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NASA
Procedural
Requirements

NPR 3713.4

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2022**COMPLIANCE IS MANDATORY**

Procedures for Discrimination Complaints Based on Sexual Orientation (Revalidated on March 7, 2017)

Responsible Office: Office of Diversity and Equal Opportunity

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Preface

P.1 Purpose

- a. Pursuant to Executive Order 13087 and NASA Policy Directive (NPD) 3713.2, Federal Equal Employment Opportunity (EEO) Programs of NASA, discrimination based on sexual orientation is prohibited in the NASA workplace and the Agency's employment practices, to the extent permitted by law.
- b. These procedures provide an internal Agency administrative process for the adjudication of complaints by NASA employees or applicants for employment who allege sexual orientation discrimination (see Appendix A for the definition of this term). This complaint process also provides an avenue of redress for claims of reprisal for participating in this process or opposing sexual orientation discrimination.
- c. These internal complaint procedures provide an alternative forum for redress in addition to the union grievance process and the NASA Administrative Grievance System, NASA Procedural Requirements (NPR) 3771.1, which as of the issuance of this NPR does not exclude grievances based on sexual orientation. When an employee is covered by a collective bargaining agreement that does not preclude claims of discrimination based on sexual orientation to be raised in the negotiated grievance procedure, an employee wishing to file a complaint shall raise the matter either under these procedures or the negotiated grievance procedure, but not both.
- d. These procedures also provide an alternative forum to filing a complaint of discrimination based on sexual orientation with the U.S. Office of Special Counsel (OSC) or to filing an appeal with the U.S. Merit Systems Protection Board (MSPB), if the action complained of is otherwise appealable to the MSPB. If, however, a complainant initially files with the OSC or MSPB, and the OSC or MSPB decides it does not have jurisdiction to investigate the complaint containing the claim of sexual orientation discrimination, the complainant shall be entitled to pursue the claim pursuant to these procedures if the complaint is filed within 15 days of receipt of notice that the OSC or MSPB will not address (see Section 2.5).
- e. These procedures do not affect a complainant's right to base his or her claim on an EEO-protected basis, that is, a basis protected under Federal antidiscrimination law, or to include an EEO-protected basis in his or her claim(s) in addition to the bases covered under these procedures. It is important to note that, while an individual may bring a discrimination complaint based on sexual orientation, that individual may also be alleging gender stereotyping or same sex harassment, both of which are covered as forms of gender discrimination under the EEO complaints process. (See also Appendix C. Implementation Guide.)
- f. If complainant reports harassment based on sexual orientation to a supervisor or other management official in his or her office or to the Center Anti-Harassment Coordinator, the harassment allegation shall be processed, as any reported harassment on any other basis, in accordance with NPR 3713.3, NASA Anti-Harassment Procedures.

P.2 Applicability

- a. This directive is applicable to NASA Headquarters and NASA Centers, including Component Facilities and Technical and Service Support Centers. This directive applies to the Jet Propulsion Laboratory (JPL) (a Federally Funded Research and Development Center (FFRDC)) and other

contractors only to the extent specified or referenced in the appropriate contracts.

b. In this directive, all mandatory actions (i.e., requirements) are denoted by statements containing the term "shall." The terms: "may" or "can" denote discretionary privilege or permission, "should" denotes a good practice and is recommended, but not required, "will" denotes expected outcome, and "are/is" denotes descriptive material.

c. In this directive, all document citations are assumed to be the latest version unless otherwise noted.

P.3 Authority

a. National Aeronautics and Space Act of 1958, as amended, 51 U.S.C. § 20101 et seq.

b. Civil Service Reform Act of 1978, as amended, 5 U.S.C. § 2302.

c. Exec. Order No. 11478, 3 C.F.R. 803 (1966-1970), as amended by Exec. Order No. 13087, 3 C.F.R. 191 (1998).

d. NASA Policy Directive (NPD) 3713.2, Federal Equal Employment Opportunity Programs of NASA.

P.4 Applicable Documents and Forms

a. Back Pay Act of 1966, as amended, 5 U.S.C. § 5596.

b. U.S. Office of Personnel Management (OPM), Back Pay Act Regulations, 5 C.F.R. Part 550, subpart H.

c. U.S. Equal Employment Opportunity Commission (EEOC), Federal Sector EEO Regulations, 29 C.F.R. part 1614.

d. NPR 1441.1, NASA Records Retention Schedules.

e. NPR 3713.2, Alternative Dispute Resolution for Discrimination Complaints.

f. NPR 3713.3, Agency Anti-Harassment Procedures.

g. NPR 3771.1, NASA Grievance System.

h. EEOC Management Directive 110 (November 9, 1999).

i. OPM, Addressing Sexual Orientation Discrimination in Federal Civilian Employment: A Guide to Employees' Rights (June 1999).

j. Informal Complaints Counseling: Rights and Responsibilities: Sexual Orientation (SxO) Discrimination Complaints.

k. Complaint of Discrimination Form.

P.5 Measurement/Verification

a. Centers, in cooperation with the Office of Diversity and Equal Opportunity (ODEO), shall annually evaluate the effectiveness of their discrimination complaints processing under this NPR, including data gathering and other evaluation activities as determined by ODEO.

- b. ODEO shall use this data to monitor trends and inform the development of Agency policy regarding nondiscrimination efforts regarding sexual orientation.
- c. ODEO shall keep the Agency Diversity and Inclusion Strategic Partnership apprised of its actions and plans in this area.

P.6 Cancellation

None.

Chapter 1. Roles and Responsibilities

1.1 The Associate Administrator for Diversity and Equal Opportunity

1.1.1 It shall be the responsibility of the Associate Administrator for Diversity and Equal Opportunity (AA, ODEO) to process sexual orientation discrimination complaints at the formal stage in accordance with these procedures.

1.1.2 The AA, ODEO shall:

- a. Issue decisions on claims of sexual orientation discrimination consistent with these procedures, except that, for complaints arising within the Office of Inspector General, the authority delegated by this paragraph shall be retained in the Office of the Administrator.
- b. Review and issue decisions on requests for reconsideration, except that, for complaints arising within the Office of Inspector General, the authority delegated by this paragraph shall be retained in the Office of the Administrator.
- c. Develop and periodically review and update NASA policies, procedures, and other materials providing guidance on nondiscrimination based on sexual orientation.
- d. Advise NASA officials, in consultation and coordination with the Office of the General Counsel (OGC), regarding Executive Orders, regulations and guidelines, and NASA policies pertaining to sexual orientation discrimination, including, for example, the U.S. Office of Personnel Management's guidelines for implementing the policy of Executive Order 13087, Addressing Sexual Orientation Discrimination in Federal Civilian Employment: A Guide to Employee's Rights, and this NPR.¹

¹ This document is accessible at <http://www.opm.gov/er/address.pdf>

- e. Provide education and awareness opportunities and technical assistance to NASA managers, supervisors, employees, EEO Counselors, and vendors on NASA policies and procedures regarding nondiscrimination based on sexual orientation.
- f. Oversee the informal stage of the process set forth in this NPR to assure Agency-wide consistency of policy and practice in the NPR's implementation.

1.2 NASA Officials-in-Charge and Center Directors

1.2.1 It shall be the responsibility of NASA Officials-in-Charge and Center Directors to assist the AA, ODEO with ensuring compliance with NASA policies and procedures regarding discrimination complaints based on sexual orientation.

1.2.2 NASA Officials-in-Charge and Center Directors shall ensure appropriate dissemination of such NASA policies and procedures to all Center employees.

1.3 Center EO Directors

1.3.1 Center EO Directors shall process informal sexual orientation discrimination complaints under these procedures.

1.3.2 Center EO Directors shall assist the AA, ODEO in educating and advising managers, supervisors, employees, and EEO Counselors on applicable Executive Orders, regulations and guidelines, and NASA policies regarding sexual orientation discrimination, in conjunction with the OGC at NASA Headquarters and the Office of the Chief Counsel (OCC) at the NASA Centers.

1.4 Center Diversity Managers

1.4.1 Center Diversity Managers shall assist the AA, ODEO in educating and advising managers, supervisors, and employees on NASA policies and practices regarding sexual orientation nondiscrimination, for example, coordinating with the AA, ODEO on the development and implementation of "diversity dialogue" programs.

1.5 Managers and Supervisors

1.5.1 Pursuant to NASA policy, managers and supervisors shall strive to ensure that all personnel actions, policies and practices, and the work environment are free from illegal discrimination based on sexual orientation or on any non-merit factor.

1.5.2 Alleged responsible officials (AROs) shall have the same rights and opportunities to review documents, be made aware of allegations, and provide responses and evidence as are available under EEOC, Federal Sector EEO Regulations, and EEOC Management Directive 110.

1.6 EEO Counselors

1.6.1 EEO Counselors shall conduct counseling activities in the same manner as described in Federal Sector EEO Regulations, EEOC Management Directive 110, and applicable NASA policies and procedures.

1.6.2 EEO Counselors shall inform aggrieved persons that their entitlement to informal complaint processing in discrimination complaints based on sexual orientation derives from NASA policy and not from EEOC regulations, which govern the processing of discrimination complaints under Title VII of the Civil Rights Act and other related antidiscrimination statutes. (For a detailed discussion on the EEO Counselor's roles and responsibilities under this NPR, see Appendix C.)

Chapter 2. Complaint Procedures

2.1 Informal Complaints

2.1.1 Initiating the Complaint

2.1.1.1 An aggrieved person who believes that he or she has been discriminated against on the basis of sexual orientation shall initiate the informal process by contacting the NASA Center EO office within 45 calendar days from the date of the alleged discriminatory incident;² or

² At the informal stage of the process, the person raising the issue is referred to as an "aggrieved person" or "aggrieved individual." At the formal stage, the person is referred to as a "complainant."

2.1.1.2 In the case of a personnel action, an aggrieved person who believes that he or she has been discriminated against on the basis of sexual orientation shall initiate the informal process within 45 days of the alleged discriminatory act, the effective date of the alleged discriminatory action, or the date that the employee learned or reasonably should have suspected that the Agency action was discriminatory.³

³ All references to "days" throughout these procedures are to calendar days.

2.1.2 Informal Counseling

2.1.2.1 All aggrieved persons are entitled to EEO counseling under these procedures, which are based on the procedures set forth in Federal Sector EEO Regulations, Pre-complaint processing (informal counseling).

2.1.2.2 At the initial counseling session, EEO counselors shall advise aggrieved persons in writing of their rights and responsibilities in this process and their right to elect other forums (see Sec. 2.5).

2.1.2.3 Alternative Dispute Resolution (ADR) is as follows:

a. The ADR process under this NPR shall be based on EEOC Management Directive 110 and NPR 3713.2, Alternative Dispute Resolution for Discrimination Complaints.

b. Center EO staff (informal stage) and ODEO (formal stage) shall strongly encourage the use of ADR to resolve discrimination complaints raised under this process.

2.2 Formal Complaints

2.2.1 Intake and Jurisdictional Determinations

2.2.1.1 Formal complaints of discrimination based on sexual orientation shall be filed with ODEO (see Appendix D. Forms, Discrimination Complaints Form).

2.2.1.2 ODEO shall review the complaint to assure that it meets jurisdictional prerequisites, including the following:

a. A complaint shall be in writing.

b. A complaint shall be filed within 15 days of receipt of the Notice of Right to File a Complaint of Discrimination on the basis of sexual orientation.

c. A complaint shall contain a signed statement from the complainant or the complainant's representative. This signed statement will be sufficiently precise to identify the complainant, the Center where the complaint arose, and to describe generally the action(s) or practice(s) that form the basis of the complaint.

d. The complaint shall also contain a telephone number and address where the complainant and the representative can be contacted.

2.2.2 Complaint Acceptance and Dismissal

2.2.2.1 The acceptance process is as follows:

a. ODEO shall delineate the issues raised by the complainant.

b. ODEO shall advise the complainant of any accepted issues.

2.2.2.2 The dismissal process and related requirements are as follows:

a. ODEO shall dismiss a complaint or a portion of a complaint based on one or more of the following. The complaint:

(1) Fails to state a claim of sexual orientation under this NPR, or states the same claim that is pending before or has been decided by the Agency or Court of law.

(2) Fails to comply with the applicable time limits contained in Section 2.1.1.1 above unless the Agency extends the time limits; or that raises a matter that has not been brought to the attention of an EEO Counselor and is not like or related to a matter that has been brought to the attention of a Counselor.

(3) Is the basis of a pending civil action in a United States District Court in which the complainant is a party provided that at least 180 days have passed since the filing of the administrative complaint; or that was the basis of a civil action decided by a United States District Court in which the complainant was a party.

(4) Where the complainant has raised the matter in a negotiated grievance procedure or NASA administrative grievance procedure that does not preclude allegations of sexual orientation discrimination or in an appeal to the Merit Systems Protection Board (MSPB) and it has been determined that the complainant has elected to pursue the non-EEO process, e.g., administrative and negotiated grievance or MSPB appeal.

(5) Is moot or alleges that a proposal to take a personnel action, or other preliminary step to taking a personnel action, is discriminatory.

(6) Where the complainant cannot be located, provided that reasonable efforts have been made to locate the complainant and the complainant has not responded within 15 days to a notice of proposed dismissal sent to his or her last known address.

(7) Where the Agency has provided the complainant with a written request to provide relevant information or otherwise proceed with the complaint, and the complainant has failed to respond to the request within 15 days of its receipt or the complainant's response does not address the Agency's request, provided that the request included a notice of the proposed dismissal. Instead of dismissing for failure to cooperate, the complaint may be adjudicated if sufficient information for that purpose is available.

(8) Alleges dissatisfaction with the processing of a previously filed complaint.

(9) Where the Agency, strictly applying the criteria set forth in EEOC decisions, finds that the complaint is part of a clear pattern of misuse of this process for a purpose other than the prevention and elimination of employment discrimination.

b. Where the Agency believes that some but not all of the claims in a complaint shall be dismissed for the reasons contained in paragraphs (a)(1) through (9) of this section:

(1) ODEO shall notify the complainant in writing of its determination, the rationale for that determination and that those claims will not be investigated.

(2) ODEO shall place a copy of the notice in the investigative file.

c. A determination under this section shall not to be reconsidered until final action is taken on the remainder of the complaint.

2.2.3 Investigation

2.2.3.1 Accepted complaints shall be investigated in the same manner as any other allegation of discrimination accepted by ODEO, utilizing the process established under Federal Sector EEO Regulations and EEOC MD 110.

2.2.3.2 In the event a complaint is received which contains an allegation of discrimination based on sexual orientation and bases covered under Federal antidiscrimination law, that is, EEO-protected bases or claims, all allegations shall be investigated concurrently and a single report of investigation (ROI) developed.

2.2.3.3. Upon conclusion of the investigation, ODEO shall provide a copy of the completed ROI and notify the complainant, in writing, that:

a. ODEO shall issue a decision as to the merits of the claim within 60 days of completion of the review of the ROI and provide the individual and the NASA Center a copy of the decision.

b. The complainant does not have a right to an EEOC hearing on his or her sexual orientation claims (see also Purpose Section (a)).

2.2.4 Decision on the Merits

2.2.4.1 In regard to complaints of sexual orientation discrimination, the AA, ODEO shall issue a final decision on the complaint to include the following:

a. The final decision will consist of findings by ODEO on the merits of each issue in the complaint or, as appropriate, the rationale for dismissing any claims in the complaint and, when discrimination is found, appropriate remedies and relief in accordance with Section 2.3 below.

b. The final decision will contain notice of the right to request reconsideration of the decision by the AA, ODEO and the process for filing such request (see Section 2.2.5).

2.2.4.2 The OGC conducts legal sufficiency reviews of all decisions.

2.2.5. Request for Hearing

2.2.5.1 Under the EEO process defined at 29 C.F.R. part 1614, there is no right to request a hearing with the EEOC on cases solely based on sexual orientation.

2.2.5.2 In the event that a complaint contains both sexual orientation claims and one or more EEO-protected claims, and the complainant has received a notice of right to elect either an EEOC

hearing or a final Agency decision, the process is as follows:

- a. At any time after 180 days have elapsed from the filing of the complaint, the complainant may request a hearing on the EEO claims by submitting a written request for a hearing directly to the EEOC office indicated in the Agency's acknowledgment letter.
- b. The complainant shall send a copy of the request for a hearing to ODEO.
- c. Where a complainant requests a hearing on the EEO-protected claims, ODEO shall stay its decision on the sexual orientation claim until the EEOC Administrative Judge (AJ) has rendered a decision on the EEO-protected claims and will issue its decision on the sexual orientation claim no later than 60 days after the issuance of the AJ's decision.

2.2.5.3 The authority for decisions on complaints based on sexual orientation arising in the Office of Inspector General shall be retained in the Office of the Administrator.

2.2.6 Request for Reconsideration

2.2.6.1 If the complainant is dissatisfied with a final decision, a request for review may be filed with the AA, ODEO within 30 days of receipt of the final decision. The request shall:

- a. Be in writing.
- b. Contain arguments or evidence which establish that the final decision was erroneous because:
 - (1) New and material evidence is available that was not readily available when the previous decision was issued.
 - (2) The previous decision involved an erroneous interpretation of material facts, misapplication of law, or established policy or procedures contained within this NPR, or the decision is of such exceptional nature as to have effects beyond the actual case at hand.

2.3 Remedies and Relief

2.3.1 When the AA, ODEO finds that a NASA employee or applicant for employment has been discriminated against under this NPR, the Agency shall provide relief to the fullest extent permitted by existing laws and regulations.

2.3.2 The authority to resolve complaints arising within the Office of Inspector General and to require and implement appropriate remedial actions, as described above in this paragraph, is delegated to the Inspector General, in consultation with the Office of the Administrator.

2.3.3 Possible Forms of Relief⁴

2.3.3.1 Notification to all NASA employees in the affected Center that the Agency was found to have engaged in discrimination based on sexual orientation, that employees have a right to be free from such discrimination or from reprisal, and that the Agency is committed to taking corrective or preventive action to ensure that violations similar to those found do not recur.

⁴ Should the Agency have been found to have discriminated based on sexual orientation, this section discusses possible forms of relief to which complainants may be entitled based on the particular facts of the case. In determining appropriate remedies, ODEO shall consult with the Office of Human Capital Management and OGC.

2.3.3.2 An offer of placement in the position the person would have occupied absent the discrimination (or a substantially equivalent position), subject to the following:

- a. If the position has not been filled, the Agency shall extend an offer of employment to the complainant for that position, unless clear and convincing evidence indicates that the complainant would not have been selected even in the absence of discrimination.
- b. If the position has been filled, the Agency shall extend an offer of employment to a substantially equivalent position if such a position exists, unless clear and convincing evidence indicates that the complainant would not have been selected even in the absence of discrimination.
- c. If there are no substantially equivalent positions, then the Agency shall grant the complainant priority consideration rights. The requirements and process are as follows:
 - (1) Priority consideration means that the complainant receives bona fide consideration by the selecting official for any position for which the complainant is qualified before any other candidate is referred for consideration, and that the complainant is not to be considered in competition with other candidates and is not to be compared with them.
 - (2) While priority consideration does not mean that the complainant will actually be selected, it does mean that once the Agency determines that the complainant meets the qualifications for the position, it will refer the complainant to the selecting official for consideration.
 - (3) All requests for priority consideration shall be consistent with legal requirements for the position.
- d. In the case of an applicant for employment, once an offer is made to the applicant, he or she has a maximum of 30 days to accept the offer, and failure to do so within the specified time period will be considered a declination of the offer.

2.3.3.3 Monetary awards are subject to the following:

- a. Compensatory damages are not available to employees or applicants for employment discrimination based solely on sexual orientation.
- b. If appropriate, employees shall be awarded back pay and monetary benefits computed pursuant to the Back Pay Act and OPM's Back Pay Act regulations.
- c. If appropriate, employees shall be awarded reasonable attorney's fees, where back pay is at issue. In all other situations, attorney's fees are not authorized.
- d. Applicants for employment are not authorized awards of back pay or attorney's fees.

2.3.3.4 Cancellation of an unwarranted personnel action.

2.3.3.5 Expungement from the Agency's records of any adverse materials pertaining to the complainant that relate to the discriminatory employment practice.

2.3.3.6 Full opportunity to participate in the employee benefit denied (e.g., training, preferential work assignments, overtime scheduling).

2.3.3.7 Commitment that the Agency shall cease from engaging in the specific discriminatory employment practice found in the case.

2.4 Settlement Agreements

2.4.1 NASA shall make reasonable efforts to resolve complaints of discrimination voluntarily and as early as possible throughout the administrative processing of the complaint.

2.4.2 Centers are strongly encouraged to use ADR procedures to facilitate early resolution (see NPR 3713.2, Alternative Dispute Resolution for Discrimination Complaints).

2.4.3 Finalizing a Settlement Agreement

2.4.3.1 Any settlement agreement reached at any time in the process shall be in writing, signed by both parties, identify the allegations resolved, remedies provided, and be consistent with NPR 3713.2, Alternative Dispute Resolution for Discrimination Complaints.

2.4.3.2 Settlement agreements, both at the formal and informal stage, shall be reviewed by the Center OCC (or at Headquarters by OGC) for legal sufficiency. As part of this review, it is imperative that OGC/OCC be part of the consultative process to ensure that ADR offers are legally viable.

2.4.3.3 All terms of the settlement agreement shall comply with all NASA policies, requirements, and legal authorities.

2.4.3.4 Any settlement agreement knowingly and voluntarily agreed to and executed by all parties, reached at any stage of the complaint process, shall be binding on all parties.

2.4.3.5 The original settlement agreement shall reside with the Center EO Director if signed at the informal stage and with ODEO if signed at the formal stage, in accordance with NPR 1441.1, NASA Records Retention Schedules.

2.4.3.6 A copy of the settlement agreement shall be given to the complainant, the manager responsible for implementing the agreement, the Center EO Director, Center HR Director, ODEO, and OCC/OGC.

2.4.3.7 For complaints involving the Office of Inspector General, settlement authority and signature authority for settlement agreements is delegated to the Inspector General, in consultation with the Office of the Administrator.

2.4.4 Compliance with Settlement Agreements

2.4.4.1 If the complainant believes that the Center has failed to comply with the terms of a settlement agreement, the complainant shall notify the AA, ODEO in writing, of the alleged noncompliance with the settlement agreement, within 30 days of when the complainant knew or should have known of the alleged noncompliance.

2.4.4.2 The complainant has the opportunity to request that the terms of the settlement agreement be specifically implemented or, alternatively, that the complaint be reinstated for further processing from the point where processing ceased.

2.4.4.3 The AA, ODEO shall issue a decision on the breach of settlement agreement claim within 60 days of receipt of the claim.

2.4.4.4 If the AA, ODEO determines that the Agency is not in compliance and the noncompliance is not attributable to acts or conduct of the complainant, ODEO may order such compliance or it may order that the complaint be reinstated for further processing from the point processing ceased. Allegations that subsequent acts of discrimination violate a settlement agreement shall be processed as separate complaints.

2.4.4.5 Center EO Directors shall maintain all documentation and records supporting compliance with the settlement agreement, including records associated with expungement of the operating unit's files, in accordance with NPR 1441.1, NASA Records Retention Schedules.

2.5 Relationship of NPR 3713 Process to Other Processes

2.5.1 A complainant under this process shall be deemed to have elected this process, that is, to choose to proceed pursuant to this process, only by the timely filing of a formal complaint as described in Section 2.2 above.

2.5.1.1 Use of the informal complaint process shall not constitute an election for purposes of this section.

2.5.2 By electing to pursue a complaint under other processes, such as those administered by the OSC or the MSPB (see below, this Section), a complainant shall be deemed to have waived his or her rights to seek redress of the alleged discriminatory actions pursuant to this process.

2.5.3 The determination as to which forum or process a complainant has elected shall be made based upon whichever written complaint/appeal/grievance is filed first.

2.5.4 Nothing in these procedures shall abrogate the rights of any individual to file a complaint of discrimination against NASA within the purview of Federal Sector EEO Regulations, or in an appropriate U.S. District Court.

2.5.4.1 If the individual files a civil action in a U.S. District Court on the same matter pending before NASA, the administrative complaint shall be dismissed (see Section 2.2.2.2 above).

2.5.4.2 The complainant shall have 45 days to request reinstatement of his or her complaint where the Court finds that it lacks jurisdiction to hear the case.

2.5.5 Making an Election

2.5.5.1 NASA Administrative Grievance System process is as follows:

a. When an individual is covered by an administrative grievance procedure that does not preclude claims of discrimination based on sexual orientation to be raised in the administrative grievance procedure, a person wishing to file a complaint shall elect to raise the matter either under these procedures or the administrative grievance procedure, but not both.

b. An election to proceed under the administrative grievance procedure shall be indicated by the filing of a timely grievance.

2.5.5.2 Collective Bargaining Unit Procedures are as follows:

a. When an individual is covered by a collective bargaining agreement that does not preclude claims of discrimination based on sexual orientation to be raised in the negotiated grievance procedure, a person wishing to file a complaint shall raise the matter either under these procedures or the negotiated grievance procedure, but not both.

b. An election to proceed under the negotiated grievance procedure shall be indicated by the filing of a timely grievance.

2.5.5.3 The Office of Special Counsel's (OSC) process is as follows:

a. A complainant shall initially file a complaint based on sexual orientation discrimination pursuant to these procedures or with the OSC pursuant to the Civil Service Reform Act of 1978, but not both.

b. If a complainant initially files with the OSC within 45 days of the matter alleged to be discriminatory, or in the case of a personnel action, within 45 days of the effective date of the action,

and the OSC decides it does not have jurisdiction to investigate the complaint containing the claim of sexual orientation discrimination, the complainant shall be entitled to pursue the claim pursuant to these procedures.

c. The complainant shall initiate informal complaint counseling within 15 days of receipt of the OSC's denial of jurisdiction.

d. The date on which the complainant filed his/her complaint with the OSC shall be the date of initial contact with the EEO Counselor. The 30-day time period in which counseling is generally to be completed will not begin to run until the date on which the complainant actually initiates informal complaint counseling.

2.5.5.4 The Merit Systems Procedures Board's (MSPB) process is as follows:

a. A complainant can initially file a complaint of sexual orientation discrimination with NASA pursuant to these procedures or an appeal of an adverse personnel action with the MSPB pursuant to Federal appellate procedures, but not both.

b. If a complainant initially files with the MSPB within 30 days of the matter alleged to be discriminatory, or in the case of a personnel action, within 30 days of the effective date of the action, and the MSPB decides it does not have jurisdiction to investigate the complaint containing the claim of sexual orientation discrimination, the complainant is entitled to pursue the claim under these procedures.

c. The complainant shall initiate informal complaint counseling within 15 days of receipt of the MSPB's denial of jurisdiction as long as the MSPB's dismissal of the appeal was not based upon the appeal having been untimely filed.

d. The date on which the complainant filed his/her appeal with the MSPB shall be the date of initial contact with the EEO Counselor. The 30 day time period in which counseling is generally to be completed will not begin to run until the date on which the complainant actually initiates informal complaint counseling.

2.6 Representation and Official Time

2.6.1 At any stage in the processing of a complaint of discrimination because of sexual orientation, including the counseling stage, the complainant is entitled to be accompanied, represented, and advised by a representative of complainant's choice.

2.6.1.1 A representative who creates a conflict of interest or whose representation negatively impacts the Agency's priority needs or gives rise to unreasonable costs shall be excluded. In such cases the complainant will be so advised.

2.6.2 If the complainant is an employee of the Agency, he or she shall have a reasonable amount of official time, if otherwise on duty, to prepare the complaint and to respond to Agency requests for information.

2.6.3 If the complainant is an employee of the Agency and designates another employee of the Agency as representative, the representative shall similarly have a reasonable amount of official time, if otherwise on duty, to prepare the complaint and to respond to Agency requests for information.

2.6.4 The Agency shall not be obligated to change work schedules, incur overtime costs, or pay travel expenses to facilitate the choice of a specific representative or to allow the complainant and

representative to confer.

2.6.5. Bargaining unit employees are not prohibited from requesting that a union representative accompany/represent them when engaging this process.

Appendix A. Definitions

Aggrieved Person

A NASA employee or applicant for employment who alleges employment discrimination based on sexual orientation at the informal stage of this process.

Complainant

A NASA employee or applicant for employment who alleges employment discrimination based on sexual orientation at the formal stage of this process.

Employment Discrimination Based on Sexual Orientation

Treating employees or applicants for employment differently from similarly situated coworkers or applicants because of:

- a. Sexual orientation or perceived sexual orientation.
- b. Relationship with an individual(s) of a particular sexual orientation.
- c. Affiliation with a group that is associated with sexual orientation issues or whose membership is composed mainly of people of a particular sexual orientation or perceived sexual orientation(s), including an employee organization.

Retaliation

Retaliation refers, for purposes of this process, to retaliation for raising a complaint of sexual orientation discrimination in the complaint process, as a complainant or in some other capacity, or for opposing sexual orientation discrimination.

Sexual Orientation

Sexual orientation refers to homosexuality (gay or lesbian), bisexuality, heterosexuality, or asexuality, whether such orientation is real or perceived.

Appendix B. Acronyms

- B.1 Alleged Responsible Official (ARO).
- B.2 Administrative Judge (AJ).
- B.3 Alternative Dispute Resolution (ADR).
- B.4 Associate Administrator (AA).
- B.5 Equal Employment Opportunity (EEO).
- B.6 Equal Opportunity (EO).
- B.7 Merit Systems Protection Board (MSPB).
- B.8 Notice of Right to File (NRTF).
- B.9 Office of the Chief Counsel (OCC).
- B.10 Office of Diversity and Equal Opportunity (ODEO).
- B.11 Office of the General Counsel (OGC).
- B.12 Office of Personnel Management (OPM).
- B.13 Office of Special Counsel (OSC).
- B.14 Report of Investigation (ROI).

Appendix C. Implementation Guide

C.1 Introduction

C.1.1 This Implementation Guide provides supporting information on the Agency procedures for processing discrimination complaints based on sexual orientation under this NPR.

C.1.2 The guide is designed as an educational tool and desk-reference for EO staffs, counselors, and investigators, to assist in ensuring appropriate and effective complaint processing pursuant to the NPR.

C.1.3 To this end, the guide provides specific requirements and additional considerations to be addressed regarding the process itself and the communication of this policy to Agency employees and applicants for employment.

C.2 Role of the EEO Counselor

C.2.1 The EEO Counselor plays a vital role during the intake and pre-complaint (informal) stage of the process.

C.2.1.1 It is essential that the EEO Counselor remains neutral and offers an unbiased environment in which an aggrieved person can speak freely about the allegations of discrimination.

C.2.1.2 Of equal importance, the EEO Counselor is expected to be able to, upon hearing the specific facts of the allegation and collecting information about the bases and issues, properly notify the aggrieved person of the correct complaints process for his or her case.

C.2.2 The EEO Counselor's role requires an understanding of the complexities stemming from the fact that sex (or gender) is a protected basis under EEO law (Title VII of the Civil Rights Act) while sexual orientation is not.

C.2.2.1 In this regard, it will be noted that a complaint based on non-conformity with traditional gender stereotypes can, in certain instances, be processed under the EEO complaints process as a form of sex discrimination under Title VII.

C.2.2.2 A complaint raising sexual orientation discrimination unrelated to gender stereotyping will only be raised under this NPR because, while gender is a protected basis under Title VII, sexual orientation is not.

C.2.2.3 A complainant may raise both sex discrimination under Title VII and sexual orientation under this NPR.

C.2.3 For the reasons cited above and because the Title VII/EEO process offers more extensive appeal rights and broader allowances of damages, it is important that EEO Counselors understand the differences between the EEO complaints process and these procedures.

C.2.3.1 In cases in which the aggrieved person may be able to file a complaint of gender discrimination under the Title VII process (see Section C.2.2 above), EEO Counselors should seek advice from EO Directors and other appropriate individuals, should they have questions about the available avenues of relief.

C.2.3.2 The role of the EEO Counselor should be limited to presenting the available options to the aggrieved person and not addressing the merits of the complaint.

C.3 Informal Stage: Counseling

C.3.1 EO Counseling Roles and Responsibilities

C.3.1.1 EEO Counselors shall conduct counseling activities in accordance with the regulations found in Federal Sector EEO Regulations, the guidance contained in the EEOC Management Directive MD-110, and NASA policies and procedures.

C.3.1.2 The EEO Counselor shall not attempt in any way to dissuade the aggrieved person from filing a complaint.

C.3.1.3 The EEO Counselor shall not reveal the identity of an aggrieved person who consulted the Counselor, except when authorized to do so by the aggrieved person, or until the Agency has received a discrimination complaint under this NPR from that person involving that same matter.

C.3.1.4 Use of the iComplaints Database

a. Relevant contact information of the aggrieved person will be input into the iComplaints database and utilized by ODEO and Center EO offices for data management pertaining to discrimination complaints.

b. Where the person indicates that he or she wishes to remain anonymous, basic information will still be placed within iComplaints (contact date, issues, and bases) for data purposes.

C.3.2 Initiation of Counseling

C.3.2.1 Aggrieved persons who believe they have been discriminated against on the basis of sexual orientation should consult an EEO Counselor prior to filing a complaint in order to try to informally resolve the matter.

C.3.2.2 An aggrieved person should initiate contact with an EEO Counselor within 45 days of the date of the matter alleged to be discriminatory or, in the case of personnel action, within 45 days of the effective date of the action.

C.3.2.3 The case will be recorded as an informal complaint in iComplaints, either as a new case or converted from a contact.

C.3.3 Advising Aggrieved Individuals on their Rights and Responsibilities

C.3.3.1 The EEO Counselor shall advise the aggrieved that:

a. Sexual orientation is not protected as a basis under current Federal EEO law and EEOC regulations.

b. Cases alleging sexual orientation discrimination will be processed in accordance with this NPR.

C.3.3.2 EEO Counselors will advise aggrieved persons in writing of their rights and responsibilities, where eligible, based on MD-110, Appendix B-1, including but not limited to:

- a. The right to an immediate final decision after an investigation by the Agency, if the complaint is accepted.
- b. The right to elect to raise their sexual orientation issues in other forums including:
 - (1) The OSC (which investigates prohibited personnel practices under the Civil Service Reform Act of 1978).
 - (2) The MSPB (which hears appeals of certain limited adverse Agency actions, including removal actions and suspensions greater than 14 days).
 - (3) The Federal Sector EEO Complaint Process.
 - (4) NPR 3771.1, the NASA Administrative Grievance System, which addresses matters of concern to employees outside of EEO issues. Note: As of the issuance of this NPR, the NASA Grievance System does not exclude grievances based on sexual orientation.
 - (5) The appropriate NASA negotiated grievance process for those employees in a collective bargaining unit.
- c. The duty to mitigate damages.
- d. Administrative and court time frames.
- e. Only the claims raised in informal counseling (or issues or claims like or related to issues or claims raised in counseling) may be alleged in a subsequent complaint filed with the Agency.
- f. The duty to keep the Agency informed as to the aggrieved person's current address.

C.3.3.3 EEO Counselors will advise aggrieved persons that they may choose between participation in ADR and the counseling activities:

- a. Where the aggrieved person agrees to counseling, the Counselor will conduct the final interview with the aggrieved person within 30 days of the date the aggrieved person's request for counseling, unless the aggrieved person agrees to extend the counseling period for an additional 60 days.
- b. If the claim has not been resolved before the 90th day, the Counselor will issue to the aggrieved person a notice of the right to file a formal complaint.

C.3.4 Determining the Claims and Bases

C.3.4.1 The EEO Counselor plays a crucial role in the complaint process, including helping the aggrieved person in articulating his or her claim(s).

C.3.4.2 At the initial interview, the Counselor will determine what actions the Agency has taken or is taking that cause the aggrieved person to believe she or he is a victim of discrimination.

C.3.4.3 In order to process a complaint under this NPR, the aggrieved person should raise an allegation that he or she has been discriminated against on the basis of sexual orientation.

C.3.4.4 The Counselor will ascertain whether the aggrieved person believes his or her problem is the result of discrimination on additional bases, including those protected by EEO law.

a. Where the aggrieved person also alleges discrimination on EEO-protected bases, i.e., the bases of race, color, sex (including Equal Pay Act), religion, national origin, age (40 and over), disability, genetic information, or in retaliation for having participated in activity protected by the various antidiscrimination laws, the Counselor will inform the aggrieved party that the sexual orientation claims may be processed jointly with the EEO claims.

C.3.4.5 Before the Counselor begins the inquiry (see Section C.3.5 below), the requirements are as follows:

- a. She or he will be certain that the claims are clearly defined and the aggrieved person agrees on how the Agency defined the claims that are to be the subject of the inquiry and any subsequent attempts at resolution, whether through counseling or ADR.
- b. If a claim is like or related to a previously filed complaint, then the complaint will be amended to include those additional claim(s) if the ROI has not been completed.
- c. If the claim is not like or related to a previously filed complaint, the claim will be processed as a separate complaint.

C.3.5. Conducting the Inquiry

C.3.5.1 After the Counselor has determined the bases and claims, he or she should conduct a limited inquiry. The purposes of the limited inquiry are as follows:

- a. To obtain information to determine jurisdictional questions if a formal complaint is filed and is performed regardless of whether the aggrieved person subsequently chooses ADR.
- b. To be used to obtain information for settlement purposes if the person chooses EEO counseling over ADR or does not have the right to elect between EEO counseling and ADR.

C.3.5.2 While the scope of the inquiry will vary based on the complexity of the claims, the inquiry is limited and not intended to substitute for the investigation required in the formal stage of the process. The process for addressing problems that may arise during the limited inquiry is as follows:

- a. If the aggrieved person or Agency personnel raise objections to the scope or nature of the inquiry, the Counselor will seek guidance and assistance from the EO Director.
- b. If the Counselor has problems with the inquiry, she or he will immediately notify the EO Director.

C.3.5.3 It may be appropriate to ask the ARO and other witnesses as to their knowledge of the aggrieved person's sexual orientation should this be a matter raised by the aggrieved. The guidelines and process are as follows:

- a. The level of detail for sexual orientation claims at this stage of the process will be limited to having the witness disclose what they believe the aggrieved person's sexual orientation to be and when they became aware of this.
- b. For example, regarding sexual orientation, the question may be framed as: "Did you know [the aggrieved person's] sexual orientation and, if so, when did you learn of this?"

C.3.5.4 Prior to initiating the inquiry, the Counselor shall inform witnesses that information regarding their sexual orientation will not appear in the

counseling report or otherwise be disclosed if they choose not to permit disclosure. The process is as follows:

- a. Prior to initiating the inquiry, the inquiry plan shall state whether the sexual orientation of any of the witnesses is relevant to the case.
- b. To the extent that such information is relevant for a particular witness, a general question to be considered is: "Do you care to disclose your sexual orientation?"
- c. If the witness declines to disclose, there shall be no indication in the inquiry report of what was stated.
- d. It is not necessary that the witnesses and the ARO disclose their sexual orientation for comparator purposes. However, if the information is volunteered, it shall be recorded in the report.

C.3.5.5 For claims alleging perceived sexual orientation by an ARO, it is not necessary that the aggrieved disclose his or her actual sexual orientation. However, the aggrieved shall state the perceived sexual orientation held by the ARO of the aggrieved.

C.3.6 Conclusion of Informal Counseling

C.3.6.1 If the parties have not resolved the matter through either ADR or counseling, the aggrieved person shall be informed in writing by the Counselor, not later than the 30th day after contacting the Counselor, of the right to file a discrimination complaint.

C.3.6.2 The written notice, a NRTF, shall inform the aggrieved person that counseling was completed and the aggrieved person has the following rights:

- a. The right to file a formal individual complaint within 15 calendar days of receipt of the NRTF.
- b. The appropriate official with whom to file a formal complaint.
- c. The aggrieved person's duty to inform the Agency if the she or he retains counsel or a representative.
- d. Prior to the end of the 30-day period, the aggrieved person may agree in writing with the Agency to postpone the final interview and extend the counseling period for an additional period of no more than 60 days.
- e. If the matter has not been resolved before the conclusion of the agreed extension, the notice described above shall be issued. Note: The notice shall also advise the aggrieved that a complaint that is not filed within the 15-day period can be dismissed as untimely.

C.3.7 The Counselor's Report

C.3.7.1 The report shall include:

- a. A precise description of the claims and the bases identified by the aggrieved person.
- b. Pertinent documents gathered during the inquiry, if any.
- c. A summary of interviews with relevant parties and witnesses.
- d. Specific information bearing on timeliness of the counseling contact.
- e. If timeliness appears to be a factor, an explanation for the delay; and an indication as to whether an attempt to resolve the complaint was made.
- f. Whether or not the aggrieved has raised this same matter in other forums, and if so, which one(s), as well as the status.

C.3.7.2 ODEO shall retain a copy of the Counselor's report for availability in the event that the original Counselor's report is lost or misplaced.

C.4 Formal Stage: The Formal Complaint

C.4.1 Filing

C.4.1.1 Formal complaints of discrimination on the basis of sexual orientation shall be filed with ODEO.

C.4.1.2 A complaint shall be filed within 15 days of receipt of the notice referenced in Section C.3.6.2, above.

C.4.1.3 A complaint shall contain a signed statement from the aggrieved person or that person's attorney that:

- a. Is sufficiently precise to identify the aggrieved person and the Agency and to describe generally the action(s) or practice(s) that form the basis(es) of the complaint.
- b. Contains a telephone number and address where the complainant or the representative can be contacted (See also Section 2.2.1.2).

C.4.1.4 A complainant may amend a complaint at any time prior to the conclusion of the investigation to include issues or claims like or related to those raised in the complaint.

C.4.2. Acknowledgement of the Formal Complaint

C.4.2.1 Immediately upon receipt of a formal complaint of discrimination, ODEO shall acknowledge receipt of the complaint in writing. The guidelines are as follows:

- a. The acknowledgement letter will inform the complainant of the date on which the complaint was filed.
- b. If the complaint is mailed, the date of filing will be the postmark date, not the date the Agency received the complaint.

C.4.2.2 The EEO Counselor shall:

- a. Provide both ODEO and the complainant with a written report within 5 days of being advised that the complainant has filed a formal complaint.
- b. Advise the complainant he or she has a right to a final decision by the AA, ODEO on claims concerning sexual orientation discrimination, but that claims of sexual orientation discrimination cannot be forwarded to the EEOC for either a hearing or an appeal.
- c. Advise the complainant that he or she has the right to request reconsideration with the AA, ODEO of a final decision (see Section 2.2.4).

C.4.3 Complaint Dismissal

C.4.3.1 NPR (Section 2.2.2.2) sets out the circumstances under which the Agency may dismiss a complaint of sexual orientation discrimination. The bases outlined in Section 2.2.2.2 are the same bases for dismissal under 29 CFR Part 1614.

C.4.4 Investigations

C.4.4.1 The Agency will conduct an impartial and appropriate investigation of the complaint within 180 days of the filing of the complaint unless the parties agree in writing to extend the time period.

C.4.4.2 When a complaint has been amended, the Agency shall complete its investigation within the earlier of 180 days after the last amendment to the complaint or 360 days after the filing of the original complaint, except that the complainant may request a hearing from an administrative judge on the consolidated complaints any time after 180 days from the date of the first filed complaint. Only issues covered under EEO-protected bases will be addressed by the AJ, issues of sexual orientation discrimination covered under this NPR will be held in abeyance and addressed in the AA, ODEO's decision, within 60 days after issuance of the AJ's decision. .

C.4.4.3 Prior to initiating the investigation, the investigator shall inform witnesses that information regarding their own sexual orientation will not appear in the ROI or otherwise be disclosed if they choose not to permit disclosure.

C.4.4.4 In accordance with instructions contained in EEOC Management Directives, ODEO shall develop an impartial and appropriate factual record upon which to make findings on the claims raised by the written complaint. The guidelines are as follows:

- a. An appropriate factual record is one that allows a reasonable fact finder to draw conclusions as to whether discrimination occurred.
- b. ODEO may use an exchange of letters or memoranda, interrogatories, investigations, fact-finding conferences, or any other fact-finding methods that efficiently and thoroughly address the matters at issue. Given the sensitivity of these types of cases, it is preferable for the investigator to reach out first to the complainant, witnesses, and the ARO by telephone or in person, if feasible.
- c. The complainant, the Agency, and any NASA employee shall produce such documentary and testimonial evidence as the Agency deems pertinent and necessary.
- d. Investigators are authorized to administer oaths and statements of witnesses shall be made under oath or affirmation or, alternatively, by written statement under penalty of perjury.
- e. When the complainant, the Agency, or its employees fail without good cause shown to respond fully and in timely fashion to requests for documents, records, comparative data, statistics, affidavits, or the attendance of witnesses, the AA, ODEO may exercise the discretion to take any of the following actions in appropriate circumstances:
 - (1) Draw an adverse inference that the requested information, or the testimony of the requested witness, would have reflected unfavorably on the party refusing to provide the requested information.
 - (2) Consider the matters to which the requested information or testimony pertains to be established in favor of the opposing party.
 - (3) Exclude other evidence offered by the party failing to produce the requested information or witness.
 - (4) Issue a decision fully or partially in favor of the opposing party.
 - (5) Take such other actions as it deems appropriate.

C.4.4.5 Reports of Investigation (ROI). The guidelines for ROIs are as follows:

- a. Within 180 days from the filing of the complaint, or where a complaint was amended, within the earlier of 180 days after the last amendment to the complaint or 360 days after the filing of the original complaint, within the time period contained in a grant of reconsideration from a dismissal, or within any period of extension, ODEO shall provide the complainant with a copy of the investigative file.
- b. ODEO shall also notify the complainant that, within 60 days of receipt of the investigative file, the Agency shall issue a finding as to the merits of the claim of discrimination based on sexual orientation.
- c. In the event that a complaint contains both sexual orientation claims and EEO-protected bases and claims, the process is as follows:
 - (1) ODEO will inform the complainant of the right to request a hearing and decision from an EEOC Administrative Judge (AJ) on those EEO-protected claims by submitting a written request for a hearing directly to the applicable EEOC regional office.
 - (2) The complainant will send a copy of the request for a hearing to ODEO.
 - (3) Within 15 days of receipt of the request for a hearing, the Agency will provide a copy of the complaint file to EEOC and, if not previously provided, to the complainant.

C.4.5 EEOC Hearings in "Dual Processing" Cases

C.4.5.1 Where the complaint includes both EEO-protected bases as well as claims based on sexual orientation discrimination, those issues brought under a basis protected by the EEO laws are eligible for a hearing before the EEOC, while the issues on the bases of sexual orientation are not.

C.4.5.2 In these cases, ODEO's transmittal letter of the ROI shall reflect that the case contains evidence on issues arising under both EEO-protected bases and bases under this NPR and explain that, due to the interconnectedness of the issues, the ROI could not be bifurcated.

C.4.6 Agency Decisions

C.4.6.1 All cases are subject to a final Agency decision, in which the AA, ODEO will issue a decision addressing all claims in the complaint, including ODEO's rationale for dismissing claims, if any, and its finding on the merits of the accepted claims. The Office of the General Counsel conducts legal sufficiency reviews of all decisions.

C.4.6.2 In "dual processing" cases where the complainant requests an Agency decision on both the EEO-protected bases and the bases covered under this NPR, ODEO shall issue a single decision covering both. In such cases, the appeal rights shall specify that the complainant only has appeal rights for the EEO-protected basis(es).

C.4.7 Requests for Reconsideration to the AA, ODEO:

C.4.7.1 The complainant may request reconsideration of the Agency's decision on the sexual orientation complaint, including reconsideration of any partial dismissals.

C.4.7.2 Requests for reconsideration may be submitted if the complainant demonstrates the following:

- a. New information that was unavailable during the investigation of the complaint has become available.
- b. The decision of the AA, ODEO contained an error of fact or law.

C.4.7.3 Where a final decision addressed both protected EEO-bases and sexual orientation under this NPR, the reconsideration decision shall address only the sexual orientation claims. Complainants have a right to appeal the portions of the decision regarding EEO-protected bases to the Office of Federal Operations, EEOC (see Section 2.2.5).

C.4.8 Compliance

C.4.8.1 In the event that the Agency decision finds discrimination, ODEO shall formulate a remedy that is appropriate under the circumstances. The process is as follows:

- a. The Agency decision issued by the AA, ODEO, including the remedy, shall be provided to the Center EO Office and the Center Director for the Center where the complaint originated.
- b. The Center EO Office shall submit a report to the AA, ODEO supporting compliance with the Agency decision within 30 days of the date that the Center received the Agency decision and remedy.

C.4.8.2 If the complainant believes that the Center has failed to comply with the Agency decision, the complainant should notify the AA, ODEO in writing, of the alleged noncompliance within 30 days of the day that he or she knew or should have known of the non-compliance. The complainant can request that the terms of the settlement agreement be specifically implemented or, alternatively, that the complaint be reinstated for further processing from the point processing ceased.

C.4.8.3 The Agency shall resolve the matter and respond to the complainant in writing. The process is as follows:

- a. If the Agency has not responded to the complainant, in writing, or if the complainant is not satisfied with the Agency's attempt to resolve the matter, the complainant may request reconsideration to determine whether the Agency has complied with the terms of the settlement agreement or decision.
- b. The complainant should file such a request 35 days after he or she has served the Agency with the allegations of noncompliance.

C.5 Additional Considerations

C.5.1 Policy Clarification

C.5.1.1 In information to employees and applicants for employment regarding this NPR, ODEO will include clarifying language to state that the entitlement to complaint processing in this area derives from NASA policy and not from EEO law and regulations, which govern the processing of discrimination complaints under Title VII of the Civil Rights Act and other antidiscrimination statutes.

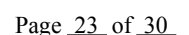
C.5.1.2 ODEO and Center EO Offices will undertake efforts to advise employees and applicants for employment that, although complaints based on sexual orientation are processed similarly to those under the procedures found in Federal Sector EEO Regulations, they cannot be the subject of either a hearing before an AJ of the EEOC or an appeal to the EEOC's Office of Federal Operations.

C.5.2 Education and Awareness Efforts and Information Dissemination

C.5.2.1 ODEO, in collaboration with the Center EO offices, will provide management, employee, and EEO Counselor training on this NPR.

C.5.2.2 Appropriate information dissemination regarding this NPR, including contact information on filing a discrimination complaint based on sexual orientation, will be prominently placed in appropriate venues around NASA Headquarters and the NASA Centers.

C.6 NPR 3713 Procedures Flowchart



(11a) Where discrimination is found, the Agency will determine the appropriate remedy. The Center EO Director will assist in implementing and monitoring the remedial action as identified by the Agency. The Center EO Director will provide the Agency with a compliance report on the remedial action to ensure that all terms are implemented.

(11b) The employee will have 30 days to request reconsideration from the AA, ODEO.

(12) If the AA's decision on reconsideration finds discrimination, the Agency will determine the appropriate remedy (see (11a) above).

(12a) If no discrimination is found, the case is closed.

Note: in all cases, the employee, EEO Counselor, Mediator, Center, and Agency will adhere to timelines. Employees can request ADR at any stage of this complaints process.

Appendix D. Informal Complaints Counseling: Rights and Responsibilities: Sexual Orientation Discrimination Complaints

Informal Complaints Counseling Rights and Responsibilities Sexual Orientation (SxO) Discrimination Complaints

(NPR 3713.X, Procedures for Discrimination Complaints Based on Sexual Orientation)

NASA Procedural Requirements (NPR) 3713.X covers discrimination based on sexual orientation, or retaliation for engaging in activity pursuant to NPR 3713.X. Discrimination complaints based on Sexual Orientation are hereafter referred to as "SxO complaints (or claims)."

Rights

- 1) If you believe that you have been subjected to prohibited discrimination based on your race, color, national origin, sex, religion, age, disability, genetic information, sexual orientation, or retaliation, you have the right to EEO counseling. You shall initiate counseling within 45 days of the date of the alleged discriminatory action or incident.
- 2) You have the right to anonymity during the informal complaint process.
- 3) You have the right to representation throughout the complaint process including the counseling stage. The EEO Counselor that is assigned to you is not an advocate for you or for the Agency, but acts strictly as a neutral in the EEO process.
- 4) You have the right to elect to resolve your claim through the Center's ADR program. The Agency has the obligation to make ADR available at the informal complaint stage. However, the Agency reserves the right to decline ADR if it is deemed inappropriate. The Centers EO Office should provide you with the following information:
 - a. How the Agency ADR program works at your Center.
 - b. Whether the Agency agrees to participate in ADR in your case.
 - c. Information regarding your right to file a formal complaint if ADR is elected does not achieve a resolution.
- 5) Where ADR is selected, but a resolution is not reached, you have the right to receive Notice of Final Interview and Right to File, which will be issued upon completion of the dispute resolution process.
- 6) Where counseling is selected and ADR is declined and depending on the basis for the complaint, you have the right to receive the following notices in writing within 30 calendar days of the first counseling contact (unless you agree in writing to an extensions of no more than 60 days):
 - a. Notice of the right to file a formal individual or class complaint within 15 calendar days of receipt of notice.
 - b. The appropriate official with whom to file a formal complaint.

c. Notification of your duty to immediately inform the Agency if you retain counsel or a representative.

7) You have a right to be notified that your case may be heard in more than one forum under certain circumstances.

8) You have a right to be advised of the timeframes in the complaints process. In addition the Counselor should advise the aggrieved that when a complaint is amended, the Agency shall complete its investigation within the earlier of 180 days of the filing of the complaint, or 360 days of the initial complaint.

9) You have the right to be advised that the Agency will consolidate two or more complaints pursuant to Federal sector EEO regulations.

Rights and Exceptions (Combined EEO and SxO)

1) If you are alleging discrimination based on sexual orientation and also based on a protected EEO basis (i.e., age, race, gender, disability, retaliation, or genetic information), upon receipt of the investigative report you have a right to elect a hearing before an EEOC judge on your protected EEO claims only. You do not have a right to elect a hearing on your sexual orientation claim.

2) Upon receipt of a Final Agency Decision (FAD) on your EEO/SxO claims, you have a right to appeal your EEO claims to the EEOC Office of Federal Operations. You do not have a right to appeal your sexual orientation discrimination claim to the EEOC. You do have a right to request reconsideration of your sexual orientation discrimination claim(s) with the AA, ODEO, within 30 days of the FAD. You do not have a right to have the AA reconsider your EEO protected claims.

3) You may have a right to attorney's fees on the EEO portion of your complaint.

4) You may have the right to compensatory damages on the EEO portion of your complaint.

Exceptions (SxO Complaints only)

1) You do not have the right to a hearing before the EEOC.

2) You do not have the right to appeal to the EEOC (however, a request for reconsideration can be made to the AA, ODEO).

3) You do not have the right to file a class complaint.

4) You do not have the right to compensatory damages.

5) You do not have a general right to attorney's fees. You may be awarded reasonable attorney's fees where back pay is at issue. In all other situations, attorney's fees are not authorized (see NPR 3713.X, Section 2.3.3.3.c).

Duties


1) You have the duty to keep the Agency informed of your current mailing address.

2) You have the duty to mitigate damages.

3) You have the duty to inform the Agency if you have engaged in other process, e.g., union grievance and MSBP appeals.

- 4) Only those claims raised at counseling stage, or those claims like and related to those raised at counseling, may be the subject of a formal complaint.
- 5) You have a duty to cooperatively participate in the process.

Appendix E. Complaint of Discrimination Form

 National Aeronautics and Space Administration		<h2 style="text-align: center;">Complaint of Discrimination</h2> <p style="text-align: center;"><i>(Based on age, color, gender identity, genetic information, national origin, physical or mental disability, race, religion, retaliation, sex, sexual orientation.)</i></p>	
<p style="text-align: center;">NPR 3713.X, Procedures for Discrimination Complaints Based on Sexual Orientation or Gender Identity and NPD 3713.6P, Delegation of Authority to Act in Matters Pertaining to Discrimination Complaints Under 29 C.F.R. Part 1614</p>			
1. COMPLAINANT'S FULL NAME		2a. HOME PHONE NO. (include area code)	
3. HOME STREET ADDRESS (P.O. Box or RD number)		2b. WORK PHONE NO. (include area code)	
5. NAME OF REPRESENTATIVE		4. CITY AND STATE (include ZIP code)	
		6. ADDRESS OF REPRESENTATIVE	
7. NASA OFFICE YOU BELIEVE DISCRIMINATED AGAINST YOU			
a. NAME OF OFFICE		b. ADDRESS (street name and number, city state, and ZIP code)	
8. EMPLOYMENT DATA			
a. NOW WORKING IN THE FEDERAL GOVERNMENT		b. EMPLOYER (include your organizational designation, job title and grade)	
<input type="checkbox"/> (1) YES (if checked, complete items 8b through 8d) <input type="checkbox"/> (2) NO (if checked, continue in item 9)			
c. STREET ADDRESS		4. CITY AND STATE (include ZIP code)	
9. DATE MOST RECENT ALLEGED DISCRIMINATION TOOK PLACE		a. MONTH	b. DAY
			c. YEAR
10. REASON WHY YOU BELIEVE YOU WERE DISCRIMINATED AGAINST			
a. BECAUSE OF AGE (specify)			
b. BECAUSE OF RACE (specify)		g. BECAUSE OF PHYSICAL OR MENTAL DISABILITY (specify)	
c. BECAUSE OF COLOR (specify)		h. BECAUSE OF RETALIATION (specify)	
d. BECAUSE OF RELIGION (specify)		i. BECAUSE OF GENETIC INFORMATION (specify)	
e. BECAUSE OF SEX (specify)		j. BECAUSE OF NATIONAL ORIGIN (specify)	
f. BECAUSE OF SEXUAL ORIENTATION (specify)		k. BECAUSE OF GENDER IDENTITY (specify)	
11. EXPLAIN HOW YOU BELIEVE YOU WERE DISCRIMINATED AGAINST (treated differently from other employees or applicants) BECAUSE OF AGE, RACE, COLOR, RELIGION, GENETIC INFORMATION, SEX, NATIONAL ORIGIN, PHYSICAL OR MENTAL DISABILITY OR RETALIATION (Continue on another sheet if more space is needed)			
12. HAVE YOU FILED A GRIEVANCE (negotiated or agency) OR APPEALED TO MSPB ON THIS MATTER(S)? <input type="checkbox"/> (a) YES <input type="checkbox"/> (b) NO			
13. I HAVE DISCUSSED MY COMPLAINT WITH AN EQUAL EMPLOYMENT OPPORTUNITY COUNSELOR (see instructions)			
<input type="checkbox"/> (a) YES <input type="checkbox"/> (b) NO NAME OF COUNSELOR (if item 13a is checked)			
14. CORRECTIVE ACTION YOU WANT TAKEN ON YOUR COMPLAINT			
15. SIGNATURE OF COMPLAINANT OR DESIGNATED REPRESENTATIVE		DATE OF COMPLAINT (month, day, year)	

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INSTRUCTIONS (READ CAREFULLY)

• This form should be used only if you, as the applicant for NASA employment or as a NASA employee, think you have been discriminated against because of age, race, color, religion, sex, national origin, physical or mental disability, sexual orientation, gender identity or retaliation by NASA and have presented the matter for informal resolution to an Equal Opportunity (EO) Counselor within 45 calendar days of the date the incident occurred or, if a personnel action, within 45 calendar days of its effective date.

NOTE: Claims of discrimination based on sexual orientation or gender identity will be processed in accordance with NPR 3713.X, Discrimination Complaints Based on Sexual Orientation or Gender Identity. Because there is no Federal statutory prohibition for discrimination on these bases and the U.S. Equal Employment Opportunity Commission (EEOC) does not enforce the protections that prohibit discrimination on these bases, you are not entitled to a hearing before EEOC for a complaint alleging discrimination on one or both of these bases. However, in accordance with NPR 3713.X, at the conclusion of the investigative stage, the Associate Administrator, Office of Diversity and Equal Opportunity (ODEO) will issue a decision on claims based on sexual orientation or gender identity, and, if warranted, recommend corrective actions and remedies. The decision will apply the merit principles utilized for Final Agency Decision (FADs) issued for complaints based on the EEOC protected categories covered by Title VII of the Civil Rights Act of 1964, as amended (Title VII). However, the decision will not include appeal rights to EEOC. A request for reconsideration from the AA, ODEO may be filed within 30 days of a decision (see NPR 3713.X, Section 2.2.5).

- Your complaint shall be filed within 15 calendar days of the date of receipt of the Final Interview and Notice of Right to File Complaint letter from the EO Counselor.
- These time limits may be extended if you show that you were not notified of the time limits and were not otherwise aware of them, or that you were prevented by circumstances beyond your control from submitting the matter within the time limits, or for other reasons considered sufficient by NASA.
- Your written complaint should be filed by you or your designated representative with the Director, Complaints Management Division, Office of Diversity and Equal Opportunity, NASA, Washington, DC 20546.
- You may have a representative of your own choosing at all stages of the processing of your complaint.
- If your complaint is accepted, you may have an opportunity to attempt settlement of your complaint through the Agency's Alternative Dispute Resolution (ADR) mediation program.
- If your complaint is accepted, you will also have an opportunity to talk with an investigator and give all the facts which you believe show discrimination.
- After the investigation of your complaint has been completed, you will be given a copy of the investigative report and notified of your right to request a hearing and final decision from an Equal Employment Opportunity Commission (EEOC) Administrative Judge (AJ) or a decision from the Associate Administrator for Equal Opportunity Programs without a hearing.
- If you request a hearing, you will have an opportunity to seek discovery. The discovery and the hearing will be administered by an EEOC AJ. The hearing will be held at a convenient time and place. At the hearing, you may present witnesses and any other evidence in your behalf.
- If a hearing is held, the final decision will be made by the AJ. You will be furnished with a copy of the transcript of the hearing, a copy of the findings, analysis and decision of the AJ.
- If you are not satisfied with final decision of the AJ or the AA for Equal Opportunity Programs (EOP), you will have the right to appeal that decision within 30 calendar days of its receipt. You shall file your appeal with EEOC's Office of Federal Operations, Post Office Box 19848, Washington, DC 20026, or you may file a civil action in a Federal District Court within 90 calendar days of receipt of the final decision. If you elect to file an appeal with the EEOC, you may still file a civil action in a federal court within 90 calendar days of the EEOC's decision if you are dissatisfied with the decision.
- You may also file a civil action in an appropriate Federal District Court if you have not received a final decision within 180 days of filing your complaint with NASA, or if you have not received a final decision from EEOC within 180 calendar days of filing your appeal.

PRIVACY ACT STATEMENT FOR COMPLAINT OF DISCRIMINATION

- The information to be provided on this form is authorized to be collected by the National Aeronautics and Space Administration by the Equal Employment Opportunity Act of 1972 (P.L. 92-261), the Age Discrimination in Employment Act of 1967, as amended (P. L. 93-259), and the EEOC rules and regulations; failure to furnish the information may result in your complaint being dismissed. The principal purpose for which the information is intended to be used is to secure the specific information essential for the acceptance and investigation of complaints of discrimination.
- This information will be incorporated in the NASA Equal Opportunity System of records. The routine uses of this system of records outside of NASA are: (a) to the EEOC to facilitate processing of discrimination complaints; (b) to the Congress, other Federal agencies, or organizations having legal and administrative responsibilities related to the EEO programs; (c) to law enforcement agencies or other agencies in connection with investigations; or (d) courts, administrative tribunals and the Department of Justice in connection with proceedings.

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