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UNITED STATES GOVERNMENT PRINTING OFFICE
OFFICE OF THE INSPECTOR GENERAL

memorandum

DATE: June 11, 1999

REPLY TO

ATTN OF: Inspector General

SUBJECT: Interim Report on the Processing of Formal EEO Complaints

TO: Deputy Public Printer

The attached interim report is intended to alert GPO management to conditions requiring immediate corrective action. A more comprehensive report will be prepared at the conclusion of the audit which will examine all aspects of the discrimination complaint process at GPO.

The interim report contains recommendations developed by the audit team through normal audit methods. These are appropriate recommendations which, if implemented, should improve the processing of formal complaints by the Office of Equal Employment Opportunity.

However, the gravity of the situation we found in the Counseling and Complaints Processing Division (CCPD) warrants my further comment on the management intervention that will be necessary to correct the deficiencies in the program.

I conclude from the findings of the audit team that:

- The staff of the CCPD who process formal complaints are in significant noncompliance with the Federal regulations governing the formal complaint process.
- The staff is not responding to efforts by the Director, Office of Equal Employment Opportunity, to bring the program into compliance with Federal regulations.
- The noncompliance has resulted in GPO employees being denied the impartial, fair and early resolution of their formal complaints that the EEOC regulations were designed to promote. The noncompliance may also expose GPO to substantial liability should the formal complainants resort to their appellate remedies under the regulations.

Therefore, I recommend that you consider replacing the staff of the Counseling and Complaints Processing Division (CCPD) with personnel who will undertake to comply with Federal regulations governing the formal complaint process.

You should consider: restaffing through contracting with a public or private entity to furnish qualified individuals on a temporary basis; detailing motivated and skilled GPO employees from another Office to the CCPD; or hiring qualified individuals on an emergency basis to replace the current staff.

This recommendation applies only to those CCPD employees responsible for the processing of formal complaints.

If you have any questions or need additional information, please contact me at x31183 or 2-0039.


ROBERT G. ANDARY

Attachment

cc: Director, Office of Equal Employment Opportunity

U.S. Government Printing Office
Office of the Inspector General
Office of Audits

**INTERIM REPORT ON THE PROCESSING
OF FORMAL EEO COMPLAINTS**

On January 6, 1999, the Deputy Public Printer asked the Inspector General to conduct a complete audit of the Equal Employment Opportunity Program at the U.S. Government Printing Office (GPO). The resulting audit undertaken by the Office of Inspector General (OIG) has focused on the operation of the Counseling and Complaints Processing Division (CCPD) of the Office of Equal Employment Opportunity. The objective of the audit was to examine the policies, activities and procedures of the CCPD to determine whether it is fulfilling its mission of serving the needs of both the agency and employees in a timely manner.

It has become apparent in the course of the audit that the CCPD is not fulfilling its mission with respect to the processing of formal complaints. As set forth in more detail below, the office had exceeded statutory time limits for processing formal complaints in every one of its open cases. The result is that GPO employees who file formal Equal Employment Opportunity (EEO) complaints are being routinely denied the due process of the law. Our audit activity indicates that this serious deficiency is not likely to be corrected in the near future without aggressive management intervention.

Accordingly, we are issuing an interim report detailing our preliminary findings and recommendations because of the need for immediate corrective action to improve the processing of formal complaints. We will continue the audit with respect to the overall operation of the CCPD, including the informal complaint process and the contract investigation process, as well as an examination of closed cases, security, automation and related issues. We will also compare the operations of the CCPD with the operation of similar units in other Federal agencies.

RESULTS IN BRIEF

During the course of this audit, certain issues were identified regarding practices within CCPD that were consistently in noncompliance with applicable Federal regulations. We identified several procedures that warranted immediate management attention to insure compliance with the regulations issued by the U.S. Equal Employment Opportunity Commission (EEOC), 29 CFR (Code of Federal Regulations) Part 1614. GPO management officials should take immediate action to prevent recurrence of the following control issues:

1. The processing of formal complaints was found to be in noncompliance with applicable Federal time limits for all open formal complaint cases.
2. In addition, the CCPD methodology for processing formal complaints is in conflict with the process established by EEOC regulations.

Implementation of the report recommendations should improve policies and procedures, strengthen management controls, and reduce or eliminate noncompliance with applicable Federal regulations in this area.

Management has agreed to implement the recommendations in this report.

The audit activity upon which this interim report is based was performed by Mr. David Schaub, Supervisory Auditor, Ms. Frances Gross, Auditor-in-Charge, and Ms. Michele Anderson, Auditor.

OBJECTIVES, SCOPE, AND METHODOLOGY

The observations and findings in this interim report were revealed as a portion of a management-requested audit conducted on behalf of the Deputy Public Printer regarding EEO's CCPD. The objectives of this audit were to examine the policies, activities and procedures of GPO's EEO CCPD, and to determine whether or not it is fulfilling its mission of serving the needs of both the agency and GPO's employees in a timely manner.

The scope of this interim report was limited to the area of formal complaints; it included a review of the prior six years of formal complaint files. This interim report is based on audit work conducted between January and June, 1999. The data included in the tables appended to this report are current as of May 18, 1999. Formal complaint case files for all currently open cases (at a cutoff point established by the audit team) were examined in detail to determine whether they were processed in a timely manner, in compliance with the regulations established in 29 CFR 1614. An assessment was made, based on interviews, compliance with Federal regulations, and review of documentation, whether cases were completed efficiently. Appropriate testing and verification of controls and documents were also included.

The system of internal controls was examined and a general review of key controls was performed to evaluate their appropriateness and effectiveness. The discovery of several significant weaknesses determined the nature and extent of audit work that was done by request of GPO management in the limited-scope area of formal complaints.

This review was performed in accordance with generally accepted Government auditing standards and included such tests of the procedures and operations as were considered necessary in the circumstances. Significant instances of noncompliance with laws and regulations in the specific area described were noted.

FINDINGS AND RECOMMENDATIONS

1. PROCESSING OF FORMAL COMPLAINTS DOES NOT COMPLY WITH FEDERAL REGULATIONS

FINDING

A review of the formal complaint case files prepared by CCPD revealed that the 180-day limit prescribed by EEOC regulations for case resolution has been exceeded in every current case. The Status Report of current formal complaints prepared by CCPD, listed as of December 10, 1998, showed a total of 51 open cases at that time. The audit team examined in detail the files prepared for these cases, and compared the dates when each case was opened to the current date (at the time of this audit). The audit team discovered that none of the 51 cases could be completed within the allowable time limit prescribed by Federal regulations, as all of them had already surpassed it.

EEOC regulations stipulate that every formal complaint accepted should be investigated and have had a decision reached on it within a maximum time limit of 180 days. Within 29 CFR Part 1614.106, "Individual complaints," subpart (d)(2), states:

"The agency is required to conduct a complete and fair investigation of the complaint within 180 days of the filing of the complaint unless the parties agree in writing to extend the period."

In its commentary to the final rule, the EEOC makes clear that it expected agencies to comply with the 180 day limit of 29 CFR 1614, Part C, "Agency Processing of Individual Complaints:"

"We believe that agencies can complete investigations within 180 days and that agencies will have sufficient incentive to investigate complaints. The most recent federal sector statistics reported by the agencies to EEOC indicate that the average time it takes an individual complaint to reach the proposed disposition stage under part 1613 is 180 days or less in a majority of the agencies. Since under part 1614 the proposed disposition and informal adjustment are being eliminated from the agency process, agencies should be able to complete the investigation under part 1614 in the same amount of time it takes to reach the proposed disposition stage under part 1613. This indicates that the 180-day time frame can be met."

57 FR 12635 (April 10, 1992). 29 CFR 1614.108 goes on to describe an exception, by written agreement with the complainant, whereby this time period may be voluntarily extended up to an additional 90 days. However, no evidence of written agreements received from complainants for extensions were found in the current formal complaint

case files. Thus without such documentation, the CFR's 180-day limitation would be considered valid for all current formal complaints received by CCPD.

Furthermore, many open cases remained open for an amount of time significantly in excess of the prescribed time limit. A breakdown of the ages of cases was prepared by arranging them in ascending order from least overdue to most overdue. This listing showed a spectrum of delinquent cases that ranged from 235 days to 2,289 days, as summarized in Table A.

CCPD officials explained that some of the factors that contributed to delays in formal complaint processing were beyond their control. They cited such factors as slow response time by some complainants, and inaccuracies in the Reports of Investigation (ROIs) prepared by contract investigators (causing returns of ROIs to the preparers for revision). Processing delays by the Office of General Counsel (OGC) when complaint case files are provided to the OGC were also mentioned. CCPD personnel claimed that the steadily decreasing resources in their department have impacted the timeliness of processing.

The audit team considered these factors in its review of the case files. The team concluded that there were instances where at least one factor could have had an adverse impact on timely case resolution. Data obtained from the Office of Budget revealed that the Full Time Equivalencies (FTEs) for the EEO Department as a whole have been steadily decreasing at a rate far greater than the GPO average since FY 1993. Office of Budget data showed that the FTE level for the EEO Office was reduced from sixteen (for September 1993) to eight (by September 1998), or a 50 percent reduction in personnel. By contrast, statistics compiled for the Federal Sector Reports On EEO Complaints and Appeals from FY 1993 through 1998 showed the total number of GPO employees decreased from 4,779 to 3,414 in this period, or a 29 percent decline. CCPD management claimed that their duties have also increased over this time, making case resolution more difficult to achieve.

However, although delays in processing were not always controllable, they did not completely account for the rate of delinquency that existed with formal complaints. To illustrate this point, the process of formal complaints processing was analyzed at the beginning (Phase 1) and at the end of the process (Phase 4), as follows.

Phase 1: Formal Complaint Initiation to Acceptance Letter

The December 1998 Status Report listed nine cases where a decision had not been reached regarding acceptance of the complaint as a formal complaint (requiring issuance of an acceptance letter) or rejection of the complaint (requiring a rejection letter). This quantity represented 17.6 percent of the total formal complaints initiated. EEOC regulations do not specify a time limit for issuance of an acceptance or rejection letter. However, it is implied that with an overall 180-day time limit imposed on the process, an inordinate amount of time should not be used to make this decision, as it is only the first of many procedural steps to be taken. A review of the nine cases that were described as

“Awaiting Acceptance/Rejection [letter]” in GPO’s CCPD revealed that all nine of these cases had already taken more than 180 days since initiation without achieving the first stage of acceptance or rejection.

This situation was underscored in a memorandum from the EEO Director to the CCPD Chief dated April 3, 1998. In this memorandum, the issue was addressed as follows:

“Also, let’s talk again about the acknowledgement [acceptance] letters because one of the reasons ...[a complainant] went to court was because it had been over 180 days since ...[they] had filed [the] formal complaint and we hadn’t even acknowledged that ...[they] had filed a formal complaint. There are many other complaints that were filed over 180 days [ago] that need to be acknowledged.”

In discussions with the audit team, the EEO Director claimed that this subject had been discussed orally with the staff on several occasions. Furthermore, the Director noted that the problem of having numerous complaints in the category of “Awaiting Acceptance/Rejection” has been in evidence on status reports since December 1997.

Phase 4: Resolution Via Hearing or Final Agency Decision

Once the complainant decides either to request a hearing or receive a final decision, 29 CFR Part 1614 specifies the maximum amount of time that can be devoted to this phase of the process. If the complainant opts for a final agency decision (FAD), the deadlines are specified in 29 CFR 1614.110, “Final decisions,” as follows:

“Within 60 days of receiving notification that a complainant has requested an immediate decision from the agency, within 60 days of the end of the 30-day period for the complainant to request a hearing or an immediate final decision where the complainant has not requested either..., the agency shall issue a final decision.”

Regardless of complainant response, CCPD would be expected to issue a decision. Yet a review of the formal complaints as of December 1998 showed that only one FAD had been reached in the previous two years on applicable cases. This FAD was not prepared until 2,278 days had elapsed since the formal complaint was first filed, according to statistics from the Federal Sector Report On Complaints And Appeals for FY 1998. Therefore, scrutiny of all closed cases per the December 1998 status report was done to determine how many had obtained the FAD. A total of 21 of 130 cases, or 16 percent, had FADs prepared. The actual time taken for their resolution is summarized in Table B.

From this analysis of the formal complaint process, it became evident that CCPD was not in compliance with Federal regulations for following deadlines imposed via the CFR. As a result of this noncompliance, the “Average Days To Closure” statistics that have been provided to EEOC for Federal Sector Reports On Complaints And Appeals have been

well in excess of the 180-day maximum since Fiscal Year 1988. The average days to closure from FY 1988 through FY 1998 has ranged from a minimum of 416 days to a maximum of 1,114 days, for a combined average of 752 days, or more than four times the maximum allowable limit.

RECOMMENDATIONS

The Director of GPO's Equal Employment Opportunity Office should take immediate steps to ensure that improved efforts are made to comply with EEOC deadlines. To that end, the Director should:

- Document the efforts of GPO's EEO Counseling and Complaints Processing Division personnel to achieve EEOC-imposed deadlines (9906-01).
- Review and revise Position Descriptions and performance reviews for personnel involved with the formal complaints in order to emphasize the significance of meeting EEOC deadlines, so that future identification of persistent noncompliance would result in appropriate performance ratings and/or other sanctions (9906-02).

Furthermore, the Director of EEO should meet with the Deputy Public Printer, General Counsel, and/or other GPO management representatives to discuss the effectiveness of contacting individual complainants who continue to have outstanding formal complaints. Such contact could be in the form of a memorandum or other document notifying these complainants that their complaints were not processed in accordance with applicable EEOC regulations, and that GPO will be taking immediate steps to address and remedy this situation via corrective action.

2. THE METHODOLOGY FOR PROCESSING FORMAL COMPLAINTS IS IN CONFLICT WITH THE PROCESS ESTABLISHED BY EEOC REGULATIONS

FINDING

Certain procedures and methods employed by EEO's CCPD staff in handling formal complaints were in direct contradiction with EEOC regulations. These actions hampered efficient case processing, while having a direct impact on causing formal complaint cases to be overdue. Furthermore, the CCPD staff both acknowledged and supported the usage of these alternative strategies, knowing that they would cause or contribute to delays, with the intent of using delay as a strategy to help induce some complainants to withdraw their complaints.

CCPD personnel admitted to a strategy of "waiting out" some of the complainants in cases where they had made a value judgement ahead of time regarding the legitimacy of the complaint. In a memorandum addressed to the Deputy Public Printer on January 26, 1999, the Chief of CCPD acknowledged this practice:

"Of course, I am aware that the [complaint] process is outlined by regulation, but we are dealing with people not paper. If you can reach a settlement, whereby, everyone comes out happy, why not bend the rules."

The audit team found other documents indicating that this practice of delaying has been in effect for a significant amount of time. In some cases, CCPD staff had concluded that a given complaint could be resolved without an investigation, even after they had become formal complaints, through use of this tactic.

For example, an internal office memorandum on March 20, 1998, explained this strategy in further detail:

"When the counselors tell me that they wish to follow up on a case, or they feel that the individual is surface angry, then I wait. Sometimes, we feel that a case should be postponed until people have cooled off and then you can work out a resolution. However, I have found that once you give complainant's [*sic*] something in writing that says that they are about to receive an investigation, they believe that they must have one, and are less amenable to resolve [the complaint]."

Discussions with the EEO Director have revealed that this strategy was commonly known. It was explained that if the complaint has not been officially accepted, then it cannot be sent to a contract investigator for the ROI, and the complainant may eventually decide to withdraw the complaint. The Director claimed to have informed the CCPD staff that this practice is unacceptable. The staff must be consistent in their methods of accepting complaints, and because a policy of "waiting out" (i.e. delaying action on the case) would hamper the investigation. The Director stated that CCPD staff had responded by commenting that if the complainant were made to wait for a sufficient

amount of time, they would withdraw the complaint. However, a review of documentation provided by the Director that was allegedly sent to CCPD personnel did not show evidence of any comments or memoranda that specifically addressed this subject.

CCPD staff has explained that the use of this strategy saves GPO the cost of fees that would otherwise be paid to contract investigators for conducting investigations and preparing reports. Further commentary on this issue was included in the previously cited January 26, 1999 memorandum to the Deputy Public Printer:

“...History has taught us that once you have a formal investigation, where people have to make statements, it can seriously and sometimes irreparably damage an organization. We try to settle at all costs, without such records having to be created. I rely upon the counselors to determine when a case should be held in abeyance for further negotiation. I must say that the counselors...are generally right. Last year alone, we got approximately ten withdrawals.”

This claim regarding withdrawals was compared to the December 1998 status report. Out of the 130 cases listed as “Closed” on this report, 19 cases (or 15 percent) were designated with a “W” denoting withdrawal of a case. It could not be determined, however, how many of these withdrawals were recent.

CCPD personnel also justified this strategy by commenting on the fact that the complaints that are most common, i.e. those based on non-selection for a job opening, are the most difficult to resolve. It was acknowledged that some of these complaints could be “on the books” for years. CCPD personnel explained that this situation can occur because they want to wait and see what happens later in a complainant’s career. It is possible that the complainant could be selected for a subsequent job or position that would render moot his or her earlier complaint.

However, it was also noted that a significant proportion of the complainants who have filed these long-unresolved formal complaints are no longer employed by GPO. A review of the 47 different complainants represented on the December 1998 status report (note that there are less complainants than complaints because some complainants have filed more than one complaint) revealed that 13 of them, or 27.7 percent, have either retired or left GPO. As a result, the likelihood that these cases will remain unresolved has increased, as has the possibility that the complainant did not achieve satisfaction from the complaint. Eventually, GPO’s potential liability for not reaching a timely resolution was likely to increase.

RECOMMENDATIONS

The Director of GPO’s Equal Employment Opportunity Office should take immediate steps to ensure that the practice of delaying processing, or waiting until or unless a

complainant withdraws their complaint, is actively and effectively discouraged. To that end, the Director should perform the following actions:

- Prepare written notification and/or procedures for GPO's EEO Counseling Complaints Processing Division, sanctioned by GPO executive management, that would require personnel to immediately abandon the intentional strategy of delay tactics and require compliance with CFR and EEOC regulations (9906-03).
- Continuously monitor those complaint cases where little or no action has been taken for a significant time period, including maintaining of contact with the complainants, in order to determine whether these tactics are continuing (9906-04).
- Scrutinize cases where progress has been rapid in evolving toward resolution so that they may be used as models or prototypes for other cases where appropriate (9906-05).

TABLES

Table A

**NUMBER OF DAYS SINCE ORIGINAL COMPLAINT FILING
FOR THE PERIOD ENDING MAY 18, 1999
(Years represent calendar years)**

Case No	1993	1994	1995	1996	1997	1998	1999	Total Days
93-20	325	365	365	366	365	365	138	2289
93-38	177	365	365	366	365	365	138	2141
93-39	178	365	365	366	365	365	138	2142
93-43		138	365	366	365	365	138	1737
94-09		249	365	366	365	365	138	1848
94-10		227	365	366	365	365	138	1826
94-11		328	365	366	365	365	138	1927
94-13		255	365	366	365	365	138	1854
95-03		30	365	366	365	365	138	1629
95-09			264	366	365	365	138	1498
95-11			208	366	365	365	138	1442
95-12			167	366	365	365	138	1401
95-13			138	366	365	365	138	1372
95-15			96	366	365	365	138	1330
96-04			113	366	365	365	138	1347
96-08				256	365	365	138	1124
96-09				256	365	365	138	1124
96-10				249	365	365	138	1117
96-12				181	365	365	138	1049
96-13				185	365	365	138	1053
96-15				148	365	365	138	1016
96-17				113	365	365	138	981
96-18				96	365	365	138	964
97-01				30	365	365	138	898
97-03					336	365	138	839
97-04				13	365	365	138	881
97-05					343	365	138	846
97-06					303	365	138	806
96-07					279	365	138	782
97-08					308	365	138	811
97-09					270	365	138	773
97-10					285	365	138	788
97-11					272	365	138	775
97-12					272	365	138	775
97-13					231	365	138	734
97-14					187	365	138	690
97-17					233	365	138	736
98-01					48	365	138	551
98-02					48	365	138	551
98-03					1	365	138	504

Case No	1993	1994	1995	1996	1997	1998	1999	Total Days
98-04					1	365	138	504
98-05						332	138	470
98-06						339	138	477
98-07						300	138	438
98-08						297	138	435
98-09					233	365	138	736
98-10						365	138	503
98-11						156	138	294
98-12						100	138	238
98-13						99	138	237
98-14						97	138	235
98-15						105	138	243

KEY

Case file numbers are assigned by fiscal year.

Column headings represent calendar years.

97-04, 98-06, 98-07, and 98-09 – indicates a discrepancy between the login date and the date recorded on the formal complaints.

Table B
FAD PREPARATION TIME

Case No	Investigator	Date ROI Sent To EEO	Date OF FAD
90-31	Delany Siegel & Zorn	7/92	11/94
90-33	Delany Siegel & Zorn	12/92	12/94
91-11	Mgmt. Resource Assoc.	11/91	8/93
91-18	Not Available	Not Available	8/93
91-20	Murphy & Johnson	6/93	6/96
91-21	Murphy & Johnson	4/93	12/94
91-23	Not Available	Not Available	3/95
91-24	Murphy & Johnson	11/92 (request to invest.)	10/94
91-28	Murphy & Johnson	3/93	12/94
92-01	Murphy & Johnson	6/93	6/96
92-05	Not Available	Not Available	No Date
92-07	Murphy & Johnson	11/93	6/94
92-09	Murphy & Johnson	8/93	8/94
92-14	Murphy & Johnson	1/94	3/95
92-17	Murphy & Johnson	5/93	3/97
93-01	Murphy & Johnson	2/93	2/94
93-03	Murphy & Johnson	2/93	10/93
93-30	Murphy & Johnson	8/93	Not Available
94-08	Not Available	Not Available	7/95
94-14	Not Available	Not Available	10/96
94-17	National Employment	Not Available	11/98

KEY

“FAD” = Final Agency Decision

“Not Available” = Not Available at the time of the review.

“No Date” = No Date on the FAD Letter.