

Discrimination Complaint Process

**Office of Small Business and Civil Rights
Vonna L. Ordaz, Director**



It is the policy of the U.S. Nuclear Regulatory Commission (NRC) to provide equal employment opportunity (EEO) to all employees (current and former) and applicants for employment with the Agency who believe they have been subjected to discrimination based on: race, color, national origin, religion (including reasonable accommodation for religious beliefs and practices), gender (including gender-based wage discrimination or harassment), age (40 and over), mental or physical disability (including reasonable accommodation), sexual orientation, status as a parent, genetic information and/or reprisal.

If you believe you have been subjected to discrimination because of one or more of these prohibited bases, you may pursue your claim through the NRC's administrative discrimination complaint process, administered by the Office of Small Business and Civil Rights (SBCR), in accordance with U.S. Equal Employment Opportunity Commission (EEOC) regulations, Title 29 of the *Code of Federal Regulations* (29 CFR) Part 1614, "Federal Sector Equal Employment Opportunity," as amended. The text of these regulations can be accessed through EEOC's Web site at <http://www.eeoc.gov/federal/directives/1614-final.cfm>.

Allegations of discrimination based on sexual orientation or status as a parent are not bases enforced by EEOC regulations at 29 CFR 1614; however, allegations of discrimination on these bases may be pursued with the Office of Special Counsel (OSC), the Merit Systems Protection Board (MSPB), or the Office of Personnel Management (OPM). SBCR will ensure parties are advised of the proper forum for presenting their complaint and, if requested, will conduct pre-complaint processing of these complaint types. If resolution is not reached at the conclusion of the pre-complaint process, however, SBCR must process the complaint in accordance with relevant EEOC regulations.

The regulations also require Federal agencies to make an alternative dispute resolution (ADR) program available at both the pre-complaint (informal or EEO counseling) and formal complaint stage of the discrimination complaint process. The ADR process supplements existing EEO discrimination complaint procedures in an effort to resolve employment discrimination claims. The NRC is committed to using ADR as a tool to resolve employment discrimination claims at the earliest stage possible. In compliance with EEOC regulations, the NRC has developed a confidential, informal, nonadjudicative and nonadversarial ADR program to assist employees, managers, and supervisors in reaching mutually acceptable and voluntary resolutions to employment discrimination claims. The NRC's ADR program is administered by SBCR through an ADR coordinator and is available to all NRC employees.

This pamphlet includes an overview of EEOC regulations and the Agency's administrative discrimination complaint process, including the ADR process. This pamphlet also provides the procedures and timeframes imposed for pursuing a claim of unlawful discrimination and your rights and responsibilities with respect to the process.

The information provided in this pamphlet is not intended to be all-inclusive. Questions about the NRC's administrative discrimination complaint process, including ADR, should be directed to the Office of Small Business and Civil Rights, Civil Rights Program, at 301-415-7380 (TDD 301-415-6285) or SBCR's e-mail address: EEOPPrograms.Resource@nrc.gov

ANTI-DISCRIMINATION LAWS AND REGULATIONS

Age Discrimination in Employment Act of 1967 (ADEA), as amended

Prohibits discrimination on the basis of age (40 years and older).

EEOC Regulations, Title 29 Code of Federal Regulations (CFR) Part 1614

These regulations, amended December 7, 2009, govern the processing of Federal sector discrimination complaints filed under the above laws.

Equal Pay Act of 1963 (EPA), as amended

Prohibits Federal agencies from paying employees of one sex a lower wage than employees of the opposite sex for performing equal or substantially equal work under similar working conditions. Sex-based wage claims may be filed under Title VII and the EPA simultaneously.

Executive Order 13087, amending Executive Order 11478, EEO Opportunity in the Federal Government

Signed on May 28, 1998, the Executive Order adds sexual orientation as a basis for a claim of prohibited discrimination. Discrimination based on sexual orientation is not covered by 29 CFR Part 1614. If you wish to pursue an allegation of discrimination based on sexual orientation, contact SBCR, OSC, MSPB, or OPM.

Genetic Information Nondiscrimination Act of 2008 (GINA)

Prohibits discrimination against employees or applicants because of genetic information about an individual or an individual's family member's genetic tests, disease, disorder, or condition.

Rehabilitation Act of 1973, as amended

Prohibits discrimination on the basis of mental or physical disability. It also requires agencies to reasonably accommodate known physical or mental limitations of qualified disabled employees or applicants.

Title VII of the Civil Rights Act of 1964, as amended

Prohibits discrimination based on race, color, religion, sex (including sexual harassment), or national origin. It also prohibits reprisal or retaliation for participating in the discrimination complaint process or for opposing any unlawful employment practice that the individual reasonably and in good faith believes violates Title VII.

The text of these laws may be accessed through the EEOC Web site at

<http://www.eeoc.gov/laws/index.cfm> or SBCR's Web site at <http://www.nrc.gov/about-nrc/organization/sbcfuncdesc.html>.

THE DISCRIMINATION COMPLAINT PROCESS

PRE-COMPLAINT PROCESSING

Equal Employment Opportunity (EEO) counseling is the first step in the discrimination complaint process. If you believe you have been subjected to discrimination based on race, color, national origin, religion (including reasonable accommodation for religious beliefs and practices), gender (including gender-based wage discrimination or harassment), age (40 and older), mental or physical disability (including reasonable accommodation), sexual orientation, status as a parent, or genetic information or reprisal, your initial contact with an EEO counselor must be made within 45 calendar days of the date the alleged discrimination occurred, or in the case of a personnel action, within 45 calendar days of the effective date of the personnel action.

Contractor employees may qualify as “employees of the agency” within the meaning of the anti-discrimination statutes and must contact an EEO counselor within 45 calendar days of alleged discrimination by the NRC. Contractor employees will qualify as employees of the agency for the purpose of filing a complaint of employment discrimination only if they meet specific criteria including that the NRC exercises control over the means and manner of their performance. Contractor employees should also pursue resolution of their complaint through their employer’s complaint process.

Pursuant to U.S. Equal Employment Opportunity Commission (EEOC) regulations, 29 CFR Part 1614, you have a right to request to participate in ADR at the pre-complaint or during the formal-complaint stage of the process. If you would like to participate in ADR, you must follow the relevant procedures set forth in the section herein.

The role of the EEO counselor includes the following:

- Advise you in writing of your rights and responsibilities in the discrimination complaint process, including your right to participate in the ADR Program.
- Listen to and understand the viewpoints of all parties to facilitate a resolution.
- Ensure that the claim(s) and basis(es) to be addressed are clearly defined.
- Conduct a limited fact-finding inquiry to facilitate a resolution at the lowest possible level and to determine jurisdiction in the event that a formal complaint is filed.
- Refer you to an appropriate source if it is clear that your issue does not involve a basis(es) covered by the regulations.
- Advise and issue you a Notice of Right to File a Formal Discrimination Complaint (NRTF), and when appropriate, the right to file a formal grievance through the NRC/National Treasury Employees Union (NTEU) negotiated grievance procedure or a mixed case appeal through the Merit Systems Protection Board (MSPB), if the dispute is not resolved during counseling.

- Advise you of your option to bypass the administrative process under the ADEA and pursue a civil action directly in an appropriate U.S. District Court, as well as the procedures and time limits imposed for exercising that right.
- Advise you of your right under the [Equal Pay Act](#) to file a civil action in U.S. District Court regardless of whether an administrative action has been pursued, as well as the procedures and time limits imposed for exercising that right.
- Prepare a report sufficiently documenting the counseling activity and any jurisdictional questions related to the complaint not resolved during counseling.

The Counseling Inquiry

The EEO counselor must complete the inquiry and conduct the final interview within 30 calendar days of the date of your initial contact, unless you and the Agency agree, in writing, to an extension of up to an additional 60 calendar days.

If the matter is not resolved during the pre-complaint process, the counselor will conduct a final interview with you and issue you an NRTF. When appropriate, the counselor also will advise you of the right to file a formal grievance through the NRC and NTEU negotiated grievance procedure or a mixed-case appeal through MSPB. The NRTF will advise you of the applicable procedures and time limits imposed for exercising those rights.

If the matter is resolved during counseling, the terms and conditions will be reduced to writing and signed by the appropriate parties to the agreement. A copy of the signed agreement will be provided to you. You also will be advised of your rights and responsibilities in the event that you believe the Agency fails to comply with the terms and conditions stated in the agreement (see 29 CFR 1614.401, "Appeals to the Commission," 29 CFR 1614.402, "Time for Appeals to the Commission," and 29 CFR 1614.504, "Compliance with Settlement Agreements and Final Decisions").

To avoid any undue delay in processing your claim of unlawful employment discrimination, you have a responsibility to cooperate with the EEO counselor by complying with the following:

- Making a request to your supervisor for use of official time in connection with your EEO matter and receiving approval before taking such time unless you have requested to remain anonymous.
- Providing an explanation if your initial contact with the counselor is beyond the required 45 calendar day period.
- Providing written notice of designation of a representative (name, address, telephone number), if applicable.
- Attending scheduled meetings and responding to requests for information in a timely manner to facilitate a resolution.
- Making a timely request if you wish to participate in ADR.

- Providing prompt responses to requests for information required to process your complaint,
- Keeping SBCR informed of the current address and telephone numbers for you and your representative.

During the pre-complaint process, you have the following rights:

- To remain anonymous, unless you waive your right to anonymity in writing.
- To representation of your choice at any stage of the process as long as the individual identified does not create a conflict of interest or the appearance of a conflict of interest.
- To a reasonable¹ amount of official time to present your complaint and to respond to the Agency's request for information (see 29 CFR 1614.605, "Representation and Official Time"). Please note that the actual number of hours to which you and your representative (if employed by the Agency) will be entitled will be determined in coordination with you and your representative, your management, and the Office of Small Business and Civil Rights, before the use of any such time.
- To request to participate in ADR (see the section on the Agency's ADR Program included herein).
- To bypass the administrative processing under the ADEA and pursue a civil action directly in an appropriate U.S. District Court after providing the EEOC a 30 calendar day notice of intent to file a civil action.
- To file a civil action in Federal District Court, whether or not an administrative action has been pursued, pursuant to the Equal Pay Act.

FORMAL DISCRIMINATION COMPLAINT PROCESSING

In addition to the rights and responsibilities outlined in the informal complaint process, you have the following rights during the formal complaint process:

- To request to participate in ADR at any time after you file a formal complaint but before making a request for a hearing conducted by an EEOC administrative judge (see the section on the Agency's ADR Program included herein).
- To amend your original formal complaint at any time before the conclusion of the

¹ EEOC's Management Directive (MD) 110 defines reasonable as "... whatever is appropriate under the particular circumstances of the complaint to allow a complete presentation of the relevant information associated with the complaint and to respond to the Agency's requests for information." Under MD 110, reasonable time "... is generally defined in terms of hours, not in terms of days, weeks, or months."

investigation to include issues or claims that are like or related to those raised in the complaint.

- To request a hearing before an EEOC administrative judge.
- To file a motion with the EEOC administrative judge to amend your complaint at the hearing stage.
- To request a final Agency decision based on the investigative record or after a hearing before an EEOC administrative judge.
- To appeal the Agency's final action in your complaint to the EEOC.

To ensure the timely processing of your formal complaint, you have a responsibility to:

- Meet the required timeframes at each stage of the formal process.
- Provide a written explanation to the Director, SBCR, if you fail to file your complaint within the required 15 calendar days.
- Cooperate with the investigation.

INDIVIDUAL COMPLAINTS—29 CFR 1614.106

If you elect to file an individual formal discrimination complaint, you must file the complaint within 15 calendar days of your receipt of the NRTF with the Director, SBCR, at the address indicated in the NRTF. Your written complaint must be signed by you or your attorney of record, if represented. Your complaint must contain sufficient information and be stated clearly so that the alleged discriminatory basis and actions or practices can be identified. Your complaint also must include a telephone number and address for you and your representative.

If you file a formal complaint, you will be provided a counselor's report, which will include a statement of the claim(s) and basis(es) raised with the EEO counselor, any pertinent documents reviewed during the inquiry, a summary of the interviews conducted by the EEO counselor, all information required to determine jurisdiction, and statements regarding attempts made to resolve the matter.

Amendments to Complaints

- You may amend your original formal complaint at any time before the conclusion of the investigation to include issues or claims that are **like or related** to those raised in the complaint. There is no requirement that you seek counseling on these claims.
- If SBCR determines that your new claim is not like or related to your pending claim, the new claim will be processed as a separate EEO complaint and you will be advised to seek EEO counseling on that matter. Your complaints may be consolidated for joint processing if SBCR determines that consolidation of the complaints will make better use of Agency and EEOC resources. You will be notified in writing if it is determined that

your complaints should be consolidated for joint processing (see 29 CFR 1614.606, "Joint Processing and Consolidation of Complaints").

- After requesting an EEOC administrative hearing, you may amend your complaint to include like or related claims by filing a motion with the administrative judge.

Acknowledgment of Receipt of Complaint or Amendment(s)

- Upon receipt of your complaint or request for amendment, SBCR will notify you in writing that your complaint or amendment was received, inform you of the Agency case number (e.g., NRC 12-01) assigned to your complaint, and the date on which the complaint or amendment was filed.
- You will be advised in writing of your rights and responsibilities in the process and the procedures and time limits imposed for exercising your rights.
- If your complaint or amendment is mailed, the date filed is the postmarked date. If hand delivered, the date filed is the date it is received in SBCR.

Commutation of Time

A document is deemed timely if received or postmarked before the expiration of the applicable filing period, or in the absence of a legible postmark, if it is received by mail within 5 calendar days of the expiration of the applicable filing period.

The first day counted will be the day after the event from which the time period begins to run and the last day of the period will be included, unless it falls on a Saturday, Sunday, or Federal holiday, in which case the period will be extended to include the next business day (see 29 CFR 1614.604, "Filing and Computation of Time").

Delivery of Official Correspondence

- The notice acknowledging receipt of your complaint, and all subsequent actions on your complaint will be mailed or delivered to you and timeframes for receipt of all official correspondence relating to your complaint will be computed from the time received by you.
- If you designate an attorney as your representative, the notice acknowledging receipt of your complaint and all subsequent actions on your complaint will be mailed or delivered to your attorney, with a copy to you. All official timeframes for receipt of all official correspondence relating to your complaint will be computed from the time of receipt by your attorney (see 29 CFR 1614.605, "Representation and Official Time").

Acceptance of Complaints for Investigation

- You will be notified in writing and provided an opportunity to submit a written statement regarding the claims and issues of your complaint accepted for investigation by the Agency.

- If you disagree with the claims and issues as defined by the Agency for investigation, efforts will be made to resolve the matter before forwarding the complaint for investigation.

DISMISSAL OF COMPLAINTS—29 CFR 1614.107

A. Dismissal of Entire Complaint

Before your request for a hearing, the Agency will dismiss a complaint if the following conditions apply:

- Failure to state a claim or stating the same claim that is pending before or has been decided by the Agency or the EEOC.
- Failure to comply with the 45 calendar day period for contacting an EEO counselor or the 15 calendar day period for filing a complaint, unless extended by the Agency.
- The matter has not been raised with an EEO counselor and is not like or related to a matter that has been raised with an EEO counselor.
- The matter is the basis of a pending civil action in a U.S. District Court in which you are a party, provided that at least 180 calendar days have passed since the complaint was filed, or that was the basis of a civil action decided by a U.S. District Court in which you were a party.
- The matter is being pursued through the NRC and NTEU negotiated grievance procedure or in an appeal to the MSPB.
- The matter is moot,² or alleges that a proposal to take a personnel action, or other preliminary steps to taking a personnel action, is discriminatory.
- You cannot be located, provided that reasonable efforts have been made to locate you and you failed to respond within 15 calendar days of your receipt of a notice of proposed dismissal sent to your last known address.
- The Agency has provided you with a written request to provide relevant information or otherwise to proceed with the processing of your complaint and you failed to respond to the request within 15 calendar days of your receipt of the request or your response fails to address the Agency's request. (The request must include a notice of proposed dismissal.)
- Alleged dissatisfaction with the processing of a previously filed complaint or in instances in which the Agency, strictly applying the criteria set forth in EEOC decisions, finds that your complaint is part of a clear pattern of misuse of the EEO process for a purpose other than the prevention of employment discrimination.

² In accordance with 29 CFR 1614.107(a)(5), a complaint may be dismissed as moot when there is no reasonable expectation that the alleged violation will recur, and interim relief or events have completely and irrevocably eradicated the effects of the alleged violation (*see Wildberger v. Small Business Administration*, EEOC Request No. 05960761 (October 8, 1998), citing *County of Los Angeles v. Davis*, 440 U.S. 625 (1979)).

B. Partial Dismissal of Complaints

Where the Agency believes that some, but not all of, the claims in your complaint should be dismissed for one of the reasons stated above, the Agency will notify you in writing of its determination, the rationale for that determination, and that those claims will not be investigated.

The Agency's determination is subject to review by an administrative judge appointed by the EEOC if you request a hearing on the accepted portion of your complaint. The Agency's determination regarding the dismissed claims is not appealable until final action has been taken on the accepted portion of the complaint.

INVESTIGATION OF COMPLAINTS—29 CFR 1614.108

The Agency may use various methods (i.e., in-person interviews, fact-finding conferences, requests for information, interrogatories, affidavits) to investigate your complaint and develop an impartial record, including assigning your complaint to an independent contract investigator. The evidence in the record must be sufficient for a reasonable fact finder to draw conclusions as to whether or not discrimination occurred. You will be provided a copy of the letter of authorization to investigate, which will identify the name of the investigator, the method the Agency will use to develop the factual record in your complaint, and the requirements for you, the Agency, and any witnesses during the conduct of investigation.

The Investigative Process

- The Agency is required to conduct an impartial and appropriate investigation of your complaint and provide you with a copy of the investigative file within 180 calendar days of the date your complaint was filed, unless you agree in writing to extend the time for a period of up to an additional 90 calendar days.
- Under certain circumstances, the Agency may unilaterally extend the period of investigation up to an additional 30 calendar days to sanitize a file. You will be notified of the extension.
- If your complaint is amended, the investigative file and required notice must be forwarded to you within 180 calendar days after the last amendment to the complaint or 360 calendar days after the filing of the original complaint.
- The required notice will advise you of your right to request a hearing (except in a mixed case) and decision from an administrative judge appointed by the EEOC or to request a final decision by the Agency based on the existing record, within 30 calendar days of your receipt of the investigative file and required notice. The notice also will provide you the procedures for requesting a hearing, including the location of the EEOC office where the request should be sent. A copy of the request for hearing form will be attached to the notice (see 29 CFR 1614.109, "Hearings," and 29 CFR 1614.110, "Final Action by Agencies").

- Within 30 calendar days of receipt of the required notice or any time after 180 calendar days from the date your complaint was filed, you may submit a written request for a hearing on your individual or consolidated complaints (except a mixed case complaint) directly to the EEOC office identified in the required notice and the Agency's acknowledgment of receipt of your complaint letter. (A [request for hearing form](#) may be accessed through the site index at SBCR's Web site.)
- You must provide the Director, SBCR, a copy of your request for a hearing and within 15 calendar days of receipt of your request for a hearing, SBCR will forward a copy of your complaint file, including the investigative file, to the EEOC and to you, if you had not been previously provided a copy.

HEARINGS—29 CFR 1614.109

A. Request for Hearing

If you request a hearing, the EEOC will appoint an administrative judge to conduct the hearing. Upon appointment, the administrative judge will assume full responsibility for adjudication of the complaint, including overseeing the development of the record. The administrative judge will provide you information about the hearing process and your rights and responsibilities during that process.

B. Dismissals by the Administrative Judge

The administrative judge may dismiss your complaint pursuant to 29 CFR 1614.107, "Dismissal of Complaints," on his or her own initiative, after notice to you and the Agency, or upon the Agency's motion to dismiss a complaint.

C. Offers of Resolution:

- If you are represented by an attorney, the NRC may make you an offer of resolution any time after the filing of your written complaint but not later than the date an administrative judge is appointed to conduct the hearing.
- Whether or not you are represented by an attorney, the NRC may make you an offer of full relief any time after you and the NRC have received notice that an administrative judge has been appointed to conduct the hearing, but not later than 30 calendar days before the hearing.
- The offer of resolution shall be in writing and include a notice explaining the possible consequences of failing to accept the offer within 30 calendar days from receipt of the Agency's offer of resolution.
- Except situations in which the interest of justice would not be served, you shall not receive payment from the Agency for attorney's fees or costs incurred if, within 30 calendar days following your receipt of the Agency's offer of resolution, you fail to accept the offer of resolution and the relief awarded in the administrative judge's

decision, the NRC's final decision, or if the EEOC's decision on appeal is not more favorable than the relief stated in the offer of resolution.

- Your acceptance of the offer of resolution must be in writing and will be considered timely if postmarked or received by SBCR within 30 calendar days of your receipt of the Agency's offer of resolution.
- If you fail to accept an offer of resolution, you or the Agency may negotiate a settlement of the complaint at any time.

D. Decisions by the Administrative Judge

Within 180 calendar days of the administrative judge's receipt of the complaint file from the Agency, the administrative judge will issue a decision on the complaint and order appropriate remedies and relief when discrimination is found, unless the administrative judge makes a written determination that there is cause for extending the time for issuing a decision.

The administrative judge will forward a copy of the hearing record, including the transcript and the decision to you (and your representative, if applicable) and the NRC. The decision of the administrative judge will become final, unless the Agency issues a final order within 40 calendar days of receipt of the hearing file and the administrative judge's decision, stating that it will not fully implement the judge's decision.

FINAL ACTION BY AGENCIES—29 CFR 1614.110

A. Final Action by Agency Following a Decision by an Administrative Judge

- If you request a hearing, the Agency will take final action on your complaint by issuing a final order within 40 calendar days of receipt of the hearing file and the administrative judge's decision.
- The final order will notify you whether or not the Agency will fully implement the administrative judge's decision.
- The final order also will notify you of your right to appeal the final order to the EEOC, the right to file a civil action in Federal District Court, the name of the Chairman of the Agency as the proper defendant in any such lawsuit, and the applicable time limits imposed for filing an appeal and lawsuit. A copy of EEOC Form 573 Notice of Appeal/Petition will be attached to the Agency's final order (see 29 CFR 1614.403, "How to Appeal").
- If the Agency's final order does not fully implement the administrative judge's decision, the Agency must file an appeal at the same time the final order is issued.

B. Final Action by Agency in all Other Circumstances

- If your entire complaint is dismissed, the Agency will take final action by issuing you a final decision.
- If you request an immediate final decision in your complaint, the Agency will issue a final decision within 60 calendar days of SBCR's receipt of your request, if your request is received in SBCR within 30 calendar days of your receipt of the investigative file and required notice.
- If your request for a hearing or an immediate final Agency decision is not received in SBCR within 30 calendar days, you will be issued a final Agency decision within 60 calendar days of the end of the 30 calendar day period.
- The final decision will consist of findings by the Agency on the merits of each accepted 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, "Remedies and Enforcement," 29 CFR 1614.501, "Remedies and Relief."
- The final decision will notify you of your right to appeal the final decision to the EEOC, the right to file a civil action in Federal District Court, the name of the Chairman of the Agency as the proper defendant in any such lawsuit, and the applicable time limits imposed for filing an appeal and lawsuit. A copy of EEOC Form 573 Notice of Appeal/Petition will be attached to the Agency's final decision. (EEOC Form 573 Notice of Appeal/Petition may be accessed through the Subject Index at SBCR's Web site.)

APPEALS, REQUESTS FOR RECONSIDERATION AND CIVIL ACTIONS 29 CFR 1614.401–29 CFR 1614.409

A. Right to File an Appeal

You have a right to appeal the Agency's final action or dismissal in your complaint (except a mixed case complaint) to the EEOC. Partial dismissals are not appealable until the final action has been taken on the accepted portion of your complaint. You may file an appeal with the Equal Employment Opportunity Commission within 30 calendar days of receipt of a dismissal or final action on the merits, at the below address:

Equal Employment Opportunity Commission
Office of Federal Operations
P.O. Box 77960
Washington, DC 20013

As an alternative to mailing, an appeal may be hand-delivered to:

Equal Employment Opportunity Commission
Office of Federal Operations
One NOMA Station
131 M Street, NE
Suite 5SW12G
Washington, DC 20507

Appeals also may be forwarded by fax (if less than 10 pages) to: 202-663-7022.

If you do not file an appeal with EEOC within the 30 calendar day period, your appeal may be dismissed by EEOC as untimely. If you file an appeal after the 30 calendar day period, you should provide EEOC an explanation as to why your appeal should be accepted despite its untimeliness. You should use EEOC Form 573, Notice of Appeal/Petition, to file your appeal. You must provide the Agency a copy of your appeal at the same time it is forwarded to EEOC. Additionally, any brief or statement in support of your appeal must be filed with EEOC's Office of Federal Operations (OFO) within 30 calendar days of filing your Notice of Appeal, with a copy to the Agency.

B. Appeals by the Agency

If the Agency determines it will not fully implement an administrative judge's decision on the merits of your complaint, the Agency must file an appeal at the same time the final order is issued, and provide you a copy of the final order and the appeal. You must submit your statement in opposition to the Agency's appeal to the OFO, with a copy to the Agency, within 30 calendar days of your receipt of the Agency's statement or brief in support of its appeal.

C. Appeals in Noncompliance of Settlement Agreements

If you believe that the Agency failed to comply with the terms of a written agreement and you have notified the Director, SBCR, in writing, regarding the alleged noncompliance, you may file an appeal with the EEOC 35 calendar days after service of the allegation of noncompliance with the Director, SBCR, but no later than 30 calendar days after receipt of the Agency's determination with respect to the alleged noncompliance.

D. Requests for Reconsideration

EEOC's decision on appeal from the Agency's final action is final unless you or the Agency requests the EEOC to reconsider the case. The request must be made within 30 calendar days of receipt of a decision by EEOC on appeal. EEOC, in its discretion, may grant the request if you or the Agency demonstrates that: (1) the appellate decision involved a clearly erroneous interpretation of material fact or law, or (2) the decision will have a substantial impact on the policies, practices, or operations of the Agency.

E. Right to File a Civil Action

You have a right to file a civil action in Federal District Court on claims raised in the administrative discrimination complaint process under Title VII, ADEA, EPA, the Rehabilitation Act, and GINA:

- Within 90 calendar days of receipt of a final action on an individual or class complaint if no appeal has been filed.
- After 180 calendar days from the filing date an individual or class complaint if an appeal has not been filed and a final action has not been taken.
- Within 90 calendar days of receipt of EEOC's final decision on appeal, or after 180 calendar days from the date of filing an appeal with EEOC if there has been no final EEOC decision.

PROCEDURES FOR RELATED PROCESSES

Age Discrimination in Employment Act (ADEA)—29 CFR 1614.201

- As an alternative to pursuing your claim of age discrimination through the Agency's discrimination complaint process, you have a right to file a civil action directly in U.S. District Court in accordance with the Age Discrimination in Employment Act (ADEA). If you elect to pursue your claim directly in a U.S. District Court instead of filing a formal complaint through the Agency's discrimination complaint process, you must give EEOC not less than 30 calendar days notice of your intent to file a civil action.
- The notice must be in writing and filed with EEOC, by mail, hand-delivery, or facsimile, within 180 calendar days of the date of the alleged discrimination.

Equal Pay Act—29 CFR 1614.202 and Civil Action: Equal Pay Act—29 CFR 1614.408

- As an alternative to pursuing your equal pay claim through the Agency's discrimination complaint process, you may file a civil action directly in a U.S. District Court.
- You may pursue a claim of gender-based discrimination under both Title VII and EPA simultaneously within 2 years of the alleged violation (3 years if the violation is willful).
- If you elect to file a civil action, you are **not required** to first provide notice to the EEOC or exhaust your rights under the Agency's administrative discrimination complaint process. The filing of a complaint through the Agency's discrimination complaint process does not toll the time for filing a civil action.

Relationship to Negotiated Grievance Procedure—29 CFR 1614.301

- If you are a bargaining unit employee, as an alternative to pursuing your claim of discrimination through the Agency's discrimination complaint process, you may pursue

your claim of discrimination as a formal grievance through the NRC and NTEU negotiated grievance procedure.

- Before filing a formal grievance, you must raise the matter with an EEO counselor within 45 calendar days of the date the alleged discrimination occurred.
- If the matter is not resolved during EEO counseling, you have a right to elect to file either a formal complaint through the Agency's discrimination complaint process or a formal grievance through the NRC and NTEU negotiated grievance procedure, but not both.
- An election is made by the filing of a written formal complaint or a timely written formal grievance. Use of the pre-complaint EEO counseling process or the informal stage of the NRC and NTEU negotiated grievance procedure does not constitute an election.
- If you file a formal complaint, you may not thereafter file a formal grievance on the same matter.
- If you file a formal grievance, you may not thereafter file a formal EEO complaint on the same matter, irrespective of whether the Agency has informed you of the need to elect a process or whether an allegation of discrimination was raised in the grievance.
- Any such EEO complaint filed after a grievance has been filed on that same matter will be dismissed, and you will be advised of your obligation to raise discrimination in the grievance process and of your right to appeal the final grievance decision to the EEOC.

Mixed Case Complaints—29 CFR 1614.302

- A mixed case complaint is a complaint of employment discrimination based on race, color, gender, religion, national origin, age, physical or mental disability, or genetic information or reprisal, or related to or stemming from a personnel action that is appealable to the MSPB (i.e., termination for cause and suspension of more than 14 calendar days). As an alternative to filing a mixed case complaint through the Agency's discrimination complaint process, you may file a mixed case appeal through the MSPB.
- A mixed case appeal is an appeal filed with the MSPB that alleges that an appealable action taken by the Agency was affected, in whole or in part, by discrimination based on the prohibited bases identified above.

Election to File a Mixed Case Complaint or a Mixed Case Appeal

- If you are subject to an action that is appealable to the MSPB, and you have either orally or in writing raised the issue of discrimination in connection with that action, the Agency will advise you of your right, if you are eligible, to elect to file either a mixed case complaint through the Agency's discrimination complaint process or a mixed case appeal through MSPB, but not both.

- An election is made by formally filing either a mixed case complaint or a mixed case appeal. Whichever you file first constitutes an election to pursue your claim under that forum.
- To be eligible to file an MSPB appeal, you must have standing and the personnel action that forms the basis of the discrimination complaint must be appealable to MSPB (i.e., removal for cause; suspension of more than 14 calendar days). The Office of the Chief Human Capital Officer will advise you on whether you have standing to file such an appeal and whether the identified personnel action(s) is appealable to the MSPB.

Procedures for Processing Mixed Case Complaints—29 CFR 1614.302 through 29 CFR 1614.310

- If you file a mixed case complaint, your complaint must be filed within 15 calendar days of your receipt of the notice of right to file a formal discrimination complaint.
- You will be notified in writing when your complaint has been received and provided the Agency case number (e.g., NRC 00-01) assigned to your complaint, the date your complaint was filed, your rights and responsibilities in the complaint process, and the procedures and applicable time limits imposed for exercising those rights.
- If your complaint is accepted for investigation, you will be notified in writing and provided the name of the investigator.
- Upon completion of the investigation, you will be provided a copy of the investigative file and notified that a final decision will be issued within 45 calendar days without a hearing. You are not entitled to an EEOC hearing.
- A resolution or a final decision, including applicable appeal rights, must be issued to you within 120 calendar days of the date you filed your complaint.
- If you are dissatisfied with the resolution or final decision, you may file an appeal with MSPB within 30 calendar days of receipt of the resolution or final decision (see 5 CFR 1201.154(b)(1)).
- If the Agency has not resolved the matter or issued a final decision within 120 calendar days, you may appeal the matter directly to MSPB at any time after the expiration of 120 calendar days (see 5 CFR 1201.154(b)(2)).

Dismissals

If your mixed case complaint is dismissed, you will be notified in writing regarding the reason for the dismissal and provided your appeal rights and the procedures and time limits for exercising those rights.

Filing a Civil Action

You may file a civil action in a U.S. District Court within 30 calendar days of your receipt of any

of the following:

- a final agency decision if no MSPB appeal is filed
- a final MSPB decision if you do not petition the EEOC for consideration
- an EEOC decision that fails to adopt the MSPB decision
- an EEOC decision to concur with the MSPB decision
- a MSPB decision that concurs with and adopts, in whole, the EEOC decision, if the EEOC decision is different from the MSPB decision

You may also file a civil action after 120 calendar days from the filing of your formal complaint if there is no final action by the Agency or appeal to MSPB or, after filing an appeal with MSPB, if the MSPB has not issued a decision.

Additionally, you may file a civil action if your appeal has been pending before MSPB for 180 calendar days or, after 180 calendar days from the filing of a petition for consideration with EEOC, if there has been no EEOC decision, reconsideration by MSPB, or decision by the Special Panel, where applicable.

REHABILITATION ACT—29 CFR 1614.203

The Agency is required to provide reasonable accommodation to qualified individuals with a disability, in accordance with the Rehabilitation Act. The Act defines a qualified disabled individual with respect to employment as one who “. . . with or without reasonable accommodation, can perform the essential functions of the position in question without endangering the health and safety of the individual or others and who, depending upon the type of appointing authority being used: (i) meets the experience or education requirements (which may include passing a written test) of the position in question; or (ii) meets the criteria for appointment under one of the special appointing authorities for individuals with [disabilities].” This section of EEOC regulations also defines reasonable accommodation and provides types of accommodations agencies may consider. **If you need a reasonable accommodation, you should contact your supervisor or your Office of the Chief Human Capital Officer (OCHCO) representative.**

CLASS COMPLAINTS—29 CFR 1614.204

A class is defined as a group of employees, former employees, or applicants for employment who believe that they have been or are being adversely affected by an NRC policy or practice that discriminates against the members of the group on the basis of their common race, color, religion, gender, national origin, age, disability, genetic information, or being reprisal against for prior EEO or whistleblower activity. A class complaint is a written complaint of discrimination filed on behalf of a class by the agent of the class.

Pre-Complaint Processing

This is the first stage in filing a class complaint. A class allegation must be brought to the attention of an EEO counselor by a class agent or representative within 45 calendar days of the date that the specific policy or practice adversely affected the class agent or, if a personnel action, within 45 calendar days after the effective date of the action.

- The class may move for certification at any reasonable point in the discrimination complaint process when it becomes apparent that there are class implications to the claim. Note: Unduly delays in moving for class certification may result in the administrative judge denying class certification.

Filing and Presentation of a Class Complaint

- A class complaint must be signed by the agent or representative and must identify the policy, practice, or action adversely affecting the class.
- The complaint must be filed with the Director, SBCR, within 15 calendar days of the agent's receipt of the notice of right to file a class complaint.

Acceptance/Dismissal of a Class Complaint

Within 30 calendar days of receipt of your complaint, SBCR will forward your complaint, along with the counselor's report and any relevant information, to the appropriate EEOC district office for assignment of an administrative judge to decide to accept or dismiss all or a portion of the class complaint.

The Agency will take final action by issuing a final decision within 40 calendar days of receipt of the administrative judge's decision and record.

The Agency's final order will notify the class agent of whether the administrative judge's decision will be implemented.

If the administrative judge's decision is not implemented, the Agency will file an appeal and append a copy to the final order (see 29 CFR 1614.403).

If the class complaint is dismissed, the dismissal decision will inform the agent either that the complaint is being filed on that date as an individual complaint or that the individual complaint is being dismissed in accordance with the regulations. The dismissal decision also will advise the class agent of appropriate appeal rights and the procedures and time limits for exercising those rights (see 29 CFR 1614.204, "Class Complaints").

ALTERNATIVE DISPUTE RESOLUTION PROGRAM

The Alternative Dispute Resolution Program (ADR) is administered by SBCR through an ADR coordinator and is available to all NRC employees and applicants for employment (hereinafter referred to as employees). The Associate Director, Civil Rights and Diversity Directorate,

SBCR, serves as the ADR coordinator. The ADR process does not replace already existing EEO discrimination complaint procedures, but supplements them in an effort to resolve claims of employment discrimination. The Agency uses mediation as the primary form of ADR. Employees may request mediation at the pre-complaint or formal complaint stage (after filing a formal complaint but before a request for an EEOC administrative hearing).

The ADR Coordinator or Agency Official

The ADR coordinator coordinates all matters associated with the mediation process, including obtaining a mediator and identifying an Agency official who has authority to provide technical assistance during the mediation process and to sign an agreement if the matter is resolved. The Agency official is assigned on a case-by-case basis and will not be assigned a case within his or her chain of supervision or a case that could create a conflict or the appearance of a conflict of interest. Consistent with the confidentiality of the ADR Program, the Agency official may consult with any Agency office, including SBCR, OCHCO, and the Office of the General Counsel (OGC), to the extent necessary to resolve the claim. The Agency official and ADR coordinator may not impose a decision or resolution on any party.

Mediation

Mediation involves the use of a neutral third party to facilitate the resolution of a dispute (claim of employment discrimination) between parties. Mediation is a confidential, informal, nonadjudicative, and nonadversarial process with the objective of helping the parties reach a mutually acceptable resolution. The parties have the right to be represented during the mediation process by an attorney or non-attorney of his or her choice unless it creates a conflict or the appearance of a conflict of interest. Mediation will not occur unless all parties voluntarily agree that it will be appropriate and useful in reaching a resolution. Individuals do not waive statutory rights of the complaint process by participating in mediation; however, in accordance with EEOC regulations at 29 CFR Part 1614, the time requirements related to the administrative processing of an EEO complaint may be either held in abeyance or extended for a specified period, pending the mediation outcome.

The mediator will assist the parties in identifying issues, fostering joint problem solving, and exploring settlement opportunities. The mediator does not provide counseling or legal advice to parties. If, however, the mediator believes that either party does not understand how an agreement (or failure to agree) may affect legal rights or obligations, the mediator should bring this issue to the attention of the parties involved. Additionally, the mediator will not impose a decision or resolution on any party.

PRE-COMPLAINT STAGE

The EEO counselor remains the first point of contact for you to initiate a claim of employment discrimination. You must seek counseling within 45 calendar days of the alleged discriminatory decision or action. During the initial interview, the counselor will obtain relevant personnel and complaint information, including a statement of the issue(s), basis(es), and requested relief.

The counselor will provide you a copy of the Agency's discrimination complaint process pamphlet and provide you with a written notice of rights and responsibilities. The EEO

counselor will advise you of the right to request to pursue your claim(s) through traditional EEO counseling or through ADR. If you elect to participate in ADR, you must complete a request to participate in alternative dispute resolution form.

Making an Election

- If you elect to pursue a resolution through EEO counseling, the counselor will have 30 calendar days from the date counseling begins, to conduct the inquiry.
- You may agree, in writing, to extend EEO counseling by an additional 60 calendar days.
- If the matter is resolved by the counselor within 30 calendar days or the agreed upon period of extension, an agreement, stating the terms and conditions, will be signed by the appropriate parties.
- If the matter is not resolved by the 30th calendar day or within the agreed upon period of extension, the EEO counselor will conduct the final interview and provide you a written NRTF, or if applicable, a formal grievance through the NRC and NTEU negotiated grievance procedure, or a mixed case appeal through the MSPB.
- The NRTF advises you of applicable procedures and time limits to exercise that right.
- If you elect to pursue a resolution through ADR, you must complete the request to participate in ADR form and timely submit it to the EEO counselor.
- If you and the other party to the dispute agree to participate in ADR, the EEO counselor will have both of you sign an agreement to participate in ADR form.
- The agreement to participate in ADR explains the mediation process, including the rights and responsibilities of all participants.
- If you initially elect to pursue a resolution through traditional EEO counseling, you may later decide to pursue a resolution through ADR.
- The combined period for EEO counseling and ADR must not exceed 90 calendar days from the date you sought EEO counseling.
- ADR will not occur unless all parties to the dispute voluntarily agree to participate in ADR; upon agreement, all parties will sign a written agreement indicating voluntary participation.

Resolution During ADR

If a mutually acceptable resolution is reached, the ADR coordinator will prepare an agreement to be signed by the appropriate parties.

The agreement contains explicit instructions on actions to take if a party believes the Agency has failed to comply with the terms of the agreement. The Director, SBCR, will take appropriate action to resolve the alleged noncompliance.

No Resolution during ADR

If the matter is not resolved during ADR, the mediator will notify the ADR coordinator that a resolution was not reached. The ADR coordinator will refer you back to the EEO counselor for the final interview and issuance of the NRTF.

If a formal complaint is filed, the EEO counselor will prepare and issue you a counselor's report. All discussions and resolution activity occurring during the ADR are confidential and will not be included in the report.

FORMAL DISCRIMINATION COMPLAINT STAGE

- If you wish to participate in ADR at the formal stage of the process, you must timely submit a request to participate in ADR form to the ADR coordinator.
- You also must agree to extend the period for processing the formal complaint, including the issuance of a final Agency decision, by 90 calendar days.
- ADR cannot occur unless all parties voluntarily agree that it is appropriate and useful in reaching a resolution. If the parties agree to participate in ADR, they will sign and abide by the rights and responsibilities governing the process.
- By electing to participate in ADR, you do not waive any statutory rights in the formal complaint process. Additionally, election of ADR does not suspend the timeframe for requesting an EEOC hearing or for filing suit in U.S. District Court.

Request for ADR before Determining Acceptance and Dismissal of Complaint

- If the parties voluntarily agree that it is appropriate and useful in reaching a resolution in the matter, the ADR coordinator will obtain a mediator and identify an Agency official.
- If the matter is resolved, the parties or the mediator in coordination with the parties, the ADR coordinator, and the Agency official will prepare an agreement to be signed by the appropriate parties.
- If the terms and conditions are not met, the ADR coordinator, the Agency official, and the Director, SBCR, will take appropriate action to resolve the problem.

In the formal complaint process, ADR may be requested at any time before the request for a hearing. When ADR is requested, the complaint is held in abeyance pending the outcome of ADR. If the matter is not resolved, the ADR process will be terminated and formal processing of the complaint will continue from the point processing ceased.