

**U. S. Department of Agriculture
Office of Inspector General
Audit Report**

**OFFICE OF CIVIL RIGHTS
MANAGEMENT OF
EMPLOYMENT COMPLAINTS**



**Audit Report No.
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March 2000**



UNITED STATES DEPARTMENT OF AGRICULTURE

OFFICE OF INSPECTOR GENERAL

Washington, D.C. 20250



March 10, 2000

REPORT TO THE SECRETARY ON CIVIL RIGHTS ISSUES – PHASE VII

FROM: Roger C. Viadero
Inspector General

SUBJECT: Audit of the Office of Civil Rights' Management
of Employment Complaints

In August 1999, you asked me to review the accuracy of the inventory data maintained by the Department's Office of Civil Rights (CR) with regard to USDA employees' complaints of discrimination (EEO). In your August letter, you also asked me to evaluate the efforts by CR to implement the recommendations we made during our six previous reviews of CR's processing of complaints of discrimination in the distribution of USDA program benefits. We completed both requests in two separate reviews.

Although this is the first time we evaluated CR's management of EEO complaints, it represents our *seventh* attempt to provide CR with constructive ways to overcome its inefficiencies. Based on our current review of CR's EEO complaint processing and on our observations of the EEO operating environment at CR, we cannot report encouraging news.

CR's EEO data base is an unreliable repository of information and its case files are in too chaotic a condition to provide an accurate clarification of the status of complaints (whether under investigation, pending a hearing, etc.) We found a total of 1,731 open complaints, but we cannot say with certainty where in the processing cycle these complaints stand. We could not determine a status of any sort for nearly 15 percent of the cases.

CR is as inefficient in processing EEO complaints as past reviews have shown it to be in processing program complaints. EEO complainants must wait, on average, 474 days before CR accepts the reports of investigation on their cases. The processing times CR reported to you do not reflect actual average times and do not provide meaningful comparisons on which to base notions of progress.

Based on the deficiencies we found in the EEO complaints resolution process and on CR's poor record of responding to our past recommendations concerning program complaints, it is doubtful that any significant level of progress will occur in EEO complaint processing. Unless CR

implements a management plan that addresses effective leadership, changing organizational culture, customer focus, and process reengineering, we question whether future complaints of discrimination in employment will receive due care.

Executive Summary

Results in Brief

This report presents the results of our review of the effectiveness of the U.S. Department of Agriculture's Office of Civil Rights (CR) in processing complaints of employment (EEO) discrimination filed against the Department. The Secretary of Agriculture requested this review to determine whether CR had established a reliable tracking system to ensure that employment complaints were being resolved on a fair and timely basis. CR's timeliness in handling employment complaints has been the subject of recent criticism. A January 1999 report from the General Accounting Office concluded that CR's record for processing these complaints was among the worst in the Federal Government.

The Secretary also asked us to review the status of corrective actions that CR had implemented in response to our previous reports regarding CR's processing of complaints of USDA program discrimination. We conducted our review of program complaints concurrently with this review of employment complaints and are reporting our results under separate covers. (For the results of our review of program complaints, see Audit Report No. 60801-4-Hq.)

Concerning EEO complaints, the Secretary had asked us to establish the number of open cases within USDA and the number of complainants filing these cases. We found that CR's data base for tracking these complaints was unreliable; consequently, we had to perform a complete inventory of the file room to arrive at the data requested. Casefiles identified complaints pending a hearing before the Equal Employment Opportunity Commission (EEOC), as well as complaints that had been reopened because the complainants alleged that the agencies reneged on their settlement agreements. However, not all casefiles reflected where in the resolution process the cases stood, and we cannot be certain of the exact numbers of cases in each category. The following table reflects our best count of the open cases in the categories identified by the Secretary.¹

	Complaints	Complainants
Pending acceptance	764	598
Accepted and pending within USDA	461	377
Pending before the EEOC	192	156
Indeterminate status	253	189
Reopened for noncompliance	61	61
TOTAL	1,731	1,185

NOTE: A complainant may have more than one case, with each case pending at a different phase of the process. Therefore, the number of complainants by phase will not reconcile to the total number of complainants.

Table 1. The Number of Open Employment Complaints and Complainants.

¹ All sources were used to verify the status of complaints as of September 7, 1999. There are also, according to the Office of the General Counsel, 74 USDA EEO cases pending some action before the courts, but because these cases are no longer in the Department's jurisdiction, it regards them as closed and does not track them.

Although actions can be taken to make CR's case-tracking system more reliable, its condition is, we believe, only a symptom of the larger problem of CR's operating environment. CR needs to design and implement a long-term plan to ensure that it can resolve complaints efficiently and with due care. The EEOC, which enforces all civil rights employment laws, established 270 days as the timeframe within which EEO complaints should be resolved (excluding an EEOC hearing), but CR has been unable to meet this timeframe. Complainants whose cases have been investigated must wait, on average, 474 days before the report of investigation is accepted; complainants whose cases are pending final agency decision must wait, on average, 668 days before the decision is approved. We attribute CR's inefficiency to the agency's constant reorganization and its practice of concentrating resources on the crisis of the moment rather than adhering to a long-term plan to which CR managers and staff could be held accountable.

CR Inefficiency. We reviewed CR's data governing processing time and determined that CR has made less progress than its reports indicate. CR had reported that between 1997 and 1999, it had reduced by over a half the average time it takes to process an EEO complaint. Its data, which it presented in a table we have duplicated below, showed a significant reduction over the 2-year period.

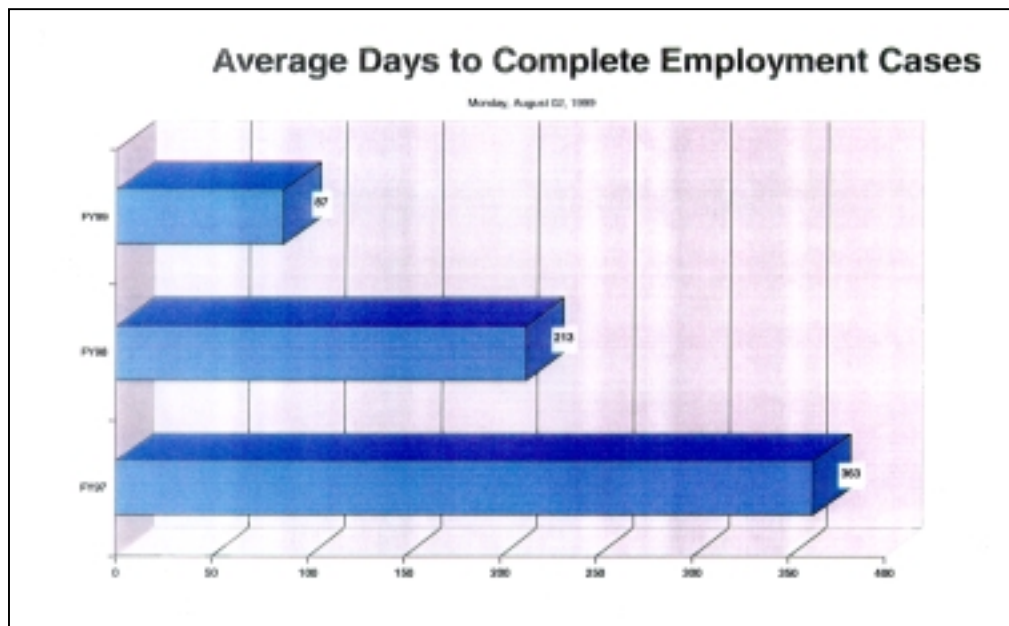


Table 2. Average Days to Process Employment Cases, Calculated by CR.

We tested the data CR used to calculate these averages. We found that the figures were not representative of CR's processing time because they included cases that had been settled by the agencies, not by CR. Also, the figures were based on the number of cases *filed* in each given year. This gives a statistical advantage to cases filed most recently and does not present a meaningful contrast between the years. Cases filed in 1999 would

only count if they were completed in 1999; cases filed in 1997 would count if they were completed any time in 1997, 1998, or 1999, a period that would extend their average processing time. CR accepted 393 cases for processing in 1997; it accepted only 3 in 1999 (before the chart was composed), and those 3 remained in CR's preacceptance category for 222 days² before they were closed due to litigation. A fairer indicator of CR's efficiency is found in the age of those cases still being processed by CR. The following chart represents the average number of days that cases filed in each of the 3 fiscal years had been open as of the date of CR's chart.

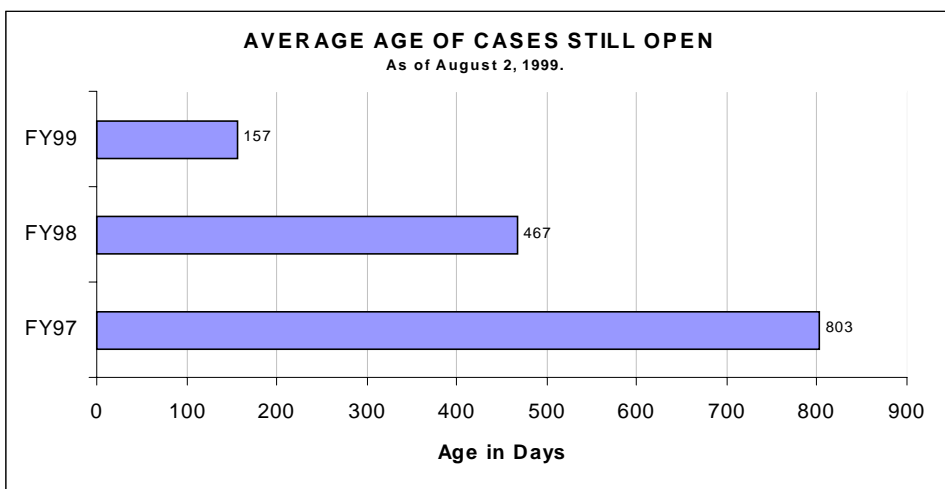


Table 3. Average Age of Open EEO Cases, Calculated by OIG.

Although the numbers for these years still do not result in a meaningful comparison, the average age of open cases suggests that by the time the 1999 cases are closed in fiscal year 2000, CR's average processing time for 1999 cases will have gotten longer.

Questions of due care. Part of CR's inefficiency is reflected in the quality of its reports of investigation and its final agency decisions. Although CR has had to return numerous reports of investigation to its contract investigators to complete work that was inadequate, many of the reports it accepted as complete contained substantial errors. In one case, CR accepted a report of investigation based on investigative work that CR later found it could not rely on to render a final agency decision. We also found final agency decisions that were based on inaccurate assumptions or faulty reasoning and did not always reflect the evidence compiled in the reports of investigation. One final decision was rendered on a complainant's allegation of discrimination on the basis of sex, even though this allegation was not investigated or reported on. In our opinion, these final agency decisions do not show that CR exercised due care in judging the actions of USDA managers in matters affecting the complainants' careers.

² CR's 1999 average of 87 days includes another 60 cases that were received in 1999 but that were never accepted and therefore never processed.

Short-term vs. long-term strategies. The untimeliness of CR's complaint processing and the questionableness of some of its decisions are, as we noted earlier, a result of management practices that rely on short-term solutions rather than long-term plans to which they could hold their employees accountable. Although CR officially abandoned its original mission approach to processing complaints and implemented a more segmented approach, it has, over the past 3 years, practiced a style of management that employs neither approach. Employees are tasked to resolve the crisis of the moment, whether it be a backlog of new complaints, a backlog of unclosed cases, or a backlog of unwritten final decisions. This practice often requires employees to perform duties for which they are untrained and neglect duties for which they are nominally responsible, thereby creating the next backlog and the next crisis. This practice has nullified CR's ability to hold its employees accountable for processing complaints efficiently and with due care.

In 1997, for example, CR created a backlog of complaints pending acceptance when it took personnel from the acceptance desk and moved them to clear a backlog of old complaints. In early 1998, to handle the backlog of complaints pending acceptance, *CR accepted them all*, which in turn increased the volume of cases that CR was obliged to process. CR hired contractors to write final agency decisions, but according to CR personnel, almost every decision had to be rewritten by the CR staff, creating another backlog of cases pending acceptance. As of the date of our fieldwork, this backlog stands at 750. No key people in critical areas were held accountable to coordinate the complaint process and ensure that each complaint was handled with due care. Half of the employees in the Employment Complaints Division received outstanding performance appraisals for 1998. No division employee was placed on a performance improvement plan.

Organizational and Leadership Changes. As noted above, constant reorganization of the Employment Complaints Division within CR³ and the large turnover of personnel throughout CR management's chain of command have left CR without a long-term plan to meet its obligations to the Secretary, to EEOC, and to the complainants. Over the past 3 years, the key management positions over USDA civil rights affairs, from the Assistant Secretary for Administration (ASA) to the chief of the Employee Complaints Division, have experienced persistent changes in leadership, as portrayed on the chart on the following page.

³ Effective October 1999, a new division was created separating the employment complaints division from the writers of final agency decisions. However, our review was conducted when these functions were under the one employment complaints division.

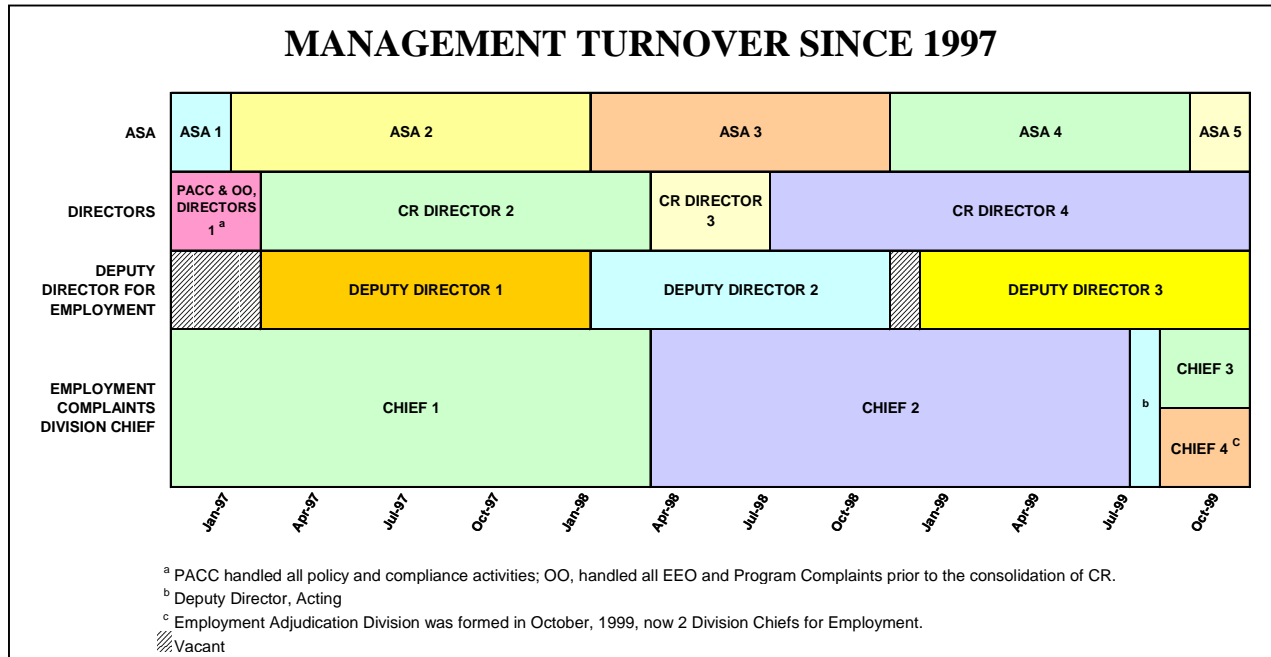


Table 4. Stratified Depiction of the Changes in CR Management’s Chain of Command Since 1997.

Each change in management has brought a new focus and a different emphasis within CR. Also, each change in personnel assignment has affected the efficiency of the process. Because CR employees are often new to a job or only responsible for a segment of the complaints process, no one individual within CR can answer all questions about a complaint when contacted by USDA agencies or by the complainants. One agency civil rights official called four different people within CR before finding the knowledgeable party.

CR’s case-tracking system and file room. CR’s case-tracking system and file room have both suffered from CR’s short-term strategies. No one has been held accountable for the unreliability of the data base and for the chaos of the casefiles. Although the case-tracking system could be effective, CR employees were not using it according to its potential. They did not update it in a timely manner, and they did not always reconcile its data with other USDA agencies. We found 133 complaints listed by the agencies but not by CR, and another 344 complaints listed by CR but not by the agencies.

The casefiles that support CR's data base also cannot be wholly relied upon. Our review found CR’s file room in chaos. Casefiles contained information on cases that were not relevant to the file; documents in the files were loose and in no particular order; and 399 files were placed in the "open" section of the file room, even though the cases were closed. As of the end of our fieldwork, the file room clerk could not locate 18 of the open complaint casefiles.

CR's current case-tracking system could perform more efficiently if CR used it to its potential, but it is an old system and not as user-friendly as more current software. It also allows access by all employees without identifying the employee making changes to the file. At the Secretary's request, we considered the availability of other tracking systems, but we did not encounter any that could be installed as readily as the Secretary had hoped. CR is planning to convert to a newer system that will provide better case management as well as an audit trail. However, if training is insufficient, this new system will quickly become inaccurate itself.

Interdepartmental relations. Although CR and the Department agencies share a responsibility to resolve employment complaints, they do not function as partners in the resolution process. Agencies have complained of difficulty in contacting CR staff to obtain information on a complaint or locate case documents that CR was supposed to forward to the agencies. The CR director's monthly meetings with agencies leave issues unresolved, and CR's report of complaints status seldom reflects agency updates for settlements and other closures. CR does not reconcile its case-tracking system with agency data. Frustrated with an apparent closed-door policy, agencies have given up trying to reconcile their case numbers with CR or even seeking EEO guidance from CR. One of CR's primary missions is to inform agency civil rights staffs of EEO policies and train them on civil rights matters, but it has not done this. Although the Supreme Court has recently handed down three important decisions on harassment, no guidance has been issued from CR on these decisions.

We also noted that CR has been processing EEO complaints made against CR management. There are no separate procedures in place for processing complaints from CR employees; consequently, these employees may not receive due process. They are not afforded an unbiased, third-party review and may be subjected to acts of discrimination that are allowed to continue because the officials responsible for signing decisions have a vested interest in the complaint.

Key Recommendations

Although all the recommendations we offer throughout this report are issue-specific, some, if implemented, will have larger consequences and can benefit the Department in broader ways than as a corrective only to the issue to which we assigned them. We note five such recommendations. We are recommending that the Secretary—

- Direct CR and the civil rights directors of USDA agencies to establish and develop ways to enhance the working relationship between CR and the agencies' civil rights staffs.

- Develop procedures for processing CR in-house complaints that eliminates potential conflicts of interest and provides unbiased due care,
- Develop a management plan to address the areas of effective leadership, changing organizational culture, customer focus, process improvement and reengineering, with emphasis on long-term planning. This plan should include the development of a workforce planning strategy that would require job classifiers to evaluate the Employment Complaints Division's operations and ascertain the type of positions and grade levels needed to process employee complaints, and that would include an appraisal system that establishes performance standards for use in both appraisals and in personnel selection, and
- Direct CR to expedite the implementation of its new employment complaint tracking system containing advanced edit checks to ensure the integrity of the data and providing workflow functions for casefile management.

For more immediate, issue-specific correctives, we are recommending that CR maintain the integrity of the data in its data base by running routine searches for anomalies to identify suspect data, and by reconciling its data with that of USDA agencies and the EEOC to ensure that all cases are accounted for. Most importantly, CR needs to find the 18 missing casefiles to ensure that the complainants' cases are receiving due care.

CR also needs to provide full disclosure on the data and methodology used regarding civil rights activities, and it needs to perform a document-by-document sweep of its EEO casefiles to ensure that all documentation is accounted for.

Agency Response

In its March 8, 2000, written response to the draft report, CR generally concurred with the findings.

We have incorporated excerpts from CR's response to the recommendations, along with our positions and the actions necessary to reach management decision on the recommendations. CR's response is included in its entirety as exhibit E of the audit report.

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Introduction

Background

The U.S. Department of Agriculture's Office of Civil Rights (CR) is responsible for resolving all complaints of discrimination that are made against the Department. These complaints generally fall into two main categories: complaints of discrimination in the hiring, promoting, or retaining of employees (equal employment opportunity (EEO) complaints), and complaints of discrimination in the award or distribution of Federal program benefits (program complaints). Processing procedures for EEO complaints differ from those of program complaints; consequently EEO complaints are tracked by CR on a separate tracking system.

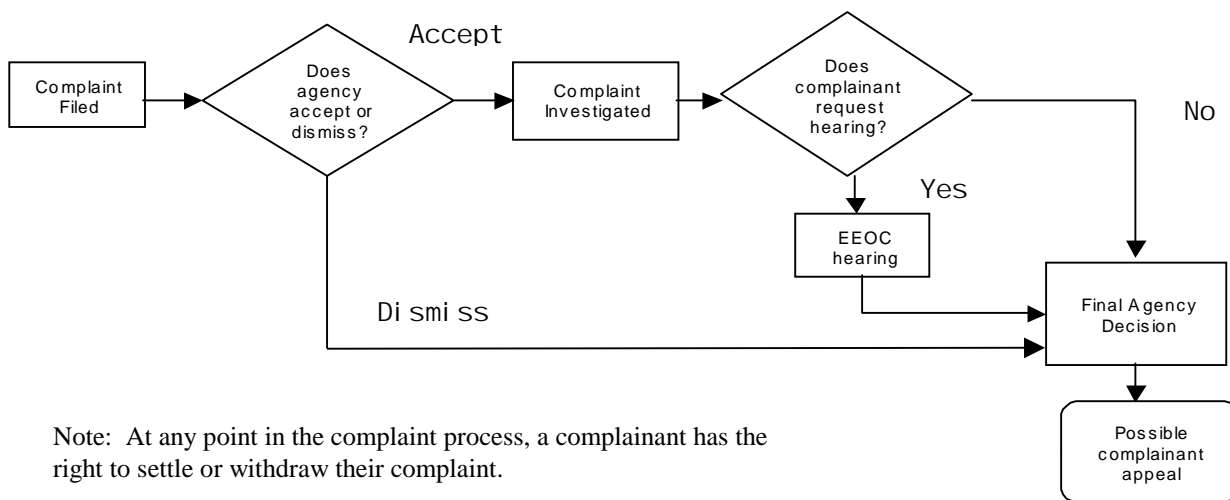
Individuals seeking employment with the Federal Government, or promotion within it, are protected against discrimination by several statutes. Title VII of the Civil Rights Act of 1964 makes it illegal to discriminate in employment on the basis of race, color, religion, sex, or national origin; the American's with Disabilities Act extends these protections to disabled persons; and the Age Discrimination in Employment Act further protects job-seekers and job-holders on the basis of age.⁴

Responsibility for employee complaints has changed hands several times at the Department level. In 1993, the Office of Advocacy and Enterprise handled employee complaints. By 1994, the responsibility was transferred to the Office of Civil Rights Enforcement (CRE). Under CRE, six regional service centers were established that provided counseling and presided over dispute resolution boards. The responsibility for employee complaints was again transferred in 1995 to the Office of Operations (OO) and Policy Analysis and Coordination Center (PACC). As a result of the report issued by the Civil Rights Action Team (CRAT) in 1997, the Secretary of Agriculture gave full responsibility to the Assistant Secretary of Administration. The assistant secretary delegated this authority to CR. This is where we stand today.

CR's Employment Complaints Division (ECD) processes all EEO complaints. Timeframes for processing are prescribed by the Equal Employment Opportunity Commission (EEOC). Individuals who believe they were discriminated against must first contact an EEO counselor within 45 days of the alleged discrimination to attempt to informally resolve the complaint. If this effort is unsuccessful, complainants are given notice of their right to file a formal complaint and have another 15 days to file their complaint with CR. From the date the complaint is filed with it, CR has 180 days to investigate the complaint and issue a report. The complainant then has another 30 days to decide whether to accept a final agency decision (FAD) based on the investigation or to request a hearing before an administrative judge, whose findings can affect the FAD. This entire process may take between 270 days and 450 days, depending on whether the

⁴ Other statutes include the Equal Pay Act, the Pregnancy Discrimination Act, the Rehabilitation Act of 1973, the Civil Rights Act of 1991, and the Civil Service Reform Act.

complainant requests a hearing. However, the complainant also has the right to appeal the FAD, in which case the process may exceed 450 days. (See figure 1.)



Note: At any point in the complaint process, a complainant has the right to settle or withdraw their complaint.

Figure 1: Process for Federal Employment Complaints

CR may reject a complaint if a complainant: 1) fails to state a claim, 2) fails to comply with applicable time limits or has not brought the matter to the attention of a counselor, 3) files a civil action in a United States District Court, 4) has raised the complaint in a negotiated grievance procedure, 5) files a moot complaint or a complaint based on a proposed personnel action, 6) cannot be located after reasonable efforts, 7) fails to provide adequate information to proceed with the complaint, and 8) fails within 30 days to accept an offer from the agency of full relief. If CR accepts an EEO complaint, it refers it to one of several private civil rights investigators it retains under contract to complete an investigation. CR has used as many as 15 contract investigation firms to investigate EEO complaints; beginning in 1999, CR limited its contract work to only 3 firms.

The EEO complaints investigator assembles the facts and gathers information to support a prima facie case. Such a case demonstrates three elements: (1) that the complainant is a member of a protected group or class; (2) that the action taken by the USDA agency was adverse toward the complainant; and (3) that there is some inference that the action was taken because of the complainant's membership in the protected group or class. An inference may be drawn in several ways: statistical data may show the agency's actions have been consistently adverse toward the complainant's group or class; sources may indicate the agency official named by the complainant has made disparaging remarks about the complainant's group or class; or documents may show that the agency's

treatment of the complainant was different from its treatment of individuals who are not members of the complainant's group or class.

CR uses a complaint tracking system, called EEOMAS, to identify the status of each complaint—that is, where in the resolution process the complaint stands, whether under investigation, pending a hearing at EEOC, or at some other point in the process. CR's presentation of its progress in resolving EEO complaints is based on EEOMAS data.

It should be noted that the EEOC regulations governing the procedures for Federal employee discrimination complaints changed effective November 9, 1999. We did not conduct any testing or consider these changes during our evaluation, as it did not affect the status of the September 7, 1999, complaints we reviewed.

This review constitutes our seventh in a series of ongoing evaluations of CR and the first evaluation of CR's employment complaints process. Concurrent with this review, we conducted a followup review (Audit Report No. 60801-4-Hq) of our prior six evaluations of CR's program complaints process. We began our evaluations in December 1996, at the direction of the Secretary, who had raised concerns about the performance of the Department's civil rights program complaint system.

Objectives

Our objectives were defined by the Secretary in his letter to us dated August 24, 1999.

Generally, the Secretary asked us to determine if CR has established a reliable tracking system for EEO complaints to ensure that they are being resolved on a fair and timely basis. His letter requested specifically that we determine the following.

1. The number of EEO complaints, in the following categories: (a) complaints pending acceptance, (b) complaints accepted as formal and pending within USDA, (c) complaints pending before the EEOC, and (d) complaints pending in the courts.
2. The number of complainants, by the same categories listed in Number 1 above.
3. Whether all complaint files can be located.

The Secretary also asked us to identify whether there were adequate case-tracking systems available as "off-the-shelf" software and how long it would take to bring such a system on-line, if the most expeditious procurement approach were used.

We expanded on the Secretary's request by conducting reviews to determine the quality of CR's final agency decisions and the affect of the working environment on CR's operations. See exhibit A for a copy of the Secretary's letter.

Scope

We performed our work at the USDA Office of Civil Rights in Washington D.C. Our review primarily covered operations from fiscal year 1997 to September 7, 1999. The fieldwork was conducted between September 1999 and December 1999.

To accomplish the Secretary's request, we interviewed the staff, managers and former employees of the ECD as well as other CR officials in order to obtain information on the structure and environment of the division. In addition, we interviewed staff personnel at the Office of Human Resources concerning any personnel issues applicable to civil rights.

We interviewed all 18 USDA agency civil rights staffs and an official at the Office of the General Counsel to discuss employment complaint procedures and obtain any concerns regarding the complaint process. (See exhibit B for a list of agency directors interviewed.) Prior to our interview, a letter was distributed to the agency administrators asking them to provide us with information on all open employee complaints. This information was compared with those complaint cases at CR.

We reviewed the Equal Employment Opportunity Monitoring and Analysis System (EEMAS), which allows CR to track and monitor all employee complaint cases for the Department and provide their current status. Early in our review, we found that CR's data base could not be relied upon to provide the correct status of the cases. Therefore, we inventoried 2,129 employee complaint casefiles at the Office of Civil Rights, and obtained complaint information from other USDA agencies. We also requested from EEOC a list of complaint cases currently awaiting a hearing before an administrative judge, and cases awaiting an EEOC decision from an appeal. As a result of this review, we identified 1,731 open cases as of September 7, 1999.

The table on the following page shows our reconciliation of the cases we inventoried with the cases we identified as open, closed, missing, and of undetermined status.

Reconciliation of Casefiles Inventoried by OIG

Total Casefiles Inventoried by OIG	2,129
- Closed files (per casefile documentation)	263
- Closed files (per EEO/AS)	136
- Undetermined Status	17
Total Open Casefiles reviewed	416
+ Missing Open Casefiles (per EEO/AS data--Unable to review)	18
Total Open Casefiles, per OIG	1,731

Table 5. Number of Casefiles Inventoried and Number Actually Open, per OIG.

We also performed a statistical sample of 88 cases from all 1,823 cases that were listed in CR’s data base as having been closed either by a FAD or settlement agreement between October 1, 1996, and September 7, 1999. (See Exhibit D.) We used this sample to test the adequacy of CR’s complaint processing.

The audit was conducted in accordance with Government Auditing Standards.

Methodology

To accomplish our objectives, we interviewed CR officials and staff, agency civil rights directors, and organizations outside the

Department. We also performed the following tasks:

- We conducted a review of 88 statistically sampled reports of investigations from a universe of 1,823 cases that had been closed by a FAD or a settlement agreement between October 1, 1996, and September 7, 1999. When available, we also reviewed the FAD relating to those 88 reports of investigations,
- We reconciled CR’s data base with case files, agency files, and EEOC,
- We analyzed CR’s data base used to track employee complaints,
- We reviewed CR policies and procedures used to process employment discrimination complaints,
- We reviewed the laws and Department regulations applicable to the employment complaint process,
- We performed a physical inventory of all open employee complaint case files at CR,

- We interviewed an official with the Office of the General Counsel (OGC) to determine OGC's role in the employee civil rights complaints resolution process,
- We contacted all of the Department's agency administrators to determine the number of open employee civil rights complaints in each agency and compared these figures to CR's data base. We also interviewed agency civil rights staffs to obtain an understanding of their role in the complaint process and to document their concerns and comments relating to that process.
- We conducted interviews with civil rights officials at the Department of Defense, Office of Army, Department of Treasury, Department of Housing and Urban Development, and the White House employment complaints director to determine what tracking software they use. We also contacted two private software vendors to determine whether off-the-shelf employment complaint tracking software was available,
- We analyzed the EEOMAS data base as of September 7 and September 30, 1999, to determine whether data had been entered correctly and timely, and
- We reviewed cases within the complaint process to determine if the complaints had been accepted in a timely manner.

CR's Systems To Track its Complaint Inventory Are Unreliable; Representations of CR Activity Do Not Reflect Actual Progress

In response to the Secretary's request, we tried to determine the status of all open EEO complaints, whether under investigation, pending an EEOC hearing, or undergoing some other form of processing. We found that CR's data base and physical casefiles are not being properly used as management tools and cannot be relied upon to reflect where each case stands in the process of complaint resolution. The ECD's data base contains inaccuracies, while its physical casefiles are in chaos. As a result, the Director of CR has reported inaccurate information to the Secretary and to Congress, and CR employees are unable to effectively manage their caseloads.

Because we could not rely on CR's data base to arrive at an accurate count of open cases and their status, we performed a complete physical inventory of CR's casefiles and obtained information from CR, from the agencies, and from EEOC. None of the numbers reconciled, and we cannot say with certainty how many cases exist and what the exact status of each case is. The following table shows the status of cases as of September 7, 1999, with our best determination using all available sources of the actual status of cases as of that date.

	Complaints	Complainants
Number of open cases*	1,731	1,185
Pending acceptance	764	598
Accepted		
Under investigation	231	190
Pending complainant election	65	52
Pending agency decision	165	135
Pending before the EEOC	192	156
Indeterminate status	253	189
Reopened for noncompliance	61	61
*A complainant may have a case pending at more than one phase of the process. Therefore, the number of complainants within the phases of complaint processing will not reconcile to the total number of complainants.		

Table 6. Number of Employment Complaints and Complainants Identified by OIG.

The Secretary also asked for the number of open complaints pending before the courts. Such cases are beyond USDA's jurisdiction and are closed by CR once the district courts assume responsibility for them; consequently, their status is not tracked by USDA. However, we obtained information from the Office of the General Counsel that showed there are 94 civil rights complaints against USDA pending in Federal district courts, 74 of which involve employment discrimination.

CR is in the process of replacing its current data base system with a new system that will allow interagency access. This will permit agencies to determine the status of their cases and will help them reconcile their caseloads with CR. We believe that if the new system is properly installed and properly used, with appropriate protections against unauthorized access, it should provide CR with a better management tool than the current system.

**Conclusion No. 1
CR's Data Base Is Not Supported
by its Case Files or by Records
Maintained by USDA Agencies and
EEOC**

Employment complaint casefiles were in chaos and did not always provide information to support the processing classifications recorded in the data base. CR's data base was also not consistent with USDA agencies' listings and EEOC's records. CR did not properly manage

its casefiles, did not always update its system in a timely manner, and did not routinely reconcile its complaint inventory with USDA agencies or with EEOC. There were 580 differences between the status reported by EEOC and the status we determined using information from the casefiles, from the agencies, and from EEOC. While we can conclude with certainty that the data provided by CR to the Secretary is incorrect, we cannot conclude with certainty that the data we arrived at is wholly accurate.

Casefiles in Chaos

We knew from our evaluations of CR's management of program complaints that CR had a history of problems with casefiles. Initially, for this review, we were going to test some casefile information and compare it with CR's data base. This would allow us to determine whether the case did exist and where the complaint was in the process of resolution. Early in this process we recognized that with the number of discrepancies we identified, we would have to perform a complete physical inventory.

The casefiles are the primary support for all of ECD's decisions, as well as for the information maintained in the data base. We discovered, however, that ECD's casefiles were not maintained with any degree of order. Many of the case documents were filed in folders that used tabs to divide each case into 16 discrete categories (e.g., EEO counselor report, formal complaint, acknowledgment letter, etc.), but the tabs were used only when each folder was first created. A copy of the formal complaint and the EEO counselor's report were properly filed, but most of the remaining 14 tabs remained unused. For the most part, documents were just placed loosely in the folders without regard to chronology. As a result, we had to go through all documents in each file to ensure that we were apprised of the last action taken.

For some casefiles, we could easily determine the status of the case; however, for other casefiles it was difficult, and for some it was impossible. In our review of casefiles, we found that documents were either improperly filed or missing and that the files

themselves were disordered and sometimes difficult to locate. In at least 11 casefiles, we found documentation belonging to another complaint filed by the same complainant, and in 23 casefiles, we found documentation belonging to another complainant altogether. CR staff would have found this latter documentation only by accident. The complainants would have been denied all material relevant to their cases.

CR had also changed its file numbering system without changing all numbers on its folders. CR originally numbered its complaints according to the day the complaint was received, but because this numbering system produced duplicate file numbers, CR began using EEOMAS to assign a unique number to each complaint. While EEOMAS could assign the numbers automatically, the file folders still needed to be renumbered manually. We discovered that some file numbers were not changed. During our physical inventory, we could not find 274 files, some of which we thought were missing because they still showed the old file numbers. It took ECD personnel over 2 months to locate these files, 18 of which were still missing by the end of our review (see Exhibit C). We were therefore unable to verify the status of these 18 complaints.

Also during our physical inventory, we found 416 casefiles in the open section of the file room that we could not find listed on our September 7 listing of open complaints. Sixty-three of these 416 cases were nowhere to be found in EEOMAS.

Poor storage of the casefiles made locating them difficult. The division file room operating procedures state that the outside tab of the casefile should show the complainant's name and case number, allowing the cases to be filed alphabetically. However, files were not always filed alphabetically, and larger cases that extended to more than one folder were not labeled in succession (i.e., 1 of 2 and 2 of 2) to ensure that all folders were accounted for. The photographs on the following pages illustrate the condition of the file room and the haphazard way the file folders were kept.



Figure 2. CR's File Room, Showing Files Stacked in Borrowed Shopping Cart.



Figure 3. CR's File Room, Showing Boxed Files



Figure 4. CR's File Room, Showing Unfiled Casefiles.

During our inventory, we also discovered that not all casefiles were maintained in a secure area. Some casefiles we inventoried were left unsecured in employees' cubicles when they were absent. Several more casefiles relating to complaints that were awaiting a signature from the director were shelved out in the open and not subject to ECD's normal file room checkout procedures.

Because of the condition of CR's file room and its casefiles, we cannot be certain that we have been apprised of all of CR's complaints or their status in the complaints resolution process. Our best guess, based on our physical inventory, is that CR maintained a caseload, as of September 7, 1999, of 1,731 open cases.

Reconciliation of Casefiles Inventoried by OIG

Total Casefiles inventoried by OIG		2,129
- Closed files (per casefile documentation)	263	
- Closed files (per EEOMAS)	136	
- Undetermined Status	17	416
Total Open Casefiles inventoried		1,713
+ Missing Open Casefiles (Open per EEOMAS. Unable to review.)		18
Total Open Casefiles per OIG (See Table 6.)		1,731

Table 7. Number of Casefiles Inventoried and Number Actually Open.

CR's Caseload Does Not Match USDA Agencies' Records

Each USDA agency maintains a list of all EEO complaints filed by its employees. In our attempt to validate CR's data base, we obtained a listing of open complaints from the

other USDA agencies. For nearly every agency in USDA, CR listed employment complaints that were not listed by the agencies, and the agencies listed employment complaints that were not listed by CR. This occurred largely because CR did not always update its data base when agencies reported that a complaint had been resolved at the agency level or when CR received a formal complaint filed by a complainant. Occasionally CR neglected to inform the agencies that a case was closed.

We found 133 complaints that were listed by the agencies but not included in CR's data base, and another 344 complaints that were listed by CR but not by the agencies. Of the 133 complaints not listed by CR, 2 had been closed in the tracking system in error, leaving 2 complainants potentially without due process. Without a routine reconciliation of the complaints, the Department may spend contract funds unnecessarily to investigate cases that are closed, and risk closing cases that are in fact open and active.

According to CR, division personnel try to update the data base within 5 days of receiving a new complaint. However, during our reconciliation, we found 55 complaints that had been filed between July and August 1999 but that did not appear on the September 7, 1999, listings. These complaints did appear on the September 30, 1999, listing.

Agencies also complained that CR does not respond to their notifications that cases have been resolved at the agency level. We found 27 cases which the agency had settled with the complainant after the complainant had filed a formal complaint with CR, but CR did not have a record of the settlement and continued to process the case.

We were eventually able to reconcile the information between CR and the agencies. As a result, CR needed to close 87 complaints that it listed as open on September 7, 1999, and reopen the 2 cases closed in its tracking system that it closed in error. We believe this demonstrates the need for CR to reconcile its data with the agencies at least monthly to ensure that information being reported is accurate and that all cases are accounted for.

CR's Caseload Does Not Match EEOC Records

Due to the number of complaints reported at EEOC, we determined it was necessary to obtain EEOC's records for reconciliation. We contacted EEOC to obtain a list of USDA employee complaints that were before the committee for hearings or appeals. An employee may request a hearing before EEOC under two different circumstances: after 180 days have elapsed from the date the complainant filed the complaint, or after the complainant receives the report of investigation. When CR issues a final agency decision (FAD), the complaint is closed but the complainant is also informed that he or she can appeal the FAD before EEOC. We found discrepancies in both lists, as described in the following table:

	PER EEOC	PER CR
Hearings	204	408
Appeals	299	215

Table 8. Discrepancies in Numbers of Cases Being Heard and Appealed at EEOC.

Hearings. In reconciling the hearing cases, we could not determine the status of 199 of CR's 408 complaints because CR's files indicated they were at EEOC, and EEOC records indicated they were not. (Because EEOC may consolidate complaints by the same complainant, the numbers need not be identical, but the names of individuals should match.) From EEOC's data, we found 16 names of complainants pending a hearing as of September 7, 1999, which we could not find in CR's data base (open or closed cases), and we found another 9 complaints pending hearings that had been closed in CR's data base. Normally, CR does not close cases pending hearings at EEOC because the EEOC decision will result in CR having to take further action.

Appeals. During our review of the appeals listed by EEOC, we identified USDA complaint numbers being assigned more than one EEOC case number. An EEOC official explained that these might be duplications or they might have occurred because complainants had more than one issue being heard independently. On the EEOC appeals list we identified seven complainants that we could not find in EEOMAS. Another 13 cases listed on appeal at EEOC were shown in EEOMAS as still open. If EEOC's information is correct, these cases should have been closed with FAD's.

Determination of Status

We found a total of 580 differences between the status reported by EEOMAS and the status we determined using information from the casefiles, from the agencies, and from EEOC.

- There were 253 complaints whose status we could not determine. For most of these (199), we could not determine the status because EEOMAS and the casefiles showed that the complaints were at EEOC, but the information provided by EEOC did not reconcile with this. For the remaining cases, we could not determine the status because either we could not derive this information from the casefiles or we could not locate the casefiles.
- There were 99 complaints that were identified in EEOMAS with an error code but whose status we were able to determine.
- There were 186 cases that were further along in the process than indicated by EEOMAS. (See Conclusion No. 3.)

- There were 42 cases whose status as shown in the database was not supported by the casefiles. (See Conclusion No. 3.)

Although CR issued Departmental Regulation 4300-7, Processing EEO Complaints, on March 3, 1999, and EEO Complaints Processing Procedures on September 9, neither of these include a requirement for a reconciliation to occur between the agencies or EEOC. Based on the results of our review, it is evident that the regulations need to include a reconciliation process.

In her response, the CR director implies that OIG's presence added to the confusion of the fileroom. The pictures we presented are representative of the condition of the fileroom throughout our 4 months of fieldwork. The chaotic nature of the fileroom was not the result of OIG staff being present. It is safe to say that the management of the fileroom was inadequate. An efficient fileroom would be able to accommodate auditors and all others who would need access to the files. The chaotic nature of the fileroom was caused by management neglect.

Recommendation 1

Direct CR to locate the 18 missing casefiles.

Agency Response:

CR will locate any files that are missing or establish that the files are duplicative or do not exist within 30 days of receiving the list identifying those cases.

OIG Position:

The list provided as Exhibit C in the report will be updated to include the names. Based on the above response, we agree to reach management decision on this recommendation.

Recommendation 2

Direct CR to review and determine the proper status of the 87 open complaints we identified as closed, and the 2 closed complaints we identified as open.

Agency Response:

CR will accomplish this within 30 days of receiving the list identifying those cases.

OIG Position:

Based on the above response, we agree to reach management decision on this recommendation.

Recommendation 3

Direct CR to perform a document-by-document sweep of its employment complaints casefiles to ensure that all documentation is accounted for and that the documentation in the files reflects the status of each case.

Agency Response:

CR will perform a document review of the casefiles to account for all documents and verify the accuracy and consistency of the casefiles to the database. This will be accomplished by July 31, 2000.

OIG Position:

We concur with CR's intent to complete this task by the provided date; however, CR's response does not provide us with its plan on how this will be accomplished. CR's response failed to include the director's comments made during the exit conference on how it intended to organize its files, such as implementing a bar code system to facilitate proper filing of documents. To reach management decision, CR needs to provide us with its plan to accomplish the review and verify the accuracy and consistency of the casefiles to the data base.

Recommendation 4

Direct CR to immediately reconcile its casefiles with those of the agencies. CR should make the appropriate changes to its tracking system based on these reconciliations.

Agency Response:

According to CR, the reconciliation process is ongoing with reconciliation meetings scheduled around the tenth of the month. Reconciliation will occur by the end of the month of the meeting.

OIG Position:

There are no reconciliation meetings for employment complaints. The meetings mentioned by CR are for program complaints. We had learned during our concurrent review (Audit No. 60801-4-Hq) of program complaints processing that these meetings

did not result in any immediate change of status. Due to the differences we identified during our reconciliation of CR and agencies' data, and to agency concerns of lack of action on CR's part, CR needs to work with the agencies now to reconcile cases and update the tracking system appropriately. To reach management decision, CR needs to provide us with its immediate plan of action and date this will be accomplished.

Recommendation 5

Direct CR to modify Department Regulation 4300-7 to require agencies and CR to reconcile their caseloads on a monthly basis.

Agency Response:

CR will implement this recommendation through a directive within 30 days.

OIG Position:

Based on the above response, we agree to reach management decision on this recommendation.

Recommendation 6

Direct CR to implement management controls to ensure timely and accurate reconciliation between CR and the agencies.

Agency Response:

Appropriate management controls will be incorporated in the Directive to be issued within 30 days.

OIG Position:

To reach management decision, CR needs to provide us with the changes made to its operating procedures to ensure the Department Regulations will be carried out.

Recommendation 7

Direct CR to immediately reconcile its cases with those listed by the EEOC as pending appeal and hearings.

Agency Response:

ECD initiated the reconciliation of cases pending hearings in the winter of 1999 and will complete this reconciliation by May 30, 2000. The process will be repeated at the end of the fiscal year. The appealed cases were reconciled in January 2000 and will also be reconciled twice a year.

OIG Position:

At the end of our fieldwork, no one in CR was working on reconciling EEO hearings with its data base. Further, we were unable to verify that CR had begun reconciliation of EEO appeals. To reach management decision, CR needs to provide us with the results of its completed reconciliation of EEO appeals, and its plan of action detailing how it intends to reconcile EEO hearings with its data base.

Recommendation 8

Direct CR to reconcile its cases on a quarterly basis with those cases listed by EEOC as pending appeal and hearings.

Agency Response:

To complete the reconciliation process for cases pending hearings, CR must contact each of the 26 EEOC field offices. CR therefore suggested that the reconciliation occur semiannually.

OIG Position:

We can agree to management decision on this recommendation when CR incorporates its reconciliation process into its operating procedures and provide a date when this would be accomplished.

**Conclusion No. 2
CR's Representations of Its Progress
Do Not Reflect Actual Performance**

On August 3, 1999, the CR director briefed the Secretary and other USDA officials on the status of EEO complaints within the Department. We tested the information used by the director and found that her data did not accurately reflect the actual number of employment cases accepted by CR for processing or the timeframes for processing complaints.

The chart below was presented at the August 3, 1999, briefing. It represents the number of cases accepted and closed for fiscal years 1997, 1998, and 1999.

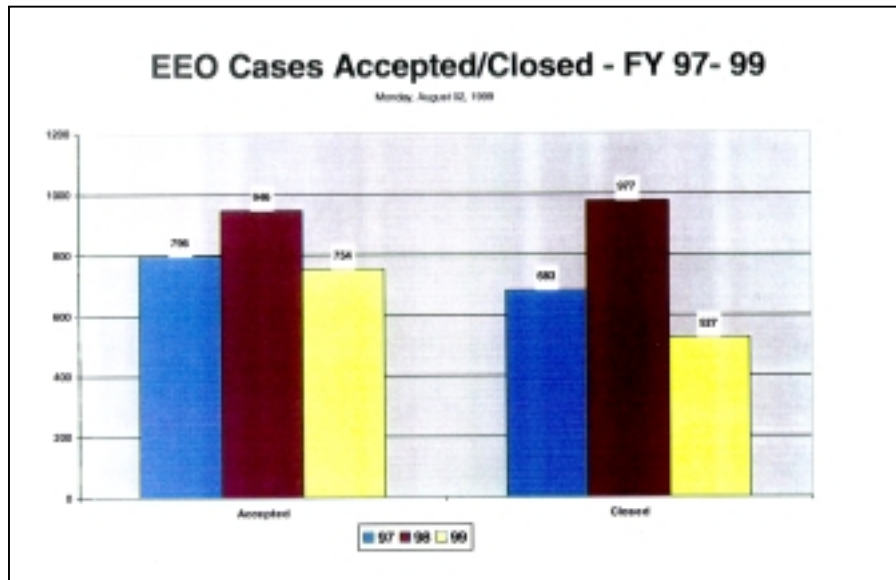


Table 9. EEO Cases Accepted and Closed, According to CR.

The number of cases accepted is misleading because it includes cases that were filed by complainants but that had not yet been formally accepted by CR for processing. To accept a case means that a CR EEO specialist has reviewed the complaint and the counselor's report from the informal process to determine whether the complaint is valid. (CR rejects, on average, about 10 percent of all complaints annually as invalid.) The figures presented by the CR director represent all the cases filed by complainants, not the cases accepted for processing.

The figures presented by the CR director for closed cases were also misleading. A large percentage of cases closed by CR had been settled by the agencies or had been withdrawn by the complainant at some point prior to formal acceptance by CR. Crediting CR with these closed cases misrepresents the actual efficiency of the division.

Finally, the figures may be understood to depict a correlation between the number of cases accepted and the number closed, but this is not the case. The number of complaints "accepted" in fiscal year 1999, for example, is, as stated, the number of complaints filed in that year, but the number of complaints closed includes complaints from prior years that had been closed in 1999. Most of CR's activity for 1999 was in fact based on resolving prior years' complaints, not 1999 complaints.

The table below presents a more accurate representation of the cases actually accepted for processing and closed for the 3 fiscal years. We compiled these figures directly

from EEMAS. The accepted cases include only those cases that CR had formally accepted for processing, while the closed cases exclude those cases closed by CR before it formally accepted them.

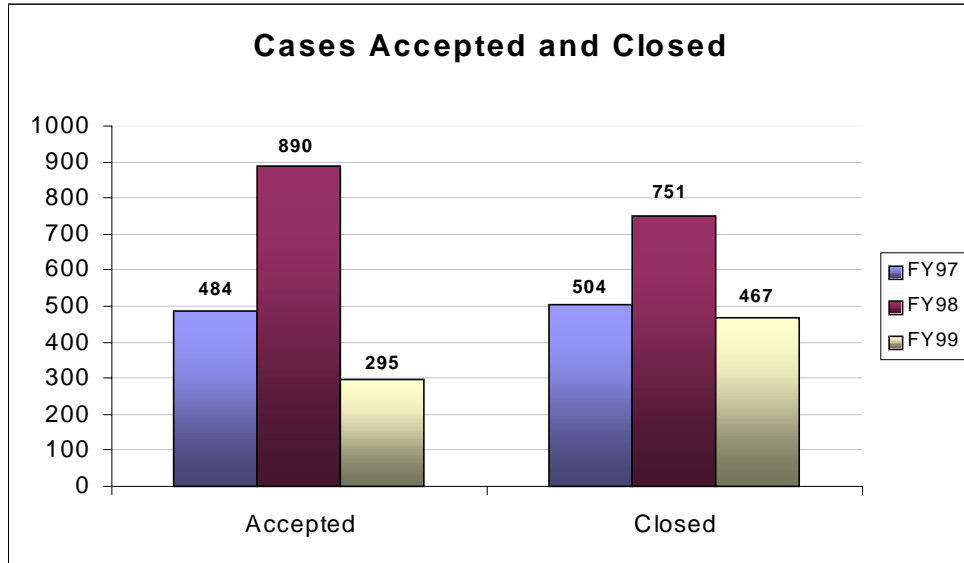


Table 10. Number of Cases Accepted, as Determined by OIG.

Again, there is no correlation between the number of cases accepted by CR each year and the number of cases closed.

Also at her August 3, 1999, briefing, the CR director presented the following chart depicting the average number of days CR had taken to complete an employment case.

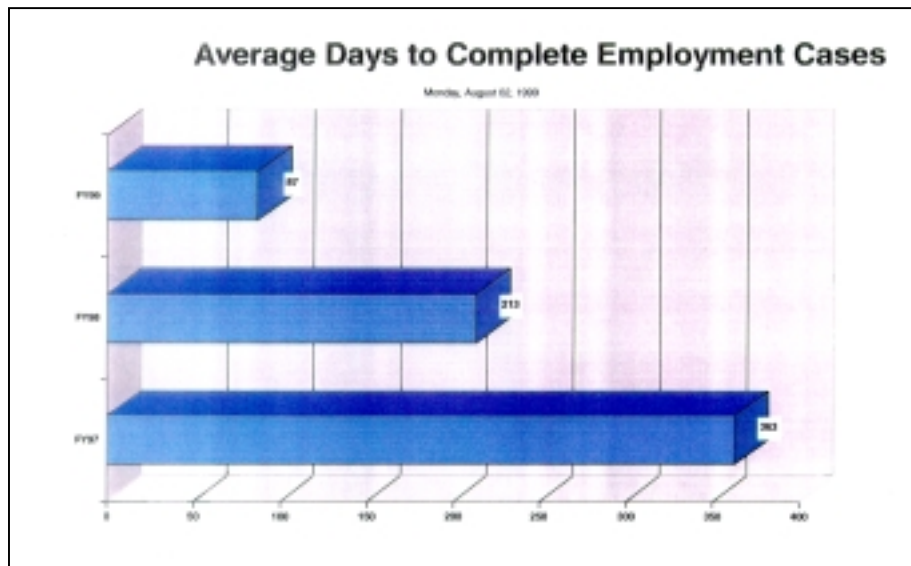


Table 11. Average Days to Process EEO Cases, Calculated by CR.

This chart suggests that there has been a dramatic improvement in the time it takes CR to process employment discrimination complaints. However, the CR director's figures do not appropriately reflect actual processing times and do not provide a meaningful comparison. Although they appear to represent the number of days that it took to close all cases closed during those 3 fiscal years, they actually represent the average number of days to close cases that were *filed* with CR in each of those fiscal years. Specifically, the figure of 87 days for fiscal year 1999 is the average number of days that it took to close all cases that had been filed with CR between October 1, 1998, and August 2, 1999, a period that could not exceed 307 days. By comparison, the figure of 363 days for fiscal year 1997 is the average number of days it took to close all cases that had been filed during fiscal year 1997 and closed by August 2, 1999. This counts all cases that were filed between October 1, 1996, and September 30, 1997, and that had been closed up to August 2, 1999, a timeframe that could extend up to 1,034 days.

We also noted that the two charts presented by the CR director were not based on the same methodology. (See Tables 9 and 11.) Taken together, the charts may give the impression that CR closed 527 cases in fiscal year 1999 within an average timeframe of 87 days, but this is not the case. The first chart is based on the number of complaints received over the years and closed in 1999, while the second chart is based on the number of complaints CR was counting as *filed and closed* in 1999 only. The average time taken to complete processing of the 527 cases was 679 days. The 87-day average CR computed for 1999 was based on only 63 of those cases.

When we reviewed the 63 cases, we found that 60 had not even been accepted, while the other 3 had been accepted but then dismissed due to litigation. Of the 60 cases that were not accepted, 39 (65 percent) had been closed because of a settlement reached between the complainant and the agency, while the remaining cases were closed because they were duplicate complaints or withdrawn cases. We concluded that the CR director should have based her chart numbers for fiscal year 1999 on the three cases that had been accepted that year.

The chart below represents the processing timeframes using the same methodology used by the CR director but excluding those cases that had not been formally accepted by CR. While this still does not provide a meaningful comparison between the years, it is a more accurate representation of the time expended by CR to complete some processing of the more recent cases.

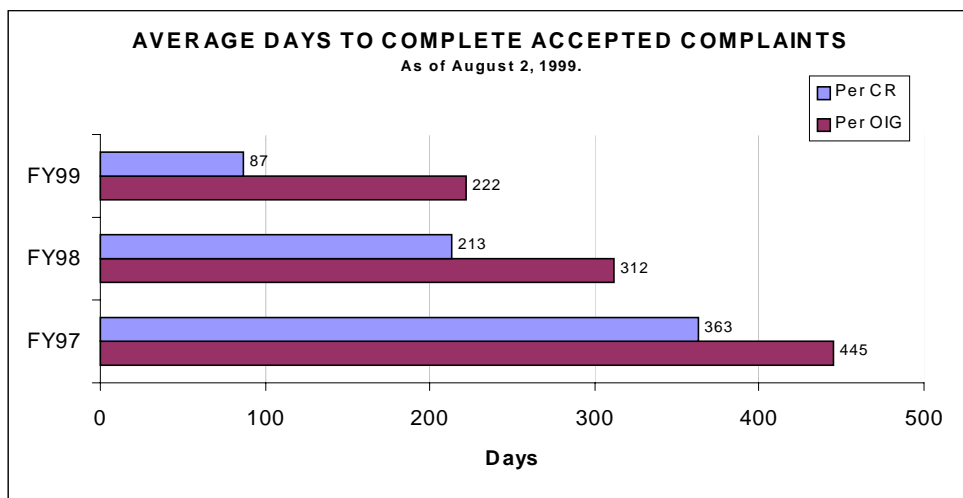


Table 12. Average Days to Process EEO Cases, Calculated by OIG.

It should be noted that the figure of 222 days in fiscal year 1999 is based only on those three cases mentioned above that were immediately closed due to pending litigation. Because these three cases never went through the entire complaint process, the 222-day timeframe actually represents the time these three cases were awaiting acceptance by CR, far exceeding the 180-day timeframe established by EEOC for accepting and investigating a complaint. (See Conclusion No. 4.)

Finally, we believe the age of those cases still being processed by CR is a fair indicator of CR’s servicing efficiency. The chart on the following page represents the average number of days that cases filed per EEOMAS in each of the 3 fiscal years had been open as of August 2, 1999. The age of these cases shows that as these cases are closed, the averages presented by the CR director in Table 11 will only increase.

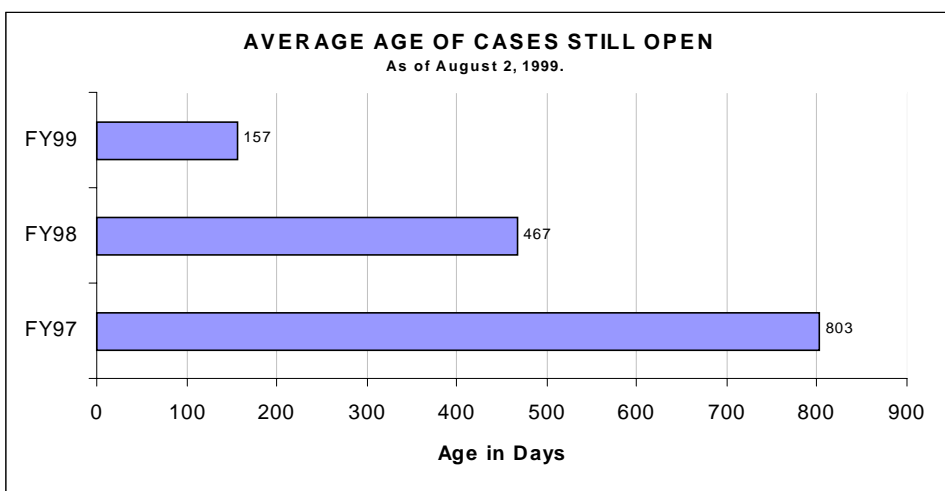


Table 13. Average Age of Open EEO Cases, Calculated by OIG.

The CR director stated that her staff had prepared the charts and that she did not know what data made up the averages. She maintained, however, that in her opinion, the charts were a valid presentation of the data.

We believe CR should provide full disclosure of the data presented regarding civil rights activities. The process should include a review of the methodology used to extract the data from CR's data base, how the data is used and what it means. In addition to explaining the underlying data, there needs to be a consistent application of the methodology from year to year.

Recommendation 9

Direct CR, when presenting data regarding civil rights activities, to provide full disclosure about the data, methodology on how the data is used, and what exactly it means, and to be consistent in reporting over time.

Agency Response:

Within 45 days, the Tracking Analysis and Application Division (TAAD) will institute an internal quality control review that ensures the integrity of the data presented by CR. This review will include the method of data extraction, define the representation of the data, and add the run date as a footnote on all outgoing reports.

OIG Position:

Based on the above response, we agree to reach management decision on this recommendation.

Conclusion No. 3 Other Data Bases Exist, but CR Does Not Use Its Current Data Base Effectively

In his letter, the Secretary expressed his concern about the accuracy of CR's case-tracking system and asked us to identify other case-tracking systems that were available "off-the-shelf" and that could be installed with a minimum of delay. We are not aware of other case-tracking systems that could be installed expeditiously; however, our evaluation determined that CR's current employment complaints data base is being underutilized and that a different system would not, per se, solve the case-tracking problems that exist at CR. CR's data base can be an effective control to track the status of cases within the complaints resolution process. However, ECD does not update the data base in a timely manner and does not properly use the data fields so that others may readily determine the status of cases and compile accurate data for reporting purposes. We found 186 cases that were further along in the process than indicated by the data base, and another 42 cases whose status as shown in the data base was not supported by the casefiles.

CR's data base, EEOMAS, was implemented before the creation of CR as it exists today. It was developed by a contractor using a dBASE-compatible data base under the old PC-DOS operating system, and lacks advanced security and edit checking capabilities which would help ensure the integrity of the data. While EEOMAS is not as sophisticated and user-friendly as current software, it has been modified through the years to meet CR's requirements.

ECD employees noted that EEOMAS does not capture all of the information they need and that frequent system crashes have contributed to the questionable usefulness of the system. ECD Employees further stated that they relied more on the casefile for the status of the case than EEOMAS. However, we found during our inventory process that complaint casefiles were not a reliable source for information either (see Conclusion No. 1).

While we noted that EEOMAS had crashed in the past, we determined that this was not an insurmountable obstacle to case tracking. Rather, our tests of the data maintained on EEOMAS showed that ECD did not use the system effectively. We obtained copies of the division's data base as of September 7 and September 30, 1999, to test the reliability and completeness of its data. Generally, we found that division personnel had not updated the data base in a timely manner, had not entered all critical data, and had entered a preponderance of unrelated data into one data field.

- Untimely updates. Among the 186 cases that we identified as further along in the process than indicated by the data base were some shown as pending acceptance when dismissal drafts had been prepared, and some shown with FAD's pending signature (in September) when the FAD's had been signed in July and August. Among the 42 cases whose data base status was not supported by documentation in the files were some reported in the investigative phase that showed no evidence of ever having been accepted.

We also evaluated the data base on the two dates (September 7 and September 30) to determine how timely data was updated. Timely data base updates are equally important to ensure that management reports are accurate. Using the September 30, 1999, copy of the data base, we extracted data that should have been entered on or before September 7, 1999, but was missing from our copy of the data base as of that date. We identified 56 cases received, 38 counselor reports received, 7 cases accepted, and 16 cases closed that had not been timely updated on the September 7, 1999, data base.

- Missing Data. Not all records in the data base contained the dates of actions taken during the processing of complaints, such as the date the division accepted the case, or the date that the report of investigation was received as final. EEOMAS is designed to use critical dates such as these to update the status of the division's caseload on a daily basis. The status field in the data base is used by the division

to report how many cases are in each phase of the complaint process. We found 112 instances where cases showed an 'error' status because dates or other data were missing. CR did not routinely review these errors to determine their cause. We were able to determine the status of 99 of these 112 cases based on our casefile review.

- Misused data fields. Division personnel rely heavily on a memorandum field in the data base rather than the date fields to determine where the case is in the processing cycle. While memorandum fields may be useful for EEO specialists to document certain events not otherwise captured in the data base, it cannot be used to systematically extract meaningful information for reporting purposes. The division data base administrator periodically generates a report for CR management showing the number of cases in each phase of the complaint process. This report relies on the date and status fields to extract this information. Those cases where status information was captured in the memorandum field will not be accurately reported.
- Security of data and files. The division relies on EEOMAS to track casefile location, but because security over EEOMAS is weak, this reliance is misplaced. Although only two employees have the authority to check out files from the file room, nearly every employee in the division has the ability to update EEOMAS; consequently, every employee can change the location of the file. We also noted that not all entries were accurate or current. Our copy of the EEOMAS data as of September 30, 1999, showed 379 files checked out to "contractor," even though the division does not send the entire casefile to the contractors. Another 21 cases were shown as still checked out to two former division managers, one of whom left CR almost a year earlier. For over 1,400 cases, the file location was left blank. Again, we learned that division personnel were using the memorandum field rather than the location field to document the location of the casefile.

We contacted five other civil rights agencies in the Federal Government and two private software vendors to determine whether an "off-the-shelf" tracking system existed. We found that no tracking system would be easily implemented and that agencies had contracted out for their systems to suit their own needs and interface with their Department's current systems.

Currently, CR is in the process of developing a new employment complaint tracking system based on the same software it uses for the new program complaints tracking system. The new system promises to contain advanced security and edit checks to help ensure data integrity. Under this new system, each employee responsible for some phase of the case will receive the case electronically, complete an action on it, and forward the case electronically to the next responsible employee. The system itself will track the movement of the case and accurately maintain its status, as well as

provide an audit trail of changes made to the data base. We concluded that, if used properly, this system will increase the efficiency of ECD, and we are recommending that the CR director expedite the implementation of the system.

Until CR can implement its new EEO complaint tracking system, we believe CR should work with its data base administrators to increase the effectiveness of EEOMAS. Specifically, CR should maintain the integrity of its data base by implementing a program of identifying suspect data in the system through routine searches for anomalies. For instance, reports could be generated from the data base identifying cases where data is missing or possibly incorrect. CR should assign at least one person with the responsibility to follow up on those suspect cases. CR should also discontinue the use of EEOMAS to track the location of casefiles or develop a system that ensures the accuracy of the file location and that can be updated only by those with the authority to do so.

Only after CR has assured itself that all data in EEOMAS has been cleansed of inaccuracies and of mislocated data should it migrate EEOMAS information to the new EEO tracking system.

Recommendation 10

Direct CR to expedite the implementation of its new employment complaint tracking system containing advanced edit checks to ensure the integrity of the data and providing workflow functions for casefile management.

Agency Response:

The Employment Data Tracking System (EDTS) is in its second phase of development. EDTS will have advanced edit checks to include lookup lists for ease of entry to avoid typographical entries, and contain a workflow system which allows users to track the flow of a case, providing better case management. The new system will be tested and finalized, including staff training, by September 30, 2000.

OIG Position:

Based on the above response, we agree to reach management decision on this recommendation.

Recommendation 11

Direct CR to maintain the integrity of the data in its tracking system by identifying suspect data in the system through routine searches for anomalies, and by assigning someone the responsibility to follow up on those suspect cases.

Agency Response:

Beginning immediately, TAAD will identify suspect data by presenting weekly reports to ECD for action. These reports will identify missing data or invalid date entries for correction. TAAD will follow up with the specialist to ensure corrections are being made.

OIG Position:

Based on the above response, we agree to reach management decision on this recommendation.

Recommendation 12

Direct CR to discontinue using its data base to track casefile location, or otherwise develop a system that ensures accurate casefile location that can be updated only by those with the authority to do so.

Agency Response:

CR's new employment complaints data base, EDTS, will have the capability to track the location of the casefiles. EDTS will be available in October 2000. Until EDTS becomes available, TAAD will modify a file tracking system developed for another USDA agency to suit CR's needs. The modifications and installation of this new file tracking system will be completed within 30 days.

OIG Position:

Based on the above response, we agree to reach management decision on this recommendation.

Recommendation 13

Direct CR to cleanse its current data base before migrating the information to the new EEO tracking system.

Agency Response:

TAAD will work closely with ECD to assist in cleansing the data. EDTS is scheduled to go online in October 2000. TAAD will identify key fields for migration to the new system and will work closely with employment complaints staff to clean those fields. TAAD will verify the validity of the data by providing reports to the employment complaints staff for concurrence.

OIG Position:

Based on the above response, we agree to reach management decision on this recommendation.

CR's Management Practices Prevent CR From Processing Complaints With Due Care and From Resolving Them Within the Timeframes Established by EEOC

Conclusion No. 4

CR has adopted management practices that have nullified its ability to hold employees accountable for their job performances.

Under CR's practices, staff members of ECD must be available to perform in whatever critical area management moves them, regardless of the procedures that hold employees accountable for the quality of the work for which they were employed and the timeliness of their performances. CR has adopted these practices because its constant reorganizations and management turnover have left it without a long-term plan to ensure a consistent level of productivity. The resulting work environment, with its lack of accountability and poor morale, has affected the division's ability to process employee complaints in a timely manner and to ensure due care for each complaint. We found active cases from fiscal years 1998, 1997, and even 1996, that were still pending acceptance. We also found reports of investigation that failed to include critical interviews and did not stand as objective statements of fact.

Timeframes and Employee Accountability

During our review of complaint processing, we found that even though CR has had a consistent influx of EEO complaints (between 70 and 80 a month) over the past 3 years, it has had difficulty processing complaints at a consistent rate to meet EEOC's established timeframe of 270 days.⁵ The CRAT report of February 1997 identified the Department's inability to process EEO complaints timely and effectively, noting that it took an average of nearly 3 years to complete a case. The GAO report of January 1999 arrived at the same conclusions, noting that CR's record of processing employment complaints has been among the worst in the Federal Government.

EEOC regulations require that formal EEO complaints be accepted and investigated within 180 days from the date of complaint, and adjudicated within another 90 days. We found during our review that adherence to these timeframes remains the exception rather than the rule. Those cases pending acceptance on September 7, 1999, had an average age of 210 days, already exceeding the number of days by 30 within which these cases should have been investigated. Based on our review of 88 statistically sampled ROI's, we estimate that an average of 243 days⁶ was taken to accept and

⁵ This timeframe excludes a possible EEOC hearing, during which complaint processing is beyond CR's control.

⁶ See Exhibit D for our Summary of Statistical Estimates.

investigate an EEO complaint. The age of those cases pending approval of the draft reports of investigation (ROI) and draft final agency decisions (FAD) is, on average, 474 days and 688 days respectively. Overall, the average number of days it took CR to close a case from fiscal year 1997 through August 2, 1999, was 699 days.

We concluded that CR’s operations were short-sighted and did not function according to any long-term plan to which CR could hold employees accountable. In early 1998, for example, in order to clear a backlog of new complaints, CR abandoned its procedures for accepting or rejecting complaints and *accepted all complaints*, regardless of their merits and regardless of the consequences the decision would have on CR’s investigative workload. However, even before 1998, CR’s performance was erratic and reflected what we determined was CR officials’ tendency to focus all of the agency’s resources on whatever phase of complaint processing demanded attention. Managers were not let to manage their own areas of specialty, but were called upon to furnish resources for some other priority area.

Using CR’s data, we identified those periods during which CR’s productivity changed to respond to management’s priorities. During each period, as CR was productive in the area it chose to emphasize, it was simultaneously unproductive in the area it chose not to emphasize. The following chart shows the rising and falling off of productivity as CR changes focus between accepting cases and closing them.

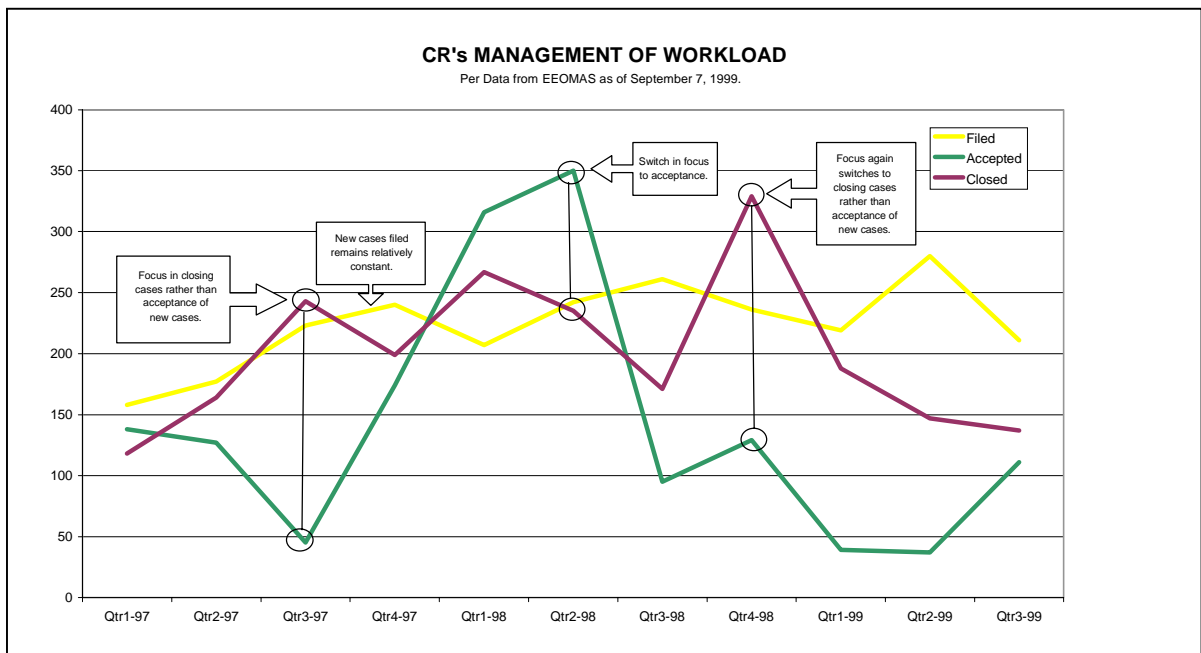


Table 14. Depiction of Productivity and Nonproductivity Due to CR’s Changes of Focus

As the chart shows, even though CR receives complaints at a fairly predictable rate, it has a history of reacting to priorities rather than anticipating them. It has no plan in place

to ensure that it can efficiently meet its commitments to the Secretary and to EEOC. Instead it reacts to the exigencies of the moment. One division manager characterized the constant establishment of new priorities as “crisis management.” Under this management practice, CR cannot ensure that complaints are processed efficiently because it has lost control of manager accountability. Manager accountability is the expectation that managers are responsible for the quality and timeliness of program performance, increasing productivity, controlling costs, and mitigating adverse aspects of agency operations. Although CR has formal procedures to ensure that managers would be held accountable for EEO complaint processing, it has, because of its management practices, nullified its ability to hold anyone accountable.

For example, CR could not exercise accountability during its effort in 1997 to resolve all backlogged employee complaints noted in the CRAT report of January 1997. The director at that time assembled a task force to clear the backlog, and this initiative extended through September 1997. Because the bulk of the staff was reassigned to the backlog team, new cases were not being processed during the initiative period. By September 1997, the number of complaints to be accepted or dismissed had inflated to approximately 500. Because of CR’s initiative, no one was being held accountable for the growing backlog of new cases; management’s solution to the backlog was simply to create another task force in October 1997.

This task force worked on the backlog of new cases until January 1998. As noted earlier, management decided to accept all employee complaints at that time to facilitate the processing of the backlog. This decision increased the volume of cases ECD had to process. Subsequent initiatives had to be undertaken to address backlogs that developed in neglected phases of the complaint process. For one initiative, contractors were hired to write FAD’s, but according to an ECD manager, almost every decision had to be rewritten. The FAD-writing initiative resulted in a growing number of cases pending acceptance that as of the date of our fieldwork stands at nearly 750. Again, no single manager or staff group is being held accountable for the backlog.

During our review, we observed CR’s crisis management at first hand. In October 1999, when the backlog of cases pending acceptance had reached 700, CR management decided to contract out this function. Approximately 400 pending cases were submitted to four contractors. We asked management how this large volume of cases would be processed when it returned from the contractors and reentered ECD’s workload. We were told that with “some type of intervention” at the FAD-writing stage, the staff could handle it. We concluded that CR did not have a plan to ensure the efficient processing of the cases. Without a plan to which it can hold employees accountable, management will continue to face large backlogs of cases at each phase of the complaint process.

Management’s reluctance to hold nonproductive employees accountable is reflected in their performance appraisals. We found that employees were rated fully successful or

superior regardless of their performance level. We obtained copies of fiscal year 1998 performance appraisals for the current ECD employees and three ex-employees. We found no indication that any employees in ECD had been placed on a performance improvement plan. Thirteen of the 26 employees in ECD who had been rated for fiscal year 1998 received outstanding performance appraisals.

ECD's appraisals also showed that the GS-14 branch or team leaders received performance appraisals signed by the GS-15 of the division, but only one correctly bore the CR director's signature as reviewer. Also, a former division chief did not receive an appraisal for either fiscal year 1998 or 1999.

The degree to which the CR director provided any guidance on employee accountability was not discernible. A former division chief said she was instructed to submit the division employees' appraisals to the CR director for review, but the CR director said she issued no such instruction. However, we noted that the CR director had signed the appraisal of one GS-14 team leader, as well as three appraisals of employees at grade 13 and below as the reviewing official. In our opinion, the CR director should set an example for the division by performing the required appraisals or signing as the reviewing authority on other appraisals.

Reorganization and Changes in Leadership

We concluded that CR's management practices and inattentiveness to employee accountability have resulted from the constant reorganizations and changes in leadership it has undergone since its inception in 1997. Since January 1997, ECD has experienced no fewer than three complete changes in its entire chain of command, from the Assistant Secretary for Administration (ASA) to the ECD chief. Each change in management has brought a new focus and a different emphasis within CR. Different priorities have been established, and employees have been shifted or reassigned to address the most recent initiatives established by the new management. Under these circumstances, CR has been unable to implement a long-term plan to ensure compliance with its EEOC obligations.

The timeline on the following page depicts the management changes that have occurred since January 1997:

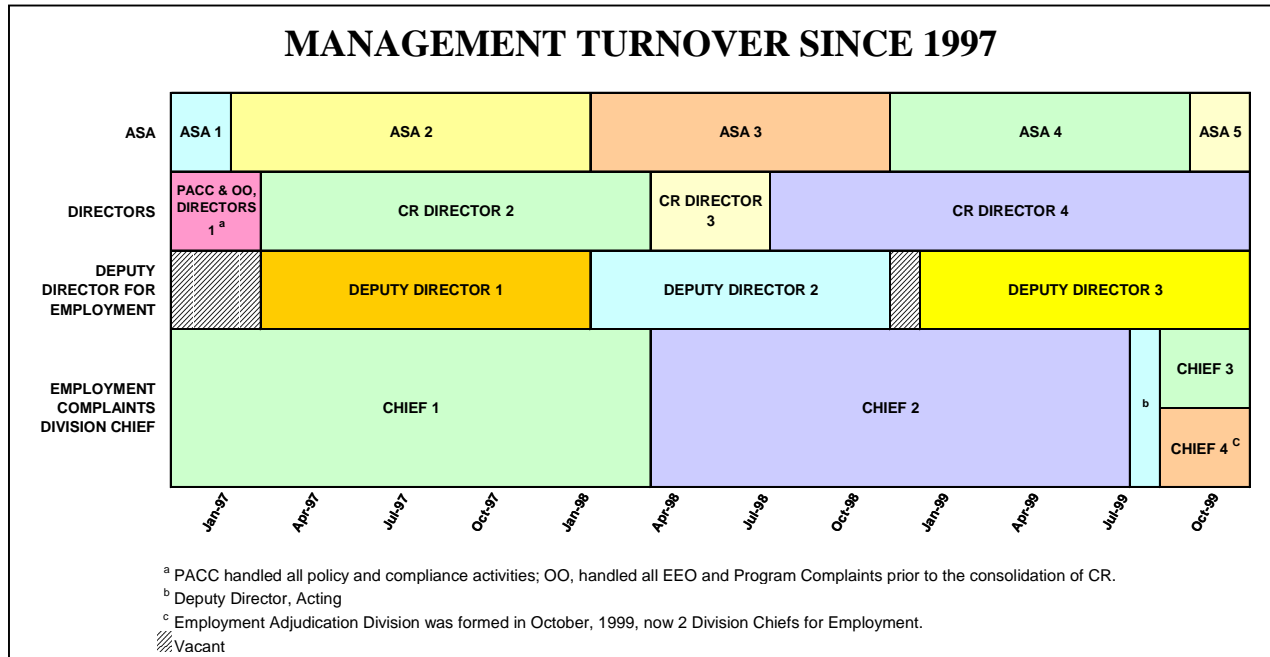


Table 15. Stratified Depiction of the Changes in CR’s Management Chain of Command Since 1997.

The major change in work assignments within the ECD occurred in May 1998. At that time, the division discontinued its mission approach to complaint resolution, whereby ECD teams were responsible for the complete processing of a specified caseload, and adopted a functional approach, whereby each team was responsible for processing all complaints through only one specified segment of the resolution process. We noted that in spite of the reorganization of ECD at that time, the division continued to practice “crisis management,” regardless of its nominative approach to complaint processing.

Questions of Due Care

As a result of CR’s lack of employee accountability, it cannot ensure the timeliness of complaints resolution, as described above, and it cannot ensure the quality of its ROI’s and FAD’s. CR returns an estimated 13 percent⁷ of the possible review cases of the ROI’s because of inadequacies. Nevertheless, CR accepts ROI’s that show incomplete and nonobjective investigative work, and it renders FAD’s that do not appear to derive from information contained in the ROI’s.

Inadequate ROI’s. For investigations, CR relies on EEO investigators contracted through the General Services Administration who have 45 days to investigate the complaint and provide a report to CR. We estimate that 237 cases of the estimated 996

⁷ Our estimate is 13.04, but we are 95 percent sure that the actual percent of ROI’s returned to contractors is between 8.02 and 18.06 with a precision of 5.021 (See exhibit D.)

cases where an ROI had been completed had to be sent back to the contractor for additional work or documentation. When CR returns a case to the contractor, CR documents the information needed to make the ROI complete. Our review disclosed that ROI's were returned because exhibits were missing or incomplete, responding officials or other knowledgeable parties had not been interviewed, and adequate documentation had not been gathered on the issues raised in the complaint.

In one case we reviewed, an ROI was returned to the contractor with a list of 11 items needed before the ROI satisfactorily addressed the accepted issues in the complaint. Two of 11 items noted that the contractor failed to obtain testimony from witnesses named in the complaint and failed to investigate one of the complainant's allegations.

Inadequate CR Reviews of ROI's. We selected a statistical sample of 88 ROI's from an estimated universe of 996 cases with final ROI's.⁸ We selected our sample to review CR's processing of employment complaints. We identified numerous cases where the final ROI's were inadequate, indicating that they were not thoroughly reviewed or not reviewed at all. We found one instance where the ROI was so poor that a supplemental investigation had to be conducted. In this case, the original reviewer sent the ROI forward as sufficient, but the writer of the FAD determined it was not. This person requested that the supplemental investigation be conducted in order to adequately address the issues in the complaint. Because the contractor or the original ROI was no longer under contract, CR had to assign the supplemental investigation to another contractor, incurring additional costs.

We also identified instances where the ROI did not address all the accepted issues in the complaint, was missing exhibits, contained exhibits that did not seem to be material to the issues being investigated, and did not show that all responding officials or others with knowledge of the case were interviewed. These deficiencies resulted in ROI's that appear to be weighted towards either the complainant's or the agency's position rather than standing as an objective statement of the facts. For instance, in one ROI, the investigator had not talked to all of the witnesses identified by the complainant yet had obtained affidavits from agency officials who had no knowledge of the circumstances surrounding the complaint.

FAD's Contain Questionable Statements. When available, we also reviewed the FAD's relating to the ROI's we reviewed. Many cases we reviewed had been settled between the agency and the complainant after the ROI was completed but before a FAD was written. FAD's are written based on the issues and bases (i.e., race or gender identification, etc.) accepted in the complaint and any other bases that had been investigated relating to those issues. We found several instances where we question the adequacy of those FAD's. Some of the FAD's we reviewed included issues or bases not

⁸ See the Scope section of this report for an explanation of our derivation of the universe of ROI's and our statistical sample.

formally accepted or investigated, while others failed to include all of the issues or bases accepted and investigated.

For example, one of the cases we reviewed was formally accepted and investigated on the basis of race and reprisal for previous EEO activity; however, the FAD was written only on the basis of race and did not address the basis of reprisal. Another case, accepted on the bases of race and age, was ultimately adjudicated on the basis of race, age, and sex. The basis of sex was explicitly not accepted by CR because the complainant had not raised the basis during the informal counseling stage of the complaint process. Indeed, the counselor's report did not address the basis of sex. Further, our review of the ROI indicated that the basis of sex was not investigated. We question how CR could issue a decision based on sex when the basis was not investigated.

We concluded that the amount of time CR takes to complete its employment complaint cases bears no relation to the quality of the processing. Although CR employees are able to identify inadequate ROI's and FAD's through their internal reviews, they do not maintain their vigilance, either in evaluating ROI's for sufficiency, or in rendering quality FAD's.

Lack of accountability, management turnover, reorganizations, and low employee morale have all affected the work environment within ECD. CR could address these issues by developing a workforce planning strategy. The first step in this strategy would require job classifiers to evaluate ECD's operations and ascertain the type of positions and grade levels needed to process employee complaints. It should also address training to ensure that employees are able to accomplish their assigned responsibilities. The strategy must include an appraisal system which establishes performance standards, communicates elements and standards to employees, establishes methods and procedures to appraise performance against established standards, and provides appropriate use of the appraisal information in making personnel selections.

In the short-term, CR needs to strengthen its oversight of ROI's and FAD's. A review system is in place, but it is clearly not effective and requires closer supervision to ensure that the reviews are performed and that they are thorough. CR also needs to revisit the ROI's and FAD's that we found deficient and ensure that the complaint in each of these cases has been handled with due care.

The issues identified throughout this report are similar to those reported in previous phases of our ongoing reviews of CR. Given our prior experiences with CR, and its inattentiveness to implementing our recommendations from the prior six evaluations, we conclude CR needs to develop a management plan to guide the agency in implementing positive change. The management plan should help create an organization that can withstand management changes and focus on its mission. Due to the longstanding

problems identified with personnel, CR should consider the use of an unbiased third party to assist in the development of the plan.

In her response, the CR director included her belief that OIG, despite its best efforts, did not have the background and ability to substitute its judgment of what an adequate FAD is for the judgment of ECD. Our review of the FAD's focused only on obvious errors and omissions and did not consider their legal sufficiency. CR's issuance of FAD's that address issues and basis not investigated, as cited in our report, leads us to question whether supervision over the writing of FAD's was sufficient.

Recommendation 14

Develop a management plan to address issues identified concerning effective leadership, changing organizational culture, customer focus, and process improvement and reengineering. This plan should include the development of a workforce planning strategy. The use of a management consultant to help develop such a plan should be considered.

Agency Response:

Classifications for jobs for civil rights are prepared by Departmental Administration's Human Resources Division. Generally, the positions in the Office of Civil Rights are appropriate; the grades are high because personnel were assigned to the positions.

OIG Position:

CR's response did not address the recommendation. To reach management decision, CR needs to provide us with a management plan to address the areas of effective leadership, changing organizational culture, customer focus, process improvement and reengineering, with emphasis on long-term planning. This plan should include the development of a workforce planning strategy that would require job classifiers to evaluate the Employment Complaints Division's operations and ascertain the type of positions and grade levels needed to process employee complaints, and that would include an appraisal system that establishes performance standards for use in both appraisals and in personnel selection.

Recommendation 15

Develop management controls to ensure the reviews of ROI's and FAD's are performed thoroughly and that the documents provide accurate information.

Agency Response:

CR's response indicated that the new chief of ECD and the recently acquired chief of EAD are taking steps to ensure greater quality of ROI's and FAD's.

OIG Position:

To reach management decision, CR needs to develop explicit management controls in their operating procedures to ensure that both current and future division chiefs perform thorough reviews of ROI's and FAD's.

Recommendation 16

Direct CR to revisit the ROI's and FAD's that we found deficient and ensure that the complaint in each of these cases has been handled with due care.

Agency Response:

According to CR, adequate supervision and management is being given and will be provided in the future as they exert tremendous efforts to select the best managers possible.

OIG Position:

A listing of the complaints will be provided to CR. In order to reach management decision, CR needs to provide us with how and when it will revisit the ROI's and FAD's we found deficient.

CR's Relations With Other USDA Agencies Have Deteriorated

CR needs to provide better guidance to the Department on civil rights employment issues, and it needs to encourage Department involvement in processing EEO complaints. One of CR's most important missions is to interpret civil rights laws and regulations for the Department and to train agency civil rights staffs on the requirements of their jobs. CR's second most important mission is to investigate complaints of civil rights discrimination raised against the Department. While CR has the sole authority to investigate a formal EEO complaint, the agencies have the ability to settle these complaints at any stage of the complaint process. Consequently, both CR and the USDA agencies take an active hand in resolving EEO complaints and have every reason to act as partners in the process.

We found that relations between CR and other Department agencies have deteriorated over the years. Members of agency civil rights staffs complained of difficulty in contacting ECD staff and obtaining advice and direction from CR. The agencies also complained that their attempts to notify CR of settlements of EEO complaints were generally ignored. This apparent absence of an open door policy has gradually alienated Department agencies from CR. Agencies prefer not to contact CR because they receive little guidance and no acknowledgment of accomplishment.

We concluded that CR needs to take action to ensure that agency civil rights staffs are adequately trained and to involve the agencies in the complaints resolution process.

Conclusion No. 5 Complaints Processing Requires A Partnership Between CR and Other USDA Agencies

A lack of communication between CR and other USDA agencies hinders the effective processing of employment complaints. In addition, there is no effective reconciliation process between CR's data base and the records of any of the other USDA agencies (see

Conclusion No. 1). Agency officials complained that although they tried to communicate with CR to update CR's data base, heavy staff turnovers at CR made it difficult to know whom to contact as the responsible person for the action involved. As a result, six agency civil rights directors have given up trying to communicate with CR because they seldom get a direct response. Of the 18 civil rights directors, 11 were not able to accurately or consistently reconcile or track employee complaints once those complaints had been accepted in the formal complaint process.

We found that lack of communication between CR and the Department agencies affected the efficient sharing of documents critical to EEO complaint cases and the effective reconciling of outstanding complaints.

Untimely or Nonreceipt of Case Documents

When a complaint enters the formal process, CR is obliged to furnish the agency with critical documents that the agency would otherwise not have, such as acknowledgement letters, acceptance letters, notification assignments of investigators, copies of the requests by the complainant for hearings before the EEOC, and FAD's. During our interviews with the civil rights directors, we discovered that these case documents are not received on a timely or consistent basis. FAD's and ROI's are received late or not at all. As a result, agencies have no current status on formal complaints and are not able to reconcile their reports with the monthly report they receive from CR. Agency directors stated that sometimes their only notification that an informal case has become formal is when a complainant or investigator contacts them for information or requests an interview.

Agency directors also mentioned that it is very difficult to contact personnel at CR when they need to request case documents and information. At times, documents begin to arrive but then stop. The directors never know when a complainant has requested a hearing at EEOC or when the complainant has appealed a FAD. It will be months after the fact when they learn of any EEOC decisions, or even that an informal complaint has been accepted by CR as formal. This makes it very difficult for the agencies to answer questions or provide adequate information to an investigator who may want to know the issues of an employees' complaint. Also, the agencies' ability to resolve a complaint at the earliest stages of the formal process is lost because there is no immediate notification from CR that a complaint has been filed. The agencies go for some time not knowing if a complaint has been filed, allowing valuable time to elapse before any efforts are made to reach a solution.

An official from one agency also stated that CR loses many of the documents the agency provides to them. Multiple requests have been made for the same documents, particularly EEO counselor reports and settlement agreements. Agency directors noted that they continually fax information to CR only to be told later by CR that it did not receive the requested information. One official from another agency noted that there is no communication from CR unless it is requesting counselor reports. They do not hear from CR unless CR needs something.

Monthly Reports from CR

CR provides the agencies with a monthly report that shows the formal employee complaints and their status. Agency officials said that this is the only report given to

them by CR and that it contains many discrepancies. Case numbers are changed after previously being assigned, and cases that show a status as “pending acceptance or pending signature” will appear on the monthly report for several months. In addition, even though the agencies submit documentation to CR showing cases that have been closed, the cases continue to appear on CR’s monthly report.

Eleven of the 18 agency managers have become so frustrated with CR’s reporting, they put little reliance on it. One agency official mentioned that his agency had provided documentation to CR on numerous occasions in order to get CR to delete cases from its report, but the cases were still there. Another official noted that cases closed due to settlement agreements continued to be shown on the CR report.

Eleven of the agencies had their own tracking systems in place to track formal complaints, but their reports never agreed with CR’s report. Agency officials stated that they have stopped trying to reconcile their reports to the report from CR. They stated that when discrepancies are identified, it takes an enormous amount of time to get them corrected, and they do not see any benefit in trying. They rely on the information contained in their own reports because they know the information contained on the CR report is inaccurate. One official persuaded the agency administrator not to read the report from CR due to its inaccuracies.

Effects of Reorganization

Because reorganization has occurred so often at CR, CR cannot keep the Department fully informed of its changes. One agency official noted that everyone is aware of the latest reorganization but that none of the agency directors have been officially informed. Other agency civil rights directors said that there are no current organizational charts, telephone numbers, or contact lists that are available to the agencies to determine whom to communicate with at CR. They said that the quality of the response depends on the individual being contacted. Some ECD employees are responsive to agency needs and others are not. Many employees assigned to a case are not responsible for the actions that concern the agencies. Also, phone calls are not always returned. One agency official said that on one occasion she had to make four calls before someone could answer her question.

The ECD division recognizes that its high turnover of personnel has affected its ability to perform many of its functions. An e-mail dated July 20, 1999, from the ECD chief to CR management stated that the ECD division had a staff of 24 people to process nearly 1,800 open cases. She noted that the division needed replacements for all personnel who had left over a 2-year period and had not been replaced. She also stated that resources should immediately be shifted to the division if management expected to meet the various legal obligations of the Department. Finally, she noted that if resources were not available, serious consideration should be given to transferring these functions back to

the agencies within USDA because CR had demonstrated it could no longer perform these statutory duties.

The CR Director did not deny that communication problems between CR and the agencies existed; however, she stated that it was ultimately ECD's responsibility to respond to agencies' needs. Based on discussions with the agency civil rights directors, we concluded that one way to improve communications between CR and agency civil rights staffs and involve USDA agencies in the complaints resolution process is to emphasize the partnership between CR and the agencies in resolving EEO complaints. CR should develop a more client-oriented nature and act as an arbiter between the complainants and the agencies. For instance, CR could establish points of contact by agency to ensure agencies' needs are addressed. Consequently, we are recommending that the Secretary direct the agencies' civil rights directors and CR to establish and develop ways to enhance the working relationship between CR and the agencies' civil rights staffs.

Recommendation 17

Direct CR and the civil rights directors of USDA agencies to establish and develop ways to enhance the working relationship between CR and the agencies' civil rights staffs.

Agency Response:

CR will establish a task force of agency civil rights directors and managers in March 2000, to provide the Assistant Secretary for Administration recommendations to improve civil rights enforcement. CR believes that agency heads should be included since the civil rights directors report to the agency heads, not the CR director.

OIG Position:

Based on the above response, we agree to reach management decision on this recommendation.

Recommendation 18

Direct CR to publish a current organizational chart and points-of-contact phone listings which show the names of staff personnel and their areas of responsibility. Each time the Department reorganizes, an updated list should be published.

Agency Response:

CR responded that this had been accomplished and would be placed on the Civil Rights website.

OIG Position:

Our review of CR's organization chart found on its website on March 6, 2000, did not include phone numbers. Also, since this chart was last updated on September 11, 1998, five of the eight staffed positions on it listed names of employees who are no longer with CR. If this is the means CR will use to provide the agencies with points of contact, to reach management decision, CR needs to provide us with assurance that this information will be updated regularly.

**Conclusion No. 6
CR Needs To Provide Better Guidance
to the Department on Civil Rights
Policy**

Agency civil rights directors complain that they receive minimal guidance from CR on EEO policy and that they rarely receive training on handling EEO complaints. Also, issues raised at the CR director's monthly meetings are seldom resolved. Providing training and

guidance to USDA agencies on civil rights issues is one of CR's primary missions, yet agency officials believe that CR is unresponsive to their needs, incapable of answering their questions, and inconsistent in the direction it provides. There have been three important Supreme Court decisions on harassment, and the Department has not addressed these areas. EEOC issued guidance on this area on June 18, 1999,⁹ but no guidance has been issued from CR. In the absence of CR guidance, agencies have attempted to resolve issues on their own.

According to the CRAT report, dated February 1997, CR should proactively promote civil rights at USDA, provide guidance and oversight to agencies, and establish and disseminate civil rights policy to ensure the proper enforcement of all civil rights laws, rules, and regulations.

We found that CR provides little guidance, oversight, or feedback to the agencies on civil rights policy or procedures, updates in regulations or regulatory guidance, and direction for the enforcement of civil rights laws and rules. Agency officials noted that the current employment complaints division is understaffed and does not appear to have the expertise to give the agencies adequate guidance or oversight. Two agency civil rights directors said many of the agency staffs have been in their current positions longer than the CR people and know more about EEO issues than the CR staff.

⁹ Guidance 915.002, "Enforcement Guidance: Vicarious Employer Liability for Unlawful Harassment by Supervisor."

Lack of Training

CR does not provide any current training to the EEO counselors that are assigned to the agencies. Eleven agency directors noted that their counselors are full-time but that CR has given no training to them. Of the 18 agency civil rights officials we talked to, 10 conduct their own training for their counselors, specialists, and agency officials.

A director from one agency stated that his agency was instructed by CR to be responsible for the training of its EEO counselors and staff. Another director said that he did not believe CR had any personnel competent or experienced enough to provide adequate training. One agency sent its employees to schools and to various training courses in order to sustain the requirements of employee complaint processing, counseling of the complainant, and resolving issues.

Monthly Meetings With Agency Civil Rights Directors

Agency officials stated that EEO-related issues are raised during the CR director's monthly meetings with the agency directors, but that rarely is anyone from the CR staff in attendance who can answer questions or resolve any of the problems that the directors may have. An agency civil rights official noted that typically the CR director would state during the meetings that she would have her staff resolve the problem or contact the agency with some type of followup, but rarely did the director or a CR employee get back to them. Another director mentioned that an official from CR had been conducting meetings relating to employee compliant issues and their current status, but these meetings were discontinued after the official left CR for a position at another agency.

Recommendation 19

Direct CR to establish and provide guidance on training to the agencies and work with the agencies to ensure training is developed and conducted in accordance with regulatory guidance and EEO standards. This should include identifying and developing EEO training needs for agency civil rights personnel.

Agency Response:

CR's response indicated that this would be implemented with the task force established with Recommendation 17.

OIG Position:

Based on the above response, we agree to reach management decision on this recommendation.

Recommendation 20

Direct CR to distribute the notes of monthly meetings with agency civil rights directors to facilitate followup action.

Agency Response:

CR stated that this would be implemented after their next meeting.

OIG Position:

Based on the above response, we agree to reach management decision on this recommendation.

Separate Controls Are Needed For EEO Complaints Made Against CR Management

Conclusion No. 7

Employees of the Employment Complaints Division process employment complaints made against CR management. There are no separate procedures in place for processing complaints from employees within CR and within Department Administration. As a result, these employees are not afforded the opportunity of an unbiased, third-party review and may be subjected to acts of discrimination that are allowed to continue because the officials responsible for signing decisions may have a vested interest in the complaint.

The ECD processes all formal USDA employee complaints, including those from employees working in CR and Department Administration (these are referred to as “in-house” complaints). Management stated that employees with knowledge of an in-house complaint or officials named in the complaint would be excused from working on a specific case. However, we do not believe this mitigates the fact that employees are entitled to an unbiased, third-party review.

In prior years, a Memorandum of Understanding with the Department of Commerce established Commerce as the department to process the in-house complaints. According to ECD employees, this mechanism is no longer used because Commerce was not processing USDA complaints in a timely manner.

Currently ECD has contracted out in-house cases at the acceptance/dismissal phase. The final product submitted by the contractors is a recommendation to CR, which is still responsible for determining whether or not the decision should be accepted or dismissed. Furthermore, the use of contractors at the acceptance/dismissal phase is a temporary situation to address the backlog. ECD employees will process future in-house complaints.

Contractors are responsible for conducting the investigation of complaints by CR employees as for all USDA employees. Once the ROI has been accepted, however, ECD is responsible for writing and issuing the FAD. The decision is written and reviewed by division employees, and the director of CR signs all the FAD’s.

We noticed one in-house complaint whose dismissal by CR presented an apparent conflict of interest. The complaint had named the CR director as a responding official, and ECD, uncertain of who was authorized to sign a decision in this case, prepared two

draft dismissal decisions, one of which was pending the CR director's signature, and the other of which was pending the signature of the Assistant Secretary for Administration. A complainant who receives a dismissal letter from the person he or she complains about cannot have faith in the resolution process. A complainant who receives such a letter from essentially the same "house" he or she complains about may not have any greater faith. We believe allowing the director and even the Assistant Secretary for Administration (ASA) to sign a FAD when the director or ASA is named as the responding official presents a conflict of interest.

The confidentiality of in-house complaints is also questionable. The casefiles of complaints from in-house employees are maintained and stored in the file room with all other complaint casefiles. The potential exists for ECD employees to gain access to employee complainant casefiles, violating their privacy, or permitting tampering with documentation. The current tracking system can also be viewed and changed by any employee.

As of September 7, 1999, there were 32 open CR employee complaints at different stages of the complaint process as shown below.

- 18 pending acceptance/dismissals
(8 of these have been sent to contractors)
- 12 in the investigation phase
- 2 pending FAD's
(1 was pending signature and the other was in the draft decision process)

Of the 32 employee complaints, we were unable to locate or identify the responding official in 7 of the casefiles. Subsequent to this date, one of the casefiles was closed because two case numbers were erroneously assigned to the same complaint. Five casefiles located during our initial inventory count could not be found during our review of the in-house complaints. Ten complainants named the director in their complaints as the offending party.

CR needs to develop procedures for processing in-house complaints that would eliminate potential conflicts of interest and protect the confidentiality of these complaints. The procedures should include a mechanism for processing complaints against the Director of CR and the ASA outside of USDA. There should also be caution used in processing the remaining in-house complaints to ensure complainants are afforded unbiased due care. The controls would include adequate safeguarding and maintenance of the files and data base records.

Recommendation 21

Direct CR to develop procedures for processing in-house complaints. The procedures should provide a mechanism for processing complaints against the Director of CR and the Assistant Secretary for Administration outside of USDA. There should also be appropriate controls on processing the remaining in-house complaints to ensure complainants are afforded unbiased due care. These controls would include adequate safeguarding and maintenance of the files and data base records.

Agency Response:

CR's stated that OGC prepared a proposed procedure for processing CR in-house complaints to eliminate potential conflicts of interest. The proposal was shared with the agencies and would be finalized after the comments are considered and sent through appropriate departmental offices for clearance.

OIG Position:

OGC had provided us with a copy of the draft proposal. The procedures only relate to employee complaints against the CR director. We believe the procedures need to be expanded to include more cautious handling of all CR employee complaints. These complaints are filed with all other complaints and can be seen by anyone. And even though the complaints are investigated by contractors, the ROI's are reviewed by division employees. Decisions are written and reviewed by division employees. The current tracking system can be reviewed by all employees; it also allows anyone to make changes without identifying who made them. Controls need to be in place to ensure in-house complaints are afforded unbiased due care. To reach management decision, CR needs to provide a revised draft to include all complaints initiated by CR employees.

Exhibit A – Secretary’s Request Letter



United States Department of Agriculture

Office of the Secretary
Washington, D.C. 20250

AUG 24 1998

MEMORANDUM FROM THE SECRETARY

TO: Roger Viadero, Inspector General

SUBJECT: Civil Rights Policies, Procedures, and Settlements

One of my most important objectives has been to assure that equal employment opportunity (EEO) complaints by Department of Agriculture (USDA) employees are resolved on a fair and timely basis. As you know, Members of Congress have repeatedly asked me about this. Accordingly, I want to make sure that USDA's Office of Civil Rights (CR) has established a reliable tracking system for these complaints, and I want to examine CR's employment complaints files to determine the following.

1. The number of open EEO complaints, in the following categories:
 - a. complaints pending acceptance;
 - b. complaints accepted as formal and pending within USDA;
 - c. complaints pending before the Equal Employment Opportunity Commission; and
 - d. complaints pending in the courts.
2. The number of complainants, by the same categories listed in #1.
3. Whether all complaint files can be located.

Questions about the status of EEO cases have increased my concern about the expeditious acquisition of an accurate case tracking system. As part of your report, please identify whether there are adequate case tracking systems available as "off-the-shelf" software and how long it would take to bring such a system on-line if we used the most expeditious procurement approach.

Finally, since February 1997, the Office of Inspector General has issued six Evaluation Reports on civil rights issues relating to the program complaints process. I would also like your assessment of corrective actions taken to date by CR on this vital and important process.

When you have assessed this request, please give me an estimate of how long you will need to complete your examination and make recommendations, including any other matters you discover in the course of carrying out this examination that you believe need to be addressed.

An Equal Opportunity Employer

Exhibit A – Secretary’s Request Letter

2

The Acting Assistant Secretary for Administration will work with you on a cost-reimbursable agreement for this special review.

Thank you for your help on this important matter.

cc: Deputy Secretary Richard Rominger
Rosalind Gray, Director, CR
Charlie Rawls, General Counsel
Sally Thompson, Acting Assistant Secretary for Administration

Exhibit B –USDA Agency Civil Rights Staff Interviewed

- Animal Plant Health Inspection Service (APHIS)
- Food Safety and Inspection Service (FSIS)
- Rural Development (RD)
- Risk Management Agency (RMA)
- Natural Agricultural Statistics Service (NASS)
- Natural Resources Conservation Service (NRCS)
- Economic Research Service (ERS)
- Cooperative State Research, Education, & Extension Service (CSREES)
- Grain Inspection, Packers & Stockyards Administration (GIPSA)
- Foreign Agricultural Service (FAS)
- Office of Chief Financial Officer (OCFO)
- Office of Inspector General (OIG)
- Food and Nutrition Service (FNS)
- Agricultural Research Service (ARS)
- Agricultural Marketing Service (AMS)
- Farm Service Agency (FSA)
- Office of Human Resource Management (HRM)
- Forest Service (FS)

Exhibit C – Summary of Missing Casefiles (Sorted by Complaint Date)

EEOMAS NUMBER	AGENCY	COMPLAINT DATE
953034	FSA	6/7/1995
970110	FSIS	12/9/1996
980224	FSIS	12/18/1997
980391	ARS	2/18/1998
980620	FSIS	5/1/1998
980638	APHIS	5/12/1998
980837	FS	7/14/1998
980849	FS	7/21/1998
981024	FS	9/17/1998
981038	APHIS	9/22/1998
990014	OGC	11/15/1998
990015	HRM	11/15/1998
970959	FSA	12/31/1998
990413	FS	1/7/1999
990422	OO	2/24/1999
990645	FS	5/5/1999
990813	FSIS	7/9/1999
990834	FS	7/16/1999

Exhibit D – Summary of Statistical Projections

The general statistical sample design for this audit was a simple random sampling scheme where civil rights cases were selected in four separate universes. A 95% two-sided confidence level was used for all the statistical estimates in this review.

A universe of 1,823 cases was identified for this simple random sample design. There was no stratification of these 1,823 cases. Since attribute estimates were to be generated from this statistical sample, a sample size of 88 was selected. All cases were selected with equal probability without replacement. The sample unit was a case.

Statistical Analysis

All statistical sample design, selection, and statistical estimation were accomplished on a DELL Pentium Personal Computer using SAS and SUDAAN. The statistical estimates used for projections along with their standard errors were produced using the Windows version of SUDAAN, a software system that analyzes sample survey data gathered from complex multistage sample designs. SUDAAN was written by B.V. Shah of Research Triangle Institute, Research Triangle Park, North Carolina.

The sample precision for estimating percentage values is defined as

$$sp = t * STDERR$$

where

t - t factor for a 95% two-sided confidence level
 STDERR - standard error of the point estimate (percentage value)

Table of Statistical Estimates used in the report:

Population Estimate: 996.42

	Estimate	Lower	Upper	Precision
Of the cases we could have reviewed, the percent of cases were required to be returned to the contractor for more information/work.	13.04	8.02	18.06	5.021
Estimate of the days from the date of Complaint to the Date of the ROI	243.3727	202.6314	284.1139	0.1674
Estimated number of cases required to be returned to the contractor for more information/work	237.78	146.26	329.31	0.385

Note: All statistical estimates are found in Conclusion No. 4 of the report.

Exhibit E – CR’s Written Response to the Draft Report


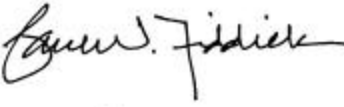

	
United States Department of Agriculture	
Office of the Assistant Secretary for Administration	
Office of Civil Rights	
1400 Independence Avenue SW	
Washington, DC 20250	
	MAR - 9 2000
TO:	Roger Viadero Inspector General
THROUGH:	Paul W. Fiddick Assistant Secretary for Administration 
FROM:	Rosalind D. Gray Director  MAR - 8 2000
SUBJECT:	Response to OIG Audit Report No. 60801-3-Hq
<p>As the Secretary has noted, the Office of Civil Rights (CR) is an agency which has been neglected for over a decade. Creating the appropriate structure and staffing to correct years of neglect requires time and resources. While additional resources have been provided in the last fiscal year, securing and training employees in necessary competencies has been a slow process. CR has made significant progress in addressing these problems and is well on its way to efficient and effective operations.</p> <p>CR has been inefficient. Its organizational structure was not designed to enforce civil rights. The changes in structure have been attempts to staff civil rights with managers in the critical phases in the enforcement process. Creation of a Departmental office that is dependent on employees who are not in its chain of command contribute further to its inefficiency. Generally, employees have been placed in CR for reasons other than their qualifications to process employment complaints. The employees are frustrated both because of the changes in management and lack of familiarity with civil rights enforcement. Always there has been an urgency to produce results because of the accumulation of cases and the need to reduce a constant flow of complaints.</p> <p>The Employment Complaints Division (ECD) itself has not gone through constant restructuring. Inefficiencies in the unit are due to the fact that staff is not adequately trained and is frustrated. This situation in the Employment Division has led to and continues to contribute to turnover. Staffing in the Office of Civil Rights is controlled by Departmental Administration’s personnel office, and obtaining essential personnel is a slow process. In FY 1999, the Office of Civil Rights did not receive a budget allocation until February, 1999, five months into the fiscal year. It was more than a month later before CR was able to add additional staff based on its FY 99 allocation. It was July, 1999, before it obtained certified lists from which to select managers.</p>	
AN EQUAL OPPORTUNITY EMPLOYER	

Exhibit E – CR’s Written Response to the Draft Report

The history and reputation of the Department of Agriculture (USDA) in the area of civil rights further complicates the ability of the office to obtain skilled civil rights employees. Many on the list of eligible applicants are not experienced in civil rights.

Yet we have achieved some results. The Office of Civil Rights has obtained two experienced civil rights employment attorneys, who, combined, have over 25 years of experience working at the Equal Employment Opportunity Commission (EEOC) in the Office of Federal Operations. Already, USDA is benefitting from improved drafting of final agency decisions and the management of compensatory claims. Civil rights adjudication already has determined that some accepted reports of investigation lacked information critical to drafting appropriate final agency decisions and we are addressing these issues.

Four days training by experienced attorneys was provided to all employees in ECD. Additional training is being planned. All ECD employees attended training provided by the EEOC on its new regulations for processing Federal EEO complaints.

The following comments on the report are being provided in the same order that they were presented in the report.

Conclusion No. 1 - CR’s Data Base Is Not Supported by its Case Files or by Records Maintained by USDA Agencies and EEOC (pp. 8-15)

In general, CR agrees with the findings of the report. The pictures of the file room are dramatic; however, there is no acknowledgment that the pictures were taken while the OIG staff were conducting their audit, thereby placing an extraordinary burden on the file manager as OIG staff requested files in addition to the usual requests for files generated by ECD.

Recommendation 1 - Direct CR to locate the 18 missing case files.

CR will locate any files that are still missing within 30 days of receiving the list identifying those cases or establish that the files are duplicative or do not exist.

Recommendation 2 - Direct CR to review and determine the proper status of the 87 open complaints we identified as closed, and the two closed complaints we identified as open.

CR will determine the appropriate status of the 87 cases that IG identified as closed and CR records as open, and the two cases that the IG identified as closed and CR records identify as open, within 30 days of receiving the necessary information from the IG.

Recommendation 3- Direct CR to perform a document-by-document sweep of its employment complaint case files to ensure that all documentation is accounted for and that the documentation in the files reflects the status of each case.

CR will perform a document review of its open employment case files to account for all

Exhibit E – CR’s Written Response to the Draft Report

documents and verify the accuracy and consistency of the case files to the database. Because of the extremely large number of employment cases, this review and verification process will be completed by July 31, 2000.

Recommendation 4 - Direct CR to immediately reconcile its case files with those of the agencies. CR should make the appropriate changes to its tracking system based on these reconciliations.

The reconciliation process is ongoing. ECD will better monitor reconciliation in the future, and insure reconciliations are accomplished. Reconciliations will occur by the end of the month within which the meetings occur. Reconciliation meetings are generally scheduled around the tenth of the month.

Recommendation 5 - Direct CR to modify Department Regulation 4300-7 to require agencies and CR to reconcile their caseloads on a monthly basis.

CR will implement this recommendation through a directive within 30 days.

Recommendation 6 - Direct CR to implement management controls to ensure timely and accurate reconciliation between CR and the agencies.

Appropriate management controls will be incorporated in the Directive to be issued in response to Recommendation 5.

Recommendation 7 - Direct CR to immediately reconcile its cases with those listed by the EEOC as pending appeal and hearings.

ECD initiated a reconciliation project on cases pending hearing in the winter of 1999. This project will be completed by May 30, 2000. Reconciliation will occur again at the end of the fiscal year.

Appeal cases and reconciliations with the Equal Employment Opportunity Commission (EEOC) are scheduled to occur twice a year. This process was completed in January, 2000, and is current.

Recommendation 8 - Direct CR to reconcile its cases on a quarterly basis specifically those cases listed by EEOC as pending appeals and hearings.

To reconcile CR cases with the EEOC listing is a very time-consuming task. CR must contact each of the 26 EEOC field offices and solicit the cooperation of a staff that has, as CR, a very heavy caseload. We recommend that the reconciliation occur not more often than semi-annually.

Exhibit E – CR’s Written Response to the Draft Report

Conclusion No. 2 - CR’s Representations of its Progress Do Not Reflect Actual Performance
(pp. 15-19)

Recommendation 9 -Direct CR, when presenting data regarding civil rights activities, to provide full disclosure about the data, methodology on how the data is used, and what exactly it means, and to be consistent in reporting over time.

Tracking Analysis and Application Division (TAAD) will institute an internal quality control review that ensures the integrity of the data we present. TAAD will include the method of data extraction, define the representation of the data and add the rundeate as a footnote on all outgoing reports. Identifying the criteria upon which the report was created will allow TAAD to be consistently running the report over time.

TAAD will include on all outgoing reports information to identify data extraction, definition of the representation of the data and rundates on all outgoing reports. This process will take effect in 45 days.

Conclusion No. 3 - Other Data Bases Exist, but CR Does Not Use Its Current Data Base Effectively (pp. 19-23)

Recommendation 10 - Direct CR to expedite the implementation of its new employment complaint tracking system containing advanced edit checks to ensure the integrity of the data and providing workflow functions for case file management.

The Employment Data Tracking System (EDTS) is in its second phase of development. EDTS will have advanced edit checks to include lookup lists for ease of entry to avoid typographical entries. These checks will alleviate the chances of processing erroneous data.

EDTS is based around the ActionWorks Technology, which is a workflow based application. This application allows the user to track the flow of a case providing better management of case files.

Work on the new system has been initiated and the contractor has held a series of meetings with CR staff to familiarize the contractor with the complaint process, database requirements and expected performance of the system. The first live test of the new system is scheduled to begin in April, 2000, and the contractor is currently on schedule. The new system will be tested and finalized, staff trained in how to use the system and the database in place on September 30, 2000. We are on schedule and have every expectation the system will be fully functioning as scheduled.

The prototype for the formal phase is completed and testing will commence in April. The system will be deployed to the agency in September, 2000.

Exhibit E – CR’s Written Response to the Draft Report

Recommendation 11 - Direct CR to maintain the integrity of the data in its tracking system by identifying suspect data in the system through routine searches for anomalies, and by assigning someone the responsibility to follow up on those suspect cases.

To insure the integrity of the data is secure TAAD will identify suspect data by presenting weekly reports to ECD for action. These reports will identify missing data or invalid data entries for correction. TAAD will follow up with the specialist to insure corrections are being made.

EEOMAS currently has the capability to provide a report on data anomalies in the database. The database staff has been generating these reports and attempting to correct the problems. We will establish a procedure between ECD and the current database management staff that these data anomalies will be reported to ECD on a periodic basis so that ECD can correct the database discrepancies, as staff allows.

During the past 3 years, the division embarked on a number of efforts to correct the database and match the database case status to the case status as reflected by actual documents in the case files. Staff involvement was extensive.

TAAD will begin providing reports to the ECD staff immediately to assist in identifying suspect data in the system.

Recommendation 12 - Direct CR to discontinue using its database to track casefile location, or otherwise develop a system that ensures accurate casefile location that can be updated only by those with the authority to do so.

EDTS will have the capability to track the location of the casefile when the system comes online. EDTS will be available for use October 2000. TAAD has an access database that will be put into place for tracking the location of the physical file. The application will be loaded on the server in a secured directory and accessible only by the File Room Manager and members of the TAAD staff. The application will allow the user to print reports which identify the location of a case.

We do not concur that the case file location should be separate from the employment complaint tracking system. Keeping all relevant data about a case in one database is an efficient and effective means of ensuring that all relevant information is readily available.

There has been a file location tracking system developed for another customer within USDA. We will modify this system (i.e., customize it to fit his needs) and give access to the File Room manager to track the location of the cases. The modifications and installation of this system will be completed within 30 days.

Recommendation 13 - Direct CR to cleanse its current database before migrating the information to the new EEO tracking system.

Exhibit E – CR’s Written Response to the Draft Report

TAAD will work closely with ECD to assist in cleansing the data. EDTS is scheduled to go online October 2000. TAAD will identify key fields for migration to the new system and will work closely with the Employment staff to clean those fields. TAAD will verify the validity of the data by providing reports to the Employment staff for concurrence.

OIG’s Accepted/Closed Graphs

In regards to allegations that the Director attempted to mislead the OIG we offer the following explanation:

TAAD agrees with OIG’s figures for cases accepted in FY 97 - 99. We report that same data in our weekly employment report that is given to the Director. There was a misunderstanding in how the report from TAAD was titled. Our report accurately reflects total cases opened FY 97-99 and total closed cases. TAAD reported opened and closed cases for FY 97 - 99 and not accepted cases as the title states. However, TAAD supplied the report, with the headings attached, to the Director.

Cleansing the current database is an ongoing process. TAAD will assist ECD by providing reports weekly. EDTS will be in place in September, 2000.

Conclusion No. 4 - CR’s Management Practices Prevent CR From Processing Complaints With Due Care and From Resolving them Within the Time frames Established by EEOC (pp. 24-31)

General Response to Conclusion No. 4:

The report’s references to the absence of a long term plan needs clarification. As an agency, we believe our long range plan during the audit period was defined by the Secretary as processing all current complaints within the regulatory time frames and clear up the backlog. This understanding of the long range plans produced the “bubble” management approach cited by the report and found to be unacceptable--a view shared by the CR management team and employees. The bubble management approach--the reassignment of staff to follow the movement of this large number of cases (bubble) as they moved from one stage of the complaint process to the next stage of the complaint process--was created as a means to address the Secretary’s “clear the back log” goals within the available staffing levels. Had there been adequate staffing at each stage of the complaint process, employee reassignments to follow the bubble would not have been necessary. Because the report does not address the reason for the development of the bubble management approach, the report’s recommendations are not sufficient to remedy the problem or provide a clear understanding of the report’s recommendations.

Further, the report fails to recognize that during FY’98 when the bubble management approach was being utilized, the agency closed more complaint cases than it received. This was the only year that this occurred since FY’94 when the complaint caseload began its dramatic climb. The report’s failure to address this achievement in a bubble

Exhibit E – CR’s Written Response to the Draft Report

management environment calls into question the report’s conclusion that bubble management was an inappropriate approach.

Since we do not know the cases that the OIG reviewed in arriving at this assertion, we are denied the opportunity to review the cases and determine the validity of this assertion. We must note that we do not believe, despite its best efforts, that the OIG has the background and ability to substitute its judgement of what an adequate Final Agency Decision (FAD) is for the judgement of ECD, the organization that has the staff that has been performing this responsibility for a number of years. What further suggests that the OIG assertion is incorrect is that the ECD decisions of FADs is appealable by the complainants to the EEOC. A review of the record on the number of FADs issued by USDA that are overturned by the EEOC on appeal will disclose that the USDA rate of being overturned is among the lowest in the Federal government.

Recommendation 14 - Develop a management plan to address issues identified concerning effective leadership, changing organizational culture, customer focus, process improvement and reengineering. This plan should include the development of a workforce planning strategy. The use of a management consultant to help develop such a plan should be considered.

Classifications for jobs for civil rights are prepared by Departmental Administration’s Human Resources Division. Generally, the positions in the Office of Civil Rights are appropriate; the grades are high because personnel were assigned to the positions.

Recommendation 15 - Develop management controls to ensure the reviews of ROI’s and FAD’s are performed thoroughly and provide accurate information.

The new chief of ECD and the recently acquired chief of EAD are taking steps to ensure greater quality of ROIs and FADs.

Recommendation 16 - Direct CR to revisit the ROIs and FADs that we found deficient and ensure that the complaint in each of these cases has been handled with due care.

Adequate supervision and management is being given, and will be provided, in the future. CR is exerting tremendous efforts to select the best managers possible to insure that ROIs are adequate and final agency decisions are correct.

Conclusion No. 5 - Complaints Processing Requires A Partnership Between CR and Other USDA Agencies (pp. 32-35)

Recommendation 17 - Direct CR and the civil rights directors of USDA agencies to establish and develop ways to enhance the working relationship between CR and the agencies’ civil rights staff.

CR is always ready to assist agency civil rights directors in performing their functions. If

Exhibit E – CR’s Written Response to the Draft Report

they have expressed a need for improving the working relationship between staffs, CR will cooperate in whatever way we can.

CR will establish, in March, 2000, a task force of agency civil rights directors and managers to recommend to the Assistant Secretary for Administration methods to improve civil rights enforcement at USDA. It is important to include agency heads on such a working group in view of the fact that agency civil rights directors report to agency heads and not to the Director of the Office of Civil Rights.

Recommendation 18 - Direct CR to publish a current organizational chart and points of contact phone listings which show the names of staff personnel and their areas of responsibility. Each time the Department reorganizes, an updated list should be published.

This is done and will be placed on the Civil Rights website.

Conclusion No. 6 - CR Needs To Provide Better Guidance to the Department on Civil Rights Policy (pp.35-37)

Recommendation 19 - Direct CR to establish and provide guidance on training to the agencies and work with the agencies to ensure training is developed and conducted in accordance with regulatory guidance and EEO standards. This should include identifying and developing EEO training for agency civil rights personnel.

In conjunction with the working group established as a result of recommendation 18, we will implement this recommendation.

Recommendation 20 - Direct CR to distribute the notes of monthly meetings with agency civil rights directors to facilitate follow up action.

We will implement this recommendation after our next meeting.

Conclusion No. 7 - Separate Controls Are Needed For EEO Complaints Made Against CR Management (pp.38-39)

Recommendation 21 - Direct CR to develop procedures for processing in-house complaints. The procedures should provide a mechanism for processing complaints against the Director of CR and the Assistant Secretary for Administration outside of USDA. There should also be appropriate controls on processing the remaining in-house complaints to ensure complaints are afforded unbiased due care. These controls would include adequate safeguarding and maintenance of the files and data base records.

OGC, at the request of the Assistant Secretary for Administration, prepared a proposed procedure for processing CR in-house complaints to eliminate potential conflicts of interest. The proposal has been shared with agency heads. The draft will be finalized

Exhibit E – CR’s Written Response to the Draft Report

after comments are considered and sent through the appropriate Departmental offices for clearance.