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EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR PART 1614

RIN: 3046-AB46

Federal Sector Equal Employment Opportunity

AGENCY: Equal Employment Opportunity Commission

ACTION: Proposed rule.

SUMMARY: The Equal Employment Opportunity Commission (EEOC) proposes revising Federal sector EEO complaint rules to streamline processing, improve effectiveness, and implement the Cummings Act. The rule would end mandatory pre complaint counseling and remove the option to request administrative judge proceedings before a final agency decision. Complainants could seek such proceedings only on appeal, and the EEOC would order them only when necessary or efficient. The rule would bar administrative class complaint adjudication while preserving putative class assertions for exhaustion. The rule also allows joint processing of related individual complaints and updates pleading standards, mixed case procedures, attorney fee provisions, and required reports.

DATES: Comments must be received on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments for this proposed rule within the Federal eRulemaking Portal at https://www.regulations.gov/. Follow the instructions for submitting comments.

All comments must be received by the end of the comment period for them to be considered. All comments and other submissions received generally will be posted on the

internet at regulations.gov as they are received, without change, including any personal information provided. However, EEOC retains discretion to redact personal or sensitive information, including but not limited to personal or sensitive information pertaining to third parties, where appropriate.

A summary of this rule may be found in the docket for this rulemaking at www.regulations.gov.

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SUPPLEMENTARY INFORMATION:

I. Background

The Equal Employment Opportunity Commission ("EEOC" or "Commission") administers and enforces the Federal-sector equal employment opportunity (EEO) complaint process under section 717 of title VII of the Civil Rights Act of 1964, as amended, and related statutes prohibiting discrimination in employment. EEOC regulations at part 1614 of title 29 of the Code of Federal Regulations currently govern the processing and adjudication of EEO complaints filed by Federal employees and applicants. The regulations at part 1614 also establish standards for agency EEO programs.

The Federal-sector EEO complaint process has roots long predating current part 1614. Title VII, as originally enacted in 1964, did not apply to the Federal government. At the time, EEO in the Federal sector was addressed through Executive Order, as it had been for many years. *See* Executive Order No. 9980, 13 Fed. Reg. 4,311 (July 28, 1948); Executive Order No. 10590, 20 Fed. Reg. 409 (Jan. 19, 1955); Executive Order No. 10925, 26 Fed. Reg. 1,977 (Mar. 8, 1961); Executive Order No. 11246, 30 Fed. Reg. 12,319 (Sept. 28, 1965); Executive Order No.

11478, 34 Fed. Reg. 12,985 (Aug. 12, 1969). The EEOC, itself just created in 1964, initially had no role in administering these Executive Orders. Responsibility instead fell to the Civil Service Commission, which in 1966 codified its Federal-sector EEO complaint procedures at 5 CFR part 713. Those procedures largely reflected pre-existing procedures promulgated outside the traditional rule-making process under the earlier Executive Orders.

In 1972, Congress amended title VII to add section 717. This new section extended title VII coverage to employees and applicants at most Federal agencies, mandating that "[a]ll personnel actions affecting employees or applicants for employment [in covered agencies] shall be made free from any discrimination based on race, color, religion, sex, or national origin." 42 U.S.C. § 2000e-16(a). And the new section gave Federal employees and applicants the right to file a de novo civil action under title VII after exhausting administrative remedies. *Id.* § 2000e-16(d).

Authority to regulate this new administrative process was placed in the Civil Service Commission—not the EEOC. *Id.* § 2000e-16(b) (1972). The Civil Service Commission largely retained the sequence and structure from its 1966 procedural regulations, *supra*, including initial counseling, filing a complaint with the respondent agency, designated opportunities for informal resolution, investigation by the respondent agency, an administrative hearing, final action by the respondent agency, and an appeal to an outside agency.

The Civil Service Commission's oversight of the Federal-sector EEO complaint process lasted just a few years. The Civil Service Reform Act of 1978 abolished the Civil Service Commission. Pursuant to Reorganization Plan No. 1 of 1978 and Executive Order 12106, the EEOC assumed the Civil Service Commission's title VII responsibilities. EEOC also received

Federal-sector responsibilities under the Equal Pay Act, the Age Discrimination in Employment Act, and the Rehabilitation Act.

When EEOC assumed these functions, it retained the Civil Service Commission's procedures and standards for EEO complaints. These procedures and standards were simply re-styled and re-codified under part 1613 of title 29 of the Code of Federal Regulations.

In 1989, the EEOC proposed a new framework, to be housed under part 1614, that promised to "fundamentally restructure[] the Federal sector equal employment opportunity complaint process." 54 Fed. Reg. 45747, 45747 (Oct. 31, 1989). Under the new framework, at the conclusion of the hearing process, an EEOC administrative judge would issue a recommended decision. If the agency's ensuing final action rejected the EEOC administrative judge's recommended decision, the complainant could appeal to the EEOC. The final rule, adopted in 1992, confirmed this shift. 57 Fed. Reg. 12634, 12634 – 12662 (Apr. 10, 1992).

The Commission has revised part 1614 several times since 1992. Revisions in 1999 responded to concerns that the process was too long, involved too many layers of review, encouraged fragmentation of claims, and allowed agencies to revise administrative judge decisions in ways that undermined confidence in impartiality. *See* 64 Fed. Reg. 37644 (July 12, 1999). The 1999 revisions dramatically expanded the role and authority of administrative judges by limiting agencies to issuing final orders stating whether they would fully implement an administrative judge's decision, rather than rewriting that decision. And if an agency did not fully implement an administrative judge's decision, the agency had to simultaneously file an appeal with the Commission.

Part 1614 was last revised in 2012. Those revisions add compliance-review tools, permit agency pilot projects with Commission approval, require notices when investigations were not

timely completed, require digital submission of appeal records, and make administrative judge decisions on the merits of class complaints final subject to appeal. *See* 77 Fed. Reg. 43498 (July 25, 2012).

II. Purpose and Justification of Proposed Rulemaking

The purpose of the Federal-sector EEO complaint process is to "encourag[e] quicker, less formal, and less expensive resolution of disputes within the Federal Government and outside of court." *West v. Gibson*, 527 U.S. 212, 219 (1999). The Federal-sector EEO complaint process, in its current form, strays from this purpose. Mandatory pre-complaint counseling, a longstanding fixture of the EEO complaint process, consistently fails to provide employees and applicants with effective resolutions. A regrettably common result of counseling is for employees and applicants to simply abandon their claims. When employees and applicants do file complaints, their claims are routed to an ineffective and unmanageable EEOC hearing process. Proceedings before EEOC administrative judges are too long, too formal, and too adversarial, for both complainants and agencies. These burdens cannot be justified since, in the Commission's experience, the great majority of complaints can be resolved fairly and accurately by agencies based on the existing investigative file without duplicative involvement from an EEOC administrative judge.

The Commission proposes to revise the Federal-sector EEO complaint process to, among other things, rescind mandatory pre-complaint counseling, reserve administrative judge proceedings, including hearings, for cases identified by the EEOC on appeal for targeted referral, clarify standards for attorney's fees, and implement requirements under the Cummings Act.

A. Mandatory EEO counseling does not produce results

The current rule mandates pre-complaint EEO counseling in every case "in order to try to resolve the [allegedly discriminatory] matter." 29 C.F.R. 1614.105(a). Counseling has not, however, proved an effective means to this end. From 2017 to 2021, Federal agencies conducted on average 35,618 counselings a year. Despite the high volume, each year on average only 385 cases settled at the pre-complaint stage through EEO counseling. This amounts to 1% of all counselings. In contrast, agency ADR programs—a process wholly separate from EEO counseling and not involving an EEO counselor—resulted in an average of 3,924 pre-complaint settlements each year. This amounts to 11% of pre-complaint matters. EEO counseling's low success rate—both at the bottom line and compared to agency ADR programs—does not justify its substantial burdens.

The EEOC proposes transitioning to a direct filing model. In other words, employees and applicants would be permitted to file complaints without first going through mandatory pre-complaint counseling with the agency. The EEOC invites comments on alternatives to direct filing, including alternative ways, other than mandatory counseling, that complainants and agencies could use the pre-complaint period to resolve complaints before they are filed.

B. Current administrative judge proceedings are ineffective

Under the current rule, complainants always have the option to request a hearing and litigate their complaints before an EEOC administrative judge. Consequently, administrative judges preside over thousands of complaints a year. From fiscal year 2017 through fiscal year 2025, the EEOC received an average of 7,514 hearing requests per year. This is not to say the EEOC conducted 7,514 hearings each year. Given the limited resources granted by Congress each year, it would be impossible for the EEOC to conduct a full hearing whenever one is

requested. Instead administrative judge proceedings primarily entail filtering and disposing of cases without a hearing, with dismissal or summary judgment in an agency's favor as the most common mechanisms. In application, however, this approach has ossified into a process that is too long, too formal, and too adversarial.

1. The hearing process is too long

From fiscal year 2021 through fiscal year 2025, complaints in the EEOC hearing process took an average of 442 days from docketing the hearing request to a decision by the administrative judge. Phrased differently, it takes the EEOC on average 1.21 years to process a single complaint in its hearing process. A process that takes over a year is hardly expeditious.[1]

The overall average, however, does not tell the whole story. Cases naturally vary in complexity and impact. But it should go without saying that those cases where a complainant has a meritorious claim, meaning they have been a victim of unlawful employment discrimination, are the most important. Here the need for expeditious justice is most acute. Yet the EEOC hearing process has utterly failed to deliver timely outcomes. From fiscal year 2021 through fiscal year 2025, successful complainants—in other words victims of unlawful discrimination—had to wait on average an astonishing 962 days, or 2.63 years, before receiving a decision and relief from an EEOC administrative judge. And this is just the average. One in four successful complainants had to wait 1190 days, or 3.26 years, or more to receive a decision and relief. One in ten had to wait 1661 days, or 4.55 years, or more. A process that requires victims of unlawful discrimination to wait so long for their due justice cannot be defended.

These prolonged processing times do not mean that EEOC administrative judges are putting in years of work into each individual case. Rather, to the Commission's observation,

[1] This figure does not include time spent by the agency during counseling, investigation, implementing or appealing an administrative judge's decision, etc. Overall processing time for a complaint will therefore be even longer.

much of this time is spent simply waiting on an administrative judge to act. Repeatedly the Commission has found cases ripe for decision simply idling for months on administrative judge dockets. Even cases where liability is clear or likely will sit in docket purgatory as administrative judges prioritize easier closures.

For all this, the quality and accuracy of the eventual decisions by administrative judges do not appear materially superior to what an agency's independent EEO office could have produced at the outset. Returning decision-making to the agency in the first instance and placing a firm deadline on that decision will give complainants and agencies the expeditious results they deserve. This is much more in line with title VII's straightforward requirement that complainants first receive "final action" from their employing agency. 42 U.S.C. 2000e-16(c). And should an agency's "final action" be incorrect, complainants may still "appeal" to the EEOC as contemplated by the statute. *Id.* A targeted appellate process will give the EEOC increased flexibility, compared to the current summary judgment model, to expeditiously identify and resolve potentially meritorious claims.

2. *Discovery and summary judgment are too formal and too adversarial for the needs of the EEO process*

As the Supreme Court observed in *West*, *supra*, the EEOC's administrative complaint process is intended to be quicker, less formal, and less expensive than a civil action in Federal district court. 527 U.S. at 219. Yet contrary to this purpose, current EEOC procedures effectively mirror the traditional civil action, particularly when it comes to discovery and summary judgment. This makes the EEO process costlier, more formal, and more adversarial than it needs to be.

Under the current rule, both parties before the administrative judge have "the right to seek [pre-hearing] discovery. . . . through interrogatories, depositions, and requests for

admissions, stipulations or production of documents." 29 C.F.R. 1614.109(d). The EEOC has never defined the right to discovery with precision, leading to significant variability amongst regional offices and individual administrative judges. What is common is that both sides, agencies and complainants, abuse the open-ended discovery process for litigation advantage. Extensive and intrusive discovery from an agency can successfully pressure a complainant into withdrawing their hearing request, particularly if they do not have attorney representation. Alternatively, agencies can often convince the administrative judge to dismiss the hearing request as a sanction when a pro se complainant has not fully responded to the letter of the agency's highly technical discovery requests. On the other side of the ledger, complainants can use the high costs of discovery, including the potential for crippling attorney fees, to leverage their settlement demands and secure substantial payouts from the defending agency on even marginal claims. And when both sides hold their ground in discovery, the administrative judge is often left to untangle competing and acrimonious motions to compel. Discovery disputes consume an unjustified share of an administrative judge's time, leaving less time and resources to consider the actual merits of complaints.

Summary judgment is an additional procedural barrier under the current rule. 29 C.F.R. 1614.109(g). The standard and process are virtually identical to summary judgment under Rule 56 of the Rules of Federal Procedure, with a full and lengthy briefing period. This means agencies must invest substantial resources and legal expertise drafting summary judgment motions in order to defend against meritless complaints. For their part, complainants must respond in detail to each agency assertion and argument. Many pro se complainants end up not responding at all, with the consequence that administrative judges routinely consider the motion unopposed and automatically grant judgment in the agency's favor. And even when

complainants do respond, administrative judges routinely adopt the agency's motion as their decision, providing no statement of facts or legal analysis of their own. This common practice among administrative judges effectively allows agency defense counsel to write their own decisions. The upshot is that agencies, rather than administrative judges, are already doing most of the heavy lifting on decision-making.

3. Complaints requiring hearings are rare

The current automatic hearing-request model requires the Commission to maintain—and agencies to litigate—a full docket of thousands of cases each year even though the core function that justifies that docket—an evidentiary hearing—is needed in only a small fraction of matters. From fiscal year 2017 through fiscal year 2025, the EEOC received an average of 7,514 hearing requests per year. Yet, during that same period, only an average of 304 evidentiary hearings per year were held—approximately 4.0 percent of hearing requests. And only an average of 128 cases per year resulted in a finding of liability against an agency—approximately 1.7 percent of hearing requests. Put differently, the automatic hearing-request model generated roughly twenty-five hearing requests for every case that actually went to a hearing, and nearly fifty-nine hearing requests for every case that resulted in agency liability.

4. Reforming administrative judge proceedings

The low hearing rate, coupled with the length, formality, and adversarial nature of administrative judge proceedings, force agencies, complainants, and administrative judges to put nearly all their time, resources, and expertise into cases without merit. The result is an enormous mismatch between the resources consumed by the automatic hearing-request model and the adjudicatory value the model actually delivers. This mismatch is even more concerning when we consider the years it takes administrative judges to address the cases that do have merit. To

reiterate, a *successful* complainant ends up waiting on average over two-and-a-half years for a decision from an administrative judge.

The proposed rule addresses the mismatch by replacing the automatic hearing-request model with a targeted referral model. Under the proposed rule, the agency would still be responsible for developing an appropriate factual record through investigation, after which it would issue a prompt final agency decision. A complainant can appeal the final agency decision to the Commission. Through an appeal a complainant can request referral to an administrative judge for a hearing, explaining why a hearing would be necessary or efficient to decide the appeal. Granting the request would be discretionary, with the Commission considering factors such as whether the appeal raises genuine disputes of fact or credibility that cannot be fairly resolved on the current record. The Commission's appellate review would be de novo, and on appeal the Commission may decide the matter on the administrative record, order targeted supplementation of the record, remand for further agency action, or refer the complaint to an administrative judge for proceedings, including a hearing, when necessary or efficient.

When the Commission does refer a matter to an administrative judge, the proceedings would not amount to a wholesale retrial of the complaint but would be limited to an appropriate scope by the Commission's referral order. The purpose of the administrative judge proceedings would be to assist the Commission in resolving the appeal, and to that end, the administrative judge would provide the Commission with a recommended decision, recommended findings, or report. The Commission could adopt, reject, or modify the administrative judge's recommendation as appropriate in arriving at its final decision on the appeal.

Administrative judge proceedings would therefore remain available, but would only occur when the Commission determines that such proceedings are necessary or efficient to

resolve an appeal—for example, where there is a genuine dispute of material fact or a material credibility issue that cannot be fairly resolved on the current record, an incomplete record that can be more efficiently supplemented before an administrative judge, or a likely finding of discrimination requiring further remedial proceedings. This approach preserves administrative judge resources for the cases in which they are most likely to add decisional value, while avoiding the costs of routing thousands of cases each year into a decisional structure that, in most cases, does not culminate in a hearing.

The revised process otherwise preserves impartial agency investigations, final agency decisions, Commission de novo appellate review, remedies, compliance procedures, and civil action rights, while allowing the Commission to focus administrative judge resources on cases where live testimony, credibility findings, targeted discovery, or other proceedings are necessary or efficient.

The revised rule would not alter statutory civil action rights. A complainant may file a civil action in Federal district court within the time periods authorized by law and § 1614.407. Filing a civil action terminates Commission processing, including any administrative judge proceedings.

The EEO complaint process was never meant to replace or mirror the civil action. Its purpose is to complement the civil action by providing an alternative avenue for speedy and informal resolution. Conversely, if a complaint requires lengthy formal proceedings or extensive record development through discovery, then a civil action is the more appropriate avenue.

The proposed revisions to part 1614 restore the appropriate balance between the Commission-overseen EEO complaint process and the civil action in Federal court. Complainants and agencies will no longer be subjected to unduly formal and adversarial

proceedings before administrative judges by default. When complaints are heard by an administrative judge after a hearing referral on appeal, the judge will promptly reach the merits without bogging the parties down in motion practice. And if this speedier, less formal process does not suit the needs of a particular complainant, they always retain the right to file a de novo civil action in Federal court.

C. Class complaints

The EEOC has also experienced recurring difficulty in the processing and adjudication of class complaints. Class complaints often require extensive case management, class-definition analysis, notice procedures, discovery management, settlement oversight, and numerous individualized remedial proceedings. The EEOC's Federal-sector administrative process was designed principally to resolve complaints by identified employees and applicants. It has not demonstrated the resources, institutional structure, or specialized capability to adjudicate large classes effectively. Class complaints consequently have remained a perennial source of delay, complexity, and uncertainty for complainants, agencies, and the EEOC. In some cases, the EEOC has taken more than a decade to resolve even threshold certification issues in class complaints.

This proposed rule would revise part 1614 to focus on individual complaints in alignment with the Commission's resources and institutional role. Among other changes, the proposed rule would eliminate administrative class complaints under part 1614, while preserving the ability of an identified complainant to assert a putative class claim for exhaustion purposes. And the proposed rule would preserve the ability of agencies and the Commission to jointly process related individual complaints where joint processing would promote fair, efficient, and timely resolution.

D. Attorney's Fees

Under the current framework, the EEOC has observed significant variability in attorney fee awards. The proposed rule retains the lodestar model but clarifies that rates are determined based on prevailing market rates for work comparable to the EEO administrative process. Fee matrices developed outside the EEO administrative process, such as the *Laffey* Matrix, would generally not be appropriate evidence of the prevailing market rate for work comparable to the EEO administrative process.

E. Cummings Act Implementation

The proposed rule also implements requirements made by the Elijah E. Cummings Federal Employee Antidiscrimination Act of 2020 ("Cummings Act"), enacted as subtitle B of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021. The Cummings Act amended the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 ("No FEAR Act") to strengthen accountability, transparency, and tracking of discrimination and retaliation findings in the Federal Government.

First, the Cummings Act requires the head of a Federal agency subject to a final finding of discrimination, including retaliation, to post a public notice not later than 90 days after the relevant final agency decision or other final agency action, final Commission decision, or court judgment becomes final after exhaustion of appeals. The notice must be posted on the agency's public website in a clear and prominent location linked directly from the homepage, must state that a finding of discrimination or retaliation has been made, and must remain posted for not less than one year. The notice also must identify the date of the finding, the date of each discriminatory or retaliatory act, the law violated, and the rights and protections available to Federal employees.

Second, the Cummings Act requires agencies to report disciplinary action information to the Commission. Not later than 120 days after an agency takes final action, or receives a final Commission decision, involving a finding of discrimination or retaliation, the agency must submit a report to the Commission stating whether disciplinary action has been proposed against a Federal employee as a result of the violation and the reasons for any proposed disciplinary action.

Third, the Cummings Act expands public data posting requirements. Agencies must post additional information concerning findings of discrimination, including the date of the finding, the affected agency, the law violated, and whether a disciplinary action decision has been made. The Act also requires agencies to post data regarding each class action complaint filed against the agency alleging discrimination or retaliation, including the filing date, a general summary of allegations, an estimate of the number of plaintiffs or class members if known, the current status of the complaint, whether a class has been certified, and case numbers for civil actions in which discrimination or retaliation has been found.

Fourth, the Cummings Act requires each Federal agency to establish a system to track each discrimination complaint adjudicated through the EEO process from filing through resolution, including whether a disciplinary-action decision has been made as a result of any finding of discrimination. It also requires an agency that takes an adverse action covered by 5 U.S.C. 7512 against a Federal employee for discriminatory or retaliatory conduct to include, after all appeals of that adverse action have been exhausted, a notation of the adverse action and the reason for it in the employee's personnel record.

Finally, the Cummings Act requires agencies to be responsible for the fair and impartial processing and resolution of employment-discrimination complaints and to establish model EEO

programs that are not under the structural or practical control of the agency's human capital office, general counsel's office, or equivalent offices. The Act further requires the head of each agency's EEO program to report directly to the head of the agency.

Accordingly, this proposed rule would update subpart G of part 1614 to implement the Cummings Act's public-notice, reporting, data-posting, complaint-tracking, and personnel-record-notation requirements. It also would revise agency-program requirements in subpart A to reflect the Cummings Act's direction that the agency EEO Director report directly to the agency head and that the EEO program operate independently of offices whose responsibilities may create actual or perceived conflicts in the fair and impartial processing of discrimination complaints.

III. Section-by-Section Analysis

Authority Citation for Part 1614

The proposed rule would revise the authority citation for part 1614. The revised citation would add 5 U.S.C. 2301 note, reflecting the No FEAR Act and the Elijah E. Cummings Federal Employee Antidiscrimination Act of 2020, and would retain the Commission's existing statutory and Executive Order authorities for Federal-sector EEO complaint processing and agency EEO programs.

Nomenclature Change—Office of Federal Sector

Throughout part 1614, the proposed rule would remove the words "Office of Federal Operations" wherever they appear and add, in their place, the words "Office of Federal Sector." This nomenclature change would update the regulatory text to reflect the new name of the Commission office responsible for, among other things, appellate review and oversight functions under this part. The change is non-substantive: it would not alter the office's functions,

responsibilities, or authority to act on behalf of the Commission under part 1614. References in prior Commission decisions, orders, management directives, and guidance to the Office of Federal Operations should be understood as references to the Office of Federal Sector. Consistent with this change, all proposed regulatory text in this document refers to the Office of Federal Sector.

Section 1614.102—Agency Program

The proposed rule would amend § 1614.102(a)(8) to modernize the terminology from the outdated "employees with handicaps" to the more modern terminology "employees with disabilities."

The proposed rule would insert a new paragraph (a)(9) to recognize agencies' obligation to provide reasonable accommodation for pregnancy, childbirth, or related medical conditions unless the accommodation would impose an undue hardship on the agency's program. Current sub-paragraphs (9) through (13) would be renumbered (10) through (14) but otherwise remain the same.

Paragraph (b)(2) of § 1614.102 would continue to require each agency to establish or make available an alternative dispute resolution program. However, the Commission proposes to amend the qualification that such program must "be available for both the pre-complaint process and the formal complaint process." With the removal of mandatory EEO counseling, there will no longer be a delineated "pre-complaint process." To reflect this change, the provision would read: "be available before and after a complaint is filed."

Paragraph (b)(4) would revise the requirements for the agency EEO Director. The proposed rule would require the EEO Director to report directly to, and be under the immediate supervision of, the agency head. Reporting to an intermediate official would not satisfy this

requirement. This change would implement the independence and reporting-relationship requirements reflected in the Cummings Act and would reinforce the separation of the EEO program from offices whose duties may create actual or perceived conflicts with impartial complaint processing and adjudication.

In addition, the proposed rule would revise § 1614.102(b)(4) to require each agency to designate an EEO Director "and such other personnel as may be necessary to carry out the functions described in this part," rather than listing specific categories of staff such as EEO Officers, Special Emphasis Program Managers, and clerical and administrative support. The Commission proposes to replace that list with the more general term "other personnel" while retaining the substantive requirement that agencies designate sufficient staff to carry out part 1614 functions in all organizational units and at all agency installations. The existing list reflects legacy terminology and examples that may no longer correspond to the way all agencies organize their EEO programs. The proposed language also avoids the possible inference that the positions named in the current rule are either mandatory in every agency or exclusive of other necessary EEO functions. A single regulatory list of titles is therefore both underinclusive and potentially over-prescriptive. The more general phrase "other personnel" better captures the range of staff an agency may need to carry out the functions of part 1614.

Paragraph (b)(6) would continue to require agencies to ensure full cooperation by agency employees with agency EEO personnel in the processing and resolution of complaints, and full cooperation with the Commission in appeals, including by providing access to personnel records and other agency records when required in connection with an investigation. However, the Commission proposes to eliminate specific references to EEO counselors and pre-complaint

processing, as the Commission proposes to eliminate the requirement for pre-complaint processing including required contact with an EEO counselor.

Paragraph (b)(7) would revise agency notice obligations. Agencies would be required to publicize and keep readily accessible the name and contact information of the EEO Director, instructions for requesting pre-complaint technical assistance, instructions for initiating and filing a complaint, available filing methods, and notice of applicable deadlines and procedural requirements. Agencies also would be required to make this information available through appropriate employee communications channels, including electronic means, and to ensure accessibility to employees in headquarters, field, remote, and other duty locations. The Commission proposes to eliminate specific references to EEO counselors, EEO officers, and Special Emphasis Program managers in alignment with the removal of the requirement for pre-complaint contact with an EEO counselor and to eliminate the suggestion that specific positions (other than EEO Director) are required, so as to give agencies more flexibility in structuring their EEO programs.

The proposed rule would add paragraph (b)(8) to state that each agency shall "maintain a process for employees and applicants to request and receive appropriate and effective pre-complaint technical assistance."

Paragraph (c)(4) would be revised to conform to the proposed rule's elimination of administrative class complaints. The Commission also proposes to revise this paragraph to remove the requirement that the agency EEO Director be responsible for providing "counseling for aggrieved individuals" to conform with the proposed elimination of pre-complaint processing.

Section 1614.103—Complaints of Discrimination Covered by This Part

Paragraph (a) would provide that complaints may be jointly processed as provided in §§ 1614.204 and 1614.606, but that putative class claims may be asserted only as provided in § 1614.204(b) for administrative exhaustion and may not be processed as class complaints under this part.

The proposed amendments to paragraphs (b)(3), (b)(6), and (d)(2) would update references to covered and excluded entities, including the United States Postal Service, Postal Regulatory Commission, Tennessee Valley Authority, Government Publishing Office, and Government Accountability Office.

Section 1614.104—Agency Processing

The proposed rule would make conforming changes to § 1614.104(a) to reflect the proposed elimination of administrative class complaints.

The proposed rule would add paragraph (c) to allow agencies to petition the Commission for permission to adopt an internal hearing process as part of its complaint adjudication responsibilities. The Director, Office of Federal Sector, would decide petitions and annually review approved internal hearing processes for effectiveness and impartiality. The Director may revoke approval for non-compliant processes upon reasonable notice to the agency and opportunity to demonstrate compliance. The Commission intends that approved hearing processes will be rare and reserved for agencies with compelling needs and reliable pre-existing hearing infrastructure.

The Commission recognizes that in circumstances of compelling need, such as when national security interests are implicated, waiting for a determination from the Commission whether to conduct a hearing or not can negatively impact agency performance and readiness. For these agencies, allowing them to voluntarily support a complainant's request for a hearing on

appeal may not be effective enough. If an agency would be negatively impacted by delay, and if the agency already has an effective means to conduct hearings, it makes sense to allow the agency to early on develop evidence through its own hearing before issuing the final agency decision. Proposed paragraph (c) anticipates and meets this need.

By conducting early hearings, approved agencies will likely be able to self-impose liability, and provide relief to the complainant, earlier than would have been achieved through the normal EEOC appeal process. If an agency conducts a hearing and declines liability, the EEOC will benefit from a more robustly developed record on appeal than it otherwise would have. And if the agency declines to conduct a hearing, the EEOC on appeal can still order a hearing before one of its own administrative judges where necessary or efficient.

Section 1614.105—Pre-Complaint Processing

The proposed rule would remove and reserve § 1614.105. Under the proposed rule, the separate pre-complaint counseling provision would be eliminated as a required step. The filing requirements for individual complaints would now be set forth in proposed § 1614.106. Agencies would remain obligated to establish or make available ADR programs and to make reasonable efforts to resolve complaints informally, but the proposed rule would no longer maintain the existing pre-complaint counseling section as a separate regulatory prerequisite.

Section 1614.106—Individual Complaints

The proposed rule would revise § 1614.106 in full. Proposed paragraph (a) would require a complaint to be filed with the agency that allegedly discriminated against the complainant.

Proposed paragraph (b) would establish a 60-day filing period. A complaint, amendment, or supplementation would have to be filed within 60 days of the date of the matter alleged to be discriminatory, or, in the case of a personnel action, within 60 days of the effective date of the

action, or, in the case of a hostile work environment or other continuing violation, within 60 days of the most recent act alleged to have contributed to the violation.

Proposed paragraph (c) would specify the required contents of a complaint. A complaint would have to contain a signed statement from the aggrieved person or that person's attorney, identify the complainant and respondent agency, and include sufficient factual information to identify the challenged action, omission, policy, practice, or matter; the alleged basis or bases; the approximate date or time period; and the relief sought, if known. The proposed rule would state that a complaint need not use technical legal terminology, but it must contain sufficient factual matter, accepted as true, to state a claim for relief that is plausible on its face based on discrimination prohibited under part 1614.

A plausibility standard is intended to distinguish between complaints that warrant the expenditure of administrative resources and complaints that consist only of labels, conclusions, speculation, or an unadorned assertion that the agency acted unlawfully. The current rule already authorizes dismissal of complaints that fail to state a claim, and the proposed rule would make that screening function more precise by requiring factual allegations sufficient to permit a plausible inference that the challenged agency action, omission, policy, practice, or matter may have been discriminatory.

Once a complaint is accepted, the agency must define the claims, gather documents, obtain testimony, prepare an investigative file, issue a final agency decision, and, if appealed, submit the matter for Commission review. The plausibility standard will ensure that those agency resources are devoted to matters in which the alleged facts, if true, would support a cognizable discrimination claim, rather than to matters that are merely conceivable, conclusory, unrelated to

a protected basis, or based on mere disagreement with ordinary workplace decisions unconnected to unlawful discrimination.

Proposed paragraph (d) would govern amendments and supplementations. Current procedures for adding claims to a complaint do not distinguish between claims existing at the time of the original complaint and claims arising after the original complaint. This leads to the anomalous result that a complainant can wait until very late in the investigatory process to "amend" their complaint to include claims that were known to exist to the complainant at the time they filed the original complaint. The proposed changes would now properly distinguish between amendments and supplementations and clearly instruct complainants when to file.

A complainant could amend a complaint within 21 days after filing to include claims or issues existing at the time the complaint was filed that are like or related to those raised in the complaint. Before the final agency decision, a complainant could supplement a complaint to include claims or issues arising after the complaint was filed that are like or related to those raised in the complaint. The agency would be required to acknowledge amendments and supplementations and include them in the complaint record. A decision declining to accept an amendment or supplementation would not be immediately reviewable by the Commission but can be reviewed on appeal from the final agency decision on the original complaint

Proposed paragraph (e) would prescribe the agency's acknowledgment and notice of rights. The agency would be required to acknowledge receipt of a complaint in writing, identify the filing date, and advise the complainant of the agency's duty to conduct an impartial and appropriate investigation and issue a final agency decision. The notice also would explain the applicable deadlines for investigation and decision, the right to appeal the final agency decision to the Commission, the Commission's authority on appeal to decide the matter on the record,

supplement the record, remand, or refer the matter to an administrative judge, and the right to file a civil action.

Section 1614.107—Dismissals of Complaints

The proposed rule would amend § 1614.107 to conform dismissal standards to the proposed revised complaint-processing procedures. Proposed paragraph (a) would continue to identify grounds for dismissal of an entire complaint. The proposed revisions would provide for dismissal where a complaint fails to state a claim under § 1614.103, fails to satisfy the pleading requirements of § 1614.106(c), states the same claim pending before or decided by the agency or Commission, or fails to comply with the filing time limits in § 1614.106.

The proposed rule also would revise paragraph (a)(5) to provide that an agency shall dismiss a complaint that is moot or that alleges that a proposal to take a personnel action, or another preliminary step to taking a personnel action, is discriminatory, unless the complaint alleges a retaliation claim that is plausible on its face.

Proposed paragraph (b) would govern partial dismissals. When an agency determines that some but not all claims should be dismissed, the agency would have to notify the complainant in writing, identify the claims that will not be accepted, explain the rationale, and place the notice in the complaint record. The agency would continue processing any remaining accepted claims.

A partial dismissal would not be immediately reviewable by the Commission but could be reviewed on appeal from the final agency decision on the remainder of the complaint.

Section 1614.108—Investigation of Complaints

The proposed rule would revise § 1614.108 in full. The Commission proposes to add paragraph headings to paragraphs (a) and (b). Current paragraph (a) says the agency shall "conduct" the investigation, creating confusion whether an agency may engage in workshare

agreements with other agencies for investigations or may use contract investigators. Paragraph (a) would be revised to clearly convey that the agency is "responsible" for investigating the complaint. Paragraph (b) would otherwise continue to read the same.

The proposed revision to § 1614.108(c)(3) would preserve the existing duty to cooperate with an EEO investigation but would restate the consequences of noncooperation in a more tailored and legally precise way. Current § 1614.108(c)(3) permits an investigator to note that, when a complainant, agency, or agency employee fails without good cause to respond fully and timely to investigative requests, the decisionmaker or the Commission may draw adverse inferences, deem matters established, exclude evidence, issue a decision fully or partially in favor of the opposing party, or take other appropriate action. The proposed rule would replace that formulation with language allowing the investigator to document the failure and allowing the agency or Commission to consider the failure in evaluating the evidence, draw appropriate nonmonetary evidentiary inferences, exclude untimely produced evidence, or take other nonmonetary procedural or evidentiary action consistent with part 1614 and applicable law.

Proposed paragraph (d) would address classified information and other information requiring special handling. Investigations involving such information would have to be conducted by investigators with appropriate credentials, authorizations, or security clearances, and the Commission would supply the name of an appropriately cleared investigator upon request.

Proposed paragraph (e) would establish investigation deadlines. The agency generally would be required to complete the investigation within 135 days of the filing of an individual complaint. This deadline would be extended to 180 days for an introductory period, until January 1, 2028, to allow agencies time to adapt their EEO programs to the new procedures.

For supplemented complaints, the agency would be required to complete the investigation by the earlier of 135 days after the last accepted supplementation or 270 days after the original complaint was filed.

The complainant and agency could voluntarily extend these deadlines by written agreement for not more than 90 days. The agency also could unilaterally extend the deadline by not more than 30 days where sanitization of a complaint file is necessary because the file may contain classified or other protected information, provided the agency notifies the complainant.

Proposed paragraph (f) would allow the parties to submit additional evidence to the investigator within 15 days of receiving the investigative file. This will allow both parties a full and fair chance to fill in any gaps in the investigatory record before a final agency decision. After the time for supplementing the investigative file elapses, the record is closed.

Proposed paragraph (g) would set the deadline for the agency to issue its final agency decision under § 1614.110 following an investigation. The decision would be due within 30 days of the record closing.

Proposed paragraph (h) would address situations where an agency cannot complete the investigation or issue a final agency decision within the applicable time limits. In such situations, the agency must issue a written notice to the complainant explaining why the investigation or final agency decision has not been completed, estimating when the delayed action will be completed, and informing the complainant of the right to file a civil action. The agency remains responsible for completing the investigation and issuing a final agency decision unless the complainant files a civil action or the Commission otherwise directs. The agency would also be required to simultaneously inform the Office of Federal Sector of delays. This will allow the

Office of Federal Sector to monitor compliance in real time and more proactively intervene if an agency misses its deadlines without good cause.

Section 1614.109—Offers of resolution

The proposed rule substantially revises and renames § 1614.109. Standards for administrative judge proceedings, including hearings, would be moved to § 1614.406 under Subpart D—Appeals and Civil Actions, *infra*. Proposed § 1614.109 would solely address offers of resolutions. The current offer-of-resolution procedure is contained in § 1614.109(c). The existing provision is tied to the hearing process and contains different timing rules depending on whether the complainant is represented by an attorney and whether an administrative judge has been appointed. In the Commission's experience, that provision has been rarely used, notwithstanding its potential to promote settlement and reduce unnecessary attorney fees and costs.[2] The proposed rule would make the procedure more useful by making it available after a written complaint has been filed and at any stage of administrative processing, and specifying the contents and consequences of a valid offer.

The proposed rule would preserve the settlement-promoting purpose of the existing provision while making it more predictable and enforceable. A valid offer must identify the complaint, claims, and parties to be resolved; state the monetary and nonmonetary relief offered with sufficient specificity; provide for reasonable attorney fees and costs incurred through the end of the acceptance period; remain open for at least 30 days; state whether fees and costs are included in or excluded from the offer; and clearly explain the consequences of rejection. An

[2] *See*, *e.g.*, EEOC, *The Offer of Resolution Settlement Procedure in the Federal Sector* (March 2023), available at https://www.eeoc.gov/offer-resolution-settlement-procedure-federal-sector (describing the existing offer-of-resolution procedure as "an often overlooked tool" and stating that the EEOC has seen "few appeal filings" raising the procedure since its inception in 1999).

accepted offer resolves the complaint to the extent stated in the offer and is enforceable under § 1614.504. An accepted offer does not constitute an admission of liability unless the offer expressly so provides.

If a complainant rejects a valid offer and the relief finally obtained is not more favorable than the offer, the complainant may not recover attorney fees or costs incurred after the acceptance period expires, except where the offer was invalid, unenforceable, materially incomplete, or where application of the limitation is prohibited by the governing fee statute. The proposed rule also specifies how the comparison between the offer and the relief finally obtained is to be made. The comparison must be objective, must consider both monetary and nonmonetary relief, must evaluate nonmonetary relief according to practical effect and enforceability, and must exclude post-offer attorney fees and costs from the relief finally obtained. The agency bears the burden of proving both that the offer was valid and that the relief finally obtained was not more favorable.

These revisions are intended to make offers of resolution a practical settlement tool at all stages of the administrative process rather than a rarely used hearing-stage device. The proposed rule encourages agencies to make serious, complete, and enforceable settlement offers early enough to avoid unnecessary administrative expense. It encourages complainants and representatives to evaluate such offers realistically. And it reduces collateral disputes by specifying in the rule the timing, required contents, acceptance procedure, fee consequences,

comparison methodology, limitations, treatment of multiple offers, and evidentiary effect of an unaccepted offer.

Section 1614.110—Final agency decisions

The proposed rule would retitle § 1614.110 to reflect that the final agency decision is the ordinary adjudication mechanism for all complaints. The proposed rule would revise § 1614.110 in full to replace the current hearing-election structure with a model where the agency must always promptly issue a final agency decision following its investigation, unless the matter is subject to earlier dismissal.

Current § 1614.110 is built around two paths: if an administrative judge issues a decision, the agency issues a final order within 40 days stating whether it will fully implement the administrative judge's decision, and, if it will not, the agency simultaneously appeals; in other cases, the agency issues a final agency decision only for a dismissal, after a complainant's request for an immediate decision, after a complainant's failure to respond to the post-investigation notice offering a hearing or immediate final decision, or as ordered by the Commission.

The proposed section reforms that fractured structure. Because the proposed rule removes the option to request an administrative judge hearing *before* the final agency decision, the agency's ordinary obligation will be to complete the investigation on an accepted complaint and issue a final agency decision on the merits within the time limits proposed by § 1614.108(e). Alternatively, the agency shall issue an immediate final agency decision dismissing the entire complaint for the reasons stated in § 1614.107.

Proposed paragraph (a) would require the agency to issue an immediate final agency decision where the entire complaint is subject to dismissal for the reasons stated in § 1614.107.

The final agency decision would describe the dismissed claims, provide the rationale for dismissal, and advise the complainant of appeal rights, civil action rights, and notice that the Commission may decide an appeal on the record, supplement the record, remand the matter to the agency, or refer the matter to an administrative judge.

Proposed paragraph (b) would require the agency to issue a final agency decision on the merits of the accepted complaint within the time limits proposed by § 1614.108(e). The final agency decision would be decided on a preponderance of the evidence standard. The final agency decision would describe the claims, provide rationales for findings of discrimination or no discrimination, provide relief when discrimination is found, and advise the complainant of appeal rights, civil action rights, and notice that the Commission may decide an appeal on the record, supplement the record, remand the matter to the agency, or refer the matter to an administrative judge. If discrimination is found, the agency would provide appropriate remedies and relief under subpart E.

Proposed paragraph (c) would allow an agency that believes administrative judge proceedings would be necessary or efficient if the complainant appeals to include a referral request in or with the final agency decision. The request would have to identify the issues for referral and explain why referral would be necessary or efficient. Such a request would not affect the finality of the agency's decision or the complainant's appeal or civil action rights.

Proposed paragraph (d) would state that a final agency decision issued under § 1614.110 is final agency action for purposes of subparts D and E, subject to Commission review if timely appealed and subject to termination of administrative processing if a civil action is filed.

Section 1614.203—Rehabilitation Act

The proposed rule would amend § 1614.203(d)(3)(iii)(D) to conform the reasonable-accommodation denial-notice provision to the proposed rescission of mandatory pre-complaint EEO counseling. Current § 1614.203(d)(3)(iii)(D) requires agencies to notify individuals denied reasonable accommodation that they must initiate contact with an EEO Counselor under § 1614.105 within 45 days. Because the proposed rule would remove § 1614.105 and establish direct filing of complaints under § 1614.106, the proposed amendment would instead require the denial notice to explain that the individual may file a complaint under § 1614.106 and to identify the applicable filing deadline and procedural requirements.

Section 1614.204—No Class Complaints; Assertion of Putative Class Claims for Administrative Exhaustion; Joint Processing of Related Individual Complaints

The proposed rule would revise § 1614.204 in full. The revised section would eliminate administrative class complaints under part 1614 while preserving limited mechanisms for presenting putative class claims for administrative exhaustion purposes and for jointly processing related individual complaints.

Proposed paragraph (a) would provide that complaints under part 1614 may be filed, accepted, investigated, heard, decided, resolved, appealed, and enforced only as complaints of identified aggrieved persons, except that related complaints or claims may be processed together under § 1614.204 or § 1614.606. No complaint may be filed, maintained, certified, processed, adjudicated, resolved, appealed, or enforced as a class complaint. Agencies, administrative judges, and the Commission under this part may not certify a class, appoint or recognize a class agent, issue class notice, approve or disapprove a class settlement, adjudicate a class complaint, issue a decision binding absent persons, or award individual relief to persons who are not identified complainants.

Proposed paragraph (b) would allow a complainant to assert a putative class claim in a written complaint, amendment, or supplementation for the purpose of presenting the claim to the agency or Commission for administrative exhaustion purposes. A putative class claim asserted under this paragraph would not be a class complaint and would not make the complainant a class agent or representative. The agency would include the putative class claim in the record and notify the complainant that it will not be certified, heard, decided, resolved, appealed, or enforced as a class complaint. The agency would not investigate the claim as a class complaint, but could investigate the alleged policy, practice, action, or matter to the extent relevant to the complainant's own claim or jointly processed individual claims.

Proposed paragraph (c) would allow two or more identified complainants to file a single joint written complaint or separate complaints concerning substantially similar allegations or the same agency policy, practice, action, or matter. Each identified complainant would have to satisfy the applicable requirements of § 1614.106.

Proposed paragraph (d) would permit identified complainants to request joint processing. It provides that a request should identify the complaints, claims, and complainants proposed for joint processing, describe common questions or relationships among the claims, and explain why joint processing would promote fair, efficient, and timely resolution.

Proposed paragraph (e) would allow the agency or Commission, on its own initiative or on request, to process related individual complaints or claims together where appropriate. Joint processing could include coordinated ADR, investigation, development of a common factual record, discovery, hearings, agency final action, appeals, compliance proceedings, or other case-management procedures.

Proposed paragraph (f) would allow the agency or Commission to decline, limit, discontinue, modify, or sever joint processing where joint processing would cause delay, prejudice, conflicts of interest, privacy or confidentiality concerns, materially different facts or legal issues, classified or protected information issues, or otherwise fail to promote fair, efficient, and timely processing.

Proposed paragraph (g) would preserve the right to receive a decision on an individual complaint. Joint processing and assertion of a putative class claim would not create a class, class representative, class member, opt-in class, opt-out class, or class-wide presumption of discrimination. Joint processing also would not alter any complainant's obligation to satisfy part 1614 requirements or election-of-remedies rules.

Proposed paragraph (h) would govern decisions, settlements, and relief. Findings and determinations would be made as to each identified complainant and claim. The agency or Commission would not make class-wide findings or determine the rights of absent persons. Settlements would have to be in writing, identify the complainants and claims resolved, and bind only the parties to the agreement. Individual relief could be awarded only to identified complainants who are parties to the complaint or proceeding.

Proposed paragraph (i) would clarify the relationship between § 1614.204 and § 1614.606. Complaints processed together would remain individual complaints, and § 1614.204 would supplement the consolidation and joint-processing authority in § 1614.606 without permitting class complaints or class-wide adjudication.

Section 1614.301—Negotiated Grievance Procedures

The proposed rule makes subpart C of part 1614 simpler by reorganizing mixed-case and related-process rules around the questions employees and agencies actually need answered:

Which forum may the employee choose? When is the choice made? What must the agency do next? Where does any appeal go? When may the employee go to court? Current subpart C spreads those answers across §§ 1614.301 through 1614.310, including separate provisions for petition contents, EEOC consideration procedures, Special Panel referral, Special Panel organization, Special Panel procedures, and Special Panel enforcement. Many of these provisions simply repeat procedural requirements already clearly stated in the governing statute. To avoid confusion, the proposed rule incorporates these requirements by reference to the statute rather than superfluously restating them. The proposal would remove and reserve §§ 1614.304 through 1614.309 and consolidate the operative rules into revised §§ 1614.301, 1614.302, 1614.303, and 1614.310.

Starting with negotiated grievance procedures, the proposed rule would revise § 1614.301 in full. Proposed paragraph (a) would clarify that the section applies only when 5 U.S.C. 7121(d) applies, that is when an aggrieved employee is affected by a prohibited personnel practice described in 5 U.S.C. 2302(b)(1), the matter falls within a negotiated grievance procedure, and that procedure permits discrimination allegations to be raised.

Proposed paragraph (b) would clarify election of remedies. An employee may raise the matter either under part 1614 or under the negotiated grievance procedure, but not both. Election under part 1614 would occur when the employee files a written complaint under § 1614.106. Seeking pre-filing information, technical assistance, or ADR before filing a written complaint would not constitute an election. Election under the negotiated grievance procedure would occur when the employee timely files a written grievance, and the first election would control.

Proposed paragraph (c) would require dismissal of a complaint, or portion of a complaint, that concerns a matter previously elected for processing under a covered negotiated grievance

procedure. The dismissal would be without prejudice to the employee's rights in the negotiated grievance process, including rights to seek Merit Systems Protection Board (MSPB) or Commission review of a final grievance decision where available.

Proposed paragraph (d) would state that, where 5 U.S.C. 7121(d) does not apply, the existence or use of a negotiated grievance procedure does not bar processing under part 1614 unless another statute requires an election of remedies.

Section 1614.302—Mixed Cases: Election and Agency Processing

The proposed rule would revise § 1614.302 in full. Proposed paragraph (a) would define a mixed case as a matter in which an employee or applicant is affected by an action appealable to the MSPB and alleges that a basis for the action was discrimination covered by 5 U.S.C. 7702(a)(1)(B) or another statute requiring treatment under 5 U.S.C. 7702.

Proposed paragraph (b) would define "mixed case complaint" as a mixed case filed with an agency under part 1614 and "mixed case appeal" as a mixed case filed with MSPB.

Proposed paragraph (c) would state the election rule. An employee or applicant may initially file either a mixed case complaint with the agency or a mixed case appeal with MSPB, but not both. The first filing would control, subject to 5 U.S.C. 7702(f) and proposed paragraph (f).

Proposed paragraph (d) would govern agency processing of mixed case complaints. Agencies would process mixed case complaints under subpart A, except that the agency would issue a final decision within 120 days after filing, the complainant would not be entitled to a hearing before a Commission administrative judge, and the final decision would advise the complainant of the right to appeal to MSPB or file a civil action, but not both. If the agency fails

to issue a final decision within 120 days, the complainant could appeal to MSPB or file a civil action.

Proposed paragraph (e) would require dismissal of a mixed case complaint, or portion of a complaint, concerning the same matter previously filed as a mixed case appeal with MSPB, unless further agency processing is required by 5 U.S.C. 7702(f) or proposed paragraph (f).

Proposed paragraph (f) would address MSPB dismissals for lack of jurisdiction. Proposed subparagraphs (f)(i) through (f)(iii) lay out clear instructions for individuals to return their cases to the EEO complaint process should the MSPB lack jurisdiction. An individual can return to the EEO complaint process by filing with the agency or Commission, depending on the procedural posture, within 30 days of receipt of the MSPB's dismissal for lack of jurisdiction. Provided the returned matter meets the usual prerequisites, the agency or Commission would process as a non-mixed matter consistent with this part.

Proposed paragraph (g) would clarify that mixed cases first raised under negotiated grievance procedures are governed by § 1614.301, 5 U.S.C. 7121(d), 5 U.S.C. 7702, applicable MSPB regulations, and subpart D as applicable.

Section 1614.303—Commission Consideration of MSPB Decisions in Mixed Cases

The proposed rule would revise § 1614.303 in full. The revised § 1614.303 would simplify Commission review of MSPB decisions by keeping only the essential procedural rule in part 1614: an employee or applicant who receives a final MSPB decision in a mixed case may petition EEOC within 30 days, and the petition must identify the alleged error concerning the discrimination issue.

Proposed paragraph (a) would allow an employee or applicant who receives a final MSPB decision in a mixed case to petition the Commission to consider the Board's decision. The

petition would have to be filed within 30 days after receipt of notice of the Board's final decision.

Proposed paragraph (b) would prescribe the petition's form and service requirements. The petition would have to identify the petitioner and MSPB decision and state the alleged error concerning the discrimination issue.

Proposed paragraph (c) would provide that Commission consideration of an MSPB mixed-case decision is governed by 5 U.S.C. 7702, including whether to consider the petition, review of the MSPB record, supplementation, Commission concurrence or disagreement, and referral to MSPB.

Proposed paragraph (d) would provide that MSPB action following a Commission decision that differs from the MSPB decision, certification to the Special Panel, Special Panel proceedings, interim relief, and enforcement are governed by 5 U.S.C. 7702 and applicable MSPB regulations.

Proposed paragraph (e) would state that a Commission determination not to consider an MSPB decision has the effect provided by 5 U.S.C. 7702 and may not be used as evidence on any discrimination issue in a judicial proceeding.

Sections 1614.304 Through 1614.309

The proposed rule would remove and reserve §§ 1614.304 through 1614.309. These provisions would be reserved because the proposed rule would consolidate and streamline the mixed-case rules in revised §§ 1614.302, 1614.303, and 1614.310.

Section 1614.310—Civil Actions in Mixed Cases

The proposed rule would revise § 1614.310 in full. Proposed paragraph (a) would state that an individual with a mixed case may file a civil action in an appropriate United States district court as authorized by 5 U.S.C. 7702 and 7703(b)(2).

Proposed paragraph (b) would identify when a civil action in a mixed case may be filed: within 30 days after receipt of notice of a judicially reviewable action under 5 U.S.C. 7702; after 120 days from filing a mixed case complaint with an agency if there has been no judicially reviewable action and no MSPB appeal; after 120 days from filing a mixed case appeal with MSPB if there has been no judicially reviewable action, subject to 5 U.S.C. 7702(e)(1)(B); or after 180 days from filing a petition with the Commission under § 1614.303 if there has been no final action under 5 U.S.C. 7702(b), (c), or (d).

Proposed paragraph (c) would clarify that § 1614.310 applies only to mixed cases and that civil actions in non-mixed cases are governed by subpart D and applicable law.

Section 1614.401—Appeals to the Commission

The proposed rule would revise § 1614.401 in full. Proposed paragraph (a) would provide that a complainant may appeal an agency's final agency decision.

Proposed paragraph (b) would generally prohibit agency appeals. In other words, an agency may not appeal its own final agency decision.

Proposed paragraph (c) would allow an agency to participate in a complainant's appeal and request referral to an administrative judge under § 1614.406. Such a request would not be an appeal, would not affect the finality of the agency's decision, and would not extend, toll, or restrict the complainant's appeal or civil action rights.

Proposed paragraph (d) would govern grievance appeals. A grievant could appeal a final decision of the agency, arbitrator, or Federal Labor Relations Authority on a grievance when an

issue of employment discrimination was raised in a negotiated grievance procedure that permits such issues. A grievant could not appeal under part 1614 while the matter remains pending in the negotiated grievance process, arbitration, or before FLRA; where the matter is appealable to MSPB; or where the matter is not subject to 5 U.S.C. 7121(d).

Proposed paragraph (e) would allow a complainant to appeal from an agency determination on alleged agency noncompliance with a settlement agreement or final agency decision under § 1614.504.

Section 1614.402—Time for Appeals to the Commission

The proposed rule would revise § 1614.402 in full. Proposed paragraph (a) would establish a 30-day deadline for appeals described in § 1614.401(a), (d), and (e), measured from receipt of the applicable dismissal, decision, final action, grievance decision, arbitration decision, FLRA decision, or agency compliance determination. The paragraph would clarify that an agency request for administrative judge proceedings under §§ 1614.110, or 1614.403, or 1614.406 is not an appeal and does not create an independent appeal period.

Proposed paragraph (b) would provide that, if the complainant is represented by an attorney of record, the appeal period is calculated from receipt by the attorney; otherwise, it is calculated from receipt by the complainant.

Section 1614.403—How To Appeal

The proposed rule would revise § 1614.403 in full. Proposed paragraph (a) would require appeals to be filed with the Director of the Office of Federal Sector in a digital format acceptable to the Commission, through the EEOC Public Portal, FedSEP where applicable, or another Commission-prescribed method. It provides that the appellant should use EEOC Form 573 or a successor form and identify the decision, action, dismissal, or determination being appealed. A

complainant could include a request for administrative judge proceedings under § 1614.406 and would have to explain why such proceedings are necessary or efficient. The Commission may deem the issue waived if a complainant fails to request administrative judge proceedings or fails to support a request with an explanation.

The proposed rule adds paragraph headings to paragraphs (b) and (c) but does not alter their content.

Proposed § 1614.403(d) would update the briefing rule for Commission appeals to conform to the proposed appellate model. It would retain the existing rule that a complainant's supporting statement or brief is due within 30 days after filing the notice of appeal, unless the Commission provides otherwise. Current § 1614.403(d) already uses that 30-day deadline for complainant briefs. The principal change is to remove language governing an agency brief "in support of its appeal." Under the proposed rule, agencies generally may not appeal their own final agency decisions.

The paragraph also adds a new function for agency briefs: the agency may ask the Commission to refer the matter, or specified claims or issues, to an administrative judge under § 1614.406. The agency must explain why such proceedings are necessary or efficient.

Finally, the proposed paragraph omits the current facsimile-transmission language and 10-page fax limit. That change fits with the proposed digital-filing structure in § 1614.403(a), (e), and (g), under which appeals, briefs, complaint files, final agency decisions, referral requests, and other filings generally would be submitted in a digital format acceptable to the Commission.

Proposed § 1614.403(e) would revise the agency record submission requirement for Commission appeals. The current rule requires an agency to submit the complaint file within 30

days after notice of a complainant's appeal or within 30 days after an agency appeal. The proposed rule would retain the 30-day deadline after notice of a complainant appeal, but would specify that the agency must submit the complete complaint file, any investigative file, the final agency decision, and any agency request for administrative judge proceedings. The revision also removes the reference to agency appeals, consistent with proposed § 1614.401, and treats any agency request for administrative judge proceedings as part of the complainant's appeal record. Finally, the proposed rule would require the agency to identify any portion of the record that is classified, privileged, protected by law, or subject to special handling so that the Commission can protect sensitive information and manage the record appropriately during appellate review.

Proposed paragraph (f) would set deadlines for opposition briefs. Proposed paragraph (g) would require complainants and agencies to submit complaint files, investigative files, final agency decisions, referral requests, appeal briefs, and other filings digitally absent good cause,.

Section 1614.404—Appellate Procedure

The proposed rule would revise § 1614.404 in full. Proposed paragraph (a) would provide that the Office of Federal Sector reviews the complaint file, investigative file, final agency decision or action, any administrative judge referral record, and party submissions. The Commission could supplement the record by letters, memoranda, targeted requests for information, investigation, remand, referral to an administrative judge, or other procedures consistent with part 1614.

Proposed paragraph (b) would require parties providing supplemental information to serve the other party unless the Commission orders otherwise to protect classified, privileged, protected, or specially handled information.

Proposed paragraph (c) would authorize the Commission to require agencies, complainants, or other persons to provide evidence necessary to resolve an appeal. Where a party or Federal employee fails without good cause to respond fully and timely, the Commission could consider the failure in its decision-making and take appropriate nonmonetary procedural or evidentiary action, including adverse inferences, deeming factual issues established, excluding evidence, limiting argument or evidence, or taking other tailored nonmonetary action.

Proposed paragraph (d) would clarify that § 1614.404 does not authorize the Commission to impose monetary sanctions against a Federal agency except to the extent Congress has expressly waived sovereign immunity for that specific monetary remedy.

Section 1614.405—Decisions on Appeals

The proposed rule would revise § 1614.405 in full. Proposed paragraph (a) would allow the Director, Office of Federal Sector, on behalf of the Commission, to issue a written decision setting forth the reasons for the Commission's decision, except that summary affirmance could be used where the appeal presents no material factual dispute, no colorable legal error, and no issue warranting written discussion. A summary affirmance would constitute the Commission's final decision. The Commission would review agency final decisions de novo on the administrative record and decide factual issues by a preponderance of the evidence.

Proposed paragraph (b) would identify available appellate dispositions. The Commission could affirm, reverse, or modify the agency's decision; find discrimination or no discrimination; order appropriate remedies; order targeted supplementation; remand; refer the matter or specified issues to an administrative judge; or take other action consistent with part 1614.

Proposed paragraph (c) would govern final Commission decisions after administrative judge proceedings. The Commission could adopt, modify, or reject the administrative judge's

recommended decision, findings, or report. If discrimination is found, the decision would include appropriate remedies and, where appropriate, entitlement to interest, attorney fees, or costs. Proposed paragraph (d) would set appellate time standards. The Commission would use best efforts to issue a decision within 180 days after receipt of the appeal. If a matter is referred to an administrative judge, the Commission would use best efforts to issue a decision within 90 days after the Office of Federal Sector receives the administrative judge's recommendation and hearing record. These standards would not limit civil action rights.

Proposed paragraph (e) would retain reconsideration standards. A Commission decision would be final unless a timely request for reconsideration is filed. A party could request reconsideration within 30 days, and the Commission could grant reconsideration where the party demonstrates a clearly erroneous interpretation of material fact or law or that the decision will substantially affect agency policies, practices, or operations.

Section 1614.406—Administrative Judge Proceedings

The proposed rule would revise § 1614.406 in full and retitle it "Administrative judge Proceedings." The proposed rule would replace the current automatic entitlement to request a hearing before an EEOC administrative judge with a targeted referral-based model in which administrative judge proceedings may occur only when authorized by the Commission during its appellate process.

Proposed paragraph (a) would state that a complainant is not entitled to a hearing before an administrative judge.

Proposed paragraph (b) would authorize the Office of Federal Sector, on behalf of the Commission, to refer a complaint, claim, or issue to an administrative judge in an appeal from a

final agency decision where the Commission determines that administrative judge proceedings are necessary or efficient to resolve the appeal.

Proposed paragraph (c) would allow complainants to request administrative judge proceedings in their appeal or supporting statement and would allow agencies to request such proceedings in the final agency decision, accompanying notice, or response to an appeal. Any request would have to identify the issues for which proceedings are sought and explain why proceedings are necessary or efficient.

Proposed paragraph (d) would identify grounds for referral, including genuine disputes of material fact or material credibility determinations that cannot be fairly resolved on the appellate record, materially incomplete investigative records where targeted administrative judge proceedings would be more efficient than remand, complex or significant legal or factual issues, likely findings of discrimination requiring further remedial proceedings, agency requests that would materially assist fair and efficient resolution, and other circumstances promoting fair, efficient, and timely resolution.

Proposed paragraph (e) would allow the Commission to limit the referral to specified claims, issues, remedies, witnesses, documents, time periods, or factual questions. The administrative judge would be required to conduct proceedings within the scope of the referral unless the Commission modifies it.

Proposed paragraph (f) would define an administrative judge's authority in referred matters. Within the scope of the referral order, the administrative judge could order limited discovery or record supplementation, require production of evidence, administer oaths, conduct conferences and evidentiary hearings, limit cumulative or burdensome evidence, take nonmonetary procedural or evidentiary measures to address noncompliance, compile the hearing

record, issue recommended decisions or findings, and take other actions authorized by the Commission.

Proposed paragraph (g) would clarify that administrative judge proceedings are part of the Commission's appellate review process. Proceedings would be limited to what is necessary or efficient to resolve the appeal.

Proposed paragraph (h) would govern discovery. Parties may not conduct discovery unless authorized by the administrative judge. Any discovery authorized by the administrative judge would be limited to what is necessary and proportional to resolve the matters referred by the Commission.

Proposed paragraph (i) would govern hearings. Hearings would be limited to the claims, issues, remedies, witnesses, documents, time periods, or factual questions identified in the Commission's referral order. The administrative judge would regulate the hearing, limit unnecessary or cumulative evidence, and may use virtual means where appropriate. Attendance would be limited to specified participants and others whose presence is necessary for a fair, efficient, and orderly hearing. Hearings would be closed to the public. The rules of evidence would not apply strictly, and the administrative judge could exclude irrelevant, immaterial, cumulative, repetitious, privileged, protected, unduly burdensome, or out of scope evidence.

Proposed paragraph (j) would require the agency to arrange and pay for a verbatim transcript, unless otherwise ordered by the administrative judge. The paragraph would specify how exhibits and other materials become part of the hearing record, how materials are provided to the parties subject to protective limitations, and how the hearing record is transmitted to the Office of Federal Sector.

Proposed paragraph (k) would provide that, unless the Commission directs otherwise, the administrative judge issues recommended decisions, recommended findings, or reports to the Office of Federal Sector. Proposed paragraph (m) would provide that the Director, Office of Federal Sector issues the final Commission decision under § 1614.405 after considering the administrative judge's input and the administrative record. Proposed paragraph (n) would clarify that referral to an administrative judge does not restrict civil action rights and that filing a civil action terminates Commission processing under § 1614.409.

Section 1614.407—Civil Actions: Title VII, ADEA, Rehabilitation Act, GINA, and PWFA

The proposed rule would revise § 1614.407 to improve organization and conform the civil action provision to the proposed restructuring of part 1614. The revised section adds paragraph headings that separate the principal civil-action rules from related procedural issues: authorization and filing deadlines, withdrawal of an appeal after agency final action, withdrawal of a request for reconsideration, exhaustion of putative class claims, and the effect of an administrative judge referral. This structure makes the provision easier to use by placing each civil action consequence in a discrete paragraph.

The proposed rule also removes references to administrative class complaints and replaces them with language consistent with proposed § 1614.204. Under the proposed rule, a complainant may file a civil action after filing an individual complaint, including an individual complaint that asserted a putative class claim for exhaustion purposes. The revision makes clear that asserting a putative class claim in the administrative process is sufficient to present that claim for purposes of part 1614, but does not decide whether a court will certify a class, permit a class claim to proceed, apply tolling, or find exhaustion satisfied in a later civil action.

Proposed paragraph (d) would address exhaustion of putative class claims. A complainant who follows the withdrawal procedures in paragraphs (b) or (c) would be deemed to have exhausted administrative remedies under part 1614. A complainant who asserts a putative class claim under § 1614.204(b) would be deemed to have presented that putative class claim in the administrative process for purposes of part 1614. The proposed rule would not determine whether a court will certify a class, permit a class claim to proceed, apply tolling, or find administrative exhaustion satisfied in a civil action.

Proposed paragraph (e) would provide that referral to an administrative judge under § 1614.406 does not extend, restrict, or otherwise alter civil action rights.

Section 1614.409—Effect of Filing a Civil Action

The proposed rule would revise § 1614.409 to provide that filing a civil action under § 1614.407, § 1614.408, or § 1614.310 terminates Commission processing of the complaint, appeal, request for reconsideration, and any administrative judge proceedings concerning the same claims. The proposed rule would further provide that a Commission decision issued after the complainant files suit will not be enforceable by the Commission. If suit is filed after an appeal and before a final Commission decision, the complainant should notify the Commission in writing.

Section 1614.501—Remedies and Relief

The proposed rule would amend § 1614.501 to update remedies and relief provisions to conform them to the proposed individual-complaint framework and to comply with the mixed-motive provisions in the Civil Rights Act of 1991.

Section 1614.501 currently applies a "clear and convincing" standard of proof for agencies raising a same-decision defense. *See* § 1614.501(b)(1)(i); (b)(2); (c)(1); (c)(2). A

heightened standard of proof for this limited defense is inconsistent with the Civil Rights Act of 1991. The Act precludes "[an] award of damages or issu[ance] [of] an order requiring any admission, reinstatement, hiring, promotion, or payment" if "a respondent demonstrates the respondent would have taken the same action in the absence of the impermissible motivating factor." 42 U.S.C. 2000e-5(g)(2)(B). The key word is "demonstrates," which the Supreme Court has construed under title VII to indicate a "preponderance of the evidence" standard of proof. *Desert Palace, Inc. v. Costa*, 539 U.S. 90, 100 (2003). Accordingly, an agency's same-decision defense is established by showing on a preponderance of the evidence that the agency would have taken the same action absent the impermissible motive. *See Porter v. Natsios*, 414 F.3d 13, 22 (D.C. Cir. 2005). Establishing the same-decision defense does not avoid liability for the agency, but it does limit the relief and remedies available to the complainant as the prevailing party consistent with Section 2000e-5 of title VII.

Proposed paragraph (a) would clarify that, when an agency or the Commission finds discrimination in an individual case, the agency must provide full relief to the identified applicant or employee. Proposed paragraphs (a)(3) and (a)(4) would refer to each identified complainant who is a victim of discrimination and would require appropriate placement and make-whole payment for lost earnings.

Proposed paragraph (b) would revise applicant relief provisions. Where an applicant has been discriminated against, the agency would offer the position the applicant would have occupied absent discrimination or a substantially equivalent position, unless a preponderance of the evidence establishes the applicant would not have been selected even absent discrimination. The paragraph would specify written-offer, acceptance, retroactive appointment, back pay, interest where sovereign immunity has been waived, service-credit, and declination rules. Where

discrimination existed but the applicant would not have been hired even absent discrimination, the agency would still be required to eliminate the discriminatory practice and ensure it does not recur.

Proposed paragraph (c) would revise relief for employees. When discrimination is found, the agency would provide relief, including nondiscriminatory placement with back pay unless a preponderance of the evidence establishes the personnel action would have occurred even absent discrimination. Interest would be included where sovereign immunity has been waived, and back pay liability under title VII or the Rehabilitation Act would be limited to two years before the complaint was filed. If the agency proves the same action would have been taken absent discrimination, the agency still would be required to eliminate the discriminatory practice and prevent recurrence.

Proposed paragraph (d) would codify mitigation principles. The complainant would have a duty to make reasonable efforts to mitigate damages where required by law, and the agency would bear the burden to prove failure to mitigate and the amount by which any award should be reduced.

Proposed paragraph (e) would comprehensively revise attorney fee and cost rules. It would identify fee-eligible claims, compensable legal services, prevailing-party requirements, presumptions and limitations, the lodestar method, reasonable hours, documentation requirements, reasonable rates, treatment of fee matrices, fee agreements and nonprofit or pro bono representation, limited success, unsuccessful claims, fees for fee litigation, enhancements, mixed-motive cases, covered and noncovered claims, timing of compensable services, fee petition procedures, decisions on fee petitions, and costs and witness fees. The proposed rule

would emphasize that fees and costs are available only to the extent authorized by statute and must be reasonable, documented, and tied to the relief obtained.

Proposed paragraph (f) would prohibit monetary sanctions against Federal agencies unless Congress has expressly waived sovereign immunity for the specific monetary remedy. The paragraph would clarify that this prohibition does not limit awards of back pay, compensatory damages, equitable relief, attorney fees, or costs otherwise authorized by statute as relief for a proven violation of law.

Section 1614.504—Compliance With Settlement Agreements and Final Agency Decisions

The proposed rule would retitle and amend § 1614.504(c). Proposed paragraph (c) would allow the Commission, before rendering a compliance determination, to request additional information, direct the agency to develop additional information, or refer the matter for administrative judge proceedings under § 1614.406. The Commission would decide compliance based on the written record and any additional information or administrative judge record developed.

If the Commission determines that the agency is not complying with a settlement agreement or final agency decision, and the noncompliance is not attributable to the complainant, the Commission could order compliance. For noncompliance with a settlement agreement, the Commission could order specific implementation or reinstate the complaint for further processing from the point processing ceased. Allegations that subsequent acts of discrimination violate a settlement agreement would be processed as separate complaints under § 1614.106.

Section 1614.505—Interim Relief

The proposed rule would remove and reserve § 1614.505. The current interim-relief provision is tied to agency appeals from administrative judge decisions and temporary or

conditional relief pending appeal. Because the proposed rule would eliminate the existing model in which agencies appeal administrative judge decisions and would replace it with final agency decisions followed by Commission appellate review and discretionary administrative judge referral, the interim-relief provision would no longer be necessary in its current form.

Section 1614.602—Reports to the Commission

The proposed rule would amend § 1614.602(a) to require each agency to report to the Commission information concerning the status, processing, and disposition of complaints under part 1614, including investigations, final agency decisions, appeals, compliance proceedings, settlements, administrative judge referrals, and other matters, at the times and in the manner prescribed by the Commission. This change would align agency reporting obligations with the proposed revised complaint-processing and appellate structure.

Section 1614.603—Voluntary Settlement Attempts

The proposed rule would revise § 1614.603 to require each agency to make reasonable efforts to voluntarily settle complaints of discrimination as early as possible in, and throughout, administrative processing. Any settlement would have to be in writing, signed by both parties, and identify the claims resolved. This provision would reinforce early and continuing voluntary resolution while ensuring enforceable written settlement terms.

Section 1614.604—Filing and Computation of Time

The proposed rule would amend § 1614.604(c), (d), and (e) to address digital filing and service. Paragraph (c) would provide that complaints, appeals, requests for reconsideration, requests for administrative judge proceedings, briefs, or other documents filed by complainants using the EEOC Public Portal or by agencies using FedSEP are deemed filed on the date

uploaded. Timeliness would be determined based on the time zone from which the document was submitted.

Paragraph (d) would provide that a document transmitted through the Public Portal or FedSEP is deemed received when accessed, or within five days after the document is uploaded, whichever occurs first. When a document is transmitted through email or other digital means, and is not returned as undeliverable, it is deemed received when accessed, or within five days after the document was transmitted, whichever occurs first.

Paragraph (e) would clarify that, for specified provisions, regulatory terms such as file, issue, notify, receive, serve, submit, and transmit include digital transmissions through FedSEP, the EEOC Public Portal, or email.

Section 1614.605—Representation and Official Time

The proposed rule would amend § 1614.605(a) to clarify that the complainant's right to be accompanied, represented, and advised by a representative of choice applies at any stage of processing under part 1614, including filing, investigation, final agency decision, appeal, administrative judge proceedings, reconsideration, compliance, and settlement.

Section 1614.606—Joint Processing and Consolidation of Complaints

The proposed rule would revise § 1614.606 in full. Complaints filed by two or more complainants consisting of substantially similar allegations or relating to the same matter could be jointly processed by the agency or Commission after appropriate notice to the parties. Two or more complaints filed by the same complainant could be consolidated after appropriate notice to the complainant. When complaints are jointly processed or consolidated, the agency would be required to complete the investigation and issue a final agency decision within the time limits in § 1614.108 unless extended under part 1614. Administrative judge proceedings could occur only

as provided in § 1614.406. The proposed rule would clarify that joint processing and consolidation do not create a class complaint, class representative, class member, or class-wide adjudication.

Section 1614.607—Delegation of Authority

The proposed rule would revise § 1614.607 to provide that an agency head may delegate authority under part 1614 to one or more designees, except where law, Executive Order, or regulation requires action by the agency head. The proposed rule would also clarify that delegation does not alter the EEO Director reporting relationship required by § 1614.102(b)(4).

Section 1614.701—Purpose and Scope

The proposed rule would revise § 1614.701 to update subpart G. Proposed paragraph (a) would state that subpart G implements the public posting, data, reporting, tracking, and accountability requirements of the No FEAR Act, as amended, including the Cummings Act.

Proposed paragraph (b) would describe the scope of subpart G, including agency and Commission responsibilities to post complaint data and notices on public websites, maintain and report complaint and finding information, provide comparative data, track complaints from filing through resolution, report disciplinary action information following findings of discrimination or retaliation, and maintain required records concerning certain disciplinary actions.

Proposed paragraph (c) would clarify that subpart G's reporting requirements do not create, extend, limit, or otherwise alter rights, remedies, time limits, appeal rights, civil action rights, or complaint-processing requirements under part 1614.

Section 1614.702—Definitions

The proposed rule would revise § 1614.702 to define terms for subpart G. The proposed definitions would include agency or Federal agency, Commission, complaint, investigation, final

agency decision or final agency action, final agency decision or action involving a finding of discrimination, administrative judge proceedings, appeal, basis of alleged discrimination, issue of alleged discrimination, finding of discrimination, final finding of discrimination, disciplinary-action decision, class action complaint, and subordinate component. These definitions would support uniform reporting, posting, and tracking under the No FEAR Act and Cummings Act provisions.

Section 1614.703—Manner and Format of Posted Data and Notices

The proposed rule would add or revise § 1614.703 to establish the manner and format for agency postings. Agencies would be required to post information required by subpart G on their public websites in a clear, prominent, and readily accessible location, with a link from the homepage. Data under §§ 1614.704 and 1614.705 would be identified as "No FEAR Act Data," and notices under § 1614.706(a) would be identified as "Notification of Findings of Discrimination or Retaliation."

The proposed rule would require postings to be accessible, searchable, downloadable, and compliant with section 508 of the Rehabilitation Act. Agencies would identify the date of the latest update, post separate data for subordinate components, post current fiscal year data cumulatively, report processing times in calendar days, take reasonable steps to ensure searchability, provide URLs to the Commission, and protect personally identifiable information, medical information, confidential settlement information, classified information, privileged information, and other legally protected information.

Section 1614.704—Information To Be Posted—All Federal Agencies

The proposed rule would revise § 1614.704 to specify quarterly public posting requirements for agencies. Not later than 30 days after the end of each fiscal quarter, each agency would post cumulative current fiscal year data regarding complaints filed under part 1614. The posted data would include the number of complaints filed, number of individual filers, and number of individuals filing two or more complaints. Agencies also would post the number of complaints raising each basis and issue of alleged discrimination or retaliation, including non-EEO bases.

The proposed rule would require posting of agency processing and disposition data, including average time from filing to completion of investigation, average time from filing to final agency decision or other final agency action, the number of dismissals and average pendency before dismissal, and the number of withdrawn complaints.

Agencies also would post findings data, including the number and percentage of final agency decisions or actions involving findings of discrimination or retaliation, the number and percentage by basis and issue, and, for each finding, the date of the finding, affected agency or subordinate component, law violated, and whether a disciplinary-action decision has been made. The proposed rule also would require pending-inventory and timeliness data, including the number of complaints pending at the beginning of the fiscal year, filed, closed, and pending at the end of the reporting period; the number of older pending complaints and associated filers; the number pending at specified processing steps; and the number in which the agency has not completed the investigation and issued final action within required time limits.

Finally, agencies would post data regarding each class action complaint filed against the agency alleging discrimination or retaliation, including filing date, a general summary of allegations, an estimate of plaintiffs or class members if known, current status including

certification status, and the case number for any civil action in which discrimination or retaliation has been found.

Section 1614.705—Comparative Data To Be Posted by Agencies

The proposed rule would revise § 1614.705 to require annual comparative data. No later than January 31 of each year, each agency would post year-end data corresponding to the categories in § 1614.704 for each of the five immediately preceding completed fiscal years, or for the fiscal years for which data are available. Agencies would post a separate figure for each fiscal year included in the comparative data.

Section 1614.706—Cummings Act Notices, Reports, Tracking, and Other Data

The proposed rule would revise § 1614.706 to implement Cummings Act requirements. Proposed paragraph (a) would require the head of an agency subject to a final finding of discrimination or retaliation to post a public notice within 90 days after the final finding. The notice would have to be posted on the agency's public website in a clear and prominent location linked directly from the homepage and remain posted for at least one year.

Proposed paragraph (b) would require the notice to state that a finding of discrimination or retaliation has been made and identify the date of the finding, the date of each discriminatory or retaliatory act, the law violated by each act, and the rights and protections available to Federal employees and applicants under the laws covered by part 1614.

Proposed paragraph (c) would require agencies, not later than 120 days after taking final action or receiving a final Commission decision involving a finding of discrimination or retaliation, to submit a report to the Commission stating whether disciplinary action has been proposed against a Federal employee as a result of the violation and the reasons for any proposed disciplinary action.

Proposed paragraph (d) would require each agency to maintain a system to track each discrimination or retaliation complaint adjudicated through the EEO process from filing through resolution, including whether a disciplinary-action decision has been made as a result of any finding.

Proposed paragraph (e) would require an agency that takes an adverse action covered by 5 U.S.C. 7512 against a Federal employee for discriminatory or retaliatory conduct to include, after all appeals relating to that adverse action have been exhausted, a notation in the employee's personnel record of the adverse action and the reason for it.

Section 1614.707—Data To Be Posted by EEOC

The proposed rule would revise § 1614.707 to update Commission posting obligations. Proposed paragraph (a) would require the Commission, not later than 30 days after the end of each fiscal quarter, to post current fiscal year statistics regarding matters referred to administrative judges under § 1614.406. The required statistics would include the number of appeals involving referrals, the number of complainants whose matters were referred, pending and completed referred matters, completions with and without evidentiary hearings, administrative judge recommendations by disposition, average time from referral to transmission of the recommendation or report, and the number of matters not completed within applicable Commission timeframes.

Proposed paragraph (b) would require the Commission to post quarterly current fiscal year appeals data. The required data would include the number of appeals filed, number of individual appellants, appeals by basis and issue, pending inventory, decided appeals, average time to appellate decision, appellate decisions involving findings of discrimination and their percentage of all appellate decisions, findings by basis and issue, and older pending appeals.

IV. Expected Impact

A. Statement of Need

The Commission proposes to revise 29 CFR part 1614 to modernize and streamline the Federal-sector EEO complaint process, to better align the administrative process with the Commission's resources and institutional role, to clarify the obligations of Federal agencies and complainants, and to implement statutory requirements enacted by the Elijah E. Cummings Federal Employee Antidiscrimination Act of 2020. The Cummings Act amended the No FEAR Act to add requirements concerning public notice of final findings of discrimination or retaliation, reporting of disciplinary-action information to the Commission, complaint tracking, personnel-record notations for certain adverse actions, and structural independence of agency EEO programs.

The current part 1614 process requires agencies to conduct pre-complaint counseling, investigate formal complaints, and, upon a complainant's request, transmit matters to the Commission for a hearing before an administrative judge. In practice, however, most matters that enter the administrative judge process do not result in an evidentiary hearing. From fiscal year 2017 through fiscal year 2025, the Commission received, on average, 7,514 hearing requests per year. During that period, 27.1 percent of cases ended in settlement, an average of 2,283 per year; 4 percent proceeded to hearing, an average of 304 per year; and 1.7 percent resulted in a finding of liability against an agency, an average of 128 per year. These data indicate that the current automatic hearing-request model devotes substantial administrative resources to proceedings in which evidentiary hearings occur in only a small minority of cases.

The Commission also has determined that the administrative class complaint process has become a recurring source of delay and complexity. Class complaints require specialized

procedures for class certification, notice, discovery, settlement review, class-wide remedial determinations, and individual relief. The Commission's Federal-sector complaint process was designed principally to resolve complaints by identified Federal employees and applicants. The Commission has not had the resources, institutional structure, or specialized capacity to adjudicate large administrative classes effectively. The proposed rule would therefore eliminate administrative class complaints under part 1614 while permitting complainants to assert putative class claims for exhaustion purposes and preserving the ability of agencies and the Commission to jointly process related individual complaints where joint processing would promote fair, efficient, and timely resolution.

The proposed rule also would revise the administrative judge process. Rather than providing an automatic entitlement to a hearing before final agency action, the rule would require agencies to investigate accepted individual complaints and issue final agency decisions within applicable time limits. A complainant could then appeal the agency's final agency decision to the Commission. In an appeal, the Office of Federal Sector, on behalf of the Commission, could decide the matter on the administrative record, order targeted supplementation, remand the matter, or refer a complaint, claim, or issue to an administrative judge when administrative judge proceedings are necessary or efficient to resolve the appeal.

The Commission proposes these changes to reduce unnecessary procedural layers, focus administrative judge resources on matters in which live testimony, credibility determinations, record supplementation, or targeted evidentiary proceedings would materially assist fair resolution, improve the timeliness of Federal-sector EEO adjudication, and preserve civil action rights. The proposed rule also would clarify pleading standards, clarify mixed-case and negotiated-grievance election rules, revise fee and cost standards, prohibit monetary sanctions

absent an express waiver of sovereign immunity, and update digital filing and service provisions to reflect the Commission's current use of the EEOC Public Portal and FedSEP. EEOC's FedSEP system allows agencies to submit MD-715 reports, Form 462 complaint-processing data, and complaint files for hearings and appeals, while the EEOC Public Portal allows Federal employees and applicants to file and manage hearing and appeal matters electronically.

B. Costs

The Commission preliminarily estimates the proposed rule would result in approximately $16.1 million in one-time transition costs and approximately $9.2 million in annual recurring costs, before accounting for offsetting savings from eliminating mandatory pre-complaint counseling, eliminating automatic administrative judge proceedings, eliminating administrative class complaint processing, reducing duplicative discovery, and streamlining appeals. Annualized over 10 years, the estimated cost is approximately $11.1 million per year using a 3-percent discount rate and approximately $11.5 million per year using a 7-percent discount rate.

These estimates do not include transfer payments, such as back pay, compensatory damages, attorney fees, costs, or settlement amounts paid to complainants. The estimates also do not quantify expected cost savings, which the Commission expects to be substantial because the proposed rule would eliminate automatic hearing requests, reserve administrative judge proceedings for matters referred by the Commission, remove administrative class complaint processing, and require more focused electronic appeal records.

For purposes of this estimate, the Commission uses 278 Federal agencies and subcomponents as the number of entities expected to incur implementation costs. EEOC's FY 2021 Annual Report on the Federal Workforce relied on data from 278 Federal agencies and subcomponents that filed Form 462 reports. The Commission uses 12,226 formal complaints per

year as a proxy for annual complainant volume, based on FY 2021 Federal-sector complaint filings. The Commission uses 4,343 appeals per year as a proxy for annual Federal-sector appeals volume, based on EEOC's FY 2023 appellate intake. The Commission uses 7,514 hearing requests per year as the annual average for FY 2017 through FY 2025.

The Commission estimates Federal employee labor costs using 2026 Washington-Baltimore-Arlington locality rates as a conservative proxy. OPM's 2026 salary table lists hourly rates of $55.62 for GS-12, step 5; $66.14 for GS-13, step 5; $78.15 for GS-14, step 5; and $91.93 for GS-15, step 5. The Commission multiplies those rates by 1.6 to account for benefits and overhead, producing loaded hourly rates of approximately $88.99 for GS-12, $105.82 for GS-13, $125.04 for GS-14, and $147.09 for GS-15. For complainant time, the Commission uses BLS's March 2026 average civilian total compensation rate of $49.32 per hour. For attorney familiarization time, the Commission uses BLS's May 2024 median lawyer wage of $72.67 per hour, multiplied by a 1.46 benefits-and-overhead factor derived from the BLS civilian compensation-to-wage ratio, producing a loaded attorney rate of approximately $106.10 per hour. Dollar amounts are rounded to the nearest dollar.

The Commission estimates that agencies and subcomponents would incur approximately $14,316,878 in one-time transition costs. These costs include rule familiarization, revision of procedures and templates, training, information-technology and website updates, Cummings Act reporting setup, and limited organizational adjustments.

First, the Commission estimates $834,267 for agency rule familiarization. This estimate assumes that each of the 278 agencies and subcomponents would require 24 hours of GS-14 time to review the final rule and identify necessary implementation steps. The calculation is: 278 agencies × 24 hours × $125.04 = $834,267.

Second, the Commission estimates $3,650,385 for revisions to agency procedures, forms, notices, templates, and internal guidance. This estimate assumes that each agency or subcomponent would require 40 hours of GS-14 time, 60 hours of GS-13 time, and 20 hours of GS-12 time. The calculation is: 278 agencies × [(40 hours × $125.04) + (60 hours × $105.82) + (20 hours × $88.99)] = $3,650,385. This category accounts for updates to agency EEO procedures, complaint-filing instructions, reasonable-accommodation denial notices, acknowledgment letters, dismissal templates, final agency decision templates, appeal notices, settlement templates, offer-of-resolution templates, and internal guidance.

Third, the Commission estimates $1,176,763 for initial training of EEO, human resources, counsel, and related personnel. This estimate assumes that each agency or subcomponent would train 20 employees for 2 hours, using the GS-13 loaded hourly rate. The calculation is: 278 agencies × 20 employees × 2 hours × $105.82 = $1,176,763. This category accounts for initial training of staff responsible for complaint intake, investigations, final agency decisions, appeals, compliance, settlement, reasonable accommodation, and No FEAR Act reporting.

Fourth, the Commission estimates $3,743,971 for information-technology, electronic filing, website, and internal case-management updates. This estimate assumes that each agency or subcomponent would require 80 hours of GS-13 time and 40 hours of GS-14 time. The calculation is: 278 agencies × [(80 hours × $105.82) + (40 hours × $125.04)] = $3,743,971. This category accounts for changes to agency electronic filing workflows, complaint-tracking systems, public-facing webpages, internal case-management systems, and record-submission procedures.

Fifth, the Commission estimates $4,733,562 for Cummings Act and No FEAR Act tracking, posting, and reporting setup. This estimate assumes that each agency or subcomponent would require 40 hours of GS-14 time, 80 hours of GS-13 time, and 40 hours of GS-12 time. The calculation is: 278 agencies × [(40 hours × $125.04) + (80 hours × $105.82) + (40 hours × $88.99)] = $4,733,562.

Sixth, the Commission estimates $177,931 for EEO Director reporting structure review and conforming organizational documents. This estimate assumes that approximately 56 agencies or subcomponents—20 percent of the 278 covered entities—would need additional review or conforming changes, and that each such entity would require 8 hours of GS-15 time and 16 hours of GS-14 time. The calculation is: 56 agencies × [(8 hours × $147.09) + (16 hours × $125.04)] = $177,931.

Adding these categories yields total estimated one-time agency transition costs of $14,316,878.

The Commission estimates that agencies and subcomponents would incur approximately $8,098,451 in annual recurring costs. These costs principally reflect preparation of final agency decisions in matters that otherwise would have entered the automatic administrative judge hearing process, submission of more complete appeal records, Cummings Act and No FEAR Act posting and reporting, complaint tracking, and annual refresher training.

The largest estimated recurring cost is $5,348,525 for incremental final agency decision preparation in cases that otherwise would have entered the automatic administrative judge process. This estimate uses 7,514 hearing requests per year and assumes 6 hours per matter, consisting of 4 hours of GS-14 attorney or EEO management time and 2 hours of GS-13 EEO specialist time. The calculation is: 7,514 hearing requests × [(4 hours × $125.04) + (2 hours ×

$105.82)] = $5,348,525. This estimate is conservative because agencies already expend resources in these cases under the current process, including preparing litigation positions, engaging in motion practice before administrative judges, participating in discovery, responding to administrative judge orders, engaging in settlement discussions, preparing for hearings, and issuing final orders after administrative judge decisions.

The Commission estimates $919,187 for appeal record submission and identification of classified, privileged, protected, or special-handling material. This estimate assumes 4,343 appeals per year and 2 hours of GS-13 time per appeal. The calculation is: 4,343 appeals × 2 hours × $105.82 = $919,187.

The Commission estimates $217,069 for agency requests for administrative judge proceedings. This estimate assumes that agencies will request referral in approximately 10 percent of appeals, or 434 requests per year, and that each request will require 4 hours of GS-14 time. The calculation is: 434 requests × 4 hours × $125.04 = $217,069.

The Commission estimates $668,623 for quarterly No FEAR Act and Cummings Act data postings. This estimate assumes that each of the 278 agencies and subcomponents will make four quarterly postings per year, and that each quarterly posting will require 4 hours of GS-13 time and 2 hours of GS-12 time. The calculation is: 278 agencies × 4 quarters × [(4 hours × $105.82) + (2 hours × $88.99)] = $668,623.

The Commission estimates $176,514 for annual comparative data postings. This estimate assumes that each agency or subcomponent will require 6 hours of GS-13 time annually. The calculation is: 278 agencies × 6 hours × $105.82 = $176,514.

The Commission estimates $110,535 for disciplinary-action reports to the Commission following findings of discrimination or retaliation. This estimate assumes 221 findings per year

and 4 hours of GS-14 time per report. The calculation is: 221 findings × 4 hours × $125.04 = $110,535.

The Commission estimates $82,902 for public notices of final findings. This estimate assumes 221 findings per year and 3 hours of GS-14 time per notice. The calculation is: 221 findings × 3 hours × $125.04 = $82,902.

The Commission estimates $272,004 for complaint tracking from filing through resolution. This estimate assumes 12,226 complaints per year and 0.25 hours of GS-12 time per complaint. The calculation is: 12,226 complaints × 0.25 hours × $88.99 = $272,004.

The Commission estimates $8,899 for personnel-record notations for covered adverse actions. This estimate assumes 50 covered adverse actions per year and 2 hours of GS-12 time per action. The calculation is: 50 actions × 2 hours × $88.99 = $8,899.

Finally, the Commission estimates $294,191 for annual refresher training. This estimate assumes that each of the 278 agencies and subcomponents will provide 1 hour of annual refresher training to 10 employees at the GS-13 loaded hourly rate. The calculation is: 278 agencies × 10 employees × 1 hour × $105.82 = $294,191.

Adding these categories yields total estimated annual recurring agency costs of $8,098,451.

The Commission estimates that it would incur approximately $624,874 in one-time transition costs.

The Commission estimates $442,512 for EEOC Public Portal, FedSEP, appellate intake, and data-system updates. This estimate assumes 3,000 hours of GS-13 time and 1,000 hours of GS-14 time. The calculation is: (3,000 hours × $105.82) + (1,000 hours × $125.04) = $442,512.

The Commission estimates $129,450 for revision of Management Directives, public guidance, templates, referral protocols, and training materials. This estimate assumes 800 hours of GS-14 time and 200 hours of GS-15 time. The calculation is: (800 hours × $125.04) + (200 hours × $147.09) = $129,450.

The Commission estimates $52,912 for initial training of Commission staff. This estimate assumes 250 employees receiving 2 hours of training at the GS-13 loaded hourly rate. The calculation is: 250 employees × 2 hours × $105.82 = $52,912.

Adding these categories yields total estimated one-time Commission costs of $624,874. These costs include modifications to FedSEP, the EEOC Public Portal, appeal intake procedures, administrative judge referral protocols, appeal templates, public guidance, internal training materials, and Commission data-posting systems. The proposed rule would require the Commission to process appeals under a revised model, consider requests for administrative judge proceedings, issue referral orders where appropriate, and publish data concerning administrative judge referrals and appeals.

The Commission estimates that it would incur approximately $542,464 in annual recurring costs.

The Commission estimates $271,524 for incremental review of appeals for possible administrative judge referral. This estimate assumes 4,343 appeals per year and 0.5 hours of GS-14 time per appeal. The calculation is: 4,343 appeals × 0.5 hours × $125.04 = $271,524.

The Commission estimates $217,069 for preparation of administrative judge referral orders. This estimate assumes 434 referrals per year and 4 hours of GS-14 time per referral. The calculation is: 434 referrals × 4 hours × $125.04 = $217,069.

The Commission estimates $53,870 for quarterly Commission posting of administrative judge referral and appeal data. This estimate assumes four quarterly postings per year, each requiring 80 hours of GS-13 time and 40 hours of GS-14 time. The calculation is: 4 quarters × [(80 hours × $105.82) + (40 hours × $125.04)] = $53,870.

Adding these categories yields total estimated annual recurring Commission costs of $542,464. This estimate counts only incremental costs associated with the proposed rule. It does not include costs the Commission already incurs to process Federal-sector appeals, manage hearing inventories, review administrative judge decisions, or maintain FedSEP and the Public Portal under the current process. It also does not subtract expected Commission savings from reducing the number of cases assigned to administrative judges under the current automatic hearing request model.

The Commission estimates that complainants and representatives would incur approximately $1,121,849 in one-time transition and familiarization costs and approximately $560,924 in annual recurring familiarization costs.

For one-time complainant familiarization, the Commission estimates $602,986. This estimate assumes 12,226 complainants and 1 hour per complainant at the $49.32 civilian total compensation rate. The calculation is: 12,226 complainants × 1 hour × $49.32 = $602,986.

For one-time representative familiarization, the Commission estimates $518,863. This estimate assumes that 40 percent of the 12,226 complainants will be represented or consult a representative, and that each representative will spend 1 hour becoming familiar with the revised process at the loaded attorney rate of approximately $106.10. The calculation is: 12,226 complainants × 40 percent × 1 hour × $106.10 = $518,863.

Adding those two categories yields total estimated one-time complainant and representative costs of $1,121,849.

For annual complainant familiarization, the Commission estimates $301,493. This estimate assumes 12,226 complainants and 0.5 hours per complainant at the $49.32 civilian total compensation rate. The calculation is: 12,226 complainants × 0.5 hours × $49.32 = $301,493.

For annual representative familiarization, the Commission estimates $259,431. This estimate assumes that 40 percent of complainants will be represented or consult a representative, and that each representative will spend 0.5 hours on familiarization at the loaded attorney rate of approximately $106.10. The calculation is: 12,226 complainants × 40 percent × 0.5 hours × $106.10 = $259,431.

Adding those two annual categories yields total estimated annual complainant and representative costs of $560,924.

The estimate assumes that each complainant will spend one hour during the first year becoming familiar with the revised complaint-filing deadline, complaint-content requirements, amendment rules, final-agency-decision process, appeal procedures, administrative judge referral standard, and civil-action provisions. The estimate further assumes that 40 percent of complainants will be represented or will consult a representative, and that each such representative will spend one hour during the first year becoming familiar with the revised process. For subsequent years, the Commission estimates one-half hour per complainant and one-half hour per represented matter.

These estimates are conservative in some respects because the proposed rule also would simplify the process for complainants by eliminating mandatory EEO Counselor contact, establishing direct filing, clarifying complaint contents, preserving equitable tolling, requiring

clearer final agency decisions and appeal notices, and allowing complainants to request administrative judge proceedings on appeal.

The Commission estimates total one-time costs of $16,063,600, consisting of $14,316,878 in one-time agency costs, $624,874 in one-time Commission costs, and $1,121,849 in one-time complainant and representative costs.

The Commission estimates total annual recurring costs of $9,201,839, consisting of $8,098,451 in recurring agency costs, $542,464 in recurring Commission costs, and $560,924 in recurring complainant and representative costs.

Annualized over 10 years, the one-time cost of $16,063,600 equals $1,883,144 per year using a 3-percent discount rate. Adding the estimated annual recurring cost of $9,201,839 yields a total annualized cost of approximately $11,084,983 per year at a 3-percent discount rate.

Using a 7-percent discount rate, the one-time cost of $16,063,600 annualizes to $2,287,095 per year. Adding the estimated annual recurring cost of $9,201,839 yields a total annualized cost of approximately $11,488,934 per year at a 7-percent discount rate.

C. Benefits

The Commission preliminarily expects the proposed rule to produce important administrative, fiscal, and programmatic benefits. The principal expected benefit is a more focused, efficient, and effective Federal-sector complaint process. By replacing the automatic administrative judge hearing-request model with Commission-directed administrative judge referrals on appeal, the proposed rule would allow the Commission to concentrate administrative judge resources on cases in which targeted proceedings are necessary or efficient to resolve material factual disputes, credibility issues, incomplete records, complex issues, or remedial questions.

This reallocation of resources is expected to reduce delay and unnecessary process. Under the current system, thousands of hearing requests are filed each year, but only a small share of cases proceed to hearing. The proposed rule would better align process with actual case outcomes by requiring agencies to complete investigations and issue final agency decisions, while allowing the Commission to refer cases to administrative judges when additional proceedings are warranted. This structure is expected to reduce unnecessary discovery, case-management proceedings, and hearing preparation in cases that can be resolved on the administrative record, through targeted supplementation, through remand, through settlement, or through civil action.

The proposed rule also is expected to improve the quality and usefulness of agency investigations and final agency decisions. Because the final agency decision would become the ordinary completion point for agency processing, agencies would have greater incentives to develop an impartial and appropriate record, address accepted claims, explain dismissals, and provide clear notice of appeal and civil action rights. This, in turn, should improve the record available for Commission appellate review and reduce the need for duplicative proceedings.

Moreover, the proposed rule provides a mechanism for agencies with compelling needs to voluntarily contribute to the hearing process by petitioning the Commission for permission to adopt an internal hearing process as part of its adjudication responsibilities. Where an agency already has a reliable pre-existing hearing structure, an early hearing by the agency is more efficient than a late one by the Commission. And allowing an agency to conduct early hearings would likely improve the quality and accuracy of its final decisions, benefitting both complainants and the agencies themselves.

Granting such a petition would be reserved for agencies with a compelling need for resolutions earlier than what the EEOC can usually provide, for instance agencies for whom drawn out proceedings would interfere with national security interests. The availability of an internal hearing process would be without prejudice to a complainant's right to appeal to the Commission, and approval of an agency's internal hearing process would not prevent the Commission from referring a matter on appeal to one of its own administrative judges.

The proposed elimination of administrative class complaints is expected to produce substantial process benefits. The administrative class mechanism has required extensive Commission and agency resources while often producing delay and procedural uncertainty. The proposed rule would preserve the ability of identified complainants to present their own claims, assert putative class allegations for exhaustion purposes, and seek joint processing of related individual complaints. It would avoid administrative class certification, class notice, class-wide discovery, class settlement review, and class-wide remedial proceedings in a forum that has not proved well suited to large-class adjudication.

The proposed rule also is expected to increase transparency and accountability by implementing the Cummings Act. Public notices of final findings of discrimination or retaliation, disciplinary-action reports to the Commission, complaint tracking, personnel-record notations for certain adverse actions, and expanded public data postings are expected to improve agency accountability and provide Congress, the Commission, Federal employees, applicants, agencies, and the public with more useful information about Federal-sector EEO compliance. The No FEAR Act's existing public data-posting framework was designed to assist Congress, agencies, and the public in assessing whether agencies are meeting their EEO responsibilities.

Other expected benefits include increased clarity, predictability, and consistency. The proposed revisions to mixed-case and negotiated-grievance provisions would clarify election rules. The proposed revisions to attorney-fee standards would provide more detailed guidance concerning prevailing-party status, reasonable hours, reasonable rates, fee documentation, fee matrices, limited success, unsuccessful claims, fee litigation, and covered versus noncovered claims. These clarifications should reduce disputes over procedure, remedies, attorney fees, and sanctions.

The proposed digital-filing provisions are expected to reduce mailing costs, improve timeliness, increase transparency, and facilitate electronic record management. The Commission has already expanded use of the EEOC Public Portal and FedSEP for Federal-sector hearings, appeals, document exchange, and case tracking. Codifying and expanding digital-filing rules should reduce uncertainty over filing dates, receipt dates, service, and electronic transmissions.

D. Alternatives Considered

The Commission considered taking no regulatory action. Under that alternative, the existing Federal-sector complaint process would remain in place, including mandatory pre-complaint counseling, the automatic option to request a hearing before an administrative judge, administrative class complaint procedures, existing remedial provisions, and the current No FEAR Act regulations. The Commission rejected this alternative because it would not implement the Cummings Act fully, would not address recurring delay and resource-allocation concerns in the counseling and administrative judge processes, and would not address the Commission's experience with administrative class complaints.

The Commission considered retaining the automatic entitlement to request an administrative judge hearing but imposing more stringent discovery limits, case-management

standards, summary-judgment procedures, or hearing-selection criteria. The Commission rejected that alternative because it would leave in place the basic incentive to route large numbers of cases to the administrative judge process even though very few cases benefit from a hearing. The Commission preliminarily believes that a referral-based model better aligns administrative judge proceedings with the cases in which those proceedings are necessary or efficient.

The Commission considered eliminating administrative judge proceedings entirely and resolving all appeals on the written record, subject to remand to the agency or targeted supplementation. The Commission rejected that alternative because some appeals present material factual disputes, credibility issues, incomplete records, complex or recurring issues, or remedial questions that may be resolved more fairly and efficiently through limited proceedings before an administrative judge. The proposed rule therefore preserves administrative judge proceedings as a targeted appellate tool.

The Commission considered retaining administrative class complaints while revising certification standards, discovery rules, settlement-approval procedures, or remedial procedures. The Commission rejected that alternative because the principal difficulties with administrative class complaints arise from the very nature of large-class adjudication. The Commission preliminarily believes that identified individual complaints, putative class assertions for exhaustion purposes, and joint processing of related individual claims provide a more administrable framework that preserves individual rights while avoiding the burdens and delays of administrative class adjudication.

The Commission considered creating a specialized administrative class unit or separate class adjudication process. The Commission rejected that alternative because it would require

substantial new staffing, specialized expertise, data systems, case-management capacity, and funding. The Commission preliminarily believes that its limited resources should be directed toward timely resolution of individual complaints, targeted administrative judge referrals, and effective oversight of agency EEO programs.

The Commission considered retaining mandatory pre-complaint counseling while making other changes to the complaint process. The proposed rule instead would remove § 1614.105 and establish a 60-day period for filing written complaints. The Commission preliminarily believes that direct filing will reduce delay, simplify procedural requirements, and avoid disputes over counseling deadlines while preserving agency obligations to provide ADR and make reasonable efforts to resolve complaints informally.

The Commission considered imposing mandatory ADR. The Commission rejected that alternative because ADR is most effective when participation is appropriate for the circumstances of the case and consistent with voluntary resolution principles. The proposed rule would continue to require agencies to establish or make available ADR programs and to make reasonable efforts to settle complaints as early as possible and throughout processing.

The Commission requests comment on these and other alternatives, including whether particular provisions should be phased in, whether additional transition rules are needed, and whether any alternative would achieve the Commission's objectives at lower cost or with greater benefit.

E. Reliance Interests

The Commission recognizes that Federal agencies, complainants, agency representatives, complainants' representatives, administrative judges, and other participants have structured their practices around the existing part 1614 process. Existing reliance interests include agency

procedures for pre-complaint counseling, formal complaints, investigations, hearing requests, administrative judge proceedings, agency final orders, class complaints, settlement agreements, fee petitions, appeals, compliance proceedings, and No FEAR Act postings.

The Commission has considered these reliance interests in developing the proposed rule. The proposed rule preserves core features of the Federal-sector EEO administrative process, including agency investigation of accepted complaints, final agency decisions, Commission appellate review, representation rights, settlement enforcement, civil action rights, remedies for proven discrimination, and attorney-fee awards where authorized by statute. The proposal also preserves administrative judge proceedings when the Commission determines that such proceedings are necessary or efficient to resolve an appeal.

The proposed rule addresses reliance interests associated with class complaints by permitting complainants to assert putative class claims for exhaustion purposes and by preserving joint processing of related individual complaints. The Commission recognizes that some complainants and representatives may have relied on existing administrative class procedures. The Commission preliminarily concludes, however, that reliance on a particular administrative mechanism does not outweigh the Commission's interest in adopting a more administrable process that preserves individual claims, allows putative class allegations to be presented for exhaustion purposes, and leaves questions of class certification to the courts in subsequent civil actions.

The Commission also recognizes reliance interests associated with existing administrative judge hearing procedures. The proposed rule mitigates those interests by preserving Commission authority to refer matters to administrative judges when needed,

preserving civil action rights, requiring agencies to issue final agency decisions, and permitting complainants and agencies to request administrative judge proceedings on appeal.

The Commission does not intend the proposed rule to reopen final Commission decisions, final agency decisions, other final agency actions, settlement agreements, or court judgments that became final before the effective date of a final rule. The Commission requests comment on whether the final rule should include additional transition provisions for complaints, hearing requests, appeals, class complaints, compliance matters, or fee petitions pending on the effective date.

F. Severability

The Commission intends that the provisions of this rule be severable. The proposed rule contains several distinct reforms, including revisions to agency EEO program requirements, complaint filing, investigations, final agency decisions, administrative judge proceedings, class complaints, mixed cases, appeals, remedies, settlement compliance, digital filing, consolidation, and No FEAR Act/Cummings Act reporting. Each of these provisions serves independent regulatory purposes and can operate independently of the others.

If any provision of the final rule, or the application of any provision to any person, agency, complaint, claim, issue, or circumstance, is held invalid or stayed, the Commission intends that the remaining provisions and applications remain in effect to the fullest extent permitted by law. For example, the provisions implementing the Cummings Act can operate independently of the provisions governing administrative judge referrals; and the provisions governing individual complaint filing can operate independently of the provisions governing attorney fees.

The Commission would have adopted the remaining provisions of this rule even if any particular provision were held invalid. The Commission therefore intends that any reviewing court give maximum effect to the rule's severability and preserve all valid provisions and applications.

V. Regulatory Compliance

A. Regulatory Review

Executive Orders 12866 and 13563 direct agencies to assess the benefits and costs of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits to the extent permitted by law. Executive Order 13563 reaffirms Executive Order 12866 and emphasizes quantifying costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 14192 directs agencies to reduce regulatory costs and requires offsetting certain new regulatory costs through elimination of existing regulatory costs, consistent with law. Executive Order 14215 requires proposed and final significant regulatory actions, including those of independent agencies, to be submitted to the Office of Information and Regulatory Affairs (OIRA) before publication in the Federal Register.

This proposed rule has been reviewed in accordance with Executive Orders 12866 and 13563. The proposed rule would revise procedures governing Federal-sector EEO complaint processing and agency EEO program obligations. It would apply principally to Federal agencies, Federal employees, and applicants for Federal employment. It would not directly regulate private employers, consumers, markets, or State, local, or Tribal governments.

The Commission preliminarily estimates that this proposed rule is not likely to have an annual effect on the economy of $100 million or more or otherwise meet the threshold for a significant economic effect under Executive Order 12866 section 3(f)(1). The Commission

recognizes the proposed rule raises important legal and policy issues concerning the structure of the Federal-sector EEO administrative process. The proposed rule has been submitted to OIRA for review under Executive Order 12866. OIRA has determined the rule is otherwise significant under section 3(f).

For purposes of Executive Order 14192, the Commission preliminarily expects that the proposed rule would not be an Executive Order 14192 regulatory action. The proposed rule would remove or reduce several procedural burdens, including the automatic administrative judge hearing-request process, administrative class complaint procedures, and certain monetary-sanction and fee-related consequences. The proposed rule also would impose or clarify certain agency obligations, including final agency decision requirements and Cummings Act reporting, tracking, posting, and personnel-record-notation requirements. Many of those obligations implement statutory requirements imposed by the Cummings Act.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 through 612, requires agencies to consider the economic impact of a rule on small entities and, where required, to prepare an initial regulatory flexibility analysis unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

The proposed rule would govern Federal-sector EEO complaint processing and agency EEO program obligations. It would apply to Federal agencies and to Federal employees and applicants for Federal employment. It would not directly regulate small businesses, small organizations, or small governmental jurisdictions. The proposed rule therefore would not impose compliance obligations on a substantial number of small entities.

Accordingly, the Commission certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities. An initial regulatory flexibility analysis is not required. The Commission invites comment on this certification and on any potential indirect effects on small entities.

C. Federalism

The Commission has reviewed this proposed rule under Executive Order 13132, "Federalism." The proposed rule would govern Federal-sector EEO complaint processing and Federal agency EEO program obligations. It would not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government.

The proposed rule would not impose requirements on State or local governments and would not preempt State law. Accordingly, the Commission has determined that the proposed rule does not have federalism implications within the meaning of Executive Order 13132.

D. Civil Justice Reform

The Commission has reviewed this proposed rule under Executive Order 12988, "Civil Justice Reform." The proposed rule is intended to provide a clear, administrable framework for Federal-sector EEO complaint processing; reduce ambiguity; clarify filing, investigation, final decision, appeal, administrative judge, class-claim, mixed-case, remedies, and fee standards; and reduce unnecessary procedural disputes.

The proposed rule specifies the administrative process that applies to individual Federal-sector discrimination and retaliation complaints, preserves civil action rights as provided by statute, and clarifies the effect of filing a civil action on administrative processing. The proposed

rule also clarifies that it does not determine whether a court will certify a class, permit a class claim to proceed, apply tolling, or find administrative exhaustion satisfied in a civil action.

The Commission has endeavored to draft the proposed rule to minimize litigation, eliminate ambiguity, and provide clear legal standards. The proposed rule would not have retroactive effect except to the extent expressly provided in a final rule or required by law.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531 through 1538, requires agencies to assess the effects of Federal mandates on State, local, and Tribal governments and the private sector under specified circumstances.

This proposed rule would govern Federal-sector EEO complaint processing and Federal agency EEO program responsibilities. It would not impose enforceable duties on State, local, or Tribal governments or on the private sector. The proposed rule would not result in expenditures by State, local, or Tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, adjusted for inflation. The proposed rule also would not significantly or uniquely affect small governments.

Accordingly, the Commission has determined that no written statement is required under the Unfunded Mandates Reform Act.

F. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 through 808, requires agencies to submit a rule report to each House of Congress and to the Comptroller General before a final rule may take effect. The Commission will submit the required report and other information to Congress and the Comptroller General before any final rule takes effect.

The Commission will also submit the final rule to OIRA for a determination whether the rule is a "major rule" under 5 U.S.C. 804(2). The Commission preliminarily expects that the rule would not be a major rule because it is not expected to result in an annual effect on the economy of $100 million or more, a major increase in costs or prices, or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises. The Commission requests comment on this preliminary assessment.

G. Paperwork Reduction Act

The Paperwork Reduction Act of 1995, 44 U.S.C. 3501 through 3521, requires agencies to consider the burden of information collections and obtain approval from the Office of Management and Budget where required. A person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The proposed rule contains provisions that relate to complaint filing, agency acknowledgment of complaints, final agency decisions, appeals, requests for administrative judge proceedings, agency submission of complaint files, No FEAR Act data postings, Cummings Act notices, disciplinary-action reports to the Commission, complaint tracking, personnel-record notations, and Commission posting of appeal and administrative judge referral data. Some of these provisions modify existing Federal-sector EEO complaint-processing and reporting practices, including agency reporting through FedSEP and annual complaint-processing data reported through EEOC Form 462. EEOC's FedSEP system is currently used by agencies to submit MD-715 reports, Form 462 complaint-processing data, and complaint files for hearings and appellate cases.

To the extent the proposed rule modifies an existing approved collection of information or creates a new collection of information subject to the Paperwork Reduction Act, the Commission will submit the required information collection request, revision request, or other appropriate request to OMB. The Commission preliminarily expects that much of the information required by the proposed rule is already collected, maintained, or reported by agencies under existing part 1614, the No FEAR Act, the Cummings Act, FedSEP reporting, EEOC Form 462 reporting, agency complaint files, and agency public data-posting practices.

List of Subjects in 29 CFR Part 1614

Administrative practice and procedures; Equal employment opportunity, Government employees, Individuals with disabilities, Race discrimination, Religious discrimination, Sex discrimination.

Equal Employment Opportunity Commission

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Andrea Lucas,

Chair

For the reasons stated in the preamble, the Equal Employment Opportunity Commission proposes to amend 29 CFR part 1614 as follows:

PART 1614—FEDERAL SECTOR EQUAL EMPLOYMENT OPPORTUNITY

1. The authority citation for part 1614 is revised to read as follows:

Authority: 5 U.S.C. 2301 note, 29 U.S.C. 206(d), 633a, 791, and 794a; 42 U.S.C. 2000e-16, 2000ff-6(e), and 2000gg-2(e); E.O. 10577, 3 CFR, 1954-1958 Comp., p. 218; E.O. 11222, 3 CFR, 1964-1965 Comp., p. 306; E.O. 11478, 3 CFR, 1969 Comp., p. 133; E.O. 12106, 3 CFR, 1978 Comp., p. 263; Reorg. Plan No. 1 of 1978, 3 CFR, 1978 Comp., p. 321.

2. Throughout part 1614, remove the words "Office of Federal Operations" wherever they appear and add, in their place, the words "Office of Federal Sector".

Subpart A—Agency Program To Promote Equal Employment Opportunity

3. Amend § 1614.102 by revising paragraphs (a)(8), (b)(2), (b)(4), (b)(6), (b)(7), and (c)(4), adding paragraphs (a)(9) and (b)(8), and renumbering current paragraphs (a)(9) through (a)(13) to read as follows:

§ 1614.102 Agency program.

(a) * * *

(8) Provide reasonable accommodation to qualified applicants and employees with disabilities as required by Section 501 of the Rehabilitation Act, unless the accommodation would impose an undue hardship on the operation of the agency's program;

(9) Provide reasonable accommodation to qualified applicants and employees for pregnancy, childbirth, or related medical conditions as required by the Pregnant Workers Fairness Act, unless the accommodation would impose an undue hardship on the operation of the agency's program;

(10) Provide recognition to employees, supervisors, managers and units demonstrating superior accomplishment in equal employment opportunity;

(11) Establish a system for periodically evaluating the effectiveness of the agency's overall equal employment opportunity effort;

(12) Provide the maximum feasible opportunity to employees to enhance their skills through on-the-job training, work-study programs and other training measures so that they may perform at their highest potential and advance in accordance with their abilities;

(13) Inform its employees and recognized labor organizations of the affirmative equal employment opportunity policy and program and enlist their cooperation; and

(14) Participate at the community level with other employers, with schools and universities and with other public and private groups in cooperative action to improve employment opportunities and community conditions that affect employability.

* * * * *

(b) * * *

(2) Establish or make available an alternative dispute resolution program to be available before and after a complaint is filed.

* * * * *

(4) Designate a Director of Equal Employment Opportunity (EEO Director) and such other personnel as may be necessary to carry out the functions described in this part in all organizational units of the agency and at all agency installations. The EEO Director shall report directly to, and be under the immediate supervision of, the agency head. A reporting relationship to an intermediary official, including a deputy, chief operating officer, chief human capital officer, general counsel, or equivalent official, does not satisfy this requirement;

* * * * *

(6) Ensure that full cooperation is provided by all agency employees to agency EEO personnel in the processing and resolution of complaints, investigations, final agency decisions, appeals, compliance proceedings, and other proceedings under this part, and that full cooperation is provided to the Commission in the course of appeals, compliance proceedings, and other matters under this part, including providing access to personnel records and other agency records when required in connection with an investigation, appeal, compliance proceeding, or other proceeding under this part; and

(7) Publicize to all employees, and maintain in a current and readily accessible format, the name, title, business telephone number, business email address, and business mailing address of the agency EEO Director; instructions for requesting pre-complaint technical assistance; instructions for filing a complaint under this part, including any electronic portal, email address, mailing address, forms, or other approved filing method; and a notice of applicable filing deadlines and procedural requirements. Agencies must make this information available through appropriate employee communications channels, including electronic means, and must ensure that the information is accessible to employees in headquarters, field, remote, and other duty locations.

(8) Maintain a process for employees and applicants to request and receive appropriate and effective pre-complaint technical assistance.

(c) * * *

(4) Providing for the receipt and processing of individual complaints of discrimination, including complaints that assert putative class claims for exhaustion purposes under § 1614.204(b) and complaints jointly processed under §§ 1614.204 and 1614.606; and

* * * * *

4. Amend § 1614.103 by revising paragraphs (a), (b)(3), (b)(6), and (d)(2) to read as follows:

§ 1614.103 Complaints of discrimination covered by this part.

(a) Individual complaints of employment discrimination and retaliation prohibited by title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e et seq. (discrimination on the basis of race, color, religion, sex, or national origin); the Age Discrimination in Employment Act, 29 U.S.C. 621 et seq. (discrimination on the basis of age when the aggrieved individual is at least 40 years of age); the Rehabilitation Act, 29 U.S.C. 791 et seq. (discrimination on the basis of disability); the Equal Pay Act, 29 U.S.C. 206(d) (sex-based wage discrimination); the Genetic Information Nondiscrimination Act, 42 U.S.C. 2000ff et seq. (discrimination on the basis of genetic information); or the Pregnant Workers Fairness Act, 42 U.S.C. 2000gg et seq. (discrimination on the basis of pregnancy, childbirth, or related medical conditions), shall be processed in accordance with this part. Complaints alleging retaliation prohibited by these statutes are considered complaints of discrimination for purposes of this part. Complaints may be jointly processed as provided in §§ 1614.204 and 1614.606. Putative class claims may be asserted only as provided in § 1614.204(b) and shall not be processed as class complaints under this part.

(b) * * *

(3) The United States Postal Service, Postal Regulatory Commission, and Tennessee Valley Authority;

* * * * *

(6) The Government Publishing Office, except for complaints under the Rehabilitation Act; and

* * * * *

(d) * * *

(2) Employees of the Government Accountability Office;

* * * * *

5. Amend § 1614.104 by revising paragraph (a) and adding paragraph (c) to read as follows:

§ 1614.104 Agency processing.

(a) Each agency subject to this part shall adopt procedures for processing individual complaints of discrimination, including complaints that assert putative class claims for exhaustion purposes under § 1614.204(b) and complaints jointly processed under §§ 1614.204 and 1614.606, that are consistent with §§ 1614.106 through 1614.110 and § 1614.204 and all other applicable provisions of this part, along with the instructions for complaint processing contained in the Commission's Management Directives.

* * * * *

(c) An agency may petition the Commission for permission to adopt an internal hearing process as part of its individual complaint processing procedures. For example, an agency could petition to conduct hearings on its own initiative before issuing a final agency decision or it could petition to adopt procedures for complainants to request the agency conduct a hearing before issuing a final agency decision.

(1) The agency's petition shall be directed to and decided by the Director, Office of Federal Sector. In addition to considering any requirements set by the Commission's

Management Directives, the Director may approve an internal hearing process upon satisfactory demonstration from the agency that the process will be impartial and will improve the quality and accuracy of final agency decisions.

(2) The Commission intends that approved internal hearing processes will be reserved for agencies with a reliable pre-existing hearing infrastructure and a compelling need for resolution through a hearing at an earlier stage than can be provided through the Commission's appellate process. A compelling need can be demonstrated by national security interests or obligation of comparable significance.

(3) The Director, Office of Federal Sector, will annually review all approved agency internal hearing processes. The Director may revoke approval for a deficient agency internal hearing process upon providing the agency with notice and a reasonable opportunity to correct and demonstrate compliance.

(4) Approval of an internal hearing process is without prejudice to a complainant's right to appeal a final agency decision to the Commission under § 1614.401. On appeal from a final decision by an agency with an approved internal hearing process, the Commission may remand a matter to the agency with instructions for further proceedings within the agency's internal hearing process. Alternatively, the Commission may refer a matter to an administrative judge under the criteria at § 1614.406(d).

6. Remove and reserve § 1614.105.

§ 1614.105 [Reserved]

7. Amend § 1614.106 to read as follows:

§ 1614.106 Individual complaints.

(a) ***Agency with which to file.*** A complaint must be filed with the agency that allegedly discriminated against the complainant.

(b) ***Time for filing.*** A complaint, amendment, or supplement to a complaint must be filed within 60 days of the date of the matter alleged to be discriminatory; in the case of a personnel action, within 60 days of the effective date of the action; or, in the case of a hostile work environment or other continuing violation, within 60 days of the most recent act alleged to have contributed to the violation.

(c) ***Contents of complaint.*** A complaint must contain a signed statement from the person claiming to be aggrieved or that person's attorney. The signed statement must identify the complainant and the agency and must contain sufficient factual allegations to identify the action, omission, policy, practice, or matter being challenged; the protected bases alleged; the approximate date or time period of the action, omission, policy, practice, or matter being challenged; and the relief sought. The complaint need not use technical legal terminology, but it must contain sufficient factual allegations, accepted as true, to state a claim for relief that is plausible on its face based on discrimination addressed under this part. The complaint must also contain a telephone number, email address, mailing address, or other contact information where the complainant and the complainant's attorney or representative can be contacted.

(d) ***Amending or supplementing the complaint.***

(1) A complainant may amend a complaint within 21 days after the complaint was filed to include issues or claims existing at the time the complaint was filed that are like or related to those raised in the original complaint. An amendment that is like or related to the original

complaint relates back to the date the original complaint was filed for purposes of the time limits in paragraph (b) of this section. The agency shall decline to accept an amendment if it is untimely, is not like or related to the issues or claims in the original complaint, or is otherwise subject to dismissal under § 1614.107.

(3) The agency shall acknowledge the amendment request in writing, identify the date on which the amendment was filed, explain whether the amendment was accepted or declined, and include the amendment request and determination in the complaint record. An agency's determination to decline an amendment is not immediately reviewable by the Commission but may be considered by the Commission on an appeal from the final agency decision on the original complaint.

(4) A complainant may supplement a complaint at any time before the agency issues a final agency decision to include issues or claims arising after the complaint was filed that are like or related to those raised in the original complaint. A supplementation does not relate back to the date the original complaint was filed for purposes of the time limits in paragraph (b) of this section. The agency may decline to accept an otherwise valid supplementation if the proceedings are advanced and accepting the supplementation would unduly delay the final agency decision on the original complaint. The agency shall decline to accept a supplementation if it is untimely, is not like or related to the issues or claims in the original complaint, or is otherwise subject to dismissal under § 1614.107.

(5) The agency shall acknowledge the supplementation request in writing, identify the date on which the supplementation was filed, explain whether the supplementation was accepted or declined, and include the supplementation request and determination in the complaint record. An agency's determination to decline a supplementation request is not immediately reviewable

by the Commission but may be considered by the Commission on an appeal from the final agency decision on the original complaint.

(6) If an agency declines to accept an amendment or supplementation, and the claims raised therein are timely and not otherwise subject to dismissal under § 1614.107, the agency shall accept and process the claims as a separate complaint.

(e) ***Acknowledgment of complaint and notice of rights.*** The agency shall acknowledge receipt of a complaint in writing and inform the complainant of the date on which the complaint was filed. If the agency accepts the complaint, the acknowledgment shall advise the complainant that:

(1) The agency will conduct an impartial and appropriate investigation of the accepted complaint, including any accepted amendment or supplementation, and issue a final agency decision in accordance with §§ 1614.108 and 1614.110;

(2) When a complaint has been supplemented, the agency shall complete the investigation within the earlier of 135 days after the last accepted supplementation to the complaint or 270 days after the filing of the original complaint, unless the time period is extended in accordance with § 1614.108;

(3) The complainant has the right to appeal a final agency decision to the Commission in accordance with subpart D of this part;

(4) In an appeal, the Commission may decide the matter on the administrative record, order supplementation of the record, remand the matter to the agency, or refer the matter, or specified claims or issues, to an administrative judge under § 1614.406 when the Commission determines that administrative judge proceedings are necessary or efficient; and

(6) The complainant has the right to file a civil action in accordance with §§ 1614.407 and 1614.408, as applicable.

8. Amend § 1614.107 by revising paragraph (a) introductory text, paragraphs (a)(1), (a)(2), and (a)(5), and paragraph (b) to read as follows:

§ 1614.107 Dismissals of complaints.

(a) ***Dismissal of entire complaint.*** The agency shall issue a final agency decision dismissing an entire complaint:

(1) That fails to state a claim under § 1614.103 or fails to satisfy the pleading requirements of § 1614.106(c), or states the same claim that is pending before or has been decided by the agency or the Commission;

(2) That fails to comply with the applicable time limits contained in § 1614.106;

* * * * *

(5) That is moot or alleges that a proposal to take a personnel action, or another preliminary step to taking a personnel action, is discriminatory, unless the complaint states a claim for retaliation based on the proposal or preliminary step that is plausible on its face;

* * * * *

(b) ***Partial dismissal of claims.*** Where the agency concludes that some but not all of the claims in a complaint should be dismissed for the reasons contained in paragraphs (a)(1) through (9) of this section, the agency shall notify the complainant in writing of its determination, identify the accepted and dismissed claims, explain the rationale for the determination, and include a copy of the notice in the complaint record. The agency shall continue processing any remaining accepted claims in accordance with this part. A determination under this paragraph is

not immediately reviewable by the Commission but may be considered by the Commission on an appeal from the final agency decision on the remainder of the complaint.

9. Revise § 1614.108 to read as follows:

§ 1614.108 Investigation of complaints.

(a) ***Agency is responsible for investigation.*** The agency against which the complaint has been filed shall be responsible for investigating the complaint.

(b) ***Development of factual record.*** In accordance with any additional instructions contained in the Commission's Management Directives, the agency shall ensure development of an impartial and appropriate factual record upon which to issue a final agency decision under § 1614.110 and upon which the Commission may conduct review under subpart D of this part. An appropriate factual record is one that allows a reasonable fact finder to draw conclusions as to whether discrimination occurred. Agencies may use an exchange of letters or memoranda, interrogatories, investigations, affidavits, declarations, requests for information, fact-finding conferences, or any other fact-finding methods that efficiently and thoroughly address the matters at issue. Agencies are encouraged to incorporate alternative dispute resolution techniques into their investigative efforts to promote early resolution of complaints.

(c) ***Investigative procedures*.** The procedures in paragraphs (c)(1) through (3) of this section apply to the investigation of complaints:

(1) The complainant, the agency, and any employee of a Federal agency shall produce such documentary and testimonial evidence as the investigator deems necessary.

(2) Investigators are authorized to administer oaths. Statements of witnesses shall be made under oath or affirmation or, alternatively, by written statement under penalty of perjury.

(3) When a party or current Federal employee fails without good cause to respond fully and timely to an investigator's request for evidence, the investigator may document the failure in the investigative record. The agency in a final decision or the Commission on appeal may consider the failure in evaluating the complaint and may draw appropriate nonmonetary evidentiary inferences, exclude evidence not timely produced, or take other nonmonetary procedural or evidentiary measures consistent with this part and applicable law. Neither an agency nor the Commission can compel a response from a non-party, former employee who has left Federal service; such failure to respond should not raise an inference of discrimination.

(d) ***Classified information.*** Any investigation involving classified information or other information requiring special handling shall be conducted by investigators with appropriate credentials, authorizations, or security clearances. The Commission will, upon request, supply the agency with the name of an investigator with appropriate credentials, authorizations, or security clearances, as applicable.

(e) ***Time for investigation.***

(1) Except as provided in this paragraph, the agency shall complete its investigation within 135 days of the date of filing of an individual complaint or within the time period contained in an order from the Office of Federal Sector on an appeal from a dismissal pursuant to § 1614.107. For complaints filed after the effective date of this subpart, but before January 1, 2028, the agency shall complete its investigation within 180 days of the date of filing of an individual complaint. By written agreement within those time periods, the complainant and the respondent agency may voluntarily extend the time period for not more than an additional 90 days. The agency may unilaterally extend the time period, or any period of extension, for not

more than 30 days where it must sanitize a complaint file that may contain classified information or other protected information, provided the agency notifies the complainant of the extension.

(2) When a complaint has been supplemented under § 1614.106(d)(4), the agency shall complete its investigation within the earlier of 135 days after the last accepted supplementation to the complaint or 270 days after the filing of the original complaint, unless the time period is extended in accordance with this paragraph.

(3) The investigation is deemed complete when the investigative file is transmitted to the complainant and counsel for the respondent agency.

(f) ***Supplementing the investigative file before final agency decision.*** The parties may submit additional evidence to the investigator within 15 days of receipt of the investigative file. The investigator shall append all timely submitted evidence to the investigative file. The record is closed after the time for submitting additional evidence elapses.

(g) ***Time for final agency decision.*** The agency shall issue a final agency decision within 30 days of the record closing.

(h) ***Delays in completing investigation or issuing final agency decision.*** If the agency is unable to complete the investigation or issue a final agency decision within the applicable time limits, the agency shall, within those same time limits, issue a written notice to the complainant explaining why it cannot meet the deadline, estimating the date by which the agency expects to complete the investigation or issue a final agency decision, and informing the complainant of the right to file a civil action in accordance with § 1614.407(a)(2). The agency shall simultaneously inform the Office of Federal Sector of the delay. Commission Management Directive may proscribe the manner and means of the agency's notice to the Office of Federal Sector. The

agency remains responsible for completing the investigation and issuing a final agency decision unless the complainant files a civil action or the Commission otherwise directs.

10. Rename and revise § 1614.109 to read as follows:

§ 1614.109 Offers of resolution.

(a) ***Timing.*** After a written complaint has been filed, the agency may serve a written offer of resolution on the complainant at any stage of administrative processing.

(b) ***Contents of a valid offer.*** To be effective under this paragraph, an offer must:

(1) Be in writing;

(2) Identify the complaint, claims, and parties to be resolved;

(3) State the monetary relief offered, including back pay, compensatory damages, interest, and other monetary relief, as applicable;

(4) State the nonmonetary relief offered with sufficient specificity to be enforceable;

(5) Provide for payment of reasonable attorney fees and costs incurred through the end of the acceptance period, either in a stated amount or in an amount to be determined under § 1614.501(e) if the parties cannot agree;

(6) State that the offer will remain open for 30 days unless a longer period is specified; and

(7) Clearly explain the consequences of rejection under this paragraph.

(c) ***Acceptance.*** If the complainant accepts the offer in writing within the acceptance period, the complaint is resolved to the extent stated in the offer. An accepted offer is enforceable under § 1614.504. Acceptance of an offer does not constitute an admission of liability unless the offer expressly so provides.

(d) ***Consequence of rejection*.** If the complainant does not accept a valid offer and the relief finally obtained by the complainant is not more favorable than the offer, the complainant may not recover attorney fees or costs incurred after the expiration of the acceptance period, except as provided in paragraph (j)(7) of this section.

(e) ***Comparison of offer and relief obtained.*** In determining whether the relief finally obtained is more favorable than the offer:

(1) The comparison must be made on an objective basis, considering the total monetary and nonmonetary relief offered and the total monetary and nonmonetary relief finally obtained;

(2) Attorney fees and costs incurred after the expiration of the acceptance period must not be considered part of the relief finally obtained;

(3) Attorney fees and costs incurred through the expiration of the acceptance period must be considered only to the extent the offer included such fees and costs in a stated amount or offered to pay reasonable fees and costs as determined under § 1614.501(e);

(4) Nonmonetary relief must be compared according to its practical effect, enforceability, duration, and relationship to the claims at issue; and

(5) The agency bears the burden of establishing that the offer was valid and that the relief finally obtained was not more favorable than the offer.

(f) ***Multiple offers*.** The agency may make more than one offer. If more than one valid offer is rejected, the limitation on fees and costs applies from the expiration of the acceptance period for the earliest offer that was not less favorable than the relief finally obtained.

(g) ***Limitations*.** The limitation in paragraph (j)(4) of this section does not apply if the offer was invalid, unenforceable, or materially incomplete, or to the extent application of the

limitation is prohibited by the governing fee statute. A claim, event, or request for relief arising after the offer is considered only if it is within the scope of the offer.

(h) ***Evidentiary effect.*** An unaccepted offer is not admissible to prove liability or the amount of relief, but may be considered in determining attorney fees and costs under this paragraph.

11. Rename and revise § 1614.110 to read as follows:

§ 1614.110 Final agency decisions.

(a) ***Final agency decision dismissing entire complaint.*** The agency shall issue an immediate final agency decision where the entire complaint is subject to dismissal under § 1614.107. The final agency decision shall include:

(1) A description of the claims;

(2) The rationale for dismissal;

(3) Notice of the complainant's right to appeal to the Commission, including that the appeal may be filed using the EEOC Public Portal, available at https://publicportal.eeoc.gov;

(4) Notice that, in an appeal, the Commission may decide the matter on the record, order supplementation, remand the matter, or refer the matter to an administrative judge under § 1614.406;

(5) Notice of the right to file a civil action in federal district court, the name of the proper defendant, and the applicable time limits; and

(6) A copy of EEOC Form 573 or other Commission-prescribed appeal notice.

(b) ***Final agency decision on the merits.*** The agency shall issue a final agency decision on the merits of an accepted complaint, or partially accepted complaint, after completing the

investigation required by § 1614.108. The agency shall issue the final agency decision within the time limits prescribed by § 1614.108(g), unless the complaint is resolved, withdrawn, dismissed, or otherwise terminated. The final agency decision shall consist of findings, decided on a preponderance of the evidence standard, by the agency on the merits of each accepted claim in the complaint. When discrimination is found, the final agency decision shall provide appropriate remedies and relief in accordance with subpart E of this part. The final agency decision shall include:

(1) A description of the claims, including any claims partially dismissed under § 1614.107;

(2) The rationale for any finding of discrimination or no discrimination;

(3) Any remedies and relief ordered;

(4) Notice of the complainant's right to appeal to the Commission, including that the appeal may be filed using the EEOC Public Portal, available at https://publicportal.eeoc.gov;

(5) Notice that, in an appeal, the Commission may decide the matter on the record, order supplementation, remand the matter, or refer the matter to an administrative judge under § 1614.406;

(6) Notice of the right to file a civil action in federal district court, the name of the proper defendant, and the applicable time limits; and

(7) A copy of EEOC Form 573 or other Commission-prescribed appeal notice.

(c) ***Agency request for administrative judge proceedings.*** If the agency believes that administrative judge proceedings would be necessary or efficient if the complainant appeals, the agency may include in the final agency decision, or in an attachment to the final agency decision, a request for referral under § 1614.406. The request must identify the issues for referral and

explain why referral would be necessary or efficient. The request does not affect the finality of the final agency decision, the complainant's appeal period, or the complainant's civil action rights.

(e) ***Final agency action.*** A final agency decision issued under this section is final agency action for purposes of subparts D and E of this part, subject to review by the Commission if timely appealed, and subject to termination of administrative processing if a civil action is filed.

12. Amend § 1614.203 by revising paragraph (d)(3)(iii)(D) to read as follows:

§ 1614.203 Rehabilitation Act.

* * * * *

(d) * * *

(3) * * *

(iii) * * *

(D) Explains that the individual may file a complaint under § 1614.106 and identifies the applicable filing deadline and procedural requirements under this part.

* * * * *

Subpart B—Provisions Applicable to Particular Complaints

13. Revise § 1614.204 to read as follows:

§ 1614.204 No class complaints; assertion of putative class claims for administrative exhaustion; joint processing of related individual complaints.

(a) ***No administrative adjudication of class complaints.***

(1) Complaints under this part may be filed, accepted, investigated, heard, decided, resolved, appealed, and enforced only as individual complaints of identified aggrieved persons,

except that related complaints or claims may be processed together as provided in this section or § 1614.606.

(2) Subject only to paragraph (b) of this section, which permits assertion of a putative class claim for administrative exhaustion purposes only, no complaint may be filed, maintained, certified, processed, adjudicated, resolved, appealed, or enforced as a class complaint under this part. No employee, former employee, applicant for employment, representative, or other person may act as a class agent or class representative under this part.

(3) An agency, an administrative judge, or the Commission shall not, under this part, certify a class, appoint or recognize a class agent, issue class notice, approve or disapprove a class settlement, adjudicate a class complaint, issue a decision or final order binding persons who are not identified complainants, or award individual relief to persons who are not identified complainants. This does not limit any individual's or agency's right or ability to pursue or settle class-wide claims outside the administrative process established under this part.

(4) An allegation that an agency personnel policy, practice, action, or matter affected more than one employee, former employee, or applicant for employment may be raised by one or more identified complainants and, where appropriate, may be processed together with related individual complaints or claims under this section or § 1614.606.

(b) ***Assertion of putative class claims for administrative exhaustion purposes.***

(1) A complainant may assert, in a written complaint, amendment, or supplementation under § 1614.106, that an agency policy, practice, action, or matter discriminated against a putative class of employees, former employees, or applicants for employment. Such an assertion may be made for the purpose of presenting the putative class claim to the agency or the

Commission and preserving the complainant's ability to contend in a subsequent civil action that administrative exhaustion requirements have been satisfied.

(2) A putative class claim asserted under this paragraph is not a class complaint under this part and shall not be processed as a class complaint under this part. A complainant who asserts a putative class claim under this paragraph is not a class agent, class representative, or representative of any person other than the complainant in proceedings under this part.

(3) A complainant asserting a putative class claim for administrative exhaustion purposes under this paragraph should identify, to the extent reasonably available:

(i) The agency policy, practice, action, or matter alleged to have affected the putative class;

(ii) The protected bases;

(iii) The complainant's own individual claim, injury, and requested relief;

(iv) The general description of the putative class; and

(v) The time period during which the alleged discrimination occurred.

(4) The agency shall include a putative class claim asserted under this paragraph in the complaint record and shall notify the complainant that the claim will not be certified, heard, decided, resolved, appealed, or enforced as a class complaint in the administrative process. The agency shall not investigate the claim as a class complaint, but may investigate the alleged policy, practice, action, or matter to the extent relevant to the complainant's individual claim or any jointly processed individual claims. The agency shall process the complainant's individual complaint, and any jointly processed individual complaints, in accordance with this part.

(5) An agency shall not dismiss an otherwise valid individual complaint solely because the complainant has asserted a putative class claim under this paragraph. The agency may

dismiss or reject the putative class-processing component of the complaint on the ground that class complaints are not processed under this part, but such action shall not affect the processing of any individual complaint or claim that otherwise complies with this part.

(6) For purposes of the administrative procedures established by this part, a putative class claim asserted under this paragraph is deemed presented to the agency or the Commission on the date it is timely raised. The final agency or Commission action on the complainant's individual complaint, or the agency's or Commission's failure to take final action within the applicable time period, constitutes final administrative action, or failure to take final administrative action, on the complaint including the putative class claim to the extent such action or inaction is required by this part or by statute before filing a civil action.

(7) Nothing in this paragraph authorizes class certification, class notice, class discovery, class settlement, class-wide adjudication, class-wide relief, tolling for persons who are not identified complainants, or any binding determination of the rights of absent persons in the administrative process.

(c) ***Complaints by identified groups of complainants.***

(1) Two or more identified employees, former employees, or applicants for employment may file a single joint written complaint, or may file separate complaints, concerning substantially similar allegations of discrimination or relating to the same agency policy, practice, action, or matter.

(2) Each identified complainant must satisfy the applicable requirements of § 1614.106, including applicable time limits and pleading and signature requirements.

(d) ***Requests for joint processing.***

(1) One or more identified employees, former employees, or applicants for employment may request that the agency or the Commission process related individual complaints or claims together.

(2) A request for joint processing should identify the complaints, claims, and complainants proposed for joint processing; describe the common questions of fact or law, common policy or practice, or other relationship among the claims; and explain why joint processing would promote fair, efficient, and timely resolution.

(3) The agency or the Commission shall consider a request for joint processing and notify the affected complainants and the agency whether the request is granted, denied, or granted in part. Denial of a request for joint processing does not dismiss any complaint or claim and does not affect any complainant's right to proceed individually.

(e) ***Discretionary joint processing by the agency or Commission.***

(1) The agency or the Commission may, on its own initiative or on request of one or more complainants, process related individual complaints or claims together when they involve substantially similar allegations, common questions of law or fact, the same or related agency policies or practices, the same matter, or other circumstances showing that joint processing would promote fair, efficient, and timely resolution.

(2) Joint processing may include, as appropriate: coordinated or joint alternative dispute resolution; investigation; development of a common factual record; discovery or other development of evidence; hearing; agency final action; appeal; compliance proceedings; or other case-management procedures consistent with this part.

(3) Before directing joint processing, the agency or Commission shall provide appropriate notice to the affected complainants and the agency.

(f) ***Severance, limitations, and case management.*** The agency or Commission may decline, limit, discontinue, or modify joint processing, or may sever complaints, claims, issues, or parties, when joint processing would unduly delay resolution, prejudice a complainant or the agency, create a conflict of interest, compromise privacy or confidentiality interests, involve materially different facts or legal issues, affect classified or otherwise protected information, or otherwise fail to promote fair, efficient, and timely processing.

(g) ***Individual rights preserved.***

(1) Joint processing under this section or § 1614.606, or the assertion of a putative class claim under paragraph (b) of this section, does not create a class, class complaint, class agent, class representative, class member, or class-wide presumption of discrimination.

(2) Joint processing does not alter any complainant's obligation to satisfy the requirements of this part; does not alter any election-of-remedies rule; and does not expand or restrict any complainant's rights under this part.

(3) Each complainant remains responsible for proceeding with that complainant's own complaint, whether or not the complaint is jointly processed with other complaints and whether or not the complainant has asserted a putative class claim under paragraph (b) of this section.

(h) ***Decisions, settlements, and relief.***

(1) In any jointly processed matter, the agency or Commission shall make findings and determinations as to each identified complainant and each claim, except to the extent a complainant's claim is otherwise resolved, withdrawn, dismissed, severed, or terminated.

(2) In any matter in which a complainant has asserted a putative class claim under paragraph (b) of this section, the agency or Commission shall make findings and determinations only as to the identified complainant or complainants and the claims processed under this part. The agency or Commission shall not make class-wide findings or determinations and shall not determine the rights of persons who are not identified complainants.

(3) Any settlement agreement must be in writing, must identify the complainants and claims resolved, and binds only the parties to the agreement. A settlement of one complainant's claim does not resolve another complainant's claim unless that complainant knowingly and voluntarily agrees in writing.

(4) Relief may be awarded only as authorized by this part. Individual relief may be awarded only to identified complainants who are parties to the complaint or proceeding. Nothing in this section limits the authority of an agency or the Commission to order corrective, curative, preventive, or prospective relief otherwise authorized by this part in an individual complaint.

(i) ***Relationship to § 1614.606.*** Complaints or claims processed together under this section remain individual complaints or claims for purposes of this part. This section supplements § 1614.606 and shall be construed to preserve the authority of agencies and the Commission to consolidate or jointly process related complaints by identified complainants, without permitting class complaints or class-wide adjudication in the administrative process.

Subpart C—Related Processes

14. Revise § 1614.301 to read as follows:

§ 1614.301 Negotiated grievance procedures.

(a) ***Applicability.*** This section applies only when 5 U.S.C. 7121(d) applies; that is, when an aggrieved employee is affected by a prohibited personnel practice described in 5 U.S.C.

2302(b)(1), the matter falls within the coverage of a negotiated grievance procedure, and the negotiated grievance procedure permits allegations of discrimination to be raised.

(b) ***Election.*** An employee covered by paragraph (a) of this section may raise a matter under either this part or the negotiated grievance procedure, but not both. An election under this part occurs when the employee files a written complaint under § 1614.106. Seeking pre-filing information, technical assistance, or alternative dispute resolution before filing a written complaint under § 1614.106 does not constitute an election under this part. An election under the negotiated grievance procedure occurs when the employee timely files a written grievance under that procedure. The first election controls.

(c) ***Effect of election.*** An agency shall dismiss a complaint, or the portion of a complaint, that concerns a matter previously elected for processing under a negotiated grievance procedure covered by paragraph (a) of this section. The dismissal shall be without prejudice to the employee's rights in the negotiated grievance procedure, including any right to seek review of a final grievance decision by the Merit Systems Protection Board or the Commission as provided by 5 U.S.C. 7121(d), 5 U.S.C. 7702, and subpart D of this part.

(d) ***Matters not covered by 5 U.S.C. 7121(d).*** If 5 U.S.C. 7121(d) does not apply, the existence or use of a negotiated grievance procedure does not bar processing under this part unless another statute requires an election of remedies.

15. Revise § 1614.302 to read as follows:

§ 1614.302 Mixed cases: election and agency processing.

(a) ***Mixed case.*** A mixed case is a matter in which an employee or applicant for employment:

(1) Challenges an action that may be appealed to the Merit Systems Protection Board; and

(2) Alleges that a basis for the action was discrimination covered by 5 U.S.C. 7702(a)(1)(B) or by another statute requiring treatment under 5 U.S.C. 7702.

(b) ***Mixed case complaint and mixed case appeal.*** A mixed case complaint is a mixed case filed with an agency under this part. A mixed case appeal is a mixed case filed with the Merit Systems Protection Board.

(c) ***Election.*** An employee or applicant may initially file either a mixed case complaint with the agency or a mixed case appeal with the Merit Systems Protection Board, but not both. The first filing controls, subject to 5 U.S.C. 7702(f) and paragraph (f) of this section.

(d) ***Agency processing of mixed case complaints.*** A mixed case complaint filed with an agency shall be processed under subpart A of this part, except that:

(1) The agency shall complete its investigation and issue a final agency decision within 120 days after the mixed case complaint is filed;

(2) The agency's final decision shall advise that the complainant may appeal the matter to the Merit Systems Protection Board (not the Commission) within the time allowed by MSPB regulations or may file a civil action as provided in § 1614.310, but may not do both; and

(3) If the agency does not issue a final decision within 120 days after the mixed case complaint is filed, the complainant may appeal the matter to the Merit Systems Protection Board or file a civil action as provided in § 1614.310, but may not do both.

(e) ***Dismissal based on prior MSPB election***. An agency shall dismiss a mixed case complaint, or the portion of a complaint, that concerns the same matter previously filed as a

mixed case appeal with the Merit Systems Protection Board, unless 5 U.S.C. 7702(f) or paragraph (f) of this section requires further processing by the agency.

(f) ***MSPB dismissal for lack of jurisdiction*.**

(i) If an individual files a mixed case appeal with the Merit System Protection Board instead of a mixed case complaint with an agency, and the MSPB subsequently dismisses the appeal for lack of jurisdiction or otherwise determines the matter is not within the MSPB's jurisdiction, the individual may re-file the matter as a non-mixed complaint with the agency allegedly responsible for the discrimination. Any such complaint must be filed with the agency within 30 days of receipt of the MSPB's dismissal or other jurisdictional determination. The complaint must comply with all requirements under § 1614.106. The complaint relates back to the date of the original appeal to the MSPB for purposes of the time limits in § 1614.106(b) and may be considered timely to the extent required by 5 U.S.C. 7702(f). The agency shall process the complaint as a non-mixed matter consistent with this part. Nothing in this paragraph requires an agency to process a matter that is untimely, previously elected and within the MSPB's jurisdiction, or otherwise subject to dismissal, except to the extent required by 5 U.S.C. 7702(f).

(ii) If an individual files a mixed case appeal with the MSPB after receiving a final agency decision on a mixed case complaint, and the MSPB subsequently dismisses the appeal for lack of jurisdiction or otherwise determines the matter is not within the MSPB's jurisdiction, the individual may appeal the earlier final agency decision to the Commission. Any such appeal must be filed with the Commission within 30 days of receipt of the MSPB's dismissal or other jurisdictional determination. The appeal must comply with all requirements under subpart D of this part. The appeal relates back to the date of the original appeal to the MSPB for purposes of the time limits in § 1614.402(a) and may be considered timely to the extent required by 5 U.S.C.

7702(f). The Commission shall process the appeal as a non-mixed matter consistent with this part. Nothing in this paragraph requires an Commission to process a matter that is untimely, previously elected and within the MSPB's jurisdiction, or otherwise subject to dismissal, except to the extent required by 5 U.S.C. 7702(f).

(iii) If an individual files a mixed case appeal with the MSPB after not receiving a final agency decision within 120 days of filing a mixed case complaint with an agency, and the MSPB subsequently dismisses the appeal for lack of jurisdiction or otherwise determines the matter is not within the MSPB's jurisdiction, the individual may re-file the complaint with the agency as a non-mixed matter. Any such complaint must be re-filed with the agency within 30 days of receipt of the MSPB's dismissal or other jurisdictional determination. The agency shall recommence processing the re-filed complaint as a non-mixed matter consistent with this part. Nothing in this paragraph requires an agency to process a matter that is untimely, previously elected and within the MSPB's jurisdiction, or otherwise subject to dismissal, except to the extent required by 5 U.S.C. 7702(f).

(g) ***Negotiated grievance procedures.*** A mixed case first raised under a negotiated grievance procedure is governed by § 1614.301, 5 U.S.C. 7121(d), 5 U.S.C. 7702, applicable MSPB regulations, and subpart D of this part, as applicable.

16. Revise § 1614.303 to read as follows:

§ 1614.303 Commission consideration of MSPB decisions in mixed cases.

(a) ***Petition for Commission consideration.*** An employee or applicant who receives a final decision from the Merit Systems Protection Board in a mixed case may petition the Commission to consider the MSPB's decision. The petition must be filed within 30 days after receipt of notice of the MSPB's final decision.

(b) ***Form and service.*** A petition must be in writing, identify the petitioner, identify the MSPB decision for which Commission consideration is sought, and state the alleged error concerning the discrimination issue. The petition must be filed and served in the manner prescribed by the Commission's public filing instructions.

(c) ***Commission action.*** Commission consideration of an MSPB mixed-case decision, including any decision whether to consider the petition, any review of the MSPB record, any supplementation of the record, any Commission decision concurring in or differing from the MSPB, and any referral to the MSPB, shall be governed by 5 U.S.C. 7702.

(d) ***MSPB action and Special Panel.*** Any MSPB action following a Commission decision that differs from the MSPB decision, any certification to the Special Panel, any Special Panel proceedings, any interim relief, and enforcement of any Special Panel decision shall be governed by 5 U.S.C. 7702 and applicable MSPB regulations.

(e) ***Effect of Commission determination not to consider MSPB decision.*** A Commission determination not to consider an MSPB decision shall have the effect provided by 5 U.S.C. 7702 and shall not be used as evidence on any issue of discrimination in any judicial proceeding concerning that issue.

17. Remove and reserve §§ 1614.304, 1614.305, 1614.306, 1614.307, 1614.308, and 1614.309.

§§ 1614.304 through 1614.309 [Reserved]

18. Revise § 1614.310 to read as follows:

§ 1614.310 Civil actions in mixed cases.

(a) ***Authorization.*** An individual with a mixed case may file a civil action in an appropriate United States district court as authorized by 5 U.S.C. 7702 and 5 U.S.C. 7703(b)(2).

(b) ***Time for filing*.** A civil action in a mixed case may be filed:

(1) Within 30 days after receipt of notice of a judicially reviewable action under 5 U.S.C. 7702, including a final agency decision on a mixed case complaint if the individual does not appeal the matter to the Merit Systems Protection Board;

(2) After 120 days from the filing of a mixed case complaint with an agency if there has been no judicially reviewable action and no appeal to the Merit Systems Protection Board;

(3) After 120 days from the filing of a mixed case appeal with the Merit Systems Protection Board if there has been no judicially reviewable action, subject to 5 U.S.C. 7702(e)(1)(B); or

(4) After 180 days from the filing of a petition with the Commission under § 1614.303 if there has been no final action under 5 U.S.C. 7702(b), (c), or (d).

(c) ***Non-mixed cases.*** This section applies only to mixed cases. Civil actions in non-mixed cases are governed by subpart D of this part and applicable law.

Subpart D—Appeals and Civil Actions

19. Revise § 1614.401 to read as follows:

§ 1614.401 Appeals to the Commission.

(a) ***Complainant appeals.*** A complainant may appeal to the Commission from a final agency decision on a complaint. The Commission would review the final agency decision de novo.

(b) ***Agency appeals prohibited except as expressly authorized.*** An agency may not appeal its own final agency decision on a complaint. An agency may appeal only where expressly authorized by this part.

(c) ***Agency participation and requests for administrative judge proceedings.*** An agency may participate in any appeal filed by a complainant and may request that the Commission refer the complaint, or specified claims or issues, to an administrative judge under § 1614.406. An agency request for administrative judge proceedings is not an appeal, does not affect the finality of the final agency decision, and does not extend, toll, or restrict the complainant's appeal or civil action rights.

(d) ***Grievance appeals.*** A grievant may appeal the final decision of the agency, arbitrator, or Federal Labor Relations Authority on a grievance when an issue of employment discrimination was raised in a negotiated grievance procedure that permits such issues to be raised. A grievant may not appeal under this part when the matter initially raised in the negotiated grievance procedure is still pending in that process, is in arbitration, is before the Federal Labor Relations Authority, is appealable to the Merit Systems Protection Board, or is not subject to 5 U.S.C. 7121(d).

(e) ***Compliance appeals.*** A complainant may appeal to the Commission from an agency's alleged noncompliance with a settlement agreement or final agency decision in accordance with § 1614.504.

20. Revise § 1614.402 to read as follows:

§ 1614.402 Time for appeals to the Commission.

(a) ***Appeal deadline.*** Appeals described in § 1614.401(a), (d), and (e) must be filed within 30 days of receipt of the final agency decision, final grievance decision, final arbitration decision, final Federal Labor Relations Authority decision, or agency determination on compliance, as applicable and subject to § 1614.604(f). An agency request for administrative

judge proceedings under §§ 1614.110, 1614.406, or 1614.403 is not an appeal and does not create an independent appeal period.

(b) ***Receipt by attorney.*** If the complainant is represented by an attorney of record, the time period provided in paragraph (a) of this section shall be calculated from receipt of the required document by the attorney. In all other instances, the time period shall be calculated from receipt by the complainant.

21. Amend § 1614.403 to read as follows:

§ 1614.403 How to appeal.

(a) ***Filing an appeal and requesting administrative judge proceedings.*** A complainant, grievant, or other individual authorized to appeal under § 1614.401 must file an appeal with the Office of Federal Sector, Equal Employment Opportunity Commission, in a digital format acceptable to the Commission, through the EEOC Public Portal, FedSEP where applicable, or by another method prescribed by the Commission. The appellant should use EEOC Form 573, Notice of Appeal/Petition, or any successor form prescribed by the Commission, and should identify the decision, action, dismissal, or determination being appealed. The appellant may include in the appeal a request that the Commission refer the matter, or specified claims or issues, to an administrative judge under § 1614.406. Any such request must explain why administrative judge proceedings are necessary or efficient. The Commission may consider administrative judge proceedings waived if a complainant fails to request them or fails to support a request with an explanation.

(b) ***Service and certification of appeal.*** The appellant shall furnish a copy of the appeal to the respondent agency at the same time it is filed with the Commission. In or attached to the

appeal to the Commission, the appellant must certify the date and method by which service was made on the respondent agency.

(c) ***Dismissal of untimely appeals.*** If an appellant does not file an appeal within the time limits of this subpart, the appeal shall be dismissed by the Commission as untimely.

(d) ***Statements and briefs.*** Any statement or brief on behalf of the appellant in support of the appeal must be submitted to the Office of Federal Sector within 30 days of filing the notice of appeal, unless the Commission provides otherwise. Any statement or brief on behalf of the agency must be submitted within the time provided by paragraph (f) of this section or as otherwise ordered by the Commission. In its statement or brief, the agency may request that the Commission refer the matter, or specified claims or issues, to an administrative judge under § 1614.406, and must explain why such proceedings are necessary or efficient.

(e) ***Agency submission of the record and referral request.*** The agency must submit the complete complaint file, any investigative file, the final agency decision, and any agency request for administrative judge proceedings, as applicable, to the Office of Federal Sector within 30 days of initial notification that an appeal has been filed. The agency must identify any portion of the record that is classified, privileged, protected by law, or subject to special handling.

(f) ***Response to appeal.*** Any statement or brief from the agency in response to an appeal must be submitted to the Commission and served on the appellant within 30 days of receipt of the statement or brief supporting the appeal or, if no statement or brief supporting the appeal is filed, within 60 days of receipt of the appeal, unless the Commission provides otherwise. An agency may include in its response a request for administrative judge proceedings under § 1614.406.

(g) ***Digital filing by agencies and appellants.*** Agencies and appellants are required to submit complaint files, investigative files, final agency decisions, requests for administrative judge proceedings, appeal briefs, and other filings to the Office of Federal Sector in a digital format acceptable to the Commission, absent a showing of good cause.

22. Amend § 1614.404 to read as follows:

§ 1614.404 Appellate procedure.

(a) ***Review of the record.*** On behalf of the Commission, the Office of Federal Sector shall review the complaint file, the investigative file, the final agency decision, any administrative judge referral record, and all written statements and briefs submitted by either party. The Commission may supplement the record by an exchange of letters or memoranda, targeted requests for information, investigation, remand to the agency, referral to an administrative judge under § 1614.406, or other procedures consistent with this part.

(b) ***Supplementation of the record and service.*** If the Office of Federal Sector requests information from one or both parties to supplement the record, each party providing information shall serve a copy of the information on the other party, unless the Commission orders otherwise to protect classified information, privileged information, protected information, or other information subject to special handling.

(c) ***Failure to provide requested information; nonmonetary procedural and evidentiary measures.*** The Commission may require an agency, appellant, or other person to provide information, documents, records, testimony, affidavits, declarations, or other evidence necessary to resolve an appeal. When a party or Federal employee fails without good cause to respond fully and timely to the Commission's request for evidence, the Commission may consider the failure

in evaluating the evidence and may take appropriate nonmonetary procedural or evidentiary measures consistent with this part and applicable law, including:

(1) Drawing an adverse inference that the requested information or testimony would have reflected unfavorably on the noncomplying party;

(2) Considering a factual issue established against the noncomplying party where the failure to respond prevents fair resolution of that issue and a lesser measure would be inadequate;

(3) Excluding evidence offered by the noncomplying party that should have been produced in response to the request;

(4) Limiting argument or evidence; or

(5) Taking other nonmonetary procedural or evidentiary action tailored to the noncompliance, the prejudice caused, and the fair, efficient, and timely resolution of the appeal.

(d) ***No monetary sanction.*** Nothing in this section authorizes the Commission to impose monetary sanctions against a Federal agency except to the extent Congress has expressly waived sovereign immunity for that specific monetary remedy.

23. Amend § 1614.405 to read as follows:

§ 1614.405 Decisions on appeals.

(a) ***Written decisions, summary affirmance, dismissals, and standard of review.*** The Director, Office of Federal Sector, on behalf of the Commission, may issue a written decision setting forth the reasons for the Commission's decision, except that the Director, Office of Federal Sector may issue a summary affirmance where the appeal presents no material factual dispute, no colorable legal error, and no issue warranting a written discussion. A summary affirmance constitutes the Commission's final decision. The Commission shall dismiss appeals in accordance with §§ 1614.107, 1614.403(c), and 1614.409. The Commission shall review a

final agency decision de novo on the administrative record and shall decide factual issues by a preponderance of the evidence. If the Commission's final decision contains a finding of discrimination, appropriate remedies shall be included and, where appropriate, entitlement to interest, attorney fees, or costs shall be indicated. The decision shall inform the appellant of civil action rights and shall be transmitted to the appellant and the agency.

(b) ***Disposition of appeals.*** In deciding an appeal, the Commission may:

(1) Affirm, reverse, or modify the final agency decision;

(2) Issue a decision finding discrimination or no discrimination;

(3) Order appropriate remedies and relief under subpart E of this part;

(4) Order targeted supplementation of the record by the agency or the parties;

(5) Remand the matter to the agency for further investigation, clarification, or final agency decision;

(6) Refer the matter, or specified claims or issues, to an administrative judge under § 1614.406;

(7) Order compliance with an enforceable settlement agreement or final agency decision;

(8) Vacate a settlement agreement and reinstate the underlying individual complaint from the point processing ceased; or

(9) Take any other action consistent with this part that is necessary for fair, efficient, and timely resolution.

(c) ***Final Commission decision after administrative judge proceedings.*** If the Commission refers a matter to an administrative judge, the Commission's final decision after the administrative judge proceedings shall be issued under this section. The Commission may adopt,

modify, or reject the administrative judge's recommended decision, recommended findings, or report.

(d) ***Time standards for appellate decisions.*** The Commission shall use best efforts to issue a decision on an appeal within 180 days after receipt of the appeal. When a matter is referred to an administrative judge under § 1614.406, the Commission shall use best efforts to issue a decision within 90 days after the Office of Federal Sector receives the administrative judge's recommended decision, recommended findings, or report and any hearing record. These time standards do not limit any civil action right provided by § 1614.407.

(e) ***Finality and reconsideration.*** A decision issued under this section is final within the meaning of § 1614.407 unless a party timely requests reconsideration. A party may request reconsideration within 30 days of receipt of a decision of the Commission, which the Commission in its discretion may grant, if the party demonstrates that:

(1) The appellate decision involved a clearly erroneous interpretation of material fact or law; or

(2) The decision will have a substantial impact on the policies, practices or operations of the agency.

24. Amend § 1614.406 to read as follows:

§ 1614.406 Administrative judge proceedings.

(a) ***No automatic hearing entitlement.*** A complainant or other aggrieved individual is not automatically entitled to a hearing or any other proceedings before an administrative judge. Administrative judge proceedings may be conducted only as authorized under this section.

(b) ***Referral by the Commission.*** In an appeal from a final agency decision, the Office of Federal Sector, on behalf of the Commission, may refer the appeal, or one or more claims or

issues in the appeal, to an administrative judge when the Commission determines that such proceedings are necessary or efficient to resolve the appeal.

(c) ***Requests for administrative judge proceedings.*** An appellant may request administrative judge proceedings in their appeal or supporting statement. An agency may request administrative judge proceedings in its final agency decision, in the notice accompanying its final agency decision, or in its response to an appeal. A request under this paragraph must identify the issues for which administrative judge proceedings are sought and explain why such proceedings are necessary or efficient.

(d) ***Grounds for referral.*** The Commission may refer a matter to an administrative judge when:

(1) The appeal presents a genuine dispute of material fact that cannot be resolved fairly on the written record;

(2) Resolution of the appeal requires credibility determinations that are material to the outcome and cannot be fairly resolved on the written record;

(3) The investigative record is materially incomplete and targeted proceedings before an administrative judge would be more efficient than remand to the agency for a supplemental investigation;

(4) The appeal presents complex, recurring, or significant legal or factual issues for which administrative judge proceedings would materially assist the Commission;

(5) A finding of discrimination appears likely on the existing record and further proceedings are necessary to determine appropriate remedies;

(6) The agency requests administrative judge proceedings and the Commission determines that such proceedings would materially assist fair, efficient, and timely resolution; or

(7) Other circumstances show that administrative judge proceedings would promote fair, efficient, and timely resolution of the complaint.

(e) ***Scope of referral.*** The Commission may limit the referral to specified claims, issues, remedies, witnesses, documents, time periods, or factual questions. The administrative judge shall conduct proceedings within the scope of the referral unless the Commission modifies the referral. The referral shall include a deadline, tailored to the expected needs of the case, for the administrative judge to issue their recommended decision, findings, or report.

(f) ***Administrative judge authority.*** When a matter is referred under this section, the administrative judge may, consistent with the referral order:

(1) Order limited discovery or record supplementation;

(2) Require production of documentary or testimonial evidence;

(3) Administer oaths;

(4) Conduct status conferences, settlement conferences, prehearing conferences, or evidentiary hearings;

(5) Limit cumulative, irrelevant, immaterial, or unduly burdensome evidence;

(6) Take nonmonetary procedural or evidentiary measures reasonably necessary to protect the integrity of the proceeding and remedy prejudice caused by a party's failure to comply with an order, including drawing an adverse inference, deeming a referred fact or issue established, excluding evidence or witness testimony not produced as ordered, limiting evidence or argument, or resolving a referred issue against the noncomplying party. Any measure taken by the administrative judge shall be tailored to the noncompliance, the prejudice to the other party caused by the noncompliance, and the scope of the Commission's referral;

(7) Conduct any hearing in accordance with paragraph (j) of this section and compile the hearing record in accordance with paragraph (k) of this section;

(8) Issue recommended decisions, findings, or other report to the parties and the Commission; and

(9) Take other actions authorized by the Commission and consistent with this part.

(g) ***Nature of proceedings.*** Administrative judge proceedings under this section are part of the Commission's appellate review process. They are not a second de novo administrative complaint process. Proceedings shall be limited to what is necessary or efficient to resolve the appeal.

(h) ***Discovery.***

(1) The parties may not engage in discovery unless authorized by the Commission's referral order or by the administrative judge.

(2) The Commission or an administrative judge may authorize discovery only upon determining discovery is necessary to fairly resolve the matters referred by the Commission and proportional to the needs of the case.

(3) The Commission or an administrative judge may limit the scope and manner of discovery, including limits on the type and number of discovery requests.

(4) Where the Commission or an administrative judge has authorized the parties to propound their own discovery requests, it shall be grounds for objection that the information sought is outside the scope of the Commission's referral; irrelevant to the referred claims, issues, remedies, witnesses, documents, time periods, or factual questions; privileged or protected; cumulative or repetitious; already available in the investigative file; obtainable from a more convenient or less burdensome source; unduly burdensome or expensive considering the needs of

the case; or otherwise inconsistent with the fair, efficient, and timely resolution of the appeal. The parties shall comply with any orders from the administrative judge governing discovery disputes. Administrative judges shall resolve discovery disputes expeditiously. Failure to comply with a discovery order may result in nonmonetary procedural or evidentiary measures under paragraph (g) of this section, subject to § 1614.501(f).

(i) ***Conduct of hearing.***

(1) When the Commission refers a matter to an administrative judge for an evidentiary hearing under this section, the hearing shall be limited to the claims, issues, remedies, witnesses, documents, time periods, or factual questions identified in the Commission's referral order, or as modified by any subsequent Commission order. The administrative judge shall regulate the conduct of the hearing and may limit witnesses, testimony, exhibits, and argument to avoid unnecessary burden, expense, delay, cumulative evidence, or inquiry outside the scope of the referral.

(2) The agency shall provide for the attendance, including through approved virtual means when appropriate, of Federal employees approved as witnesses by the administrative judge. The agency shall take reasonable steps necessary to make such employees available at the time and in the manner directed by the administrative judge.

(3) Attendance at the hearing shall be limited to the complainant; the parties' representatives; agency officials whose presence the administrative judge determines is necessary for presentation of the agency's case or implementation of any order; witnesses while testifying or as otherwise authorized by the administrative judge; interpreters; court reporters; technical, security, or reasonable-accommodation support personnel; Commission personnel; and

any other person whose presence the administrative judge determines is necessary for the fair, efficient, and orderly conduct of the hearing.

(4) Hearings under this section are closed to the public. They are part of the administrative complaint process and the Commission's appellate record-development process, and access to the hearing and hearing record shall be limited as provided in this part, by the administrative judge, or by other applicable law.

(5) The rules of evidence shall not be applied strictly. The administrative judge may receive evidence that is relevant, material, and not unduly repetitious, and shall exclude evidence that is irrelevant, immaterial, cumulative, repetitious, privileged or protected, unduly burdensome, or outside the scope of the Commission's referral.

(6) The administrative judge may exclude any person from the hearing for contumacious conduct, disruption, misbehavior, refusal to comply with lawful directions, or other conduct that obstructs the fair, efficient, and orderly conduct of the hearing.

(j) ***Record of hearing.***

(1) Unless the administrative judge directs otherwise, the agency shall arrange and pay for a verbatim transcript of the hearing, including any transcript required for a virtual or hybrid hearing. Unless the administrative judge orders otherwise, the transcript shall be provided in an electronic format to the administrative judge, the appellant, and the agency.

(2) All documents, electronically stored information, exhibits, stipulations, testimony, and other materials submitted to and accepted by the administrative judge at the hearing shall be made part of the hearing record.

(3) If the agency submits a document or other material that is accepted into the hearing record, the agency shall provide a copy to the appellant, subject to any protective order, redaction

requirement, privilege determination, classified-information procedure, or other limitation imposed by the administrative judge or by law.

(4) If the appellant submits a document or other material that is accepted into the hearing record, the administrative judge shall make the document or material available to the agency representative for reproduction or electronic access, subject to any protective order, redaction requirement, privilege determination, classified-information procedure, or other limitation imposed by the administrative judge or by law.

(5) The administrative judge may require the agency to ensure timely delivery of the transcript and may establish deadlines for correction of transcript errors, submission of post-hearing briefs, or other steps necessary to complete the hearing record.

(6) The hearing record shall be transmitted with the administrative judge's recommended decision, recommended findings, or report under paragraph (m) of this section and shall become part of the administrative record considered by the Office of Federal Sector under § 1614.405.

(k) ***Recommended decision, recommended findings, or report.*** Unless the Commission directs otherwise, the administrative judge shall issue recommended decisions, recommended findings, or reports to the Office of Federal Sector. The administrative judge shall transmit the recommended decision, recommended findings, or report and any hearing record to the parties and to the Office of Federal Sector.

(l) ***Final Commission decision.*** The Director, Office of Federal Sector, on behalf of the Commission, may issue the final Commission decision in accordance with § 1614.405 after considering the administrative judge's recommended decision, recommended findings, or report and the administrative record.

(m) ***Civil action.*** The referral of a matter to an administrative judge does not restrict any civil action right provided by § 1614.407. The filing of a civil action terminates Commission processing in accordance with § 1614.409.

25. Revise § 1614.407 to read as follows:

§ 1614.407 Civil action: title VII, Age Discrimination in Employment Act, Rehabilitation Act, Genetic Information Nondiscrimination Act, and Pregnant Workers Fairness Act.

(a) ***Authorization and time for filing civil action.*** A complainant who has filed an individual complaint, including a complainant who has asserted a putative class claim under § 1614.204(b), is authorized under title VII, the Age Discrimination in Employment Act, the Rehabilitation Act, the Genetic Information Nondiscrimination Act, and the Pregnant Workers Fairness Act to file a civil action in an appropriate United States District Court:

(1) Within 90 days of receipt of the agency final action on the complaint;

(2) After 180 days from the date of filing the complaint if agency final action has not been taken;

(3) Within 90 days of receipt of the Commission's final decision on an appeal; or

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

(b) ***Withdrawal of appeal after agency final action.*** After filing an appeal with the Commission from an agency final action, the complainant may withdraw the appeal and file a civil action within 90 days of receipt of the agency final action. If the complainant files an appeal with the Commission from a final agency decision and more than 90 days have passed since receipt of the agency final action, the complainant may file a civil action only in accordance with paragraph (a)(3) or (a)(4) of this section.

(c) ***Withdrawal of request for reconsideration.*** After filing a request for reconsideration of a Commission decision on an appeal, the complainant may withdraw the request and file a civil action within 90 days of receipt of the Commission's antecedent decision on the appeal. If the complainant files a request for reconsideration of a Commission decision on an appeal and more than 90 days have passed since the complainant received the Commission's antecedent decision on the appeal, the complainant may file a civil action only in accordance with paragraph (a)(3) or (a)(4) of this section.

(d) ***Exhaustion and putative class claims.*** A complainant who follows the procedures described in paragraph (b) or (c) of this section shall be deemed to have exhausted administrative remedies under this part. A complainant who asserts a putative class claim under § 1614.204(b) shall be deemed to have presented that putative class claim in the administrative process for purposes of this part, but nothing in this section determines whether a court will certify a class, permit a class claim to proceed, apply tolling, or find administrative exhaustion satisfied in a civil class action.

(e) ***Effect of administrative judge referral.*** A referral to an administrative judge under § 1614.406 does not extend, restrict, or otherwise alter the complainant's right to file a civil action under this section.

26. Amend § 1614.409 to read as follows:

§ 1614.409 Effect of filing a civil action.

Filing a civil action under § 1614.407, § 1614.408, or § 1614.310 shall terminate Commission processing of the complaint, appeal, request for reconsideration, including any administrative judge proceedings under § 1614.406 concerning the same claims. A Commission decision on an appeal issued after a complainant files suit in district court will not be enforceable

by the Commission. If a civil action is filed subsequent to the filing of an appeal and prior to a final Commission decision, the complainant should notify the Commission in writing.

Subpart E—Remedies and Enforcement

27. Amend § 1614.501 by revising paragraph (a) introductory text, paragraphs (a)(3) and (4), paragraphs (b)(1)(i), (ii), and (iii), paragraph (b)(2), paragraph (c) introductory text, paragraphs (c)(1) and (2), paragraph (d) and paragraph (e), and adding paragraphs (f) and (g) to read as follows:

§ 1614.501 Remedies and relief.

(a) ***Full relief following a finding of discrimination.*** When an agency, in a final agency decision, or the Commission, in its final decision, finds in an individual case that an applicant or employee has been discriminated against, the agency shall provide full relief, which shall include the following elements in appropriate circumstances:

* * * * *

(3) An unconditional offer to each identified complainant who is a victim of discrimination of placement in the position the person would have occupied but for the discrimination suffered by that person, or a substantially equivalent position;

(4) Payment to each identified complainant who is a victim of discrimination on a make-whole basis for any loss of earnings the person may have suffered because of the discrimination; and

* * * * *

(b) * * *

(1)(i) When an agency, in a final agency decision, or the Commission, in its final decision, finds that an applicant for employment has been discriminated against, the agency shall

offer the applicant the position that the applicant would have occupied absent discrimination or, if justified by the circumstances, a substantially equivalent position, unless a preponderance of the evidence indicates that the applicant would not have been selected even absent the discrimination. The offer shall be made in writing. The individual shall have 15 days from receipt of the offer within which to accept or decline the offer. Failure to accept the offer within the 15-day period will be considered a declination of the offer, unless the individual can show that circumstances beyond the individual's control prevented a response within the time limit.

(ii) If the offer is accepted, appointment shall be retroactive to the date the applicant would have been hired. Back pay, computed in the manner prescribed by 5 CFR 550.805, shall be awarded from the date the individual would have entered on duty until the date the individual actually enters on duty, unless a preponderance of the evidence indicates that the applicant would not have been selected even absent discrimination. Interest on back pay shall be included in the back pay computation where sovereign immunity has been waived. The individual shall be deemed to have performed service for the agency during this period for all purposes except for meeting service requirements for completion of a required probationary or trial period.

(iii) If the offer of employment is declined, the agency shall award the individual a sum equal to the back pay the individual would have received, computed in the manner prescribed by 5 CFR 550.805, from the date the individual would have been appointed until the date the offer was declined, subject to the limitation of paragraph (b)(3) of this section. Interest on back pay shall be included in the back pay computation where sovereign immunity has been waived. The agency shall inform the applicant, in its offer of employment, of the right to this award in the event the offer is declined.

(2) When an agency, in a final agency decision, or the Commission, in its final decision, finds that discrimination existed at the time the applicant was considered for employment but also finds by a preponderance of the evidence that the applicant would not have been hired even absent discrimination, the agency shall nevertheless take all steps necessary to eliminate the discriminatory practice and ensure it does not recur.

* * * * *

(c) ***Relief for an employee.*** When an agency, in a final agency decision, or the Commission, in its final decision, finds that an employee of the agency was discriminated against, the agency shall provide relief, which shall include, but need not be limited to, one or more of the following actions:

(1) Nondiscriminatory placement, with back pay computed in the manner prescribed by 5 CFR 550.805, unless a preponderance of evidence demonstrates that the personnel action would have been taken even absent the discrimination. Interest on back pay shall be included in the back pay computation where sovereign immunity has been waived. The back pay liability under title VII or the Rehabilitation Act is limited to two years prior to the date the discrimination complaint was filed.

(2) If a preponderance of the evidence indicates that, although discrimination existed at the time the personnel action was taken, the personnel action would have been taken even absent discrimination, the agency shall nevertheless eliminate any discriminatory practice and ensure it does not recur.

(d) ***Mitigation of damages.*** The complainant has a duty to make reasonable efforts to mitigate damages where mitigation is required by applicable law. The agency bears the burden of proving, by a preponderance of the evidence, that the complainant failed to mitigate and the

amount by which any award should be reduced. Any reduction shall be limited to damages or monetary relief the agency proves the complainant reasonably could have avoided.

(e) ***Attorney fees and costs.***

(1) **Covered claims.** Attorney fees and costs may be awarded in administrative proceedings under this part only to the extent authorized by title VII, the Rehabilitation Act, the Genetic Information Nondiscrimination Act, the Pregnant Workers Fairness Act, or another statute that authorizes such an award in the Federal-sector administrative process. Attorney fees are not available for claims under the Age Discrimination in Employment Act or the Equal Pay Act except to the extent required by applicable law.

(2) **Compensable legal services.** Attorney fees are allowable only for the services of members of the Bar and for the services of law clerks, paralegals, or law students when assisting and supervised by members of the Bar. No award of attorney fees is allowable for the services of any employee of the Federal Government.

(3) **Prevailing complainant.** A complainant is eligible for attorney fees only if the complainant is a prevailing party. A complainant prevails only when the complainant obtains a material alteration of the legal relationship between the complainant and the agency through enforceable relief, including a final agency decision, final Commission decision, or enforceable settlement agreement.

(4) **Presumption and limitations.** In cases in which a finding of discrimination is made under a statute authorizing attorney fees, the complainant is presumed entitled to reasonable attorney fees, subject to special circumstances, limited success, the limitations in § 1614.108(j), and the reasonableness requirements of this section.

(5) **Lodestar.** The starting point for determining a reasonable attorney fee is the number of hours reasonably expended multiplied by a reasonable hourly rate. The fee applicant bears the burden of documenting entitlement to fees, the hours reasonably expended, the rate claimed, and the relationship between the work performed and the relief obtained.

(6) **Reasonable hours.** Hours are not reasonably expended to the extent they are excessive, redundant, unnecessary, inadequately documented, clerical, secretarial, duplicative, unrelated to successful claims, attributable to claims rejected as frivolous or groundless, incurred after the expiration of a valid offer of resolution under § 1614.108(j), or otherwise not properly billable to a paying client in the exercise of billing judgment.

(7) **Documentation.** A fee petition must be supported by contemporaneous or otherwise reliable billing records identifying the date, timekeeper, task performed, time spent in increments no greater than one-quarter hour, claim or issue to which the work related where practicable, hourly rate claimed, costs claimed, and billing judgment exercised. Vague, block-billed, reconstructed, or materially incomplete records may be reduced or disallowed.

(8) **Reasonable rate.** A reasonable hourly rate is the prevailing market rate in the relevant community for attorneys of reasonably comparable skill, experience, and reputation performing work comparable to the Federal-sector EEO administrative process. The fee applicant bears the burden of producing satisfactory evidence, beyond counsel's own affidavit, that the requested rate is consistent with such prevailing market rates.

(9) **Fee matrices.** Fee matrices, including fee matrices for attorney work in general, matrices for employment litigation, and fee matrices for work on complex litigation, are disfavored and are not presumptively reasonable. An agency, an administrative judge, or the Commission shall not consider a fee matrix in determining a reasonable hourly rate unless the

fee applicant demonstrates, through specific and reliable evidence, that the matrix reflects the prevailing market rate in the relevant community for attorneys of reasonably comparable skill, experience, and reputation performing work comparable to the Federal-sector EEO administrative process. Absent the required showing, the agency, administrative judge, or Commission shall give the matrix no weight.

(10) **Fee agreements and nonprofit, union, or pro bono representation.** A fee agreement, reduced-rate agreement, contingency arrangement, nonprofit representation, union representation, or pro bono representation is relevant evidence, but does not by itself establish or cap the reasonable fee unless applicable law requires otherwise.

(11) **Limited success.** When the complainant achieves only limited success, the award must be reduced to reflect the degree of success obtained. No fee, or a substantially reduced fee, may be appropriate where the complainant obtains only nominal, technical, or de minimis relief and no meaningful nonmonetary relief, prospective relief, or other material benefit.

(12) **Unsuccessful claims.** Time spent on unsuccessful claims must be excluded when those claims are materially distinct from successful claims. When unsuccessful and successful claims involve a common core of facts or related legal theories, the agency, administrative judge, or Commission must consider the significance of the overall relief obtained in relation to the hours reasonably expended.

(13) **Fees for fee litigation.** Reasonable fees may be awarded for time reasonably spent preparing and defending a fee petition. Such fees must be reduced or denied to the extent the fee litigation was excessive, unnecessary, inadequately documented, disproportionate to the fee dispute, or pursued after the agency made a reasonable tender of fees and costs.

(14) **Enhancements.** The lodestar carries a strong presumption of reasonableness. Enhancements above the lodestar are permitted only in rare and exceptional circumstances supported by specific evidence and detailed findings, and may not be based on factors already subsumed in the lodestar.

(15) **Mixed-motive cases.** In a case in which the complainant establishes that a protected characteristic was a motivating factor but the agency proves by preponderant evidence it would have taken the same action absent the impermissible factor, attorney fees and costs must be limited to fees and costs directly attributable to the claim on which the complainant prevailed and must reflect the limited relief authorized by law.

(16) **Covered and noncovered claims.** When a complaint includes both fee-eligible and non-fee-eligible claims, fees may be awarded only for work reasonably related to fee-eligible claims on which the complainant prevailed, except to the extent claims share a common core of facts and cannot reasonably be separated.

(17) **Timing of compensable services.** Attorney fees may be awarded only for services performed after the filing of a written complaint, provided that the attorney provides reasonable notice of representation to the agency, administrative judge, or Commission. Fees are allowable for a reasonable period of time before notice of representation for services performed in determining whether to represent the complainant.

(18) **Fee petition.** When an entitlement to attorney fees or costs is determined, the complainant's attorney shall submit a verified statement of attorney fees, including expert witness fees where authorized, and other costs, as appropriate, within 30 days of receipt of the decision determining entitlement, unless the decision provides otherwise. The verified statement must be submitted to the agency and served on the opposing party. If the matter is pending

before the Commission, the verified statement must also be submitted to the Commission. A statement of attorney fees and costs must be accompanied by an affidavit or declaration executed by the attorney of record itemizing the attorney's charges for legal services. The agency may respond to a statement of attorney fees and costs within 30 days of receipt. The verified statement, accompanying affidavit or declaration, and any agency response shall be made part of the complaint file.

(19) **Decision on fee petition.** The agency or Commission, as appropriate, shall issue a decision determining the amount of attorney fees or costs due. The decision must include the specific reasons for determining the amount of the award and, if applicable, notice of the right to appeal to the Commission. The Commission may include fees and costs within the scope of a referral to an administrative judge for a recommended decision, recommended findings, or report.

(20) **Costs and witness fees.** Costs may be awarded only to the extent authorized by applicable law. Witness fees shall be awarded in accordance with the provisions of 28 U.S.C. 1821, except that no award shall be made for a Federal employee who is in a duty status when made available as a witness.

(f) ***Monetary sanctions prohibited.*** Neither the agency, an administrative judge, nor the Commission may impose or recommend monetary sanctions against a Federal agency, including attorney fee sanctions, cost shifting sanctions, litigation expenses, fines, penalties, contempt sanctions, or any other monetary payment imposed as a sanction, unless Congress has expressly waived sovereign immunity for that specific monetary remedy. This paragraph does not limit the award of back pay, compensatory damages, equitable relief, attorney fees, or costs otherwise authorized by statute as relief for a proven violation of law.

28. Amend § 1614.504 by revising paragraph (c) to read as follows:

§ 1614.504 Compliance with settlement agreements and final agency decisions.

* * * * *

(c) Before rendering its determination, the Commission may request additional information from the parties, may direct that additional information be developed by the agency, or may refer the matter for administrative judge proceedings under § 1614.406. The Commission shall issue its determination on the basis of the written record and any additional information or administrative judge record developed under this paragraph. If the Commission determines that the agency is not in compliance with a settlement agreement or final agency decision, and that the noncompliance is not attributable to acts or omissions of the complainant, the Commission may order compliance. For noncompliance with an enforceable settlement agreement, the Commission may order specific implementation of the settlement agreement or, alternatively, may order that the complaint be reinstated for further processing from the point processing ceased. Allegations that subsequent acts of discrimination violate a settlement agreement shall be processed as separate complaints under § 1614.106, rather than under this section.

29. Remove and reserve § 1614.505.

§ 1614.505 [Reserved]

Subpart F—Matters of General Applicability

30. Amend § 1614.602 by revising paragraph (a) to read as follows:

§ 1614.602 Reports to the Commission.

(a) Each agency shall report to the Commission information concerning the status, processing, and disposition of complaints under this part, including investigations, final agency

decisions, appeals, compliance proceedings, settlements, administrative judge referrals, and other matters, at such times and in such manner as the Commission prescribes.

* * * * *

31. Amend § 1614.603 to read as follows:

§ 1614.603 Voluntary settlement attempts.

Each agency shall make reasonable efforts to voluntarily settle complaints of discrimination as early as possible in, and throughout, the administrative processing of complaints. Any settlement reached shall be in writing and signed by both parties and shall identify the claims resolved.

32. Amend § 1614.604 by revising paragraphs (c), (d), and (e) to read as follows:

§ 1614.604 Filing and computation of time.

* * * * *

(c) A complaint, appeal, request for reconsideration, request for administrative judge proceedings, brief, or other document filed by a complainant using the EEOC Public Portal, or filed by an agency using FedSEP, shall be deemed filed on the date the document is uploaded to the Public Portal or FedSEP. The timeliness of documents submitted through the Public Portal and FedSEP will be determined based on the time zone from which the document was submitted.

(d) When a document is transmitted through the Public Portal or FedSEP, the document is deemed received when it is accessed in the Portal or FedSEP, or within five days of when the document is uploaded, whichever occurs first. When a document is transmitted by email or other digital means, and is not returned as undeliverable, the document is deemed received when it is accessed, or within five days of when the document is transmitted, whichever occurs first.

(e) For purposes of §§ 1614.106 through 1614.110, 1614.204, and 1614.401 through 1614.405, the terms accept, accepted, file, filed, filing, issue, issuance, issuing, notify, notified, receive, receipt, send, serve, served, service, submit, submission, submitted, transmit, and transmitted shall include digital transmissions made through FedSEP, the EEOC Public Portal, or by email.

* * * * *

33. Amend § 1614.605 by revising paragraph (a) to read as follows:

§ 1614.605 Representation and official time.

(a) At any stage in the processing of a complaint under this part, including filing, investigation, final agency decision, appeal, administrative judge proceedings, reconsideration, compliance, or settlement, the complainant shall have the right to be accompanied, represented, and advised by a representative of the complainant's choice.

* * * * *

34. Revise § 1614.606 to read as follows:

§ 1614.606 Joint processing and consolidation of complaints.

Complaints filed by two or more complainants consisting of substantially similar allegations or relating to the same matter may be processed jointly by the agency or the Commission after appropriate notice to the parties. Two or more complaints filed by the same complainant may be consolidated by the agency or the Commission after appropriate notice to the complainant. When complaints are jointly processed or consolidated, the agency shall complete the investigation and issue a final agency decision within the time limits prescribed by § 1614.108 unless extended under this part. Administrative judge proceedings may occur only as

provided in § 1614.406. Joint processing and consolidation under this section do not create a class complaint, class representative, class member, or class-wide adjudication.

35. Amend § 1614.607 to read as follows:

§ 1614.607 Delegation of authority.

An agency head may delegate authority under this part to one or more designees, except where law, Executive order, or regulation requires action by the agency head. A delegation under this section shall not alter the reporting relationship required for the agency EEO Director under § 1614.102(b)(4).

Subpart G—Procedures Under the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (No FEAR Act)

36. Amend § 1614.701 to read as follows:

§ 1614.701 Purpose and scope.

(a) ***Purpose.*** This subpart implements the public posting, data, reporting, tracking, and related accountability requirements of the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002, as amended, including the Elijah E. Cummings Federal Employee Antidiscrimination Act of 2020.

(b) ***Scope***. This subpart sets forth the responsibilities of Federal agencies and the Commission to post complaint data and related notices on public websites; maintain and report required complaint and finding information; provide comparative data; track discrimination complaints from filing through resolution; report disciplinary action information following findings of discrimination or retaliation; and maintain required records concerning certain disciplinary actions taken for discriminatory or retaliatory conduct.

(c) ***Relationship to complaint processing.*** The reporting requirements in this subpart do not create, extend, limit, or otherwise alter any right, remedy, time limit, appeal right, civil action right, or complaint-processing requirement under this part.

37. Amend § 1614.702 to read as follows:

§ 1614.702 Definitions.

For purposes of this subpart:

(a) ***Agency or Federal agency.*** Agency or Federal agency means an Executive agency as defined in 5 U.S.C. 105, the United States Postal Service, the Postal Regulatory Commission, and any other entity covered by this part.

(b) ***Commission.*** Commission means the Equal Employment Opportunity Commission and any subdivision or official authorized to act on the Commission's behalf.

(c) ***Complaint.*** Complaint means a written complaint filed under § 1614.106, including any accepted amendment. The term includes complaints jointly processed or consolidated under §§ 1614.204 or 1614.606.

(d) ***Investigation.*** Investigation means the agency fact-development step described in § 1614.108. For purposes of this subpart, investigation begins when a complaint is filed and ends when the agency completes the investigative file and issues a final agency decision on the merits, issues a final agency decision dismissing the entire complaint, otherwise takes final agency action, or terminates processing because a civil action has been filed.

(e) ***Final agency decision or final agency action.*** Final agency decision or final agency action means the agency action described in § 1614.110, including a dismissal under § 1614.107, or other final agency disposition of a complaint under this part.

(f) ***Final agency decision or final agency action involving a finding of discrimination.*** Final agency decision or final agency action involving a finding of discrimination means a final agency decision or final agency action in which the agency finds discrimination or retaliation prohibited by a law covered by this part.

(g) ***Administrative judge proceedings.*** Administrative judge proceedings means proceedings referred by the Office of Federal Sector to an administrative judge under § 1614.406. Administrative judge proceedings begin when the Office of Federal Sector refers a matter to an administrative judge and end when the administrative judge transmits a recommended decision, recommended findings, report, or hearing record to the Office of Federal Sector.

(h) ***Appeal.*** Appeal means the step of the Federal-sector EEO process described in subpart D of this part. For purposes of this subpart, an appeal begins when received by the Commission and ends when the Commission issues its appellate decision or otherwise terminates processing.

(i) ***Basis of alleged discrimination.*** Basis of alleged discrimination means the protected status or activity alleged in a complaint, including race, color, religion, sex, national origin, age, disability, genetic information, pregnancy, childbirth, or related medical conditions, Equal Pay Act claim, or retaliation.

(j) ***Issue of alleged discrimination.*** Issue of alleged discrimination means the challenged employment action, policy, practice, or matter identified in the complaint, using categories prescribed by the Commission.

(k) ***Finding of discrimination.*** Finding of discrimination means a finding by an agency, the Commission, or a court that an agency discriminated or retaliated in violation of a law covered by this part.

(l) ***Final finding of discrimination.*** Final finding of discrimination means a finding of discrimination for which all administrative appeals have been exhausted or for which a court of competent jurisdiction has issued a final judgment.

(m) ***Disciplinary action decision.*** Disciplinary-action decision means a decision whether to propose, initiate, decline, or take disciplinary action against a Federal employee as a result of a finding of discrimination or retaliation.

(n) ***Class action complaint.*** Class action complaint means a civil action, or other complaint where applicable, filed against an agency alleging discrimination or retaliation on behalf of a class or putative class of employees, former employees, or applicants for employment. The term does not include joint processing of identified individual complaints under §§ 1614.204 or 1614.606.

(o) ***Subordinate component.*** Subordinate component means any organizational subunit directly below the agency or department level that has 1,000 or more employees and is required to submit EEOC Form 715-01, or any successor form, to the Commission.

38. Amend § 1614.703 to read as follows:

§ 1614.703 Manner and format of posted data and notices.

(a) ***Public website posting.*** Each agency shall post the information required by this subpart on its public website in a clear, prominent, and readily accessible location. The agency shall provide a link from the homepage of its public website to the page containing the information required by this subpart.

(b) ***Title and organization.*** Data posted under §§ 1614.704 and 1614.705 shall be clearly identified as "No FEAR Act Data." Notices posted under § 1614.706(a) shall be clearly identified as "Notification of Findings of Discrimination or Retaliation."

(c) ***Accessible and searchable format.*** Agencies shall post required data and notices in an accessible electronic format that complies with section 508 of the Rehabilitation Act and is readable, searchable, and downloadable. The Commission may prescribe templates, data formats, or additional instructions for posting data under this subpart.

(d) ***Date of update.*** Agencies shall prominently identify the date on which the data or notice was last updated.

(e) ***Subordinate component data.*** In addition to aggregate agency-wide data, an agency shall post separate data for each subordinate component. Data for a subordinate component shall be identified as pertaining to that subordinate component.

(f) ***Current fiscal year data.*** Data posted under § 1614.704 shall be cumulative for the current fiscal year. Agencies shall not post separate quarterly datasets for the current fiscal year unless the Commission instructs otherwise.

(g) ***Processing time.*** Processing times required to be posted under this subpart shall be reported in number of calendar days.

(h) ***Searchability.*** Agencies shall take reasonable steps to ensure that data and notices posted under this subpart can be readily located through the agency's public website and through commercial search engines.

(i) ***Notification to Commission.*** Each agency shall provide the Commission the Uniform Resource Locator for each page on which the agency posts information required by this subpart.

An agency shall notify the Commission within 30 days after creating, changing, or discontinuing any such Uniform Resource Locator.

(j) ***Privacy and protected information.*** Agencies shall post data and notices under this subpart in a manner that protects personally identifiable information, medical information, confidential settlement information, classified information, privileged information, and other information protected by law. Agencies shall not include names of complainants, witnesses, alleged discriminating officials, or other individuals unless disclosure is expressly authorized by law.

39. Amend § 1614.704 to read as follows:

§ 1614.704 Information to be posted—all Federal agencies.

(a) ***Current fiscal year data.*** No later than 30 days after the end of each fiscal quarter, each agency shall post on its public website the following cumulative current fiscal year data regarding complaints filed under this part.

(b) ***Complaint filings and filers.*** Each agency shall post:

(1) The number of complaints filed;

(2) The number of individuals filing complaints; and

(3) The number of individuals who filed two or more complaints.

(c) ***Bases and issues alleged.*** Each agency shall post:

(1) The number of complaints, whether initially or through amendment, raising each basis of alleged discrimination or retaliation, and the number of complaints in which a non-EEO basis is alleged; and

(2) The number of complaints, whether initially or through amendment, raising each issue of alleged discrimination or retaliation.

(d) ***Agency processing and disposition.*** Each agency shall post:

(1) For complaints in which the agency completed an investigation during the fiscal year, the average number of days from filing of the complaint to completion of the investigation;

(2) For complaints in which the agency issued a final agency decision or other final agency action during the fiscal year, the average number of days from filing of the complaint to final agency decision or other final agency action;

(3) The number of complaints dismissed by the agency under § 1614.107 and the average number of days such complaints were pending before dismissal; and

(4) The number of complaints withdrawn by complainants.

(e) ***Findings of discrimination or retaliation.*** Each agency shall post:

(1) The number of final agency decisions or other final agency actions issued during the fiscal year involving a finding of discrimination or retaliation;

(2) The percentage of final agency decisions or final agency actions issued during the fiscal year that involved a finding of discrimination or retaliation;

(3) Of the final agency decisions or final agency actions issued during the fiscal year involving a finding of discrimination or retaliation, the number and percentage by basis and by issue; and

(4) For each finding of discrimination or retaliation described in paragraph (e)(1) of this section, the date of the finding, the affected agency or subordinate component, the law violated, and whether a disciplinary action decision has been made as a result of the finding.

(f) ***Pending inventory and timeliness.*** Each agency shall post:

(1) The number of complaints pending at the beginning of the fiscal year, the number filed during the fiscal year, the number closed during the fiscal year, and the number pending at the end of the reporting period;

(2) Of the complaints pending at the end of the reporting period, the number that were first filed before the start of the then-current fiscal year and the number of individuals who filed those complaints;

(3) Of the complaints pending at the end of the reporting period, the number pending at the agency investigation or final agency action step, the Commission appeal step, the reconsideration step, and the compliance step; and

(4) The number of complaints in which the agency has not completed the investigation and issued a final agency decision or final agency action within the time required by § 1614.108(e), plus any extensions authorized by that section.

(g) ***Class action complaint data.*** Each agency shall post data regarding each class action complaint filed against the agency alleging discrimination or retaliation, including:

(1) The date on which the complaint was filed;

(2) A general summary of the allegations;

(3) An estimate of the total number of plaintiffs or class members joined in or covered by the complaint, if known;

(4) The current status of the complaint, including whether a class has been certified; and

(5) The case number for any civil action in which discrimination or retaliation has been found.

40. Amend § 1614.705 to read as follows:

§ 1614.705 Comparative data to be posted by agencies.

(a) ***Annual comparative data.*** No later than January 31 of each year, each agency shall post year-end data corresponding to the categories required by § 1614.704 for each of the five immediately preceding completed fiscal years, or, if data are not available for all five fiscal years, for each of those fiscal years for which data are available.

(b) ***Separate fiscal year figures.*** For each category of data required by § 1614.704, the agency shall post a separate figure for each fiscal year included in the comparative data.

41. Amend § 1614.706 to read as follows:

§ 1614.706 Cummings Act notices, reports, tracking, and other data.

(a) ***Public notice of final findings.*** Not later than 90 days after a final finding of discrimination or retaliation, the head of the agency subject to the finding shall post a notice on the agency's public website in a clear and prominent location linked directly from the homepage of that website. The notice must remain posted for not less than one year.

(b) ***Contents of public notice.*** A notice under paragraph (a) of this section must state that a finding of discrimination or retaliation has been made and must identify:

(1) The date on which the finding was made;

(2) The date on which each discriminatory or retaliatory act occurred;

(3) The law violated by each such act; and

(4) The rights and protections available to Federal employees and applicants under the laws covered by this part.

(c) ***Disciplinary action report to Commission.*** Not later than 120 days after the agency takes final action, or receives a final Commission decision, involving a finding of discrimination or retaliation, the agency shall submit to the Commission a report stating whether disciplinary

action has been proposed against a Federal employee as a result of the violation and the reasons for any disciplinary action proposed. The report shall be submitted in the form and manner prescribed by the Commission.

(d) ***Complaint tracking.*** Each agency shall maintain a system to track each complaint of discrimination or retaliation adjudicated through the EEO process from the filing of the complaint through resolution. The system must track whether a disciplinary-action decision has been made as a result of any finding of discrimination or retaliation.

(e) ***Personnel record notation.*** If an agency takes an adverse action covered by 5 U.S.C. 7512 against a Federal employee for an act of discrimination or retaliation prohibited by a law covered by this part, the agency shall, after all appeals relating to that action have been exhausted, include in the employee's personnel record a notation of the adverse action and the reason for the action.

42. Amend § 1614.707 to read as follows:

§ 1614.707 Data to be posted by EEOC.

(a) ***Administrative judge referral data.*** No later than 30 days after the end of each fiscal quarter, the Commission shall post on its public website the following current fiscal year statistics regarding matters referred to administrative judges under § 1614.406:

(1) The number of appeals in which the Commission referred a complaint, claim, issue, remedy, witness, document, time period, or factual question to an administrative judge under § 1614.406.

(2) The number of complainants whose complaints, claims, or issues were referred to an administrative judge under § 1614.406.

(3) The number of referred matters pending before administrative judges at the beginning of the fiscal year, the number referred during the fiscal year, the number completed during the fiscal year, and the number pending at the end of the reporting period.

(4) Of the referred matters completed during the fiscal year, the number completed without an evidentiary hearing and the number completed after an evidentiary hearing.

(5) Of the referred matters completed during the fiscal year, the number in which the administrative judge transmitted a recommended decision, recommended findings, or report recommending a finding of discrimination, no discrimination, or other disposition.

(6) For referred matters completed during the fiscal year, the average number of days from referral under § 1614.406 to transmission of the administrative judge's recommended decision, recommended findings, or report to the Office of Federal Sector.

(7) The number of referred matters pending or completed during the fiscal year in which administrative judge proceedings were not completed within the time established by the Commission's referral order, scheduling order, or other applicable Commission direction.

(b) ***Appeals data.*** No later than 30 days after the end of each fiscal quarter, the Commission shall post on its public website the following current fiscal year statistics regarding appeals filed with the Commission under subpart D of this part:

(1) The number of appeals filed.

(2) The number of individuals filing appeals.

(3) The number of appeals involving each basis of alleged discrimination.

(4) The number of appeals involving each issue of alleged discrimination.

(5) The number of appeals pending at the beginning of the fiscal year, the number filed during the fiscal year, the number decided during the fiscal year, and the number pending at the end of the reporting period.

(6) For appeals decided during the fiscal year, the average number of days from filing of the appeal to issuance of the Commission's appellate decision.

(7) The number of appellate decisions issued during the fiscal year involving a finding of discrimination, and the percentage of all appellate decisions issued during the fiscal year that involved a finding of discrimination.

(8) Of the appellate decisions issued during the fiscal year involving a finding of discrimination, the number and percentage by basis of discrimination and by issue of discrimination.

(9) Of the appeals pending at the end of the reporting period, the number that were first filed before the start of the then-current fiscal year.