



## DCSA INSTRUCTION 08-11

# EQUAL EMPLOYMENT OPPORTUNITY PROGRAM

---

<b>Originating Component:</b>	Diversity and Equal Opportunity Office
<b>Effective:</b>	March 18, 2022
<b>Releasability:</b>	Cleared for public release. Available on DCSA policy library.
<b>Replaces and cancels:</b>	DIS Regulation 08-11, "Affirmative Employment and Equal Opportunity Program," April 15, 1991
<b>Approved by:</b>	Daniel J. Lecce, Deputy Director

---

**Purpose:** This instruction establishes policies and mandated procedures for equal employment opportunity (EEO) counseling, filing and processing of formal EEO complaints, investigations, settlement of EEO complaints, and decisions for informal and formal EEO complaints of discrimination. This instruction reflects the changes incorporated in Title 29, Code of Federal Regulations, Part 1614, effective July 1, 2017. Information and procedures in this Instruction should be applied with full consideration of the Federal, DoD and DCSA guidance applicable at the time. Questions about DCSA's administrative discrimination complaint process, including alternative dispute resolution (ADR), should be directed to the Office of Diversity and Equal Opportunity (DEO), EEO complaints manager, at 571-305-6734 or DEO's e-mail address: [dcsa.quantico.dcsa-hq.mbx.eeo@mail.mil](mailto:dcsa.quantico.dcsa-hq.mbx.eeo@mail.mil).

## TABLE OF CONTENTS

SECTION 1: GENERAL ISSUANCE INFORMATION .....	4
1.1. Applicability. ....	4
1.2. Policy. ....	4
1.3. Information Collections. ....	4
SECTION 2: RESPONSIBILITIES.....	5
2.1. Director, DCSA.....	5
2.2. DEO Chief. ....	5
2.3. Supervisors.....	6
SECTION 3: EEO COMPLAINT PROCESSING .....	7
3.1. Overview.....	7
a. Counseling.....	7
b. Alternative Dispute Resolution (ADR).....	7
c. Confidentiality of Negotiations for Resolutions. ....	7
d. Time Frames. ....	7
d. Representation During the Complaint Process. ....	8
e. Independent Authority and Reporting.....	8
f. Delegation of Authority to Resolve Disputes.....	8
g. EEO Officials Cannot Serve as Representatives. ....	8
3.2. EEO Pre-Complaint Process. ....	9
a. Roles and Responsibilities of an EEO Counselor. ....	9
b. When the Basis is not Covered by EEO Laws.....	9
c. Pre-Complaint Processing Procedures. ....	9
3.3. Complaints of Class Discrimination. ....	11
SECTION 4: RELATED PROCESSES.....	12
4.1. Mixed Case Complaints and Appeals. ....	12
a. Determinations. ....	12
b. Election to Proceed. ....	12
c. Mixed Case Complaints Filed at the Agency.....	13
4.2. Age Discrimination Complaints. ....	13
4.3. Equal Pay Act Complaints. ....	14
SECTION 5: PROCESSING FORMAL COMPLAINTS .....	16
5.1. Acknowledgement of Formal Complaints. ....	16
5.2. Acceptance or Dismissal of Formal Complaints. ....	16
5.3. Providing Other Information and Notice of Rights. ....	16
a. DCSA Will Inform the Complainant of the Agency’s Obligations. ....	16
b. DCSA Will Inform Complainant of Their Rights.....	17
5.4. Conducting the Investigation. ....	17
a. Responsibility.....	17
b. Appropriate Investigation. ....	17
5.5. Final ActionS. ....	18
SECTION 6: IMPARTIAL AND APPROPRIATE FACTUAL RECORDS.....	19
6.1. EEO Investigators. ....	19
6.2. The Investigation. ....	19

6.3. Role of the EEO Investigator..... 20

- a. Collecting and Discovering Factual Information..... 20
- b. Must Be Unbiased and Objective. .... 20

6.4. Witnesses and Representatives in the Federal EEO Complaint Process. .... 20

- a. Official Time..... 20
- b. Use of Government Property. .... 22

6.5. Sanctions for Failure to Cooperate During the Investigation. .... 22

6.6. Offer of Resolution. .... 23

SECTION 7: HEARINGS..... 24

7.1. Overview..... 24

7.2. Role of the AJ. .... 24

- a. Dismissal of Complaint by AJ. .... 24
- b. Transmittal of the Decision and Hearing Record. .... 24

7.3. Exclusion and Disqualification. .... 25

GLOSSARY ..... 26

- G.1. Acronyms..... 26
- G.2. Definitions..... 26

REFERENCES ..... 32

TABLES

Table 1. EEO Complaint Processing Timeline ..... 7

## SECTION 1: GENERAL ISSUANCE INFORMATION

**1.1. APPLICABILITY.** This instruction applies to all organizational entities within DCSA.

### 1.2. POLICY.

a. EEO is required by law. DCSA provides equal opportunity in Federal employment and prohibits discrimination in employment based on age (40 or older), disability (physical or mental), race, color, sex (including pregnancy, gender identity and sexual orientation), religion, national origin, and genetic information in accordance with Title VII of Public Law 88-38, otherwise known as the Civil Rights Act of 1964; Public Law 110-233, otherwise known as the Genetic Information Act of 2008; Public Law 93-112, otherwise known as the Rehabilitation Act of 1973; Public Law 90-202, otherwise known as the Age Discrimination in Employment Act of 1967; and Public Law 110-325, otherwise known as the Americans with Disabilities Act Amendments Act of 2008. It is illegal to retaliate against an individual that has complained about discrimination, filed a charge of discrimination, or participated in an employment discrimination investigation or lawsuit. EEO law and policies apply to all types of work situations, including hiring, firing, promotions, harassment, training, wages, and benefits.

b. This instruction is designed to provide DCSA supervisors and employees an overview of the EEO complaint process. It provides information on the informal process, which includes EEO counseling and ADR; and the formal complaint process, which may include an investigation, hearing before an Equal Employment Opportunity Commission (EEOC) Administrative Judge (AJ), or the issuance of a final agency decision (FAD). This instruction is intended to be an easy reference for understanding the EEO complaint process and responsibilities throughout the process.

c. DCSA promotes EEO for all individuals and will not tolerate any form of unlawful discrimination in the workplace. DCSA is committed to preventing discrimination by removing any barriers that may limit opportunities. Every effort must be made by management officials to ensure this commitment is reflected in all of the actions and policies of the organization. If DCSA employees, former DCSA employees, or applicants for employment with DCSA believe that this commitment is not being met, they may seek guidance and assistance through the EEO complaint process without fear of retaliation.

**1.3. INFORMATION COLLECTIONS.** The DD form 2655, Formal Complaint of Discrimination in the Federal Government, referred to in Section 6.1, has been assigned report control symbol DCSA-0076, and the EEO Intake Questionnaire, referred to in Section 3.2, has been assigned report control number DCSA-0077 in accordance with the procedures in Volume 1 of DoD Manual 8910.01.

## SECTION 2: RESPONSIBILITIES

### 2.1. DIRECTOR, DCSA. The Director, DCSA:

- a. Exercises oversight for the implementation of this policy.
- b. Appoints and supervises the DEO Chief.
- c. Is committed to fostering a workplace environment free from discrimination and, at least annually, reinforces the expectations of all DCSA personnel through a policy memorandum regarding equal employment opportunity.

### 2.2. DEO CHIEF. The DEO Chief:

- a. Oversees day-to-day DEO operations and advises the DCSA Director regarding EEO programs.
- b. Oversees continuing and special projects related to strategic planning and analysis; program evaluation; annual, multi-year, and long-range fiscal resource planning; and personnel standards for the EEO Programs.
- c. Holds supervisory responsibility over the EEO program managers at headquarters and in the field, to include additional staff under the service lines of EEO Complaints, Diversity and Inclusion, and Disability/Reasonable Accommodation.
- d. Develops, directs, implements, and evaluates the Agency EEO programs in accordance with DoD Directive 1440.1 and EEOC Management Directive 110.
- e. Provides guidance to senior staff members assisting in the conduct of EEO-related duties.
- f. Issues reports of investigation, FADs, and final agency actions, by delegation from the DCSA Director, on complaints of discrimination consistent with law, rule, and regulation.
- g. Acts as an advocate for the EEO programs policies, and procedures, and informs the workforce of their EEO rights and obligations.
- h. Maintains the neutrality of functions and services provided by the DCSA DEO office.
- i. Oversees the EEO Complaints program, including the EEO Alternative Dispute Resolution program; the Diversity and Inclusion program; and the Disability (Reasonable Accommodation) program.
- j. Accepts and dismisses, in whole or in part, formal EEO complaints as prescribed in EEOC's Management Directive-110.

k. Transmit ROIs and all documents requested by the EEOC upon the filing of a request for a hearing.

l. Reviews, evaluates, collaborates with, and provides advice and assistance to personnel officials, managers, and supervisors regarding personnel programs closely related to and vital to the success of complaints processing, alternative dispute resolution, and medical opportunities.

m. Is authorized to delegate any responsibilities not specifically reserved by law or regulation to the Director of EEO to subordinate officials in the DEO office.

**2.3. SUPERVISORS.** Supervisors must:

a. Cooperate fully during the EEO counseling process and the formal investigative process, and seek to prevent and resolve EEO matters whenever possible.

b. Allow reasonable official time for employees to seek assistance through the EEO complaint process.

c. Provide data and documentation for investigations when requested.

d. Provide a work environment that is free of coercion, interference, and fear of retaliation for involvement in the EEO complaints process.

e. Seek guidance regarding EEO complaint procedures from the DEO office and advice on responses to EEO informal and formal complaints from the Office of General Counsel (OGC).

## SECTION 3: EEO COMPLAINT PROCESSING

### 3.1. OVERVIEW.

**a. Counseling.** Federal employees, former employees, or applicants for employment with DCSA must contact the DEO office to initiate the counseling process within 45 calendar days of the alleged discriminatory event, becoming aware of the alleged discriminatory event, or should have reasonably been aware of the discriminatory activity. Aggrieved individuals who express intent to enter the EEO process made to any agency official connected with the EEO process, even if that official is not an EEO counselor, will satisfy the criterion for contact with an EEO counselor.

**b. Alternative Dispute Resolution (ADR).** Both ADR and EEO counseling are essential to achieving early resolution of the claim. The opportunity for informal resolution is important. The ADR program provides a means of improving the efficiency of the EEO complaint process by attempting early informal resolution of EEO disputes. DCSA Instruction 08-13 provides the procedures and details of how ADR is handled within the Agency.

**c. Confidentiality of Negotiations for Resolutions.** To facilitate resolution attempts, all parties involved in resolution must be free to explore all reasonable avenues of relief. Offers and statements by parties made in response to resolution attempts by the EEO counselor cannot be used against either party during the administrative EEO process, unless excepted by law or determined by a court, if resolution attempts fail. The EEO counselor must not report any discussions that occur during negotiations for resolution session.

**d. Time Frames.** Time frames for EEO complaint processing are provided in Table 1.

**Table 1. EEO Complaint Processing Timeline**

Number of Days	Action
45 Days	Aggrieved individual must contact the appropriate EEO official (EEO complaints manager, field EEO Program specialists, etc.) within 45 calendar days of the alleged discriminatory action, becoming aware of the discriminatory action or should have reasonably known of the discriminatory action; or, in the case of a personnel action, within 45 calendar days of the effective date of the action.
30 Days	EEO counselor has 30 days from the date the aggrieved individual expressed intent to enter the EEO complaint process to attempt resolution.
60 Days	Counseling can be extended up to an additional 60 days, if the aggrieved individual agrees in writing to the extension. Total counseling period must not exceed 90 days.
90 Days	When the aggrieved individual chooses to attempt resolution via mediation, the pre-complaint process period must not exceed 90 days.

15 Days	Upon receipt of the Notice of Right to File a Discrimination Complaint, the aggrieved individual has 15 calendar days to file their formal EEO complaint with the DEO Office.
---------	---

*Note: All days referenced above refer to calendar days.*

**d. Representation During the Complaint Process.** Although employees do not have to be represented by an attorney during the complaint process, they have the right to seek representation from an attorney or other person at their own expense. An aggrieved individual can represent him/herself or seek representation from someone who is not a lawyer. Neither the EEOC nor the DEO office will represent an employee during the complaint process, nor will the EEOC or DCSA appoint an attorney to represent them. Officials who work with the DCSA DEO office cannot represent aggrieved individuals. The EEOC or DCSA may also disqualify a representative from representing a complainant, after giving the representative an opportunity to respond, where an actual conflict with the official or collateral duties of the representative exists.

**e. Independent Authority and Reporting.**

(1) Agency officials must take reasonable measures to avoid conflicts of position or conflicts of interest as well as the appearance of such conflicts. For example, the same agency official(s) responsible for executing and advising on personnel actions may not also be responsible for managing, advising, or overseeing the EEO pre-complaint or complaint processes.

(2) Heads of agencies must not permit prohibited involvement in the EEO process by representatives and offices responsible for defending the Agency against EEO complaints.

**f. Delegation of Authority to Resolve Disputes.** The Agency must designate an individual to attend settlement discussions convened by an EEOC AJ or to participate in ADR that the Agency has agreed to participate in. DCSA should include an official with settlement authority at all ADR meetings. The probability of achieving resolution of a dispute improves significantly if the designated agency official has the authority to agree immediately to a resolution reached between the parties. If an official with settlement authority is not present at the settlement or ADR negotiations, such official must be immediately accessible to the Agency's representative during settlement discussions or ADR. Settlement agreements will be stated in writing and must be reviewed by OGC before signature by any DCSA officials.

**g. EEO Officials Cannot Serve as Representatives.** EEO officials must have the confidence of the Agency and its employees. It is inconsistent with their neutral roles for EEO counselors, EEO investigators, EEO officers, and EEO program managers to serve as representatives for agencies or complainants, or as neutral parties in ADR efforts on EEO complaints managed by DCSA. Therefore, persons in these positions cannot serve as representatives for complainants or for agencies in connection with the processing of discrimination complaints.



### **3.2. EEO PRE-COMPLAINT PROCESS.**

**a. Roles and Responsibilities of an EEO Counselor.** When an aggrieved individual enters the EEO pre-complaint process, the EEO counselor serves as educator, information gatherer, facilitator, and messenger. They have no decision-making authority. To ensure impartiality, DCSA may utilize EEOC-certified contract counselors. The EEO counselor must perform several tasks in all cases, regardless of whether the individual ultimately elects the ADR option. These tasks include:

(1) Serving as a neutral, unbiased entity in the pre-complaint stage of the EEO process, plays a vital role in early resolution at the pre-complaint stage of the EEO process, and attempts to informally resolve matters during traditional counseling.

(2) Establishing an environment that cultivates open dialogue.

(3) Conducting an initial interview where they advise the aggrieved individual about the EEO complaint process, provide written notice of the rights and responsibilities under EEO laws, convey information related to the ADR program, and assist the aggrieved individual with articulating claims of employment discrimination.

(4) Offering the aggrieved individual an opportunity to participate in mediation during the initial interview.

(5) Conducting a limited inquiry when the aggrieved individual elects traditional counseling in an effort to attain resolution.

(6) Facilitating the final interview with the aggrieved individual and issues the Notice of Right to File a Discrimination Complaint, when resolution is not possible. The completion of the final interview marks the end of informal EEO counseling.

(7) Preparing and submitting the counselor's report to the EEO complaints manager or the DEO Office within 15 calendar days of the issuance of the Notice of Right to File a Discrimination Complaint to the aggrieved individual.

(8) Maintaining effective and efficient communication with the DEO office by providing periodic updates throughout the EEO counseling process.

**b. When the Basis is not Covered by EEO Laws.** When it is clear that the aggrieved individual's issue does not involve a basis set forth in the Civil Rights Act of 1964, the Genetic Information Act of 2008, the Rehabilitation Act of 1973, the Age Discrimination in Employment Act of 1967, or the Americans with Disabilities Act Amendments Act of 2008, the EEO counselor will continue the counseling process and notify the appropriate EEO official for situational awareness.

#### **c. Pre-Complaint Processing Procedures.**

(1) The EEO complaints manager or complaints specialist in the field will conduct the initial intake with an aggrieved individual. During the intake, the aggrieved individual will articulate

their concerns regarding employment discrimination. The complaints manager or specialist will provide an overview of the EEO complaint process, explain the ADR program, distribute information related to the EEO complaint process and benefits of mediation, and issue the EEO Intake Questionnaire to the aggrieved individual for completion. During this time, the supervisor named in the complaint will not have the right to know the identity of the aggrieved individual, unless the aggrieved individual waives anonymity.

(2) At the conclusion of the initial intake, the EEO complaints manager or specialist will draft a memorandum for the record and input the case data, along with the memorandum, into the appropriate database as an EEO Contact.

(3) Upon receipt of the completed EEO Intake Questionnaire, the complaints manager or specialist will initiate the process to acquire an EEO counselor for the pre-complaint process. Once the assigned EEO counselor has been identified, the complaints manager or specialist will schedule a pre-counseling meeting with the EEO counselor, and then provide the EEO counselor with the EEO Intake Questionnaire. Subsequently, the complaints manager or specialist will provide the aggrieved individual the name and contact information of the assigned EEO counselor.

(4) The EEO counselor will contact the aggrieved individual within 3 calendar days to schedule and conduct the initial interview. During the initial interview, the EEO counselor will provide an intake packet consisting of the following items:

- (a) Notice of Rights and Responsibilities
- (b) Certificate of Receipt of Rights and Responsibilities
- (c) Offer to Mediate
- (d) Agreement to Extend Counseling
- (e) Designation of Representative

(5) Additionally, the EEO counselor will assist the aggrieved individual with capturing a summary of their claims of employment discrimination, identifying the responsible management official and relevant witnesses, and articulating their desired relief to resolve the complaint. The aggrieved individual must sign, date, and return the draft claims to the EEO counselor, thereby acknowledging the accuracy of the summary.

(6) After the claim(s) have been established and the completed intake packet has been returned, the EEO counselor will facilitate a fact-finding limited inquiry into the allegations, if the aggrieved individual elected to seek resolution via traditional counseling. The EEO counselor has 30 calendar days to attempt resolution through traditional counseling which, with written agreement from the aggrieved individual, can be extended up to 60 days.

(7) If resolution is successful in counseling, the EEO counselor will contact the complaints manager or specialist. The DEO office, in collaboration with OGC, will draft the negotiated settlement agreement (NSA) that will contain the stipulations agreed upon by the

parties involved. The NSA must be signed by the DCSA General Counsel or an attorney designee, the aggrieved individual, and the settlement authority, and a copy of the final NSA is provided to the parties and to the DEO office.

(8) When resolution is not obtained via counseling, the EEO counselor will conduct the final interview with the aggrieved individual and issue the Notice of Right to File a Complaint of Discrimination, ending the pre-complaint process.

**3.3. COMPLAINTS OF CLASS DISCRIMINATION.** An EEO counselor may need to provide EEO counseling to an aggrieved individual or group of individuals seeking to represent a class of persons. A class complaint is a written complaint of discrimination filed on behalf of the class by the agent of the class, alleging that the class is so numerous that: a consolidated complaint by the members of the class is impractical; there are questions of fact common to the class; the claims of the agent of the class are typical of the claims of the class; and the agent of the class and, if represented, the representative will fairly and adequately protect the interests of the class. Information regarding class complaints can be found in Chapter 8 of EEOC Management Directive 110.

## SECTION 4: RELATED PROCESSES

### 4.1. MIXED CASE COMPLAINTS AND APPEALS.

**a. Determinations.** Two determinations must be made to decide if mixed-case regulations apply.

(1) **Standing.** The employee must have standing to file such an appeal with the Merit Systems Protection Board (MSPB). Employees generally have a right to appeal to the MSPB and, therefore, to initiate a mixed-case complaint or appeal if they are:

(a) Excepted or competitive service employees not serving a probationary or trial period under an initial appointment;

(b) Career appointees to the Senior Executive Service;

(c) Non-competitive service veterans preference-eligible employees with 1 or more years of current continuous service; and

(d) Non-preference eligible excepted service employees who have completed their probationary period or with 2 or more years of current continuous service.

(2) **Exclusions.** Non-probationary employees, certain non-appropriated fund activity employees, and employees serving under a temporary appointment limited to 1 year or less generally do not have a right to appeal to the MSPB.

(3) **Appealable Actions.** Most appealable actions are classified into one of six categories:

(a) Reduction in grade or removal for unacceptable performance;

(b) Removal, reduction in grade or pay, suspension for more than 14 days, or furlough for 30 days or less for cause that will promote the efficiency of the service;

(c) Separation, reduction in grade, or furlough for more than 30 days, when the action was effected because of a reduction-in-force;

(d) Reduction-in-force action affecting a career appointee in the Senior Executive Service;

(e) Reconsideration decision sustaining a negative determination of competence for a general schedule employee; and

(f) Disqualification of an employee or applicant because of a suitability determination.

### **b. Election to Proceed.**

(a) A covered individual may raise claim(s) of discrimination in a mixed case either as a direct appeal to the MSPB or as a mixed-case EEO complaint with the Agency, but not both.

(b) Whatever action the individual files first is considered an election to proceed in that forum. 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.

(c) Where an aggrieved individual files an MSPB appeal and timely seeks counseling, counseling may continue at the option of the parties.

**c. Mixed Case Complaints Filed at the Agency.** If an employee elects to file a mixed-case complaint, the Agency must process the complaint in the same manner as it would any other discrimination complaint.

#### **4.2. AGE DISCRIMINATION COMPLAINTS.**

a. An aggrieved individual may file an administrative age discrimination complaint with the Agency pursuant to 29 C.F.R. Part 1614. If the aggrieved individual elects to file an administrative complaint, they must exhaust administrative remedies before they may file a civil action in U.S. District Court. Exhaustion of administrative remedies occurs when the Agency takes final action or 180 days after filing the complaint if no final action is taken during that time.

b. An aggrieved individual may bypass the administrative complaint process and file a civil action directly in U.S. District Court provided the aggrieved individual first provides the EEOC with a written notice of intent to sue in accordance with Public Law 90-202, otherwise known as the Age Discrimination in Employment Act of 1967. The notice to the EEOC must be filed within 180 days of the date of the alleged discriminatory action. Once a timely notice of intent to sue is filed with the EEOC, the aggrieved individual must wait at least 30 days before filing a civil action.

c. The aggrieved individual, the EEOC, and the Agency have certain responsibilities with respect to the filing and processing of notices of intent to sue under the Age Discrimination in Employment Act of 1967.

(1) The aggrieved individual must provide the EEOC with a written notice of intent to sue within 180 days of the date of the alleged discriminatory action.

(a) Notices of intent to sue must be provided to the EEOC via:

1. Delivery to:

Equal Employment Opportunity Commission  
Office of Federal Operations  
Federal Sector Programs  
131 M Street, NE  
Washington, DC 20507

2. Mailed to:

Equal Employment Opportunity Commission  
Office of Federal Operations  
Federal Sector Programs  
P.O. Box 77960  
Washington, DC 20013

3. Submitted through the EEOC's electronic document submission portal or fax at (202) 663-7022.

(b) The notice of intent to sue should be dated and must contain:

1. Statement of intent to file a civil action in accordance with Section 15(d) of the Age Discrimination in Employment Act of 1967, as amended;

2. Name, address, and telephone number of the employee or applicant;

3. Name, address, and telephone number of the complainant's designated representative, if any;

4. Name and location of the federal agency or installation where the alleged discriminatory action occurred;

5. Date on which the alleged discriminatory action occurred;

6. Statement of the nature of the alleged discriminatory action(s); and

7. Signature of the complainant or the complainant's representative.

(2) EEOC.

(a) Upon receipt of a notice of intent to sue, the EEOC will promptly notify the concerned Agency (and all persons named in the notice as prospective defendants in the action, if any), in writing, of its receipt of the notice of intent to sue and will provide the Agency with a copy of the notice. A copy of the EEOC's notification will be provided to the aggrieved individual and their representative, if any. Additionally, the EEOC will take any appropriate action to ensure the elimination of any unlawful practice.

(b) Where an aggrieved individual files a civil action before the Agency has completed its inquiry, or before the EEOC has reviewed the Agency's disposition, the EEOC will terminate the inquiry and will take no further action on the notice of intent to sue.

(3) Upon DCSA's receipt of a notice of intent to sue, the DEO office will review the claim(s) of age discrimination and conduct an inquiry sufficient to determine whether there is evidence that unlawful age discrimination has occurred.

**4.3. EQUAL PAY ACT COMPLAINTS.** In accordance with Public Law 88-38 (otherwise known as the Equal Pay Act of 1963), an aggrieved individual does not have to file an administrative complaint before filing a lawsuit. If an aggrieved individual nonetheless wants to file an administrative complaint, it will be processed in the same manner as Title VII complaints

and in accordance with 29 C.F.R. Part 1614. Complainants in cases under the Equal Pay Act of 1963 should be notified of the statute of limitations (2 years or, if a willful violation is alleged, 3 years), which applies even if the individual files an administrative complaint, and of the right to file directly in a court of competent jurisdiction without first providing notice to the EEOC or exhausting administrative remedies.

## SECTION 5: PROCESSING FORMAL COMPLAINTS

### 5.1. ACKNOWLEDGEMENT OF FORMAL COMPLAINTS.

a. Complainants have 15 calendar days, beginning the day they receive their Notice of Right to File a Discrimination Complaint, to submit their formal complaint. Formal complaints are written documentation that outlines the basis(es) and claim(s) in an employment discrimination matter. Allegations are submitted on a signed and dated [DD Form 2655](#), Formal Complaint of Discrimination in the Federal Government. If the 15th day falls on a Saturday, Sunday or holiday, the next business day will be considered the suspense for filing the complaint. Supervisors must give complainants a reasonable amount of time during work hours to prepare the complaint. If complainants feel they have not been given a reasonable amount of time to prepare their complaint, they should contact the DEO Chief or EEO complaints manager.

b. Formal complaints can be submitted to the DEO Chief by mail at Defense Counterintelligence and Security Agency, 27130 Telegraph Road, Quantico, Virginia, 22134-7130, or by e-mail to [dcsa.quantico.dcsa-hq.mbx.eeo@mail.mil](mailto:dcsa.quantico.dcsa-hq.mbx.eeo@mail.mil). For complaints mailed to the Agency, the date of the postmark will serve as the official date the complaint was filed. For emailed complaints, the date of receipt will determine the date the complaint was filed.

c. Within 2 business days of receipt of a formal complaint of discrimination, the DEO office will acknowledge in writing receipt of the complaint.

**5.2. ACCEPTANCE OR DISMISSAL OF FORMAL COMPLAINTS.** The DEO office will assess the formal complaint, in accordance with EEOC Management Directive 110, to make a decision regarding acceptance or dismissal, in part or entirely, of the asserted claims of discrimination. The DEO office will provide the complainant a letter, identifying all claims accepted for investigation or dismissed, including issues and bases. Complainants have 7 calendar days from receipt of this letter to confirm that claims (including dates, range of dates, names, and missing claims) for investigation are accurately captured or to inform the DEO office of any disputes about the issues and bases that were accepted or dismissed.

### 5.3. PROVIDING OTHER INFORMATION AND NOTICE OF RIGHTS.

#### a. DCSA Will Inform the Complainant of the Agency's Obligations.

##### (1) To Investigate in a Timely Manner.

(a) DCSA is required to investigate EEO-accepted complaints in a timely manner. The investigation must be appropriate and impartial, and it must be completed within 180 calendar days of filing the complaint unless the parties agree in writing to extend the time period.

(b) An investigation is deemed completed when the report of the investigation is served on the complainant in conjunction with the notice of the right to elect either a hearing before an EEOC AJ or a final decision from DCSA.



(2) **To Process Mixed Cases in a Timely Manner.** For mixed-case complaints, if a final decision is not issued within 120 calendar days of the date of filing, the complainant may appeal to the MSPB at any time thereafter, or file a civil action, but not both. The complainant is not entitled to a hearing before the EEOC on a mixed case.

**b. DCSA Will Inform Complainant of Their Rights.**

(1) **The Right to a Hearing.** Except in mixed cases, the complainant has the right to request a hearing before an EEOC AJ after 180 calendar days from the filing of a formal complaint or after completion of the investigation, whichever comes first. Complainants must request a hearing directly from the EEOC field office that has jurisdiction over the geographic area in which the complaint arose.

(2) **The Right to Appeal.** The complainant has the right to appeal a dismissal, final action or a decision. DCSA will inform the complainant of the right to appeal within 30 calendar days of receipt of the dismissal, final action or decision.

(3) **The Right to File a Civil Action.** The complainant has the right to file a civil action in U.S. district court on claims raised in the administrative process:

(a) Within **90 days** of receipt of a final action on an individual or class complaint, if no appeal has been filed;

(b) After **180 days** from the date of filing an individual or class complaint, if an appeal has not been filed and a final action has not been taken;

(c) Within **90 days** of receipt of the EEOC's final decision on appeal; or

(d) After **180 days** from the date of the filing of an appeal with the EEOC if there has been no final decision by the EEOC.

**5.4. CONDUCTING THE INVESTIGATION.**

**a. Responsibility.** The DEO Chief will ensure an appropriate, timely, complete investigation of complaints is conducted. DCSA is required to ensure investigations are thorough and completed within 180 days after the filing of the last complaint or within 360 days after the filing of the original complaint. Regardless of the possible amendment to or consolidation of complaints, the investigation must be completed in not more than 360 days, unless there is a written extension for not more than 90 days.

**b. Appropriate Investigation.** A timely completed investigation means that within the applicable time period, the Agency must:

(1) Ensure the investigation includes a factual record that allows a reasonable fact finder to draw conclusions as to whether discrimination occurred.

(2) Provide complainants a copy of the report of investigation, including a summary of the investigation.

(3) Within 30 calendar days of receipt of investigation file, inform complainants of their right to request a FAD or hearing, if it is not a mixed case.

**5.5. FINAL ACTIONS.** After the investigation is completed, the complainant may request a hearing before an EEOC AJ or request a FAD based on the merits of each claim in the complaint or, as appropriate, the rationale for dismissing any claims in the complaint.

## **SECTION 6: IMPARTIAL AND APPROPRIATE FACTUAL RECORDS**

### **6.1. EEO INVESTIGATORS.**

a. The EEO investigator is officially designated and authorized to conduct inquiries into accepted claims raised in EEO complaints. EEO investigators have authority to administer oaths and to require employees to furnish testimony under oath or affirmation, without a promise of confidentiality. The EEO investigator does not make or recommend findings on the issues claims under investigation.

b. EEO investigators from the DoD Investigations and Resolutions Directorate, Diversity Management Operations Center conduct investigations into all allegations of discrimination for DCSA.

### **6.2. THE INVESTIGATION.**

a. An investigation of a formal complaint of discrimination is an official review or inquiry, by persons authorized to conduct such review or inquiry, into claims raised in an EEO complaint. Investigative inquiries may use a variety of methods and devices, such as in-person interviews, written requests for information, position statements, interrogatories, and affidavits. Prior to the investigation, the DEO office will provide to the EEO investigator:

- (1) Formal Complaint
- (2) Counselor Report
- (3) Letter of Acknowledgement
- (4) Notice of Acceptance
- (5) Accepted Amendments

b. The investigative process is non-adversarial. The EEO investigator is obligated to collect evidence regardless of the parties' positions with respect to the items of evidence.

c. The purpose of the investigation is to gather facts upon which a reasonable fact finder may draw conclusions as to whether DCSA violated EEOC-enforced statutes, and whether a violation is found to have a sufficient factual basis from which to fashion an appropriate remedy.

d. The investigation must include a thorough review of the circumstances under which the alleged discrimination occurred; the treatment of members of the complainant's group as compared with the treatment of other similarly situated employees, if any; and any policies or practices that may constitute or appear to constitute discrimination, even though they have not been expressly cited by the complainant.

### 6.3. ROLE OF THE EEO INVESTIGATOR.

**a. Collecting and Discovering Factual Information.** The role of the EEO investigator is to collect and discover factual information concerning the claim(s) in the complaint under investigation and to prepare an investigative summary.

**b. Must Be Unbiased and Objective.** Regardless of the mix of investigation activity selected for a particular case, the EEO investigator must be, and maintain the appearance of being, unbiased, objective, and thorough. They must be neutral in their approach to factual development. The EEO investigator is not an advocate for any party or interest, and should refrain from developing allegiances.

### 6.4. WITNESSES AND REPRESENTATIVES IN THE FEDERAL EEO COMPLAINT PROCESS.

#### a. Official Time.

(1) Complainants are entitled to a representative of their choice, subject to the limitations identified in this instruction, during all stages of the EEO complaint process. Both the complainant and the representative, if they are DCSA employees, are entitled to a reasonable amount of official time to present the complaint and to respond to agency requests for information.

(2) If a former DCSA employee initiates the EEO complaint process concerning an action relating to their prior employment with DCSA, and the individual has a representative who is a current employee of DCSA, the representative will be entitled to a reasonable amount of official time to represent the former employee.

(3) Both a complainant and the responsible management official(s) can name witnesses to be interviewed during the formal process. Witnesses who are Federal employees, regardless of whether they are employed by DCSA or another Federal agency, must be in a duty status when their presence is authorized or required by the EEOC or agency officials in connection with a complaint.

#### (a) Reasonable Amount of Official Time.

1. “Reasonable” is defined as whatever is appropriate, under the particular circumstance of the complaint, in order to allow a complete presentation of the relevant information associated with the complaint and to respond to agency requests for information. Reasonable official time is generally considered to be measured in terms of hours, rather than in terms of days, weeks or months. It is at the discretion of the individual’s supervisory team to determine the appropriate and reasonable times and dates to make available.

2. The actual number of hours to which the complainant and the representative are entitled will vary, depending on the nature and complexity of the complaint and taking into consideration the mission of the Agency and the need to have DCSA employees available to perform their normal duties on a regular basis. The complainant and the Agency should arrive at

a mutual understanding as to the amount of official time to be used prior to the complainant's use of such time. Time spent commuting to and from home should not be included in official time computations, because all employees are required to commute to and from their Federal employment on their own time.

(b) **Meeting and Hearing Time.** Most of the time spent by complainants and their representatives during the processing of a typical complaint is spent in meetings and hearings with agency officials or with EEOC AJs. Whatever time is spent in such scheduled meetings and hearings is automatically deemed reasonable and must be granted. Both the complainant and representative are to be granted official time for the duration of such meetings or hearings and are in a duty status regardless of their tour of duty. If a complainant or representative has already worked a full week and must attend a hearing or meeting on an off day, that complainant or representative is entitled to official time, which may require the Agency to pay overtime or compensatory time

(c) **Preparation Time.** Presentation of a complaint involves preparation for meetings and hearings, as well as attendance at such meetings, conferences, and hearings; complainants and their representatives are also afforded a reasonable amount of official time to prepare for meetings and hearings. They are also to be afforded a reasonable amount of official time to prepare the formal complaint and any appeals that may be filed with the EEOC, even though no meetings or hearings are involved. However, because investigations are conducted by Investigations and Resolutions Directorate Diversity Management Operations Center personnel, the DEO office does not envision large amounts of official time for preparation purposes. Consequently, "reasonable," with respect to preparation time (as opposed to time actually spent in meetings and hearings), is generally considered to be conducted in terms of hours rather than days, weeks or months. Again, what is reasonable depends on the individual circumstances of each complaint.

(d) **Aggregate Time Spent on EEO Matters.**

1. The Agency may restrict the overall hours of official time afforded to a representative, for both preparation purposes and for attendance at meetings and hearings, to a certain percentage of that representative's duty hours in any given month, quarter or year. Such overall restrictions would depend on the nature of the position occupied by the representative, the relationship of that position to the mission of the Agency, and the degree of hardship imposed on the mission of the Agency by the representative's absence from their normal duties. The amount of official time to be afforded an employee for representational activities will vary with the circumstances.

2. Where representation of a complainant conflicts with official or collateral duties of the representative, the Agency may, after giving the representative an opportunity to respond, disqualify the representative. At all times, the complainant is responsible for proceeding with the complaint, regardless of whether they have a designated representative.

3. The EEOC does not require agencies to provide official time to employee representatives who are representing complainants in cases against other Federal agencies.

However, the EEOC encourages agencies to provide official time to representatives in such cases.

(e) **Requesting Official Time.** The amount of official time a complainant is provided is determined on a case-by-case basis. The DEO office will inform complainants, representatives, and others who may need official time, such as witnesses, of the process and how to claim or request official time. Requests for official time by complainants or representatives must include sufficient description of the activity requiring the use of official time (e.g., complaint preparation, statement preparation, participation in hearing or interview) for the supervisor to be able to make an informed decision on whether or not to grant official time.

(f) **Denial of Official Time.** If the Agency denies a request for official time, either in whole or in part, the deciding official must prepare a written statement noting the reason(s) for the denial and forward it to the DEO Office for inclusion in the complaint file. If the Agency's denial of official time is made before the complaint is filed, the Agency must provide the complainant with a written explanation for the denial, which it will include in the complaint file once a complaint is filed.

**b. Use of Government Property.** Complainants or complainants' non-attorney representatives' use of government property (copiers, telephones, document software and internet access) must be authorized by the Agency and must not cause undue disruption of agency operations. Use of Government vehicles by complainants or their representatives to support EEO complaint activity is not permitted without prior supervisory approval.

## **6.5. SANCTIONS FOR FAILURE TO COOPERATE DURING THE INVESTIGATION.**

a. The DEO office will develop an impartial and appropriate factual record upon which to make findings on the accepted claim(s) raised in the written complaint. The EEOC AJ and the EEOC's Office of Federal Operations have the authority to issue sanctions against an agency for failure to develop an impartial and appropriate factual record in appropriate circumstances.

b. Moreover, all complainants, DCSA employees and management officials must cooperate with the EEO investigator. A party to the complaint (complainant or the Agency) may be subject to sanction when it fails to comply with a request of the EEO investigator for documents, records, comparative data, statistics, affidavits or the attendance of witnesses. Per EEOC Management Directive 110, the EEO investigator must make note in the investigative file concerning the party's failure, without good cause shown, to comply and the decision-maker (DCSA where the complainant requests a FAD and the EEOC AJ during the hearing process) or the EEOC on appeal may, in appropriate circumstances:

(1) 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;

(2) Consider the matter(s) to which the requested information or testimony pertains to be established in favor of the opposing party;

- (3) Exclude other evidence offered by the party failing to produce the requested information or witness;
- (4) Issue a decision fully or partially in favor of the opposing party; or
- (5) Take such other actions as it deems appropriate.

#### **6.6. OFFER OF RESOLUTION.**

a. An offer of resolution can be made to a complainant who is represented by an attorney at any time after the filing of a formal complaint until 30 days before a hearing. If, however, the complainant is not represented by an attorney, an offer of resolution cannot be made before the case is assigned to an AJ for a hearing. These time and representation provisions apply only to offers of resolution and do not restrict parties from discussing settlement or engaging in an alternate dispute resolution process in an effort to resolve an EEO complaint.

b. Complainants have 30 days from receipt of an offer of resolution to consider the offer and decide whether to accept it. Offers of resolution and complainant's acceptance of the offer must also be in writing. Upon acceptance, the complaint is settled in full and processing ceases.

c. If a complainant decides not to accept the offer, the Agency takes no immediate action, and the complaint continues to be processed normally. A complainant's failure to accept an offer of resolution does not preclude the Agency from making other offers of resolution or either party from seeking to negotiate a settlement of the complaint at any time.

## SECTION 7: HEARINGS

### 7.1. OVERVIEW.

a. The EEOC hearing is an adjudicatory proceeding that completes the process of developing a full and appropriate record. An EEOC hearing provides the parties with a fair and reasonable opportunity to explain and supplement the record and, in appropriate instances, to examine and cross-examine witnesses. An EEOC AJ adjudicates claim(s) of discrimination and issues decisions.

b. A complainant must submit the hearing request directly to the EEOC district or field office having jurisdiction over the geographic area in which the complaint arose.

c. OGC serves as the Agency representative in the hearing and EEOC appeals process and will represent DCSA and provide advice, information and guidance related to the hearing and discovery process for all scheduled hearings and EEOC appeals.

d. The DEO office will transmit ROIs and all documents requested by the EEOC upon the filing of a request for hearing.

e. EEOC AJ decisions, in non-class action cases, become the final action of the Agency if the Agency does not issue a final order within 40 days of receipt of the EEOC AJ's decision.

f. Requests for hearing can be submitted through the EEOC's Public Portal, at <https://publicportal.eeoc.gov>. The EEOC Public Portal is a secure, web-based application developed for individuals to interact with the EEOC regarding complaints of employment or hiring discrimination. The EEOC Public Portal is the primary point of communication between the complainant and the EEOC.

**7.2. ROLE OF THE AJ.** Once an EEOC AJ is appointed, the EEOC AJ has full responsibility for the adjudication of the complaint. DCSA cannot dismiss a case that has been referred to the EEOC for a hearing.

**a. Dismissal of Complaint by AJ.** The EEOC AJ may dismiss complaints within the jurisdiction on his/her own initiative, after notice to the parties, or upon either or both parties' motion to dismiss a complaint.

**b. Transmittal of the Decision and Hearing Record.**

(1) At the conclusion of the hearing stage, the EEOC AJ will send to the parties, copies of the record produced during the hearing stage; including the transcript of the hearing, if any, as well as the decision.

(2) The EEOC AJ may, when necessary, release the transcript prior to the issuance of the decision (e.g., when the transcript is needed to prepare a post-hearing brief or to prepare for a hearing on relief.)



(3) The EEOC AJ may issue a decision 'from the bench' immediately after the conclusion of the hearing, by reading a decision into the transcript of the hearing, in lieu of issuing a written decision at a later time.

### **7.3. EXCLUSION AND DISQUALIFICATION.**

a. All participants in the EEO hearing process have a duty to maintain the decorum required for a fair and orderly proceeding and to obey orders of the EEOC AJ. Any person who engages in improper behavior or contumacious conduct at any time subsequent to the docketing of a complaint for a hearing is subject to sanction.

b. Persons may be excluded from the hearing for disruptive conduct or misbehavior that obstructs the hearing. If the complainant's or Agency's representative engages in misconduct or refuses to obey an order of the EEOC AJ, the EEOC may suspend or disqualify the representative from future hearings, refer the matter to an appropriate licensing authority, or both.

## GLOSSARY

### G.1. ACRONYMS.

ADR	alternative dispute resolution
AJ	Administrative Judge
DEO	Diversity and Equal Opportunity
EEO	equal employment opportunity
EEOC	Equal Employment Opportunity Commission
FAD	final agency decision
MSPB	Merit Systems Protection Board
NSA	negotiated settlement agreement
OGC	Office of General Counsel

### G.2. DEFINITIONS.

Unless otherwise noted, these terms and their definitions are for the purpose of this issuance.

TERM	DEFINITION
<b>AJ</b>	Administrative Judge. An EEOC AJ has full responsibility for the adjudication of EEO complaints.
<b>agency representative</b>	Any or all agency employees, (for example, agency counsel, or legal representative), whose job duties include defending the agency's personnel policies or actions. In DCSA, the DCSA General Counsel serves as the Agency Representative unless another official is designated such by the DCSA General Counsel or DCSA Director.
<b>aggrieved</b>	Person who believes he or she has been discriminated or retaliated against in violation of laws or regulations enforced by the EEOC, and who participates in the EEO pre-complaint process (traditional counseling).
<b>class</b>	A class is defined as a group of employees, former employees, or applicants who alleged that they have been or are being adversely affected by an agency personnel policy or practice that discriminates against the group on the basis of their common race, color, religion, sex (includes pregnancy, equal pay, gender identity, and sexual

<b>TERM</b>	<b>DEFINITION</b>
	orientation), national origin, age (40 and over), disability (physical/mental), genetic information and retaliation.
<b>complainant</b>	Person who files a formal EEO complaint.
<b>discrimination</b>	Treatment, consideration of, or making a distinction in favor of or against, a person based on the group, class or category to which that person belongs rather than on individual merit. Disparate treatment based on age (40 or older), disability (physical or mental), race, color, sex (including pregnancy, gender identity and sexual orientation), religion, national origin, and/or genetic information.
<b>equal pay/compensation discrimination</b>	The Equal Pay Act of 1963 requires that men and women in the same workplace be given equal pay for equal work. The jobs need not be identical, but they must be substantially equal. Job content (not job titles) determines whether jobs are substantially equal. All forms of pay are covered by this law, including salary, overtime pay, bonuses, stock options, profit sharing and bonus plans, life insurance, vacation and holiday pay, cleaning or gasoline allowances, hotel accommodations, reimbursement for travel expenses, and benefits. If there is an inequality in wages between men and women, employers may not reduce the wages of either sex to equalize their pay.
<b>Final Agency Action</b>	Agency's last and final action on a complaint of employment discrimination. The final agency action may be in the form of a final agency decision, a final agency order implementing an Administrative Judge's decision, or a final determination on a breach of settlement agreement claim.
<b>FAD</b>	A decision on a complaint of discrimination made by the Agency, without an Administrative Judge, that is appealable to the EEOC. It includes agency decisions to dismiss or agency decisions on the merits. To ensure impartiality, DCSA utilizes contractors to review case files and draft FADs for issuance.
<b>Final Agency Order</b>	Decision by an agency to implement, or not implement, an AJ's decision, which is appealable to the EEOC. Where the agency's final order does not fully implement the AJ decision, the agency must simultaneously appeal to the EEOC.
<b>genetic discrimination</b>	Under Title II of Genetic Information Nondiscrimination Act of 2008 (GINA), it is illegal to discriminate against employees or applicants because of genetic information. Genetic information includes information about an individual's genetic tests and the genetic tests

**TERM**

**DEFINITION**

of an individual’s family members, as well as information about the manifestation of a disease or disorder in an individual’s family members (that is, family medical history).

**harassment**

(1) Harassment is a form of employment discrimination that violates Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967, and the Americans with Disabilities Act of 1990.

(2) 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:

(a) Enduring the offensive conduct becomes a condition of continued employment.

(b) The conduct is severe or pervasive enough to create a work environment that a reasonable person would consider intimidating, hostile, or abusive.

(c) 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.

(3) It is unlawful to harass a person (an applicant or employee) because of that person’s sex. Harassment can include “sexual harassment” or unwelcome sexual advances, requests for sexual favors, and other verbal or physical harassment of a sexual nature.

(4) Harassment does not have to be of a sexual nature, however, and can include offensive remarks about a person’s sex. For example, it is illegal to harass a woman by making offensive comments about women in general. Both victim and the harasser can be either a woman or a man, and the victim and harasser can be the same sex. Although the law doesn’t prohibit simple teasing, offhand comments, or isolated incidents that are not very serious, harassment is illegal when it is so frequent or severe that it creates a hostile or offensive work environment or when it results in an adverse employment decision (such as the victim being fired or demoted). The harasser can be the victim’s supervisor, a supervisor in another area, a co-worker, or someone who is not an employee of the employer, such as a client or customer.

**individual with disability**

An individual who has a physical or mental impairment that substantially limits one or more major life activities or impairment (any physiological disorder or condition, cosmetic disfigurement, or

<b>TERM</b>	<b>DEFINITION</b>
	<p>anatomical loss affecting any of the following body systems: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, immune, circulatory, hemic, lymphatic, skin, and endocrine). Also included are mental or psychological disorders such as intellectual disability, organic brain syndrome, emotional or mental illness, and specific learning disabilities.</p>
<b>mediation</b>	<p>A voluntary and confidential process in which an impartial third party assists disputants in finding a mutually acceptable solution to their dispute.</p>
<b>mixed case complaint</b>	<p>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 may be appealed to the MSPB. 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.</p>
<b>mixed case appeal</b>	<p>An appeal filed directly with the MSPB that alleges that an appealable agency action was effected, in whole or in part, because of discrimination on the basis of race, color, religion, sex, national origin, age, disability or reprisal. There is no right to a hearing before an EEOC AJ on a mixed case complaint.</p>
<b>MSPB</b>	<p>Forum in which certain Federal employees may appeal an adverse personnel action, such as removal, reduction, suspension, whistleblower reprisal, or other detrimental actions. The MSPB generally acts after a final decision on an adverse action has been rendered by the agency.</p>
<b>NSA</b>	<p>Settlement agreement entered into voluntarily and is binding; terms of the resolution must be in writing, clearly stating all the terms of the resolution and signed by both the Agency representative and the aggrieved.</p>
<b>pregnancy discrimination</b>	<p>Pregnancy discrimination involves treating a woman (an applicant or employee) unfavorably because of pregnancy, child- birth, or a medical condition related to pregnancy or childbirth. The Pregnancy Discrimination Act of 1978 forbids discrimination based on pregnancy when it comes to any aspect of employment, including hiring, firing, pay, job assignments, promotions, layoff, training,</p>

**TERM**

**DEFINITION**

fringe benefits, such as leave and health insurance, and any other term or condition of employment.

**race/color  
discrimination**

Race discrimination involves treating someone (an applicant or employee) unfavorably because he/she is of a certain race or because of personal characteristics associated with race (such as hair texture, skin color, or certain facial features). Color discrimination involves treating someone unfavorably because of skin color complexion. Race/color discrimination also can involve treating someone unfavorably because the person is married to (or associated with) a person of a certain race or color or because of a person's connection with a race-based organization or group, or an organization or group that is generally associated with people of a certain color. Discrimination can occur when the victim and the person who inflicted the discrimination are the same race or color. The law forbids discrimination when it comes to any aspect of employment, including hiring, firing, pay, job assignments, promotions, layoff, training, fringe benefits, and any other term or condition of employment.

**religious  
discrimination**

(1) Religious discrimination involves treating a person (an applicant or employee) unfavorably because of his or her religious beliefs. The law protects not only people who belong to traditional, organized religions, such as Buddhism, Christianity, Hinduism, Islam, and Judaism, but also others who have sincerely held religious, ethical, or moral beliefs.

(2) Religious discrimination can also involve treating someone differently because that person is married to (or associated with) an individual of a particular religion or because of his or her connection with a religious organization or group. The law requires an agency to reasonably accommodate an employee's religious beliefs or practices, unless doing so would cause more than a minimal burden on the operations of the agency's business. This means the law may require an agency to make reasonable adjustments to the work environment that will allow an employee to practice his or her religion.

**reprisal**

Discrimination based on reprisal occurs when managers treat employees differently because they are, or were, involved in a protected EEO activity. Protected activities include 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 discriminatory activities.

<b>TERM</b>	<b>DEFINITION</b>
<b>Responsible Management Official</b>	Any staff member who serves in a supervisory capacity and is responsible for assignment of work, performance appraisals, issuing awards, disciplinary actions, etc., and who, according to the complainant's allegations, is/are responsible for the action or made the decision that allegedly harmed the complainant because of the complainant's age, disability, race, color, sex, religion, national origin, and/or genetic information.
<b>retaliation</b>	Punishing, an applicant or employee) for asserting their rights to be free from employment discrimination including harassment. Asserting these EEO rights is called "protected activity," and it can take many forms, complaining about discrimination on the job, or participating in an employment discrimination proceeding (such as an investigation or lawsuit).
<b>senior leadership</b>	Heads of DCSA offices and directorates.
<b>sex-based discrimination</b>	Sex discrimination involves treating someone (an applicant or employee) unfavorably because of that person's sex. Sex discrimination also can involve treating someone less favorably because of his or her connection with an organization or group that is generally associated with people of a certain sex. Discrimination on the basis of pregnancy, gender identity, or sexual orientation (non-conformance with gender stereotypes) is discrimination because of sex.

## REFERENCES

- DoD Directive 1440.1, "DoD Civilian Equal Employment Opportunity (EEO) Program," May 21, 1987, as amended
- Equal Employment Opportunity Management Directive 110, revised August 5, 2015
- Public Law 88-38, "Equal Pay Act of 1963," June 10, 1963
- Public Law 88-352, "Civil Rights Act of 1964," July 2, 1964
- Public Law 90-202, "Age Discrimination in Employment Act of 1967, as amended," December 15, 1967
- Public Law 93-112, "Rehabilitation Act of 1973, as amended," September 26, 1973
- Public Law 110-233, "Genetic Information Discrimination Act of 2008," May 21, 2008
- Public Law 110-325, "Americans with Disabilities Act Amendments Act of 2008," September 25, 2008
- Public Law 111-2, "Lilly Ledbetter Fair Pay Act of 2009," January 29, 2009
- Title 29, United States Code of Federal Regulations, Chapter XIV, Part 1614, July 1, 2017