United States Department of the Interior
OFFICE OF THE SECRETARY
Washington, D.C. 20240

CIVIL RIGHTS DIRECTIVE 2011-01 MAR 14 2011

To: Bureau and Office Heads

From: Sharon D. Eller
Director, Office of Civil Rights

Subject: Public Civil Rights Complaint Procedures

Purpose. The purpose of this Directive is to establish and convey bureau responsibilities, provide guidance and direction, and to ensure effectiveness and consistency by Department of the Interior (Department) bureaus and offices for processing discrimination complaints governed by Department regulations at 43 Code of Federal Regulations (CFR) Part 17, other regulations, and Executive Orders relating to public civil rights. The Department is obligated to provide direction and guidance while implementing federal public civil rights laws and regulations against discrimination in programs, activities, and services that are federally conducted, receive federal financial assistance, or are covered by Title II of the Americans with Disabilities Act (ADA).

Policy. It is the policy of the Department's Office of Civil Rights to resolve all complete complaints of alleged discrimination. The Department must take steps necessary to ensure that no person is subjected to discrimination based on race, color, national origin, gender, disability, religion, sexual orientation, or status as a parent. Retaliation by any entity against the complainant is prohibited. Complaints brought under the Authorities section will be processed under appropriate laws, regulations, and Department and bureau procedures.

Scope. This Directive covers Department federally conducted and federally assisted programs, and those state and local entity programs covered by the ADA, whether or not they receive federal financial assistance. The focus of these requirements is to achieve resolution through voluntary compliance using various forms of alternative dispute resolution techniques and methods.

Authorities. 28 CFR Part 42, Subpart F designates Department of Justice (DOJ) as lead agency in providing guidance on non-discrimination in federally assisted programs to other departments. 43 CFR Part 17 provides the Department's Public Civil Rights regulatory requirements for Title VI, Age Discrimination Act of 1975, Section 504 of Rehabilitation Act, as amended, federally conducted and federally assisted programs. The Departmental Manual at 205 DM 17 provides for the delegation of authority to all bureaus for the processing of civil rights complaints, conducting investigations and compliance reviews, and providing technical assistance and training in

covered program areas under their jurisdiction with appropriate oversight by the Director, Office of Civil Rights. The following authorities cover the Public Civil Rights program:

A. Architectural Barriers Act (ABA) of 1968 (Pub. L. 90-480; 42 U.S.C. 4151 et seq.) provides that certain buildings financed with federal funds are so designed and constructed to be accessible to the physically disabled by establishing accessibility standards.

B. Title IX of the Education Amendments of 1972 (Pub. L. 92-318; 86 Stat. 235; 373; 20 U.S.C. 1681-1688) as amended by Pub. L. 93-568; 88 Stat. 1855) (except sections 904 and 906 of those Amendments) is designed to eliminate (with certain exceptions) discrimination on the basis of sex in any education program or activity receiving federal financial assistance, whether or not such program or activity is offered or sponsored by an educational institution.

C. Section 504 of the Rehabilitation Act of 1973 (Pub. L. 93-112; 87 Stat. 394; 29 U.S.C. 794), as amended by the Rehabilitation Act Amendments of 1974 (Pub. L. 93-516; 88 Stat. 1617) and the Rehabilitation, Comprehensive Service, and Developmental Disabilities Act of 1978 (Pub. L. 95-602; 92 Stat. 2955; 29 U.S.C. 700 et seq.) prohibits discrimination based on disability in federally assisted and conducted programs, activities, and services.

D. Section 508 of the Rehabilitation Act of 1973 (29 U.S.C. 794d), as amended by the Workforce Investment Act of 1998 (Pub. L. 105-220; 112 Stat. 936) Section 508 requires federal departments and agencies that develop, procure, maintain, or use electronic and information technology to ensure that federal employees and members of the public with disabilities have access to and use of information and data, comparable to that of the employees and members of the public without disabilities.

E. Age Discrimination Act of 1975, as amended, (Pub. L. 94-135, Title III; 42 U.S.C. 6101 et seq.) prohibits discrimination based on age in programs, activities, and services receiving federal financial assistance.

F. Civil Rights Restoration Act of 1987 (Pub. L. 100-259; 102 Stat. 28), as amended, by Civil Rights Restoration Act of 1991 (Pub. L. 102-166; 42 U.S.C. 2000d) to overturn the Supreme Court's 1984 decision in *Grove City College v. Bell*, and to restore the effectiveness and vitality of the four major federal civil rights laws that prohibit discrimination in programs, activities, and services receiving federal financial assistance. For civil rights coverage purposes, the law broadly defines the terms "program" or "activity.

G. Telecommunications Accessibility Enhancement Act of 1988 (Pub. L. 100-542; 102 Stat. 2721; 40 U.S.C. 762 a-d) expands our national telecommunications system for the benefit of the hearing-impaired and speech-impaired populations, and provides for General Service Administration coordinated relay services.

H. Americans with Disabilities Act of 1990 (Pub. L. 101-336; 42 U.S.C. 12101 et seq.) with DOJ regulations at 28 CFR 35, including published revisions taking effect March 15, 2011, with revised 2010 design standards taking effect March15, 2012. Title II of the ADA, prohibits discrimination on the basis of disability in State or local government programs, services, and activities whether or not they receive federal financial assistance.

same duties are relevant to federal financial assistance programs, activities, and services covered under Title VI of the Civil Rights Act of 1964.

K. EO 13160, *Nondiscrimination on the Basis of Race, Color, National Origin, Disability, Religion, Age,* Sexual *Orientation, and Status as a Parent in Federally Conducted Education and Training Programs* ensures equal opportunity in government educational programs, activities, and services.

L. EO 13166, *Improving Access to Services for Persons with Limited English Proficiency* improves access to federally conducted and federally assisted programs under Title VI and activities for individuals who, as a result of national origin, are limited in their English proficiency.

Federally Conducted and Federally Assisted.

A. Federally Conducted refers to programs, activities, and services directly provided by or for the bureau or the Department, or through partnerships on behalf of the bureau or the Department for the benefit, education, aid, and enjoyment to the public. Federally conducted programs and activities that a bureau must make accessible include, but are not limited to, recreation sites, bid openings, recruitment, employment, trainings, public information and/or education, visitor centers, and public meetings.

B. Federally Assisted[1] means (1) grants and loans of federal funds; (2) grants and donations of federal property and interests in property; (3) the detail of federal employees; (4) the sale or lease or permission to use federal property; (5) cooperative matching funds and reimbursable agreements; and (6) research information delivery with population impact. It is important to note that federal financial assistance may be provided in non-monetary form when authorized or extended under the law administered by the federal agency that awards such assistance. In determining whether the agency is providing federal financial assistance, remember the following:

(1) Federal financial assistance does <u>not only</u> include grants of money. It may not

[1] See Civil Rights Directive 2009-01, Policy for Implementing a Public Civil Rights Program, Definitions, Letter J for additional examples of Federal Financial Assisted.

always be clear whether an institution or organization is receiving assistance; it may be receiving federal block grant money through the State or another organization.

(2) The Civil Rights Restoration Act of 1987 provides very broad jurisdiction for investigative purposes when federal financial assistance goes to any part of a program or activity.

Bureau Responsibilities.

A. Responsible Official(s). Bureau Office Equal Opportunity Officers or the Bureau's designee shall be responsible for processing and investigating civil rights complaints, including those against bureau conducted programs, bureau federally assisted programs, and ADA complaints delegated pursuant to Civil Rights Directive 2007-02.

B. Staffing. Bureaus and offices that administer federally conducted and federal financial assistance programs shall provide sufficient staff and resources to implement an effective civil rights compliance and enforcement program.

C. Public Notification. All bureaus and offices shall establish and publish procedures in accordance with Civil Rights Directive 2009-01, *Policy for Implementing a Public Civil Rights Program*, for promptly processing complaints and notifying the public of non-discrimination policies. The complaint procedures must provide for notifying in writing the complainant, and/or the respondent, and/or the federally conducted program official as to the disposition of the complaint. Bureaus and offices shall investigate all complaints received that are within their jurisdiction and pursue voluntary resolution in all cases.

D. Complaint Referrals. If a bureau or office lacks jurisdiction over a complaint, the bureau or office shall refer the complaint to an appropriate federal, State, or local government agency for appropriate action and/or otherwise notify the complainant of the bureau or office's lack of jurisdiction. If unsuccessful in identifying the appropriate entity, the bureau shall refer the complaint to the Department for action.

E. Reporting Requirements. Bureaus will maintain a tracking system of civil rights complaints filed, and report monthly to the Department. The tracking system will include the following:

(1) complainant name;

(2) complaint number;

(3) authority under which the complaint is covered;

(4) basis of the complaint;

(5) date the complaint was filed;

(6) disposition;

(7) date of disposition; and

(8) other pertinent information necessary for reporting or for other purposes.

Considering the nature of the complaint received directly by a bureau, the most complex complaints e.g., multiple allegations, complaints relating to personal care to a child or an elderly person, personal services (e.g., wheel chair requests), or cases of multiple chemical sensitivity syndrome shall be reported to the Office for Civil Rights within five (5) days upon receipt rather than waiting for the monthly report if more than 5 days away.

F. Investigations Conducted by Primary Respondents. If a bureau or office permits a primary respondent to investigate an applicant or sub-respondent to which it extends federal financial assistance, the bureau or office shall ascertain whether the primary respondent's procedures for investigating complaints are fair and in compliance with federal regulations. The bureau or office having jurisdiction over the respondent shall obtain a written report of such complaint and shall retain review responsibility over the investigation and disposition of each complaint. Bureaus shall require each respondent processing federal financial assistance civil rights complaints to maintain a log or tracking system accounting for each complaint received.

Complaint Processing Requirements. All complaints alleging discrimination on the basis of race, color, national origin, gender, disability, religion, sexual orientation, or status as a parent must be in writing and must be signed by the complainant and/or his/her representative.

A. Initial Receipt

(1) The receiving bureau must date stamp all incoming correspondence **immediately** upon receipt to ensure the complainant's ability to seek redress of the alleged discrimination in a timely manner. The receipt date by the bureau or office becomes the receipt date for other federal agencies.

(2) The bureau shall acknowledge the complainant with a letter stating that the complaint has been received and is being reviewed.

(3) For third party complaints, i.e., a complaint filed on behalf of another individual, the bureau must contact that individual (or if the person is a minor or an incompetent adult, contact the person's parent or guardian) on whose behalf the complaint is filed to ensure that the individual wishes to pursue the allegations raised on his/her behalf. If the person (or his/her guardian) declines to pursue the complaint, the bureau must close the complaint and inform the third-party of the reason for the closure. A memorandum to the file must be placed in the case file explaining the steps the bureau took and the reasons why the person did not wish to pursue the complaint. If the person decides he/she wants to pursue the complaint, then the Privacy Act Consent Form must be signed.

B. Review of the Complaint

federal entity/agency has jurisdiction to investigate the alleged discrimination and refer the complaint to that entity/agency. The bureau shall also notify the Office of Civil Rights, in writing, that it did not have jurisdiction to investigate the alleged discrimination and referred the complaint to the appropriate agency.

(3) Bureaus must assign a separate case number to each named respondent in the complaint. The case number shall consist of bureau initials, fiscal year, and sequence number. Each fiscal year begins a new number sequence.

(4) Multiple complainants filing separate complaints against the same respondent should be assigned separate case numbers to comply with the requirements of the Privacy Act and the Freedom of Information Act. Multiple complainants filing together in the same complaint may be assigned a single case number.

(5) Additional allegations from the same complainant against the same respondent after the investigative process has begun shall be added to the open complaint.

(6) Public civil rights complaints must be filed within 180 days from the last date of the alleged discrimination. The 180 day timeframe may be extended by the Director, Office of Civil Rights or by the Bureau Civil Rights Office having jurisdiction over the complaint.

C. Determine Whether the Complaint is Complete

(1) The complaint is a complete complaint if it meets the following criteria:

(a) a **signed** written explanation of what has happened;

(b) a **means** to contact the complainant;

(c) the **basis** of the complaint, i.e., identification of the person or group, including the race, gender, or other appropriate identification, injured by the alleged discrimination;

(d) the **respondent identification** of the person or agency or organization alleged to have discriminated; and

(e) has **sufficient information** to understand the facts that led the complainant to believe that discrimination has occurred and when the discrimination took place. The bureau shall work with each complainant to ensure sufficient

[2] Refer to DOJ's Investigative Manual, Tab 7 for sample list of agencies/entities. The list is intended for referral of complaints or to identify other agencies/entities that may share jurisdiction with the Bureau over a respondent or subject matter.

information to properly evaluate the complaint, determine whether the complaint is complete, and investigate the complaint.

(2) Based on Title VI requirements, complaints in languages other than English must be translated and responded to in the language in which they are received. The Privacy Act Release Form must also be translated or other steps taken to ensure that the complainant understands what is contained in the form and the legal implications of signing the form.

(3) Bureaus must accept complaints from persons with disabilities in "alternate formats." Alternative formats include, but are not limited to, electronic e-mail, large print 18 pt. or larger, or Braille.

D. Determine Jurisdiction and Identify Issues

(1) Bureaus must ensure sufficient information to determine whether it is responsible for investigating all or some of the allegations it raises. The bureau must confirm that it has jurisdiction over either the organization or the entity that is alleged to have discriminated and the issues, or subject matter, that the complainant addresses. In order for the bureau to have jurisdiction to investigate a complaint, the complaint must meet the following criteria:

(a) it must allege discrimination on a **basis** prohibited by one of the covered statutes;

(b) it must allege that discrimination is occurring in a program or activity that is federally conducted, receives federal financial assistance from the bureau, or is a state or local entity covered by the ADA;

(c) it must be covered by one or more of the **statutes** that the bureau or Department is responsible for enforcing; and

(d) it must be filed within 180 days of the last date of alleged discrimination.

(2) If the complaint meets all of the above criteria and is not affected by regulatory exemptions or exceptions, the bureau has jurisdiction to investigate the complaint. If no jurisdiction over complaint (or a portion of it), then the bureau must send it to the agency with jurisdiction.

(3) The complaint must identify one of the bases covered by the bureau (i.e., of race, color, national origin, gender, disability, religion, sexual orientation, or status as a parent) and that the alleged discrimination is **wholly or at least in part** responsible for the harm. Other reasons for the harm may also be alleged, but at least some portion of the case must involve one of the discriminatory bases.

(4) If the bureau determines that it does not maintain jurisdiction over the complaint

(or portion of it), then the bureau will determine the appropriate jurisdiction, notify the complainant of the appropriate jurisdiction, and forward the complaint to the agency with jurisdiction for action.

E. Issues/Subject Matter Bureaus must identify the specific practice or service involved in the alleged discrimination e.g. denial of a service or access to a covered program, harassment by the program's employees, and unequal services in a program. Identify the practice, procedure, policy, or service that is alleged to have a disparate effect on one or more members of a certain protected class. In identifying the subject matter, look for allegations of the covered bases (i.e., race, color, national origin, gender, disability, religion, sexual orientation, or status as a parent). Intentional or disparate effect issues may include:

(1) Any difference in the quality, quantity, or manner in which a service or benefit is provided;

(2) Segregation in any part of a program or separate treatment in any manner;

(3) Restriction in the enjoyment of any advantages, privileges, or other benefits that are provided by the program;

(4) Different standards or requirements for participation or entry;

(5) Failure to provide information or services in languages other than English where significant number or proportion of potential beneficiaries are of limited English-speaking ability; and

(6) Use of criteria or methods of administration that would defeat or substantially impair the accomplishment of program objectives or would impact more heavily on members of a protected group.

F. Timeliness Complaints are timely if received within **180** days from an alleged discriminatory incident. The date of discrimination for timeliness purposes is the **most recent date** the discrimination occurred, not when it began. If a complaint alleges a **policy** of a respondent is discriminatory, the existence of the policy is sufficient to consider the complaint to be timely for investigative purposes. Bureaus have the authority to waive the timeliness requirement at their discretion (i.e. complainant becomes ill or otherwise incapacitated and is not able to file a complete complaint).

G. Pre-investigative Administrative Closure When all the information has been acquired, the complaint is found to be timely or a waiver has been granted, and other aspects of jurisdiction have been established, the investigative process begins. Bureaus do not need to proceed with or continue a complaint investigation if:

(1) The complaint is, on its face, without merit;

(2) If the same allegations and issues of the complaint have been addressed in a

recently closed investigation or by previous federal court decisions;

(3) The complainant's or injured party's refusal to cooperate (including refusal to give permission to disclose his or her identity) has made it impossible to investigate further;

(4) The bureau transfers or refers the complaint to another agency for investigation; or

(5) The death of the complainant or injured party makes it impossible to investigate the allegations.

Approaches to Complaint Resolution. The Public Civil Rights complaint process requires that the bureaus attempt to negotiate a resolution for violations found in an investigation and resolve matters by voluntary means.

A. Negotiation of a resolution to a case may be accomplished at any point during the processing of a complaint without completing a full investigation.

B. Bureaus must use ADR whenever appropriate. Bureaus must first determine if the case is a good case for early settlement negotiations or is a thorough investigation, with an onsite visit, necessary to identify violations, victims, and relief.

C. The type of ADR must be selected carefully, based upon the allegations, number of persons affected, type and extent of relief involved, cooperation of the respondent, and other factors.

D. A complaint may be reopened if the respondent has not complied with the resolution commitments.

Complaint Investigation

Complainant and Respondent Notification. Bureaus must notify the complainant and the respondent in writing that the bureau has accepted the complaint and will proceed with an investigation.

A. The notification letter to the complainant and respondent shall contain the following:

(1) The basis for the complaint;

(2) A brief statement of the allegations over which bureaus have jurisdiction;

(3) A brief statement of the bureaus jurisdiction over the respondent to investigate the complaint; and

(4) A timeframe of when the parties will be contacted.

B. An investigative case file must be assembled for each complaint the bureau accepts for investigation. The complaint file shall include, at a minimum:

(1) contents/log

(2) external correspondence

(3) investigator's documentation

(4) evidence

(5) internal correspondence

(6) determination/settlement

C. Contacting the Complainant

(1) The bureau shall contact the complainant by telephone to discuss the needed information and follow up with a letter regarding information discussed.

(2) If the complainant is a minor, seek the consent of the minor's parent or guardian to proceed with the investigation. The parent must sign the Privacy Act Consent Form to release the minor's name to the respondent.

(3) If the complaint is submitted on behalf of a complainant by an attorney, call the attorney for the additional information. Ask the attorney for permission to contact the complainant directly.

(4) Set a deadline for the complainant to provide information, generally 30 calendar days from the date of the written request.

(5) If the complainant provides insufficient information, close those allegations that remain incomplete and proceed with the analysis and investigation process of the remaining allegations. Explain in a letter that failure to provide the requested information by the deadline will result in the closure of the complaint.

D. Identification of Bases and Issues. The complainant must allege a basis for discrimination against one or more members of a protected class because of race, color, national origin, gender, disability, religion, sexual orientation, or status as a parent and is wholly or at least in part responsible for the complaint. The Bureau must also identify the issue(s), i.e. specific policy or practice responsible for the alleged discrimination (e.g., denial of transit services, placement of bus lines so that they only serve non-minority communities, harassment, retaliation for filing a complaint or giving testimony in an investigation, provision of unequal services, inaccessibility of facilities, etc.).

E. Types of Evidence. There are four types of evidence to use during the planning and

investigation process related to the theory or theories of discrimination.

(1) Direct Evidence. Direct evidence of the actual, subjective intent of the person(s) charged with discrimination. It may take the form of an admission of discriminatory purpose which rarely occurs. Such admissions commonly occur during an interview, when a person is explaining or justifying his/her actions. Direct evidence encompasses more than just admissions; it includes any facts that tend to establish the subjective motives of persons involved in the alleged discrimination. This might include any of the following:

(a) public statements or speeches;

(b) minutes of hearings;

(c) facially discriminatory actions/legislation; and

(d) contemporaneous statements (e.g. attributed by third parties).

(2) Circumstantial Evidence. Circumstantial evidence includes facts from which one may infer intent or discriminatory motive; it forms the bulk of investigative findings in disparate treatment cases. Circumstantial evidence proves intent by focusing on the results or effects of an action or on the action itself, rather than on why the action was taken. It may also collectively lead to an inference of discriminatory motive.

(3) Comparative Evidence. Comparative evidence is most often thought of as that which identifies difference(s) in treatment accorded similarly situated individuals or groups based on their identification with or membership in a protected class. It may also focus on program results.

(4) Statistical Evidence. Statistical evidence generalizes about the experience of a class rather than focusing on the experience of an individual member of that class. Statistics alone will not prove an individual claim of disparate treatment. Statistical evidence can be helpful in proving individual cases of disparate treatment because it can be used as circumstantial evidence to establish the possible presence of discriminatory motive.

F. Data Collection. Data is gathered during the course of the investigation to answer two main questions concerning the allegations:

(1) What happened? (including when, where, and how.) The complaint alleges that something did or did not happen. Data must be gathered to determine if the alleged event occurred or not.

(2) Why did it happen? On what basis? For what reason? The information gathered must help the Bureau determine whether the reasons alleged in the complaint are accurate or not.

(3) Proof of discrimination is required. The violation must be substantiated.

(1) Personal contact with the complainant and the respondent may yield information and clarification that may not otherwise be apparent in written documents or verbal discussions;

(2) Obtain a more accurate impression of the physical environment and general atmosphere of the respondent and the surrounding community, which can help in making a determination on the complainant;

(3) More effective communication can be established with representatives of the respondent, which can be of assistance in the present or future complaint investigation; and

(4) Printed data can only be examined onsite for reasons of convenience, cost, format or balk. A final decision shall not be made until all the documentation has been received and analyzed, including the respondent's reply to the initial information request letter.

I. On-Site Investigation. If the bureaus determine that an on-site investigation is necessary, the bureau shall notify the complainant and respondent of the decision to conduct an onsite investigation. Interviews should be scheduled in advance so that valuable time while onsite is not wasted. The investigator should notify the respondent of the records to be reviewed, the titles and names of employees to be interviewed, and ask that a liaison person be designated.

J. Interviews. Before conducting the interview, the bureau must know as much as possible about what needs to be accomplished during the interview. Bureaus must make certain strategic decisions as to which witnesses to interview for which purpose, and in what sequence the interviews are to be conducted. There is not a set "rule of thumb" in determining who should be interviewed, however, certain categories of people are advisable:

(1) Persons who were directly involved in the situation that the complainant has alleged occurred.

(2) Persons who were not directly involved, but who have first-hand knowledge of the processes, events, and issues being investigated.

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[3] Agency regulations provide legal authority to require respondents to provide access to records and sources of information necessary to determine whether the respondent in is compliance with Title VI and other nondiscrimination statutes enforced by agencies. Department regulations 43 CFR Part 17.323 give the Bureaus the authority to ask respondents for records and information.

(3) Written consent of a parent or guardian must be obtained when interviewing a person under 18 years of age or otherwise legally incompetent, for example, an individual with a mental impairment.

(4) The respondent can require that its attorney be present for interviews. Non-management staff and other witnesses also have the right to have a representative present during interviews if they request it.

K. Exit Interview. Bureaus must conduct the exit interview separately for the complainant and the respondent. The exit interviews provide an opportunity to clarify any questions that may have arisen, and to respond to any additional requests. Explain that this exit interview does not mean an end to the investigation as additional information may be needed.

L. Investigative Report. Bureaus shall prepare an Investigative Report whenever a full investigation is completed. An Investigative Report shall be prepared for all cases in which the Letter of Findings will not stand on its own as support for the findings and in cases resulting in a violation in a Letter of Findings.

Letters of Findings and Resolutions. Bureaus must close the complaint with a Letter of Findings or closure letters. All closure letters must include standard jurisdictional information, a statement of the allegations of each issue and the findings of fact for each, supported by any necessary explanation or analysis of the information on which the findings are based. Each allegation and the respondent's position should be addressed and the relevant facts, the applicable regulation, the appropriate legal standards, an explanation of any issues not investigated or included in the letter, and the retaliation, Freedom of Information Act, and Privacy Act paragraphs. A combination of letters may be used if, for example, one issue is resolved, no violation is found in another issue, and a violation is found on the last issue. All letters must be sent both to the complainant or the complainant's representative, and the respondent.

A. Letter of Resolution. This letter is issued when the respondent has voluntarily taken actions to come into compliance before a Letter of Findings is issued. A Letter of Resolution can simply explain the steps the respondent has taken or promises to take. Letters of Resolution must include:

(1) The steps that the respondent has taken to come into compliance and an explanation of how these actions meet the requirements of the applicable regulation;

(2) Notice that failure to continue the actions may result in the finding of a violation and that compliance will be monitored, if necessary; and

(3) If applicable, the date(s) that any promised action will occur and when monitoring or other reports will be due.

B. No Violation Letter of Findings. This letter is issued when the respondent is found to be in compliance. A No Violation Letter of Findings must include:

(1) An explanation of why the respondent was found in compliance;

(2) Notification of a complainant's right to file a private right of action; and

(3) Procedural violations, such as lack of a posted notice, may be mentioned if uncovered during the investigation.

C. Violation Letter of Findings. This letter is issued when the respondent is found to be in noncompliance and pre-findings voluntary compliance cannot be achieved. A Violation Letter of Findings must include:

(1) Each violation referenced as to the applicable regulations and the specific citations under the regulation.

(2) A time frame for the respondent to achieve voluntary compliance. No sanctions may be imposed on a respondent without an offer of voluntary compliance.

(3) A brief description of proposed remedies.

(4) Notice of the time limit on the conciliation process and the consequences of failure to achieve voluntary compliance.

(5) An offer of assistance to the respondent in devising a remedial plan for compliance (if a proposed formal agreement is not included), if appropriate.

D. Letter of Concern. This letter is applicable following the investigation where there is insufficient evidence of a violation, but there are matters of concern to be raised with the respondent.

Disposition Response Form. For DOI-Delegated[4] complaints, after complaint has been closed, the bureaus must complete DOJ's Disposition Response Form and attached, if necessary, the Letter of Findings and Resolution or closure letter and return it to the DOI PCR division for action.

Records Retention. The Department's Privacy Act system of records notice, as related to public civil rights complaints, provides that records are retained and disposed of in compliance with the National Archives and Records Administration's General Records Schedule No. 1. These requirements under Item 25 cover "Official Discrimination Complaint Case Files" including the originating agency file containing complaints with related correspondence, reports, exhibits, withdrawal notices, and copies of decisions. Retention and disposal of public civil rights case files are included as follows:

[4] Civil Rights Directive No. 2007-02, Delegation of Federal Assistance and Americans with Disabilities Act Title II Complaints to Bureaus for Processing.

A. Official Discrimination Complaint Case Files. May be destroyed 4 years after resolution of case.

B. Copies of Complaint Case Files. Duplicate case files or documents pertaining to case files retained in Official Discrimination Complaint Case Files may be destroyed 1 year after resolution of case.

C. Preliminary and Background Files. Background records not filed in the Official Discrimination Complaint Case Files may be destroyed 2 years after final resolution of case.

D. Non-Discrimination Case Files. Records documenting complaints that do not develop into Official Discrimination Complaint Cases may be destroyed after 2 years old.

Instructional Materials and Directives. The Office of Civil Rights will prepare and disseminate, with the Department and to the Bureau Civil Rights Offices, directives, manuals, policies and other instructional documents as necessary to implement the provision of this Policy.

Distribution: All Bureau/Office Equal Opportunity Officers

Inquiries: Carroll J. Andre, Chief, Pubic Civil Rights Division
Departmental Office of Civil Rights

Expiration: When superseded.