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designated representative of the Department and shall notify the Department of any changes of the representative and Complainant's address.

(f) The Complainant shall at all times be responsible for proceeding with the complaint and cooperating in the entire EEO complaint process, whether or not the Complainant has designated a representative.

(g) Witnesses who are Federal employees, regardless of their tour of duty and regardless of whether they are employed by the Department or some other Federal agency, shall be in a duty status when their presence is authorized or required by EEOC or Department officials in connection with an EEO complaint.

§ 7.33 Contents of the complaint.

(a) *Information to be included in complaint.* (1) The complaint filed should include the following information:

(i) The specific claim or personnel matter which is alleged to be discriminatory;

(ii) The date the act or matter occurred;

(iii) The protected basis or bases on which the alleged discrimination occurred;

(iv) Facts and other pertinent information to support the claim(s) of discrimination; and

(v) The relief desired.

(2) To expedite the processing of complaints of discrimination, the Complainant may use the HUD EEO–1 Complaint Form to file the complaint.

(b) *Amendments.* (1) 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. After requesting a hearing, a Complainant may file a motion with the EEOC Administrative Judge to amend a complaint to include issues or claims like or related to those raised in the complaint.

(2) The Department shall acknowledge receipt of a complaint or an amendment to a complaint in writing and inform the Complainant of the date on which the complaint or amendment was filed. The Department shall advise the Complainant in the acknowledgment of the EEOC office and its address where a request for a hearing shall be sent. Such acknowledgment shall also advise the Complainant that:

(i) The Complainant has the right to appeal the dismissal of or final action on a complaint; and

(ii) The Department is required to conduct an impartial and appropriate investigation of the complaint within 180 days of the filing of the complaint unless the parties agree in writing to extend the time period. When a complaint has been amended, the Department shall complete its investigation within the earlier of 180 days after the last amendment to the complaint or 360 days after the filing of the original complaint, except that the Complainant may request a hearing from an EEOC Administrative Judge on the consolidated complaints any time after 180 days from the date of the first filed complaint.

(c) *Joint processing and consolidation.* (1) Complaints of discrimination filed by two or more Complainants consisting of substantially similar allegations of discrimination or relating to the same matter may be consolidated by the Department or the EEOC for joint processing after appropriate notification to the parties.

(2) Two or more complaints of discrimination filed by the same Complainant shall be consolidated by the Department for joint processing after appropriate notification to the Complainant. When a complaint has been consolidated with one or more earlier filed complaints, the Department shall complete its investigation within the earlier of 180 days after the filing of the last complaint or 360 days after the filing of the original complaint, except that the Complainant may request a hearing from an EEOC Administrative Judge on the consolidated complaints any time after 180 days from the date of the first filed complaint.

(3) EEOC Administrative Judges or the EEOC may, in their discretion, consolidate two or more complaints of discrimination filed by the same Complainant.

(d) *Class complaints*—(1) *Definitions.* (i) A class is a group of employees, former employees or applicants for employment who, it is alleged, have been or

are being adversely affected by the Department's personnel management policy or practice that discriminates against the group on the basis of their common race, color, religion, sex, national origin, age, disability, or in reprisal for participating in protected EEO activity or for opposing a practice made illegal under the EEO statutes.

(ii) A class complaint is a written complaint of discrimination filed on behalf of a class by the agent of the class that satisfies the requirements of 29 CFR 1614.204.

(2) *Pre-complaint processing*. A current or former employee or applicant who wishes to file a class complaint must be counseled in accordance with 29 CFR 1614.105. A Complainant may move for class certification at any reasonable point in the process when it becomes apparent that there are class implications to the claim raised in an individual complaint. If a Complainant moves for class certification after completing the counseling process in 29 CFR 1614.105, no additional counseling is required. Class certification shall be denied by the EEOC Administrative Judge, when the Complainant has unduly delayed in moving for certification.

(3) *Certification*. Class complaints are certified by an EEOC Administrative Judge in accordance with the provisions of 29 CFR 1614.204.

(e) *Mixed case complaints*—(1) *Definitions*. A mixed case complaint is a complaint of employment discrimination filed with a Federal agency based on race, color, religion, sex, national origin, age, disability, or in reprisal for participating in protected EEO activity or for opposing a policy or practice made illegal by the EEO statutes, related to or stemming from an action that can be appealed to the Merit Systems Protection Board (MSPB). The complaint may contain only a claim of employment discrimination or the complaint may contain additional claims that the MSPB has jurisdiction to address.

(2) *Election*. An aggrieved person may initially file a mixed case complaint with the Department pursuant to this section or an appeal on the same matter with the MSPB pursuant to 5 CFR 1201.151, but not both. The Department shall inform every employee who is the subject of an action that is appealable to the MSPB and who has either orally or in writing raised the issue of discrimination during the processing of the action of the right to file either a mixed case complaint with the Department or to file a mixed case appeal with the MSPB. If a person files a mixed case appeal with the MSPB instead of a mixed case complaint and the MSPB dismisses the appeal for jurisdictional reasons, the Department shall promptly notify the individual in writing of the right to contact an EEO counselor within 45 days of receipt of this notice and to file an EEO complaint, subject to 29 CFR 1614.107.

(3) *Procedures for agency processing of mixed case complaints*. When a complainant elects to proceed initially under 29 CFR part 1614, subpart C, rather than with the MSPB, the procedures in 29 CFR part 1614, subpart A, shall govern the processing of the mixed case complaint with the following exceptions:

(i) At the time the Department advises a Complainant of the acceptance of a mixed case complaint, the Department shall also advise the Complainant that:

(A) If a final decision is not issued within 120 days of the date of filing of the mixed case complaint, the Complainant may appeal the matter to the MSPB at any time thereafter as specified at 5 CFR 1201.154(b)(2) or may file a civil action as specified at 29 CFR 1614.310(g), but not both; and

(B) If the Complainant is dissatisfied with the Department's final decision on the mixed case complaint, the Complainant may appeal the matter to MSPB (not EEOC) within 30 days of receipt of the Department's final decision;

(ii) Upon completion of the investigation, the notice provided the Complainant in accordance with 29 CFR 1614.108(f) will advise the Complainant that a final decision will be issued within 45 days without a hearing; and

(iii) At the time that the Department issues its final decision on a mixed case complaint, the Department shall advise the Complainant of the right to appeal the matter to the MSPB (not EEOC) within 30 days of receipt and of the

right to file a civil action as provided at 29 CFR 1614.310(a).

(4) *Dismissal*. The Department may dismiss a mixed case complaint for the reasons provided in, and under the conditions prescribed in 29 CFR 1614.107. If MSPB's Administrative Judge finds that MSPB does not have jurisdiction over the matter, the Department shall resume processing of the complaint as a non-mixed case EEO complaint.

§ 7.34 Acceptability.

(a) The Director of EEO shall determine whether a complaint comes within the purview of 29 CFR part 1614 and shall advise the Complainant and Complainant's representative, if applicable, in writing of the acceptance or dismissal of the claims(s) of the complaint. The Notice of Receipt is provided to the Complainant, Complainant's representative, if applicable, and to the organizational unit through the appropriate EEO Officer and DCM.

(b) Dismissals of complaints are governed by the notice requirements and procedures in 29 CFR 1614.106(e)(1) and 29 CFR 1614.107.

(c) Prior to a request for a hearing in a case, the Department shall dismiss an entire complaint for any of the reasons provided in 29 CFR 1614.107(a)(1) through (9), including a complaint that alleges dissatisfaction with the processing of a previously filed complaint; or where the Department, strictly applying the criteria in EEOC decisions, finds that 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. A clear pattern of misuse of the EEO process requires:

(1) Evidence of multiple complaint filings; and

(2) Claims that are similar or identical, lack specificity or involve matters previously resolved; or

(3) Evidence of circumventing other administrative processes, retaliating against the Department's in-house administrative processes or overburdening the EEO complaint system.

(d) Where the Director of EEO believes that some, but not all, of the claims in a complaint should be dismissed for the reasons provided in this section and 29 CFR 1614.107(a)(1) through (9), the Department shall notify the Complainant in writing of its determination, the rationale for that determination and that those claims will not be investigated, and shall place a copy of the notice in the investigative file. A determination under 29 CFR 1614.107(b)(1) that some claims should be dismissed is reviewable by an EEOC Administrative Judge if a hearing is requested on the remainder of the complaint, but is not appealable until final action is taken on the remainder of the complaint.

§ 7.35 Processing.

(a) The Director of EEO will process complaints filed under 29 CFR part 1614 for the Department with the assistance of the EEO Officer, DCM, the EEO Counselor and the full cooperation of all other Department managers, supervisors and other employees.

(b) The Director of EEO shall, in accordance with 29 CFR part 1614, provide for the development of an impartial and appropriate factual record upon which to make findings on the claims raised by the written complaint. An appropriate factual record is one that allows a reasonable fact finder to draw conclusions as to whether discrimination occurred. The person assigned to develop the factual record may use an exchange of letters or memoranda, interrogatories, investigations, fact-finding conferences or any other fact-finding methods that efficiently and thoroughly address the matters at issue and is encouraged, in accordance with 29 CFR 1614.108(b), to incorporate ADR techniques into the investigative efforts in order to promote early resolution of complaints.

(c) The Director of EEO will provide the Complainant and Complainant's representative, if applicable, and the EEO Officer a copy of the record developed. Within 180 days from the filing of the complaint, or where a complaint was amended, within the earlier of 180 days after the last amendment to the complaint or 360 days after the filing of the original complaint, within the time period contained in an order from the Office of Federal Operations on an appeal from a dismissal, or within any period of extension provided for in 29 CFR