

interests of the class fairly and adequately.

**§ 588.36 Acceptance, rejection, or cancellation of the formal complaint.**

(a) The activity EEO officer will review the class complaint, along with the EEO counselor's report and all other available evidence relevant to the acceptance of the class status of the complaint as specified in § 588.35. The EEO officer should coordinate with the servicing legal office and CPO for their comments to the EEOC complaints examiner on accord with b(4) below.

(b) The EEO officer must forward the following items to the EEOC district officer having geographic jurisdiction over the activity (appendix M.) within 10 calendar days after receipt of the class complaint.

(1) The Class complaint.

(2) The EEO counselor's report.

(3) Any other information that may help the EEOC complaints examiner determine whether the complaint meets the criteria for acceptance specified in § 588.35.

(4) Any brief prepared by the labor counselor regarding the acceptability of the class status of the complaint. At the request of the labor counselor, a personnel specialist may be appointed to assist the labor counselor in the preparation of the brief.

(5) A written instruction that the EEOC complaints examiner send the recommended decision on acceptance, rejection, or cancellation of the class complaint directly to EEOCCRA, ATTN: SFCR, WASH DC 20310-1813.

(c) If an allegation is not included in the EEO counselor's report, the EEOC complaints examiner gives the class agent 15 calendar days to explain whether it was discussed and, if not, the reason it was not discussed. If the explanation is not satisfactory, the complaints examiner may recommend that the Army reject the allegation. If the explanation is satisfactory, the complaints examiner may refer the allegation back to the EEO counselor for further counseling of the agent.

(d) If an allegation is not specific and lacks detail, the complaints examiner gives the agent 15 calendar days to correct it. If the agent does not give the

required information within that time, the complaints examiner may recommend that the Army reject the complaint. If the information given makes new allegations outside the scope of the complaint, the examiner advises the agent to file an individual or class complaint based on these allegations.

(e) The complaints examiner may recommend that the Army extend the time limits for filing a complaint and for consulting with an EEO counselor. This may be done when the agent or the representative establishes either of the following:

(1) The class agent was not notified of the prescribed time limits and was not otherwise aware of them.

(2) The class agent was prevented by circumstances beyond his or her control from acting within the time limits.

(f) The complaints examiner may recommend that the Army cancel a complaint if the agent fails to prosecute the complaint. This action may be taken when the agent fails to respond, within 15 calendar days, to a written request from the complaints examiner to give information or proceed with the complaint. No complaint may be canceled unless the class agent is first notified, in writing, that failure to proceed within a specified time may result in cancellation of the class complaint.

(g) When requesting information under d or e above, the complaints examiner informs the class agent that the complaint may be rejected if the information is not provided.

(h) The complaints examiner's written recommendation to accept, reject, or cancel a class complaint is sent to the Director, EEOCCRA, the class agent, and the agent's representative.

(i) Upon receiving the complaint examiner's recommendation, the EEOCCRA reviews the recommendations and the case file. The EEOCCRA recommends to the Secretary of the Army or his or her designee whether to accept, reject, or cancel the class complaint.

(j) The Secretary of the Army or his or her designee will notify the class agent, the agent's representative and the complaints examiner of the Army decision, and will send a copy of the

notice to the MACOM and activity EEO officer.

(k) The notice of decision to reject or cancel must inform the class agent of all of the following:

(1) The right to proceed with an individual complaint of discrimination.

(2) The right to appeal the Army decision to the EEOC Office of Review and Appeals.

(3) The right to file a civil action. In age discrimination complaints, the agent must appeal a rejection or cancellation to the EEOC before he or she may file a civil action.

(l) The complaint examiner's recommendation to accept, reject, or cancel the complaint becomes the Army decision unless it is accepted, modified, or rejected by the Secretary of the Army or his or her designee within 10 calendar days after its receipt.

(m) Acceptance of a class complaint by the Secretary of the Army or his or her designee for purposes of administrative processing under this regulation is not an admission of class status within the meaning of Rule 23 of the Federal Rules of Civil Procedure for purposes of litigation within a Federal District Court.

**§ 588.37 Notification and opting out.**

(a) Upon notification of acceptance of a class complaint, the activity EEO officer will immediately make reasonable efforts to notify all class members of the existence of a class complaint. The notice will advise class members of their right to remove themselves from the class by notifying the Army within 30 calendar days after the notice is issued. The EEO officer will determine the reasonable means such as delivery, mailing distribution, or posting, for notifying the class members.

(b) The notice will contain the following:

(1) The name of the agency or organizational segment, its location, and the date the class complaint was accepted by the Army.

(2) A description of the issues accepted in the class complaint.

(3) An explanation that class members may remove themselves from the class by notifying the activity EEO officer within 30 calendar days after the issuance of the notice.

(4) An explanation of the binding nature of the final decision on the formal class complaint.

**§ 588.38 Avoiding delay.**

A class complaint must be processed promptly. All parties will proceed with the complaint without delay so that the time limits imposed by the complaints examiner will be met and the complaint will be processed within 180 calendar days after filing.

**§ 588.39 Developing evidence.**

(a) The complaints examiner gives the labor counselor and the class agent and his or her representative, if any, 60 calendar days to prepare their cases and develop the evidence based on EEOC regulations. The complaints examiner may extend this time if requested by either party.

(b) During the time allowed to develop the evidence, the complaints examiner may, at his or her discretion, direct that an investigator trained or certified by the EEOC, investigate facts relevant to the class complaint or to any portion of it. In this event, the labor counselor will immediately notify the EEO officer who will request, in writing, within 3 days of receipt of the examiner's directive, the assignment of an investigator by the appropriate USACARA Regional Office citing applicable funds for travel and per diem.

(c) Both parties will give the examiner all materials that they wish examined and other material the examiner may request.

**§ 588.40 Resolution of the complaint.**

(a) The complaints examiner gives the class agent, or his or her representative, and the labor counselor a copy of all materials obtained. Also, the examiner provides an opportunity for the class agent to discuss these materials with the labor counselor and to try to resolve the complaint.

(b) Though an opportunity to resolve the complaint is specifically provided at this stage, both parties may agree to resolution at any time after the complaint has been accepted.

(c) If the complaint is resolved, the terms of the resolution will be put in writing and signed by the class agent