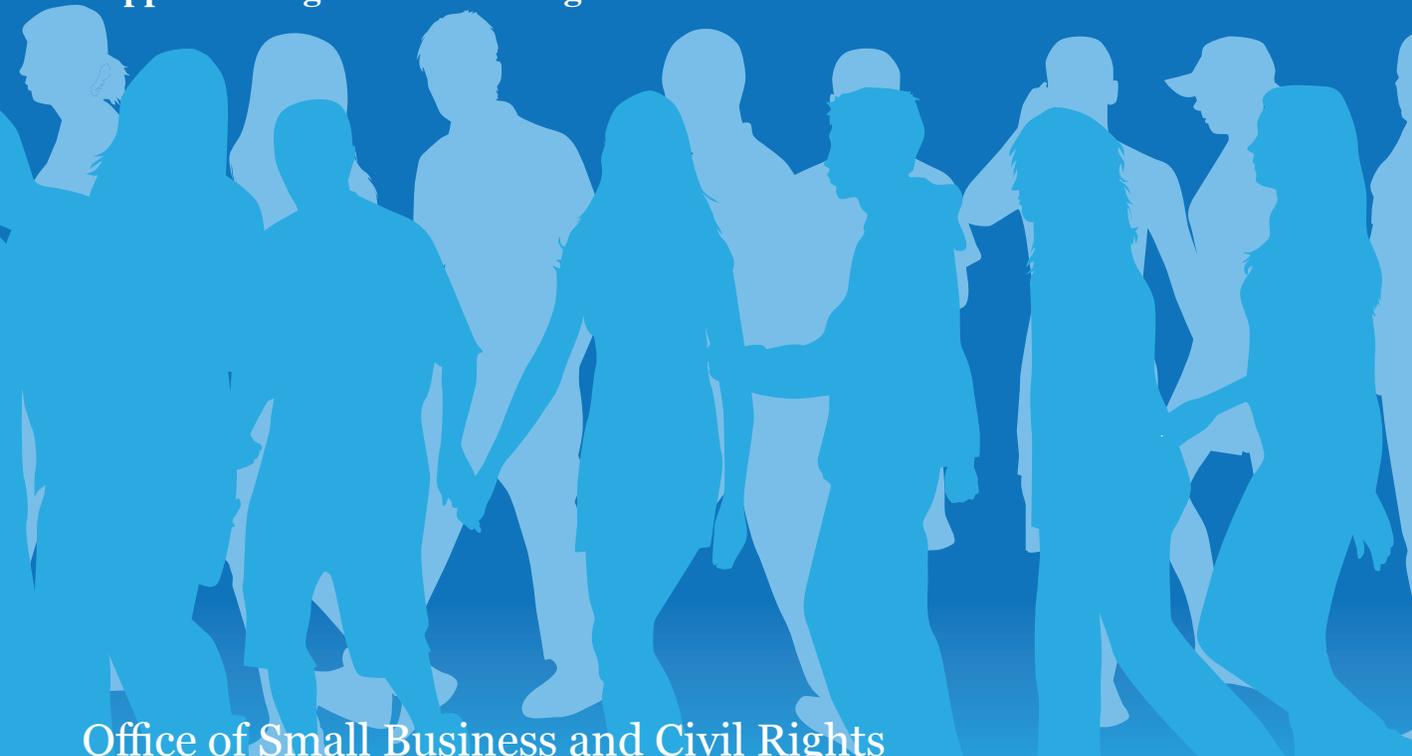




THE U.S. NUCLEAR REGULATORY COMMISSION'S EXTERNAL COMPLAINT PROCESSING AND INVESTIGATION PROCEDURES MANUAL

This manual assists the U.S. Nuclear Regulatory Commission (NRC) to ensure uniform complaint processing and investigation procedures. This manual also provides the public and other interested stakeholders information on the NRC's external civil rights procedural processes.

The NRC's External Complaint Processing & Investigation Procedures Manual
Supplementing OCCP's Management Directive 10.164

A large graphic at the bottom of the page features silhouettes of a diverse group of people of various ages and ethnicities walking together in a line, holding hands. The silhouettes are rendered in a light blue color against the dark blue background.

Office of Small Business and Civil Rights

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1. INTRODUCTION

1.1 Purpose and Applicability

The U.S. Nuclear Regulatory Commission (NRC) delegated authority to the Office of Small Business and Civil Rights (SBCR) to administer the agency's civil rights programs. SBCR provides leadership, guidance, technical assistance, and support to other NRC offices to ensure agencywide compliance with applicable NRC and Federal civil rights regulations. Each NRC office is responsible for ensuring nondiscrimination in their respective NRC conducted programs and activities.

SBCR's civil rights activities fall into two broad categories: (1) internal civil rights programs affecting NRC employees and applicants for employment, and (2) external civil rights programs relating to participants and beneficiaries (eligible and actual) of the various programs and activities conducted by the NRC and receiving Federal financial assistance (FFA). This manual focuses solely on external civil rights complaint processing and investigation procedures. NRC's external civil rights programs fall under the oversight of the SBCR Outreach and Compliance Coordination Program (OCCP), which was established and approved by the Commission on April 4, 2007 (see SECY-07-0065, "Outreach and Compliance Coordination Program") to administer the agency's external civil rights compliance programs.

This manual provides step by step instructions and guidance on processing, investigating and resolving external complaints. This manual is reflective of the guidance set forth in the Department of Justice's (DOJ's) Investigation Procedures Manual and "best practices" learned from other Federal, State, and local civil rights/human relations agencies. This manual, however, is not intended to offer an exhaustive explanation of external complaint processing, investigating, or resolution procedures. For additional guidance, refer to OCCP's Management Directive 10.164 and/or the DOJ Investigation Procedures Manual for the Investigation and Resolution of Complaints Alleging Violations of Title VI and Other Nondiscrimination Statutes (September 1998 edition or amended version). If DOJ's guidance differs from this manual, consult with the OCCP Manager for further advisement.

In discussing investigative procedures, this manual may cite obligations under Title VI of the Civil Rights Act of 1964, which prohibits discrimination based on race, color, national origin, and disability in any program or activity receiving FFA. However, this manual's general complaint and investigative guidance should be applied to investigate complaints of discrimination covered under other statutes, equal opportunity and fair practice laws, Executive orders (EOs), court decisions, and NRC regulations (e.g., Title 10, "Energy," of the Code of Federal Regulations (10 CFR) Parts 2 ("Agency Rules of Practice and Procedure"), 4 ("Nondiscrimination in Federally Assisted Programs or Activities Receiving Federal Financial Assistance from the Commission"), 5 ("Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance"), and 19 ("Notices, Instructions and Reports to Workers: Inspection and Investigations")).

Despite differing program missions, all NRC offices (lead and support) share the same goal: to ensure that all civil rights laws, regulations, and EOs for which the NRC is responsible are implemented and enforced consistently, correctly, and expeditiously.

1.2 Authorities

1.2(1) General Nondiscrimination Statutes, Regulations, and Guidelines

- A. 10 CFR Part 4 (the NRC's implementation of agency regulations related to nondiscrimination in federally assisted programs or activities receiving FFA from the Commission) (10 CFR 4):
 - 1. **Subpart A**— “Regulations Implementing Title VI of the Civil Rights Act of 1964 [as amended] and Title IV of the Energy Reorganization Act of 1974 [as amended]” (10 CFR 4, Subpart A).
 - 2. **Subpart B**— “Regulations Implementing Section 504 of the Rehabilitation Act of 1973, as amended” (10 CFR 4, Subpart B).
 - 3. **Subpart C**— “Regulations Implementing the Age Discrimination Act of 1975, as amended” (10 CFR 4, Subpart C).
 - 4. **Subpart D**— [Section reserved].
 - 5. **Subpart E**— “Enforcement of Nondiscrimination on the Basis of Disability in Programs or Activities Conducted by the U.S. Nuclear Regulatory Commission” (10 CFR 4, Subpart E).
- B. 10 CFR Part 5 (the NRC's implementation of Title IX of the Education Amendments of 1972) (10 CFR 5).
- C. Civil Rights Restoration Act of 1987, Pub. L. No. 100 209.
- D. EO 12250, “Leadership and Coordination of Nondiscrimination Laws.”
- E. Title 28, “Judicial Administration,” of the Code of Federal Regulations, Part 42, “Nondiscrimination; Equal Employment Opportunity; Policies and Procedures” (28 CFR 42), Subpart F, “Coordination of Enforcement of Non discrimination in Federally Assisted Programs.”
- F. 28 CFR Part 42, Subpart H, “Procedures for Complaints of Employment Discrimination Filed Against Recipients of Federal Financial Assistance [with the DOJ].”
- G. Title 29, “Labor,” of the Code of Federal Regulations, Part 1691, “Procedures for Complaints of Employment Discrimination Filed Against Recipients of Federal Financial Assistance [with the Equal Employment Opportunity Commission (EEOC)]” (29 CFR 1691).

1.2(2) Race, Color, National Origin, and Disability

- A. Title VI of the Civil Rights Act of 1964, 42 U.S.C. Sections 2000d et seq. (Title VI).
- B. 10 CFR Part 4, Subpart A.
- C. 28 CFR Part 42, Subpart C, “Nondiscrimination in Federally Assisted Programs-Implementing Title VI of the Civil Rights Act of 1964.”
- D. 28 CFR Section 50.3, “Guidelines for the Enforcement of Title VI, Civil Rights Act of 1964.”

1.2(3) Limited English Proficiency

- A. EO 13166, “Improving Access to Services for Persons with Limited English Proficiency [(LEP)].”
- B. Title VI of the Civil Rights Act of 1964.
- C. 10 CFR Part 4, Subpart A.

1.2(4) Environmental Justice

- A. EO 12898, “Federal Actions to Address Environmental Justice [(EJ)] in Minority Populations and Low Income Populations.”
- B. Policy Statement on the Treatment of Environmental Justice Matters in NRC Regulatory and Licensing Actions, 69 Federal Register (FR) 52040 (August 24, 2004).
- C. 10 CFR Part 4, Subpart A.

1.2(5) Sex

- A. 40 U.S.C. Section 476, “Sex discrimination prohibited” (prohibiting sex discrimination in any program or activity carried on or receiving Federal Assistance under Title 40 United States Code, “Public Buildings, Property, and Works”).
- B. Title IV, “Sex Discrimination,” of the Energy Reorganization Act of 1974 (42 U.S.C. Sections 5801, 5891) prohibits sex discrimination under any program or activity carried on or receiving Federal assistance under any title of this Act (which relates to NRC conducted and NRC-assisted programs and activities).
- C. 10 CFR Part 4, Subpart A.
- D. 10 CFR Part 2.
- E. 10 CFR Part 19.

- F. Title IX of the Education Amendments of 1972 (20 U.S.C. Section 1681 et seq.).
- G. 10 CFR Part 5.

1.2(6) Age

- A. The Age Discrimination Act of 1975, as amended (42 U.S.C. Section 6101 et seq.).
- B. 10 CFR Part 4, Subpart C, "Regulations Implementing the Age Discrimination Act of 1975, as amended."

1.2(7) Disability

- A. Section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination in any program or activity receiving FFA or under any program or activity conducted by any Federal executive agency of the U.S. Postal Service.
- B. The Americans with Disabilities Act of 1990, as amended (42 U.S.C. Section 12101 et seq.).
- C. 10 CFR Part 4, Subparts B ("Regulations Implementing Section 504 of the Rehabilitation Act of 1973, as Amended") and E ("Enforcement of Nondiscrimination on the Basis of Disability in Programs or Activities Conducted by the U.S. Nuclear Regulatory Commission").
- D. 28 CFR Part 41, "Implementation of Executive Order 12250, Nondiscrimination on the Basis of Handicap in Federally Assisted Programs" (provides guidelines for determining discriminatory practices).
- E. 28 CFR Part 37, "Procedures for Coordinating the Investigation of Complaints or Charges of Employment Discrimination Based on Disability Subject to the Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973 [by the DOJ]."
- F. 29 CFR Part 1640, "Procedures for Coordinating the Investigation of Complaints or Charges of Employment Discrimination Based on Disability Subject to the Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973 [by the EEOC]."
- G. GSA Federal Management rule, which incorporates by reference the Architectural Barriers Act Accessibility Standard guidelines and is found at 41 CFR Section 102-76.

1.2(8) Education and Training

EO 13160, "Nondiscrimination on the Basis of Race, Sex, Color, National Origin, Disability, Religion, Age, Sexual Orientation, and Status as a Parent in Federally Conducted Education and Training Programs" (EO 13160).

1.3 Agency Commitment to Promoting Nondiscrimination in NRC-Conducted and Assisted Programs and Activities

- A. The NRC is committed to ensuring that NRC FFA recipients do not discriminate against participants or beneficiaries (eligible or actual) in their programs and activities based on their protected classification such as race, color, national origin, age, sex, or disability.
- B. NRC FFA recipients include state and local governments, institutions of higher education, and nongovernmental organizations, among others.
- C. NRC employees and members of the public who become aware of discrimination in NRC conducted or NRC-assisted programs or activities should immediately contact the OCCP Manager to ensure that the agency promptly addresses the alleged act(s).
- D. Nondiscrimination laws and EOs identified in Section 1 that are applicable to NRC recipients include:
 - 1. Title VI of the Civil Rights Act of 1964, which prohibits race, color, national origin, or disability discrimination in programs and activities receiving FFA.
 - 2. Title IV of the Energy Reorganization Act, which states, “No person shall on the ground of sex be excluded from participation in, be denied a license under, be denied the benefits of, or be subjected to discrimination under any program or activity... receiving Federal assistance under any title of this Act.”
 - 3. Section 504 of the Rehabilitation Act, which prohibits disability discrimination in programs and activities receiving FFA.
 - 4. Title II of the Americans with Disabilities Act, which prohibits disability discrimination in State and local government services.
 - 5. Title III of the Americans with Disabilities Act, which prohibits disability discrimination in public accommodations (i.e., private entities that own, operate, lease, or lease to places of public accommodation).
 - 6. The Age Discrimination Act of 1975, which prohibits age discrimination in programs and activities receiving FFA.
 - 7. EO 12898, which promotes environmental justice in Federal actions (as described in “Policy Statement on the Treatment of Environmental Justice Matters in NRC Regulatory and Licensing Actions,” 69 FR 52040 (August 24, 2004)).
 - 8. EO 13166, which requires FFA recipients to provide LEP individuals meaningful access to their programs and activities.

1.4 Agency Commitment to Promoting Nondiscrimination in NRC-Conducted Programs and Activities

- A. The Commission is committed to ensuring that NRC conducted programs and activities do not discriminate against members of the public, participants, or beneficiaries (eligible or actual) based on their protected classification such as race, color, national origin, age, sex, or disability. The NRC is obligated to enforce those Federal and NRC regulations and EOs which extend protections to NRC employees and members of the public. For example:
1. Title IV of the Energy Reorganization Act states, “No person shall on the ground of sex be excluded from participation in, be denied a license under, be denied the benefits of, or be subjected to discrimination under any program or activity carried on or receiving Federal assistance under any title of this Act. This provision will be enforced through agency provisions and rules similar to those already established, with respect to racial and other discrimination, under Title VI of the Civil Rights Act of 1964. However, this remedy is not exclusive and will not prejudice or cut off any other legal remedies available to a discriminatee.”
 2. Section 504 of the Rehabilitation Act, as amended, prohibits discrimination in any program or activity receiving FFA, or under any program or activity conducted by any Federal executive agency of the U.S. Postal Service.
 3. Section 508 of the Rehabilitation Act, as amended, requires that Federal agencies’ electronic and information technology (EIT) is accessible to people with disabilities.
 4. EO 13160 prohibits discrimination on the basis of race, sex, color, national origin, disability, religion, age, sexual orientation, and status as a parent in federally conducted education and training programs.
- B. EO 13160 provides that federally conducted “education and training programs and activities” include, but are not limited to:
1. Formal schools
 2. Academic programs
 3. Occupational training
 4. Student internships, scholarships, and fellowships
 5. Training for industry members
 6. Summer enrichment camps
 7. Teacher training programs
 8. Extracurricular activities

- C. EO 13160 applies to education and training programs or activities that are conducted or administered by the NRC or are operated in facilities owned or controlled by the NRC. After obtaining approval from the NRC Office of General Counsel (OGC), questions about whether a program or activity is covered by this EO should be referred to the Federal Coordination and Compliance Section of DOJ. Examples of some NRC conducted programs and activities that fall under EO 13160 include the following:
1. Orientation and on the job instruction provided to State and local officials at NRC offices and facilities, as well as training courses in fundamentals of radiation and radiation protection for State and local government employees under the State Agreements Program.
 2. Occupational training courses and programs, executive and leadership development training programs, the take your children to work program, and student work study activities sponsored by the NRC Office of the Chief Human Capital Officer (OCHCO).
 3. Workshops, symposiums, training, and programs to assist scientific professionals, educational institutions, or other groups sponsored or co sponsored by NRC offices.
 4. Internships, scholarships, and fellowships through the NRC's education investment programs conducted by OCHCO or SBCR or through other NRC conducted programs and activities.
- D. EO 13166 requires Federal agencies to provide LEP individuals meaningful access to their services, programs, and activities and to ensure that their FFA recipients comply with Title VI requirements.
- E. NRC employees and members of the public who become aware of discrimination in NRC conducted or FFA programs or activities should immediately contact the OCCP Manager to ensure that the agency promptly addresses the alleged act(s).

1.5 Goal and Measurable Objectives

- A. The NRC's goal is to achieve equal opportunity in NRC conducted and NRC-assisted programs and activities.
- B. SBCR achieves the above goal by accomplishing, at a minimum, the following measurable objectives:
1. Ensuring that NRC conducted and NRC-assisted programs and activities or other benefits are provided without regard to race, color, national origin, sex, age, religion, or disability.
 2. Promoting the full and fair participation of minority, low income, LEP, disabled, and other protected populations in NRC regulatory processes.
 3. Preventing denial, reduction, or delay in benefits related to NRC programs and activities affecting minority, low income, LEP, disabled, and other protected populations.

4. Providing individuals who are LEP and individuals who are disabled with equal and meaningful access to NRC programs and activities by providing language services and assistance at no cost.
5. Identifying and addressing, as appropriate, disproportionately high and adverse human health and environmental impacts (including social and economic effects) of programs and activities on minority, low income, LEP, disabled, and other protected populations.

2. COMPLAINT INTAKE PROCESS

2.1 Walk-Ins (Civil Rights Specialist/Investigator Assigned to Intake)

- A. Explains the roles of the NRC, SBCR, and OCCP, as well as discrimination laws and actionable categories.
- B. Determines whether or not the complainant identifies himself or herself as a member of a protected classification and determines whether the complaint alleges that the complainant was discriminated against by the respondent or recipient on the basis of his or her membership in the protected classification identified in the complaint.
- C. Gathers information related to the complaint, including, but not limited to:
 - 1. Background Information and Specifics of the Allegation(s). Ascertain time, location, person taking the action, witnesses, and what witnesses can attest to; copy documents in complainant's possession at the time of filing; request identifiable pertinent information, etc.
 - 2. Additional Information Sheet. Have complainant complete an additional information sheet and initial it.
 - 3. Information on the Complaint Process and Investigative Procedures. Inform complainant of the complaint process and investigative procedure, noting burdens of proof necessary to prove discriminatory conduct.
 - 4. Available and Desired Remedies. Explain the remedies available through NRC and Federal regulations and ascertain the remedies desired by the complainant; have the complainant list any expenses and submit documents of support within 30 calendar days, unless impractical to do so.
 - 5. Alternate Dispute Resolution (ADR)/Mediation. Inform complainant of the option for mediation and continuing efforts to resolve the complaint during the investigative process. When both the complainant and respondent agree to mediation, begin mediation attempts for a period not to exceed 45 calendar days for complaints that do not identify age as a basis or 60 calendar days for age based complaints (10 CFR Part 4 Sections (a) through (f)). If the NRC accepts the complaint, it should only refer the matter to ADR if both parties agree and are aware that they may withdraw from the process at any time. Any timeframes should be tolled during ADR. Even when a complaint is in ADR, SBCR/OCCP is charged with ensuring the adequate enforcement of Federal civil rights laws. Title VI coordination regulations provide that, absent "good cause," an agency "should investigate complaints having apparent merit" (28 CFR 42.408). NRC regulations implementing these coordination regulations also describe the complaint process, how the NRC will conduct an investigation, and the attempt to resolve matters voluntarily. A convener should be used to explain the mediation process to both parties and provide additional assistance before mediation to individuals.

6. Investigation Process. Inform the complainant that should mediation attempts fail, the complaint will automatically be referred to a Civil Rights Specialist/Investigator for investigation; explain the processes and procedures outlined in the manual.
7. Automated Processing of the Complaint Form. Systematically process the complaint form and related documents in accordance with internal directives and Federal mandates and oversight agencies' guidelines (e.g., EO 13160).
8. Completeness of the Complaint Form. Check the complaint form for completeness and accuracy before either seeking the OCCP Manager's approval to upload the document or obtaining the complainant's signature.

2.1(1) Roles During the Intake Process

A. Walk-Ins (Administrative Assistant):

1. Registers the individual(s) through the NRC's security and parking systems.
2. Greets the individual(s) arriving at the office and inquires about the nature of their visit; if the individual(s) indicate that they wish to file an OCCP related complaint of discrimination, has the individual(s) sign the OCCP log sheet.
3. Informs the intake personnel of need for assistance.
4. Sets up and maintains the electronic and manual complaint case filing system (including the case number and file).
5. Provides administrative support to intake personnel (including scheduling appointments).
6. Initials, date stamps, and routes mail in complaints to the OCCP Manager.

2.2 Electronic and Mail-in Complaints (Administrative Assistant and Civil Rights Specialist/Investigator Assigned to Intake)

- A. Follow the applicable steps outlined in the above walk-in procedures (Administrative Support). Complaints that are mailed in are handled in the same way as walk-ins. A complaint received by mail goes to a Civil Rights Specialist and gets analyzed. Document the date and time of the complaint.
- B. Once the requirements under Section A are met, the Civil Rights Specialist should, at a minimum:
 1. Analyze the Complaint. Review the complaint and determine whether it is a complete complaint based on NRC and Federal regulations and guidance provided below in Chapter 4, "Evaluating a Complaint," Section 4.4(1), "Pre-Investigation Requirements for a Section 508 Complaint (10 CFR Section 4.4.503).

2. Establish Communication with Complainant. Contact the complainant and/or the complainant's representative by phone or through written communications to ascertain the information needed to perfect the complaint (complete complaint) and gather general or pertinent additional information.
3. Make Needed Simple Changes. If changes to the complaint form can easily be made to perfect the complaint, make the necessary changes and initial and date the complaint form; confirm either by phone or in writing to the complainant that the changes were made. Make a note to the file of changes the Civil Rights Specialist makes to the complaint. Have the complainant initial and date changes to the complaint, or provide a supplemental complaint.

2.3 Provide Notice to the Respondent

- A. Provide Notice to the Respondent. Notify the respondent of the complaint during the intake process, and at a minimum:
 1. Explain the function of the SBCR/OCCP.
 2. Explain the allegation(s) made in the complaint.
 3. Inform the respondent that he or she will receive a written notice of the complaint and a request for additional information.
 4. Obtain the name(s) of those individuals delegated or authorized to field inquiries, participate in mediating the dispute, participate in a fact-finding conference, have the power to agree to reach resolutions, can set up an onsite investigation, etc.
- B. Provide Written Notice to the Respondent:
 1. Provide a synopsis of the complaint, a request for information, and a copy of the Procedures Manual (or excerpts) where appropriate.
 2. Request a response to the request for information within 30 calendar days.
 3. Forward the case file to the OCCP Manager once the file is ready for assignment, mediation, or investigation.

3. DETERMINING JURISDICTION AND IDENTIFYING ISSUES

3.1 Determining Jurisdiction and Identifying Issues

- A. The agency will accept and investigate all complete complaints for which it has jurisdiction over both (1) the organization or agency alleged to have discriminated, and (2) the subject matter of the issues the complaint addresses.

- B. The OCCP Manager or designee will review complaints to determine whether the NRC has jurisdiction to investigate a complaint filed under the OCCP. The complaint must meet the following basic criteria:
 - 1. It alleges discrimination on a basis (of protected status, e.g., race, sex, age, or disability) prohibited by one of the applicable Federal and agency civil rights statutes that SBCR is responsible for enforcing.

 - 2. It alleges discrimination against a provider of an NRC-conducted or assisted program or activity, which is prohibited by applicable Federal civil rights laws, regulations, EOs, mandates, and directives over which SBCR has oversight authority and/or enforcement responsibilities.

 - 3. The subject matter (e.g., issues) addressed by the complaint must be covered by one or more of the statutes that the NRC is responsible for enforcing.

 - 4. It is filed in a timely manner, unless the timeliness requirement is waived.

- C. If the complaint meets all four of the above-cited criteria and is not affected by any regulatory exemptions or exceptions, the NRC most likely has jurisdiction to investigate the complaint. In instances where additional information is needed, the Civil Rights Specialist will contact the complainant by phone and in writing. Failure of the complainant to provide the requested information in 30 days may result in the administrative closure of the complaint or a delay in complaint resolution.

- D. Determining jurisdiction can only be done after information related to the complaint is gathered. Given the legal nature of jurisdictional questions, OGC concurrence must be obtained.

3.2 Complaints Over Which the NRC Does Not Have Jurisdiction

- A. If OCCP receives a complaint over which the NRC does not have jurisdiction, the complainant or the complainant's representative will be promptly notified in writing and reasonable efforts made to refer the case to the appropriate government entity. See Section D. below and Section 4.6.B.

- B. If jurisdiction is found not to exist in SBCR, but does exist in another NRC office, the complaint will be forwarded to the appropriate office for resolution.

- C. If jurisdiction is found not to exist in SBCR or in another NRC office, a good faith effort will be made to refer the complaint to the appropriate government entity for further action, or ultimately to DOJ for further processing.

- D. If a complaint is not filed against an entity subject to the NRC's jurisdiction or does not state a claim under the statutes identified earlier, the NRC will not investigate the allegations. In such instances, the OCCP Manager, in coordination with OGC, is required to return the complaint to the complainant or his or her representative and state the reason(s) why it is outside the agency's jurisdiction.

3.3 Referring the Complaint to Another Agency

- A. If it becomes clear that the NRC lacks jurisdiction over a complaint, the Civil Rights Specialist should make a good faith effort to refer the complaint to the appropriate agency. A referral letter should be sent to the agency along with the complaint materials (see the agency referral letter in Tab 8).
- B. A dismissal letter should be sent to the complainant or the complainant's legal representative and respondent advising them that the complaint has been referred to another governmental agency and that the NRC has administratively closed the case file (see the dismissal letter in Tab 7). Include a copy of the referral letter.

3.3(1) Employment Related Complaints

- A. The DOJ and the EEOC have established procedures for how agencies are to jointly handle employment related complaints, as well as required correspondence to the complainant. For the DOJ's procedures, see 28 CFR Part 37 and Subpart H of 28 CFR Part 42; for the EEOC, see 29 CFR Parts 1630, 1640 and 29 CFR 1691.
- B. SBCR/OCCP, in consultation with OGC, should follow the above procedures and consult DOJ's Title VI Legal Manual (January 11, 2001) or a more recently amended version of that publication for further clarification.
- C. The Rehabilitation Act was amended in 1990 to require the use of the EEOC procedures and standards at 29 CFR Part 1630 for all disability-related employment complaints.

3.4 Processing Multiple Jurisdictional Issues

- A. When appropriate, SBCR/OCCP will refer the complaint to another NRC office or Federal agency for processing.
- B. OCCP should coordinate meetings with OGC and other Federal agencies to resolve multiple jurisdictional issues and help determine which agency should act as the lead to process the complaint. If the agencies are unable to arrive at a consensus after consultation with OGC, OCCP will seek guidance from the Federal Coordination and Compliance Section of DOJ.
- C. To facilitate the referral process between agencies, NRC will post on its Web site a list of its major recurring recipients.

4. EVALUATING A COMPLAINT

4.1 Determining What Constitutes a Complaint

- A. Any person (members of the public or employees) who believes that he or she or any specific class of persons has been subjected to discrimination or retaliation by either an NRC conducted or NRC-assisted program or activity on the basis of any of the protected characteristics listed under Sections 1.2 or 1.3 (e.g., race, color, national origin, sex, age, religion, or disability) may file a complaint with one of the following:
1. The NRC office where the discrimination is believed to have occurred or is occurring, which must forward the complaint to OCCP.
 2. The NRC FFA recipient establishment where the discrimination is believed to have occurred or is occurring, which must forward the complaint to OCCP.
 3. The NRC SBCR/OCCP, which administers the agency's external civil rights programs. OCCP contact information is as follows:

Attention: OCCP Program Manager
Outreach and Compliance Coordination Program
Office of Small Business and Civil Rights
U.S. Nuclear Regulatory Commission
11555 Rockville Pike, MS 03-G04
Rockville, MD 20852
Telephone #: (301) 415-7380
TDD #: (301) 415-5244
Fax #: (301) 415-5953
e mail: OCCPProgram.Resource@nrc.gov

- B. A complaint is a written or electronic statement concerning an allegation of discrimination that contains a request for the receiving office to take action. Complaints must be in writing and may be filed by mail or fax, in person, or online electronically (NRC Form 782) (see Tab 1 in the Appendices) by accessing NRC's Web site at <http://www.nrc.gov>. The Civil Rights Specialist may provide assistance in certain instances. For example, if an individual, because of his or her disability, is unable to submit a complaint online, by mail, or fax, staff can assist the individual by scribing his or her complaint by phone or, for individuals who communicate by American Sign Language, by videophone. Written complaints must be sent to NRC, Attention: SBCR Director, 11555 Rockville Pike, Mail Stop O3 G04, Rockville, MD 20852.
- C. Some correspondence that NRC receives alleging a violation may not constitute a complaint. Immediately upon receiving correspondence containing an allegation, the Civil Rights Specialist assigned to Intake will determine whether the correspondence is a complaint. Examples of items not considered a complaint include, but are not limited to:
1. Anonymous correspondence,
 2. Inquiries seeking advice or information,
 3. Courtesy copies of correspondence or complaints filed with other agencies, and
 4. Oral allegations (exceptions are made for people with disabilities on request).

- D. Correspondence that is not a complaint but potentially involves a civil rights issue may be recorded in the OCCP External Complaints Tracking System as an inquiry, which will be converted to an open complaint if more information is received.
- E. Callers wishing to file a complaint will be provided information and assistance needed to complete an NRC Form 782 electronic discrimination complaint form. The Complainant Consent/Release Form (see the form in Tab 3 of the Appendices) and the “Notice About Investigatory Uses of Personal Information” (see the notice in Tab 4) will be available to the caller online or electronically. The Civil Rights Specialist will advise the caller that he or she is not required to use the NRC Form 782 complaint form to submit the complaint, but rather may choose to provide the information it asks for in some other format.
- F. The guidelines in this section do not preclude SBCR/OCCP from attempting to informally resolve issues raised in instances where a written complaint is not filed.
- G. NRC employees and members of the public who become aware of discrimination in NRC conducted or NRC-assisted programs or activities should immediately contact the SBCR/OCCP Manager or Civil Rights Specialists to ensure that the agency promptly addresses the alleged act(s).
- H. Individuals who need language translation assistance and/or related services to file a complaint may contact SBCR/OCCP by mail at 11555 Rockville Pike, Mail Stop O3 G04, Rockville, MD 20852, or by e mail at OCCPResources@nrc.gov, or by phone at 301 415-7380.

4.2 Accepting Complaints in Alternative Formats or Languages

- A. NRC accepts complaints in alternative formats. For example:
 - 1. A complaint may be filed on computer disc, on audiotape, or in braille.
 - 2. If a complainant is unable to read or write proficiently, the Civil Rights Specialist may need to write out the allegations made over the telephone and send the complaint to the complainant for his or her signature.
- B. NRC will ensure that LEP individuals can meaningfully access the agency’s programs and activities, including its complaint processes, as set forth in EO 13166, “Improving Access to Services for Persons with Limited English Proficiency.” Complaints in languages other than English will be translated and responded to in the language in which they were sent.
- C. For both LEP complainants and those with disabilities, a Civil Rights Specialist will provide the Complainant Consent/Release Form and other vital documents in alternative formats (e.g., in Spanish or an electronic text file). Steps also must be taken to ensure that the complainant understands the legal implications of signing any document. Some people with disabilities will be unable to sign forms, and in those cases, the Civil Rights Specialist should use other means to ensure they understand their rights, such as

through an oral confirmation or by e mail. For LEP complainants, NRC will translate and post versions of the Complainant Consent/Release Form and discrimination complaint form on the NRC's Web site.

- D. The NRC recognizes that the need to modify practices to serve LEP complainants and those with disabilities may extend beyond the complaint intake stage. Throughout the complaint resolution process, including ADR, the Civil Rights Specialist should ensure that these individuals understand their rights and responsibilities, as well as the status of their complaint.

4.3 Receiving and Tracking the Complaint

- A. Immediately after it is received, a complaint (or potential complaint) should be date stamped and assigned a case number by the administrative assistant assigned to OCCP. This step is important because the date on which NRC receives the complaint may affect a complainant's ability to seek redress, even if the complaint is ultimately referred to another agency.
- B. Once correspondence has been deemed a complaint, the administrative assistant should enter the appropriate information into the OCCP External Complaint Tracking System and create an investigative case file (using a six section folder) to systematically compile and structure all documents, records, and information associated with the case. The Administrative support and Investigator should use the following format to set up the investigative case file:
 - 1. Section I Contents/Log This section has two types of entries and is attached to the inside left of the file folder.
 - a) Table of Contents. This entry describes each section in the Case File and identifies each entry under that section. The Table of Contents is attached as the top page of Section I.
 - b) Case File Log. The purpose of the Case File Log is to record all contacts and activities relevant to processing the complaint for which there is no paper trail. The log is to be a reference of the actions taken by the Investigator on the case. Space should be provided to record the date, summary of actions, and the name of the individual annotating the actions. Under "Action," enter a brief description of the activity, including any outcome and future action required.
 - 2. Section II External Correspondence All external correspondence is included under this section and is attached immediately opposite Section I on the first page of the file folder. Enter external correspondence chronologically (i.e., the most recent first), assigning sequential letters of the alphabet (e.g., A, B, C, and D) to identify each exhibit, if desired.
 - 3. Section III Determination/Settlement Agreement This section contains copies of SBCR's determination and, where appropriate, a conciliation agreement.

4. Section IV Investigator's Documents This section contains copies of all documents generated by and pertinent to the Investigator's handling of the complaint. Analysis made by the Investigator (e.g., statistical tabulations, application of statistical techniques to a body of data, etc.) which later become a part of his or her investigative report should be included.
 5. Section V – Evidence This section contains all documentary evidence relating to the case: records, interview statements, etc. Where the respondent or complainant submitted a document being used as an exhibit, the letter transmitting the document would be filed in Section II, External Correspondence (as referenced in Section 4.3 above), but the document itself (with a copy of the cover letter) and its accompanying Analysis Form would be filed in this section.
 6. Section VI Internal Correspondence Exhibits All internal correspondence should be included under this section. Enter internal correspondence exhibits chronologically so that the most current exhibit is on top, assigning sequential letters of the alphabet to identify each exhibit.
- C. The above format provides the basis and supporting documentation for the Investigator's Report, and allows a reader of that report to easily verify the facts on which it is based.
- D. For multiple complaints, the following guidelines should be applied to determine how many case numbers should be assigned:
1. Each named respondent in the complaint should be assigned a separate case number.
 2. Complaints filed by more than one person that raise substantially identical allegations against the same recipient may be consolidated as one complaint and assigned one case number.
 3. Complaints filed by more than one person against the same respondent should be assigned separate case numbers if they contain different allegations.
 4. New allegations filed by the same complainant against the same respondent after the investigative process has begun should be reviewed on a case by case basis to determine whether the allegations should be added to the existing complaint or treated as a new complaint.
 5. Complaints filed by such entities as advocacy groups, the Protection & Advocacy Network, and Independent Living Centers, where there are multiple complainants, but one entity handling all complaints should receive one case number.

4.4 Completing a Pre-Investigation

- A. Once the Civil Rights Specialist concludes that correspondence is a complaint, he or she should complete the file with specific information. Determine whether the complaint is “complete” in order to proceed with complaint processing and resolution (refer to 10 CFR 4.42, “Complaints”; 4.332, “Complaints”; 4.503, “Definitions”; and 5.605, “Enforcement Procedures”). In order for a complaint to be complete, it must at least:
1. Be in writing.
 2. Contain the complainant’s name and address or other information necessary to contact the complainant (e.g., if the complaint is filed by e mail, the NRC should request the sender’s actual name and address if those are not provided).
 3. Identify the respondent (person(s) or agency/organization) alleged to have discriminated against the complainant.
 4. Describe the action or practice complained of, providing sufficient information to understand the facts that led the complainant to believe discrimination occurred and when the discrimination took place, including the nature and approximate date(s) of the violation(s).
 5. Be signed and dated by the complainant or by someone authorized to do so on his or her behalf.
- B. If not contained in the complaint, the Civil Rights Specialist should gather the following information:
1. The identity of the party or parties involved and the date the complainant first had knowledge of the alleged violation(s).
 2. Information relevant to determine whether the complainant alleges a violation of an applicable NRC and/or Federal regulation.
 3. The basis for the alleged discrimination, (e.g., race, sex, disability).
 4. The person(s) or group (if filed on behalf of classes or third parties) injured by the alleged discrimination.
- C. To the extent necessary to gather the required information, the Civil Rights Specialist may contact the complainant and, if necessary, the complainant’s witnesses.

4.4(1) Pre-Investigation Requirements for a Section 508 Complaint (10 CFR Section 4.503)

- A. The Civil Rights Specialist should ensure that any complaints implicating Section 508 contain the following information in the case file:
1. The information listed under Section 4.4.A. above, items 1 through 5, and Section 4.4.B., items 1 through 4.
 2. The nature and approximate date of the 508 violation. For example, how and why access was denied and when (on what date) the alleged discrimination occurred; details about the alleged act(s) of discrimination; the name(s) of the individual(s) whom are alleged to have discriminated against the complainant, if known; and the names of any persons, if known, that the Investigator could contact for additional information to support or clarify the complainant's allegations.
 3. If the complaint concerns EIT developed, used, or maintained by NRC, then consider whether the complaint also implicates a Section 504 complaint of discrimination either under subpart B or subpart E.
 4. Identify or describe the EIT that the complainant believes is not accessible (e.g., if the Web site address, location of system or equipment, type of system or equipment, and NRC office responsible for the product) and the accessibility standard(s) which has not been met, if known.
 5. Documents that the complainant has a disability that meets the definition of disability found at 42 U.S.C. 12102.
 6. The ADA Amendments Act of 2008 revised the definition of disability applicable to both the ADA and Section 504. Until such time as the NRC updates its Section 504 regulation to reflect the requirements of the ADA Amendments Act of 2008, the regulatory language related to definition of disability in the EEOC ADA Title I regulation at 29 CFR Part 1630 should be used as a guide.
 7. Include any other relevant information.

4.4(2) Pre-Investigation Requirements for an EO 13160 Complaint

- A. The Civil Rights Specialist should ensure that any complaint implicating EO 13160 contain the following:
1. The information listed under Section 4.4.A. above, items 1 through 5, and Section 4.4.B., items 1 through 4.
 2. Describe the alleged discriminatory conduct in sufficient detail to inform the agency as to the nature and approximate date of the alleged violation.
 3. Determine whether the matter involves an educational or training program or activity, as described further in Section 1.4.C.

4.4(3) Dismissing Complaints During Pre-Investigation

- A. The NRC generally will not proceed with or continue a complaint investigation and attempts at resolution of an allegation under certain circumstances that include, but are not limited to, these:
1. The complaint is so weak, insubstantial, or lacking in detail that it is without merit on its face or so replete with incoherent or unreadable statements that the complaint as a whole cannot be considered to be grounded in fact.
 2. There is no statutory basis for the complaint, or the complaint is untimely and SBCR/OCCP does not waive the time limitation for filing, or the NRC lacks jurisdiction in the matter.
 3. The complaint is a continuation of a pattern of previously filed complaints involving the same or similar allegations against the same respondent or other respondents that have been found factually or legally insubstantial by SBCR.
 4. The same allegations and issues that are raised in the complaint have been addressed in a recently resolved complaint or compliance review.
 5. Complaint allegations are foreclosed by previous decisions of the Federal courts, the Commission, NRC policy determinations, or a Federal oversight agency (e.g., DOJ or the U.S. Department of Health and Human Services (HHS)).
 6. Litigation has been filed raising the same allegations with the same basis and issue(s) involved in the complaint. In such cases, the complaint should not be held in abeyance, but dismissed. A complaint, however, may be refiled within 60 calendar days following termination of the court proceeding if there has been no decision on the merits or settlement of the complaint allegations. (Dismissal with prejudice by a court of competent jurisdiction is considered a decision on the merits.)
 7. The same complaint allegations have been filed with another Federal, State, or local agency, or through the respondent's internal grievance procedures, including due process proceedings, and the OCCP Manager anticipates that the NRC will provide the complainant with a comparable resolution process. The complainant should be advised that she or he may refile within 60 calendar days of the completion of the other agency's action (OCCP's consideration of the complaint will not involve a reinvestigation of the case). The OCCP Manager will review whether (a) the complaint has been investigated, (b) the resolution of the complaint meets NRC and Federal regulatory standards (e.g., all allegations were investigated and appropriate legal standards applied), and (c) any remedies secured meet the NRC's standards. Generally, SBCR/OCCP consideration of such a complaint will not be a de novo (second) investigation of the facts and the NRC will not conduct a hearing. Instead, the OCCP Manager will review the evidence to determine whether it constitutes a violation of a statute that the NRC enforces.
 8. Credible information obtained at any time indicating that the allegations raised by the complaint have been resolved or are moot and have no class wide allegations

or implications. This includes instances in which the respondent has offered the complainant full relief and the complainant has refused to accept full relief. In such a case, the Civil Rights Specialist or Investigator will attempt to ascertain the apparent resolution. If the OCCP Manager determines that there are no current allegations appropriate for further complaint resolution, the complaint will be closed.

9. The information received from the complainant does not provide sufficient detail to proceed with complaint resolution and the complainant does not cooperate when contacted to complete the file with the necessary details. Where appropriate, the OCCP Manager may use the information as the basis for targeting future compliance reviews or technical assistance activities.
10. The OCCP Manager determines that the OCCP staff's ability to complete the investigation is being substantially impaired because the complainant cannot be located after reasonable attempts or refuses to provide the information or cooperation necessary for investigation of the complaint. In such instances, the OCCP Manager will attempt to contact the complainant or injured party or their representative by telephone as soon as possible to discuss the problem. If this does not resolve the matter, a letter should be sent to the complainant or injured party or representative explaining why their failure to cooperate (possibly including their refusal to give permission to disclose their identity) has made it impossible to investigate further. The letter should inform the complainant or injured party or representative that continuing to refuse to cooperate or failing to provide the required information within 30 calendar days of receiving the written notification will result in the administrative closure of the case. The administrative assistant should send these types of letters by certified mail, return receipt requested.
11. A complaint involving a priority issue, because of its scope, may require a massive amount of agency investigative resources. In such instances, the OCCP Manager following consultation with the Associate Director, Small Business, Outreach, and Compliance Coordination Directorate and/or the SBCR Director may consider treating such a complaint as a compliance review, after determining that the case file contains the information listed in Section 4.5. The Program Manager should provide the complainant with a copy of the resolution documents when the compliance review is complete.
12. If the OCCP Manager determines that a compliance review is the most effective means of addressing multiple individual complaints against the same respondent, the Civil Rights Specialist should discuss the decision with the complainants or their representatives, assign a compliance review number, and initiate a review as soon as possible. The OCCP Manager may close the individual complaints at that time if SBCR/OCCP wants to, but the OCCP Manager must ensure that all appropriate individual relief for the complaint(s) is included. Any outstanding individual allegations that cannot be promptly resolved should be incorporated into the review. Throughout the compliance review, the complainant(s) and other aggrieved persons should have the opportunity to: provide supplemental evidence about their grievance, receive general information about the status of the compliance review, provide ideas for individual remedies, provide feedback about individual remedies before they are adopted, and be informed of the final results. OCCP also may wish to consult with

community members and other stakeholders before resolving the compliance review. OCCP is under no obligation to adopt the remedies suggested by the complainant(s), aggrieved person(s), community members, or other stake holders. The results of the review will be shared with the complainant when it is completed.

13. Complainant decides to withdraw his or her complaint. If the complaint included class allegations, the office may close out the entire complaint, pursue resolution of the class allegations, or use the information to target future compliance review activity.
14. SBCR/OCCP refers a complaint over which the NRC has jurisdiction to another Federal agency that also has jurisdiction, but may be better suited to conduct the investigation, so long as the other agency agrees to process the complaint. If the agencies are unable to agree about which agency should process the complaint, SBCR/OCCP should contact the Federal Coordination and Compliance Section of DOJ for further assistance.
15. Death of the complainant or injured party makes it impossible to investigate the allegations fully, or when the death of the complainant or injured party forecloses the possibility of relief because the complaint involved potential relief solely for the complainant or injured party.
16. The complainant does not accept a reasonable resolution of the case. Reasonableness is determined by SBCR.

- B. A dismissal letter should be sent to the complainant whenever a complaint is dismissed for the reasons stated above.

4.4(4) Technical Assistance Provided to the Complainant and Respondent

- A. The Civil Rights Specialist/Investigator will facilitate the filing of complaints whenever possible, including taking the following measures:
 1. Accepting a complete complaint for processing, as mentioned in Section 4.4.
 2. Permitting a complainant to add information to meet the requirements of a sufficient complaint.
 3. Notifying the complainant and the respondent of their obligation to participate actively in efforts toward speedy resolution of the complaint.
 4. Notifying the complainant and the respondent of their rights and obligations under the complaint procedure, including the right to have a representative at all stages of the complaint procedures.
 5. Notifying the complainant and the respondent of their right to contact the NRC for information and assistance regarding the complaint resolution process.

4.4(5) Contacting the Complainant for More Information

- A. The Civil Rights Specialist may contact the complainant by telephone or e mail to obtain missing information. In instances in which further information is needed in writing, especially when the complainant cannot be reached by telephone, the Civil Rights Specialist should send the individual an NRC SF 782 electronic complaint form. However, the Civil Rights Specialist should always advise the complainant that he or she is not required to use the complaint form to submit the complaint or additional information, but rather may choose to provide the information it asks for in some other format. The cover letter may explain that, without the information requested in the items marked with an asterisk, the NRC will be unable to process the complaint.
- B. A request for information may be combined with the standard acknowledgment letter provided that it can be sent within 15 calendar days of the NRC receiving the complaint. (See the Acknowledgment Letter and Request for Information in Tab 5 of the Appendices.) Regardless of the method of contact or at what stage in the investigation information is requested, the complainant should be informed that the NRC will close the case if the information is not provided within 30 calendar days of the receipt of the request. The NRC can confirm receipt through certified mail, a FedEx signature, or contact with the complainant. The NRC may extend the deadline depending on the extent of the information request or other special circumstances. The complainant should be notified in writing of any closure.
- C. If the complaint contains sufficient information for at least one allegation, but lacks sufficient factual information for other allegations, the Civil Rights Specialist should attempt to obtain the missing information, as described above. Allegations lacking sufficient factual information that is not supplied within 30 calendar days from the time the complainant receives the request will be closed, unless reasonable cause exists for the delay. The NRC will initiate complaint processing and resolution only for those allegations for which sufficient information has been provided.
- D. The Civil Rights Specialist should work with each complainant to ensure receipt of sufficient information to evaluate the complaint. People with disabilities and limited English proficiency, in particular, may need assistance preparing complaint materials.

4.4(6) Attorney Representation

- A. If the complaint is submitted on behalf of a complainant by an attorney, the Civil Rights Specialist should call the attorney for additional information or to request permission to contact the complainant directly.
- B. If it appears that the complainant may be represented by an attorney (especially if the complaint states that the matter raised has been or will be filed in court), the Civil Rights Specialist should ask the complainant whether he or she is represented by an attorney concerning the complaint and document in the complaint file. If so, the Civil Rights Specialist should contact the attorney for additional information or for permission to contact the complainant directly. The OCCP Manager will notify OGC if a complaint is filed and there is legal representation.

4.4(7) Complainant Consent/Release Form

- A. The Civil Rights Specialist must receive a signed Complainant Consent/Release Form from the complainant authorizing release of personal information (see the form in Tab 2). The form is usually sent along with the letter acknowledging receipt of the complaint; if the complainant is a walk in, forms should be provided to the complainant during the Intake process.
- B. A person filing a complaint on behalf of another person is responsible for securing the written consent from that individual.
- C. When the complainant is a minor (under 18 years of age) or a legally incompetent adult, the consent form must be signed by that person's parent or legal guardian.
- D. The Civil Rights Specialist should inform the complainant that the complaint will be closed if written consent is not received within 30 calendar days of the date of receipt of the request.
- E. In responding to requests for information, the NRC complies with provisions of the Federal Freedom of Information and Privacy Acts (5 U.S.C. Sections 552 and 552a, respectively). Unless the release of the information is prohibited by Federal law, the agency may make available to the public any information concerning the complaint. Nevertheless, the identity of a complainant shall be kept confidential at their election. A complainant's refusal to release his or her identity, however, may hinder the investigation or result in a denial of appropriate administrative due process to other parties. The complainant should be advised that failure to authorize the release may impede the investigation or result in closure of the complaint.

4.5 Determining Whether the Complaint is Timely

- A. Complaints must be filed within 180 calendar days of the last date of the alleged discrimination unless the time for filing is extended by SBCR/OCCP (10 CFR 4.42, 4.332, 4.570(d), and 5.605). The filing date of the complaint is the earlier of (1) the postmark of the complaint or (2) the date the complaint is received by any NRC office.
- B. If a complaint is not filed within the 180 calendar-day timeframe, SBCR/OCCP should notify the complainant of their right to request a waiver (see the waiver letter in Tab 8). An SBCR Director, Associate Director, or OCCP Manager may grant an extension under any of the following circumstances:
 - 1. Complainant could not reasonably be expected to know the act was discriminatory within the 180 calendar-day period and the complaint filed the complaint 180 calendar days from the time that the person knew or reasonably should have known that they were subjected to conduct that violated Federal law.
 - 2. Complainant was unable to file a complaint because they suffered incapacitating illness or other incapacitating circumstances during the 180 calendar-day period and the complaint was filed within 60 calendar days after the period of incapacitation ended.

3. Complainant filed a complaint alleging the same discriminatory conduct within the 180 calendar-day period with another Federal, state, or local civil rights enforcement agency and filed a complaint with the NRC within 60 calendar days after the other agency had completed its investigation or notified the complainant that it would take no further action.
 4. Complainant filed, within the 180 calendar-day period, an internal grievance alleging the same discriminatory conduct that is the subject of the NRC complaint, and the NRC complaint was filed no later than 60 calendar days after the internal grievance is concluded.
 5. Unique circumstances generated by NRC action have adversely affected the complainant.
 6. The discriminatory act is of a continuing nature.
- C. Some complaints will be referred to the NRC by other agencies. In the event the referring agency has possessed the complaint for an inordinately long period of time, and the complainant filed his or her complaint with that agency within the 180 calendar day timeframe, the NRC will automatically grant an informal extension. In these cases, the Civil Rights Specialist does not need to notify the complainant of the extension.

4.6 Acknowledging the Complaint

- A. A letter should be sent to the complainant within 30 calendar days of receiving the complaint acknowledging that the correspondence has been received, unless it is impractical to do so. The acknowledgment letter should state that the complaint will be evaluated to determine whether the NRC will investigate the allegations and that further communications about the complaint will occur in the future. The following two documents should be cited in the letter and included as attachments:
1. Complainant Consent/Release Form (if not already provided by the complainant) with instructions that the signed form must be returned within 30 calendar days from the date of receipt.
 2. Notice about Investigatory Uses of Personal Information, which outlines the complainant's rights and protections during an investigation (see the acknowledgment letter in Tab 4).
- B. If it is immediately clear from the information provided that the NRC does not have jurisdiction over the complaint, the Civil Rights Specialist should attempt to refer the complaint to the appropriate agency (see Section 3.2.C. and Section 3.3.A. and B. and the agency referral letter in Tab 7). When a referral is not possible (i.e., the complainant does not allege a violation of any law), the Civil Rights Specialist may close the complaint without a referral. A "dismissal" letter, instead of the standard acknowledgment letter described above, should be sent to the complainant within 30 calendar days of receiving the complaint to inform the complainant that although the complaint has been received, the allegations fall outside the NRC's jurisdiction and,

where applicable, the complaint has been referred to either another NRC office or another Federal agency (see the dismissal letter in Tab 6; see also Section 3.3 for more information on referring complaints).

4.7 Identifying Issues

- A. The Civil Rights Specialist should identify the specific practice or service involved in the alleged discrimination, e.g., denial of services or access to a covered program, discrimination, and/or harassment by the program's employees, or unequal services in a program. Even if discriminatory intent cannot be ascertained, the Civil Rights Specialist should identify the practice, procedure, policy, or service alleged to have a disparate effect on one or more members of a certain protected class.

- B. The Civil Rights Specialist should look for allegations of discrimination under Section 504, identified under NRC's regulations at 10 CFR Part 4, Subparts B and E. Prohibited practices include, but are not limited to, the failure to provide a reasonable accommodation to a qualified individual with a disability through changes in policies, practices, or procedures, or the failure to provide effective communication through the provision of an auxiliary aid, or service to allow access to facilities, programs, and services by an individual with a disability.

- C. In identifying the subject matter, the Civil Rights Specialist should look for allegations of one or more of the following occurring because of the complainant's membership in one or more protected classes (e.g., race, sex, or disability):
 - 1. Any difference in the quality, quantity, or manner in which a service or benefit is provided.
 - 2. Segregation in any part of a program or separate treatment in any manner.
 - 3. Restriction in the enjoyment of any advantages, privileges, or other benefits that are provided by the program.
 - 4. Different standards, requirements, or eligibility factors for participation or entry.
 - 5. Disparate treatment in any manner related to receipt of services or benefits.
 - 6. Disparate impact as described in Section 8.2(3).
 - 7. Restriction of the membership of advisory or planning councils that are an integral part of the program or activity.
 - 8. Failure to provide information or services in languages other than English where (a) a significant number or proportion of potential beneficiaries are of limited English speaking ability, (b) the program involves frequent contact with LEP persons, or (c) safety concerns exist.
 - 9. Failure to adequately advise person(s) (including LEP individuals) in the eligible population of the existence of services or benefits.

10. Use of criteria or methods of administration that would defeat or substantially impair the accomplishment of program objectives or would more heavily affect members of a protected group.
11. Discrimination in any aspect of employment when a primary purpose of NRC FFA is to provide employment, or where the employment discrimination results in discrimination against beneficiaries, or when an NRC program statute prohibits employment discrimination.
12. Failure to provide needed auxiliary aids and services if needed by a person with a disability.
13. Failure to comply with specific NRC and/or Federal regulatory requirements.

4.8 Informal Investigation

- A. The NRC SBCR/OCCP will investigate complaints that are unresolved after mediation or are reopened because of a violation of a mediation agreement. As part of the initial investigation, informal fact finding methods may be used, including separate discussions with the complainant and respondent to establish the facts and, if possible, settle the complaint on terms that are mutually agreeable to the parties. An investigator must act with caution during the initial stages of an investigation before asking the complainant to speak about his or her allegations in the presence of the recipient, in the hopes that he or she “may consider working toward a resolution.” Any possible violations of civil rights laws should be articulated by the investigator to the recipient, not the complainant. After the filing of the complaint, any resolution should be to the satisfaction of OCCP. The OCCP may seek the assistance of any involved State agency. The Civil Rights Specialist will put any agreement reached in writing, submit the agreement to the OCCP Manager for review and SBCR and OGC concurrence, and subsequently have it signed by the parties and authorized officials at the NRC. The settlement does not:
 1. Affect the operation of any other enforcement effort of the NRC, including compliance reviews and investigation of other complaints which may involve the respondent, or
 2. Constitute a finding of discrimination against a respondent or an admission of discrimination by a respondent.

4.9 Completion of the Informal Investigation Process

The Informal Investigation Process will conclude a maximum of sixty (60) calendar days after the return of an unresolved mediated complaint or of a complaint routed through other processes that were not successful.

5. APPROACHES TO RESOLVING A COMPLAINT BEFORE OR AFTER AN INVESTIGATION

- A. The opportunity to resolve a complaint informally should be encouraged throughout the complaint process. As early as the initial discussions with the complainant and the respondent, the Civil Rights Specialist/Investigator should request information on acceptable relief and settlement options. Under Title VI and other nondiscrimination laws, a Federal agency must determine that voluntary compliance cannot be achieved before taking formal enforcement action.
- B. To close a complaint investigation, any of these three primary types of letters (described more fully in later sections) can be sent to the respondent and complainant:
 - 1. A “No Violation” Letter of Findings,
 - 2. A Letter of Resolution, or
 - 3. A violation Letter of Findings when there is sufficient evidence to support a finding of noncompliance and negotiations with the respondent have failed.

5.1 Alternative Dispute Resolution (ADR)

ADR can consist of anything from the use of a neutral third party or mediator to informally resolving a matter without completing a full investigation. Federal agencies are strongly encouraged to make use of ADR whenever appropriate. Both the President and the Attorney General have encouraged the use of ADR in matters that are the subject of civil litigation. The Administrative Dispute Resolution Act of 1966, Pub. L. 104 320, authorizes the use of ADR to resolve administrative disputes. Under Title VI regulations, an agency must conduct an investigation of all complaints having apparent merit and make a determination that voluntary compliance cannot be achieved before taking formal enforcement action.

Consider the following pre finding settlement approaches as alternatives to a full investigation when determining how to resolve a complaint:

- A. Expedited processing of complaints alleging imminent harm to the complainant or some other person protected by statute, generally conducted by telephone. This will frequently involve provision of technical assistance to the respondent or a modified mediation process between the parties. Once the case is resolved, a letter of resolution is sent to the respondent and complainant stating that the appropriate action has been taken and the case is closed.
- B. Formal offer of settlement negotiations at the point of notification and data request to an entity alleged to have violated the law, thereby allowing the respondent to avoid the burden of a full investigation. With this approach, your notification/data request letter should state that you believe the case may be amenable to ADR and that you are willing to enter into settlement negotiations. Ask the respondent to notify you within 10 calendar days, if it is interested in entering into negotiations. As encouragement to use ADR, we suggest that you indicate that response to the entire data request may not be

necessary if the recipient agrees to enter into settlement negotiations. (You will likely need the response to some of the questions in order to develop the proposed Settlement Agreement.)

- C. Informal process whereby the respondent is contacted by telephone, notified of the allegations, and (if appropriate) is provided technical assistance in resolving the complaint. The respondent then submits a letter explaining the steps it has taken to resolve the problem, or making a written commitment to take corrective action. The case is closed based on the completed action or commitment, with a letter of resolution notifying the respondent/complainant that the case will be reopened if the action is not taken as promised.
- D. An informal process similar to that in item C, but in which you discuss the allegations and offer to provide the respondent with a draft Settlement Agreement. If the respondent agrees, and the Settlement Agreement is subsequently finalized, the case is closed based on the signing of the Settlement Agreement.
- E. Formal mediation may be considered in a variety of circumstances both before and after the issuance of findings. In mediation, the mediator attempts to assist the parties in working out a resolution to their dispute that is acceptable to both sides. This does not mean that NRC will lose its ability (or its responsibility) to reach an agreement that is legally sufficient. Rather, a non partisan third party is assisting the complainant and the respondent in reaching a resolution of their “dispute.” A mediator will attempt to develop a relationship of trust between the parties that could be important to NRC in its future dealings with the parties.

5.2 Advantages and Disadvantages of Using ADR

- A. The “aggressive” use of ADR as an approach to processing complaints can result in an extensive saving of staff time. It allows SBCR/OCCP to provide technical assistance up front, where it may be most helpful.
- B. DOJ recommends that Federal agencies only use ADR if they have staff experienced in doing complaint investigations, because the ability to “jump” from the initial allegations to an appropriate resolution requires a thorough understanding of the issues, legal concepts, and scope of the relief that would be involved.
- C. A disadvantage of using ADR to resolve a case through a Settlement Agreement before issuing findings is that, if the respondent (e.g., recipient) fails to meet the terms of the Settlement Agreement, DOJ can only sue the respondent based on its failure to comply with the terms of the agreement, and not based on an actual violation (e.g., Title VI regulation). In order to sue for a violation of Title VI, a formal violation Letter of Findings must have been issued, the respondent must have been given an opportunity to come into compliance, and a determination must have been made that voluntary compliance could not be achieved.

D. NRC/SBCR may prefer, for policy or programmatic reasons, to issue a violation Letter of Findings rather than to resolve a complaint through ADR. For example:

1. If the complainant and other victims have faced discrimination for an extended period of time with this respondent, SBCR/OCCP may determine that a violation Letter of Findings should be issued to make clear the respondent's obligations under the applicable NRC and/or Federal regulations.
2. NRC/SBCR may believe a violation Letter of Findings is appropriate, or the case might raise important policy issues that the NRC/SBCR wants to address and clarify in formal findings, both for this respondent and as a way of clarifying the agency's position for other respondents that might have the same problems.

In the types of situations described above, the Civil Rights Specialist or Investigator should not discuss settlement with the respondent until after the Letter of Findings (determination of cause findings) has been issued.

E. The use of ADR does not mean that the OCCP Manager, Associate Director, and Director can ignore the relief that would be appropriate if SBCR conducted a full investigation. Rather, ADR is a means of resolving cases with basically the same relief that SBCR would get after a full investigation, while avoiding the expenditure of staff time that full investigation requires. When considering whether to use ADR at any point during the complaint and investigation processes, the OCCP Manager, Civil Rights Specialist, and Investigator should remember the following:

1. Regardless of the approach the Civil Rights Specialist/Investigator takes to resolve a complaint, all letters to the respondent should be addressed to its chief executive, unless the respondent has directed that correspondence be addressed to a lower ranking official or another designated representative, such as an attorney.
2. Be open to negotiate a resolution to a case at any point during the processing of a complaint.
3. Consult with the Program Manager regarding the type of ADR to pursue (your "settlement approach"). The determination of the type of ADR selected should be based on the allegations, number of persons affected, type and extent of relief involved, cooperation of the respondent, and other factors.
4. The case file should include an explanation of how the resolution was determined to constitute adequate relief.
5. The resolution should provide for monitoring whenever appropriate.
6. Be ready to reopen a complaint if OCCP learns that the respondent has not complied with its commitments.

5.2(1) External Mediation Process

- A. The complainant and the respondent should be encouraged to participate in the mediation process to the extent necessary to reach an agreement or make an informed judgment that an agreement is not possible. For matters not involving the Age Discrimination Act of 1975, the parties will be informed that participation is voluntary and that they may withdraw from the process at any time.
- B. SBCR/OCCP will use the external mediation process for a maximum of 60 calendar days (45 calendar days for non age based complaints) after receiving a complaint.
- C. SBCR/OCCP is legislatively mandated to refer all disputes to the Federal Mediation and Conciliation Services (FMCS) designated by the Secretary of the HHS that meet the following criteria:

- 1. Fall within the jurisdiction of the Age Discrimination Act of 1975, and
- 2. Contain all information necessary for further processing.

Staff should refer to SBCR's Interagency Agreement with the FMCS and the related written referral process.

- D. Mediation ends if any of the following conditions are met:
 - 1. From the time SBCR/OCCP receives the complaint, 45 calendar days for non age based complaints or 60 calendar days for age based complaints has elapsed.
 - 2. Before the end of that 45/60 calendar-day period, the mediator determines that an agreement has been reached.
 - 3. Before the end of that 45/60 calendar-day period, the mediator determines that an agreement cannot be reached.
- E. The mediation process will conclude a maximum of 45/60 calendar days after receiving a complaint, unless one of situations described takes place and mediation ends at an earlier time. The mediator is required to return all unresolved complaints to SBCR/OCCP for further processing.

5.2(2) Mediator Roles

- A. OCCP role and/or the role of the assigned mediation entity (e.g., FMCS) in mediation encompasses the following:
 - 1. To move the complaint to an "on hold" status such that the regulatory timeframes for the NRC to complete its investigation will be tolled during the convening, situation assessment, and mediation or facilitation processes (i.e., the duration of the ADR process).

2. To inform the parties of the procedures, establish a constructive tone, and encourage the parties to work in good faith toward a mutually acceptable resolution.
 3. To provide a convener to help the complainant and recipient get ready for participation in an ADR process by providing education about the process and, when relevant, assisting them in selecting a mediator or facilitator.
 4. To review the allegations and make sure the parties understand the issues that the NRC has accepted for investigation.
 5. To present and provide explanations of the applicable requirements and how these requirements apply to the allegations.
 6. To facilitate a discussion between the parties regarding possible actions that the parties may consider in working toward a resolution.
 7. Where participants agree to try ADR to resolve their dispute, to assist participants who feel disadvantaged disadvantage in terms of their ability to negotiate or address technical issues by offering training in how to effectively participate in ADR processes and expert technical advice.
 8. To offer assistance, as appropriate, with regard to reducing any resolution to writing.
 9. To review and, along with OGC, approve of any proposed resolution before it is executed. For Title VI complaints, the resolution must include a term binding the Title VI complainant to withdraw the complaint.
 10. If an agreement is reached and approved by SBCR/OCCP and OGC, the parties are informed that the NRC will issue a closure letter reflecting the voluntary resolution of the complaint by agreement of the parties. NRC will close the complaint with prejudice after the agreement is executed.
- B. At the conclusion of the process, the office obtains a copy of a statement signed by the complainant that the allegation has been resolved. Once resolution of any allegation has been obtained, the office may close that portion of the complaint; other approaches may be used to resolve any outstanding allegations.

6. OVERVIEW OF THE INVESTIGATION PROCESS

6.1 Formal Investigation Process

- A. If the Civil Rights Specialist/Investigator cannot resolve the complaint through the informal investigation process, formal findings will be developed through further investigation of the complaint. The standard of proof applied in making a determination of noncompliance, absent contrary statutory command, should be one of “preponderance of the evidence.”
- B. During the formal investigating process, the Civil Rights Specialist or Investigator, at a minimum should:
 - 1. Prepare in advance (and consult with OGC as needed) an investigative plan that identifies the legal approach that the Civil Rights Specialist or Investigator will take, determine what kind and how much evidence will be needed, how he or she will meet burdens of proof, etc.
 - 2. Contact the appropriate designated representative of the respondent where the alleged discrimination took place to determine whether an investigation has been initiated and, if so, the results of that investigation. The results of any such investigation may inform the OCCP investigation, but are not determinative.
 - 3. Identify and review all pertinent documents, pertinent practices and procedures, and circumstances under which possible noncompliance occurred and other factors relevant to a determination of noncompliance and appropriate resolution.
 - 4. Identify and interview individuals with knowledge of the alleged discrimination, such as the complainant; witnesses; others identified by the complainant; people who might have been subject to similar activity; and anyone else with relevant information.

6.2 Completion of the Formal Investigation Process

- A. The Formal Investigation Process will conclude a maximum of 90 calendar days after the investigation begins, unless it is impractical to do so.

6.3 Contact with Complainant

- A. During both the informal and formal investigation, the complainant should have the opportunity to: provide supplemental evidence about his or her complaint, receive general information about the status of the investigation, request remedies, and provide feedback about remedies under consideration.
- B. OCCP also may consult with community members and other stakeholders to gather additional information about desirable remedies.
- C. OCCP is under no obligation to adopt the remedies suggested by the complainant(s), community members, or other stake holders

6.4 Completion/Disposition of Investigation and Findings

- A. Upon completion of the investigation, the Civil Rights Specialist/Investigator will submit for the OCCP Manager's review the report of investigation with the investigative findings.
- B. The OCCP Manager will review and approve or reject the report of the investigation and the investigative findings and will review the outcome with the SBCR OCCP Associate Director and/or SBCR Director and OGC for concurrence. Once SBCR approves the investigation and findings, the information/documentation processing will be in accordance with the applicable Subpart of 10 CFR Part 4. A deciding official will be appointed to issue a Final Agency Decision.

6.5 Issuance of a Final Agency Decision Under 10 CFR Part 4, Subpart E

- A. Complaints must be investigated in a timely manner, if permitted by NRC's regulations. The agency shall promptly notify the complainant of the results of the investigation in a letter containing:
 - 1. Findings of fact and conclusions of law,
 - 2. A description of a remedy for each violation found, and
 - 3. A notice of the right to appeal.
- B. The OCCP Manager will assign a disposition to each complaint as follows:
 - 1. Substantiated Complaints – A complaint is assigned to this category if there is sufficient evidence to prove that the allegation(s) in the complaint can be substantiated. Attempts will be made to obtain voluntary compliance. If the NRC cannot obtain voluntary compliance, appropriate remedial action will be taken immediately to rectify the discrimination (i.e., to achieve resolution), including, where warranted, enforcement described in applicable NRC and Federal regulations.
 - 2. Unsubstantiated Complaints – A complaint is assigned to this category if there is insufficient evidence to prove that the allegation(s) in the complaint can be substantiated.

6.6 Appeal Process Under 10 CFR Part 4, Subpart E

- A. If the complainant is not satisfied with the disposition (findings of fact and conclusions of law) or resolution (remedies) of the complaint, the complainant may appeal the decision within 90 calendar days of receipt of the Letter of Findings (final agency decision) unless they are granted an extension for good cause. Timely appeals should be sent directly to the Chairman, NRC, 11555 Rockville Pike, Mailstop O16-G04, Rockville, MD 20852, or to DOJ. A copy should also be sent to the Director, SBCR, 11555 Rockville Pike, Mailstop O3-G04, Rockville, MD 20852.
- B. Appeals must be in writing; must include the name, address and telephone number of the complainant; and must state the reason why the complainant believes that the

disposition or resolution of the complaint was erroneous. The head of the agency or designee will notify the complainant within 60 calendar days of the receipt of the request. If additional information is needed from the complainant, the agency head will have 60 calendar days from the date of receipt of the additional information to make his or her determination on the appeal.

7. NOTIFYING THE COMPLAINANT AND RESPONDENT OF THE DECISION TO PROCEED WITH INVESTIGATION OF THE COMPLAINT

- A. After deciding to proceed with investigation of the complaint, the Civil Rights Specialist should notify the complainant and the respondent by letter that the complaint has been accepted for investigation.
- B. The Notification of Investigation Letters to the complainant (see Tab 9) and to the respondent (see Tab 10) should contain the following:
 - 1. The basis for the complaint;
 - 2. A brief statement of the allegations over which the NRC has jurisdiction;
 - 3. A brief statement of the NRC's jurisdiction over the respondent (i.e., over its office activity or recipient personnel) in terms of its authority to investigate the complaint,
 - 4. An indication of when the parties will be contacted;
 - 5. A cautionary statement that neither an NRC employee (e.g., Civil Rights Specialist), respondent, a recipient, nor any other person(s) shall intimidate, threaten, coerce, or discriminate against the complainant because he or she has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under any laws or regulations related to nondiscrimination in accordance with the provisions of 10 CFR 4.45, "Intimidatory or Retaliatory Acts Prohibited";
 - 6. A notice of the availability of ADR and early resolution, if appropriate or mandated by law (i.e., for age based complaints under 10 CFR 4.333, "Mediation");
 - 7. A request for the respondent to submit a position statement in response to the allegations, if appropriate;
 - 8. Where applicable, a request for the complainant's and Recipient's attorney to enter a notice of appearance (see Tab 22);
 - 9. OCCP contact information;
 - 10. Attachments that include, but are not limited to:
 - a) The Complaint Procedures Process (see Tab 24),
 - b) A Request for Mediation (see Tab 23),
 - c) A Notice About Investigative Uses of Personal Information and a Notice of the Rights and Privileges of the complainant and Interviewees (see Tab 3), and
 - d) A Consent Release Form seeking consent from the complainant to share information from, and related to, the complaint (see Tab 2).

8. INVESTIGATING A COMPLAINT

8.1 Roles and Responsibilities

- A. SBCR is required to make a prompt investigation whenever a compliance review, report, complaint, or any other information indicates a possible failure to comply with NRC and Federal regulations in accordance with 10 CFR 4.43, “Investigations”; 4.233, “Enforcement Procedures”; 4.334, “Investigation”; 4.570(d) through (j); and 5.605, “Enforcement Procedures.” SBCR’s OCCP is responsible for all phases of the complaint process, including acceptance or rejection, investigation, making and issuing compliance findings, and obtaining voluntary compliance. If OCCP uses contract Investigators, they are to be held to the same standards as if the OCCP staff itself were to conduct the investigation. The OCCP Manager is responsible for implementing program activities.
- B. The OCCP Manager and Civil Rights Specialist provide policy guidance and technical assistance to NRC offices, recipients, the public, and stakeholders concerning the implementation and enforcement of applicable civil rights laws, regulations, and EOs for which the NRC is responsible. The Civil Rights Specialist is expected to perform the duties assigned in his or her job description. For example, the Civil Rights Specialist conducts or facilitates the conducting of external investigations, monitors complaints and complaint handling, and tracks and reports on the investigation of complaints in such reports as those to DOJ under EO 12250, “Leadership and Coordination of Nondiscrimination Laws”; the Age Report to the Secretary of HHS under 10 CFR 4.341, “Reports”; reports to NRC management officials; and Commission briefings. The Civil Rights Specialist also performs a wide range of duties which are identified throughout this manual.
- C. If a complaint presents one or more issues that are novel, of interest to the media, politically sensitive, or unfamiliar, the OCCP Manager should alert the Small Business OCCP Associate Director and Director and consult with OGC as soon as possible. Depending on the issues involved, this consultation may occur before or during an investigation. “Novel issues” are those which raise substantive legal or policy questions that are not addressed in agency/office regulations or guidelines. In addition, when investigating a case in which there is media interest or political sensitivity, the OCCP Manager should inform the SBCR Associate Director or Director as soon as possible.
- D. The Administrative Assistant is responsible for file/record maintenance.

The administrative assistant is required to assist the OCCP directorate in meeting all recordkeeping and reporting requirements and to ensure that records and reports are legible throughout the applicable retention period specified by NRC and Federal regulations and applicable internal management directives.

8.2 Developing an Investigative Plan

The investigator is required to prepare an Investigative Plan (IP), which is a working document intended to define the issues and lay out the blueprint to complete the investigation. The IP is an internal document for use by the investigator and the Program Manager of the OCCP to

keep the investigation on track and focused on the issues and likely sources of evidence or corroboration. The written IP should include, at a minimum, the following:

1. Complainant(s) name and address
2. Attorney for the complainant – name and address (if applicable)
3. Respondent(s) name and address
4. Attorney for the Respondent – name and address (if applicable)
5. Applicable laws
6. Basis(es)
7. Allegation(s)/Issue(s)
8. Background
9. Name of person(s) to be interviewed
10. Questions for complainant
11. Questions for respondent
12. Questions for witness(es)
13. Evidence to be obtained during the investigation
14. Estimated investigation timeline
15. Remedy sought by complainant(s)

8.2(1) Case Planning

- A. Case planning should begin as early as possible, and the approach should be tailored to the nature and complexity of the issues involved. The Civil Rights Specialist/Investigator should prepare an Investigative Plan (IP), a working document that defines the issues and serves as a blueprint to complete the investigation. The IP is an internal reference that helps the Civil Rights Specialist/Investigator keep the investigation on track and remain focused on the issues and likely sources of evidence or corroboration (see Tab 11 for the format of an IP). The extensiveness of an IP depends on the complexity of the case, and some investigations will require modifications to the IP as facts are gathered or additional information is provided by the complainant.
- B. Generally, the following elements, as appropriate, should be included in an investigative plan:
 1. The NRC's jurisdiction over the subject matter and parties;
 2. A description of the issues, including identification of the specific action, policy, or practice responsible for the alleged discrimination;
 3. Applicable legal theories (e.g., intentional discrimination or disparate treatment or disparate impact or effects);
 4. Data to be gathered during the investigation; and
 5. A proposed activity schedule (including the anticipated sequence and timeframes of case activities such as on site visits and interviews).

- C. The case file should contain documentation that supports the decisions made with respect to each of the above planning elements. Planning documentation should be organized so that it can be readily located in the case file.
- D. As noted above, the IP should explain the theory or theories of discrimination anticipated to be used in the investigation, which will determine the standards of proof needed to establish a violation. Two primary legal theories are used to establish a case of prohibited discrimination: intentional discrimination or disparate treatment and disparate impact or effects.

8.2(2) Intentional Discrimination

- A. Intentional discrimination may take many forms, but disparate treatment is one of the most common. Simply put, disparate treatment means that similarly situated persons are treated differently (i.e., less favorably) than others because of their race, color, national origin, sex, disability, etc. Another type of intentional discrimination involves the use of policies or practices that explicitly classify individuals on the basis of their membership in a particular group. Such “classifications” may constitute unlawful discrimination if they are based on characteristics such as race, color, sex, or disability.
- B. To prove intentional discrimination, the Civil Rights Specialist/Investigator must show that a challenged action was motivated by intent to discriminate. This requires a showing that the decisionmaker was not only aware of the complainant’s race, color or national origin, but acted, at least in part, because of the complainant’s race, color, national origin, or disability.
- C. If the record contains sufficient evidence to establish a prima facie case of discrimination, OCCP must then determine whether the respondent can articulate a legitimate, nondiscriminatory reason for the challenged action. If the respondent can articulate a nondiscriminatory explanation for the alleged discriminatory action, the investigating agency must determine whether the record contains sufficient evidence to establish that the respondent’s stated reason was a pretext for discrimination. In other words, the evidence must support a finding that the reason articulated by the respondent was not the true reason for the challenged action, and that the real reason was discrimination based on race, color, national origin, or disability.

8.2(3) Disparate Impact

- A. The second primary theory for proving a violation is known as the discriminatory “effects” or disparate impact theory. In contrast to disparate treatment, the disparate impact/effects theory does not require proof of discriminatory intent. Rather, disparate impact cases involve claims that a respondent is violating the law by using a neutral policy or practice that has the effect of disproportionately excluding or adversely affecting members of a protected group, and the respondent’s policy or practice lacks a substantial legitimate justification.
- B. In a disparate impact case, the focus of the investigation concerns the consequences of the respondent’s practices, rather than the respondent’s intent. To establish liability under disparate impact, the Civil Rights Specialist/Investigator must first ascertain

whether the respondent used a facially neutral practice that had a disproportionate impact on members of a protected group (e.g., those of a particular race, sex, age, disability). If the evidence establishes a prima facie case, the investigating agency must then determine whether the respondent can articulate a substantial legitimate justification for the challenged practice.

- C. To prove a substantial legitimate justification, the respondent must show that the challenged policy was necessary to meeting a goal that was legitimate, important, and integral to the respondent's mission. If the respondent can make such a showing, the inquiry must focus on whether there are any equally effective alternative practices that would result in less adverse impact or whether the justification proffered by the respondent is actually a pretext for discrimination. If a substantial legitimate justification is identified, the third stage of the disparate impact analysis is the complainant's demonstration of a less discriminatory alternative.
- D. For a detailed discussion of IPs, including how to apply the appropriate legal theories and evidentiary standards, see the DOJ's Investigation Procedures Manual.
- E. No recipient or other person shall intimidate, threaten, coerce, or engage in other discriminatory conduct against any individual for the purpose of interfering with any right or privilege secured by applicable NRC regulations (e.g., 10 CFR Parts 4 and 5), or because he or she has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing protected by the civil rights law NRC enforces. Any individual alleging such harassment or intimidation may file a complaint with NRC/SBCR. SBCR will investigate such a complaint, if the situation warrants.

8.3 Scope of the Investigation

- A. The investigation should be confined to the issues and facts relevant to the allegations in the complaint, unless evidence shows the need to extend the issues.
- B. A future compliance review of the respondent may be appropriate when issues identified during the complaint investigation cannot be feasibly covered within the scope of the complaint investigation.

8.4 Collecting Data

- A. The types of data collected during an investigation will vary from case to case depending on the issue in question, the availability of the information, and the investigative strategy. The goal of all data collection efforts, however, should be to answer two main questions:
 1. What happened, and when, where, and how did it happen? A complaint alleges that something did or did not happen. Data must be collected to determine whether the alleged event occurred.
 2. Why did it happen? (On what basis? For what reason?) The information gathered should help the Civil Rights Specialist/Investigator determine whether the reasons alleged in the complaint are accurate.

- B. Civil Rights Specialist/Investigator should adhere to three key principles when collecting data:
 - 1. Try to obtain independently written documentation to corroborate oral statements that are critical to proving the case.
 - 2. Clearly label evidence identifying the case under investigation and the circumstances under which the evidence was obtained (e.g., where and when an interview was conducted and who provided a given document).
 - 3. Keep in mind that documents cannot always be relied on to provide verification.

8.4(1) Requesting and Accessing Information

- A. The NRC has legal authority under 10 CFR 4.31, “Cooperation and Assistance”; 4.33, “Access to Sources of Information”; and 4.334(a) and (c) to seek the cooperation of respondents and their contractors, to the fullest extent possible, in providing access to records and other information needed to determine whether the respondent is complying with Title VI, Section 504, and other statutes under the agency’s authority. The NRC may also request that respondents provide access to its employees for interviews and produce documents for examination during normal business hours.
- B. The Civil Rights Specialist should send a letter to the respondent requesting information relevant to the allegations under investigation. The initial information request can be combined with the formal notification letter or it can be sent later. The information request letter may be comprehensive and cover all allegations and data needed, may be a preliminary request for a portion of the information needed, or may be a request for information the respondent should provide during an on site visit. Information could include documents regarding prior dealings with the complainant, documents that show how others similarly and differently situated were treated, the respondent’s reasons for the action(s) taken, and statistical data related to the issues involved in the complaint and similar or dissimilar individuals or groups.
- C. All information request letters, however, should contain the following:
 - 1. The case number,
 - 2. The anticipated Investigatory process,
 - 3. Citation of the statute and/or regulations under which the investigation is being conducted,
 - 4. Reference to the NRC’s legal authority for access to information,
 - 5. A list of the information requested,
 - 6. An offer to settle or resolve the complaint, if appropriate, and
 - 7. A deadline for responding to the request for information.

- D. Respondents typically must provide information in the form that the NRC requests. However, Federal regulations and policies may restrict information requests.
- E. OCCP staff may not generally require a respondent to record information on a form or other standardized data collection instrument without obtaining prior approval for its use by the Office of Management and Budget (OMB).
- F. OCCP staff may suggest suitable formats to be used at the discretion of the respondent as information collection instruments. Similarly, OCCP staff must consider Federal policies concerning paperwork burdens when requesting a recipient to do more than provide the Civil Rights Specialist/Investigator with access to normally maintained information. Requests that a respondent manipulate or compile information to meet a need must be reasonable and take into consideration the burden being placed on the respondent.
- G. The NRC submitted and received approval from OMB for information collection requirements contained in 10 CFR 4 and 5.

8.4(2) Timeframe for the Respondent's Response

- A. The NRC respondent should be given 30 calendar days from the date of the OCCP request to submit the required information.
- B. OCCP may modify the timeframe depending on the extent of the data request or other special circumstances.

8.4(3) Confidentiality

- A. The Freedom of Information Act (FOIA), 5 U.S.C. Section 552, gives the public a right of access to records of Federal agencies, including the records and files of the NRC and its offices.
- B. The FOIA is implemented by the NRC regulations 10 CFR Part 9, "Public Records," and 10 CFR Section 2.390, "Public Inspections, Exemptions, Requests for Withholding."
- C. The Privacy Act of 1974 (5 U.S.C. Section 552a) regulates the collection, maintenance, use, and dissemination of certain personal information in Federal agency files. It is the policy of the NRC to comply with the Privacy Act. Therefore, personal data contained in each system of records is afforded adequate protection against unauthorized access, is as accurate as is feasible, and is limited to that necessary to accomplish the stated use of the system. The Civil Rights Specialist/Investigator and other recipients of information related to a complaint should redact personal information in accordance with the Privacy Act.
- D. The NRC's policy and regulations concerning maintenance and availability of records are contained in Management Directive 3.53, "NRC Records and Document Management."
- E. Third parties may not gain access to records about individuals within a system of records without the consent of the subject individual except as required by FOIA or under other

statutory exceptions contained in the Privacy Act (5 U.S.C. Section 552a(b)). Any requests for copies of documents or other access to information contained in office files should be referred to the Civil Rights Specialist responsible for handling FOIA and Privacy Act requests.

- F. Some records OCCP requests may identify individuals by name, including those not relevant to the investigation. To protect the confidential nature of certain files, OCCP may permit a respondent to conceal names by, for example, replacing names with a code and retaining a key to the code. However, if such a practice impedes timely investigation, OCCP should inform the respondent that it requires access to unmodified records.

8.5 Failure by the Respondent to Provide Access to Information

- A. The respondent must provide the NRC with access to all books, records, accounts, electronic media, audio and video recordings, and other sources of information or facilities necessary to determine compliance with applicable regulations. Failure by the respondent to cooperate fully can be grounds for a determination of noncompliance on the part of the respondent.
- B. Access to information includes that which an employee can supply orally as well as any written information he or she may have that is not maintained elsewhere, access to facilities, and reasonable efforts to obtain information from a third party.
- C. The Civil Rights Specialist/Investigator cannot compel a respondent's employee to provide information if the employee refuses. The respondent, in appropriate circumstances, should be informed of its employee's unwillingness to cooperate with the investigation, and that they are responsible for providing the information by any other possible method.
- D. A respondent denies access when it:
 - 1. Refuses to permit access to written or unwritten information, such as electronic storage media, microfilm, retrieval systems, photocopies, or facilities during the respondent's normal business hours;
 - 2. Refuses to permit access to employees during the respondent's normal business hours;
 - 3. Fails to provide information by virtue of the refusal of one of its employees to do so or to provide access to information maintained exclusively by an employee in his or her official capacity;
 - 4. Refuses to provide access to facilities; or
 - 5. Refuses to make reasonable efforts to obtain the requested information from third parties.

- E. If access is denied, the Civil Rights Specialist/Investigator should do the following:
1. If the refusal is stated orally, either in person or over the telephone (or comparable alternative means of communication), the Civil Rights Specialist/Investigator should ascertain the basis for the refusal and explain the NRC's authority (under 10 CFR 4.31, 4.33, 4.43, 4.324 ("Information Requirements"), and 5.605) or try to provide other information to address the concerns.
 2. If the Civil Rights Specialist/Investigator is unable to obtain access to the requested information, the Civil Rights Specialist/Investigator must consult the OCCP Manager for further directions (when on site, this should be done over the telephone whenever possible before the Civil Rights Specialist/Investigator leaves the premises). Where appropriate, the OCCP Manager should discuss the refusal to provide information directly with the respondent's representative.
 3. If attempts to persuade a respondent's representative to provide information fail, a letter should be prepared setting forth the NRC's authority to obtain access to the information and addressing any particular concerns expressed by the representative.
 4. Whenever SBCR determines that compliance cannot be achieved, SBCR should initiate enforcement under 10 CFR 4.46, "Means Available," or 5.605.
- F. The Civil Rights Specialist/Investigator should indicate in the final Investigative Report that the respondent refused to provide pertinent information and describe efforts made to obtain the information, including the identity of persons not cooperating in the investigation.
- G. There may be instances wherein another agency, institution, or person has exclusive possession of information and refuses to furnish this information. If so, the respondent must certify that this has occurred in its response or report to OCCP and describe what efforts it has made to obtain the information in accordance with 10 CFR 4.31, 4.33, 4.43, 4.233, 4.324, and 5.605.

8.6 Interviews

- A. During the investigative process, the complainant, the appropriate Equal Opportunity Coordinator for the respondent, and any witnesses should be interviewed.
- B. The Civil Rights Specialist/Investigator should determine from the outset if the witness is most comfortable communicating in English or another language. If the witness wishes to communicate in a language other than English, the Civil Rights Specialist/Investigator must obtain the assistance of a certified interpreter and should not use a person affiliated with the witness or a co-worker not certified as an interpreter.
- C. The main objectives of an interview are to gather information that will either support or refute the allegations in the complaint, and to obtain an understanding of the respondent's operation or policies that the complainant is citing in the complaint.

- D. The Civil Rights Specialist/Investigator should ensure that he or she understands the nature of the complaint, because the complainant's concerns may be different from what was originally written in the complaint.
- E. The Civil Rights Specialist/Investigator may conduct interviews in person or over the telephone, and in some cases through written inquiry and followup by telephone or e mail as appropriate.

8.6(1) Notice to Interviewees

- A. Before initiating an interview of the respondent's Civil Rights Specialist or of witnesses, the Civil Rights Specialist/Investigator should inform the person of the following:
 - 1. The right to an interpreter if the person prefers communicating in a language other than English.
 - 2. The purpose of the interview, including the roles of the NRC, SBCR and OCCP; what laws may be relevant to the investigation; and, if appropriate, an explanation of what is under investigation.
 - 3. The potential uses of the information to be collected from the witness and the applicable disclosure provisions of the FOIA.
 - 4. The witness's right to personal representation during the interview by a person of his or her choice.
 - 5. If the witness is an employee of a respondent, his or her right to refuse to have anyone else present during the interview and his or her right to refuse to reveal the content of an interview to the respondent, unless required by law.
 - 6. The regulatory provisions on prohibition of intimidation or retaliation by a respondent.
 - 7. If the witness has a disability, his or her right to reasonable accommodation to participate in the interview.

8.6(2) Preparing for and Conducting Interviews

- A. A list of primary questions should be prepared before the interview that addresses the allegations in the complaint. During the interview, the Civil Rights Specialist/Investigator should generally do the following:
 - 1. Introduce him or herself and try to put the individual being interviewed at ease.
 - 2. Explain the purpose of the interview and the interviewing process (indicate that a signed statement will be requested and that notes will be taken).
 - 3. Listen effectively.
 - 4. Remain impartial.

5. Distinguish facts from opinions.
6. Anticipate and be able to deal with negative reactions.
7. Ask open ended questions that will elicit the witness's perception—who, what, where, when, and how.
8. Take precise notes.
9. Obtain a signed sworn or affirmed affidavit from the interviewee addressing the complainant's allegations.

8.6(3) Witness's Right to Representation

- A. The witness's right to representation does not include a general right to have other persons present during the interview. Besides the Civil Rights Specialist/Investigator, the person being interviewed, and any needed interpreters/translators, the only other person present during any interview should be the witness's designated representative.
- B. It is prohibited for an individual to act as a personal representative for a witness if a conflict of interest exists between that person's responsibilities to the respondent and responsibilities as a personal representative.
- C. The witness should be informed that if a representative with responsibilities to the respondent appears to interfere with the Civil Rights Specialist/Investigator's ability to interview the witness or obtain requested information, the representative will be asked to leave. The witness should then be asked again if the witness wishes to have a personal representative and whom the witness wishes to have as that representative. If the witness still identifies the same person as the witness and the Civil Rights Specialist/Investigator has no other reason to believe the presence of the identified representative will interfere with gathering information, the Civil Rights Specialist/Investigator should proceed with the interview.
- D. If the person being interviewed is an OCCP Manager, supervisor, or policymaker of the respondent, he or she is often, in essence, an agent of the respondent. If this employee is represented by an attorney—either provided or hired personally—the attorney may be present during the interview of this person. The Civil Rights Specialist/Investigator should discuss these considerations with the witness before scheduling the interview, if at all possible.

8.6(4) Interviews with Minors or Legally Incompetent Individuals

- A. The Civil Rights Specialist/Investigator should obtain written consent of a parent or guardian before interviewing a person under 18 years of age or otherwise legally incompetent (for example, intellectually impaired).
- B. If a parent or guardian refuses to provide consent for an interview, and the OCCP Manager or the Civil Rights Specialist/Investigator determines that the child's information is critical, the Civil Rights Specialist/Investigator may attempt to secure parental or

guardian consent by inviting the parent or guardian to be present during the interview. If consent is denied, the Civil Rights Specialist/Investigator cannot interview the child or legally incompetent individual.

8.6(5) Records of Interviews

- A. A written record of both telephone and in person interviews must be created and kept in the case file.
- B. An interview may be recorded with the written consent of the interviewee, in which case the recording becomes part of the record along with the written transcription.
- C. Notes and subsequent reports of the interview should contain the following:
 - 1. The case number;
 - 2. The name and identification of the interviewee, interviewer, and any other person present (include an explanation for the presence of any other person);
 - 3. The date, time, and location of interview (including whether the interview was conducted by telephone);
 - 4. A record of whether the interviewee was informed of the required Privacy Act notifications and signed a summary statement; and
 - 5. A summary of the questions and responses (this need not be a verbatim transcript but should accurately reflect the responses of the witness).

8.7 On-Site Visits

- A. A thorough investigation can often be conducted without an on site visit to the respondent's facility.
- B. If all the following conditions are present, an on site visit is usually unnecessary:
 - 1. Individuals are not the primary source of information needed (i.e., interviews are unnecessary or can be done by telephone).
 - 2. All needed information can be specified precisely in the information request letter and can be easily provided by the respondent.
 - 3. The respondent can provide written documentation to verify its position in its response to the Civil Rights Specialist's/Investigator's information request letter.
 - 4. There is good reason to conclude that the complainant is the only person affected by the alleged discrimination.

- C. After analyzing the respondent's response to the initial information request letter, the Civil Rights Specialist/Investigator may decide that a visit to the respondent's facility is necessary.
- D. A Civil Rights Specialist/Investigator should consider the possibility of conducting a portion of the investigation on site if any of the following apply:
 - 1. Personal contact with the complainant and the respondent may yield information and clarification that might not otherwise be discovered by just reviewing written documents or speaking over the telephone.
 - 2. A more accurate impression of the physical environment and general atmosphere of the respondent and the surrounding community can be obtained, which may help in making a determination on the complaint.
 - 3. More effective communication can be established with respondent representatives who can be of assistance in the current complaint investigation or in future investigations.
 - 4. Some documentation can only be examined on site for reasons of convenience, cost, format, or bulk.

8.7(1) Notifying the Complainant and Respondent

- A. When OCCP determines that an on site visit is needed, the Civil Rights Specialist/Investigator should send a notification letter to both the complainant and the respondent advising them of the planned visit.
- B. An on site notification letter to the complainant should include at least the following:
 - 1. OCCP's intention to investigate his or her allegations, if not already acknowledged;
 - 2. The anticipated date of the on site visit;
 - 3. The time and place for interviewing the complainant;
 - 4. A request for the complainant to provide any additional information and documentation he or she considers relevant to the investigation, possibly including a list of witnesses; and
 - 5. A timeframe in which the complainant needs to provide the additional information and list of witnesses.

- C. At this point in the review process, the respondent is already aware of the existence of the complaint, the NRC's jurisdiction, the basis of the complaint, and the NRC's legal authority to investigate the complainant's concerns. However, the letter notifying the respondent of the scheduled on site visit should:
1. Restate the allegations made by the complainant, their basis, and the legal authority under which the complaint is being investigated.
 2. State the section of the appropriate regulation that prohibits the discrimination.
 3. Provide the general time schedule under which OCCP will conduct its investigation.
 4. Request additional information or data needed before the on site visit and state a deadline for the submission of that information.
 5. Identify additional data that must be available during the on site visit.
 6. Request that the respondent's management and other employees/witnesses to be interviewed and those responsible for the release of additional records be asked to be available as appropriate during the on site visit.
 7. Request an opening meeting with the designated responsible official to be held when the Civil Rights Specialist/Investigator arrives on site. Also, if appropriate, request an orientation meeting with selected respondent employees (state the date and time—usually the first or second day of the on site visit).
 8. Identify the respondent's employees to be interviewed, if this can be determined in advance. Also request that the respondent set up the interview schedule at convenient times and private locations during the on site visit.
 9. Suggest that the respondent designate a liaison person, if it has not already done so.
- D. Immediately upon arrival on site, and after meeting with the complainant, the Civil Rights Specialist/Investigator should hold an opening conference with the authorized official to ensure that adequate preparation for the investigation has taken place and that satisfactory arrangements have been made to allow the Civil Rights Specialist/Investigator to interview the respondent's management and other employees and to conduct a review of the records and other information.
- E. Without sharing any details of the complaint protected by law, the Civil Rights Specialist/Investigator may also meet with community members and other stakeholders who can better illuminate civil rights challenges and/or possible remedies.

8.7(2) Analyzing Evidence after the On site Visit

- A. Properly collected and analyzed evidence is essential to determining compliance. Upon completion of the on site visit, but before returning to the NRC, the Civil Rights Specialist/Investigator should review the information and cross check it with the Investigative Plan to ensure that all needed information has been collected.

- B. Missing information should be gathered in an exit conference, which provides an opportunity for the Civil Rights Specialist/Investigator to clarify any questions that may have arisen and request any additional information.
- C. Once the information packet is deemed complete, the Civil Rights Specialist/Investigator should take the following five steps in analyzing data and information:
 - 1. Read and Interpret. Be sure to have a clear and thorough understanding of what the information collected says. Civil Rights Specialists/Investigators should review what happened to the complainant; compare the complainant's treatment with the appropriate policies and procedures; compare the complainant's treatment with others in the same situation; review the respondent's reason for the treatment afforded the complainant; and compare the respondent's treatment of the complainant with the treatment afforded others. Seek clarification where needed to understand the written language; for example, obtain definitions for abbreviations; identify words and phrases that are key to interpreting the message; where words used within a given context do not take on an obvious meaning, ask interpretive questions; and do not make assumptions. Never read meanings into the evidence. Accept the evidence at face value.
 - 2. Determine Relevance. Read with a purpose. Know what information or answers should be sought and recognize their presence or absence. Where the evidence (1) does not provide the answers needed, (2) does not provide any direction to a source for the answers needed, or (3) does not raise additional questions related to the issue at hand, the evidence, at least for the moment, is not relevant. (However, the fact that evidence is not relevant at this time does not mean that it could not become relevant at a later stage of the investigation.) Categorize the evidence by issue and/or allegation.
 - 3. Verify the Evidence. Develop a system for cross checking. Identify and try to resolve conflicting information.
 - 4. Assemble the Evidence. Put the evidence together so that it illustrates a logical continuity of dependent, or related but independent, occurrences leading to a conclusion.
 - 5. Draw Conclusions. Allow the evidence to speak for itself. Test conclusions. Try to consider all possible rebuttal arguments by the respondent and the complainant.
- D. Both the respondent and the complainant must be given an opportunity to confirm or rebut the assertions of the other party.

8.8 Preparing an Investigative Report

- A. An Investigative Report, also called an Investigative Summary, that is prepared after a full investigation is completed should:
 - 1. Present all facts pertinent to the case in an organized, logical fashion,

2. Analyze those facts in light of the complainant's allegations and pertinent departmental regulations,
 3. Evaluate the validity of the allegations based on that analysis and the compliance status of the respondent, and
 4. Recommend corrective or remedial action, as appropriate.
- B. An Investigative Report may be unnecessary in cases that:
1. Are straightforward,
 2. Raise only limited issues,
 3. Do not involve significant rebuttal by either party, and
 4. Result in compliance or findings of no violation.
- C. In such cases, a letter explaining the findings to the complainant may substitute for the Investigative Report. However, an Investigative Report should always be prepared if:
1. The case is complex,
 2. Class issues are involved that require extensive analysis of evidence, or
 3. A Violation Letter of Findings has been prepared that does not stand on its own as support for the findings.
- D. An Investigative Report should contain the following major sections:
1. Introduction (optional)
 2. Applicable laws/regulations
 3. Basis (e.g., race, sex, or disability)
 4. Allegations
 5. Methodology
 6. Position of the recipient
 7. Findings of fact
 8. Analysis and recommended determination
 9. Proposed corrective action/remedial action

- E. References should be used throughout the investigative report to direct the reader to the appropriate supporting documentation in the investigative case file (see the Investigative Report Format in Tab 12).
- F. For large case files, it is suggested that the Investigative Report include an index of documents and a key citing by tab the evidence in the file that is relied on in making any determination.

8.9 Timeframe for Investigating Complaints

- A. The NRC's Title VI regulations in 10 CFR 4.43; 10 CFR 4 Subparts B, C, and E; and 10 CFR 5 require the NRC to make "a prompt investigation" whenever information suggests a possible failure to comply with the regulations.
- B. All complaints, unless extenuating circumstances are present, should be resolved within 180 calendar days from the NRC's/SBCR's receipt of the complaint.

8.10 Reconsideration Rights and Final Agency Decisions

- A. If the Civil Rights Specialist/Investigator has kept the complainant advised of the progress of the investigation and thoroughly explained the basis for the NRC's resolution or closure of the case, complainants will generally accept the results. However, this is clearly not always the case. A complainant may believe that the Civil Rights Specialist/Investigator has overlooked important evidence or failed to interview key witnesses.
- B. The regulation in 10 CFR 4.570(h) provides a formal process for a complainant to appeal the findings of fact and conclusions of law or remedies within 90 calendar days of receipt from the agency of the letter notifying the complainant of the results of the investigation. The agency may extend the 90 day timeframe for good cause.
- C. The complainant should be informed in the "No Violation" Letter of Findings that he or she may send a request for reconsideration within 90 calendar days of the letter to the Director of SBCR. The director may grant a waiver of the 90-day deadline in special circumstances. If the complainant files a request for reconsideration, the Director should issue a written decision, as promptly as possible, on whether to reopen the case.
- D. Reasons for reconsidering a decision include, but are not limited to, the following:
 - 1. Complaint allegations were not investigated.
 - 2. The investigation was insufficient, e.g., the Civil Rights Specialist/Investigator failed to interview complainant's witnesses or perform an on site visit when one was necessary.
 - 3. Facts or evidence from the complainant were not adequately considered.
 - 4. Issues were investigated under the wrong authority or the correct authority was applied inappropriately.
 - 5. The wrong evidentiary standard was applied.

6. Material information became available that was not available previously.
 7. Fraud or misrepresentation occurred.
 8. The Director's decision would have a substantial impact on the policies, practices, or operations of SBCR.
- E. There are no formal appeal processes related to investigation of respondents under 10 CFR 4 or 5. However, at the level of the Commission and the Office of the Executive Director (EDO), requests may be received from members of Congress and others to review a decision by the NRC in a particular case. In these situations, members of the Commission or the EDO may at their sole discretion decide to conduct a de novo review of the complaint file on a case by case basis. They should consult SBCR/OCCP during their review and before issuing any response.

9. SETTLEMENT AGREEMENTS AND MONITORING

9.1 Developing and Monitoring Settlement Agreements

- A. The Civil Rights Specialist/Investigator should contact both the respondent and the complainant to determine options to be considered in settling a case.
- B. Settlement Agreements can be negotiated before or after a Letter of Findings is issued.

9.1(1) Guidelines for Agreements

- A. Settlement Agreements must be signed by the SBCR Director, the respondent, and the complainant (if a party). When the complainant is not a party, he or she should be given an opportunity to provide ideas for relief and respond to proposals for relief, even though the complainant's wishes are not binding on SBCR/OCCP. A complainant that is not a party should also receive a copy of the signed Settlement Agreement. OGC concurrence is required for all Settlement Agreements.
- B. The agreement should be sent to the respondent with the Letter of Findings, if prepared, and contain, but not be limited to the following:
 - 1. A description of the allegations;
 - 2. The authority of the NRC to investigate the complaint and secure voluntary compliance;
 - 3. The jurisdiction of the NRC to cover the entity (e.g., it receives funds from a specific agency or program);
 - 4. Terms of the settlement, including the specific steps the respondent will take to correct the compliance issues and dates for implementing each step;
 - 5. Dates for submitting reports and documentation verifying implementation, if applicable; and
 - 6. Provision for enforcement if the respondent fails to comply with the agreement, if applicable.
- C. According to DOJ guidance, the importance of settlement cannot be overstated. It is important to bear in mind that when settling a case, the investigator is representing the NRC, not the complainant. The primary objective is to enforce the law – that is, to ensure that the NRC-conducted or assisted program or activity in question comes into compliance. The investigator should contact both the complainant and the recipient to determine options to be considered in settling a case during both the investigation phase, as well as after a Letter of Findings (LOF) has been issued. Settlement Agreements can be negotiated before or after a LOF is issued. The following provisions should be included in all Settlement Agreements:
 - 1. The name of the two parties (the Federal agency and the recipient) and a brief description of the allegation(s).

2. The authority of the Federal agency to investigate the complaint and secure voluntary compliance.
3. The jurisdiction of the agency to cover the entity (receives funds from specific agency program).
4. Addresses each potential violation (pre-LOF) and each violation (post-LOF).
5. If appropriate, states that the agreement does not constitute an admission by the recipient of any violation of the regulation. Do not put this language in the agreement unless the recipient asks to include it. Therefore, you would generally not include it in the initial proposed Settlement Agreement you send to the recipient for negotiation purposes.
6. Specifies the remedial relief and corrective action (prospective relief) to be taken, within a stated period, to come into compliance:
 - (a) Specific acts or steps the recipient will take to come into compliance;
 - (b) Timetable for implementing the various steps of the agreement; and
 - (c) Description and timetable for submission of documentation that the recipient will provide periodically as the remedy is implemented.
7. Provides assurance that discrimination will not reoccur.
8. Provision for enforcement by the Federal agency in the appropriate Federal Court and/or for special conditioning the drawdown of future grants for failure to comply with the agreement.
9. A statement that the agency's failure to enforce the entire agreement or any provision thereof with respect to any deadline or any other provision therein shall not be construed as a waiver of the agency's right to enforce other deadlines and provisions of the agreement.
10. Prohibition of retaliation by the recipient against any person who has either taken action or participated in action to secure rights protected by the civil rights statute.
11. A statement of the duration of the agreement.
12. A statement that the agreement has no effect on other pending cases against same respondent nor does it remedy any other potential violation not contained within the Agreement.
13. Is signed by the responsible official for the Federal agency and the respondent.
14. A statement that the agreement is available to members of the public upon request, unless it contains confidentiality provisions.

15. A statement that compliance with the agreement may be reviewed at any time by the Federal agency.
16. A statement of the effective date of the agreement.
17. A statement that the agreement does not affect the respondent's continuing responsibility to comply with the Federal statute(s).

9.1(2) Monitoring Respondents' Actions

- A. Monitoring activities should be tailored to follow the agreement. While many agreements can be fulfilled in a short period of time, others will take longer to implement because of complex terms.
- B. The NRC should notify the respondent when it has satisfied the terms of the Settlement Agreement.
- C. If SBCR/OCCP determines that the respondent has failed to implement the agreement, OCCP should provide written notice to the respondent outlining the deficiencies and needed remedial actions.

9.1(3) Modifying an Agreement

- A. SBCR/OCCP may modify the Settlement Agreement if circumstances have arisen that fully resolve, or render moot, any compliance concerns addressed by the agreement (e.g., further remedial action is not required because the programs at issue no longer exist). Copies of any modifications must be initiated and received by the parties.
- B. SBCR/OCCP will also modify the agreement to comport with:
 1. Changes in controlling case law,
 2. Changes in statutes,
 3. Changes in regulations, or
 4. Changes in NRC policy that cause provisions in the agreement to no longer be legally required.

9.1(4) Respondent's Failure to Comply with an Agreement

- A. If OCCP learns or has reason to believe that the agreement is not being complied with, it should contact the respondent immediately.
- B. If the matter cannot be resolved, NRC will take action to the greatest extent permissible by law.

10. TYPES OF CLOSURE LETTERS

10.1 Closure Letters Generally

- A. Different types of letters will be issued to the complainant and respondent depending on the findings of an investigation or how the case is resolved.
- B. All closure letters should include:
 - 1. A statement of the NRC's jurisdictional authority, including the statutory basis for the investigation;
 - 2. A brief statement of the allegations over which the NRC has jurisdiction;
 - 3. A brief statement of the NRC's jurisdiction over the respondent;
 - 4. The basis for the complaint (e.g., race, color, national origin, sex, disability, religion, age, etc.);
 - 5. A statement of each allegation and the applicable regulation;
 - 6. An explanation of the status of any issues that were investigated but are not included in the letter or any issues that were raised but not investigated;
 - 7. An explanation of the basis for the NRC's determination that the complaint has been resolved, if applicable;
 - 8. A paragraph on the prohibition of retaliation by the respondent against the complainant or anyone who has either taken action or participated in an action to secure rights protected by the civil rights statutes;
 - 9. A paragraph on the FOIA and the Privacy Act;
 - 10. An attachment of a copy of any written agreement;
 - 11. A notation for the respondent as to when the first monitoring report will be due, if applicable;
 - 12. Notation that the complainant has the right to file his or her own private lawsuit in Federal District Court, if applicable;
 - 13. The name and telephone number of the Civil Rights Specialist/Investigator or other person to contact for additional information; and
 - 14. Thanks to the respondent for its cooperation (optional).
- A. All closure letters should be signed by the Director of SBCR before they are issued to the involved parties.

- B. SBCR management may decide to consult with OGC before issuing a closure letter (e.g., if a complaint involves issues that are novel, of media interest, or politically sensitive).

10.2 Letter of Resolution

- A. A Letter of Resolution is issued when the respondent has voluntarily taken actions to come into compliance or has agreed to take the required steps. It can be issued before any discrimination has been proven and a Letter of Findings prepared, or after an investigation that finds noncompliance. A Letter of Resolution can simply explain the steps the respondent has taken or promises to take, or it can include a Settlement Agreement (see Tab 16).
- B. Letters of Resolution should include, in addition to the items in Section 5–2, the following:
 - 1. The steps that the respondent has taken or will take to come into compliance and an explanation of how these actions meet the requirements of the applicable regulation;
 - 2. Notice that failure to take or continue these actions may result in the finding of a violation and that compliance will be monitored, if necessary; and
 - 3. The date(s), if applicable, that any promised action will occur and when monitoring or other reports will be due.

10.3 “No Violation” Letter of Findings

- A. When OCCP concludes that evidence is insufficient to show that a respondent failed to comply with applicable regulations—or that it is clear that the respondent is in compliance—SBCR will inform the parties in writing.
- B. A “No Violation” Letter of Findings (also called a Compliance Letter of Findings) should include, in addition to the items in Section 10.1, the following:
 - 1. An explanation of why the respondent was found to be in compliance;
 - 2. Notification of the complainant’s right to file a private action or other appeal rights (in the letter to the complainant), if applicable; and
 - 3. A list of any procedural violations, such as lack of posted notice, or other concerns uncovered during the investigation. Inclusion of these items will put the respondent on notice that certain practices are questionable and that without corrective steps a future violation finding is possible (see Tabs 14 and 15).

10.4 Violation Letter of Findings

- A. When OCCP determines that the respondent has not complied with applicable regulations and the respondent declines to enter into an agreement, OCCP will prepare a Violation Letter of Findings, with OGC concurrence.

B. A Violation Letter of Findings should include, in addition to the items in Section 10.1, the following:

1. A statement of each issue and the findings of fact for each, supported by any necessary explanation or analysis of the evidence on which the findings are based;
2. Conclusions for each issue that cite the relevant facts, the applicable regulation, and the appropriate legal standards. An OGC review should be obtained related to usage of the appropriate legal standards;
3. A description of proposed remedies or directions to the respondent on resolving the matter;
4. An offer of assistance in devising a remedial plan for compliance (if a proposed formal agreement is not included), if appropriate;
5. Notice that the Letter of Findings is not intended, and should not be construed, to cover any other issue regarding the respondent's compliance;
6. Notice of the time limit on the conciliation process and the consequence of failure to achieve voluntary compliance;
7. Notice of the NRC's or the respondent's obligation to take immediate action, or alternatively, any other time limit set by SBCR regarding the settlement process;
8. The consequence of failure to take SBCR directed action or settlement; and
9. Notice of a possible deferral if a decision is made to defer final approval of any application by the respondent for additional FFA.

C. When writing a Violation Letter of Findings, the following guidelines should be considered:

1. The Letter of Findings should present a complete, neutral discussion of the facts in a clear, concise, and logical manner.
2. Where the investigation has revealed two different versions of the facts, state both sides.
3. The intended reader should be considered to have no knowledge of civil rights laws or the facts of the particular investigation.
4. The Letter of Findings cannot assume facts or the law. These elements must be clearly articulated in the letter.
5. The general prohibition contained in the relevant statute and the particular regulation governing the issues should be cited. Only focus on those parts of the regulations necessary to resolve the complaint.

6. The Letter of Findings should tell the reader why a particular set of facts demonstrates compliance or noncompliance.
 7. Where it is necessary to credit one version of the facts and discredit another version, the Letter of Findings should state the basis on which the one version was determined to be more credible than the other.
 8. In the conclusion of the Letter of Findings, the determinations of compliance, noncompliance, or both should be highlighted.
 9. The Letter of Findings must contain the information necessary to meet the burden of proof. The legal standard for a Letter of Findings is the “preponderance of the evidence.”
- D. Letters of Resolution and Violation Letters of Finding are both often called Noncompliance Letters of Finding, and should be recorded as such in the annual EO 12250 report to DOJ.

11. INITIATING ENFORCEMENT ACTION

11.1 Commencing Enforcement Actions

- A. If SBCR/OCCP is unable to negotiate a settlement with a respondent found to be in noncompliance, or if a respondent fails to meet the terms of an existing agreement, the NRC will begin enforcement action.
- B. Enforcement is a formal process that is initiated only after other means for compelling compliance have failed.
- C. Except where otherwise indicated, NRC/SBCR will follow the procedures in the NRC's Title VI regulations (10 CFR 4) when enforcing any civil rights statute. For disability based complaints, NRC/SBCR will follow the procedures in the regulations at 10 CFR 4, Subpart B (implementing Section 504 of the Rehabilitation Act of 1973, as amended, with respect to federally assisted programs or activities), and 10 CFR 4, Subpart E (which applies to programs or activities conducted by the NRC).
- D. The decision to initiate administrative enforcement proceedings or referral to DOJ, recommending that appropriate proceedings be brought must be made in consultation with the Office of General Counsel, which will help develop an enforcement strategy and coordinate meetings with DOJ officials and others (see 10 CFR 4.46).

11.2 Available Enforcement Options

- A. The DOJ guidelines for enforcing Title VI (28 CFR Section 50.3, "Guidelines for the Enforcement of Title VI, Civil Rights Act of 1964") note that several enforcement options exist.
- B. Title VI itself and relevant presidential directives preserve in each agency the authority and duty to select, from among available sanctions, the methods best designed to secure compliance in individual cases. These sanctions include referral to DOJ, termination of or refusal to grant assistance, and other administrative actions.
- C. In each case, the NRC's primary objective is to compel respondents to promptly and fully comply with civil rights laws, thus promoting the delivery of accessible, nondiscriminatory services and ensuring that needed Federal assistance may commence or continue.
- D. The NRC's primary objective is to also hold the agency to the same standards as it holds its respondents, and to ensure that NRC conducted programs and activities also deliver accessible, nondiscriminatory services.

11.2(1) Referral to the Department of Justice

- A. As noted in NRC regulations under 10 CFR 4, Subpart A, Section 4.46, compliance may be effected by referring the matter to DOJ with a recommendation that appropriate proceedings be brought to enforce any rights of the United States under any law of the United States, or any assurance or other contractual undertaking.

- B. SBCR/OCCP management initiate referrals to DOJ by following all regulations, guidance, policies, and any memoranda of understanding between the NRC and DOJ specific to the applicable statute.
- C. SBCR/OCCP management must consult with OGC on the prospective referral, and the underlying basis for the referral, before requesting DOJ's involvement.

11.2(2) Termination of or Refusal to Grant Assistance (Applicable to Recipients)

- A. The ultimate sanctions under Title VI are the refusal to grant an application for assistance and the termination of assistance being rendered.
- B. Before sanctions may be invoked, the NRC regulations at 10 CFR 4.48, "Termination of or Refusal to Grant or to Continue Federal Financial Assistance," require the following to have occurred:
 - 1. SBCR has advised the applicant or respondent of his or her failure to comply and has determined that compliance cannot be secured by voluntary means (see 10 CFR 4.49).
 - 2. There has been an express finding on the record, after opportunity for hearing (see 10 CFR 4.51, "Notice of Opportunity for Hearing," for hearing requirements), of a failure by the applicant or respondent to comply with a requirement imposed by or under this subpart.
 - 3. The action has been approved by the Commission under 10 CFR 4.72, "Exceptions and Final Decision."
 - 4. Thirty days have passed since the Commission filed (with the committee of the House and the committee of the Senate having legislative jurisdiction over the program involved) a full written report of the circumstances and the grounds for such action.
- C. The NRC's Section 504 at 10 CFR 4.233 outline that the enforcement procedures set forth in 10 CFR 4.41, "Periodic Compliance Reviews," through 4.75, "Post Termination Proceedings," shall be used for the enforcement of the regulations in 10 CFR 4 Subpart B.
- D. When SBCR recommends the termination of or refusal to grant assistance, it should work with OGC to prepare an enforcement recommendation package, which is submitted to the Commission/EDO for consideration. The package should include the following items:
 - 1. Letter of Findings;
 - 2. Litigation memorandum describing the issue; the nature of any violations found on investigation of each issue; applicable statutes, regulations, and case law; and an evaluation of evidence that supports each finding;

3. Information regarding FFA; and
4. Discussion of attempts at settlement.

11.2(3) Other Administrative Actions Related to Recipients

- A. A number of effective alternative courses not involving litigation may also be available in many cases. These possibilities include:
 1. Consulting with or seeking assistance from other Federal agencies having authority to enforce nondiscrimination requirements;
 2. Consulting with or seeking assistance from state or local agencies having such authority;
 3. Bypassing a recalcitrant central agency applicant in order to obtain assurances from, or to grant assistance to, complying local agencies; and
 4. Bypassing all recalcitrant non Federal agencies and providing assistance directly to the complying ultimate beneficiaries.
- B. The use of such administrative alternatives should be considered at all stages of enforcement when appropriate and feasible.

11.3 When Enforcement Occurs

- A. Before proceeding with enforcement, the NRC must determine that compliance cannot be secured through voluntary means.
- B. Enforcement should be initiated following a violation finding and failure of all settlement efforts. Any of the following actions constitutes failure:
 1. The respondent has unreasonably prolonged settlement negotiations with the NRC.
 2. The respondent is not negotiating in good faith.
 3. The respondent is not represented by an official of sufficient stature to bind the respondent.
 4. The respondent has taken actions that will not cure the discrimination found.
- C. Under DOJ regulations at 28 CFR 42.411, "Methods of Resolving Noncompliance," agencies must notify the Assistant Attorney General for Civil Rights of any case in which negotiations have continued for more than 60 calendar days after making the determination of probable noncompliance and state the reasons for the length of negotiations.

11.4 Letter to the Respondent Regarding Imminent Enforcement

- A. At the enforcement stage, a Violation Letter of Findings will have already been sent to the respondent outlining the NRC's findings, actions the respondent must take to come into compliance, and the consequences of failing to take those actions.
- B. Before proceeding further, SBCR/OCCP should send a letter to the respondent setting out the last clear opportunity for settlement and, again, the actions to be taken to effect compliance.
- C. Enforcement should not be initiated before the passage of at least 60 calendar days from the mailing of such notice to the respondent. During this period of at least 10 calendar days, additional efforts should be made to persuade the respondent to comply with the regulations and take corrective action (under 10 CFR 4.49, "Other Means Authorized by Law").

11.5 Special Procedures for Shorter Programs

- A. Special enforcement procedures may sometimes be required where there is noncompliance with Title VI regulations in connection with a program of such short total duration that all assistance funds will have to be paid out before the NRC's usual administrative procedures can be completed and where deferral in accordance with these guidelines would be tantamount to a final refusal to grant assistance.
- B. In such a case, the NRC may, although otherwise following these guidelines, suspend normal agency procedures and institute expedited administrative proceedings to determine whether the regulations have been violated. SBCR, after consulting with OGC, should simultaneously refer the matter to DOJ for consideration of possible court enforcement, including interim injunctive relief. Deferral of action on an application is appropriate, in accordance with DOJ guidelines, for a reasonable period of time, provided such action is consistent with achievement of the objectives of the statute authorizing the FFA in connection with the action taken. As in other cases in which noncompliance is found in the hearing proceeding, and if administrative alternatives are ineffective or inappropriate and court enforcement is not feasible, procedures under Section 602 of Title VI may be completed and assistance finally refused.

APPENDIX A – COMPLAINT PROCESSING CHECKLIST

- **EVALUATE THE COMPLAINT**
 - Determine whether the correspondence is a complaint
 - Record the complaint in the OCCP Internal Tracking System
 - Acknowledge the complaint
 - Determine whether the complaint is complete
 - Identify missing information
 - Determine whether the complaint has been filed in a timely manner
- **DETERMINE JURISDICTION AND ISSUES**
 - Confirm NRC jurisdiction over the issues
 - Determine regulatory authority
 - Determine whether the complaint should be referred to another agency
 - List allegations/issues
 - Determine whether the case should be closed administratively or nonadministratively
- **DATA COLLECTION**
 - Notify the respondent and the complainant of the investigation
 - Write an Investigative Plan
 - Identify relevant data needed
 - Select appropriate data collection methods
 - Send data request letter
 - Create an interview list with preliminary questions
 - Decide whether an on site visit is necessary
 - Arrange the on site visit

- ON SITE
 - Conduct an opening conference
 - Review on site records for relevant data
 - Conduct interviews
 - Write up interview notes
 - Conduct an exit conference
- DATA ANALYSIS
 - Cross check data collected with the Investigative Plan
 - Determine relevance and verify evidence
 - Assemble the evidence
 - Draw conclusions and develop patterns established by information
- DEVELOP FINDINGS
 - Summarize the complainant's position
 - Summarize the respondent's position
 - Apply relevant statutes and regulations to the data collected
 - Develop and articulate preliminary/recommended conclusions
 - Develop and articulate final conclusions
 - Write the Investigative Report
 - Write the Letter of Findings

<p>(4A) *Non-employment: Does your complaint concern discrimination in the delivery of services or in other discrimination actions of the department or agency in its treatment of you or others? If so, please indicate below the basis on which you believe these discriminatory actions were taken.</p> <p>Race Sex Age</p> <p>Color Disability Sexual Orientation</p> <p>National Origin Religion Status as a Parent</p>	<p>(4B) *Employment: Does your complaint concern discrimination in employment by the department or agency? If so, please indicate below the base(s) on which you believe these discriminatory actions were taken.</p> <p>Race Sex Age</p> <p>Color Disability Sexual Orientation</p> <p>National Origin Religion Status as a Parent</p>
<p>(5) What is the most convenient method and time (telephone, email, other; time day/night, between the hours of ____ and ____) for us to contact you about this complaint?</p>	<p>(6) *If we are not able to reach you directly, is there an alternate contact for information on the complaint?</p>
<p>I Can Be Reached : AM and : AM</p> <p>Between the Hours of: PM PM</p>	<p>Yes No If yes, what is the name and telephone number?</p>
<p>Telephone Number</p> <p>Email</p> <p>Other</p>	<p>Name:</p> <p>Telephone Number:</p>

COMPLAINT FORM (Continued)

(7) *Your attorney information, if applicable:

(8) *To your best recollection, on what date(s) did the alleged discrimination take place?

Earliest date of discrimination:
(MM/DD/YYYY)

Most recent date of discrimination:
(MM/DD/YYYY)

(9) *Complaints of discrimination must generally be filed within 180 days of the alleged discrimination. If the most recent date of discrimination, listed above, is more than 180 days ago, you may request a waiver of the filing requirement. If you wish to request a waiver, please explain why you waited until now to file your complaint.

(10) *Please explain as clearly as possible what happened, why you believe it happened, and how you were discriminated against. Indicate who was involved. Be sure to include how other persons were treated differently from you. (Please use additional sheets, if necessary and attach a copy of written materials pertaining to your case.)

(11) Civil Rights laws prohibit reprisal for filing complaints or opposing practices prohibited by these laws. If you have been subjected to retaliation or intimidation (separate from the discrimination alleged in #10), please explain below including the actions you believe to be the basis for the reprisal.

COMPLAINT FORM (Continued)

(12) *Please list below any persons (witnesses, fellow participants or employees, supervisors, or others), if known, for additional information regarding your complaint.

No.	Name	Address	Telephone Number (Include area code) and Email Address	What information or documentation will the individual be able to provide to support your complaint?
1				
2				
3				
4				
5				

(13) Do you have any other information that you think is relevant to our investigation of your allegations?

(14) What remedy are you seeking for the alleged discrimination?

(15) *Have you (or the person discriminated against) filed the same or any other complaints with NRC, another Federal agency, or the recipient company?

Yes No If so, provide the complaint number. What was the date of that filing? (MM/DD/YYYY)

What is the name of the agency/department or program that the complaint was filed against? (Please provide the address, zip code and telephone number).

COMPLAINT FORM (Continued)

Briefly state what the complaint was about?

<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	

What were the results?

Cause Finding No Cause Finding

Other: (Explain)

<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>

(16) *Have you filed or do you intend to file a charge or complaint concerning the issues raised in this complaint with any of the following?

U.S. Department of Justice	Federal or State Court
U.S. Office of Health and Human Services	Your State or local Human Relations/Rights Commission
U.S. Equal Employment Opportunity Commission	Other Grievance or Complaint office

(17) *If you have already filed a complaint with an agency indicated in #16, please provide the following information (attach additional pages if necessary):

Name of Agency:	Date filed (MM/DD/YYYY):	Case or Docket Number:	Date of Trial/Hearing (MM/DD/YYYY):
Location of Agency/Court:	Name of Investigator:	Status of Case:	

Comments:

COMPLAINT FORM (Continued)

(18) If you know of any NRC funds or other assistance received by the program or department in which the alleged discrimination occurred, please provide that information below:

(19) ***REQUIRED SIGNATURE:** We cannot accept a complaint, if it has not been signed. Please type in your signature and date below.

(SIGNATURE) complainant's signature acknowledges and verifies

SIGNATURE DATE

(20) ***REQUIRED SIGNATURE/CONSENT:** Your signature below indicates your consent to disclosure of your name during the investigation processes. (If you are filing this complaint for a person whom you allege has been discriminated against, we will need consent from that person).

(SIGNATURE) complainant's signature acknowledges and verifies consent to release complainant's name in the course of any investigation by NRC.

SIGNATURE DATE

For Questions, please call: (301) 415-7380
U.S. Nuclear Regulatory Commission
The Office of Small Business and Civil Rights

YOU MAY SAVE A COPY OF THIS COMPLETED FORM FOR YOUR RECORDS OR PRINT A COPY, BEFORE YOU CLICK THE SUBMIT BUTTON.

TO SUBMIT YOUR REQUEST BY EMAIL, PRESS THE SUBMIT BUTTON BELOW.

APPENDIX C – COMPLAINANT CONSENT/RELEASE FORM

[Complainant
Address
City, State, ZIP Code]

OCCP # [13 11(27)]

Please read the information below, check the appropriate box, and sign this form.

I have read the Notice of Investigatory Uses of Personal Information by the Nuclear Regulatory Commission (NRC). As a complainant, I understand that in the course of an investigation it may become necessary for NRC to reveal my identity to persons at the organization or institution under investigation. I am also aware of the obligations of NRC to honor requests under the Freedom of Information Act. I understand that it may be necessary for NRC to disclose information, including personally identifying details, which it has gathered as a part of its investigation of my complaint. In addition, I understand that as a complainant, I am protected by NRC's regulations from intimidation or retaliation for having taken action or participated in action to secure rights protected by nondiscrimination statutes enforced by NRC.

CONSENT/RELEASE

/ / CONSENT – I have read and understand the above information and authorize NRC to reveal my identity to persons at the organization or institution under investigation. I hereby authorize the NRC to receive material and information about me pertinent to the investigation of my complaint. I understand that the material and information will be used for authorized civil rights compliance and enforcement activities. I further understand that I am not required to authorize this release, and do so voluntarily.

/ / CONSENT – The Respondent named in this complaint may receive a copy of my complaint upon request.

/ / CONSENT DENIED – I have read and understand the above information and do not want NRC to reveal my identity to the organization or institution under investigation, or to review, receive copies of, or discuss material and information about me, pertinent to the investigation of my complaint. I understand this is likely to impede the investigation of my complaint and may result in the closure of the investigation.

SIGNATURE

Date

Print Complainant's Name

Date

APPENDIX D – NOTICE ABOUT INVESTIGATORY USES OF PERSONAL INFORMATION

NOTICE OF COMPLAINANT/INTERVIEWEE RIGHTS AND PRIVILEGES

Complainants and individuals who cooperate in an investigation, proceeding, or hearing conducted by the U.S. Nuclear Regulatory Commission (NRC) are afforded certain rights and protections. This brief description will provide you with an overview of these rights and protections.

This notification applies, as follows:

—A Respondent may not force its employees to be represented by the Respondent's counsel nor intimidate, threaten, coerce, or discriminate against any employee who refuses to reveal the content of an interview. An employee does, however, have the right to representation during an interview with NRC. The representative may be the Respondent's counsel, the employee's private counsel, or anyone else the interviewee authorizes to be present.

—A Respondent may not force employees or witnesses to be represented by General Counsel nor intimidate, threaten, coerce, or discriminate against any employee who refuses to reveal the content of an interview. An employee does, however, have the right to representation during an interview with NRC. The representative may be NRC counsel, the employee's private counsel, or anyone else the interviewee authorizes to be present.

—The laws and regulations which govern the NRC's compliance and enforcement authority provide that neither the NRC, nor the Respondent, nor any other person shall intimidate, threaten, coerce, or discriminate against any individual because he or she has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing conducted under NRC's jurisdiction, or has asserted rights protected by statutes that NRC enforces.

—Information obtained from the complainant or other individual maintained in NRC's investigative files may be exempt from disclosure under the Privacy Act or under the Freedom of Information Act if release of such information would constitute an unwarranted invasion of personal privacy.

There are two laws governing personal information submitted to any Federal agency, including the NRC: The Privacy Act of 1974 (5 U.S.C. § 552a) and the Freedom of Information Act (5 U.S.C. § 552).

THE PRIVACY ACT protects individuals from misuse of personal information held by the Federal Government. The law applies to records that are kept and that can be located by the individual's name or social security number or other personal identification system. Persons who submit information to the government should know that:

—The NRC is required to investigate complaints of discrimination on the basis of race, color, national origin, sex, disability, age, and, in some instances, religion against Respondents receiving Federal financial assistance. The NRC is also authorized to conduct reviews of federally funded Respondents to assess their compliance with civil rights laws.

—Information that the NRC collects is analyzed by authorized individuals within the agency. This information may include records or other personal information. The NRC’s Civil Rights Specialist may need to reveal certain information to persons outside the agency in the course of verifying facts or gathering new facts to develop a basis for making a civil rights compliance determination. Such details could include the physical condition or age of a complainant. The NRC may also be required to reveal certain information to any individual who requests it under the provisions of the Freedom of Information Act (see below).

—Personal information will be used only for the specific purpose for which it was submitted; that is, for authorized civil rights compliance and enforcement activities. Except in the instances defined in the NRC’s regulation at 10 CFR 9, “Public Records,” and 10 CFR 2.390, “Public Inspections, Exemptions, Requests for Withholding,” the NRC will not release the information to any other agency or individual unless the person who supplied the information submits a written consent. One of these exceptions is when release is required under the Freedom of Information Act (see below).

—No law requires a complainant to give personal information to the NRC, and no sanctions will be imposed on complainants or other individuals who deny the NRC’s request. However, if the NRC fails to obtain information needed to investigate allegations of discrimination, it may be necessary to close the investigation.

—The Privacy Act permits certain types of systems of records to be exempt from some of its requirements, including the access provisions. It is the policy of the NRC to exercise authority to exempt systems of records only in compelling cases. The NRC may deny a complainant access to the files compiled during the agency investigation of his or her civil rights complaint against the NRC or a Respondent receiving Federal financial assistance. Complaint files are exempt in order to aid negotiations between Respondents and the NRC in resolving civil rights issues and to encourage them to furnish information essential to the investigation.

—The NRC does not reveal the names or other identifying information about an individual unless it is necessary for the completion of an investigation or for enforcement activities against a Respondent that violates the laws, or unless such information is required to be disclosed under the Freedom of Information Act (FOIA) or the Privacy Act. The NRC will keep the identity of complainants confidential except to the extent necessary to carry out the purposes of the civil rights laws, or unless disclosure is required under FOIA, the Privacy Act, or otherwise required by law.

THE FREEDOM OF INFORMATION ACT gives the public access to certain files and records of the Federal Government. Individuals can obtain items from many categories of records of the Government, not just materials that apply to them personally. The NRC must honor requests under the Freedom of Information Act, with some exceptions. The NRC generally is not required to release documents during an investigation or enforcement proceedings if the release could have an adverse effect on the ability of the agency to do its job. Also, any Federal agency may refuse a request for records compiled for law enforcement purposes if their release could be an “unwarranted invasion of privacy” of an individual. Requests for other records, such as medical files, may be denied where the disclosure would be a “clearly unwarranted invasion of privacy.”

APPENDIX E – ACKNOWLEDGMENT OF RECEIPT AND ACCEPTANCE LETTER TO THE COMPLAINANT

[Complainant
Address
City, State, ZIP Code]

In Reply Refer to: NRC OCCP # [13 11(27)]

Dear [Name]:

This correspondence is to notify you that the U.S. Nuclear Regulatory Commission's (NRC) Office of Small Business and Civil Rights (SBCR) is in receipt of your complaint against [Respondent]. SBCR's Outreach and Compliance Coordination Program (OCCP) is currently reviewing the complaint for acceptance and/or investigation under [statute(s)]. The complaint was received in our office on [date]. Specifically, you have alleged that [describe allegations].

A Civil Rights Specialist/Investigator will contact you by telephone as part of our intake procedure to explain:

- 1) the NRC's authority to ensure nondiscrimination in NRC conducted and Federal financially assisted programs and activities
- 2) the roles and responsibilities of SBCR and OCCP
- 3) applicable civil rights regulations and remedies available through the NRC
- 4) rights, responsibilities, and obligations of the involved parties (you, the complainant, and the alleged violator, the Respondent)
- 5) the NRC's complaint process and investigation procedures
- 6) other information relevant to processing your complaint

During the intake teleconference, the Civil Rights Specialist will answer any questions, discuss any concerns, and address any issues you or your representative may have.

At a later date, you will receive written notice of whether the agency will investigate the allegations contained in the complaint. If so, and if needed, you will receive a request for additional information and/or documentation.

Please be advised that no one may intimidate, threaten, coerce, or engage in other discriminatory conduct against any individual because s/he has either taken action or participated in an action to secure rights protected by the civil rights laws that the NRC enforces. Any individual alleging such harassment or intimidation may file a complaint with SBCR.

Under the Freedom of Information Act (5 U.S.C. § 552) and the Privacy Act (5 U.S.C. § 552a), it may be necessary to release this document and related correspondence and records upon request. Therefore, enclosed for your information are the:

- 1) Complainant Consent/Release Form and
- 2) Notice of Investigatory Uses of Personal Information Fact Sheet.

Please sign and date the “Complainant Consent/Release Form” and return it to this office in the enclosed self addressed envelope within 15 calendar days of receiving this letter. In the event that we receive such a request, we will seek to protect, to the extent provided by law, personal information which, if released, could constitute an unwarranted invasion of privacy.

If you have any questions, please contact [name of Investigator], the Investigator assigned to this case, who can be reached at [(xxx) xxx xxxx] (voice), [(xxx) xxx-xxxx] (fax), [(xxx) xxx xxxx] (TTD), or by e mail to OCCPResources@nrc.gov.

Please refer to the complaint number cited above in all future correspondence or contact with this office.

Sincerely,

[Name]
OCCP Manager
U.S. Nuclear Regulatory Commission

Enclosures (as stated)

**APPENDIX F – FOLLOWUP LETTER AND REQUEST FOR INFORMATION
(COMPLAINANT)**

[Complainant
Address
City, State, ZIP Code]

In Reply to: NRC OCCP # 13 11(27)

Dear [Name]:

This correspondence serves as a followup to the letter (acknowledging our receipt of your complaint) that was sent to you on [Date], which informed you that the U.S. Nuclear Regulatory Commission's (NRC's) Outreach and Compliance Coordination Program (OCCP), which is administered by the agency's Office of Small Business and Civil Rights (SBCR), was reviewing the complaint for possible investigation under [statute(s)].

After a preliminary review of your complaint, it has been determined that additional information is needed from you in order to more fully understand the facts and circumstances that lead you to believe discrimination occurred. Please provide:

[INSERT REQUEST FOR INFORMATION]

Your response to the above request for information is needed by no later than close of business on [date]. If the information is not received by that date, the case will be administratively closed and SBCR will take no further action.

Please be advised that no one may intimidate, threaten, coerce, or engage in other discriminatory conduct against an individual because he or she has either taken action or participated in an action to secure rights protected by the civil rights laws that we enforce. Any individual alleging such harassment or intimidation may file a complaint with SBCR.

If you have any questions concerning this letter, please contact me at [(xxx) xxx-xxx] (voice). If you have any questions or concerns regarding the complaint or investigative process, please contact [name of Investigator], the Investigator assigned to this case. [Investigator's name] can be reached at [(xxx) xxx xxx] (voice), [(xxx) xxx-xxxx] (fax), [(xxx) xxx xxx] (TTD), or by e mail to [e mail address].

Please refer to the complaint number cited above in all future correspondence or contact with this office.

Sincerely,

[Name]
OCCP Manager
U.S. Nuclear Regulatory Commission

Enclosures (as stated)

APPENDIX G – DISMISSAL LETTER TO COMPLAINANT NO JURISDICTION

[Complainant
Address
City, State, ZIP Code]

In Reply Refer To: NRC OCCP # 13 11 (27)

Dear [Name]:

This correspondence serves as a follow-up to the acknowledgement of complaint and status letters sent to you on _____ and _____ [insert dates], which informed you that the U.S. Nuclear Regulatory Commission's (NRC's) Outreach and Compliance Coordination Program (OCCP), which is administered by the agency's Office of Small Business and Civil Rights (SBCR), had received your complaint and was reviewing it for possible investigation under [statute(s)].

After a thorough review of the information you provided, it has been determined that the matters raised in your complaint are not related to the laws or statutes for which the NRC has jurisdiction. Therefore, SBCR has closed your case and will take no further action in this matter.

[INSERT LANGUAGE BELOW IF THE COMPLAINT HAS BEEN REFERRED TO ANOTHER AGENCY (FEDERAL, STATE, OR LOCAL)]

However, SBCR has referred your complaint to the [agency name], since it appears that that agency may have jurisdiction over the matter. A copy of the referral is attached. Any questions about this referral and all further correspondence should be addressed to:

[INSERT REFERRAL AGENCY ADDRESS/CONTACT INFORMATION]

If the NRC can be of assistance or service to you in the future, please feel free to contact us.

Sincerely,

[Name]
Director, SBCR
U.S. Nuclear Regulatory Commission

Enclosures (as stated)

APPENDIX H – REFERRAL LETTER TO OUTSIDE AGENCY

[Name of agency or component head designated for civil rights complaint referrals
Name of agency or component
Address
City, State, ZIP Code]

In the Matter of Complainant: [Name]

In Reply Refer to: NRC OCCP # 13 11(27)

Dear [Name]:

Enclosed for your review is correspondence received by the U.S. Nuclear Regulatory Commission (NRC). The correspondence was received in NRC's Office of Small Business and Civil Rights (SBCR) on [date]. The complainant alleges:

[INSERT DESCRIPTION OF COMPLAINT'S ALLEGATIONS]

After conducting a thorough review of the information provided, it has been determined that the matters raised in the complaint are not related to the laws or statutes for which the NRC has jurisdiction. Therefore, SBCR has administratively closed the case and will take no further action in this matter.

However, the issue(s) raised may fall within the jurisdiction of the [name of the agency to which the NRC is referring the complaint], so NRC is referring this complaint for your review and disposition. The complainant and his/her representative (if applicable) have been informed of the NRC's referral of the complaint to your agency for further processing.

If you have any questions about this letter or related matters, please feel free to contact me at [(xxx) xxx xxxx] or email OCCPResource@nrc.gov.

Sincerely,

[Name]
OCCP Manager
U.S. Nuclear Regulatory Commission

Enclosures (as stated)

APPENDIX I – NOTIFICATION OF COMPLAINANT’S RIGHT TO REQUEST A WAIVER OF TIMELINESS REQUIREMENT

[Name of Complainant
Address
City, State, ZIP Code]

In Reply Refer to: OCCP # 13 11 (27)

Dear [Name]:

This correspondence is in response to your complaint of discrimination against [name of Respondent] on the basis of [protected status, e.g., race or age]. Your complaint was received by the U.S. Nuclear Regulatory Commission (NRC) on [date].

NRC’s Outreach and Compliance Coordination Program (OCCP), which is administered by the agency’s Office of Small Business and Civil Rights (SBCR), reviewed the information provided to determine possible investigation under [statute(s)].

Based on a thorough review of your complaint, SBCR has determined that the alleged act(s) of discrimination occurred on [date]. Normally, a complaint must be received by NRC within 180 calendar days of the alleged act of discrimination; in the case of your complaint, 180 calendar days from the date of the alleged act(s) of discrimination would have been [date]. Therefore, you have failed to file your complaint in a timely manner.

The NRC has the authority to waive the 180 calendar day time period required for filing a complaint if you can demonstrate that your failure to file was based on “good cause.” Generally, NRC will find good cause in the following circumstances:

- 1) The complainant could not reasonably be expected to know the act was discriminatory within the 180 day period established by NRC, and the complaint was filed after the complainant became aware of the alleged discrimination.
- 2) The complainant was unable to file a complaint because of incapacitating illness or other incapacitating circumstances during the 180 calendar day period, and the complaint was filed after the period of incapacitation ended.
- 3) The complainant filed a complaint alleging the same discriminatory conduct within the 180 calendar day period with another Federal, state, or local civil rights enforcement agency, and filed a complaint with NRC after the other agency had completed its investigation, or notified the complainant that it would take no further action.
- 4) The complainant filed, within the 180 calendar day period, an internal grievance alleging the same discriminatory conduct that is the subject of the NRC complaint, and the complaint is filed after the internal grievance is concluded.

- 5) Unique circumstances generated by NRC action have adversely affected the complainant.
- 6) The discriminatory act is of a continuing nature.

If you wish to request a waiver, please submit a detailed description explaining why you failed to file your complaint within 180 days of the alleged act(s) of discrimination. If you do not seek a waiver within 30 days of your receipt of this letter, SBCR will administratively close the complaint and no further action will be taken.

Under the Freedom of Information Act (5 U.S.C. § 552) and the Privacy Act (5 U.S.C. § 552(a)), the NRC may be required to release this letter and other correspondence and records related to your complaint in response to a request from a third party. Should NRC receive such a request, the agency will safeguard, to the extent permitted by the Freedom of Information Act and the Privacy Act, the release of information which could constitute an unwarranted invasion of your or others' privacy.

If you have any questions concerning this letter, please contact [insert name of Civil Rights Specialist/Investigator], the Investigator assigned to this case. [Investigator's name] can be reached at [(xxx) xxx xxxx] (voice), [(xxx) xxx-xxxx] (fax), [(xxx) xxx xxxx] (TTD), or by e mail to [e mail address]. Please direct any written correspondence regarding this matter to [Investigator's name and address].

Please refer to the complaint number cited above in all future correspondence or contact with SBCR.

Sincerely,

[Name]
OCCP Manager
U.S. Nuclear Regulatory Commission

APPENDIX J – NOTIFICATION OF INVESTIGATION LETTER TO COMPLAINANT

[Complainant
Address
City, State, ZIP Code]

In Reply Refer To: OCCP Complaint Case # 13 11 (27)

Dear [Name]:

This correspondence serves as a follow up to the acknowledgement of complaint and status letters sent to you on [insert date] and [insert date], which informed you that the U.S. Nuclear Regulatory Commission's (NRC) Outreach and Compliance Coordination Program (OCCP), which is administered by the agency's Office of Small Business and Civil Rights (SBCR) had received your complaint and reviewing it for possible investigation under [statute(s)].

After a thorough review of the information you provided, it has been determined that the complaint fall under the laws or statutes for which the NRC has jurisdiction. This letter is to notify you that SBCR has initiated an investigation of your allegations under [statute(s)]. Specifically, the following allegations have been accepted alleged for investigations—

INSERT DESCRIPTION OF ACCEPTED ALLEGATIONS FOR INVESTIGATION

1. Whether _____.
2. Whether _____.
3. Whether _____.
4. Whether _____.

The investigation will include, where appropriate, a review of pertinent practices and policies of the Respondent, the circumstances under which the possible noncompliance occurred, and other factors relevant to a determination as to whether the Respondent has failed to comply with applicable NRC and Federal civil rights regulations. If the investigation indicates the Respondent failed to comply with these regulations, SBCR will inform the Respondent and the matter will be resolved by informal means whenever possible. SBCR will inform you and the Respondent in writing, if the investigation does not warrant NRC action.

You should be aware that no one may intimidate, threaten, coerce, or engage in other discriminatory conduct against you because you have either taken action or participated in an action to secure rights protected by the nondiscrimination statutes NRC enforces. If you experience such harassment or intimidation, you may file a complaint with the NRC.

Please be advised that NRC's investigation represents the interests of the United States and NRC does not represent you individually. The agency's primary goal is to ensure nondiscrimination in NRC conducted and Federal financially assisted programs and activities. Remedial action will be negotiated principally with this goal in mind. This relief may be

consistent with your interests; however, you may wish to consult private counsel of your choosing to determine what, if any, relief you may be entitled to receive through private litigation.

Under the Freedom of Information Act (5 U.S.C. § 552) and the Privacy Act (5 U.S.C. § 552a), it may be necessary to release this document and related correspondence and records upon request. In the event that NRC receives such a request, NRC will seek to protect, to the extent provided by law, personal information which, if released, could constitute an unwarranted invasion of privacy.

[Insert name of the Civil Rights Specialist/Investigator], the Investigator assigned to this case, will be contacting you in the near future to schedule an interview with you [by telephone/in person]. The OCCP will keep you informed of the progress of the investigation. If you have any questions, please contact [Investigator] at [(xxx) xxx xxxx] (voice), [(xxx) xxx-xxxx] (fax), [(xxx) xxx xxxx] (TTD), or electronically at [e mail address].

Please reference the complaint number cited above in all future correspondence or contact with this office.

Sincerely,

Name
OCCP Manager
U.S. Nuclear Regulatory Commission

APPENDIX K – NOTIFICATION OF INVESTIGATION LETTER AND REQUEST FOR INFORMATION

[Responsible Respondent official
Title
Address
City, State, ZIP Code]

In Reply Refer to: OCCP # [13 11 (27)]

In the Matter of: [Complainant] v. [Respondent]

Dear [Name]:

A complaint of discrimination, dated [insert date], has been filed by [insert the name of the complainant] against [insert the name of the Respondent]. The complaint was received by the U.S. Nuclear Regulatory Commission (NRC) Office of Civil Rights on [insert date]. The complainant alleges the following:

[INSERT DESCRIPTION OF ACCEPTED ALLEGATIONS FOR INVESTIGATION]

The allegation(s) raised by the complainant is/are covered under [insert applicable regulations]. The NRC's investigation will focus on the following allegation(s) [use as many lines as needed]:

- Whether _____; and
- Whether _____.

In accordance with Title 10 of the Code of Federal Regulations, Parts 4 (“Nondiscrimination in Federally Assisted Programs or Activities Receiving Federal Financial Assistance from the Commission”) and 5 (“Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance”), applicable Federal Executive Orders, and NRC’s Procedures for Processing External Complaints, NRC’s Office of Small Business and Civil Rights (SBCR)/Outreach and Compliance Coordination Program (OCCP) investigates complaints of discrimination filed against NRC conducted or Federal financially assisted programs and activities.

SBCR is required to make findings of fact and conclusions of law, and to attempt to negotiate voluntary compliance if a violation is found. NRC regulation also provides for the use of alternative means of dispute resolution, where appropriate, including settlement negotiations and conciliation. Generally, when an investigation is completed, the results of the investigation are sent to a Respondent in a Letter of Findings. If the investigation reveals discrimination that violates [statute(s)], attempts will be made to resolve the matter before issuing a violation Letter of Findings. If a violation letter is issued and an agreement cannot be reached on a remedy, enforcement action may be initiated. This enforcement may include [insert strong and relevant example(s)]. SBCR is committed to resolving this complaint in a productive and amicable manner.

In order to facilitate the investigation, OCCP will send you a Request for Information in the near future. We will review and analyze your response and determine whether further investigation, potentially including an on site visit to conduct interviews and review additional documents, is necessary.

In order to facilitate the investigation, please submit a position statement responding to the allegations listed above, within 30 calendar days of the date of this letter. List as appropriate in your response any pertinent documents, records, and names of witnesses to support your statement. As part of the investigative process, we also need you to provide the documents outlined on the enclosed Request for Information on or before [insert date within 30 calendar days]. You will be contacted at a later date if it is determined that an on site investigation is necessary.

SBCR believes that the issues raised in this complaint may best be addressed through a negotiated settlement. If you are interested in entering into negotiations to address the allegations raised in this complaint, please notify [insert the name of the Investigator], the Investigator assigned to this case, at [(xxx) xxx xxxx] (voice) or [(xxx) xxx xxxx] (TTD) within 10 days of the date of this letter.

SBCR is obligated to inform you that no one may intimidate, threaten, coerce, or engage in discriminatory conduct against an individual because he or she has either taken action or participated in an action to secure rights protected by the civil rights laws that the NRC enforces. Any individual alleging such harassment or intimidation may file a complaint with NRC's SBCR.

Under the Freedom of Information Act (5 U.S.C. § 552) and the Privacy Act (5 U.S.C. § 552a), it may be necessary to release this document and related correspondence and records on request. In the event that NRC receives such a request, NRC will seek to protect, to the extent provided by law, personal information which, if released, could constitute an unwarranted invasion of privacy.

If you or your representative wish to discuss this complaint, please feel free to contact [insert name of the Investigator] at [(xxx) xxx xxxx] (voice), [(xxx) xxx-xxxx] (fax), [(xxx) xxx xxxx] (TTD), or by e mail to [e mail address]. Please direct any written correspondence regarding this matter to [Investigator and address] and refer to the complaint number cited above. Thank you for your cooperation.

Sincerely,

[Name]

APPENDIX L – SAMPLE FORMAT FOR DRAFTING A REQUEST FOR INFORMATION

Issue #1

Documents Needed

Issue #2

Documents Needed

Issue #3

Documents Needed

Issue #4

Documents Needed

APPENDIX M – FAILURE TO PROVIDE DOCUMENTATION LETTER TO RESPONDENT

[Responsible Respondent official
Title
Address
City, State, ZIP Code]

In Reply Refer to: OCCP # [13 11 (27)]

In the Matter of: [Complainant] v. [Respondent]

Dear [Name]:

A complaint of discrimination, dated [insert date], has been filed by [insert the name of complainant] against [insert the name of the Respondent]. The complaint was received by the U.S. Nuclear Regulatory Commission (NRC) Office of Civil Rights on [insert date]. The complainant alleges the following:

[INSERT DESCRIPTION OF ACCEPTED ALLEGATIONS FOR INVESTIGATION]

The allegation(s) raised by the complainant is/are covered under [insert applicable regulations]. The NRC's investigation will focus on the following allegation(s) [use as many lines as needed]:

- Whether _____; and
- Whether _____.

In accordance with Title 10 of the Code of Federal Regulations, Parts 4 (“Nondiscrimination in Federally Assisted Programs or Activities Receiving Federal Financial Assistance from the Commission”) and 5 (“Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance”), applicable Federal Executive Orders, and NRC’s Procedures for Processing External Complaints, NRC’s Office of Small Business and Civil Rights (SBCR)/Outreach and Compliance Coordination Program (OCCP) investigates complaints of discrimination filed against NRC conducted or Federal financially assisted programs and activities.

NRC is required to make findings of fact and conclusions of law, and attempts to negotiate voluntary compliance if a violation is found. NRC regulation also provides for the use of alternative means of dispute resolution, where appropriate, including settlement negotiations and conciliation. Generally, when an investigation is completed, the results of the investigation are sent to a Respondent in a Letter of Findings. If the investigation reveals discrimination that violates [statute(s)], attempts will be made to resolve the matter before issuing a violation Letter of Findings. If a violation letter is issued and an agreement cannot be reached on a remedy, enforcement action may be initiated. This enforcement may include [insert strong and relevant example(s)].

SBCR is committed to resolving this complaint in a productive and amicable manner.

In order to facilitate the investigation, SBCR sent you a letter on [insert date], which requested that you submit a position statement responding to the allegations listed above within 15 days of the date of the letter. Specifically, you were requested to list, as appropriate in your response, any pertinent documents, records, and names of witnesses to support your statement. You were informed that the information/documentation requested was necessary to determine whether or not an on site or other investigation was necessary.

This notification is being sent to advise you of your failure to comply. As a result, the Commission will proceed with actions to effect compliance through means available under NRC and Federal regulations. In the short term for this case, such actions will be taken in accordance with 10 CFR 4, Subpart A § 4.46. This section states, "If there appears to be a failure or threatened failure to comply with any of the provisions of this subpart, and if the noncompliance or threatened noncompliance cannot be corrected by informal means, compliance with this subpart may be effected by the suspension or termination of or refusal to grant or to continue Federal financial assistance or by any other means authorized by law. Such other means may include, but are not limited to: (a) A reference to the Department of Justice with a recommendation that appropriate proceedings be brought to enforce any rights of the United States under any law of the United States (including other titles of the Act), or any assurance or other contractual undertaking, and (b) any applicable proceeding under State or local law. [The Civil Rights Specialist should take note that the cited paragraph is not applicable to complaints involving NRC conducted programs and activities. Consult with your Program OCCP Manager for proper guidance regarding cases in which NRC offices are not compliant.]

If you or your representative wish to discuss this matter, please contact [insert name of the Program OCCP Manager] by no later than [date within 5 calendar days] at [(xxx) xxx xxxx] (voice), [(xxx) xxx-xxxx] (fax), [(xxx) xxx xxxx] (TTD), or by e mail to [e mail address]. Please direct any written correspondence regarding this matter to [Program OCCP Manager and address] and refer to the complaint number cited above. Thank you for your cooperation.

Sincerely,

[Name]
Director, SBCR
U.S. Nuclear Regulatory Commission

APPENDIX N – INVESTIGATIVE PLAN

**[Complainant
Respondent/Contact
Investigator]
OCCP Case # [13 11 (27)]**

I. JURISDICTION

[This section should note that an incident of a covered basis of discrimination (a protected status such as race or sex) has been alleged in a timely fashion against a covered Respondent, giving NRC jurisdiction to investigate.]

Timeliness:
Respondent Status:
Basis:
Legal Authority:

II. ISSUES

[Here the Investigator should identify the specific action, policy, or practice suspected to be responsible for the alleged discrimination.]

III. APPLICABLE LEGAL THEORIES

[The applicable legal theory of discrimination, which will determine the standards of proof needed to establish a violation, should be listed in this section. Two primary legal theories are used to establish a case of prohibited discrimination: intentional discrimination/disparate treatment and disparate impact/effects.]

IV. DATA NEEDED

[In this section, the Investigator should list the data that must be gathered during the investigation and their source. Both documentary evidence, such as business records, and testimonial (or oral) evidence should be listed. The list of documents may correspond to the Issues outlined in Section II above. A list of interview questions for the Complainant, Respondent, and witnesses may be included in this section.]

V. PROPOSED ACTIVITY SCHEDULE

[This section should list the anticipated sequence of activities that will be important in proving whether discrimination occurred or not.]

Notification and data request by [date].
Response due from respondent by [date].
Interviews by [date].
On site visit by [date].
Analysis of data by [date].
Discussion of settlement with respondent, if applicable, by [date].
Letter of Findings issued by [date].

APPENDIX O – INVESTIGATIVE REPORT FORMAT

**[Complainant
Respondent/Contact
Investigator]
OCCP Case # [13 11 (27)]**

I. INTRODUCTION (AUTHORITY/JURISDICTION STATEMENT)

[As in Appendix 12 above.]

II. APPLICABLE LAWS/REGULATIONS

[As in Appendix 12 above.]

III. BASIS

[As in Appendix 12 above.]

IV. ALLEGATIONS

[In this section, the Investigator should describe each individual or class allegation, stating it as succinctly and clearly as possible. The allegations should be numbered.]

V. METHODOLOGY

[Here the Investigator should explain how the investigation was conducted, what documents were reviewed, and which witnesses were interviewed. The Investigator need not provide the names and addresses of the witnesses, but should provide the reader with both quantitative and qualitative information about what he or she did with sufficient specificity to identify the types of documents reviewed (e.g., 504 or ADA transition plans, business plans, citizen complaints, or internal grievances) and the category and number of witnesses interviewed (e.g., three witnesses for the complainant, seven witnesses for the respondent, and two individuals identified by the Investigator).]

VI. FINDINGS AND ANALYSIS FOR EACH ALLEGATION

Findings

[All facts relevant to the Investigator's analysis and recommended determination in the case should be set forth in this section. It is important both to the settlement/conciliation process and for establishing credibility of the determination that only clear, accurate, and factual evidence be included in this section. Facts should be presented in a logical sequence, such as by chronological order or by subject matter. Factual issues in dispute should be resolved through examination of the relevant documents and the testimony in the record. Specific evidence supporting a finding should be cited. Each fact or series of related facts should be sequentially numbered and listed separately.]

Analysis

[In this section, the Investigator conducts an analysis of the facts presented and draws his or her conclusions as to the validity of the complainant's allegations based on that analysis. Each fact should be weighed against the allegation to which it pertains, and a prima facie case of discrimination either established based on the preponderance of the evidence or the allegation rejected as without merit.

VII. DECISION AND RECOMMENDED CORRECTIVE/REMEDIAL ACTION

[In this section, the Investigator includes a brief statement indicating whether or not the respondent was found to have discriminated. Next, the Investigator describes the action(s), if any, required of the respondent in order to make the complainant whole and eliminate the discriminatory practices. The Investigator may want to seek those remedies suggested by the complainant, but must remember that the complaint is between the respondent and the NRC concerning a violation(s) of a federal civil rights statute(s). The Investigator should ensure that the remedy NRC seeks will provide both remedial relief for identified victims and prospective relief (e.g., changes in policies and procedures, training for a Civil Rights Specialist, development of adequate complaint procedures, and a public notice to beneficiaries concerning new procedures) required to bring the respondent into compliance. Both remedial and prospective relief (corrective action) should be specifically identified, not implied.

APPENDIX P – “NO VIOLATION” LETTER OF FINDINGS TO COMPLAINANT

[Complainant
Address
City, State, ZIP Code]

In Reply Refer to: OCCP Complaint Case #13 11(27)

Dear [Name]:

The U.S. Nuclear Regulatory Commission’s Office of Small Business and Civil Rights (SBCR) have completed the investigation of the complaint of discrimination that you filed against the [respondent]. In your complaint filed with SBCR on [date], you alleged [describe allegations broadly]. Specifically, you alleged [describe allegations] and you believe the reasons were because of your [protected status].

[Insert the applicable regulation(s)] prohibits discrimination based on [insert basis] in [insert NRC conducted or federal financially assisted programs and activities]. The NRC enforces [insert regulations] and other civil rights statutes and investigates complaints against respondents. [respondent] falls under the jurisdiction of the NRC, and therefore must comply with all [insert applicable regulation] requirements.

SBCR has concluded that the evidence obtained during the investigation does not support the allegation(s) raised in your complaint.

[Explain why the respondent was found to be in compliance.]

Under the Freedom of Information Act (5 U.S.C. § 552) and the Privacy Act (5 U.S.C. § 552a), it may be necessary to release this information and related correspondence and records on request. In the event that we receive such a request, we will seek to protect, to the extent provided by law, personal information which, if released, could constitute an unwarranted invasion of privacy.

You should be aware that no one may intimidate, threaten, coerce, or engage in other discriminatory conduct against anyone because he or she has taken action or participated in an action to secure rights protected by the [statute(s)]. Any individual alleging such harassment or intimidation may file a complaint with SBCR. We would investigate such a complaint if the situation warrants.

If you have any questions concerning this letter, please contact [Investigator’s name], who can be reached at [(xxx) xxx xxxx] (voice), [(xxx) xxx-xxxx] (fax), [(xxx) xxx xxxx] (TTY) or by e mail to [e mail address]. Please refer to the complaint number cited above in all correspondence or contact with this office.

This concludes SBCR’s processing of this complaint and no further action will be taken.

Sincerely,
[Name]
Director, SBCR
U.S. Nuclear Regulatory Commission

APPENDIX Q – “NO VIOLATION” LETTER OF FINDINGS TO RESPONDENT

[Responsible respondent official
Title
Address
City, State, ZIP Code]

In Reply Refer to: OCCP CASE #13 11(27)

Dear [Name]:

SBCR has completed the investigation of the complaint of discrimination filed by [Complainant] against [Respondent]. The complaint, received by SBCR on [date], alleges [describe allegations and include protected status basis].

[Insert the applicable regulation(s)] prohibits discrimination based on [insert basis] in [insert NRC conducted or Federal financially assisted programs and activities]. The U.S. Nuclear Regulatory Commission enforces [insert regulations] and other civil rights statutes and investigates complaints against Respondents. [Respondent] falls under the jurisdiction of the NRC, and therefore must comply with all [insert regulations] requirements.

SBCR has concluded that the evidence obtained during the investigation does not support the allegation(s) raised in the complaint.

[Explain why the Respondent was found to be in compliance.]

Under the Freedom of Information Act (5 U.S.C. § 552) and the Privacy Act (5 U.S.C. § 552a), it may be necessary to release this information and related correspondence and records on request. In the event that we receive such a request, we will seek to protect, to the extent provided by law, personal information which, if released, could constitute an unwarranted invasion of privacy.

You should be aware that no one may intimidate, threaten, coerce, or engage in other discriminatory conduct against anyone because he or she has taken action or participated in an action to secure rights protected by the [statute(s)]. Any individual alleging such harassment or intimidation may file a complaint with SBCR. We would investigate such a complaint if the situation warrants.

If you have any questions concerning this letter, please contact [insert Investigator's name], who can be reached at [(xxx) xxx xxxx] (voice), [(xxx) xxx-xxxx] (fax), [(xxx) xxx xxxx] (TTD), or by e mail to [e mail address]. Please refer to the complaint number cited above in all correspondence or contact with this office.

This concludes SBCR's processing of this complaint and no further action will be taken.

Sincerely,

[Name]
Director, SBCR
U.S. Nuclear Regulatory Commission

APPENDIX R – “NO VIOLATION” LETTER OF FINDINGS WITH RECOMMENDATION TO RESPONDENT

[Responsible respondent official
Title
Address
City, State, ZIP Code]

In Reply Refer to: 13 11(27)

Dear [Name]:

The U.S. Nuclear Regulatory Commission’s Office of Small Business and Civil Rights (SBCR) has reviewed SBCR’s Outreach and Compliance Coordination Program’s Investigative Report regarding the complaint dated [insert date] by [insert name of the complainant] against [insert the respondent’s name] alleging violations of [insert applicable regulations]. The complainant alleged that:

[Insert complainant’s allegations]

Although a finding of “no violation” has been made regarding the allegations, SBCR recommends that:

[Insert SBCR’s recommendations]

This concludes processing of this matter and no further action will be taken.

Sincerely yours,

[Name]
Director, SBCR
U.S. Nuclear Regulatory Commission

cc:

APPENDIX S – VIOLATION LETTER OF FINDINGS TO COMPLAINANT

[Complainant
Address
City, State, ZIP Code]

In Reply Refer to: OCCP Case # 13 11(27)

Dear [Name]:

The U.S. Nuclear Regulatory Commission’s Office of Small Business and Civil Rights (SBCR) has completed the investigation of your complaint of discrimination, dated [insert date], alleging violations of [insert regulations] against [insert name of respondent]. The evidence reviewed during the investigation shows the following:

Issue #1: Whether [identify issue].

[Describe the evidence gathered and reviewed. Repeat the “Issue #” heading followed by further evidence as necessary for any additional issues.]

Based on this evidence, the NRC’s investigation supports a finding of [insert protected-status basis] discrimination as alleged in your complaint. Having determined that a violation has occurred, the NRC makes the following recommendations [make as many as necessary] to bring [insert name of respondent] into compliance with NRC and Federal regulations:

1. _____.
2. _____.
3. _____.
4. _____.

The [insert name of respondent] has 90 calendar days in which to submit an Action Plan for implementing the recommendations made in this Letter of Finding. You will be advised at a later date regarding the status of the implementation of the recommendations.

If you have any questions regarding this matter, please contact _____, at _____.

Sincerely yours,

[Name]
Director, SBCR
U.S. Nuclear Regulatory Commission

APPENDIX T – VIOLATION LETTER OF FINDINGS TO THE RESPONDENT

[Responsible respondent official
Title
Address
City, State, ZIP Code]

In Reply Refer to: OCCP CASE # 13 11(27)

Dear [insert name of respondent]:

The U.S. Nuclear Regulatory Commission (NRC) has completed its investigation of the complaint of discrimination dated [insert date] by [insert complainant's name] alleging violations of [insert regulations]. The evidence reviewed during the investigation shows the following:

Issue #1: Whether [identify issue].

[Describe the evidence gathered and reviewed. Repeat the "Issue #" heading followed by further evidence as necessary for any additional issues.]

Based on this evidence, the NRC's investigation supports a finding of [insert protected status basis] discrimination as alleged in the complaint. Having determined that a violation has occurred, the NRC makes the following recommendations [make as many as necessary] to bring [insert name of respondent] into compliance with NRC and Federal regulations:

1. _____.
2. _____.
3. _____.
4. _____.

The [insert name of respondent] will document how it plans to implement the recommendations outlined above. The [insert name of respondent] may provide alternatives to the above recommendations if the alternatives provide the desired outcome.

The documents showing the implementation of the recommendations or the implementation of alternative measures are to be provided to the NRC, Office of Small Business and Civil Rights, 11555 Rockville Pike, Mailstop 03 G08, Rockville, MD 20852, within 90 calendar days of receipt of the NRC's Letter of Finding.

If you have any questions regarding this matter, please contact _____,
at _____.

Sincerely yours,

[Name]
Director, SBCR
U.S. Nuclear Regulatory Commission

APPENDIX U – VIOLATION LETTER OF FINDINGS/COMPLIANCE ACHIEVED TO THE RESPONDENT

[Responsible respondent official
Title
Address
City, State, ZIP Code]

In Reply Refer to: OCCP CASE # 13 11(27)

Dear [insert name of respondent]:

This correspondence is in reference to the complaint of discrimination dated [insert date] by [insert complainant's name] alleging violations of [insert regulations] against _____ . In a letter dated [insert date], the U.S. Nuclear Regulatory Commission (NRC) determined that [insert regulation] had been violated regarding the allegation(s) raised in the complaint.

The NRC made the following recommendations to [insert name of respondent] to bring it into compliance with NRC and Federal regulations:

To resolve:

Issue #1: Whether [identify issue]. [List any additional issues previously identified in connection with the same complaint for resolution with the recommendations.]

The NRC recommended [list the recommendations previously made]:

1. _____.
2. _____.
3. _____.
4. _____.

Please be advised that the NRC is in receipt of and accepts the implementation by [insert name of respondent] of the items outlined above.

Therefore, the NRC will close this complaint.

Sincerely yours,

[Name]
Director, SBCR
U.S. Nuclear Regulatory Commission

APPENDIX V – LETTER CONFIRMING ON SITE INVESTIGATION

[Responsible respondent official
Title
Address
City, State, ZIP Code]

In Reply Refer to: Case # 13 11(27)

Dear [insert name of respondent]:

This correspondence is in reference to the complaint of discrimination dated [insert date] by [insert name of complainant] against [insert name of respondent] alleging violations of [insert regulations].

As discussed in our telephone conversation on [insert date], I have been assigned as the Investigator for this complaint. The issues accepted for investigation are listed on the enclosed Request for Information, along with the documents needed to initiate the investigation. I will be in [insert name of the State where the alleged violation(s) occurred] on the week of [insert range of dates]. I plan to meet with you on [insert day of the week, month, date, and year] at [time and location of the meeting]. At that time, it is requested that you have the information listed on the Request for Information available for review. If you have any questions about the investigative process, please call me at [insert phone number]. Your cooperation throughout this process is greatly appreciated.

Sincerely yours,

[Name]
Investigator

**APPENDIX W – CLOSURE LETTER (WITHDRAWAL OF COMPLAINT AND/OR
ISSUES RESOLVED)**

[Complainant
Address
City, State, ZIP Code]

In Reply Refer to: 13 11(27)

Dear [Name]:

This correspondence is in reference to your complaint of discrimination dated [insert date] against [insert name of respondent] alleging a violation of [insert regulations]. In your complaint, you alleged that [describe allegations].

The U.S. Nuclear Regulatory Commission (NRC) is in receipt of your followup letter dated [insert date].

[INSERT IN THE COMPLAINANT’S REASONS FOR WITHDRAWAL OF THE COMPLAINT:

In your letter, you stated that you were withdrawing your complaint because [state reason if given]. Based on this information, the NRC is closing this complaint and no further action will be taken.

[INSERT THE LANGUAGE BELOW IF THE COMPLAINT IS RESOLVED:]

After reviewing the information, we have concluded that the concerns you raised with NRC’s Office of Small Business and Civil Rights have been addressed and resolved. Specifically, you [insert description of concerns and actions taken to address and resolve the concerns].

[INSERT THE LANGUAGE BELOW IF COMPLAINT FAILS TO PROVIDE INFORMATION]

[Insert if applicable: We have made attempts to contact you to confirm this information but have been unable to do so. Since the matter has been addressed and we are unable to locate you,] please be advised that we are closing your complaint and no further action will be taken.

Sincerely yours,

[Name]
Director, SBCR
U.S. Nuclear Regulatory Commission

APPENDIX X – INFORMAL SETTLEMENT AGREEMENT

U.S. NUCLEAR REGULATORY COMMISSION

Complainant

Respondent

In Reply Refer to: OCCP Complaint Case # 13 11(27)

INFORMAL RESOLUTION AGREEMENT

IT IS HEREBY AGREED by and between [name], hereinafter referred to as the complainant, and [name], hereinafter referred to as the respondent, as follows:

Section One: Purpose

This agreement is made between the parties for the complete and final settlement of their claims, differences, and actions with respect to the matters described below.

Section Two: Description of Allegation

The Aggrieved Person initiated the complaint of discrimination through a complaint filed on [date]. The complainant alleged that [statement of allegations].

Section Three: Terms of Settlement

The complainant and the respondent enter into this agreement without any finding of discrimination having been determined. The parties agree to the following, which will resolve and settle all claims and issues arising from the above mentioned allegation:

1. _____.

2. _____.

3. _____.

- A. The parties agree that this settlement shall not constitute an admission of discrimination or violation of any provision of law on the part of the respondent.
- B. It is understood that if the respondent fails to fulfill or rescinds any provision of this agreement, the complainant, upon written request, shall be entitled to reinstate the matter for further processing from the point processing ceased.

- C. It is understood that if the complainant fails to comply with the responsibilities under the terms of the agreement, the agreement may be terminated and any subsequent complaint based on the same issues will be rejected or canceled. The respondent shall notify the [operating administration] in writing of its intention to terminate the agreement within _____ days of the complainant's failure to comply.
- D. The parties agree that this settlement constitutes the sole and complete understanding between them. No other promises or agreements shall be binding unless signed by them and made a part of this agreement.
- E. The parties agree that this settlement shall become effective on the date that the last signatory signs this agreement.
- F. The parties agree to notify SBCR within two business days of any non-compliance with the settlement agreement.

Complainant	Date

Authorized Representative of Respondent	Date

Director, Office of Small Business and Civil Rights	Date

APPENDIX Y– NOTICE OF ENTRY OF APPEARANCE AS ATTORNEY OR REPRESENTATIVE

TITLE II – CIVIL RULES: RULE 201—ENTRY AND WITHDRAWAL OF APPEARANCES BY ATTORNEYS IN CIVIL ACTIONS

ENTRY OF APPEARANCE

An attorney eligible to appear may enter an appearance in a civil action by signing any pleading described in Rule 7(a), Federal Rules of Civil Procedure, or by filing a written notice of the entry of an appearance listing the attorney’s correct address, telephone number, and bar identification number.

APPENDIX Z – OCCP MEDIATION PROCESS



Outreach and Compliance Coordination Program: Mediation (ADR)

The United States President and Attorney General have encouraged the use of Alternative Dispute Resolution (ADR) in matters that are the subject of civil litigation. The ADR Act of 1966 authorizes use of ADR to resolve administrative disputes.

The U.S. Nuclear Regulatory Commission's (NRC's) Outreach and Compliance Coordination Program (OCCP) is administered by the Office of Small Business and Civil Rights (SBCR). OCCP leads NRC's external ADR efforts related to NRC Federal financially assisted programs and activities. OCCP uses ADR as part of its complaint process whenever appropriate.

OCCP refers all disputes to a mediation agency designated by the Secretary of the U.S. Department of Health and Human Services that:

fall within the jurisdiction of the Age Discrimination Act of 1975 and

contain all information necessary for further processing.

The Age Discrimination Act requires the complainant and recipient to participate in the mediation process to reach an agreement, or make an informed judgment that an agreement is not possible. At least one meeting must be held with the mediator before OCCP will accept a judgment that an agreement is not possible. The parties are not required to meet with the mediator at the same time. If the parties reach an agreement, the mediator will reduce it to writing and have the parties sign. The mediator will send a copy of the agreement to OCCP. No further action will be taken, unless the complainant or recipient fails to comply with the agreement.

Mediation

The mediator protects the confidentiality of all information obtained during the mediation process. The mediator will not testify in any adjudicative proceeding, produce any document, or otherwise disclose any information obtained in the course of the mediation process without prior approval of the head of the agency appointing the mediator.

The mediation process will be used for a maximum of 60 calendar days after receiving a complaint. Mediation ends if any of the following conditions are met:

From the date of receipt of the complaint 60 calendar days have elapsed.

Before the end of that 60 calendar-day period, the mediator determines an agreement is reached.

Before the end of that 60 calendar-day period, the mediator determines that an agreement cannot be reached. The mediator will return unresolved complaints to OCCP.

APPENDIX AA – MEDIATION PROCESS AND REFERRAL FORMS (AGE)

FEDERAL MEDIATION & CONCILIATION SERVICE MEDIATION REFERRAL INTAKE

Date Submitted: _____

Contract Number: _____

Please submit this referral once to FMCS:

Email

Fax

U.S. Mail

|
-OR-
|

(202) 606-3679

|
-OR-
|

ALTERNATIVE DISPUTE RESOLUTION
FEDERAL MEDIATION & CONCILIATION SERVICE
2100 K STREET, N.W.
WASHINGTON, DC 20427

To facilitate contacting the parties in a timely manner, please fill out this form as completely as possible

Referring Agency / Employer

1. AGENCY _____

2. BUREAU / SUBDIVISION _____ OFFICE _____

3. ADDRESS LINE 1 _____ ADDRESS LINE 2 _____

CITY _____ STATE _____ ZIP CODE _____

4. AGENCY CONTACT _____ CONTACT TITLE _____

5. PHONE _____ FAX _____ EMAIL _____

Complainant Information

6. COMPLAINT _____ 7. FILE / CASE # _____

8. COMPLAINANT(S) _____ COUNSEL / REP. _____

9. ADDRESS LINE 1 _____ ADDRESS LINE 2 _____

CITY _____ STATE _____ ZIP CODE _____

10. PHONE _____ FAX _____ EMAIL _____

11. LOCATION OF REQUESTED MEDIATION CITY _____ STATE _____ ZIP CODE _____

Respondent Information

12. RESPONDENT _____

13. RESP. CONTACT _____ RESP. TITLE _____

14. ADDRESS LINE 1 _____ ADDRESS LINE 2 _____

CITY _____ STATE _____ ZIP CODE _____

15. PHONE _____ FAX _____ EMAIL _____

NOTES:

INSTRUCTIONS FOR COMPLETING THE MEDIATION REFERRAL FORM

If you submit the mediation referral form electronically at: www.fmcs.gov, FMCS will provide you with a printable electronic version and a confirmation number. The FMCS will not confirm receipt of referral forms filed by fax or U.S. mail. All correspondence concerning referrals, including submittal of the paper form, should be mailed to: **Federal Mediation and Conciliation Service, Alternative Dispute Resolution, 2100 K Street, NW, Washington, DC 20427** or by fax at **(202) 606-3679**. You may also contact FMCS by telephone during normal business hours at (202) 606-5445. Do not send copies of this notice to any other FMCS office.

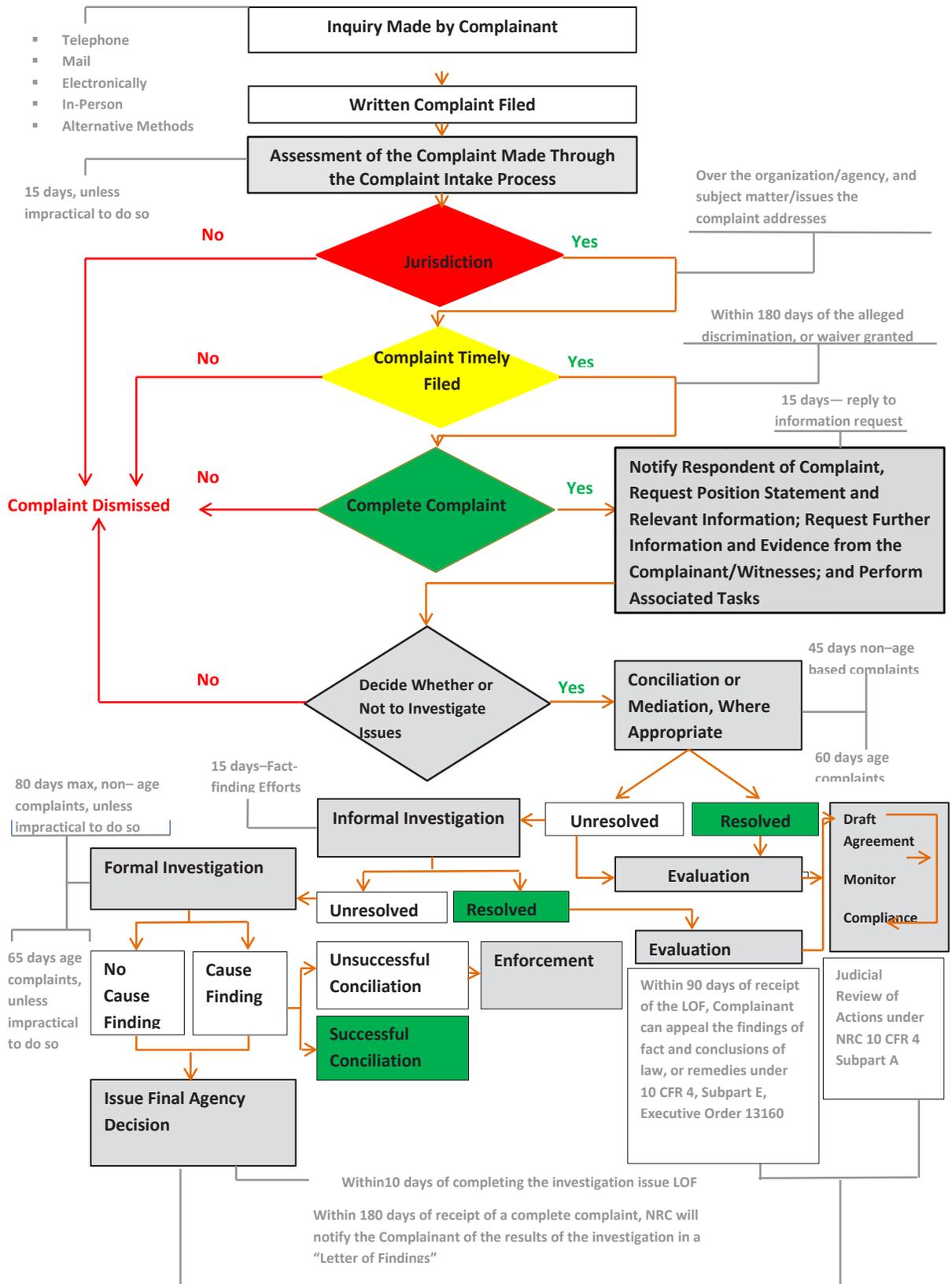
Receipt of this form does not constitute a request for mediation nor does it commit FMCS to offer its facilities. Use of this form is voluntary but is strongly encouraged to facilitate our service to respondents. Maintain a copy of this notice for your files.

-
- Line 1 Spell out the referring agency or employer's full name. Do not use an abbreviation or acronym unless this is the official spelling of the employer's name. If the employer is a government, please use the highest level within that entity.
 - Line 2 For government entities, use the bureau, agency, department or subdivision that is directly involved in this dispute.
 - Line 3 Provide a complete street address, city, state, and 5-digit ZIP code for the employer. Use the second address line for a floor, suite, or room number.
 - Lines 4 & 5 Provide the full name and title of the official who will represent or is a contact for the employer in this negotiation, including their phone and fax numbers and e-mail address.
 - Lines 6 & 7 Describe the basis for the complaint and any case, file, or reference number that may be associated with the case.
 - Line 8 Provide the full name of the complainant(s) and/or the name of their legal counsel or representative in the case.
 - Line 9 Provide a complete street address, city, state, and 5-digit ZIP code for the complainant. Use the second address line for a floor, suite, or room number.
 - Line 10 Provide the phone and fax numbers and e-mail address where the complainant can be contacted.
 - Line 11 Enter the city, state, and ZIP code that best describe the physical location where the requested mediation is to take place. This is typically the same as the employer address.
 - Line 12 Provide the respondent's name. This may be an employer or an individual.
 - Line 13 Provide the name of the respondent's representative and title.
 - Line 14 Provide a complete street address, city, state and 5-digit ZIP code for the respondent. Use the second address line for a floor, suite or room number.
 - Line 15 Provide the phone and fax numbers and e-mail address where the complainant can be contacted.
-

APPENDIX BB FLOWCHART OF EXTERNAL COMPLAINT PROCESS

REQUEST INTERNAL COPY FOR COMPLETENESS

EXTERNAL COMPLAINT PROCESS/INVESTIGATION PROCEDURES





Within 180 days of receipt of a complete complaint, NRC will notify the complainant of the results of the investigation in a "Letter of Findings"

During a formal investigation process, the complainant may send a request for reconsideration of a "No Violation Letter of Findings" to the SBCR Director within 30 calendar days of

A complainant can file civil action following exhaustion of administrative remedies—(1) 180 calendar days after filing a complaint or (2) NRC issues any finding in favor of the recipient.

Under 10 CFR 4 Subpart C (Age-based complaint), the complainant—(1) may bring a civil action (See Section 305(e) of The Age Act of 1975) only in a United States District Court for the district in which the recipient is found to transact business; (2) shall give 30 day notice by registered mail to the NRC, Secretary of the Department of Health and Human Services, the Attorney General of the United States, and the recipient; (3) must state in the notice the relief requested (including costs of the action), the court in which the complainant is bringing the action, and whether or not attorney's fees are demanded in the event the complainant prevails; and (4) may not bring an action if the same alleged violation of the Act by the same recipient is the subject of pending action in any court of the United States (See Section 4.340 Exhaustion of administrative remedies).

Freedom of Information Act and Amendments of 1974 (P.L. 93-502). Source Book: Legislative History, Texts, and Other Documents

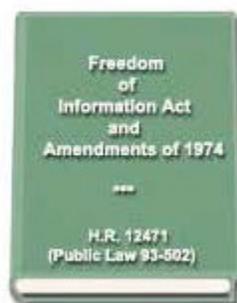
Ninety-Fourth Congress, 1st Session

March 1975

H.R. 12471, commonly referred to as the Freedom of Information Act (FOIA) Amendments of 1974 (Pub. L. No. 93-502, 88 Stat. 1561), was enacted into law on November 21, 1974. These amendments effected the first substantive changes to the FOIA since its initial enactment in 1966 (Pub. L. No. 89-487). The committee print linked below contains the text of documents comprising the legislative history of this law, including House and Senate committee reports and House and Senate Floor debate. It also contains U.S. Department of Justice memoranda regarding implementation of the Act by executive departments and agencies, as well as analyses prepared by the Library of Congress Congressional Research Service and committee staff. The U.S. Senate Judiciary Subcommittee on Administrative Practice and Procedure, chaired by Senator Edward M. Kennedy (Massachusetts), prepared this document jointly with the U.S. House Government Operations Subcommittee on Government Information and Individual Rights, chaired by Representative Bella Abzug (New York). Senator James O. Eastland (Mississippi) chaired the full Senate committee and Representative Jack Brooks (Texas) chaired the full House committee. (Library of Congress Call Number [KF5753.A315A15.1975](#); OCLC Number 277052558)

Adobe Acrobat Reader 6.0 or higher is required to read this document. If you do not have this software on your PC, go to <http://www.adobe.com/products/acrobat/readstep2.html> to download a free copy of the reader.

To view the PDF file, click the image below.



APPENDIX DD – LETTER FOR COMPLAINT PROCESS

Month, Day, Year

CERTIFIED MAIL

RETURN RECEIPT REQUESTED

*Complainants' Attorney Name
Address*

Subject: Complaint of Discrimination Filed by Client's Name

Dear Complainant's Attorney:

This is in regards to the complaint of discrimination that you filed on behalf of your client, Name of Complainant, on Month, Day, Year, with the Office of Small Business and Civil Rights (SBCR), U.S. Nuclear Regulatory Commission (NRC). On Month, Day, Year, the NRC advised you that SBCR would be processing Complainant's name complaint of discrimination under Section 401 of the Energy Reorganization Act, 42 U.S.C. Section 5891 and 10 of the Code of Federal Regulations (CFR), Part 4, "Nondiscrimination in Federally Assisted Programs or Activities Receiving Federal Financial Assistance from the Commission." SBCR is in the process of investigating Complainant's name complaint.

SBCR has established an Alternative Dispute Resolution (ADR) Program and would like to offer mediation to attempt to resolve Complainant's name complaint of discrimination. The goal of ADR is for the parties to work collaboratively to develop and consider alternatives that can lead to a mutually satisfying resolution of their issues. ADR is based on the idea that parties who are involved in a controversy are the ones best able to develop a reasonable and enduring solution because they best know their own needs and interests. SBCR uses a neutral third party – called a mediator – who assists the parties in reaching mutual agreement. ADR can result in outcomes that litigation and/or administrative processes may not otherwise achieve. The NRC's ADR Program is voluntary, including the decision to participate as well as the content of any final settlement agreement. Mediation may be terminated for any reason and Complainant may continue to pursue a resolution of the matter through the Agency's discrimination complaint process.

If Complainant's name would like to participate in mediation, please complete the attached Request to Participate in Alternative Dispute Resolution Form and send it to: Ms. Tuwanda Smith, Program Manager, Outreach and Compliance Coordination Program, SBCR, NRC, 11555 Rockville Pike, Mailstop: O3H8, Rockville, MD 20852, or Tuwanda.Smith@nrc.gov within 10 calendar days of receipt of this letter.

If you have any questions about this letter, please contact Ms. Smith on (301) 415-7394. Thank you for your continued cooperation in this matter.

Sincerely yours,

Vonna L. Ordaz
Director, Office of Small Business and Civil Rights

Enclosure

cc: *Complainants*
Address

APPENDIX EE – REQUEST TO PARTICIPATE IN ADR FORM

**REQUEST TO PARTICIPATE IN ALTERNATIVE DISPUTE RESOLUTION
OFFICE OF SMALL BUSINESS AND CIVIL RIGHTS
U.S. NUCLEAR REGULATORY COMMISSION**

I am requesting to pursue a resolution of the claim(s) of discrimination raised in my formal complaint filed with the U.S. Nuclear Regulatory Commission on *enter date Complaint Filed*, and assigned Agency No. _____, through the Agency’s Alternative Dispute Resolution (ADR) process. I understand that the processing of my complaint will be held in abeyance or extended for a specified period of time, pending the outcome of the ADR process. I also understand that ADR cannot occur unless both parties to the dispute voluntarily agree to participate in ADR.

Complainant

Date

Complainant’s Representative

Date

Date Received by SBCR: _____

Comments:

SBCR ADR Coordinator

Date

APPENDIX FF – AGREEMENT TO PARTICIPATE IN MEDIATION - NRC

AGREEMENT TO PARTICIPATE IN MEDIATION U.S. NUCLEAR REGULATORY COMMISSION

The Complainant and the U.S. Nuclear Regulatory Commission have agreed to participate in Mediation to resolve his/her complaint of discrimination filed under Title VI of the Civil Rights Act of 1964 (Title VI) or other civil rights statutes, laws, and Executive Orders. The Parties (including representatives, if applicable) understand and agree that:

1. Mediation is voluntary and may be terminated at any time by either party. In the event that mediation is terminated for any reason, the Complainant may continue to pursue a resolution of the matter through the Agency's discrimination complaint process.
2. Any timeframes for processing the complaint shall be tolled during mediation.
3. The parties have a right to representation by an attorney to consult with or assist them at any stage in the mediation process, and each party is responsible for taking steps to obtain such a person.
4. The role of the Mediator is to facilitate and assist the parties in reaching a voluntary, mutually satisfactory resolution to the problem. However, the decision whether to agree to a particular decision rests with the parties, not the Mediator.
5. If the parties cannot agree on a resolution, the Mediator has no authority to impose a resolution.
6. Mediation is a confidential process and matters relating to the mediation process may not be discussed with individuals that are not involved in the mediation process.
7. Any documents submitted to the Mediator and statements made during mediation, including proposed settlement terms, are for settlement purposes only and shall remain confidential to the full extent permitted by law.
8. All information provided to the Mediator is confidential except evidence that is otherwise admissible or discoverable in a court of law or other administrative process even though brought up in a mediation session.
9. The parties will not subpoena or request the Mediator to serve as a witness, or request or use as evidence any materials prepared by the Mediator for the mediation, with the exception of a settlement document signed by the parties.
10. The Mediator will not voluntarily testify on behalf of any party or third person or submit any type of report in connection with the mediation.
11. No party or representative will be bound by anything said or done during the mediation process unless a written settlement agreement is reached and signed by all the appropriate parties.

12. If a settlement is reached, the agreement will be reduced to writing by the parties in coordination with the Mediator, Complainant (or Complainant's legal representative), and SBCR. When signed and approved by all the appropriate parties, the settlement document shall be legally binding upon all parties to the agreement.
13. The Complainant's right to pursue the formal complaint process is not waived and will be protected during the mediation process.
14. No admission of guilt or wrongdoing by either party is implied, and none should be inferred, by participation in this process.
15. The parties will sincerely attempt to resolve this matter, cooperate with the Mediator assigned to this matter, and give serious consideration to all suggestions made in regard to developing a resolution of the dispute.
16. The parties will conduct themselves in a courteous and non hostile manner, use appropriate language, and allow the Mediator to interrupt the process if the Mediator feels a caucus or break is needed to facilitate the mediation process.
17. The parties will be notified of the status and results of the mediation process, including settlements, withdrawal from, or unsuccessful conclusion of the process.

BY SIGNATURES BELOW, THE PARTIES ACKNOWLEDGE THAT THEY HAVE READ, UNDERSTAND AND AGREE TO THIS AGREEMENT TO PARTICIPATE IN MEDIATION:

 Name
 Complainant

 DATE

 Attorney
 Complainant's Representative

 DATE

 Attorney
 Management Official, Title
 Office

 DATE

 Management Official, Title
 Office

 DATE

 Mediator
 Contracting Company

 DATE

 Director
 Office of Small Business and Civil Rights

 DATE

BIBLIOGRAPHIC DATA SHEET

(See instructions on the reverse)

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NUREG-2185

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Procedures Manual

3. DATE REPORT PUBLISHED

MONTH	YEAR
December	2015

4. FIN OR GRANT NUMBER

5. AUTHOR(S)
Tuwanda M. Smith, Esq.

6. TYPE OF REPORT
Technical

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8. PERFORMING ORGANIZATION - NAME AND ADDRESS (If NRC, provide Division, Office or Region, U. S. Nuclear Regulatory Commission, and mailing address; if contractor, provide name and mailing address.)

Office of Small Business and Civil Rights
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

9. SPONSORING ORGANIZATION - NAME AND ADDRESS (If NRC, type "Same as above", if contractor, provide NRC Division, Office or Region, U. S. Nuclear Regulatory Commission, and mailing address.)

Same as above

10. SUPPLEMENTARY NOTES

11. ABSTRACT (200 words or less)

This manual assists the U.S. Nuclear Regulatory Commission (NRC) to ensure uniform compliant processing and investigation procedures. This manual also provides the public and other interested stakeholders information on the NRC's external civil rights procedural processes.

12. KEY WORDS/DESCRIPTORS (List words or phrases that will assist researchers in locating the report.)

NRC's External Complaint Processing & Investigation Procedures Manual

13. AVAILABILITY STATEMENT

unlimited

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