

**DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT**

**Office of the Secretary; Equal
Employment Opportunity; Policies and
Procedures**

24 CFR Part 7

[Docket No. FR 3323-F-01]

RIN 2529-AA61

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: This final rule streamlines HUD's regulations in 24 CFR part 7 pertaining to equal opportunity policies and procedures, and updates these regulations to reflect current practices. Additionally, this rule makes HUD's equal employment complaint processing consistent with the Equal Employment Opportunity Commission's (EEOC) regulations at 29 CFR part 1614.

EFFECTIVE DATE: April 29, 1996.

FOR FURTHER INFORMATION CONTACT: Mari R. Barr, Director for Equal Employment Opportunity, Office of Departmental Equal Employment Opportunity, Room 4300 L'Enfant Plaza, (202) 708-3633, Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. (This telephone number is not toll-free.) For hearing- or speech-impaired persons this number may be accessed via TDD by contacting the Federal Information Relay Service at 1-800-877-8339.

SUPPLEMENTARY INFORMATION:

Background

This final rule streamlines and updates HUD's regulations in 24 CFR part 7 pertaining to equal opportunity policies and procedures. With the exception of two sections (§§ 7.2, 7.3) these regulations have not been amended since 1971. The rule is revised to reflect the new organization of HUD's Equal Employment Opportunity (EEO) office. Additionally, this rule revises the regulations to parallel EEOC's regulations at 29 CFR part 1614, relating to Federal sector equal employment. It will enable quicker, more efficient processing of complaints and promotes impartial, fair and early resolution of complaints.

The revisions are as follows:

Section 7.1 Policy

This section has been revised by the adding of age and disability as additional bases of discrimination.

Section 7.2 Definition

The definition of a person with a disability, which means the same as

handicap under EEOC's regulations at 29 CFR part 1614, has been added.

Section 7.3 Designation

This section replaces the Assistant Secretary for Fair Housing and Equal Opportunity as the Director of Equal Employment Opportunity. The Director of the Office of Departmental Equal Employment Opportunity is designated the Director of Equal Employment Opportunity (EEO).

The Deputy Director of the Office of Departmental Equal Employment Opportunity is designated as the Deputy Director of Equal Employment Opportunity.

This section also states that Equal Employment Opportunity officers shall be designated by the Director of EEO for their respective organizational units.

Section 7.4 Affirmative Employment Programs

The final rule adds a new section which states that the Office of the Secretary, the Assistant to the Deputy Secretary for Field Management, each Assistant Secretary, the General Counsel, the Inspector General, the President of Government National Mortgage Association, the Chief Financial Officer, the Director of Lead-Based Paint Abatement and Poisoning Prevention, and the Director, Office of Federal Housing Enterprise Oversight shall establish, maintain and carry out a plan of affirmative employment to promote equal employment opportunity in every aspect of employment policy and practice. Each plan shall identify instances of under-representation of minorities, women and persons with disabilities, recognize situations or barriers that impede equality of opportunity, and include objectives and action items targeted to eliminate any employment, training, advancement, and retention issues which adversely affect minorities, women and persons with disabilities.

Section 7.10 Responsibilities of the Director and Deputy Director of EEO

The function of selecting equal employment counselors has been added to the functions of the Director and Deputy Director of EEO.

Equal employment counselors previously were designated by EEO officers. The Director or the Deputy Director of EEO only concurred on the designations.

Section 7.11 Responsibilities of EEO Officers.

Each EEO officer has the additional responsibilities of

(1) advising the Director of EEO on all matters pertaining to the implementation of the Department's Equal Employment and Affirmative Employment policies and programs in the respective organizational units;

(2) Publicize to all employees of the organizational unit the name and address of the Director of EEO, the EEO Officer, and the EEO Counselor(s), the EEO Discrimination Complaint Manager, the Affirmative Employment Program (AEP) Manager, the Diversity Program Manager, and the EEO complaint procedures;

(3) Evaluate the performance by the managers and supervisors in the organization unit in carrying out their responsibilities;

(4) Seek a resolution of EEO matters alleging discrimination within their organization brought to their attention;

(5) Designate a high level Affirmative Employment Program (AEP) Manager in Headquarters responsible for the preparation of the AEP plan; the management of the plan; providing advice and guidance to managers and supervisors in removing barriers to Equal Employment Opportunity/Affirmative Employment (EEO/AE) and in implementing all their EEO/AE responsibilities.

(6) Designate a senior level EEO Discrimination Complaint Manager in Headquarters to manage and direct the organization's EEO responsibilities;

(7) Designate a senior level Diversity Program Manager in Headquarters to manage and direct the organization's Diversity Program and provide resources for Diversity activities for its employees.

Section 7.12 Responsibilities of EEO Counselors

Age and disability discrimination have been added as additional reasons for counseling by EEO counselors.

Section 7.13 Responsibilities of the Assistant Secretary for Administration

This section was revised by adding three new responsibilities. They are as follows:

(1) Prepare and implement plans for recruitment and reports in accordance with the Federal Equal Opportunity Recruitment Program and the Disabled Veterans Affirmative Action Program;

(2) Make reasonable accommodation to the known physical or mental limitations of qualified applicants and employees with disabilities unless the accommodation would impose an undue hardship on the operation of the agency's program; and

(3) Designate a senior level Disability Program Manager to promote EEO/AE

for persons with disabilities; to assure the accessibility of all HUD facilities and programs; and to manage the resources for providing reasonable accommodation.

Section 7.14 Responsibilities of Human Resources Officers

The title of Director of Personnel has been replaced with the new title called Human Resources Officer. Certain responsibilities have been given Human Resources Officers in addition to those of the former Directors of Personnel. They are as follows:

(1) In coordination with the Director of the Training Academy, develop an on-going training program for various levels of administration and supervision, to insure understanding of the Departmental EEO/AE programs, policy and requirements which fosters effective teamwork and high morale, and provide communication with employees on any matter related to equal employment opportunity;

(2) Decide all personnel actions on merit principles in a manner which will demonstrative affirmative equal employment opportunity for the organization;

(3) Ensure the greatest possible utilization and development of the skills and potential ability of all employees;

(4) Track applicant flow and promptly take or recommend appropriate action to overcome any impediment to the achievement of the objectives of the EEO/AE programs; and

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

Section 7.15 Responsibilities of the Assistant Regional Administrators for Equal Opportunity

This title has been removed from the table of contents.

Section 7.16 Responsibilities of Supervisors.

This title has been removed from the table of contents.

Section 7.17 Responsibilities of Managers and Supervisors

This new section states that responsibilities of managers and supervisors include the following:

(1) Removing barriers to EEO and ensuring that Affirmative Employment objectives are accomplished in their areas of responsibility;

(2) Evaluating subordinate managers and supervisors on their performance of EEO/AE responsibilities;

(3) Encouraging and taking positive steps to ensure respect for and

acceptance of minorities, women and persons with disabilities, veterans and other diverse characteristics in the work force;

(4) Providing for the non-discriminatory treatment of all employees and for providing full and fair opportunity for all employees in obtaining employment and career advancement, including support for F.A.I.R., the Upward Mobility Program, the Mentoring Program and the Individual Development Plan;

(5) Encouraging and authorizing staff participation in the various Diversity Program observances;

(6) Being proactive in addressing EEO/AE issues, and for work environments that encourage and support complaint avoidance through sound management and personnel practices;

(7) Resolving complaints of discrimination early in the EEO process either independently, or through the use of alternate dispute resolution techniques, when it is the right thing to do and when it represents a sound business decision; and

(8) Making reasonable accommodation to the religious and disability needs of applicants and employees when those accommodations can be made without undue hardship on the business of the agency.

Section 7.25 Precomplaint Processing

EEOC's regulations, 24 CFR part 1614.105, shall apply concerning precomplaint processing.

Sections 7.30, 7.31, 7.32, 7.33 and 7.34—These sections have been revised to provide more efficient measures of handling EEO complaints.

The following titles have been removed from the table of contents:

§ 7.35—Adjustment of complaints.

§ 7.36—Hearing.

§ 7.38—Avoidance of delay.

§ 7.40—Complaint file.

The following sections have been removed:

§ 7.45—Entitlement.

§ 7.46—Where to appeal.

§ 7.47—Time limit.

§ 7.48—Appellate procedures.

§ 7.49—Appellate review by the Commissioners.

Other Matters

Environmental Impact. The subject matter of this final rule is categorically excluded from HUD's environmental clearance procedures under 24 CFR 50.20(k). It relates to internal administrative procedures whose content does not constitute a development decision or affect the

physical condition of project areas or building sites.

Impact on Small Entities. The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)) has reviewed and approved this rule, and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule only streamlines and simplifies 24 CFR part 7.

Federalism. The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this rule will not have substantial direct effects on states or their political subdivisions, or the relationship between the federal government and the states, or on the distribution of power and responsibilities among the various levels of government. The rule's coverage is limited to federal employees.

Family. The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that this rule does not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the order. This final rule will make HUD's processing of employment discrimination complaints more efficient.

Justification for Final Rulemaking. The Department has determined that it is unnecessary to subject this rule to public comment. Since this rule is limited to removing obsolete provisions and updating provisions in part 7 to reflect current practices, prior public comment was determined to be unnecessary. Section 10.1 of 24 CFR part 10 states that notice and public procedure can be omitted if the Department determines in a particular case or class of cases that notice and public procedure are impracticable, unnecessary, or contrary to the public interest.

List of Subjects in 24 CFR Part 7

Administrative practice and procedure, Equal employment opportunity, Organization and functions (Government agencies).

Accordingly, 24 CFR part 7 is revised as follows:

PART 7—EQUAL EMPLOYMENT OPPORTUNITY; POLICY AND PROCEDURES

Subpart A—Equal Employment Opportunity Without Regard to Race, Color, Religion, Sex, National Origin, Age, or Disability

General Provisions

Sec.

- 7.1 Policy.
- 7.2 Definitions.
- 7.3 Designations.
- 7.4 Affirmative employment programs.

Responsibilities

- 7.10 Responsibilities of the Director and Deputy Director of EEO.
- 7.11 Responsibilities of the EEO Officers.
- 7.12 Responsibilities of the EEO Counselors.
- 7.13 Responsibilities of the Assistant Secretary for Administration.
- 7.14 Responsibilities of Human Resources Officers.
- 7.15 Responsibilities of managers and supervisors.
- 7.16 Responsibilities of employees.

Precomplaint Processing

- 7.25 Precomplaint processing.

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- 7.30 Presentation of complaint.
- 7.31 Who may file a complaint, with whom filed, and time limits.
- 7.32 Contents.
- 7.33 Acceptability.
- 7.34 Processing.
- 7.35 Hearing.
- 7.36 Decision by Director of EEO.
- 7.37 Rights of appeals.
- 7.38 Relationship to other HUD appellate procedures.

Subpart B—[Reserved]

Authority: 42 U.S.C. 3535(d); E.O. 11478, 3 CFR, 1969 Comp. p. 306; 42 U.S.C. 2000e note.

Subpart A—Equal Employment Opportunity Without Regard to Race, Color, Religion, Sex, National Origin, Age, or Disability

General Provisions

§ 7.1 Policy.

In conformity with the policy expressed in Executive Order 11478 (34 FR 12985, 3 CFR, 1966–1970 Comp., p. 803) and with implementing regulations of the Equal Employment Opportunity Commission, codified under 29 CFR part 1614, it is the policy and the intent of the Department of Housing and Urban Development to provide equality of opportunity in employment in the Department for all persons; to prohibit discrimination because of race, color, religion, sex, national origin, age or disability in all aspects of its personnel policies, program, practices, and operations and in all its working

conditions and relationships with employees and applicants for employment; and to promote the full realization of equal opportunity in employment through continuing programs of affirmative employment at every management level within the Department.

§ 7.2 Definitions.

For purposes of this subpart A—*AE* means Affirmative Employment. *EEO* means Equal Employment Opportunity.

Organizational unit means the jurisdictional area of the Office of the Secretary, the Assistant to the Deputy Secretary for Field Management, each Assistant Secretary, the General Counsel, the Inspector General, the President of the Government National Mortgage Association, the Chief Financial Officer, the Director of Lead-Based Paint Abatement and Poisoning Prevention, and the Office of Federal Housing Enterprise Oversight.

Person with a disability means the same as handicap under EEOC's regulations at 29 CFR part 1614.

§ 7.3 Designations.

(a) *Director of Equal Employment Opportunity.* The Director of the Office of Departmental Equal Employment Opportunity is designated the Director of EEO, except that with respect to complaints naming the Director and/or Deputy Director of Departmental EEO as the alleged discriminating official(s) and complaints arising in the Office of Departmental EEO, the Chief of Staff shall be Director of EEO.

(b) *Deputy Director of Equal Employment Opportunity.* The Deputy Director of the Office of Departmental Equal Employment Opportunity is designated as the Deputy Director of Equal Employment Opportunity and acts for the Director of EEO.

(c) *Equal Employment Opportunity Officers.* The Director of Equal Employment Opportunity shall designate appropriate HUD officials to be Equal Employment Opportunity Officers for their respective organizational units.

§ 7.4 Affirmative employment programs.

The Office of the Secretary, the Assistant to the Deputy Secretary for Field Management, each Assistant Secretary, the General Counsel, the Inspector General, the President of the Government National Mortgage Association, the Chief Financial Officer, the Director of Lead-Based Paint Abatement and Poisoning Prevention, and the Director, Office of Federal Housing Enterprise Oversight shall

establish, maintain and carry out a plan of affirmative employment to promote equal opportunity in every aspect of employment policy and practice. Each plan shall identify instances of underrepresentation of minorities, women and persons with disabilities, recognize situations or barriers that impede equality of opportunity, and include objectives and action items targeted to eliminate any employment, training, advancement, and retention issues which adversely affect minorities, women and persons with disabilities. Each plan must be consistent with 29 CFR part 1614 and the governing Management Directive issued by the Equal Employment Opportunity Commission, and is subject to approval by the Director of Equal Employment Opportunity and shall be developed within the framework of Departmentwide guidelines published by the Director of EEO.

Responsibilities

§ 7.10 Responsibilities of the Director and Deputy Director of EEO.

The Director and Deputy Director of EEO are assigned the functions of:

- (a) Advising the Secretary with respect to the preparation of plans, procedures, regulations, reports, and other matters pertaining to the Government's equal employment opportunity policy and the Department's EEO/AE programs;
- (b) In coordination with other officials, developing and maintaining plans, procedures, and regulations necessary to carry out the Department's EEO programs, including a Departmentwide program of affirmative employment developed in coordination with other officials; approving programs of affirmative employment established throughout the Department;
- (c) Evaluating from time to time the sufficiency of the Department's EEO/AE programs and reporting thereon to the Secretary with recommendations as to any improvement or correction needed, including remedial or disciplinary action with respect to managerial or supervisory employees who have failed in their responsibility;
- (d) Appraising the Department's personnel operations at regular intervals to insure their conformity with the policy of the Government and the Department's equal employment opportunity program;
- (e) Making changes in programs and procedures designed to eliminate discriminatory practices and improve the Department's EEO/AE programs;
- (f) Selecting EEO Counselors;
- (g) Providing for counseling by an EEO Counselor of an aggrieved

employee or applicant for employment who believes that he or she has been discriminated against because of race, color, religion, sex, national origin, age or disability and for attempting to resolve on an informal basis or through a formal alternative dispute resolution process, the matter raised by the employee or applicant before a complaint of discrimination may be filed under § 7.31;

(h) Providing for the prompt, fair and impartial processing of individual complaints involving issues of discrimination within the Department subject to 29 CFR part 1614;

(i) Making the final decision on discrimination complaints and ordering such corrective measures as may be necessary, including disciplinary action as is warranted by the circumstances when an employee has been found to have engaged in a discriminatory practice; and

(j) Executing settlement agreements to resolve EEO complaints.

§ 7.11 Responsibilities of the EEO Officers.

Each EEO Officer shall:

(a) Advise the Director of EEO on all matters affecting the implementation of the Department's EEO/AE policies and programs in the organizational unit;

(b) Develop and maintain a program of affirmative employment for the organizational unit and insure that it is carried out in an exemplary manner;

(c) Publicize to all employees of the organizational unit the name and address of the Director of EEO, the EEO Officer, and the EEO Counselor(s), the EEO Discrimination Complaint Manager, the Affirmative Employment Program (AEP) Manager, the Diversity Program Manager, and the EEO complaint procedures;

(d) Inform all supervisors in the organizational unit of the responsibilities and objectives of the EEO Counselors and the EEO complaint process and the importance of cooperating with the Counselors to informally find solutions to problems brought to the officer's attention by employees and applicants;

(e) Evaluate the performance by the managers and supervisors in the organizational unit in carrying out their responsibilities under this subpart and taking appropriate action;

(f) Seek a resolution of EEO matters alleging discrimination within their organization brought to their attention;

(g) Designate a high level Affirmative Employment Program (AEP) Manager in Headquarters responsible for the preparation of the AEP plan; the management of the plan; providing

advice and guidance to managers and supervisors in removing barriers to EEO/AE and in implementing all their EEO/AE responsibilities; and reviewing all recruitment and personnel actions taken by managers and supervisors to ensure the achievement of AEP objectives;

(h) Designate a senior level EEO Discrimination Complaint Manager in Headquarters to manage and direct the organization's EEO responsibilities; and

(i) Designate a senior level Diversity Program Manager in Headquarters to manage and direct the organization's Diversity Program and provide resources for Diversity activities for its employees.

§ 7.12 Responsibilities of the EEO Counselors.

The EEO Counselors are responsible for counseling and attempting resolution of matters brought to the counselor's attention pursuant to § 7.26 and 29 CFR part 1614 by any employee or applicant for employment who believes that he or she has been discriminated against because of race, color, religion, sex, national origin, age, or disability.

§ 7.13 Responsibilities of the Assistant Secretary for Administration.

The Assistant Secretary for Administration shall:

(a) Provide leadership in developing and maintaining personnel management policies, programs, automated systems and procedures which will promote continuing affirmative employment to insure equal opportunity in the recruitment, selection, placement, training, awards, recognition and promotion of employees, including an applicant flow tracking system;

(b) Provide positive assistance and guidance to organizational units and personnel offices to insure the effective implementation of the personnel management policies, programs, automated systems, and procedures on equal employment opportunity;

(c) Participate at the national level with other Government departments and agencies, other employers, and other public and private groups, in cooperative action to improve employment opportunities and community conditions which effect employability;

(d) Prepare and implement plans for recruitment and reports in accordance with the Federal Equal Opportunity Recruitment Program and the Disabled Veterans Affirmative Action Program;

(e) Make reasonable accommodation to the known physical or mental limitations of qualified applicants and

employees with disabilities unless the accommodation would impose an undue hardship on the operation of the agency's program; and

(f) Designate a senior level Disability Program Manager to promote EEO/AE for persons with disabilities; to assure the accessibility of all HUD facilities and programs; and to manage the resources for providing reasonable accommodation.

§ 7.14 Responsibilities of Human Resources Officers.

In conformity with guidelines issued by the Assistant Secretary for Administration, Human Resources Officers shall:

(a) Appraise job structure and employment practices to insure genuine equality of opportunity for all employees to participate fully on the basis of merit in all occupations and levels of responsibility;

(b) Communicate the Department's equal employment opportunity policy and program and its employment needs to all sources of job candidates without regard to race, color, religion, sex, national origin, disability or age and solicit their recruitment assistance on a continuing basis;

(c) As appropriate, provide personnel information to EEO counselors and others who are involved in the decision on a discrimination complaint;

(d) Evaluate hiring methods and practices to insure impartial consideration for all job applicants;

(e) Ensure that new employee orientation programs contain appropriate references to the Department's EEO/AE policies and programs;

(f) Participate in the preparation and distribution of such educational materials as may be necessary to inform adequately all employees of their rights and responsibilities as described in this part, including the Department's directives issued to carry out the Equal Employment Opportunity Program;

(g) In coordination with the Director of the Training Academy, develop an on-going training program for various levels of administration and supervision, to ensure understanding of the Departmental EEO/AE programs, policy and requirements which fosters effective teamwork and high morale, and provide communication with employees on any matter related to equal employment opportunity;

(h) Decide all personnel actions on merit principles in a manner which will demonstrative affirmative equal employment opportunity for the organization;

(i) Ensure the greatest possible utilization and development of the skills and potential ability of all employees;

(j) Track applicant flow and promptly take or recommend appropriate action to overcome any impediment to the achievement of the objectives of the EEO/AE programs; and

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

§ 7.15 Responsibilities of managers and supervisors.

All managers and supervisors of the Department are responsible for:

(a) Removing barriers to EEO and ensuring that Affirmative Employment objectives are accomplished in their areas of responsibility;

(b) Evaluating subordinate managers and supervisors on their performance of EEO/AE responsibilities;

(c) Encouraging and taking positive steps to ensure respect for and acceptance of minorities, women and persons with disabilities, veterans and others of diverse characteristics in the work force;

(d) Providing for the non-discriminatory treatment of all employees and for providing full and fair opportunity for all employees in obtaining employment and career advancement, including support for F.A.I.R., the Upward Mobility Program, the Mentoring Program and the Individual Development Plan;

(e) Encouraging and authorizing staff participation in the various Diversity Program observances;

(f) Being proactive in addressing EEO/AE issues, and for work environments that encourage and support complaint avoidance through sound management and personnel practices;

(g) Resolving complaints of discrimination early in the EEO process either independently, or through the use of alternate dispute resolution techniques, when it is the right thing to do and when it represents a sound business decision; and

(h) Making reasonable accommodation to the religious and disability needs of applicants and employees when those accommodations can be made without undue hardship on the business of the agency.

§ 7.16 Responsibilities of employees.

All employees of the Department are responsible for:

(a) Being informed as to the Department's EEO/AE programs;

(b) Adopting an attitude of full acceptance of minority, female and disabled group associates, and support of F.A.I.R.;

(c) Providing equality of treatment of, and service to, all citizens with whom they come in contact in carrying out their job responsibilities; and

(d) Providing assistance to supervisors and managers in carrying out their responsibilities in the EEO/AE programs.

Precomplaint Processing

§ 7.25 Precomplaint processing.

The regulations in 29 CFR 1614.105, concerning precomplaint processing shall apply.

Complaints

§ 7.30 Presentation of complaint.

At any stage in the presentation of a complaint, including the counseling stage, the Complainant shall be free from restraint, interference, coercion, discrimination, or reprisal and shall have the right to be accompanied, represented, and advised by a representative of the Complainant's own choosing, except as limited by 29 CFR 1614.605. If the Complainant is an employee of the Department, the employee shall have a reasonable amount of official time to present the complaint if the employee is otherwise in an active duty status. If the Complainant is an employee of the Department and designates another employee of the Department as Complainant's representative, the representative shall be free from restraint, interference, coercion, discrimination, or reprisal, and shall have a reasonable amount of official time, if the representative is otherwise in an active duty status, to present the complaint.

§ 7.31 Who may file a complaint, with whom filed, and time limits.

Any aggrieved person (hereafter referred to as the Complainant) who has observed the provisions of § 7.25 may file a complaint if the matter of discrimination was not resolved to the complainant's satisfaction. The complaint must be filed with the Director of EEO within fifteen (15) days of receipt of the Notice of Right to File a Complaint issued by the EEO Counselor. The Department may accept a complaint only if the Complainant has met the appropriate requirements contained in 29 CFR 1614.605.

§ 7.32 Contents.

(a) The complaint filed should include the following information:

(1) The specific action or personnel matter which is alleged to be discriminatory;

(2) The date the act or matter occurred;

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

(4) Facts and other pertinent information to support the allegation of discrimination; and

(5) The relief desired.

(b) To expedite the processing of complaints of discrimination, the Complainant should use HUD EEO-1 form to file the complaint.

§ 7.33 Acceptability.

The Director of EEO shall determine whether the complaint comes within the purview of the EEO regulations at 29 CFR part 1614 and shall advise the Complainant and Complainant's representative in writing of the acceptance or dismissal of the allegation(s) of the complaint. Should the Director of EEO dismiss the complaint or any allegations contained in the complaint, the written decision to the Complainant shall inform Complainant of the complainant's right to appeal the decision and of the time limit applicable to the right of appeal, if Complainant believes the dismissal improper.

§ 7.34 Processing.

(a) The Director of EEO will process complaints filed under 29 CFR part 1614 for the Department. The Director or the Director's designee has jurisdiction of any case.

(b) The Director of EEO shall provide for the development of a complete and impartial record on which to decide the merits of the allegations accepted for investigation.

(1) The person assigned to develop the factual record for the complaint shall occupy a position in the Department which is not, directly or indirectly, under the jurisdiction of the head of the part of the Department in which the complaint arose, or the person shall develop the record under a contract with the Department.

(2) The Department will develop a complete and impartial factual record, subject to the requirements of 29 CFR part 1614, upon which to make findings on the matters raised in the complaint and accepted for processing.

(3) The Director of EEO will provide the Complainant and the EEO Officer a copy of the record developed.

§ 7.35 Hearing.

(a) The Director of EEO will notify the Complainant of the Complainant's right to request an administrative hearing before the Equal Employment Opportunity Commission or a Final Agency Decision from the Department and the timeframes for executing the

right to request an administrative hearing.

(b) The Director of EEO will notify the appropriate EEOC office of Complainant's timely request for a hearing and request the appointment of an administrative judge to conduct the hearing pursuant to 29 CFR 1614.109.

§ 7.36 Decision by Director of EEO.

Following consultation with the General Counsel and the Assistant Secretary for Administration, the Director of EEO shall make the final agency decision for the Department based on the record developed through the processing of the complaint. The decision shall require the remedial and corrective action necessary to ensure that the Department is in compliance with the EEO statutes and to promote

the Department's policy of equal employment opportunity.

§ 7.37 Rights of appeal.

The provisions of 29 CFR part 1614, subpart D, shall govern rights of appeal.

§ 7.38 Relationship to other HUD appellate procedures.

(a) An aggrieved individual covered by a collective bargaining agreement that permits allegations of discrimination to be raised in a negotiated grievance procedure can file a complaint under these procedures or a negotiated grievance, but not both. An election to proceed under this part is indicated only by filing of a written complaint. An election to proceed under a negotiated grievance procedure is indicated by the filing of a timely grievance.

(b) An aggrieved individual alleging discrimination on the basis of race, color, religion, sex, national origin, age or disability related to or stemming from an action that can be appealed to the Merit Systems Protection Board (MSPB) can file a complaint under these procedures, or an appeal with the MSPB, but not both. Whichever is filed first, the complaint or the appeal, is considered an election to proceed in that forum.

Subpart B—[Reserved]

Dated: March 20, 1996.
Henry G. Cisneros,
Secretary.
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