(f) If the complaint of discrimination is resolved on the merits by a decision of the Secretary of the Army or his or her designee, the award of attorney fees and/or costs must also be made by the Secretary of the Army or his or her designee in accord with the procedures outlined in (e) above.

(g) All payment of attorney fees and/or costs will be made payable jointly to the complainant and the attorney of record.

§ 588.55 Informal no-fault settlement.

(a) Informal settlements of complaints may be reached though the Army need not admit fault, wrongdoing, or discrimination provided that the ROI indicates some merit to the allegation of wrongful action.

(b) The standard for informal settlement awards is stated in § 588.51.

(c) The Activity Commander, or his or her designee, in consultation with the EEO officer and the labor counselor, has authority to award attorney fees and/or costs as part of an informal settlement if agreement is reached between the parties and the amount to be awarded is less than $5,000. If the parties do not reach agreement, or the amount is $5,000 or more, the final award will be made by the Secretary of the Army or his or her designee.

Subpart F—Appeals and Civil Actions

§ 588.57 Appealing an Army decision.

(a) A complainant in an individual complaint of discrimination or a class agent in a class complaint may appeal to the EEOC Office of Review and Appeals, 2401 E Street, NW, WASH DC 20507, the Army decision—

(1) To reject or cancel the complaint in whole or in part.

(2) To refuse to reinstate the complaint for further processing.

(3) On the merits of the complaint, the issue of attorney fees and/or costs, or the remedial action.

(b) A claimant in a class complaint may appeal to the EEOC Office of Review and Appeals, 2401 E Street, NW, WASH DC 20507, the Army decision—

(1) To cancel or reject a claim for individual relief.

(2) On the merits of the claim for individual relief or the issue of attorney fees and/or costs.

(c) Except as provided in § 588.57(f) complainant in an individual complaint of discrimination may file a notice of appeal with the EEOC any time after receiving the Army Notice of Final Decision on his or her complaint but not later than 20 calendar days after receiving the decision. A notice of appeal will be deemed filed on the date it is postmarked or, without a postmark, on the date it is received by the EEOC. Any statement or brief to support the appeal must be sent to the EEOC and to EEOCCRA, ATTN: SFCR, WASH DC 20310–1813, within 30 calendar days after the date the notice of appeal was filed.

(d) On receiving the complainant's statement or brief, EEOCCRA will ask the activity to send management comments and copies of the case file. These comments must be coordinated between the activity EEO officer, labor counselor, and CPO, and must be received by EEOCCRA early enough for EEOCCRA to meet the EEOC suspense date. Comments will be prepared in a format that will permit forwarding to EEOC without editing or retyping.

(e) Except as in § 588.57(f) an agent or a claimant in a class complaint may file an appeal at any time after receiving a final Army decision, but not later than 15 calendar days after receiving the decision. An appeal will be deemed filed on the date it is postmarked or, without a postmark, on the date it is received by the EEOC.

(f) Usually, the time limits for filing a notice of appeal will not be extended by the EEOC. However, the EEOC, at its discretion, may extend the time limits and accept an appeal based on a written statement by the complainant. The statement must show that the complainant was not notified and not otherwise aware of the prescribed time limits, or that circumstances beyond his or her control prevented filing a notice of appeal or an appeal within the prescribed time limits.

(g) The EEOC Office of Review and Appeals reviews the complaint file and all relevant written representations made by the parties. The office may return the complaint to the Army for

further investigation or for a new hearing, or may have an EEOC investigator look into the case. The office issues a written decision that sets forth its reasons for the decision and sends copies of the decision to the complainant, the designated representative and EEOCCRA. EEOCCRA will send the decision to the activity. If corrective action is ordered, the activity must take the action. The activity will promptly report to the EEOC compliance officer, with copies to the complainant, the MACOM, and EEOCCRA, that the action has been taken.

(h) For purposes of an appeal to the EEOC, the Army decision is final only when all issues in the complaint, including the award of attorney fees and/or costs, have been resolved. If fees and/or costs are to be awarded, the decision will not be final until the procedure for determining the amount of the award has been completed.

§588.58 Review by the EEOC commissioners.

(a) The EEOC commissioners may, at their discretion, reopen and reconsider any previous decision when the requesting party files written argument or evidence that tends to establish one or more of the following:

(1) New and material evidence is available that was not readily available when the previous decision was issued.

(2) The previous decision involves an erroneous interpretation of law or regulation or a misapplication of established policy.

(3) The previous decision may set a precedent involving a new or unreviewed policy consideration that may have effects beyond the case at hand or, is otherwise of such an exceptional nature as to merit the special attention of the Commission.

(b) A copy of any statement or brief in support of a request to reopen and reconsider must be submitted to the EEOCCRA as well as to the activity EEO officer.

(c) An Activity Commander or a designee who wishes to request reopening will consult the labor counselor to determine if the request meets the requirements of this paragraph. If so, the commander will send the request to EEOCCRA for action. Any Army request to reopen and reconsider must be made within 30 days of the date of the EEOC Office of Review and Appeals decision.

(1) The request will be fully self-contained and will explain how the criteria of above applies to the case. It will be prepared to show an Army position rather than a local position and will be typed on plain bond paper.

(2) The request will be sent to EEOCCRA as early as possible but not later than 7 work days before the 30-calendar-day time limit for requesting reopening and reconsideration expires.

(3) The request to reopen and reconsider will be prepared in a format that will permit forwarding to EEOC without editing or retyping.

(4) EEOCCRA will check the submission for consistency with the case file and, if otherwise proper, will obtain approval from the Director of EEO.

(i) An Army request to reopen and reconsider may be submitted to EEOC only if approved by the Director of EEO.

(ii) Approval will be granted only when the Director of EEO finds that the submission is timely, meets EEOC criteria, and is in the best interest of the Army. Approval will not be granted routinely.

§588.59 Civil actions.

(a) A complainant in an individual complaint or an agent in a class complaint has the right to file a civil action in a Federal District Court. Time limits for filing, except for complaints based on age (see §588.6(c)(1)(iii)), are as follows:

(1) Within 30 calendar days after receiving the notice of the final Army decision on the complaint or claim.

(2) After 180 calendar days from the date of filing a complaint with the Army if there has been no decision.

(3) Within 30 calendar days after receiving the notice of the final EEOC decision on the complaint.

(4) After 180 calender days from the date of filing an appeal with the EEOC if the EEOC has not made a decision.

(b) In complaints alleging age discrimination, the complainant can file a civil action in Federal District Court 30 days after providing notice to the