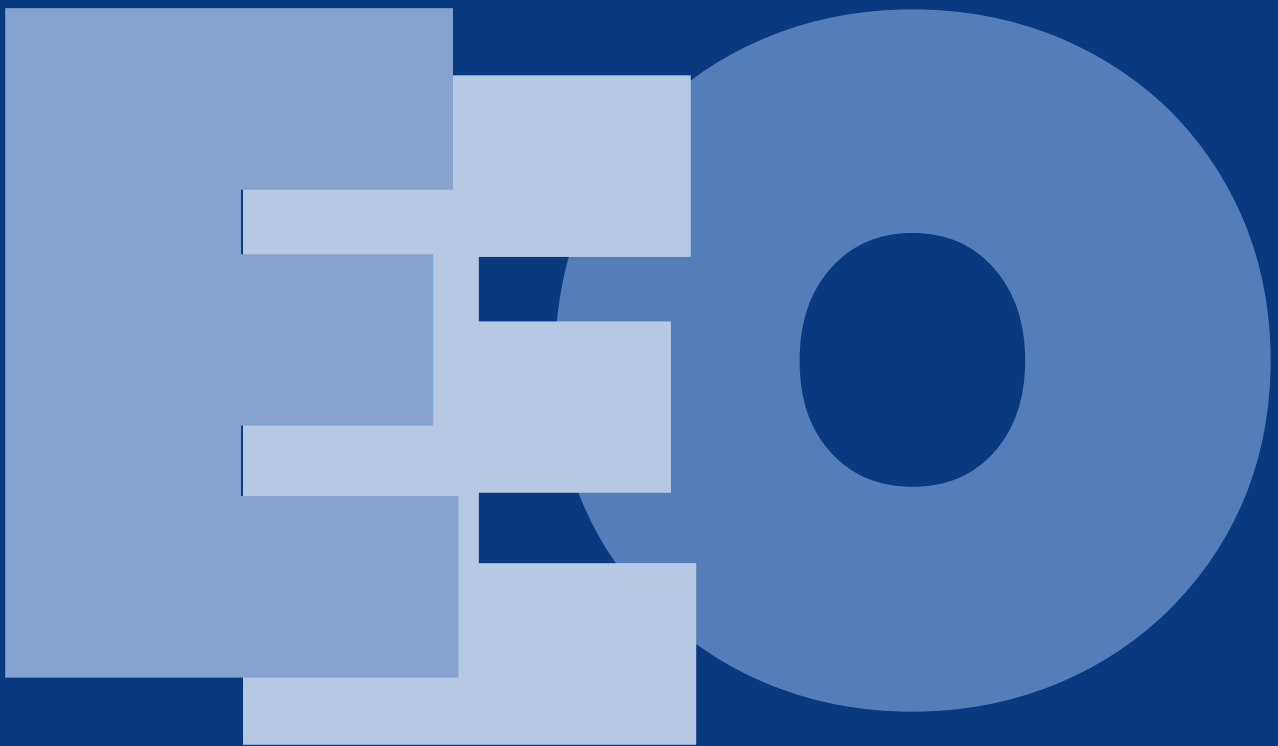




Equal Employment Opportunity Complaint Processing



Handbook EL-603

July 1996

Equal Employee Opportunity Handbook Complaint Processing Handbook

Handbook EL-603

July 1996

1. **Explanation.** Handbook EL-603 is a reference for EEO Complaint Processing offices at Headquarters, area and postal facilities to manage the USPS EEO Complaint Processing Program.

2. **Distribution.**

Initial. Handbook EL-603 is distributed to all USPS EEO Complaint Processing offices. Further distribution to the postal facilities will be accomplished by the Manager, EEO Compliance & Appeals and EEO Compliance and Appeals Coordinators.

Additional Copies. Additional copies will be maintained by the Manager, EEO Compliance & Appeals and EEO Compliance and Appeals Coordinators.

3. **Comments.**

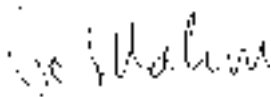
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4. **Effective Date.** This handbook is effective July 1996.



Joseph J. Mahon, Jr.
Vice President
Labor Relations

Contents

1	Introduction	1
1.1	Purpose	1
1.2	Scope	1
1.3	Background	1
1.3.1	Legal Authority	1
1.3.2	EEOC Regulations	1
1.4	Designation of EEO Officials	2
1.4.1	Overall Responsibility	2
1.4.1.1	Agency Enforcement of EEOC Regulations	2
1.4.1.2	Policies, Procedures, and Day-to-Day Management	2
1.4.2	Specific Responsibility	2
1.4.2.1	Vice President of Labor Relations	2
1.4.2.1.1	General Cases	2
1.4.2.1.2	Conflict of Interest Cases	2
1.4.2.2	Vice Presidents (Headquarters)	3
1.4.2.3	Manager, EEO Compliance and Appeals	3
1.4.2.4	EEO Appeals Review Specialist (Headquarters)	3
1.4.2.5	EEO Counselor (Headquarters units)	3
1.4.2.6	Vice Presidents (Area)	3
1.4.2.7	EEO Compliance and Appeals Coordinator (Area)	3
1.4.2.8	Manager, Human Resources (District)	4
1.4.2.9	Senior EEO Complaints Processing Specialist (where applicable)	4
1.4.2.10	Senior Labor Relations Specialist (District)	4
1.4.2.11	EEO Counselor/Investigator (Headquarters, Inspection Service, and District)	5
1.5	Filing Periods and Computation of Time	5
2	Equal Employment Opportunity Complaint Process	7
2.1	Procedures for Complaints Filed by District Employees and Applicants for Employment	7
2.1.1	Freedom From Retaliation	7
2.1.2	Precomplaint Processing Stage	8
2.1.2.1	Timeliness in Contacting Counselor/Investigator	8
2.1.2.2	Approaches to Counseling	8
2.1.2.3	Duty of C/I to Inform Counselee	8
2.1.3	Responsibilities of C/I (Counseling Stage)	10
2.1.3.1	C/I Duties	10
2.1.3.2	C/I Responsibilities During Precomplaint Counseling	11
2.1.3.3	Alternative Dispute Resolution Procedure	13

2.1.4	Individual Formal Complaint (See chapter 4 for mixed case complaints.)	13
2.1.4.1	Who May File a Complaint	13
2.1.4.2	With Whom, When, and How to File	14
2.1.4.3	What It Should Contain	14
2.1.5	Acknowledgment and Acceptance of Formal Complaint for Investigation	15
2.1.5.1	Informing Complainant	15
2.1.5.2	Advising Complainant of Issues Accepted for Investigation	15
2.1.6	Dual Filing Provision	16
2.1.7	Dismissal of a Formal Complaint	16
2.1.7.1	Nominations for Dismissal	16
2.1.7.2	Decision to Dismiss a Complaint	20
2.1.7.3	Partial Dismissals	20
2.1.8	Withdrawal or Settlement of Formal EEO Complaints ...	21
2.1.8.1	A Complainant May Withdraw the EEO Complaint at Any Time	21
2.1.8.2	A Complaint May Be Settled at Any Time by Mutual Agreement	22
2.1.8.3	Complainants May Allege That the Terms of a Settlement Agreement Have Been Breached	22
2.1.9	Investigation of the EEO Complaint	23
2.1.10	Scope of the Investigation	23
2.1.10.1	Limited to Issues Accepted by the Postal Service	23
2.1.10.2	Referral to C/I	23
2.1.10.3	Role of C/I	23
2.1.10.4	Restricted Medical Records	24
2.1.10.5	Objective Evidence Required When Investigation Includes Complainant's Claim for Compensatory Damages	24
2.1.10.6	Disclosure to Witnesses	25
2.1.10.7	Status of Accused Official	25
2.1.10.8	EEO Staff as Witnesses	25
2.1.10.9	C/I Report	26
2.1.11	Official EEO Complaint File	26
2.1.11.1	Establishment of a Complaint File	26
2.1.11.2	Notice of Restricted Use	27
2.1.12	Informal Settlement Opportunity	27
2.1.13	Distribution of Complaint File	27
2.1.14	Request for Hearing or Final Agency Decision Without a Hearing	28
2.1.14.1	When a Request May Be Made	28
2.1.14.2	With Whom It Should Be Filed	28
2.1.15	Issuance of Final Agency Decision Without a Hearing ..	28
2.1.15.1	Notifying the Complainant	28
2.1.15.2	Time Frame for Appeal	29
2.1.16	Preparations for the Hearing	29

2.1.16.1	Request for an EEOC Administrative Judge ...	29
2.1.16.2	Forwarding a Copy of the Complainant's File .	29
2.1.16.3	Arrangements for the Hearing	29
2.1.17	Findings and Conclusions Without a Hearing	29
2.1.17.1	Agency Request	29
2.1.17.2	Right of the Administrative Judge to Issue Findings and Conclusions Without a Hearing	30
2.1.17.3	Right of the Administrative Judge to Remand Newly Raised Issues	30
2.1.18	Authority of Administrative Judge	30
2.1.19	Witnesses at the Hearing	31
2.1.19.1	Attendees	31
2.1.19.2	Duty Status of Witnesses	32
2.1.20	Change of Venue	32
2.1.21	Findings and Conclusions	32
2.1.21.1	Time Period for Issuance	32
2.1.21.2	Transmittal of Administrative Judge's Determination	32
2.1.22	Final Agency Decision—Merits	33
2.1.22.1	When and by Whom Decision Is Rendered	33
2.1.22.2	Basis for the Decision	33
2.1.22.3	If No Discrimination Is Found	33
2.1.22.4	If Discrimination Is Found	33
2.1.23	Issuance and Distribution of Final Agency Decision	34
2.1.23.1	Postal Service	34
2.1.23.2	Complainant	34
2.1.24	Appeal to the Office of Federal Operations	34
2.1.24.1	Complainant's Right to Appeal	34
2.1.24.2	OFO Request for Complaint File	34
2.1.24.3	Preparing Transmittal Letter and Supporting Statement	34
2.1.25	Following Receipt of OFO's Decision on Appeal	35
2.1.25.1	Request for Reconsideration	35
2.1.25.2	Conditional Restoration	35
2.1.25.3	Compliance With OFO Decision	35
2.1.25.4	Enforcement of EEOC Decisions	35
2.1.26	Right to File a Civil Action	36
2.1.27	Right to Representation and Use of Reasonable Official Time	36
2.1.27.1	Legal Provisions	36
2.1.27.2	Official Time for Counselees Who Have Elected Anonymity	37
2.1.27.3	Conflict of Interest in Representation	37
2.1.27.4	Official Correspondence With Representative	38
2.1.27.5	Restrictions on Complainants' and Representatives' Use of Postal Service Resources	38

	2.1.27.6 Charging Complainants and Representatives for Search and Reproduction Costs	38
2.1.28	Allegations of Dissatisfaction Regarding Processing of Pending Complaints	39
	2.1.28.1 Complainant Dissatisfaction	39
	2.1.28.2 Inequitable Treatment	39
2.2	Processing Procedures for Complaints Filed by Other Than District Employees and Applicants	40
2.2.1	Parties Involved	40
	2.2.1.1 Complainants	40
	2.2.1.2 Complainants With Conflict of Interest Cases in Districts	40
2.2.2	Freedom From Discrimination and Retaliation	40
2.2.3	Precomplaint Counseling	41
2.2.4	Individual Formal Complaint	41
2.2.5	Acknowledgment and Acceptance of Formal Complaint	41
2.2.6	Dual Filing Provision	41
2.2.7	Dismissal of EEO Complaints	41
2.2.8	Withdrawal or Settlement of Formal EEO Complaints ...	41
2.2.9	Investigation of EEO Complaint	42
2.2.10	Hearings and Final Agency Decisions	42
	2.2.10.1 When a Request May Be Made	42
	2.2.10.2 With Whom It Should Be Filed	42
	2.2.10.3 Issuance of Final Agency Decision Without a Hearing	43
2.2.11	EEOC Hearing	43
	2.2.11.1 Procedures	43
	2.2.11.2 Conflict of Interest	43
2.2.12	Final Agency Decision—Merits	44
2.2.13	Appeal to the Office of Federal Operations	44
2.2.14	Requests for Reconsideration	44
2.2.15	Enforcement of EEOC Decisions	44
2.2.16	Right to File a Civil Action	44
2.2.17	Right to Representation and Use of Reasonable Office Time	44
2.2.18	Conflict of Interest in Representation	44
2.2.19	Official Correspondence With the Representative	45
2.2.20	Restrictions on Complainants' and Representatives' Use of Postal Service Resources	45
2.2.21	Charging Complainants and Representatives for Search and Reproduction Costs	45
3	Class Complaints of Discrimination (29 CFR §1614.204 et seq.)....	47
3.1	Definitions	47
	3.1.1 Class	47
	3.1.2 Class Complaint	47
	3.1.3 Class Agent	47
	3.1.4 Class Representative	48

3.2	Precomplaint Processing	48
3.2.1	Contact With C/I	48
3.2.2	Approaches to Counseling	48
3.2.3	Duty of C/I to Inform Class Agent	48
3.3	Responsibilities of C/I	49
3.4	Alternative Dispute Resolution Procedure	51
3.5	Formal Class Complaint	51
3.5.1	Who May File	51
3.5.2	Where, When, and How to File	51
3.5.3	What It Should Contain	52
3.6	Acceptance or Dismissal of a Formal Class Complaint	52
3.6.1	Designation of Agency Representative	52
3.6.2	Assignment of EEOC Administrative Judge	52
3.6.3	Consideration by the Administrative Judge	52
3.6.4	Grounds for Dismissal	53
3.6.5	Final Agency Decision	53
3.6.6	Appeal Rights	53
3.7	Individual Complaints Filed on Bases Identical to Class Complaints	54
3.8	Notification to the Class Upon Acceptance	54
3.8.1	How Notification Is Made	54
3.8.2	What Notification Should Include	54
3.9	Discovery Phase of Class Complaint	55
3.9.1	Preparation of Cases	55
3.9.2	Developing Evidence	55
3.10	Resolving Class Complaints	55
3.10.1	Mutual Agreement	55
3.10.2	Notice of Resolution	55
3.11	EEOC Hearing	55
3.11.1	Procedures	55
3.11.2	Administrative Judge's Recommended Decision	56
3.12	Final Agency Decision	56
3.12.1	If Made Within 60 Days	56
3.12.2	If Not Made Within 60 Days	56
3.12.3	Transmitting the Decision	56
3.12.4	Notice of Right to Appeal	56
3.13	Where Classwide Discrimination Is Not Found but Discrimination Is Found for the Agent	57
3.14	Discrimination on a Classwide Basis	57
3.15	Appeal to the Office of Federal Operations	57
3.16	Requests for Reconsideration	57
3.17	Official Correspondence With the Representative	57
3.18	Restrictions on Complainants' and Representatives' Use of Postal Service Resources	58
3.19	Charging Class Agents and Representatives for Search and Reproduction Costs	58

4	Mixed Case Complaints (EEO/MSPB) (29 CFR §1614.302 et seq.)	59
4.1	Definitions	59
4.1.1	Mixed Case Complaint	59
4.1.2	Mixed Case Appeal	59
4.2	Election of EEO or MSPB Procedure Required	59
4.3	Responsibilities of C/I at Counseling Stage	60
4.3.1	Situation 1	60
4.3.2	Situation 2	60
4.4	Election of Forum	61
4.5	Dismissal Based on Election of Forum	61
4.5.1	Mixed Case Complaint	61
4.5.2	Mixed Case Appeal	62
4.6	Dismissal Based on Procedural Reasons	62
4.6.1	Mixed Case Complaint	62
4.6.2	Failure to Issue a Decision	62
4.7	Questionable Jurisdiction	62
4.8	Referral to EEO Process Resulting From MSPB's Jurisdictional Dismissal	63
4.9	Processing Procedures for Mixed Case Complaints	64
4.10	Investigation of Mixed Case Complaint	64
4.11	Distribution of the Complaint File	64
4.12	Final Agency Decision—Merits	64
4.12.1	When Issued	64
4.12.2	Appeal Rights	65
4.13	Pending Nonmixed Complaints That Lead to Appeal on a Matter Appealable to MSPB	65
4.14	Reissuing Final Agency Decision Following MSPB's Dismissal for Jurisdictional Reasons	66
4.14.1	With Whom It Should Be Filed	66
4.14.2	Issuance of a Final Agency Decision Without a Hearing	66
4.14.3	Preparations for the Hearing	67
4.15	Official Correspondence With Representative	67
5	EEO Case File	69
5.1	Dividers	69
5.2	Placing Postal Service Forms in the Case File	69
5.3	Arrangement of the Case File	70
5.4	Numbering the Investigator's File	74
5.5	Contents Page	74
5.6	Supplemental Investigations	74
5.7	Notice of Restricted Use	75
6	Records Retention and Disposal and Privacy Disclosure Regulations	77
6.1	Precomplaint Counseling File	77
6.2	Official EEO Complaint File	77
6.3	Civil Actions	78
6.4	Extra Copies of EEO Complaint Files	78
6.5	Request to Preserve Records	78
6.6	Privacy Act Considerations	78
6.7	Maintenance of Files	78
6.8	Access and Disclosure	79



1 Introduction

1.1 Purpose

This handbook outlines the procedures for providing precomplaint counseling and for processing Equal Employment Opportunity (EEO) complaints.

1.2 Scope

The procedures discussed in this handbook are intended to apply the Equal Employment Opportunity Commission (EEOC) regulations found in 29 Code of Federal Regulations (CFR) §1614.

1.3 Background

1.3.1 Legal Authority

Title VII of the Civil Rights Act of 1964, as amended; the Age Discrimination in Employment Act (ADEA) of 1967, as amended; the Rehabilitation Act of 1973, as amended; and the Equal Pay Act (EPA) of 1963, as amended, mandate that the United States government ensure equal employment opportunity for all persons. These statutes also prohibit discrimination in employment based on race, color, religion, sex, national origin, age, and physical or mental disability; and they prohibit retaliation for prior participation in activities protected by the statutes.

1.3.2 EEOC Regulations

The EEOC is responsible for developing, issuing, and enforcing the complaint processing regulations of these acts for all executive departments and agencies, including the U.S. Postal Service. These regulations are found at 29 CFR §1614.101 et seq.

1.4 Designation of EEO Officials

1.4.1 Overall Responsibility

1.4.1.1 *Agency Enforcement of EEOC Regulations*

The deputy postmaster general is the director of EEO for the Postal Service for purposes of EEOC regulations. The vice president of Labor Relations is responsible for the EEO complaints processing and appeals programs.

1.4.1.2 *Policies, Procedures, and Day-to-Day Management*

The manager of EEO Compliance and Appeals is responsible for developing policies for EEO complaint processing and procedures and for the day-to-day management of the complaint processing system.

1.4.2 Specific Responsibility

1.4.2.1 *Vice President of Labor Relations*

1.4.2.1.1 General Cases

The vice president of Labor Relations for the Postal Service has designated the manager, EEO Compliance and Appeals, or his or her designee to render final agency decisions (discussed later in this handbook) on the complaints of employees or applicants for employment in Headquarters, Headquarters field units, and the Postal Inspection Service. The manager also renders such decisions on the complaints of area office employees and field Postal Career Executive Service (PCES) employees, and in certain cases involving a conflict of interest.

1.4.2.1.2 Conflict of Interest Cases

A conflict of interest may exist in cases concerning the direct and personal involvement of a management official whose responsibilities include administrative or functional complaint processing activities. For example, a discrimination complaint concerning a selection decision personally made by an area manager will be processed as a conflict of interest case, but a complaint concerning a selection in which the area manager acted solely as the approving official may not be processed as such. Area office cases that involve an actual processing conflict of interest may appropriately be handled by an investigator employed in another area or by Headquarters. If discrimination is found in a conflict of interest case, the manager of EEO Compliance and Appeals will ensure necessary compliance.

1.4.2.2 Vice Presidents (Headquarters)

Vice presidents are the designated EEO officers for their respective units and are responsible for overseeing the administration of the EEO program; directing necessary corrective action; and ensuring implementation of Postal Service, EEOC, and court decisions in their respective units.

1.4.2.3 Manager, EEO Compliance and Appeals

The manager of EEO Compliance and Appeals directs the program and day-to-day management of the Compliance and Appeals Office and supervises Headquarters appeals review specialists. The manager coordinates the EEO complaints processing program on a national level and provides for national program guidance and training of EEO professionals. The manager also renders final agency decisions in certain Headquarters and conflict of interest cases.

1.4.2.4 EEO Appeals Review Specialist (Headquarters)

An EEO appeals review specialist is responsible for the day-to-day management of EEO complaint processing. The specialist supervises the EEO counselor/investigators (C/Is) assigned to process Headquarters, Headquarters field unit, Inspection Service, area office headquarters, and conflict of interest cases. The specialist maintains liaison with EEOC officials, coordinates arrangements for hearings, and prepares final agency decisions in certain cases.

1.4.2.5 EEO Counselor (Headquarters units)

The EEO counselor serves as a bridge between employees and management, attempts to facilitate amicable solutions to employee problems, and informs employees of their right to file a formal complaint with the EEO appeals review specialist when attempts at informal resolution fail. (Sections 2.1.2 and 2.1.3 further explain the responsibilities of the EEO counselor.)

1.4.2.6 Vice Presidents (Area)

Area vice presidents are the designated EEO officers for their respective areas. They or their designees render merit final agency decisions, which are prepared by the EEO compliance and appeals coordinator in their area. These officials direct the necessary corrective action in individual complaints of discrimination, unless otherwise designated (for example, see section 1.4.2.2).

1.4.2.7 EEO Compliance and Appeals Coordinator (Area)

These coordinators oversee the EEO complaint process in their area, provide program guidance to area EEO personnel, and

arrange training for area EEO professionals. Coordinators review formal complaints for acceptance or dismissal, assign investigations to area EEO C/Is, and coordinate arrangements for hearings. They render procedural final agency decisions and prepare merit final agency decisions, which are then signed by the appropriate Human Resources manager.

1.4.2.8 Manager, Human Resources (District)

The manager of Human Resources supervises EEO complaints processing and the Labor Relations Office. This manager may be designated by the district manager to formulate and implement EEO policies, enter into EEO and grievance settlements, and sign final agency decisions in certain cases.

1.4.2.9 Senior EEO Complaints Processing Specialist (where applicable)

These specialists are administratively responsible for precomplaint counseling and formal complaint investigations in their district. When senior EEO complaints processing specialists identify a potential conflict of interest case in the district, they should seek guidance from the EEO compliance and appeals coordinator in the area office.

Headquarters cases that represent a conflict of interest may be assigned to a senior EEO complaints processing specialist at a district. The specialist must ensure that EEO posters are prominently displayed in employee areas within each installation in the district, as well as the facility's customer service lobby areas and personnel offices when postal employee entrance exams are opened to the public.

1.4.2.10 Senior Labor Relations Specialist (District)

Senior labor relations specialists assign advocates for hearing before administrative judges of the EEOC. They work closely with senior EEO complaints processing specialists to apprise them of the filing date of mixed case appeals and promptly inform them when a mixed case appeal is dismissed by the Merit Systems Protection Board (MSPB) for lack of jurisdiction (see section 4.4). Senior labor relations specialists also work with senior EEO complaints processing specialists to identify instances when a grievance and an EEO complaint have been filed on the same matter. When the EEO complaint is deferred pending adjudication of a grievance, senior labor relations specialists must promptly inform the appropriate senior EEO complaints processing specialist of the termination date of the grievance procedure.

1.4.2.11 EEO Counselor/Investigator (Headquarters, Inspection Service, and District)

EEO C/Is provide precomplaint counseling to individual counsees and attempt to resolve the case at the informal stage. C/Is also investigate formal EEO complaints and prepare a summary report of their investigation. They resolve cases during the investigative stage of complaint processing. Although some formal conflict of interest complaints are handled by Headquarters, the precomplaint counseling for most conflict of interest EEO complaints is handled by the districts.

1.5 Filing Periods and Computation of Time

All time periods in this handbook are stated in calendar days. A document is deemed timely if it is delivered in person before the expiration of the applicable filing period. If mailed, it must be postmarked by the filing date. In the absence of a legible postmark, it must be received by mail within 5 days of the applicable filing period. The first day counted will be the day after the event from which the time period begins to run. The last day of the period will be included, unless it falls on a Saturday, Sunday, or federal holiday, in which case the period will be extended to include the next business day.



2 Equal Employment Opportunity Complaint Process

2.1 Procedures for Complaints Filed by District Employees and Applicants for Employment

The procedures in this section apply to most district career employees, noncareer employees, and applicants for employment. See section 2.2 for the procedures regarding employees and applicants for Postal Service employment in Headquarters, Headquarters field units, the Postal Inspection Service, and area offices; for field PCES employees and EEO professionals; and for complainants whose conflict of interest cases are referred to Headquarters.

2.1.1 Freedom From Retaliation

Complainants and their representatives, EEO professionals, witnesses, and all other persons involved in the presentation and processing of an EEO complaint must be free from restraint, interference, coercion, discrimination, or retaliation with respect to their participation in the EEO complaint process. It is illegal to discriminate against employees because they have opposed any practice that is deemed unlawful under Title VII or have made a charge, testified, assisted, or participated in any manner in an EEO proceeding, including precomplaint counseling, investigations, or hearings.

2.1.2 Precomplaint Processing Stage

2.1.2.1 *Timeliness in Contacting Counselor/Investigator*

In order to try to resolve a matter informally, aggrieved individuals who believe they have been discriminated against on the basis of their race, color, religion, sex, national origin, age, physical or mental disability or have been subjected to retaliation must participate in the precomplaint processing procedure before filing a formal complaint. This process is initiated by the aggrieved individual (referred to at this point as the counselee). Counselees must bring the matter to the attention of the senior EEO complaints processing specialist and request counseling within 45 days of the date of the alleged discrimination or—if a personnel action is involved—within 45 days of the effective date, if applicable, or the date the counselee knew or reasonably should have known of the alleged discriminatory event. Prominently displayed copies of EEO Poster 72, which delineates these time limits, constitute counselee notification.

2.1.2.2 *Approaches to Counseling*

The EEO precomplaint counseling process involves various techniques in an attempt to bring about early resolution. These techniques include the following: (1) requesting that the counselee fill out Form 2564-A, *Information for Precomplaint Counseling*, and return it to the senior EEO complaints processing specialist before counseling activities begin; (2) having the C/I assigned to the case hold separate or joint meetings with the counselee and management officials; and (3) having the C/I conduct interviews and meetings via conference call or separate telephone communications.

2.1.2.3 *Duty of C/I to Inform Counselee*

During the initial counseling session, the C/I must advise each counselee in writing of his or her rights and responsibilities, including the following:

- a. The right to be accompanied by the representative of his or her choice and the right to proceed anonymously during the precomplaint processing phase. The right to anonymity does not extend to disclosures to EEO officials whose need to know is in the performance of their official duties.
- b. The regulatory requirement to participate in the precomplaint processing stage, and that only the matters raised in precomplaint counseling (or similar or related issues raised in precomplaint counseling) may be alleged in a formal complaint filed with the Postal Service.
- c. The duty to keep the agency and EEOC informed of his or her current address, and that copies of appeal papers must be served on the Postal Service.

- d. The requirement to choose when there is an option of filing either a mixed case complaint or a mixed case appeal.
- e. The right to file a notice of intent to sue and a lawsuit under ADEA instead of an administrative complaint of age discrimination.

When a person contacts a C/I with an allegation of age discrimination, the C/I explains the counselee's options and provides him or her with a copy of Form 2563-B, *Allegations of Discrimination Based on Age*. This form explains that aggrieved persons may file an administrative age discrimination complaint with the Postal Service pursuant to 29 CFR §1614. If they elect to file an administrative complaint, they must first exhaust administrative remedies before filing a civil action in U.S. District Court. Exhaustion in an age case means that the complainant has pursued the administrative process to the point where a civil action may be filed pursuant to 29 CFR §1614.201.

Complainants may choose to bypass the administrative complaint process and file a civil action directly in U.S District Court if they first provide the EEOC with a written notice of intent to sue under ADEA. The notice to EEOC must be filed within 180 days of the date of the alleged discriminatory action. After filing, the aggrieved person must wait at least 30 days before filing a civil action.

Notices of intent to sue can be mailed to EEOC at the following address:

Equal Employment Opportunity Commission
Office of Federal Sector Programs
P.O. Box 19848
Washington, DC 20036-1948

Notices can be hand-delivered to the following address:

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

Faxes can be sent to (202) 663-7022.

- f. The right to go directly to U.S. District Court (without providing notice to EEOC or exhausting administrative remedies) on claims of sex-based wage discrimination under EPA, even though such claims of wage discrimination may be raised under Title VII and EPA simultaneously, and that the statute of limitations in EPA cases is 2 years (3 years for a willful violation).

- g. The right to request a hearing after 180 days from the filing of a formal complaint or within no more than 30 days after receiving the completed report of investigation, whichever occurs first.
- h. The duty to mitigate damages (applies to nonmixed cases).
 - (1) According to the law, interim earnings or amounts that a complainant could have earned with reasonable diligence must be deducted from any back pay otherwise allowable.
 - (2) Back pay may not include the following: (1) any period during which an individual was not ready, willing, and able to perform his or her duties because of an incapacitating illness or injury, or (2) any period during which the individual was unavailable for reasons other than those related to or caused by the adverse action or unlawful discrimination.
 - (3) Individuals who are denied employment with the Postal Service and subsequently file successful appeals challenging such actions are required to mitigate damages. They must furnish information about their efforts to secure other employment during the entire back pay period. If, for example, an employee is removed from the Postal Service and later reinstated through an offer of full relief, the employee would be entitled to the salary he or she would have earned had he or she not been removed, less the amount he or she earned or reasonably could have earned during the period of discharge.
- i. The responsibility to meet administrative and court time frames for appeals (see section 2.1.7.2 et seq.).

2.1.3 Responsibilities of C/I (Counseling Stage)

2.1.3.1 C/I Duties

The EEO C/I has six clearly defined duties that must be performed for each completed counseling that does not achieve resolution:

- a. To advise the aggrieved person about the EEO complaint process under 29 CFR §1614 and possible election requirements.
- b. To determine the issues and bases of the potential complaint.
- c. To conduct a limited inquiry to furnish information for settlement efforts and determine jurisdictional questions if a formal complaint is filed.
- d. To seek resolution of the matter at the lowest possible level.
- e. To document the resolution or advise the counselee of his or her right to file a formal discrimination complaint if resolution fails.

- f. To prepare a report sufficient to determine that required counseling action has been taken and to resolve any jurisdictional questions that may arise.

2.1.3.2 *C/I Responsibilities During Precomplaint Counseling*

During the precomplaint counseling process, the C/I must do the following:

- a. Respect the counselee's request for anonymity during EEO consultations unless the C/I is authorized to reveal the counselee's name or until a formal complaint has been filed.
- b. Discuss the issues in the case and the date of occurrence with the counselee, determine the specific type of discrimination alleged, and obtain information on the individuals whom the counselee thinks were treated differently or, if appropriate, determine the accommodation being sought.
 - (1) If, after being thoroughly advised by the C/I of the bases of discrimination that may be alleged in the EEO complaint process, as covered by the statutes and incorporated in 29 CFR §1614, the aggrieved person does not allege that his or her problems stem from discrimination based on race, color, religion, sex, national origin, age, or physical or mental disability, the counselor will immediately issue the appropriate *Notice of Right to File* a formal complaint.
 - (2) If the aggrieved person's initial contact with the EEO office occurs beyond the specified time limits (see section 2.1.2.1), the C/I will inquire whether sufficient reasons prevented the individual from making initial contact within the time limit. If no sufficient reason exists, the C/I will immediately issue the aggrieved the appropriate *Notice of Right to File* a formal complaint.
- c. Make the necessary inquiries of Postal Service employees and supervisors personally involved in the EEO counseling process and obtain access to relevant Postal Service regulations and documents that will clarify the C/I's understanding of the issues. EEO counseling inquiries are conducted informally and do not involve sworn testimony or extensive documentation.
- d. Try to facilitate informal resolution of a case through discussion with the counselee, appropriate officials, and witnesses who can help clarify the matter. C/Is should remain impartial throughout the counseling and avoid interjecting their own views on settlement. They should also not develop or advocate specific terms of an agreement. C/Is will not report any discussions that occur during negotiations for resolution to either party.

- (1) A counselee may withdraw his or her allegation(s) by signing a written statement that clearly states that the withdrawal was not induced by threats, coercion, or intimidation. If a counselee decides to partially withdraw his or her allegation(s), his or her written withdrawal must clearly spell out what he or she is intentionally withdrawing.
 - (2) A settlement agreement must be in writing, signed by the parties, and specific in its terms and stipulations. It must identify the allegations resolved. (See section 2.1.8 for further information pertaining to settlement agreements.)
- e. Conduct a final interview within 30 days of the date on which the counselee sought counseling, *unless* the counselee agrees in writing, before the end of the 30-day period, to postpone the final interview and extend counseling for an additional period of no more than 60 days. If the matter has not been resolved at the conclusion of the counseling period, the C/I must conduct a final interview and issue the counselee a *Notice of Right to File*, with the following considerations:
- (1) During the final interview, the C/I will discuss the attempts at resolution, but will not reveal the identity of individuals used to compare treatment of the aggrieved. EEO counseling inquiries are conducted informally and do not involve sworn testimony or extensive documentation. Therefore, the C/I **cannot** make findings on the issue of discrimination and **should not** imply to the aggrieved person that the C/I's interpretation of the issues constitutes the agency's official finding.
 - (2) When the *Notice of Right to File* is issued, the C/I will inform the counselee of his or her right to file a formal complaint no later than 15 days after receiving the notice. The C/I will also inform the counselee of the specific types of information required in a formal complaint; of his or her duty to immediately inform the Postal Service if he or she retains counsel or a representative; and that if he or she decides to file a formal complaint, it must be filed with the EEO compliance and appeals coordinator.
- f. Keep a record of all counseling contacts and activities, including the date of initial contact and a copy of the signed and dated *Notice of Right to File*. The C/I must submit the precomplaint processing file to the area processing center, as requested.
- (1) The C/I must submit Form 2570, *EEO Counselor's Inquiry Report*, to the area processing center within 5 days of being advised that a formal complaint of discrimination has been filed. The C/I's notes of interviews and document reviews and any copies of documents assembled will be submitted to the

area processing center at the same time as the report, but not as a portion of or an attachment to the report. A copy of Form 2570 will be provided to the complainant. A copy of the inquiry report may also be provided to the management official who has responsibility for the facility or unit in question.

- (2) The inquiry report must be a succinct summary of the C/I's resolution efforts and should include sufficient information to enable the EEO compliance and appeals coordinator to determine the timeliness of the initial counseling contact and the reason for any delay, determine whether an attempt to resolve the complaint was made, and make a reasoned decision to accept or dismiss the formal complaint.
- g. Do not attempt in any way to encourage or restrain a person from filing a formal complaint of discrimination. C/Is must not express an opinion regarding a case's merit and may not infer that they have reached a finding on the issue of discrimination.

2.1.3.3 Alternative Dispute Resolution Procedure

Some facilities or units have an alternative dispute resolution procedure in which the manager of Human Resources or the manager's designee invites the counselee to participate. If the counselee agrees in writing to participate in the procedure, the precomplaint processing period will be 90 days. During this period, the counselee and the management representative may jointly or separately participate in voluntary resolution efforts. (An example of such a process would be mediation—a voluntary joint resolution and problem-solving process facilitated by an impartial party.) If the matter has not been resolved on or before the 90th day, the C/I will issue the counselee Form 2579-A, *Notice of Right to File Individual Complaint*, and inform him or her of the right to file a formal complaint no later than 15 days after receiving the notice. The C/I will also inform the counselee of the specific types of information required in a formal complaint, of his or her duty to immediately inform the Postal Service if he or she retains counsel or a representative, and that if he or she decides to file a formal complaint, it must be filed with the EEO compliance and appeals coordinator.

2.1.4 Individual Formal Complaint (See chapter 4 for mixed case complaints.)

2.1.4.1 Who May File a Complaint

The complaint must bear a signed statement from the complainant or the complainant's attorney. The complaint may be filed by mail or in person. If filed by a nonattorney representative, the formal

complaint must display the complainant's signature and be accompanied by the complainant's written designation or the representative. **Chapter 3** of this handbook covers the processing of class complaints of discrimination.

2.1.4.2 With Whom, When, and How to File

At the conclusion of the precomplaint processing period, the counselor will provide the counselee with Form 2579-A, *Notice of Right to File Individual Complaint*, and Form 2565, *EEO Complaint of Discrimination in the Postal Service*. The latter may be used for filing a formal EEO complaint in the Postal Service. The following explains the procedures for filing a formal complaint:

- a. A formal complaint must be in writing and must be filed with the EEO compliance and appeals coordinator no later than 15 days after receiving a *Notice of Right to File*. In calculating the 15-day period, the first day counted is the day after the form is received, and the last day counted is the 15th calendar day thereafter, unless it falls on a Saturday, Sunday, or federal holiday, in which case the period will be extended to the next business day. When filing a formal complaint, the Postal Service recommends, but does not require, that the aggrieved person mail a duplicate copy of the complaint to the C/I who conducted the counseling.
- b. A formal complaint will be considered timely if it is delivered in person to the EEO compliance and appeals coordinator or mailed to the area processing center and postmarked before the expiration of the filing period. If the complaint is received by mail without a legible postmark, the EEO compliance and appeals coordinator will consider the complaint to have been filed 5 days before the date it was received.

2.1.4.3 What It Should Contain

The formal complaint should contain the following information:

- a. The complainant's name, home address, telephone number, and Social Security number.
- b. The complainant's title and position level, when applicable. If the complainant is an applicant for employment, the word *applicant* should be entered on the form.
- c. The name, title, business address, and telephone number of the complainant's representative, if applicable.
- d. The names and titles of the officials who carried out the alleged discriminatory action, policy, or procedure, and the postal facility where the act occurred.
- e. The date and identification of the incident, personnel action, or matter that prompted the complainant to seek EEO counseling.

- f. Information regarding each allegation of discrimination, including the circumstances of the matter and the date and place it occurred. The complainant cannot include allegations or issues not like or related to those raised during counseling.
- g. The date the complainant received Form 2579-A, *Notice of Right to File Individual Complaint*.
- h. The C/I's name.
- i. The signature of the complainant and the date, or the signature of the complainant's attorney of record and the date.
- j. Whether the complainant has initiated or filed a grievance or an MSPB appeal, and the date of that grievance or appeal.

2.1.5 Acknowledgment and Acceptance of Formal Complaint for Investigation

2.1.5.1 *Informing Complainant*

The EEO compliance and appeals coordinator or designee will notify the complainant in writing of the date of the Postal Service's receipt of the formal complaint and whether it has been accepted for investigation or has been dismissed. The following must occur for an EEO complaint to be accepted for processing:

- a. It must meet the jurisdictional requirement—that is, it must be filed by an aggrieved employee or applicant for employment and it must raise a claim of discrimination based on race, color, religion, sex, national origin, age, physical or mental ability, or retaliation.
- b. It must be filed in a timely manner.
- c. It must be filed with the appropriate area processing center or designated complaints processing office.
- d. It must contain specific and detailed information (see section 2.1.4).

2.1.5.2 *Advising Complainant of Issues Accepted for Investigation*

The complainant must be advised of each issue accepted for investigation, including the specific incident or personnel action involved, the basis of discrimination, and the date the alleged discrimination occurred.

- a. The area processing center may consolidate two or more complaints of discrimination filed by the same complainant.

- b. The area processing center may also consolidate two or more complaints filed by different complainants, if the complaints consist of substantially similar allegations of discrimination or relate to the same matter.
- c. The EEO compliance and appeals coordinator will advise complainants when their complaints are consolidated for processing.
- d. The filing date of the complaint that is filed first will control the applicable time frame for the processing of consolidated complaints.

2.1.6 Dual Filing Provision

When an employee covered by a collective bargaining agreement files an EEO complaint that is accepted and a grievance has been filed covering the same matter, the manager of Human Resources may authorize the senior EEO complaints processing specialist to temporarily hold the EEO complaint in abeyance. The specialist will then stop the 180-day time-in-process clock for investigating the complaint until the grievance procedure has terminated. The senior EEO complaint processing specialist will notify the aggrieved in writing that if all the issues are not resolved during the grievance procedure, the complaint may be pursued after the grievance procedure has terminated. A copy of the *Notice of Abeyance* letter will be provided to the senior labor relations specialist, who is responsible for immediately notifying the senior EEO complaints processing specialist of when and how the grievance procedure was terminated. If the issues are resolved during the grievance procedure, the complainant may concurrently settle the EEO complaint by completing a signed statement that references the EEO complaint by case number and acknowledges that the EEO complaint is being settled or withdrawn (see section 2.1.8). Should the grievance be resolved and the aggrieved employee wish to continue the processing of the EEO complaint, the area processing center will review the complaint and grievance files to determine whether full or partial dismissal of the EEO complaint is appropriate (see section 2.1.7). If dismissal is not appropriate, the complaint will be reactivated within 15 days following termination of the grievance procedure. The investigation will be completed within that portion of the 180 days that remained when the complaint was deferred.

2.1.7 Dismissal of a Formal Complaint

2.1.7.1 Nominations for Dismissal

Complaints that must be wholly or partially dismissed include the following:

- a. The complaint is not based on a type of discrimination addressed in 29 CFR §1614 (see section 1.3.1).

- b. The complaint is filed with an agency or office that is not a part of the Postal Service (29 CFR §§1614.106[b] and 1614.107[a]).
- c. It sets forth identical matters included by the complainant in a previous EEO complaint that is pending before or has previously been decided by either the Postal Service or EEOC (29 CFR §1614.107[a]).
- d. It was not filed in a timely manner (29 CFR §1614.107[b]).
 - (1) The complainant must have requested EEO counseling within 45 days of the date of the alleged discrimination or, if the complaint involved a personnel action, within 45 days from its effective date.
 - (2) Additionally, the complainant must have filed the formal complaint within 15 days from the date of receiving Form 2579-A, *Notice of Right to File Individual Complaint*.
 - (3) If these time limits have not been adhered to, the EEO compliance and appeals coordinator may extend the time for filing if the complainant is able to show the following:
 - (a) That he or she was not notified and was otherwise unaware of the time limits.
 - (b) That when the alleged action occurred, he or she was unaware of its occurrence and reasonably could not have known at the time.
 - (c) That despite his or her diligent efforts, circumstances beyond his or her control prevented the complainant from filing in a timely fashion.
 - (d) That there were other sufficient reasons for the untimely filing. Whether the reasons are sufficient is determined by the EEO compliance and appeals coordinator.
- e. The complaint raises a matter that has not been brought to the attention of a counselor and is unlike or unrelated to any such matter (29 CFR §1614.107[b]).
 - (1) The portion of an EEO complaint that contains matters not brought to the attention of an EEO counselor cannot be accepted for investigation.
 - (2) The senior EEO complaints processing specialist of the area processing center will notify the complainant in writing of the name of the counselor to whom the newly raised matter has been referred for precomplaint processing.
 - (3) For purposes of establishing timeliness, the date that the area processing center received the formal complaint, letter, or affidavit containing the newly raised matter will be considered

the initial date that the matter was brought to the attention of an EEO counselor.

- f. The allegation raised in the complaint has been in the formal processing stage with the Postal Service for at least 180 days; the complaint is the basis of a civil action in which the complainant is a party, and the civil action is either pending or has been decided by a U.S. District Court (29 CFR §1614.107[c]).
 - (1) If, while a complaint is in the hearing or appeal stage before EEOC, it is also the basis of a civil action in which the complainant is a party, and that civil action is either pending or has been decided by a U.S. District Court, the coordinator or specialist will immediately notify EEOC of the civil action and will request EEOC to cancel the matter and return the case to the Postal Service for dismissal.
 - (2) The EEO compliance and appeals coordinator and the chief field counsel will closely monitor the court proceedings.
- g. The complainant has raised the same matter in an appeal to MSPB (29 CFR §1614.107[d]). (See **chapter 4** for additional information on mixed case complaints.)
- h. The issue is moot, or the issue being raised is an allegation that a Postal Service proposal to take a personnel action or any preliminary step to a personnel action is discriminatory (29 CFR §1614.107[e]).
 - (1) Generally speaking, a case is moot if (1) the matter has already been resolved by interim events that have eradicated the effects of the alleged violation (e.g., rescission of a Letter of Warning through the grievance procedure and expungement of any records showing that it had been issued) and (2) there is no reasonable expectation that the alleged violation will reoccur.
 - (2) Complaints alleging discrimination in any preliminary steps that do not, without further action, affect the person will be dismissed. For example, progress reviews or improvement periods that are not part of any official file on the employee will be dismissed unless the complaint alleges that the preliminary step was taken to harass the individual in a way prohibited by EEOC regulations.
- i. Complainant cannot be located (29 CFR §1614.107[f]). After reasonable efforts to locate him or her, the EEO compliance and appeals coordinator will send a notice to the complainant's last known address stating that the case will be dismissed if he or she fails to respond to the notice within 15 days. Complainants who

change their mailing address must notify the area processing center or the designated complaints processing office.

- j. Complainant fails to cooperate (29 CFR §1614.107[g]). If a complainant takes an unreasonably long time to provide relevant information, the EEO compliance and appeals coordinator will send him or her a certified letter requesting the necessary information and warning that the case will be dismissed if he or she fails to provide the information within 15 days of the date the letter is received.

Failure to respond will result in dismissal, unless sufficient information is already available in the file to continue pursuing the complaint.

- k. The complainant refuses to accept a written offer of full relief to settle the complaint (29 CFR §1614.107[h]).

- (1) For the purposes of this section, full relief is that to which the complainant would be *personally* entitled if discrimination were found and which is otherwise available under Title VII, as amended; ADEA; EPA; or the Rehabilitation Act.

Aggrieved employees who prevail in disparate treatment cases in which the discriminatory incident occurred on or after November 21, 1991, may be awarded compensatory damages. (This award is not available to claimants in disparate impact, ADEA, or EPA *only* cases; restrictions apply to claims filed under the Rehabilitation Act when the agency has made a good faith reasonable accommodation effort.) **Employees must state a claim for compensatory damages before receipt of an offer of full relief.**

- (2) If the senior EEO complaints processing specialist believes that a complainant has refused an offer of full relief, the specialist will advise the EEO compliance and appeals coordinator in the area processing center. If the coordinator concurs, he or she will certify in writing that full relief has been offered and will send this certification to the complainant. The coordinator will include a letter outlining the full relief and notifying the complainant that the complaint will be dismissed if the offer is not accepted within 30 days of receipt of the letter.
- (3) If the complainant does not accept the offer within 30 days, the coordinator will prepare a decision letter to be sent to the complainant as outlined in section 2.1.7.2. This letter will also notify the complainant of the possible consequences of appealing the final agency decision. The letter must advise the complainant that such an appeal is not risk free. If, on

appeal, EEOC affirms a dismissal under 29 CFR §1614.107(h), the complainant need not receive any relief in the administrative process, and any decision to offer relief again will be at the discretion of the Postal Service. The letter also will advise that if EEOC affirms the dismissal based on refusal to accept a certified offer of full relief, the complainant retains the right to seek a de novo review of the complaint by filing a civil action in U.S. District Court.

2.1.7.2 Decision to Dismiss a Complaint

(This section refers to nonmixed complaints. See **chapter 4** for regulations covering the dismissal of mixed complaints.)

No time period is placed on the Postal Service (other than to complete the investigation within 180 days) regarding when dismissal or partial dismissal of a complaint may occur. Dismissing a complaint is a final agency decision and must be transmitted to the complainant by certified mail. The notification letter must outline the complainant's appeal rights, including the right to file a civil action in an appropriate U.S. District Court within 90 days of receiving the final agency decision or submitting a written appeal to EEOC's Office of Federal Operations (OFO) within 30 days of receiving the decision. The letter must inform the complainant that if he or she appeals to OFO, a copy of the appeal and any supporting documentation must also be submitted to the EEO compliance and appeals coordinator. The coordinator will ensure that a copy of EEOC Form 573, *Notice of Appeal/Petition to the Office of Federal Operations*, is attached to the decision letter.

When a complainant is represented by an attorney of record, the time for appeal begins from the date that the attorney receives the final decision. When the complainant is not represented by an attorney, the time period for appeal runs from the date that the complainant receives the final decision.

2.1.7.3 Partial Dismissals

When the Postal Service dismisses one or more issues in a complaint, but not the entire complaint, the area coordinator will send a letter to the complainant by certified mail. The letter will acknowledge receipt of the complaint, list the issues that have been accepted, and separately list the issues that have been dismissed, along with the reasons for dismissal. The letter will contain the complainant's appeal rights, as outlined in section **2.1.7.2**. A copy of EEOC Form 573 will be attached to the partial acceptance/dismissal letter.

When a complainant appeals a partial dismissal to OFO, the area coordinator may temporarily stay the 180-day time-in-process period to complete the investigation of the accepted portion of the

complaint. The coordinator will notify the senior EEO complaints processing specialist and the complainant that the investigation of the accepted portion has been temporarily discontinued, pending OFO's decision on the appeal of the dismissed portion.

If OFO reverses a partial dismissal, the 180-day time-in-process period will be reactivated on the date the OFO decision becomes final. Thereafter, the dismissal portion of the case will be investigated along with the accepted portion during the time remaining in the 180-day processing period.

The complainant retains the right to request reconsideration within 30 days of receiving OFO's decision letter sustaining a partial dismissal. If a complainant requests reconsideration, the appeals processing center will continue to reconsider the partial dismissal as having been upheld; effective on the date the OFO decision would have become final, the investigation of the accepted portion of the complaint will resume for completion within the remaining portion of the 180-day time period. Should EEOC reverse its decision to uphold the dismissal, OFO will return the dismissed portion of the complaint to the Postal Service with instructions to complete the investigation within a prescribed period.

Complainants need not exercise their right to file a civil action on the dismissed portion until they receive a final decision issued by the Postal Service or EEOC on the merits of the remainder of the complaint. They then have 90 days to file.

2.1.8 Withdrawal or Settlement of Formal EEO Complaints

2.1.8.1 *A Complainant May Withdraw the EEO Complaint at Any Time*

- a. To withdraw a complaint filed under Title VII, the Rehabilitation Act, or the Equal Pay Act, the complainant may sign Form 2565-A, *Withdrawal of Formal EEO Complaint of Discrimination*, or the complainant may put the withdrawal in writing and sign it. The withdrawal must clearly state that it was not induced by threats, coercion, or intimidation. In a partial withdrawal, the complainant must clearly spell out the allegation he or she intends to drop.
- b. To withdraw a complaint filed under ADEA, the complainant may sign Form 2565-E, *Withdrawal of Formal EEO Complaint (Including claims filed under ADEA)*, or the complainant may put the withdrawal in writing and sign it. Withdrawals of complaints filed under ADEA are binding on complainants who have previously received written advice of their rights under the Older Workers' Benefit Act, including their right to seek the advice of an attorney

and to have adequate time to consider before deciding to withdraw their complaints.

2.1.8.2 A Complaint May Be Settled at Any Time by Mutual Agreement

- a. The settlement agreement of a case filed under Title VII, the Rehabilitation Act, or the Equal Pay Act must be in writing, must be signed by the parties, must be specific in its terms and stipulations, and must identify the allegations resolved. Form 2565-B, *EEO Settlement Agreement*, may be used for this purpose.
- b. Before settling a complaint filed under ADEA, the complainant must be given written advice to consult an attorney before executing the agreement and a reasonable period of time in which to consider the settlement agreement. The agreement must contain clear language, a specific reference to the fact that the claims being settled arise under ADEA, and a specific reference to the fact that the settlement applies only to claims arising on or before the date of the agreement (not to future claims). It must specify the consideration the complainant is receiving. In other words, it must spell out what the complainant is receiving that has merit, desirability, or importance to the complainant. Form 2565-F, *EEO Settlement Agreement (Including claims filed under ADEA)*, may be used for this purpose.
- c. Settlement agreements must state that if complainants believe the agency has breached any of the terms of the settlement, they have the right to request that the terms be implemented or that the case be reinstated for processing.

2.1.8.3 Complainants May Allege That the Terms of a Settlement Agreement Have Been Breached

- a. Complainants must notify the appeals processing center in writing within 30 days of the date on which they knew or should have known of an alleged failure to comply with the terms. They may request either agency compliance with the agreement or reinstatement of the complaint to the point at which processing ceased.
- b. Within 30 days of receiving a complainant's notification, the EEO compliance and appeals coordinator or district designee must respond in writing, outlining the Postal Service's opinion concerning compliance and the basis for that opinion. If the coordinator does not believe that the Postal Service failed to comply, the letter must advise the complainant of the right to appeal to OFO within 30 days of receiving the coordinator's letter. If the coordinator fails to respond to the complainant within 35 days of receiving the complainant's letter, the complainant may appeal to OFO.

If the complainant appeals, OFO may request additional information, require an investigation, or order a hearing to help determine compliance. If OFO determines that the Postal Service was not in compliance for reasons not attributable to the complainant, it may order compliance with the settlement or reinstatement of the complaint.

2.1.9 Investigation of the EEO Complaint

The investigation will be complete within 180 days of the date of filing the complaint, except that the complainant and the Postal Service may voluntarily agree in writing to extend the period for up to an additional 90 days. The investigative time frame may include an exchange of letters or memoranda, interrogatories, fact-finding conferences, or other fact-finding processes that efficiently and thoroughly address the matters at issue. The complainant and the Postal Service may also voluntarily agree to incorporate alternative dispute resolution procedures into their investigative efforts to promote early resolution.

2.1.10 Scope of the Investigation

2.1.10.1 Limited to Issues Accepted by the Postal Service

The scope of the investigation is limited to the issues the Postal Service has accepted. Any portion of an EEO complaint containing matters unlike or unrelated to matters that were brought to the attention of the EEO C/I during counseling cannot be accepted for investigation (see section **2.1.7.1**).

2.1.10.2 Referral to C/I

Typically, when a complaint is accepted, it will be referred to the same C/I who handled the matter at the precomplaint processing stage. All Postal Service employees and officials must cooperate with the C/I in the course of the investigation, including producing such documentary and testimonial evidence as the C/I deems necessary.

2.1.10.3 Role of C/I

At the investigative stage, the C/I collects and discovers factual information concerning the issues in the complaint under investigation and prepares a report.

- a. C/Is must interview and obtain affidavits under oath, affirmation, or declaration under penalty of perjury. C/Is take affidavits from the complainant and any additional witnesses whose testimony is required. They also obtain any documentary evidence that

describes the Postal Service policy at issue, the efforts at reasonable accommodation, and the way the complainant was treated compared with similarly situated employees.

- b. When possible, C/Is may take affidavits in person. Otherwise, they will send written questions to the affiant, along with a cover letter that gives the affiant the option of including additional relevant information. The cover letter will inform the affiant that the affidavit should contain a narrative response to each question and that the statement must be given under oath, affirmation, or by written declaration that it is being made under penalty of perjury.

The complainant's representative may help draft the language for the complainant's affidavit, but only the complainant may sign the document. Complainants, employees, and postal officials must cooperate with the C/I in the affidavit process and must not impede the C/I's ability to review and copy pertinent documents.

2.1.10.4 Restricted Medical Records

A C/I should request medical records in accordance with section 222 of Handbook EL-806, *Health and Medical Service*. All requests must be submitted in writing through the installation head of the appropriate medical facility and must state the official purpose. C/Is will be given restricted medical information only when necessary and relevant to the complaint. Instead, a summary of the relevant medical records will normally be provided. If the summary is insufficient, the C/I must submit written justification to medical personnel for further information. If medical professionals determine that more explicit information is warranted, they may extract the specific portion of the record in question and provide a copy to the C/I. The C/I must not make copies of the record. Rather, the C/I should include a notation in the report that restricted medical records were reviewed and that copies of or information contained in those records cannot be disclosed in accordance with medical regulations.

2.1.10.5 Objective Evidence Required When Investigation Includes Complainant's Claim for Compensatory Damages

EEOC requires objective evidence that a complainant has incurred compensatory damages and that the damages are related to the alleged discrimination. If the incident occurred on or after November 21, 1991, and the complainant is claiming entitlement to compensatory damages, the investigative report may, for example, include the following:

- a. Receipts or bills for medical care.
- b. Receipts for medications.

- c. Receipts for transportation to a doctor.
- d. Evidence linking claimed damages (i.e., medical care or treatment) to the alleged unlawful discrimination.
- e. Testimony of witnesses relating to personal observation or knowledge of the complainant before or after the date the alleged discrimination occurred.

Complainants who claim entitlement to compensatory damages may be required to provide the EEO investigator with certified copies of relevant, objective evidence that is in their personal possession. They must cooperate fully in the investigation of their claim for compensatory damages as an essential part of the investigation into their complaint. Complainants who claim entitlement to compensatory damages for medical conditions must provide the EEO investigator with medical records concerning the causation, inception, diagnosis, prognosis, treatment, and duration of the medical condition for which the complainant is seeking damages.

2.1.10.6 Disclosure to Witnesses

Although statements included in complaint files are obtained without a pledge of confidence, these statements, as well as other documents in the files, frequently include information of a personal and sensitive nature. The C/I may disclose documents to witnesses on a need-to-know basis, if a witness has a valid reason to see all or part of a document. The C/I will advise anyone given access to a file document that it must be used with discretion, and that Postal Service employees are bound by Privacy Act restrictions against improper disclosures. Should questions arise regarding a need-to-know disclosure request, the C/I will refer the matter to the senior EEO complaints processing specialist for a determination.

2.1.10.7 Status of Accused Official

Legally, an EEO complaint is filed against the Postal Service and not an individual official. The Postal Service official who took the alleged action is a witness and is entitled to no more or fewer rights than other witnesses. Investigative reports will identify and refer to all witnesses only by their names and position titles.

2.1.10.8 EEO Staff as Witnesses

Members of the EEO staff may help identify other witnesses, but they should rarely be witnesses themselves. Their information will usually be hearsay, and their appearance as witnesses may compromise their objectivity.

2.1.10.9 C/I Report

Upon completion of the investigation, the C/I will prepare Form 2430, *EEO Investigation Report*, cataloging the affidavits taken and the documents collected. The report will contain an analysis of the allegation investigated in the complaint, which may include a discussion of reasonable accommodation or the complainant's treatment at the hands of the Postal Service compared with treatment of other similarly situated employees, if applicable.

2.1.11 Official EEO Complaint File

2.1.11.1 Establishment of a Complaint File

After the formal EEO complaint is accepted and assigned to a C/I, an official EEO complaint file is established.

- a. Initially, the EEO complaint file will consist of Form 2564-A, *Information for Precomplaint Counseling*; Form 2570, *EEO Counselor's Inquiry Report*; requisite documents and agreements executed by the complainant during the precomplaint processing phase; and the formal complaint. The file will be updated to include documents compiled at each subsequent phase of the EEO process.
- b. The C/I will augment the official EEO complaint file by adding the following documents, as appropriate:
 - (1) *EEO Investigation Report*.
 - (2) The affidavit of the complainant and any additional affidavits required during the investigation.
 - (3) Exhibits, including copies of or extracts from Postal Service regulations or other documents that the C/I determines are relevant to the case, even though they have not expressly been cited by the complainant.
 - (4) Correspondence relating to the case, such as the acceptance and assignment letter.
- c. Relevant information concerning employees will be recorded in the investigative report in an objective format. There are few circumstances in which names will be purged. However, identifying information, such as Social Security numbers, home addresses of witnesses and other individuals, restricted medical information, and—when not relevant to the complaint—birth dates, gender, and minority group or disability identifiers and identification codes, will be deleted by the C/I.

2.1.11.2 Notice of Restricted Use

The following statement will appear on the outside of each EEO complaint file:

NOTICE OF RESTRICTED USE

Access to, and usage of, the EEO complaint file is RESTRICTED by both the Freedom of Information Act and the Privacy Act to (1) the complainant (and his or her representative) and (2) government officials who must have access to the files to discharge their OFFICIAL duties. The file and its contents must be safeguarded. Willful violations of these requirements are subject to criminal penalties (5 U.S.C. 522a[i]).

2.1.12 Informal Settlement Opportunity

Upon completion of the report, the C/I will turn the investigative file over to the senior EEO complaints processing specialists, who will review the case file for completeness. Thereafter, during the 180-day investigative time frame, the specialist may provide a copy of the completed investigation; a copy of Form 2565-D, *Notification of Completed Investigation*; and a blank copy of Form 2565-B, *EEO Settlement Agreement*, to the PCES executive with authority for the organizational area in which the complaint arose. These materials must be either hand-delivered or sent via certified mail.

The PCES executive has 15 days to review the case file, determine whether to attempt informal settlement of the complaint, and complete and return Form 2565-D to the senior EEO complaints processing specialist. The senior specialist will be available to help the PCES executive or designee arrange a meeting or mediation session, or to transmit resolution offers between the parties.

If the case is resolved, the senior EEO complaints processing specialist will ensure that both parties are provided a copy of the settlement agreement for their personal records. The specialist will place the original, signed Form 2565-B, *EEO Settlement Agreement*, in the case file and transmit the file to the appeals processing center, where it will be retained as outlined in **chapter 5**.

2.1.13 Distribution of Complaint File

If the case is not resolved during the investigation stage, the EEO compliance and appeals coordinator or the senior EEO complaints processing specialist will augment the case file with Form 2565-D, *Notification of Completed Investigation*, if applicable, and provide a copy of the investigative report to the complainant and a copy to his or her representative.

2.1.14 Request for Hearing or Final Agency Decision Without a Hearing

(This section applies to nonmixed cases. See **chapter 4** for mixed case appeal rights following completion of the investigation.)

2.1.14.1 When a Request May Be Made

When the senior EEO complaints processing specialist provides the complainant with a copy of the investigative file, he or she must include a letter notifying the complainant that within 30 days of receiving the file, the complainant has the right to request a hearing before an EEOC administrative judge or to request a final agency decision without a hearing. In the absence of receiving the required notice, the complainant may request a hearing at any time after 180 days have passed since filing the complaint. If applicable, the extension period discussed in section 2.1.9 should also have elapsed.

2.1.14.2 With Whom It Should Be Filed

The complainant should file the request for a hearing or final agency decision without a hearing with the EEO compliance and appeals coordinator within 30 days of receiving the investigative file.

2.1.15 Issuance of Final Agency Decision Without a Hearing

The area manager or designee will render a final agency decision prepared by the appeals processing center. The final agency decision will be based on the appeals processing center's review of the case file in its entirety and will clearly state the reasons for the Postal Service's findings on the merits of each issue in the complaint. The manager must issue this decision either within 60 days of receiving the complainant's request for a decision without a hearing or—if the complainant did not request a decision or hearing—within 60 days of the expiration of the complainant's 30-day period to do so.

2.1.15.1 Notifying the Complainant

The decision will be transmitted by certified mail to the complainant. It will outline the appropriate appeal rights, including the complainant's right to file a civil action in U.S. District Court within 90 days of receiving the final agency decision or to submit a written appeal to OFO within 30 days of receiving the decision. The decision letter must inform the complainant that if an appeal is submitted to EEOC, a copy of the appeal and any supporting documentation must also be submitted to the appeals processing center. The center will ensure that a copy of EEOC Form 57A, *Notice of Appeal/Petition to the Office of Federal Operations*, is attached to the decision letter.

2.1.15.2 Time Frame for Appeal

When a complainant is represented by an attorney of record, the time for appeal begins from the date the attorney receives the final decision. When the complainant is not represented by an attorney, the time runs from the date the complainant receives the final decision (see section **2.1.27.4**).

2.1.16 Preparations for the Hearing

2.1.16.1 Request for an EEOC Administrative Judge

If the complainant submits a timely request for an EEOC hearing, the appeals processing center will write to the appropriate EEOC district office and request that an administrative judge be appointed to conduct a hearing. A copy of this letter will be sent to the complainant and to the PCES executive with authority for the organizational area in which the complaint arose.

2.1.16.2 Forwarding a Copy of the Complainant's File

The appeals processing center will forward a copy of the official EEO complaint file to EEOC and advise the EEOC district office that the contact point for scheduling the hearing will be the senior labor relations specialist. The transmittal letter will also advise the Commission that the recommended decision and transcript of the hearing should be sent to the EEO compliance and appeals coordinator for that area, and should include the proper address. If no address is in the transmittal letter, the time period within which the Postal Service must issue its final agency decision in response to a recommended decision will begin as soon as the Postal Service takes custody of the file, even though the coordinator may not be immediately aware of its receipt.

2.1.16.3 Arrangements for the Hearing

When EEOC informs the senior labor relations specialist of the hearing, the specialist will inform the appropriate management officials and will make arrangements for the hearing, including attendance of a court reporter. The hearing is conducted in accordance with EEO regulations.

2.1.17 Findings and Conclusions Without a Hearing

2.1.17.1 Agency Request

If the advocate who will handle the case believes that some or all of the material facts in the case are not in genuine dispute, the advocate should file a statement with the administrative judge at least 15 days before the scheduled hearing. The statement should request

findings and conclusions without a hearing and should set forth the facts and cite the parts of the record that support the statement. A copy of the statement must also be served on the complainant, who will have 15 days from receipt of the statement to file an opposition with the administrative judge or to file an affidavit stating why he or she cannot present facts to oppose the request. After considering the submissions, the judge may order that discovery be permitted on the fact or facts involved, limit the hearing to the issues remaining in dispute, issue findings and conclusions without a hearing, or make other ruling as appropriate.

2.1.17.2 Right of the Administrative Judge to Issue Findings and Conclusions Without a Hearing

If the administrative judge determines that some or all facts are not in genuine dispute, the judge may issue an order limiting the scope of the hearing or issue findings and conclusions without holding a hearing, after notifying the Postal Service and the complainant and providing both parties the opportunity to respond within 15 days.

2.1.17.3 Right of the Administrative Judge to Remand Newly Raised Issues

If the judge determines that the complainant is raising, or intends to pursue, issues similar or related to those raised in the complaint, but which the Postal Service has not had an opportunity to address, the judge will remand such issues for counseling in accordance with 29 CFR §1614.105, and for other processing that the judge may order. If such issues become the issues of a formal complaint after the precomplaint process has concluded, the appeals processing center will consider whether dismissal is appropriate in accordance with 29 CFR §§1614.107(a) and (b).

2.1.18 Authority of Administrative Judge

Commission regulations give the administrative judge who will conduct the hearing the following authority:

- a. To administer oaths.
- b. To regulate the conduct of hearings.
- c. To limit the number of witnesses so as to exclude irrelevant and repetitious evidence.
- d. To order discovery or the production of documents and witnesses.
 - (1) Advocates are required to produce testimonial and documentary evidence as the judge deems necessary. Before the hearing, the judge will notify the parties of the right to seek

discovery and may issue discovery orders, as appropriate. Both parties are entitled to reasonable development of evidence on matters relevant to the issues raised in the complaint, but the administrative judge may limit the quantity and timing for discovery.

- (2) Advocates should submit well-reasoned objections to producing evidence if the information sought by the complainant is irrelevant, overly burdensome, repetitious, or privileged.
- e. To direct supplemental investigations when discovery would be inadequate in developing the record.
 - f. To exclude disruptive persons from the hearing. The administrative judge has the power to exclude any person from the hearing for conduct or behavior that obstructs the hearing. Refusing to follow the orders of the judge or engaging in improper conduct may cause the judge to refer an attorney to the disciplinary committee of the appropriate bar association, to suspend complainants from the hearing, or to disqualify representatives.
 - g. To limit the hearing to the issues in dispute.
 - h. To impose appropriate sanctions. The administrative judge has the authority to impose sanctions on a party if the party fails to comply—without good cause—with rulings on requests for information, documents, or admissions, when the information is solely in the control of that party. Similarly, if a party does not provide an adequate explanation for this failure, the judge may impose sanctions, such as the following:
 - (1) Drawing an adverse inference that the requested information would have reflected unfavorably on the party who refused to provide it.
 - (2) Considering the matters to which the requested information pertains to be established in favor of the opposing party.
 - (3) Excluding other evidence offered by the party who failed to produce the requested information.
 - (4) Entering a decision fully or partially in favor of the opposing party and taking such other actions as the administrative judge deems appropriate.

2.1.19 Witnesses at the Hearing

2.1.19.1 Attendees

Hearings are part of the investigative process and are not open to the public. The attendance of witnesses or others at the EEOC hearing is limited to persons who are deemed necessary by the

administrative judge. When administratively practical, Postal Service officials in charge of the applicable unit must produce any witness under their jurisdiction whom the judge determines to be necessary. When it is not practical to comply with the request, the official in charge of the unit will provide an explanation to the judge through the agency advocate.

2.1.19.2 Duty Status of Witnesses

The Postal Service is required to place all employees who are EEOC hearing witnesses in a duty status. Regardless of their normal tour of duty, witnesses must be on official time when they are made available to testify, including the time they are required to be present to testify at the hearing and a reasonable time spent waiting to testify. Postal Service managers must offer a change of schedule to reduce premium costs. Normal Postal Service travel regulations control any reimbursement to witnesses attending hearings. (See section **2.1.27** for a discussion of complainants and their representatives.)

2.1.20 Change of Venue

If the Postal Service advocate believes that the site selected for the hearing is inappropriate, the advocate should consult with the manager of Human Resources or designee and submit a written request for a change of venue to the administrative judge. The letter must identify the preferred location and must detail the reasons that justify the change. If the request is approved, and if the hearing site is beyond the local commuting area of the facility where the complaint arose, the Postal Service must bear all reasonable travel costs associated with the change in venue for complainants, authorized representatives, and all witnesses approved by the administrative judge (unless the witnesses are not federal employees). Normal Postal Service travel regulations control such reimbursements.

2.1.21 Findings and Conclusions

2.1.21.1 Time Period for Issuance

Within 180 days of EEOC receiving a request for a hearing, the administrative judge will issue findings of fact and conclusions of law on the merits of the complaint, unless the judge makes a written determination that good cause exists for extending the time for such issuance.

2.1.21.2 Transmittal of Administrative Judge's Determination

The administrative judge will send to the parties via certified mail copies of the entire record, including the transcript and the

judge's findings and conclusions of law on the merits of the complaint. Advocates at hearings should ensure that the judge knows that the Postal Service's copies of these documents must be sent to the area processing center, and advocates must provide the judge with the correct address of the EEO compliance and appeals coordinator.

2.1.22 Final Agency Decision—Merits

2.1.22.1 *When and by Whom Decision Is Rendered*

The area vice president or designee must render the final agency decision for the Postal Service in cases that underwent EEOC hearings. The manager has 60 days from the date of receiving an EEOC administrative judge's findings and conclusions to issue a decision.

- a. If the administrative judge has been given the correct address in writing, the 60-day period will not begin until the file reaches the EEO compliance and appeals coordinator.
- b. If the Postal Service does not render the final agency decision within 60 days, the findings and conclusions and any relief ordered by the judge will become the final decision of the Postal Service.

2.1.22.2 *Basis for the Decision*

The appeals processing center will prepare the final agency decision on the basis of the entire record reflected in the official EEO complaint file. The Postal Service's decision may reject or modify the findings and conclusions or relief ordered by the administrative judge.

2.1.22.3 *If No Discrimination Is Found*

If discrimination is not found, complainants must be advised of the Postal Service's findings on the merits of the complaint and of their right to appeal the final decision.

2.1.22.4 *If Discrimination Is Found*

If discrimination is found in the final agency decision, the area vice president or designee will notify the district manager who will take corrective action. The area vice president must specifically inform the district manager that the corrective action must be initiated within 30 days after the final decision and must advise the area processing office of the actions taken to comply. The area processing office will be responsible for notifying EEOC of compliance within the time specified by the Commission.

2.1.23 Issuance and Distribution of Final Agency Decision

2.1.23.1 *Postal Service*

The area vice president or designee sends a copy of the final agency decision to the administrative judge who rendered the findings and conclusions of law. Copies of the judge's findings and conclusions and the Postal Service's final agency decision should also be sent to the Postal Service advocate and the PCES executive responsible for the unit in which the complaint arose.

2.1.23.2 *Complainant*

The final agency decision must be sent to the complainant by certified mail and must contain an outline of the complainant's appropriate appeal rights, including the right to file a civil action in U.S. District Court within 90 days of receiving the decision or the right to submit a written appeal to the Office of Federal Operations within 30 days. The decision letter must inform the complainant that if an appeal is submitted to OFO, a copy of the appeal and any supporting documentation must also be submitted to the EEO compliance and appeals coordinator. The coordinator will ensure that a copy of EEOC Form 573, *Notice of Appeal/Petition to the Office of Federal Operations*, is attached to the letter.

2.1.24 Appeal to the Office of Federal Operations

2.1.24.1 *Complainant's Right to Appeal*

Complainants who decide to appeal a final agency decision to OFO should file EEOC Form 573 and indicate what they are appealing. When filing the appeal, complainants must furnish a copy of the appeal to the postal official designated in the final agency decision. They must certify the date and the method by which they furnished this copy to the Postal Service and must include this certification with their appeal.

2.1.24.2 *OFO Request for Complaint File*

Following receipt of the complainant's appeal, OFO will ask the Postal Service to transmit the official complaint file within 30 days of receiving the request. OFO must receive any statement or brief in support of the Postal Service's position on the appeal within that same 30-day period.

2.1.24.3 *Preparing Transmittal Letter and Supporting Statement*

The appeals processing center will prepare a transmittal letter that supports the Postal Service's position on the appeal, and this letter

will be signed by the area manager or designee. Within 30 days of receiving OFO's request for the file, the appeals processing center will send the letter and a copy of the official complaint file to OFO. Concurrently, a copy of the Postal Service's statement of brief must be served on the complainant.

2.1.25 Following Receipt of OFO's Decision on Appeal

2.1.25.1 *Request for Reconsideration*

Either the complainant or the Postal Service may request that an OFO decision be reopened and reconsidered. Such a request must be made within 30 days of receiving that decision (or within 20 days of receiving the other party's request to reconsider). Any argument opposing a request to reconsider must be filed within 20 days of receiving the other party's request to reconsider. Requests for reconsideration will be prepared by the area processing center in consultation with the affected district.

2.1.25.2 *Conditional Restoration*

When a case involves removal, separation, or indefinite suspension, and EEOC recommends that the employee be retroactively restored to duty, the Postal Service—in requesting reconsideration—may choose to conditionally restore the employee to the recommended position and defer back pay pending the outcome of the request.

2.1.25.3 *Compliance With OFO Decision*

When compliance is required, the EEO compliance and appeals coordinator or designee will initiate necessary actions to ensure relief to the complainant within 60 days of the Postal Service's receipt of EEOC's final decision, unless otherwise ordered by the Commission. The coordinator is responsible for notifying the designated EEOC compliance officer of the date and extent of relief granted to the complainant and for providing the compliance officer with documentation of the Postal Service's compliance, including, but not limited to, copies of personnel records, pay computation records, and other relevant documents.

2.1.25.4 *Enforcement of EEOC Decisions*

When there is a difference of opinion over compliance with a decision of OFO or the Commission, the complainant may petition OFO for enforcement. OFO will take the necessary steps to determine compliance and, if necessary, may issue a clarification of its previous decision. This clarification may not change the previous result or enlarge or diminish the relief ordered. It may only explain the meaning and intent of the decision. If OFO is unable to achieve compli-

ance, it may refer the case to the Commission, which may, among other things, issue a notice to the head of the agency to explain why compliance has not occurred. If the Commission determines non-compliance, it will advise the complainant of the right to file a civil action seeking enforcement and to request judicial review of the refusal to implement the ordered relief or to ask the court to commence de novo proceedings.

2.1.26 Right to File a Civil Action

A complainant is authorized to file a civil suit in an appropriate U.S. District Court as follows:

- a. Within 90 days of receiving the final decision or the decision to dismiss the case wholly or partially, if an appeal to OFO has not been filed.
- b. After 180 days from the date of filing the complaint if a final agency decision has not been issued.
- c. Within 90 days of receiving EEOC's final decision on an appeal.
- d. After 180 days from the date of filing an appeal with the EEOC if there has been no final decision by the Commission.

2.1.27 Right to Representation and Use of Reasonable Official Time

2.1.27.1 Legal Provisions

EEOC regulations (see 29 CFR §1614.605) provide that at any stage in the preparation of a complaint, including the precomplaint processing stage, complainants have the right to be accompanied, represented, and advised by a representative of their choice.

Complainants who are current employees of the Postal Service and who are otherwise on duty will be allowed a reasonable amount of official time to prepare their EEO complaints and to respond to Postal Service and EEO requests for information. If present employees of the Postal Service designate other present employees as their representatives, these representatives will be allowed a reasonable amount of official time to prepare the complaint and to respond to Postal Service and EEOC requests for information, if they are otherwise on duty.

- a. Employees are considered to be on duty during their normal working hours.
- b. The Postal Service is not obligated to change work schedules, incur overtime wages, or pay travel expenses beyond the local community area to facilitate the choice of a specific representative or to allow the complainant and the representative to confer.

- c. Management determines what constitutes a reasonable amount of official time. Reasonable is generally defined in terms of hours or portions of hours, and not in terms of days or weeks.

The complainant and representative, if they are current Postal Service employees and otherwise in a pay status, will be on official time, regardless of their tour of duty, when their presence is authorized or required by either the Postal Service or the Commission during an investigation or hearing. They must be reimbursed for any related and authorized travel expenses. The senior EEO complaints processing specialist should ensure that, whenever possible, meetings that the complainant and representative are required to attend during an EEO investigation are scheduled at times when their normal duty hours overlap. If this overlapping is not possible, meetings should be scheduled sufficiently in advance to enable appropriate arrangements for schedule changes with minimal premium costs.

Complainants are at all times responsible for proceeding with the complaint regardless of whether they have a designated representative.

2.1.27.2 Official Time for Counselees Who Have Elected Anonymity

Current employees or counselees may elect anonymity without abdicating their rights to meet with an EEO counselor inside their postal facility or to designate another postal employee as their representative and to meet with that representative during official time to prepare Form 2564-A, *Information for Precomplaint Counseling*, when the complainants and their representatives are in a duty status. However, the EEO Complaints Processing Office cannot acknowledge that an anonymous counselee has requested counseling in order to validate the counselee's entitlement to these rights.

2.1.27.3 Conflict of Interest in Representation

The following situations constitute a conflict of interest in representation in the EEO process and are therefore inappropriate:

- a. An EEO professional or an official involved in the EEO process representing an EEO complainant.
- b. A Postal Service advocate or labor relations official representing an EEO complainant.
- c. A Postal Service manager representing a subordinate with a direct reporting relationship.
- d. A Postal Service manager influencing or permitting a subordinate to represent the manager as a complainant, or influencing or

requiring a subordinate to represent any other employee as an EEO complainant.

- e. A current employee of the Postal Inspection Service, including technical personnel and postal police officers, representing any non-Postal Inspection Service employee, former employee, or applicant for employment.

If a conflict of interest in representation arises, the final Postal Service position will be determined at the next higher level of authority or, ultimately, by the manager of EEO Compliance and Appeals.

2.1.27.4 Official Correspondence With Representative

Complainants must give the Postal Service written notification of their attorney's name, address, and phone number. Unless complainants state otherwise in writing, the Postal Service will send all correspondence subsequent to Form 2579-A, *Notice of Right to File Individual Complaint*, to the attorney, with a copy to the complainant. This correspondence includes the acknowledgment/acceptance letter, requests for cooperation and information, evidence of testimony, and service of decisions or documents. The time frame for the complainant to receive these materials will be computed from the time of receipt by the attorney. When the complainant designates a representative who is not an attorney, official correspondence and service of documents and decisions will be to the complainant, with copies to the representative. The time frame will be computed from the complainant's receipt. To evidence the date of receipt, all original documents and requests must be sent by certified mail, return receipt requested.

2.1.27.5 Restrictions on Complainants' and Representatives' Use of Postal Service Resources

A complainant or representative may not use Postal Service resources to prepare an EEO complaint without obtaining prior approval from the installation head (or designee responsible for handling such requests). The term *Postal Service resources* means items that the Postal Service owns or controls and includes, but is not limited to: typewriters; computer equipment and computer-related services; telephones and telephone equipment; fax machines; duplicating and copying equipment; penalty mail; writing instruments and stationery supplies; furniture; file cabinets and storage space; and offices and meeting rooms.

2.1.27.6 Charging Complainants and Representatives for Search and Reproduction Costs

Pursuant to the *Administrative Support Manual*, the Postal Service may charge fees to provide duplicate copies of records that the

agency already provided to the requestor and to search and reproduce records requested under the Freedom of Information Act or the Privacy Act.

2.1.28 Allegations of Dissatisfaction Regarding Processing of Pending Complaints

2.1.28.1 Complainant Dissatisfaction

If the complainant is dissatisfied with processing of a pending complaint, whether or not the complainant alleges discrimination as a basis for dissatisfaction, the complainant should be referred to the EEO compliance and appeals coordinator. The coordinator will attempt to resolve dissatisfaction with the complaint process expeditiously.

2.1.28.2 Inequitable Treatment

Aggrieved participants in the EEO complaints process may allege that they are treated differently or are being adversely affected by a policy or practice that has a discriminatory effect on the processing of their complaint. If the discriminatory basis is covered by law, the aggrieved person must be provided EEO counseling and the opportunity to file a formal complaint.

- a. During counseling, the EEO counselor or C/I will attempt to resolve the complaint informally. Attempts will include explaining the progress of the pending complaint and the self-correcting features of the complaints process to the complainant. The informal processing stage may include an alternative dispute resolution process or an agreement to extend the time period for counseling.
- b. If the aggrieved person files a timely formal complaint before the investigation of the pending complaint is completed and the investigative file is provided to the complainant, the EEO appeals and compliance coordinator may combine the new complaint with the pending complaint, in accordance with 29 CFR §1614.606. When complaints are consolidated, the first one filed controls the processing time frames of both complaints.

2.2 Processing Procedures for Complaints Filed by Other Than District Employees and Applicants

2.2.1 Parties Involved

2.2.1.1 *Complainants*

The procedures in this section apply to employees or applicants for employment in Headquarters, Headquarters field units, the Postal Inspection Service, the area office, and field PCES employees, and to those employees whose actual or perceived conflict of interest complaint has been referred to Headquarters.

2.2.1.2 *Complainants With Conflict of Interest Cases in Districts*

Some of the district cases in which there is an actual or perceived conflict of interest with local processing will be processed at Headquarters during the investigative stage; the majority will be handled by another district's EEO complaint processing office. The rights of the complainant have been protected from compromise when the investigator in a conflict of interest case is not directly or indirectly employed in the part of the Postal Service from which the complaint arose. Therefore, actual or perceived conflict of interest cases may be appropriately investigated by a C/I from outside the district from which the complaint arose. When cases involve a real or perceived conflict of interest that existed only during the investigation of the matter, the area EEO compliance and appeals coordinator or designee will determine where the case will be processed.

2.2.2 Freedom From Discrimination and Retaliation

Complainants and their representatives, EEO professionals, witnesses, and all other persons involved in the presentation and processing of an EEO complaint must be free from restraint, interference, coercion, discrimination, or reprisal with respect to their participation in the EEO complaint process. It is illegal to discriminate against employees because they opposed any practice that is unlawful under Title VII or the other antidiscrimination laws, or because they have made a charge, testified, assisted, or participated in any manner in an EEO proceeding, including precomplaint counseling, investigations, or hearings.

2.2.3 Precomplaint Counseling

The procedures in sections **2.1.2** and **2.1.3** apply to Headquarters precomplaint counseling.

2.2.4 Individual Formal Complaint

The procedures in section **2.1.4** apply here, except that complaints processed under this chapter may be filed with the EEO appeals review specialist at headquarters, and the investigation of these cases will be performed by a headquarters investigator in accordance with the procedures described in section **2.1.9**.

2.2.5 Acknowledgment and Acceptance of Formal Complaint

See the procedures in section **2.1.5**. The EEO appeals review specialist is responsible for accepting the complaint for formal processing.

2.2.6 Dual Filing Provision

The EEO appeals review specialist has discretionary authority to hold the EEO complaint in abeyance when an employee covered by a collective bargaining agreement files an EEO complaint and a grievance concerning the same matter. See the procedures in section **2.1.6**.

2.2.7 Dismissal of EEO Complaints

The procedures in section **2.1.7** apply here, except that the manager of EEO Compliance and Appeals or a designee is responsible for dismissing formal complaints; and copies of complainants' appeals to the Office of Federal Operations, as well as supporting documentation, must be served in person or by mail to the manager.

2.2.8 Withdrawal or Settlement of Formal EEO Complaints

Section **2.1.8** applies here.

The complainant must notify the EEO appeals review specialist in writing within 30 days of the date on which the complainant knew or should have known of an alleged failure to comply with the terms of the settlement agreement. The complainant may request either agency compliance with the agreement or reinstatement of the complaint.

Within 30 days of receiving a complainant's notification, the EEO appeals review specialist must respond in writing, outlining the Postal Service's opinion and the basis for that opinion. If the Postal Service does not believe that it failed to comply, the letter must advise the complainant of the right to appeal to OFO within 30 days of receiving the Postal Service's determination. If the Postal Service fails to respond, complainants may appeal to OFO within 35 days of the date the Postal Service received their notification.

OFO may request additional information, require an investigation, or order a hearing to help determine compliance. If OFO determines that the Postal Service was not in compliance for reasons not attributable to the complainant, it may order compliance with the settlement or reinstatement of the complaint.

2.2.9 Investigation of EEO Complaint

Section **2.1.9** applies here, except that the investigation of cases processed under this chapter will be completed by a Headquarters EEO investigator, who will turn the file over to the EEO appeals review specialist when the investigation is complete.

2.2.10 Hearings and Final Agency Decisions

This section applies to nonmixed complaints. See **chapter 4** for mixed case complaints.

2.2.10.1 When a Request May Be Made

The EEO appeals review specialist will provide complainants with a copy of the investigative file and will notify them that within 30 days of receiving the file, they have the right to request a hearing before an EEOC administrative judge or to request a final agency decision without a hearing. In the absence of receiving the required notice, complainants may request a hearing at any time after 180 days have passed since filing the complaint. When applicable, the extension period discussed in section **2.1.9** also should have elapsed.

2.2.10.2 With Whom It Should Be Filed

Complainants should file their request for a hearing or a final agency decision with the EEO appeals review specialist within 30 days of receiving the investigative file. If complainants request an EEOC hearing, the EEOC appeals review specialist will write to the appropriate EEOC district office and request that an administrative judge be appointed to conduct a hearing. A copy of this letter will be sent to the complainant.

2.2.10.3 Issuance of Final Agency Decision Without a Hearing

The manager of EEO Compliance and Appeals will render a final agency decision prepared by his or her designee. This decision must be issued within 60 days of receiving the complainant's request for a final agency decision without a hearing or within 60 days of the expiration of the complainant's 30-day period to request a hearing or decision if the complainant did not request a hearing. The final agency decision will be based on a review of the EEO complaint file in its entirety and must clearly state the reasons for the Postal Service's findings on the merits of each issue. The decision will be transmitted by certified mail to the complainant and will outline the appropriate appeal rights. These rights include the complainant's right to file a civil action in U.S. District Court within 90 days of receiving the final agency decision or to submit a written appeal to OFO within 30 days of receiving the decision. The decision letter must state that if the complainant submits an appeal to EEOC, a copy of the appeal and any supporting documentation must also be submitted to the manager of EEO Compliance and Appeals. The manager will ensure that a copy of EEOC Form 573, *Notice of Appeal/Petition to the Office of Federal Operations*, is attached to the decision letter. When a complainant is represented by an attorney of record, the time for appeal runs from the date the attorney receives the final decision. When the complainant is not represented by an attorney, the time for appeal runs from the date the complainant receives the final decision.

2.2.11 EEOC Hearing

2.2.11.1 Procedures

The procedures in section **2.1.16** apply here, except that the Postal Service advocate will be appointed at the Headquarters level and the manager of EEO Compliance and Appeals will receive the recommended decision, transcript, and complaint file. The manager is also responsible for processing compliance in accordance with EEOC regulations, including the issuance of a final agency decision.

2.2.11.2 Conflict of Interest

During the investigative stage, some conflict of interest cases may be processed outside the district in which they arose but returned to the district for hearing, since the perceived conflict of interest in these cases existed solely during the investigation of the matter. If the manager of EEO Compliance and Appeals or a designee determines that a case should be returned to the division for hearing, the senior labor relations specialist will arrange for the hearing and advocacy at the hearing. The senior labor relations specialist

will ensure that the administrative judge is informed in writing that copies of the entire record, including the transcript, findings, and conclusions, should be sent to the EEO compliance and appeals coordinator at the area processing center. The specialist will provide the judge with the correct address for the EEO compliance and appeals coordinator. The area processing center will prepare the final agency decision for the area manager, and the case will be processed in accordance with the procedures outlined in section **2.1.22**.

2.2.12 Final Agency Decision—Merits

The procedures in section **2.1.22** apply here, except that the manager of EEO Compliance and Appeals or a designee will render the final decision in cases heard at the Headquarters level. The manager will also oversee compliance activity.

2.2.13 Appeal to the Office of Federal Operations

The procedures in section **2.1.24** apply here, except that in cases heard at the Headquarters level, the manager of EEO Compliance and Appeals or a designee will transmit the file and prepare the agency comments.

2.2.14 Requests for Reconsideration

The procedures in section **2.1.25** apply here, except that in cases heard at the Headquarters level, the manager of EEO Compliance and Appeals has the responsibilities indicated.

2.2.15 Enforcement of EEOC Decisions

See section **2.1.25.4**.

2.2.16 Right to File a Civil Action

See section **2.1.26**.

2.2.17 Right to Representation and Use of Reasonable Office Time

See section **2.1.27**.

2.2.18 Conflict of Interest in Representation

See section **2.1.27.3**.

2.2.19 Official Correspondence With the Representative

See section **2.1.27.4**.

2.2.20 Restrictions on Complainants' and Representatives' Use of Postal Service Resources

See section **2.1.27.5**.

2.2.21 Charging Complainants and Representatives for Search and Reproduction Costs

See section **2.1.27.6**.



3 Class Complaints of Discrimination (29 CFR §1614.204 et seq.)

3.1 Definitions

3.1.1 Class

As defined by EEOC, a group of employees, former employees, or applicants for employment who, it is alleged, have been or are being adversely affected by an agency personnel management policy or practice that discriminates against the group on the basis of race, color, religion, sex, national origin, age, or disability.

3.1.2 Class Complaint

Defined by EEOC as a written complaint of discrimination filed on behalf of a class by the agent of the class alleging the following:

- a. That the class is so numerous that a consolidated complaint of the members is impractical.
- b. That there are questions of fact common to the class.
- c. That the claims of the agent of the class are typical of the claims of the class.
- d. That the agent and, if represented, representatives of the class will fairly and adequately protect the interest of the class.

3.1.3 Class Agent

Defined by EEOC as a class member who has been aggrieved and who acts on behalf of the class during the processing of the EEO class complaint.

3.1.4 Class Representative

Defined by EEOC as one who represents class members in the litigation or prosecution of the class action. The representative is most often an attorney.

3.2 Precomplaint Processing

3.2.1 Contact With C/I

An employee or applicant who wishes to file a class complaint must first seek counseling with a C/I within 45 days of the alleged discrimination; or, if the matter is a personnel action, 45 days from the effective date that the specific policy or practice adversely affected the class agent.

3.2.2 Approaches to Counseling

The EEO precomplaint counseling process often uses various techniques in an attempt to bring about early resolution. These techniques include the following:

- a. Having the potential class agent fill out Form 2564-A, *Information for Precomplaint Counseling*, and return it to the senior EEO complaints processing specialist before the commencement of counseling activities.
- b. Having the C/I assigned to the case hold separate or joint meetings with the class agent and management officials.
- c. Having the C/I conduct interviews and meetings via conference calls or separate telephone communications.

3.2.3 Duty of C/I to Inform Class Agent

During the initial counseling session, the C/I must advise class agents in writing of their rights and responsibilities, including the following:

- a. The right to be accompanied by the representative of their choice and the right to proceed anonymously during the precomplaint processing phase. The right to anonymity does not extend to disclosures to EEO officials whose *need to know is in the performance of their official duties*.
- b. The regulatory requirement to participate in the precomplaint processing stage, and that only matters raised in precomplaint counseling (or similar or related issues) may be alleged in a formal complaint filed with the Postal Service.

- c. The duty to keep the agency and the Commission informed of their current address and to serve copies of appeal papers on the Postal Service.
- d. The duty to mitigate damages.
- e. The responsibility to meet administrative and court time frames for appeals.
- f. The responsibility to adequately and fairly protect the interests of the class and the class complaint procedures.

3.3 Responsibilities of C/I

The C/I will do as follows:

- a. Respect the class agent's request for anonymity during EEO consultations, unless the C/I is authorized to reveal the class agent's name or until a formal complaint has been filed.
- b. Discuss the issues of the case with the agent, including the management policy or practice in question and how it has affected the agent as well as class members.
 - (1) Class agents must present the alleged discriminatory matter to the C/I. He or she must be prepared to discuss why he or she believes that the potential class meets the prerequisites of numerosity, commonality, typicality, and adequacy of representation.
 - (2) Class action EEO counseling inquiries are conducted informally and **do not** involve sworn testimony.
- c. Make the necessary inquiries of Postal Service employees and supervisors personally involved in the informal complaint. The C/I will obtain routine access to personnel records; unrestricted medical records, if appropriate; and other documents that may clarify the issues and facilitate resolution.

A C/I should request medical records in accordance with Part 222 of Handbook EL-806. C/Is may be provided with restricted medical information only if necessary and relevant to the complaint. All requests must be submitted in writing through the installation head of the appropriate medical facility and must state the official purpose involved. A summary of the relevant medical records will be provided to the C/I. If the summary is insufficient, the C/I must submit written justification to medical personnel for more explicit information. If medical professionals determine that more explicit information is warranted, they may extract the specific portion of the medical record in question and provide a copy to the C/I. The C/I is not to make copies of the record, but may include a notation in the counseling report stating that while

restricted medical records were reviewed, medical regulations prohibit disclosure of this information.

- d. Attempt to resolve the case informally through discussions with the class agent and appropriate officials. The C/I must remain impartial throughout counseling.
- e. Conduct a final interview within 30 days from the date on which the class agent sought counseling, unless, before the end of the 30-day period, the class agent agrees in writing to postpone the final interview and extend the counseling period for up to 60 days. If the matter has not been resolved at the conclusion of the counseling period, the C/I will conduct a final interview and issue the counselee Form 2579-B, *Notice of Right to File Class Complaint*.
 - (1) During the final interview, the C/I will summarize resolution efforts and discuss with the class agent what occurred during the EEO counseling process. The C/I will not reveal the identity of others used to compare treatment of the aggrieved class.
 - (2) When the *Notice of Right to File* is issued, the C/I will inform class agents of their right to file a formal complaint no later than 15 days after receiving the notice. The C/I will also inform class agents of the general types of information required in a formal complaint, of their duty to ensure that the Postal Service is immediately informed if they retain counsel or a representative, and that if they decide to file a formal complaint, it must be filed with the EEO Compliance and Appeals Coordinator. The C/I should also ask class agents for notification if a formal class complaint is filed.
- f. Not attempt in any way to encourage or discourage the agent from filing a formal complaint of discrimination. C/Is may not advise agents to file or not to file a formal complaint or give their opinion on the merits of a particular complaint.
- g. Keep a record of all counseling contacts and activities, including the date of initial contact and a copy of the signed and dated *Notice of Right to File*.
- h. Submit Form 2570, *EEO Counselor's Inquiry Report*, to the senior EEO complaints processing specialist within 5 days after learning that a formal complaint of discrimination has been filed. After review, the senior EEO complaints processing specialist will transmit the original Form 2570 to the EEO compliance and appeals coordinator along with the C/I's notes of interviews and document reviews, and any copies of documents assembled. A copy of Form 2570 will be provided to the class agent, the class representative, and the PCES official who has responsibility for

the facility from which the complaint arose. Additionally, a yellow-colored paper copy of Form 2570 must be forwarded to the manager of EEO Compliance and Appeals.

3.4 Alternative Dispute Resolution Procedure

When the facility or unit has an alternative dispute resolution procedure in which the manager of Human Resources or a designee invites the class agent to participate in the procedure, the precomplaint processing period will be 90 days. During this precomplaint processing period, the class agent and management representatives may jointly or separately participate in voluntary resolution efforts. (An example of such a process would be mediation—a voluntary joint resolution and problem-solving process facilitated by an impartial party.) If the matter has not been resolved on or before the 90th day, the C/I will issue the class agent Form 2579-B, *Notice of Right to File Class Complaint*, and inform the class agent of the right to file a formal complaint no later than 15 days after receiving the notice. The C/I will also inform the agent of the general types of information required in a formal complaint, of the agent's duty to immediately notify the Postal Service if counsel or a representative is retained, and that if the agent decides to file a formal complaint, it must be filed with the EEO compliance and appeals coordinator.

3.5 Formal Class Complaint

3.5.1 Who May File

The class agent or the class representative must sign the complaint and submit it in writing.

3.5.2 Where, When, and How to File

- a. The complaint must be filed with the EEO compliance and appeals coordinator in writing no later than 15 days after the class agent received the *Notice of Right to File Class Complaint*. Form 2565, *EEO Complaint of Discrimination in the Postal Service*, may be completed and used to file the complaint. In calculating the 15-day period, the first day counted is the day after the *Notice of Right to File* is received, and the last day is the 15th day thereafter, unless it falls on a Saturday, Sunday, or federal holiday, in which case the period will be extended to the next business day.

- b. The formal complaint will be considered filed in a timely fashion if it is delivered in person to the EEO compliance and appeals coordinator before the filing period expires or mailed to the coordinator and postmarked before the filing expiration date. If the complaint is received by mail but lacks a legible postmark, the coordinator will consider the complaint to have been filed 5 days before the date it was received.

3.5.3 What It Should Contain

The complaint must contain the following, specifically and in detail:

- a. A description of the personnel management policy or practice that prompted the complaint.
- b. A description of how that personnel policy or practice adversely affected the class and the class agent.
- c. How the class requirements are met by the putative class.

3.6 Acceptance or Dismissal of a Formal Class Complaint

3.6.1 Designation of Agency Representative

Within 30 days of receiving a class complaint, the EEO compliance and appeals coordinator will notify EEOC of the name of the agency representative and forward the complaint to the Commission, along with a copy of the C/I's report and any other information pertaining to timeliness or relevant circumstances related to the complaint.

3.6.2 Assignment of EEOC Administrative Judge

The Commission will assign the complaint to an administrative judge. The judge may require the complainant or agency to submit additional information relevant to the complaint.

3.6.3 Consideration by the Administrative Judge

If an allegation lacks specificity and detail, the administrative judge will allow the agent 15 days to provide specific and detailed information. The judge will recommend that the Postal Service dismiss the complaint if the agent fails to provide such information within the specified time period. If the information provided contains new allegations outside the scope of the complaint, the judge will advise

the agent how to proceed on an individual or class basis concerning these allegations.

3.6.4 Grounds for Dismissal

The complaint can be dismissed wholly or partially for any of the reasons under 29 CFR §1614.107 (see section 2.1.7) and for the following reasons:

- a. The complaint does not meet the prerequisites of a class complaint under 29 CFR §1614.204(a)(2) (numerosity, commonality, typicality, and adequacy of representation).
- b. The allegations lack specificity and detail pursuant to 29 CFR §1614.204(d)(4).
- c. The class agent cannot satisfactorily explain why an allegation that appears in the formal complaint was not raised in counseling (29 CFR §1614.204[d][3]).

3.6.5 Final Agency Decision

The administrative judge's recommendation to accept or dismiss a class complaint will become the agency decision, unless the EEO compliance and appeals coordinator accepts, rejects, or modifies the recommended decision within 30 days of receiving the recommended decision and complaint file.

- a. When a class complaint is dismissed at the certification stage, the Postal Service must consider whether to accept or dismiss the matter as an individual complaint. The Postal Service's final agency decision will inform the agent that the complaint has also been considered as an individual complaint and that it is being accepted for processing as though it had been filed on the date of the decision, or that the complaint is also dismissed as an individual complaint in accordance with 29 CFR §1614.107.
- b. The EEO compliance and appeals coordinator must notify the agent by certified mail and the administrative judge of the Postal Service's decision to dismiss the complaint. The PCES executive in charge of the facility or unit from which the complaint arose will also receive a copy of the final decision to dismiss the complaint for class action processing.

3.6.6 Appeal Rights

The final agency decision will include the agent's right to appeal the dismissal of the class complaint to the Office of Federal Operations within 30 days after receiving the decision or to file a civil action in the appropriate U.S. District Court. A copy of EEOC Form 573,

Notice of Appeal/Petition to the Office of Federal Operations, will be attached to the final agency decision provided to the class agent.

3.7 Individual Complaints Filed on Bases Identical to Class Complaints

An individual complaint filed before or after the class complaint is filed that comes within the definition of the class allegation will not be dismissed but will be held in abeyance pending a final determination on certification of the class complaint. While the complaint is held in abeyance, the 180-day time clock is stopped.

- a. If the class complaint is certified, the individual complaint will be subsumed within the class complaint. If the class complaint proceeds to a hearing, the individual claim may be used by the class representative at the liability stage of the process or it may be presented at the remedy stage.
- b. If the class complaint is dismissed at the certification stage, the individual complaint may proceed after the agent has exhausted administrative rights to appeal the dismissal. The compliance and appeals coordinator, or designee, will notify class members by certified mail that the class complaint has been decertified and that their individual complaints will be processed during whatever time remained of the 180-day investigation period when the abeyance period began.

3.8 Notification to the Class Upon Acceptance

3.8.1 How Notification Is Made

If the class complaint is accepted, the Postal Service's Area Processing Office must notify all class members of this outcome within 15 days. Notification must be made by reasonable means, such as hand delivery, mailing to the last known address, distribution through interoffice mail, or conspicuous posting on bulletin boards.

3.8.2 What Notification Should Include

The notice will contain all of the following:

- a. The name of the affected postal installation or organizational unit, its location, and the date the complaint was accepted.
- b. A description of the issues accepted.
- c. An explanation of the binding nature of the final decision or resolution of the complaint on class members.

- d. The name, address, and telephone number of the class representative.

3.9 Discovery Phase of Class Complaint

3.9.1 Preparation of Cases

The administrative judge will notify the class agent and the agency of the time both parties have to prepare their cases. This time period will be a minimum of 60 days. Both parties are entitled to a reasonable development of evidence on matters relevant to the issues raised in the complaint.

3.9.2 Developing Evidence

Evidence may be developed through interrogatories, depositions, and requests for admissions, stipulations, or production of documents. Either party may object to the production of the evidence if the evidence being sought is irrelevant, overly burdensome, repetitious, or privileged.

3.10 Resolving Class Complaints

3.10.1 Mutual Agreement

At any time after a class complaint has been accepted, the complaint may be resolved by mutual agreement to terms offered by either party. If resolution or settlement is achieved, the terms must be put in writing and signed by the class agent, the Postal Service representative, and the PCES executive in charge of the unit in which the complaint arose. The original settlement agreement must be forwarded to the EEO compliance and appeals coordinator responsible for the area in which the complaint arose.

3.10.2 Notice of Resolution

All class members must be notified of a class complaint's resolution in the same manner in which they were notified of its acceptance. The notice of resolution must state any terms of relief to be granted by the Postal Service. The resolution is binding on all members of the class.

3.11 EEOC Hearing

3.11.1 Procedures

The procedures outlined in section **2.1.16.3** et seq. apply, except that the manager of EEO Compliance and Appeals reserves the

right to assume responsibility for the handling of a class complaint at any time, and the Postal Service representative will be an attorney advocate for Postal Headquarters or a field legal office.

3.11.2 Administrative Judge's Recommended Decision

After the hearing, the administrative judge will issue a report of findings and recommendations, including a recommended decision, and forward it to the EEO compliance and appeals coordinator. The official EEO complaint will contain the transcript of the hearing.

3.12 Final Agency Decision

3.12.1 If Made Within 60 Days

The EEO compliance and appeals coordinator or designee will issue a decision to accept, reject, or modify the findings and recommendations of the administrative judge within 60 days after receiving the recommended decision.

3.12.2 If Not Made Within 60 Days

If the Postal Service has not issued a final decision within 60 days, the administrative judge's findings and recommendations will become the final agency decision.

3.12.3 Transmitting the Decision

The final agency decision and the findings and recommendations of the administrative judge will be transmitted to the class agent, the class representative, the Postal Service representative, and the PCES executive responsible for the facility or unit where the complaint arose. The class agent also will receive a copy of the hearing transcript.

3.12.4 Notice of Right to Appeal

The final agency decision must inform the class agent and representative of the agent's right to appeal the decision to the Office of Federal Operations or to file a civil action in the appropriate U.S. District Court. The Postal Service will attach a copy of EEOC Form 573, *Notice of Appeal/Petition to the Office of Federal Operations*, to the final agency decision that the agent receives. Class members will be notified of the final decision in the same manner in which they were notified of the class complaint. This notification will be given within 10 days of transmitting the final agency decision to the agent.

3.13 Where Classwide Discrimination Is Not Found but Discrimination Is Found for the Agent

Within 60 days of issuing the final agency decision, the Postal Service will acknowledge the individuals' complaints that were subsumed under the class complaint and process them, as applicable, in accordance with regulations found in 29 CFR §§1614.106, .107, and .108 et seq.

3.14 Discrimination on a Classwide Basis

When there is a finding of discrimination on a classwide basis, the class agent, the class representative, the Postal Service representative, and the Postal Service officials involved must be informed by the EEO Compliance and Appeals Coordinator. Additionally, class members must be appropriately notified of the final decision and corrective action in the same manner in which they were notified of the class complaint. Notice of the finding of discrimination must be sent to the proper Headquarters, area, or district EEO officials who will be responsible for ensuring that the corrective action is implemented. EEO officials must be specifically informed that corrective action must be initiated within 30 days after the final decision and that EEOC must be notified of the corrective action taken within the Commission's established time period.

3.15 Appeal to the Office of Federal Operations

The procedures in section 2.1.24 apply here, except that the manager of EEO Compliance and Appeals has the discretion to assume responsibility for preparing the agency comments.

3.16 Requests for Reconsideration

The procedures in section 2.1.22 apply here, except as noted above.

3.17 Official Correspondence With the Representative

Agents must give the Postal Service written notification of their attorney's name, address, and phone number. Unless the agent states otherwise in writing, the Postal Service will send all corre-


spondence subsequent to Form 2579-B, *Notice of Right to File Class Complaint*, to the attorney, with a copy to the agent. This correspondence includes the acknowledgment/acceptance letter, requests for cooperation and information, evidence or testimony, and service of decisions or documents. The time frame for the agent to receive these materials will be computed from the time of receipt by the attorney. When the agent designates a representative who is not an attorney, official correspondence and service of decisions and documents will be to the agent, with copies to the representative. The time frame is then computed from the agent's receipt. To evidence the date of receipt, all original documents and requests must be sent by certified mail, return receipt requested.

3.18 Restrictions on Complainants' and Representatives' Use of Postal Service Resources

An agent or representative may not use Postal Service resources to prepare an EEO complaint without obtaining prior approval from the installation head (or designee responsible for handling such requests). The term *Postal Service resources* means items that the Postal Service owns or controls and includes, but is not limited to: typewriters, computer equipment and computer-related services; telephones and telephone equipment; fax machines; duplicating and copying equipment; penalty mail; writing instruments and stationery supplies; furniture; file cabinets and storage space; and offices and meeting rooms.

3.19 Charging Class Agents and Representatives for Search and Reproduction Costs

Pursuant to the *Administrative Support Manual*, the Postal Service may charge fees to provide duplicate copies of records that the agency already provided to the requestor and to search and reproduce records requested under the Freedom of Information Act or the Privacy Act.



4 Mixed Case Complaints (EEO/MSPB) (29 CFR §1614.302 et seq.)

4.1 Definitions

4.1.1 Mixed Case Complaint

The EEOC defines a mixed case complaint as a complaint of employment discrimination based on race, color, religion, sex, national origin, age, or disability related to or stemming from an action taken by the Postal Service that may be appealed to the Merit Systems Protection Board (MSPB).

4.1.2 Mixed Case Appeal

A mixed case appeal is an appeal filed directly with the MSPB that alleges that an appealable agency action was effected, in whole or in part, because of discrimination on the basis of race, color, religion, sex, national origin, age, or disability.

4.2 Election of EEO or MSPB Procedure Required

Any employee or former employee may file an appeal with MSPB to challenge a refusal to grant restoration to duty following recovery from a compensable work-related injury. Veterans' preference eligibles or employees covered by Public Law 100-90 (such as postmasters, individuals in supervisory positions, and certain management and confidential employees) with 1 or more years of current continuous service in the same or similar position in the

Postal Service may file an appeal with the MSPB challenging an adverse personnel action (i.e., a removal, a suspension for more than 14 days, a reduction in grade or pay, a furlough for 30 days or less, or a constructive discharge). (An allegation of discriminatory constructive discharge is one in which the aggrieved persons allege that they were subjected to working conditions so difficult, unpleasant, or intolerable that a reasonable person in the aggrieved person's position would feel compelled to resign or retire. In other words, the aggrieved person is alleging forced resignation or retirement under circumstances tantamount to termination or discharge.) In the EEO process, an individual with access to MSPB could raise the issue of discrimination concerning an adverse action as follows:

- a. The employee seeks counseling after receiving the proposed adverse action, but before the final decision is issued.
- b. The employee seeks counseling within 45 days of receiving the final decision or within 45 days of the effective date of the adverse action.

4.3 Responsibilities of C/I at Counseling Stage

4.3.1 Situation 1

In situation 1, no action other than an abbreviated counseling process is required of the C/I. However, if a formal complaint is eventually filed solely on the proposal to take an adverse action, it should be considered for dismissal in accordance with 29 CFR §1614.107(e).

4.3.2 Situation 2

In situation 2 the C/I must do the following:

- a. Determine whether the counselee is a preference eligible with 1 or more years of current continuous service in the same or a similar position, or is an employee covered by Public Law 100-90 with 1 or more years of current continuous service in the same or a similar position.
- b. Continue with the normal counseling process as outlined in sections 2.1.2 and 2.1.3, if the counselee is not eligible to file an appeal to MSPB.
- c. If the counselee does have eligibility to file with MSPB, the C/I will do the following:

- (1) Determine whether the letter of decision on the adverse action contained the proper appeal rights for mixed case complaints.
 - (2) Establish from the senior labor relations specialist or other appropriate official whether the counselee has appealed the action to MSPB. If the counselee has not, the C/I should proceed with the normal EEO counseling process.
- d. If the counselee has already appealed the action to MSPB, the C/I must do the following:
- (1) Notify the EEO compliance and appeals coordinator or designee of the mixed case appeal.
 - (2) Inform the counselee that (1) a mixed case issue may not be processed through both MSPB and EEO procedures, and (2) by appealing to MSPB, the counselee must now pursue the allegation of discrimination with MSPB. The C/I may inform the counselee either orally or in writing. At the same time, the C/I must tell the counselee that the counseling process has concluded and must issue the counselee Form 2579-C, *Notice of Right to File Mixed Case Complaint*.

4.4 Election of Forum

The forum in which the complainant must pursue the matter is established by which action is filed first—the MSPB appeal or the EEO complaint. Therefore, it is essential that the senior labor relations specialist immediately provide the senior EEO complaints processing specialist with a copy of each *mixed case appeal* that is filed with MSPB. Conversely, the senior EEO complaints processing specialist must immediately provide the senior labor relations specialist with a copy of each *mixed case formal complaint* that is filed. This practice gives each specialist an opportunity to search his or her records and ascertain that the aggrieved does not have concurrent filings on the same matter.

4.5 Dismissal Based on Election of Forum

4.5.1 Mixed Case Complaint

When the senior EEO complaints processing specialist receives a mixed case complaint and determines that the complainant has previously appealed the action to MSPB, and neither the MSPB administrative judge nor the Postal Service questions MSPB's jurisdiction over the appeal on the same matter, the senior EEO complaints processing specialist will advise the EEO compliance and appeals coordinator or designee of the dual filing. The area processing center will prepare a final agency decision dismissing

the EEO complaint pursuant to 29 CFR §1614.107(d). The decision letter will tell the complainant to bring the allegation of discrimination to the attention of MSPB.

The dismissal of such a mixed case complaint is not appealable to EEOC unless the complainant alleges that 29 CFR §1614.107(d) has been applied to a nonmixed case matter.

If a mixed case complaint is accepted before the EEO compliance and appeals coordinator learns that the case contains issues first appealed to MSPB, and neither the Postal Service nor the MSPB administrative judge questions the MSPB's jurisdiction over the matter, the EEO complaint related to the action pending at MSPB will be dismissed pursuant to §1614.107(d). The decision letter will tell the complainant to bring the allegations of discrimination to the attention of MSPB, and that the decision is not appealable to EEOC unless the complainant alleges that §1614.107(d) has been applied to a nonmixed matter.

4.5.2 Mixed Case Appeal

If the senior labor relations specialist learns that an MSPB appeal contains issues first filed as a formal EEO complaint, the specialist will notify the Postal Service advocate to file a motion with MSPB to dismiss the appeal without prejudice.

4.6 Dismissal Based on Procedural Reasons

4.6.1 Mixed Case Complaint

The Postal Service may dismiss a mixed case complaint for the reasons contained in and under the conditions prescribed in section 2.1.7.

4.6.2 Failure to Issue a Decision

The Postal Service will dismiss a mixed case complaint when the complainant, who first pursued the matter through the EEO system, appeals the matter to MSPB because the Postal Service did not issue a final agency decision within 120 days.

4.7 Questionable Jurisdiction

When the Postal Service or the MSPB administrative judge questions MSPB's jurisdiction over a mixed case appeal on a matter that had subsequently been filed as an EEO complaint, the area processing center will notify the complainant in writing that the complaint will be

held in abeyance until the MSPB administrative judge rules on the jurisdictional issue. The letter will tell the complainant to bring the allegation of discrimination to the attention of MSPB. The letter will also inform the complainant that until the administrative judge rules on the matter, all time limitations for processing the EEO complaint will be suspended, and the time-in-process clock to complete the investigation will be stopped. The Postal Service's decision to hold the complaint in abeyance is *not* appealable to EEOC.

- a. If the MSPB administrative judge decides that MSPB does not have jurisdiction over the matter, the Postal Service will reactivate the case as a nonmixed EEO complaint. The investigation will be completed within that portion of the 180 days that remained when processing was halted.
- b. If the MSPB administrative judge decides that MSPB has jurisdiction over the matter, the Postal Service will dismiss the mixed case complaint, pursuant to 29 CFR. §1614.107(d), and advise the complainant of the right to petition EEOC to review MSPB's final decision on the discrimination issue.

4.8 Referral to EEO Process Resulting From MSPB's Jurisdictional Dismissal

When the mixed case appeal of an individual who did not previously seek EEO counseling is dismissed by MSPB based on jurisdiction, the individual has the right to request EEO counseling within 45 days of receiving the decision. Therefore, the senior labor relations specialist must promptly provide a copy of the dismissal letter to the senior EEO complaints processing specialist, who will immediately advise the individual in writing of the right to request EEO counseling within 45 days of receipt of the notification letter. If the individual contacts an EEO counselor in a timely manner, the date on which the individual filed the MSPB appeal will be deemed the date of initial contact with the counselor.

When MSPB jurisdictionally dismisses the mixed case appeal of an individual who participated in the EEO complaint process and did not file a formal complaint, but who did file the mixed case appeal (1) within 30 days of the effective date of the personnel action; (2) after initiating counseling but before or in lieu of receiving a *Notice of Right to File*; or (3) within 15 days of receiving Form 2579-C, *Notice of Right to File Mixed Case Complaint*, the individual has the right to file a formal complaint. Therefore, the senior labor relations specialist must promptly provide a copy of MSPB's dismissal letter to the senior EEO complaints processing specialist, who will immediately provide the individual with Forms 2579-A and 2565, along with a letter advising of the right to file an EEO complaint within 15

days of receiving the letter. If the individual files a formal complaint within the stated time period, the complaint will be deemed to have been filed in a timely manner.

4.9 Processing Procedures for Mixed Case Complaints

The Postal Service has 120 days from the filing date to complete the investigation of a mixed case complaint and issue a final agency decision. When an individual's mixed case complaint is accepted for investigation, the manager of EEO Compliance and Appeals or the EEO compliance and appeals coordinator or designee will notify the complainant in writing that the case has been accepted for investigation. The letter must inform the complainant of the right to appeal the mixed case complaint to MSPB for a hearing or to file a civil action in U.S. District Court if a final agency decision is not received within 120 days.

4.10 Investigation of Mixed Case Complaint

Except that the time period for investigation and final agency decision is limited to 120 days, the investigation of a mixed case complaint will emphasize the EEO issue and be conducted in the same manner as a regular investigation (see sections **2.1.10–2.1.13**). The investigation may include an exchange of letters, memoranda, interrogatories, and other fact-finding processes that efficiently and thoroughly address the matters at issue. The complainant and the Postal Service may also agree to incorporate alternative dispute resolution procedures in the investigative process to promote early resolution.

4.11 Distribution of the Complaint File

If the case is not resolved during the investigative stage, the EEO compliance and appeals coordinator or the senior EEO complaints processing specialist will provide a copy of the investigative report to the complainant and a copy to the complainant's representative, along with letters advising that the complaint will receive a final agency decision within 45 days.

4.12 Final Agency Decision—Merits

4.12.1 When Issued

In a mixed case, the complainant is not entitled to a hearing before an EEOC administrative judge. The area processing center will

prepare a merit final agency decision based on a review of the official complaint file in its entirety. The decision will be signed by the area manager or designee. Complainants will receive the final agency decision within 45 days of receiving the investigative file.

4.12.2 Appeal Rights

The final agency decision must advise complainants of the right to appeal the matter to MSPB (not EEOC) within 30 days of receiving the decision or to file a civil action in U.S. District Court within 30 days. Complainants must also be told that MSPB's final decision is appealable to EEOC. To appeal, a petition must be filed with EEOC within 30 days of receiving MSPB's final decision or within 30 days of when the decision of an MSPB field office becomes final.

4.13 Pending Nonmixed Complaints That Lead to Appeal on a Matter Appealable to MSPB

In some situations, a series of events connected in time or type culminate in adverse action against a person who can appeal to MSPB (e.g., minor discipline, letters of warning, or other corrective actions that ultimately lead to a suspension of 15 days or more or a termination that raises mixed case issues). If, in such cases, the EEO compliance and appeals coordinator believes that the nonmixed case complaint is sufficiently related to the subsequent mixed case complaint that one cannot be adjudicated without adjudicating the other, the area processing center must notify the complainant in writing that the filing of a mixed case appeal *may* terminate the processing of the nonmixed cases and that the nonmixed matters will be consolidated with the mixed case appeal.

The EEO compliance and appeals coordinator or designee may file a motion with MSPB to consolidate the nonmixed case with the mixed case appeal. Upon filing the motion, the nonmixed case complaints will be held in abeyance pending a decision on the Postal Service's motion by the MSPB administrative judge. If the MSPB judge decides not to consolidate the nonmixed case complaints, these complaints will be processed pursuant to §1614.106 et seq. Time for processing will commence without notice within 15 days following the decision denying jurisdiction.

4.14 Reissuing Final Agency Decision Following MSPB's Dismissal for Jurisdictional Reasons

If a complainant files a timely mixed case appeal after either receiving a final agency decision from the Postal Service or after more than 120 days have passed from the filing date without receiving a final decision from the Postal Service, and the appeal is dismissed by MSPB for jurisdictional reasons, the senior labor relations specialist must promptly provide the senior EEO complaints processing specialist with a copy of the dismissal. The senior EEO complaints processing specialist will immediately notify the complainant in writing that the case is no longer mixed and advise of the right to request a hearing before an EEOC administrative judge or a final agency decision without a hearing within 30 days of receiving the letter.

4.14.1 With Whom It Should Be Filed

Complainants should file the request for a hearing or a final agency decision without a hearing with the EEO compliance and appeals coordinator or designee within 30 days of receiving the advisement letter.

4.14.2 Issuance of a Final Agency Decision Without a Hearing

If, within 60 days of receiving the complainant's request for a final agency decision without a hearing or within 60 days of the expiration of the complainant's 30 days to request a hearing, the complainant did not exercise the right to request either, the area manager or designee will render a final agency decision prepared by the area processing center. This decision will be based on the manager's review of the EEO complaint file in its entirety. The final agency decision must clearly state the Postal Service's findings on the merits of the complaint. Generally, if a final agency decision was issued in accordance with section 4.12, the context of that decision may be reissued without change, except that the appeal rights must be appropriately revised. Complainants must be advised that they may appeal the final agency decision to EEOC's Office of Federal Operations at any time up to 30 days after receiving the final agency decision, or they may file a civil action in U.S. District Court within 90 days of receiving the decision. A copy of EEOC Form 573, *Notice of Appeal/Petition to the Office of Federal Operations*, must be attached to the final agency decision. (See section 2.1.24 et seq. for additional information.)

4.14.3 Preparations for the Hearing

Follow the procedures outlined in section 2.1.16.

4.15 Official Correspondence With Representative

Complainants must give the Postal Service written notification of their attorney's name, address, and telephone number. Unless the complainant states otherwise in writing, the Postal Service will send all correspondence subsequent to Form 2579-C, *Notice of Right to File Mixed Case Complaint*, to the attorney, with a copy to the complainant. This correspondence includes the acknowledgment/acceptance letter, requests for cooperation and information, evidence or testimony, and service of decisions or documents. The time frame for the complainant to receive these materials will be computed from the time of receipt by the attorney. When the complainant designates a representative who is not an attorney, official correspondence and service of decisions and documents will be to the complainant, with copies to the representative. The time frame is computed from the complainant's receipt. To evidence the date of receipt, all original documents and requests must be sent by certified mail, return receipt requested.

5 EEO Case File

5.1 Dividers

Material in the file should be assembled under the following dividers:

- Counselor's Report
- Formal Complaint
- Issues To Be Investigated
- Miscellaneous Correspondence
- Appellate Activity
- Exhibits
- Affidavits
- Investigation
- Post-investigation
- Post-investigation Appellate Activity

5.2 Placing Postal Service Forms in the Case File

Section **5.3** includes comprehensive lists of all EEO forms used in the Postal Service. Remember, however, that most case files will not contain a copy of every form. For example, when counsees fully complete Form 2564-A, there is no need for them to complete either Form 2584 or Form 2563-A. Similarly, Form 2563-B, *Allegations of Discrimination Based on Age*, is only included in case files if age discrimination has been alleged. The file of a counselee who withdrew the matter early in the precomplaint process will consist of a signed Form 2564-C, *Withdrawal of Informal EEO Complaint of Discrimination*, and few other documents. Likewise, the file of a counseling or a formal complaint that was resolved by a settlement

may include a settlement form or agreement but not many other documents.

A written settlement offer should not be included in the official case file unless (1) it was agreed to and signed by the complainant and a management designee or (2) it was rejected by the complainant even though it contains an offer of full relief. (See section 2.1.7 for information on dismissals based on failure to accept an offer of full relief.)

5.3 Arrangement of the Case File

Forms issued and documents gathered during counseling should be maintained in a medium weight brown or manila folder. Begin building the informal case file with the first document received from the counselee and assemble the file up from the bottom. Assemble the formal case file on top of the precomplaint file in the same folder.

EEO COUNSELOR'S REPORT

- a. Letter from the counselee requesting counseling, along with the envelope in which it was received.
- b. PS Form 2564-A, *Information for Precomplaint Counseling*. If the information was sent by mail, include PS Form 3811, *Domestic Return Receipt*, to show the date it was received.
- c. Signed receipt for Publication 133, *What You Need to Know About EEO*. If sent by mail, include PS Form 3811 to show the date it was received.
- d. PS Form 2584, *Representation/Anonymity*.
- e. PS Form 2563-A, *Privacy Act Notice for EEO Discrimination Complaint—Interview*.
- f. PS Form 2563-B, *Allegations of Discrimination Based on Age*.
- g. PS Form 2567-B, *Agreement to Participate in Alternate Dispute Resolution Process*.
- h. PS Form 2567-A, *Agreement to Extend 30-Day EEO Counseling Process*.
- i. Correspondence to and from the counselee concerning scheduling of the initial interview or correspondence that actually constitutes the interview if it was conducted by mail.
- j. Miscellaneous correspondence to and from the counselee and other witnesses that is not part of the initial or final interview.
- k. PS Form 2564-C, *Withdrawal of Informal EEO Complaint of Discrimination*, or other written withdrawal statement signed by the counselee, fully or partially withdrawing the informal complaint.

- l. PS Form 2564-B, *EEO Settlement-Counseling Process*, or other written agreement signed by the counselee and designated management official, fully or partially settling the informal complaint.
- m. Letter concerning scheduling of the final interview or correspondence that actually constitutes the final interview if it was conducted by mail.
- n. Form 2579-A, *Notice of Right to File Individual Complaint*; Form 2579-C, *Notice of Right to File Mixed Case Complaint*; or Form 2579-B, *Notice of Right to File Class Complaint*, signed and dated by the counselee. (An unsigned copy of a *Notice of Right to File* only if the original was not signed or not returned to the counselor.) If the *Notice* was sent by mail, include a Form 3811 to show the date it was received.
- o. Form 2570, *EEO Counselor's Inquiry Report*, and supporting documentation required by the area or district processing office.

FORMAL COMPLAINT

- p. PS Form 2565, *EEO Complaint of Discrimination in the Postal Service*, signed and submitted by the complainant, or the formal letter of complaint.

ISSUES TO BE INVESTIGATED

- q. Acknowledgment letter.
- r. Dismissal or partial dismissal letter.
- s. Acceptance or partial acceptance letter.
- t. Form 2565-A, *Withdrawal of Formal EEO Complaint of Discrimination*, documenting that the case has been wholly or partially withdrawn. PS Form 2565-E, *Withdrawal of EEO Complaint (Including claims filed under ADEA)*, documenting that claims made under ADEA have been wholly or partially withdrawn.
- u. Form 2565-B, *EEO Settlement Agreement*, documenting that the case has been wholly or partially settled. PS Form 2565-F, *EEO Settlement Agreement (Including claims filed under ADEA)*, documenting that claims made under ADEA have been wholly or partially withdrawn.

MISCELLANEOUS CORRESPONDENCE

- v. Assignment letter.
- w. Documents submitted by the complainant at the investigative stage that were not incorporated into the complainant's affidavit statement and are not duplicated elsewhere in the case file.

- x. Documents pertaining to the complainant's agreement to engage in Alternative Dispute Resolution during the formal processing stage.
- y. Form 2565-C, *Agreement to Extend 180-Day Investigative Process*.
- z. Interrogatories and miscellaneous correspondence to and from the complainant during the formal processing stage, arranged in ascending date order (most recent date on top).
- aa. Interrogatories and miscellaneous correspondence to and from individuals, including witnesses, technical experts, and records custodians.
- bb. A copy of the deferral letter if the investigative process was temporarily deferred pending the final outcome of the grievance/arbitration procedure; copies of relevant extracts from the grievance file that support the deferral decision; and correspondence to and from the complainant concerning the commencement and cessation of the deferral period.

APPELLATE ACTIVITY

- cc. A record of any MSPB appellate activity pertaining to the disposition or processing of all or some of the complainant's allegations, including an abeyance letter if processing was deferred pending MSPB's decision on jurisdiction.
- dd. A record of any appellate activity before OFO that pertains to the processing or disposition of all or some of the issues in the case, including written notification to the complainant that the investigation is being held in abeyance pending OFO's decision on the appeal of a partial dismissal.

EXHIBITS

- ee. Exhibits relating solely to the complainant's claimed entitlement to compensatory damages. The first compensatory damages claim exhibit will be labeled with the number that comes after the last numbered investigator's exhibit. The number of each exhibit in this section will be prefaced with the alpha identifier "C." (Example: Ex. C-15.)
- ff. Documents included in the file as investigator's exhibits should be (1) divided into categories, (2) logically arranged and sequenced within the categories, and (3) consecutively numbered beginning with Exhibit No. 1, the first exhibit under the *Exhibits* divider. The number of each exhibit should appear on the bottom left-hand side of the page. Each page of a multipage exhibit should be identified by both its exhibit number and its

page number within the exhibit. (Example: Ex. 1 [pg. 1 of 10], Ex. 14 [pg. 11 of 11].)

AFFIDAVITS

- gg. The top page of an affidavit is Form 2568-A, *EEO Investigative Affidavit (Complainant)*, or Form 2568-B, *EEO Investigative Affidavit (Witness)*. If the statement of the complainant or other witness exceeds 1 page, the statement should be continued using copies of Form 2569, *EEO Investigative Affidavit (Continuation Sheet)*. The bottom page of each affidavit is Form 2571, *Certification*.

The complainant's affidavit or deposition is *Affidavit A*, and it is always the first affidavit to appear under the *Affidavits* divider. When an affiant submits more than one affidavit or deposition, each statement should be labeled with the same alpha identifier. (Example: "See complainant's affidavits, Affs. A-1, A-2, and A-3.") The pages within the statement should also be paginated. (Examples: Aff. B [pg. 1 of 6] Aff. B [pg. 2 of 6], etc.) The alpha identifier and the page number of the affidavit should always appear on the bottom left-hand side of the page.

INVESTIGATION

- hh. Summary and analysis.
- ii. Contents page.
- jj. PS Form 2430, *EEO Investigation Report* (the first page of the investigative report).

POST-INVESTIGATION

- kk. Standard letter transmitting completed investigative file to complainant.
- ll. Letter from complainant electing final agency decision (FAD) or EEOC hearing.
- mm. Transmittal letter addressed to EEOC.
- nn. Final agency decision.

POST-INVESTIGATION APPELLATE ACTIVITY

- oo. Appellate activity occurring after completion of the investigation, including appeal of FAD and agency response or transmittals concerning Request for Reconsideration, OFO decisions, copy of court complaint, etc.

**Investigation Report
Case No. 50-000000-95**

Jayne Dough,
Complainant,
vs.
Marvin Runyun,
Postmaster General

CONTENTS

	Page
PS Form 2430	1
Contents Page	2
Summary and Analysis	3-9
Affidavits:	
A. Jayne Dough Mailhandler, PS-4	10-14
A-1. Jayne Dough	15-17
B. Juan Q. Public Supervisor, EAS-16	18-22
Exhibits:	
1. Letter to complainant dated March 16, 1995, in which supervisor Public informed complainant that he was denying her request for a permanent schedule change.	23
2. PS Forms 3971, <i>Request for or Notification of Absence</i> , submitted by complainant for unscheduled annual leave during calendar year 1995.	24-28
Appellate Activity:	29-32

5.6 Supplemental Investigations

Supplemental investigation materials may be placed on top of primary investigation materials in the same folder, or may be arranged in a separate folder. If a separate folder is used, the words *SUPPLEMENTAL INVESTIGATION* must be printed on the outside of the folder in very large, black letters so that it will not be mistaken for the primary investigation folder.

Form 2430 is the first page of a supplemental investigative report. The words *SUPPLEMENTAL INVESTIGATION* must be printed in large, bold letters on the top center of Form 2430. The *Contents* page is always page 2. The supplemental file must be organized in the same fashion as the primary file, although it may not need to have as many sections as the primary file. Each page in this file must be appropriately labeled in the same manner as those in the


primary file, except that the pages of affidavits, exhibits, other documents, and the chronological page numbers must be prefixed with a lowercase “s” to show that they are part of the supplemental file. (Examples: Aff. sA [pg. 2 of 3], Ex. s10; Ex. sC 10 [pg. 4 of 4].)

5.7 Notice of Restricted Use

Neither a counseling report nor an investigative report should be released from the custody of the United States Postal Service without the following notice printed on the face of the report and on the outside of the folder that contains the report:

NOTICE OF RESTRICTED USE

Access to and use of this EEO complaint file is RESTRICTED by both the Freedom of Information Act and the Privacy Act to (1) the complainant (and his or her representative) and (2) government officials who must have access to the file to discharge their OFFICIAL duties. The file and its contents must be safeguarded. Willful violations of these requirements are subject to criminal penalties (5 U.S.C., 522a[i]).



6 Records Retention and Disposal and Privacy Disclosure Regulations

6.1 Precomplaint Counseling File

As applicable to the progression of processing at the informal stage, the precomplaint counseling file will consist of all required documents and agreements executed, including the *Information for Precomplaint Counseling* form, *Notice of Right to File*, *Anonymity and Privacy Act Statements*, *Extension and Election* forms, *Report of Counseling*, and any signed withdrawal or mutually agreed to and signed settlement statement. This file must be moved to an inactive file when final disposition is made at the C/I level or when a formal complaint is filed. The cutoff date for this file is the end of each calendar year, and the file is disposed of 1 year from the cutoff date.

6.2 Official EEO Complaint File

The official EEO complaint file consists of case files containing all applicable standard forms and reports, such as forms 2565, 2570, and 2579, and related correspondence. The file also consists of exhibits, withdrawal and settlements, copies of decisions, records of hearings and meetings, and other records and appeals. Refer to 29 CFR §1614.106 for EEOC regulations on the complaint file. If the case is appealed to OFO, the file will also consist of all documents relating to the appeal. This file should be moved to a closed file when the complaint is resolved or when action on it has been completed. The cutoff date for this file is the end of each calendar year, and the file is disposed of 6 years from the cutoff date.

6.3 Civil Actions

The files of EEO cases litigated in civil court will be retained by the Law Department. That department will determine the appropriate retention period for each file and will dispose of files accordingly.

6.4 Extra Copies of EEO Complaint Files

Any extra copies of EEO complaint files will be disposed of 1 year after resolution or final completion of the case.

6.5 Request to Preserve Records

Postal executives, human resources managers, and records custodians may be asked by Postal Service attorneys or EEO or labor relations professionals to preserve certain administrative records past their normal retention period. Regardless of how much time elapses, while a discrimination complaint is in an administrative or civil procedure the Postal Service should be able to produce records that are relevant to the issue raised by the complainant or that document the treatment of similarly situated employees. If the Postal Service is unable to produce such records, the deciding authority may issue an adverse inference decision in which the authority opines that the agency withheld the requested information because its disclosure would reflect unfavorably upon the Postal Service.

6.6 Privacy Act Considerations

EEO case file records are personal in nature and are to be treated as “Restricted.” They are maintained within Privacy Act Systems of records USPS 030.010, Equal Employment Opportunity—EEO Discrimination Complaint Files; and USPS 030.030, Equal Employment Opportunity—EEO Administrative Litigation Case Files. C/Is are responsible for complying with Privacy Act regulations concerning the collection, use, disclosure, and safeguarding of information about employees. See *Administrative Support Manual*, sections 352, 353, and appendix.

6.7 Maintenance of Files

All information within Privacy Act systems of records (USPS 030.010 and USPS 030.030) and all personal identifiers contained on reports must be treated as Restricted Information. Paper records must be stored in locking filing cabinets within the restricted area of the EEO office. Computer records must be password protected. The

use of the “Restricted Information” caveats must be placed on both hardcopy and automated screens that contain information requiring restrictions on access and disclosure. (See *Administrative Support Manual* section 351.33.)

6.8 Access and Disclosure

Requests for access and disclosure must be handled in accordance with the provisions of the *Administrative Support Manual (ASM)* sections 352, 353, and appendix. Procedures in EL-806 and *ASM* must be followed when handling medical records. Accountings of disclosure must be kept in accordance with *ASM* section 353.3.

