

EEOC of his or her intent to file a civil action. Such notice must be given to the EEOC within 180 days of the occurrence of the alleged discriminatory act. If a complainant elects to pursue his or her age complaint through the administrative procedures outlined in subpart B then he or she may not file a civil action in Federal District Court until all administrative remedies (including an appeal of the final Army decision to the EEOC) have been exhausted.

(c) All Army decisions must notify the complainant of the right to file a civil action and of the time limits for doing so. For civil action purposes, the Army decision is final only when a determination has been made on all the issues in the complaint, including whether or not to award attorney fees and/or costs. If attorney fees and/or costs are to be awarded, the decision will not be final until the procedure outlined in subpart E for determining the amount of the award has been followed.

(d) The labor counselor will inform the activity EEO officer and the EEOCRA (ATTN: SFCR, WASH DC 20310-1813) when litigation is initiated on any EEO complaint. The following will be provided:

- (1) EEOCRA docket number.
- (2) Federal Court docket number.
- (3) Federal Court where the suit has been filed.
- (4) Date of filing.
- (5) Copy of Federal Court complaint.
- (6) Date suit terminated.
- (7) Copy of court order terminating suit.

#### **Subpart G—Participation by the Alleged Discriminating Official**

##### **§ 588.60 General guidance.**

(a) The purpose of the discrimination complaint procedure is to determine whether discrimination has occurred so that appropriate remedial action can be taken. Investigations and hearings in discrimination complaint cases are essentially fact-finding processes. Their purpose is to develop and record evidence on which an informed and impartial decision can be based. It is not the purpose of the complaint procedure to try individual officials. Complaints

are lodged “against” the Army, not “against” individuals.

(b) Employees and applicants must be free to avail themselves of the discrimination complaint procedures without fear of reprisal. However, ensuring these rights of complainants is not done without regard for the rights of persons against whom allegations of discrimination have been made. Persons, named or otherwise, identified as ADOs have clearly defined rights and a significant role in the complaint process.

(c) A complainant cannot always be expected to know which person, if any, might have been responsible for a specific action or policy. Therefore, a complainant must not be required to identify ADO(s) in complaints of discrimination, but may do so if he or she believes particular persons have discriminated against him or her.

(d) The Army must ensure that persons named as ADOs are informed of all allegations made against them and are given a full and fair opportunity to respond to these allegations.

##### **§ 588.61 The ADO at the informal stage.**

(a) The informal counseling stage, the EEO counselor must solicit the views of an identified ADO unless the counselor obtains and provides information which clears the official to the satisfaction of the aggrieved person.

(b) Before the counselor interviews the ADO, the ADO must be told that he or she has been identified as a potential ADO. The ADO must be informed of the nature of any allegations made and must be told of the right to have a representative at the interview to advise him or her on how to respond to any questions the counselor may ask.

(c) The counselor must not reveal the identity of the aggrieved person when the aggrieved person has not authorized him or her to do so.

##### **§ 588.62 The ADO during the USACARA investigation.**

(a) The USACARA investigator must give an ADO the opportunity to respond to all allegations made against him or her and to review all documents that name or implicate the ADO and are to be included in the investigative

file. Names and other identifying information of persons other than the complainant and the ADO will be deleted by the investigator from the copies shown to the ADO to protect these persons from an unwarranted invasion of their privacy. The investigator must also advise the ADO of his or her right to have a representative present.

(b) The investigator must give the ADO full opportunity to state the facts as he or she understands them, in affidavit form, for inclusion in the investigative file, and to name witnesses who might be questioned. The investigator must inform the ADO that only witnesses whose testimony is considered necessary to the investigation will be interviewed. Also, the investigator must tell the ADO that the only testimony to be obtained in affidavit form and included in the investigative file is that which the investigator deems relevant and necessary to the investigation.

(c) The activity EEO officer must keep the ADO informed of the progress of the investigation. When the investigation is completed, the EEO officer must review the investigative file to ensure that the ADO has had the opportunity to provide his or her version of the facts in response to each allegation. If the file shows that the ADO was not given this opportunity, the EEO officer will return the case file to USACARA for appropriate action.

**§ 588.63 Informal adjustment and proposed disposition.**

(a) The Activity Commander or a designee may, at his or her discretion, consult with the ADO on the terms under which the activity will try to informally resolve the complaint.

(b) If an informal adjustment is agreed upon, the Activity Commander or his or her designee must inform the ADO of the terms of the agreement.

(c) If an agreement is not reached, the Activity Commander or a designee will give the ADO a copy of the proposed disposition.

**§ 588.64 The ADO at the hearing.**

(a) The ADO has the right to testify at the hearing and comment for the record on any allegations against him or her including new allegations made

at the hearing. If the ADO has not been called to testify, the activity EEO officer must tell the ADO how and where to contact the labor counselor and the hearing examiner to arrange to testify or comment.

(b) The presence of the ADO and his or her representative, if any, at the hearing is limited to the time the ADO appears as a witness.

**§ 588.65 The final Army decision.**

(a) If the final Army decision finds discrimination, the Activity Commander or his or her designee will review the entire file and determine whether disciplinary action against the ADO is appropriate and record the basis for its decision. The decision shall not be included in the complaint file. If the decision is to take disciplinary action, the entire complaint file will be made available to the ADO for review. If no disciplinary action is taken against the ADO after a finding of discrimination, the complaint file will be made available to the ADO for review but names and identifying information of persons other than the complainant and the ADO will be deleted from the file. This action will be taken to protect such persons from an unwarranted invasion of privacy.

(b) If the activity takes or proposes adverse or other corrective action against the ADO based on the evidence developed in processing the complaint, the Activity Commander or his or her designee will make the entire complaint file, without deletions, available to the ADO for review. Corrective action may include requiring the ADO to complete EEO training or temporarily or permanently withdrawing the ADO's selection or disciplinary authority. Though not disciplinary, such actions constitute censure and correction of the ADO's conduct or performance.

(c) If the final decision concludes there was no discrimination, the Activity Commander or his or her designee will give the ADO a copy, sanitized in accord with a, above, of the final Army decision only.

**§ 588.66 Appeals to the EEOC.**

If a complainant appeals the Army decision to the EEOC Office of Review and Appeals, the EEO officer must give