

action occurred, that despite due diligence he or she was prevented by circumstances beyond his or her control from contacting an EEO Counselor within the time limits, or for other reasons considered sufficient by the Board.

(b) At the initial counseling session, EEO Counselors must advise individuals in writing of their rights and responsibilities, including the right to request a hearing after the investigation by the Board, the right to file a notice of intent to sue pursuant to § 268.301(a) of this part and to file a lawsuit alleging a violation of the ADEA instead of an administrative complaint of age discrimination under this part, the duty to mitigate damages, administrative and court time frames, and that only the matter(s) raised in pre-complaint counseling (or issues like or related to issues raised in pre-complaint counseling) may be alleged in a subsequent complaint filed with the Board. EEO Counselors must advise individuals of their duty to keep the Board informed of their current address, to serve copies of requests for review by the Commission on the Board, and to keep the Commission informed of their current address in connection with any review of a Board action. The notice required by paragraphs (d) and (e) of this section shall include a notice of the right to file a class complaint. If the aggrieved person informs an EEO Counselor that he or she wishes to file a class complaint, the EEO Counselor shall explain the class complaint procedures and the responsibilities of the agent of the class.

(c) EEO Counselors shall conduct counseling activities in accordance with instructions promulgated by the EEO Programs Director, which shall be consistent with the counseling guidelines contained in the Commission's "EEO Management Directives For 29 CFR part 1614". When advised that a complaint has been filed by an aggrieved person, the EEO Counselor shall submit a written report within 15 calendar days to the EEO Programs Director and to the aggrieved person concerning the issues discussed and actions taken during counseling.

(d) Unless the aggrieved person agrees to a longer counseling period

under paragraph (e) of this section, the EEO Counselor shall conduct the final interview with the aggrieved person within 30 days of the date the aggrieved person brought the matter to the EEO Counselor's attention. If the matter has not been resolved, the aggrieved person shall be informed in writing by the EEO Counselor, not later than the 30th day after contacting the EEO Counselor, of the right to file a discrimination complaint with the Board. This notice shall inform the complainant of the right to file a discrimination complaint within 15 calendar days of receipt of the notice, of the appropriate official with whom to file a complaint and of the complainant's duty to assure that the EEO Programs Director is informed immediately if the complainant retains counsel or a representative.

(e) Prior to the end of the 30-day period, the aggrieved person may agree in writing with the Board to postpone the final interview and extend the counseling period for an additional period of no more than 60 days. If the matter has not been resolved before the conclusion of the agreed extension, the notice described in paragraph (d) of this section shall be issued.

(f) In the event the aggrieved person believes that he/she has been discriminated against and agrees to participate in an established Board alternative dispute resolution procedure, the pre-complaint processing period of this section will be 90 days. If the matter has not been resolved before the 90th day, the notice described in paragraph (d) of this section shall then be issued.

(g) The EEO Counselor shall not attempt in any way to restrain the aggrieved person from filing a complaint. The EEO Counselor shall not reveal the identity of an aggrieved person who consulted the EEO Counselor, except when authorized to do so by the aggrieved person, or until the Board has received a discrimination complaint under this part from that person involving the same matter.

#### **§ 268.205 Individual complaints.**

(a) A complaint alleging that the Board discriminated against the complainant must be filed with the Board.

(b) A complaint must be filed within 15 calendar days of receipt of the notice required by §§ 268.204 (d), (e) or (f) of this part.

(c) A complaint must contain a signed statement from the person claiming to be aggrieved or that person's attorney. This statement must be sufficiently precise to identify the aggrieved person and to describe generally the action(s) or practice(s) that form the basis of the complaint. The complaint must also contain a telephone number and address where the complainant or the complainant's representative can be contacted.

(d) The EEO Programs Director shall acknowledge receipt of a complaint in writing and inform the complainant of the date on which the complaint was filed. Such acknowledgement shall also advise the complainant that:

(1) The complainant has the right to file a request for review with the Commission with regard to the Board's final decision or dismissal of all or a portion of a complaint; and

(2) The Board is required to conduct a complete and fair investigation of the complaint within 180 days of the filing of the complaint unless the parties agree in writing to extend the period.

**§ 268.206 Dismissals of complaints.**

(a) The Board shall dismiss a complaint or a portion of a complaint:

(1) That fails to state a claim under §§ 268.203 and 268.205(c) of this part, or states the same claim that is pending before or has been decided by the Board or the Commission;

(2) That fails to comply with the applicable time limits contained in §§ 268.204, 268.205(b) and 268.305(b) of this part, unless the Board extends the time limits in accordance with § 268.604(c) of this part, or that raises a matter that has not been brought to the attention of an EEO Counselor and is not like or related to a matter that has been brought to the attention of an EEO Counselor;

(3) That is the basis of a pending civil action in a United States District Court in which the complainant is a party, provided that at least 180 days have passed since the filing of the administrative complaint, or that was

the basis of a civil action decided by a United States District Court in which the complainant was a party;

(4) That is moot or alleges that a proposal to take a personnel action, or other preliminary step to taking a personnel action, is discriminatory;

(5) Where the complainant cannot be located, provided that reasonable efforts have been made to locate the complainant and the complainant has not responded within 15 calendar days to a notice of proposed dismissal sent to his or her last known address;

(6) Where the Board has provided the complainant with a written request to provide relevant information or otherwise proceed with the complaint, and the complainant has failed to respond to the request within 15 calendar days of its receipt or the complainant's response does not address the Board's request, provided that the request included a notice of the proposed dismissal. Instead of dismissing for failure to cooperate, the complaint may be adjudicated if sufficient information for that purpose is available; or

(7) If, prior to the issuance of the notice required by § 268.207(f) of this part, the complainant refuses within 30 days of receipt of an offer of settlement to accept the Board's offer of full relief containing a certification from the Board's Staff Director for Management, the General Counsel or a designee reporting directly to the Staff Director for Management or General Counsel (after consulting with the EEO Programs Director) that the offer constitutes full relief, provided that the offer gave notice that failure to accept would result in dismissal of the complaint. An offer of full relief under this paragraph (a)(7) is the appropriate relief in § 268.501 of this part.

(b) The Board shall inform the complainant of the right to file a request for review with the Commission with regard to the dismissal of the individual complaint pursuant to § 268.401 of this part, or to file a civil action. A copy of EEOC Form 573, notice of Appeal/Petition, shall be attached to the Board's decision to dismiss an individual complaint under this section.