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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 1614.108(f), the Department shall provide the Complainant with a copy of the investigative file, and shall notify the Complainant that, within 30 days of receipt of the investigative file, the Complainant has the right to request a hearing and decision from an EEOC Administrative Judge or may request an immediate final decision pursuant to 29 CFR 1614.110 from the Department.

### § 7.36 Hearing.

(a) *Notification of right to request a hearing.* The Director of EEO will notify the Complainant, the General Counsel, EEO Officer, DCM and Complainant's representative, where applicable, of the Complainant's right to request an administrative hearing and decision before the EEOC or the Department's final decision and the time frames for executing the right to request an administrative hearing. Note: Where a mixed case complaint is filed, the Complainant has no right to a hearing before an EEOC Administrative Judge unless the MSPB has dismissed the mixed case complaint or ap-

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peal for jurisdictional reasons. (See 29 CFR 1614.302(2)(b).)

(b) *Requesting a hearing.* Where the Complainant has received the notice required in § 7.35(c) and 29 CFR 1614.108(f) or at any time after 180 days have elapsed from the filing of the complaint, the Complainant may request a hearing by submitting a written request for a hearing directly to the EEOC office indicated in the Department's acknowledgment letter. The Complainant shall send a copy of the request for a hearing to the Department's EEO office. Within 15 days of receipt of a copy of complainant's request for a hearing, or the docketing notice from the EEOC, whichever is earlier, the Director of EEO shall provide a copy of the complaint file to EEOC and, if not previously provided, to the Complainant, Complainant's representative, if applicable, and the appropriate Office of General Counsel.

(c) *EEOC appointment of EEOC Administrative Judge.* When a Complainant requests a hearing, the EEOC shall appoint an EEOC Administrative Judge to conduct a hearing in accordance with this section. Upon appointment, the EEOC Administrative Judge shall assume full responsibility for the adjudication of the complaint, including overseeing the development of the record. Any hearing will be conducted by an EEOC Administrative Judge or hearing examiner with appropriate security clearances.

(d) *Dismissals.* EEOC Administrative Judges may dismiss complaints pursuant to 29 CFR 1614.107, on their own initiative, after notice to the parties, or upon the Department's motion to dismiss a complaint.

(e) *Offer of resolution.* Any time after the filing of the written complaint but not later than the date an EEOC Administrative Judge is appointed to conduct a hearing, the Department may make an offer of resolution to a Complainant who is represented by an attorney.

(1) Any time after the parties have received notice that an EEOC Administrative Judge has been appointed to conduct a hearing, but not later than

30 days prior to the hearing, the Department may make an offer of resolution to the Complainant, whether represented by an attorney or not.

(2) The offer of resolution shall be in writing and shall include a notice explaining the possible consequences of failing to accept the offer. The Department's offer, to be effective, must include attorney's fees and costs and must specify any non-monetary relief.

(3) With regard to monetary relief, the Department may make a lump sum offer covering all forms of monetary liability, or the Department may itemize the amounts and types of monetary relief being offered.

(4) The Complainant shall have 30 days from receipt of the offer of resolution to accept the offer of resolution. If the Complainant fails to accept an offer of resolution and the relief awarded in the EEOC Administrative Judge's decision, the Department's final decision, or the EEOC decision on appeal is not more favorable than the offer, then, except where the interest of justice would not be served, the Complainant shall not receive payment from the Department of attorney's fees or costs incurred after the expiration of the 30-day acceptance period.

(5) An acceptance of an offer must be in writing and will be timely if post-marked or received within the 30-day period. Where a Complainant fails to accept an offer of resolution, the Department may make other offers of resolution and either party may seek to negotiate a settlement of the complaint at any time.

(f) *Orders to produce evidence and failure to comply.* (1) The Complainant, the Department, and any employee of the Department shall produce such documentary and testimonial evidence as the EEOC Administrative Judge deems necessary. The EEOC Administrative Judge shall serve all orders to produce evidence on both parties.

(2) 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 EEOC Administrative Judge, or requests for the investigative file, for documents, records, comparative data, statistics, affidavits, or the attendance

of witness(es), the EEOC Administrative Judge shall, in appropriate circumstances:

(i) 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;

(ii) Consider the matters to which the requested information or testimony pertains to be established in favor of the opposing party;

(iii) Exclude other evidence offered by the party failing to produce the requested information or witness;

(iv) Issue a decision fully or partially in favor of the opposing party; or

(v) Take such other actions as appropriate.

(g) *Discovery, conduct and record of hearing—(1) Discovery.* The EEOC Administrative Judge shall notify the parties of the right to seek discovery prior to the hearing and may issue such discovery orders as are appropriate. Unless the parties agree in writing concerning the methods and scope of discovery, the party seeking discovery shall request authorization from the EEOC Administrative Judge prior to commencing discovery. Both parties are entitled to reasonable development of evidence on matters relevant to the issues raised in the complaint, but the EEOC Administrative Judge may limit the quantity and timing of discovery. Evidence may be developed through interrogatories, depositions, and requests for admissions, stipulations or production of documents. Grounds for objection to producing evidence shall be that the information sought by either party is irrelevant, overburdensome, repetitious, or privileged.

(2) *Conduct of hearing.* The Department shall provide for the attendance at a hearing of all employees approved as witnesses by an EEOC Administrative Judge. Attendance at hearings will be limited to persons determined by the EEOC Administrative Judge to have direct knowledge relating to the complaint. Hearings are part of the investigative process and are thus closed to the public. The EEOC Administrative Judge shall have the power to regulate the conduct of a hearing, limit

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the number of witnesses where testimony would be repetitious, and exclude any person from the hearing for contumacious conduct or misbehavior that obstructs the hearing. The EEOC Administrative Judge shall receive into evidence information or documents relevant to the complaint. Rules of evidence shall not be applied strictly, but the EEOC Administrative Judge shall exclude irrelevant or repetitious evidence. The EEOC Administrative Judge or the Commission may refer to the Disciplinary Committee of the appropriate Bar Association any attorney or, upon reasonable notice and an opportunity to be heard, suspend or disqualify from representing Complainants or agencies in EEOC hearings any representative who refuses to follow the orders of an EEOC Administrative Judge, or who otherwise engages in improper conduct.

(3) *Record of hearing.* The hearing shall be recorded and the Department shall arrange and pay for verbatim transcripts. All documents submitted to, and accepted by, the EEOC Administrative Judge at the hearing shall be made part of the record of the hearing. If the Department submits a document that is accepted, the Department shall furnish a copy of the document to the Complainant. If the Complainant submits a document that is accepted, the EEOC Administrative Judge shall make the document available to the Department representative for reproduction.

#### **§ 7.37 Final action.**

(a) *Department final decision without a hearing.* The Director of EEO shall make the final decision for the Department based on the record developed through the processing of the complaint. The Director of EEO may consult with the General Counsel, the Assistant Secretary of Administration, the Office of Human Resources, the EEO Officer, the DCM, the EEO Counselor, other managers and supervisors, all designees and comparables, and all other persons the Director of EEO deems necessary. The decision, where appropriate, shall include the remedial and corrective action necessary to ensure that the Department is in compliance with the EEO statutes and to pro-

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mote the Department's policy of equal employment opportunity. When the Department dismisses an entire complaint under 29 CFR 1614.107, receives a request for an immediate final decision or does not receive a reply to the notice issued under 29 CFR 1614.108(f), the Department shall take final action by issuing a final decision. The final decision shall consist of findings by the Department 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 in accordance with 29 CFR part 1614, subpart E. The Department shall issue the final decision within 60 days of receiving notification that a Complainant has requested an immediate decision from the Department, 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. 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. A copy of the Notice of Appeal Petition (EEOC Form 573) shall be attached to the final action.

(b) *Department final order after decision by EEOC Administrative Judge.* When an EEOC Administrative Judge has issued a decision under 29 CFR 1614.109 (b), (g) or (i), the Department shall take final action on the complaint by issuing a final order within 40 days of receipt of the hearing file and the EEOC Administrative Judge's decision. The final order shall notify the Complainant whether or not the Department will fully implement the decision of the EEOC Administrative Judge and shall contain notice of the Complainant's right to appeal 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. If the final order does not fully implement the decision of the EEOC Administrative Judge,