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Departments of the Army and the Air Force
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*National Guard Regulation (AR) 600-22/
NGR (AF) 30-3

Personnel-General

NATIONAL GUARD MILITARY DISCRIMINATION COMPLAINT SYSTEM

Summary. This regulation establishes policies and procedures for filing, processing, investigating, settling, and adjudicating discrimination complaints in the Army and Air National Guard. It implements Title VI of the Civil Rights Act of 1964, as amended, DoD Directive 1350.2, Army Regulation 600-20, and Air Force Regulation 30-2, prohibiting discrimination based on race, color, religion, gender, national origin, age, and handicap. It establishes a uniform Discrimination Complaint System for both the Army and the Air National Guard, legal and administrative reviews, and a final decision by the National Guard Bureau.

Applicability. This regulation applies to--

a. Army and Air National Guard military personnel serving in and former military personnel who served in an inactive duty for training status, during annual training, in a full-time support status, and while in Active Guard Reserve (AGR) status under Title 32 U.S.C.

b. Applicants for membership in the Army and Air National Guard and for duty as AGR under Title 32 U.S.C.

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

Internal Control System. This regulation is not subject to the requirements of AR 11-2. It does not contain internal control provisions.

Impact on New Manning System. This regulation does not contain information that affects the New Manning System.

Supplementation. Supplementation of this regulation and establishment of forms other than NGB forms are prohibited without prior approval from NGB-PRE-C.

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 Users will destroy interim changes on their expiration dates unless sooner superseded or rescinded.

Suggested Improvements. The proponent agency of this regulation is the National Guard Bureau Complaints Management and Support Activity. Users are invited to send comments and suggested improvements on DA Form 2028 (Recommended Changes to Publications and Blank Forms) directly to NGB-PRE-C, 4501 Ford Avenue, Alexandria, VA 22302-1454.

*This regulation supersedes paragraph 2-6 and Appendix A of NGR 600-21, 1 April 1986 and paragraphs 6-4b, d, e, f, j, k and l and figure 6-1 of ANGR 30-2, 1 September 1987.

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Chapter 1
General

1-1. Purpose
This regulation sets policy and tells how to file, process, investigate, and settle complaints of discrimination. It establishes a uniform Discrimination Complaint System for the Army and the Air National Guard (ARNG and ANG). It implements Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d); DoD Directive 1350.2; Army Regulation 600-20; and Air Force Regulation 30-2. 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 National Guard military personnel.

1-2. Explanation of abbreviations and terms
Abbreviations and explanation of terms used in this regulation are contained in the glossary. Because much of the terminology is unique to the complaint process and differs from definitions used in other directives, the meanings of these terms are essential to the understanding of this regulation.

1-3. Implementation
a. Transfer of complaint functions from Regional Personnel Centers to the National Guard Bureau Complaints Management and Support Activity (NGB CMSA) will be announced by an All States Memorandum.

b. Effective 1 Oct 92, all complaints will be processed under the provisions of this regulation, including complaints that were filed prior to 1 Oct 92. However, there is no requirement to re-accomplish any processing that was correctly performed in accordance with the regulations in effect at that time.

1-4. Who may file a complaint
a. Any aggrieved individual, covered by this regulation (see the applicability paragraph on page 1), who believes that he or she has been illegally discriminated against due to race, color, religion, gender (including sexual harassment), national origin, age, physical or mental handicap, or retaliation in a matter subject to the control of the National Guard, may file an individual complaint of discrimination. Beneficiaries of services of the ARNG or ANG under Title VI of the Civil Rights Act may only file complaints based on race, color, or national origin (as provided for under that statute).

b. Members of the National Guard who believe that they have been discriminated against while serving on active duty, to include active duty training and Active Guard Reserve (AGR) under Title 10 U.S.C., must process such complaints of discrimination under active component regulations. (See AR 600-20 and AFR 30-2.)

c. Members of the National Guard who believe that they have been discriminated against while performing State missions must process such complaints of discrimination under State regulations.

d. Individuals who believe that they have been discriminated against in technician employment must process such complaints under NGR (AR) 690-600/NGR (AF) 40-1614.

1-5. Policy.
a. The fair, equitable, and nondiscriminatory treatment of all members and employees of the National Guard improves morale and productivity, fosters unit cohesion and readiness, and increases combat effectiveness of the Guard. It is the policy of the National Guard to provide equal

opportunity for National Guard 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), national origin, age, physical or mental handicap, or retaliation.

b. All National Guard 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 outlined in military or civilian personnel regulations will be applied when individuals behaved inappropriately by engaging in sexual harassment. Such instances will be documented in the harasser's official personnel file.

c. The National Guard has established and operates a Military Discrimination Complaint System designed 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 feel that 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 retaliation.

d. The chain of command will be the primary channel for resolving discrimination complaints. Individuals will be encouraged to use command channels for redress of grievances. Allegations of discrimination will be referred for processing by the lowest appropriate command level in accordance with this regulation. This provides that commander an opportunity to assist the complainant, inquire into the issues and allegations, take corrective action, and to attempt to resolve the complaint, where possible.

e. It is the goal of the National Guard to resolve and settle all allegations and complaints of discrimination fairly, equitably and expeditiously. Whenever possible, complaints will be resolved at the unit level. However, when resolution of a complaint at the lowest level is not successful, military personnel will be afforded an opportunity to present their grievance through the chain of command to the Adjutant General.

f. Requests for any interpretation of policy or provisions of this regulation will be forwarded, in writing, through command channels, to the NGB Complaints Management and Support Activity (NGB-PRE-C), 4501 Ford Ave., Alexandria, VA 22302-1454.

1-6. Time limits

These 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 full time or AGR personnel, a reduction in these time limits is appropriate.

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 discriminatory event or action.

b. A complainant must indicate his or her desire to pursue the complaint to the next level of the chain of command:

(1) At the time that he or she is advised of this right (i.e.,

when a complaint is not resolved or is dismissed or referred) or

(2) Within 30 days thereafter by notifying the next command level.

c. The lowest level of command should complete all required actions (see paragraph 2-6) within 60 calendar days after receipt of the formal complaint.

d. Each intermediate level of command should complete all required actions (see paragraph 2-7) within 30 calendar days after the receipt of the complaint case from the subordinate commander.

e. The investigation and actions required at the Adjutant General level (paragraph 2-8) should be completed within 90 calendar days after receipt of the case file from the subordinate commander. The case file should be forwarded to NGB for review and final decision within 8 months of the formal filing of a complaint.

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.

1-7. Responsibilities

a. Chief, National Guard Bureau (NGB). Provides the overall direction to equal opportunity (EO) within the National Guard.

b. Directors, Army and Air National Guard, NGB. Implement equal opportunity within the Army and Air National Guard respectively; review and comment on cases forwarded to NGB for final decisions; and process complaints filed against Adjutants General.

c. Director for Personnel Resources (NGB-PR). Provides broad guidance and overall direction of the Military Discrimination Complaint System and issues final decisions on behalf of the Chief, NGB, or delegates that function to the Chief, NGB CMSA.

d. Chief, Equal Opportunity Division (NGB-PRE). Administers EO plans, policies, and programs in the National Guard, to include Affirmative Action Plans and Special Emphasis Programs for women and minorities.

e. Chief, Complaints Management and Support Activity (NGB-PRE-C). Establishes and administers the Military Discrimination Complaint System and develops policies and procedures for processing, managing, and adjudicating discrimination complaints.

f. Judge Advocate, NGB (NGB-JA). Reviews discrimination complaint cases for compliance with applicable laws and regulations. Reviews final decisions for legal sufficiency and provides advice in discrimination complaint matters.

g. State Adjutants General (AG). Implement and manage the Military Discrimination Complaint System within their State, take appropriate steps to ensure that the State National Guard operates in an atmosphere free of illegal discrimination, and--

(1) Ensure that the policies, procedures, and requirements of this regulation are carried out within their State.

(2) Establish procedures to ensure expeditious processing of complaints and adherence to above time limits.

(3) Direct that an investigation be conducted when a complaint of discrimination is not resolved after having reached the AG.

(4) Request a final decision from NGB if the complaint cannot be resolved after the investigation.

h. ARNG and ANG Commanders. Ensure that the policies of the AG and of this regulation are adhered to in their organizations. Commanders at all levels will--

(1) 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.

(2) 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.

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

i. State Equal Employment Manager (SEEM). Manages the Military Discrimination Complaint System within the State on behalf of the AG. In coordination with the State HR/EO or Social Actions Officer, ensures that complaints are properly and rapidly processed upon reaching the level of the AG. Coordinates with the State JA and advises the AG on all aspects of discrimination complaint processing and management.

j. State HR/EO and Social Actions Officers. In conjunction with the SEEM, advise the AG on discrimination complaints in the Army or Air National Guard, respectively.

k. ARNG Equal Opportunity Advisors (EOA) and ANG Equal Opportunity and Treatment Staff (EOT). Advise commanders regarding issues, merits, validity, and processing of discrimination complaints.

1-8. Assessment

DoD Instruction 1350.3 establishes discrimination complaints, to include sexual harassment complaints, as a category of equal opportunity assessment categories. To provide a capability to monitor and assess discrimination complaints, AGs will establish procedures within their States and territories to ensure that the following information is captured and maintained by fiscal year. SEEMs will be required to provide this data as requested by NGB and DoD.

a. The total number of complaints filed by grade, service, and basis (as listed in paragraph 4-5f). 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 will be included.

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

c. The number of complaints that were adjudicated with a finding of discrimination or no discrimination.

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

Chapter 2
Processing of Complaints

2-1. Assistance in discrimination complaints

a. Military members who believe that they have been illegally discriminated against are encouraged to discuss their complaints with and to seek assistance from their immediate supervisors, other members of their chain of command, their unit commander, and EOA or EOT staff. Supervisors, members of the chain of command, and EOA or EOT staff will attempt to informally resolve the complaint. Figure 1 represents the discrimination complaint process and should be used to advise complainants on procedures for filing complaints under this regulation.

b. EOA or EOT staff may not conduct inquiries into criminal matters. If, in the course of obtaining information about a complaint, the EOA or EOT staff suspect that the person being interviewed has violated the Uniform or State Code of Military Justice (for example, cases of sexual harassment may be punishable under Articles 93, 117, 120, 125, 128, or 134 of the UCMJ or equivalent provisions of the state military code), the interview will be terminated and the appropriate members of the chain of command notified.

2-2. Filing of formal complaints

Any current or former member of the Army or Air National Guard, applicant for membership in the ARNG or ANG, or beneficiary of services of the ARNG or ANG under Title VI of the Civil Rights Act, who believes that he or she was illegally discriminated against due to of race, color, religion, gender (to include sexual harassment), national origin, age, physical or mental handicap, or retaliation may file a formal complaint of discrimination. Beneficiaries of services of the ARNG or ANG under Title VI of the Civil Rights Act may only file formal complaints based on race, color, or national origin (as provided for under that statute).

a. The complaint must be in writing. ANG members will use AF Form 1587, EOT Complaint Summary. ARNG member may use the AF form, a local form, or plain paper. The formal complaint must contain the following information:

(1) Identification of the complainant and the complainant's representative, if any.

(2) The address and telephone number where the complainant (and complainant's representative, if any) may be contacted regarding the complaint. Note that if the complainant cannot be contacted or refuses to respond the complaint may be dismissed.

(3) A concise statement of the act or personnel action that the complainant believes to be discriminatory.

(4) The date on which the act or personnel action occurred or the date the complainant found out about the alleged discrimination. In the latter case, provide an explanation.

(5) The basis or bases on which the complainant believes the alleged discrimination was predicated.

(6) The individual(s) or organization that the complainant believes was responsible for the discrimination.

(7) The corrective or remedial action requested by the complainant.

(8) Explanatory statements or documentation to support the complainant's case may be provided by the complainant, if he or she desires.

b. The complaint must be filed within 180 calendar days of 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.

c. The complaint should be filed with the EOA or EOT staff or with the unit commander of the military member, except as provided for in paragraph 2-4, below. A complaint may also be filed with any other commander in the chain of command, the AG, the National Guard Bureau, or inspectors general. However, all complaints based on allegations of discrimination will be referred to the lowest command level and will be processed in accordance with paragraphs 2-6 through 2-11.

2-3. 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 formal complaint filed under provisions of paragraph 2-4b, such allegations will be processed as specified in this paragraph. 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, below) and referred to State National Guard 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 paragraphs 1-5d and 2-2c, above. The complainant will be provided assistance in informal resolution of the complaint (see paragraph 2-1) or formal filing of the complaint (see paragraph 2-2).

c. If it is determined that the allegations do not fall within the purview of this regulation (see paragraph 2-5b(3)), the complainant will be advised of the proper channels to seek redress.

d. The AG or an officer acting for the AG, 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 CMSA.

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

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

(2) The complainant has filed a formal complaint in accordance with paragraph 2-2 of this regulation. In such instance the processing of the allegations of discrimination will be discontinued under this paragraph and will be processed as a formal complaint of discrimination in accordance with paragraphs 2-6 through 2-11, below. A new NGB case number will be assigned if the complaint reaches the AG unresolved (see paragraph 2-8a).

(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.

2-4. Complaints against or outside the chain of command

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

b. When the first person in a military member's chain of command is the AG and that member believes that the AG is personally responsible for the alleged discrimination, the formal complaint will be filed with the Director, Army or Air National Guard, NGB, as appropriate.

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

(1) If the complaint involves another State's National Guard organization, the AG 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. Note that complaints of discrimination by National Guard members serving on active duty, to include AGR in Title 10 U.S.C. status, are filed with the active component organization to which assigned or attached and are processed under active component regulations.

d. Applicants for membership in the National Guard may file a discrimination complaint with the State Recruiting and Retention Manager or with the AG.

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

2-5. Acceptance, dismissal, referral, or withdrawal of complaints

a. Formal 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 paragraphs 2-6 through 2-8. Complaints that have been accepted for processing may later be dismissed or withdrawn, as described in c, below.

b. Any allegations of discrimination in a complaint or the complaint in its entirety may be dismissed for the following reasons:

(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 that are not covered by this regulation. Among claims in this category are technician complaints of discrimination; these are not within the jurisdiction of the State National Guard or NGB for acceptance or processing under this regulation (see paragraph 1-4d, above). Also included are situations over which neither the State National Guard nor NGB has jurisdiction or which neither has the authority to remedy.

(4) Based on statutory or regulatory restrictions. Complaints that are based on statutory or regulatory restrictions will not be processed under this regulation; for example, restriction on assignment of women to certain combat positions and age requirements established for appointments, enlistment, and other areas. See paragraph 2-5d, for referral of other complaints that do not constitute illegal discrimination.

c. 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 of the proposed dismissal of a complaint (figure 2). The complaint will be dismissed in writing using figure 3.

d. When it is determined that one or more allegations in a complaint are not based on illegal discrimination because of race, color, religion, gender (to include sexual harassment), national origin, age, physical or mental handicap, or retaliation, such allegations will not be processed under this regulation. Commanders will, nevertheless attempt to assist and resolve the military 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 will refer such allegations to these other agencies. If a military member disagrees with the commander'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 chain of command.

e. A complaint may be withdrawn at any stage of processing by the complainant. Such withdrawal must be voluntary, in writing, and must be signed and dated by the complainant.

f. Dismissal or withdrawal of a complaint does not lessen responsibility of the chain of command to determine the merits and validity of the allegations that had been raised and to take corrective action required.

2-6. Processing by the lowest command level

Once a complaint has been filed with or referred to the lowest level of command in accordance with paragraphs 1-5d, 2-2c, 2-3, or 2-4, the complaint will be processed as specified in this paragraph. Time limits in paragraph 1-6c, apply. If the commander has EOA or EOT staff available to him or her, that staff will assist and advise the commander in the processing required under this paragraph. If the lowest level of command is the AG, the provisions of paragraph 2-8d apply.

a. A procedural review of the complaint will be conducted to determine whether it should be accepted, dismissed, or referred as provided in paragraph 2-5. The formal complaint will be annotated to show whether the complaint was accepted or whether the complaint, in whole or in part, was dismissed or referred (see paragraphs 2-5b and d).

b. If the complaint is accepted, the commander will conduct or cause an inquiry to be conducted. See chapter 3 regarding inquiries.

c. Based on the results of that inquiry, the commander or designee will meet with the complainant to attempt to resolve the complaint. See chapter 3 on resolution of complaints.

d. If the complaint is resolved, the formal complaint will be annotated and the complaint is administratively closed.

e. If the complaint is not resolved or if the complaint, in whole or in part, was dismissed or referred, the complainant will be advised of his or her right to pursue the complaint to the next level of the chain of command. At this point in time the complainant should indicate his or her desire to pursue the complaint to the next level of the chain of command. If the complainant does not make that

election at this time, the complainant will have 30 days to notify the next level of command of his or her desire to pursue the complaint; otherwise the complaint will be administratively closed.

f. The original of the formal complaint, along with the results of the inquiry and resolution attempts or the reason for dismissal or referral will be forwarded to the next higher commander in the chain of command. If the complainant has indicated a desire to pursue the complaint to the next level of command, this will also be indicated in the case file. Resolution attempts will be documented and included as part of the official complaint case file.

2-7. Processing by intermediate commanders

If the complainant chooses to pursue the complaint, the complaint will be processed as specified in this paragraph. Time limits in paragraphs 1-6b and d, apply. If the complainant has not indicated his or desire to pursue the complaint, the complaint will be administratively closed.

a. Intermediate commanders will review the complaint, inquiry(ies) of the subordinate commander(s), attempts at resolution by subordinate commander(s), and the decisions of subordinate commander(s). Intermediate commanders should use their EOA or EOT staff, legal advisors, or other staff members, as appropriate, in conduct of this review.

b. Intermediate commanders may cause additional inquiries or investigations to be conducted in accordance with chapter 3. After completion of additional inquiries or investigations or after the review in 2-7a, above, as appropriate, intermediate commanders or designees will attempt to resolve the complaint (see chapter 3).

c. If the complaint is resolved, the formal complaint will be annotated and the complaint is closed.

d. If the complaint is not resolved or if the complaint, in whole or in part, was dismissed or referred, the complainant will be advised of his or her right to pursue the complaint to the next level of the chain of command. At this point in time the complainant should again indicate his or her desire to pursue the complaint to the next level of the chain of command. If the complainant does not make that election at this time, the complainant will have 30 days to notify the next level of command of his or her desire to pursue the complaint, otherwise the complaint will be administratively closed.

e. The original of the formal complaint, along with the results of the inquiry by intermediate commander(s) and the resolution attempts or the reason for intermediate commanders to uphold the dismissal or referral will be forwarded to the next higher commander in the chain of command. If the complainant has indicated a desire to pursue the complaint at the next level of command, this will also be indicated in the case file. Resolution attempts by the intermediate commander will be documented and included as part of the official complaint case file.

2-8. Processing by the AG

If the complaint proceeds unresolved to the AG or if the AG is the lowest level of command in a particular complaint, it will be processed as specified in this paragraph. The State Equal Employment Manager will administratively process discrimination complaints that reach the AG unresolved or that are filed with the AG. The SEEM will coordinate the processing with the State HR/EO or Social Actions

Officer, the Judge Advocate, and other staff members, as appropriate.

a. Upon receipt of the complaint, the SEEM will immediately contact the NGB CMSA by phone or facsimile and obtain a NGB case number.

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

c. If the complainant disagreed with subordinate commanders' decision that the complaint, in whole or in part, was dismissed or did not contain allegations based on discrimination, the AG may reverse that decision or take action as specified in paragraphs 2-8c(1) or (2), below.

d. If the AG is the first member in the chain of command for filing a complaint, the complaint will be reviewed to determine whether it should be accepted, dismissed, or referred as provided in paragraph 2-5. The formal 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, age, physical or mental handicap, or retaliation, such allegations will not be processed under this regulation. The AG will direct the appropriate processing of such allegations. The formal 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 NGB for review in accordance with paragraph 2-9.

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

f. If the AG chooses not to attempt resolution at this point or if resolution attempts are unsuccessful, the AG will direct an investigation, as provided for in chapter 3.

g. After the investigation has been completed, the Report of Investigation (ROI) and the entire case file will be reviewed for legal and administrative sufficiency. This review will be conducted by the SEEM and the State HR/EO or Social Actions Officer with a legal review by the State JA.

(1) The legal review must contain a thorough analysis of the facts under the appropriate case law. The ROI may also be coordinated with other staff offices within the State National Guard on matters in their functional area.

(2) The AG may direct any additional investigation or supplementation of the record to ensure legal sufficiency and compliance with laws and regulations.

(3) Once the ROI is determined to be administratively and legally sufficient, it will become part of the official complaint case file.

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

i. Using the ROI, the advice of the SEEM and HR/EO or Social Actions staff and of the JA, and a personal appraisal of the case, the AG or designee will meet with the complainant to attempt to resolve the complaint.

j. If the complaint cannot be resolved, the AG will request that NGB issue a final decision. Both the AG and the complainant may provide NGB

with rationale for their position regarding a final decision.

k. The complete case file, prepared and assembled as described in chapter 4, below, will be forwarded in original and two copies to NGB CMSA.

l. If the complaint is resolved while at the AG level, an NGB review is not required. However, the SEEM must notify NGB CMSA that a resolution has been achieved so that the record started with the assignment of the NGB case number may be closed.

2-9. Review by NGB

a. A review by the National Guard Bureau will be conducted--

(1) When a complaint is dismissed, in whole or in part, and the complainant disagrees with the dismissal.

(2) After a formal investigation has been conducted and the AG and the complainant have been unable to resolve the complaint.

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

(1) The documentation in the case file to determine whether it is sufficient to determine the merits of the case.

(2) The procedures followed to determine if inquiries, resolution attempts and other requirements of this regulation have been adhered to.

(3) The investigation to determine if it is adequate to make a finding of discrimination or no discrimination.

(4) Conclusions of the investigator and recommendations regarding the final decision to determine if they are supported by the evidence in the case file and ROI.

(5) The appropriateness of the rationale for any dismissal.

c. NGB CMSA will review the entire case, to include the chain of command inquiries, the ROI, and the dismissal and/or request for final decision, as appropriate. The case will be coordinated with the Office of the Judge Advocate, NGB and with the Army or Air Directorate, NGB.

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

(1) The 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.

2-10. Issuance of the final decision

After completion of NGB review and of any needed corrective actions by the State National Guard, NGB will issue a final decision in the format shown in figure 4. A copy of the final decision will be forwarded to the AG and the complainant.

2-11. Administrative closure

When a complaint is administratively closed, this exhausts the administrative process established by this regulation; 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 or the requirements listed in paragraphs 2-5d or f. A complaint is considered to be administratively closed when:

a. NGB issues a final decision.

b. A complaint is resolved to the satisfaction of the complainant and the formal complaint is so annotated.

c. A complainant voluntarily and unconditionally withdraws a complaint.

d. The complainant fails to pursue the complaint to the next level of the chain of command.

e. A complaint is dismissed or referred and the complainant does not disagree with this action.

f. NGB determines that a dismissal was proper.

g. The AG or the Director, Army or Air National Guard, NGB, determines that the complaint is not based on illegal discrimination and refers the allegations in the complaint for processing under a different regulation.

Chapter 3
Inquiries, Investigations, and Resolutions of Complaints.

3-1. Purpose and formality of inquiries and investigations

Inquiries and investigations are designed to determine the validity and merit of the complaint and to foster the resolution of the complaint. In addition, inquiries and investigations serve as a tool for commanders to take appropriate corrective action, whether or not discrimination has been found. By definition, inquiries are informal; note that the definition of inquiry, as used in this regulation (see glossary), is not identical to that found in AR 15-6 or AFR 120-3. Investigations, as defined by this regulation (see glossary), are only formal and "informal investigations" provided for in other regulations, will not be conducted in discrimination complaints.

3-2. Authority and guidance for inquiries.

a. Inquiries into allegations of discrimination are conducted under the authority of chapter 3 of this regulation. They will be conducted as specified herein; additional guidance is contained in AR 15-6 or AFR 120-3.

b. An inquiry will be conducted into all accepted allegations of the complaint. Since an inquiry is informal, it is not intended to have the scope or formality of an investigation; however, sufficient information must be obtained to enable the commander to determine the validity and merit of the complaint. If, due to the nature or circumstances of the complaint, an inquiry does not suffice for a commander to make a decision on the complaint, the commander may recommend or direct that a formal investigation be conducted in accordance with paragraph 3-3, below.

c. An inquiry is not intended to provide a hearing for persons who may have an interest in the subject of the inquiry. No respondent will be designated and no one is entitled to the rights of a respondent.

d. A written report of the inquiry will be prepared and made part of the complaint file. This is not intended to be a detailed or formal report, but should summarize the inquiry, to include a summary of the testimony of witnesses.

e. An inquiry may be conducted personally by the commander or by a military member appointed by the commander. EOA or EOT staff, HR/EO officers, social actions personnel, SEEMs, and JAs may provide advice and assistance regarding conduct of the inquiry and the allegations, merits, and processing of complaints, but they will not, themselves, conduct an inquiry.

3-3. Authority and requirement for investigations

a. Investigations into allegations of discrimination are conducted under authority of chapter 3 of this regulation. They will be conducted as specified herein and in accordance with the guidance in the NGB Investigators Procedural Manual and AR 15-6 or AFR 120-3. The Reports of Investigation (ROI) of such discrimination complaints will be processed in accordance with this regulation and, after a determination of administrative and legal sufficiency, a copy of the entire ROI will be provided to the complainant.

b. If, upon completion of an inquiry, the facts indicate that an investigation is warranted, a recommendation is made to the commander having the authority to direct such an investigation.

c. When a complaint has reached the AG and a resolution has not been arrived at, the AG will order an investigation under the provision of chapter 3 of this regulation. If an investigation has already been conducted by a subordinate commander, the AG may use that investigation rather than directing another investigation. In such a case, the AG will have that investigation reviewed to determine if it meets all the requirements of AR 15-6 or AFR 120-3, the NGB Investigators Procedural Manual, and chapter 3 of this regulation.

d. When a complaint is filed with the Director, Army or Air National Guard, NGB, in accordance with paragraph 2-4b, the Director will accept, dismiss, or refer the complaint in accordance with the criteria in paragraph 2-5, above.

(1) For accepted complaints, the Director will appoint an impartial investigating officer or will request the NGB Inspector General to assist in investigating the complaint.

(2) Dismissal of complaints will be coordinated with NGB-JA and NGB-PRE-C.

3-4. Appointment of Investigators.

a. AGs and commanders may use whatever resources are available to them to conduct investigations. EOA or EOT staff, HR/EO officers, social actions personnel, SEEMs, and JAs may provide advice and assistance regarding the allegations, merits, and processing of complaints, but they will not be appointed as investigating officers in discrimination complaints.

b. Only disinterested and impartial personnel will be appointed as investigating officers. Normally, investigating officers should be senior to persons being investigated (see AR 15-6 or AFR 120-3).

c. Investigating officers will be appointed in writing. Chapter 3 of this regulation will be cited as the authority. 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 paragraphs 3-5a and d). Copies of this regulation, the NGB Investigators Procedural Manual, and AR 15-6 or AFR 120-3 will be made available to the investigator.

3-5. Duties of the investigator

In addition to the instructions in AR 15-6 or AFR 120-3 and the NGB Investigators Procedural Manual, investigators will be guided by the provisions of this paragraph. The investigator:

a. Is required to make a fair and impartial investigation of the facts and circumstances surrounding the case and to render logical findings, conclusions, and recommendations based on the preponderance of evidence (see glossary for definitions). The NGB Investigators Procedural Manual specifies what evidence is used in the ROI, the quality of evidence, and the essentiality of evidence.

b. Collects facts and develops information to determine the merits of each accepted allegation in the complaint and reviews the circumstances under which the discrimination is alleged to have taken place. This does not lessen responsibility of the complainant and National Guard officials to prepare, present, and explain their positions as to the disputes and to provide supporting evidence.

c. Determines the witnesses whose testimony is necessary to the investigation and interviews and obtains testimony from only these witnesses. Testimony is included in the investigative file only if the investigator deems the testimony relevant and necessary. The investigator documents in

the ROI the reason any witness identified by the complainant or by National Guard officials was not interviewed and why any evidence that may have been offered was not accepted.

d. Administers oaths and obtains statements from witnesses under oath or affirmation without any promise of confidentiality. If a court reporter is provided, ensures verbatim transcripts have been properly prepared. If using a court reporter; witnesses' review and signature is not required. When testimony is obtained without the use of verbatim transcripts by a court reporter, signed, written statements under oath will be obtained.

e. Collects and analyzes information on how members of the complainant's group are treated compared to other military personnel in the organization where the discrimination is alleged to have occurred. This information may include, for instance, statistical data on promotions, disciplinary action, awards, or other personnel actions.

f. Investigates work policies and practices, relevant to the complaint, that seem to constitute discrimination, even though they may not have been specifically cited by the complainant.

h. Prepares and submits a written, signed ROI. See the NGB Investigators Procedural Manual for content and format of an ROI.

(1) The investigator provides a detailed narrative report of the investigation as part of the ROI. The report includes 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 that had been accepted for investigation; and appropriate conclusions, recommendations, and findings (see glossary for definitions), with explicit findings on whether or not discrimination has 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.

3-6. Resolution

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

b. When complaints of discrimination are investigated, it will be in sufficient detail to support a finding of discrimination or no discrimination and to provide a basis for an appropriate decision on the resolution of the complaint. Records of the decision regarding complaints of discrimination will be adequate to document the investigative process, record the decision, and will contain sufficient documentary evidence and sworn testimony to support the decision.

c. 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 National Guard (this can include the commander or other designated representative).

d. 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.

3-7. 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 the commanders concerned. In such cases either:

(1) All complainants must agree, in writing, to joint processing of their complaints and to the release of documents to all complainants; or

(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.

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 NGB must be complete and appropriately indexed, tabbed, and assembled. Case files will be submitted in original and two copies. The NGB may return case files to the State National Guard 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 by the name of the State and Army or Air National Guard, as appropriate.

(3) After a case number is assigned, the case number composed of the elements described in paragraph 4-5, below.

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

(1) Complaint of Sergeant Joe T. Doe, Maryland Army National Guard, NGB Case No. M-000-MD-A-00-92-RL.

(2) Complaint of Captain Jane A. Rowe, Ohio Air National Guard, NGB Case No. M-000-OH-F-00-92-CGS.

4-3. The official discrimination complaint case file

a. The official discrimination complaint case file is established when a written complaint is filed. This case file is a management document. It will be used by commanders, AGs, and NGB officials to make recommendations and decisions regarding the complaint.

b. Official discrimination complaint case files include the chain of command inquiries, 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 individual complainants and their designated representatives or to National Guard officials directly involved in the processing, management, or adjudication of complaints, such as the AG, JA, MILPO, ESSO, SEEM, HR/EO Officer, or SL Officer.

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 formal 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 investigating officer 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 by paragraph 2-7f, above.

(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 NGB will be assembled and organized with an index (NGB Form 690-R), tabbed index sheets, and a hard backing. All documents and index sheets will be fastened together with appropriate paper fasteners (see figure 5). NGB Form 690-R, prescribed by NGR (AR) 690-600/NGR (AF) 40-1614, will also be used as the index for military discrimination complaint files.

a. The index (NGB Form 690-R), as shown in figure 5, will be placed as the top document on the complaint file. The index will be updated each time a document is added to the complaint file. It will contain:

(1) Complainant's name (last name, first name, middle initial).

(2) NGB case number, as described in paragraph 4-5, below.

(3) The source and addressee of each document, entered in the "TO/FROM" column.

(4) The date on which the document was sent to or received from (not the date of the document) entered in the "ON: DATE" column. Dates will be shown as YY/MM/DD (year/month/day).

(5) A brief description of the document, entered in the "DESCRIPTION OF DOCUMENT" column.

(6) The date of the document, entered in the "DOC DATE" column. In some instances, particularly in the case of outgoing documents, it may be the same as the date the document was sent or received. Dates will be shown as YY/MM/DD (year/month/day).

(7) A letter indicating under which tab the document is to be found, entered in the "TAB" column.

b. Alphabetical tabs will be used to separate documents listed in paragraph 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.

c. Documents will be arranged in chronological order with the earliest document at the bottom and the last 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.

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

e. 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.

f. 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 (see figure 5).

g. More than one set of index tabs may be used if warranted by the number of documents in the case file. In such cases, the NGB Form(s) 690-R, attached to a given set of tabbed documents, will be annotated as "Part I," "Part II," etc. (see figure 5).

4-5. Case number

Each complaint which reaches the AG unresolved will be assigned a case number. The number will be entered on the formal complaint; on NGB Form 690-R, National Guard Official Discrimination Complaint File Index; and in the subject line of correspondence pertaining to discrimination complaints. 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 NGB CMSA to the SEEM (see paragraph 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) A for Age.
(8) H for Handicap.
(9) O for retaliatiOn.

4-6. Case number for allegations referred from NGB

When NGB refers an allegation of discrimination to the State for inquiry and processing (see paragraph 2-4), NGB will assign a case number. It will be composed of the same elements as shown in paragraph 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 to conduct an inquiry.

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

GLOSSARY

Section I
Abbreviations

AGR
Active guard reserve

ANG
Air National Guard

ARNG
Army National Guard

CMSA
Complaints Management and Support Activity

EO
Equal opportunity

EOA
Equal opportunity advisor

EOT
Equal opportunity and treatment

FD
Final decision

HR
Human resources

JA
Judge Advocate

NGB
National Guard Bureau

NGB-JA
Office of the Judge Advocate, NGB

NGB-PR
Directorate for Personnel Resources, NGB

NGB-PRE
Equal Opportunity Division, NGB

NGB-PRE-C
Complaints Management and Support Activity, NGB

ROI
Report of investigation

SEEM
State Equal Employment Manager

SL
Social actions

U.S.C.
United States code

Section II
Terms

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

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

c. **Case file.** See official discrimination complaint case file.

d. **Case number.** A number assigned to a formal complaint when it reaches the level of the Adjutant General or a number assigned to complaint referred to the State National Guard by NGB. It is used by the State National Guard and NGB for statistical and identification purposes.

e. **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.

f. **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.

g. Equal opportunity (ARNG terminology) or equal opportunity and treatment (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, national origin, age, or physical or mental handicap.

h. 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.

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

j. Formal complaint. A written complaint filed under this regulation that alleges illegal discrimination. ANG members will use AF Form 1587, EOT complaint Summary. ARNG members may use the AF form, a local form, or plain paper. The term "formal complaint," as used in this regulation, refers to the written complaint, whether on AF Form 1587, on another form, or on plain paper.

k. Illegal discrimination. Any action that unlawfully results in unequal treatment of persons based on race, color, religion, gender (to include sexual harassment), national origin, age, or physical or mental handicap. Note that within the military, some appointments, assignments, and other personnel actions have statutory or regulatory restrictions due to gender, age, or handicap. Actions based on these statutory or regulatory requirements do not constitute illegal discrimination.

l. Inquiry. An informal 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 generally appropriate when the subject is not complex or as a preliminary to a formal investigation. It corresponds to the "review" defined in AFR 120-3 and to an "informal investigation" referred to in AR 15-6.

m. 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 Investigators Procedural Manual, chapter 3 of this regulation, and AR 15-6 or AFR 120-3.

n. Official discrimination complaint case file. A management document containing all correspondence and other documentation relating to a formal complaint, including the ROI, and used to make recommendations and decisions regarding the complaint.

o. 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 evid-

ence, 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."

p. 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.

q. Retaliation. An act of reprisal, restraint, interference, or coercion against an individual because of his or her involvement with a discrimination complaint during any stage of presentation and processing of a complaint, including testifying, assisting, or participating in an inquiry or investigation.

r. Resolution (of a complaint). A voluntary, written agreement between the complainant and a representative of the State National Guard which results in the settlement of the complaint to the satisfaction of both parties and terminates the administrative processing of the complaint.

s. Sexual harassment. A form of gender discrimination that involves unwelcome sexual advances, requests 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

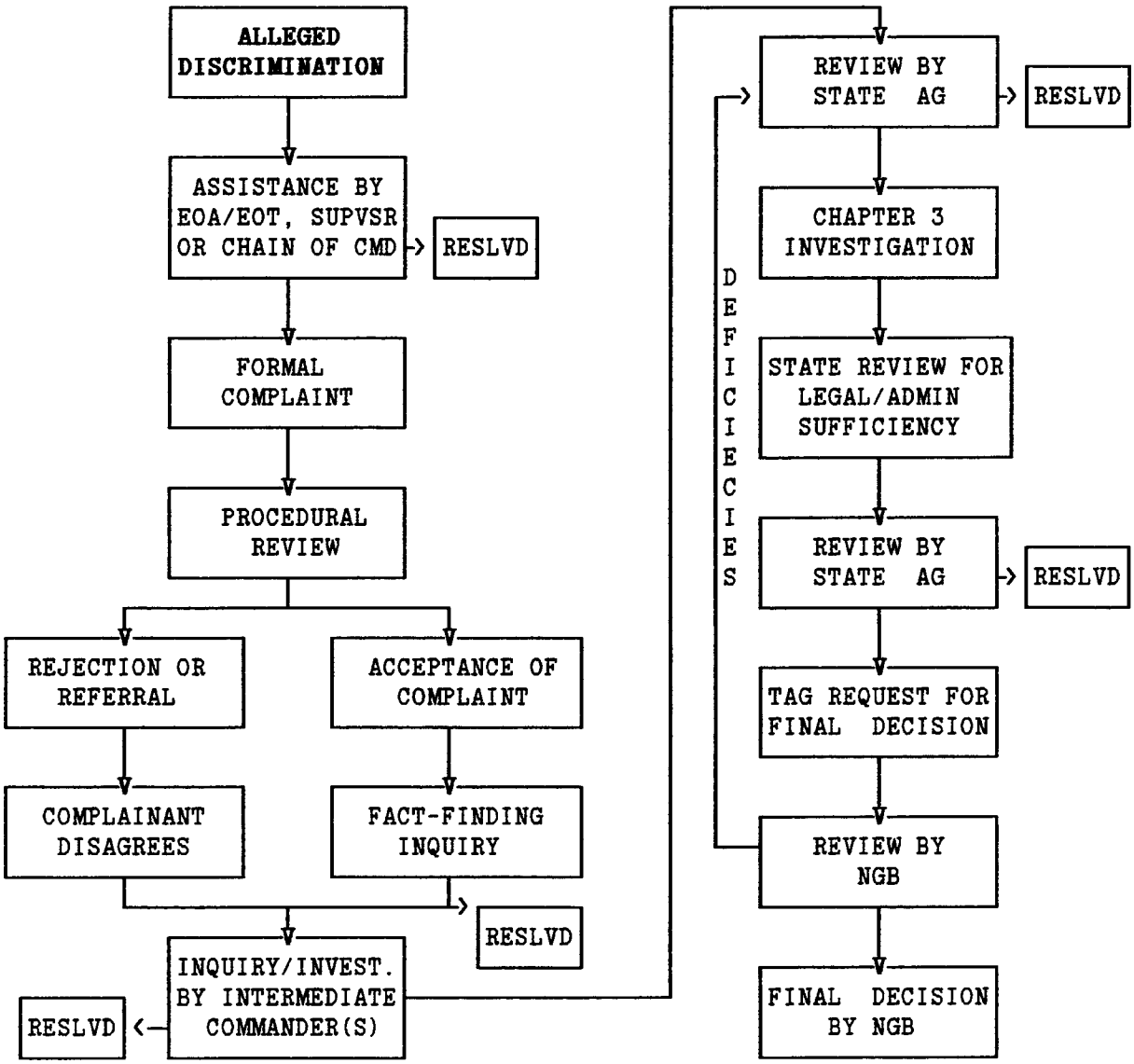
(3) Such conduct interferes with an individual's performance or creates an intimidating, hostile, or offensive environment.

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.

t. Withdrawal (of the complaint). A voluntary, written, signed and dated statement by the complainant indicated an unconditional willingness to stop further processing and pursuit of the complaint.

DISCRIMINATION COMPLAINT PROCESS
FOR NATIONAL GUARD MILITARY PERSONNEL



NOTE: The process stops if the complaint is resolved (RESLVD block, above)

Figure 1. Discrimination complaint process

NOTICE OF PROPOSED DISMISSAL

STATE OR UNIT LETTERHEAD

(DATE)

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

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

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

---

1. Use Army or Air Force military or civilian correspondence format, as appropriate.
2. 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. Notice of proposed dismissal

NOTICE OF DISMISSAL OF COMPLAINT

STATE OR UNIT LETTERHEAD

(DATE)

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

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

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

---

1. Use Army or Air Force military or civilian correspondence format, as appropriate.
2. 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 3. Notice of dismissal of complaint

FINAL DECISION

NGB LETTERHEAD

Directorate for Personnel Resources (DATE)

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

Rank, Name, and
Address of Complainant

Dear (Rank and Name of Complainant):

Your complaint of discrimination dated (DATE) has been reviewed by all members of your chain of command and the required inquiry(ies) and investigation have been completed. A copy of the Report of Investigation was provided to you on (DATE).

After a thorough review of the record, the Report of Investigation, and the resolution meeting held on (DATE), it is the decision of the National Guard Bureau to adopt a finding of (no) discrimination. This decision is based on the (rationale contained in the Report of Investigation) (rationale provided in the Adjutant General's recommendation) (following rationale:). The foregoing shows by a preponderance of evidence that the allegations in your complaint (were) (were not) caused by discrimination based on (basis).

A copy of this letter is being provided to the (State) Adjutant General who will take appropriate remedial actions in your complaint.

OR

A copy of this letter is being provided to the (State) Adjutant General. Although discrimination was not found, the (State) Adjutant General (intends) (is being asked) to take the following actions as a result of the information brought out in the investigation and review of your complaint:

OR

A copy of this letter is being provided to the (State) Adjutant General. Since discrimination was not found, no further action necessary in the matter of your complaint.

This completes all administrative processing of your complaint (except for the remedial actions indicated above).

Signature Block of the
Deputy Director for Personnel
Resources or Chief, CMSA

Copy Furnished:
The Adjutant General, (State)

Figure 4. Final decision

TABBED AND INDEXED COMPLAINT FILE

A B C D E F G H I J K L M Mc N O P Q R S T U V W XYZ

Part I

NATIONAL GUARD
OFFICIAL DISCRIMINATION COMPLAINT FILE
INDEX
(For use of this form, see NGR (AR) 690-600/NGR (AF) 40-1614)

Show dates as YY/MM/DD: date sent to or rcd from in 'ON: DATE' & document date in 'DOC DATE'

NAME: *ALEXANDER, Peter J. II, Lieutenant* CASE NO. *M-212-OH-A-02-92-LN*

TO/FROM	ON: DATE	DESCRIPTION OF DOCUMENT	DOC DATE	TAB
Co Cdr/Compl	*92/05/05*	*Formal complaint filed*	*92/05/01*	*A*
Cdr/Inq Off	*92/06/03*	*Result of inquiry conducted by Lieutenant Jones*	*92/06/02*	*B*
Bn Cdr/CoCdr	*92/06/02*	*Memo of unsuccessful resolution meeting w/Lt. Alexander*	*92/06/02*	*C*
BnCdr/InqOff	*92/07/01*	*Result of inquiry conducted by Captain Smith*	*92/07/01*	*D*
DivCdr/BnCdr	*92/07/02*	*Memo of unsuccessful resolution meeting w/Lt. Alexander*	*92/07/02*	*E*
Div Cdr/JA	*92/07/10*	*Legal review of the complaint*	*92/07/07*	*F*
Compl/JA	*92/07/19*	*Request by JA for clarification of one allegation*	*92/07/17*	*G*
JA/Compl	*92/07/27*	*Complainant's response on allegation & desire to continue*	*92/07/25*	*H*
AG/CofS	*92/08/14*	*Memo on unsuccessful resolution of complaint*	*92/08/06*	*I*
AG/SEEM	*92/08/21*	*Review of chain of cmd inquiry & assessment of case*	*92/08/21*	*J*
Inv/AG	*92/08/25*	*Orders appointing investigator & transmittal of case file*	*92/08/25*	*K*
Compl/SEEM	*92/08/26*	*Notification of assignment of investigator*	*92/08/26*	*L*
AG/Inv	*92/09/19*	*Report of investigator submitted to AG*	*92/09/15*	*M*
AG/State JA	*92/09/25*	*Legal review of ROI*	*92/09/22*	*Mc*
AG/SEEM	*92/09/26*	*Review of ROI and recommendation to AG*	*92/09/26*	*N*
AG/Dep AG	*92/09/29*	*Memorandum regarding resolution meeting with complainant*	*92/09/28*	*O*
NGB/AG	*92/10/11*	*Request for final decision by the AG*	*92/10/06*	*P*
AG/NGB	*92/11/17*	*Notification to AG of legal/administrative sufficiency*	*92/11/17*	*Q*
Compl/NGB	*92/11/27*	*NGB final decision to complainant*	*92/11/27*	*P*
AG/NGB	*92/11/27*	*NGB final decision to AG*	*92/11/27*	*T*

NGB FORM 690-R Replaces NGB Form 690-R, 1 May 88, which is obsolete
1 OCT 1992

Figure 5. Tabbed and indexed complaint file

By Order of the Secretaries of the Army and the Air Force:

JOHN B. CONAWAY
Lieutenant General, USAF
Chief, National Guard Bureau

Official:

E. DARDEN BAINES
Director
Administrative Services

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