



## Office of Workplace Diversity

### Notice of Your Rights and Responsibilities in the Equal Employment Opportunity (EEO) Complaint Process

If you believe that you have been discriminated against on the basis of race, color, religion, sex, national origin, disability, age, genetic information, and/or subjected to reprisal in an employment matter (*see* Attachment 1), you may have a choice of options to pursue your EEO Complaint. This Notice provides your rights and responsibilities under 29 C.F.R. Part 1614 and the Equal Employment Opportunity Commission (EEOC) Management Directive (MD) 110. **PLEASE READ THIS NOTICE CAREFULLY SO THAT YOU MAY FULLY UNDERSTAND YOUR RIGHTS AND RESPONSIBILITIES.** Should you have any questions, please contact your EEO Counselor or Lakeisha Jordan, Attorney Advisor/EEO Program Manager, Office of Workplace Diversity (OWD).

#### I. Pre-complaint Processing

a. You have the right to remain anonymous during EEO counseling. The counselor will refrain from divulging your identity, except by your authorization. You may elect to waive your right to remain anonymous during EEO counseling. The right to remain anonymous ends upon the filing of a formal EEO complaint, or upon the election of Alternative Dispute Resolution (ADR) (*see* subparagraph I.c. below).

b. You have the right to representation throughout the EEO complaint process. EEO counselors cannot act as representatives. EEO Counselors are not advocates for individuals or the Agency but acts strictly as a neutral in the EEO process. If your representative is an attorney, all documents will be officially served on your attorney.

c. You have the option to request traditional EEO counseling or the ADR process (*see* Attachment 3-1). The Federal Communications Commission uses Mediation as the ADR process to resolve EEO workplace disputes. If you participate in mediation, the pre-complaint period will be **90 calendar days** from the date you initiated counseling to accomplish the mediation. Mediation may also be available, either at your request or at the recommendation of the Agency, in later stages of the EEO process, including at the formal investigation stage.

d. If you are in the bargaining unit, you may elect between the EEO complaint procedure and the **negotiated grievance procedure** (NGP) if the NGP permits members to raise claims of

discrimination. An election is made depending on which forum you file with first. Filing a formal EEO complaint constitutes an election; however participation in pre-complaint counseling is not considered an election. You may not file both an EEO complaint and a grievance.

e. You have the right to elect to proceed through the EEO complaint process with a **mixed case complaint** OR to file an appeal to the **Merit Systems Protection Board**. A “mixed case” complaint involves claims that include personnel actions that are appealable to the MSPB which include, for example, removal or suspension for more than **14 days** of a non-probationary, competitive service employee. If you are subject to a personnel action that is appealable to the MSPB, you will be notified in writing of your right to appeal to the MSPB (*see* Attachment 4). The election is made depending on which forum you file in first. You may file an EEO complaint or an MSPB appeal, but not both. Whichever forum you file in first (a formal EEO complaint or an MSPB appeal) will be considered an election to proceed in that forum.

f. If you elect to proceed through the Pre-complaint stage (traditional counseling), you must contact an EEO counselor within 45 days of the date that you become aware of or reasonably suspect you have been discriminated against on the basis of race, color, religion, sex, national origin, disability, age, genetic information, and/or subjected to reprisal in an employment matter.

g. Generally, the Pre-complaint stage is **30 days**. However, before the end of the 30-day period, you and the FCC may agree to extend this stage for an additional period of no more than **60 days**. As noted previously, if you participate in ADR, this stage is **90 days**. If your claim(s) are resolved at this stage, the counselor will assist in documenting the resolution.

h. If you elect to proceed through the EEO counseling or the ADR process and your claim(s) are not resolved through these processes, the EEO Counselor will conduct a final interview and issue a **Notice of Right to File a Formal Complaint of Discrimination**.

i. A formal EEO complaint must be filed within **15 calendar days** of receipt of the Notice of Right to File a Formal Complaint of Discrimination. Formal Complaint processing is discussed below (*see* paragraph 1).

## II. Optional Process for Age Discrimination Complaints

a. If you have an Age Discrimination complaint, in lieu of filing an EEO complaint, a mixed case appeal with the MSPB (*see* paragraph I.e.), or a negotiated grievance (*see* paragraph I.d.), you may elect to bypass the administrative procedure and file a civil action in a United States District Court (*see* Attachment 4).

b. If you elect to file a civil action, you must first notify the EEOC of your intent to do so at least **30 calendar days** in advance of the filing of your lawsuit.

c. Your notice must be filed in writing within **180 days** of the occurrence of the alleged unlawful practice with the EEOC at P.O. Box 77960, Washington, DC 20013, personal delivery at 131 M. Street, NE, Washington, DC 20507, or facsimile.

d. If you file an EEO complaint under the Age Discrimination in Employment Act, you must exhaust your administrative remedies before you may file a civil action,

### III. Optional Process for Equal Pay Act Discrimination Complaints

a. If you allege a gender-based wage discrimination (that is, being paid less than a person of the opposite sex, even though you are doing equal work) (*see* Attachment 2), you may file a formal EEO complaint, or a lawsuit in Federal District Court, pursuant to the Equal Pay Act (see Attachment 4).

b. If you choose to proceed directly to a United States District Court, you must file within **two years**, or **three years** if the violation is willful, of the date of the alleged violation of the Equal Pay Act. Proceeding directly to court means that you do not have to participate in the Pre-complaint stage or formal EEO Complaint stage.

### IV. Formal EEO Complaint Processing

a. Upon filing a formal complaint (*see* Attachment 3-1), the OWD will send you an acknowledgment that it has received the formal complaint. After review of the formal complaint, the OWD will notify you which claims, if any, have been accepted for processing. Claims that are not accepted for processing will be dismissed and you will be notified of your appellate rights.

b. If any claims are accepted for processing, the OWD will appoint an investigator to develop an impartial and appropriate factual record upon which to make findings on the claims. The investigator shall complete the investigation within **180 days** of the date of filing the complaint. If you amend your complaint, the investigation shall be completed within the earlier of **180 days** after the last amendment to the complaint or **360 days** after the filing of the original complaint, except that you may request a hearing from an administrative judge on the consolidated complaints any time after **180 days** from the date of the first filed complaint. Before the end of the **180-day** period, the period may be extended for an additional **90 days**.

c. Upon completion of the investigation, the OWD shall provide a copy of the investigative file to you and the Office of General Counsel representative to examine and notify the OWD of any perceived deficiencies in the investigation. Upon completion of the review, the OWD will give you a copy of the investigative file and shall notify you that within **30 days** of receipt of the investigative file, you have the right to request a hearing and decision from an administrative judge or may request an immediate final decision from the FCC. This notice shall provide instructions regarding where and how to either request a hearing or an immediate final decision.

d. If you elect a hearing before an administrative judge of the EEOC, you have a duty to send a copy of the request for a hearing to D'wana Terry, Acting Director, Office of Workplace Diversity, 45 L Street NE, Room 8.103, Washington, D.C., 20554. You also must certify to the Administrative Judge that you provided a copy of the request for a hearing to the Agency.

e. If you elect an immediate final decision from the FCC, this decision will be issued within **60 calendar days** of:

- i. Receiving notice that you requested an immediate decision
- ii. The end of the 30-day period for requesting a hearing if the FCC has not received a timely request.

## V. Responsibilities

a. You have the right to file a lawsuit in U.S. District Court **180 calendar days** after filing a formal complaint if you have not filed an appeal or **180 days** after filing an appeal if the EEOC has not issued a decision.

b. You have the duty to mitigate damages by actively seeking and/or retaining employment. Interim earnings or amounts that could be earned with reasonable diligence generally must be deducted from back pay.

c. You have the duty to keep the FCC and the EEOC informed of your current mailing address and to serve copies of appeal papers on the FCC.

d. If you choose to participate in the EEO Counseling program you have the right to receive in writing within **30 calendar days** of the first counseling contact (unless you have agreed in writing to an extension) a notice terminating counseling. Any extension of the counseling period may not exceed an additional **60 calendar days**. In addition,

i. You have the right to file a formal individual or class complaint (within **15 calendar days** of receipt of the notice) with D'wana Terry, Acting Director, Office of Workplace Diversity, 45 L Street NE, Room 8.103, Washington, D.C., 20554;

ii. You must immediately inform the Agency if you retain counsel or a representative.

e. If you agree to participate in an established mediation program, you will be issued written notice terminating the counseling period upon completion of mediation or within **90 calendar days** of the first contact with the EEO Counselor, whichever is earlier.

f. If you file a formal complaint you may only raise those claims that were raised at the counseling stage or claims that are like or related to those claims. You may amend your original claim(s) at any point before the investigation is finished.

g. If you believe that other individuals, similarly situated to you, have suffered from the same kind of discrimination, you may have the right to file a class action complaint. A class action complaint must allege that you have been individually harmed by a Federal Communications Commission personnel management policy or practice which has similarly harmed numerous other class members. You must also allege that there are questions of fact that are common to and typical of the claims of the class, and that you or your representative will fairly and adequately protect the interests of the class. A class complaint must be signed by the class agent or a representative of the class.

h. You should be aware that the rejection of an offer of resolution from the Agency, pursuant to 29 C.F.R. § 1614.109(c), might result in the limitation of the Agency's payment of attorney's fees or costs.

i. You should be aware that the FCC must consolidate two or more complaints filed by the same complainant after appropriate notice to the complainant. When a complaint has been consolidated with one or more complaints, the Agency shall complete its investigation within the earlier of **180 days** after the filing of the last complaint or **360 days** of the filing of the first complaint. The complainant may

request a hearing before an EEO Administrative Judge at any time after **180 days** of the filing of the first complaint.

A copy of this notice will be given to you for future reference.

If you wish to discuss your rights and responsibilities further, please advise contact your EEO Counselor or Lakeisha Jordan, Attorney Advisor, OWD.

\_\_\_\_\_  
Signature  
Printed Name \_\_\_\_\_

\_\_\_\_\_  
Date

I \_\_\_\_\_ (name) acknowledge receipt of the Notice of Rights and Responsibilities.

\_\_\_\_\_  
Signature  
Printed Name \_\_\_\_\_

\_\_\_\_\_  
Date

File No. FCC-EEO-\_\_\_\_\_

Attachments

1. EEO Bases
2. EEO Laws and Regulations
3. EEO Complaint Process Flowchart
4. EEO Special Procedures and Election Rights

## Attachment 1

### Equal Employment Opportunity Bases

#### **I. *Race***

Race discrimination includes discrimination on the basis of ancestry or physical or cultural characteristics associated with a certain race, such as skin color, hair texture or styles, or certain facial features.

#### **II. *Color***

Color discrimination occurs when a person is discriminated against based on his/her skin pigmentation (lightness or darkness of the skin), complexion, shade, or tone. Color discrimination can occur between persons of different races or ethnicities, or even between persons of the same race or ethnicity.

#### **III. *Religion***

Religious discrimination occurs when an employer does not provide reasonable accommodation of an employee's or applicant's sincerely held religious beliefs, observances, and practices when requested, unless accommodation would impose an undue hardship on business operations

#### **IV. *Sex***

Sex discrimination occurs when treating an applicant or employee unfavorably because of that person's sex.

#### **V. *National Origin***

Title VII prohibits the denial of equal employment opportunity because of the place of origin of an individual or his or her ancestors, or because an individual has the physical, cultural, or linguistic characteristics of a national origin group. In addition, Title VII prohibits discrimination against a person because he or she is associated with an individual of a particular national origin.

#### **VI. *Reprisal (Protected Activity)***

Discrimination on the basis of Protected Activity involves retaliation against a person for:

- Opposing discrimination under Title VII, the Age Discrimination, in Employment Act, the Equal Pay Act, the Rehabilitation Act, or the Genetic Information Nondiscrimination Act; or
- Participating in any stage of administrative or judicial proceedings under those statutes.

## **VII. Age**

Treating an applicant or employee less favorably because of his/her age. Note, however, to bring a claim under EEO regulations, complainant must be 40 years or older.

## **VIII. Disability**

Treating an applicant or employee less favorably because he/she has a physical or mental impairment which substantially limits one or more major life activities:

The law requires an employer to provide reasonable accommodation to an employee or job applicant with a disability, unless doing so would cause an undue hardship on employer.

## **IX. Genetic Information Nondiscrimination Act**

Discrimination on the basis of genetic information makes it illegal to discriminate against employees or applicants because of an individual's genetic tests and the genetic tests of an individual's family members, as well as information about any disease, disorder or condition of an individual's family members (i.e. an individual's family medical history).

## **X. Harassment**

Harassment is unwelcome conduct that is based on race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability or genetic information. Harassment becomes unlawful where 1) enduring the offensive conduct becomes a condition of continued employment, or 2) the conduct is severe or pervasive enough to create a work environment that a reasonable person would consider intimidating, hostile, or abusive. Anti-discrimination laws also prohibit harassment against individuals in retaliation for filing a discrimination charge, testifying, or participating in any way in an investigation, proceeding, or lawsuit under these laws; or opposing employment practices that they reasonably believe discriminate against individuals, in violation of these laws.

- The harasser can be the victim's supervisor, a supervisor in another area, an agent of the employer, a co-worker, or a non-employee.
- The victim does not have to be the person harassed, but can be anyone affected by the offensive conduct.
- Unlawful harassment may occur without economic injury to, or discharge of, the victim.

## Attachment 2

### Equal Employment Opportunity Laws and Regulations

#### I. Title VII

Prohibits employment discrimination based on race, color, religion, sex, or national origin. It also prohibits reprisal or retaliation for participating in the discrimination complaint process or for opposing any unlawful employment practice under Title VII.

#### II. Equal Pay Act

The EPA prohibits discrimination by employers on the basis of sex in the wages paid for equal, but not identical, work on jobs the performance of which requires equal skill, effort and responsibility and under similar working conditions. Any violation of the EPA is a violation of Title VII. However, not all wage violations of Title VII will be a violation of the EPA.

#### III. Age Discrimination in Employment Act

Treating an applicant or employee less favorably because of his/her age. Note, however, to bring a claim under EEO regulations, complainant must be 40 years or older.

#### IV. The Rehabilitation Act of 1973, as amended

Treating an applicant or employee less favorably because he/she:

- Has a history of a disability (such as cancer that is controlled or in remission); or
- Is believed to have a physical or mental impairment that is not transitory (lasting or expected to last six months or less) and minor (even if she does not have such an impairment).
- Has a relationship with a person with a disability (even if the employee or applicant does not have a disability)

The law requires an employer to provide reasonable accommodation to an employee or job applicant with a disability, unless doing so would cause significant difficulty or expense for the employer ("undue hardship").

#### V. Genetic Information Nondiscrimination Act

Discrimination on the basis of genetic information makes it illegal to discriminate against employees or applicants because of an individual's genetic tests and the genetic tests of an individual's family members, as well as information about any disease, disorder or condition of an individual's family members (i.e. an individual's family medical history).



## **VI. Harassment**

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- The harasser can be the victim's supervisor, a supervisor in another area, an agent of the employer, a co-worker, or a non-employee.
- The victim does not have to be the person harassed, but can be anyone affected by the offensive conduct.
- Unlawful harassment may occur without economic injury to, or discharge of, the victim.

## **VII. 29 C.F.R. Part 1614**

EEOC regulations governing the processing of Federal sector discrimination complaints.

## **VIII. EEOC Management Directive 110 (August 2015)**

Provides Federal Agencies with EEOC policies, procedures, and guidance relating to the processing of employment discrimination complaints governed by 29 C.F.R. Part 1614.

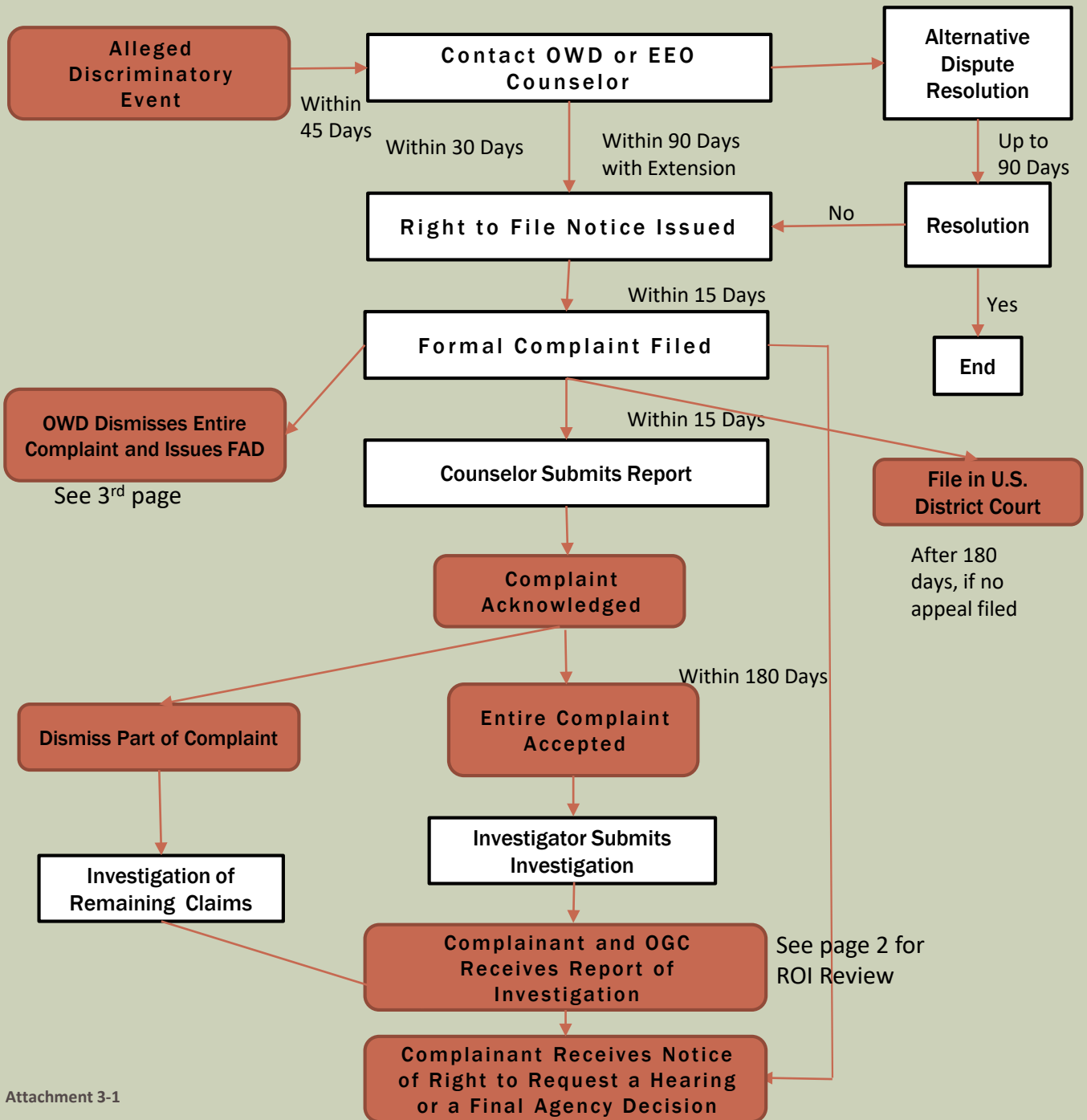
## **IX. Administrative Dispute Resolution Act of 1996, 5 U.S.C. 571**

Defines Alternative as a means of dispute resolution means any procedure that is used to resolve issues in controversy, including, but not limited to, conciliation, facilitation, mediation, fact-finding, mini-trials, arbitration, and use of ombuds, or any combination thereof

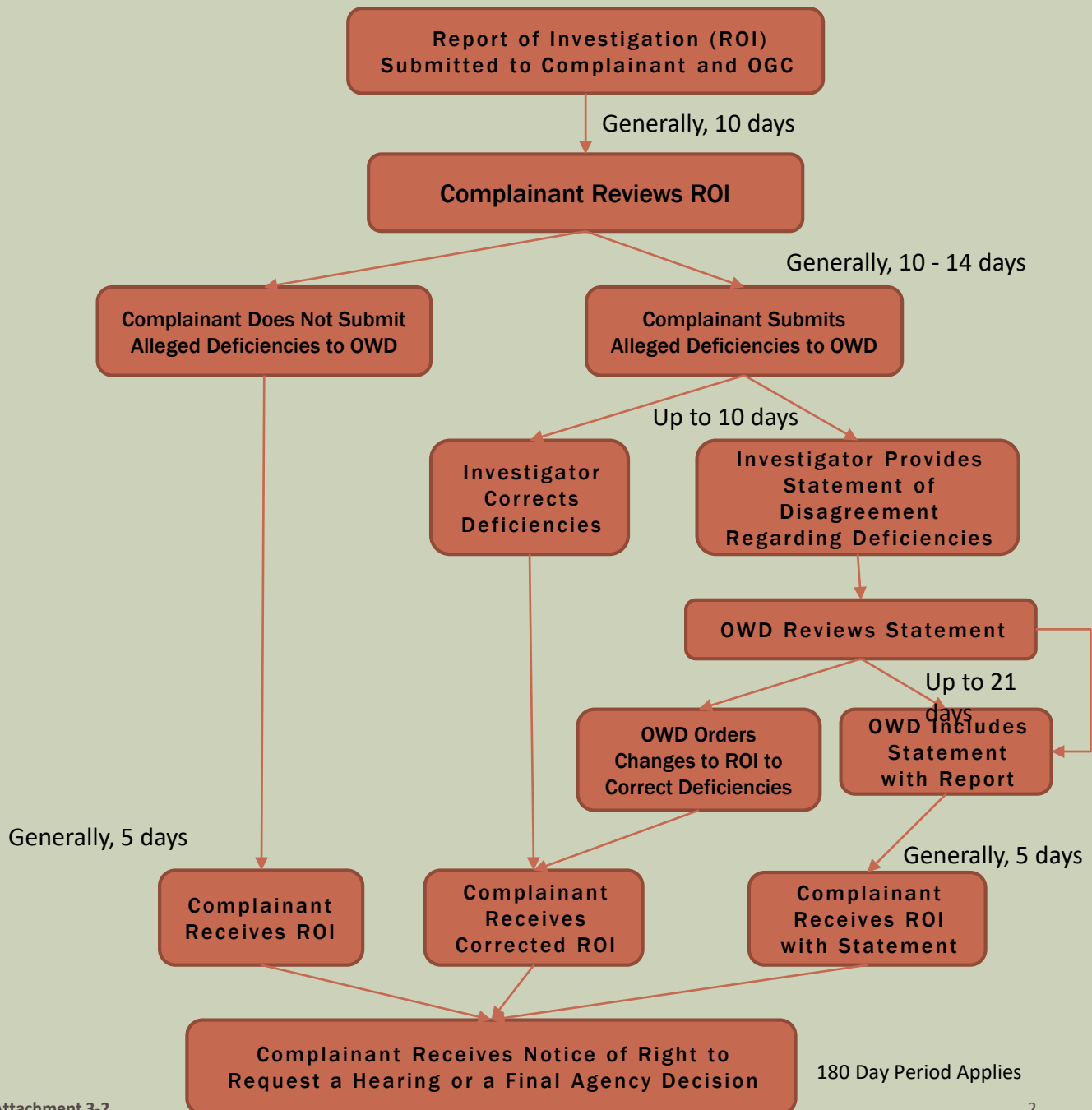
## **X. Administrative Dispute Resolution Act of 1998, 28 U.S.C. 651**

Further refines an alternative dispute resolution process to include any process or procedure, other than an adjudication by a presiding judge, in which a neutral third party participates to assist in the resolution of issues in controversy, through processes such as early neutral evaluation, mediation, mini-trial, and arbitration.

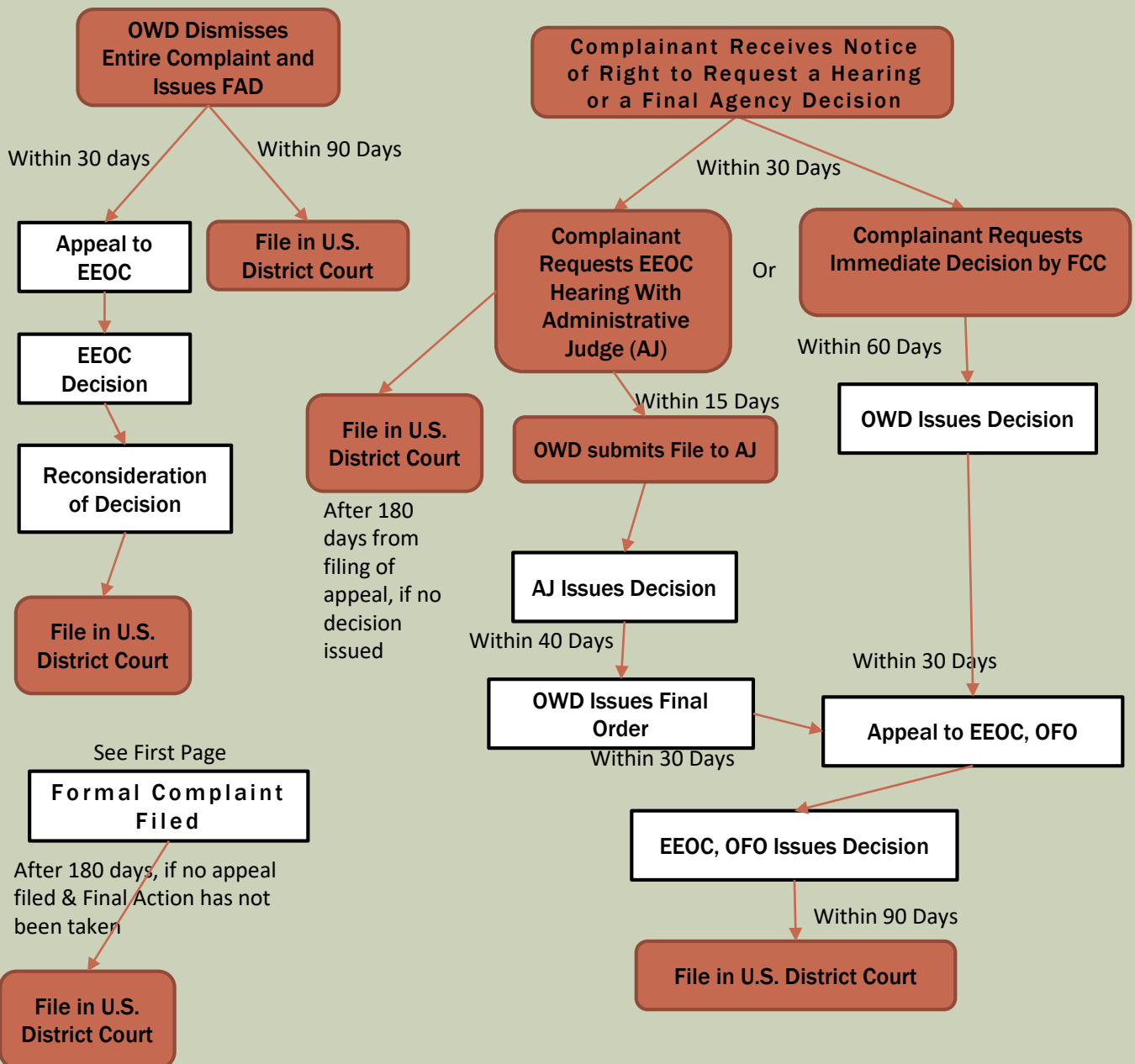
# FEDERAL SECTOR DISCRIMINATION COMPLAINT PROCESS (PRE-COMPLAINT & FORMAL)



# FEDERAL SECTOR DISCRIMINATION COMPLAINT PROCESS INVESTIGATION



# FEDERAL SECTOR DISCRIMINATION COMPLAINT PROCESS (HEARING & APPEAL)



## Attachment 4

### Equal Employment Opportunity Special Procedures and Election Rights

Depending upon the facts and circumstances of your particular case, you may have options other than the EEO complaint process under 29 CFR Part 1614. In some cases, you may have to elect the process you wish to pursue. These options and associated procedures apply in age discrimination complaints, complaints that involve personnel actions, Equal Pay Act complaints and matters where a negotiated grievance procedure could apply.

#### I. Equal Pay Act (EPA) Complaints

You have a right to go directly to U.S. District Court on claims of sex-based wage discrimination under the EPA even though such claims are also cognizable under title VII of the Civil Rights Act. You may file a formal EEO complaint of sex-based wage discrimination which will be processed in accordance with 29 C.F.R. Part 1614 or you may go directly to U.S. District Court without first providing notice to the EEOC or exhausting administrative remedies. The statute of limitations for EPA complaints is two years, or three years for a willful violation.

#### II. Age Discrimination in Employment Act Complaints

You have the right to file a notice of intent to sue when age is alleged as a basis for discrimination and you have the right to file a lawsuit under the ADEA, instead of filing an EEO complaint of age discrimination, pursuant to 29 C.F.R. § 1614.201(a).

Election of Administrative Process. Following EEO counseling, you may file a formal EEO complaint based on age discrimination with the OWD. Once you elect to file a formal EEO complaint, you must first exhaust administrative remedies before filing a civil action in U.S. District Court. Exhaustion in an age discrimination case occurs: (1) 180 days after the filing of an individual or class EEO complaint if the GCC has not issued a final decision and you have not filed an appeal with the EEOC; (2) no more than 90 days after the issuance of a final decision on an individual or class EEO complaint if you or the class agent have not filed an appeal; or (3) no more than 90 days after the issuance of a final decision by the EEOC on an appeal or 180 days after the filing of an appeal if the EEOC has not issued a final decision.

Bypass Administrative Process. You may bypass the EEO complaint process and file a civil action directly in U.S. District Court provided that you first provide the EEOC with a written notice of your intent to sue under the ADEA. The notice to the EEOC must be filed within 180 calendar days of the date of the alleged discriminatory action. Once a timely notice of intent to sue is filed with the EEOC, you must wait at least 30 calendar days before filing a civil action.

Responsibilities Regarding Notices of Intent to Sue. Notices of intent to sue must be delivered, mailed, or faxed to the EEOC. The address for EEOC is:

Equal Employment Opportunity Commission

Office of Federal Operations  
Federal Sector Programs  
One NOMA Station  
131 M Street NE, Suite 5SW12G  
Washington, DC 20507-0004

The notice of intent to sue should be dated and must contain the following information: (1) a statement of your intent to file a civil action under section 15(d) of the ADEA, as amended; (2) your name, address, and telephone number; (3) the name, address, and telephone number of your designated representative, if any; (4) the name and location of the Federal agency or installation where the alleged discriminatory action occurred; (5) the date on which the alleged discriminatory action occurred; (6) a statement of the nature of the alleged discriminatory actions; and (7) your signature or your representative's signature.

### **III. Mixed Case Complaints and Appeals to the Merit Systems Protection Board (MSPB)**

A complaint of employment discrimination based on race, color, religion, sex, national origin, age, disability, or reprisal related to or stemming from an action that can be appealed to the MSPB is known as a "mixed case" complaint. The complaint may contain only a claim of employment discrimination or it may contain additional non-discrimination claims that the MSPB has jurisdiction to address. Examples of appealable actions to the MSPB include removal for misconduct or unacceptable performance, suspension for more than 14 days; furlough for 30 days or less; reduction-in-force; disqualification because of a suitability determination, etc.

The regulations provide that a covered individual may raise claims of discrimination in a mixed case either as a direct appeal to the MSPB or as a mixed-case EEO complaint with the OWD, but not both. Filing a formal EEO complaint constitutes an election to proceed in the EEO forum. Contacting an EEO counselor or receiving EEO counseling does not constitute an election.

### **IV. Negotiated Grievance Procedures in Collective Bargaining Agreements**

If you are a member of a bargaining unit and your collective bargaining agreement contains a negotiated grievance procedure which permits you to raise allegations of discrimination, you may file an EEO complaint or a grievance under the grievance procedure, **But Not Both**. Your election will be determined by the forum you filed in first. Filing a timely written grievance constitutes an election to proceed under a negotiated grievance procedure. Filing a formal EEO complaint under 29 C.F.R. Part 1614 constitutes an election to proceed in the EEO forum. Contacting an EEO counselor or receiving EEO counseling does not constitute an election. Election to use the EEO complaint procedure or the negotiated grievance procedure is final. Once you decide which forum you will use, you are precluded from raising the same matter in the other forum.

# memorandum

DATE: Calendar Year 2019

TO: FCC Employees, Applicants and Former Employees

FROM: Office of Workplace Diversity

SUBJECT: Pre-Complaint Counseling

This document provides a brief overview of the Equal Employment Opportunity (EEO) Complaint process. This overview is brief because an EEO Counselor will provide additional information, answer your questions and assist you in completing the Pre-Complaint forms.

If you believe that you have been discriminated against on the basis of race, color, religion, sex, national origin, disability, age, genetic information, and/or reprisal, you must contact Office of Workplace Diversity (OWD) Staff or an EEO Counselor within 45 days of the date of the matter alleged to be discriminatory. If you contact OWD Staff, the staff will assign EEO Counselor to speak with you and attempt to informally resolve the matter. The EEO Counselor is neutral. Accordingly, the EEO Counselor does not represent the employee or the management.

In addition to attempting to resolve the matter, the EEO Counselor will provide you with relevant information regarding the EEO complaint process, such as your rights and responsibilities, your ability to request Alternative Dispute Resolution (ADR), the time frames for actions, the basis for EEO Complaints, individual vs class complaints, mixed complaints (such as negotiated grievance complaints and Merit System Protection Complaints), complaints that may proceed directly to federal court without completing the administrative process, etc.

You will receive the following forms during the Pre-Complaint Counseling stage:

- Pre-Complaint Form
- Summaries of EEO Bases and EEO Laws and Regulations
- Summary of Special Procedures and Election of Rights
- EEO Process Diagrams
- Rights and Responsibilities
- Waiver of Anonymity
- Witness Participation

In most cases, the Pre-Complaint stage is completed within 30 days from initial contact with the OWD or an EEO Counselor.

## Waiver of Anonymity

I understand that I have the right to remain anonymous during the pre-complaint stage of the Equal Employment Opportunity (EEO) complaint process. Unless I give my permission, the EEO Counselor must make every effort to protect my identity. However, I understand that my right to anonymity during the pre-complaint stage will end if I make a threat (direct or perceived) of violence or suicide or disclose any type of harassment, including sexual harassment, child abuse or domestic violence. The EEO Counselor is required to report such disclosures to appropriate authorities.

By signing this Waiver of Anonymity (waiver), I voluntarily elect to waive my right to anonymity, and I authorize the EEO Counselor to reveal my name during the pre-complaint stage of my EEO discrimination complaint to the alleged responsible management official(s) and witnesses who must be interviewed during pre-complaint counseling.

I certify that my EEO Counselor has furnished me with a copy of this waiver. I understand the original or a copy of this waiver will be made a part of the EEO Counselor's Report.

\_\_\_\_\_  
Counselee

\_\_\_\_\_  
Date

\_\_\_\_\_  
Counselee's Representative

\_\_\_\_\_  
Date

\_\_\_\_\_  
EEO Counselor

\_\_\_\_\_  
Date