



CCI 211.03
EFFECTIVE DATE: 31 July 2023

By Order of the Assistant Secretary for Health:

ADM Rachel L. Levine, M.D.

SUBJECT: Equal Opportunity Complaints

1. PURPOSE: This Instruction prescribes the policy and procedures relating to Equal Opportunity (EO) complaints for Public Health Service (PHS) officers and candidates to the U.S. Public Health Service (USPHS) Commissioned Corps.
2. APPLICABILITY: This Instruction applies to all PHS officers and, where applicable, candidates for commissioning in the USPHS Commissioned Corps.
3. AUTHORITY:
 - 3-1. [42 U.S.C § 216](#), "Regulations"
 - 3-2. [42 U.S.C § 213\(f\)](#), "Active Service Deemed Active Military Service with Respect to Anti-Discrimination Laws"
 - 3-3. Commissioned Corps Directive (CCD) [111.01](#), "Equal Opportunity"
4. PROPONENT: The proponent of this Instruction is the Assistant Secretary for Health (ASH). The Surgeon General (SG) is responsible for providing supervision of activities relating to the day-to-day operations of the USPHS Commissioned Corps. The Director, Commissioned Corps Headquarters (CCHQ), provides overall management of USPHS Commissioned Corps personnel operations and processes.
5. SUMMARY OF REVISIONS AND UPDATES: This is the first issuance of this Instruction within the electronic Commissioned Corps Issuance System (eCCIS) and replaces Commissioned Corps Personnel Manual (CCPM) CC26.1.6, "Equal Opportunity: Discrimination Complaints Processing" dated 21 December 2001. This policy:
 - 5-1. Incorporates guidance from The Department for Health and Human Services (HHS) Office of Equal Employment Opportunity, Diversity, & Inclusion (EEODI).
 - 5-2. Aligns with current laws, regulations, policies, and guidance that prohibit discrimination in the federal workplace.
 - 5-3. Provides clearer guidance on the formal processes of filing EO complaints.
 - 5-4. Updates policy to new Commissioned Corps Instruction (CCI) format.

- 5-5. Introduces new USPHS Commissioned Corps branding language (i.e., USPHS Commissioned Corps; Public Health Service officers).
- 5-6. Introduces applicability to Ready Reserve Corps.
- 5-7. Removes reference to Public Law 105-392.
- 5-8. Replaces Equal Employment Opportunity Programs Group (EEOPG) with Office of Equal Employment Opportunity, Diversity & Inclusion (EEODI), HHS.
- 5-9. Replaces EEO with Equal Opportunity (EO).
- 5-10. Provides a new section (Section 6-3.) that introduces concepts (complaint, EO process) that have procedures.
- 5-11. Formal complaints must be filed within 90 days of the alleged incident (or after the officer returns from deployment) rather than the original 60 days. (6-3. d.)
- 5-12. Moves procedure elements for EO counselor and EO Officer to appropriate section (Section 8.).
- 5-13. Establishes responsibilities for the ASH and Director, CCHQ (Section 7.).
- 5-14. Removes Section K, "Privacy Act Provisions."
- 5-15. Adds Appendix A, "Definitions."
- 5-16. Replaces Exhibit I (Opportunity Flow Chart) with Appendix B, "Informal and Formal Resolution Process: Equal Opportunity Personnel Instruction USPHS Commissioned Corps Equal Opportunity Flow Chart."

6. POLICY:

6-1. Equal Opportunity.

- a. Service in the USPHS Commissioned Corps, in accordance with [42 U.S.C. §213\(f\)](#), is the equivalent of “active military service in the Armed Forces of the United States for purposes of all laws related to discrimination on the basis of race, color, sex, ethnicity, age, religion, and disability.”
- b. The USPHS Commissioned Corps maintains a zero tolerance policy on discrimination affecting USPHS commissioned officers and candidates based on race, color, religion, sex, national origin, age, disability, or genetic information (except as specified in Sections 6-1. through 6-3. of [CCD 111.01](#), “Equal Opportunity” and Sections 6-1.b. and 6-1.c. of [CCI 231.01](#), “General Appointment Standards”). This extends to all USPHS Commissioned Corps’ functions such as recruitment, appointment, assignment, career development, professional improvement, recognition, promotion, relocation, retention, and separation consistent with the needs of the Department of Health and Human Services (HHS).
- c. Officers and candidates must be free from all restraint, interference, coercion, or reprisal by fellow officers, employees, supervisors, or other management officials in lodging any allegation in any form relating to discrimination, pursuing any complaint or appeal, appearing as a witness, serving as a representative or an advisor to a complainant, or performing any other related action.

6-2. Conduct. If an officer violates this policy, CCHQ will refer an officer’s record for appropriate disciplinary action and or separation process. (See [CCD 111.02](#), “Disciplinary Action,” [CCD 123.01](#), “Involuntary Separation,” [CCI 211.07](#), “Accountability for Conduct and Performance,” [CCI 341.01](#), “Probationary Period,” [CCI 382.03](#), “Involuntary Termination of Commission,” and [CCI 384.03](#), “Mandatory, Voluntary, and Involuntary Retirement”). Violations of this Instruction must be brought to the attention of the appropriate supervisor, administrator, or EO Office.

6-3. Complaint and Representation.

- a. Officers and candidates with an EO issue (hereinafter “complainant”) may pursue resolution of EO matters in accordance with this Instruction.
- b. The USPHS Commissioned Corps encourages complainants to pursue resolutions informally within their agencies before filing an official complaint.
- c. Informal and Formal Resolution Processes.
 - (1) Chain of Command. Complainants, or their representative(s), will attempt to resolve the EO matter at the lowest level of their chain of command.
 - (2) EO Counseling. Complainants may seek informal resolution with their agency’s appropriate EO official.
 - (3) Alternative Dispute Resolution (ADR). Complainants may participate in ADR to achieve resolution.
 - (4) Complainant and management can mutually agree upon other methods to resolve the EO issue.

- (5) Complainant's Representative:
 - (a) A complainant may have a representative (who does not need to be an attorney) of their own choosing at all stages of the complaint process. The complainant may obtain legal counsel at their own expense. The complainant is responsible for obtaining a representative if they wish to have one. No individual may be required to serve as a representative if they do not wish to do so. No one can serve as a representative if such representation would present a conflict of interest with regard to either the complainant's or the representative's work or duties.
 - (b) Both the representative (if employed by HHS) and the complainant may request, from their respective supervisors, official duty time in which to prepare documents, affidavits, or testimony relevant to the complaint. Whether official time is granted, and the amount of official time that is granted, is in the sole discretion of the respective supervisors.
 - (6) Notice Regarding Representative. Complainants must designate their representative and show the agreement of the designated representative in writing. Complainants must provide this written designation and acceptance to the EO officer who will add it to the complaint file. Cancellation of such designation must also be made in writing by the complainant.
- 6-4. The Filing of EO Complaints when Officers Are Detailed to HHS Operating Divisions and Staff Divisions (OPDIVs/STAFFDIVs) and Non-HHS Agencies. Complainants:
- a. Must file a complaint with HHS, the Office of Equal Employment Opportunity, Diversity & Inclusion (EEODI), when the EO matter is under the control of HHS (i.e., involves HHS supervisors or managers).
 - b. Must file their complaint with the appropriate EEO or EO office of the non-HHS organization when the matter is outside the control of HHS (e.g., involving an agency such as Department of Defense, Bureau of Prisons, United Coast Guard (USCG), or National Oceanic and Atmospheric Administration). Complaints must be processed in accordance with relevant EO guidance in the respective Memorandum of Agreement (MOA) or Understanding (MOU).
 - c. Remain subject to the laws of the Armed Forces if detailed to the U.S. Navy, U.S. Marine Corps, U.S. Army, U.S. Air Force, U.S. Space Force, and USCG. EO complaints filed by complainants detailed to any of these Services will be processed in accordance with the procedures of the Service to which they are detailed.
- 6-5. Personnel Actions and Equal Opportunity.
- a. All issues of discrimination, retaliation, or harassment must be resolved through the EO process
 - b. The filing of an EO complaint does not preclude the initiation or continuance of any personnel action.
 - c. Officers must file EO complaints with the appropriate EO or EEO office and must not make that complaint in a Board proceeding, in the Complaints and Redress process,

or in any other non-EO or EEO office, even if the EO complaint is related to an issue currently pending in the other forum (i.e., a Letter of Reprimand, COER rating, or involuntary termination). However, this does not preclude the officer from filing a non-EO complaint, appeal, or action through the Complaints and Redress process or in an appropriate Board proceeding.

- d. If an officer raises an EO complaint at any point during the Complaints and Redress process, a Board proceeding, or in connection with any other Corps process, the officer will be notified that no action will be taken on the EO complaint and the officer must file the EO complaint with the appropriate EO or EEO Office. Any non-EO complaints or issues currently pending in the Complaints and Redress process, Board proceeding, or other Corps process will continue even if the officer files a related EO case.

7. RESPONSIBILITIES:

7-1. The ASH is responsible for establishing USPHS Commissioned Corps' policies.

7-2. Surgeon General. The SG will review the final complaint file, including the Report of Investigation (ROI), with the recommendation from the OPDIV/STAFFDIV/non-HHS organization EO office and all recommendations from the appointed advisory board, before rendering a decision within 60 days:

7-3. Director, CCHQ. Under the direction of the SG, the Director, CCHQ, provides overall administration and management of all the personnel processes listed in this Instruction and any operational guidelines established by the SG. The Director, CCHQ may:

- a. Provide consultation on USPHS Commissioned Corps policies and procedures;
- b. Assist with informal resolutions; and
- c. Respond to SG direction.

7-4. Supervisor. The supervisor must:

- a. Maintain a work environment free of discrimination and harassment;
- b. Maintain open lines of communication and exercise a good faith effort to resolve issues and complaints to include the ADR option;
- c. Maintain confidentiality;
- d. Advise complainants of their rights and responsibilities;
- e. Maintain relevant documents related to the EO complaint to include the resolution if the issue is resolved; and
- f. Ensure that no one under their supervision takes any reprisal or retaliation action against a complainant for exercising their rights under this Instruction.

7-5. USPHS Commissioned Corps Liaison. Upon request, the Commissioned Corps Liaison or designee must:

- a. Provide consultation on USPHS Commissioned Corps policies and procedures; and

- b. Assist with informal resolutions.

7-6. Complainant. The complainant should:

- a. Maintain open lines of communication and exercise a good faith effort to resolve issues and complaints;
- b. Follow EO procedures and policies contained in this Instruction;
- c. Cooperate with the investigation; and
- d. Notify the EO office if they choose a representative and/or counsel.

7-7. EO Office. Upon request from the complainant, the appropriate EO office will assist the complainant and management to achieve a resolution informally. If resolution is not achieved, the EO office must:

- a. Receive complaints from complainant in accordance with this Instruction;
- b. Determine if a formal complaint should be investigated or dismissed;
- c. Notify CCHQ if a complaint is filed. The EO office is responsible for reporting USPHS Commissioned Corps EO complaints in a manner consistent with reporting complaints filed by other Federal personnel;
- d. Notify the Director, EEODI, in writing, of the withdrawal of a complaint by a complainant and provide a copy of the complainant's memorandum of withdrawal;
- e. Establish an EO complaint file, if one does not already exist, for each complaint accepted under this Instruction. The complaint file will contain all available documents or records pertaining to the matter of the complaint;
- f. Be responsible for designating, training, and assigning competent and impartial complaint investigators;
- g. Prepare the ROI to include a detailed, complete, and accurate written record of all the information developed in the investigation that supports or refutes the significant charges made by the complainant;
- h. Maintain the complete complaint file in accordance with the applicable system of records maintenance; and
- i. Make a recommended decision to the SG based on the information in the complaint file, including but not limited to the information in the ROI.

7-8. Advisory Board. The SG will appoint an Advisory Board to review complaint files and recommended decisions of the EO Office on an as needed basis. The SG may also refer the appeal of a dismissal of a complaint to the Advisory Board for a recommendation. The Board consists of five senior level officers and civilian employees ranked GS-14 and above (or equivalent) who have been nominated by their respective OPDIV/STAFFDIV/non-HHS organization. The nominated individuals will have an appropriate level of training and/or experience in equal opportunity regulations and policies. Advisory Board members will be appointed for terms of one, two, or three years. The SG will make every effort to seek Board members from diverse backgrounds. All members of the Board will:

- a. Review and make a recommendation on all EO complaints the SG requests the Board's review;
 - b. Make a unanimous recommendation to the SG on all such complaints, if possible, regarding whether discrimination, harassment, or retaliation occurred, the factual basis for such a finding, and what relief should be awarded to the officer; and
 - c. If the Board is unable to make a unanimous recommendation, inform the SG without issuing any recommendation.
- 7-9. HHS Office of Equal Employment Opportunity, Diversity, & Inclusion (EEODI). The HHS EEODI will provide staff support to the SG on EO cases.
8. PROCEDURES:
- 8-1. Optional Informal Complaint Process. The USPHS Commissioned Corps recognizes that each situation is different and informal resolution may be achieved in many ways (see Section 6-3.c.). If an officer seeks informal resolution, but does not obtain a satisfactory resolution, the officer must create a written record of these informal efforts.
- 8-2. Formal EO Complaint Process.
- a. Except as otherwise set forth in this Instruction, Complainants must submit a formal complaint in accordance with the procedures established by the Office of Equal Employment Opportunity, Diversity & Inclusion (EEODI) when the EO matter is under the control of HHS (i.e., involves HHS supervisors or managers), or the appropriate EEO or EO office of the non-HHS organization when the matter is outside the control of HHS (i.e., the officer is assigned to a non-HHS organization and the alleged act of discrimination occurred at the non-HHS organization).
 - b. Timeliness:
 - (1) A complainant must submit a formal complaint to the EO office within 90 days of the alleged EO violation (or within 90 days after the officer returns from deployment, if the officer begins deployment at any time during the original 90-day period). A formal complaint must:
 - (a) Be complete with detailed information describing the alleged EO violation, including name(s) of individual(s) involved and witness(es).
 - (b) Identify the complainant's representative, if any.
 - (2) Complainants may request an extension from the EO office when they are prevented by circumstances beyond their control from filing their formal complaint within the 90-day time limit. The EO officer may require complainants to demonstrate good cause. The EO office has the sole discretion to decide whether the extension will be granted and the length of the extension, and such decision is not appealable.
 - (3) An EO officer may dismiss a formal complaint when:
 - (a) The complaint is not filed in a timely manner;
 - (b) The issues raised do not relate to EO;

- (c) The complainant failed to cooperate with EO procedures;
- (d) The complainant separates from the USPHS Commissioned Corps at any point during the EO process;
- (e) The complaint states the same claim that is pending before, or has been decided by the EO office or SG;
- (f) The complaint alleges dissatisfaction with the processing of a previously filed EO complaint; or
- (g) The complaint is part of a clear pattern of misuse of the EO process for a purpose other than the prevention and elimination of discrimination. Proof of such a pattern may include, but not be limited to, two or more of the following: evidence of multiple complaint filings; allegations that are similar or identical, lack specificity, or involve matters previously resolved; or evidence of retaliating against or overburdening the EO process.

8-3. EO Office and Formal Complaint Process.

- a. The EO office may dismiss a part or all of a formal complaint, for the reasons set forth in Section 8-2. above. When it does, the EO office must issue a "Notice of Dismissal."
 - (1) The notice must be sent to the complainant within 30 days of receipt of a formal complaint.
 - (2) The notice must include a statement that the complainant may, within 15 days, appeal the decision to the SG.
 - (3) The SG must issue a final decision on the appeal within 60 days.
- b. The EO office must investigate any of the claims in the complaint that were not dismissed, including obtaining relevant documents and obtaining relevant witness statements; prepare a Report of Investigation (ROI); and provide the complainant with a copy of the ROI within 180 days of the filing of the formal complaint. The timeframe may be extended when mutually agreed upon by the affected parties or by the EO office in its sole discretion upon good cause.
- c. At the time the EO office sends the ROI to the complainant, the EO office must notify the complainant that they have 30 days to review, comment, and supplement the ROI.
- d. Recommended Decision by EO officer. Within 120 days of receiving comments from the complainant, or within 120 days after issuance of the notice to complainant if the complainant does not respond to the notice, the EO officer will prepare a recommended decision and transmit it to the SG. The EO officer will also provide a copy of the recommended decision to the complainant.
- e. SG Decision. After receipt of the recommended decision from the EO officer, the SG will:
 - (1) Send the recommended decision, as well as the ROI and complaint file, to the Advisory Board on an as-needed basis, per Section 7-8.;

- (2) Once the Advisory Board makes the recommendation, render a final decision based upon the record, submit the decision in writing to the EO Office processing the complaint, and ensure that the decision is communicated to the affected parties; or
 - (3) Request that the EO officer conduct such further investigation as the SG deems necessary and appropriate for a well-reasoned decision, and then, within 60 days of receipt of the supplemental ROI and complaint file, render a final decision based upon the record as supplemented by this further investigation and submit it as indicated in (1) above.
 - f. Resolution. The case may be settled or a resolution achieved at any stage of the process. If a resolution is achieved, the EO officer will write a final report, including the resolution, in writing, and make it part of the complaint file, or include a copy of the parties' written settlement agreement in the complaint file. The EO officer will provide the affected parties and EEDI with a copy of the resolution or settlement agreement.
 - g. Withdrawal. A complainant or their representative, at any time during the EO process, may withdraw a complaint by submitting a signed statement which will become part of the complaint file; such a withdrawal is final, and the complaint cannot subsequently be revived.
- 8-4. Freedom from Reprisal or Interference.
 - a. A complainant who alleges reprisal in connection with the filing of a pending complaint under this Instruction, may add reprisal to the original complaint. The charge must be in writing, contain all pertinent facts, and be submitted to the EO officer within 15 days of the date of the alleged occurrence. The EO officer must conduct an investigation into the new claim(s), include the relevant information and documents in the ROI, and include the findings on said claim(s) in the recommended decision sent to the SG.
 - b. Allegations of reprisal that are filed after the recommended decision on the case has been transmitted to the SG must be processed as a new complaint. If claims of reprisal are filed with less than 60 days remaining for the completion of investigation and submission of the ROI (see Section 8-3.b.), then the investigation period shall automatically be extended for at least an additional 60 days to allow sufficient time for investigation of the new claim(s). However, the EO Office may extend this investigation period for a longer period of time at its sole discretion upon good cause.
 - c. A representative or witness who alleges reprisal due to participation in an EO complaint under this Instruction may file a separate complaint.
- 9. HISTORICAL NOTES. This is the first issuance of this Instruction within the eCCIS.
 - 9-1. CCPM CC26.1.6, "Equal Opportunity: Discrimination Complaints Processing," dated 21 December 2001.

Appendix A

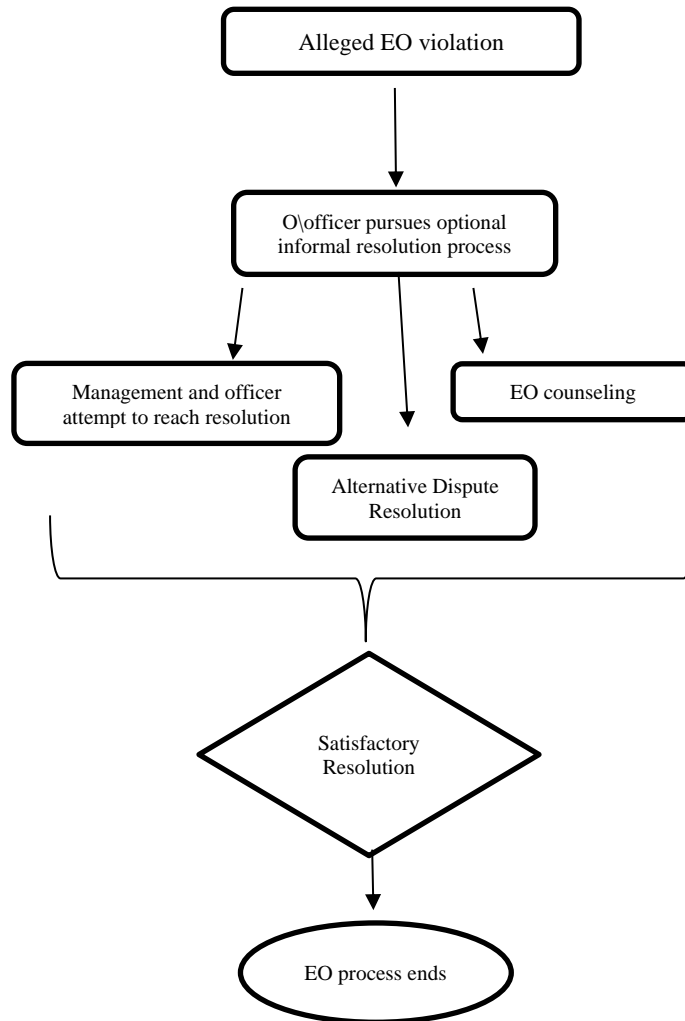
Definitions

1. **Affected Parties.** The complainant, any alleged discriminating official(s), and the management official(s) with jurisdiction over the organizational unit in which the subject matter of the complaint arose.
2. **Alternative Dispute Resolution (ADR).** ADR consists of several techniques (such as a mediation program) which provide alternatives to the traditional mechanisms (i.e., litigation) for resolving a EO conflict(s). ADR techniques are generally voluntary, consensual, and convened by a neutral party.
3. **Candidate.** The prospective person seeking or being considered for a commission after his/her application documents have been verified (such as a person in the nomination process, appointment boarding process, or entered into an Applicant Tracking System (ATS)).
4. **Complainant.** A commissioned officer or a candidate for appointment to the USPHS Commissioned Corps who initiates a complaint of discrimination.
5. **Complaint or EO Complaint.** An allegation of discrimination, harassment, or reprisal based on race, color, religion, sex, national origin, or, to a limited extent, based on age, disability, or genetic information (except as specified in Sections 6-1 through 6-3 of CCD 111.01, "Equal Opportunity" and Sections 6-1.b. and 6-1.c. of CCI 231.01, "General Appointment Standards").
6. **EO Office.** An office which handles the processing of EO complaints, including HHS EEODI (defined below), and the EO Office of a non-HHS organization. As used in this instruction, "EO Office" usually refers to the EO Office processing an officer's EO complaint
7. **EO Officer.** A designated official in an EO Office with the responsibility for managing EO programs and/or processing EO complaints. As used in this instruction, "EO Officer" usually refers to the EO Officer handling or processing an officer's EO complaint.
8. **Equal Opportunity (EO).** Consideration and fair treatment based on merit and capability without regard to race, color, religion, sex, national origin, or, to a limited extent, age, disability, or genetic information (when not otherwise addressed by appointment, accession, retention, or retirement standards) for all members of, and candidates to, the USPHS Commissioned Corps, in factors such as appointment, training, career development, discipline, and any other personnel practices that might affect the member's or candidate's opportunities and work environment.
9. **HHS Office of Equal Employment Opportunity, Diversity & Inclusion (EEODI).** EEODI administers and ensures HHS compliance with the laws, regulations, policies, and guidance that prohibit discrimination in the federal workplace for HHS employees and candidates for employment.
10. **Federal Personnel.** Civilian employees or members of one of the Uniformed Services.
11. **Report of Investigation (ROI).** An ROI consists of all documents and information collected or developed during the equal opportunity investigation, such as affidavits from the complainant, alleged discriminating officials and relevant witnesses, and copies of relevant documents, records, policies, and regulations.

12. Reprisal. An unlawful act to restrain, interfere, coerce, or discriminate against an individual because that individual is involved or participating in the discrimination complaints process (e.g., a complainant, their representative, witness, or an agency official responsible for processing discrimination complaints).
13. USPHS Commissioned Corps Liaison. An officer or an employee designated by the HHS OPDIV/STAFFDIV or non-HHS organization as the resource person on USPHS Commissioned Corps personnel issues.

Appendix B

Informal and Formal Resolution Process: Equal Opportunity Personnel Instruction
USPHS Commissioned Corps Equal Opportunity Flow Chart



Formal Complaint Process: Equal Opportunity Personnel Instruction
 USPHS Commissioned Corps Equal Opportunity Flow Chart

