

along with an analysis in support of the recommendation.

(4) A copy of the EEO counselor's report.

§ 588.11 Complaints involving the U.S. Army Civilian Personnel Center (CIVPERCEN).

(a) The Chief, CIVPERCEN will render the proposed disposition if a complaint challenges all of the following:

(1) The rating, ranking, and referral process at the Army-wide referral level.

(2) Actions taken by DA Career Program administrators and/or Career Program screening panels.

(3) The complainant was not included on the referral list.

(b) The Activity Commander responsible for the nonselection will render the proposed disposition if a complaint challenges all of the following:

(1) The rating, ranking, and referral process at the Army-wide referral level.

(2) Actions taken by DA Career Program administrators and or Career Program screening panels.

(3) The complainant was included on the referral list but not selected.

(c) Pertinent information will be provided by CIVPERCEN or other DA level referral offices, as appropriate, to include in the Activity Commander's proposed disposition.

Subpart B—Individual Complaints of Discrimination

§ 588.12 Who may file a complaint?

Any employee, former employee, or applicant for employment covered by this regulation, who believes he or she has been discriminated against because of race, color, religion, sex, national origin, physical or mental handicap, age, and/or reprisal in an employment matter subject to the control of the Army, may file an individual complaint of discrimination. The complaint may also be filed for the complainant, by a representative designated in writing by the complainant. (The summarized, step-by-step complaint procedure at appendix A and the flow chart at appendix C may be repro-

duced locally and given to the complainant.)

§ 588.13 Precomplaint processing.

(a) Before a formal complaint can be filed, the complainant must first present the matter to an EEO counselor for inquiry within 30 calendar days from the date of the alleged discriminatory event, the effective date of a personnel action, or the date that the aggrieved person became aware or reasonably should have become aware, of the discriminatory event or personnel action. Matters raised after the 30-day time limit will be counseled by the EEO counselor even though a formal complaint may later be rejected for untimeliness.

(b) At the initial interview, the EEO counselor will inform the aggrieved person of the following matters:

(1) The aggrieved person may be accompanied, represented, and advised at all counseling interviews by a representative designated in writing in accord with § 588.71.

(2) The aggrieved person will waive the right to file a formal complaint under this regulation and its procedures if he or she files or has already filed a grievance on the same allegations of discrimination under a negotiated grievance procedure or an appeal with the MSPB. The counselor will give the aggrieved person a handout similar to that contained in appendix D which informs the individual of the other procedures available for filing allegations of discrimination. If the aggrieved person has already filed an appeal with the MSPB or a written grievance under a negotiated procedure on the same issue, the EEO officer will reject a formal complaint under this regulation.

(3) The counselor will not reveal the aggrieved person's identity to anyone unless the aggrieved person gives written permission or a formal complaint is accepted.

(4) The counselor will define and record the dates and facts of the specific incidents or personnel actions that are the basis of the discrimination complaint. The aggrieved person must cooperate with the counselor in clearly defining issues for investigation.

(5) If the aggrieved person believes that a particular person discriminated against him or he, then that individual may be identified as the alleged discriminating official (ADO).

(6) If an EEO counselor has filed a discrimination complaint individually or as a class agent then, at the discretion of the activity EEO officer, he or she may be precluded from counseling any other person concerning a complaint until that counselor's complaint is resolved by a final Army decision and all appeals have been exhausted. An activity EEO officer may preclude an EEO counselor from counseling based on actual or perceived conflict of interest.

(c) The EEO counselor's duties during inquiry are as follows:

(1) The counselor will inquire into the specific incidents and actions identified by the aggrieved person at the initial interview. The counselor should interview persons who can give direct information on the allegations. If the aggrieved person has named an ADO or an ADO is otherwise identified, the counselor must interview that person unless the counselor has information that clears the ADO from any alleged discrimination to the satisfaction of the aggrieved person. Before any interview with an ADO, the counselor must advise that individual of his or her rights and the nature of the accusations in accord with § 588.61.

(2) The counselor's inquiry should be designed to obtain only that information necessary to reach an informal resolution of the aggrieved person's allegations. Usually such inquiries are to be completed within a matter of days. The inquiry should not be as extensive as an investigation under § 588.19. The counselor should function as a mediator between the aggrieved person and management and should seek a reasonable informal resolution.

(3) The counselor should prepare a written report of all actions taken during the inquiry and of the advice, if any, given to the aggrieved person and the activity.

(d) The EEO counselor's duties at the final interview are as follows:

(1) The counselor should conduct the final interview with the aggrieved person within 21 days after the matter was

first called to the counselor's attention, absent extraordinary circumstances that must be documented by the counselor. At that time, the counselor will tell the aggrieved person of the results of the inquiry and discuss proposed solutions. Upon completion of the final interview, the counselor will—

(i) Inform the aggrieved person, in writing, of the right to file a formal complaint within the next 15 calendar days. This formal notice should be given to the aggrieved person by the use of the sample letter in appendix E. The counselor must not try to influence the aggrieved person on whether or not to file a formal complaint and must emphasize that the decision to file rests solely with the aggrieved person.

(ii) Stress that a formal complaint must give specific information on the alleged acts of discrimination and must be limited to the issues discussed with the counselor in the precomplaint procedure. A formal complaint that is not specific or does not define the issues will be returned for clarification and canceled if not properly defined.

(iii) Inform the aggrieved person that he or she must inform the EEO officer immediately in writing if legal counsel or any other representative is retained for a formal complaint. (See § 588.71)

(2) If the final interview is not held within 21 calendar days of initial contact with the EEO counselor and if the matter has not previously been resolved to the satisfaction of the aggrieved person, the counselor will inform the aggrieved person in writing, in the 21st day, of the right to file a formal complaint of discrimination. (See appendix F.) The counselor must not try to influence the aggrieved person on whether or not to file a formal complaint and must emphasize that the decision to file rests solely with the aggrieved person.

(3) Upon completion of counseling, the counselor will prepare a written report of all actions taken during the inquiry, and of the advice, if any, given to the aggrieved person and to management. The counselor will provide this report to the EEO officer along with a copy of the written Notice of Final Interview. The EEO counselor will also

complete DA Form 5492-R (Precomplaint Counseling Data Sheet) and appropriate portions of DA Form 5493-R (Individual Complaint Data Sheet). The DA Form 5492-R will be prepared for each reportable contact at the time the Notice of Final Interview is issued. These documents will be submitted to the EEO officer along with his or her report. DA Form 5492-R and DA Form 5493-R will be reproduced locally on 8 1/2- by 11-inch paper.

(e) All Army personnel will fully cooperate with and support the EEO counselor in the performance of his or her duties under this regulation. The EEO counselor will be free from restraint, interference, harassment, coercion, discrimination, or reprisal in connection with the performance of his or her duties.

§ 588.14 Filing a formal complaint.

(a) A formal complaint must be filed within 15 calendar days after the date of receipt of the notice of final interview with the EEO counselor. The formal complaint must be filed in writing by the complainant. If vague or general allegations are contained in the complaint, the complainant will be given an opportunity to provide specific information that will clearly define the issues. If specific information is not provided, the vague or general allegations of the complaint will be canceled for failure to prosecute.

(b) Complaints should be submitted on DA Form 2590-R (Formal Complaint of Discrimination). Complaints submitted in letter form, while not preferred, will be accepted if they meet the other requirements of this regulation. However, in this situation, the EEO officer will complete a DA Form 2590-R and attach it to the letter. DA Form 2590-R will be reproduced locally on 8 1/2- by 11-inch paper. A copy of DA Form 2590-R is located at the back of this regulation.

(c) Persons to whom complaints may be submitted are as follows:

(1) A formal complaint may be submitted to the Army official listed below:

- (i) Activity EEO officer.
- (ii) Activity Commander.
- (iii) Federal Woman's Program Manager.

(iv) Director of Equal Employment Opportunity.

(v) Secretary of the Army.

(2) All activity publication will request the complainant to submit a copy of his or her complaint to the activity EEO officer regardless with whom it is filed. Anyone other than the activity EEO officer who receives a complaint will immediately transmit the complaint to the activity EEO officer, indicating the date of receipt of the complaint if it is not postmarked. EEO counselors should encourage aggrieved persons to submit their complaints to the activity EEO officer to assure timely processing.

(3) A formal complaint is deemed filed on the date that it is postmarked or, if there is no postmark, on the date it is received by one of the officials listed in c(1) above. The activity EEO officer will acknowledge receipt of the formal complaint in writing. (See appendix G.)

(4) Upon receipt of the formal complaint, the EEO officer will indicate the MACOM against which the complaint is filed, code the matters giving rise to the complaint, ensure the DA Form 2590-R is completed, and immediately submit one copy of the completed DA Form 2590-R to EEOCCRA.

§ 588.15 Criteria for acceptance.

(a) A complaint will be accepted by the EEO officer (subject to final decision by the Secretary of the Army or his or her designee) unless the complaint contains one or more of the following:

(1) Refers to a situation over which the Army has no jurisdiction.

(2) Is not based on the complainant's race, color, religion, sex, age, national origin, physical or mental handicap, and/or reprisal. Complaints of discrimination because of age are accepted only if the complaint was at least 40 years of age when the action complained of occurred.

(3) Sets forth matters identical to those in a previous complaint filed by the same complainant and which has been, or is being, processed.

(4) Sets forth matters identical to those in a grievance filed in writing by the same complainant under a negotiated grievance procedure.