■ 14. Revise § 213.6 to read as follows:

§ 213.6 Information concerning assistance.

Any person may contact the Office with questions regarding eligibility for technical assistance. Summaries of the trade laws and the SBA size standards can be obtained by writing to the Trade Remedy Assistance Office, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Information is also provided on the Commission's Web site at *http://www.usitc.gov.*

By order of the Commission.

Issued: February 2, 2015.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2015–02388 Filed 2–5–15; 8:45 am]

BILLING CODE 7020–02–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1614

RIN 3046–AB00

Federal Sector Equal Employment Opportunity

AGENCY: Equal Employment Opportunity Commission.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Equal Employment Opportunity Commission (''EEOC'' or ''Commission'') is issuing an Advance Notice of Proposed Rulemaking (''ANPRM'') inviting the public to submit comments regarding the Federal sector EEO complaint process. The Commission primarily is interested in suggestions that will make the process more efficient and user-friendly, and more effective in identifying and redressing prohibited employment discrimination.

DATES: Comments and suggestions in response to the Advance Notice of Proposed Rulemaking must be received on or before April 7, 2015.

ADDRESSES: You may submit comments, identified by RIN Number, by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- Fax: (202) 663–4114. (There is no toll free FAX number). Only comments of six or fewer pages will be accepted via FAX transmittal, in order to assure access to the equipment. Receipt of FAX transmittals will not be acknowledged, except that the sender may request confirmation of receipt by calling the Executive Secretariat staff at (202) 663–4070 (voice) or (202) 663–4074 (TTY). (These are not toll free numbers).
- Mail: Bernadette Wilson, Acting Executive Officer, Executive Secretariat, Equal Employment Opportunity Commission, U.S. Equal Employment Opportunity Commission, 131 M Street NE., Washington, DC 20507.
- Hand Delivery/Courier: Bernadette Wilson, Acting Executive Officer, Executive Secretariat, Equal Employment Opportunity Commission, 131 M Street NE., Washington, DC 20507.

Instructions: The Commission invites comments from all interested parties. All comment submissions must include the agency name and the Regulatory Information Number (RIN) for this ANPRM. Comments need be submitted in only one of the above-listed methods. All comments received will be posted without change to *http://www.regulations.gov*, including any personal information you provide.

Comments: For access to the comments received, go to *http://www.regulations.gov*. Copies of the received comments also will be available for review by pre-arranged appointment at the Commission's library, 131 M Street NE., Suite 4NW08R, Washington, DC 20507, between the hours of 9:30 a.m. and 5 p.m., from April 7, 2015 until the Commission publishes a Notice of Proposed Rulemaking (''NPRM'') addressing the Federal sector EEO complaint process.

FOR FURTHER INFORMATION CONTACT: Thomas J. Schlageter, Assistant Legal Counsel, (202) 663–4668, or Gary John Hozempa, Senior Staff Attorney, (202) 663–4666, or (202) 663–7026 (TTY), Office of Legal Counsel, U.S. Equal Employment Opportunity Commission. (These are not toll free numbers). Requests for this advance notice in an alternative format should be made to the Office of Communications and Legislative Affairs at (202) 663–4191 (voice) or (202) 663–4494 (TTY). (These are not toll free numbers).

SUPPLEMENTARY INFORMATION: As discussed more fully below, Federal sector EEO complaint processing procedures did not originate with EEOC in 1979, when EEOC was given oversight authority over the Federal sector EEO process. Rather, formal, regulatory procedures first were promulgated by the Civil Service Commission (''CSC'') in 1966, codified at 5 CFR part 713, and the basic framework contained in those procedures was adopted by EEOC in 1979. Although EEOC has revised the procedures a number of times, the original structure inherited from the CSC—counseling, complaint, investigation, hearing, final agency action, and appeal—remains.

The CSC's complaint processing scheme was not created in a vacuum. Rather, the CSC developed its procedures based on those established in a series of Executive Orders issued by Presidents Roosevelt through Nixon. The first administrative system for resolving Federal sector EEO complaints was created in Executive Order (''E.O.'') 8802 (June 25, 1941). Among other things, U.S. agencies involved in ''defense production'' were ordered to administer their programs ''without discrimination because of race, creed, color, or national origin.'' The Order, as amended by E.O. 9346 (May 27, 1943), established a Committee on Fair Employment Practice whose function was to formulate policy, promulgate rules and regulations, investigate EEO complaints and make findings of fact, conduct hearings, and provide relief when appropriate. As can be seen, many of the element's in today's Federal sector EEO complaint process were created more than 70 years ago.

E.O. 9980 (July 26, 1948) expanded the reach of the Federal Government's EEO policy to include ''all departments and agencies of the executive branch . . .'' The Order created within each agency the position of ''Fair Employment Officer'' (''FEO''), the precursor to today's Director of Equal Employment Opportunity (''EEO Director''). The E.O. also introduced an appeal stage, wherein a complainant could appeal the decision of the agency head to the Fair Employment Board (''Board'') of the CSC. The Board was empowered to ''make recommendations'' to the agency head. The Board also was given the authority to promulgate ''necessary'' rules and regulations and coordinate EEO policies and procedures among the agencies.

Over the next 20 years, the CSC's authority over the Federal sector EEO process was modified by subsequent Presidents. E.O. 10590 (January 18, 1955), as amended, explicitly superseded E.O. 9980, abolished the CSC's Board, and replaced it with a ''President's Committee.'' The position of FEO was replaced with an ''Employment Policy Officer,'' who, like a current EEO Director, is ''outside of the division handling the personnel matters of the . . . agency'' and ''under the immediate supervision of the head of his department or agency.'' A complainant could appeal an agency final decision to the President's Committee, which could issue an

advisory opinion. The CSC retained the authority to issue ''necessary'' regulations.

E.O. 11246 (September 24, 1965), as amended, explicitly superseded all previous E.O.'s regarding the Federal sector EEO process and returned oversight authority to the CSC. In addition, the CSC was directed to establish a complaint processing procedure that included ''at least one impartial review with the executive department or agency and [an] appeal to the Civil Service Commission.'' [1] In response, and as noted above, the CSC issued its first formal complaint processing regulations in 1966. Selectively adopting procedures from the various E.O.'s, CSC's regulations required that a complaint be filed with and investigated by the agency alleged to have engaged in discrimination, that an agency offer the complainant a hearing, and that the agency issue a final decision on the complaint. A complainant could appeal an agency's final decision to the CSC. E.O. 11478 (August 8, 1969) directed agencies to ''provide access to counseling for employees who feel aggrieved and shall encourage the resolution of employee problems on an informal basis.'' [2] Thus, CSC revised its regulations to include counseling and informal resolution.

In 1972, the Equal Opportunity Act of 1972 was enacted, amending Title VII of the Civil Rights Act of 1964. New section 717(a) provided that ''all personnel actions affecting employees or applicants for employment'' in the executive branch (with some exclusions and additions) ''shall be free from any discrimination based on race, color, religion, sex, or national origin.'' Importantly, section 717(c) gave Federal employees the right to file *de novo* suit in Federal court once administrative remedies had been exhausted. While the Act was being debated, some members of Congress criticized the CSC's administrative EEO complaint process, noting the conflict of interest inherent in an agency investigating itself and determining whether it had engaged in prohibited discrimination, and the lack of confidence Federal employees had in its effectiveness. *See* S. Rpt. 92–416 at 14, H. Rpt. 92–238 at 23–24. The Senate Report stated that ''[o]ne feature of the present equal employment opportunity program which deserves special scrutiny by the Civil Service Commission is the complaint process.'' Furthermore, one version of section 717(b) transferred administrative oversight of the Federal sector EEO complaint process from the CSC to EEOC. The final bill, however, retained oversight authority in the CSC. In October 1972, the CSC revised its regulations at 5 CFR part 713, adding provisions to reflect that a Federal complainant who had filed an administrative EEO complaint had the right to file a civil action in an appropriate United States District Court.

The Civil Service Reform Act of 1978 abolished the CSC and created in its place the Office of Personnel Management. The Act also created the Merit Systems Protection Board (''MSPB''), the Federal Labor Relations Authority, and the Office of Special Counsel. Pursuant to the Reform Act, Reorganization Plan No. 1 of 1978, and E.O. 12106 (December 28, 1978), the CSC's functions under section 717 of Title VII were transferred to EEOC effective January 1, 1979. At the same time, EEOC was given enforcement responsibility regarding the provisions applicable to Federal employees contained in the Equal Pay Act of 1963, the Age Discrimination in Employment Act of 1967, and the Rehabilitation Act of 1973.

Pursuant to E.O. 12106, EEOC was made ''responsible for directing and furthering the implementation of the Policy of the Government of the United States to provide equal employment opportunity in Federal employment for all employees and applicants for employment * * * and to prohibit discrimination in employment because of race, color, religion, sex, national origin, handicap, or age.'' The Order directed EEOC, ''after consultation with all affected departments and agencies,'' to ''issue such rules, regulations, orders, and instructions and request such information from the affected departments and agencies as it deems necessary and appropriate to carry out [E.O. 12106].''

At the time of the transfer of functions from the CSC to EEOC, EEOC adopted CSC's complaint processing procedures, only making changes to reflect EEOC's oversight authority. Thus, for example, an administrative hearing was held before an EEOC ''Complaints Examiner'' (now referred to as an Administrative Judge (''AJ'')), and a complainant could appeal an agency final decision to EEOC's ''Office of Review and Appeals'' (now called the Office of Federal Operations). Thus, CSC's basic complaint processing structure—counseling, filing of complaint with the agency accused of discrimination, investigation of the complaint by that agency, a hearing at complainant's request, an agency final decision, and an optional appeal—remained intact.[3]

EEOC's regulations were codified at 29 CFR part 1613. EEOC amended part 1613 in 1980 to authorize agencies to award attorney's fees and costs to prevailing complainants. In 1983, EEOC and the MSPB added mixed case complaint procedures to their respective regulations, at 29 CFR part 1613 and 5 CFR part 1201, respectively.

In 1987, EEOC enacted additional, minor revisions to part 1613. Among other things, a provision was added requiring an agency to notify an aggrieved person of the election of remedies pertaining to filing an EEO complaint, an appeal with MSPB, or a grievance under a collective bargaining agreement. Official time for complainants to prepare and pursue complaints was addressed. The EEOC's then private sector policy statement on remedies and relief was incorporated into the Federal sector process.

In 1992, EEOC issued a final rule abolishing 29 CFR part 1613 (except with respect to complaints filed before a certain date), and replaced it with 29 CFR part 1614. While EEOC made significant changes to many parts of the complaint process, the basic structure inherited from the CSC remained.

In 1995, EEOC established a Federal Sector Workgroup which evaluated the complaint process and made numerous recommendations for reform. The Commission published a Notice of Proposed Rulemaking in 1998, proposing many of the Workgroup recommendations, including requiring alternative dispute resolution (hereinafter ''ADR'') during the counseling and investigative stages, and making an AJ decision final. In their comments, agencies contended that EEOC could not make an AJ decision final because section 717 of Title VII gives an agency the right to take final action on an administrative EEO complaint. Consequently, the Final Rule, published in 1999, while retaining the ADR requirements, provided an agency with the opportunity to issue a notice of final action after receiving an AJ decision. That final action was not termed a decision, but it allowed an agency to indicate whether it would fully implement the decision of the AJ. If not, the agency was required to file an appeal with EEOC.

[1] E.O. 11375 (October 13, 1967) added sex as a prohibited basis.

[2] In subsequent Executive Orders, additional bases of discrimination were added to E.O. 11478: handicap and age (E.O. 12106 (December 28, 1978)); sexual orientation (E.O. 13087 (May 28, 1998)); status as a parent (E.O. 13152 (May 2, 2000)); and, gender identity (E.O. 13672 (July 21, 2014)).

[3] Although E.O. 12106 revised E.O. 11478 to eliminate the counseling and informal resolution language of E.O. 11478, EEOC chose not to drop these components when it adopted the CSC regulations.

EEOC established another Federal Sector Workgroup in 2004, again to consider ways in which to improve the Federal sector EEO complaint process. The Workgroup failed to reach internal consensus for large scale revisions, but did reach agreement on several discrete changes that clarified and built upon the improvements made by the last major revisions in 1999. The resulting final rule was published on July 25, 2012. *See* 77 FR 43498. One revision authorizes EEOC, after it reviews an agency program for compliance with EEOC rules and directives, to issue a notice to an agency when non-compliance is found and not corrected. Another revision allows an agency to seek approval from EEOC to conduct a complaint processing pilot project. An AJ's decision on the merits of a class complaint was made final in the revised regulation, which meant that an agency could implement it or appeal. Additionally, there is now a provision which requires an agency that has not completed its investigation of a complaint in a timely manner to notify the complainant that the investigative period has expired and that, as a result, the complainant has an immediate right to request a hearing or file a civil action.

As previously noted, although the Federal sector EEO complaint process has undergone various permutations over the last seven decades, certain procedures, once introduced, have remained. The Truman administration, for example, introduced agency self-investigation and the opportunity to appeal an agency decision to an outside entity. The Eisenhower administration created the hearing and required an agency to appoint an EEO Officer who worked outside the personnel office and was under the immediate supervision of the agency head. Under President Nixon, pre-complaint counseling was established. Thus, when the CSC issued its last regulations in 1972, the Federal sector complaint process consisted of a combination of requirements first introduced in the various Executive Orders and certain rights provided by section 717 of Title VII.

In this regard, when most of the Executive Orders discussed above were issued, EEOC either did not exist or did not have oversight authority for the Federal sector. Questions that the Commission wishes the public to explore and answer in response to this ANPRM are as follows:

1. If EEOC were to create a new Federal sector EEOC complaint process, what current elements would you retain or remove, and what new elements would you introduce?

a. With respect to a current element you believe should be retained, in what way does that element provide value, efficiency, or fairness?

b. With respect to a current element you believe should be removed, how will its removal improve the process for the complainant, the agency, or both?

c. With respect to a new element, why should it be included, and how will it improve the process for the complainant, the agency, or both?

2. Should the process include an investigative stage?

a. Should agency personnel investigate complaints filed against the agency?

b. Should agencies pick from a pool of investigators made up of in-house personnel from various agencies so that no agency is investigated by one of its own investigators?

c. Should investigators employed by EEOC conduct all investigations, similar to the process EEOC uses when an aggrieved individual from the private sector files a charge of employment discrimination with EEOC?

3. Should the hearing stage be retained?

a. If the hearing stage is retained as a matter of right, should the administrative hearing take place after an investigation?

b. If there is a hearing, should the hearing be a continuation of the investigative process, as it is now, or should the hearing be adversarial in nature, such as those conducted by the MSPB?

c. Should there be a hearing as of right only as an alternative to an investigation?

d. Should a hearing always be discretionary, and if so, at whose discretion?

4. What time limits should be imposed at various stages of the process?

a. How many days should a complainant have to contact a counselor from the date of the alleged discriminatory matter?

b. How many days should a complainant have to file a complaint following the conclusion of counseling?

c. If there is an investigative stage, within how many days should the investigation be completed?

d. How many days should a complainant and agency have to file an appeal from an agency final action?

5. What standard of review should apply when EEOC considers an appeal?

a. What standard of review should apply when there is a hearing decision?

b. What standard of review should apply when there is only an agency decision?

6. How can the Commission continue to enhance its ability to ensure agencies' compliance with Federal sector equal employment opportunity requirements and the Federal sector EEO complaint process?

a. For example, pursuant to 29 CFR 1614.102(e), should the EEOC conduct Commission meetings from time to time to review agencies' compliance efforts?

b. Also, for example, as part of the complaint process, should the Commissioners from time to time hear arguments on appeals from final agency actions?

c. What value would these and any other related ideas bring to the Federal sector complaint process?

7. When discrimination is found, what enforcement mechanisms can EEOC use to ensure agency compliance?

The above questions are not meant to be exhaustive and, in fact, only touch upon the many issues and stages of the current complaint process. Therefore, EEOC is interested in any ideas and comments regarding all aspects of the process. In this regard, EEOC will consider comments that advocate abolition of all or part of the current system coupled with ideas for a replacement system, as well as comments from those who believe that only a few changes are necessary in order to improve the Federal sector complaint process.

In drafting comments, stakeholders and other members of the public should keep in mind the requirements imposed by section 717 of Title VII, which cannot be altered or discarded. This means for example, that any administrative process must include agency final action on a complaint and the opportunity for a complainant to appeal the agency's final action to EEOC. Additionally, a complainant's right to file a civil action and the time limits applicable to that right cannot be changed. Comments advocating that EEOC retain any non-mandated feature of the current process should be based on a fresh assessment of the extent to which that element has served to advance the policy goals and purposes of the EEO statutes.

For the Commission,

Dated: January 30, 2015.

Jenny R. Yang,

Chair.

[FR Doc. 2015–02330 Filed 2–5–15; 8:45 am]

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