

EQUAL EMPLOYMENT OPPORTUNITY (EEO) PROGRAMS
**DISCRIMINATION COMPLAINTS PROCESSING PROGRAM AND
PREVENTION OF SEXUAL HARASSMENT**

BY ORDER OF THE DIRECTOR



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AUTHORITY: HQ DeCA Equal Employment Opportunity (EEO) Discrimination Complaints Processing Program is established pursuant to DoDD 1440.1: The DoD Civilian Equal Employment Opportunity Program and 29 Code of Federal Regulations (CFR) Part 1614: Agency Regulations for Processing Complaints of Discrimination. HQ DeCA EEO Program on the Prevention of Sexual Harassment is established pursuant to: DoDD 1440.1: The DoD Civilian Equal Employment Opportunity Program and DoD Memorandum dated 12 Jul 91 on "DoD Strategies to Eradicate Sexual Harassment in the Military and Civilian Environment."

MANAGEMENT CONTROLS: This Directive contains Management Control provisions that are subject to evaluation and testing as required by DeCAD 70-2 and as scheduled in DeCAD 70-3. The Management Control Review Checklist to be used by assessable unit managers to conduct the evaluation and test management controls is at Appendix A.

HOW TO SUPPLEMENT: This Directive may be further supplemented. Users are invited to send comments to HQ DeCA, ATTN: EEO, Fort Lee, VA 23801-6300

APPLICABILITY AND SCOPE: This Directive applies to all Defense Commissary Agency elements assigned to DeCA.

HOW TO ORDER: Directive will be included on DeCA Intranet.

SUMMARY: This Directive established the Agency's policy and procedures for processing complaints of discrimination at all DeCA component levels.

SUPERSEDES: DeCA Directive 50-9 dated April 14, 1995.
OFFICE OF PRIMARY RESPONSIBILITY (OR): HQ DeCA/EE
COORDINATORS: IG, GC, DP, IR, PA, SA, DF, PL AND REGIONS
DISTRIBUTION: E

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SECTION I

Chapter 1

DEFENSE COMMISSARY AGENCY POLICY AND PROCEDURES FOR PROCESSING DISCRIMINATION COMPLAINTS

1-1. **PURPOSE.** To establish the Defense Commissary Agency's (DeCA) policy and procedures for processing discrimination complaints in matters under the control of DeCA.

1-2. **REFERENCES.**

- a. DoDD 1440.1, the DoD Civilian EEO Program.
- b. 29 CFR Part 1614, Agency Regulations for Processing Complaints of Discrimination
- c. Equal Employment Opportunity Commission (EEOC) Management Directive 110 For 29 C.F.R. Part 1614, Federal Sector Complaint Processing Manual.

1-3. **POLICY.**

- a. It is the policy of DeCA to prohibit discrimination in employment because of race, color, religion, sex, national origin, age, handicapping condition, or reprisal.
- b. Persons involved in presenting or processing a discrimination complaint will be free from restraint, interference, coercion, harassment, discrimination, and reprisal.
- c. Discrimination complaints will be processed promptly and impartially. Informal resolution, which can occur at any stage of processing, is in the best interest of DeCA. Therefore, all reasonable efforts will be made to achieve early resolution of discrimination complaints at the lowest possible level.
- d. Alternative Dispute Resolution (ADR) will be made available to complainants as a tool in resolving EEO disputes for both the pre-complaint process and the formal complaint process.
- e. Disciplinary action will be considered and corrective action will be taken when any supervisor or individual discriminates against a DeCA employee, former employee or applicant for employment. Personnel management policies or practices which have an unlawful discriminatory impact on a protected group of employees, former employees, or applicants shall be modified.

1-4. **APPLICABILITY.** This procedure applies to:

- a. Complaints from any employee, former employee, or applicant who believes that he or she has been discriminated against by DeCA because of race, color, religion, sex, national origin, age, handicapping condition or reprisal because of involvement with filing, presenting, or processing a discrimination complaint at any stage of the process, or reprisal because of prior involvement in the complaint process or opposition to an unlawful discriminatory employment practice.

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b. Equal Pay Act Complaints (EPA): Complaints claiming sex-based wage discrimination under the EPA are processed as are those arising under Title VII, except that there is no exhaustion requirement arising from the statute and the aggrieved person may therefore file suit in a court of competent jurisdiction without waiting for the expiration of any time limits. A civil action must be filed within two years of the date of the occurrence or within three years of this date if the violation is alleged to be willful. Liquidated damages in an amount equal to lost back wages may also be awarded. The filing of an administrative complaint does not toll the time for filing a civil action.

c. Class complaints alleging that a DeCA personnel management policy or practice has or may have an unlawful discriminatory impact upon a group of employees, former employees, or applicants on the basis of their common race, color, religion, sex, national origin, age, or handicapping condition.

1-5. **COVERAGE.** Complaints other than those described above and complaints over matters outside the control of DeCA shall not be accepted for processing. The aggrieved employee, former employee, or applicant shall be advised to file such a complaint with the appropriate agency. The following are excluded from coverage:

- a. Local nationals employed outside the United States.
- b. DeCA contractors, their employees and applicants for employment with contractors.
- c. Active duty military members.

1-6. **RESPONSIBILITIES.**

a. The Director DeCA is responsible for ensuring that a system exists to process discrimination complaints fairly, promptly, and in strict accordance with the complaint processing procedures of 29 CFR, Part 1614. By delegation of authority, the Director, DeCA has designated the Director, Equal Employment Office (EEO), to act as DeCA's Director of Equal Employment Opportunity, to assist in carrying out the responsibilities in this instruction, and to impartially review and make recommendations to the Director, DeCA on complaints of discrimination.

b. The Director, Equal Employment Office, is responsible for establishing policy for processing discrimination complaints and:

- (1) Ensuring that a system exists to process complaints which is properly managed and evaluated.
- (2) Advising the Director, DeCA, Chief Executive Officer, and the Executive Director for Support regarding adequate resources to implement the discrimination complaints system.
- (3) Advising the Director, DeCA, Chief Executive Officer, and the Executive Director for Support to ensure that DeCA's final decisions and final orders on discrimination complaints are rendered and enforced in a timely manner.
- (4) Reviewing all discrimination complaints for which a final decision or order from the Director, DeCA has been requested, with or without a hearing.
- (5) Forwarding recommended decisions to the Chief Executive Officer, DeCA, who has been delegated authority to issue the final decision or order for DeCA.

- (6) Forwarding the DeCA final agency decision or order to the complainant.
- (7) Reporting the status of discrimination complaints to the Equal Employment Opportunity Commission (EEOC) and the Director, Equal Opportunity Policy Directorate, Department of Defense.
- (8) Serving as the primary point of contact with the EEOC for DeCA discrimination complaints.
- (9) Monitoring and evaluating the status of discrimination complaints within DeCA.
- (10) Preparing the annual agency statistical report on discrimination complaints to be submitted to the EEOC at the end of each fiscal year.
- (11) Processing all requests from EEOC for complaint files on DeCA final agency decisions that are appealed to EEOC. The DeCA General Counsel will oversee the preparation of all briefs for DeCA in cases appealed to the EEOC.
- (12) Coordinating with the DeCA General Counsel who will oversee the preparation of all requests for reopening and reconsideration of EEOC decisions on DeCA discrimination complaints.

c. Directors, DeCA Regions. The DeCA Region Directors or his/her designee are responsible for:

- (1) Ensuring that the discrimination complaints process is understood, accepted, and implemented within their respective regions.
- (2) Allocating adequate resources to effectively manage the complaint process.
- (3) Ensuring that individuals responsible for the complaints process within the region office are properly trained to manage the complaints process in a timely, efficient, and effective manner.
- (4) Analyzing the status of discrimination complaints within their respective regions and ensuring that monthly reports are submitted regarding the status of discrimination complaints within their respective regions no later than the 10th calendar day of each month.

d. DeCA HQ Discrimination Complaints Program (DCP) Manager. The DCP Manager is responsible for the overall central management of the agency's Discrimination Complaints Program. The DCP Manager will also manage the process of drafting final agency decisions on complaints. Additionally, the DCP Manager will monitor the status of complaints on a monthly and annual basis and brief the Director, Equal Employment Opportunity Office. Additionally, the DCP Manager will conduct periodic on-site evaluations of DeCA region offices to ensure that assigned personnel are properly carrying out their complaints processing responsibilities.

e. Region and Area Office Equal Employment Managers (EE Manager). The EE Managers are responsible for:

- (1) Managing the region and area office complaints processing program.

- (2) Ensuring that claims of discrimination are within the purview of EEO regulations and are accepted or dismissed within ten (10) calendar days of receipt of the EEO Counselor's Report.
- (3) Requesting an investigator within seven (7) calendar days of accepting the complaint.
- (4) Monitoring and tracking EEO complaints and reporting the status of complaints to the Region Director and DeCA HQ prior to or on the 10th of each month.
- (5) Analyzing and evaluating complaints, providing recommendations and attempting resolution by negotiating with management and complainant when possible.
- (6) Notifying complainant within ten (10) calendar days of the receipt of the Report of Investigation of his/her right to request a final agency decision with or without a hearing.
- (7) Processing all requests from EEOC for DeCA cases that have been appealed, remanded or reopened for reconsideration within fourteen (14) calendar days.

f. Department of the Army, Navy and Air Force EEO Personnel who service DeCA employees.

(1) CONUS cases will be processed in accordance with servicing agreements between the services and DeCA. The services' personnel who have responsibility for processing discrimination complaints will continue to provide informal counseling to DeCA employees worldwide, including issuing Notice of Final Interview letters. If a complainant wishes to file a formal complaint, the servicing EEO official at the installation will direct the complainant to file his/her complaint with the appropriate DeCA EE Manager. The servicing EEO official will forward the case file to the EE Manager within five (5) calendar days of being notified of the formal complaint. Department of Defense, Civilian Personnel Management Service, Office of Complaint Investigations (OCI) will investigate all complaints. After the investigation is completed, the Report of Investigation (ROI) will be sent directly to the appropriate region or area office EE Manager. The EE Manager will send a copy of the ROI to the complainant. Simultaneously, the EE Manager shall notify the complainant that within 30 days of receipt of the ROI, he/she has the right to request a hearing before an EEOC Administrative Judge (AJ) or may receive an immediate final from DeCA. If the complainant requests a hearing, he/she must submit the hearing request directly to the EEOC district or field office having jurisdiction over the geographic area in which the complaint arose. The complainant must provide a copy of the hearing request to the EE Manager. EEOC will request that the agency forward a copy of the complaint file within the earlier of fifteen (15) days of its receipt of the complainant's request for a hearing or receipt of the docketing letter. The EE Manager will send a copy of the case file to EEOC, with instructions to send the transcript and AJ's decision to the Director, EEO Office, DeCA. Request for all final agency decisions should be sent to:

Director, EEO Office
Defense Commissary Agency, Headquarters
1300 E Avenue
Fort Lee, VA 23801-1800

(2) Overseas cases will be processed in accordance with servicing agreements between the military services' and DeCA. The services' personnel who have responsibility for processing discrimination complaints will continue to provide informal counseling to DeCA employees worldwide,

including issuing Notice of Final Interview letters and acknowledgment of receipt of formal complaint letters. If a formal complaint is filed, the servicing EEO official at the installation, should forward the case file to the appropriate Region EEO Office and the EE Manager will accept/dismiss the complaint and request an OCI Investigator. Department of Defense, Civilian Personnel Management Service, Office of Complaint Investigations (OCI) will investigate all complaints. After the investigation is completed, the Report of Investigation (ROI) will be sent directly to the appropriate DeCA Region EE Manager.

g. Civilian Personnel Office (CPO). The servicing CPO shall:

(1) Provide advice and guidance to employees, managers, and EEO officials which is consistent with the servicing agreement.

(2) Cooperate with EEO counselors, investigators, and the EE Managers in providing information and access to records necessary to investigate and resolve claims of discriminations consistent with the servicing agreement.

h. Supervisors. Supervisors are responsible for:

(1) Ensuring that their actions are free from discrimination based on race, color, religion, sex, national origin, age, handicapping condition, or reprisal because of involvement with a discrimination complaint at any stage of the process or opposition to an unlawful discriminatory employment practice.

(2) Taking action to ensure a workplace is free from a hostile and offensive environment, including sexual harassment, and taking immediate steps to correct such situations should they occur.

(3) Monitoring employee conduct and taking corrective action as required.

(4) Communicating discrimination complaint procedures to employees.

(5) Cooperating with EEO program officials, counselors, investigators, and the designated management representative.

(6) Seeking reasonable resolution of potential complaints during the counseling stage, and cooperating with efforts to settle formal complaints.

i. Employees are responsible for:

(1) Conducting themselves in a manner consistent with the principles of EEO and which does not reflect adversely on DeCA.

(2) Cooperating with EEO program officials, counselors, and investigators as required.

j. Complainants are responsible for:

(1) Complying with the time limits and procedures specified by this directive.

(2) Providing the information necessary for counseling and processing of any formal complaint filed.

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- (3) Cooperating with EEO program officials, counselors, and investigators as required.

1-7. **AVOIDANCE OF DELAY.** Individual discrimination complaints shall be processed promptly. The failure of DeCA to meet any processing time frame does not entitle a complainant to any form of relief.

1-8. **SETTLEMENT OF COMPLAINTS.** Adjustment of complaints by settlement may occur at any stage of processing. Settlement is in the best interest of DeCA when the terms are practicable:

a. Every effort should be made to achieve early settlement of discrimination complaints at the lowest possible level. A settlement agreement resolving an allegation of discrimination under Title VII of the Civil Rights Act of 1964, as amended (Title VII) or the Rehabilitation Act of 1973, as amended, may include an award of back pay, attorney's fees or other appropriate relief. Attorney's fees and liquidated damages are not provided for under the Age Discrimination in Employment Act of 1967, as amended, during the administrative process. If unresolved under the settlement terms, the issue of an award of attorney's fees or of the amount to be awarded, may be the subject of an appeal to EEOC.

b. Settlement Agreements: Any settlement reached shall be reduced to writing, signed by both parties, and shall identify the allegations resolved. A copy of the agreement shall be forwarded to the DeCA Headquarters EEO Office.

(1) A "no-fault" settlement agreement may be reached at any stage of the process, as long as DeCA has not issued a final agency decision as to whether discrimination did or did not take place. The issue of discrimination is only noted in the settlement by a statement that the settlement does not admit discrimination.

(2) Where the parties agree on settlement of the complaint, but cannot agree on whether attorney's fees or costs should be awarded, or on the amount of attorney's fees, these issues may be severed from the settlement agreement and made subject of an appeal to EEOC OFO.

c. Non-compliance with Settlement Agreement:

(1) Any settlement agreement, knowingly and voluntarily agreed to by both parties, reached at any stage of the complaint process shall be binding on both parties.

(2) If the complainant believes that DeCA has failed to comply with the terms of the settlement agreement, the complainant:

(a) Shall notify the Director, EEO Office, DeCA HQ, in writing, of the alleged noncompliance with the settlement agreement, within 30 calendar days of when he or she knew or should have known of the alleged noncompliance.

(b) May further request that the terms of the settlement agreement be specifically implemented or alternatively, that the complaint be reinstated for further processing from the point processing ceased under the terms of the settlement agreement.

(c) DeCA HQ, upon receipt of the complainant's written allegation of noncompliance with the settlement agreement, shall have 30 calendar days in which to resolve the matter and to respond to the complainant in writing.

(d) The complainant may appeal to the EEOC OFO for a determination as to whether DeCA has complied with the terms of the settlement agreement if:

1. After 30 calendar days from the date of the DeCA's receipt of the complainant's written allegations of noncompliance with the settlement agreement, DeCA has not responded to the complainant in writing.

2. The complainant is not satisfied with the attempt to resolve the matter.

(e) Such an appeal may be filed with EEOC OFO 35 calendar days after service of the notification of allegations of noncompliance, but must be filed within 30 calendar days of receipt of DeCA's determination.

(f) Prior to rendering its determination, the EEOC OFO may:

1. Request that the parties submit whatever additional information or documentation they may deem necessary.

2. Direct that an investigation or hearing on the matter be conducted, as may be appropriate.

(g) Upon determination that the settlement agreement has not been complied with, and the noncompliance is not attributable to acts or conduct of the complainant, EEOC OFO may:

1. Order such compliance; or

2. Order that the complaint be reinstated for further processing from the point processing ceased under terms of the settlement agreement.

(h) Complaints that reprisal or further discrimination violates a settlement shall be processed as individual complaints, but not as a noncompliance allegation.

1-9. **PROCESSING DISCRIMINATION COMPLAINTS.**

a. Complaint Procedures: The procedures for processing discrimination complaints per 29 CFR Part 1614 are described for:

(1) Individual and "spin-off" complaints in EEO-MD-110 Section IV.D and 29 C.F.R. 1614.107(a)(8)

(2) Mixed case complaints in EEO-MD-110-4-6 and 29 C.F.R. 1614.310 (a)(g)

(3) Class complaints in EEO-MD-110-8-4 and 29 C.F.R. 1614.204.

(4) Age Discrimination in Employment Act complaints in EEO MD-110, Section II-6, and 29 C.F.R. 1614.201

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b. Referral of Issues: If an employee or applicant for employment includes claims of discrimination in a complaint for which pre-complaint counseling has not taken place, he or she shall be referred to the pre-complaint counseling stage on any such claims as part of a decision to accept, or dismiss the complaint.

c. Joint Processing and Consolidation of Complaints: Complaints of discrimination filed by two or more complainants consisting of substantially similar allegations of discrimination or relating to the same matter may be consolidated by the agency or the Commission for joint processing after appropriate notification to the complainant. When a complaint has been consolidated with one or more earlier filed complaints, DeCA shall complete its investigation within the earlier of 180 days after the filing of the last complaint or 360 days after the filing of the original complaint, except that the complainant may request a hearing from an administrative judge on the consolidated complaints any time after 180 days from the date of the first filed complaint. Administrative judges or the Commission may, at their discretion, consolidate two or more complaints of discrimination filed by the same complainant.

d. Escalating Complaints: No discrimination complaint processed under this directive shall be escalated for acceptance or dismissal to a higher level of authority merely because the DeCA Region Director has been named in the complaint. Acceptance of a complaint is an administrative decision, which recognizes that a complaint meets basic requirements. It is not an attempt to decide the merits of a complaint.

(1) If an individual in DeCA who is responsible for processing complaints is identified during the investigation of a complaint as having played an active role in the discriminatory acts being alleged, a higher level shall determine who will assist DeCA in processing the complaint.

(2) If it appears during the investigative process that the Region Director may have been involved in the alleged discriminatory act; the complaint will be escalated to DeCA HQ for coordination of processing. If the investigative report indicates that the Director, EEO Office, may have been involved in the alleged discriminatory act, the Fort Lee, Equal Employment Opportunity Office, will process the complaint. If the investigative report indicates that the Director, DeCA may have been personally involved in the alleged discriminatory act, the final Agency Decision on the complaint will be escalated to the DoD for decision.

e. Remedies and Relief: The purpose of remedial action is to make whole an employee, former employee, or applicant who has been the victim of discrimination. For example, when an employee is found to have been discriminated against in a promotion selection, the employee may be offered retroactive promotion and back pay. When retroactive promotion and back pay are not offered because the record contains clear and convincing evidence that the employee would not have been selected absent the discrimination, the discriminatory practice identified should be eliminated and steps taken to prevent recurrence.

(1) Appropriate Remedies: Appropriate remedies for prohibited discrimination include, but are not limited to:

(a) The posting of a notice to all employees advising them of their right to be free of unlawful discrimination and assuring them that discrimination will not recur.

(b) Restoration of benefits, such as assignment to missed training development opportunities.

(c) Placement, if feasible, in the position which was the subject of the finding of discrimination, and in all other instances, placement in a substantially equivalent vacant position. Displacing other employees should be avoided where it is possible to do so.

(d) Notification to all employees of the agency in the affected facility of their right to be free of unlawful discrimination and assurance that the particular types of discrimination found will not recur;

(e) Back pay; and/or

(f) Eliminating the discriminatory practice.

(2) Other Relief: Other relief available where there is a finding that the employee was the subject of discrimination, may include cancellation of an unwarranted personnel action, reinstatement, expunction of records reflecting unwarranted personnel actions, and training or work assignment opportunities.

(3) Attorney's Fees: Requests for attorney's fees (not allowed under the ADEA) must be documented and submitted within 30 calendar days of the receipt of the decision establishing the entitlement to fees.

(4) Placement: The following provisions apply to placement of a complainant found to have been denied a position due to prohibited discrimination:

a. When offering the position or one which is substantially equivalent, the offer must be made in writing.

b. The complainant has 30 calendar days from receipt of the offer to accept or decline the offer. Failure to notify within 30 calendar days is considered a declination, unless circumstances beyond his or her control prevented response within 30 calendar days.

c. If the offer is accepted, appointment must be retroactive to the date the complainant would have been appointed absent the discrimination.

d. When offering relief, the complainant must be notified that backpay, computed under 5 CFR 550.805, may be awarded in lieu of the position offered, if the complainant declines the position. Back pay awarded to a complainant under Title VII or the Rehabilitation Act may not extend from a date earlier than two years prior to the date on which the complaint was initially filed by the applicant.

1-10. **EEO COUNSELORS.** DeCA has servicing agreements with the respective Armed Services on military installations where a DeCA activity is a tenant, to provide EEO counseling services. The counselor or the appropriate EEO official from the Armed Services who is servicing the DeCA activity, should contact an appropriate management official within DeCA in an attempt to resolve potential complaints informally. Counselors are encouraged to conduct informal fact-finding and to be able to present factual information when encouraging a DeCA manager to resolve a complaint.

1-11. **COMPLAINANT'S RIGHT TO REPRESENTATION.** At every stage of the complaint process, including the counseling stage, the complainant has the right to be accompanied, represented, and advised by a representative of his or her own choice, except as described in paragraph b, below:

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a. **Notice of Right to Representation:** A counselor shall advise a complainant, that he or she must immediately notify the EEO counselor or the EEM if a representative is retained.

b. **Disqualification of Representative:** Prior to a hearing, a particular representative may be denied to a complainant only when there is a conflict of interest or position (e.g., including but not limited to an activity EEO counselor, Region and Area Office EEMs, Civilian Personnel Officer, or other civilian personnel management officials, or complainant's supervisor). Denial of a representative must be in writing and cite the reason for the denial. Should such a conflict arise after a hearing has been requested, the EEOC administrative judge will be advised and may, after giving the complainant an opportunity to respond, disqualify the representative. Complainants who believe that they have been improperly denied a representative of their choice may raise the matter during the further processing or appeal of the complaint, or by letter to the Hearings Program Division of the Equal Employment Opportunity Commission.

c. **Standards of Conduct for Representatives:** Representatives of both the complainant and management shall conduct themselves in a professional manner. In cases of repeated or flagrant misconduct or misbehavior by a representative at the hearing stage of the complaint process, the EEOC administrative judge may refer the matter to the EEOC. The EEOC, after giving the representative an opportunity to respond to the allegations of misconduct, may suspend or disqualify the representative from further representational activity and report the misconduct to the appropriate authority.

d. **Official Time:** Meetings with complainants shall be scheduled during the complainant's normal duty hours to the extent practicable. DeCA is not obligated to change work schedules, incur overtime wages, or pay travel expenses to facilitate the choice of a specific representative or to allow the complainant and the representative to confer.

(1) **Presence authorized or required:** The complainant and representative, if employed by DeCA and otherwise in a pay status, shall be on official time regardless of their tour of duty when their presence is authorized or required by DeCA or EEOC during the investigation, at meetings, or for the hearing on the complaint. If a meeting or the hearing is scheduled outside a complainant's or representative's normal working hours, the individual's working hours should be rearranged to coincide with the meeting or hearing. If it is not possible to rearrange the working hours, compensatory time or overtime may be granted as appropriate, to allow attendance of the complainant and/or representative at the meeting or hearing in an official duty status.

(2) **Complainant:** If the complainant is an employee of DeCA, he or she shall have a reasonable amount of official time to prepare and present the complaint if otherwise in an official duty status.

(3) **Representative:** If a complainant employed by DeCA, designates an employee of DeCA as his or her representative, he or she shall have a reasonable amount of official time to prepare and present the complaint if otherwise in an official duty status. Exception: DeCA may restrict the official time for preparation and presentation of complaints by a representative who acts in a representational capacity in more than one complaint in a given time period. Official time authorized for preparation and presentation of complaints, when warranted in such cases, may be restricted to a percentage of a representative's duty hours in a given month, quarter, or year. DeCA shall document any restriction imposed under this exception in the appropriate complaint files.

(4) **Witnesses:** DeCA employees requested as witnesses by an EEOC administrative judge will be made available unless administratively impracticable. Regardless of their tour of duty, such witnesses shall be in an official duty status during the period of time they are made available to testify.

(5) **Complaints against Other Agencies:** DeCA is not required to grant official time to DeCA employees to prepare or present complaints against other federal agencies.

(6) **Denial of Official Time:** The reasons for denial of a request for official time from a complainant or representative shall be documented and made a part of the complaint file.

1-12. **FREEDOM FROM RESTRAINT, COERCION, AND REPRISAL.** It is unlawful to restrain, interfere with, coerce, or discriminate against complainants, their representatives, witnesses, and DeCA officials with responsibility for processing discrimination complaints because of involvement with a discrimination complaint during any stage in the presentation and processing of a complaint, including the counseling stage. Further, it is unlawful to restrain, interfere with, coerce, or discriminate against any of the persons cited above because an individual filed a complaint of discrimination, testified, assisted or participated in any manner with an investigation, proceeding or hearing, or because of any opposition to an unlawful discriminatory employment practice.

1-13. **REVIEW OF ALLEGATIONS OF REPRISAL.** An allegation of reprisal shall be filed as an individual complaint of discrimination.

1-14. **RELATIONSHIP TO OTHER APPELLATE PROCEDURES.**

a. **Administrative Grievance Procedures:** If an allegation of discrimination is raised by a covered employee at any stage of the administrative grievance procedure, the deciding official will inform the grievant that introduction of the allegation will serve to terminate processing of the matter under DeCA's Grievance System. The grievant must be given the opportunity to withdraw the allegation and continue under the administrative grievance procedure, or to proceed under the discrimination complaint procedure at the appropriate stage. The grievant's selection of procedure must be documented and made part of the grievance file. If the grievant elects to pursue the complaint under the discrimination procedure of this directive, the grievance shall be canceled, the grievant and the EEM notified, and the grievance file forwarded to the servicing Civilian Personnel Office.

b. **Negotiated Grievance Procedure (NGP):** An employee, covered by a collective bargaining agreement with a NGP which does not exclude processing a grievance involving an allegation of prohibited discrimination, may elect to pursue the matter under either the NGP or the discrimination complaint procedure. The employee may not employ both procedures. A counselor who determines that a potential complainant has the option of making such an election will notify the employee, in writing, of the right to make an election of procedure; the consequences of such an election; and document the date of notification.

(1) **Election of Procedure:** An employee who may elect to pursue a matter under the NGP or under the discrimination complaint procedure of this directive will indicate by the filing of a written grievance under a NGP or by the filing of a written discrimination complaint. Use of precomplaint counseling does not constitute such an election.

(2) **Effect of an Election to Use a Negotiated Grievance Procedure:** An employee who files a grievance in writing under a NGP which does not exclude allegations of prohibited discrimination, may not thereafter file a discrimination complaint on the same matter, regardless of whether the grievance

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has raised an allegation of discrimination. Any such complaints filed after a grievance has been filed under a NGP on the same matter shall be rejected without prejudice to the complainant's right to proceed through the NGP. If the matter including the allegation of discrimination is submitted to arbitration, exceptions to the arbitrator's decision may be filed with the Federal Labor Relations Authority (FLRA), or, if the matter is otherwise appealable, i.e., is a mixed case, to the Merit Systems Protection Board (MSPB).

(3) Notice of Right to Appeal to the EEOC: In other than mixed cases, the counselor will advise the employee that he or she may appeal to the Equal Employment Opportunity Commission, Office of Federal Operations (EEOC, OFO) from:

- (a) A final DeCA decision on the grievance
- (b) The arbitrator's decision; or
- (c) The decision of the FLRA on exceptions to the arbitration award.

(4) Time Limits for Appeal to EEOC: An appeal to the EEOC OFO must be filed within 30 calendar days from an employee's receipt of:

- (a) An agency decision on the grievance and expiration of the time during which the union and the activity may move the matter to the next stage of the grievance procedure;
- (b) An arbitrator's award; or
- (c) The decision of the FLRA on exceptions to the arbitrator's award.

(5) Notice Required if a Complaint is Dismissed: If a discrimination complaint is dismissed based on an employee's prior election to pursue the matter under a NGP, the decision letter dismissing the employee's complaint shall notify the complainant of his or her appeal rights, in addition to the right to appeal the dismissal to the EEOC OFO within 30 calendar days of receipt of the decision letter.

(6) An employee, former employee, or applicant for employment who files a formal complaint of discrimination will be notified that he or she is authorized by Section 717(c) of the Civil Rights Act of 1964, as amended, to file a civil action in an appropriate U.S. District Court:

- (a) Within 90 calendar days of receipt of notice of the final DeCA decision on a complaint; or
- (b) After 180 calendar days from the date of filing a complaint with DeCA (or 120 days in a mixed case) if there has been no final decision.

(7) Only DeCA decisions, which make a determination on all the issues in the complaint, including whether or not to award attorney's fees or costs, are considered final decisions. If a determination to award attorney's fees is made, the DeCA decision will not be final until the procedure is followed for determining the amount of the award.

- (8) The EEOC will notify the complainant who filed an appeal to OFO that:

(a) He or she may file a civil action:

1. Within 90 calendar days of receipt of final action taken by EEOC on a complaint; or
2. After 180 calendar days from the date of filing an appeal with EEOC if there has been no EEOC decision; and
3. If he or she files a civil action and does not have, or is unable to obtain the services of a lawyer, he or she may request the court to appoint a lawyer to represent him or her in such circumstances as the court may deem just. The court may appoint a lawyer and authorize the commencement of such action without the payment of fees, costs, or security. Any such request must be within the above-referenced 90-day time limit and in such form and manner as the court may require.

(b) The filing of a civil action by an employee, former employee, or applicant involving a complaint filed under this directive terminates the administrative processing of that complaint. A complainant whose administrative complaint processing is terminated based on the filing of a civil suit shall be provided written notification of the termination.

1-15. DISCIPLINARY AND CORRECTIVE ACTIONS. Disciplinary or corrective action, e.g., training or reassignment, will be considered when determination is made that prohibited discrimination has occurred. The basis for a decision to take, or not to take, disciplinary will be recorded separately from the complaint file. Policies or procedures, which have an unlawful discriminatory impact, shall be modified.

a. **Disciplinary Action:** When an employee has been found to have engaged in a discriminatory practice, and in all cases in which a formal recommendation of disciplinary action is a part of the record, the complaint record shall be reviewed by a DeCA EEO official and he/she shall coordinate a decision regarding what disciplinary or other corrective action is warranted by the circumstances. Copies of all such decisions will be provided to the Director, EEO. Disciplinary actions against military and/or civilian personnel shall be taken following appropriate procedures, if warranted.

b. **Corrective Action:** In cases where disciplinary action is not considered warranted, a determination shall be made whether other corrective action is appropriate, e.g., reassignment from a position with personnel program responsibilities, or EEO training for one or more supervisory, managerial, or staff employees. Any such corrective action shall be recorded separately from the complaint file.

1-16. ESTABLISHMENT AND RETENTION OF FILES.

a. **Complaint File:** Each EEM will establish a complaint file upon receipt of a discrimination complaint. The complaint file shall not contain any document that has not been available to the complainant or representative, or designated physician under 5 CFR 297.205. This file shall contain all documents pertinent to the complaint, shall be tabbed, numbered, indexed, and assembled as required by the EEOC Management Directive, and shall include the following, when applicable:

- (1) The Notice of Final Interview or Notice of Right to File a Discrimination Complaint.
- (2) The complaint form.
- (3) Notice of Receipt of Complaint.

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- (4) The counselor's report.
- (5) The acceptance or dismissal letter, including the proper caption and DeCA docket number.
- (6) The investigative report.
- (7) Written withdrawal of the complaint by the complainant or representative.
- (8) The written record of the terms of a settlement, resolution, or adjustment.
- (9) Documentation of the attempt to adjust (settle) the complaint and the documentation notifying the complainant of the right to a hearing.
- (10) The complainant's request for a decision by the Director, DeCA with or without a hearing.
- (11) A copy of the letter to the complainant transmitting DeCA's final agency decision.

b. Disposition of Federal Equal Employment Opportunity Files: Official discrimination complaint case files will be for four years after the resolution of the case. The EE Manager will retain the official file during the appeals process, certify that the file is complete, and forward a copy of the file to DeCA HQ upon request.

c. Records of Official Personnel Actions (e.g., merit promotion, disciplinary action, reduction-in-force, and appointment documents). Relevant documents and records of official personnel actions shall be retained until the complaint is closed, whether by DeCA decision or by decision on appeal to EEOC, MSPB, or an U.S. Court.

CHAPTER 2**PROCESSING INDIVIDUAL COMPLAINTS****2-1. PRECOMPLAINT PROCESSING.**

a. An employee, former employee, or applicant for employment who believes that he or she has been discriminated against because of race, color, religion, sex, national origin, age, handicapping condition, or reprisal must consult with an Equal Employment Opportunity (EEO) counselor to try to resolve the matter.

b. The matter must be brought to the attention of the EEO counselor within 45 calendar days from the date the alleged act occurred, the effective date of the alleged discriminatory personnel action or the date that the aggrieved person knew or reasonably should have known that it occurred. The time limit may be extended by DeCA when, through no fault of the complainant, counselor contact was delayed.

2-2. PRECOMPLAINT COUNSELING.

a. The importance of the EEO counselor cannot be overemphasized. The nature and thoroughness of counseling affects the entire processing of the complaint. Therefore, all DeCA managers and supervisors shall ensure that all employees provide full cooperation to the counselor in the performance of his or her duties, and that the counselor is assured of freedom from restraint, coercion, discrimination, or reprisal in connection with his/her duties.

b. Where an aggrieved person seeks EEO counseling, the counselor must ensure that the complainant understands his/her rights and responsibilities in the EEO process, including the option to elect ADR. The EEO Counselor must perform several tasks in all cases, regardless of whether the individual ultimately elects the ADR option, including:

(1) Advise the aggrieved person about the EEO complaint process under 29 C.F.R. Part 1614. The EEO counselor should explain the agency's ADR program, indicating either that the program is available to the aggrieved individual or that the EEO counselor will advise the individual whether the program will be made available. The EEO counselor further should explain that if the ADR program were available, the aggrieved individual would have to exercise an election option, and decide whether to seek pre-complaint resolution through the ADR process or through the traditional EEO counseling process.

(2) Determine the claim(s) and basis(es) raised by the potential complaint.

(3) Conduct an inquiry during the initial interview with the aggrieved person for the purpose of determining whether there may be issues relating to the timeliness of the individual's EEO counselor contact and obtaining information relating to this issue. It also includes obtaining enough information concerning the claim(s) and basis(es) so as to enable the agency to properly identify the legal claim raised if the individual files a complaint at the conclusion of the EEO counseling process.

(4) Seek a resolution of the dispute at the lowest possible level, unless the aggrieved person elects to participate in the agency's ADR program where the agency agrees to offer ADR in a particular case. If the dispute is resolved in counseling, the EEO counselor must document the resolution.

(5) Advise the aggrieved person of his/her right to file a formal discrimination complaint if attempts to resolve the dispute through EEO counseling or ADR fail to resolve the dispute.

(6) Prepare a report sufficient to document that the EEO counselor undertook the required counseling actions and to resolve any jurisdictional questions. Formal complaints should be submitted on DeCAF 55-1, Formal Complaint Discrimination Form. However, since DeCA has an Interservice Support Agreement with the military services that provide EEO counseling support, the services may provide a copy of their discrimination complaint form to the complainant.

2-3. **FILING AND PROCESSING COMPLAINTS.**

A formal complaint must be filed within 15 calendar days after the date of receipt of the counselor's Notice of Right to File a Complaint. The formal complaint must be filed, in writing, by the complainant or representative, and must be signed by the complainant. Formal complaints should be submitted on a Formal Complaint of Discrimination Form.

(1) Time frames must be extended if complainant was not notified of time limits and was not otherwise aware of them, or if circumstances "beyond complainant's control" prevented timely filing.

(2) DeCA may extend the time periods for seeking counseling or filing, only for good cause.

(a) **Official Filing Date.** The complaint is deemed filed on the date it is received, if delivered to an appropriate official, or, if mailed, on the date it is postmarked, if addressed to an appropriate official designated to receive complaints.

(b) The official receiving the complaint shall indicate on the face of the complaint the time and date of its receipt and his or her initials, if hand delivered, or, if mailed, the envelope showing the postmark must be attached to the complaint. Upon receipt immediately annotate the official date of filing, and ensure that it is properly captioned and assigned a DeCA docket number.

(c) The EE Manager shall ensure that all complaints which are accepted for processing identify the complainant and the head of the agency in which the complaint was filed. Therefore, regardless with whom the complaint is filed, all DeCA formal complaints at the administrative level shall be captioned as follows: (Complainant's Name) and (Name), Director, Defense Commissary Agency. However, in all complaints correspondence advising complainants of their right to file a civil action in a Federal Court, complainants must be advised that the appropriate agency is the Department of Defense and that the name and official title of the Secretary of Defense must be identified as the defendant in the event a civil action is filed.

(d) The servicing EEO office will assign a DeCA docket number to each newly filed discrimination complaint which must be included in any subsequent document or correspondence pertaining thereto. Each servicing EEO office should number DeCA discrimination complaints sequentially using the following method: complaint.

1. Two digit Fiscal Year such as (00).
2. Six digits Unit Identification code (UIC).

3. Three digit Case Number, starting with 001 at the beginning of each fiscal year.

4. Class Complaints should be designated by the letter "C" after the three digit Case Number.

(e) A complainant may amend a complaint at any time prior to the conclusion of the investigation to include issues or claims like or related to those raised in the complaint. After requesting a hearing, a complainant may file a motion with the administrative judge to amend a complaint to include issues or claims like or related to those raised in the complaint.

(f) The agency shall acknowledge receipt of a complaint or an amendment to a complaint in writing and inform the complainant of the date on which the complaint or amendment was filed. The agency shall advise the complainant in the acknowledgment of the EEOC office and its address where a request for a hearing shall be sent. Such acknowledgment shall also advise the complainant that:

(1) The complainant has the right to appeal the final action on or dismissal of a complaint; and

(2) The agency is required to conduct an impartial and appropriate investigation of the complaint within 180 days of the filing of the complaint unless the parties agree in writing to extend the time period. When a complaint has been amended, the agency shall complete its investigation within the earlier of 180 days after the last amendment to the complaint or 360 days after the filing of the original complaint, except that the complainant may request a hearing from an administrative judge on the consolidated complaints any time after 180 days from the date of the first filed complaint.

2-4. **DETERMINING THE CLAIM(S) AND BASIS(ES) OF THE POTENTIAL COMPLAINT.**

Determining the Claim(s)

(1) Fragmentation. Section III of the Management Directive indicates that EEO counselors must assist the complainant in articulating the claim so as to avoid fragmenting the claim. EEO counselors must become familiar with the concept of fragmentation to ensure the proper identification of the claims set forth in a request for EEO counseling or in other documents that the EEO counselor may prepare.

(2) Identifying the claim(s)

(a) At the initial interview, the counselor must determine what action(s) the agency has taken or is taking that causes the aggrieved person to believe s/he is the victim of discrimination. The first step is essential to proceeding with the inquiry and resolution attempt and, if resolution is not achieved, essential to a focused investigation and hearing. Before the counselor begins the inquiry, s/he must be certain that the claim(s) are clearly defined and the aggrieved person agrees on how the agency defines the claim(s) that are to be the subject of the inquiry and subsequent attempts at resolution, whether through counseling or ADR. The counselor must determine, based on his/her understanding of the claims whether special procedures apply. If a claim is like or related to a previously filed complaint, then the complaint should be amended to include that claim. If the claim is not like or related to a previously filed complaint, the claim should be processed as a separate complaint. Commission regulations require that agencies consolidate complaints for processing unless it is impossible to do so. The aggrieved person must believe s/he has been discriminated against on the basis of race, color, sex (including equal pay), religion, national origin, age (40 and over), disability, or in retaliation for having participated in activity

protected by the various civil rights statutes. The EEO counselor should determine if the aggrieved person believes that his/her problem is the result of discrimination on one or more of the bases. If it is clear that the aggrieved person's problem does not involve a basis(es) covered by the regulations, the EEO counselor should inform the aggrieved person and, if possible refer him/her to an appropriate source.

(b) Fragmentation of EEO claims must be prevented at all levels of the complaint process, including pre-complaint EEO counseling. Fragmentation is the breaking up of legally recognizable claims into two or more EEO complaints. Fragmentation often results from a failure to distinguish between the claim the complainant is raising and the evidence (factual information) s/he is offering in support of that claim.

(c) Timeliness Issues. In general for a legal claim to be timely raised, at least one of the incidents the complainant cites as evidence in support of his/her claim must have occurred within the 45-day time period for contacting an EEO counselor. If the claim itself is timely raised, the agency must consider, at least as background, all relevant evidence offered in support of a timely raised legal claim, even if the evidence involves incidents that occurred outside the 45-day time limit question.

(d) A complainant may amend a pending complaint at any time prior to the agency's mailing of the notice required by 1614.108(f) at the conclusion of the investigation; 1614.106(d) permits a complainant to amend a pending EEO complaint to add claims that are like or related to those claim(s) raised in the pending complaint. There is no requirement that the complainant seek counseling on these new claims. After the complainant has requested a hearing, s/he may file a motion with the Administrative Judge to amend the complaint. When a complainant raises a new incident of alleged discrimination during the processing of an EEO complaint, it must be determined whether this new incident provides additional evidence offered to support the existing claim, but does not raise a new claim; raises a new claim that like or related to the claim(s) raised in the pending complaint; or raises a new claim that is not like or related to the claim(s) raised in the pending complaint

(e) New Incident That Is Part of the Existing Claim. If the EEO Manager concludes that the new incident(s) provides additional evidence offered in support of the claim raised in the pending complaint, but does not raise a new claim in and of itself, then the EEO Manager should instruct the investigator to include the new incident in the investigation. A copy of this letter should be sent to the complainant.

(f) New Incident That Raises a New Claim Like or Related to the Pending Claim. While a complaint is pending, a complainant may raise a new incident of alleged discrimination that is not part of the existing claim, but may be part of a new claim that is like or related to the pending claim. In deciding if a subsequent claim is "like or related" to the original claim, a determination must be made as to whether the later incident adds to or clarifies the original claim, and/or could have reasonably been expected to grow out of the investigation of the original claim. If the EEO Manager concludes that the new incident(s) raises a new claim, but that this new claim is like or related to the claim(s) raised in the pending complaint, the agency must amend the pending complaint to include the new claim. The agency shall acknowledge receipt of an amendment to a complaint in writing and inform the complainant of the date on which the amendment was filed.

(g) New Incident Raises Claim That Is Not Related to Pending Claim. In cases where subsequent acts of alleged discrimination do not add to or clarify the original claim, and/or could not have been reasonably expected to grow out of the investigation of the original claim, the later incident should be the subject of a separate EEO complaint. In such cases, fragmented processing of an EEO complaint is not at issue because there are two distinct and unrelated legal claims being alleged. If the EEO Manager

concludes that the new claim raised by the complainant is not like or related to the claim(s) raised in the pending complaint, then the complainant must be advised in writing that s/he should seek EEO counseling on the new claim. The postmark date of the letter (from complainant requesting an amendment) to the EEO Manager would be the date for time computation purpose used to determine if initial counselor contact was timely under 1614.105(b).

2-5. **DISMISSALS OF COMPLAINTS.** Section 1614.107(a) sets out the circumstances under which an agency may dismiss a complaint. An agency's authority to dismiss a complaint ends when a complainant requests a hearing. An agency should process dismissals expeditiously.

a. Bases for dismissals that may exist as of the filing of the complaint or develop thereafter.

(1) Untimely Counseling Contact- 1614.107(a)(2) 2-4

(a) A claim that has not been brought to the attention of an EEO counselor in a timely manner.

(b) The complainant did not contact an EEO Counselor within forty-five (45) calendar days of the discriminatory event or within 45 days of the effective date of the personnel action, and the complainant did not show that the 45-day contact period should be extended pursuant to 1614.105(a)(2). Time limit is not triggered until the complainant reasonably suspects discrimination, but before all of the facts that support the charge of discrimination have become apparent. An agency may be barred from dismissing a complaint on timeliness grounds where:

(c) The agency could not establish that the complainant was not notified of the time limits and was not otherwise aware of them, or did not know and reasonably should not have known that the discriminatory practice or personnel action occurred or that despite due diligence was prevented by circumstances beyond his/her control from contacting an EEO counselor within the time limits; or

(d) The complainant contends that the claim is a part of a continuing violation or established that there are other equitable circumstances that mitigate untimely contact. Time limits are subject to waiver, estoppel and equitable tolling under 1614.604.

(2) Untimely Filing of the Formal Complaint-1614.107(a)(2). The complainant failed to file a formal complaint within fifteen (15) days of his/her receipt of the Counselor's notice of right to file a formal complaint (Notice of Final Interview) in an individual complaint. The agency has the burden of proving that the complainant received the notice and that the notice clearly informed the aggrieved person of the 15-day filing time frame.

(3) Failure to State a Claim-1614.107(a)(1). The complainant failed to state a claim under 1614.103. This may include a claim that does not allege discrimination on a basis encompassed in one of the statutes applicable to federal sector employees. In determining whether a complaint states a claim, the proper inquiry is whether the conduct if true would constitute an unlawful employment practice under the EEO statutes.

(4) Abuse of Process-1614.107(a)(9). Abuse of process is defined as a clear pattern of misuse of the process for ends other than that which it was designed to accomplish. The occasions in which application of the standards are appropriate must be rare; because of the strong policy in favor of preserving a complainant's EEO rights whenever possible.

(5) States the Same Claim. The complainant states the same claim that is pending before or had been decided by the agency or Commission except in those cases where a class action complaint is pending. The Commission has interpreted this regulation to require that the complaint must set forth the identical matters raised in a previous complaint filed by the same complainant, in order for the subsequent complaint to be rejected.

(6) Complainant Files a Civil Action 1614.107(a)(3). The complainant files a civil action concerning the same allegation, at least one hundred eighty (180) days after s/he filed his/her administrative complaint. The requirement in 1614.410 that the civil action shall be dismissed only if it was filed pursuant to 1614.408 evidences the intent of the Commission to restrict the dismissals of EEO complaints for filing a civil action to those civil actions which were brought under the statutes enforced by the Commission.

(7) Issue Has Been Decided-1614.107 (a)(3). The same issue has been decided by a court of competent jurisdiction and the complainant was a party to the lawsuit. Commission regulations mandate dismissal of the EEO complaint under these circumstances so as to prevent a complainant from simultaneously pursuing both administrative and judicial remedies on the same matters, wasting resources, and creating the potential for inconsistent or conflicting decisions.

(8) Allegation Raised in Negotiated Grievance Proceeding-1614.107(a)(4). Section 1614.301(a) provides that “a person wishing to file a complaint or a grievance on a matter of alleged employment discrimination must elect to raise the matter under either part 1614 or the negotiated grievance procedure, but not both.”

(9) Appeal Made to MSPB-1614.107(a)(4). The complainant has elected to appeal the claim to the Merit Systems Protection Board, rather than file a mixed case complaint under 1614.302.

(10) Complainant Alleges a Preliminary Step-1614.107(a)(5). The complainant alleges that a proposal to take or a preliminary step in taking a personnel action is discriminatory. This provision requires the dismissal of complaints that allege discrimination “in any preliminary steps that do not, without further action, affect the person; for example, progress reviews or improvement periods that are not a part of any official file on the employee.”

(11) Complaint is Moot-1614.107(a)(5). A complaint may be dismissed as moot where there is not reasonable expectation that the alleged violation will recur, and interim relief or events have completely and irrevocably eradicated the effects of the alleged violation. When such circumstances exist, no relief is available, and there is no need for a determination of the rights of the parties.

(12) Dissatisfaction with the Processing of a Complaint-1614.107(a)(8). The complaint alleges dissatisfaction with the processing of a previously filed complaint.

b. Dismissals that Generally Occur After the Agency Accepts the Complaint Based on Complainant’s Actions or Inaction’s:

(1) The Complainant Cannot Be Located-1614.107(a)(6). The regulation permits dismissal where the complainant cannot be located. The provision requires that the agency make reasonable efforts to locate the complainant and inform the complainant that s/he must respond to the agency’s notice of proposed dismissal within fifteen (15) days sent to his/her last known address.

(2) The Complainant Failed to Respond or Proceed in a Timely Fashion-1614.107(a)(7). The regulations permit dismissal where the complainant has failed to respond to a written "request to provide relevant information or to otherwise proceed within 15 days" of receipt provided that the request contained notice of the proposed dismissal and further provided that there is otherwise insufficient available information to adjudicate the claim.

d. Processing of Partially Dismissed Complaints. There is no immediate right to appeal a partial dismissal of a complaint. Where an agency believes that some but not all of the claims in a complaint should be dismissed for the reasons contained in 1614.107(a), the agency must notify the complainant in writing of its determination, set forth its rationale for that determination, and notify the complainant that the allegations will not be investigated.

(1) Where a Hearing is Requested: If the complainant requests a hearing from an Administrative Judge, the Administrative Judge will evaluate the agency's reasons for believing that a portion of the complaint met the standards for dismissal before holding the hearing. If the Administrative Judge believes that all or a part of the agency's reasons are not well taken, the entire complaint or all of the portions not meeting the standards for dismissal will continue in the hearing process.

(2) Where a Final Decision by the Agency is Requested: Where a complainant requests a final decision by the agency without a hearing, the agency will issue a decision addressing all claims in the complaint, including its rationale for dismissing claims and its findings on the merits of the remainder of the complaint. The complainant may appeal the agency's decision, including any partial dismissal, to the EEOC.

2-6. INVESTIGATION OF COMPLAINTS.

a. The investigation of complaints shall be conducted by the DoD Office of Complaint Investigations, Civilian Personnel Management Services (OCI), in accordance with instructions contained in EEOC Management Directives. OCI shall develop an impartial and appropriate factual record upon which to make findings on the claims raised in the written complaint. An appropriate factual record is one that allows a reasonable fact finder to draw conclusions as to whether discrimination occurred. An exchange of letters or memoranda, interrogatories, investigations, fact-finding conferences or any other fact-finding methods that efficiently and thoroughly address the matters at issue may be used. DeCA encourages the use of alternative dispute resolution techniques into the investigative efforts in order to promote early resolution of complaints.

b. The following procedures apply to the investigation of complaints:

(1) The complainant, and DeCA, and any employee of a federal agency shall produce such documentary and testimonial evidence as the investigator deems necessary.

(2) Investigators are authorized to administer oaths. Statements of witnesses shall be made under oath or affirmation or, alternatively, by written statement under penalty of perjury.

(3) When the complainant, or DeCA fails without good cause shown to respond fully and in timely fashion to requests for documents, records, comparative data, statistics, affidavits, or the attendance of witness(es), the investigator may note in the investigative record that the decision maker should, or the EEOC on appeal may, in appropriate circumstances:

(a) Draw an adverse inference that the requested information, or the testimony of the requested witness, would have reflected unfavorably on the party refusing to provide the requested information;

(b) Consider the matters to which the requested information or testimony pertains to be established in favor of the opposing party;

(c) Exclude other evidence offered by the party failing to produce the requested information or witness;

(d) Issue a decision fully or partially in favor of the opposing party; or

(e) Take such other actions as deemed appropriate.

c. The investigation should be completed within 180 days of the date of filing an individual complaint or within the time period contained in an order from the Office of Federal Operations on an appeal from a dismissal pursuant to 1614.107, unless there is an agreement to an extension of this time period.

d. Within 180 days from filing of the complaint, or where a complaint was amended, within the earlier of 180 days after the last amendment to the complaint or 360 days after the filing of the original complaint, within the time period contained in an order from the Office of Federal operations on an appeal from a dismissal, or within any period of extension provided for in paragraph (e) of this section, DeCA shall provide the complainant with a copy of the investigative file, and shall notify the complainant that, within 30 days of receipt of the investigative file, the complainant has the right to request a hearing and decision from an administrative judge or may request an immediate final decision pursuant to 1614.110 from DeCA.

e. Where the complainant has received the notice required in paragraph (d) of this section or at any time after 180 days have elapsed from the filing of the complaint, the complainant may request a hearing directly to the EEOC office indicated in DeCA's acknowledgment letter. The complainant shall send a copy of the request for a hearing to the appropriate DeCA EEO office. Within 15 days of receipt of the request for a hearing, DeCA shall provide a copy of the complaint file to EEOC and, if not previously provided, to the complainant.

2-7. **HEARINGS.**

When a complainant requests a hearing, the Commission shall appoint an administrative judge to conduct a hearing in accordance with 1614.109. Upon appointment the administrative judge shall assume full responsibility for the adjudication of the complaint, including overseeing the development of the record.

(1) Dismissals. Administrative judges may dismiss complaints pursuant to 1614.107 on their own initiative, after notice to the parties, or upon an agency's motion to dismiss.

(2) Offer of resolution. Any time after the filing of the written complaint but not later than the date an administrative judge is appointed to conduct a hearing, the agency may make an offer of resolution to a complainant who is represented by an attorney.

(3) Any time after the parties have received notice that an administrative judge has been appointed to conduct a hearing but not later than 30 days prior to the hearing, the agency may make an offer of resolution to the complainant, whether or not represented by an attorney.

(4) The offer of resolution shall be in writing and shall include a notice explaining the possible consequences of failing to accept the offer. The offer, to be effective, must include attorney's fees and costs and must specify any non-monetary relief, a lump sum offer covering all forms of monetary liability or an itemized type of monetary relief may be offered. The complainant shall have 30 days from receipt of the offer of resolution to accept it. If the complainant fails to accept an offer of resolution and the relief awarded in the administrative judge's decision, the agency's final decision, or the Commission's decision on appeal is not more favorable than the offer, then, except where the interest of justice would not be served, the complainant shall not receive payment from the agency of attorney's fees or costs incurred after the expiration of the 30-day acceptance period. An acceptance of an offer must be in writing and will be timely if postmarked or received within the 30-day period. Where a complainant fails to accept an offer of resolution, an agency may make other offers of resolution and either party may seek to negotiate a settlement of the complaint at any time.

(5) After 180 calendar days from the filing of a formal complaint or after completion of the investigation, complainants must request a hearing directly from the EEOC field office that has jurisdiction over the geographic area in which the complaint arose. In DeCA's written acknowledgment of receipt of a complaint or an amendment to a complaint, DeCA shall advise the complainant of the EEOC office and address where a hearing request is to be sent as well as the DeCA office to which the copy of the request should be sent. The complainant shall certify to the Administrative Judge that he/she sent a copy of the request to the agency EEO office to the attention of the individual and at the address that the agency previously informed the complainant.

2-8. **FINAL ACTIONS.** There are two types of final actions by agencies. One is a final action by an agency following a decision by an Administrative Judge. The other is a final action in all other circumstances. Final Action by DeCA Following an Administrative Judge's decision.

a. When an administrative judge issues a decision under Section 1614.109(b), (g), or (I), DeCA shall take final action on the complaint by issuing an order within 40 days of the date of its receipt of the Administrative Judge's decision. DeCA's final action shall inform the complainant as to whether it will fully implement that decision. The term "fully implement" means that an agency adopts without modification the decision of the Administrative Judge. DeCA's final action shall also inform the complainant of his/her right to file an appeal with the Commission, the right to file a civil action in federal court, the name of the proper defendant in such appeal or civil action, and the applicable time limits for such appeals or civil actions. If DeCA's final action does not fully implement the decision of the administrative judge, the agency shall file an appeal with the Commission in accordance with 1614.403, appending a copy of its appeal to the final order, simultaneously with its issuance of a decision to the complainant. A copy of EEOC Form 573, Notice of Appeal/Petition, shall be attached to the final action.

b. Final Actions in All Other Circumstances. When DeCA dismisses an entire complaint under 1614.107(a), receives a request for an immediate final decision, or does not receive a reply to the notice issued under 1614.108(f), DeCA will take final action by issuing a final decision. The final decision consists of findings by DeCA on the merits of each claim in the complaint, or, as appropriate, the rationale for dismissing any claims in the complaint and, when discrimination is found, appropriate remedies and relief in accordance with subpart E of Part 1614. DeCA will issue the final decision within

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sixty (60) days of receiving notification that a complainant has requested an immediate final decision from the agency, or within 60 days of the end of the thirty (30)-day period for the complainant to request a hearing or an immediate final decision where the complainant has not requested a hearing or a decision. The final action shall contain notice of the right to appeal the final action to the EEOC, the right to file a civil action in federal district court, the name of the proper defendant in any such lawsuit, and the applicable time limits for appeals and lawsuits. A copy of EEOC Form 573, Notice of Appeal/Petition, shall be attached to the final action.

CHAPTER 3

PROCESSING MIXED CASE COMPLAINTS

3-1. **MIXED CASES.** An allegation of discrimination raised by an individual eligible to appeal to the U.S. Merit Systems Protection Board (MSPB) in connection with a personnel action otherwise appealable to MSPB (e.g., suspension for more than 14 days, demotion, reduction - in force, or removal), is considered a "mixed case." 5 CFR 1201.3 provides descriptions of employees eligible to appeal to MSPB and appealable actions within MSPB jurisdiction. The MSPB procedures for cases involving allegations of discrimination are contained in Subpart E of 5 CFR Part 1201.

3-2. **ELECTION OF FORUM.**

a. Non-bargaining Unit Employees: Individuals not in a bargaining unit must elect either:

(1) To have the MSPB consider an allegation of discrimination as part of a mixed case appeal of the personnel action and process both under MSPB procedures; or

(2) To have an allegation of discrimination processed as a mixed case complaint in accordance with this directive; but not both.

b. Bargaining Unit Employees: Some bargaining unit employees may have the additional option of filing a grievance concerning a matter appealable to MSPB that includes an allegation of discrimination under a negotiated grievance procedure pursuant to 5 U.S.C. 7121. The negotiated agreement for each bargaining unit must be reviewed to make this determination. If a bargaining unit member who has this option makes an election to use a negotiated grievance procedure to process an allegation of discrimination in a matter otherwise appealable to MSPB, such an employee may request the MSPB to review the final decision under 5 U. S. C. 7702. The final decision on a mixed case processed under a negotiated grievance procedure should provide notice of this appeal right. A request for MSPB review in such a case must be filed within 30 calendar days of receipt of the final decision with the:

Clerk of the Board
U.S. Merit Systems Protection Board
Washington, DC 20419

3-3. **NOTICE OF RIGHT TO ELECT FORUM.** An employee eligible to appeal to MSPB who is subject to an action which is appealable to MSPB (see 5 CFR 1201.3) and who has raised the issue of discrimination, either orally or in writing during the processing of the action, shall be notified, of the right to file either a mixed case discrimination complaint under this directive, or a mixed case appeal with the MSPB, but not both. The employee shall be further notified that whichever is filed first shall be considered an election to proceed in that forum. Bargaining unit employees may have an additional option, as described in paragraph 3-2.b. above.

Time for Filing Petition to MSPB: A petition to the Board in a mixed case must be filed:

(1) Within 30 calendar days after the effective date of the appealable DeCA action, if the employee elects to file a mixed case appeal to the MSPB;

(2) Within 30 calendar days after receipt of the final DeCA decision on the discrimination issue, if the employee elects to file a mixed case discrimination complaint with DeCA;

(3) At any time after 120 calendar days from the date the mixed case complaint was filed with DeCA, if a final decision has not been issued by DeCA; or

(4) Within 30 calendar days after receipt of the final decision under 5 U. S. C. 7702 where an appellant who is a member of a bargaining unit has elected to file a grievance under a negotiated grievance procedure pursuant to 5 U.S.C. 7121, which alleges discrimination concerning the appealable action.

3-4. CONCURRENT DISCRIMINATION COMPLAINT AND MSPB APPEAL. If DeCA learns that an appeal has been filed with the MSPB, which contains issues which also form the basis of a discrimination complaint which has been accepted, DeCA shall determine which was filed first.

a. **MSPB Appeal Filed First:** If the mixed case appeal to MSPB was filed first that portion of the mixed case complaint related to the action appealed to the MSPB shall be dismissed. The complainant shall be notified, in writing, of the dismissal, and advised to bring the allegations of discrimination to the attention of the MSPB.

b. **Complaint Filed First:** If the mixed case complaint was filed first, DeCA will so notify the MSPB through the DeCA management representative designated to represent DeCA before the MSPB. The management representative shall request that the MSPB appeal be dismissed without prejudice. If dismissed by MSPB, DeCA shall process the mixed case complaint as described below.

3-5. PROCEDURES FOR PROCESSING MIXED CASE COMPLAINTS.

A mixed case complaint filed under this procedure, and an allegation of discrimination remanded to DeCA for processing by the MSPB, shall be processed as an individual complaint as provided in this directive, except as provided below.

(1) **Processing time:** The complaint should be processed within 120 calendar days.

(2) **No Right to a Hearing:** The complainant has no right to a hearing by an EEOC Administrative Judge prior to the issuance of a final decision.

(3) **Acceptance Notice:** The complainant will be advised in the acceptance notice that:

(a) The complaint will be processed following 29 CFR Part 1614, Subpart C.

(b) An appeal to MSPB or a civil action may be filed at any time after 120 calendar days from the date the mixed case complaint was filed or the allegation remanded by MSPB if DeCA has not issued a decision.

(c) If the complainant is dissatisfied with DeCA's decision on the mixed case complaint, he or she may file a mixed case appeal with the MSPB within 30 calendar days after receipt of the final DeCA decision.

(4) Notice Provided to Complainant: Upon completion of the investigation the complainant will be provided with a notice informing him or her that a final decision without a hearing will be issued within 45 days.

(5) Notice of Decision: The DeCA Director's decision on a mixed case complaint shall notify the complainant that he or she may:

(a) Appeal the matter to the MSPB within 30 calendar days of receipt; or

(b) File a civil action within 30 calendar days of receipt of the agency's final decision.

3-6. DISMISSAL OF A MIXED CASE COMPLAINT ON AN ACTION PREVIOUSLY APPEALED TO MSPB. If DeCA is presented with a mixed case complaint concerning an action previously appealed to MSPB, DeCA shall dismiss the complaint in writing, regardless of whether the allegations of discrimination raised in the mixed case complaint were raised in the mixed case appeal to the MSPB. The complainant shall be advised in the decision dismissing the complaint that the rejected allegations must be brought to the attention of the MSPB pursuant to 5 CFR 1201.155.

3-7. EFFECT OF DISMISSAL OF A MIXED CASE COMPLAINT. A DeCA decision to dismiss a mixed case complaint may not be appealed to EEOC unless the case has been mislabeled as a mixed case. Cancellation or rejection of a mixed case complaint as provided above does not prejudice an employee's right to raise an allegation of discrimination in connection with a pending mixed case appeal before the MSPB.

3-8. FURTHER APPEAL OF A MSPB MIXED CASE DECISION. An individual who has received a final MSPB decision in a mixed case may petition the EEOC Office of Federal Operations or file a civil action in an appropriate U.S. District Court. The MSPB decision will specify the time limits and procedures to file such an action.

CHAPTER 4

PROCESSING CLASS COMPLAINTS

4-1. **CLASS COMPLAINTS.** This section establishes DeCA procedures for processing class complaints of discrimination based on 29 CFR Part 1614.204. Except as provided below, a class complaint shall be processed under the same provisions as an individual complaint as described in EEO-MD-110, 8-2.

4-2. **DEFINITIONS.** A class is a group of employees, former employees, or applicants for employment, who, it is alleged, have been, are being, or may be, adversely affected by an agency personnel management policy or practice which discriminates against the group on the basis of their common race, color, religion, sex, national origin, age or handicapping condition.

a. A "class complaint" is a written complaint of discrimination filed on behalf of a class by the agent of the class, alleging that:

- (1) The class is so numerous that a consolidated complaint of the members of the class is impractical;
- (2) There are questions of fact common to the class;
- (3) The claims of the agent of the class are typical of the claims of the class;
- (4) The agent of the class, or his or her representative, if any, will fairly and adequately protect the interests of the class.

b. An "agent" is a class member who acts for the class.

4-3. **PRE-COMPLAINT PROCESSING.** An employee or applicant who wishes to file a class complaint must seek counseling and be counseled in accordance with 1614.105. A complainant may move for class certification at any reasonable point in the process when it becomes apparent that there are class implications to the claim raised in an individual complaint. If a complainant moves for class certification after completing the counseling process contained in 1614.105, no additional counseling is required. The Administrative Judge shall deny class certification when the complainant has unduly delayed in moving for certification.

4-4. **FILING AND PRESENTATION OF A CLASS COMPLAINT.** A class complaint must be signed by the agent or his or her representative and identify the policy or practice adversely affecting the class as well as the specific action or matter affecting the class agent.

a. The complaint must be filed with the agency that allegedly discriminated not later than 15 calendar days after the agent's receipt of the notice of the right to file a class complaint.

b. The complaint shall be processed promptly; the parties shall cooperate and shall proceed at all times without undue delay.

c. Acceptance or dismissal. Within 30 days of receipt of a complaint, DeCA shall designate an agency representative who shall not be any of the individuals referenced in 1614.102(b)(3), and forward the complaint, along with a copy of the Counselor's report and any other information pertaining to timeliness or other relevant circumstances related to the complaint, to the Commission. The Commission shall assign the complaint to an administrative judge or complaints examiner with a proper security clearance when necessary. The administrative judge may require the complainant or DeCA to submit additional information relevant to the complaint.

d. The Administrative Judge may dismiss the complaint, or any portion, for any of the reasons listed in 1614.107 or because it does not meet the prerequisites of a class complaint under 1614.204 (a) (2).

e. If an allegation is not included in the counselor's report, the Administrative Judge shall afford the agent 15 days to state whether the matter was discussed with the Counselor and, if not, explain why it was not discussed. If the explanation is not satisfactory, the administrative judge shall dismiss the allegation. If the explanation is satisfactory, the administrative judge shall refer the allegation to the agency for further counseling of the agent. After counseling, the allegation shall be consolidated with the class complaint. If an allegation lacks specificity and detail, the administrative judge shall afford the agent 15 days to provide specific and detailed information. The administrative judge shall 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 administrative judge shall advise the agent how to proceed on an individual or class basis concerning these allegations. The administrative judge shall extend the time limits for filing a complaint and for consulting with a Counselor in accordance with the time limit extension provisions contained in 1614.105(a)(2) and 1614.604. When appropriate, the Administrative Judge may decide that a class be divided into sub-classes and that each subclass be treated as a class, and the provisions of this section then shall be construed and applied accordingly.

f. A description of the resultant personnel action or matter adversely affecting the agent.

g. A description of the class, including numerosity, commonality, and typicality issues.

h. A statement of the agent's ability to represent the class.

4-5. ACTION UPON RECEIPT OF A CLASS COMPLAINT. Initial Action:

a. Notify Counsel: The DeCA General Counsel shall be notified immediately when a class complaint is received with a request that a memorandum of law be submitted to the EEOC District Office on the question of whether the complaint meets the criteria of a class complaint.

b. Forward the complaint File: Within 30 calendar days of receipt of a class complaint, forward a copy of the complaint file to the appropriate EEOC District Office, along with a letter recommending acceptance or dismissal of the complaint and the rationale thereof.

c. Terminate processing of a Class Complaint: Immediately upon notification that an agent has filed a civil action in a U.S. District Court based on the same allegation of discrimination as contained in the class complaint, the processing of the class complaint will be terminated.

4-6. **ACTION BY EEOC.** The EEOC will assign the complaint to an Administrative Judge, who will issue a decision that DeCA accept the complaint; or dismiss the complaint or any portion, for any of the reasons listed in 1614.107 or because it does not meet the prerequisites of 1614.204(a)(2).

a. The Administrative Judge's written decision to DeCA on whether to accept or dismiss a complaint and the complaint file shall be transmitted to DeCA and notification of that transmittal shall be sent to the agent.

b. DeCA shall take final action by issuing a final order within 40 days of receipt of the hearing record and Administrative Judge's decision. The final order shall notify the agent whether or not DeCA will implement the decision of the Administrative Judge. If the final order does not implement the decision of the administrative judge, DeCA shall simultaneously appeal the administrative judge's decision in accordance with 1614.403 and append a copy of the appeal to the final order. A dismissal of a class complaint shall inform the agent either that the complaint is being filed on that date as an individual complaint of discrimination and will be processed under subpart A or that the complaint is also dismissed as an individual complaint in accordance with 1614.107. In addition, it shall inform the agent of the right to appeal the dismissal of the class complaint to the Equal Employment Opportunity Commission or to file a civil action and shall include EEOC Form 573, Notice of Appeal/Petition.

4-7. **NOTIFICATION.** Within 15 days of receiving notice that the administrative judge has accepted a class complaint or a reasonable time frame specified by the administrative judge, the agency shall use reasonable means, such as delivery, mailing to last known address or distribution, to notify all class members of the acceptance of the class complaint. Such notice shall contain:

a. The name of the DeCA organizational component, its location, and the date of acceptance of the complaint.

b. A description of the issues accepted as part of the class complaint.

c. An explanation of the binding nature of the final decision on or resolution of the complaint on class members; and

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

4-8. **OPPORTUNITIES FOR RESOLUTION OF THE COMPLAINT.** The Administrative Judge will furnish the agent, or his or her representative, and the representative of the agency, a copy of all materials obtained concerning the complaint; provide an opportunity for the agent to discuss materials with the agency representative; and attempt resolution.

a. The complaint may be resolved by agreement of the agency and the agent at any time pursuant to the notice and approval procedure contained in paragraph 4-7.

b. If the complaint is resolved, the terms of the resolution shall be reduced to writing and signed by the agent and DeCA.

c. Notice of the resolution shall be given to all class members in the same manner as notification of the acceptance of the class complaint and to the administrative judge. It shall state the relief, if any, to be granted by DeCA and the name and address of the EEOC administrative judge assigned to the case. It shall state that within 30 days of the date of the notice of resolution, any member of the class may petition the administrative judge to vacate the resolution because it benefits only the class agent, or is otherwise not fair, adequate and reasonable to the class as a whole. The administrative judge shall review the notice of resolution and consider any petitions to vacate filed. If the administrative judge finds that the proposed resolution is not fair, adequate and reasonable to the class as a whole, the administrative judge shall issue a decision vacating the agreement and may replace the original class agent with a petitioner or some other class member who is eligible to be the class agent during further processing of the class complaint. The decision shall inform the former class agent or the petitioner of the right to appeal the decision to the Equal Employment Opportunity Commission and include EEOC Form 573, Notice of Appeal/Petition. If the administrative judge finds that the resolution is fair, adequate and reasonable to the class as a whole, the resolution shall bind all members of the class.

4-9. **HEARING.** On expiration of the period allowed for preparation of the case, the administrative judge shall set a date for hearing. The hearing shall be conducted in accordance with 29 CFR 1614.109(a) through (f).

a. The administrative judge shall transmit to the agency a report of findings and recommendations on the complaint, including a recommended decision, systemic relief for the class and any individual relief, where appropriate, with regard to the personnel action or matter that gave rise to the complaint.

b. If the administrative judge finds no class relief appropriate, he or she shall determine if a finding of individual discrimination is warranted and, if so, shall recommend appropriate relief.

c. The administrative judge shall notify the agent of the date on which the report of findings and recommendations were forwarded to the agency.

4-10. **FINAL AGENCY DECISION.** Within 60 days of receipt of the report of findings and recommendations issued under 1614.204(I), DeCA shall issue a final decision, which shall accept, reject, or modify the findings and recommendations of the administrative judge.

a. The final decision of the agency shall be in writing and shall be transmitted to the agent by certified mail, return receipt requested, along with a copy of the report of findings and recommendations of the administrative judge.

b. When DeCA's final decision is to reject or modify the findings and recommendations of the administrative judge, the decision shall contain specific reasons for the DeCA's action.

c. If DeCA has not issued a final decision within 60 days of its receipt of the administrative judge's report of findings and recommendations, the Report shall become the final decision. The agency shall transmit the final decision to the agent within five days of the expiration of the 60-day period.

d. The final decision of DeCA shall require any relief authorized by law and determined to be necessary or desirable to resolve the issue of discrimination.

e. The final decision on a class complaint shall be binding on all members of the class and DeCA.

f. The final decision shall inform the agent of the right to appeal or to file a civil action in accordance with 1614.204.

g. Notification of decision. DeCA shall notify class members of the final decision and relief awarded, if any, through the same media employed to give notice of the existence of the class complaint. The notice where appropriate, shall include information concerning the rights of class members to seek individual relief, and of the procedures to be followed. Notice shall be given by the agency within 10 days of the transmittal of its final decision to the agent.

h. Relief for individual class members. When discrimination is found, DeCA must eliminate or modify the employment policy or practice out of which the complaint arose and provide individual relief, including an award of attorney's fees and costs, to the agent in accordance with 1614.501.

i. When class-wide discrimination is not found, but it is found that the class agent is a victim of discrimination, 1614.501 shall apply. DeCA shall also, within 60 days of the issuance of the final decision finding no class-wide discrimination, issue the acknowledgment of receipt of an individual complaint as required by 1614.106(d).

j. When discrimination is found in the final decision and a class member believes that he or she is entitled to individual relief, the class member may file a written claim with the EEO Director within 30 days of receipt of notification by DeCA of its final decision. Administrative judges shall retain jurisdiction over the complaint in order to resolve any disputed claims by class members. The claim must include a specific, detailed showing that the claimant is a class member who was affected by the discriminatory policy or practice, and that this discriminatory action took place within the period of time for which DeCA found class-wide discrimination in its final decision. Where a finding of discrimination against a class has been made, there shall be a presumption of discrimination as to each member of the class. DeCA must show by clear and convincing evidence that any class member is not entitled to relief. The administrative judge may hold a hearing or otherwise supplement the record on a claim filed by a class member. DeCA or the Commission may find class-wide discrimination and order remedial action for any policy or practice in existence within 45 days of the agent's initial contact with the Counselor. Relief otherwise consistent may be ordered for the time the policy or practice was in effect. The agency shall issue a final decision on each such claim within 90 days of filing. Such decision must include a notice of the right to file an appeal or a civil action in accordance 1614.204.

CHAPTER 5

PROCESSING AGE DISCRIMINATION IN EMPLOYMENT ACT (ADEA) COMPLAINTS

5-1. **AGE DISCRIMINATION ALLEGATIONS.** An employee, former employee, or applicant for employment who was 40 years of age or older at the time of the action complained of, and who believes he or she has been discriminated against by DeCA on the basis of his or her age in violation of the Age Discrimination in Employment Act (ADEA) of 1967, as amended, may elect to:

- a. File an individual complaint of discrimination on account of age under the administrative discrimination complaint process; or
- b. File with EEOC a written notice of intent to file a civil action within 180 calendar days of the date the alleged discrimination occurred, and wait at least 30 calendar days after filing the notice with the EEOC before filing a civil action in U.S. District Court; or
- c. File a civil action in a U.S. District Court within 90 calendar days of the date of a final decision from DeCA or of a decision from the Equal Employment Opportunity Commission (EEOC).

5-2. **FILING AND PROCESSING AN AGE DISCRIMINATION COMPLAINT.** An aggrieved employee, former employee, or applicant shall follow the counseling, filing, and other processing requirements of EEO MD-110 when he or she elects to file a complaint of discrimination on account of age. An agent for a class complaint shall follow the procedures of 29 C.F.R. Part 1614.204 as set forth in this directive.

5-3. **FILING A CIVIL ACTION.**

a. An employee, former employee, or applicant alleging age discrimination who elects to file a civil action and who has not been issued a final DeCA decision must file a written notice with the EEOC of intent to file a civil action under the ADEA within 180 calendar days of the date the alleged discrimination occurred. He or she then must wait at least 30 calendar days before filing a civil action in a U.S. District Court.

(1) Notice of Intent to Sue: The Notice of Intent to Sue under the ADEA should be dated and must contain the following information:

- (a) Statement of intent to file a civil action under Section 15(d) of the ADEA, as amended.
- (b) Name, address and telephone number of the complainant.
- (c) Name, address and telephone number of the complainant's designated representative, if any.
- (d) Name and location of the DeCA activity where the alleged discriminatory action occurred.

- (e) Date(s) the alleged discriminatory action occurred.
- (f) Statement of the nature of the alleged discriminatory action(s).
- (g) Signature of the complainant or representative.

(2) Filing a Notice of Intent to Sue with the EEOC. The aggrieved person must file a Notice of Intent to Sue under the ADEA with the EEOC at the following address:

Hearings Program Division
Federal Sector Program
Equal Employment Opportunity Commission
1801 L Street, NW
Washington, DC 20507

b. EEOC Notification. Upon receipt of the Notice of Intent to Sue, the EEOC will notify the Director, EEO Office, DeCA and all persons named in the notice as prospective defendants in the action, if any, in writing. EEOC will also provide a copy to the aggrieved person and his or her representative. The Director, EEO Office will ensure that the Notice is reviewed, coordinate this matter with the DeCA General Counsel and ensure an appropriate inquiry is conducted. If there is evidence that unlawful age discrimination has occurred, good faith efforts should be made to resolve the matter.

c. After Receipt of a Decision. Complainant may file a civil action in a U.S. District Court within 90 calendar days of the date of a final decision from DeCA or of a decision from the Equal Employment Opportunity Commission (EEOC).

d. Termination of Processing. The filing of a civil action (not the filing with EEOC of a Notice of Intent to Sue) in U.S. District Court by an employee former employee, or applicant involving a complaint under this directive, terminates administrative processing of that complaint.

CHAPTER 6

ATTORNEY'S FEES, COSTS AND WITNESS FEES

6-1. **ATTORNEY'S FEES AND COSTS.** These provisions relate to the award of reasonable attorney's fees and costs under the administrative discrimination complaint process.

6-2. **AUTHORITY FOR PAYMENT:**

a. Title VII of the Civil Rights Act of 1964 (Title VII): Attorney's fees and costs may be awarded for allegations of discrimination or retaliation prohibited by Section 717 of Title VII of the Civil Rights Act of 1964, as amended (29 U.S.C. 2000e-16).

b. The Rehabilitation Act of 1973, as amended: Attorney's fees and costs may be awarded for allegations of discrimination or retaliation prohibited by Sections 501 and 505 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 791 and 794a).

c. The Age Discrimination in Employment Act (ADEA) as amended: The ADEA does not provide for the award of attorney's fees for federal sector complaints at the administrative level.

6-3. **INFORMAL ADJUSTMENTS (SETTLEMENTS).** DeCA is authorized to award attorney's fees and costs as part of any settlement of a complaint. If the complainant and DeCA agree on settlement terms but cannot agree on the award and/or the amount of attorney's fees, either or both of those issues may be severed from the settlement agreement and will be the subject of a decision of DeCA. A waiver of attorney's fees may be made a condition of the settlement. Such a waiver, when agreed upon, should be specified in the settlement agreement.

6-4. **FINAL DECA DECISIONS.**

a. The decision of the Director, DeCA shall be a final decision only when a determination is made on all the issues, including whether or not to award attorney's fees and/or costs and, if awarded, the amount of the award. When discrimination under Title VII or the Rehabilitation Act is found, the final decision must contain a determination of whether the complainant is entitled to attorney's fees and/or costs. A finding of discrimination or retaliation raises a presumption of entitlement to an award of attorney's fees.

b. Notice to the Complainant and Representative When Discrimination is Found: A final DeCA decision which finds discrimination shall include notice to the complainant and his or her representative, if any, that any request for attorney's fees must be documented and submitted within 30 calendar days of receipt of the notice.

c. Notice of Denial of Attorney Fees: When the final DeCA decision denies an award of attorney's fees and/or costs, the decision must include specific reasons for the denial and advise the complainant and his or her representative, if any, of the right to appeal the decision to the EEOC.

6-5. **APPEAL OF DECA DECISION.** The complainant may appeal the final decision regarding denial, the award and/or amount of attorney's fees to the EEOC.

6-6. PAYMENT OF ATTORNEY'S FEES. Any award of attorney's fees or costs shall be paid by DeCA when the requirements listed below are met.

a. **Statement of Costs and/or Attorney's Fees:** The complainant or representative must submit a verified statement of costs and attorney's fees to DeCA within 30 calendar days of the final DeCA decision awarding fees and/or costs. A statement of attorney's fees shall be accompanied by an affidavit executed by the attorney of record itemizing the attorney's charge for legal services. Both the verified statement and the accompanying affidavit shall be made a part of the complaint file.

b. **Persons Authorized to Receive Attorney's Fees:** Attorney's fees may be allowed only for the services of members of the bar and law clerks, paralegal or law students under the supervision of members of the bar. Awards are not permitted for a federal employee's services.

c. **Requirement for Notice of Representation:** Fees will not be paid for services prior to the filing of a complaint, nor for services rendered prior to the time DeCA was notified that the complainant had representation. An exception allows payment to compensate an attorney for a reasonable amount of work necessary to decide to represent the complainant. A written submission by the complainant's attorney shall constitute sufficient notice that the complainant is represented.

6-7. AMOUNT OF AWARDS.

a. When the agency, administrative judge or the Commission determines an entitlement to attorney's fees or costs, the complainant's attorney shall submit a verified statement of attorney's fees (including expert witness fees) and other costs, as appropriate, to the agency or administrative judge within 30 days of receipt of the decision and shall submit a copy of the statement to the agency.

b. A statement of attorney's fees and costs shall be accompanied by an affidavit executed by the attorney of record itemizing the attorney's charges for legal services. The agency may respond to a statement of attorney's fees and costs within 30 days of its receipt. The verified statement, accompanying affidavit and any agency response shall be made part of the complaint file.

c. The agency or administrative judge shall issue a decision determining the amount of attorney's fees or costs due within 60 days of receipt of the statement and affidavit. The decision shall include a notice of right to appeal to the EEOC along with EEOC Form 573, Notice Of Appeal/Petition and shall include the specific reasons for determining the amount of the award.

d. The amount of attorney's fees shall be calculated using the following standards: The starting point shall be the number of hours reasonably expended multiplied by a reasonable hourly rate. There is a strong presumption that this amount represents the reasonable fee. In limited circumstances, this amount may be reduced or increased in consideration of the degree of success, quality of representation, and long delay caused by the agency.

e. The costs that may be awarded are those authorized by 28 U.S.C. 1920 to include:

(1) Fees of the reporter for all or any of the stenographic transcripts necessarily obtained for use in the case.

(2) Fees and disbursements for printing and witnesses.

(3) Fees for exemplification and copies necessarily obtained for use in the case.

f. Witness Fees: Witness fees shall be awarded following the provisions of 28 U.S.C. 1821, except that no award shall be made for a federal employee who is in a duty status when available as a witness.

SECTION II

Chapter 7

PREVENTION OF SEXUAL HARASSMENT

7-1. **PURPOSE.** To establish the policy of the Defense Commissary Agency (DeCA) which will reinforce the requirements of references (a) and (b) regarding the prevention of sexual harassment at work or in work-related environments and to define the responsibilities of DeCA personnel. This DeCAD is applicable to all DeCA civilian and military employees.

7-2. **REFERENCES.**

- a. 29 CFR 1604. 11
- b. Secretary of Defense Memorandum dated 12 Jul 91
- c. DoDD 1440. 1, the DoD Civilian EEO Program

7-3. **POLICY.**

a. Sexual harassment is a form of employee misconduct which undermines the integrity of the employment relationship, debilitates morale and interferes with the work productivity of its victims and co-workers. The cost of sexual harassment is high, in reduced mission effectiveness, in the suffering of victims, and in wasted resources. Sexual harassment is unacceptable conduct and will not be condoned or tolerated in any way.

b. Reference 7-2a establishes guidelines for Federal employees which reaffirm that sexual harassment is an unlawful employment practice under Title VII of the Civil Rights Act of 1964, as amended. Unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature constitute sexual harassment when:

(1) Submission to or rejection of such conduct is made either explicitly or implicitly a term or condition of an individual's job, pay, or career; or

(2) Submission to or rejection of such conduct by an individual is used as the basis for career or employment decisions affecting such individuals; or

(3) Such conduct has the purpose or effect of interfering with an individual's work performance or creates an intimidating, hostile or offensive work environment.

c. Alleged instances of sexual harassment will be evaluated on a case-by-case basis, considering the totality of the circumstances, such as the nature of the sexual misconduct and the context in which the alleged incidents occurred. Examples of sexual harassment include but are not limited to:

(1) Use of implicit or explicit coercive sexual behavior by a supervisor to control, influence or affect the career, salary, or job of a military member or civilian employee.

(2) Deliberate or repeated unwelcome verbal comments, gestures, or physical contact of a sexual nature from a military member or civilian employee to another military member or civilian employee.

d. DeCA is liable for the actions of its supervisors and managers where it knew or should have known of instances of sexual harassment and failed to take appropriate action. Agency responsibility for sexual harassment also extends to conduct between fellow employees, of which management became aware, unless it can be shown that immediate and appropriate corrective action was taken to remedy the situation. Therefore, managers and supervisors must promptly inquire into all allegations of sexual harassment.

e. All personnel are to be informed of the avenues to file complaints and to seek redress. The procedures to file complaints shall be given maximum dissemination and be prominently posted throughout the organization.

f. Managers and supervisors must ensure that all personnel are informed that effective action will be taken against individuals who violate policy. Failure to comply with this policy will be reflected in managers' and supervisors' annual performance ratings or fitness reports, and result in the imposition of penalties. The range of penalties, from warning to dismissal, is described in several articles of the Uniform Code of Military Justice, U.S. Federal Personnel Manual Letter 751-3 and in DoD Directive 5200.2-R.

7-4. **RESPONSIBILITIES.**

a. All personnel:

- (1) Shall adhere to DeCA's policy against sexual harassment in the workplace by their own behavior.
- (2) If sexually harassed, should make it clear to the offender that such behavior is unwanted.
- (3) Should report alleged incidents of sexual harassment to management personnel.

b. Managers and supervisors shall:

- (1) Ensure that prompt, corrective action is taken whenever sexual harassment is observed or brought to their attention.
- (2) Set the proper example for subordinates by their own behavior in providing an environment free of sexual harassment.
- (3) Ensure that all personnel under their direction are aware of the provisions of this directive, understand the definition of sexual harassment, and receive training in the prevention of sexual harassment.
- (4) Inform the Region Equal Employment Manager, or Inspector General's Office of any complaints of sexual harassment.

- c. The HQ EEO Office and EEMs shall:
 - (1) Ensure appropriate guidance, assistance and training is provided to managers and supervisors (military and civilian) in the prevention of sexual harassment.
 - (2) Ensure appropriate guidance and training is made available to nonsupervisory employees.
 - (3) Ensure that the DeCA policy on sexual harassment is widely publicized.
 - (4) Ensure prompt processing of all complaints alleging sexual harassment.
- d. DeCA Region Directors shall:
 - (1) Exhibit active leadership in eliminating sexual harassment within their respective regions.
 - (2) Ensure that all managers, and supervisors (military and civilian) within their respective regions receive training in the prevention of sexual harassment.
 - (3) Ensure appropriate guidance and training is made available to all nonsupervisory employees.
 - (4) Ensure that the DeCA policy on sexual harassment is widely publicized.

7-5. **PROCEDURES.**

- a. When an employee believes that he/she has been subjected to sexual harassment, he/she may contact the Equal Employment Opportunity Manager, EEO Counselor, or the Inspector General's Office. The employee may also bring this matter to the attention of an appropriate supervisor.
- b. When any supervisor becomes aware of an allegation of sexual harassment, that supervisor shall ensure appropriate authorities are informed.
- c. If the facts developed confirm that sexual harassment has occurred, management shall take appropriate remedial action.
- d. Copies of all fact-findings reports regarding sexual harassment, must be sent to the DeCA HQ EEO Office.

**APPENDIX A
MANAGEMENT CONTROL CHECKLIST**

Management Control Review
Checklist (Page 1 of 6 Pages)

TASK: Equal Employment/Management

SUBTASK: Discrimination Complaints

THIS CHECKLIST: Complaint Processing Time Frames

ORGANIZATION: Equal Employment

ACTION OFFICER:

REVIEWER:

Date Completed

ASSESSABLE UNIT: DeCA EE Staff and Region EEO Office. The assessable unit managers responsible for completing this checklist are the Discrimination Complaints Manager and the Region and Area Office EE Managers.

EVENT CYCLE 1: Recording and processing pre-complaints

Step 1: Accounting for all pre-complaints.

Risk: Pre-complaints are not being processed in accordance with the time frames cited in 29 C.F.R Part 1614.

Control Objectives: Pre-complaints are being recorded properly and processed in a timely manner.

Control Techniques: (1) Counselors provide EE Managers with monthly EEO report containing status of all pre-complaint counseling activity; (2) EE Managers review EEO report to ascertain whether pre-complaint time frames are being met; (3) If time frames are not met, EE Manager follow-up with phone call to installation EEO office; and (4) EE Managers submit monthly EEO status reports to HQ where pre-complaints are monitored and tracked for compliance with pre-complaint processing time frames.

Test Questions:

1. Are Counselors meeting the pre-complaint processing time frames in accordance with 29 C.F.R Part 1614?

Response: YES NO NA

REMARKS*

2. Does the monthly EEO status reports submitted to HQ show that the EEMs are monitoring the status of precomplaints and assuring that the processing time frames are being met?

Response: YES NO NA

REMARKS*

3. Are EEMs forwarding monthly EEO Complaints Status Reports to DeCA HQ- EE by the 10th calendar day of each month?

Response: YES NO NA

REMARKS*

4. Are EEMs reviewing complaints from a systemic perspective, conducting trend analyses, and identifying problems, which are common at several different stores, which may require a change in personnel policies or practices?

Response: YES NO NA

REMARKS*

EVENT CYCLE 2: Processing of individual complaints

Step 1: Assuring completion of investigations within the time frame.

Risk: Investigations will not be completed within 180 days; complaint moved forward to EEOC w/o investigation being conducted.

Control Objectives: Investigations will be completed and a notice of final action on a complaint issued within 180 days of its filing, unless an agreement from the complainant to extend processing for up to an additional 90 days has been secured.

Control Techniques: (1) Counselors will deliver to the EEMs a counselor's report within 15 days of notice by the EE Manager that a formal complaint has been filed; (2) EE Manager will acknowledge in writing its receipt of the complaint; (3) EE Manager will accept or dismiss the complaint within 30 calendar days of receipt of the complaint, and (4) If the complaint is accepted, the EE Manager will request an investigator within 7 days of the date of acceptance of the complaint.

Test Questions:

1. Are Counselors submitting Counselor's reports timely?

Response: YES NO NA

REMARKS*

2. Is the EE Manager accepting or dismissing complaints within the required time frame?

Response: YES NO NA

REMARKS*

3. Is the EE Manager requesting investigation of complaint in a timely manner?

Response: YES NO NA

REMARKS*

EVENT CYCLE 3: Complainant's right to hearing (with administrative judge or final agency decision without a hearing).

Step 1: Notification to complainant that the investigation has been completed and he/she has the right to request a hearing before an administrative judge or may receive an immediate final decision from the agency. The agency must notify the complainant of the right to request a hearing and that the request must be made in writing within thirty (30) days.

Risk: Complainant is not apprised of his/her right to hearing.

Control Objectives: Complainant is notified that the investigation is completed and told that within 30 days of receipt of the investigative file, he/she has a right to request a hearing before an administrative judge or may receive an immediate final decision from the agency.

Control Techniques: (1) EE Manager reviews investigative file and ensures complainant has been notified of right to request hearing; (2) If complainant requests hearing with an administrative judge, the agency must arrange for an appropriate size room, ensure that all approved witnesses who are Federal employees are notified as to when their presence will be required, and limit access to authorized persons in accordance with Commission policies as well as the administrative judge's discretion; and (3) if complainant requests a final agency decision without a hearing, the EE Manager must immediately notify the Discrimination Complaints Manager and forward the investigative file to HQ-EE.

Test Questions:

1. Are complainants being appropriately notified of their right to hearing?

Response: YES NO NA

REMARKS*

2. Are appropriate arrangements (size of room, witnesses, court reporter) for the administrative hearing being made by the EE Manager and has the EE Manager notified the Office of Counsel?

Response: YES NO NA

REMARKS*

3. Are EE Managers notifying HQ in a timely manner of complainant's request for a final agency decision without a hearing and forwarding the investigative files to HQ-EE?

Response: YES NO NA

REMARKS*

EVENT CYCLE 4: Final action by agency following an Administrative Judge's decisions and final actions in all other circumstances

Step 1: Final agency decisions must be issued within the required time frames in accordance with 29 C.F.R. 1614.109(b), (g), or (i) and 1614.107(a).

Risk: Final agency decisions are not issued within the required time frame.

Control Objectives: When an Administrative Judge issues a decision under 1614.109(b), (g), or (i), the agency shall take final action on the complaint by issuing an order within forty (40) days of the date of its receipt of the Administrative Judge's decision. When an agency dismisses an entire complaint under 1614.107(a), and receives a request for an immediate final decision, or does not receive a reply to the notice issued under 1614.108(f), the agency will take final action by issuing a final decision. The final decision is to be issued within sixty (60) days of receiving notification that a complainant has requested an immediate final decision from the agency, or within 60 days of the end of the thirty (30) day period for the complainant to request a hearing or an immediate final decision where the complainant has not requested a hearing or a decision.

Control Techniques: (1) Upon receiving notice that a complainant has requested an immediate decision from the agency, the EE Manager shall contact agency HQ-EE and inform the Discrimination Complaints Manager of the request; (2) Investigative files are maintained by EE Managers. If at the end of the 30-day period for requesting a hearing, the complainant has not made a request, the EE Manager will forward the investigative file to HQ-EE and request that a final agency decision be issued; and (3) EE Managers when requesting a hearing from an administrative judge (AJ) will inform the AJ to forward the findings and conclusion of law to HQ-EE where a final agency decision is to be issued within the required time frame.

Test Questions:

1. Are EE Managers notifying the Discrimination Complaints Manager in a timely manner of complainant's request for an immediate decision?

Response: YES NO NA

REMARKS*

2. Are EE Managers maintaining appropriate records in order to inform HQ-EE that the 30-day period has elapsed and that a final agency decision on the complaint should be issued?

Response: YES NO NA

REMARKS*

3. Are findings and conclusions of an administrative judge reviewed and draft final agency decision letters prepared and submitted to the EE Director in a timely manner?

Response: YES NO NA

REMARKS*

4. Are complaint case files submitted to EEOC, OFO in a timely manner on cases appealed, after EEOC requests the file? EEO Managers must submit complaint file to EEOC, OFO, within 30 days of receiving notification that a case has been appealed to OFO.

Response: YES NO NA

REMARKS*

EVENT CYCLE 5: EEO climate assessment is to be conducted at commissary stores.

Step 1. In order to ascertain real or perceived problems, which could have an impact on EEO complaints, a minimum of five EEO climate assessments are to be conducted at stores in all regions.

Risk: Region Director and EEO Managers will not know the effectiveness of the EEO program nor will EEO Managers fully understand the training needs at the store level.

Control Objectives: Real or perceived EEO problems as well as other personnel related problems are identified so that training needs are developed to deal with the problems.

Control Technique:

1. Assessment team shall conduct a minimum of five (5) climate assessments at stores each year on a cyclic basis and prepare assessment report for zone managers, vice presidents and region/deputy directors. Maintain reports for review by HQ-EE Program Evaluation Team.

Test Questions:

1. How were stores to be assessed selected?

Response: YES NO NA

REMARKS*

2. What method was utilized in conducting the EEO climate assessment (i.e., interviews, sensing session etc.)

Response: YES NO NA

REMARKS*

3. Were identified EEO issues resolved as a result of the assessment?

Response: YES NO NA

REMARKS*

4. Was the affirmative employment program evaluated in accordance with the guidance identified in EEOC MD- 714 with respect to the distribution of promotions, awards, disciplinary actions, separations, etc., by RNO?

Response: YES NO NA

REMARKS*

5. Were reports prepared and maintained upon completion of each store assessment?

Response: YES NO NA

REMARKS*

6. Has follow-up assessment recommendations been conducted?

Response: YES NO NA

REMARKS*

7. Has appropriate training in identified areas of weakness been conducted?

Response: YES NO NA

REMARKS*

8. Are EEO related policies posted in a central store location for access by all employees?

Response: YES NO NA

REMARKS*

EVENT CYCLE 6: Prevention of Sexual Harassment

Step 1: Title VII of the Civil Rights Act of 1964, as amended, prohibits discrimination in employment on the basis of sex. The key to preventing sexual harassment on the job is to establish and implement a strongly enforced policy against sexual harassment. In addition to the policy, it is critical that management assures that all complaints alleging sexual harassment are documented, promptly and effectively investigated.

Risk: Even the most comprehensive sexual harassment policies and procedures will not provide an effective affirmative defense if an employer does not enforce them quickly, consistently, and aggressively. Employer may be held liable for a supervisor's harassing conduct.

Control Objectives: All employees should receive training on the prevention of sexual harassment policy and procedures to maintain an environment free of sexual harassment or sex discrimination. In this manner, employees are: (1) made aware of the employer's sexual harassment policy; (2) are more alert to inappropriate workplace conduct; and (3) put on notice that the agency wants to be notified of inappropriate conduct so as to provide it with the opportunity to investigate and take corrective action.

Control Techniques: (1) Region EEM will conduct surveys to determine new employees who have not received prevention of sexual harassment training in the past eighteen months; and (2) The results of the survey will be reported to the Region Director and HQ-EE. The Region Director will ensure that prevention of sexual harassment training is made available to those employees who have not received this training.

Test Questions:

1. Has the survey on employees who have not received training in the prevention of sexual harassment been conducted?

Response: YES NO NA

REMARKS*

2. Have all employees that were identified as not receiving training in the prevention of sexual harassment now been trained?

Response: YES NO NA

REMARKS*

3. Are accurate records being maintained as to the training measures undertaken, including, but not limited to, keeping an agenda of what is discussed and a list of individuals in attendance. Employees should be required to personally sign attendance forms.

Response: YES NO NA

REMARKS*

4. Have the regions reviewed their sexual harassment policy in light of the Supreme Court's decision in Ellerth and Faragher?

Response: YES NO NA

REMARKS*

5. If so, does the policy contain statements that will help DeCA establish an affirmative defense that it exercised reasonable care to prevent any sexually harassing behavior?

Response: YES NO NA

REMARKS*

DECAD 55-1 JUNE 2000

*Explain rationale for YES response or provide cross-reference where rationale can be found. For NO responses, cross reference to where corrective action plans can be found. If response is NA, explain rationale.

I attest that the above-listed management controls provide reasonable assurance that DeCA resources are adequately safeguarded. I am satisfied that if the above controls are fully operational, the management controls for this subtask throughout DeCA are adequate.

Director, Equal Employment

I have reviewed this subtask within my organization and have supplemented the prescribed management control review checklist when warranted by unique environmental circumstances. The controls prescribed in this checklist, as amended, are in place and operational for my organization.

Assessable Unit Manager
(Signature/Date)

DEFENSE COMMISSARY AGENCY DISCRIMINATION COMPLAINT		UIC	FOR AGENCY USE
PRIVACY ACT STATEMENT			
<p>Authority: Title VII, United States Code, Privacy Act of 1974 (5 USC 552a). Purpose: To collect information to permit processing of a formal discrimination complaint. Use: The information on this form may be used (a) in the processing and adjudication of the Complaint and any appeal concerning the complaint and (b) as a data source for production of summary descriptive statistics and analytical studies of complaint processing and resolution efforts. Disclosure: Voluntary; however, failure to provide requested information may lead to a delay in processing or to a dismissal of this complaint.</p>			
1. COMPLAINANT'S FULL NAME (Last, First, MI)		COMPLAINANT'S SSN ____-____-____	2. TITLE, SERIES & GRADE OF YOUR JOB
3. HOME ADDRESS Street City State Zip Code		5. WORK ADDRESS Street City State Zip Code	
4. HOME PHONE		6. WORK PHONE	
7. NAME AND TITLE OF PERSON(S) YOU BELIEVE DISCRIMINATED AGAINST YOU AND THEIR ORGANIZATIONAL UNIT			
NAME		TITLE	
		ORGANIZATIONAL UNIT	
8. DATE OF MOST RECENT ALLEGED DISCRIMINATORY INCIDENT FOR WHICH YOU SOUGHT COUNSELING (MM-DD-YYYY)			
9. EXPLAIN HOW YOU BELIEVE YOU WERE DISCRIMINATED AGAINST (treated differently from other employees or applicants). (For each allegation identified in 10, below, please state to the best of your knowledge, information and belief what incident occurred and when the incident occurred. If you need more space you may continue on the next page.)			
10. CHECK BELOW WHY YOU BELIEVE YOU WERE DISCRIMINATED AGAINST (Check all that apply)			
<input type="checkbox"/> a. RACE (if so, state your race)		<input type="checkbox"/> f. AGE (if so, state your age)	
<input type="checkbox"/> b. COLOR (if so, state your color)		<input type="checkbox"/> g. HANDICAP (if so, state whether mental or physical)	
<input type="checkbox"/> c. RELIGION (if so, state your religion)		<input type="checkbox"/> h. SEXUAL HARASSMENT (if so, state your sex and the sex of the person you believed harassed you)	
<input type="checkbox"/> d. NATIONAL ORIGIN (if so, state your national origin)		<input type="checkbox"/> i. REPRISAL (if so, state nature of involvement in prior EEO activity)	
<input type="checkbox"/> e. SEX (if so, state your sex)			
11. I HAVE DISCUSSED MY COMPLAINT WITH AN EQUAL EMPLOYMENT OPPORTUNITY COUNSELOR <input type="checkbox"/> YES <input type="checkbox"/> NO		12. COUNSELOR	
		13. DATE NOTICE OF FINAL INTERVIEW RECEIVED	
14. STATE ACTION YOU ARE SEEKING TO RESOLVE YOUR COMPLAINT			
15. NAME AND ADDRESS OF YOUR REPRESENTATIVE (if any)			16. REPRESENTATIVE'S PHONE NO.
17. COMPLAINANT'S SIGNATURE			18. DATE OF THIS COMPLAINT (MM-DD-YYYY)

DeCA Form 55-1, Oct 2003

Supersedes DeCA 05-13, Aug 2001 &
DeCAF 55-1, May 1998
Which Are Obsolete

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