



Court Services and Offender Supervision Agency
For the District of Columbia

POLICY STATEMENT

Policy Statement 1012

Policy Area: EEO

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EQUAL EMPLOYMENT OPPORTUNITY AND DIVERSITY

I. COVERAGE

This Policy Statement applies to all employees and applicants of the Court Services and Offender Supervision Agency for the District of Columbia (CSOSA), and the Pretrial Services Agency for the District of Columbia (PSA) (or collectively the “Agency”).

II. BACKGROUND

The Agency was established to provide community supervision to defendants and offenders on pretrial release, parole, probation and supervised release in the District of Columbia. It is unique in that it is the only Federal agency with a local mission to increase public safety, prevent crime, reduce recidivism, and support the fair administration of justice in close collaboration with the community in the District of Columbia. This mission requires a dedicated and richly diverse workforce that is committed to excellence.

As Directors of CSOSA and PSA, we are committed to a continual effort to develop and implement the principal elements of nondiscrimination in the work place and build it into a model equal employment opportunity (EEO) program as defined by the Equal Employment Opportunity Commission (EEOC) Management Directive 715 (MD-715). Our personal commitment to EEO goes well beyond meeting the legal requirements and directives of the EEOC. We believe in the individual uniqueness and talents of each employee and recognize that our success as an Agency relies on our ability to best utilize the individual strengths of our employees. This Policy Statement reaffirms our commitment to promote diversity and inclusiveness, and to ensure equal employment opportunity (EEO) for every employee, and applicant. We will continually strive to prevent any barriers to employment opportunity at every level within CSOSA and PSA and ensure that our workplace is free from all forms of discrimination and harassment.

As Directors of CSOSA and PSA, we are committed to a strong EEO program. Agency employees and applicants for employment have our commitment to carry out the goals and objectives of this Policy Statement by implementing effective strategies directed at recruiting, hiring and promoting individuals from the different sectors of the workforce population, including but not limited to: women, people of color, veterans and individuals with disabilities. Likewise, we hold each manager, supervisor and all other employees responsible for ensuring a nondiscriminatory work environment. Our goal of excellence in our work requires zero tolerance of any form of discrimination or harassment. By holding others accountable for their conduct and by being responsible for our own conduct, we can reap the benefits of full equal employment opportunity as we work together to accomplish our respective missions.

III. POLICY

The Agency will not tolerate discrimination or harassment on the bases of race, color, religion, national origin, gender (including pregnancy), age, disability, genetic information, or reprisal (prior EEO activity). The Agency supports every employee's right to exercise the protections guaranteed under the Federal civil rights statutes and will not tolerate reprisal or retaliation against any employee who engages in protected EEO activity, including opposing discriminatory practices or participating in EEO complaint proceedings. EEO means that employment-related decisions are made exclusively on the basis of job-related criteria, merit, ability, performance and potential. The Agency will ensure that employment opportunities are open to all candidates within the designated area of consideration.

This Policy Statement applies to all personnel and employment programs, management practices and employment decisions including, but not limited to: recruitment, hiring, merit promotions, transfers, reassignments, training and career development, benefits, and separations. In addition, the Agency will provide reasonable accommodations to qualified individuals with disabilities, and will accommodate religious practices as required by all applicable law and Agency policy.

IV. AUTHORITIES, SUPERSEDURES, AND REFERENCES

A. Authorities

Title II of the Genetic Information Nondiscrimination Act of 2008 (GINA) (Pub. L. 110-233, 122 Stat. 881)

Title VII of the Civil Rights Act of 1964, as amended. (42 U.S.C. §§ 2000 *et seq.*)

The Equal Pay Act of 1963, as amended (29 U.S.C. § 206(d) *et. seq.*)

The Age Discrimination in Employment Act of 1967 (ADEA), as amended (29 U.S.C. §§ 621 *et seq.*)

The Americans with Disabilities Act of 1990 (ADA) (42 U.S.C. §§ 12101 *et seq.*), as amended by the ADA Amendments Act (ADAAA) of 2008, Pub. L. 110-325

EEOC Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act, as amended, Final Rule, 76 Fed. Reg. 16978 (3/25/11)

Section 501 and 505 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §§ 791 *et seq.*)

Section 102 and 103 of the Civil Rights Act of 1991 (42 U.S.C. 1981, and 42 U.S.C. 1988)
Code of Federal Regulations, Title 29, Part 1614

Equal Employment Opportunity Commission Management Directives 110 and 715

Title III of the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (No FEAR Act of 2002), (Pub. L. 107-174)

Executive Order 13087, Amendment to Executive Order 11478, Prohibits discrimination based on sexual orientation in federal government

Executive Order 13152, Amendment to Executive Order 11478, Prohibits discrimination based on an individual's status as a parent

B. Policy Supersedure

PM EEO Policy Memorandum 2011-11

C. Procedural References

PS 1005 PSA's Anti-Harassment Policy (PSA only)

PS 1006 PSA's Prevention of Sexual Harassment Policy (PSA only)

PS 1010 CSOSA's Employment Opportunity Anti-Harassment Policy (CSOSA only)

PS 1011 CSOSA Sexual Harassment Policy (CSOSA only)

D. Attachments

Appendix A: Definitions

Appendix B: General Procedures

Appendix C: EEO Complaint Process Flow Chart

Guidance Disclaimer

The contents of this guidance do not have the force and effect of law and are not meant to bind the public in any way. This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies.

APPENDIX A DEFINITIONS

For the purpose of this Policy Statement, the following definitions apply:

- A. Adverse Inference – When the complainant, or the Agency against which a complaint is filed, or its employees fail without good cause shown to respond fully and in timely fashion to an order of an administrative judge, or requests for the investigative file, for documents, records, comparative data, statistics, affidavits, or the attendance of witness(es), the administrative judge shall, in appropriate circumstances:
- a. Draw an adverse inference that the requested information, or the testimony of the requested witness, would have reflected unfavorably on the party refusing to provide the requested information;
 - b. Consider the matter to which the requested information or testimony pertains to be established in favor of the opposing party;
 - c. Exclude other evidence offered by the party failing to produce the requested information or witness;
 - d. Issue a decision fully or partially in favor of the opposing party; or
 - e. Take such other actions as appropriate.
- B. Aggrieved Person - One who believes that they have been discriminated against on the basis of race, color, religion, gender (including pregnancy), national origin, age, disability, genetic information, or reprisal (prior EEO activity).
- C. Alternative Dispute Resolution (ADR) – A process in which a third party neutral assists the disputants in reaching an amicable resolution through the use of various techniques. ADR describes a variety of approaches to resolve conflict which avoid the cost, delay, and unpredictability of the traditional adjudicatory processes.
- C. Complainant – An employee, a former employee, or an applicant for employment who files a formal complaint of discrimination based on his/her race, color, religion, gender (including pregnancy), national origin, age, disability, genetic information, or reprisal (prior EEO activity) to an appropriate Agency official.
- D. Discrimination – Under the governing EEOC statutes, discrimination refers to any act or failure to act, impermissibly based in whole or in part on a person's race, color, religion, gender (including pregnancy), national origin, age, disability, genetic information), or reprisal (prior EEO activity) that adversely affects privileges, benefits, working conditions, results in disparate treatment, or has a disparate impact on employees or applicants.
- E. Discriminatory Harassment – Occurs when improper actions of employees or non-employees are motivated by race, color, gender (including pregnancy), religion, national origin, age, disability, genetic information, or reprisal (prior EEO activity) , and culminate in a tangible

employment action or the actions are so severe and pervasive as to alter the conditions of the complainant's work environment. This includes sexual harassment and non-sexual harassment.

- F. Diversity – A collection of individual attributes that together help agencies pursue organizational objectives efficiently and effectively. These include, but are not limited to, characteristics such as national origin, language, race, color, disability, ethnicity, gender, age, religion, sexual orientation, gender identity, socioeconomic status, veteran status, and family structures. The concept also encompasses differences among people concerning where they are from and where they have lived and their differences of thought and life experiences.
- G. Equal Employment Opportunity – The Agency's obligation to protect applicants or employees from discrimination because of that person's race, color, religion, gender (including pregnancy) national origin, age (40 or older), disability, genetic information, or reprisal (prior EEO activity).
- H. Equal Employment Opportunity Commission – The Federal agency that is responsible for enforcing federal laws that make it illegal to discriminate against a job applicant or an employee because of their race, color, religion, gender (including pregnancy), national origin, age, disability, genetic information, or reprisal (prior EEO activity).
- I. EEO Counselor: - The Equal Employment Opportunity (EEO) Counselor plays a vital role in the complaint process. The Counselor serves as a neutral party and establishes an open and objective channel through which employees may raise questions, find answers, discuss problems, and obtain resolution to employment discrimination conflicts. There are six clearly defined roles of an EEO Counselor. They are:
 - a. Advise the aggrieved person about the EEO complaint process under 29 CFR Part 1614 and other avenues of relief.
 - b. Determine the issues and EEO bases of the complaint.
 - c. Conduct a limited inquiry to furnish information for settlement efforts and determining jurisdiction if a formal complaint is filed.
 - d. Seek a resolution at the lowest possible level.
 - e. Document the resolution through a settlement agreement or a withdrawal. If the complaint is not resolved or withdrawn, advise the complainant of the right to file a formal discrimination complaint.
 - f. Prepare a report sufficient to determine that required counseling actions have been taken and resolve any jurisdictional questions that may arise.
- J. Formal Complaint – A written form, filed after the counseling stage, which starts the EEO complaint process.
- K. Genetic Information - Genetic information includes information about an individual's genetic tests and the genetic tests of an individual's family members, as well as information

about the manifestation of a disease or disorder in an individual's family members (i.e. family medical history). Family medical history is included in the definition of genetic information because it is often used to determine whether someone has an increased risk of getting a disease, disorder, or condition in the future. Genetic information also includes an individual's request for, or receipt of, genetic services, or the participation in clinical research that includes genetic services by the individual or a family member of the individual, and the genetic information of a fetus carried by an individual or by a pregnant woman who is a family member of the individual and the genetic information of any embryo legally held by the individual or family member using an assisted reproductive technology.

- L. Genetic Information Non-Discrimination Act – Under Title II of GINA, the law prohibits employers from improperly using genetic information for hiring, firing, or promotion decisions, and for any decisions regarding terms or conditions of employment.
- M. Inclusion - A culture that connects each employee to the organization; encourages collaboration, flexibility, and fairness; and leverages diversity throughout the organization so that all individuals are able to participate and contribute to their full potential.
- N. Informal Pre-Complaint – A matter of alleged discrimination which an aggrieved person brings to the attention of the EEO Counselor before a formal discrimination complaint is filed.
- O. Protected Activity – Opposition to discrimination or participation in the statutory EEO complaint process.
- P. Protected Individual – An employee or applicant who is participating or has participated in protected EEO activity.
- Q. Reprisal/Retaliation – Occurs when an employee is treated differently or subjected to an adverse employment action because they are, or were, involved in a protected EEO activity; (e.g., seeking or participating in EEO counseling, providing testimony in an EEO investigation or at an EEO hearing, filing a discrimination complaint, or speaking out against discrimination). Adverse employment actions include any negative change in the terms and conditions of a person's employment, including, but not limited to: adverse changes in work schedule or assignments, negative performance evaluations, disciplinary actions, harassment, denial of promotional opportunities, and training.
- R. Settlement – A legally binding written agreement that is signed by all parties, and contains mutually acceptable terms and solutions to the issues or matters that are in dispute.

APPENDIX B
GENERAL PROCEDURES

A. Equal Employment Opportunity (EEO) Complaint Process.

- (1) The Equal Employment Opportunity (EEO) Complaint Process provides a means of resolving individual employment problems or class actions relating to issues involving race, color, religion, gender (including pregnancy), national origin, age, disability, genetic information, or reprisal (prior EEO activity). When an issue is first raised, the EEO Office will try to resolve it informally. If the issues raised are not resolved through the informal process, the complaint may progress to the formal stage, which may involve sworn testimony, an investigation, and could result in a decision on the merits of the case through an EEOC administrative hearing or final agency decision. A flow chart that provides a brief description of the Federal Sector EEO Discrimination Complaint Process Procedures can be found in Appendix C.
- (2) An allegation of discrimination may result from any employment issue or action, such as in hiring, promotion, time and attendance work environment, training, evaluation/appraisal, discipline, termination, or other terms, privileges, conditions, and benefits of employment.
- (3) Any agency employee, former employee or applicant for employment who believes he/she has been discriminated against should contact the Office of EEO, Diversity and Special Programs, within **45 days** following the alleged discriminatory action.

B. Pre-complaint Informal EEO Counseling Process.

- (1) The first step in the informal EEO Counseling process is that the aggrieved person must initiate contact with an EEO Counselor within **45 days** of when they knew or should have known of the alleged discriminatory action. The responsibilities of the EEO Counselor are:
 - (a) At the initial counseling session, advise aggrieved employee in writing of their rights and responsibilities in the EEO process, including the right to request a hearing before an EEOC Administrative Judge or an immediate final decision from the Agency following its investigation of the complaint;
 - (b) Inform the aggrieved employee of their rights to proceed directly to court in a lawsuit under the Age Discrimination in Employment Act of 1967, as amended, of their duty to mitigate damages, and that only claims raised in pre-complaint counseling or claims like or related to those raised in counseling may be alleged in a subsequent complaint filed with the Agency;

- (c) Record the issues (actions the Agency has taken that caused the aggrieved employee to believe he or she has been discriminated against) and the alleged bases of race, color, religion, gender (including pregnancy), national origin, age, disability, genetic information, or reprisal (prior EEO activity) of the matter;
- (d) Conduct and complete counseling within **30 days** of the date when the aggrieved employee contacted the EEO office to request counseling;
- (e) Seek resolution. The EEO Counselor attempts to reach reasonable and timely solution acceptable to both the aggrieved employee and management for the best outcome of an EEO employment dispute;
- (f) If the matter is not resolved in a timely manner, inform the aggrieved employee in writing of their right to file a discrimination complaint within **15 days** of receipt of the Notice of Final Interview; identify the Agency official with whom the complaint must be filed; and the aggrieved employee's duty to inform the Agency if he/she is represented;
- (g) Inform the aggrieved employee that the **30-day** counseling period may be extended for an additional **60 days** when: (1) the aggrieved employee agrees to such extension in writing; or (2) where the aggrieved employee chooses to participate in an Alternative Dispute Resolution (ADR) process. If the issue is not resolved before the **90th day**, the Notice of Final Interview will be issued to the aggrieved employee;
- (h) EEO Counselors do not act as advocates either for the aggrieved employee or Management; and
- (i) EEO Counselors do not determine whether discrimination has occurred.

(2) Alternative Dispute Resolution.

- (a) ADR is a non-adversarial conflict/dispute resolution approach, which utilizes several dispute resolution techniques. An ADR process is available as an alternative process for traditional EEO complaint processing.
- (b) ADR is available for both the pre-complaint informal process and the formal complaint process.
- (c) At the initial counseling session, the EEO counselor must advise the aggrieved employee that, where an agency agrees to offer ADR in a particular case, the aggrieved employee may choose between participation in the Agency's ADR program or remain in the EEO counseling process.

- (d) If the matter is not resolved through the ADR process within **90 days** of the date the aggrieved employee contacted the EEO office, a Notice of Final Interview must be issued to the aggrieved employee giving him/her the right to proceed with a formal complaint.

D. Formal EEO Complaint Process.

- (1) If the aggrieved employee is dissatisfied with the results of pre-complaint counseling or the ADR process, the aggrieved employee may file a formal EEO complaint within **15 days** of the receipt of the Notice of Final Interview from the EEO counselor. Note, once a formal complaint is filed, the aggrieved employee is referred to as a “complainant.”
- (2) A formal complaint of discrimination must:
- (a) Be a signed statement from complainant or the complainant’s attorney, and must contain the complainant’s (or representative’s) telephone number and address;
 - (b) Be specific and limited to actions or practices that form the basis of the complaint during the informal counseling process; and
 - (c) Be filed by U.S. Mail, courier delivery service (e.g. Federal Express, UPS, etc.) hand delivery, or via e-mail (scanned copy) to the Director, Office of EEO, Diversity and Special Programs, 655 15th Street, NW, Suite 840, Washington, DC 20005-5307.
- (3) A complainant may amend a complaint at any time prior to the conclusion of the investigation to include issues or claims like or related to those raised in the complaint.
- (4) The Agency must acknowledge receipt of the formal complaint in writing and inform the complainant of the date on which the complaint was filed, of the address of the EEOC office where a request for a hearing should be sent, that the complainant has the right to appeal the Agency’s final action or dismissal of a complaint, and that the Agency must investigate the complaint within **180 days** of the complaint filing date.
- (5) The Agency’s acknowledgment must also advise the complainant that when a complaint has been amended, the Agency must complete the investigation within the earlier of: (1) 180 days after the last amendment to the complaint; or (2) 360 days after the filing of the original complaint.
- (6) A complainant may request a hearing from an EEOC Administrative Judge (AJ) on the consolidated complaints any time after 180 days from the date of the first filed complaint.
- (7) Dismissals of Complaints. Prior to a request for a hearing, in lieu of accepting a complaint for investigation, an agency may dismiss an entire complaint for any of the following reasons:

- (a) Failure to state a claim, or stating the same claim that is pending or has been decided by the Agency or the EEOC;
- (b) Failure to comply with the prescribed statutory time limits;
- (c) Filing a complaint on a matter that has not been brought to the attention of an EEO Counselor and which is not like or related to the matters counseled;
- (d) Filing a complaint which is the basis of a pending civil action, or which was the basis of a civil action already decided by a court of law;
- (e) The complainant has already elected to pursue the matter through either the negotiated grievance procedure or in an appeal to the Merit Systems Protection Board;
- (f) The matter is moot (already settled or no longer in need of further action) or relates to a proposal to take a personnel action;
- (g) The complainant cannot be located;
- (h) The complainant fails to respond to a request to provide relevant information;
- (i) The complainant alleges dissatisfaction with the processing of a previously filed complaint; or
- (j) The complaint is part of a clear pattern of misuse of the EEO process for a purpose other than the prevention and elimination of employment discrimination.

If the EEO Office believes that some, but not all, of the claims in a complaint should be dismissed for the above reasons, it will notify the complainant in writing of the rationale for this determination, identify the allegations which will not be investigated, and place a copy of this notice in the investigative file. This determination shall be reviewable by an EEOC Administrative Judge (AJ) if a hearing is requested on the remainder of the complaint, but is not appealable until final action is taken by the Agency on the remainder of the complaint.

(8) Investigations.

- (a) Following the filing of a formal complaint, investigations are conducted by the EEO office or investigators contracted by that office. The purpose of the investigation is to develop an impartial and appropriate factual record upon which to make findings on the claims raised by the complaint. An appropriate factual record is one that allows a reasonable fact finder to draw conclusions as to whether discrimination occurred.

- (b) The investigation must be completed within **180 days** from the filing of the complaint. A copy of the investigative file must be provided to the complainant, along with a notification that, within **30 days** of receipt of the file, the complainant has the right to request a hearing and a decision from an EEOC AJ or may request an immediate final decision from the agency.
- (c) Reaching a Voluntary Settlement Agreement. At any time during the complaint process, the Agency can offer to settle the complaint. The complainant is not required to accept a settlement offer. If the complainant and the Agency settle the complaint, it will be dismissed and no further action will be taken. The complainant and the Agency will be required to do what is promised in the settlement agreement.

(9) Hearings.

- (a) Requests for a hearing must be sent by the complainant to the EEOC office indicated in the Agency's acknowledgment letter, with a copy to the EEO office. Within **15 days** of receipt of the request for a hearing, the Agency must provide a copy of the complaint file to the EEOC. The EEOC will then appoint an AJ to conduct a hearing.
- (b) Prior to the hearing, the parties may conduct discovery. The purpose of discovery is to enable a party to obtain relevant information for preparation of the party's case. Each party initially bears their own costs for discovery.
- (c) An EEOC AJ may dismiss a complaint for any of the reasons set out above under Dismissals of Complaints or the AJ must conduct the hearing and issue a decision on the complaint within **180 days** of receipt by the AJ of the complaint file from the Agency. The AJ will send copies of the hearing record, the transcript and the decision to the parties. If the Agency does not issue a final order within **40 days** of receipt of the AJ's decision, then the decision becomes the final action by the Agency.

(10) Final action by agency following AJ decision.

- (a) When an AJ has issued a decision (either a dismissal, a summary judgment decision or a decision following a hearing), the Agency must take final action on the complaint by issuing a final order within **40 days** of receipt of the hearing file and the AJ's decision.
- (b) The final order will notify the complainant whether or not the Agency will fully implement the decision of the AJ, and shall contain a notice of the complainant's right to appeal to EEOC or to file a civil action. If the final order does not fully implement the decision of the AJ, the Agency must simultaneously file an appeal with the EEOC and attach a copy of the appeal to the final order.

- (c) When an AJ has not issued a decision, the Agency must take final action by issuing a final decision. The Agency's final decision will consist of findings on the merits of each issue in the complaint.
 - (d) Where the Agency has not processed certain allegations in the complaint for procedural reasons, they must provide the rationale for the decision not to process the allegations. The Agency's decision must be issued within **60 days** of receiving notification that the complainant has requested an immediate final decision. The Agency's decision must contain notice of the complainant's right to appeal to the EEOC, or to file a civil action in federal court.
- (11) Final action by agency in all other circumstances.
- (a) When an Agency dismisses an entire complaint under 29 C.F.R §1614.107, receives a request for an immediate final decision or does not receive a reply to the notice issued under 29 C.F.R. §1614.108(f), the Agency shall take final action by issuing a final decision.
 - (b) The final decision shall consist of findings by the Agency on the merits of each issue in the complaint, or, as appropriate, the rationale for dismissing any claims in the complaint and, when discrimination is found, appropriate remedies and relief will be expedited.
 - (c) The Agency shall issue the final decision within **60 days** of receiving notification that a complainant has requested an immediate decision from the Agency, or within **60 days** of the end of the **30-day** period for the complainant to request a hearing or an immediate final decision where the complainant has not requested either a hearing or a decision.
 - (d) The final action shall contain notice of the right to appeal the final action to the EEOC: the right to file a civil action in federal district court, the name of the proper defendant in any such lawsuit, and the applicable time limits for appeals and lawsuits.
- (12) Appeals to the EEOC. The following types of appeals may be brought to the EEOC:
- (a) A complainant may appeal an Agency's final action or dismissal of a complaint within **30 days** of receipt;
 - (b) A complainant may appeal to the EEOC for a determination as to whether the Agency has complied with the terms of a settlement agreement or decision;
 - (c) A grievant may appeal the final decision of the Agency, arbitrator or the FLRA on a grievance when an issue of employment discrimination was raised in the grievance procedure;

- (d) If the Agency's final action and order do not fully implement the AJ's decision, the Agency must appeal to the EEOC;
- (e) If the complaint is a class action, the class agent or the Agency may appeal an AJ's decision accepting or dismissing all or part of the class complaint; or
- (f) The class agent or the Agency may appeal from an AJ decision on the adequacy of a proposed settlement of a class action.

Appeals must be filed with EEOC's Office of Federal Operations (OFO). Any statement or brief on behalf of a complainant in support of an appeal must be submitted to OFO within **30 days** of filing the notice of appeal. Any statement or brief on behalf of the agency in support of its appeal must be filed within **20 days** of filing the notice of appeal.

The EEOC has the authority to draw adverse inferences against a party failing to comply with its appeal procedures or requests for information.

A party may request that EEOC reconsider its decision within **30 days** of receipt of the Commission's decision. Such requests are not a second appeal, and will be granted only when the previous EEOC decision involved a clearly erroneous interpretation of material fact or law; or when the decision will have a substantial impact on the policies, practices or operations of the agency. The EEOC's decision will be based on a preponderance of the evidence (more likely than not that discrimination did or did not occur). The decision will also inform the complainant of his or her right to file a civil action.

- (13) Civil Actions. Prior to filing a civil action, the complainant must first exhaust the EEO administrative process. Civil actions may be filed in an appropriate federal court:
 - (a) within **90 days** of receipt of the Agency final action where no administrative appeal has been filed;
 - (b) after **180 days** from the date of filing a complaint if an administrative appeal has not been filed and final action has not been taken;
 - (c) within **90 days** of receipt of EEOC's final decision on an appeal; or
 - (d) after **180 days** from the filing of an appeal with EEOC if there has been no final decision by the EEOC.

Under the Age Discrimination in Employment Act (ADEA), an individual may file directly in federal court after giving the EEOC notice of intent to sue. An ADEA complainant who initiates the administrative process may also file a civil action within the time frames noted above.

Under the Equal Pay Act, an individual may file a civil action within 2 years (3 years for willful violations), regardless of whether he or she has pursued an administrative complaint. Filing a civil action terminates processing of an appeal by the EEOC.

- (14) **Class Complaints.** Class complaints of discrimination are processed differently from individual complaints as indicated below:
- (a) The employees or applicants who wish to file a class complaint must first seek counseling and be counseled, just like an individual complaint;
 - (b) However, once counseling is completed the class complaint is not investigated by the Agency. Rather, the complaint is forwarded to the nearest EEOC Field or District Office, where an EEOC AJ is appointed to make a decision as to whether to accept or dismiss the class complaint;
 - (c) The AJ examines the class to determine whether it meets the class certification requirements of numerosity, commonality, typicality and adequacy of representation. The AJ may issue a decision dismissing the class because it fails to meet any of these class certification requirements, as well as for any of the reasons for dismissal discussed above for individual complaints; or
 - (d) A class complaint may begin as an individual complaint of discrimination. At a certain point, it may become evident that there are many more individuals than the complainant affected by the issues raised in the individual complaint.
- (15) **Grievances.** Persons covered by a collective bargaining agreement which permits allegations of discrimination to be raised in the grievance procedure, and who wish to file a complaint or grievance on an allegation of employment discrimination, must elect to proceed either under the EEO procedures of 29 C.F.R. Part 1614 or the negotiated grievance procedures, but not both. An election to proceed under Part 1614 is made by the filing of a complaint, and an election to precede under the negotiated grievance procedures is made by filing a grievance. Participation in the EEO pre-complaint procedures is not an election of the 1614 procedures.
- (16) **Mixed Case Complaints.** Some employment actions which may be subject of a discrimination complaint may also be appealed to the Merit Systems Protection Board (MSPB). In such cases, the employee must elect to proceed with a complaint as a "mixed case complaint" under Part 1614, or a "mixed case appeal" before the MSPB. Whichever is filed first is considered an election to proceed in that forum. Mixed case complaints are processed similarly to other complaints of discrimination, with the following notable exceptions:

- (a) the Agency has only **120 days** from the date of the filing of the mixed case complaint to issue a final decision, and the complainant may appeal the matter to the MSPB or file a civil action any time thereafter;
- (b) the complainant must appeal the agency's decision to the MSPB, not the EEOC, within **30 days** of receipt of the agency's decision; or
- (c) at the completion of the investigation the complainant does not have the right to request a hearing before an EEOC AJ, and the agency must issue a decision within **45 days**.

Individuals who have filed either a mixed case complaint or a mixed case appeal, and who have received a final decision from the MSPB, may petition the EEOC to review the MSPB final decision.

- (17) In contrast to non-mixed matters, individuals who wish to file a civil action in mixed-case matters must file within **30 days** (not 90) of receipt of:
 - (a) the agency's final decision;
 - (b) the MSPB's final decision; or
 - (c) the EEOC's decision on a petition to review.

Alternatively, a civil action may be filed after **120 days** from the date of filing the mixed case complaint with the Agency or the mixed case appeal with the MSPB if there has been no final decision on the complaint or appeal, or **180 days** after filing a petition to review with EEOC if there has been no decision by EEOC on the petition.

APPENDIX C FLOW CHART OF THE EEO COMPLAINT PROCESS

