

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Chapter CC46--Conditions of Service  
Subchapter CC46.1--Officers' Responsibilities and Conduct  
Personnel INSTRUCTION 1--Equal Opportunity

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Section A. Purpose and Scope

1. This regulation states the policy and procedure for equal opportunity (EO) discrimination complaints processing for officers of, and applicants to, the Commissioned Corps of the United States Public Health Service (PHS).
2. Officers of the PHS Commissioned Corps who are assigned or detailed to another agency or organization may only file a complaint under this regulation when the subject of the complaint is a matter under the control of PHS. For matters not under the control of the PHS, the officer should file his/her complaint with the agency or organization to which detailed in accordance with the Memorandum of Agreement between PHS and that entity.

3. PHS commissioned officers detailed to the United States Navy, Marine Corps, Army, Air Force, and Coast Guard, shall remain subject to the law of the Armed Forces to which they are detailed. Equal Opportunity claims filed by these officers will be processed in accordance with the procedures of the Service to which detailed.

#### Section B. Authority

This regulation is prescribed under the authorities of Section 215 of the PHS Act, 58 Stat. 690, as amended (42 U.S.C. Section 216), and Section 212(f) of the PHS Act, 112 Stat. 3587 (42 U.S.C. Section 213(f)).

#### Section C. Policy

It is the policy of PHS Commissioned Corps to provide Equal Opportunity to all qualified professionals; to assure that there is no discrimination in the workplace based on race, color, religion, sex, national origin, and to a limited extent, age [1]/ or disability [2]/; and to resolve or adjudicate promptly and fairly all allegations relating to discrimination.

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[1]/ "No individual who has attained the age of forty-four shall be appointed to the Regular Corps, or called to active duty in the Reserve Corps for a period in excess of one year, unless (A) he has had a number of years of active service (as defined in section 211(d) equal to the number of years by which his age exceeds forty-four, or (B) the Surgeon General . . . . determines that he possesses exceptional qualifications not readily available elsewhere in the Commissioned Corps of the Public Health Service, for the performance of special duties with the Service or (C) in the case of an officer of the Reserve Corps, the Commissioned Corps of the Service has been declared by the President to be a military service," (42 United States Code 209(a)(3)).

[2]/ Applicants to the PHS Commissioned Corps must meet medical appointment standards to be commissioned, and must be physically fit. Active-duty officers may be separated if found unfit to perform duties of their office and grade. Officers who are found fit for duty shall be provided equal opportunity and may not be subject to prohibited discrimination.

All officers of, and applicants to, the PHS Commissioned Corps are afforded Equal Opportunity when considered for appointment, career development, promotion, assignment, relocation, assimilation, retention, and separation, consistent with laws and regulations affecting the Commissioned Corps and the needs of PHS. [However, as members of a Uniformed Service, commissioned officers are not covered by laws related to discrimination on the basis of race, color, sex, ethnicity, age, religion, and disability].

Violations of this policy shall be conveyed to the appropriate supervisor, manager, or EEO Officer. Complaints shall be processed in accordance with INSTRUCTION 6, Subchapter CC26.1, "Equal Opportunity; Discrimination Complaints Processing," of the Commissioned Corps Personnel Manual.

The Surgeon General is responsible for establishing the Commissioned Corps Equal Opportunity policies and procedures. The Surgeon General will be supported by the Equal Employment Opportunity Programs Group, HHS, and all HHS Operating Divisions (OPDIVs) Equal Employment Opportunity Officers, Counselors, and Investigators, and the Office of Public Health and Science Directors in implementing Commissioned Corps Equal Opportunity programs. The Surgeon General shall render the final Agency decision in all complaints filed by PHS commissioned officers.

#### Section D. Repeal of Prior Regulations

This regulation repeals Departmental decisions that members of the PHS Commissioned Corps are covered by Title VII of the Civil Rights Act of 1964, as amended and regulations found in 29 CFR 1614. Complaints relating to events that occurred prior to November 13, 1998, shall be processed in accordance with Equal Employment Opportunity Commission (EEOC) regulations in effect on that date.

#### Section E. Effective Date

This regulation is effective upon date of signature.

/s/

August 3, 1999

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Secretary

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Date