

AO MANUAL

Volume 4: Human Resources

Chapter 3: Workplace Conduct and Protections

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§ 310 General

- (a) The AO Director established the Fair Employment Practices System (FEPS) to comply with the [AO Personnel Act of 1990, Pub. L. No. 101-474 \(1990\)](#). Section 3(a)(9) of the Act requires the AO:
- (1) to establish a personnel system prohibiting discrimination on the basis of “race, color, religion, age, sex, national origin, political affiliation, marital status, or handicapping condition”; and
 - (2) to “promulgate regulations providing procedures for resolving complaints of discrimination by employees and applicants for employment.”
- (b) This chapter codifies the AO’s fair employment and equal employment opportunity policies and provides for the prompt, fair, and impartial resolution of allegations of discrimination, harassment, or retaliation.

§ 310.10 Definitions	
Alternative dispute resolution (ADR)	A term used to describe a variety of approaches to resolving conflict that differ from traditional adjudicatory methods.
Applicant	Any individual who applies for a position with the AO.
Benefits and privileges of employment	Include, but are not limited to, employer sponsored: <ol style="list-style-type: none"> (1) training, (2) services (e.g., employee assistance programs, credit unions, cafeterias, lounges, gymnasiums, auditoriums, transportation), and (3) employer-sponsored or employer-sanctioned parties or other social functions (e.g., parties to celebrate retirements and birthdays, and office outings).
Complainant	An AO employee or applicant who invokes the Fair Employment Practices Complaint Process (FEP-CP) described in § 350 . (Note: Former employees are considered employees to the extent they assert claims relating to their position as an AO employee.)
Days	All time periods measured in days in this chapter refer to calendar days.
Deciding official	Supervisor, manager, or executive who has the authority to determine whether an accommodation will be provided and, if so, what the appropriate accommodation will be.
Disability	Those impairments that meet the ADA/Rehabilitation Act definition of “disability,” as amended by the ADA Amendments Act of 2008 (ADAAA). See: 42 U.S.C. § 12102 . The expanded definition is to be interpreted broadly and does not require an extensive analysis.

§ 310.10 Definitions	
Employee	Any full-time, part-time, or temporary employee of the AO.
Equal Employment Opportunity (EEO)	Federal laws prohibiting job discrimination based on race, color, sex, national origin, religion, age, equal pay, disability or genetic information.
Essential functions	Job duties that are fundamental to the position, as opposed to marginal or occasional duties that may be performed by the worker.
Extenuating circumstances	Factors that could not reasonably have been anticipated or avoided in advance of the request for a reasonable accommodation or limited situations in which unforeseen or unavoidable events prevent prompt processing and delivery of an accommodation.
Fair Employment Practices (FEP)	A term used to describe the AO's fair employment and equal opportunity policies and practices.
Fair Employment Practices Complaint Process (FEP-CP)	The AO's procedures for resolving complaints of discrimination by employees and applicants for employment.
FEP Counselor	Any agency or contractor appointed by the FEP Officer who, serving as a neutral, provides the complainant with his or her rights and obligations under the FEP-CP, gathers limited data and may facilitate resolution of a complaint between the parties.
FEP Decision (FEP-D)	A decision issued by OFEP that address the merits of each issue raised in the FEP-CP, or, as appropriate, the rationale for dismissing any claims in the complaint and, when discrimination is found, appropriate remedies and relief.
FEP Officer	Chief of the Office of Fair Employment Practices (OFEP), tasked with managing FEP complaints filed by employees and applicants under the AO's FEP and equal employment opportunity (EEO) policies.
Final Agency Decision (FAD)	A decision issued by the Director addressing an appeal of a FEP-D.
Final Agency Order (FAO)	A decision issued by OFEP that either fully implements or does not fully implement a decision by the Hearing Officer.
Health care provider	A person who has completed a course of study and is licensed to practice in a field of health care, which includes the diagnosis and assessment of the disability or disabilities in question.
Hearing officer	A contractor who has been appointed by OFEP to preside over FEP-CP evidentiary hearings, and who is authorized to issue written findings of fact, conclusions of law, and recommendations to the FEP Officer for a Final Agency Action.

§ 310.10 Definitions	
Individual with a disability	<p>A person that:</p> <ul style="list-style-type: none"> (1) has a physical or mental impairment that substantially limits one or more of that person's major life activities; (2) has a record of such an impairment; or (3) is regarded as having such an impairment. <p>See: "Disability" definition, above.</p>
Interactive process	An information-gathering approach used by an employer with the employee to evaluate a request for a reasonable accommodation.
Interim accommodation	A temporary or short-term measure put in place until a long-term accommodation is granted and available.
Investigator	Any agency or contractor appointed by the FEP Officer who, serving as a neutral, collects and discovers factual information concerning the claim(s) in the complaint under investigation.
Major life activities	Activities that include, but are not limited to: caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working. Major life activities also include the operation of a major bodily function, including but not limited to: functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.
Mediation	A type of ADR commonly used in FEP-CP where parties meet with an impartial and neutral person who assists the parties in reaching a resolution.
Mental impairment	Any mental or psychological disorder such as intellectual disability, organic brain syndrome, emotional or mental illness (e.g., major depression, bipolar disorder, anxiety disorders), schizophrenia and specific learning disabilities.
Office of Fair Employment Practices (OFEP)	<p>The AO office that:</p> <ul style="list-style-type: none"> (1) prevents, identifies, and remedies prohibited discrimination, unfair practices, and related wrongful conduct within the AO through its Fair Employment Practices Complaint Process and other functions; and (2) promotes, encourages, and expands diversity, inclusiveness, equal employment opportunity, and fairness in the AO and the judiciary through the Diversity Recruiting and Outreach Program and other functions.

§ 310.10 Definitions	
Physical impairment	Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the body systems, such as: neurological, musculoskeletal, special sense organs, cardiovascular, reproductive, digestive, immune systems, respiratory, genitourinary, hemic, circulatory, and lymphatic, skin, normal cell growth, and endocrine system.
Post-Act complainant	A complainant who began employment with the AO on or after October 30, 1990.
Pre-Act complainant	A complainant who was employed at the AO in a competitive service position before October 30, 1990, without a break in service.
Prohibited conduct	Conduct that violates the Fair Employment Practices principles provided in this chapter. See: § 320 .
Qualified individual with a disability	An individual with a disability is qualified, if the individual: <ul style="list-style-type: none"> (1) satisfies the requisite skill, experience, education, and other job-related requirements of the position; and (2) can perform the essential functions of the position, with or without a reasonable accommodation.
Reasonable accommodation	Any modification or adjustment to the application or hiring process, the job, an employment practice, or the work environment that allows a qualified individual with a disability to perform the essential functions of the job. (Note: The Rehabilitation Act of 1973 applies to the AO to the extent that it provides key terms and definitions of prohibited conduct in disability law and the reasonable accommodation process.)
Reasonable Accommodation Coordinator (RAC)	A representative from the Office of Fair Employment Practice who acts as an impartial advisor and serves as a subject matter expert for employees and supervisors to use in addressing requests for reasonable accommodation. See: § 360.20.10 .
Record of impairment	A history of having, or being misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.
Regarded as disabled	An actual or perceived physical or mental impairment, whether that impairment substantially limits, or is perceived to substantially limit, a major life activity.
Rehabilitation Act of 1973	The Rehabilitation Act of 1973 , as amended, section 501, requires government agencies in the Executive Branch to provide reasonable accommodation for individuals with disabilities, unless it would cause undue hardship.
Request for reasonable accommodation	An oral or written statement that an applicant or employee needs an adjustment or change at work or in the application process, for a reason related to a medical condition.

§ 310.10 Definitions	
Substantially limits	The extent to which an impairment limits an individual's ability to perform a major life activity as compared to most people in the general population, whether or not an individual chooses to forgo mitigating measures. An impairment need not prevent, significantly or severely restrict, the individual from performing a major life activity to be considered substantially limiting.
Undue hardship	A specific accommodation would require significant difficulty or expense. This determination, which must be made on a case-by-case basis, considers factors such as the nature and cost of the accommodation needed and the impact of the accommodation on the operations of the agency.

§ 320 Protections and Prohibitions

The AO provides equal opportunity in employment for all persons and prohibits:

- (a) discrimination or harassment based on:
 - (1) race,
 - (2) color,
 - (3) religion,
 - (4) age (40 or older),
 - (5) sex (including pregnancy, gender identity, and sexual orientation),
 - (6) national origin,
 - (7) political affiliation,
 - (8) marital status, or
 - (9) disability; and
- (b) retaliation due to:
 - (1) participation in the Fair Employment Practices Complaint Process (FEP-CP) as a:
 - (A) complainant,
 - (B) witness,

- (C) representative, or
- (D) counselor;
- (2) participation in an employer investigation of alleged sexual or discriminatory harassment;
- (3) raising concerns about or opposing conduct prohibited in this chapter; or
- (4) requesting an accommodation of a disability or religious practice.

§ 330 Application of Laws

The following statutes provide applicable definitions of prohibited conduct:

- Title VII of the Civil Rights Act of 1964, Sections 703-704 (codified at [42 U.S.C. §§ 2000e-2 \(Unlawful employment practices\)](#) and [2000e-3 \(Other unlawful employment practices\)](#));
- The Age Discrimination in Employment Act of 1967, Section 4 (codified at [29 U.S.C. § 623 \(Prohibition of age discrimination\)](#));
- The Rehabilitation Act of 1973, Section 501 (codified at [29 U.S.C. § 791 \(Employment of individuals with disabilities\)](#));
- The Fair Labor Standards Act of 1938, Section 206(d) (codified at [29 U.S.C. § 206\(d\) \(Prohibition of sex discrimination\)](#));
- Alternative Dispute Resolution Act of 1996 (ADRA) ([5 U.S.C. chapter 5, subchapter IV](#));
- Merit principles from [5 U.S.C. §§ 7201, 7202](#), and [7204](#); and
- The Equal Pay Act of 1963 (codified at [29 U.S.C. § 206 \(Minimum wage\)](#)).

§ 340 Duties of the Fair Employment Practices Officer

The FEP Officer (or designee) must:

- (a) ensure the fair, impartial processing and resolution of FEP complaints;
- (b) inform employees regarding their rights and FEP policy and procedures;

- (c) appoint FEP-CP counselors, ADR professionals, investigators and hearing officers;
- (d) provide annual counselor certification training to appointed FEP-CP counselors;
- (e) facilitate and assist interested parties in the resolution of FEP complaints;
- (f) issue a Fair Employment Practice Decision (FEP-D) on the merits of FEP complaints where a FEP-D is requested;
- (g) issue a Final Agency Order (FAO) in response to a hearing officer's recommended decision;
- (h) require all relevant AO employees to cooperate in the informal counseling, investigation, hearing, and resolution of FEP complaints.

§ 350 Fair Employment Practices Complaint Process

§ 350.10 General

§ 350.10.10 Covered Employees and Applicants

- (a) Except as provided below in paragraph (b), the FEP-CP is available to all:
 - (1) current employees; and
 - (2) applicants for employment and former employees to the extent they are asserting a claim related to an application for AO employment, or their previous employment.
- (b) Under the AO Personnel Act of 1990, the FEP-CP does not apply to the following employees:
 - (1) the AO Director;
 - (2) the AO Deputy Director;
 - (3) any AO Executive Service (AOES) employee, including the six senior executive positions paid under [28 U.S.C. § 603](#) (**see:** AO Manual, Vol. 4, § 1415 (Definitions)); and
 - (4) any designated positions whose incumbents serve at the will of the Director because the work involves confidential or policy-determining functions (**see:** AO Manual, Vol. 4, § 1415).

§ 350.10.20 Excluded Claims

The following claims are not covered by the FEP-CP process:

- (a) A claim already filed by the employee under the AO's grievance procedures (AO Manual, Vol. 4, § 1340 (Employee Grievances)). A grievance addresses any work-related matters of concern that is subject to the control of AO management, such as:
 - disciplinary actions and the application of the Uniformed Services Employment and Reemployment Rights Act;
 - Employee Polygraph Protection Act of 1988; and
 - Occupational Safety and Health Act of 1970.
- (b) A claim already filed by the employee under the AO's Adverse Action Appeals procedures (**see:** AO Manual, Vol. 4, § 1370 (Appeal Rights)). An adverse action appeal addresses any adverse action such as:
 - a reduction in pay band based on performance or conduct;
 - suspension greater than 14 days; and
 - removals (excluding removal for national security reasons or a workforce reduction).
- (c) A claim alleging reprisal or retaliation for anything other than retaliation as defined in [§ 320\(b\)](#).

§ 350.10.30 Right to Representation

A complainant may hire a representative at his or her own cost to represent the complainant's interest. An AO employee may represent the complainant but only if the representation does not unduly interfere with the employee's official duties and does not present an actual or apparent conflict of interest, as determined by the FEP Officer.

§ 350.10.40 Preparation Time

A complainant and the complainant's representative, if any, may use a reasonable amount of official time during regular working hours, without charge to leave, to prepare the claim, if it does not unduly interfere with the performance of the official duties. The complainant and representative, if applicable, are responsible for requesting official time with their supervisor or someone within their management chain who may consult with OFEP for guidance.

§ 350.10.50 Extensions of Time

The FEP Officer may extend any time limits based on a showing of good cause.

§ 350.10.60 Records

- (a) At the conclusion of informal and formal proceedings under the FEP-CP, copies of all papers, files, and reports produced by an investigator, or hearing officer (including the hearing record), must be filed with the FEP Officer (or designee).
- (b) No papers, files, or reports relating to a dispute may be filed in any employee's official personnel folder, unless necessary to implement the terms of a settlement agreement, FEP-D, or decision and order of a hearing office or Article III judge.
- (c) Notes, papers, files, and reports from mediation may not be disclosed, except with the consent of all parties.
- (d) After a voluntary resolution is reached as a result of mediation, all notes, papers, files, and reports from that mediation, except for the signed resolution document, are to be destroyed.
- (e) When a final decision is reached after the mediation, all notes, papers, files, and reports from mediation must be destroyed.

§ 350.10.70 Conflicts of Interest and Disqualification

- (a) Generally, no person may serve as a counselor, investigator, mediator, or hearing officer to resolve a FEP-CP if such person:
 - (1) has a personal bias or prejudice concerning a party;
 - (2) has personal knowledge of the facts giving rise to the dispute;
 - (3) is in the chain of command of the complainant or any participant in the dispute; or
 - (4) serves within the same department as any party in the dispute.
- (b) A party may seek the disqualification of a counselor, investigator, mediator, or hearing officer, by petitioning the FEP Officer in writing.
- (c) Upon a showing of good cause for disqualification, the FEP Officer must appoint a new counselor, investigator, mediator, or hearing officer to resolve the FEP-CP.

§ 350.20 Initiating the FEP-CP – Informal Counseling

- (a) An individual wishing to pursue a claim under FEP-CP must first request informal counseling verbally or in writing.
- (b) The counseling request must be made to an OFEP staff member:
 - (1) within 60 days of the date of the allegedly discriminatory matter; or
 - (2) for a personnel action, within 60 days of the action's effective date.
- (c) The FEP Officer will extend the 60-day time limit when the individual shows:
 - (1) that he or she did not know — and reasonably should not have known — that the discriminatory matter or personnel action occurred;
 - (2) that, despite due diligence, he or she was prevented from contacting the counselor within the time limits by circumstances beyond his or her control; or
 - (3) other reasons considered sufficient by the FEP Officer.
- (d) Upon receipt of a timely request for counseling, the FEP Officer (or designee) must:
 - (1) provide the complainant with a copy of the FEP-CP Intake Form;
 - (2) designate a FEP-CP Counselor; and
 - (3) instruct the complainant to complete and submit the FEP-CP Intake Form to the designated FEP-CP counselor before their initial meeting.
- (e) **Counselor Duties**
The counselor must:
 - (1) advise the complainant about the FEP-CP's general procedures;
 - (2) explain, complete, and facilitate the execution of the Informal Complaint Form to establish the issues and bases of the claim;
 - (3) conduct a limited inquiry with the individual for the purpose of determining jurisdictional questions (e.g., timeliness) and information concerning the claim(s) and basis(es) so the FEP

Officer can properly identify the legal claim raised if the individual files a complaint at the conclusion of the counseling process;

- (4) assist the parties in exploring resolution at the lowest level and document any resolution reached;
- (5) consult with OFEP on resolution efforts at the lowest possible level and documenting any resolution reached; and
- (6) if a complainant files a formal complaint, prepare a counselor's report to be included in the Report of Investigation (ROI), noting what counseling actions have been taken.

(f) Duration of Counseling Period

The counseling period may last no more than 60 days from the date that the FEP Officer received the complainant's FEP-CP Intake Form, unless the complainant agrees in writing to extend the counseling for an additional period of no more than 90 days.

(g) Conclusion of the Counseling Period and Notice

The FEP Officer (or designee) must notify the individual in writing at the end of the counseling period by issuing a Notice of Completion of Counseling. As part of the notice, the FEP Officer (or designee) must inform complainant of any right he or she may have under the FEP-CP to pursue his or her FEP claims further.

§ 350.30 Formal Complaint

- (a) A complaint must be filed, using OFEP's Formal Complaint Form, within 15 days of receipt of the Notice of Completion of Counseling.
- (b) After a formal complaint is filed, the FEP-CP Counselor must prepare and file a "Report of Informal Counseling" within 15 days after notification of receipt of a formal complaint. The report must include:
 - (1) A precise description of the claim(s) and the basis(es) identified by the complainant;
 - (2) A summary of facts gathered during informal counseling;
 - (3) A listing of the complainant's requested relief;
 - (4) Relevant documents gathered during the inquiry, if any; and
 - (5) Results of attempts to informally resolve the complaint.

- (c) Upon receipt of the complainant's formal complaint, the FEP Officer (or designee) must evaluate the claims raised to determine whether any should be dismissed due to one or more of the following:
 - (1) Failure to state a claim covered under the FEP-CP.
 - (2) Failure to timely comply with the time limits for initiating counselor contact or filing a formal complaint.
 - (3) Stating a claim that had already been decided.
 - (4) No relief can be granted because the effects of the alleged violation have been eradicated and there is no reasonable expectation that the alleged violation will recur.
 - (5) Alleging dissatisfaction with the processing of a previously filed complaint.
- (d) If a new incident(s) of discrimination, harassment, or retaliation occur after the counseling period has concluded, the complainant may request to amend the original complaint to add claims that are like or related to the previously filed complaint. The amendment must be in writing to the FEP Officer and identify the new incidents at issue. The FEP Officer or designee must review the request to amend and determine whether to:
 - (1) accept the new claims as part of the original complaint;
 - (2) dismiss the new claims in whole or in part under § 350.30(c); or
 - (3) direct the complainant to initiate a new complaint that may be consolidated with the original complaint if the new claims are similar or related to a previously filed complaint.
- (e) The FEP Officer must acknowledge receipt of a complaint or an amendment to a complaint, in writing, and inform the complainant of the following:
 - (1) The date on which the complaint or amendment was filed.
 - (2) If the complaint is dismissed in whole or in part under § 350.30(c), notification of the dismissal with an explanation of the one or more bases for dismissal.
 - (3) If the complaint is not dismissed in its entirety under § 350.30(c), notification that the AO will conduct an investigation within 180 days of the filing of the original or amended complaint unless the parties agree in writing to extend the time period.

§ 350.40 Formal Complaint Investigation

- (a) Upon receipt of a timely formal complaint, the FEP Officer must appoint an investigator to conduct an independent investigation of the facts surrounding the complaint. The investigation must include:
 - (1) a thorough review of the FEP-CP Intake Form, Informal Complaint, the counselor's report, and any additional circumstances under which the alleged prohibited conduct occurred;
 - (2) the treatment of members of the complainant's group compared to treatment of other similarly situated employees, if applicable; and
 - (3) any applicable policies or practices.
- (b) The investigation is intended to develop an impartial and appropriate factual record upon which to make findings on the claims raised by the written complaint. An appropriate factual record is one that allows a reasonable fact finder to draw conclusions as to whether prohibited conduct occurred.
- (c) The investigation must be conducted by an impartial individual.
- (d) In discharging his or her duties, the investigator may:
 - (1) request documentary evidence from the complainant or relevant AO managers and employees;
 - (2) administer oaths; and

(Note: Witness statements must be made under oath or affirmation or, alternatively, by written statement under penalty of perjury.)

 - (3) interview witnesses, including the complainant and relevant AO managers and employees.
- (e) The investigator must complete the investigation within 180 days of the filing of the complaint, or amendment to the complaint, unless the parties agree in writing to extend the time period.
- (f) At the conclusion of the investigation period, the investigator must submit his or her findings and all documentation, statements, affidavits, and declarations surrounding the investigation (collectively, the ROI) in writing to the FEP Officer, who must provide copies to the complainant and to the AO's Office of the General Counsel (OGC).

- (g) Within 15 days of receiving the ROI, the complainant may submit a written rebuttal to any testimony or evidence in the ROI to the FEP Officer, who must provide a copy to OGC.

§ 350.50 Post-investigation Election

- (a) Within 15 days of receiving the ROI, the complainant must request one of the following options:
 - (1) Hearing before a hearing officer; or
 - (2) A Fair Employment Practice Decision (FEP-D) to be issued by OFEP.
- (b) If the complainant fails to timely elect a hearing or FEP-D, the complaint will be dismissed for failure to timely comply with the time limit for electing a hearing or a FEP-D.
- (c) A complaint dismissed under this section may be reinstated by the FEP Officer upon written showing of good cause for missing the election deadline.

§ 350.60 Hearing and Recommendation

- (a) Hearing Officer's Appointment
 - (1) Within 60 days of receipt of the complainant's request for a hearing, the FEP Officer must select a hearing officer.
 - (2) The hearing officer must be:
 - (A) an attorney with specialized, subject-matter expertise; and
 - (B) a neutral party.

- (b) Hearing Officer's Responsibilities

Once selected, the hearing officer is responsible for the complaint's adjudication until issuing a Report and Recommendation. The hearing officer's responsibilities include the following:

- (1) Issuing a recommended decision on the complaint.
- (2) Regulating the conduct of hearings.
- (3) Limiting the number of witnesses to exclude irrelevant or repetitive evidence.

- (4) Ordering discovery or the production of documents.
- (5) Determining who may be present during the hearing.
- (6) Limiting the hearing to the issues in dispute.
- (7) Imposing sanctions on a party if he or she fails to comply without good cause with orders or requests. In appropriate circumstances sanctions may include:
 - (A) drawing an adverse inference that the requested information in discovery, or the testimony of the requested witness at hearing, would have reflected unfavorably on the party refusing to provide the requested information;
 - (B) consider the matters to which the requested information or testimony pertains to be established in favor of the opposing party;
 - (C) exclude other evidence offered by the party failing to produce the requested information or witness;
 - (D) issue a decision fully or partially in favor of the opposing party;
 - (E) dismiss the complaint for failure to cooperate or respond; or
 - (F) take such other actions as it deems appropriate.
- (c) Dismissal or Summary Determination
 - (1) The hearing officer may recommend the dismissal of any complaint that:
 - (A) is frivolous, or unduly repetitive of a previous complaint,
 - (B) fails to state a claim upon which relief may be granted, or
 - (C) makes claims that were not raised during informal counseling or amended to the original complaint before the close of the investigation period.
 - (2) If no material factual dispute is found to exist, the hearing officer may make a recommendation on the case summarily and issue a Report and Recommendation without a hearing.

(d) Witnesses

- (1) No later than 21 days before the hearing, the parties must submit a list of the witnesses they intend to call to testify at the hearing to the hearing officer and opposing party.
- (2) No later than 7 days of receipt of the opposing party's witness list, either party may submit a written objection to any of the witnesses to the hearing officer.
- (3) No later than 14 days before the hearing, after the parties have had an opportunity to object to any witnesses, the hearing officer must determine which witnesses may testify at the hearing.

(e) Hearing Procedures

If the hearing officer does not recommend dismissal before the hearing, he or she must hold a formal hearing on the merits of the complaint. The hearing officer determines the manner of conducting the hearing. However, the following specific provisions apply to FEP-CP hearings:

- (1) The hearing is closed to anyone who does not have an interest in the proceeding. The hearing officer determines on a case-by-case basis whether someone has such an interest.
- (2) Both the complainant and the AO have a right at the hearing:
 - (A) to representation,
 - (B) to present evidence, and
 - (C) to question or cross-examine any witness.
- (3) The hearing is limited to issues raised in the formal complaint.
- (4) The hearing officer must conduct a fair and impartial hearing and take all necessary action to avoid undue delay in the disposition of all proceedings.
- (5) A transcript of the hearing must be made and will be the official record of the proceeding.

(f) Hearing Officer's Report and Recommendation

- (1) The hearing officer must issue a recommended decision that includes:

- (A) all findings of fact and conclusions of law;
 - (B) a determination on the merits of each claim in the complaint; and
 - (C) where appropriate, a statement of the relief recommended, consistent with applicable AO policy.
- (2) The hearing officer must issue a written recommended decision not later than 60 days after receipt of the official transcript.
 - (3) The hearing officer must provide a copy of the Report and Recommendation to:
 - (A) the complainant,
 - (B) the complainant's representative (if any),
 - (C) OGC, and
 - (D) the FEP Officer.

§ 350.60.10 Final Agency Order (FAO)

- (a) The FEP Officer may adopt, modify, or reject the Report and Recommendation.
- (b) The FEP Officer's review of the recommended decision must include the following actions:
 - (1) Review of all legal determinations based on a "de novo" standard of review. (**Note:** The FEP Officer must determine whether the decision properly applied legal principles.)
 - (2) Review of the findings of fact (including a finding of discriminatory intent), based on the administrative record as a whole, using a "clearly erroneous" standard. (**Note:** The FEP Officer must adopt findings of fact unless the FEP Officer is definitely and firmly convinced that a mistake has been made.)
- (c) No later than 60 days after receipt of the hearing officer's recommendation, the FEP Officer must issue a written Final Agency Order (FAO).
- (d) If the FEP Officer issues a FAO that includes a finding of prohibited conduct in whole or in part, the FAO must specify the type of relief being awarded.

§ 350.70 Fair Employment Practices Decision (FEP-D)

- (a) Once an investigation is complete and if the complainant has made a timely request for a FEP-D, the FEP Officer must issue a FEP-D within 60 days of receipt of the complainant's request.
- (b) The FEP-D must:
 - (1) outline all findings of fact and conclusions of law;
 - (2) consist of findings by the agency on the merits of each claim in the complaint;
 - (3) where appropriate, a statement of the relief recommended, consistent with applicable AO policy; and
 - (4) contain notice of the right to appeal the decision.
- (c) The FEP officer must provide a copy of the FEP-D to:
 - (1) the complainant;
 - (2) the complainant's representative (if any); and
 - (3) OGC.
- (d) If the complainant does not file an appeal consistent with § 350.90.20(b) within 30 days of the date of the FEP-D, the FEP-D becomes the Final Agency Decision (FAD).

§ 350.80 Remedies

- (a) In general, where there is a finding that a substantive right protected by FEPS was violated, the hearing officer (or the FEP Officer when a timely request for a FEP-D was made instead of a hearing) may order a necessary and appropriate remedy.
 - (1) A remedy may correct a past violation or ensure future compliance with the rights protected by FEPS, or both.
 - (2) A remedy should be tailored as closely as possible to the specific violation involved.
- (b) Specific remedies that may be provided to successful complainants under FEPS include but are not limited to:
 - (1) placement in the subject position;

- (2) placement in a comparable alternative position;
 - (3) reinstatement to a position from which previously removed;
 - (4) prospective promotion to a position;
 - (5) priority consideration for a future promotion or position;
 - (6) back pay and attorney's fees, where the statutory criteria of the Back Pay Act (codified at [5 U.S.C. § 5596](#)) are satisfied;
 - (7) records modification and/or expungement;
 - (8) injunctive relief;
 - (9) accommodation of disabilities;
 - (10) opportunity to participate in a denied benefit of employment (e.g., training, preferential work assignment, or compensatory time);
 - (11) granting of an award; or
 - (12) referral of supervisor(s) to the appropriate management officials for potential disciplinary action(s).
- (c) Remedies that are **not** legally available include:
- (1) payment of attorney's fees (unless authorized by the Back-Pay Act);
 - (2) compensatory damages (including pecuniary damages);
 - (3) punitive damages; or
 - (4) liquidated damages.

§ 350.90 Appeals & Non-Compliance Actions

§ 350.90.10 Pre-Act Complainant Appeal Rights

- (a) Appeal Rights to the Equal Employment Opportunity Commission
- (1) A pre-Act complainant who was entitled to file an appeal with the Equal Employment Opportunity Commission's Office of Federal Operations (EEOC-OFO) before passage of the AO Personnel Act of 1990, may appeal to the EEOC-OFO:
 - (A) the AO's final agency order;

- (B) the AO's fair employment practice decision;
 - (C) the AO's rejection or dismissal of the complaint or any portion of it; or
 - (D) the AO's alleged noncompliance with a settlement agreement, FAO, or FEP-D.
- (2) For guidance on filing an EEOC-OFO appeal, **see:** [29 CFR 1614](#).
- (3) A pre-Act complainant:
 - (A) may only seek appellate review from the EEOC-OFO; and
 - (B) is not entitled to a hearing before an EEOC administrative judge.
- (b) Civil Actions
 - (1) A pre-Act complainant who was entitled to file a civil action in an appropriate United States district court before passage of the AO Personnel Act, may file such an action:
 - (A) after exhausting his or her administrative remedies under the statutes cited in [§ 330](#);
 - (B) if 180 days from the date of filing the formal complaint, the agency has not issued a FAO or FEP-D;
 - (C) within 90 days of receipt of the EEOC-OFO's final decision on appeal; or
 - (D) after 180 days from the date of filing an appeal with the EEOC-OFO if there has been no final EEOC-OFO decision.
 - (2) If a claim is based on alleged age discrimination, a pre-Act complainant may proceed to file a civil action in the appropriate United States district court within 180 days of the alleged discriminatory action, after providing EEOC-OFO with 30 days' notice of an intent to file such action.

§ 350.90.20 Post-Act Complainant Appeal Rights

- (a) Appeal of a Final Agency Order

(1) Appeal Rights

Where there was a mistake of fact or law, a complainant or the AO may appeal to an Appellate Judicial Officer (AJO) any FAO consistent with the provisions below.

(2) Time

An appeal must be filed within 30 days from the date the FAO is entered. If an appellant does not timely file an appeal, the appeal must be dismissed as untimely.

(3) How to Appeal

The complainant or the AO must file an appeal with the FEP Officer, using OFEP's Notice of Appeal Form, in person or by email or mail.

(4) Supporting Statement or Brief

- (A) Any statement or brief in support of the appeal must be submitted to the FEP Officer, with a copy to the opposing party, in person or by email, mail, or facsimile, within 30 days of filing the notice of appeal.
- (B) Any statement or brief in opposition to an appeal must be submitted to the FEP Officer, with a copy to the opposing party, in person or by email, mail, or facsimile, within 30 days of receipt of the statement or brief supporting the appeal.
- (C) If no statement or brief supporting the appeal is filed, any statement or brief in opposition to an appeal must be submitted within 60 days of the filing date of the notice of appeal.

(5) The Record

The FEP Officer must submit the notice of appeal, any response to the notice of appeal, and the complaint file (complaint, Report of Investigation, hearing transcript, final agency order) to the Chair of the Judicial Resources Committee (JRC) within 30 days of notification that a party has filed an appeal. The Chair of the JRC will identify an AJO who will decide the issues on appeal.

(6) Appellate Judicial Officer Review

- (A) The AJO must be a judge appointed under Article III of the United States Constitution.
- (B) The AJO must review the complaint file and all written statements and briefs from either party.
- (C) No new evidence may be considered on appeal unless there is an affirmative showing that the evidence was not reasonably available before or during the investigation or during the hearing process.
- (D) Standard of Review
 - (i) Only contentions of mistakes of fact or law may be considered on appeal.
 - (ii) The AJO must review findings of fact (including a finding of discriminatory intent) based on a “clearly erroneous” standard of review. The AJO must uphold findings of fact unless the AJO is definitely and firmly convinced that a mistake has been made.
 - (iii) The AJO must review legal determinations based on a “de novo” standard of review. The AJO must determine whether the decision properly applied legal principles.
- (E) Decision
 - (i) The AJO must issue a timely, written decision providing his or her reasons for the decision.
 - (a) If the decision contains a finding of discriminatory conduct, the AJO must include any appropriate remedy and, where appropriate, relief and attorney’s fees under the Back-Pay Act.
 - (b) The decision must be dated and transmitted immediately to the complainant or his or her representative, and the AO.
 - (ii) The decision issued by the AJO is final.

(b) Appeal of a Fair Employment Practices Decision (FEP-D)

(1) Appeal Rights

Where there was a mistake of fact or law, a complainant or the AO may appeal to the Director any FEP-D consistent with the provisions below.

(2) Time

- (A) An appeal must be filed within 30 days from the date the FEP-D is issued. If an appellant does not timely file an appeal, the appeal must be dismissed as untimely.
- (B) If the complainant does not file an appeal within 30 days of the date of the FEP-D, the FEP-D becomes a Final Agency Decision.

(3) How to Appeal

The complainant or the AO must file an appeal with the Director, using OFEP's Notice of Appeal Form, in person or by email or mail.

(4) Supporting Statement or Brief

- (A) Any statement or brief in support of the appeal must be submitted to the Director, with a copy to the opposing party, in person or by email, mail, or facsimile, within 30 days of filing the notice of appeal.
- (B) Any statement or brief in opposition to an appeal must be submitted to the Director, with a copy to the opposing party, in person or by email, mail, or facsimile, within 30 days of receipt of the statement or brief supporting the appeal.
- (C) If no statement or brief supporting the appeal is filed, any statement or brief in opposition to an appeal must be submitted within 60 days of the filing date of the notice of appeal.

(5) Director's Review and Decision

- (A) The Director must review the complaint file and all written statements and briefs from either party.
- (B) No new evidence may be considered on appeal unless there is an affirmative showing that the evidence was not

reasonably available before or during the investigation or during the hearing process.

(C) Standard of Review

- (i) Only contentions of mistakes of fact or law may be considered on appeal.
- (ii) The Director must review findings of fact (including a finding of discriminatory intent) based on a “clearly erroneous” standard of review. The Director must uphold findings of fact unless the Director is definitely and firmly convinced that a mistake has been made.
- (iii) The Director must review legal determinations based on a “de novo” standard of review. The Director must determine whether the decision properly applied legal principles.

(D) Final Agency Decision

- (i) The Director must issue a timely, written decision providing his or her reasons for the decision.
 - (a) If the decision contains a finding of discriminatory conduct, the Director must include any appropriate remedy and, where appropriate, relief and attorney’s fees under the Back-Pay Act.
 - (b) The decision must be dated and transmitted immediately to the complainant or his or her representative, OFEP, and OGC.
- (ii) The decision issued by the Director is final.

§ 350.90.30 Breach of a Settlement Agreement

- (a) A complainant may file a claim of breach alleging noncompliance with settlement terms reached during the FEP-CP.
- (b) The complainant must notify OFEP in writing of the agency’s alleged noncompliance with the settlement agreement within 30 days of the date the complainant knew or should have become aware of the agency’s noncompliance. The notice must:
 - (1) include a copy of the fully executed settlement agreement;

- (2) identify the specific terms alleged to have been breached; and
 - (3) include any documents providing evidence of the breach.
- (c) The FEP Officer must determine whether the agreement was breached and notify the complainant in writing.
- (d) If the FEP Officer determines that the agreement was breached, the complainant may request:
 - (1) enforcement of the settlement agreement; or
 - (2) reinstatement of the underlying complaint at the point at which the processing of the complaint was stopped.

(Note: Where a complaint is reinstated for further processing, both the agency and the complainant would be required to return any benefits received under the agreement.)

§ 350.90.40 Non-Compliance with Final Agency Action

- (a) A complainant may file a Notice of Non-Compliance with the FEP Officer and OGC for enforcement of a FAO, FEP-D, Article III Judge Decision, or FAD.
- (b) The complainant must notify OGC and the FEP Officer in writing of the agency's alleged noncompliance within 30 days of when the complainant knew or should have become aware of the agency's noncompliance. The notice must:
 - (1) identify the corrective action ordered by the hearing officer, OFEP, appellate judge, or Director that the agency has not complied with;
 - (2) include a copy of the FAO, FEP-D, Article III Judge Decision, or FAD; and
 - (3) include any documents evincing the non-compliance.
- (c) Within 30 days, OGC must file a written response to the Notice of Non-Compliance serving both the complainant and OFEP.
- (d) Upon receipt of the Notice of Non-Compliance and OGC's response, if filed, the FEP Officer will notify the Director of the notice and request enforcement of order.

§ 360 Reasonable Accommodation

§ 360.10 General

§ 360.10.10 Applicability

- (a) Except as provided below in paragraph (b), the following individuals may engage in the reasonable accommodation program provided in this section:
 - (1) current employees; and
 - (2) applicants for employment with the AO.
- (b) Contractors who report to the AO may not request an accommodation through the AO Reasonable Accommodation Process.

§ 360.10.20 Records

- (a) All papers, files, and medical documents exchanged during the accommodation process will be maintained by the FEP Officer (or designee) until the requester ceases to be employed by the AO.
- (b) No papers, correspondence, files, or medical documents relating to request for accommodation will be filed in any employee's official personnel folder (OPF).
- (c) Notes, papers, files, and medical documents will be disclosed only to those individuals necessary to assess the reasonable accommodation or with the consent of the requester.
- (d) When the requester ceases to serve as an employee of the AO, all notes, papers, files, and medical documents will be destroyed.

§ 360.10.30 Policy Exclusions

- (a) The reasonable accommodation process does not excuse conduct that would result in a disciplinary action.
- (b) An individual who poses a direct threat to the health and safety of himself, herself, or others, with or without accommodation, such that the individual poses a significant risk of substantial harm, is not qualified for an accommodation. Determining whether an individual poses a direct threat requires an individualized assessment.

- (c) A person who is “currently engaging” in the illegal use of drugs is not a “qualified individual with a disability.” However, “qualified individuals” under the ADA include those persons:
 - (1) who have been successfully rehabilitated and who are no longer engaged in the illegal use of drugs;
 - (2) who are currently participating in a rehabilitation program and are no longer engaging in the illegal use of drugs; and
 - (3) who are regarded, erroneously, as illegally using drugs.

§ 360.20 Key Roles and Responsibilities

§ 360.20.10 Reasonable Accommodation Coordinator (RAC)

The RAC has responsibility for taking the following actions:

- (a) Facilitates the AO’s reasonable accommodation program by:
 - (1) reviewing requests from employees and applicants for completeness;
 - (2) assessing requests to determine whether the requester meets the definition of a qualified individual with a disability requiring a reasonable accommodation;
 - (3) initiating the interactive process with the requester, the requester’s supervisor, and manager, the deciding official, and any other appropriate official;
 - (4) providing advice and guidance to the requester, the requester’s supervisor, and manager, the deciding official, and any other appropriate official, on issuing timely decisions granting or denying accommodation requests; and
 - (5) assisting the AO with implementing granted accommodations.
- (b) Works with deciding officials, supervisors, and managers to ensure that any accommodation, if appropriate:
 - (1) meets the individual’s disability-related needs, does not entail eliminating essential functions of the position,
 - (2) is feasible, and
 - (3) does not pose an undue hardship to the AO.

- (c) Works with applicants with disabilities who need an accommodation to either apply or be interviewed for a job.
- (d) Develops an online and in-person reasonable accommodation training course for supervisors, managers, and all other bi-weekly employees.
- (e) Maintains confidential case file of all accommodation requests in compliance with AO policy and the Rehabilitation Act of 1973, as amended.

§ 360.20.20 Requester

The requester is the employee, applicant, or third party on the employee's or applicant's behalf who requests the reasonable accommodation. The requester takes the following actions:

- (a) Initiates the reasonable accommodation process;
- (b) Cooperates in the interactive dialogue throughout the reasonable accommodation process (understanding that failure to cooperate may result in denial of the reasonable accommodation request); and
- (c) Provides promptly any requested medical information about the disability, functional limitation(s), and need for accommodation to the RAC.

§ 360.20.30 Supervisor or Manager

The supervisor or manager consults with the RAC about specific requests to ensure that an accommodation enables the individual to perform the position's essential functions and is a reasonable and effective accommodation. The supervisor or manager takes the following actions:

- (a) Forwards all reasonable accommodation requests received to the RAC as soon as practical, but no later than three business days after receipt, and directs the individual to contact the RAC;
- (b) Clarifies whether the individual seeking the assistance is requesting a reasonable accommodation when the initial communication is unclear; and
- (c) Participates in the interactive process to ensure that any accommodation is a reasonable and effective accommodation that enables the individual to perform the essential functions of the position.

§ 360.20.40 Deciding Official

The deciding official has the authority to grant or deny the requested accommodation, and takes the following actions:

- (a) Participates in the interactive process to ensure that any accommodation is a reasonable and effective accommodation and enables the individual to perform the position's essential functions; and
- (b) Renders the final decision.

§ 360.20.50 Human Resources Specialist

The designated human resources specialist from the AO's Human Resources Office consults with the RAC about specific requests to ensure that the essential functions identified by the supervisor are the functions reflected on either the individual's job description or performance plan. The human resources specialist may perform the following actions:

- (a) Provides a current copy of the requester's job description and the performance plan to the RAC;
- (b) Forwards all reasonable accommodation requests received to the RAC as soon as practical, but no later than three business days after receipt, and directs the requester to contact the RAC; and
- (c) Clarifies whether the individual seeking the assistance is requesting a reasonable accommodation when the initial communication is unclear.

§ 360.30 Submitting a Reasonable Accommodation Request

§ 360.30.10 Initiating the Request

- (a) An AO employee wishing to request a reasonable accommodation may do so orally or in writing to his or her supervisor or manager, another supervisor or manager in the employee's immediate chain of command, the appropriate deciding officer or associate director, or the RAC.
- (b) An applicant wishing to request a reasonable accommodation may do so orally or in writing to a human resources specialist or any other AO employee directly involved in the application or hiring process.
- (c) A third party (i.e., a family member, health professional, or other representative) may make a written or oral request for reasonable accommodation on behalf of an employee or applicant with the individual's consent. Unless an employee is incapacitated, the RAC will contact the employee or applicant and confirm the individual's interest in an accommodation before processing the accommodation.
- (d) In addition to the official channels provided above, a request for a reasonable accommodation may be sent directly to the RAC by email at AO_Reasonable_Accommodations@ao.uscourts.gov.

§ 360.30.20 Determining the Official to Respond to an Accommodation Request

- (a) The official who receives a request for a reasonable accommodation must first determine the appropriate deciding official (i.e., person with authority to grant or deny requested accommodation), using the following guidelines.

§ 360.30.20(a) Guidelines for Deciding Official		
Request from:	For:	Decided by:
(1) Applicant	Accommodation(s) that do not involve personnel actions, large expenditures, or other high-level determinations	Human resources specialist responsible for recruitment or selection, after consulting with the RAC
(2) Employee	Accommodation(s), except for reconfigured workspace or accessible parking (see below)	Requester's immediate supervisor, after consulting with the RAC
(3) Employee	Reconfigured workspace	AO's Facilities and Security Office
(4) Employee or Applicant	Accessible parking	AO's Administrative Services Office
(5) Employee or Applicant	Accommodation(s) that involve personnel actions, large expenditures, or other high-level determinations	Appropriate associate director

- (b) The receiving official must forward the request to the appropriate deciding official and the RAC as soon as practical, but no later than three business days after receipt.
- (c) A deciding official must designate in writing an alternate(s) to receive and process requests for reasonable accommodation in their absence or unavailability and ensure that potential requesters are provided both the name and contact information for any alternate deciding official.

§ 360.40 Responding to a Reasonable Accommodation Request

- (a) Within seven business days of receipt of an oral or written request for a reasonable accommodation, the RAC must send the requester a Reasonable Accommodation Request form to complete and return to the RAC.
- (1) If the requester is unable to complete the Reasonable Accommodation Request form due to physical or mental limitations, the RAC will complete the form and request that the employee, applicant, or third party review the form and confirm that it

accurately captures the type(s) of accommodation requested and the reason the individual is requesting the accommodation.

- (2) An employee who requires a reasonable accommodation on a recurring basis (e.g., a sign language interpreter) is only required to submit the Reasonable Accommodation Request form for the initial request and to provide appropriate advance notice each time the accommodation is needed again.
- (b) When the need for an accommodation is obvious and the requested accommodation can be approved and implemented, the appropriate deciding official may do so without delay or further processing. (**Note:** A disability is obvious or already known when it is clearly visible or where the individual has a record of impairment at the AO.) When this occurs, the deciding official must document the following information in writing in the case file. **See:** [§ 360.70](#).
 - (1) Date the request for accommodation was received,
 - (2) Specific accommodation requested,
 - (3) Specific accommodation approved, and
 - (4) Date the accommodation was put in place.
- (c) When the need for an accommodation is not obvious, the RAC will meet separately with the deciding official and the requester to explain the reasonable accommodation process, obtain additional information and, if necessary, offer alternative means of providing reasonable accommodation and discuss their effectiveness in removing the workplace barrier that is impeding the requester.

§ 360.40.10 Medical Information Request

- (a) The requester is responsible for providing the RAC with the appropriate medical information where the disability or need for accommodation is not obvious or already known. **Note:** A disability is obvious or already known when it is clearly visible or where the individual has a record of impairment at the AO.
- (b) If a disability or the need for an accommodation is not obvious or enough medical information has not been provided, the RAC may request medical information necessary to determine whether:
 - (1) the employee has a covered disability (i.e., a physical or mental impairment that substantially limits a major life activity); and

- (2) if the employee has a disability, what reasonable accommodation(s) are necessary.
- (c) The RAC may only seek medical documentation sufficient to explain the nature of the disability, the requester's need for a reasonable accommodation, and how the requested accommodation will assist the requester with applying for a job, performing the essential functions of a job, or enjoying the benefits and privileges of the workplace.
- (d) The RAC will provide the requester with a Medical Inquiry form, if the RAC requests medical information.

§ 360.40.20 Granting a Reasonable Accommodation Request

- (a) The deciding official must provide an effective reasonable accommodation to qualified individuals with a disability, unless providing an accommodation would impose an undue hardship on the daily operations of requester's office.
 - (1) The deciding official may, as part of the interactive process and at the RAC's advisement, offer alternative suggestions for reasonable accommodation.
 - (2) If more than one accommodation is effective and the accommodations are equally cost-effective, the requester's preferred accommodation should be given primary consideration. The deciding official, however, has the discretion to choose among multiple effective accommodations.
- (b) The deciding official will notify the RAC of his or her decision to grant the accommodation, and the RAC will prepare and provide written notification of the decision to the requester.
- (c) The requester is not required to accept any accommodation, aid, service, opportunity, or benefit offered. However, if the requester rejects a reasonable accommodation, aid, service, opportunity, or benefit that is necessary to enable the requester to perform the essential functions of the position held or desired — and, the individual cannot perform the essential functions of the position as a result of that rejection — the individual will not be considered qualified.

§ 360.40.30 Denying a Reasonable Accommodation Request

- (a) The deciding official will notify the RAC of his or her decision to deny the accommodation, and the RAC will prepare and provide written notification of the decision to the requester.

- (1) The notice will provide the requester with detailed information on the specific reasons for the denial.
- (2) If the deciding official has denied a specific requested accommodation, but offered an alternative accommodation that the requester rejected, the denial notice must explain both:
 - the reasons for the denial of the requested accommodation, and
 - the reasons why the deciding official believes the alternative accommodation would be effective.
- (b) The denial notice must also inform the individual that he or she has the right to initiate a FEP-CP complaint based on the denial of his or her reasonable accommodation.

§ 360.50 Initiating an FEP-CP Complaint After Denial

If an individual is dissatisfied with the resolution reached by the deciding official, the individual may initiate a FEP-CP complaint based on the denial of the reasonable accommodation. **See:** [§ 350](#).

§ 360.60 Timeframes to Process Requests and Provide Accommodations

- (a) The reasonable accommodation process begins as soon as a change is requested or workplace barrier is identified, whether orally or in writing.
- (b) The time necessary to process a request will depend on the nature of the accommodation requested and whether there is a need to obtain supporting information.
 - (1) The standard processing time for a request for a reasonable accommodation that neither requires the submission of medical information nor has any extenuating circumstances is typically no more than 30 business days from the date the requester requests an accommodation. If a determination results in finding of a reasonable accommodation, the accommodation should be provided promptly and without undue delay, barring extenuating circumstances.
 - (2) If a request for reasonable accommodation requires expedited review and a decision in less than 30 business days, the requester must include in the request the circumstances requiring expedited processing and the date the requested accommodation must be decided or in place.

- (3) If the RAC finds that medical documentation is necessary to determine whether the requester has a covered disability, the typical 30 day processing time will be tolled (i.e., the calculation of time in the processing period immediately stops) until appropriate medical documentation is provided.
- (4) Extenuating circumstances due to events that could not have reasonably been anticipated or avoided may also require tolling (i.e., pausing, delaying) the time frames. (**Note:** Absence from the office is not an extenuating circumstance.) In those situations, the RAC must notify the requester of any extenuating circumstance or delay and provide an approximate date when a decision should be expected.
- (5) If there is a delay in providing an accommodation which has been approved, the deciding official, after consulting with the RAC, should determine if temporary measures may assist the requester.

§ 360.70 Information Tracking and Reporting Requirements

- (a) The RAC must maintain a confidential case file of all accommodation requests in compliance with AO policy and the Rehabilitation Act of 1973, as amended. These case files are necessary to evaluate the efficacy and consistency of the reasonable accommodation process.
- (b) Records must be maintained for three years after:
 - (1) the employee separates from the AO;
 - (2) the applicant applies for employment; or
 - (3) an FEP-CP complaint results in a final adjudication, whichever is later.
- (c) The confidential case file must include at least the following items:
 - (1) Pertinent emails or communication between the applicants or employees and agency officials.
 - (2) Number of reasonable accommodations, by type, that have been requested for the application process and whether those requests have been granted or denied.
 - (3) Jobs (position, pay band level, and department) for which reasonable accommodations have been requested.

- (4) Types of reasonable accommodations that have been requested for each of those jobs.
- (5) Number of reasonable accommodations, by type, for each job that have been approved, and the number of accommodations, by type, that have been denied.
- (6) Number of requests for reasonable accommodations, by type, that relate to the benefits or privileges of employment, and whether those requests have been granted or denied.
- (7) Reasons for denial of requests for reasonable accommodation.
- (8) Amount of time taken to process each request for reasonable accommodation.
- (9) Sources of technical assistance that have been consulted in trying to identify possible reasonable accommodations.

§ 360.80 Confidentiality Requirements

- (a) Confidentiality applies to all aspects of the reasonable accommodation process.
 - (1) The existence of an accommodation request, details of the request, how the request was resolved, and any information about requester's functional limitations must remain confidential.
 - (2) AO employees who obtain or receive such information are strictly bound by these confidentiality requirements.
- (b) The RAC is responsible for maintaining all medical information obtained by the AO in connection with a request for a reasonable accommodation. All medical information obtained in connection with a request for reasonable accommodation must be kept confidential, and must be kept in files separate from the individual's personnel file.
- (c) Information regarding these records, or any aspect of the process, may be disclosed only to the following entities:
 - (1) Supervisors and managers, who need to know, may be told about the determination of eligibility as an individual with a disability, the necessary restrictions on the work or duties of the employee and about any recommended accommodations, but medical information should be disclosed only if strictly necessary.

- (2) Office of the General Counsel, who may provide guidance to supervisors and managers on requests for reasonable accommodation.
 - (3) First aid and safety personnel may be given specific medical information, when appropriate, if the disability might require emergency treatment.
 - (4) Worker's compensation offices or insurance carriers, in certain circumstances, may be provided information.
 - (5) A medical officer, when consulting on the interpretation of medical documents.
 - (6) A party or FEP-CP hearing officer, after an employee initiates a FEP-CP complaint alleging a denial of his or her request for a reasonable accommodation.
- (d) When information is disclosed, the individual disclosing it must inform the recipient of the confidentiality requirements.