OHIO NATIONAL GUARD

DISCRIMINATION COMPLAINT SYSTEM

OHNGR 600-22

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Columbus, OH 43235-2789
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Personnel – General

OHIO NATIONAL GUARD DISCRIMINATION COMPLAINT SYSTEM

By Order of The Adjutant General:

Deborah A. Ashenhurst
Major General
The Adjutant General

History. This regulation is published consistent with decisions of the United States Court of Appeals for the Sixth Circuit, including but not limited to Fisher v. Peters, 249 F.3d 433 (6th Cir. 2001). It implements NGR (AR) 600-22/NGR (AF) 30-3, National Guard Military Discrimination Complaint System, 1 Oct 92; as well as NGR 600-23/ANGR 30-12, Personnel: Non-Discrimination in Federally-Assisted Programs, 30 Dec 74.

Summary. This regulation establishes policies and procedures for filing, processing, investigating, settling, and adjudicating discrimination complaints in the Ohio Army National Guard (OHARNG) and Ohio Air National Guard (OHANG). It implements Title VI of the Civil Rights Act of 1964, the references noted above, DoD Directives 1350.2 and 5500.11; Army Regulation 600-20, Chapter 6, and Air Force Instruction 36-2706, prohibiting discrimination based on race, color, religion, gender, national origin, or reprisal. It establishes a uniform Discrimination Complaint System for Ohio National Guard (OHNG) military and technician personnel. Although the OHNG prohibits unlawful discrimination based upon sexual orientation, this instruction does not apply to complaints that may be raised under appropriate grievance procedures or other appeal processes. This regulation also establishes a uniform system to conduct legal and administrative reviews of equal opportunity complaints for final decision by The Adjutant General, State of Ohio, consistent with section 4112.023, Ohio Revised Code.

Applicability. This regulation applies to:

a. OHARNG and OHANG technicians and military personnel serving and former military personnel who served, in an inactive duty for training status (IADT), during annual training (AT), in either a dual or non-dual technician status, and while in State Active Duty status, Full-time National Guard Duty (FTNGD) status, or Active Duty Operational Support (ADOS) status under Title 32 U.S.C.

Note: Title 32 members attached for duty at ROTC units will file complaints of discrimination under the process established for other active component members at that unit if the complaint pertains to alleged discriminatory action(s) by persons within the ROTC chain of command. However, if FTNGD members allege discrimination against National Guard members within Ohio, even while attached for duty in ROTC, those complaints will be processed under this regulation. In all cases, complaints of discrimination should generally be handled under a complaint system which will afford the complainant an opportunity for resolution.

b. Applicants for membership in the OHARNG and OHANG for duty as National Guard Technicians, whether dual status or non-dual status, or FTNGD or ADOS/FTNGD under Title 32 U.S.C.

c. Beneficiaries of services, programs, or activities of the National Guard under Title VI of the Civil Rights Act of 1964, as amended.

d. This regulation does not apply to civil servants employed under Title 5, U.S.C., State of Ohio employees, Active Duty military personnel, nor contractors or their employees. All such persons have other available remedies.

e. Members of the OHNG who believe that they have been discriminated against while performing missions in State Active Duty status must process such complaints of discrimination under this regulation, since militia service is not employment under Chapter 4112 of the Ohio Revised Code and is therefore not under the jurisdiction of the Ohio Civil Rights Commission.

Proponent and exception authority. The proponent of this regulation is the State Equal Employment Manager (SEEM), NGOH-HRO-E. The proponent has the authority to approve exceptions to this regulation that are consistent with controlling law and regulation.

Supplementation. Supplementation of this regulation and establishment of forms other than OHNG or NGB forms are prohibited without prior approval from the SEEM, Ohio National Guard, ATTN: NGOH-HRO-E, 2825 West Dublin Granville Rd, Columbus, OH 43235-2789.

Suggested Improvements. Users are invited to send comments and suggested improvements on DA Form 2028 (Recommended Changes to Publications and Blank Forms) directly to the SEEM, Ohio National Guard, ATTN: NGOH-HRO-E, 2825 West Dublin Granville Rd, Columbus, OH 43235-2789.

Interim Changes. Interim changes to this regulation are not official unless authenticated by the OHNG's Director, Administrative Services. Users will destroy interim changes on their expiration dates unless sooner superseded or rescinded.

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Chapter 1
Introduction

1-1. Purpose

This regulation sets policy and explains how to file, process, investigate, and settle complaints of discrimination. It establishes a uniform Discrimination Complaint System for the OHARNG and OHANG. It implements Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000-e) and other references in the applicability paragraph. This regulation does not implement Title VII of the Civil Rights Act, as amended (42 U.S.C. 2000e-16); the Age Discrimination in Employment Act, as amended (29 U.S.C. 633a); or the Rehabilitation Act, as amended (29 U.S.C. 791). These statutes do not apply to OHNG military personnel nor those whose technician positions are irreducibly military in nature.

1-2. References

Required and related publications and prescribed and referenced forms are listed in Appendix A.

1-3. Explanation of Abbreviations and Terms

Abbreviations and special terms used in this regulation are explained in the glossary. Because some of the terminology is unique to the complaint process and differs from definitions used in other directives, understanding the meanings of these terms is essential to understanding this regulation.

1-4. Policy Statement

a. It is the policy of the OHNG to provide Equal Opportunity in all of our employment programs at all levels of the workforce and to prohibit discrimination in employment because of race, color, religion, gender, or national origin. The OHNG does not condone reprisal for filing a complaint of discrimination and will process all claims of retaliation under this regulation.

b. No person will be subject to retaliation for opposing any practice or for participating in any stage of administrative or judicial proceedings under those statutes made unlawful by—

(1) Title VI of the Civil Rights Act (Title VI) (42 USC §2000e-16),
(2) The Equal Pay Act (29 USC §206(d))

c. Discrimination complaints will be processed with due regard for the rights of persons against whom allegations have been made.

d. Complaints will be processed promptly and impartially.

e. Complaints should be resolved at the earliest possible stage and at the lowest appropriate command or supervisory level; however, resolution can occur at any stage of processing. Use of an alternate dispute resolution (ADR) program, as described in chapter 2 and in NGR 27-1/ANGI 51-12, is encouraged. Early resolution of complaints achieves better employee relations, cuts administrative costs, avoids protracted litigation, and is consistent with the OHNG's commitment to Equal Opportunity.

f. This regulation does not affect the collective bargaining rights granted to unions exclusively recognized by the OHNG. Further, this regulation is not intended to affect the rights of an employee represented by such a union in exercising the option to file—

(1) A discrimination complaint under this regulation.
(2) A grievance under a negotiated procedure.

g. Suspense dates imposed on the OHNG under this regulation are administrative requirements. They assure prompt processing of complaints. Mere failure to meet timelines will not nullify any administrative proceeding or create a substantive right entitling any individual to judicial or other relief. However, failure to observe timelines, if prejudicial to substantial rights, may result in an adverse inference determination or other sanction by The Adjutant General or designee.

h. All "days" referred to in this regulation are calendar days unless otherwise indicated.

1-5 Responsibilities

a. The Adjutant General (NGOH-TAG).

(1) Provides the overall direction to equal opportunity (EO) and equal employment opportunity (EEO) within the OHNG.

(2) Implement and manage the Discrimination Complaint System within the State, take appropriate steps to ensure that the OHNG operates in an atmosphere free of illegal discrimination.

(3) Ensure that the policies, procedures, and requirements of this regulation are carried out within the OHNG.

(4) Direct an investigation be conducted when a complaint of discrimination is elevated to the AG level without resolution, provided that a formal investigation found legally sufficient by the Command Judge Advocate has not previously been conducted.

(5) Provides the final level of appeal and issues final decisions in all complaints of discrimination administratively processed under this regulation.

b. Assistant Adjutants General, Ohio Army and Ohio Air National Guard. (NGOH-AAG-ARMY and NGOH-AAG-AIR).

(1) Implement equal opportunity within the OHARNG and OHANG respectively.

(2) Direct an investigation be conducted when a complaint of discrimination is elevated to the ATAG level without resolution, provided that a formal investigation found legally sufficient by the Command Judge Advocate has not previously been conducted.

(3) Provide an intermediate level of appeal and issue final decisions in complaints of discrimination administratively processed under this regulation.

(4) Review and comment on unresolved cases forwarded to The Adjutant General.

c. State Equal Employment Manager; SEEM (NGOH-HRO-E).

(1) Manages the Discrimination Complaint System within the State on behalf of the AG.

(2) Administers EO plans, policies, and programs in the OHNG, to include Affirmative Action Plans and Special Emphasis Programs for women and minorities.

(3) Provides broad guidance and overall direction of the Military Discrimination Complaint System.

(4) Establishes and administers the Military Discrimination Complaint System and develops policies and procedures for processing, managing, and adjudicating discrimination complaints.

(5) Coordinates with the Office of the State Judge Advocate and advises TAG on all aspects of discrimination complaint processing and management.

(6) In coordination with the State ARNG HR/EO or the ANG Military EO Officer at the state or wing level, ensures that complaints are processed properly and within the time constraints outlined in this regulation.

(7) Custodian of records of complaints that are elevated to the AG.

d. State Judge Advocate, OHNG (NGOH-SJA).

(1) Reviews state military discrimination complaint files, Reports of Investigation, and final decisions for legal sufficiency in accordance with Paragraph 2-21.

(2) Provides legal advice to the SEEM in all discrimination complaint matters.

(3) Advises on compliance with all provisions of the Privacy Act and Freedom of Information Act with respect to discrimination complaint files and Reports of Investigation.

e. OHARNG and OHANG Commanders/Supervisors. Equal Opportunity is a leadership and a readiness issue. Commanders/Supervisors at all levels will:

(1) Ensure that the policies of TAG and of this regulation are adhered to in their organizations.

(2) Act promptly to prevent or correct situations that may give rise to complaints of discrimination. They will ensure that supervisors and subordinate commanders refrain from actions or comments that might be viewed as discriminatory.

(3) Ensure that military personnel are fully aware of procedures for obtaining redress of complaints, including those against members of the chain of command. These procedures will be in writing and will be prominently displayed where all unit members will have access to them.

(4) Conduct inquires whenever an allegation of discrimination is brought to their attention. If the inquiry determines that the complaint has merit, commanders/supervisors will resolve the complaint at the lowest appropriate level.

(5) Inform individuals who are named by a complainant as responsible for discrimination about the basis for and issues raised by the complaint.

(6) Ensure that the command climate does not encourage or condone reprisals against individuals who exercise their rights under this regulation. In cases where discrimination or sexual harassment is substantiated, the complainant should not be further victimized by involuntary transfer or reassignment. Where there might exist the threat of bodily harm to the complainant from an unidentified person(s), or when commanders/supervisors otherwise determine that a transfer is necessary, the commander/supervisor will document the reason(s) for the transfer and inform the complainant.

f. ARNG Human Relations/Equal Opportunity Officer, ARNG Equal Opportunity Advisors (EOA), Equal Opportunity Representatives (EOR), ANG Military Equal Opportunity Officers and Specialists.

(1) Advise commanders regarding issues, merits, validity, and processing of discrimination complaints.

(2) Conduct informal fact finding into allegations of discrimination on behalf of the commander to facilitate informal resolution.

(3) Advise and assist complainants on the complaint process.

(4) Assist the complainant in the clarification of the issue(s) and the basis(es) of the complaint.

(5) Provide feedback to complainant on the status of his/her complaint at each step of the process and advise complainant of the next step.

(6) Coordinate the processing of all complaints of discrimination with the SEEM.

(7) Provide technical assistance to investigators.

g. Equal Employment Counselors

(1) A collateral duty to their full-time Technician position.

(2) Conduct inquiries into allegations of discrimination on behalf of the SEEM to facilitate informal resolution with-in the FTNGD.

(3) Advise and assist FTNGD complainants on the complaint process.

(4) Assist the FTNGD complainant in the clarification of the issue(s) raised by and the basis/bases for the complaint.

(5) Provide feedback to FTNGD complainant on the status of his/her complaint at each step of the process and advise the complainant of the next step.

(6) Coordinate the processing of all FTNGD complaints of discrimination with the SEEM.

(7) Provide technical assistance to investigators of formal complaints of discrimination.

h. Alternate Dispute Resolution Mediators

Unbiased third parties trained in ADR techniques. They will:

(1) Facilitate open communication between the aggrieved and designated management official in a collaborative, non-adversarial manner.

(2) Advise the EO Officer of any proposed settlement. The EO Officer will then be responsible for assuring the necessary coordination and completion of any settlement agreement.

(3) Advise EO Officer if resolution is not achieved.

i. Complaint Investigators

(1) Conduct investigations into allegations of discrimination filed by Title 32 employees of the OHNG.

(2) Prepare unbiased Reports Of Investigation (ROI).

1-6. Implementation

This regulation will be used to process all discrimination complaints to include those currently filed and/or being processed prior to the effective date of this regulation.

1-7. Who May File a Complaint

a. Any aggrieved individual covered by this regulation (see the Applicability paragraph), who believes that he or she has been illegally discriminated against due to race, color, national origin, religion, gender (including sexual harassment), or reprisal for having engaged in a protected equal opportunity activity, in a matter subject to the control of the OHNG, may file an individual complaint of discrimination. Complaints based on age or handicap are not addressed

in the case of technician and military members due to overriding military concerns of fitness and deployability. NDS technician complaints based upon age and handicap are allowed as a matter of policy even though those causes of action and remedies do not exist under Title VI.

b. Beneficiaries of services of the OHARNG and OHANG, who are not members of the OHARNG or OHANG, may file complaints based on race, color, religion, or national origin under Title VI of the Civil Rights Act (as provided under that statute); or on the basis of gender (including sexual harassment), as provided under DoD Directive 1350.2; or on the basis of handicap as provided under DoD Directive 1020.1. Such complaints will be filed and processed in accordance with the provisions of Chapter 2 of this regulation.

c. Members of the OHNG who believe that they have been discriminated against while serving on active duty, to include active duty training and FTNGD under Title 10 U.S.C., must process such complaints of discrimination under active component regulations. (See AR 600-20 and AFI 36-2706.)

d. Members of the OHNG who believe that they have been discriminated against while performing missions in State Active Duty status must process such complaints of discrimination under this regulation, since militia service is not employment under Chapter 4112 of the Ohio Revised Code and is therefore not under the jurisdiction of the Ohio Civil Rights Commission.

e. Individuals who believe that they have been discriminated against in FTNGD or Technician employment must process such complaints under this regulation.

1-8. Policy

a. The fair, equitable, and non-discriminatory treatment of all members and employees of the OHNG improves morale and productivity, fosters unit cohesion and readiness, and increases the combat effectiveness of the Guard. It is the policy of the OHNG to provide equal opportunity for OHNG technicians and military personnel or applicants for membership in the National Guard. They will not be subjected to illegal discrimination because of race, color, religion, gender (to include sexual harassment), or national origin; nor will they endure reprisal for having participated in a protected equal opportunity activity.

b. All OHNG personnel are entitled to serve in an environment free from sexual harassment. Sexual harassment is a form of gender discrimination and will not be tolerated. Allegations of sexual harassment will be given prompt attention and resolved as expeditiously as possible. Sanctions in the Ohio Code of Military Justice, and/or in military or civilian personnel regulations will be applied when sexual harassment or other forms of illegal discrimination can be proven beyond a reasonable doubt. Such instances will be documented in the individual's official personnel file and reflected on evaluations/appraisals, as appropriate.

c. The OHNG has established and operates the Discrimination Complaint System in this regulation to reflect the policies stated herein and to provide a just and effective avenue of redress to aggrieved persons in accordance with applicable laws and regulations. Personnel who believe they have been subjected to illegal discrimination will be permitted to participate in the complaint process established by this regulation. They will not be discouraged from participation due to fear of reprisals. Any complainant alleging reprisal for having engaged in a protected Equal Opportunity activity, i.e., for having filed a complaint of discrimination, for preparing to file a complaint of discrimination, for testifying as a witness in a discrimination complaint investigation, or any other protected communication related to equal opportunity matters must be advised that he/she may file such a complaint through Inspector General channels if he/she wishes full protection under the Whistle Blowers Protection Act (10 U.S.C. 1034, to the extent applicable). Such complaints must be filed with the OHNG Inspector General in accordance with DoD Directive 7050.6, "Military Whistleblower Protection", within 60 days of the complainant's awareness of the alleged reprisal action. If the complainant desires to file within EO channels, the official receiving the complaint will have the complainant sign and date NGB Form 335, Reprisal Complaint Advisement and Election Form shown in Figure 1-1. The original will be filed in the case file and a copy will be immediately forwarded to the State IG for information and reporting requirements through IG channels. In the case of reprisal, the complainant will be advised that the whistleblower definition of reprisal is as follows: "Taking or threatening to take an unfavorable personnel action or withholding or threatening to withhold a favorable personnel action against an OHNG member for making or preparing a protected disclosure." This definition does not address hostile work environments, condoned peer reprisal, or other forms of harassment which could constitute reprisal. Allegations of reprisal which do not pertain to "taking or threatening to take adverse personnel actions or withholding or threatening to withhold favorable personnel actions," will

be processed under the provisions of this regulation. Furthermore, because the Military Whistleblower Protection Act does not extend to former military members, if a former military member of the OHNG claims reprisal for participation in a protected equal opportunity activity, and the basis of the reprisal was the separation of the individual from the OHNG, such complaints will be processed under the provisions of this regulation.

d. Reprisal against an individual for having engaged in a protected Equal Opportunity activity is prohibited regardless of whether the protected activity pertained to technician or military employment. For example, if a military member files a complaint through the OHNG complaint process under this regulation and subsequently perceives him or herself to be the victim of reprisals while in a technician status, it is not necessary to file another complaint. Conversely, a military technician who files a discrimination complaint arising out of his/her military status (weekend drill, annual training, etc.) and subsequently perceives him or herself to be the victim of reprisal while in technician status may file a reprisal complaint under the provisions of this regulation.

e. The Department of Defense Task Force on Discrimination and Sexual Harassment concluded that a "full-time values—part-time careers" perspective is required for the National Guard and other reserve components, with respect to discrimination and sexual harassment prevention programs. Therefore, it is the policy of the OHNG that off-duty or non-duty behavior that affects the military workplace will be covered by this regulation. For example, a traditional member who lives in the same community as a superior in his/her chain of command, and is subjected to sexually harassing behavior by that superior while neither are in any kind of military status, may file a complaint of discrimination against that superior under this complaint system.

f. The chain of command, or technician supervisory chain, is the primary channel for resolving discrimination complaints. Individuals will be encouraged to use command or supervisory channels for redress of complaints. Allegations of discrimination will be referred for processing by the lowest appropriate command or supervisory level in accordance with this regulation. This provides the commander or supervisor an opportunity to assist the complainant, inquire into the issues and allegations, take corrective action, and attempt to resolve the complaint, where possible. A complaint will be filed by completing OHNG Discrimination Complaint Form in the Ohio Army and Air National Guard (See Figure 1-2.).

g. It is the goal of the OHNG to resolve and settle all allegations and complaints of discrimination fairly, equitably and expeditiously. Whenever possible complaints will be resolved at the lowest level (Commanders and supervisors may use principles of the NGB-EO Alternate Dispute Resolution Program to facilitate resolution of complaints). However, when resolution of a complaint at the lowest level is not successful, personnel can appeal their complaint through the military chain of command, or technician supervisory chain, to The Adjutant General.

h. Anonymous complaints alleging discrimination received by OHNG officials will not be processed under this regulation. However, insofar as possible, such allegations will be investigated to determine their validity and merit and corrective action taken as appropriate. Anonymous complaints received by the National Guard Bureau, whether directly from a complainant or referred from a third party, will be referred to the State for information and appropriate inquiry. An inquiry number will be assigned to such complaints.

i. Any person who knowingly submits a false equal opportunity complaint (a complaint containing information or allegations that the complainant knew to be false) may be subject to judicial or non-judicial punishment under the Ohio Military Code of Justice; or administratively under Technician Personnel Regulations 752 and 752-1. Commanders and supervisors must recognize that there is a privilege to file a complaint and that there may be a thin line between the perceptions of the complainant as to the submission of a false complaint. Commanders and supervisors will use extreme caution, and shall confer with the Staff Judge Advocate to assess the evidence before referring any such charge, to ensure that this provision is not used as a means of reprisal against a complainant. In all cases, the benefit of the doubt will go to the complainant to ensure that no "chilling effect" is created against the filing of discrimination complaints.

j. Requests for interpretation of policy or provisions of this regulation will be forwarded, to the State Equal Employment Manager, Ohio National Guard, ATTN: NGOH-HRO-E, 2825 West Dublin Granville Rd, Columbus, OH 43235-2789.

1-9. Time Limits for Army and Air National Guard Technicians, IADT, and AT Personnel:

Time limits have been established to ensure that complaints are processed expeditiously and to ensure the availability of witnesses and information needed for investigation and resolution of complaints. These time limits take into

consideration the limited availability of personnel on drill weekends. When participants in the complaint process are FTNGD/ADOS personnel, time limits in Para 1-10 shall apply. (See figure 2-1 for a grievance processing flow chart)

a. A complaint must be filed and the initial interview with the commander, supervisor, or Equal Opportunity Representative must take place within one hundred and eighty (180) calendar days from the date of the alleged discrimination or the date that the individual became aware or reasonably should have become aware of the discriminatory event or action.

b. When a commander or supervisor receives a complaint (see Para 2-11, Fig 2-1), all required actions will be completed within 30 calendar days or through the next drill period.

c. A complaint not resolved to the satisfaction of the complainant will automatically be forwarded to the next level of the chain of command or supervision.

d. Each intermediate level of command or supervision will complete all required actions (see Chapter 2) within 60 calendar days or through the next drill period after the receipt of the complaint case from the subordinate commander or supervisor.

e. The investigation and actions required at The Adjutant General's level (paragraph 2-20) should be completed within 90 calendar days after receipt of the case file from the subordinate commander or supervisor. The case file will be forwarded to SJA for review and final decision.

f. The goal of the Discrimination Complaint System is to expedite processing so that a final decision is issued not later than one year after filing of a complaint.

1-10. Time Limits for FTNGD and ADOS Personnel:

a. Complaints of discrimination by FTNGD or ADOS personnel covered by this regulation will be processed within time limits similar to those for Technicians, IADT, and AT personnel complaints. The primary difference will be the amount of time allocated between actions. (See figure 2-2 for a grievance processing flow chart)

b. FTNGD and ADOS personnel will have one hundred and eighty (180) days from the date of the alleged discrimination or the date that the individual became aware or reasonably should have become aware of the discriminatory event or action in which to file a complaint. (See Para 2-12, Fig 2-2)

c. The supervisory chain will process personnel discrimination complaints on behalf of and in coordination with the military commander at each level of the chain of command.

d. Each level of the supervisory chain will conduct an EO inquiry (not administrative investigation) or Commander's Inquiry and attempt resolution of the complaint, or will refer the case to a higher echelon of command or supervision. If the complaint is unresolved to the satisfaction of the complainant, the case file will be forwarded to the next level in the supervisory chain corresponding to the next level in the chain of command. These actions should be completed in fourteen (14) days of receipt of the complaint at each level.

e. The supervisory chain will provide appropriate feedback to the complainant on the status of his/her complaint. If unresolved at one level and forwarded to the next level, the complainant will be provided a copy of the inquiry and will be given 14 days to file an appeal with the next level. The next level will then conduct additional inquiry, if necessary, attempt resolution and/or forward to the next higher echelon, these actions should be completed within 14 days of receipt of the complaint from the subordinate unit. This process shall be repeated, until it reaches The Adjutant General's level.

f. If the complaint reaches The Adjutant General's level unresolved, The Adjutant General will have 90 calendar days to attempt resolution, order an EO inquiry or AR 15-6 investigation, review for legal and administrative compliance, provide complainant with a redacted copy of the report of inquiry or investigation, or may request NGB assistance in rendering a final agency decision. In all cases, The Adjutant General is the final authority.

1-11 Reporting Requirements and Assessment

DOD Instruction 1350.3 establishes discrimination complaints, to include sexual harassment complaints, as a category of equal opportunity assessment. To monitor and assess discrimination complaints, NGOH-TAG will establish procedures to ensure that the information described in subparas 1-11.a-1-11.d is captured and maintained by fiscal year. The SEEM will provide these upon request by NGB and DOD. To assist the SEEM with information capture, Human Relations/Equal Opportunity Officers, Equal Opportunity Advisors, Equal Opportunity Leaders, Wing Equal Opportunity Officers, and Wing Equal Opportunity Specialists will provide the SEEM with the following data on a monthly basis.

a. The total number of complaints filed under this regulation by grade, service, and basis. The data will include the complainant's group related to the basis on which the complaint is filed e.g., where a complaint is filed on the basis of race, the race of the complainant, and the race of the person(s) alleged to have discriminated will be included.

b. The number of complaints that were resolved, referred, or dismissed.

c. The number of complaints that were adjudicated and whether a finding of discrimination or no discrimination was substantiated.

d. The categories of issues raised by the complainant; e.g., promotion, training, selection for FTNGD tour, etc.

Figures 1-1., 1-2 appear on following pages.

REPRISAL COMPLAINT ADVISEMENT AND ELECTION FORM

The proponent agency is NGB-EO. The prescribing directive is NGR 600-22/ANGI 36-3.

Inspector General at any level. However, if the reprisal action which you allege does not pertain to "taking or threatening to take an adverse

PRIVACY ACT STATEMENT

AUTHORITY: Title 10 USC Section 1034, DOD Directive 7050.6
PURPOSE: Used to document the advisement and formal filing of military complaint of reprisal.
ROUTINE USES: None.
DISCLOSURE: Voluntary. This information may be disclosed to the Inspector General of the Air Force, Army, or Department of Defense.

Any member who reasonably believes a personnel action (including the withholding of an action) was taken or threatened in reprisal for making or preparing to make a lawful communication to a Member of Congress, an Inspector General (IG), or any member of an audit, inspection, investigation, or law enforcement organization within DoD, any Equal Opportunity or Military Equal Opportunity office, or to their chain of command, may file a complaint with the Air Force or Army IG, (as appropriate), or subordinate level IG, under the provisions of AFI 90-301, or AR 20-1 respectively, or with the Inspector General, Department of Defense (IG, DoD) under the provisions of Title 10, United States Code, Section 1034, and Department of Defense Directive (DoDD) 7050.6, Military Whistleblower Protection.

You are advised that if you elect to file your complaint with the IG, DoD, upon review of your complaint, the IG, DoD can either accept the complaint or deny DoD consideration and refer your complaint to the Air Force or Army IG for consideration. If the IG, DoD grants DoD-level consideration, the IG, DoD may either investigate the complaint themselves or refer the complaint to the Army or Air Force for investigation, while maintaining oversight. The election to file with the IG, DoD is optional; however, if you elect to file the complaint with the IG, DoD, you must file the complaint within 60 days of becoming aware of the personnel action (that is the basis of the allegation). Regardless of which office conducts the investigation the same reprisal process will be used. However, acceptance of your complaint by IG, DoD entitles you to the following statutory provisions: right to appeal Air Force or Army Boards for Correction of Military Records finding to the Secretary of Defense and receive a redacted copy of the ROI and attachments.

If you elect to file with IG, DoD, you are responsible for forwarding all documents relating to your reprisal complaint to their office. Army or Air Force IG officials will assist you upon your request. You should read DoDD 7050.6, and follow the instructions contained therein.

Department of Defense Inspector General
Attn: Defense Hotline
1900 Defense Pentagon
Washington DC 20301-1900

You are further advised that you may file a complaint of reprisal for having engaged in a protected Equal Opportunity activity with an Inspector General at any level. However, if the reprisal action which you allege does not pertain to "taking or threatening to take an adverse personnel action against you, or withholding or threatening to withhold a favorable personnel action from you," the reprisal action of which you complain will not meet the "acid test" used in an Inspector General investigation. That is, if the reprisal action which you allege consists of a hostile working environment or various forms of harassment, commander-condoned peer reprisal, etc., or if the personnel action which is the basis of your allegation of reprisal resulted in ending your military membership in the National Guard, and your status is now a former military member of the National Guard, then you should file your complaint within Equal Opportunity channels.

ACKNOWLEDGMENT

I have read and understand the above reprisal complaint procedures.

I [will] or [will not] file my complaint with my EO or EEO Officer. *(Circle one and initial)*

SIGNATURE:	DATE:
PRINT:	
NAME:	GRADE:
(Including Zip Code) ORGANIZATION ADDRESS:	ORGANIZATION TELEPHONE
	(If Available) DSN:
	(Include Area Code) COMMERCIAL:
(Include Area Code) HOME TELEPHONE:	
NOTES/COMMENTS: *(If Any)*	

Figure 1-1

Figure 1-1. NGB Form 335, Reprisal Complaint Advisement and Election Form.

OHIO NATIONAL GUARD DISCRIMINATION COMPLAINT FORM – PART I	Case Number

PRIVACY ACT STATEMENT

Authority: *42 U.S.C. Section 2000d*

Principal Purpose: *Used by Ohio National Guard members and employees to file a complaint of discrimination*

Routine Use: Used by the Commanders and Supervisors to resolve discrimination complaints

Disclosure: *Voluntary. However, failure to complete all portions of this form could affect the timely processing, or result in the rejection or dismissal of your complaint.*

COMPLAINT LEVEL: ☐ **Company/Flight** ☐ **Battalion/Squadron** ☐ **Brigade/Group** ☐ **MSC / WING** ☐ **ATAG** ☐ **TAG**

1. NAME (Last, First, MI)		**2. DUTY ORGANIZATION (COMPLETE ADDRESS)**
3.GRADE/RANK	**4. TITLE**	

5.WORK PHONE	**6.HOME PHONE**	**7. HOME ADDRESS**
8.GENDER	**9.RACE**	**10. NATIONAL ORIGIN**

11. CHECK BELOW THE BASIS OF DISCRIMINATION ALLEGED

	RACE		**RELIGION**		**NATIONAL ORIGIN**		**AGE**
	COLOR		**GENDER**		**REPRISAL**		**DISABILITY**

12. AREA OF CONCERN

	APPOINTMENT/ HIRE		**ASSIGNMENT OF DUTIES**		**CO-WORKER DISPUTE**		**DISCIPLINE / REPRIMAND**
	EVAL UATION/ APPRAISAL		**HARASSMENT**		**PAY / PROMOTION**		**SEPARATION**
	SUPERVISOR DISPUTE		**SUSPENSION**		**TIME / ATTENDANCE**		**TRAINING / AWARDS**

13. DATE COMPLAINT SUBMITTED	**14. COMPLAINT INTERVIEW CONDUCTED:** ☐ **By Phone** ☐ **In-Person** ☐ **Other**

15. ORGANIZATION OR UNIT WHERE ALLEGED DISCRIMINATION OCCURRED

(Complete address)

16. PERSON YOU BELIEVED DISCRIMINATED

NAME	**TITLE**

17. RESPONSIBLE MANAGEMENT OFFICIAL

NAME	**TITLE**

18. ALTERNATE DISPUTE RESOLUTION

ARE YOU WILLING TO ATTEMPT RESULOTION OF THE ISSUE THROUGH MEDIATION? ☐ **Yes** ☐ **No**

DATE SET FOR MEDIATION	**DATE (YYYYMMDD)**

Figure 1-2

Figure 1-2. OHNG Discrimination Complaint Form

OHIO NATIONAL GUARD DISCRIMINATION COMPLAINT FORM – PART I	
19.	**ALLEGATIONS AND ISSUES CONTINUED**
STATE THE ALLEGATIONS AND ISSUES (USE CONTINUATION SHEET IF MORE SPACE IS REQUIRED)	
20.	**WHAT CORRECTIVE ACTION DO YOU WANT TAKEN TO RESOLVE THE COMPLAINT**

Figure 1-2

Figure 1-2. OHNG Discrimination Complaint Form

OHIO NATIONAL GUARD
DISCRIMINATION COMPLAINT FORM – PART I

21. THE COMPLAINANT WAS PROVIDED WITH THE AGGRIEVED PERSON'S RIGHTS AND RESPONSIBILITIES NOTICE AND WAS SPECIFICALLY ADVISED OF THE FOLLOWING:

- ☐ **The basis(es) for filing a discrimination complaint with the Ohio National Guard**
- ☐ **The OHNG complaint process flow chart appropriate to complainants status, Figure 2-1 or 2-2**
- ☐ **The calendar requirement from the effective date of personnel action or of date the matter alleged to be discriminatory**
- ☐ **The role of the EO Officer, including the rationale in which the officer is neither an advocate for the aggrieved nor the OHNG and acts strictly as a neutral party**
- ☐ **The Alternate Dispute Resolution Program and the right to elect ADR or traditional EO counseling.**
- ☐ **The right to remain anonymous during the process with the understanding that once the process proceeds up the chain of command or supervision that right may not be possible in order to resolve the complaint.**
- ☐ **The right to representation throughout the complaint process**
- ☐ **Responsibility of the aggrieved to notify the SEEM or EO Office in writing of any change in address or phone number.**
- ☐ **Responsibility of the aggrieved to notify the SEEM or EO Office in writing of attorney representation, including address and phone number.**
- ☐ **The understanding that under the Title VI of the Civil Right Act of 1964 and Title 32 of United States Code, the OHNG is permitted to discriminate on the basis of a protected trait due to Bona Fide Occupational Qualifications (BFOQ) necessary to conduct the central mission of the Ohio National Guard. (i.e.; women may not hold positions directly involved in combat operations.)**

22. MEDIATION RESULTS

- ☐ **ADR was successful. Negotiated settlement agreement, signed on _____(YYYYMMDD), is attached.**
- ☐ **ADR was NOT SUCCESSFUL. The complainant was issued a Notice of Right to File a Complaint of Discrimination On _____(YYYYMMDD) and notified of requirement to file a complaint within 14 calendar days (FTNGD and ADOS) or 30 calendar days (Technician, IADT and AT) after receipt of Notice of Right to File. The complainant was provided an OHNG Discrimination Complaint Form.**

23. SIGNATURE OF COMPLAINANT	**DATE**

24. OFFICIAL RECEIVING COMPLAINT

a. PRINTED NAME	**b. TITLE**
c. SIGNATURE	**d. DATE**

Figure 1-2

Figure 1-2. OHNG Discrimination Complaint Form

OHIO NATIONAL GUARD
DISCRIMINATION COMPLAINT FORM – PART II

1.	**TO BE COMPLETED AT THE COMPANY / FLIGHT LEVEL**					
DATE COMPLAINT RECEIVED AT THIS LEVEL						**DATE (YYYYMMDD)**
2.	**WAS THE COMPLAINT**					
a	**ACCEPTED**		**ALL**		**IN PART**	
b	**REFERED**		**ALL**		**IN PART**	**TO WHOM:**
c	**DISMISSED**		**ALL**		**IN PART**	

3. WHAT WAS THE RESULT OF THE COMMANDERS / SUPERVISORS INQUIRY?
☐ **Discrimination Confirmed** ☐ **Discrimination Not Confirmed** ☐ **Discrimination Undetermined**

4. DID YOU ATTEMPT RESOLUTION OF THE COMPLAINT? ☐ **Yes** ☐ **No**	**DATE (YYYY//MM/DD**
5. IF YES, WAS THE COMPLAINT ☐ **Settled** ☐ **Withdrawn**	
6. IS THE COMPLAINANT SATISFIED WITH THE RESOLUTION? ☐ **Yes** ☐ **No**	
a. SIGNATURE OF COMPLAINANT	**DATE (YYYY//MM/DD**

7. IF NOT SATISFIED WITH RESOLUTION OR WITHDRAWN THE COMPLAINT WILL AUTOMATICALLY APPEAL TO THE NEXT COMMAND OR SUPERVISION LEVEL

☐	**Withdraw the Complaint**	**SIGNATURE OF COMPLAINANT**	**DATE (YYYY//MM/DD**

8. THIS FORM AND ALL ATTACHMENTS, AND INQUIRIES WAS FORWARDED TO THE BATTALION / SQUADRON LEVEL OF COMMAND OR SUPERVISION ON	**DATE (YYYY//MM/DD**

9. REMARKS

10. SIGNATURE OF COMMANDER/SUPERVISOR	**DATE (YYYY//MM/DD**

Figure 1-2

Figure 1-2. OHNG Discrimination Complaint Form

OHIO NATIONAL GUARD
DISCRIMINATION COMPLAINT FORM – PART III

1.	**TO BE COMPLETED AT THE BATALLION / SQUADRON LEVEL**					
DATE COMPLAINT RECEIVED AT THIS LEVEL						**DATE (YYYYMMDD)**
2.	**WAS THE COMPLAINT**					
a	**ACCEPTED**		**ALL**		**IN PART**	
b	**REFERED**		**ALL**		**IN PART**	**TO WHOM:**
c	**DISMISSED**		**ALL**		**IN PART**	

3. WHAT WAS THE RESULT OF THE COMMANDERS / SUPERVISORS INQUIRY?
☐ **Discrimination Confirmed** ☐ **Discrimination Not Confirmed** ☐ **Discrimination Undetermined**

4. DID YOU ATTEMPT RESOLUTION OF THE COMPLAINT? ☐ **Yes** ☐ **No**	**DATE (YYYY//MM/DD**
5. IF YES, WAS THE COMPLAINT ☐ **Settled** ☐ **Withdrawn**	
6. IS THE COMPLAINANT SATISFIED WITH THE RESOLUTION? ☐ **Yes** ☐ **No**	
a. SIGNATURE OF COMPLAINANT	**DATE (YYYY//MM/DD**

7. IF NOT SATISFIED WITH RESOLUTION OR WITHDRAWN THE COMPLAINT WILL AUTOMATICALLY APPEAL TO THE NEXT COMMAND OR SUPERVISION LEVEL

☐	**Withdraw the Complaint**	**SIGNATURE OF COMPLAINANT**	**DATE (YYYY//MM/DD**

8. THIS FORM AND ALL ATTACHMENTS, AND INQUIRIES WAS FORWARDED TO THE BRIGADE / GROUP LEVEL OF COMMAND OR SUPERVISION ON	**DATE (YYYY//MM/DD**

9. REMARKS

10. SIGNATURE OF COMMANDER/SUPERVISOR	**DATE (YYYY//MM/DD**

Figure 1-2

Figure 1-2. OHNG Discrimination Complaint Form

OHIO NATIONAL GUARD
DISCRIMINATION COMPLAINT FORM – PART IV

1.	**TO BE COMPLETED AT THE BRIGADE / GROUP LEVEL**					
DATE COMPLAINT RECEIVED AT THIS LEVEL						**DATE (YYYYMMDD)**
2.	**WAS THE COMPLAINT**					
a	**ACCEPTED**		**ALL**		**IN PART**	
b	**REFERED**		**ALL**		**IN PART**	**TO WHOM:**
c	**DISMISSED**		**ALL**		**IN PART**	

3. WHAT WAS THE RESULT OF THE COMMANDERS / SUPERVISORS INQUIRY?
☐ **Discrimination Confirmed** ☐ **Discrimination Not Confirmed** ☐ **Discrimination Undetermined**

4. DID YOU ATTEMPT RESOLUTION OF THE COMPLAINT? ☐ **Yes** ☐ **No**	**DATE (YYYY//MM/DD**
5. IF YES, WAS THE COMPLAINT ☐ **Settled** ☐ **Withdrawn**	
6. IS THE COMPLAINANT SATISFIED WITH THE RESOLUTION? ☐ **Yes** ☐ **No**	
a. SIGNATURE OF COMPLAINANT	**DATE (YYYY//MM/DD**

7. IF NOT SATISFIED WITH RESOLUTION OR WITHDRAWN THE COMPLAINT WILL AUTOMATICALLY APPEAL TO THE NEXT COMMAND OR SUPERVISION LEVEL

☐	**Withdraw the Complaint**	**SIGNATURE OF COMPLAINANT**	**DATE (YYYY//MM/DD**

8. THIS FORM AND ALL ATTACHMENTS, AND INQUIRIES WAS FORWARDED TO THE ATAG ON	**DATE (YYYY//MM/DD**

9. REMARKS

10. SIGNATURE OF COMMANDER/SUPERVISOR	**DATE (YYYY//MM/DD**

Figure 1-2

Figure 1-2. OHNG Discrimination Complaint Form

OHIO NATIONAL GUARD
DISCRIMINATION COMPLAINT FORM – PART V

1.	**TO BE COMPLETED AT THE ATAG LEVEL**					
DATE COMPLAINT RECEIVED AT THIS LEVEL						**DATE (YYYYMMDD)**
2.	**WAS THE COMPLAINT**					
a	**ACCEPTED**		**ALL**		**IN PART**	
b	**REFERED**		**ALL**		**IN PART**	**TO WHOM:**
c	**DISMISSED**		**ALL**		**IN PART**	

3. WHAT WAS THE RESULT OF THE COMMANDERS / SUPERVISORS INQUIRY?
☐ **Discrimination Confirmed** ☐ **Discrimination Not Confirmed** ☐ **Discrimination Undetermined**

4. DID YOU ATTEMPT RESOLUTION OF THE COMPLAINT? ☐ **Yes** ☐ **No**	**DATE (YYYY//MM/DD**
5. IF YES, WAS THE COMPLAINT ☐ **Settled** ☐ **Withdrawn**	
6. IS THE COMPLAINANT SATISFIED WITH THE RESOLUTION? ☐ **Yes** ☐ **No**	
a. SIGNATURE OF COMPLAINANT	**DATE (YYYY//MM/DD**

7. IF NOT SATISFIED WITH RESOLUTION OR WITHDRAWN THE COMPLAINT WILL AUTOMATICALLY APPEAL TO THE NEXT COMMAND OR SUPERVISION LEVEL

☐	**Withdraw the Complaint**	**SIGNATURE OF COMPLAINANT**	**DATE (YYYY//MM/DD**

8. THIS FORM AND ALL ATTACHMENTS, AND INQUIRIES WAS FORWARDED TO THE ADJUTANT GENERAL ON	**DATE (YYYY//MM/DD**

9. REMARKS

10. SIGNATURE OF COMMANDER/SUPERVISOR	**DATE (YYYY//MM/DD**

Figure 1-2

Figure 1-2. OHNG Discrimination Complaint Form

OHIO NATIONAL GUARD
DISCRIMINATION COMPLAINT FORM – PART VI

1.	**TO BE COMPLETED BYTHE ADJUTANT GENERAL**					
DATE COMPLAINT RECEIVED BY TAG						**DATE (YYYYMMDD)**
2.	**WAS THE COMPLAINT**					
a	**ACCEPTED**		**ALL**		**IN PART**	
b	**REFERED**		**ALL**		**IN PART**	**TO WHOM:**
c	**DISMISSED**		**ALL**		**IN PART**	

3. WHAT WAS THE RESULT OF THE COMMANDERS / SUPERVISORS INQUIRY?
☐ **Discrimination Confirmed** ☐ **Discrimination Not Confirmed** ☐ **Discrimination Undetermined**

4. DID YOU ATTEMPT RESOLUTION OF THE COMPLAINT? ☐ **Yes** ☐ **No**	**DATE (YYYY//MM/DD**
5. IF YES, WAS THE COMPLAINT ☐ **Settled** ☐ **Withdrawn**	
6. IS THE COMPLAINANT SATISFIED WITH THE RESOLUTION? ☐ **Yes** ☐ **No**	
a. SIGNATURE OF COMPLAINANT	**DATE (YYYY//MM/DD**
7. REMARKS	
10. SIGNATURE OF THE ADJUTANT GENERAL	**DATE (YYYY//MM/DD**

Figure 1-2

Figure 1-2. OHNG Discrimination Complaint Form

OHIO NATIONAL GUARD DISCRIMINATION COMPLAINT FORM – CONTINUATION SHEET

Figure 1-2

Figure 1-2. OHNG Discrimination Complaint Form

Chapter 2
Processing of Complaints

2-1. Initial Contact

Any person covered by this regulation, who believes that he or she has been discriminated against because of race, color, religion, sex, or national origin, and/or feels reprised against based upon a one of the aforementioned protected classes, subject to the control of the OHNG, may initiate the EO complaint process.

2-2. Determining Intent at Initial Contact

a. Generally, the initial contact made by an individual with the SEEM, EO Officer, Leader, Specialist, Assistant, or EO counselor is either to seek general information concerning the EO complaint process or to actually begin the complaint process.

b. Information inquiry. When an individual contacts an EO official seeking information concerning the EO complaint process and is still clearly undecided at the end of the initial contact whether to proceed with the EO complaint process, this contact is called an "information inquiry." Document informational inquiries by use of the OHNG Record of Assistance Form (See figure 2-6). During an information inquiry, the EO official provides general information on the OHNG EO complaint process.

c. Because the timeliness factor is one of the critical elements in complaint processing, the EO Officer or official shall determine the purpose of the individual's initial contact, that is, to seek information concerning the EO complaint process and to record that initial contact accurately.

2-3. Informal Assistance

Informal assistance may include Special Observances, Briefings, Unit Climate Assessments, EO referrals, non- EO related Alternate Dispute Resolution (ADR) and requests for EO program information, to include third party concerns (e.g., commander, supervisor, co-worker, or witness) with an allegation of unlawful discrimination or sexual harassment. The EO office will provide assistance (e.g., referral to chain of command, commander, etc.) and document the visit on the OHNG Record of Assistance Form (Figure 2-6).

a. Do not document specific allegations of unlawful discrimination or sexual harassment or the name of the alleged offender or witness on the OHNG Record of Assistance.

b. Instructions for completing the OHNG Record of Assistance, blocks not covered below are self explanatory:

c. Block 9: Description of Assistance.
(1) Check "General Assistance" when the EO staff provides assistance that is related to the EO program, such as when a person requests information on how to file an EO complaint.
(2) Check "Subject Matter Expert" when an EO specialist serves as an advisor during an EO related investigation or is requested to provide guidance on EO matters.
(3) Check "ADR/Mediation" when EO staff conducts Alternative Dispute Resolution (ADR) or mediation for EO related issues.
(4) Check "Out and About" when the EO staff conducts an Out and About, refer to chapter AFI 36-2706, paragraph 15.1.3. for details.
(5) Check "Briefing" when the EO staff provides a briefing for a commander's call, or similar venue, also include the number of people briefed. Do not record HRE classes to include KPBs as briefings.
(6) Check "UCA" to record when the EO staff completes a UCA; include the UCA type and the number of personnel in the unit.
(7) Check "Non EO Assistance" when the EO staff provides assistance that is not directly related to the EO program, such as when a person asks for advice on how to resolve a general work place dispute.
(8) Check ―Special Observance‖ when the EO staff provides advice or support to special observance committees.

d. Block 10: Area of Concern. Enter a brief summary of why the person contacted the EO office and what the concern is.

e. Block 11: Summary of Assistance. Briefly describe the assistance that was provided, such as suggested course of action to resolve the concern or information provided to the person. Ensure the military EO program scope and limitations are explained.

f. Block 12: Follow-up Actions. Precede each entry with the date. Document all follow-up actions the EO office takes to resolve the issue or concern. The initial follow-up with the complainant (technician and FTNGD) will take place within five calendar days after initial contact. If required, additional follow-up services will take place in five calendar day increments until the complainant requests no further assistance. (**Exception:** When ADR is used to resolve a non-EO issue, conduct follow-up within 30 calendar days). Do not cut and paste a person's memo or email into any area of the OHNG Record of Assistance. The EO specialist should briefly summarize any correspondence obtained during the course of providing assistance.

(1) Time Spent. Document the total time spent. This includes the initial contact and all follow-up time. Time spent should be documented as follows: 15 min = .25, 30 min = .50, 45 min = .75, 1 hour = 1.0.

(2) Date Closed. Enter the date the complainant requests no further assistance.

g. g. If the EO office conducts non-EO facilitation, attach agreement (if there is one) to the OHNG Record of Assistance Form.

2-4. Complaint Intake and Inquiry

a. Complaint intake. When an individual contacts an EO official with the intent of proceeding with an EO matter alleging discrimination on the basis of race, color, religion, sex, national origin, or reprisal, the individual is referred to as the "complainant." When the complainant intends to use the EO process, the EO official will conduct a thorough complaint intake. The complaint intake will be recorded on the OHNG Discrimination Complaint Form (See figure 1-2).

b. The complaint intake procedure involves a determination by the EO official that an individual is alleging prohibited discrimination, and determination about the proper venue to be used to address the individual's concern.

c. Once it has been determined that the matter presented by the individual is appropriate for processing, a complaint intake interview will be conducted by an EO official or counselor. The EO official or counselor will record the date and clarify the facts of the specific incident or personnel action under the matter giving rise to the complaint portion of the OHNG Discrimination Complaint Form.

d. An EO official conducting an intake interview will be considered performing in the role of a counselor. The counseling period begins on the date that the EO official becomes aware of the complainant's intent to proceed and the intake interview must begin within five calendar days of this date.

e. When conducting the intake interview, the EO official or counselor will explain the activity's ADR program, including the differences between ADR and traditional EO counseling. The EO official or counselor will inform the complainant of the right to choose participation in ADR, if deemed appropriate, or traditional EO counseling. The EO official or counselor will explain and provide the complainant a copy of the Complainant's Rights and Responsibilities notice, which informs the complainant of rights and responsibilities in the EO process and the other avenues of redress available for filing allegations of discrimination to include pertinent time frames. (See figure 2-9.)

f. In those instances where the EO official, serving in the role of an EO counselor, conducts the intake interview and the EO counselor conducts the inquiry, the EO official will provide the EO counselor with the OHNG Discrimination Complaint Form as completed to date. Even though the EO official may have provided the notice of rights and responsibilities to the complainant during the intake interview, the counselor will ensure that the complainant fully understands the option to use ADR throughout the entire complaint process and his or her rights and responsibilities as follows:

(1) The complainant may be accompanied, represented, and advised during all counseling interviews by a representative, designated in writing.

(2) During the counseling, the identity of the complainant will not be revealed without written permission from the complainant.

(3) The complainant must cooperate with the EO official or counselor by clearly defining the claim for the inquiry.

(4) Only claims raised in counseling or claims like or related to those raised in counseling may be alleged in a subsequent complaint filed with the OHNG. A claim "like or related to" may include a claim with a different basis of discrimination based on the same facts. Further, a later claim or complaint will be considered like or related to the original complaint if the later claim or complaint adds to or clarifies the original complaint and could reasonably have been expected to grow out of the original complaint during the investigation.

(5) The EO counselor will record all issues alleged to be discriminatory by the complainant on the OHNG Discrimination Complaint Form.

(6) When ADR is not elected, the EO counselor will complete the inquiry in five calendar days and forward the complaint to the appropriate level of command or supervision for review unless the complainant agrees to extend the time limit.

(7) An employee cannot raise allegations of discrimination which are not subject to final administrative review by The Adjutant General.

(8) The complainant will waive the right to file a complaint of discrimination under this regulation if he or she has already filed a timely written grievance on the same matter under a negotiated grievance procedure that allows allegations of discrimination or an appeal on the same matter.

(9) Attorney's fees and other related costs will not be awarded to a prevailing complainant following the Title VI process. A prevailing complainant is not entitled to recover costs that may include witness fees, transcript costs, printing and copying costs, and reasonable out-of-pocket expenses. These are not recoverable in the administrative process and compensatory damages are never available. (10) The complainant has the obligation to mitigate damages.

(11) The complainant has no right to file a civil action in U.S. District Court after a final decision has been rendered by The Adjutant General.

(12) Failure of the complainant to keep the activity EO officer informed of his or her current address could result in dismissal of the complaint.

g. During the intake interview or shortly thereafter, the complainant must elect between ADR, if offered, and traditional EO counseling. The offer of ADR must be presented in writing and the complainant will respond to the offer in writing on the OHNG Discrimination Complaint Form. (See figure 1-2.)

h. If the complainant elects to participate in ADR, the OHNG Discrimination Complaint Form will be so annotated and the EO officer will coordinate mediation.

2-5. Alternate Dispute Resolution

The purpose of ADR is to offer disputing parties an opportunity to openly express their positions and interests in resolving disputes in a mutually satisfactory fashion.

a. The ADR process, especially when used at the earliest stage, restores working relationships and may serve as a preventative measure against future disputes. Additionally, the non-adversarial application of ADR reduces the costs incurred with the traditional administrative or adjudicative processes and affords use of activity resources for mission related programs and activities. The preferred method of ADR within the Ohio National Guard is facilitated mediation with a qualified mediator.

b. The use of ADR is not appropriate in every case. The commander or supervisor, preferably the EO officer, will decide on a case-by-case basis whether it is appropriate to offer ADR to a complainant. For example, the commander or supervisor may wish to limit ADR geographically if extensive travel would be required, or exclude certain issues such as termination or non-selection. The commander or supervisor may not utilize blanket exclusions of disputes from ADR based solely upon the bases involved.

c. The commander or supervisor may include issues that do not fall under the jurisdiction of EO laws for resolution under ADR. However, if resolution of the issue is unsuccessful, non-EO disputes and issues not brought to the attention of the EO official or mediator cannot be accepted for investigation as a part of the complaint unless the issue is like or related to issues raised during the intake process.

d. While it is OHNG policy to attempt to resolve complaints of discrimination at the earliest stage, ADR may be offered by the commander or supervisor at any time during the complaint process.

2-6. Alternative Dispute Resolution Program

a. The OHNG will have available an ADR program. Each Major Subordinate Command (MSC) and Wing will be responsible for implementing an ADR program within its command to resolve disputes. The MSC or Wing Commander will coordinate the implementation of such a program. Programs will comply with NGR 27-1/ANGI 51-12, Alternative Dispute Resolution, 6 Apr 01.

b. MSCs and Wings will use a team approach in implementing an ADR program with participation from their respective EO officers and managers.

c. The ADR program should fit each activity's environment and workforce, but at the same time, it must be fair and conform to the following core principles:

(1) *Voluntary*. Parties must enter into mediation or another offered ADR process knowingly and voluntarily. Participation in ADR is voluntary for the complainant. Once the commander, supervisor or designee has decided to offer ADR and the complainant elects in writing to participate in ADR, both parties have knowingly and voluntarily entered into ADR. Commanders and supervisors must be aware that they have an affirmative duty to cooperate in an ADR process once the decision is made to offer ADR. Likewise, the commander/supervisor and the complainant may "opt out" of ADR at any point prior to resolution and for any reason. Neither the management official designated to participate in the ADR process nor the complainant will be coerced into accepting the other party's offer to resolve the matter.

(2) *Neutral.* The mediator shall have no official, financial, or personal interest in the issue at controversy or in the outcome of the dispute. Since the effectiveness of ADR relies on the perception of neutrality, members of the EO and SJA/legal offices, regardless of training and skill, may not serve as mediators within their MSCs or Wings. EO counselors who possess the requisite training and skills may serve as mediators provided that they have not counseled the case at issue. The EO officer will ensure that the potential mediator is neither acquainted with nor an employee from the same unit or directorate as either the complainant or the management official.

3) *Confidential.* The ADR process is confidential. As a means to promote open and frank discussions between the disputing parties, both parties and their representatives must agree, in writing, that any information disclosed during the ADR process, other than discoverable documentation, will remain confidential whether or not ADR is successful. However, any threat of physical harm or disclosure of waste, fraud, abuse, or any other illegal activity will be exempt from confidentiality and will be reported to the appropriate officials. Both parties must also agree not to request or subpoena the mediator as a witness in any subsequent administrative process or judicial proceeding regarding the dispute at issue. The taking of notes by the parties and their respective representatives is discouraged during the ADR process. Any notes taken by the mediator during the ADR process must be destroyed by the mediator at the conclusion of the ADR process. Information disclosed during the mediation is confidential and shall not be disclosed except as provided by law.

(4) *Enforceable.* If a resolution is achieved, the terms of the resolution will be set forth in a written negotiated settlement agreement that is binding upon both parties. (See figure 2-8 for a sample OHNG Negotiated Settlement Agreement)

d. The ADR program implementation plan will be submitted through the MSC or Wing commander to the SEEM for approval prior to implementation. The written plan must include, at a minimum, the types of ADR that will be offered, the source of the mediators, a description of required training for in-house mediators, and assurance that the activity will ensure participation of a management official with settlement authority.

e. The SEEM is responsible for the administration and oversight of the entire ADR process as it pertains to processing complaints of discrimination in the OHNG and will ensure that reporting requirements under NGR 27-1/ANGI 51-12 are met.

2-7. Mediation

a. Mediation is the preferred ADR method and must be provided in a nonthreatening environment to facilitate open communication between the disputing parties. Although focused on mediation, the procedures described in this section shall apply to any ADR process.

b. The mediator will receive an OHNG Alternate Dispute Resolution Form (See figure 2-7) from the EO Officer or Official to document the event and reference should the parties execute a Negotiated Settlement Agreement (NSA) (See figure 2-8).

c. Participation in mediation by both the complainant and the commander or supervisor is voluntary.

d. The commander or supervisor will determine which management official will participate in the mediation. The management official selected should be one who is authorized to engage in resolution discussions and execute a Negotiated Settlement Agreement. Execution of NSAs for full-time personnel necessarily involves the Human Resources Office.

e. Prior to the scheduled date of mediation, the EO officer will arrange for personnel and legal office representatives to be available for management representative consultation during the mediation.

f. Both the complainant and the management official have a right to representation during the complaint process. Management officials will be represented by MSC or Wing Judge Advocates. The mediator will decide to what extent personal and agency representatives will actively participate in the process.

g. The role of the mediator is to facilitate the mediation process rather than to evaluate the positions of the parties.

h. If mediation is successful, the mediator will provide the EO officer, in writing, with all terms agreed upon so that a NSA can be prepared. (See figure 2-8.) The settlement agreement must be signed by the complainant, the complainant's attorney or representative (if applicable); and the management official with settlement authority. A copy of the NSA will be filed in the complaint file.

i. If a resolution was not reached during mediation, the mediator will complete the Alternate Dispute Resolution Form (see figure 2-7) stating that mediation was attempted and was unsuccessful and will forward the form to the EO Official for processing.

j. If mediation is unsuccessful during the complaint process, the EO official will annotate the OHNG Discrimination Complaint Form to reflect that mediation was unsuccessful. The EO official will review the intake portion of the complainant to ensure that all EO related issues raised during mediation are included and issue the complainant a Notice of Right to File a Complaint of Discrimination. The notice will inform the complainant that in filing a complaint, he or she may only raise those alleged discriminatory issues addressed during mediation. The complainant will also be informed that issues like or related to those addressed during mediation can be made the subject of an EO complaint. The OHNG Discrimination Complaint Form and the Notice of Right to File a Complaint of Discrimination will be filed in the complaint file.

2-8. Qualifications and Training Requirements for Mediators

a. Any person who serves as a mediator in the MSC or Wing ADR Program must be familiar with the following.
(1) Title VI of the Civil Right Act of 1964, as amended.
(2) Title 32 of the United States Code.
(3) The EO process pursuant to this regulation.

b. Individuals serving as mediators in an EO dispute must:
(1) Have received at least 40 hours of basic mediation skills training from the Defense Equal Opportunity Management Institute or an accredited institution.
(2) Have participated as a neutral in at least 3 ADR processes.

2-9. Filing a Complaint

a. A complaint of discrimination shall be filed within 15 calendar days of receipt of the verbal or written Notice of Right to File a Complaint of Discrimination unless extenuating circumstances occur. An individual who files a complaint of discrimination is referred to as "the complainant" during the complaint process.

b. Complaints should be submitted on an OHNG Discrimination Complaint Form. Complaints submitted in letter format, while not preferred, are acceptable if they meet all the requirements of the OHNG Discrimination Complaint Form. If the complainant submits a letter rather than an OHNG Discrimination Complaint Form, the EO officer will complete an OHNG Discrimination Complaint Form and attach it to the letter provided by the complainant.

c. Formal complaints may be submitted to—
(1) The activity EO officer,
(2) The activity commander or supervisor, or
(3) The SEEM.

d. All activity posters and similar publications will recommend that the complainant submit a copy of his or her complaint to the activity EO officer regardless of with whomever else the complaint is filed. Anyone other than the activity EO officer who receives a complaint will immediately transmit the complaint to the activity EO officer, indicating the date the complaint was received if it is not postmarked. EO counselors should encourage complainant's to submit their complaints to the activity EO officer to ensure timely processing.

e. A complaint is timely if it is delivered in person, via facsimile, commercial overnight delivery or postmarked before the expiration of the 15 calendar day filing period or if, in the absence of a legible postmark; it is received within five calendar days after the expiration of the 15 calendar day filing period. If the complaint is mailed, the date of filing is the postmark date, not the date received by the activity. The postmarked envelope will be attached to the complaint and retained in the complaint file. If commercial overnight delivery is used, the date of filing is the date it is delivered to the commercial overnight delivery service.

f. Upon receipt of a complaint, the EO officer will notify the SEEM of the activity or installation against which the complaint is filed, code the claims giving rise to the complaint, annotate the docket number on the complaint, and ensure the complaint data is accurate. The complaint and all attachments will be maintained in the complaint file.

2-10. Receipt and acknowledgement of a complaint

a. Within five calendar days of receipt of a complaint, the EO officer must acknowledge receipt of the complaint and either dismiss the complaint or accept the complaint and forward it to the appropriate command or supervisory level for processing. The EO officer will acknowledge receipt of the complaint in writing. The acknowledgement letter shall inform the complainant and representative of the date on which the complaint was received and considered filed.

b. If the complaint contains vague or overly general claims, the EO officer will request clarification in the acknowledgement letter. The complainant and representative will be advised that failure to provide specific information that clearly defines the claims, within 15 calendar days from the date of receipt of a request for clarification, may result in dismissal of the complaint for failure to provide relevant information.

c. Upon receipt of a complaint, the activity commander or supervisor will serve as the OHNG representative. The name, address, telephone number, facsimile number, and e-mail address of the OHNG representative will be placed in the complaint file.

d. Upon issuance of the Acknowledgement of Receipt, the EO officer will provide a copy of the completed OHNG Discrimination Complaint Form and all other available documents to the OHNG representative.

2-11. Initial Complaints by Title 32 Technician, IADT, and AT Personnel

a. All complaints in the OHNG will begin at the lowest appropriate command or supervisory level. Technician, IADT, and AT personnel have one hundred and eighty (180) days from the date of the alleged discrimination or the date that the individual became aware or reasonably should have become aware of the discriminatory event or action in which to file a complaint. A complaint of discrimination, even one which is presented verbally, shall be put in writing on OHNG Discrimination Complaint Form with the lowest appropriate command or supervisory level box checked. At whatever level of command or supervision a complaint is filed, the commander or supervisor at that level will initiate a Commander's / Supervisor's Reprisal Prevention Plan (Figure 2-3).

b. Initial complaints will have no case number assigned. A case number will be assigned only after the complaint has proceeded to the level of The Adjutant General. The complainant's immediate commander or supervisor should be the

first step in attempting resolution and may be brought to the attention of any member of the chain of command or supervision, the equal opportunity representative or equal opportunity advisor, at the lowest level of command or supervision where a remedy or resolution is possible. For example, if a complainant who is a member of a unit at the company or squadron level brings a complaint of discrimination by another member or by a member of the chain of command or supervision below the commander, the complaint should remain at that level and a resolution attempted. The commander or supervisor at that level has 30 calendar days (or through the following drill weekend) to resolve the complaint. If the complaint is brought against the company commander, squadron commander, or a supervisor of similar position, then the complaint will be brought to a member of the chain of command or supervision at the battalion or group level, or to the next level of commands equal opportunity representative at the next higher level of command or supervision. Regardless of the level at which a complaint is filed, the commander or supervisor at that level has 30 calendar days or through the next drill period to resolve the complaint to the satisfaction of the complainant. The only means of appeal of a complaint is to proceed with the complaint to the next command or supervisory level.

c. Personnel who believe they have been illegally discriminated against are encouraged to discuss their complaints with and to seek assistance from the SEEM, an Equal Opportunity Counselor, their Equal Opportunity Advisor or Leader (ARNG) or their Wing Equal Opportunity Officers and Specialists (ANG). Such personnel will work with the complainant and others involved in the complaint to attempt to informally resolve the complaint. Figure 2-1 represents the discrimination complaint process and should be used to advise complainants on procedures for filing complaints under this regulation. EO personnel will assist the complainant in clarifying issues and allegations and reducing them to writing on the complaint form and generally assist them in completing the form. EO personnel will also counsel the complainant on what constitutes illegal discrimination. Upon the filing of a complaint, EO personnel will keep the complainant informed of the status of his/her complaint.

d. EO personnel will advise commanders and supervisors on processing a complaint and may conduct basic fact finding into allegations of discrimination on behalf of the commander or supervisor, but will not be used to conduct formal inquiries of any complaints in which they may have a role in processing, so that they may continue to be a resource and assist the complainant, the commander or the supervisor in attempts to resolve the matter to the satisfaction of the complainant and to provide advice and assistance on the proper processing of the complaint. If in the course of obtaining information about a complaint, the interviewer suspects that the person being interviewed has violated the Ohio Code of Military Justice or other applicable criminal statute (for example, cases of rape may be punishable under Title 29 of the Ohio Revised Code), the interview will be terminated and the appropriate members of the chain of command and the SJA notified under the Illegal Activities Policy. (If such situations arise in a formal inquiry of a discrimination complaint, see the NGB Investigator Procedural Manual.)

e. Figure 2-1 represents the discrimination complaint process and should be used to advise complainants on procedures for filing complaints under this regulation. EO personnel will assist the complainant in clarifying issues and allegations and reducing them to writing on the complaint form and generally assist them in completing the form. EO personnel will also counsel the complainant on what constitutes illegal discrimination. Upon the filing of a complaint, EO personnel will keep the complainant informed of the status of his/her complaint.

f. Equal Opportunity Leaders, Advisors, Specialists, Officers or other personnel involved in assisting with the resolution of a military complaint of discrimination, should be aware and should make the complainant aware that a complaint is resolved by action to make the complainant whole and to restore benefits and privileges lost because of the discrimination or harassment. However, compensatory damages and/or attorney fees are not authorized in a complaint initiated by a National Guard Technician whose position is irreducibly military in nature and is covered under Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000-e). Further, the state may authorize reinstatement in the OHNG for a complainant who was separated due to discrimination and who is otherwise qualified, but it cannot authorize back pay or retroactive promotion triggering entitlement to back pay. The state may support a complainant's appeal to the Army or Air Force Boards for Correction of Military Records, if this would be appropriate in making the complainant whole; but the State is not bound by the orders of those boards; and those boards are not empowered to award back pay or retirement points for service not performed as a member of the Ohio Army or Air National Guard.. Also, the complainant should be aware that disciplinary action against the individual responsible for substantiated discrimination is within the discretion of the commander or supervisor and is not the right of the complainant to demand as part of a resolution. While punitive action may be appropriate and should be considered by the commander or supervisor as a means of maintaining good order and discipline, it does nothing to make the complainant whole.

g. Even when a complaint is withdrawn, commanders and supervisors will attempt to eliminate underlying causes of all complaints.

2-12. Initial Complaints by Title 32 FTNGD and ADOS Personnel

a. All complaints in the OHNG must begin at the lowest appropriate command or supervisory level. FTNGD and ADOS personnel have one hundred and eighty (180) days from the date of the alleged discrimination or the date that the individual became aware or reasonably should have become aware of the discriminatory event or action in which to file a complaint. A complaint of discrimination, even one which is presented verbally, shall be put in writing on OHNG Discrimination Complaint Form with the lowest appropriate command or supervisory level box checked. At whatever level of command or supervision a complaint is filed, the commander or supervisor at that level will initiate a Commander's/Supervisor's Reprisal Prevention Plan (Figure 2-3).

b. Initial complaints will have no case number assigned. A case number will be assigned only after the complaint has proceeded to the level of The Adjutant General. The complainant's immediate commander or supervisor should be the first step in attempting resolution and may be brought to the attention of any member of the chain of command or supervision, the equal opportunity representative or equal opportunity advisor, at the lowest level of command or supervision where a remedy or resolution is possible. For example, if a complainant who is a member of a unit at the company or squadron level brings a complaint of discrimination by another member or by a member of the chain of command or supervision below the commander, the complaint should remain at that level and a resolution attempted. The commander or supervisor at that level has 14 calendar days to resolve the complaint. If the complaint is brought against the company commander, squadron commander, or a supervisor of similar position, then the complaint will be brought to a member of the chain of command or supervision at the battalion or group level, or to the next level of commands equal opportunity representative at the next higher level of command or supervision. Regardless of the level at which a complaint is filed, the commander or supervisor at that level has 14 calendar days to resolve the complaint to the satisfaction of the complainant. The only means of appeal of a complaint is to proceed with the complaint to the next command or supervisory level.

c. Military members who believe they have been illegally discriminated against are encouraged to discuss their complaints with and to seek assistance from the SEEM, an Equal Opportunity Counselor, their Equal Opportunity Leader or Advisor (ARNG), or their Wing Military Equal Opportunity Specialists and Officers (ANG). Such personnel will work with the complainant and others involved in the complaint to attempt to informally resolve the complaint.

d. Figure 2-2 represents the discrimination complaint process and should be used to advise complainants on procedures for filing complaints under this regulation. EO personnel will assist the complainant in clarifying issues and allegations and reducing them to writing on the complaint form and generally assist them in completing the form. EO personnel will also counsel the complainant on what constitutes illegal discrimination. Upon the filing of a complaint, EO personnel will keep the complainant informed of the status of his/her complaint.

e. EO personnel will advise commanders and supervisors on processing a complaint, and may conduct basic fact finding into allegations of discrimination on behalf of the commander or supervisor, but will not be used to conduct formal inquiries of any complaints in which they may have a role in processing, so that they may continue to be a resource and assist both the complainant and the commander or supervisor in attempts to resolve the matter to the satisfaction of the complainant and to provide advice and assistance on the proper processing of the complaint. If, in the course of obtaining information about a complaint, the interviewer suspects that the person being interviewed has violated the Ohio Code of Military Justice or other criminal codes, the interview will be terminated and the appropriate members of the chain of command and the SJA notified under the Illegal Activities Policy. (If such situations arise in a formal inquiry of a discrimination complaint, see the NGB Investigator Procedural Manual.)

f. Equal Opportunity Counselors, Leaders, Advisors, Officers and Specialists involved in assisting with the resolution of a military complaint of discrimination should be aware and should make the complainant aware that a complaint is resolved by action to make the complainant whole and to restore benefits and privileges lost because of the discrimination or harassment. However, compensatory damages and/or attorney fees are not authorized in a military complaint. Further, the state may authorize reinstatement in the OHNG for a complainant who was separated due to discrimination and who is otherwise qualified, cannot authorize back pay or retroactive promotion. The state may support a complainant's appeal to the Army or Air Force Boards for Correction of Military Records; but is not bound by their orders and cannot under current law abide by orders for back pay or promotion leading to back pay. Complainants should be aware that disciplinary action against the individual responsible for substantiated discrimination is within the

discretion of the commander or supervisor and is not the right of the complainant to demand as part of a resolution. While punitive action may be appropriate and should be considered by the commander or supervisor as a means of maintaining good order and discipline, it does nothing to make the complainant whole.

g. Even when a complaint is withdrawn – commanders and supervisors will attempt to eliminate underlying causes of all complaints.

2-13. Intermediate Level Complaints by Title 32 Technician, IADT, and AT Personnel

a. A complaint will be considered at the "intermediate" level of command or supervision once it has been processed at the unit or lowest level possible and no settlement has been reached.

b. If an initial complaint remains unresolved after 30 days or through the drill weekend following the filing of the complaint, the complainant may:

(1) Withdraw the complaint. Complainant will sign the OHNG Discrimination Complaint Form indicating withdrawal of the complaint.

(2) Proceed with the complaint to the next appropriate level of command or supervision.

c. A complaint will be filed at the next higher command or supervisory level above where the initial complaint resolution attempt was unsuccessful. For example, if a complaint is filed at the company or squadron level, and resolution is not successful, the complaint will be forwarded to the battalion or group level of command.

d. At whatever level of command or supervision a complaint is filed, the commander or supervisor at that level will initiate a Commander's/Supervisor's Reprisal Prevention Plan (Figure 2-3). A copy of all complaints will be sent to the SEEM for review. The SEEM has five calendar days to review the merits of the complaint. Once the SEEM has reviewed the complaint the commander or supervisor at the intermediate level has 60 calendar days from the date the SEEM has concluded his or her review to:

(1) Complete a procedural review of the complaint to determine whether the complaint will be:

(a) Accepted (in whole or in part);

(b) Dismissed (in whole or in part);

(c) Referred (in whole or in part)

(2) Complete an EO inquiry of all accepted issues in a complaint in accordance with Chapter 3 of this regulation and the NGB Investigator Procedural Manual. Commanders or supervisors will appoint only impartial investigators who are not otherwise involved in the processing of the complaint and who are outside the chain of command or supervision of either the complainant or the named responsible person(s).

(3) Complete an SJA review of the inquiry for legal sufficiency.

(4) Attempt resolution and take corrective action where appropriate.

e. If the complaint is resolved, the commander or supervisor will forward the case file to the SEEM. The case file will include the OHNG Discrimination Complaint Form, the Appointment of the Investigator, the Report of Inquiry (ROI), the legal review of the ROI (to the extent it is unprivileged), any resolution agreement, any correspondence related to the complaint and a report of corrective action or disciplinary action taken, where appropriate.

f. If the complaint is unresolved at the end of 60 days, the case file will be automatically forwarded on appeal to the next level of command or supervision unless the complainant withdraws the complaint in writing, so indicating on OHNG Discrimination Complaint Form.

g. All successive command or supervision levels have 60 days to review the case and attempt resolution of the complaint.

(1) If the complaint is resolved to the satisfaction of the complainant or withdrawn at any command or supervision level, the complainant will so indicate by signing the OHNG Discrimination Complaint Form and the entire case file will be forwarded to the SEEM for final disposition.

(2) Upon receipt of any formal complaint case file by the SEEM, wherein the formal complaint was withdrawn or resolved, the SEEM will retain a copy of the OHNG Discrimination Complaint Form for administrative closure of the case.

(3) Upon receipt of any formal complaint case file by the SEEM, wherein the formal complaint was dismissed, in whole or in part, the SEEM will review the dismissal to determine compliance with paragraph 2-15 below. If the SEEM

concurs with the dismissal, he/she will retain a copy of the OHNG Discrimination Complaint Form, to include the reason(s) for dismissal. The Staff Judge Advocate (SJA) will conduct a final review of the dismissal. If SJA concurs with a dismissal (partial or total dismissal), a letter of concurrence will be sent to the complainant by the SEEM. If SJA does not concur, the dismissed issues will be remanded to the SEEM for processing. In cases of partial dismissal, the chain of command or supervision will continue to process accepted issues concurrently with SJA review of dismissed issues. If the SEEM does not concur with the dismissal, he/she will remand the dismissed issue(s) back to the appropriate commander or supervisor for processing of the complaint. In cases of dismissal of a complaint in whole, the same process applies. The SEEM will first review the dismissal for compliance with paragraph 2-15 below. If the SEEM does not concur, the complaint will be remanded to the appropriate commander or supervisor for processing. If the SEEM concurs with the dismissal in whole, the complaint will be forwarded to SJA with a memorandum explaining the reason(s) for the dismissal. If SJA concurs, SJA will provide a letter administratively closing the case. If SJA does not concur, the complaint will be remanded to the SEEM for processing. Complaints filed at the NGB level will be assigned a case number and referred to the SEEM for processing in accordance with this chapter.

(4) If the complaint remains unresolved at The Adjutant General level after 90 days, the entire case file will be forwarded to SJA with a request from The Adjutant General or designee for consultation in order to render a final decision. At this juncture, The Adjutant General may elect to request guidance from NGB-EO or NGB-JA. In all cases The Adjutant General is the final level of appeal authority and issues final decisions in all complaints of discrimination processed under this regulation.

2-14. Intermediate Level Complaints by Title 32 FTNGD and ADOS Personnel

a. A complaint will be considered at the "intermediate" level of command or supervision once it has been processed at the unit or lowest level possible and no settlement has been reached.

b. If an initial complaint remains unresolved after 14 days or through the drill weekend following the filing of the complaint, the complainant may:

(1) Withdraw the complaint. Complainant will sign the OHNG Discrimination Complaint Form indicating withdrawal of the complaint.

(2) Proceed with the complaint to the next appropriate level of command or supervision.

c. A complaint will be filed at the next higher command or supervisory level above where the initial complaint resolution attempt was unsuccessful. For example, if a complaint is filed at the company or squadron level, and resolution is not successful, the complaint will be forwarded to the battalion or group level of command.

d. At whatever level of command or supervision a complaint is filed, the commander or supervisor at that level will initiate a Commander's/Supervisor's Reprisal Prevention Plan (Figure 2-3.). A copy of all complaints will be sent to the SEEM for review. The SEEM has five calendar days to review the merits of the complaint. Once the SEEM has reviewed the complaint the commander or supervisor at the intermediate level has 14 calendar days from the date the SEEM has concluded his or her review to:

(1) Complete a procedural review of the complaint to determine whether the complaint will be:

(a) Accepted (in whole or in part);

(b) Dismissed (in whole or in part);

(c) Referred (in whole or in part)

(2) Complete an EO inquiry of all accepted issues in a complaint in accordance with Chapter 3 of this regulation and the NGB Investigator Procedural Manual. Commanders or supervisors will appoint only impartial investigators who are not otherwise involved in the processing of the complaint and who are outside the chain of command or supervision of either the complainant or the named responsible person(s).

(3) Complete a SJA review of the inquiry for legal sufficiency.

(4) Attempt resolution and take corrective action where appropriate.

e. If the complaint is resolved, the commander or supervisor will forward the case file to the State Equal Employment Manager. The case file will include the formal complaint form, the Appointment of the Investigator, the Report of Inquiry (ROI), the legal review of the ROI (to the extent it is unprivileged), any resolution agreement, any correspondence related to the complaint, and a report of corrective action or disciplinary action taken, where appropriate.

f. If the complaint is unresolved at the end of 14 calendar days, the case file will be automatically forwarded on appeal to the next level of command or supervision unless the complainant withdraws the complaint in writing, so indicating on OHNG Discrimination Complaint Form.

g. All successive command or supervision levels have 14 days to review the case and attempt resolution of the complaint.

(1) If the complaint is resolved to the satisfaction of the complainant or withdrawn at any command or supervision level, the complainant will so indicate by signing the OHNG Discrimination Complaint Form and the entire case file will be forwarded to the State Equal Employment Manager (SEEM) for final disposition.

(2) Upon receipt of any formal complaint case file by the SEEM, wherein the formal complaint was withdrawn or resolved, the SEEM will retain a copy of the OHNG Discrimination Complaint Form for administrative closure of the case.

(3) Upon receipt of any formal complaint case file by the SEEM, wherein the formal complaint was dismissed, in whole or in part, the SEEM will review the dismissal to determine compliance with paragraph 2-5 below. If the SEEM concurs with the dismissal, he/she will retain a copy of the OHNG Discrimination Complaint Form, to include the reason(s) for dismissal. The SJA will conduct a final review of the dismissal. If the SJA concurs with a dismissal (partial or total dismissal), a letter of concurrence will be sent to the complainant by the SEEM. If the SJA does not concur, the dismissed issues will be remanded to the SEEM for processing. In cases of partial dismissal, the chain of command or supervision will continue to process accepted issues concurrently with SJA review of dismissed issues. If the SEEM does not concur with the dismissal, he/she will remand the dismissed issue(s) back to the appropriate commander or supervisor for processing of the complaint. In cases of dismissal of a complaint in whole, the same process applies. The SEEM will first review the dismissal for compliance with paragraph 2-15 below. If the SEEM does not concur, the complaint will be remanded to the appropriate commander or supervisor for processing. If the SEEM concurs with the dismissal in whole, the complaint will be forwarded to SJA with a memorandum explaining the reason(s) for the dismissal. If the SJA concurs, the SJA will provide a letter administratively closing the case. If the SJA does not concur, the complaint will be remanded to the SEEM for processing. Complaints filed at the NGB level will be assigned a case number and referred to the SEEM for processing in accordance with this chapter.

(4) If the complaint remains unresolved at The Adjutant General level after 90 days, the entire case file will be forwarded to the SJA with a request from The Adjutant General or their designee for consultation in order to render a final decision. At this juncture The Adjutant General may elect to request guidance from NGB-EO or NGB-JA. In all cases, The Adjutant General is the final level of appeal authority and issues final decisions in all complaints of discrimination processed under this regulation.

2-15 Acceptance, Dismissal, or Referral, of Complaints

a. Complaints of discrimination will be accepted for processing under this regulation unless they are dismissed or referred for procedural reasons described below. Such dismissal or referral will not be based on the merit of the complaint. Determination as to whether any allegation in the complaint has validity and merit will be made only after conducting the inquiries or investigations, as prescribed in Chapter 3. Complaints that have been accepted for processing may later be dismissed or withdrawn, as described below.

b. Any allegations of discrimination in a complaint or the complaint in its entirety will be dismissed for the following reasons: requests for waivers of dismissal can be forwarded to the State Equal Employment Manager, Ohio National Guard, ATTN: NGOH-HRO-E, 2825 West Dublin Granville Rd, Columbus, OH 43235-2789.

(1) **Untimely**. If the complaint is filed more than 180 calendar days from the date of the alleged discrimination or the date that the individual became aware or reasonably should have become aware of the discriminatory event or action.

(2) **Duplicative**. If the allegations are identical to the complainant's allegations that have been already filed or decided.

(3) **Not in purview**. Allegations by persons not covered by this regulation. (See applicability and Para 1- 6, e above). Also included are situations over which the OHNG has no jurisdiction or authority to remedy.

(4) **Failure to state a claim of discrimination**. When one or more allegations in a complaint do not affect a term, benefit, or condition of membership or is not based on illegal discrimination because of race, color, religion, gender (to include sexual harassment), national origin, or reprisal related to prior engagement in a protected EO activity, such allegations will not be processed under this regulation.

(5) **Statutory or regulatory restrictions**. Complaints that are based on statutory or regulatory restrictions will not be processed under this regulation; for example, restrictions on assignment of women to certain combat positions could not be accepted as a complaint of gender discrimination.

(6) **The Complaint or Issue is Moot**. Even if discrimination were substantiated, no actions beyond those already taken would be required. A moot issue or complaint is defined as one without legal significance, through having been previously decided or settled.

(7) **Unrelated information**. Complaint raises a matter that was not brought to the attention of EO and is not like or related to the matter addressed by the EO Officer.

(8) **Complainant cannot be located**. A complaint may be dismissed when the complainant cannot be located, provided that reasonable efforts have been made to locate the complainant, and the complainant has not responded within 15 days to a notice of proposed dismissal sent by certified mail, return receipt requested, to his or her last known address.

(9) **Failure to respond or proceed in a timely manner**. A complaint may be dismissed where the agency has provided complainant with a written request to provide relevant information or otherwise proceed with the complaint, and complainant has failed to respond to the request within 15 days of receipt, as evidenced by the signed, certified mail receipt (or proof of refusal to accept), or the response does not address the agency's request, provided that the request included a notice of proposed dismissal and further provided that there is otherwise insufficient available information to adjudicate the complaint.

(10) **Dissatisfaction with the EO Process**. A complaint may be dismissed under this provision where the complainant alleges dissatisfaction with the processing of a complaint.

a. The EO officer will add a memorandum for record to the complaint file of the pending complaint annotating complainant's concerns and any action taken to resolve the complainant's concerns. If no action was taken to resolve the complainant's concerns, the memorandum for record will explain the reasons for not taking action.

b. The notice of dismissal must inform the complainant that if his or her concerns have not been resolved formally, he or she may present those concerns to The Adjutant General if a hearing is requested and before The Adjutant General issues a decision in the underlying complaint.

c. The notice of dismissal will inform the complainant that he or she has the burden to prove improper processing, and that concerns regarding improper processing raised after a decision has been issued in the complaint will not be accepted by The Adjutant General.

(11) **Abuse of the EO Process**.

a. A clear pattern of misuse of the EEO process requires evidence of multiple complaint filings and evidence of circumventing other administrative processes, retaliating against the Ohio National Guard's processes, or overburdening the EO complaint system. Numerous filings alone are not sufficient bases for determining that there has been an abuse of the process. However, multiple filings on the same issues, lack of specificity in the allegations, and the filing of complaints on claims previously raised may be considered when deciding whether a complainant has engaged in a pattern of abuse of the EO process.

b. A complaint that has been accepted may be dismissed at any stage of processing if the complainant fails to cooperate with the inquiry, investigation, or requests for information. A complainant must be notified in writing using Notice of Proposed Dismissal of Complaint, Figure 2-4. The complaint will be dismissed in writing using Notice of Dismissal of Complaint, Figure 2-5. Proof of receipt of these notices by the complainant is required, either by signature of the complainant acknowledging receipt or by a certified mail receipt. When a complaint is dismissed on the basis of this paragraph, the case file, to include the notices to the complainant and the proofs of receipt, will be forwarded to the SEEM, who will provide a copy of the file to SJA with a request for administrative closure.

c. A complaint may be withdrawn at any stage of processing by the complainant. Such withdrawal must be voluntary, and so indicated in writing, by signature of the complainant and date of withdrawal on the OHNG Discrimination Complaint Form.

d. Dismissal or withdrawal of a complaint does not lessen responsibility of the chain of command or supervision to determine the merits and validity of the allegations that had been raised and to take corrective action as appropriate. Commanders or supervisors will attempt to assist and resolve the member's problems, take appropriate corrective action, when required, and advise the member of other proper sources of assistance, such as chaplains, legal advisors, personnel officers, or inspectors general. When appropriate, commanders and supervisors will refer such allegations to these other offices. If a member disagrees with the commander's or supervisor's determination that an allegation raised by him or her is not based on discrimination, he or she may appeal that determination to the next level of the command or supervision.

2-16. Time Limits

Time limits have been established to ensure that complaints are processed expeditiously and to ensure the availability of witnesses and information needed for investigation and resolution of complaints. These time limits take into consideration the limited availability of personnel on drill weekends. When participants in the complaint process are technician or FTNGD personnel, a reduction in these time limits is appropriate. The technician supervisory chain, in coordination with the commander, will assist in resolving and processing complaints of discrimination filed by FTNGD personnel, particularly in those cases where all parties involved are members of the technician support force, to include Title 32 FTNGD/ADOS, Title 32 Technicians (competitive or excepted service). (See Para 1-8 for Title 32 Technician, IADT, and AT personnel full-time personnel and Para 1-9 for time limits for FTNGD/ADOS personnel covered by this regulation).

a. A complaint must be filed within 180 calendar days from the date of the alleged discrimination or the date that the individual became aware or reasonably should have become aware of the alleged discriminatory event or action.

b. For Technicians, IADT, and AT personnel, the lowest level of command or supervision will complete all required actions in accordance with Para 2-11, within 30 calendar days or through the next drill weekend after receipt of initial complaint.

c. For FTNGD and ADOS members, the lowest level of command or supervision will complete all required actions in accordance with Para 2-12, within 14 calendar days after receipt of initial complaint.

d. An initial complaint not resolved to the satisfaction of the complainant will, at the election of the complainant, either be withdrawn or be forwarded to the next level of command or supervision.

e. The commander or supervisor at the level where the initial complaint was processed will meet with the complainant to determine whether the complainant wishes to withdraw the complaint. If the complainant does not wish to withdraw the complaint, the complainant should fill out item number 16, under the appropriate command or supervisory level, on the OHNG Discrimination Complaint Form. Each command or supervisory level has a “Part” of the OHNG Discrimination Complaint Form. For instance, Part –II of the OHNG Discrimination Complaint Form pertains to actions occurring at the “Company” or “Flight” command or supervisory level. An initial complaint that is not withdrawn, at the option of the complainant, and becomes an intermediate complaint, will be filed at the next higher level of command or supervision. The commander or supervisor will immediately forward the complaint form, along with any documentation gathered during the informal process, to the next higher level commander. The next level commander or supervisor will ensure that all required actions in Chapter 2 are completed within the allotted number of calendar days after the receipt of the intermediate complaint from the subordinate commander or supervisor.

f. For Technicians, IADT, and AT personnel, a complaint that is unresolved at the lowest level of command or supervision after 60 calendar days will be automatically appealed to the next command level, unless the complainant, in writing, withdraws the complaint. Each successive level of command or supervision has 60 calendar days to reach resolution or the complaint will be automatically appealed to the next command or supervision level.

g. For FTNGD and ADOS members, a complaint that is unresolved at the lowest level of command or supervision after 14 calendar days will be automatically appealed to the next command level, unless the complainant, in writing, withdraws the complaint. Each successive level of command or supervision has 14 calendar days to reach resolution or the complaint will be automatically appealed to the next command or supervision level.

h. When a complaint is filed at The Adjutant General level, such complaint will remain at The Adjutant General level and a formal investigation under the provisions of Chapter 3 of this regulation will be conducted.

i. The goal of the Discrimination Complaint System is to expedite processing so that a resolution, settlement, or final decision is issued not later than 1 year after filing of a formal complaint.

2-17. Allegations of Discrimination Received by NGB

When NGB receives allegations of discrimination from a complainant or a third party on behalf of the complainant and such allegations do not constitute a complaint filed under provisions this regulation, such allegations will be processed as

specified in these paragraphs above. Third parties referred to above, may include Inspectors General or other members of the Defense Department who refer allegations of discrimination to NGB; members of State or local governments; members of Congress or the executive branch; organizations writing on behalf of the complainant; or any other individual writing on behalf of the complainant.

a. All such allegations of discrimination will be assigned a case number by NGB (see Chapter 4) and referred to State NG officials for inquiry and processing.

b. If it is determined that the complainant is alleging discrimination that falls within the purview of this regulation, the complaint will be forwarded for processing as described in the paragraphs above. The complainant will be provided assistance in informal resolution of the complaint or formal filing of the complaint.

c. If it is determined that the allegations do not fall within the purview of this regulation the complainant will be advised of actions taken to refer the complaint or of the proper channels to seek redress.

d. The Adjutant General or his/her designee will provide appropriate response(s) to any third party who brought the allegation of discrimination to the attention of NGB. A copy of the response will be furnished to NGB-EO.

e. NGB-EO will be advised when one of the following actions has occurred so that the inquiry may be administratively closed:

(1) The complaint has been resolved to the satisfaction of the complainant.

(2) The complainant has filed a complaint in accordance Chapter 2 of this regulation. In such instance the processing of the allegations of discrimination will be discontinued under this paragraph and will be processed in accordance with the paragraphs above. A new case number will be assigned whenever a complaint after the complaint has proceeded to the next appropriate level and attained Joint Force Headquarters visibility.

(3) The allegations of discrimination have been referred for processing under another regulation or the complainant has been advised of other appropriate channels for seeking redress.

2-18. Allegations against General Officers, General Officers Select, Colonels and Colonels Select

All allegations of discrimination made against a general officer or general officer select/Colonel promotable, Colonels (O-6), Colonels select, and Lieutenant Colonels (promotable) personally (as opposed to those naming a general officer by virtue of his/her position) will be referred to the Ohio National Guard Inspector General or SEEM for forwarding and processing through IG channels to SAF/IGS and DA-IG, as appropriate, in accordance with AFI 90-301 and AR 20-1.

2-19. Complaints against or Outside the Chain of Command or Supervision

a. When a member believes that his or her commander or supervisor was responsible for the alleged discrimination, the member will file the formal complaint with the next higher commander or supervisor in the chain of command or supervision.

b. When the first person in a member's chain of command or supervision is The Adjutant General and that member believes that The Adjutant General is personally responsible for the alleged discrimination, the complaint will be processed as required by Para 2-18 above.

c. When a member alleges that discrimination was caused by individuals in an organization that is not commanded by that member's normal chain of command or supervision, the complaint will be filed with The Adjutant General. The Adjutant General will refer the complaint for processing by the lowest command level or supervision of the appropriate organization.

(1) If the complaint involves another State's NG organization, The Adjutant General will forward the complaint to that State for processing.

(2) If the complaint involves an active component organization, The Adjutant General will forward the complaint to the appropriate active component commander for processing.

d. Applicants for membership in the OHNG may file a discrimination complaint with the State Recruiting and Retention Manager or with the SEEM.

e. Complaints from other than members or applicants may be filed with The Adjutant General of the State involved.

2-20. Processing at The Adjutant General Level

If the complaint proceeds unresolved to The Adjutant General or if The Adjutant General is the lowest level of command in a particular complaint, it will be processed as specified in this paragraph. The SEEM will administratively process discrimination complaints that reach The Adjutant General unresolved or that were filed with The Adjutant General. The SEEM will coordinate the processing with the Judge Advocate, and other staff members, as appropriate.

a. Upon receipt of the complaint, the SEEM will immediately assign a case number if one has not already been assigned.

b. The SEEM will provide the complaint case file to The Adjutant General for review of the complaint, inquiry(ies) and/or investigation(s) of subordinate commander(s) or supervisor (s), resolution attempts by subordinate commander(s) or supervisor(s), and their decisions.

c. If the complainant disagreed with a subordinate commanders' or supervisors' decision that the complaint, in whole or in part, was dismissed or did not contain allegations based on discrimination, The Adjutant General may reverse that decision or take action as specified in paragraphs 2-22, below.

d. If The Adjutant General is the first member in the chain of command or supervision for filing a complaint, the complaint will be reviewed to determine whether it should be accepted, dismissed, or referred as provided in Para 2-15. The complaint will be annotated to show whether the complaint was accepted or whether the complaint, in whole or in part, was dismissed or referred.

(1) If one or more allegations in a complaint are not based on illegal discrimination due to race, color, religion, gender (to include sexual harassment), national origin, or reprisal, such allegations will not be processed under this regulation. The Adjutant General will direct the appropriate processing of such allegations. The complaint will be annotated to show what actions were directed on the complaint, in whole or in part, which was not based on discrimination.

(2) If the complaint, in whole or in part, is dismissed, it will then be forwarded to the SJA for review in accordance with Para 2-21.

e. The Adjutant General may attempt to resolve the complaint or cause any additional review or inquiry to be conducted before an attempt at resolution.

f. If The Adjutant General chooses not to attempt resolution at this point or if resolution attempts are unsuccessful and an EO investigation has not been completed by a lower level commander or supervisor, The Adjutant General will direct an EO investigation, as provided for in Chapter 3.

g. The Report of Inquiry (ROI) and the entire case file will be reviewed for legal and administrative sufficiency. This review will be conducted by the SEEM with a legal review by the SJA or his/her designated representative. The legal review of the ROI in a formal complaint of unlawful discrimination or sexual harassment will determine whether:

(1) The investigation complies with all applicable legal requirements;

(2) The investigation adequately addresses the matters complained of; (3) The evidence supports the findings of the investigating officer;

(4) The conclusions and recommendations of the investigating officer are consistent with the findings; and

(5) If any errors or irregularities exist, their legal effect, if any, on substantial rights of any person.

Additionally, the ROI may also be coordinated with other staff offices or supervisors within the OHNG on matters related to their functional area.

h. The Adjutant General may direct any additional investigation or supplementation of the record to ensure legal sufficiency and compliance with laws and regulations.

i. After the ROI is determined to be administratively and legally sufficient, it will become part of the official complaint case file.

j. Thereafter, a redacted copy of the entire ROI will be promptly provided to the complainant.

k. Using the ROI, the advice of the SEEM and of the SJA, and a personal appraisal of the case, The Adjutant General or designee will meet with the complainant to attempt to resolve the complaint.

l. If the complaint cannot be resolved, The Adjutant General will request that SJA assist SEEM in issuing a final decision. Both The Adjutant General and the complainant may provide the SJA with a rationale for their position regarding a final decision. Any position statement (rationale) must be submitted within 30 calendar days of receipt of the ROI by the complainant. The position statement must be in writing and addressed to State Equal Employment Manager, Ohio National Guard, ATTN: NGOH-HRO-E, 2825 West Dublin Granville Rd, Columbus, OH 43235-2789. The complete case file, prepared and assembled as described in Chapter 4, below, will be forwarded in original and two copies to the SEEM.

m. If the complaint is resolved while at The Adjutant General level, the resolution agreement will be put in writing and signed and dated by the complainant and The Adjutant General or designee. The SEEM must notify the SJA that a resolution has been achieved so that the record started with the assignment of the NGB case number may be administratively closed.

2-21. Review by State Judge Advocate

a. A review by the SJA will be conducted--

(1) When a complaint is dismissed, in whole or in part.
(2) After a formal investigation has been conducted and the AG and the complainant have been unable to resolve the complaint.

b. The SJA will review complaints of discrimination for compliance with applicable laws and regulations and to determine the merits of the case. The SJA will evaluate:

(1) Whether the case file is sufficient to determine the merits of the case.
(2) Whether the procedures followed regulatory requirements.
(3) The inquiry to determine if it is adequate to make a finding of discrimination.
(4) Whether the conclusions and recommendations are supported by the evidence in the case file and ROI. (5) The appropriateness of the rationale for any dismissal.

c. SEEM will review the entire case, to include the chain of command inquiries, narrative reports of resolution attempts, the ROI, and the dismissal and/or request for final decision, as appropriate. The case will be coordinated with the Office of the Staff Judge Advocate, OHNG and with the Army or Air Directorate, OHNG.

d. Based on this review, the AG will be advised whether:

(1) A dismissal was proper. If it was not, the AG will be advised what issues must be reinstated for processing and of the rationale for this action.
(2) The complaint case file and procedures are legally and administratively sufficient. If they are not, the AG will be advised what action is required and the rationale for that action.

2-22. Issuance of the Final Decision

After completion of SJA review and of any needed corrective actions by the SEEM, a final decision will be issued based on a preponderance of evidence. The evidence of record will be analyzed using principles and case law developed under Title VI of the Civil Rights Act of 1964, with decisions of the United States Court of Appeals for the Sixth Circuit, including but not limited to, Fisher v. Peters, 249 F.3d 433 (6th Cir. 2001); as well as NGR (AR) 600-22/NGR (AF) 30-3, National Guard Military Discrimination Complaint System, 1 Oct 92; and NGR 600-23/ANGR 30-12, Personnel: Non-Discrimination in Federally-Assisted Programs, 30 Dec 74. A copy of the final decision will be forwarded to The Adjutant General and the complainant. The Adjutant General or person designated by The Adjutant General will inform any person(s) named in the complaint as responsible for discrimination of the final decision.

2-23. Administrative Closure

a. When a complaint is administratively closed or a final decision is issued, the administrative process established by this regulation is exhausted; there are no further appeals. No other processing is required except for carrying out any terms agreed upon in a resolution or directed in the final decision.

b. A complaint will be administratively closed when:
(1) The Adjutant General issues a final decision.
(2) A complaint is resolved to the satisfaction of the complainant and the formal complaint is so annotated.
(3) A complainant voluntarily and unconditionally withdraws a complaint.
(4) The complainant fails to pursue the complaint to the next level of the chain of command.
(5) SJA advises SEEM in all cases whether a dismissal was proper.

c. When the complaint is resolved to the satisfaction of the complainant and the formal complaint is so annotated, the SEEM will provide the SJA a copy of the resolution signed and dated by the complainant and a OHNG official, and a copy of the annotated complaint form (NGB Form 333), so that the administrative closure may be completed.

d. When the complainant voluntarily and unconditionally withdraws a complaint, the SEEM will provide a signed and dated copy of the withdrawal so that the administrative closure may be completed.

e. When a complainant fails to pursue a complaint by failing to provide information or to take actions required to continue processing the complaint, the SEEM will provide a memorandum indicating such to SJA or OHNG official, along with copies of the memoranda to the complainant (Figures 2-4. and 2-5.), and evidence that the complainant received such notices, i.e. certified return receipts, or a statement signed by the complainant that he/she does not wish to pursue the complaint.

f. SEEM, with assistance from the SJA, will issue administrative closure letters, when appropriate, to the complainant, with a copy furnished to The Adjutant General.

Figures 2-1, 2-2, 2-3, 2-4, 2-5, 2-6, 2-7, 2-8 and 2-9 appear on the following pages.

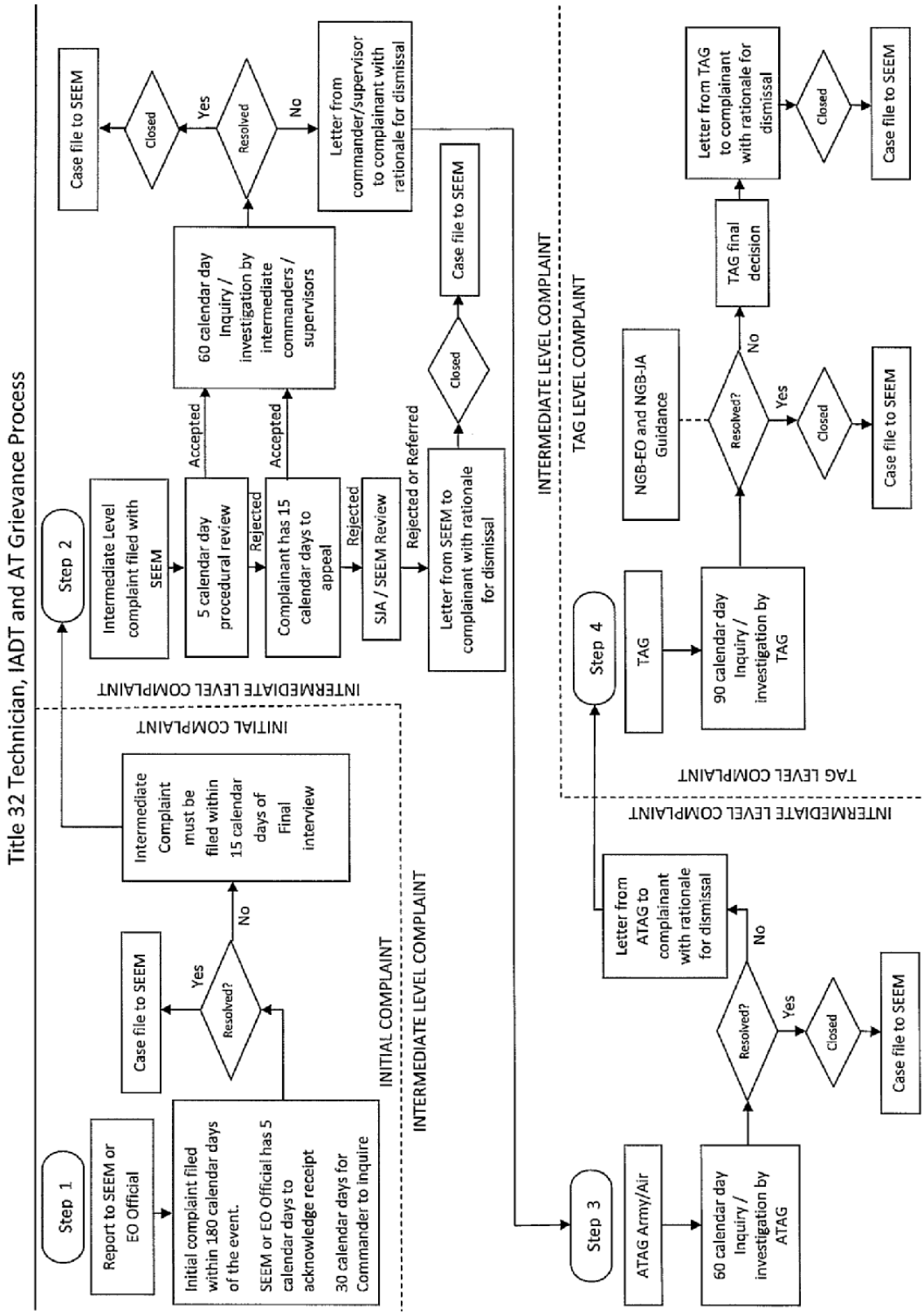

Figure 2-1. Discrimination Complaint Process for OHNG Technician, IADT, and AT Personnel.

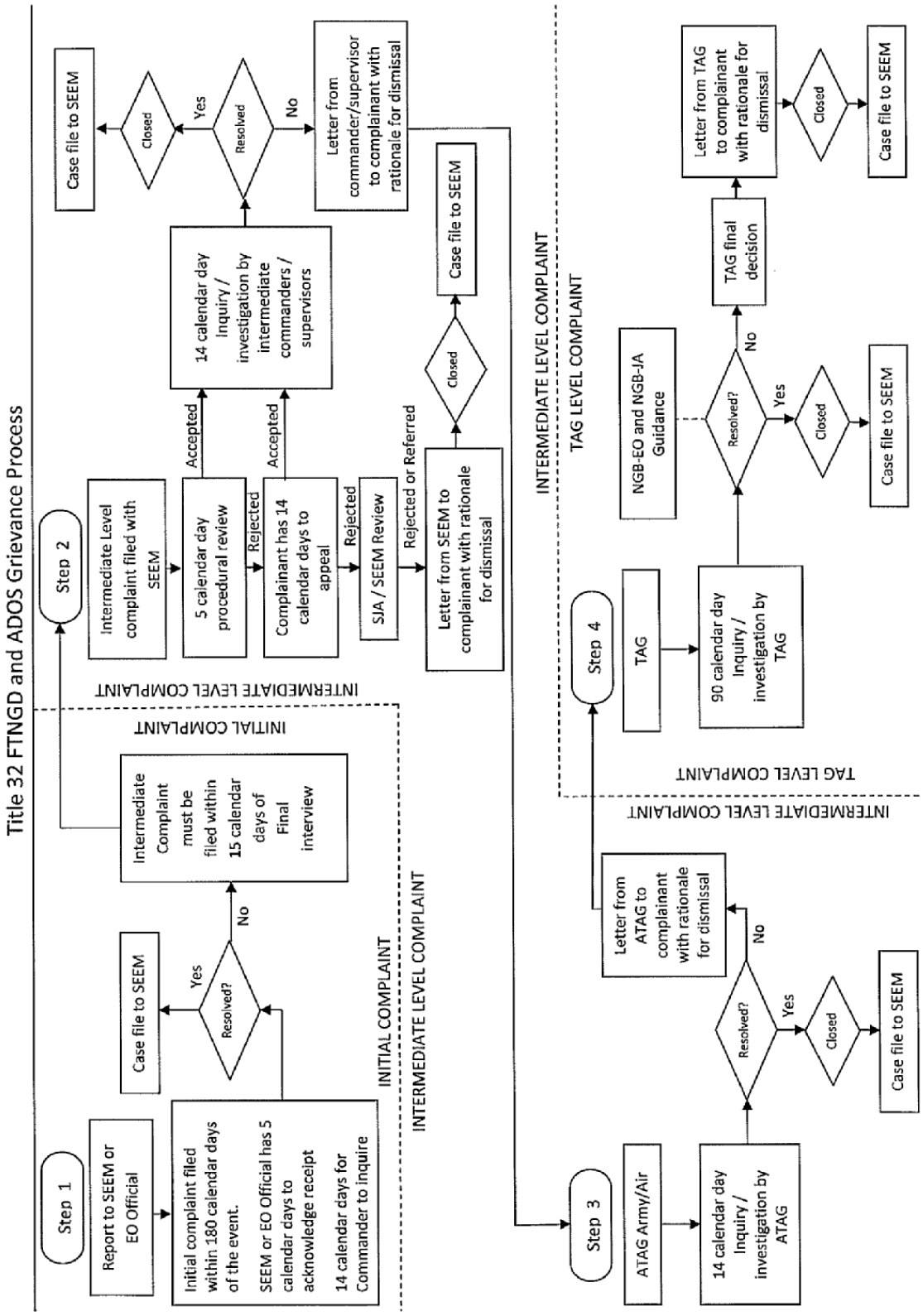

Figure 2-2. Discrimination Complaint Process for OHNG FTNGD and ADOS Personnel.

COMMANDER'S/SUPERVISOR'S REPRISAL PREVENTION PLAN

1.. Explain the following:

a. Reprisal and provide definition to all concerned parties (See terms).

b. Military Whistleblowers Protection.

c. Consequences of reprisal.

d. Possible sanctions against violators.

e. Roles and responsibilities of leadership in the prevention of acts of reprisal.

f. Command or supervision's support of a thorough unbiased investigation and good faith in attempting to resolve the complaint.

g. Need to treat all parties in a professional manner both during and following the investigation.

2. Personnel counseled.

Name of individual counseled on reprisal	Commander's/Supervisor's initials	Date

Notes:
1. All persons involved in the filing (complainant), witnesses providing testimony, or those named as a Principle Agency Witness of an EO complaint are afforded protection against reprisal.

2. The commander or supervisor will discuss reprisal prevention with all concerned individuals and annotate their name and the commander or supervisor will initial and specify the date the discussion took place.

3. The commander or supervisor will provide this reprisal prevention plan to the inquiry/investigating officer for inclusion in the official case file.

Figure 2-3. Commander's / Supervisor's Reprisal Prevention Plan.

STATE OF OHIO
ADJUTANT GENERAL'S DEPARTMENT
2825 West Dublin Granville Road
Columbus, Ohio 43235-2789

(DATE)

AGOH-CS

MEMORANDUM FOR (Rank, Name, and Address of Complainant)

FROM: (HQ OHANG)

SUBJECT: Proposed Dismissal of the Discrimination Complaint of Sergeant John Doe, (State) (Army or Air) National Guard, Case Number M-(number)

1. You have filed a discrimination complaint dated (DATE). In order to continue to process this complaint, you are required to (specify the information or action required from the complainant) not later than (specify reasonable date).

2. If you fail to (provide the information or take the action) requested above, your complaint will be dismissed.

Signature Block of
Adjutant General/Unit Commander or
Appropriate Designee

Notes:

This notice is sent by certified mail, return receipt requested, or personally delivered to the complainant. If the notice is personally delivered, the complainant will sign and date the official file copy of the notice. If he/she declines to sign the copy, the server will sign it and indicate to whom and when the notice was served.

Figure 2-4. Notice of Proposed Dismissal of Complaint.

STATE OF OHIO
ADJUTANT GENERAL'S DEPARTMENT
2825 West Dublin Granville Road
Columbus, Ohio 43235-2789

(DATE)

AGOH-CS

MEMORANDUM FOR (Rank, Name and Address of Complainant)

FROM: (HQ OHANG)

SUBJECT: Dismissal of the Discrimination Complaint of Sergeant John Doe, (State) (Army or Air) National Guard, Case Number M-(number)

1. On (DATE) you were requested to (provide specified information or take specified action) not later than (DATE) in order to continue to process your discrimination complaint. You were also advised that failure to do so would result in the dismissal of your complaint.

2. Since you have failed to (provide the requested information or take the required action) your complaint is hereby dismissed.

Signature Block of
Adjutant General/Unit Commander or
Appropriate Designee

Notes:

1. This notice is sent by certified mail, return receipt requested, or personally delivered to the complainant. If the notice is personally delivered, the complainant will sign and date the official file copy of the notice. If he/she declines to sign the copy, the server will sign it and indicate to whom and when the notice was served.

Figure 2-5. Notice of Dismissal of Complaint.

OHIO NATIONAL GUARD EQUAL OPPORTUNITY
RECORD OF ASSISTANCE

1. NAME (Last, First, MI)	2. GRADE	3. DATE	4. TIME SPENT
5. UNIT/OFFICE SYMBOL	6. PHONE	7. GENDER	8. RACE

9. DESCRIPTION OF ASSISTANCE

	GENERAL ASSISTANCE		SUBJECT MATTER EXPERT		ADR / MEDIATION		OUT & ABOUT
	BRIEFING		UCA		NON-EO ASSISTANCE		SPECIAL OBSERVANCE

10. AREA OF CONCERNS

	APPT / HIRE		ASSIGNMENT OF DUTIES		CO-WORKER DISPUTE		SUPERVISOR DISPUTE
	DISCIPLINARY ACTION		DUTY HOURS		EVAL / APPRAISAL		PAY
	NON-SEXUAL HARASSMENT		TRAINING		OTHER SPECIFY:		

11. SUMMARY OF CONCERNS

12. SUMMARY OF ASSISTANCE

13. ADMINISTRATION

14. DATE CLOSED	15. EO SPECIALIST	16. SIGNATURE
17. DATE CLOSED	18. EO OFFICER	19. SIGNATURE

Figure 2-6. Record of Assistance.

OHIO NATIONAL GUARD EQUAL OPPORTUNITY
ALTERNATE DISPUTE RESOLUTION FORM

1. NAME (Last, First, MI)			2. DUTY ORGANIZATION (COMPLETE ADDRESS)
3.GRADE	4. TITLE		
5.WORK PHONE	6.HOME PHONE	7. HOME ADDRESS	

8. ALTERNATE DISPUTE RESOLUTION

☐ Complaint determined not appropriate for ADR _____
(Complainant must sign and date)

☐ Complaint determined appropriate for ADR _____
(EO Officer must sign and date)

☐ Complainant wishes to participate in ADR, if offered _____
(EO Officer must sign and date)

Date of written offer of ADR _____

Date of Agreement to participate in ADR _____

Name of assigned ADR facilitator / mediator _____

Date ADR facilitator / mediator assigned _____

RESULT OF ADR:

☐ ADR was successful. Negotiated settlement agreement, signed on _____(YYYYMMDD), is attached.

☐ ADR was NOT SUCCESSFUL. The complainant was issued a Notice of Right to File a Complaint of Discrimination On _____(YYYYMMDD) and notified of requirement to file a complaint within 14 calendar days (FTNGD and ADOS) or 30 calendar days (Technician, IADT and AT) after receipt of Notice of Right to File. The complainant was provided an OHNG Discrimination Complaint Form.

9. ORGANIZATION WHERE ALLEGED DISCRIMINATION OCCURED

(Complete address)

10. RESPONDING COMMAND OR MANAGEMENT OFFICIALS INFORMATION

Figure 2-7. Alternate Dispute Resolution Form

OHIO NATIONAL GUARD EQUAL OPPORTUNITY ALTERNATE DISPUTE RESOLUTION FORM	
11.	**COMPLAINANT STATEMENTS**

Figure 2-7. Alternate Dispute Resolution Form

OHIO NATIONAL GUARD EQUAL OPPORTUNITY ALTERNATE DISPUTE RESOLUTION FORM	
12.	**MANAGEMENT STATEMENTS**

Figure 2-7. Alternate Dispute Resolution Form

OHIO NATIONAL GUARD EQUAL OPPORTUNITY ALTERNATE DISPUTE RESOLUTION FORM	
13.	**ADR FACILITATOR OR MEDIATOR STATEMENTS**

Figure 2-7. Alternate Dispute Resolution Form

OHIO NATIONAL GUARD EQUAL OPPORTUNITY ALTERNATE DISPUTE RESOLUTION FORM			
14. ELECTION OF REPRESENTATION			
☐ ATTORNEY ☐ NON-ATTORNEY ☐ NON-REPRESENTATION			
15. NAME OF REPRESENTATIVE			16. ADDRESS
17. PHONE NUMBER	18. FAX	19. E-MAIL	
PRINTED NAME OF COMPLAINANT			SIGNATURE OF COMPLAINANT AND DATE
PRINTED NAME OF MANAGEMENT OFFICIAL			SIGNATURE OF MANAGEMENT OFFICIAL AND DATE
PRINTED NAME OF FACILITATOR / MEDIATOR			PRINTED NAME OF FACILITATOR / MEDIATOR AND DATE

Figure 2-7. Alternate Dispute Resolution Form

STATE OF OHIO
ADJUTANT GENERAL'S DEPARTMENT
2825 West Dublin Granville Road
Columbus, Ohio 43235-2789

_____,	)	
	)	
Complainant	)	Complaint No.
	)	_____
	)	
V.	)	
	)	
	)	
(Insert Name) , (Insert Title),	)	
Ohio National Guard,	)	
Agency	)	

Figure 2-8. Sample OHNG Negotiated Settlement Agreement.

OHNG Negotiated Settlement Agreement

In exchange for the mutual consideration set forth below, the Agency, The Ohio National Guard, and the Complainant, _____, amicably agree to resolve this matter as follows:

1. The Complainant,_____, in exchange for the promises of the OHNG contained in paragraph 2 of this Agreement, hereby agrees freely without fear of coercion or intimidation to:

    a. Withdraw her informal/formal EEO complaint, Complaint No. _____, dated _____ and release the OHNG, the Agency, its employees, in both their official and individual capacities, from any and all liability, claims, causes of action, etc., resulting from or relating to, in any manner whatsoever, the subject matter of this settlement, and his or her employment with the OHNG, this agreement being a complete accord and satisfaction of any and all claims, including any and all equitable and legal relief, e.g., back pay, and or consequential damages, etc.

    b. Not file a formal complaint of discrimination or to institute a lawsuit under the Civil Rights Act of 1964, Title VI, as amended, which prohibits discrimination based on race, color, national origin, religion or sex, or under the Age Discrimination in Employment Act of 1967 (ADEA), which prohibits age discrimination in employment, or under the United States Constitution, or any other state or federal law prohibiting employment discrimination.

2. In exchange for the promises of the Complainant contained in paragraph 1 of this Agreement, the Agency hereby agrees that: (The following are examples)

    a. Annual Leave of ___ hours and Sick Leave of ____ hours will be restored to the complainant for the pay periods of _____.

    b. Complainant will be placed in the next available vacant GS-05 position for which the complainant is fully qualified. Until such a vacant position becomes available, complainant will continue on official detail working in the _____.

Figure 2-8. Sample OHNG Negotiated Settlement Agreement.

3. In addition, the parties mutually agree to the following terms:

    a. The terms of this Agreement are binding and will not establish any precedent, nor will this agreement be used as a basis by the complainant or any representative organization to seek or justify similar terms in any subsequent case.

    b. The parties agree that the facts of this negotiated settlement agreement and all terms contained herein shall be kept confidential, and parties agree not to disclose or discuss the fact of settlement with other OHNG members (except complainant's representative or responsible management personnel).

    c. This Agreement constitutes the complete understanding between the complainant and the OHNG. No other promises or agreements will be binding unless signed by both parties.

    d. The parties agree that this agreement may be used as evidence in a subsequent proceeding in which either of the parties alleges a breach of the Agreement.

    e. This Agreement does not constitute an admission by the Agency of any violation of Title VI of the Civil Rights Act of 1964, as amended, the United States Constitution, or any other federal or state statue or regulation.

    f. All parties have entered into this agreement voluntarily and with a complete and thorough understanding of its terms.

4. If the Complainant believes the Agency has not complied with the terms of this settlement agreement, he or she may, OHNG Regulation 600-22, notify the State Equal Employment Manager in writing within 30 days of the date of the alleged violation.

_____	_____
Complainant	Agency Management Representative
Date: _____	Date: _____

Figure 2-8. Sample OHNG Negotiated Settlement Agreement.

STATE OF OHIO
ADJUTANT GENERAL'S DEPARTMENT
2825 West Dublin Granville Road
Columbus, Ohio 43235-2789

Date

MEMORANDUM FOR (Name of Complainant)

SUBJECT: Complainants Rights and Responsibilities

1. **Purpose:** If you are a Title 32 U.S.C. member and believe you have been discriminated against because of your race, color, religion, sex, national origin, and/or subjected to reprisal in an employment matter subject to the control of the Ohio National Guard, you may have a choice of options to pursue your Equal Opportunity (EO) complaint and have it resolved. The purpose of this memorandum is to advise you, in writing, of those rights and responsibilities.

2. **Rights for Title 5 U.S.C. Employees**
a. If you are a Title 5 U.S.C. member you have the right to pursue a discrimination complaint under the procedures covered by Army Regulation (AR) 690-600. Your first step under this procedure is to contact an Equal Opportunity (EO) counselor within 45 calendar days of the date of the matter alleged to be discriminatory or, in the case of a personnel action, within 45 calendar days of the effective date of the action. An EO official, such as the EO officer, specialist, or assistant, or an EO counselor may offer you the opportunity to participate in the pre-complaint counseling process or, if determined appropriate, the alternative dispute resolution (ADR) method in lieu of traditional counseling. An individual contacting an EO official or counselor is referred to as the "complainant"

2. **Rights for Title 32 U.S.C. Employees**
a. If you are a Title 32 U.S.C. member you have the right to pursue a discrimination complaint under the procedures covered by this regulation. Your first step under this procedure is to contact an Equal Opportunity (EO) counselor within 180 calendar days of the date of the matter alleged to be discriminatory or, you reasonably became aware of the discriminatory act. An EO official, such as the EO officer, specialist, or assistant, or an EO counselor may offer you the opportunity to participate in the pre-complaint counseling process or, if determined appropriate, the alternative dispute resolution (ADR) method in lieu of traditional counseling. An individual contacting an EO official or counselor is referred to as the "complainant".

(1) ADR: Mediation is the ADR process preferred by the Ohio National Guard. Mediation is a method by which an objective and impartial person (a trained mediator) facilitates communication between the complainant and management to resolve concern(s) or disputes(s). If you are offered and choose to participate in mediation, the complaint period will be extended an additional 60 calendar days from the date you initiate the process to accomplish the mediation.

Figure 2-9. Complainants Rights and Responsibilities Notice.

(a) If ADR is successful, a negotiated settlement agreement will be signed by the participants. A signed settlement agreement is binding on both parties.

(b) If ADR is not successful or if some issues remain unresolved after mediation, you will be given a Notice of Right to File a Complaint of Discrimination.

(2) Traditional EO Counseling: If mediation is not offered or you choose not to participate in mediation, the EO Officer will finalize the complaint intake portion of the process and will complete an intake interview. During this interview the EO counselor will review any forms already completed and shall provide the complainant with an OHNG Discrimination Complaint Form and other necessary paperwork for pursuit of a complaint. Once the OHNG Discrimination Complaint Form and other necessary forms have been completed, the EO Officer shall forward your complaint to the lowest level of command or supervision for action within five (5) calendar days.

(a) During the Complaint process with the assigned EO counselor, the claim(s) previously identified by you during the intake interview will be discussed in order to define and record the specific dates and facts of the incidents or personnel actions alleged by you to be discriminatory. If additional matters not initially recorded during the intake interview are presented by you during the EO counselor's inquiry, those issues must be recorded in the EO counselor's report.

(b) You are obligated to cooperate with the EO counselor in clearly defining the claim(s) and basis(es) for inquiry. The EO counselor's inquiry is designed to facilitate a satisfactory resolution of your allegations. The EO counselor will advise you of the results of the inquiry and discuss proposed solutions. The EO counselor is a non-biased party who works neither for management nor the aggrieved.

(c) If resolution of your complaint is not achieved at the company or squadron level the complaint will proceed up the chain of command or to the next level of supervision until it reaches The Adjutant General's Office. The Adjutant General provides the final level of appeal and issues final decisions in all complaints administratively processed under this regulation. The EO counselor will conduct a final interview with you within 30 calendar days of the date the company or squadron level commander or supervisor, or command level in which the process began, rendered his or her decision.

3. **Additional Rights under the EO Process**

a. You have the right to remain anonymous during the counseling. The counselor will refrain from revealing your identity except by your authorization. During the ADR process, if you choose to participate in ADR, you will not be able to remain anonymous.

Figure 2-9. Complainants Rights and Responsibilities Notice.

b. You have the right to a representative of your choice throughout the complaint process including counseling. This right to a choice of representation will be limited when there is a conflict of interest. Your right to representation is extended to the ADR process. However, the ADR neutral will decide the extent to which the representative actively participates in ADR. Nonetheless, you will have sufficient time to discuss resolution and review any proposed terms with your representative prior to finalizing a settlement agreement.

c. You have the right to receive in writing within 30 calendar days of the first counseling contact (unless you agree in writing to an extension for counseling) a notice terminating counseling and informing you of:

(1) the right to file a formal complaint within 15 calendar days of receipt of the notice,

(2) the appropriate official with whom to file a complaint, and

(3) your duty to immediately inform the agency if you retain counsel or a representative.

d. Any extension of the counseling period may not exceed an additional 60 calendar days. When notice is not provided and no extension is secured, you have the right to proceed to the next level in the chain of command or supervision with your complaint of discrimination after the 30th day. Exception: If you agree to participate in mediation and unresolved issues remain after the mediation attempt, the written Notice of Right to File a Complaint of Discrimination will be issued upon completion of the mediation process or within 90 calendar days of the initial contact, whichever comes first.

e. If you file a complaint, you have a right to be notified in writing whether the activity EO officer accepts or dismisses your complaint. If you do not receive written notice within five (5) calendar days of filing a complaint, you should contact the EO officer. If your allegations are dismissed entirely or partially, you will be advised in writing of the basis and rationale for the entire or partial dismissal.

f. If you file an EO complaint and your allegations are dismissed in their entirety, you will be advised of your right to appeal the dismissal decision to The Adjutant General. If some but not all of your allegations are dismissed, the dismissed portion of your claim is not appealable to The Adjutant General until a final decision/action on the entire complaint is issued. However, the dismissed portion is subject to review by the Judge Advocate if a hearing is requested on the remainder of the complaint.

g. If you file an EO complaint, you have the right to request a hearing before The Adjutant General after 180 calendar days from the filing of a complaint or after completion of the investigation, whichever comes first.

Figure 2-9. Complainants Rights and Responsibilities Notice.

h. When you have filed two or more complaints, you have the right to receive in writing a notice that the OHNG is consolidating your complaints; that the investigation will be completed within the earlier of 180 days after the filing of the last complaint or 360 days of the filing of the first complaint.

i. You have the right to amend the pending complaint to add additional incidents or claims that are like or related to those raised in the pending complaint at any time prior to the completion of the investigation. The OHNG is required to complete its investigation within 180 days after the last amendment to the complaint or 360 days after the filing of the original complaint.

4. **Responsibilities**

a. You are responsible for cooperating with those individuals involved in the processing of your complaint.

b. At all times during the processing of your complaint, you are responsible for updating, in writing, the activity EO officer and the OHNG of any changes to your current mailing address. Failure to keep the EO Officer and the OHNG informed of your current address may result in dismissal of your complaint.

c. You are responsible for filing a EO complaint within 15 calendar days after receipt of the counselor's Notice of Right to File a Complaint of Discrimination, in the event that you wish to file a complaint at the conclusion of counseling or ADR.

d. You are responsible for electing your avenue of redress. The formal action you file first is considered to be an election to proceed only in that forum as to resolving the alleged discrimination. Thus, you should be aware that an appeal will not be accepted if you have not filed a timely complaint in writing under the EO complaint procedure.

e. If you file a complaint, you are responsible for informing the EO officer whether you are represented, by whom, and the address and telephone number(s) of the individual. You must also inform the EO officer of any change in representation. You are responsible for electing your avenue of redress.

f. If you request a hearing before The Adjutant General, you are responsible for sending your request directly to the State Equal Employment Managers Office.

g. If you have any other questions on this matter, you may contact your activity EEO office.

Signature of EO officer or official _____

Figure 2-9. Complainants Rights and Responsibilities Notice.

Chapter 3
Inquiry and Investigation of Complaints.

3-1. Fact Finding

This process is not in the same scope as an inquiry. This process is designed to present basic facts to the commander or supervisor at the level the complaint is raised. Basic fact finding will be used to facilitate resolution at the lowest level.

3-2. Inquiry

A fact finding process used to determine the validity and merit of allegations of discrimination. It may involve the review of records and directives or examination of material evidence presented by the complainant. This process should only be utilized to determine if an administrative fact-finding procedure is warranted.

3-3. Purpose and Nature of Investigations

An investigation appointed under the authority of this regulation is an administrative fact-finding procedure to investigate allegations of discrimination or sexual harassment in order to determine to the maximum extent possible what actually occurred, to assess the validity of the allegations made by the complainant, to advise the command or supervision of any leadership or management concerns which might contribute to perceptions of unlawful discrimination and poor climate, and to recommend appropriate corrective action.

a. Investigations into allegations of discrimination are conducted under authority of this regulation. They will be conducted as specified herein. The NGB Investigator Procedural Manual, provides procedural guidance for the Investigating Officer (IO). In the case of any conflict between the Manual and this regulation, this regulation will take precedence.

b. Investigations conducted under this regulation are informal. That is, they are not in the nature of a formal investigation or board under AR 15-6 or any other regulation or instruction that provides for a hearing for persons who may have an interest in the subject of the investigation. No respondents will be designated and no one is entitled to the rights that a respondent may receive in a proceeding under any other regulation or instruction. The IO may still make any relevant findings or recommendations, including those adverse to an individual or individuals.

c. No complainants, officials complained about, other witnesses, nor any officials other than the appointed investigator have any right to be present during interview of other witnesses.

3-4. Appointment of Investigators

a. The Equal Opportunity Investigator will be appointed by the Army Chief of Staff, the Director of Staff Air, the Assistant Adjutant General Army, the Assistant Adjutant General Air, and The Adjutant General. These Officers have authority to authorize an investigation into allegations of discrimination under this regulation. The letter of appointment will cite this regulation as the authority for the appointment (Figure 3-1).

b. An OHNG officer or noncommissioned officer or any technician appointed as investigating officer should be senior in rank to any military member, or senior in grade to any technician, whose conduct is being investigated. Noncommissioned officers (E- 6 or above) may be appointed to conduct investigations under the authority of this regulation and may administer oaths for the purpose of obtaining sworn testimony under the provisions of this regulation. In any case where the appointing authority perceives that state appointment is impracticable, he/she must coordinate with NGB-EO to explain his/her position and to request assistance in obtaining a senior person to conduct the investigation or obtain a waiver of this requirement. A waiver may be granted for contracting a civilian investigator at the State's expense.

c. EOAs or Military Equal Opportunity staff, Human Relations/Equal Opportunity officers, SEEMs, and Staff Judge Advocates provide advice and assistance regarding allegations, merits, and processing of complaints. They assist both commanders and complainants; therefore, they will not be appointed as IOs for any discrimination complaints in which they may have any other role in order to avoid any real or perceived conflict of interest. Only disinterested and impartial personnel will be appointed as IOs.

3-5. Authority and Requirement for Investigation

The appointing document will specify that the investigation will be conducted in accordance with this regulation and will indicate the authority of the investigator (see Para 3-5, a-g below). Copies of this regulation and the NGB Investigator Procedural Manual will be made available to the investigator.

3-6. Duties of the Investigator.

a. General. The IO is to collect facts and develop information sufficient for an objective determination of the factual merits of each allegation in the complaint. It is the duty of the investigator to:

(1) Ascertain and consider the evidence on all sides of each issue and to do so thoroughly and impartially.
(2) Make findings and recommendations that are warranted by the facts.

b. Witness Interviews. The IO will determine the witnesses whose testimony is necessary for a thorough, complete, and impartial investigation.

(1) In this pursuit, the investigator should obviously interview the complainant, the official(s) alleged to have discriminated, and persons identified as having relevant information by the complainant, and other witnesses as deemed necessary by the investigator.

(2) If the IO fails to interview any witness identified as having relevant direct first hand knowledge, the Report of Investigation (ROI) must include an explanation as to why the IO did not interview that witness, to include whatever consideration the IO gave to the type and importance of the potential evidence that the witness may have contributed. (The IO would be well advised to consult with the SEEM, MEO or EOA and also the servicing SJA before foregoing a witness identified as having relevant information).

(3) The IO is not, of course, limited to only witnesses identified by the parties and other witnesses. The IO should seek to interview persons with information establishing essential facts or corroborating, substantiating, or refuting statements about relevant events. For example, whether or not they were identified by anybody as witnesses, in an allegation about offensive sexual comments, it may be advisable to interview co-workers of the complainant and of the person alleged to have made such comments about their knowledge of the alleged incidents and about the daily working relationship between the complainant and the alleged responsible person.

(4) Should unit policies or procedures be called into question as contributing factors to perceptions of unlawful discrimination or hostile work environments, the IO should interview responsible members of the chain of command or section.

c. Document Collection. The IO should secure copies of any relevant documents, including those which might establish key events or substantiate, corroborate, or refute relevant statements of the complainant, officials alleged to have discriminated, or other witnesses. For example, in a given case, such documents might include copies of unit organizational charts and personnel records, correspondence of the parties, or personal documents kept to memorialize relevant events.

d. Testimony. The IO administers oaths and obtains statements from witnesses under oath or affirmation without any promise of confidentiality. If a certified court reporter is provided, ensures that verbatim transcripts have been properly prepared. If a certified court reporter is not provided, interviews with all witnesses will be recorded and transcribed verbatim and signed by the IO to verify their accuracy (OHNG-EO will not accept taped testimony with the ROI, all testimony that is taped must be transcribed). Although witnesses must be sworn or affirmed, there is no requirement for them to sign the verbatim transcript of their testimony. The signature of the IO is sufficient to verify its accuracy. Additionally, sworn statements and interrogations are acceptable methods of obtaining sworn testimony from persons involved in the complaint.

e. Data Collection. When appropriate because of the issues in a particular complaint, the IO will collect and analyze information on how members of the complainant's group are treated compared to other similarly situated personnel in the organization where the discrimination is alleged to have occurred. This information may include, for instance, statistical data on promotions, disciplinary actions, awards, or other personnel actions.

f. Work Policies and Practices. When appropriate, the IO will investigate work policies and practices which are relevant to the complaint and which appear to constitute discrimination whether they have been specifically cited by the complainant or not.

g. Report of Investigation (ROI). The IO will prepare a written, signed ROI. See the NGB Investigator Procedural Manual for content and format of an ROI.

(1) The investigator will provide a detailed narrative report of the investigation as part of the ROI. The report will include an analysis of the complainant's case; description of the allegations, testimony, documentation, and other exhibits and their relationship to the case and the allegation(s) that had been accepted for investigation; and appropriate conclusions, recommendations, and findings, with explicit findings on whether or not discrimination has occurred (apply the appropriate model(s) of analysis in the NGB Investigator Procedural Manual (Appendix A) to determine whether or not discrimination occurred).

(2) The investigator will include copies of all documentation relevant to the complaint. The evidence gathered will be clearly marked and placed as exhibits in the ROI.

(3) The investigator will prepare an executive summary of the narrative report to synopsize the key aspects of the case, the investigation, and the findings and conclusions of the ROI.

3-7. Resolution of Complaints

a. A complaint may be resolved at any point in time. (See Glossary for definition of resolution of a complaint). However, attempts at resolution are specifically provided for following each chain of command process.

b. If a complaint is resolved to the satisfaction of the complainant, such resolution will be documented on the formal complaint and signed and dated by the complainant and a representative of the State NG (this can include the commander or other designated representative). Specific written resolution language (settlement agreements) should be coordinated with the SEEM, SJA and NGB as appropriate.

c. If a complaint is not resolved after reaching the AG, the AG will request that NGB issue a final decision as provided in Chapter 2.

3-8. Consolidation of Complaints

Complaints filed under the provisions of this regulation are individual discrimination complaints and must be filed separately by each individual who has a complaint. However, allegations that are similar in nature and are caused by the same or similar conditions, may be consolidated for purposes of inquiry, investigation, or resolution as provided herein.

a. Two or more complaints filed by one individual may be consolidated and processed jointly at the discretion of the AG or the commanders concerned. In such cases, the consolidated inquiry(ies), investigation, resolution and final decision will address all allegations of all complaints that are being jointly processed.

b. Complaints from two or more individuals may be consolidated and processed jointly at the discretion of the AG or commanders concerned. In such cases either:

(1) All complainants must agree, in writing, to joint processing of their complaints,

(2) Any documents provided to one complainant, such as the ROI or the final decision, must be prepared in such a way as to safeguard any Privacy Act interests of the other complainant(s).

c. Withdrawal of a complaint by one complainant will not affect the processing of the remaining complaints that have been consolidated.

3-9. Initial Complaint Appeals.

The sole mechanism to appeal the disposition of a complaint of unlawful discrimination or sexual harassment is to file a complaint at the next higher command or supervisory level above where the initial complaint resolution attempt was unsuccessful. Complainants must file their appeals within 30 calendar days after closure of the initial complaint if Technician, IADT, or AT. FTNGD and ADOS members must file their appeals within 14 calendar days of the final

review. The commander or supervisor may waive the 30 and 14 day calendar day time limit for good cause based on a memorandum with sufficient justification provided by the member and submitted through the EO office.

3-10. Intermediate Level Complaint Appeals.

General guidelines.

a. Retirees and military family members may not appeal the findings of a intermediate level complaint. The Adjutant General is authorized to render decisions on appeals that involve all complaints.

b. The Adjutant General is the final review and appeal level for all EO complaints. EO Advisors, Leaders, Officers, Specialists or Counselors will hand carry or forward appeal packages via certified mail to the SEEM and will ensure all documents are included.

c. Appellants may submit appeals through the local EO office to the lowest level of command authorized to decide the appeal, e.g. to the commander or supervisor for appeals of unit or base-level cases.

d. The commander or supervisor is not disqualified from acting on an appeal by making a determination on resolving differences.

e. Complainants may appeal unsubstantiated findings; offenders may appeal substantiated findings.

f. Technician, IADT or AT complainants and offenders must submit appeals through the SEEM's office within 30 calendar days after notification of the result of the case.

g. FTNGD and ADOS complainants and offenders must submit appeals through the SEEM's office within 14 calendar days after notification of the result of the case.

h. The commander or supervisor may approve the processing of an appeal submitted more than 30 calendar days , Technician, IADT and AT, or 14 calendar days, FTNGD and ADOS, after notification.

i. The EO appeal process is not applicable to action rendered under the UCMJ or any administrative process as a result of a substantiated complaint. When a commander initiates or has previously initiated action under the UCMJ or administrative process, that action takes precedence over any ongoing or contemplated appeal. In such circumstances, the applicable UCMJ or administrative appellate processes are the exclusive method of appeal of the UCMJ or administrative action. Commanders and supervisors are not required to withhold command or supervisory action while a EO appeal is pending.

j. All appeals must be in writing. The appellant may attach supporting documents to the written appeal.

k. The EO office at the unit or base level will ensure the appeal authority receives a complete copy of the EO case file, the written appeal, the legal review and an evaluation by the appeal authority of any new evidence presented in the appeal.

l. The appeal authority will base all decisions on appeals on the EO case file and any additional written matters submitted with the appeal. The appeal authority may sustain or overrule any finding below or remand the matter for further fact finding.

m. Appeal authorities will issue written determinations briefly reporting the action taken on the appeal. The EO office will deliver the written appeal decision to the appellant and maintain a copy of the findings in the case file. If an appeal results in the appeal authority referring the case for further fact finding, the EO office at unit or base level will apprise the member who filed the appeal of this fact and inform them of the anticipated date of further action.

n. Technician, IADT and AT members dissatisfied with the action on their appeal have 30 calendar days from receipt of an appeal determination to appeal to the next higher level. Appellants will submit their appeals to the next higher level through the local EO office. The appellate authority may waive the 30-calendar-day time limit for good cause based on a memorandum with sufficient justification provided by the member and submitted through the EO office.

o. FTNGD and ADOS members dissatisfied with the action on their appeal have 14 calendar days from receipt of an appeal determination to appeal to the next higher level. Appellants will submit their appeals to the next higher level through the local EO office. The appellate authority may waive the 14-calendar-day time limit for good cause based on a memorandum with sufficient justification provided by the member and submitted through the EO office. Record the results of all formal complaint appeals in the appropriate remarks section of the OHNG Discrimination Complaint Form. Information provided in the remarks section should include a brief synopsis of the complaint, the level of the appeal, and the determination of the appeal i.e. whether the appellate authority sustained the findings or overturned the findings.

p. For EO complaints that resulted in an IG investigation, the complainant and alleged offender may only appeal through the IG appeal process. The IG will inform the EO office or SEEM on the final determination of the appeal.

q. Complainants, offenders or alleged offenders may not use the IG system simply because they are dissatisfied with the outcome of an EO case. The IG system is not an available channel of review unless there was an abuse or mishandling of the established process for appealing formal military EO complaints of discrimination.

Note: The EO office must document all process actions on an OHNG Discrimination Complaint Form.

STATE OF OHIO
ADJUTANT GENERAL'S DEPARTMENT
2825 West Dublin Granville Road
Columbus, Ohio 43235-2789

(DATE)

AGOH-CS

MEMORANDUM FOR (Rank, Name and Address of Complainant)

SUBJECT: EO/EEO Complaint investigation of alleged Race/National Origin/Religion/Gender (Sexual or Non-Sexual Harassment)/Color Discrimination and/or Retaliation.

1. This appoints (state name and rank) to investigate allegations of discrimination raised by (fill in complainant's name) at the (fill in unit) and to prepare a Report of Investigation of your findings NLT (fill in date).

2. As an investigator you will ascertain the facts of the matter to the best of your ability and impartially summarize them in your report for The Adjutant General to act upon.

3. You are directed to use NG PAM 600-22/ANGP 36-3 as your reference for preparing the Report of investigation.

4. Your POC for further details is the office of the State Equal Employment Manager at 614-336-4224/7245. DSN: 346-4224/7245.

5. This appointment letter authorizes you all necessary assistance from members or organizations named in the complaint. Access to records applicable to this investigation will be provided.

Signature Block of
Adjutant General/Unit Commander or
Appropriate Designee

Figure 3-1. Appointment of Investigating Officer.

Chapter 4
Official Discrimination Complaint Case Files

4-1. General Guidance

a. Official discrimination complaint case files and related correspondence will be prepared, organized, and assembled as provided in this regulation.

b. Case files submitted to the SEEM must be complete and appropriately indexed, tabbed, and assembled. Case files will be submitted in original and two copies. The SEEM may return case files to the unit or Wing for correction if they do not meet the requirements as explained herein.

4-2. Titling of Complaints

a. To facilitate identification and reference, the following information will be included in the subject line of any correspondence pertaining to discrimination complaints:

(1) The complainant's military rank.
(2) The complainant's full name, followed Ohio Army or Air National Guard, as appropriate.
(3) The case number composed of the elements described in Para 4-5, below.

b. Complaint titles or subjects of correspondence would appear as shown in following examples:

(1) Complaint of Sergeant Joe T. Doe, Ohio Army National Guard,
Case No. M-000-OH-A-00-11-RL.
(2) Complaint of Captain Jane A. Rowe, Ohio Air National Guard,
Case No. M-000-OH-F-00-11-CGS.

4-3. The Official Discrimination Complaint Case File

a. The official discrimination complaint case file is established when a intermediate level complaint is filed. This case file is a management document. It will be used by the SEEM, Commanders, The Adjutant General and other officials to make recommendations and decisions regarding the complaint.

b. Official discrimination complaint case files include the chain of command inquiries, resolution attempts, the ROI, and other documents listed below. Case files contain information subject to the Privacy Act. They will be maintained and safeguarded in the same manner as other sensitive, personnel files. ROIs may only be released to OHNG officials directly involved in the processing, management, or adjudication of complaints, such as the AG, JA, MILPO, ESSO, SEEM, HR/EO Officer, or MEO Officer. A redacted copy of the ROI will be provided to the complainant.

c. The official discrimination complaint case file will include all documents pertinent to the complaint. Some of the required documents are listed below. This is not an all encompassing list, nor will all such documents always appear in a case file; the specific documents in a case file depend on the particular case.

(1) The complaint.
(2) An explanation of the reason for the dismissal or referral of the complaint, if appropriate.
(3) The inquiry conducted at the lowest command level.
(4) If a resolution is not reached, a memorandum for record documenting the meeting, any offers made by the commander and the complainant's response.
(5) The record of review and inquiries, if any, conducted by intermediate commanders.
(6) The record of any further attempts at resolution taken at intermediate command levels.
(7) Orders appointing the IO to conduct an investigation IAW Chapter 3 of this regulation.
(8) A copy of the ROI.
(9) A copy of the legal review of the ROI and case file required.
(10) The record of any resolution attempts at the AG level.
(11) If the complaint is withdrawn, a written, signed, and dated statement of the complainant or the representative to that effect.
(12) If a complaint is dismissed, the letter notifying the complainant that if the complainant fails to provide information requested or take requested action, the complaint will be dismissed and the notification to the complainant of the dismissal.

(13) Any other correspondence relating to the complaint.

(14) A copy of all certified receipts and other documentation showing notification of delivery of material to the complainant and/or his or her representative, or other parties to the complaint.

4-4. Organization of the Case File

The official discrimination complaint case file submitted to the SEEM will be assembled and organized with an index, tabbed index sheets, and a hard backing. All documents and index sheets will be fastened together with appropriate paper fasteners.

a. A cover sheet (Figure 4-1), will be placed as the top document on the complaint file. The cover sheet will contain:

(1) The name of the unit where the complaint is being handled
(2) Complainant's name (last name, first name, middle initial).
(3) NGB case number, as described in Para 4-5, below.
(4) The date the complaint was filed

b. The table of contents (Figure 4-2) will be placed as the second document on the complaint file. The table of contents will include at a minimum:

(1) The Investigating Officers report.
(2) Administrative
Tab A: Written complaint (OHNG Discrimination Complaint Form)
Tab B: Commander's Plan to Prevent reprisal (Commander's / Supervisor's Reprisal Prevention Plan, Fig 2-3 and Reprisal Complaint Election and Advisement Form NGB Form 335)
Tab C: Appointment of Investigator Memorandum (Figure 3-1)
Tab D: Authorization Letter of Investigator
Tab E: Records of Resolution Attempts
Tab F: Certified Communications with Complainant
(3) Evidence and Exhibits
Tab G: Fact Finding Documentation from associated 15-6 Investigations
Tab H: Complainant's Statement's and Document's
Tab I: Witness Statements for the Complainant
Tab J: Respondent's Statement's and Document's
Tab K: Witness Statement's for the Respondent
(4) EO Official
Tab L: Notes, Transcripts or Emails taken by the EO Official

c. Alphabetical tabs will be used to separate documents listed in Para 4-3. A full set of alphabetical index sheets (with tabs A through Z) will be included, even if documents existing at a point in time use only a portion of these tabs. The remaining tabs will be included to be used for the addition of future documents.

d. Documents will be arranged in chronological order with the earliest document at the bottom and the most recent document on top. As an exception to this rule, reports such as ROIs or inquiries and enclosures to documents may contain material not chronologically organized.

e. Index sheets with alphabetical tabs will be placed over each document, or set of documents in the file, starting with tab A, over the first document in the file.

f. When multiple documents are placed under one alphabetical tab (such as reports), the appendixes or other appropriate parts will be sub-tabbed using numerical tabs (i.e.., 1, 2, 3, etc.) or alphanumeric tabs (e.g., C1, C2, C3, etc.). There will be an index listing the specific document to be found under each sub-tab.

g. Tabs or sub-tabs will not be affixed to documents. They will be attached to or be a part of blank pages to form index sheets.

h. More than one set of index tabs may be used if warranted by the number of documents in the case file.

4-5. Case Number

Each complaint will be assigned a case number only after the complaint has proceeded to the level of The Adjutant General. The number will be entered on the OHNG Discrimination Complaint Form and Cover Page of the EO Officials formal complaint case file. The case number is composed of the following elements:

M-_ _ _-_ _ - _ - _ _ - _ _ - _
{ a} {b} {c} {d} {e} {f}

a. The first three digits, immediately following the letter M, are provided by the SEEM (see Para 2-8a).

b. The two letter State abbreviation immediately follows the dash after number provided by NGB.

c. An A to indicate an ARNG or F to indicate an ANG military member (or applicant for an ARNG position). The letter A or F immediately follows the dash after the State abbreviation.

d. A two digit number is used for each military complaint filed in that State, starting with 01 for the first formal complaint filed during a fiscal year. This number immediately follows the dash after the letter A or F and is assigned by the SEEM.

e. A two digit number representing the last two digits of the fiscal year, based on the date the formal complaint is filed. The fiscal year immediately follows the dash after the State's case number.

f. One or more letters representing the basis of the complaint. The letter or letters immediately follow the dash after the fiscal year. The authorized bases of complaints are:

(1) R for Race
(2) C for Color
(3) L for Religion
(4) G for Gender (not involving sexual harassment).
(5) S for Sexual harassment.
(6) N for National origin.
(7) O for Reprisal

4-6. Case Number for Allegations Referred from NGB

When NGB-EO refers an allegation of discrimination to the
State for inquiry and processing (see Para 2-17), the SEEM will assign a case number. It will be composed of the same elements as shown in Para 4-5, except that:

a. This number will begin with an I rather than M to indicate that this is an allegation referred to the State for processing in accordance with Para 2-17.

b. The two digit number following the dash after the letter A or F represents the number of inquiries referred to the State, starting with 01 for each fiscal year.

c. Two digit number representing the last two digits of the fiscal year, based on the date the inquiry is received by the SEEM. The fiscal year immediately follows the dash after the State's inquiry number.

d. If the inquiry is resolved, withdrawn, dismissed, or referred to other channels for redress, the SEEM will be notified and provided with appropriate documentation, i.e., the written resolution, signed and dated by the complainant and state official, or the written withdrawal, signed and dated by the complainant. The inquiry will then be administratively closed by the SEEM pending final review by the JAG.

Figures 4-1 and 4-2 appear on the following pages.

OHIO NATIONAL GUARD

STATE OF OHIO

(INSERT UNIT NAME HERE)

DISCRIMINATION COMPLAINT BY

(INSERT COMPLAINANT'S NAME HERE)

(INSERT CASE NUMBER HERE)

(INSERT DATE HERE)

FOR OFFICIAL USE ONLY

Figure 4-1. Case File Cover Page

TABLE OF CONTENTS

DISCRIMINATION COMPLAINT BY

(INSERT COMPLAINANT'S NAME HERE)

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Figure 4-2. Case File Table of Contents

Appendix A
References

Section I
Required Publications
This section contains no entries

Section II
Related Publications
AFI 30-2
Social Actions Program
AR 600-20
Army Command Policy
Department of Defense Directive 1350.2
Department of Defense Military Equal Opportunity (MEO) Program

Section III
Prescribed Forms
NGB Form 333
Discrimination Complaint in the Army and Air National Guard
NGB Form 335
Reprisal Complaint Advisement and Election Form
NGB Form 690-R
National Guard Official Discrimination Compliant File Index

Section IV, Referenced Forms
This section contains no entries

GLOSSARY
Section I
Abbreviations

ADR
Alternate Dispute Resolution

AGR
Active Guard Reserve

ANG
Air National Guard

ARNG
Army National Guard

DA
Department of the Army

DoD
Department of Defense

DoDD
Department of Defense Directive

EO
Equal Opportunity

EOA

Equal Opportunity Advisor

EOR
Equal Opportunity Representative

EOT
Equal Opportunity and Treatment

FD
Final Decision

HR
Human Resources

IG
Inspector General

JA
Judge Advocate

NGB
National Guard Bureau

NGB-JA
Office of the Judge Advocate, NGB

NGB-EO
Equal Opportunity Directorate, NGB

ROI
Report of Investigation

SA-IG
Secretary of the Army-Inspector General

SAF-IG
Secretary of the Air Force-Inspector General

SEEM
State Equal Employment Manager

U.S.C.
United States Code

Section II
Terms

Allegation
An assertion by a complainant that an act or personnel action has been discriminatory.

Basis
A reason, claimed by a complainant, for a discriminatory action; specifically, race, color, religion, gender (to include sexual harassment), national origin, or reprisal.
Note that reprisal, as a basis, is subsumed in the above.

Beneficiary
An individual who is not a military member of the NG, but who benefits from a program, activity or service of the NG which is funded with federal assistance, or which program, activity or service is conducted or provided in NG facilities which are built or maintained with federally funded assistance.

Case File
See official discrimination complaint case file.

Case Number
A number assigned to a intermediate level complaint when it reaches the level of the Adjutant General or a number assigned to complaint referred to the State NG by NGB. It is used by the State NG and NGB for statistical and identification
purposes.

Complainant
A current or former military member, applicant for membership, or beneficiary of services of the Army or Air National Guard authorized to file a discrimination complaint under this regulation.

Conclusion (in an ROI)
A clear and concise statement of fact that can be readily deduced from an analysis of the evidence and the record of the case.

Equal Opportunity (ARNG terminology) or Military Equal Opportunity (ANG terminology)
The condition under which the participation, consideration, treatment, and potential for success of members of the ARNG or ANG is based upon individual merit, fitness, achievement, and ability without regard to illegal considerations of race, color, religion, gender, or national origin.

Fact Finding
This process is not in the same scope as an inquiry. This process is designed to present basic facts to the commander at the level the complaint is raised. Basic fact finding will be used to facilitate resolution at the lowest level.

Final Decision
A decision on the merits of a discrimination complaint, filed under this regulation, issued by or in the name of the Chief, NGB. A final decision is not subject to further review or appeal and it exhausts the administrative process provided for under this regulation.

Finding (in an ROI)
An explicit determination of discrimination or no discrimination on each allegation and basis raised in a formal discrimination complaint.

Intermediate Level Complaint
A written complaint filed under this regulation, using NGB Form 333, that alleges illegal discrimination.

Illegal Discrimination
Any action that unlawfully results in unequal treatment of persons based on race, color, religion, gender (to include

sexual harassment), or national origin.
Note that within the military, some appointments, assignments, and other personnel actions have statutory or regulatory restrictions due to gender. Actions based on these statutory or regulatory requirements do not constitute illegal discrimination.

Initial Complaint
A complaint of alleging illegal discrimination expressed verbally (or filed on OHNG Discrimination Complaint Form with only the appropriate command or supervisory level block checked) to a member of the complainant's chain of command at any level, EOA or MEO staff, or other state NG officials.

Inquiry
A fact finding process used to determine the validity and merit of allegations of discrimination. It may involve the review of records and directives, examination of material evidence, and interview of persons who may have direct knowledge of the facts. This process is appropriate when the commander receiving the complaint is not authorized to appoint an investigator. This process is also appropriate at the lowest command level to help facilitate resolution of the complaint.

Investigation
A duly authorized, systematic, detailed examination to uncover facts and determine the truth. It is a formal process which must produce sufficient detail to support a finding of discrimination or no discrimination. Investigations of allegations of discrimination are conducted under the authority of this regulation. They are conducted in accordance with the provisions of the NGB Investigator Procedural Manual and Chapter 3 of this regulation.

Mediation
Is a method of settling disputes which provides an alternative to litigation. It does not judge or blame and values equally people in dispute. This process creates a safe and non-threatening atmosphere for both complainants and respondents of complaints.

Moot
A complaint or an issue would be considered moot when, at the time the complaint is filed, all actions that would be required if discrimination were substantiated, had already been taken due to other circumstances. For example, the issue is promotion and the individual has been promoted at the time of the complaint. Or the issue is training and the individual has been trained.

Preponderance of Evidence
The standard of proof used in discrimination complaint cases. This standard requires that the findings and conclusions be supported by greater evidence than contrary findings and conclusions. That is, considering all evidence, it is more likely than not that discrimination did or did not take place. This is a lesser standard than "substantial credible evidence," "clear and convincing evidence," or "beyond a reasonable doubt."

Recommendation (in an ROI)
An investigator's proposal to the appointing authority for actions or remedies based on the facts and evidence gathered in the investigation.

Reprisal
Any act of reprisal, restraint, interference, or coercion taken against an individual, or taking (or threatening to take) an unfavorable personnel action, or withholding (or threatening to withhold) a favorable personnel action for having engaged in a protected equal opportunity activity, i.e., for having filed a complaint of discrimination, for preparing to file a complaint of discrimination, for having testified as a witness in a discrimination complaint investigation, for informing officials within the chain of command or NGB of perceived discrimination, or any other protected communication related to equal opportunity matters.

Resolution of a Complaint
A voluntary, written agreement between the complainant and a representative of the State NG which results in settlement of the complaint to the satisfaction of both parties and terminates the administrative processing of the complaint.

Sexual Harassment
A form of gender discrimination that involves unwelcome sexual advances, request for sexual favors, and other verbal or physical conduct of a sexual nature when:
(1) Submission to or rejection of such conduct is made either explicitly or implicitly a term or condition of a person's job, pay, or career; or
(2) Submission to or rejection of such conduct by a person is used as a basis for career or employment decisions affecting that person; or
(3) Such conduct interferes with an individual's performance or creates an intimidating, hostile, or offensive environment.
Any person in a supervisory or command position who uses or condones implicit or explicit sexual behavior to control, influence, or affect the career, pay, or job of a military member or civilian employee is engaging in sexual harassment. Similarly, any military member or civilian employee who makes deliberate or repeated unwelcome verbal comments, gestures, or physical contact of a sexual nature is also engaging in sexual harassment.

Withdrawal of the Complaint
A voluntary, written, signed and dated statement by the complainant indicating an unconditional willingness to stop further processing and pursuit of the complaint