

US. Department of Energy
Washington, D.C.

ORDER

DOE 1600.5

5-26-82

SUBJECT: SYSTEM FOR PROCESSING COMPLAINTS OF DISCRIMINATION

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1. PURPOSE. To establish procedures for processing complaints of discrimination by employees of the Department of Energy (DOE) or applicants for DOE employment on the basis of race, color, religion, sex, national origin, age, and/or physical or mental handicap.
 2. REFERENCES.
 - a. Civil Rights Act of 1964, as amended by the Equal Employment Opportunity Act of 1972 (Pub. L. 92-261), which covers equal employment opportunity provisions for Federal agencies.
 - b. Age Discrimination in Employment Act of 1967 (ADEA), as amended by Pub. L. 93-259 and Pub. L. 95-256, which covers complaints of age discrimination by employees and applicants for employment who are at least 40 years of age, and which authorizes a complainant alleging age discrimination to file with the Equal Employment Opportunity Commission (EEOC) a notice of intent to file a civil action in lieu of filing an administrative complaint.
 - c. Federal Personnel Manual (FPM) Letter 713-30, "Processing Notices of Intent to File Civil Action Under Section 15(d) of the ADEA," of 2-14-75, which sets forth policy and procedures applicable in processing notices of intent to sue.
 - d. Part 1613 of 29 CFR, which sets forth the EEOC regulations governing the processing of discrimination complaints by Federal employees and applicants on grounds of race, color, religion, sex, national origin, age, and handicap.
 - e. FPM Letter 713-42, "Participation in the Discrimination Complaint Process of Persons Named as Alleged Discriminating Officials," of 3-13-78, which sets forth general guidance concerning participation in the discrimination complaint process outlined in 29 CFR part 1613, by persons named in the complaint as discriminating officials.
 - f. Rehabilitation Act of 1973 as amended by Public Law 95-602 (1978), which makes available to individuals complaining of handicap discrimination the same remedies, procedures, and rights as are provided under section 717 of Title VII of the Civil Rights Act of 1964.

DISTRIBUTION:
All Departmental Elements
Federal **Energy Regulatory** Commission (info)

INITIATED BY:
Office of Equal Opportunity

- g. FPM Letter 713-43, "Procedures for Processing Complaints of Discrimination Based on Physical or Mental Handicap," of 4-17-78, which extended regulations on discrimination complaint based on handicap.
- h. DOE 3771.1, GRIEVANCE POLICY AND PROCEDURES, of 7-2-81, which provides general policy guidance and instructions, and states responsibilities for establishing and administering the DOE grievance system.

3. DEFINITIONS.

- a. Discrimination is an unlawful employment practice based on race, color, religion, sex, national origin, age, and/or physical or mental handicap. It shall be an unlawful employment practice for the Department of Energy, because of an individual's race, color, religion, sex, national origin, age, and/or physical or mental handicap:
 - (1) To fail or refuse to hire or to discharge any individual, or otherwise discriminate against any individual with respect to his or her compensation, terms, conditions, or privileges of employment;
 - (2) To limit, segregate, or classify employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his or her status as an employee;
 - (3) To discriminate against any individual in admission to or employment in any program established to provide apprenticeship or other training, or retraining, including on-the-job training.
- b. Handicapped Person is one who:
 - (1) Has a physical or mental impairment which substantially limits one or more of such person's major life activities;
 - (2) Has a record of such an impairment; or
 - (3) Is regarded as having such an impairment.
- c. Physical or Mental Impairment is:
 - (1) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; cardiovascular; reproductive; digestive; genito-urinary; heronic and lymphatic; skin; and endocrine; or
 - (2) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

- d. Major Life Activities are functions, such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.
- (1) Has a record of such an impairment means has a history of, or has been classified (or misclassified) as having a mental or physical impairment that substantially limits one or more major life activities.
- (2) Is regarded as having such an impairment means:
- (a) Has a physical or mental impairment that does not substantially limit major life activities but is treated by an employer as constituting such a limitation;
- (b) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitude of an employer toward such impairment; or
- (c) Has none of the impairments defined on page 2, subparagraph b, but is treated by an employer as having such an impairment.
- e. Qualified Handicapped Person. With respect to employment, is a handicapped person who, with or without reasonable accommodation, can perform the essential functions of the position in question without endangering the health and safety of the individual or others and who, depending upon the type of appointing authority being used:
- (1) Meets the experience and/or education requirements (which may include passing a written test) of the position in question; or
- (2) Meets the criteria for appointment under one of the special appointing authorities for handicapped persons.



William S. Heffelfinger
Assistant Secretary
Management and Administration

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CHAPTER I

PRECOMPLAINT PROCESSING

1. CONSULTATION WITH EQUAL EMPLOYMENT OPPORTUNITY COUNSELOR. A DOE employee or an applicant for employment with DOE, who believes that he or she has been discriminated against because of race, color, religion, sex, national origin, age, and/or physical or mental handicap and who wishes to resolve the matter, shall consult with an equal employment opportunity (EEO) counselor before he or she may file a formal complaint as provided by 29 CFR, parts 1613.213 and 1613.214. Consultation with an equal employment opportunity (EEO) counselor shall begin within 30 calendar days after the date of the alleged discriminatory act or, if a personnel action, within 30 calendar days after the effective date. The complainant shall discuss the matter with the EEO counselor in a private interview, including the facts and evidence in support of the belief that he or she has been discriminated against.
2. DUTIES OF THE EEO COUNSELOR.
 - a. Following presentation of the matter, the EEO counselor shall make whatever inquiry he or she believes necessary into the matter; seek solution of the matter on an informal basis; and counsel the complainant concerning the issues in the matter.
 - b. Determine whether the complainant is an employee or applicant for employment and inform the complainant of his or her right to elect a review procedure. (See page III-1, paragraph 1.) The counselor will refer the complainant to the appropriate office should he or she elect another procedure.
 - c. Inform the complainant of the right to be accompanied by a representative of his or her own choosing (see page II-1, paragraph 1b).
 - d. The EEO counselor shall, insofar as is practicable, conduct the final interview with complainant not later than 21 calendar days after the date on which the matter was called to his or her attention by the complainant and notify the complainant in writing on, or the day following, the 21st day of his or her right to file a discrimination complaint with the agency within 15 calendar days after receipt of the notice (page 1-5, Attachment I-1, "Notice of Final Interview with EEO Counselor,").
 - e. If the final interview is not concluded within 21 calendar days and the matter has not been resolved previously to the satisfaction of the complainant, the complainant shall be informed in writing on, or the day following the 21st day of his or her right to file a formal complaint of discrimination with the agency. The notice shall inform the complainant of his or her right to file a complaint at any time after receipt of the notice up to 15 calendar days after the final interview (which shall be so identified in writing by the EEO counselor) and the appropriate official with whom to file a complaint (page I-7, Attachment I-2, "Notice of Right

to File a Discrimination Complaint"). At the time of final interview the EEO counselor also shall supply the complainant with DOE F 1600.1, "Department of Energy Complaint of Discrimination," (page I-9, Attachment 1-3).

- f. The EEO counselor shall not attempt in any way to restrain the complainant from filing the complaint.
- g. The EEO counselor shall not reveal the identity of a complainant who has come for consultation, except when authorized to do so by the complainant, until the EEO officer has received a formal complaint of discrimination and requested a report as described below.
- h. The EEO counselor must solicit the views of any named or otherwise identified "alleged discriminating official(s)," unless the counselor otherwise obtains and provides information which exonerates the official(s) to the clear satisfaction of the complainant. Preliminary to the counselor's interview with an alleged discriminating official, the latter must be advised that he or she has been named or identified by a complainant, must be informed of the nature of any allegations made, and must be advised of the right to have a representative of his or her own choosing present during the Interview to provide advice on how to respond to any questions the counselor may ask.
- f. When advised by the EEO officer that a formal complaint of discrimination has been received from the complainant, the EEO counselor shall within 15 calendar days submit a written report (page I-11, Attachment 1-49 DOE F 1600.2, "EEO Counselor's Report,") to the EEO officer, with a copy" to the complainant, summarizing the counselor's actions and any advice given to the complainant and to appropriate management officials concerning the issue(s) of the matter. A copy of the "Notice of Right to File a Discrimination Complaint" (page I-7, Attachment 1-2), or "Notice of Final Interview with EEO Counselor" (page I-5, Attachment 1-1), as appropriate, also shall be forwarded to the EEO officer. The complainant shall be given the opportunity to initial the EEO counselor's report, DOE 1600.2 (page I-11, Attachment 1-4), in the appropriate space provided.
- j. The EEO counselor must not be involved in processing the formal complaint. The EEO counselor may not serve as the complainant's or management's representative, nor advise the complainant or management concerning the complaint. This does not preclude an EEO counselor from being interviewed by an investigator concerning the complaint or the case, or being called to testify at a hearing, when such requirement is established by the investigator or complaints examiner.
- k. Each EEO counselor shall maintain a record of his or her counseling activities to brief periodically the EEO officer on those activities and provide information for monthly status reports to the Director of Equal Opportunity on DOE F 1600.3, "Monthly Precomplaint Counseling Report,"

(page I-15, Attachment 1-5). When a matter discussed with the EEO counselor is resolved on an informal basis, the EEO counselor may make a written statement of the understanding or agreement reached in resolving the matter for parties to the resolution, which will then serve as a record of EEO counseling.

3. DUTIES OF THE EEO OFFICER.

- a. The EEO Officer shall take action to assure that full cooperation is provided by all employees to the EEO counselor in the performance of his or her duties as described on pages I-1 and I-2, paragraph 2, and that the EEO counselor shall be free from restraint, interference, coercion, discrimination, or reprisal, in connection with the performance of those duties.
- b. The EEO officer shall publicize to employees and post permanently on official bulletin boards:
 - (1) The names and addresses of the Director of Equal Opportunity, the Federal Women's Program Manager, the Hispanic Employment Program Manager, the EEO officer, and a current list of EEO counselors and the organizational units they serve.
 - (2) The requirement that an aggrieved employee or applicant for employment must consult an EEO counselor about an allegation of discrimination before a complaint may be filed.
 - (3) Time limits for contacting an EEO counselor.
- c. The EEO officer shall appoint EEO counselors.
- d. The EEO officer shall arrange for the training of EEO counselors.

4. REPORTING REQUIREMENTS. The EEO officer shall submit to the Director of Equal Opportunity a monthly report on counseling activities. An original and one copy of the report shall be submitted within 10 calendar days after the end of the month covered by the report on DOE F 1600.3, "Monthly Precomplaint Counseling Report," (page I-15, Attachment I-5). A negative report is also required.

NOTICE OF FINAL INTERVIEW WITH EEO COUNSELOR

(FORMAT)

August 14, 1981

Certified

Mr. John Smith
213 Market Street
Washington, DC 20585

Dear Mr. Smith:

This is notice that on the above date the final counseling interview was held in connection with the matter you presented to the EEO counselor.

If you believe you have been discriminated against on the basis of race, color, religion, sex, national origin, age, and/or physical or mental handicap, you have the right to file a COMPLAINT OF DISCRIMINATION WITHIN 15 CALENDAR DAYS AFTER RECEIPT OF THIS NOTICE.

The complaint must be in writing and may be filed in person or by mail with the Director of Equal Opportunity (provide specific mailing address), or any of the following officials authorized to receive discrimination complaints:

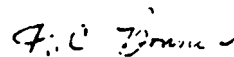
- o The Secretary of Energy
- o Head of Field Organization
- o EEO Officer
- o Federal Women's Program Manager
- o Hispanic Employment Program Manager

The complaint must be specific and must be limited to the matters discussed with the EEO counselor.

If you decide to file a complaint of discrimination and retain the services of an attorney or any other representative, it is your duty to assure that the Director of Equal opportunity is informed immediately in writing of the name and address of your representative.

Please submit your complaint on DOE F 1600.1, "Complaint of Discrimination," attached.

Sincerely,



H.C. Bonner
EEO Counselor

Attachment

NOTE: THIS NOTICE IS TO BE GIVEN TO THE PERSON COUNSELED AT THE TIME OF THE FINAL INTERVIEW. A copy of this notice should be kept by the counselor. If a complaint is filed, the copy should accompany the counselor's report on his or her counseling activities and be made a part of the complaint file.

NOTICE OF RIGHT TO FILE A DISCRIMINATION COMPLAINT

(FORMAT)

August 14, 1981

Certified

Ms. Jane Doe
725 South Maine Street
Kensington, MD 20895

Dear Ms. Doe:

This is to inform you that although counseling on the matter you brought to the attention of the EEO counselor has not been completed, 21 calendar days have gone by since you first contacted the counselor and you are now entitled, if you want to do so, to file a discrimination complaint if you believe you have been discriminated against on the basis of race, color, religion, sex, national origin, age, and/or physical or mental handicap.

If you do not file a complaint at this time, counseling will continue and your right to file a complaint also will continue until 15 calendar days AFTER THE FINAL INTERVIEW with the counselor. The counselor will inform you in writing when the final counseling interview is conducted.

If you file a complaint, it must be in writing and be filed in person or by mail with the Director of Equal Opportunity (provide specific mailing address), or any of the following DOE officials authorized to receive discrimination complaints:

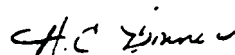
- o The Secretary of Energy
- o Head of Field Organization
- o EEO Officer
- o Federal Women's Program Manager
- o Hispanic Employment Program Manager

The complaint must be specific and must be limited to the matters discussed with the EEO counselor.

If you decide to file a complaint of discrimination and retain the services of an attorney or any other representative, it is your duty to assure that the Director of Equal Opportunity is informed immediately in writing of the name and address of your representative.

Please submit your complaint on DOE F 1600.1, "Complaint of Discrimination," attached.

Sincerely,



H. C. Bonner
EEO Counselor
(Specific Installation)

Attachment

NOTE: A copy of this notice should be kept by the counselor. If a complaint is filed, the copy should accompany the counselor's report on his or her counseling activities and made a part of the complaint file. This notice should be given by the counselor to the person counseled 21 calendar days after the counselor was first contacted on the matter by the employee or applicant.

U.S. DEPARTMENT OF ENERGY
COMPLAINT OF DISCRIMINATION

DOE # 1600.5 5-26-82		U.S. DEPARTMENT OF ENERGY COMPLAINT OF DISCRIMINATION (Because of Race, Color, Religion, Sex, Age, National Origin, Physical and/or Mental Handicap) (See reverse for instructions)		FOR AGENCY USE
COMPLAINANT'S FULL NAME Mary R. Smith		2 COMPLETE HOME ADDRESS Street Address, RD. or P.O. Box 2016 Peachtree Drive City, State, Zip Code: Alexandria, Virginia 22302		
3 BUSINESS TELEPHONE (Include Area Code) 202-252-6000	4 HOME TELEPHONE (Include Area Code) 704-564-8010			
A OFFICE YOU BELIEVE DISCRIMINATED AGAINST YOU Office of Classification Policy Operations & Support 1. ADDRESS (Include Street, City, State, Zip Code) 1000 Independence Ave., SW Washington, DC 20585 2. NAME AND TITLE OF PERSON(S) YOU BELIEVE DISCRIMINATED AGAINST YOU Richard A. Jones 3. DATE OF MOST RECENT ALLEGED DISCRIMINATION MONTH DAY YEAR 10 15 81		5A ARE YOU PRESENTLY WORKING FOR THE FEDERAL GOVERNMENT? <input checked="" type="checkbox"/> YES (Answer B, C, and D Below) <input type="checkbox"/> NO (Continue with Question 7) B AGENCY WHERE YOU WORK Department of Energy C ADDRESS OF AGENCY (Include Street, City, State, Zip Code) 1000 Independence Ave., SW Washington, DC 20585 D TITLE AND GRADE OF YOUR JOB Classifier, GS-501-09		
CHECK BELOW THE REASON(S) YOU BELIEVE YOU WERE DISCRIMINATED AGAINST <input checked="" type="checkbox"/> Race, if so, State your Race <u>Black</u> <input type="checkbox"/> Color, if so, State your Color _____ <input type="checkbox"/> Religion, if so, State your Religion _____ <input type="checkbox"/> National Origin, if so, State your National Origin _____ <input checked="" type="checkbox"/> Sex, if so, State your Sex <u>Female</u> <input type="checkbox"/> Age, if so, State your Age _____ <input type="checkbox"/> Physical Handicap, if so, State your Physical Handicap _____ <input type="checkbox"/> Mental Handicap _____ <small>(Complaints of discrimination because of age apply only to employees or applicants who are at least 40 years of age at the time the discriminatory action is alleged to have occurred.)</small>				
EXPLAIN HOW YOU BELIEVE YOU WERE DISCRIMINATED AGAINST (TREATED DIFFERENTLY FROM OTHER EMPLOYEES OR APPLICANTS) BECAUSE OF YOUR RACE, COLOR, RELIGION, SEX, AGE, NATIONAL ORIGIN, PHYSICAL AND/OR MENTAL HANDICAP (For each allegation, please state to the best of your knowledge information and belief what incident occurred and when the incident occurred. You may continue your answer on another sheet of paper if you need more space.) A white male employee and I were informed by our supervisor, Richard Jones, that after completing time-in-grade, and certain educational requirements we would be promoted to the GS-501-11. After both of us had completed the aforesaid require- ments, the male was promoted and I was denied my promotion for reasons unknown to me. Therefore, I feel the denial of my promotion was due to my race (Black) and sex (female).				
I HAVE DISCUSSED MY COMPLAINT WITH AN EQUAL EMPLOYMENT OPPORTUNITY COUNSELOR (See Instructions) <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		8 (b) NAME OF COUNSELOR Nancy Johnson		
9 WHAT CORRECTIVE ACTION ARE YOU SEEKING? Retroactive promotion to GS-11, backpay, attorney fees				
11 DATE OF THIS COMPLAINT MONTH DAY YEAR 12 15 81		12 SIGN YOUR (COMPLAINANT'S) NAME HERE <i>Mary R. Smith</i>		

INFORMATION AND INSTRUCTIONS

(PLEASE READ CAREFULLY)

- This form should be used only if you, as a DOE employee or an applicant for employment think you have been discriminated against because of race, color, religion, sex, age, national origin, and/or physical or mental handicap by DOE and have presented the matter for informal resolution to an Equal Employment Opportunity Counselor within 30 calendar days of the date the incident occurred or, if a personnel action, within 30 calendar days of its effective date.
- Your complaint must be filed within 15 calendar days of the date of your final interview with the Equal Employment Opportunity Counselor. If the matter has not been resolved to your satisfaction within 21 calendar days of your first interview with the Equal Employment Opportunity Counselor and the final counseling interview has not been completed within that time, you have a right to file a complaint at any time thereafter up to 15 days after the final interview.
- These time limits may be extended if you show that you were not notified of the time limits and were not otherwise aware of them, or that you were prevented by circumstances beyond your control from submitting the matter within the time limits, or for other reasons considered sufficient by the agency.
- If you need help in the preparation of your complaint, you may contact the Equal Employment Opportunity Officer or the Equal Employment Opportunity Counselor at the office where the alleged discrimination occurred, or you may secure help from a representative of your choice.
- Your written complaint should be filed by you or by your designated representative with the Equal Employment Opportunity Officer where the alleged discrimination occurred, the head of the field installation, the agency's Director of EO, Federal Women's Program Manager or other such officials as the agency may designate for that purpose.
- You may have a representative of your own choosing at all stages of the processing of your complaint.
- You will have an opportunity to talk with an investigator and give him/her all the facts which you believe show discrimination. The investigator will not be under the jurisdiction of the head of that part of the agency in which the alleged discrimination took place.
- After the investigation of your complaint has been completed, you will be given a copy of the investigative file and an attempt will be made by the agency to adjust the matter.
- If your complaint is not adjusted satisfactorily, you will be given an opportunity to request a hearing which will be conducted by an independent Complaints Examiner certified by the Equal Employment Opportunity Commission. The hearing will be held at a convenient time and place. At the hearing, you may present witnesses and other evidence in your behalf.
- The final decision (in writing) will be made by the head of the agency or his/her designee. If a hearing was held on your complaint, the head of the agency or his/her designee will review the decision recommended by the Complaints Examiner before making a final decision, and he/she will furnish you with a transcript of the hearing, a copy of the findings, analysis and recommended decision of the Complaints Examiner, and the agency's final decision letter.
- If you are not satisfied with the final agency decision, you have the right to appeal that decision within 20 calendar days after receipt to the Office of Appeals and Review of the Equal Employment Opportunity Commission, 2401 E Street, NW, Washington, DC 20506, or you may file a civil action in an appropriate U.S. District Court within 30 days of receipt of the agency's decision. If you elect to file an appeal with the Commission, you may still file a civil action in a U.S. District Court within 30 days of the Commission's decision if you are dissatisfied with the decision.
- You also may file a civil action in an appropriate U.S. District Court if you have not received a final agency decision within 180 days of filing your complaint with the agency or if you have not received a final Commission decision within 180 days of filing your appeal with the Commission's Office of Appeals and Review.

Privacy Act Information Statement

General: This information is provided pursuant to Public Law 93-579 (Privacy Act of 1974, December 31, 1974) for individuals completing formal discrimination complaint forms.

Authority: Section 1302 of Title 5 U.S.C., Executive Order 11478, (3 CFR Section 446 (1970)), and Title 29 CFR Section 1613.212, gives the Department of Energy authority to provide regulations for the processing of complaints of discrimination.

Purpose and Uses: The principle purpose of form DOE F 1600.1, "Complaint of Discrimination", is to receive and process complaints of discrimination based on race, religion, color, sex, age, national origin, physical and/or mental handicap.

Effects of Nondisclosure: Failure to provide this information may result in an allegation of discrimination not being processed.

DOE F 1600.2
(5-90)

U.S. Department of Energy

EEO COUNSELOR'S REPORT

I. COMPLAINANT'S/AGENT'S FULL NAME: Mary R. Smith		A. COMPLAINANT'S/AGENT'S AGENCY/OFFICE NAME: Department of Energy	
L. COMPLAINANT'S HOME ADDRESS: (Street Address, RD, or P.O. Box) 2016 Peachtree Drive City, State, Zip Code: Alexandria, Virginia 22302 Phone Number (Include Area Code): (704) 564-8010		A. COMPLAINANT'S OFFICE ADDRESS: (Street Address, RD, or P.O. Box) 1000 Independence Ave., SW City, State, Zip Code: Washington, DC 20585 Phone Number (Include Area Code): (202) 252-6000	
L. OFFICE COMPLAINANT BELIEVES DISCRIMINATED AGAINST HIM/HER: Policy Operations & Support		A. TITLE AND GRADE OF COMPLAINANT: Classifier GS-501-09	
7. BASIS OF DISCRIMINATION ALLEGED: (Check and specify)			
<input checked="" type="checkbox"/> Race <u>Black</u>		<input checked="" type="checkbox"/> Sex <u>Female</u>	
<input type="checkbox"/> Color _____		<input type="checkbox"/> Marital Status _____ (Physical or Mental)	
<input type="checkbox"/> Religion _____		<input type="checkbox"/> National Origin _____	
<input type="checkbox"/> Age _____			
8. ISSUE(S) ALLEGED: That because of race (Black) and sex (female) the complainant was denied a promotion to GS-501-11 after completing certain educational requirements and time-in-grade which had been stipulated by complainant's supervisor as a condition precedent to promotion.			
Assignment		Assignment of Duties	
Promotion	<input checked="" type="checkbox"/>	Examination/Test	
Reassignment		Work Conditions	
Separation		Harassment	
Suspension		Reprimand	
Reprimand		Pay including Overtime	
Evaluation/Approval		Conversion to Fulltime/CC	
Duty Hours		Reinstatement	
Training		Awards	
Time and Attendance		Other (Specify)	
Retirement			
9. COMPLAINANT IS: <input type="checkbox"/> Employee of DOE <input type="checkbox"/> Applicant for employment		10. TYPE OF COMPLAINT: <input checked="" type="checkbox"/> Individual <input type="checkbox"/> Class action	

11. ADJUSTMENT DESIRED: Please state specifically what adjustment(s) the complainant is seeking.

Retroactive promotion to GS-11, backpay and attorney's fees.

1. DATE COMPLAINANT INITIALLY CONTACTED SEO COUNSELOR: 10-16-81		13. DATE OF FINAL INTERVIEW: 11-16-81	
6. INFORMALLY RESOLVED: <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO (If yes, Give Details in Item 10) DATE:		15. COMPLAINANT'S INITIALS: M.R.S. DATE: 11-26-81	
8. DATE REPORT SENT TO SEO OFFICER: 11-29-81		17. SEO COUNSELOR'S OFFICE: Economic Regulatory Administration Room 5201 Address: (Street Address, RD, or P.O. Box) 12th and Pennsylvania Ave., NW City, State, Zip Code: Washington, DC 20461 Phone Number (include Area Code): 202-633-9583	
9. SEO COUNSELOR: NAME (Print) <u>Nancy Johnson</u> SIGNATURE <u>Nancy Johnson</u> DATE <u>11/29/81</u>			

19. COUNSELOR'S COMPREHENSIVE NARRATIVE: Explain in full detail what occurred during the informal counseling stage. Define each specific issue addressed during the counseling process clearly and precisely and describe all actions and / or conditions giving rise to the complaint. Give specific date(s), and place(s) of incident(s) and name all witnesses or persons involved. Include any advice given to both the complainant and the appropriate management official(s) concerning the issues of the complaint and any informal resolution.

In addition to the above, in class action complaints, include name of the person who wishes to be the agent of the class; name of representative, if any; nature of the class; agency policy or practice giving rise to the allegation of discrimination; nature of the act(s) giving rise to the aggrieved person's belief that he or she was discriminated against; reason why the aggrieved person believes that a number of other persons are similarly affected by said policy or practice; efforts made to resolve the matter affecting the individual as well as the class, including names of persons contacted and documents reviewed. (Attach sheets if additional space is required.)

On 10-16-81, Mary R. Smith came to see me regarding a discrimination complaint. Ms. Smith alleged that because of her race (black) and sex (female) she had been denied a promotion to GS-501-11, Classifier, for the Office of Policy and Support, Administration.

Ms. Smith alleged that on 10-6-80, her supervisor, Richard A. Jones, met with her and Joseph Alexandria, a white male, at which time Mr. Jones had stated that if she and Mr. Alexandria completed certain educational requirements and time-in-grade they would be promoted to a GS-501-11, Classifier.

On 10-15-81, Mr. Jones informed Ms. Smith that because of poor attendance and unsatisfactory work performance she would not be promoted until she had improved in those areas. At that time Ms. Smith learned that Joseph Alexandria had received his promotion. Both employees had completed the required educational requirements and time-in-grade.

Ms. Smith feels the reason that she has been denied a promotion to a GS-501-11, Classifier, was because of her race (black) and her sex (female); that she has performed as well if not better than Mr. Alexandria and other males in the office.

My preliminary inquiries revealed that on 10-6-80, Richard Jones had met with Joseph Alexandria and Mary Smith to discuss their promotional potential; that at the meeting certain educational requirements and time-in-grade had been stimulated as a prerequisite for a promotion for both employees. Mr. Alexandria stated he had completed his educational requirements and time-in-grade and had received his promotion on 10-10-81. He was not aware of the fact that Mary Smith did not get her promotion. He believed she was qualified, did the same work he was doing, and saw no reason why Mr. Jones had not promoted her.

I spoke with Richard A. Jones, the supervisor. Mr. Jones confirmed that he had met, on 10-6-80, with Joseph Alexandria and Mary Smith and, as alleged, had laid out the conditions precedent to promotion; that Mr. Alexandria had met the educational requirements and time-in-grade and had received his promotion on 10-10-81. He also stated that Mr. Alexandria was a high performer, productive, accurate, and timely; that while Ms. Smith had met the educational requirements and time-in-grade, she had not received her promotion because of poor attendance and unsatisfactory performance. Mr. Jones further indicated that until her attendance and performance improved he would not promote her. When questioned for specifics about her unsatisfactory work, Mr. Jones alleged that Ms. Smith was slow and often missed deadlines. However, he conceded that she was accurate.

After talking with Mr. Jones on 10-18-81, I checked the attendance records for the Office of Policy and Support. The attendance records revealed that Ms. Smith had been absent 10 times within the last 6 months (6 days on annual leave and 4 days sick), and Mr. Alexandria had been absent 12 times within the last 6 months (8 days on annual leave and 4 days sick). I also checked with Personnel to get a comparison of the number of promotions in Policy and Support between the professional males and females. The records revealed that male classifiers, especially white males, had received more promotions than the female classifiers within the past year. The average grades for the male classifiers were GS-11's-13's. The average grades of the female classifiers were GS-7's-9's. It was the general consensus among her coworkers that Ms. Smith was a good classifier; that while she "took her time" in doing her job, there was "no big rush" and that Mr. Jones set unrealistic and unnecessary deadlines; that some males didn't meet the deadlines either. Some employees thought the complainant was the best classifier in the division because she was very accurate. They did say, however, that she was often late, which annoyed Mr. Jones, but that she was willing to stay late to finish her work.

I again spoke with Mr. Jones revealing to him the information I had gathered. At this meeting, Mr. Jones was not willing to change his position concerning Ms. Smith's promotion. He stated again that when Ms. Smith has improved her attendance and work performance, he would promote her to a GS-501-11.

After several unsuccessful attempts at an informal adjustment, I met with Ms. Smith for a final interview on 11-16-81.

[illegible]

PART II

CASES CLOSED WITH CORRECTIVE ACTION

- A. Total number of cases closed with corrective action this reporting period _____
B. Total number of cases closed with backpay awarded this reporting period " _____

c. Types of Corrective Action		Total
1. Retroactive Hire	with backpay	
	without backpay	
2. Non-Retroactive Hire		
3. Retroactive Promotion	with backpay	
	without backpay	
4. Non-Retroactive Promotion		
5. Priority Consideration		
6. Rescind Disciplinary action	with backpay	
	without backpay	
7. Modify Disciplinary Action		
8. Cease Practice Complained of		
9. Reinstatement	with backpay	
	without backpay	
10. Reassignment	same duty station	
	another duty station	
11. Performance Re-evaluated to Complainant's Satisfaction		
12. Adverse Material Removed From Personnel File		
13. Agency Improvement	corrections of working conditions	
	correction of personnel practice	
14. Other		
D. Monetary Relief Provided (This Reporting Period)		
1. Backpay/Retroactive hire/		
2. Backpay/Retroactive Promotion/		
3. Backpay/Rescind Disciplinary Action/		
4. Backpay/Reinstatement/		
5. Backpay/Other/		
6. Total Backpay Provided		
7. Total Attorney Fees and Costs Awarded		

CHAPTER II

FORMAL COMPLAINT PROCESSING

1. GENERAL.

a. Individual Complaint.

- (1) Subject to the conditions set forth on page II-5, paragraph 2f, a written complaint shall be accepted from any employee or applicant for DOE employment who believes that he or she has been discriminated against because of race, color, religion, sex, national origin, age, and/or physical or mental handicap.
- (2) A complaint of discrimination based on political affiliation, marital status, or any other matters not within the purview of 29 CFR 1613.212, shall not be accepted nor processed under this chapter, but shall be handled as a grievance in accordance with the provisions of DOE 3771.1, GRIEVANCE POLICY AND PROCEDURES, of 7-2-81.

b. Right to Representation. At any stage in the presentation or processing of a complaint, including the counseling stage as described on page I-1, paragraph 1, the complainant shall have the right to be accompanied, represented, and advised by a representative of his or her own choosing, provided the choice of a representative does not involve a conflict of interest or position. The complainant should immediately notify the Director of Equal Opportunity in writing of the name and address of his or her representative, if any.

c. Official Time.

- (1) If the complainant is a DOE employee, he or she shall have a reasonable amount of official time, if he or she is otherwise in an active duty status, to prepare and present a complaint. A determination of what is a reasonable amount of time varies with the complexity of the case, is measured in hours, not in days; and is judged at each stage of the complaint process. "Prepare and present" refers to any stage in the preparation and presentation of a complaint to the EEO officer for formal acceptance or rejection including the precomplaint counseling stage under 29 CFR part 1613.213. Official time should be provided for, but not limited to:
 - (a) Meetings with the EEO officer to discuss allegations in the complaint and determine issues for investigation pursuant to 29 CFR part 1613.214.
 - (b) Meetings with the EEO officer and other appropriate officials to discuss the investigative file and attempt informal adjustment of the complaint pursuant to 29 CFR part 1613.217.

- (c) Interrogation of the complainant by the EEO investigator pursuant to 29 CFR part 1613.216.
- (d) Matters related to an EEOC hearing pursuant to 29 CFR part 1613.218.
- (e) Matters related to the Merit Systems protection Board (MSPB) proceedings pursuant to 5 CFR 1201.

(2) If the complainant is a DOE employee and designates another DOE employee as his or her representative, the representative shall have a reasonable amount of official time, if he or she is otherwise in an active duty status, to assist the complainant in the preparation and presentation of the complaint.

- d. Freedom From Reprisal or Interference. Complainants, their representatives, and witnesses shall be free from restraint, interference, coercion, discrimination, or reprisal at any stage in the presentation and processing of a complaint, including the counseling stage or any time thereafter. An allegation of reprisal or interference shall be processed as described on page 11-20, paragraph 8.

2. FILING AND PRESENTATION OF A FORMAL COMPLAINT.

- a. Appropriate Official. A complaint shall be submitted in writing by the complainant or his or her representative and be signed by the complainant. The complaint may be delivered in person or submitted by mail within 15 calendar days of the date of the final interview with the EEO counselor to any of the following DOE officials:

- (1) The Secretary of Energy,
- (2) Heads of Field Organizations,
- (3) Appropriate EEO officers,
- (4) Director of Equal Opportunity,
- (5) Federal Women's Program Manager, or the
- (6) Hispanic Employment Program Manager.

If a complaint is delivered or sent to one of these officials other than the Director of Equal Opportunity, the official, without acknowledgment, shall transmit the complaint within 5 calendar days to the Director of Equal Opportunity. The Director of Equal Opportunity will acknowledge receipt in writing to the complainant, with a copy to the complainant's representative. The acknowledgment letter shall advise the complainant of his or her administrative rights and the right to file a civil action as authorized in section 717(c) of the Civil Rights Act, as amended

(Pub. L. 92-261; 42 U.S.C. 2000e-16), including the time limits imposed on the exercise of those rights. (See page 11-21, Attachment 11-1, "Notice of Receipt of Discrimination Complaint." Additionally, see page 111-15, paragraph 3a, regarding instructions on processing complaints of age discrimination.) The Director of Equal Opportunity shall transmit a copy of the complaint to the appropriate EEO officer for acceptance or rejection, with a copy of the "Notice of Receipt of Discrimination Complaint."

b. Time Limits.

- (1) A complaint shall be deemed filed on the date it is received by the appropriate EEO officer or by another appropriate DOE official (see page 11-2, paragraph 2a), or on the date postmarked, if sent by mail to the EEO officer or to another appropriate DOE official.
- (2) The EEO officer receiving the complaint shall extend the time limits set forth on page 1-1, paragraphs 1 and 2d-e:
 - (a) When the complainant shows that he or she was not notified of the time limits and was not otherwise aware of them, or that he or she was prevented by circumstances beyond his or her control from submitting the matter within the time limits; or
 - (b) For other reasons considered appropriate by the EEO officer.

c. Contents of the Complaint.

- (1) The written complaint shall specify the basis for the alleged discrimination (i.e., race, color, religion, sex, national origin, age, and/or physical or mental handicap), and the kind of matter giving rise to the complaint (i.e., promotion, assignments, training, reprimand, and so forth).
- (2) The alleged discriminatory action on which the complaint is based shall be described in sufficient detail to permit its investigation and consideration.
- (3) If a specific position is involved, the title, series, grade, vacancy announcement number, and location shall be given.
- (4) The date of the alleged discriminatory action shall be provided.
- (5) All pertinent information in support of the allegation of discrimination shall be provided.
- (6) The desired remedy should be stated.

d. Duties of the EEO Officer. Upon receipt of a complaint: the appropriate EEO officer shall:

- (1) Send the original of the complaint without acknowledgment, within 5 working days, to the Director of Equal Opportunity.
- (2) Upon receipt of a complaint from the Director of Equal Opportunity for acceptance or rejection, suggest to the complainant that the complaint be submitted on DOE F 1600.1, "Complaint of Discrimination," (page 1-9, Attachment 1-3), if he or she has not done so, in order to expedite processing of the complaint.
- (3) Advise the EEO counselor of the receipt of a formal complaint and request that the written report of counseling and a copy of the "Notice of Right to File a Discrimination Complaint" referred to on page 1-2, paragraph 2i, be submitted within 15 calendar days. A formal complaint shall not be accepted until the EEO officer has determined that the complainant has consulted with an EEO counselor to allow for informal resolution pursuant to 29 CFR part 1613.213.
- (4) Review the complaint after receipt to determine timeliness, and which issues should properly be accepted and investigated or should be rejected. Allegations which are not within the purview of the regulations must be rejected (see page 11-5, subparagraph f). Even though the complainant's allegations meet the regulatory requirements, the EEO officer should not accept for investigation any allegations which are so vague or general that no specific issues can be defined which pertain to the alleged discrimination suffered by the complainant and which thus could be investigated.
- (5) To better define the issues in a complaint for investigative purposes, the appropriate EEO officer shall review the counselor's report. The EEO officer shall refer the complainant back to the EEO counselor on new matters raised in the complaint and on which there has been no counseling. The EEO officer shall not submit for investigation matters on which there has been no counseling. If vague or general allegations cannot be made more specific by reference to the EEO counselor's report, the EEO officer should contact the complainant, give the complainant an opportunity to furnish more specific information on such allegations and, if necessary, assist him or her in amending or perfecting the complaint in an attempt to define the issue or issues which the employee or applicant is raising. If the complainant is unable or refuses to furnish such information within a reasonable period of time, the EEO officer should recommend to the Director of Equal Opportunity cancellation of the vague or general allegations of the complaint for failure of the complainant to prosecute them and advise the complainant in writing of his or her rights of appeal. (See page 11-5, subparagraph g.)
- (6) A review of the complaint should be made to identify any issue(s) which is appealable to the MSPB. Because of the 120-day time limit for processing complaints involving a personnel action appealable to MSPB, EEO officers should work in conjunction with members of the

appropriate servicing personnel office to identify those issues in a complaint which are appealable to MSPB in order to notify the complainant, at the time the complaint is accepted for investigation of appeal rights and time requirements for appeal to MSPB (see 5 CFR 1201 and Attachments 11-2 and 11-3).

- e. Acceptance of Complaint. Upon determination of issues accepted for investigation, the appropriate EEO officer shall:
 - (1) Notify the complainant and appropriate EEO counselor in writing of the acceptance of the complaint. (See page 11-25, Attachment 11-3, "Notice of Acceptance of Discrimination Complaint.")
 - (2) Notify the complainant of his or her obligation to inform the Director of Equal Opportunity in writing if the services of an attorney or any other representative have been retained. (See Attachment 11-3.)
 - (3) Send the Director of Equal Opportunity a copy of the Notice of Acceptance within 5 working days of its date; with a copy of the EEO counselor's report.
- f. Rejection of Complaint. The EEO officer may reject a complaint which is not filed timely and shall reject those allegations in a complaint which are not within the purview of 29 CFR part 1613.212, or which set forth identical matters as contained in a previous complaint filed by the same complainant which is pending or has been decided by DOE. If the EEO officer rejects a complaint, he or she shall transmit the decision by letter to the complainant (with a copy to his or her representative). The decision letter shall inform the complainant of his or her right to appeal the decision to the EEOC and of the time limit within which the appeal may be submitted and of his or her right to file a civil action (see page 11-23, Attachment 11-2, "Notice of Final Decision of Agency." Also page 111-15, paragraph 3a, regarding processing of age discrimination complaints). A copy of the EEO officer's decision shall be forwarded to the Director of Equal Opportunity.
- g. Cancellation of Complaint. The EEO officer may recommend the cancellation of a complaint because of failure of the complainant to prosecute the complaint. When the EEO officer recommends cancellation of the complaint, he or she shall forward his or her recommendations to the Director of Equal Opportunity. When the recommendation to cancel a complaint is adopted by the Director of Equal Opportunity, he or she shall so notify the EEO officer. The EEO officer shall transmit the decision to cancel by letter to the complainant and his or her representative. The decision letter shall inform the complainant of his or her right to appeal the DOE decision to EEOC, of the time limit within which the appeal may be submitted, and of his or her right to file a civil action pursuant to 29 CFR part 1013.281. (See page 11-23, Attachment 11-2, "Notice of Final Decision of Agency.")

3. INITIATION OF INVESTIGATION.

- a. Promptness of Investigation. When notified of the acceptance of a complaint, the Director of Equal Opportunity shall provide for the prompt investigation of the complaint.
- b. Investigator. The investigation will be conducted by a qualified EEO investigator from the Office of Equal Opportunity. The Director of Equal Opportunity shall notify the appropriate EEO officer in writing of the assignment of an investigator.
- c. Setting Target Date for Completion. A date shall be established by the Director of Equal Opportunity for completion of the investigation. The target date shall be established with due recognition of the fact that, except in unusual circumstances, complaints shall be resolved within 180 days after they are filed. Time needed for post-investigative review and decision also should be considered in establishing the target date.
- d. Arrangements for Investigation. The Director of Equal Opportunity shall arrange to furnish to the person conducting the investigation a written authorization to:
 - (1) Investigate all aspects of complaints of discrimination.
 - (2) Require all DOE employees to cooperate with the investigator in the conduct of the investigation.
 - (3) Require DOE employees having any knowledge of the matter complained of to furnish testimony under oath or affirmation without a pledge of confidence.

The investigator shall be authorized to administer oaths and require that statements of witnesses shall be under oath or affirmation without a pledge of confidence (except wherein the Privacy Act is applicable). An affirmation is the equivalent of taking an oath.

- e. Obtaining Affidavits. In obtaining affidavits, the investigator shall obtain all necessary information, reduce it to writing, give the person being interviewed an opportunity to review the written statement, and make any necessary corrections or other changes. The investigator shall have the witness swear to, or affirm, the truth of the statement. If corrections or other changes are made in the statement by the person interviewed, they shall, if possible, be made in ink and initialed. The person interviewed shall sign the statement and initial each page. Only one copy of the statement need be prepared, unless the person furnishing the statement desires a copy.
- f. Protecting Confidentiality of Testimony. While testimony of the complainant, the alleged discriminating official(s), and witnesses is

subject to review of the parties concerned in the complaint and by the DOE officials identified with the processing of the complaint, it shall not be disclosed to other persons, unless authorized by the Director of Equal Opportunity and in accordance with applicable law.

4. CONDUCT OF INVESTIGATION.

- a. Scope of the Investigation. After the issues have been defined, the assigned investigator must conduct an independent investigation. Officials, including EEO officials, of the organizational element in which the investigation is conducted, must not attempt to influence the investigation, or cause the investigation to be expanded beyond, or fall short of, coverage of the issues as defined in the matter complained of, and previously submitted to EEO counseling, and accepted for investigation by the EEO officer. It is the responsibility of the independent investigator to determine the evidence needed to ascertain the truth of the allegations and the investigator must be free to obtain the evidence in any legal and proper manner.

(1) The investigation shall include a thorough review of:

- (a) The circumstances under which the alleged discrimination occurred;
- (b) The treatment of members of the complainant's group identified by his or her complaint as compared with the treatment of other employees in the organizational element in which the alleged discrimination occurred; and
- (c) Any policies and practices related to the work situation which may constitute or appear to constitute discrimination even though they have not been expressly cited by the complainant.

(2) Sufficient information should be gathered through a survey of the general environment out of which the complaint arose so that:

- (a) Any improper discrimination in the organizational element involved in the complaint can be detected wherever possible and remedial action taken; and
- (b) Any allegation of discrimination not supported by facts may be identified as such, and the alleged discriminating official can be exonerated.

(3) The scope of the survey may vary from case-to-case. In some cases, the full range of personnel actions in which the alleged discriminating official, or in which the complainant, was involved may be covered.

- (4) As a general rule, when the results of the investigation are inconclusive, additional investigation should be undertaken, when feasible.
 - (5) Information needed to appraise the utilization of members of the complainant's group as compared to the utilization of persons outside the complainant's group shall be recorded in statistical form in the investigative file, but specific information as to a person's membership or nonmembership in the complainant's group needed to facilitate an adjustment of the complaint or to make an informal decision on the complaint shall, if available, be recorded by name in the investigative file. If necessary, the investigator may obtain information regarding the membership or nonmembership of a person in the complainant's group by asking each person concerned to provide the information voluntarily. An investigator shall not require or coerce an employee to provide this information.
 - (6) The investigative file shall contain the various documents and information acquired during the investigation and shall be organized to show their relevance to the complaint or the general environment out of which the complaint arose including:
 - (a) Affidavits of the complainant, the alleged discriminating official(s), and the witnesses;
 - (b) Copies of, or extracts from, records, policy statements, or regulations of the DOE; and
 - (c) All other information pertinent to the complaint.
- b. Terminating the Investigation Before Completion.
- (1) Upon receipt of the written request from the complainant or his or her representative that the complaint be canceled or withdrawn, the investigator shall attach the request to the file, prepare a memorandum for the file reflecting that action and the complainant's reason for requesting cancellation or withdrawal and forward the investigative file to the Director of Equal Opportunity.
 - (2) When so instructed by the Director of Equal Opportunity, the investigator shall terminate the investigation, attach those instructions to the investigative file, and forward it to the Director of Equal Opportunity.
 - (3) Regardless of the reason for terminating the investigation before completion, the investigator shall record in a memorandum for the file *any* leads to further investigation which would be of value if the case is reopened or to any other aspects of the case which appear to warrant further investigation. The investigator shall call to the

attention of the Director of Equal Opportunity information in the file which might point to possible discrimination or which appears to warrant further investigation.

5. REPORT OF INVESTIGATION.

- a. The investigator shall prepare the report of investigation and attach to the report, as exhibits, a list of the names of the alleged discriminating official(s) and witnesses; a copy of each affidavit or statement of the complainant, the alleged discriminating official(s) and the witnesses; a copy of each record obtained; and a copy of other information required in accordance with the instructions in this chapter. Where information concerning DOE's issuances or instructions is essential to an understanding of the matters in the case, the investigator shall attach copies of, or excerpts from, such material.
- b. The Director of Equal Opportunity, or designee, shall transmit to the EEO officer three copies of the completed report of investigation as appropriate, to provide an opportunity for informal adjustment.

6. ADJUSTMENT OF COMPLAINT.

- a. Forwarding Investigative File to Complainant. The EEO officer shall provide an opportunity for adjustment of the complaint on an informal basis after the complainant has reviewed the investigative file. For this purpose, the EEO officer shall furnish the complainant and the complainant's representative a copy of the investigative file promptly after receiving it from the Director of Equal Opportunity, and provide an opportunity for the complainant to discuss the investigative file with appropriate officials. To expedite the complaint process, the EEO officer shall, within 30 days of receipt of the investigative file, inform the Director of Equal Opportunity of the status of the complaint. The EEO officer shall notify the Director of Equal Opportunity of the date the complainant, and his or her representative, was furnished a copy of the investigative file and the date of initial attempt at informal adjustment.
- b. Terms of Adjustment.
 - (1) EEO officers appointed by the Director of Equal Opportunity have the authority to negotiate informal adjustments of discrimination complaints. A complaint may be informally adjusted without a finding of discrimination. An informal adjustment of a complaint may properly include an award of backpay, attorney's fees, or other appropriate relief.
 - (2) The EEO officer responsible for attempting informal adjustment of a complaint may, at his or her discretion, consult with the alleged discriminating official and/or the appropriate operating official regarding the terms under which DOE may attempt to resolve the complaint informally.

- (3) If the complaint is adjusted, the EEO officer shall reduce the terms of adjustment to writing, and the agreement shall be signed by the complainant and the EEO officer and made a part of the complaint file. The EEO officer shall provide a copy of the terms of the adjustment to the complainant, the Director of Equal Opportunity, and the appropriate DOE official responsible for implementing the terms of the adjustment. The EEO officer also shall inform the alleged discriminating official of the terms of the agreement.
- (4) If the DOE official responsible for implementing the terms of the adjustment does not carry out or rescinds any action specified by the terms of the adjustment for any reason not attributable to acts or conduct of the complainant, the official shall set forth in writing the specific reasons in detail for not carrying out or rescinding any action specified by the terms of the agreement and so inform the appropriate EEO officer promptly in writing. The EEO officer shall, upon the complainant's written request, reinstate the complaint for further processing from the point processing ceased under the terms of the adjustment.

c. Attorney's Fees and Costs.

- (1) In a decision by DOE under 29 CFR parts 1613.217, 1613.220(d), 1613.221, or 1613.612, DOE may award an applicant or employee reasonable attorney's fees or costs incurred in the processing of the complaint or charge. A finding of discrimination raises a presumption of entitlement to an award of attorney's fees (see 29 CFR part 1613.271(c)). The award of attorney's fees must be reviewed and concurred in by the appropriate DOE office of legal counsel for appropriateness and reasonableness.
- (2) Attorney's fees shall be paid only for services performed after the filing of a complaint required in part 1613.214, and after the complainant has notified DOE that he or she is represented by an attorney, except that fees are allowable for a reasonable period of time prior to the notification of representation for any services performed in reaching a determination to represent the complainant. Written submissions to DOE that are signed by the representative shall be deemed to constitute notice of representation.
- (3) Attorney's fees are allowable only for the services of members of the bar and law clerks, paralegals, or law students under the supervision of members of the bar, except that no award is allowable for the services of any employee of the Federal Government.
- (4) When a settlement or a final DOE decision provides for an award of attorney's fees or costs, the complainant's attorney shall be advised by the EEO officer or Director of Equal Opportunity, as

appropriate, to submit a verified statement of costs and attorney's fees to DOE within 20 calendar days of receipt of the terms of settlement signed by the parties or the final DOE decision, as the case may be. A statement of attorney's fees shall be accompanied by an affidavit executed by the attorney of record itemizing the attorney's charges for legal services and both the verified statement and the accompanying affidavit shall be made a part of the complaint file. The amount of attorney's fees or costs to be awarded to the complainant shall be determined by agreement between the complainants the complainant's representative, and DOE. Such agreement shall be reduced immediately to writing.

- (5) The amount of attorney's fees shall be made in accordance *with* the following standards: the time and labor required, the novelty and difficulty of the questions, the skill requisite to perform the legal service properly, the preclusion of other employment by the attorney due to acceptance of the case, the customary fee, whether the fee is fixed or contingent, time limitations imposed by the client or the circumstances, the amount involved and the results obtained, the experience, reputation, and ability of the attorney, the undesirability of the case, the nature and length of the professional relationship with the client, and the awards in similar cases.
- (6) The costs which may be awarded are those authorized by 28 U.S.C. 1920 to include (a) fees of the reporter for all or any of the stenographic transcript necessarily obtained for use in the case; (b) fees and disbursements for printing and witnesses; and (c) fees for exemplification and copies of papers necessarily obtained for use in the case. Witness fees shall be awarded in accordance with the provisions of 28 U.S.C. 1821, except that no award shall be made for a Federal employee who is in a duty status when made available as a witness.
- (7) If the complainant, the representative, and DOE cannot reach an agreement on the amount of attorney's fees or costs within 20 calendar days of receipt of the verified statement and accompanying affidavit, the Director of Equal Opportunity shall issue a decision determining the amount of attorney's fees or costs within 30 calendar days of receipt of the statement and affidavit. Such decision shall include the specific reasons for determining the amount of the award.
- (8) When the parties *agree* to an adjustment of a complaint, but cannot agree on the award of attorney's fees or costs, the issue of the award of attorney's fees or costs may be severed and shall be the subject *of* a final decision under 29 CFR part 1613.221(d).
- (9) The decision of whether to award attorney's fees or costs, or of the amount to be awarded, may be the subject of an appeal to EEOC under the provisions of 29 CFR parts 1613.231-1613.236.

- d. Offer of Disposition and Hearing. If the complaint is not adjusted, the appropriate EEO Officer shall notify the complainant in writing of:
- (1) The proposed disposition of the complaint (see page 11-29, Attachment 11-4, 'Notice of Proposed Disposition of Discrimination Complaint,' for guidance);
 - (2) The complainant's right to a hearing by an EEO complaints examiner if notification is sent to the EEO officer in writing within 15 calendar days of the receipt of the notice of proposed disposition; and
 - (3) The complainant's right to a decision by the Director of Equal Opportunity or other designated individual where appropriate, without a hearing, if notification is sent to the EEO officer in writing within 15 calendar days of the receipt of the notice of proposed disposition.
- The proposed decision shall discuss only the merits of the complaint and shall not determine the issue of attorney's fees.
- e. Time Limit for Complainant's Notification to Agency. If the complainant fails to notify the EEO officer of his or her wishes within 15 calendar days, the EEO officer may adopt the disposition of the complaint proposed in the notice sent to the complainant under subparagraph d(1), above, as the final DOE decision on the complaint. When this is done, the EEO officer shall transmit the decision by letter to the complainant and his or her representative. Such letter shall inform the complainant of his or her right to appeal to the Director, Office of Review and Appeals, Equal Employment Opportunity Commission, the time limit applicable thereto, and of his or her right to file a civil action in an appropriate U.S. District Court. A copy of the decision letter, together with the complaint file shall be forwarded to the Director of Equal Opportunity (see page 11-23, Attachment 11-2, "Notice of Final Decision of Agency").
- f. Contents of Complaint File. Each DOE official authorized to process complaints shall establish a complaint file containing all pertinent documents for each complaint received. The file shall not contain any document that has not been made available to the complainant or his or her designated physician under 5 CFR part 294.401, "Medical Information." The complaint file shall include, as a minimum:
- (1) The Notice of the EEO Counselor's Final Interview to the complainant;
 - (2) The written Report of the EEO Counselor;
 - (3) The Formal Complaint;
 - (4) The Notice of Receipt;

- (5) The Notice of Acceptance or Rejection;
- (6) The Investigative File;
- (7) If the complaint was withdrawn by the complainant, a written statement of the complainant, or his or her representative, to that effect;
- (8) If the complaint was adjusted, a written record of the terms of the adjustment;
- (9) If the complaint was not adjusted, a copy of the letter notifying the complainant of the proposed disposition of the complaint and of his or her right to a hearing and decision by the Director of Equal Opportunity or a decision by the Director of Equal Opportunity without a hearing;
- (10) If a final decision is made under subparagraph e, page 11-12 (complainant failed to reply within 15 calendar days), the letter transmitting that decision;
- (11) If a hearing was held, the record of the hearing, together with the complaints examiner's findings, analysis, and recommended decision on the merits of the complaint; and
- (12) A copy of the letter transmitting the final DOE decision of the Director of Equal Opportunity.

7. HEARING, DECISION, AND APPEALS.

- a. Hearing. Title 29 CFR part 1613.218 establishes the detailed procedures or the conduct of a hearing by a complaints examiner from another agency, but assigns certain duties in connection therewith to the agency in which the complaint arose. The following subparagraphs describe the administrative requirements of the organization in which a complaint arose.

(1) Complaints Examiner.

- (a) The hearing shall be conducted by a complaints examiner who must be an employee of another agency from the one in which the complaint arose. The Director of Equal Opportunity shall request the appropriate EEOC field service office to appoint a complaints examiner who has been certified by the EEOC as qualified to conduct the hearing.
- (b) If DOE, by reason of law, is prevented from divulging information concerning the matter complained of to a person who has not received the security clearance required by DOE, the

Director of Equal Opportunity shall arrange with EEOC for the selection of an impartial DOE employee to serve as a complaints examiner.

(2) Arrangements for the Hearing.

- (a) The Office of Equal Opportunity shall transmit the complaint file containing all the documents which have been acquired up to that point in the processing of the complaint, including the original copy of the Investigative file, to the complaints examiner who reviews the complaint file to determine whether further investigation is needed before scheduling the hearing. When the complaints examiner determines that further investigation is needed, he or she may remand the complaint to the Director of Equal Opportunity for further investigation or arrange for the appearance of witnesses necessary to supply the needed information at the hearing. The requirements on page 11-6, paragraph 3, apply to any further Investigation by DOE on the complaint (29 CFR part 1613.218). The complaints examiner schedules the hearing for a convenient time and place.
- (b) The Office of Equal Opportunity provides an appropriate room for the hearing and necessary administrative support for complaints originating in Headquarters organizations, including arrangements for an appropriate number of verbatim transcripts. Field EEO officers shall provide the same support for complaints from their organizations.

(s) Conduct of the Hearing.

- (a) Attendance at the hearing is limited to persons determined by the complaints examiner to have a direct connection with the complaint.
- (b) Complaints examiners conduct hearings so as to bring out pertinent facts, including the production of pertinent documents. Rules of evidence are not applied strictly, but the complaints examiner is required by regulation to exclude irrelevant or unduly repetitious evidence. Information having a bearing on the complaint or employment policies or practices relevant to the complaint is required by regulation to be received in evidence. The complainant, his or her representative, and the DOE representatives have the opportunity to cross-examine witnesses who appear and testify. Testimony is under oath or affirmation.

- (4) powers Of Complaints Examiner. In addition to the other powers, the complaints examiner is authorized to:

- (a) Administer oaths or affirmations;
 - (b) Regulate the course of the hearing;
 - (c) Rule on offers of proof;
 - (d) Limit the number of witnesses whose testimony would be unduly repetitious; and
 - (e) Exclude any person from the hearing for contumacious conduct or misbehavior that obstructs the hearing.
- (5) Witnesses. The complaints examiner is required by regulation to request DOE to make available at the hearing any employee requested by the complainant when the complaints examiner determines that the testimony of the employee is necessary. The complaints examiner also may request the appearance of an employee of any Federal agency whose testimony he or she determines is necessary to furnish information pertinent to the complaint under consideration. DOE shall make its employees available as witnesses at a hearing on a complaint when requested to do so by the complaints examiner, and it is not administratively impracticable to comply with the request. DOE employees shall be in a duty status during the time they are made available as witnesses. When it is not administratively practicable to comply with the request for a witness, DOE shall provide an explanation to the complaints examiner. If the explanation is inadequate, the complaints examiner is required by regulation to so advise DOE and request it to make the employee available as a witness at the hearing. If the explanation is adequate, the complaints examiner is required by regulation to insert it in the record of the hearing, provide a copy to the complainant, and make arrangements to secure testimony from the employee through a written interrogatory (29 CFR 1613.218) I
- (6) Documentary Evidence. Hearings are recorded and transcribed verbatim. All documents submitted to, and accepted by, the complaints examiner at the hearing are made part of the record of the hearing. If DOE submits a document that is accepted, it shall furnish a copy of the document to the complainant. If the complainant submits a document that is accepted, he or she shall make the document available to the DOE representative for reproduction.
- (7) Avoidance of Delay.
- (a) The complaint shall be resolved promptly. To this end, both the complainant and DOE shall proceed with the complaint without undue delay so that the complaint is resolved within 180 calendar days, or sooner, after it was filed, including the time spent in processing by the complaints examiner (29 CFR part 1613.220).

- (b) The Director of Equal Opportunity may cancel a complaint in the event of undue delay by the complainant, or as an alternative, may resolve the complaint after a decision that sufficient information for that purpose is available.
- (c) If DOE has not issued a final decision, and has not requested EEOC to assign a complaints examiner within 75 calendar days from the date a complaint was filed, the EEOC may require DOE to take special measures to assure prompt processing of the complaint or may assume responsibility for processing the complaint, including assigning an investigator to conduct any necessary investigation on behalf of DOE. When the EEOC supplies an investigator, DOE is required by regulation to reimburse EEOC for all expenses incurred in connection with the investigation and shall notify the complainant in writing of the proposed disposition of the complaint not later than 15 calendar days after its receipt of the investigative report.

b. Final DOE Decision.

(1) Responsibilities of the Director of Equal Opportunity.

- (a) The Director of Equal Opportunity or other designated individual, where appropriate, shall make the final DOE decision in cases where there has been a hearing or in cases where the complainant has requested a decision without a hearing. The final decision shall be made after a review of the findings, analysis, and recommendations of the complaints examiner or in cases where there has been no hearing upon review of information in the complaint file.
- (b) The DOE decision shall require any remedial action authorized by law determined to be necessary or desirable to resolve the issues of discrimination and to promote the policy of equal opportunity, whether or not there is a finding of discrimination. When discrimination is found, the Director of Equal Opportunity shall determine the appropriate remedy in accordance with 29 CFR part 1613.271 and inform the DOE official responsible for taking remedial action to implement the decision. (See page III-16, paragraph 4, regarding exclusion of remedy for applicants alleging handicap discrimination.)
- (c) The Director of Equal Opportunity shall review the matter giving rise to the complaint to determine whether disciplinary action against alleged discriminating officials is appropriate, record the basis for that determination, and recommend accordingly. The recommendation and decision concerning disciplinary action shall not be included in the complaint file.

(2) Alleged Discriminating Official.

- (a) DOE must provide the alleged discriminating official a copy of its final decision on the complaint.
- (b) If the clear effect of the DOE decision is to deny the complainant's allegations against the alleged discriminating official, the latter should not be given access to the entire complaint file.
- (c) If the DOE decision, either directly through a finding of discrimination, or indirectly through a finding of error, concludes or implies impropriety on the part of the alleged discriminating official, the entire complaint file--with names and identifying information deleted where appropriate--must be made available for his or her review.
- (d) If DOE takes or proposes adverse action or other disciplinary action against the alleged discriminating official based on evidence developed in connection with the processing of the complaint, the entire complaint file--without deletions--must be made available for his or her review. For this purpose, "disciplinary action," includes any action that would constitute censure of the alleged discriminating official's conduct or competence, e.g., a requirement that the official undergo equal employment opportunity training.

(3) Final Decision Letter.

- (a) The final decision of the Director of Equal Opportunity or other designated individual shall be in writing, shall reflect the date of its issuance, and shall be transmitted to the complainant and his or her representative either by certified mail, return receipt requested, or by any other method which enables DOE to show the date of receipt. (See page 11-23, Attachment 11-2, "Notice of Final Decision of Agency.")
- (b) The decision letter shall inform the complainant that any request for attorney's fees or costs must be documented and submitted within 20 calendar days of receipt of the DOE decision. When the DOE decision provides for an award of attorney's fees or costs, the amount of these awards shall be determined under 29 CFR part 1613.271(c). If DOE determines not to award attorney's fees or costs to a prevailing complainant, it shall set forth in its decision the specific reasons for denying the award.
- (c) When there has been no hearing and no adjustment of the complaint, the decision letter shall set forth the findings, analysis, and decision of the Director of Equal Opportunity.

- (d) When there has been a hearing on the complaint, the decision letter shall transmit a copy of the findings, analysis, and recommended decision of the complaints examiner and a copy of the hearing record. When there has been a hearing, the DOE decision shall adopt, reject, or modify the decision as recommended by the complaints examiner. If the DOE decision is to reject or modify the recommended decision of the complaints examiner, the decision letter shall set forth the specific reasons in detail for rejection or modification. When the complaints examiner has submitted a recommended decision finding discrimination, and DOE has not issued a final decision within 180 calendar days after the date the complaint was filed, the complaints examiner's recommended decision shall become a final decision binding on DOE 30 calendar days after its submission to DOE. In such event, DOE shall so notify the complainant of the decision and furnish him or her a copy of the findings, analysis, and recommended decision of the complaints examiner and a copy of the hearing record, and also shall notify the complainant in writing of his or her right to appeal to the EEOC and the time limits applicable thereto and of the right to file a civil action in an appropriate Federal District Court, and of the time limits applicable thereto.

c. Appeal to the Equal Employment Opportunity Commission.

(1) Entitlement.

- (a) Except as provided by subparagraph (b), below, a complainant may appeal to the EEOC if the Director of Equal Opportunity, or the EEO officer, as appropriate, has made a final decision:

- 1 To reject his or her complaint, or a portion thereof;
- 2 To cancel the complaint because of the complainant's failure to prosecute his or her complaint; or
- 3 On the merits of the complaint or on the award of attorney's fees or costs, when the decision does not resolve the matter to the complainant's satisfaction.

- (b) A complainant may not appeal to the EEOC under subparagraph (a), above, when the issue of discrimination giving rise to the complaint is being considered, or has been considered in connection with any other appeal by the complainant to the EEOC.

- (2) Where to Send Appeal. The complainant shall file his or her appeal in writing, either personally or by mail, with the Director, Office of Review and Appeals, Equal Employment Opportunity Commission, - 2401 E Street, NW., Washington, DC 20506.

(3) Time Limit.

- (a) A complainant may file a notice of appeal at any time after receipt of DOE's "Notice of Final Decision" on his or her complaint, but not later than 20 calendar days after receipt of that notice. An appeal is deemed filed by the Commission on the date it is postmarked, or in the absence of a postmark, on the date it is received by the Commission (29 CFR 1613.233). A complainant has an additional 30 calendar days after filing the notice of appeal within which to submit a brief or statement in support of the appeal.
- (b) For purposes of time limits, the DOE decision shall be final only when DOE makes a determination on all the issues in the complaint which have not been adjusted or settled, including whether or not to award attorney's fees or costs.
- (c) If a determination to award attorney's fees or costs is made, the decision will not be final until the procedure is followed for determining the amount of the award as set forth in 29 CFR part 1613.271(c).

d. Right to File a Civil Action.

- (1) Time Limit. An employee or applicant is authorized by section 717(c) of the Civil Rights Act, as amended (42 U.S.C. 2000e-16), to file a civil action in an appropriate U.S. District Court:
 - (a) Within 30 calendar days of his or her receipt of notice of final action taken by DOE on a complaint. The DOE decision is a final decision only when DOE makes a determination on all the issues in the complaint which have not been adjusted or settled, including whether or not to award attorney fees or costs. If a determination to award attorney fees or costs is made, the decision will not be final until the procedure is followed for determining the amount of the award as set forth in 29 CFR part 1613.271(c);
 - (b) After 180 calendar days from the date of filing a complaint with DOE, if there has been no final DOE decision;
 - (c) Within 30 calendar days of his or her receipt of notice of final action taken by the EEOC on his or her complaint; or
 - (d) After 180 calendar days from the date of filing an appeal with the EEOC if there has been no EEOC decision.
- (2) DOE's Duty to Notify Complainant. DOE shall notify an employee or applicant of his or her right to file a civil action, and of

the 30-day time limit for filing, in any final action on a complaint. (See page 111-15, paragraph 3c, regarding age discrimination complaints.)

- (3) Effect on Administrative Complaint Processing. "The filing of a Civil action by an employee or applicant does not terminate the processing of a complaint by DOE or the processing of an appeal by EEOC.

8. REVIEW OF ALLEGATIONS OF REPRI SAL.

- a. Choice of Review Procedures. A complainant, his or her representative, or a witness who alleges restraint, interference, coercion, discrimination, or reprisal in connection with the presentation of a complaint may, if an employee or applicant, have the allegation reviewed as an individual complaint of discrimination subject to 29 CFR part 1613.211 through 1613.222 or may file a charge within 15 calendar days of the date of the alleged occurrence pursuant to 29 CFR 1613.262(b). The charge shall be in writing and shall contain all pertinent facts.
- b. Inquiry by Director of Equal Opportunity When a Charge is Filed.
- (1) Except as provided in subparagraph (2), the Director of Equal Opportunity shall undertake an appropriate inquiry into such a charge and shall forward to the EEOC within 15 calendar days of the date of its receipt a copy of the charge and a report of action taken. DOE also shall provide the charging party with a copy of the report of action taken. When a complainant elects to proceed under the 15-calendar-day charge process, hearing and appeal rights are waived. If the Director of Equal Opportunity does not complete an appropriate inquiry 15 calendar days after receipt of such a charge, the charging party may submit a written statement with all pertinent facts to the EEOC. Pursuant to 29 CFR 262(b)(1), EEOC shall require DOE to take whatever action is appropriate.
- (2) When a complainant, after completion of the investigation of his or her complaint, requests a hearing and in connection with that complaint alleges restraint, interference, coercion, discrimination, or reprisal, the complaints examiner assigned to hold the hearing shall consider the allegations as an issue of the complaint at hand or refer the matter to DOE for further processing under the procedure chosen by the complainant pursuant to paragraph 8a above.

NOTICE OF RECEIPT OF DISCRIMINATION COMPLAINT
(FORMAT)

August 14, 1981

Certified

Mr. John Smith
213 Market Street
Washington, DC 20585

Dear Mr. Smith:

The purpose of this notice is to acknowledge receipt of your discrimination complaint and to provide you with written notification of your rights as well as the time requirements for exercising those rights. If you have further questions, ask your EEO counselor or EEO officer.

- o If your complaint is accepted, it will be Investigated. Based on the information developed by the investigation, an effort at an adjustment on an informal basis will be made. You will receive a copy of the investigative report and have an opportunity to discuss it with an appropriate agency official.
- o If your complaint, or any allegation contained therein is rejected, it is considered to be a final agency decision on the complaint or that portion of the complaint which is rejected. You will receive a notice by separate letter if your complaint or any part thereof is rejected, and will be advised at that time of your rights to appeal.
- o If an adjustment of the complaint is arrived at, the terms of the adjustment will be reduced to writing and you will be provided a copy.
- o If an adjustment of the complaint is not arrived at, you will be notified in writing of the proposed disposition of the complaint. You also will be notified of your right to a hearing by an EEO complaints examiner who will recommend a decision to your agency, or to a decision by the Director of Equal Opportunity without a hearing. If you want a hearing, or a decision by the Director of Equal Opportunity without a hearing, you must NOTIFY THE DEPARTMENT IN WRITING WITHIN 15 CALENDAR DAYS OF RECEIPT OF THE PROPOSED DISPOSITION OF YOUR COMPLAINT.
- o If you fail to request a hearing or to ask for a decision by the Director of Equal Opportunity, without a hearing, within 15 calendar days of your receipt of the proposed disposition, that disposition may become the final DOE decision.
- o If you are dissatisfied with the final decision of DOE (after a hearing or without a hearing), you may file a notice of appeal with the Director, Office of Review and Appeals, Equal Employment Opportunity Commission, 2401 E Street, NW., Washington, DC 20506, within 20 calendar days of receipt of the notice,

or you may file a civil action in an appropriate U.S. District Court within 30 calendar days. If you appeal to the Equal Employment Opportunity Commission (hereafter referred to as Commission) you should know the following:

- a. Except as provided in paragraph b below, you may file a notice of appeal at any time up to 20 calendar days after receipt of the DOE notice of final decision on your complaint. Any statement or brief in support of the appeal must be submitted to the Commission and to the defendant agency within 30 calendar days of filing the notice of appeal.
- b. The 20-day time limit within which a notice of appeal must be filed will not be extended by the Commission unless, based upon a written showing by you that you were not notified of the prescribed time limit and was not otherwise aware of it or that circumstances beyond your control prevented the filing of a Notice of Appeal within the prescribed time limit, the Commission exercises its discretion to extend the time limit and accept the Appeal.

The appeal and representations in support thereof must be submitted in duplicate.

- o If the DOE has not issued a final decision on your complaint within 180 calendar days of the date it was filed, you may file a civil action in an appropriate U.S. District Court.
- 0 If you decide to appeal to the Equal Employment Opportunity Commission (EEOC), you will still have an opportunity to file a civil action in U.S. District Court within 30 calendar days after receipt of the EEOC's decision, or 180 calendar days after your appeal to the EEOC if no final decision on your appeal has been rendered.
- 0 Should you elect to file a civil action and are unrepresented at the time of your appeal, you have a right to request the court to appoint counsel.

Sincerely,



Ralph Bivins
Director of Equal Opportunity

NOTE: A copy of the notice as given to the complainant should be filed-by DOE in the complaint file.

NOTICE OF FINAL DECISION OF AGENCY
(FORMAT)

August 14, 1981

Certified

Ms. Jane Doe
725 South Maine Street
Kensington, MD 20895

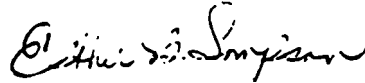
Dear Ms. Doe:

Attached to this notice is the final decision of the agency on your complaint of discrimination. If you are dissatisfied with this final decision, you have the following appeal rights:

- o You may appeal to the Equal Employment Opportunity Commission (EEOC) within 20 calendar days after receipt of the decision. Your appeal should be addressed to the Director, Office of Review and Appeals, Equal Employment Opportunity Commission, 2401 E Street NW., Washington, DC 20506. The appeal and any representations in support thereof must be submitted in duplicate. If you appeal to EEOC (hereafter referred to as Commission), you should know the following:
 - a. Except as provided in paragraph b below, you may file a notice of appeal at any time up to 20 calendar days after receipt of the DOE notice of final decision on your complaint. Any statement or brief in support of the appeal must be submitted to the Commission and to the Department of Energy within 30 days of filing the notice of appeal.
 - b. The 20-day time limit within which a notice of appeal must be filed will not be extended by the Commission, unless, based upon a written showing by you that you were not notified of the prescribed time limit and were not otherwise aware of it, or that circumstances beyond your control prevented the filing of a notice of appeal within the prescribed time limit, the Commission exercises its discretion to extend the time limit and accept the appeal.
- o In lieu of an appeal to the EEOC, you may file a civil action in an appropriate U.S. District Court within 30 calendar days of receipt of the decision.
- o If you elect to appeal to the EEOC, you may file a civil action in a U.S. District Court within 30 calendar days after receipt of the EEOC's final decision.
- o A civil action also may be filed any time after 180 calendar days of the date of initial appeal to the EEOC if a final decision has not been rendered.

- o Should you elect to file a civil action and are unrepresented at the time of your appeal, you have a right to request the court to appoint counsel.

Sincerely,



Esther B. Sampson
Secretary of Energy
(Or Title of Designee)

NOTE: This form letter is to be used under the following circumstances:

- o When a discrimination complaint is rejected or canceled;
- o When a proposed disposition is adopted after failure to request a hearing or decision by the DOE without a hearing;
- o When a final DOE decision is made after a recommended decision by the complaints examiner;
- o When DOE makes a final decision on the merits without a hearing;
- o When DOE requests a written request made in accordance with 29 CFR, part 1613.217(a), to reinstate a complaint for further processing; or
- o When DOE makes a final decision on the award of attorney's fees or costs.

A copy of the notice as given to the complainant should be filed by DOE in the complaint file. Where complaints involve allegations of discrimination based on age, see page 111-15, paragraph 3a, for guidance.

When an issue(s) in the discrimination complaint has been identified as one which may be appealable to the MSPB, the complainant should be informed of his or her right to appeal the personnel action(s) taken in regard to the identified issue(s) and the time requirements for filing the appeal to MSPB as follows:

- o You may file a petition for appeal to MSPB raising the issues of prohibited discrimination identified above.
 - a. The petition must be filed within 20 calendar days after receipt of the DOE resolution or final decision on the discrimination issue; or
 - b. When DOE has not resolved the matter or issued a final decision on the formal complaint within a 120-calendar-day period, you shall nonetheless file an appeal to MSPB within a year after the filing of the formal complaint.
- o Your petition for appeal should be addressed to the Chief Appeals Officer, Merit Systems Protection Board (list appropriate MSPB field office address).

NOTICE OF ACCEPTANCE OF DISCRIMINATION COMPLAINT
(FORMAT)

August 14, 1981

Certified

Ms. Jane Doe
725 South Maine Street
Kensington, MD 20895

Dear Ms. Doe:

The purpose of this notice is to inform you that in accordance with 29 CFR, part 1613.214(a), your individual complaint of discrimination based on (e.g., race, color, religion, sex, national origin, age, and/or physical or mental handicap) filed with the U.S. Department of Energy on (date) is hereby accepted for processing on the issues identified below:

(List accepted issues here.)

Additionally, this is to inform you that the following issues contained in your complaint are hereby rejected.

(List rejected issues and reason for rejection here.)

The accepted issues in your complaint will be investigated. Based on the information developed in the investigation, an effort will be made to adjust your complaint informally. You will receive a copy of the investigative report and have an opportunity to discuss it with me and other appropriate officials.

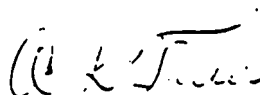
If an adjustment of the complaint is arrived at, the terms of the adjustment will be reduced to writing and you will be provided a copy. Finally, if you are dissatisfied with the Department's decision rejecting the above issues you have the following appeal rights:

- o You may appeal to the Equal Employment Opportunity Commission (EEOC) within 20 calendar days of receipt of this decision. Your appeal should be addressed to the Director, Office of Review and Appeals, Equal Employment Opportunity Commission, 2401 E Street, NW., Washington, DC 20506. The appeal and any representations in support thereof must be submitted in duplicate. If you appeal to EEOC (hereafter referred to as Commission), you should know the following:
 - a. Except as provided in paragraph b below, you may file a notice of appeal at any time up to 20 calendar days after receipt of the DOE notice of final decision on your complaint. Any statement or brief in support of the appeal must be submitted to the Commission and to the Department of Energy within 30 calendar days of filing the notice of appeal.

- b. The 20-calendar-day time limit within which a notice of appeal must be filed will not be extended by the Commission, unless, based upon a written showing by you that you were not notified of the prescribed time limit and were not otherwise aware of it or that circumstances beyond your control prevented the filing of a notice of appeal within the prescribed time limit, the Commission exercises its discretion to extend the time limit and accept the appeal.
- o In lieu of an appeal to the EEOC, you may file a civil action in an appropriate U.S. District Court within 30 calendar days of receipt of the decision.
- o If you elect to appeal to the EEOC, you may file a civil action in a U.S. District Court within 30 days after receipt of the EEOC's final decision.
- o A civil action also may be filed any time after 180 calendar days of the date of initial appeal to the EEOC if a final decision has not been rendered.
- o Should you elect to file a civil action and are unrepresented at the time of your appeal, you have a right to request the court to appoint counsel.

If you have retained the services of an attorney or any other representative, it is your duty to immediately inform the Director of Equal Opportunity in writing of the name and address of your representative.

Sincerely,



A. L. Tucker
EEO Officer

NOTE: When an issue(s) in the discrimination complaint has been identified as one which may be appealable to the Merit Systems Protection Board (MSPB), the complainant should be informed of his or her right to appeal the personnel action(s) taken in regard to the identified issue(s) and the time requirements for filing the appeal to MSPB as follows:

If you are dissatisfied with the DOE final decision regarding the personnel action(s) to be taken on (list issue(s)), you have following appeal rights:

- o You may file a petition for appeal to MSPB raising the issues of prohibited discrimination identified above.
 - a. The petition must be filed within 20 days after receipt of the DOE resolution or final decision on the discrimination issue; or
 - b. When DOE has not resolved the matter or issued a final decision on the formal complaint within a 120-calendar-day period, you shall nonetheless file an appeal to MSPB within a year after the filing of the formal complaint.
 - o Your petition for appeal should be addressed to the Chief Appeals Officer, Merit Systems Protection Board (lists appropriate MSPB field office address).
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NOTICE OF PROPOSED DISPOSITION OF DISCRIMINATION COMPLAINT

(FORMAT)

August 14, 1981

Certified

Mr. John Smith
213 Market Street
Washington, DC 20585

Dear Mr. Smith:

The purpose of this notice is to inform you of the proposed disposition of your discrimination complaint and your rights if you are dissatisfied with the proposed disposition.

- o PROPOSED DISPOSITION (State the specific proposed disposition of the complaint)
- o RIGHT OF HEARING

If you are dissatisfied with the proposed disposition, you may request a hearing and decision by the Director of Equal Opportunity, if YOU NOTIFY THE DEPARTMENT WITHIN 15 CALENDAR DAYS OF RECEIPT OF THE NOTICE that you desire a hearing.

If you request a hearing, you are expected to proceed without delay in presenting your complaint before the assigned complaints examiner. If you plan to have a representative, you immediately should obtain representation, and you also should begin preparing a list of proposed witnesses with a summary of the testimony you believe each would present at the hearing. The complaints examiner will request this list immediately after being assigned to your case.

Failure to prosecute your complaint without undue delay will be grounds for the complaints examiner to return your case to the agency. The agency may thereafter issue a final decision based on the evidence present in the complaint file.

- o RIGHT OF DECISION WITHOUT A HEARING

If you are dissatisfied with the proposed disposition, you may request a decision by the Director of Equal Opportunity without a hearing, based upon the evidence present in the complaint file. To request such a decision by the Director of Equal Opportunity, you should notify (name, position, and address of EEO Officer) within 15 calendar days after receipt of this notice.

If you fail to notify the Department of your wishes within the 15-day period, the EEO officer may adopt as the agency's final decision the proposed disposition shown above and will so notify you in writing. Upon receipt of notification, you may file a notice of appeal with the Director, Office of Review and Appeals, Equal Employment Opportunity Commission, 2401 E Street, NW.,

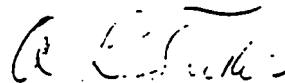
Washington, DC 20506, within 20 calendar days or file a civil action in a Federal District Court within 30 calendar days.

If you appeal to the Equal Employment Opportunity Commission (hereafter referred to as the Commission), you should know the following:

- a. Except as provided in paragraph b below, you may file a notice of appeal at any time up to 20 calendar days after receipt of the DOE notice of final decision on your complaint. Any statement or brief in support of the appeal must be submitted to the Commission and to the Department of Energy within 30 calendar days after filing the notice of appeal.
- b. The 20-calendar-day time limit within which a notice of appeal must be filed will not be extended by the Commission, unless, based upon a written showing by you that you were not notified of the prescribed time limit and were not otherwise aware of it or that circumstances beyond **your** control prevented the filing of a notice of appeal within the prescribed time limit, the Commission exercises its discretion to extend the time limit and accept the appeal.

If you appeal to the Equal Opportunity Commission (EEOC), **you may still file** a civil action within 30 calendar days after receipt of the EEOC decision, or 180 calendar days after your appeal to the EEOC, if you have not received a final decision from the EEOC. Should you elect to file a civil action and are unrepresented at the time of your appeal, you have a right to request the court to appoint counsel.

Sincerely,



A. L. Tucker
EEO Officer

<p>NOTE: When complaints involve allegation of discrimination based on age, see page 111-15, paragraph 3a, for guidance. A copy of the notice as given to the complainant should be filed by DOE in the complaint file.</p>
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CHAPTER III

SPECIAL PROVISIONS

1. MIXED CASES. When a complainant makes a written allegation of discrimination on the basis of race, color, religion, sex, national origin, age, and/or physical or mental handicap, in connection with an action that would otherwise be processed under the DOE internal grievance procedure, a negotiated grievance procedure (when the employee is a member of a DOE bargaining unit), or a personnel action appealable to the Merit Systems Protection Board (MSPB), the action for purposes of this directive is referred to as a "mixed case" and will be processed in accordance with the following guidelines:
 - a. Nonbargaining Unit Employees and Applicants.
 - (1) Because a "mixed case" may not be processed under DOE's internal grievance procedure (a procedure developed for noncollective bargaining unit employees), processing of a grievance will be discontinued if an allegation of discrimination is raised at any stage in the DOE grievance procedure, and the employee will be referred to an EEO counselor for advice on processing the complaint. See DOE 3771.1, GRIEVANCE POLICY AND PROCEDURES, of 7-2-81.
 - (2) A nonbargaining unit employee or applicant has an option to proceed under the DOE discrimination complaint procedure or the MSPB appellate procedure (when the allegation raised involves a personnel action appealable to MSPB) but not both. A complainant shall elect which procedure he or she wishes to pursue and shall be deemed to have exercised such option by filing an action timely under the applicable procedure.
 - b. Bargaining Unit Employees.
 - (1) A DOE bargaining unit employee who raises an allegation of discrimination has an option to proceed under the:
 - (a) Negotiated grievance procedure (where the negotiated grievance procedure provides for such, and the issues are not excluded by law from being decided through negotiated grievance procedures),
 - (b) DOE discrimination complaint procedure.
 - (c) MSPB's appellate procedure (when the allegation of discrimination raised involves a personnel action appealable to MSPB).

- (2) An employee shall select which procedure he or she wishes to pursue and shall be deemed to have exercised such option by filing timely a formal complaint in writing under the DOE discrimination complaint procedure; a grievance in writing under the negotiated grievance procedure; or an appeal to MSPB, whichever occurs first.
- c. Appeals to the Merit Systems Protection Board--Time Limit for Filing Petition. Following are the requirements for filing a petition for appeal to MSPB raising issues of prohibited discrimination:
- (1) Where the appellant has filed a timely formal complaint of discrimination with DOE.
 - (a) A petition must be filed within 20 calendar days after receipt of the DOE resolution or final decision on the discrimination issue; or
 - (b) When DOE has not resolved the matter or issued a final decision on the formal complaint within a 120-calendar-day period, the appellant shall nonetheless file an appeal to the Board within a year after the filing of the formal complaint with DOE.
 - (2) Where the appellant has filed a grievance with DOE under its negotiated grievance procedure, the employee may request the Board to review the final decision within 20 calendar days after receipt of the final decision.
 - (3) Where the appellant has been subject to an action appealable to the Board, he or she must either file a timely complaint of discrimination with DOE or appeal to the Board within 20 calendar days after the effective date of the DOE action being appealed.
- d. Consolidation of Complaints.
- (1) Discrimination complaints filed by two or more employees or applicants for employment consisting of substantially similar allegations of discrimination may be consolidated for processing by DOE or by the EEOC only with the written consent of the affected complainants. The Director of Equal Opportunity or the EEO officer, as appropriate, shall make the determination to consolidate complaints. When complaints are consolidated, each complainant will receive a separate report of investigation although only one investigation may have been conducted; similarly, each complainant will be entitled to a separate proposed disposition. Only one hearing will be conducted on a consolidated complaint, but DOE must issue a separate final DOE decision to each complainant.
 - (2) A complainant in a consolidated complaint may withdraw his or her complaint at any time, but such withdrawal will not affect the processing of the remaining complaints.

- e. Joint Processing of Complaints. Consent of the complainant is not required for joint processing of individual discrimination complaints filed by the same complainant after notifying the individual that the complaints will be processed jointly. One investigation, one meeting for purposes of attempting informal adjustment, one proposed disposition, one hearing, and one final DOE decision will be provided to a complainant whose complaints have been joined for processing.

2. CLASS COMPLAINTS OF DISCRIMINATION.

a. Definitions.

- (1) A class is a group of DOE employees, former DOE employees, and/or applicants for employment with DOE, on whose behalf it is alleged that they have been, are being, or may be adversely affected, by a DOE personnel management policy or practice which DOE has authority to rescind or modify, and which discriminates against the group on the basis of its common race, color, religion, sex, national origin, age, and/or physical or mental handicap.
- (2) A class complaint is a written complaint of discrimination filed on behalf of a class by the agent of the class alleging that:
 - (a) The class is so numerous that a consolidated complaint of the members of the class is impractical;
 - (b) There are questions of fact common to the class;
 - (c) The claims of the agent of the class are typical of the claims of the class; and
 - (d) The agent of the class, or his or her representative, if any, will fairly and adequately protect the interests of the class.
- (3) An agent of the class is a class member who acts for the class during the processing of the class complaint.

b. Precomplaint Counseling.

- (1) Any employee or applicant who wishes to be the agent of a class and who believes he or she has been discriminated against shall first consult with an EEO counselor within 90 calendar days of the matter giving rise to the allegation of individual discrimination or within 90 calendar days of the effective date of a personnel action. In addition to alleging that he or she has been personally injured, the a grievred person also must indicate to the EEO counselor this or her wish to pursue the matter as a class complaint and to act as the agent of the class.

- (2) Duties of the EEO Counselor. Following presentation of the complaint, the Counselor shall:
- (a) Advise the complainant of the discrimination complaint procedures; of his or her right to representation throughout the precomplaint and complaint processes, and of the right to anonymity only during the precomplaint process;
 - (b) Make whatever inquiry is believed necessary;
 - (c) Make an attempt at informal resolution through discussion with appropriate officials;
 - (d) Counsel the complainant concerning the issue(s) involved;
 - (e) Inform the EEO officer and other appropriate officials when corrective action is believed necessary;
 - (f) Keep a record of all counseling activities;
 - (g) Summarize actions and advise in writing both to the EEO officer and the complainant concerning the issues in the personnel management policy or practice.
- (3) The counselor shall conduct a final interview and terminate counseling with the complainant not later than 30 calendar days after the date on which the allegation of discrimination was called to the attention of the counselor. Although a maximum 30-calendar-day period is permitted for EEO counseling, the EEO counselor may terminate counseling at an earlier date, if, in his or her judgment, further counseling would not serve to resolve the individual and class allegations of discrimination. Counseling may not be terminated at the discretion of the complainant. During the final interview, the counselor shall inform the complainant in writing that counseling is terminated, and that he or she has the right to file a class complaint of discrimination with the Secretary of Energy or the Director of Equal Opportunity.
- (4) The counselor must immediately prepare a report (DOE F 1600.2, "EEO Counselor's Report,") which should include at a minimum: name of the person who wishes to be the agent of the class; the date he or she contacted the EEO counselor, name of representative, if any; nature of the class; DOE policy or practice giving rise to the allegation of discrimination; nature of the act(s) giving rise to the complainant's belief that he or she was discriminated against; reason why the complainant believes that a number of other persons are similarly affected by said policy or practice; efforts made by the EEO counselor to resolve the matter affecting the individual as well as the class, including names of persons, contacts, and documents reviewed. The

class agent shall be given the opportunity to initial the EEO counselor's report in the appropriate space provided (page I-11, Attachment I-4).

- (5) The EEO counselor must, immediately following the final interview, transmit a copy of his or her report to the Director of Equal Opportunity and to the class agent. The Director of Equal Opportunity will send a counselor's report to the EEO officer, where appropriate.
 - (6) The counselor shall not attempt in any way to restrain the complainant from filing a complaint nor to encourage the person to file a complaint.
 - (7) The counselor shall not reveal the identity of a complainant during the period of consultation, except, when authorized to do so by the complainant.
 - (8) The appropriate EEO officer shall assure that full cooperation is provided by all employees to counselors in the performance of their duties.
 - (9) Counselors shall have routine access to personnel records of DOE without unwarranted invasion of privacy.
- c. Right to Representation. At all stages of the class complaint process, including counseling, the agent has a right to representation of his or her own choosing, provided the choice of a representative does not involve a conflict of interest or position. The agent should immediately notify DOE of the name and address of his or her representative, if any.
- d. Filing and Presentation of a Class Complaint.
- (1) Appropriate Official. A class complaint shall be in writing and signed by the agent. It is suggested that the complaint be submitted on DOE F 1600.1, "Complaint of Discrimination," in order to expedite the processing of the complaint. The complaint may be delivered in person or submitted by mail by the agent, or his or her representative. The officials with whom class complaints may be filed are the Secretary of Energy and the Director of Equal Opportunity.
 - (2) Time Limit. The complaint must be filed not later than 15 calendar days after the agent's receipt of the notice of final interview with the counselor. A complaint shall be deemed filed on the date it is postmarked, or in the absence of a postmark, on the date it is received by an official with whom complaints may be filed (see subparagraph d(1) above).

(3) The complaint shall set forth specifically and in detail:

(a) A description of the DOE personnel management policy or practice giving rise to the complaint; and

(b) A description of the resultant personnel action or matter adversely affecting the agent.

(c) That it meets the following prerequisites:

1 The class is so numerous that a consolidated complaint of the members of the class is impractical;

2 There are questions of fact common to the class;

3 The claims of the agent of the class are typical of the claims of the class;

4 The agent of the class, or his or her representative will fairly and adequately protect the interest of the class;

e. Official Time. If the agent is an employee in an active duty status, he or she shall have a reasonable amount of official time to prepare and present his or her complaint. Employees, including attorneys, who are representing employees of DOE in discrimination complaint cases shall be permitted to use a reasonable amount of official time to carry out that responsibility whenever it is not inconsistent with the faithful performance of their duties. Although there is no requirement that DOE permit its own employees to use official time for the purpose of representing employees of other agencies, DOE may do so at its discretion. If the use of official time is not granted in such cases, employees may be granted, at their request, annual leave, or leave without pay (29 CFR part 1613.603(g)).

f. Acceptance, Rejection, or Cancellation of a Class Complaint.

(1) Within 10 calendar days of receipt of a class action complaint, the Director of Equal Opportunity shall forward the complaint, together with a copy of the EEO counselor's report and any other information pertaining to timeliness or other relevant circumstances related to the complaint, to the Director, Office of Field Services, Equal Employment Opportunity Commission, 2401 E Street, NW., Washington, DC 20506. The EEOC will assign the complaint to a complaints examiner for a recommendation that the agency accept or reject the complaint. The Director of Equal Opportunity should make an effort to assure that the file as forwarded contains all information relative to the complaint, and the DOE official to whom the complaint file, together with the EEOC complaints examiner's recommendation for acceptance, rejection, or cancellation, should be sent.

- (2) If the official receiving the complaint is other than the Director of Equal Opportunity, he or she shall forward immediately the complaint and all pertinent information regarding the complaint to the Director of Equal Opportunity to enable the Director to meet the 10-day period referred to on page III-6, subparagraph f(1).
- (3) A complaints examiner may request DOE and the class agent to submit such additional information as may be necessary to assist the examiner in making a recommended decision to accept or reject the complaint. The complaints examiner may recommend that the agency reject the complaint, or a portion thereof, for any of the following reasons:
 - (a) It was not timely filed;
 - (b) It consists of an allegation identical to an allegation contained in a previous complaint filed on behalf of the same class which is pending in the Department or which has been resolved or decided by the Department;
 - (c) It is not within the purview of 29 CFR part 1613;
 - (d) The agent failed to consult a counselor in a timely manner;
 - (e) It lacks specificity and detail ;
 - (f) It was not submitted in writing or was not signed by the agent;
 - (g) It does not meet the following prerequisites:
 - 1 The class is so numerous that a consolidated complaint of the members of the class is impractical;
 - 2 There are questions of fact common to the class;
 - 3 The claims of the agent of the class are typical of the claims of the class;
 - 4 The agent of the class, or his or her representative, will fairly and adequately protect the interests of the class.
- (4) The complaints examiner's recommendation to the DOE on whether to accept, reject, or cancel a complaint is transmitted in writing to the Director of Equal Opportunity, the agent, and the agent's representative. The complaints examiner's recommendation to accept, reject, or cancel shall become the DOE decision unless DOE rejects or modifies the decision within 10 calendar days of its receipt. The Director of Equal Opportunity shall notify the agent, the agent's representative, and the complaints examiner of DOE's decision to accept, reject, or cancel a complaint. Notice of a decision to

reject or cancel shall inform the agent of his or her right to proceed with his or her individual complaint of discrimination, and to appeal the final DOE decision on the matter to the EEOC's Office of Review and Appeals, and of his or her right to file a civil action.

g. Notification and Opting Out.

- (1) The Director of Equal Opportunity shall immediately notify the appropriate EEO officer-of acceptance of a class complaint. Within 15 calendar days after acceptance of a class complaint, the appropriate EEO officer must notify all class members of the existence of a class complaint. The "reasonable means" used by DOE should be those most likely to provide an opportunity for class members to know about the complaint and make an informed decision on whether to remain in or "opt out" of the class. Conspicuous posting on bulletin boards to which all potential class members have easy access may constitute adequate notice in some situations. In others, as for example, where work forces are geographically dispersed or where some potential class members are away from usual work locations, mailing, personal delivery, or other distribution techniques may be appropriate as substitutes for or supplements to posting.
- (2) The notice should include the name of the class agent and his or her representative, in addition to those items listed in 29 CFR part 1613.605(b). This information may assist potential class members in making an informed decision whether to remain in the class or to "opt out."
- (3) The appropriate EEO officer may reject an individual complaint of discrimination filed after expiration of the period for "opting out" by a member of the class who has not "opted out," and which concerns the same matter which is the subject of a class complaint currently pending or previously adjudicated.
- (4) A potential class member may "opt out" of a class within 30 calendar days after issuance of the notice, by notifying the appropriate EEO officer in the manner specified in the notice.

- h. Referral for Processing. Within 5 working days of its acceptance of a class complaint, or within 15 working days of its receipt of the complaints examiner's recommendation to accept the class complaint (if DOE does not action the recommendations within the regulatory time frame), the Director of Equal Opportunity will return the complete complaint file to the appropriate EEOC field office for processing. DOE will, at this time, also advise the EEOC and the class agent of the name, title, and address of its representative. DOE may not designate any EEO program official nor a person identified in the complaint as an "alleged discriminating official" as its representative.

i. Development of Evidence.

- (1) The parties concerned, i.e., the agent and/or his or her representative and the DOE representative, are primarily responsible for developing the evidence to prove or disapprove the allegations raised and the issues accepted for processing. This responsibility should be fully understood by the parties concerned in the processing of class complaints.
- (2) Upon receipt of a class complaint for processing, the complaints examiner assigned to the case may call the parties together for a meeting to ascertain and discuss the parameters of the complaint, and the scope of the evidence to be developed. A period of not more than 60 calendar days will be allowed both parties to prepare their cases. This time period may be extended by the complaints examiner upon the request of either party. Both parties are entitled to reasonable development of evidence on matters relevant to the issues raised in that complaint. Evidence may be developed through interrogatories, depositions, and requests for production of documents. It shall be grounds for objection to producing evidence that the information sought by either party is irrelevant, overburdensome, repetitious, or privileged. Both parties shall furnish the complaints examiner all materials which they wish him or her to examine and such other material as he or she may request. In the event that mutual cooperation fails, either party may request the complaints examiner to rule on a request to develop evidence. When the complaints examiner renders his or her report of findings and recommendations on the merits of the complaint, a party's failure to comply with the complaints examiner's ruling on an evidentiary request may be taken into account.

j. Investigation. During the time period for development of evidence, the complaints examiner may, in his or her discretion, direct that an investigation of facts relevant to the complaint, or any portion thereof, be conducted by an investigator trained and/or certified by the Commission.

k. Informal Adjustment of Complaint.

- (1) The complaints examiner is required by regulation to furnish the class agent or his or her representative and the DOE representative a copy of all materials obtained concerning the complaint and provide an opportunity for the agent to discuss the materials with the agency representative and attempt resolution of the complaint.
- (2) At any time after acceptance, the complaint may be resolved by agreement of the class agent and DOE to terms offered by either party.

- (3) If resolution of the complaint is arrived at, the terms of the resolution shall be reduced to writing and signed by the class agent and the appropriate EEO officer. A resolution may include a finding on the issue of discrimination, an award of attorney's fees or costs, and must include any corrective action agreed upon. Corrective action in the resolution must be consistent with law, Executive order, and commission regulations, rules, and instructions. A copy of the resolution shall be provided to the agent.
- (4) Notice of the resolution shall be given to class members in the same manner as notification of the acceptance of the class complaint and shall state the terms of corrective action, if any, to be granted by DOE. A resolution shall bind all members of the class.
- (5) If DOE does not carry out, or rescinds, any action specified by the terms of the resolution for any reason not attributable to acts or conduct of the agent, his or her representative, or class members, the DOE, upon the agent's written request, shall reinstate the complaint for further processing from the point processing ceased under the terms of the resolution. Failure of DOE to reinstate the complaint is grounds for appeal by the agent to the Office of Review and Appeals.

1. Hearing.

- (1) While a hearing is mandated in each case, it is not necessary that oral testimony be presented at a hearing, and the hearing may be opened solely for the receipt of written evidence and presentations. The complaints examiner is authorized to make rulings, as necessary as to the materiality, relevancy, and repetitiveness of testimony and/or evidence offered by the parties. At the request of either party, and with the permission of the complaints examiner, the hearing record may remain open for a specified time period to permit submission of written closing briefs.
- (2) Any witness testifying at a hearing may have his or her own representative present during such testimony. The representative may advise the witness, but may not answer for the witness, and may not cross-examine other witnesses.
- (3) Any Federal employee testifying at a hearing on a class complaint is entitled to official time for the time he or she spends testifying as well as a reasonable amount of time for travel to and from the hearing. The class agent and agent's representative, if employees of DOE, are entitled to official time for actual time spent at the hearing and for a reasonable amount of preparation time for the hearing. DOE may permit its employees to use official time in preparing and presenting a class complaint which arose in another agency.

- (4) If a hearing is scheduled for the convenience of DOE at a geographical location distant from the class agent and the agent's representative, DOE shall provide for per diem and other travel expenses for the class agent and the agent's representative, if they are Federal employees.

m. Report of Findings and Recommendations.

- (1) The complaints examiner transmits to the Director of Equal Opportunity:
 - (a) The record of the hearing;
 - (b) His or her findings and analysis with regard to the complaint;
 - (c) His or her report of findings and recommended decision on the complaint, including corrective action pertaining to systemic relief for the class and any individual corrective action, where appropriate, with regard to the personnel action or matter which gave rise to the complaint.
- (2) The complaints examiner is required by regulation to notify the class agent of the date the report of findings and recommendations was forwarded to DOE.

n. Final Decision.

- (1) Within 30 calendar days after receipt of the report of findings and recommendations, the Director of Equal Opportunity shall issue a decision to accept, reject, or modify the findings and recommendations of the complaints examiner.
- (2) The DOE decision shall be in writing and shall be transmitted to the appropriate EEO officer and the agent, or his or her representative, along with a copy of the record of the hearing and a copy of the findings and recommendations of the complaints examiner.
- (3) When the DOE decision is to reject or modify the findings and recommendations of the complaints examiner the decision shall contain the specific reasons in detail for the DOE action.
- (4) If the Director of Equal Opportunity has not issued a decision within 30 calendar days of receipt of the complaints examiner's report of findings and recommendations, the findings and recommendations shall become the final DOE decision. The Director of Equal Opportunity shall transmit the decision and the record of the hearing to the agent, or his or her representative, within 5 calendar days of the expiration of the 30-calendar-day period.

- (5) The DOE decision shall require any remedial action authorized by law determined to be necessary or desirable to resolve the issue of discrimination and to promote the policy of equal opportunity. When discrimination is found, the Director of Equal Opportunity shall (a) advise the agent and his or her representative that any request for attorney's fees must be documented and submitted within 20 calendar days of receipt, (b) review the matter giving rise to the complaint to determine whether disciplinary action against alleged discriminatory officials is appropriate, and (c) record the basis for its decision to take, or not to take, disciplinary action but this decision shall not be recorded in the complaint file.
 - (6) When the DOE decision provides for an award of attorney's fees and/or costs, the amount of these awards shall be determined under 29 CFR part 1613.271(c). When DOE determines not to award attorney's fees or costs, it shall set forth in its decision the specific reasons for denying the award.
 - (7) DOE shall inform the agent, or his or her representative, of the right to appeal the final DOE decision to the Equal Employment Opportunity Commission's Office of Review and Appeals and of his or her right to file a civil action in accordance with 29 CFR part 1613.641 and of the time limits applicable thereto.
 - (8) A final DOE decision on a class complaint shall be binding on all members of the class and DOE.
- o. Notification of Class Members of Decision. Class members shall be notified by the appropriate EEO officer, through the same media employed to give notice of the existence of the class complaint, of the DOE decision and corrective action, if any. The notice, where appropriate, shall include information concerning the rights of class members to seek individual relief, and of the procedures to be followed. Notice shall be given by the appropriate EEO officer within 10 calendar days of the transmittal of the DOE decision to the agent.
- p. Corrective Action. When discrimination is found, DOE must eliminate or modify the personnel policy or practice out of which the complaint arose, and provide individual corrective action, including an award of attorney's fees and costs, to the agent in accordance with 29 CFR part 1613.271. Corrective action in all cases must be consistent with law, Executive order, and commission regulations, rules, and instruction.
- q. Claims.
- (1) When discrimination is found and a class member believes that, but for that discrimination, he or she would have received employment or an employment benefit, the class member may file a written claim with the Secretary of Energy or the Director of Equal Opportunity within 30 calendar days after notification by DOE of its decision. Class

members may file claims only if the final decision includes a finding of discrimination. In filing a claim, a claimant has the burden of demonstrating that: (a) he or she is a member of the class; (b) his or her claim is filed timely; and (c) the alleged injury which he or she has suffered as a result of the discriminatory policy or practice occurred within 135 calendar days prior to the filing of the class complaint. The Director of Equal Opportunity, shall attempt to resolve the claim for relief 60 calendar days after the date the claim was postmarked, or in the absence of a postmark within 60 calendar days after the date it was received by the Secretary or the Director of Equal Opportunity.

- (2) If a claim is not resolved within DOE, it must be referred with recommendations concerning it to the EEOC complaints examiner. The burden is on DOE to show that the claimant was not injured as a result of the discriminatory policy or practice. Any extension of time granted by DOE to the class agent apply to all class members.
- (3) The complaints examiner is required by regulation to schedule and conduct a hearing on a claim at the request of a claimant, or may schedule a hearing at his or her discretion if no hearing has been requested by a claimant, to obtain necessary evidence concerning the claim.
- (4) The complaints examiner's recommended decision on a claim shall be treated the same as a report of findings and recommendations as described on pages III-10, and III-11, paragraphs 1 and m, and may include a reminder to DOE that its final decision on the claim shall inform the claimant of the right to file an appeal with the Office of Review and Appeals, EEOC, and of the right to file a civil action in an appropriate U.S. District Court.
- (5) Substantially similar claims from separate claimants may be consolidated for processing by the DOE or the complaints examiner, with the consent of the claimants.

r. Appeals to the Equal Employment Opportunity Commission.

(1) Entitlement.

(a) A class agent may appeal to the EEOC Office of Review and Appeals, if the Director of Equal Opportunity has made a final decision:

1 To reject or cancel his or her complaint or a portion thereof;

2 To refuse to reinstate the complaint for further processing in accordance with the provisions of 29 CFR part 1613.609(e); and

- 3 On the merits of the complaint, the issue of attorney's fees and cost and/or corrective action.
- (b) A class member may appeal to the EEOC Office of Review and Appeals if the Director of Equal Opportunity has made a final decision.:
- 1 To cancel or reject a claim for individual relief in accordance with 29 CFR part **1613.614(f)** and (g); and
 - 2 On the merits of his or her claim for individual relief including attorney's fees and costs.
- (2) Where to Send Appeal. A class agent or member shall file his or her appeal in writing, either personally or by mail with the Director, Office of Review and Appeals, Equal Employment Opportunity Commission, 2401 E Street, NW., Washington, DC 20506.
- (3) Time Limit. A class agent or member may file an appeal at any time after receipt of the DOE final decision, but not later than 15 calendar days after receipt of that decision, except when the appellant shows that he or she, or his or her representative, was not notified of the prescribed time limit and was not otherwise aware of it, or that he or she, or his or her representative, was prevented by circumstances beyond his or her control from appealing within the prescribed time limit.
- s. Reopening and Reconsideration by the Equal Employment Opportunity commission. The EEOC may reopen and reconsider any previous decision of an EEOC office on their own motion or at the request of either party in accordance with provisions of 29 CFR 1613.632.
- t. Right to File a Civil Action.
- (1) A class agent who has filed a complaint or a class member who has filed a claim for relief based on race, color, religion, sex, national origin, and/or physical or mental-handicap discrimination is authorized to file a civil action in an appropriate U.S. District Court.
 - (a) Within 30 calendar days of his or her receipt of notice of final action taken by DOE on a complaint or claim;
 - (b) After 180 calendar days from the date he or she filed a complaint **or** claim with DOE, if there has been no decision on the complaint or claim;
 - (c) Within 30 calendar days of his or her receipt of the decision by the Office of Review and Appeals on his or her appeal; or

- (d) After 180 calendar days from the date he or she filed an appeal with the Office of Review and Appeals, if there has been no office decision.
- (2) The DOE decision shall be final only when DOE makes a determination on all the issues in the complaint, including whether or not to award attorney's fees and costs. If a determination to award attorney's fees is made, the decision will not be final until the procedure is followed for determining the amount of the award as set forth in 1613.271(c).
- (3) A class agent who has filed a complaint or a class member who has filed for relief based on age discrimination, is authorized to file a civil action in an appropriate U.S. District Court.
- (4) When the class agent alleges that DOE discriminated against a class on the basis of race, color, religion, sex, national origin, age, and/or physical or mental handicap, or a class member files for relief, DOE shall notify him or her of his or her right to file a civil action in any final action on a complaint, or claim.
- (5) The filing of a civil action by a class agent or class member does not terminate DOE processing of a complaint or claim, or EEOC Office of Review and Appeals processing of an appeal.

3. AGE DISCRIMINATION COMPLAINTS.

- a. Procedures. The procedures for processing complaints of discrimination based on age are the same as the existing procedures provided for individual discrimination complaints based on race, color, religion, sex, national origin, and/or physical or mental handicap.
- b. Coverage. Employees and applicants for employment who are at least 40 years of age are covered by the Age Discrimination in Employment Act of 1967 (ADEA) as amended by Public Laws 92-259 and 95-256.
- c. Notifying Complainant of Right to File Civil Action.
 - (1) Written or other notices to complainant in age discrimination cases should not set forth specific time limits or conditions for filing civil actions, because the Age Discrimination in Employment Act is not specific in this regard.
 - (2) Although there are no specific time limits for filing a civil action, it is recommended that should a complainant wish to file a civil action, he or she be advised to do so as expeditiously as possible.
- d. Notice of Intent to File a Civil Action. In lieu of filing an individual discrimination complaint, a complainant alleging age discrimination may

file with EEOC a notice of intent to file a civil action under section 15(d) of the Age Discrimination in Employment Act. The individual who has not filed a discrimination complaint may not commence a civil action until he or she has given the Commission at least 30 calendar days notice of intent to file such action. The notice of intent must be filed within 180 calendar days after the alleged unlawful practice occurred.

4. PHYSICAL OR MENTAL HANDICAP DISCRIMINATION COMPLAINTS. The remedies provided in 29 CFR 1613.2/1 shall apply to complaints of discrimination based on a physical or mental handicap; including an award of backpay to an applicant for employment, and the right to file suit in Federal District Court if dissatisfied with the final agency action, or failure to act.

5. FREEDOM FROM REPRISAL OR INTERFERENCE.

- a. Agents, claimants, their representatives, witnesses, Director of Equal Employment Opportunity, equal employment opportunity officers, investigators, counselors, and other DOE officials having responsibility for the processing of class action discrimination complaints shall be free from restraint, interference, coercion, and reprisal at all stages in the presentation and processing of a complaint, including the counseling stage under 29 CFR part 1613.602, or any time thereafter.
- b. A person identified in paragraph 5a above, if a Federal employee or applicant, may file a complaint of restraint, interference, coercion, or reprisal in connection with the presentation and processing of a complaint of discrimination. The complaint shall be filed and processed in accordance with provisions on page 11-20, paragraph 8.

6. REMEDIAL ACTIONS.

- a. Applicants.

- (1) When DOE or EEOC finds that an applicant for employment has been discriminated against, and except for that discrimination, would have been hired, DOE will offer the applicant employment of the type and grade denied him or her unless the record contains clear and convincing evidence that the applicant would not have been hired even absent discrimination. The appropriate EEO officer will monitor the situation to determine that such offer is made. The offer shall be made in writing. The individual shall have 15 calendar days from receipt of the offer within which to accept or decline the offer. Failure to notify the appointing officer of his or her decision within the 15-calendar-day period will be considered a declination of the offer, unless the individual can show that circumstances beyond his or her control prevented him or her from responding within the time limit. If the offer is accepted, appointment shall be retroactive to the date the applicant would have been hired, subject to the limitation on page III-17, subparagraph (4). Backpay computed in the same manner prescribed in 5 CFR part 550.804 may be awarded from the beginning of the retroactive period, subject to the same

limitation, until the date the individual actually enters on duty. The individual shall be deemed to have performed service for DOE in the office in which he or she is appointed during this period of retroactivity for all purposes, except for meeting service requirements for completion of a probationary or trial period that is required. If the offer is declined, DOE shall award the individual a sum equal to the backpay he or she would have received, computed in the same manner prescribed in 5 CFR part 550.804, from the date he or she would have been appointed until the date the offer was made subject to the limitation in subparagraph (4). The DOE appointing officer shall inform the applicant in the offer of employment of his or her right to this award in the event he or she declines the offer of employment.

- (2) When DOE or EEOC finds that the discrimination existed at the time the applicant was considered for employment but also finds by clear and convincing evidence that the applicant would not have been hired even absent such discrimination, DOE will consider the individual for any existing vacancy of the type and grade for which he or she was considered initially and is qualified before considering other candidates. If the applicant is not selected for a vacancy to which he or she is referred for first consideration, the selecting official shall record the reasons for nonelection. If no vacancy exists, the individual shall be given this priority consideration for the next vacancy for which he or she is qualified. This priority shall take precedence over other priorities in 29 CFR Chapter XIV, "Equal Employment Opportunity Commission."
 - (3) Part 1613.271(a)(3) of 29 CFR shall be cited as the authority under which the above-described appointments or awards of backpay shall be made.
 - (4) A period of retroactivity or a period for which backpay is awarded under this subparagraph may not extend from a date earlier than 2 years prior to the date on which the complaint was filed initially by the applicant. If finding of discrimination was not based on a complaint, the period of retroactivity or period for which backpay is awarded under this authority may not extend earlier than 2 years prior to the date the finding of discrimination was recorded.
- b. Employee. When DOE or EEOC finds that a DOE employee was discriminated against, the appropriate EEO officer shall assure that remedial action is taken, which shall include but need not be limited to one or more of the following actions:
- (1) Retroactive promotion, with backpay computed in the same manner prescribed by CFR part 550.804, unless the record contains clear and convincing evidence that the employee would not have been promoted or employed at a higher grade, even absent discrimination. The backpay

liability may not accrue from a date earlier than 2 years prior to the date the discrimination complaint was filed, but, in any event, not to exceed the date he or she would have been promoted. If a finding of discrimination was not based on a complaint, the backpay liability may not accrue from a date earlier than 2 years prior to the date the finding of discrimination was recorded, but, in any event, not to exceed the date he or she would have been promoted.

- (2) Consideration for promotion to a position for which the employee is qualified before consideration is given to other candidates, if the record contains clear and convincing evidence that, although discrimination existed at the time selection for promotion was made, the employee would not have been promoted even absent discrimination. (See 29 CFR part 1613.271.) If the individual is not selected, the selecting official shall record the reasons for such nonelection. This priority consideration shall take precedence over priorities under other regulations in 29 CFR Chapter XIV, "Equal Employment Opportunity Commission."
- (3) Cancellation of an unwarranted personnel action and restoration of the employee.
- (4) Expunction from DOE's records of any reference to or any record of an unwarranted disciplinary action that is not a personnel action.
- (5) Full opportunity to participate in the employee benefits denied him or her (e.g., training, preferential work assignments, overtime scheduling).