

(b) Administers oaths and obtains statements from witnesses under oath or affirmation. The investigator determines the witnesses whose testimony is necessary to the investigation and interviews and obtains affidavits from only these witnesses whose testimony is necessary to the investigation and interviews and obtains affidavits from only these witnesses. Affidavits are included in the investigative file only if the investigator deems the testimony relevant and necessary. The investigator documents for the record the reason any witness identified by the complainant or by management was not interviewed and the reason evidence that was offered was not accepted.

(c) Gives the ADO, if named or identified, full opportunity to review documents and respond to all allegations made against him or her in accord with § 588.62.

(d) Collects and analyzes information on how members of the complainant's group are treated compared to other employees in the organization where the discrimination is alleged to have occurred. This information may include, for instance, statistical data on promotions, disciplinary actions, awards, or other personnel actions.

(e) Investigates work policies and practices relevant to the accepted allegations of the complaint.

(f) Collects information needed to review the merit of mixed case issues that are included under § 588.46.

(g) Is independent of control by any of the parties to the complaint, but is entitled to the full cooperation of all parties and their representatives.

(h) Sends the ROI to the EEO officer, with a copy of the report without attachments to the EEO officer at the next higher level of command within 45 days after assignment of the case. This 45-day time limit is purely administrative in nature. Failure to process a USACARA investigation within this time frame will not prevent the administrative processing of any complaint of discrimination. Included in the file are the investigator's findings and recommendations and other relevant documents as described in § 588.76.

§ 588.20 Informal adjustment and offer of hearing.

(a) The EEO officer will thoroughly review the ROI to ensure that the ADO was given an opportunity to respond to each allegation as described in § 588.62(c) and that the investigation is comprehensive and adequately addresses all issues accepted in the complaint. The EEO officer may return an ROI to USACARA for further investigation if the ROI is inadequate. The EEO officer will specify the additional issues to be investigated or evidence to be gathered.

(b) Within 5 calendar days after receipt of the USACARA ROI, the EEO officer will send a complete copy of the USACARA ROI to the complainant and his or her representative, if any, with an offer to meet and discuss an informal adjustment of the complaint. The ROI may be sent by certified mail, return receipt requested, or be personally delivered by an Army official. If the ROI is personally delivered, the complainant and the representative will acknowledge receipt in writing. If the complainant or the representative declines to sign a receipt, the server will sign and indicate to whom and when the ROI was served. The receipt will be filed in the complaint file.

(c) If the complainant agrees, an adjustment meeting should be held within 10 calendar days after receipt of the USACARA ROI by the EEO officer. The Activity Commander, or a designee, should consult with the EEO officer, the labor counselor, and the CPO, on the proposed terms of the adjustment. The adjustment meeting should be accomplished by the least costly method while protecting the rights of the complainant. Adjustment meetings may be conducted by conference call or correspondence if the concerned parties are not readily available. The commander or a designee may also consult the ADO on the subject. Offers of settlement and the details of negotiations about settlement offers will not be included in the complaint file.

(d) If a tentative settlement is reached, its proposed terms are coordinated by the EEO officer with the labor counselor and the CPO as appropriate before it is finalized. It is then signed by the complainant and the Activity

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Commander, or a designee, and made part of the complaint file. A copy of the terms of the settlement will be given to the complainant, his or her representative, and the ADO. (See appendix H.)

(e) An informal adjustment may include an award of attorney fees and/or costs if there was a finding or admission of discrimination. (See § 588.55 for special procedures on no-fault settlements without a finding or admission of discrimination.) If the parties agree on an adjustment of the complaint, but cannot agree on the issue of attorney fees and/or costs, that issue will be handled separately. The issue of attorney fees and costs will then be the subject of the final decision by the Secretary of the Army or his or her designee. (See § 588.51 for guidance.)

(f) If the complainant does not agree to meet, or if an adjustment is not reached, the Activity Commander will give the complainant a Notice of Proposed Disposition of Discrimination Complaint with a copy furnished to the ADO. (See appendix I.) The notice, which must first be reviewed by the labor counselor for legal sufficiency, will—

(1) Indicate the date a meeting was held to attempt adjustment or that the complainant refused to meet.

(2) Notify the complainant of his or her right to a final Army decision with or without a hearing, and of the 15-calendar-day time limit to make the request. Decisions regarding attorney fees and/or costs will be made in accord with §§ 588.54 and 588.55.

(3) Contain an analysis of the case and the rationale for the proposed disposition.

(4) Be issued within 20 calendar days of receipt by the EEO officer of the USACARA ROI.

(g) If the complainant does not respond within 15 calendar days from receipt of the Notice of Proposed Disposition, the Activity Commander will adopt the proposed disposition as the final Army decision and notify the complainant accordingly, advising him or her of the right to appeal to the Office of Review and Appeals, Equal Employment Opportunity Commission, and the right to file a civil action (app B). Although complaint adjustments

are specifically provided for in this paragraph, the activity should continue to be alert to the possibility of adjustments at any stage of the complaint process.

§ 588.21 MACOM review of proposed dispositions.

When a USACARA investigator recommends a finding of discrimination and the Activity Commander rejects that recommendation in favor of a proposed disposition finding no discrimination, that proposed disposition (along with the complaint file) will be forwarded to the Activity Commander's MACOM commander for review. The MACOM review will be performed within 30 calendar days after the issuance of the proposed disposition. The MACOM commander's review of the proposed disposition will be made a part of the complaint file. The MACOM review will be performed concurrent with the processing of a complaint for a hearing in accord with § 588.24 or as part of the processing of a complaint for an Army decision without a hearing in accord with § 588.16.

§ 588.22 Failure to carry out the terms of the adjustment.

If the activity does not carry out, or if it cancels, any action specified by the adjustment, for any reason not due to acts or conduct of the complainant, the complaint will be reinstated for further processing at the written request of the complainant. The complaint should be reinstated at the point where processing stopped. If the Activity Commander determines that the terms of the adjustment have been implemented, a decision declining to reinstate the complaint will be issued. Documents evidencing implementation will be attached to the decision with an advisement of appeal rights to the EEOC.

§ 588.23 Request for Army decision without a hearing.

When the complainant, dissatisfied with the Activity Commander's proposed disposition asks for an Army decision without a hearing, the EEO officer sends the original and one copy of the complaint file the ERROCCRA, ATTN: SFCR, WASH, DC 20310-1813.