NAVAIRWARCENACDIV INSTRUCTION 12713.1

From: Commander, Naval Air Warfare Center Aircraft Division

Subj: EQUAL EMPLOYMENT OPPORTUNITY PROGRAM

Ref: (a) SECNAVINST 12720.5A
(b) OCPMINST 12713.2
(c) OCPMINST 12720.1
(d) 29 CFR 1614
(e) EEO Commission Management Directive 110
(f) 5 CFR 1201
(g) Administrative Dispute Resolution Act, P.L. 101-552

Encl: (1) Affirmative Employment Program Plans
(2) Discrimination Complaints Process
(3) Alternative Dispute Resolution Process
(4) Special Emphasis Programs
(5) Equal Employment Opportunity Honorary Awards
(6) Equal Employment Opportunity Committees

1. Purpose. To publish procedural requirements, define responsibilities, and provide operational guidelines for the management and administration of the Equal Employment Opportunity (EEO) Program. This edition of the instruction has so many changes that it would not be practical to identify added, deleted, or revised material in the text. Therefore, a complete review of this entire instruction is recommended upon receipt.

2. Cancellation. NAVAIRWARCENACDIVINST 12720.1 of 18 October 1993.

3. Scope. This instruction applies to civilian personnel of the NAVAIRWARCENACDIV, appropriated and nonappropriated funds, and to those tenant activities for which EEO services are provided via host-tenant agreements.

4. Background

a. The EEO Act Of 1972, Executive Order 11478, and the Civil Rights Act of 1991 prohibit discrimination against Federal employees and applicants for Federal employment on the basis of race, color, religion, sex, or national origin. Public Law 93-159, signed on 8 April 1974, extends coverage of the Age Discrimination in Employment Act of 1967 to the Federal Government. The Rehabilitation Act of 1973 (Public Law 93-112), as amended by Public Laws 93-516 and 95-602, and the Civil Rights Act of 1991 prohibit employment discrimination against individuals with disabilities.

b. References (a) through (g) provide further guidance for the management and administration of EEO programs within the Department of the Navy (DON), consistent with laws, regulations, and policies issued by higher authority.

5. Policy

a. It is the policy of the Commander, NAVAIRWARCENACDIV that civilian employees (appropriated and nonappropriated funds) and applicants for employment shall be afforded equal opportunity in all facets of civilian employment (appointment, selection, advancement, assignment, training, etc.). Civilian employees and applicants shall not be discriminated against in an employment matter on the basis of race, color, sex, national origin, religion, age, or a physical or mental disability, or retaliated against for involvement in an EEO matter.

b. Affirmative Employment Program Plans (AEPP's), described in enclosure (1), shall be defined and implemented to overcome the manifest imbalance and conspicuous absence of women and minority men, and to improve employment opportunities for individuals with disabilities, both physical and mental, including veterans with disabilities. Program focus for individuals with disabilities will include employment, reasonable accommodation, and improvement of facility accessibility.

c. Civilian employees at all levels and in all lines of work have an inherent right to fair and equitable treatment. Managers and supervisors, military and civilian, are directly responsible for protecting that right. However, along with the right goes the responsibility for each employee to make positive contributions to the overall EEO program efforts through personal behavior and conduct, including high quality on-the-job performance, cooperation with others, and disciplined use of the discrimination complaint procedure. The discrimination complaint process is explained in enclosure (2). An alternative dispute resolution process, described in enclosure (3), may be used instead of the traditional EEO counseling process.

6. Responsibilities

a. EEO Officer (EEOO). The Commander, NAVAIRWARCENACDIV is the EEOO for the NAVAIRWARCENACDIV. Commanding Officers and Officers in Charge at the NAVAIRWARCENACDIV are the EEOO's for their respective sites. Heads of tenant commands are the EEOO's for their respective commands. EEOO's are responsible for the effective execution of DON EEO policies and programs within their activities and will be held accountable for these programs. In this regard, they will ensure managers and supervisors have an appropriate critical element and performance standard that adequately address their EEO responsibilities.

b. Director, Human Resources Office (HRO). The Director, HRO is responsible for developing personnel programs and procedures which execute the DON's EEO Program, the NAVAIRWARCENACDIV AEPP's, and the Federal Equal Opportunity Recruitment Program.

c. Deputy EEOO (DEEOO). The DEEOO is a line manager on the HRO staff, reporting to the Director, HRO for the NAVAIRWARCENACDIV. The DEEOO advises the EEOO's on all EEO matters and oversees affirmative employment program planning and the discrimination complaint process.

d. Associate Human Resources Directors (AHRD's). The AHRD's provide leadership in the day-to-day functions of the EEO program at their respective sites. They are also responsible for special emphasis programs and the EEO Awards Program outlined in enclosures (4) and (5).

e. EEO Specialists/Counselors. The EEO Specialist fills a full-time or part-time position located on the HRO staff and provides information and counseling to employees, former employees, or applicants for employment who believe they have been discriminated against in some aspect of their job or in their search for employment. In a counseling role, the EEO Specialist conducts impartial fact finding of all informal EEO complaints and works closely with managers, supervisors, HRO specialists, and complainants to effect timely resolution of complaints. The EEO Specialist may also be responsible for one or more of the Special Emphasis Programs outlined in enclosure (4), Affirmative Employment planning outlined in enclosure (1), and various special projects.

f. Managers and Supervisors. Managers and supervisors implement AEPP's by taking affirmative action where necessary to address the manifest imbalance and conspicuous absence of women and minority men and individuals with disabilities, including veterans who are disabled. Managers and supervisors must always select the best-qualified person for a position. They are responsible for:

(1) Creating a workplace free from discriminatory practices including sexual harassment.

(2) Challenging each employee to reach his or her fullest potential.

(3) Recognizing the contributions of all employees.

(4) Working with EEO Counselors and other EEO officials to resolve complaints at the lowest possible level.

(5) Advising employees who perceive employment-related discrimination of the requirement to contact an EEO Counselor within the legal time limits.

(6) Ensuring reasonable official time for employees who serve on EEO committees and perform other collateral duty EEO work.

(7) Obtaining 8 hours of EEO-related training annually.

g. EEO Committees. When EEO committees are established, they will reflect the site's work force and serve as an aid in implementing the goals of the EEO Program. Enclosure (6) outlines the functioning of these committees.

7. Review. The DEEOO will review this instruction annually, on its anniversary date, and revise as necessary.

J. W. DYER

Distribution:
List I

AFFIRMATIVE EMPLOYMENT PROGRAM PLANS

1. Description. Currently, there are three affirmative employment program plans which are implemented at each site: Affirmative Employment Program Plan (AEPP) for Women and Minorities, Affirmative Action Program for Individuals with Disabilities, and the DON Affirmative Action Plan for Disabled Veterans. The outgrowth of these plans is the Federal Equal Opportunity Recruitment Plan (FEORP) which develops strategies for addressing any imbalance identified in the previous three plans. These plans contain requirements for managers and supervisors when making human resource management decisions, and identify areas where affirmative employment is needed.

2. Objectives. The principle objectives of our various AEPP's and the FEORP are:

a. To have a work force that mirrors this nation's labor force in terms of representation of women and minority men in all occupations, grades, and levels of jobs.

b. To reach the DON's goal of 5 percent representation of Hispanics in all occupations, grades, and levels of jobs.

c. To strive to attain at least a 2 percent representation in our work force of people with targeted disabilities in all occupations, grades, and levels of jobs; identify architectural barriers; and develop a plan for the removal of any barriers identified.

d. To have disabled veterans represented in our work force in all occupations, grades, and levels of jobs.

3. Program Responsibilities. Responsibilities for achieving the goals of our AEPP's are outlined below.

a. The Commander and Vice Commander, NAVAIRWARCENACDIV will ensure NAVAIRWARCENACDIV executives, both military and civilian, are aware of the goals of our AEPP's and are held accountable for making progress toward these goals.

b. NAVAIRWARCENACDIV executives will use our various AEPP's as their guide when making and/or approving human resource management decisions. They will hold their subordinate managers and supervisors accountable for making progress toward reaching the goals of our AEPP's. Annual performance ratings will reflect support of these plans.

c. NAVAIRWARCENACDIV managers and supervisors will manage and supervise in such a way that any perceptions of discrimination will be eliminated. Managers and supervisors are required to select the best-qualified candidates for jobs regardless of non-merit factors. They will use our various

AEPP's as their guide when making and/or recommending human resources management decisions.

d. NAVAIRWARCENACDIV Directors, the Director, Human Resources Office, and the Associate Human Resources Directors will ensure human resources management decisions are free from discrimination.

DISCRIMINATION COMPLAINTS PROCESS

1. Categories. Discrimination complaints fall into two categories: individual and class.

a. Individual. An individual is a current employee, former employee, or applicant for employment who believes that he or she has been treated differently or unfairly in a job-related matter based on his or her race, color, religion, sex, national origin, age, disability, and/or reprisal.

b. Class. A class is a group of employees, former employees, or applicants for employment who allege that they have been or are being adversely affected by a personnel management policy or practice that discriminates against the group on the basis of their race, color, religion, sex, national origin, age, and/or disability.

2. Procedural Considerations. An employee or former employee may use either the Navy Discrimination Complaint Process or, if a bargaining unit employee, the applicable labor union/management negotiated grievance procedure if there is a negotiated procedure and it applies to complaints of discrimination. Employees eligible to file grievances under the Navy Administrative Grievance System may not raise allegations of discrimination in their grievances. Such allegations can only be raised under the discrimination complaint process. Applicants for employment must use the Navy Discrimination Complaint Process. Either the Navy Discrimination Complaint Process or the negotiated grievance procedure, if applicable, must be used before going to court, with an exception of age discrimination and Equal Pay Act violations, which are explained below.

a. Complainants alleging discrimination based on age may file a civil action in the U.S. District Court after giving the Equal Employment Opportunity Commission (EEOC) at least 30 days notice of the intent to file such an action. Such notice must be filed in writing with the EEOC, Federal Sector Programs, 1801 L Street, N.W., Washington, DC 20507 within 180 days of the occurrence of the alleged unlawful practice.

b. Complainants alleging a violation of the Equal Pay Act may file a discrimination complaint or file directly in Federal district court without first providing notice to the EEOC or exhausting administrative remedies. The statute of limitations is 3 years for a willful violation and 2 years for all other violations.

3. Discrimination Complaints Process

a. The discrimination complaints process consists of an informal stage in which counseling occurs or an alternative dispute resolution process and a formal stage. If counseling or an alternative dispute resolution process (see enclosure (3))

does not resolve the problem, a formal complaint may be filed by the employee.

b. Individuals who allege discrimination and desire corrective action through the NAVAIRWARCENACDIV complaint process must request consultation with an EEO specialist/counselor within 45 calendar days of the date of the alleged discriminatory act. After completion of the informal complaint intake form, the EEO counselor will attempt to resolve the matter informally with the individual at the lowest management level. The counselor is not a representative of the complainant or management, but acts as a neutral party who makes inquiries to uncover facts. The facts form the basis for a common understanding of the problem by all parties. At any stage of the process (informal or formal) the complainant is entitled to have a representative of his or her choosing. The counselor has 30 calendar days in which to attempt resolution before the individual may file a formal complaint unless the individual has granted an extension of no more than 60 days. If the individual chooses an alternative dispute resolution process, the period to attempt resolution is 90 days. At the end of the counseling period or the end of the alternative dispute resolution process, if the complaint has not been resolved, the complainant is given a final interview and has 15 days to file a formal complaint if he or she chooses to do so. Only issues brought to the EEO counselor's attention as stated on the informal complaint intake form or raised during alternative dispute resolution will be accepted for processing. The processing of discrimination complaints will follow the procedures in references (b), (d), and (e).

c. A mixed case complaint is a complaint of employment discrimination based on race, color, religion, sex, national origin, age, or disability relating to or stemming from an action that can be appealed to the Merit Systems Protection Board. The complaint may contain only an allegation of employment discrimination or it may contain additional allegations that the Merit Systems Protection Board has jurisdiction to address. Reference (f) contains the regulation covering mixed cases of employment discrimination. Guidelines contained in reference (b) will be followed when processing a mixed case complaint.

d. Class Action Complaints will be processed by the servicing Human Resources Service Center for the business unit.

ALTERNATIVE DISPUTE RESOLUTION PROCESS

1. Description. Reference (g), enacted in 1990, requires each agency to develop a policy for implementing an alternative means of dispute resolution (ADR) in its administrative programs. References (b) and (d) permit the use of an established dispute resolution procedure in the informal stage of discrimination complaints. ADR refers to a diverse array of dispute resolution approaches usually involving a neutral third party who can assist disputing parties to resolve disagreements. An individual seeking a prompt, equitable resolution to the fundamental issues in an allegation of discrimination may find an ADR established process to be useful. Individuals may choose one of the NAVAIRWARCENACDIV ADR processes instead of the traditional EEO counseling.

2. Discussion. The use of an ADR process will encourage participants to narrow issues and to identify and address their most fundamental concerns. The result should be a win-win situation rather than win-lose or lose-lose. The latter two types do not last; they only result in renewed or continued confrontation. Using an ADR process provides an extended period in which to resolve discrimination complaints. Instead of a maximum 30 days to gather the facts in the traditional EEO counseling, references (b) and (d) provide a 90-day period when using ADR. This permits resolution at a much earlier stage, which is healthier for the individual and the NAVAIRWARCENACDIV. Even if ADR processes do not result in agreements that are acceptable to all parties, all is not lost. The individual can still take his or her complaint to the next stage, but those issues taken forward will be more focused and should result in a more efficient investigation.

3. Dispute Resolution Process

a. While completing the informal intake form, the EEO Counselor presents the dispute resolution options to individuals who seek counseling in the traditional way, thoroughly explaining each option. If an individual selects ADR, the EEO Counselor refers him or her to the Discrimination Complaints Manager or the Site EEO Manager who serves as the focal point for getting the ADR process in motion.

b. Once the ADR process chosen by the individual has been completed, either a memorandum of resolution is prepared, signed, and made a matter of record if ADR was successful in resolving the complaint, or a report is written by the ADR lead and forwarded to the counselor. A final interview is conducted no later than 90 days from the date the complainant first contacted the EEO Counselor. During the interview, the individual is informed of his or her right to file a formal complaint.

SPECIAL EMPHASIS PROGRAMS

1. Description. Special emphasis programs include the Federal Women's Program, the Hispanic Employment Program, the African American Employment Program, the Asian American/Pacific Islander Program, the Native American/Alaskan Native Program, and the Disability Employment Program.

2. Objectives. Special emphasis programs are established as an integral part of the overall EEO program to enhance the employment, training, and advancement of a particular minority group, women, or individuals with disabilities.

3. Program Responsibilities. EEO Specialists, under the direction of the DEEOO and the AHRD's, are responsible for ensuring these special emphasis programs are active at their respective sites. Programs can include, but are not limited to, Awareness Month Celebrations, statistical analyses, surveys, barrier identification, strategies to overcome barriers, and special interest committees.

EQUAL EMPLOYMENT OPPORTUNITY HONORARY AWARDS

1. EEO Honorary Awards provide annual recognition to a site, units within a site, and individuals who have demonstrated superior accomplishments during the previous fiscal year or longer period, if warranted.

2. EEO awards may include, but are not limited to, the following categories: unit awards; individual awards such as manager, first line supervisor, and non-supervisor; and disabled employees program support awards.

3. The DEEOO, in consultation with local site management, will develop more specific criteria for the above awards, publicize the awards program annually, and present the awards at an annual meeting or awards luncheon, as appropriate.

EQUAL EMPLOYMENT OPPORTUNITY COMMITTEES

1. Description. EEO committee membership will function as a project-oriented committee that executes specific activities to further the goals of the EEO program.

2. Objectives. The DEEOO, AHRD's, and local site management will develop objectives for their respective EEO Committees.