
**U.S. Equal Employment Opportunity Commission
Program Evaluation Report**

**Social Security Administration
Baltimore, MD**

May 14, 2014

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INTRODUCTION

The Equal Employment Opportunity Commission (EEOC) enforces the statutes that prohibit workplace discrimination in the federal government. These statutes include section 717 of Title VII of the Civil Rights Act of 1964; section 501 of the Rehabilitation Act of 1973; section 15 of the Age Discrimination in Employment Act of 1967; the Equal Pay Act of 1963; and the Genetic Information Nondiscrimination Act of 2008. Each covered federal agency is required to maintain an equal employment opportunity (EEO) program that includes a number of components covering the variety of issues that may occur during the life of an employment relationship, from application to separation. Each agency EEO program must include procedures governing informal pre-complaint inquiries (counseling), formal EEO complaint process which includes complaint investigation, hearings and agency decisions, an alternative dispute resolution (ADR) program for the formal and informal complaints stages, an appeal process, and compliance requirements. The regulations are codified at 29 C.F.R. Part 1614; relevant guidance includes EEO Management Directive 110 (MD-110) (complaints processing manual) and Management Directive 715 (MD-715) (affirmative employment program requirements).

Pursuant to this authority, EEOC's Office of Federal Operations (OFO) periodically conducts program evaluations to assess the effectiveness of a selected agency's EEO program, as a whole or in specific part. These evaluations are carried out to ensure compliance with the civil rights laws, regulations and management directives enforced by EEOC. By conducting such evaluations, OFO seeks to improve agency EEO programs and further the federal government's goal of becoming a model EEO employer. At the conclusion of an evaluation, OFO issues a report of its findings and recommendations.

Accordingly, EEOC conducted an evaluation of the EEO program primarily focusing on the complaint process at the Social Security Administration (SSA). The decision to perform this evaluation resulted from a series of concerns raised during Fiscal Years (FY) 2009-2011 and the first two quarters of FY 2012, regarding the agency's failure to comply with laws, regulations, and other EEOC directives and the high rate of complaints alleging workplace harassment. During the same period, EEOC received numerous communications from employees within SSA's Office of Civil Rights and Equal Opportunity (OCREO) alleging harassment by OCREO management and inadequacies and deficiencies in SSA's EEO complaint processing. The goal of this program evaluation was to assess whether SSA has an efficient complaint process in accordance with EEOC regulations; and whether SSA has an adequate anti-harassment policy and procedure in place.

In order to make this assessment, OFO received and analyzed data from OCREO through a Request for Information (RFI), interviewed personnel in headquarters and Falls Church, Virginia, and each EEO Manager at the ten regional Civil Rights and Equal Opportunity (CREO) offices.

BACKGROUND

SSA's mission is "to deliver social security services that meet the changing needs of the public." The agency administers these services through various statutes and programs to include the Old Age, Survivors and Disability Insurance programs and the Supplemental Security Income program. SSA has a staff of approximately 67,000 employees led by a Commissioner. SSA's decentralized field organization provides services at the local level, including 10 regional offices, 6 processing centers, and approximately 1,260 field offices.

Responsibility for SSA's EEO programs rests with the agency's Office of Civil Rights and Equal Opportunity (OCREO), which is located at the agency's headquarters (HQ) in Baltimore, Maryland. According to its website, OCREO is responsible for providing "a national direction on a wide range of SSA's equal opportunity and diversity activities, to include:

- a) planning, implementing and directing programs designed to ensure equality of employment opportunity for all,
- b) managing the system for processing, adjudicating, and resolving complaints of discrimination in compliance with all applicable laws,
- c) developing and directing a program of reasonable accommodation for SSA's employees with disabilities,
- d) developing and maintaining all necessary information systems to manage SSA's equal opportunity programs, and
- e) developing reliable statistical analyses and track equal opportunity workloads."

OCREO is led by an Associate Commissioner who reports to the Deputy Commissioner of Human Resources (DCHR). The DCHR reports to the Commissioner. In January 2012, SSA appointed a new Associate Commissioner of OCREO, who served in the position until March 2014. Currently, SSA has named an Acting Associate Commissioner for the OCREO.

The OCREO office structure is by function: Center for Cultural Diversity (CCD); Center for Complaints Processing (CCP); Program Policy, Quality Assurance and Training Unit (PPQAT); and the Business Operations Division (BOD). CCD: 1) develops the overall SSA affirmative employment program plan; 2) handles the contractors responsible for conducting the agency's barrier analysis and preparing SSA's MD-715 report; 3) provides office automation support; 4) administers the agency's Special Emphasis Programs and 5) exercises oversight of the EEO Advisory Groups.

CCP: 1) handles counseling and ADR for HQ employees; 2) reviews all Report of Investigations (ROI) prepared by contract investigators; and 3) processes the agency-wide pending hearing and appeals requests. All hearing requests go to CCP where the Supervisory EEO Specialist assigns regional hearing requests to an EEO Specialist, who forwards the hearing request to the Regional CREO Manager.

PPQAT: 1) reviews the final agency decisions (FADs) and 2) develops training for the agency's employees on EEO topics. BOD, a newer division, 1) acts as a liaison between OCREO and SSA's Regional Offices; 2) manages the compliance process and the pre-complaint process for the Office of Disability Adjudication Review employees; and 3) ensures that the agency timely complies with the EEOC Administrative Judge's (AJ) orders, and the OFO's compliance orders.

SSA's field organizations include, ten (10) Regional Offices: Region I Boston; Region II New York; Region III Philadelphia; Region IV Atlanta; Region V Chicago; Region VI Dallas; Region VII Kansas City; Region VIII Denver; Region IX San Francisco; and Region X Seattle. Each region and the Office of Central Operations have its own Civil Rights and Equal Opportunities (field CREO) Office. The field CREO offices are responsible for 1) the counseling and pre-complaint ADR process in their respective regions and 2) forwarding files to the EEOC Hearings Units.

OBJECTIVES, SCOPE AND METHODOLOGY

OFO conducted this program evaluation to determine SSA's compliance with 29 C.F.R. Part 1614 and EEOC's management directives. In particular, OFO examined SSA's reporting structure, EEO complaint processing program, the processing of conflict of interest cases, and the agency's anti-harassment policy and procedures.

As part of the review, on July 5, 2012, OFO issued a letter notifying SSA of the program evaluation and requesting information related to SSA's EEO programs (due July 25, 2012). Exhibit 1. On July 18, 2012, the Director for the CCD requested an extension until August 10, 2012 to provide responses concerning the anti-harassment program. OFO granted the extension on July 19, 2012. On July 31, 2012, OFO received the bulk of SSA's responses. On August 13, 2012, OFO received the responses related to the anti-harassment program.

During the evaluation process, OFO analyzed the additional documents, including SSA's FY 2008-2011 MD-715 reports, FY 2008-2011 Form 462 reports on its EEO complaint activity, SSA's appeal decisions from FY 2009 until first quarter of 2012, EEO policies/procedures, anti-harassment policies and procedures, reasonable accommodation policies/procedures, and training materials from FY 2009 until first quarter of 2012. In addition, OFO interviewed SSA officials and staff within the OCREO and the field CREO offices regarding their responsibilities for administering the EEO program. OFO met with OCREO staff on November 13 and 29, December 3-6, and via teleconference December 19, 2012. Additionally, OFO staff held teleconferences with the ten CREO managers from November 14-16, 2012.

On February 12, 2014, EEOC provided SSA with a draft of the program evaluation report for review and comment. On March 26, 2014, via e-mail SSA provided EEOC a response to each of our twelve findings and advised EEOC that it already implemented some of the recommended actions.

EEOC does not reveal the names of non-management officials and employees who provided statements during interviews. Anonymity encourages greater interviewee participation and a willingness on the part of interviewees to speak freely and honestly. This allows EEOC to gain a better and more objective understanding of the agency, and assists in providing the agency with useful, practical advice on how to improve their programs. EEOC, however, has provided the titles of the SSA management officials interviewed during our evaluation.

FINDINGS AND RECOMMENDATIONS

EEOC's regulations provide guidelines to federal agencies on administering fair and neutral EEO programs. To clarify the regulatory requirements in 29 C.F.R. Part 1614, EEOC issued MD-110, which provides guidance on the administrative EEO complaint process in the federal government, and MD-715, which sets forth the six essentials elements for developing and maintaining a model EEO program.

The core issues of the evaluation in this report are set forth in four sections, they are: (1) Organizational Structure; (2) EEO Complaint Process; (3) Anti-Harassment Program; and (4) Conflict of Interest. In each of the four sections, areas in need of improvement are identified with specific "finding(s)" followed by recommendation(s) for corrective action.

Our program evaluation resulted in the following findings:

- SSA's Associate Commissioner of OCREO does not Report to the Commissioner of Social Security Administration (*Finding 1*);
- SSA's Associate Commissioner of OCREO has no authority over the field CREO offices (*Finding 2*);
- SSA does not have resources to ensure an efficient pre-complaint process (*Finding 3*);
- SSA does not have an effective ADR program (*Finding 4*);
- SSA untimely issues Acceptance/Dismissal Letters and fails to meet the regulatory requirements for an EEO investigation (*Finding 5*);
- SSA does not timely issue merit Final Agency Decisions (*Finding 6*);
- SSA does not timely submit complaint files for appeals to OFO and fails to comply timely with EEOC Orders (*Finding 7*);
- SSA's tracking system does not accurately reflect the appropriate EEO data (*Finding 8*);
- SSA does not have a uniform training program (*Finding 9*);
- SSA has not developed and implemented an effective/efficient anti-harassment policy and procedures (*Finding 10*);
- OCREO employees perceive a conflict of interest concerning the role of the agency's representatives in SSA's EEO complaints process (*Finding 11*); and
- Implementation of SSA's Delegation of Authority to Resolve OCREO Employees' Complaints of Discrimination and/or Harassment appears to be ineffective and unfair. (*Finding 12*).

**The Social Security Administration's Organizational Structure
is Inconsistent with EEOC's Regulations**

Finding 1: SSA's Associate Commissioner of OCREO Does Not Report to the Commissioner of the Social Security Administration

Pursuant to 29 C.F.R. § 1614.102(b)(4) and MD-110 Chapter 1(I), "Each federal agency shall appoint a Director of Equal Employment Opportunity (EEO Director). . . and . . . shall be under the immediate supervision of the agency head. . . . The EEO Director cannot be placed under the supervision of the agency's Director of Personnel or other officials responsible for executing and advising on personnel actions." "By placing the EEO Director in a direct reporting relationship to the head of the agency, the agency underscores the importance of equal employment opportunity to the mission of each federal agency and ensures that the EEO Director is able to act with the greatest degree of independence." See MD-110 Chapter 1(III).

MD-110 further explains, "Agencies must avoid conflict of position or conflict of interest as well as the appearance of such conflicts. For example, the same agency official(s) responsible for executing and advising on personnel actions may not also be responsible for managing, advising, or overseeing the EEO pre-complaint or complaint process. Those processes often challenge the motivations and impacts of personnel actions and decisions. In order to maintain the integrity of the EEO investigative and decision making processes, those functions must be kept separate from the personnel function." See MD-110 Chapter 1(III).

In 1978, when the President and Congress decided to move oversight of federal sector EEO from the Civil Service Commission (CSC) to EEOC, President Carter stated that "[t]ransfer of the [CSC's] equal employment opportunity responsibilities to EEOC is needed to ensure that: (1) Federal employees have the same rights and remedies as those in the private sector and in State and local government; (2) Federal agencies meet the same standards as are required of other employers; and (3) *potential conflicts between an agency's equal employment opportunity and personnel management functions are minimized.*" Reorganization Plan No. 1 of 1978 (Emphasis added).

SSA's organizational structure is in clear violation of these requirements. The OCREO Associate Commissioner (AC) [EEO Director] reports to the Deputy Commissioner of Human Resource (DCHR), who in turn reports to the SSA's Commissioner. As such, the EEO Director does not have a direct reporting relationship with SSA's Commissioner. In addition, OCREO does not participate in the agency policymaking process or provide guidance, and/or direction on SSA's key activities to ensure a diverse workplace free of barriers to equal opportunity. During our interview with the AC, he admitted that he reports to the DCHR, but he stated that he has a "super relationship with DCHR" and that "it does not hurt their program to have to report to DCHR." However, the AC stated that he depends on the DCHR for access to the agency head and informs the DCHR of his actions with or without cause. The AC

further stated that he directly presents a state of agency briefing on the MD-715 report to senior leadership.

During our evaluation, the DCHR acknowledged that the OCREO's current reporting structure is not consistent with the EEOC regulations; however, he stated that at this moment SSA has no plan in place for changing the organizational structure. His rationale for not having the structure changed was that since the Commissioner has a substantial number of direct reports, "it was more functional and consistent culturally to have the OCREO as part of the HR suite of programs." Moreover, he stated that since he has fewer direct reports than the Commissioner, he has more time to spend on these issues.

The DCHR also explained that when there is tension or a problem, he can work it through with the various Offices, and thus, "it works well from his perspective." The DCHR sees no problem or conflict of interest between Human Resources and OCREO. During his interview, he reported that if there were such an issue, the Commissioner's office would handle it directly. Ultimately, he stated, "OCREO is better off with HR and being under the same umbrella because if it were separate, it could be neglected."

The situation SSA finds itself in is precisely what EEOC regulations intended to prohibit. OCREO should be a separate entity serving EEOC's mission within SSA. The AC as the leader of the OCREO should have the requisite autonomy and freedom to operate for the benefit of impartially adjudicating discrimination complaints and advising the Commissioner of the EEO program's effectiveness. Reporting to the Commissioner ensures a direct line of communication without the interference of the DCHR whose agenda and interests may or may not align with the AC's judgments. Under the current structure, the DCHR is in the position to critically watch and direct the activities or actions of the AC inapposite to EEOC regulatory mandate.

Although the DCHR and the AC are satisfied with the OCREO reporting structure, during our onsite visit the majority of the OCREO's employees stated that the current reporting structure is affecting the SSA's EEO program. The employees stated that the structure allows for: 1) fewer resources than other offices, 2) inability to process fairly issues involving HR personnel, and 3) all EEO administrative and managerial decisions vetted through the DCHR which adds unnecessary time to the resolution process.

During our evaluation, we also learned that in addition to the OCREO AC's lack of effective and direct access to the Commissioner, he also lacks effective and direct access to senior management. This structure likely deprives senior level management of vital, first-hand information on agency EEO programs and deprives the EEO Director from having direct input into agency policy. By subsuming its EEO program into HR and giving it no independent voice, SSA has forgone the opportunity to integrate EEO into its agency's mission and instead has marginalized its EEO program. This lack of visibility of the actual EEO Director, and, by proxy, the EEO program, may send a message, even if unintended, that agency leadership does not have a strong commitment to, and interest in, equal opportunity.

Recommendations for Finding 1:

- a. To comply with 29 C.F.R §1614.102(b)(4) and MD-110, SSA must restructure to ensure that the functioning EEO Director has a direct reporting relationship with and meaningful access to the Commissioner.
- b. The EEO Director and staff responsible for EEO programs should have regular and effective means of informing the agency head and other senior management officials of the status of EEO programs.
- c. The EEO Director and EEO program officials should be involved in and consulted on management and personnel policies and procedures.

Finding 2: SSA's Associate Commissioner of OCREO Has No Authority over the Field CREO Offices

EEOC regulations at Part 1614 § 102(c)(1) provides that the EEO Director is responsible for the agency's EEO programs which includes "advising the head of the agency with respect to the preparation of national and regional equal employment opportunity plans, procedures, regulations, reports and other matters pertaining to the policy in § 1614.101 and the agency program." The significance of this reporting structure is to maintain agency-wide coordination and to ensure the consistency, integrity, and fairness of the EEO process. Such comprehensive coordination inherently requires the EEO Director to have authority over the regional EEO programs.

During our evaluation, we learned that field CREO Offices are decentralized, in that, they are not under the OCREO's authority and have their own CREO managers. All field CREO managers report to the Regional Commissioner, not to the OCREO AC. In addition, field CREO staff stated that the AC lacks the authority to select field CREO managers and/or provide input on the field CREO managers' performance appraisals. Accordingly, AC has no authority to hold CREO managers accountable for the effectiveness and efficiency of SSA's EEO program.

At the time of our evaluation, most field CREO managers agreed that they do not receive proper training from OCREO to perform the duties of their job; and OCREO does not adequately communicate the evolving EEO policies and procedures to the field offices. Field CREO managers stated that the lack of communication with OCREO is causing inconsistencies and deficiencies among the Regions on training materials and in the complaint process, as each Region creates and uses its own training material that OCREO does not review or approve. This structure deprives field CREO managers of regular access to OCREO and the ability to receive appropriate direction and guidance regarding the EEO process. In addition, several field CREO managers stated that this situation is detrimental to the agency-wide complaint process because some field CREO managers lack the knowledge and expertise on EEO matters and are not receiving adequate guidance necessary to perform the duties of the job.

During our evaluation, field CREO and OCREO employees provided feedback on the nature and extent of authority that OCREO should have over field CREO offices. Two field CREO managers stated that they do not want the reporting structure to change because both wanted their access to the Regional Commissioner for continued immediate decision-making. However, the majority of field CREO managers believe that OCREO should have oversight authority. Several field CREO managers stated that they could benefit from OCREO support and guidance. During our evaluation, field CREO managers mentioned that each region drafts its own requests for reasonable accommodation and anti-harassment policies, and that, there is no guidance, direction, or oversight provided from OCREO. In addition, field CREO managers stated that there is abundant autonomy within regions due to the lack of support and oversight by OCREO.

OCREO managers reported that OCREO should have the authority to evaluate and provide feedback to the field CREO Offices. In addition, the OCREO managers stated that the EEO program would improve if OCREO had authority over the field programs. According to the OCREO's staff, each region does not work the same way. The vast majority of the OCREO's employees stated that the field CREO offices should report through OCREO. In addition, there is a consensus among the OCREO employees that there should be minimum qualifications for the field CREO managers with basic and annual training.

Another issue related to OCREO's lack of authority over the field CREO Offices is SSA's untimely compliance with EEOC orders. At the time of our evaluation, OCREO had no mechanism in place to ensure that the field CREO managers timely complied with EEOC orders. The BOD staff stated that when they receive EEOC AJ orders or OFO's appellate orders, they forward the order to the field CREO manager for compliance. Subsequently, a senior OCREO EEO Specialist is responsible to follow-up with the field CREO managers until compliance is complete. Thereafter, OCREO's staff submits evidence of compliance to the EEOC. However, due to the lack of authority over the field CREO staff, OCREO staff does not have any mechanism in place to ensure timely compliance.

Recommendations for Finding 2:

- a. SSA should consider restructuring its organization to give OCREO oversight authority over the field CREO Offices. Specifically, OCREO should have the authority to oversee the implementation of SSA's EEO programs, including the pre-complaint activities, alternative dispute resolution, formal complaint process, affirmative employment and training programs, throughout SSA.
- b. SSA should consider developing a structure where the AC provides input on the hiring of field CREO managers and performance appraisal of the managers.
- c. OCREO should review and approve all EEO program related materials to

guarantee uniform implementation of the EEO process throughout the agency.

- d. OCREO should have the authority to establish a mechanism to ensure the field CREO offices comply with EEOC regulations and orders in a timely manner, in other words to hold the responsible employees accountable through their performance reviews for failing to comply.

Social Security Administration's Deficient and Ineffective EEO Complaint Process

Finding 3: SSA Does Not Have Resources to Ensure an Efficient Pre-Complaint Process

The aggrieved person starts the EEO complaint process by meeting with an EEO Counselor. 29 C.F.R. § 1614.105. Chapter 2(I)(A) of MD-110 explains that “the Counselor plays a vital role in ensuring the prompt and efficient processing of a formal complaint.” Chapter 2 (I)(B) of the MD-110 also provides that “agencies should use full-time EEO counselors whenever possible.” EEOC’s regulations provide that unless the aggrieved person agrees to extend the counseling process, or the person chooses alternative dispute resolution (ADR), “the Counselor shall conduct the final interview with the aggrieved person within 30 days of the date the aggrieved person contacted the agency’s EEO office to request counseling.” 29 C.F.R. § 1614.105(2)(d). EEOC’s regulations further require that an EEO Counselor provide both the agency and the complainant with a written report within fifteen (15) days of advisement that the complainant has filed a formal EEO complaint. See 29 C.F.R. § 1614.105(c).

At the time of our evaluation, it appeared from our interviews with field CREO managers that none of the Regional Offices had enough resources for full time Counselors. At Atlanta, Philadelphia, Boston, Dallas, New York and Denver Regional Offices, EEO counselors are collateral duty. This was also true for the Office of Central Operations. In addition to the limited resources for counseling, field CREO managers indicated that there are no standard operating procedures among the regions to conduct the pre-complaint process. SSA’s FY 2012 462 Report shows that out of 234 counselors only four are full-time counselors. We also learned that field CREO offices and OCREO do not coordinate in the development of a uniform agency EEO program, which negatively affects the EEO process.

Although SSA’s FY 2012 462 Report shows that it timely completed 94.98% of its EEO counselings, field CREO managers’ interviews reflect otherwise. At the time of our evaluation, most field CREO managers stated that they are confronting major problems completing the EEO pre-complaint process in a timely manner. For example, in Denver the average days for completing the EEO pre-complaint process was 85 days; and San Francisco stated that its pre-complaint process was untimely most of the time due to lack of resources. We find that at the time of our evaluation, there were inconsistencies between the reported data and the field CREO manager’s statements.

At the time of our evaluation, field CREO managers indicated that once they complete the EEO pre-complaint process they forward the file to the OCREO for processing the formal complaint. However, they stated that most of the time it was well beyond the 30-day time limit, ultimately affecting the timelines of the whole EEO complaint process.

Recommendations for Finding 3:

- a. SSA should create Standard Operational Procedures for the pre-complaint process for OCREO and field CREO offices to ensure that all SSA employees receive appropriate pre-complaint services.
- b. SSA should ensure that EEO staff performance appraisals measure effective and timely completion of the pre-complaint process for EEO Counselors and/or EEO officials responsible for conducting the counseling process.
- c. Where fiscally possible, each field CREO Office should have at least one full-time, permanent EEO Counselor. EEO Counselors in the regional offices should report directly to field CREO program. Situationally, SSA should also consider using contract counselors or EEO counselors from other agencies when confronted with an unexpected heavy caseload or staff shortages.
- d. SSA should provide training to new and experienced counselors on the proper role of EEO personnel and provide up-to-date refresher training on changes in EEO laws and emerging EEO issues.
- e. SSA should implement a system to ensure its tracking system accurately reflects the average time that it takes the agency to complete the pre-complaint process. SSA should hold its employees accountable for accurate and timely data entry which is reflected in employee performance appraisals.

Finding 4: SSA Does Not Have an Effective ADR Program

EEOC regulations provide that “[e]ach agency shall establish or make available an alternative dispute resolution program. Such program must be available for both the pre-complaint process and the formal complaint process.” 29 C.F.R. § 1614.102(b)(2). In addition, “[e]ach agency shall make reasonable efforts to voluntarily settle complaints of discrimination as early as possible in, and throughout, the administrative processing of complaints, including the pre-complaint counseling stage.” See 29 C.F.R. § 1614.603. Section II(E) of MD-715 requires a model EEO program to “[e]stablish and encourage the widespread use of a fair alternative dispute resolution (ADR) program that facilitates the early, effective and efficient informal resolution of disputes. Appoint a senior official as the dispute resolution specialist of the agency charged with implementing a program to provide significant opportunities for ADR for the full range of employment-related disputes. Whenever ADR is offered in a particular workplace matter, ensure that managers, at all appropriate levels, will participate in the ADR process.” Sections VI(B) and VII(C) of MD-110 require agencies to provide ADR

training to employees and managers. Further, during the pre-complaint process counselors must fully inform individuals of: 1) how the agency ADR program works; 2) the opportunity to participate in the program where the agency agrees to offer ADR in a particular case; and 3) the right to file a formal complaint if ADR does not achieve a resolution.

We find that at the time of our evaluation, SSA has not consistently administered an agency-wide ADR program for the EEO process throughout the regions. The field CREO Offices are responsible for the ADR program at the pre-complaint process, OCREO is responsible for the ADR program for HQ employees during the pre-complaint process, and is responsible for the ADR program at the complaint stage for all complaints nationwide. However, at the time of our evaluation neither the field CREO Offices nor the OCREO have issued written ADR procedures. In particular, SSA had not issued a policy statement supporting the use of the ADR program among managers and supervisors.

For the past three years, SSA has reported that managers and supervisors are not required to participate in the ADR process as a program deficiency in its MD-715 reports. As its planned activities, SSA reported that it would explore implementing an agency-wide mandatory ADR policy. SSA's low ADR participation rates reflect this program deficiency. Although SSA's FY 2012 462 report shows that it had offered ADR in approximately 86% of its completed counseling, the participation rates have only slightly improved from 41% in FY 2011 to 44% in FY 2012 while remaining below the government-wide averages of 49% in FY 2011 and 51% in FY 2012.

Additionally, SSA has reported that managers and supervisors are not receiving ADR training as a deficiency in its MD-715 reports. This appeared to hold true during interviews with OCREO employees. Moreover, at the time of the onsite visit, OCREO employees stated that the dissemination of ADR materials among employees was poorly done.

Recommendations for Finding 4:

- a. SSA, through the Commissioner, should issue a policy statement that strongly supports the use of SSA's ADR program and provides that once SSA offers ADR and an employee agrees to participate, SSA must provide a management official with the authority to settle the case.
- b. SSA must establish and make available to all employees written ADR procedures in accordance with MD-110 Chapter 3 (VI)(A).
- c. SSA should consider allocating the financial resources, dedicated staffing, and expertise necessary to establish and operate an ADR program to benefit from all the cost savings, productivity and enhanced morale that comes from early resolution of disputes.

- d. SSA should ensure that all managers and supervisors receive ADR training in accordance with MD-110 Chapter 3 (VI)(B).
- e. SSA should disseminate to all new employees and supervisors, ADR information materials, as well as, post the materials on SSA's internal and/or external website.
- f. SSA should conduct regular evaluations of the efficiency and effectiveness of their ADR programs and immediately establish plans to improve the ADR program if necessary.
- g. SSA should ensure that management officials' performance appraisals measure their commitment to EEO. This should included encouragement to participation informal and formal dispute resolution.

Finding 5: SSA Untimely Issues Acceptance/Dismissal Letters and Fails to Meet the Regulatory Requirements for an EEO Investigation

Within a reasonable time after receipt of the Counselor report, the agency should send complainant an "acceptance letter," stating the claim(s) asserted and to be investigated. See Chapter 5 (I) of the MD-110. EEOC maintains that, in general, agencies' acceptance/dismissal decisions should issue well in advance of the 180-day time limit for completing an investigation, and has suggested a more practical time would be within 60 days of the filing of the formal complaint. See EEOC Annual Report FY 2011, Section B (1)(g).

We find that at the time of the onsite visit, SSA had a deficient process for timely issuing the "Acceptance/Dismissal" letter. At the time of our evaluation, the CCP had a substantial amount of cases accumulated waiting for "Acceptance/Dismissal" letters. Some employees in OCREO stated that every employee in OCREO is now required to complete a certain number of "Acceptance/Dismissal" letters to assist in reducing the backlog. At the time of our evaluation, an OCREO employee stated that the average time to issue an acceptance letter is more than 66 days, but there is no data or evidence to prove the exact timeframe. Moreover, during the time of our evaluation, OCREO had not established a uniform process nor had adequate qualified and trained employees to process the "Acceptance/Dismissal" letters. An OCREO manager confirmed this, stating that some employees accepted complaints without even looking at the file, and that, managers then needed to re-write the letters resulting in unnecessary delays in the process.

EEOC regulations 29 C.F.R. § 1614.108 set forth that "the agency shall develop an impartial and appropriate factual record upon which to make findings on the claims raised by the written complaint." The agency is required to investigate the complaint within 180 days of filing the complaint. MD-110 Chapter 5(II)(A).

SSA's FY 2012 462 Report showed an 82% timely completion rate for investigations; however, in FY 2013 462 report, SSA reported a 40% timely completion rate for investigations. At the time of our evaluation, OCREO employees stated that the numbers in FY 2012 did not represent the real situation regarding the completion of its investigations. Several OCREO employees stated that when the report of investigation (ROI) is untimely, some OCREO managers move the case file to the next fiscal year to look timely, and that they manipulate the data in the iComplaints tracking system. Additionally, a few OCREO employees identified that some SSA managers were not cooperating with the investigators. For example, they provided their affidavits untimely and/or did not provide all the requested documents.

We recognize that SSA uses contractors to conduct all EEO investigations. We remind SSA that the fact that the agency contracts with outside companies to conduct its investigations does not absolve SSA of its responsibility to ensure that the development of the ROI is timely, impartial, and adequate upon which a decision can be based. See 29 C.F.R. § 1614.108(b); EEO MD-110, Chapter 5 (V)(A).

In *Complainant v SSA*, EEOC Appeal No. 0720050055 (December 24, 2009), the agency was reminded that EEOC regulations "squarely place the responsibility for an accurate, complete investigation, completed within 180 days, upon the agency. Even if the agency contracts with a company to produce the investigation, it retains control of the outcome of that investigation, and is well within its rights to review the result and require the contractor to submit it in a satisfactory manner. Contracting out the investigation does not relieve an agency of its responsibility to ensure that a complete and timely investigation has occurred."

In addition to the timeliness issues and inaccurate tracking data input, we find that, at the time of the onsite visit, SSA did not adequately manage its contracts for investigations. During our interviews, some OCREO employees expressed concerns about the quality and adequacy of the reports of investigations completed by contract investigators. OCREO employees stated that most of the problems involved missing documents, poor grammar, and/or investigators neglected to interview key witnesses. OCREO employees, including a former supervisor stated that since 2008, they returned between 50% - 60% of the ROIs to the contractor for corrections and/or additional information. According to the Statement of Work at the time of our evaluation, the agency requires the modification process to take not more than fifteen (15) days, but according to OCREO CCP employees in most instances the contractors took longer than fifteen days. OCREO employees also stated that in some instances OCREO managers instructed them to close the investigation without revision even if the investigation was not adequate.

During interviews with some CCP employees, we learned that CCP handles the contractors for EEO services. When a complainant files a complaint, the CCP notifies the region to forward the case file to the CCP COTR team. The COTR team assigns the complaint file to a contract investigator for the proper investigation of the complaint. Subsequently, the CCP review team reviews the ROI for quality purposes. At the time

of our evaluation, the OCREO management and non-management employees stated that SSA is not holding contractors accountable for untimely or deficient EEO ROIs. We reviewed the "Purchase Agreement" between SSA and its contractors and the agreement establishes penalties for the contractors when the product is deficient or untimely. See Exhibit 2, SS-09-40023 Section D-3.

We find that at the time of the onsite visit, the contractors were not timely submitting ROIs and OCREO was taking no action against the contractors. Moreover, according to OCREO CCP employees, contractors are committing the same mistakes all of the time. For example, they are not applying the law correctly, may miss relevant testimony, are not citing cases properly, and lack the proper analysis. Notwithstanding, SSA continues to use the same contractors. In addition, when CCP COTRs send work back to contractors for modifications the revision process is taking more than 15 days, yet SSA is not penalizing the contractors in accordance with the agreement.

Recommendations for Finding 5:

- a. SSA should develop a system to ensure that each ROI reviewer follows their assigned cases to completion including drafting the deficiency letter as needed. All ROI reviewers should be familiar with the statement of work terms for finding a deficiency.
- b. The AC, with input from both the CCP/COTR staff and the PPQAT staff, should draft a list of product deficiencies that require a return to the contractor for corrections. This deficiency list should be incorporated into SOPs for both groups.
- c. SSA should develop a system to ensure that the contractors comply with the terms set forth in its blanket purchase agreement and when noncompliance with those terms effect the efficiency of the SSA's EEO program, the appropriate penalties should be imposed up to and including termination of the contract.

Finding 6: SSA Does Not Timely Issue Merit Final Agency Decisions

When the EEO investigation is complete, the agency shall provide the complainant with a copy of the investigative file, and shall notify the complainant that, within 30 days of receipt of the investigative file, the complainant has the right to request a hearing with an EEOC Administrative Judge (AJ), or may request an immediate Final Agency Decision (FAD) on the merits of the case from the agency with which the complaint was filed. 29 C.F.R § 1614.108(f). If the agency receives a request for an immediate final decision, or when complainant did not request a final decision or a hearing, the agency must issue a final decision on the merits of the case within 60 days of receiving a request for an immediate final decision or within 60 days of the end of the thirty 30 day period for complainant to request a final decision or a hearing. 29 C.F.R § 1615.110(b). In mixed case complaints, the agency shall issue a decision within 45 days following the completion of the investigation. 29 C.F.R. § 1614.302(d)(2).

At the time of our evaluation, SSA did not comply with the regulatory deadlines for issuing its merit FADs. Moreover, for the last three fiscal years, its processing time has increased while the number of FADs issued decreased. In FY 2011, SSA issued 18 FADs on the merits after receiving complainant request for an immediate FAD with an average processing time of 71 days; in FY 2012, issued 16 FADs in 133 average days; and in FY 2013, issued 14 FADs in 248 average days. Where the complainant did not elect between a hearing or a FAD, in FY 2011, SSA issued 83 FADs with an average processing time of 122 days; in FY 2012, issued 68 FADs with an average processing time of 135 days; and in FY 2013, issued 65 FADs with an average processing time of 212 days. The average processing time for mixed case complaints in FY 2011 was 23 days, which was in accordance to EEOC regulations. However, in FY 2012, SSA issued 16 FADs on mixed case complaints with an average processing time of 130 days, and in FY 2013, issued 13 FADs with an average processing time of 212 days. Its average processing time for each category of FAD far exceeded the EEOC regulatory timeframes.

We find that two factors negatively affect the FAD review process: (1) contractor issues similar to those identified in the prior finding; and (2) OCREO's utilization of two different internal divisions for the processing FADs. PPQAT employees explained that after the conclusion of the investigation where complainant requests a FAD or fails to timely request a FAD, the CCP COR team will send the file to a contractor for the preparation of the FAD. Thereafter, the PPQAT staff is responsible for reviewing the FAD written by the contractor. At the time of our evaluation, several interviewed PPQAT employees stated that the contractors' work products lacked quality and were untimely, yet the agency continued to use the same contractors.

At the time of our evaluation, the CCP was not forwarding the complaint files to PPQAT in a timely manner, and when they received the complaint file, it was incomplete and/or deficient making review of the FAD quite difficult. Moreover, in reviewing the quality, the PPQAT staff stated that a fair percentage of the FADS were poorly written. In some instances, contractors used the wrong theory of discrimination, for example, they applied the disparate treatment theory in a case where the complainant alleged harassment. At the time of our evaluation, PPQAT employees needed to re-write the FAD written by the contractor more than 50% of the time. The staff stated that it was faster to re-write the decision than sent the case back to the contractor for modifications. Further, when the PPQAT team determined that the FADs were poorly written, it could sometimes take months for the CCP and/or PPQAT managers to make a final determination on whether the FAD was adequately written and whether to return it to the contractor.

In addition, we find that at the time of the onsite visit, the PPQAT and CCP lacked effective communication which resulted in delays in the FAD review process. Since both divisions are necessary for the processing of FADs, the lack of clear coordination create unnecessary delays. Further, PPQAT employees stated that the delay in the FAD process also occurs because the PPQAT employees cannot contact the

investigative contractors directly to discuss matters. Contractor communication runs through the CCP employees.

We acknowledge that for the last two fiscal years, SSA reported that it does not issue FADs in a timely manner as a program deficiency in its MD-715 reports. We note further that SSA's reported planned activities were to improve the competencies of existing staff through targeted training efforts and to implement new procedures and contract requirements to improve the quality and timeliness of investigations performed by outside contractors. We note that SSA's plan thus far appears to be ineffective as the processing days for issuing Merits FADs increased over a three-year period: from 112 days in FY 2011 to 176 days in FY 2012 and to 219 days in FY 2013.

Recommendations for Finding 6:

- a. SSA should consider assigning cases to appropriate OCREO staff members, and list them as the point of contacts on the Call Orders, prior to sending the case to the contractors for investigation/FADs. The POC would then follow the case through completion, including drafting the deficiency letter, if one is required. All POCs should be familiar with the statement of work terms for finding a deficiency.
- b. SSA should ensure that the contractors comply with the terms set forth in its blanket purchase agreement and when noncompliance with those terms effect the efficiency of the SSA's EEO program, the agreed upon appropriate penalties should be imposed up to and including termination of the contract.
- c. SSA should consider giving PPQAT the authority to draft FADs. This would streamline the process by eliminating the need 1) for two divisions to be involved, 2) to re-write contractor drafted decisions, and/or 3) to wait for the contractors to make modifications.

Finding 7: SSA Does Not Timely Submit Complaint Files for Appeals to the Office of Federal Operations (OFO) and Fails to Comply Timely with EEOC Orders

EEOC regulations provide that "[t]he agency must submit the complaint file to the Office of Federal Operations within 30 days of initial notification that the complainant has filed an appeal or within 30 days of submission of an appeal by the agency." 29 C.F.R. § 1614.403(e)

At the time of our evaluation, SSA's process for submitting files during the appeal stage to OFO was deficient. In particular, SSA consistently failed to timely submit the files and on a number of occasions, the file was incomplete (missing hearing record, hearing transcript and or agency's final order, FAD, etc). For example, in one case, the entire hearing record was missing and it took more than 1000 days before SSA submitted the entire file. In another case, SSA took more than 150 days to submit the file, and when

OFO finally received the file, it was incomplete because the agency never issued a decision on the subject matter. OFO therefore had to remand the matter back to SSA.

Prior to our onsite visit, OFO had issued several Notices to Show Good Cause why Sanctions should not be imposed. Some of these matters resulted in sanctions against SSA for failure to submit timely or complete complaint files. For example, in its initial review of a case, OFO found that the record before them on appeal was not the same record presented to the AJ. Specifically, OFO noted that the AJ adopted and relied upon the "Agency's Original Motion" for a decision without a hearing and the "Agency's Supplemental Brief." However, the record before OFO did not contain either of those documents, despite repeated efforts by the OFO to obtain them through informal attempts to retrieve missing documents and finally to issue a Show Cause Order. In this case, OFO never received the complete file and sanctioned SSA while remanding the matter for a hearing.

At the time of our evaluation, OCREO employees and managers stated that OCREO had problems finding complaint files when complainant requested an appeal because during the process where OCREO converted paper files to electronic case files, several files were missing and/or destroyed. Several OCREO employees stated that if the case originated in a regional office, they could request a copy but if it was a HQ case file, there was no backup.¹

EEOC regulations provide that "[w]hen an agency, or the Commission, in an individual case of discrimination, finds that an applicant or an employee has been discriminated against, the agency shall provide full relief..." 29 C.F.R. § 1614.501(a). "Relief ordered in a decision or final action on appeal to the Commission is mandatory and binding on the agency. 29 C.F.R. § 1614.502(a). The relief shall be provided in full no later than one hundred and twenty (120) days after receipt of the decision unless otherwise ordered in the decision." 29 C.F.R. § 1614.502(c).

Prior to our evaluation, SSA's compliance process was separated by the following compliance functions and tasks: 1) a senior EEO Specialist under the AC managed compliance with orders deriving from hearing and appellate decisions and 2) a supervisory EEO Specialist within CCP, handled compliance with information request during the hearing or appeals process. However, during our onsite interviews, we learned that the senior EEO Specialist is no longer with OCREO, and the lead EEO Specialist for the Director of BOD was now the person responsible for compliance. The

¹ We reminded SSA the importance to comply with the National Archives and Records Administration's revised General Records Schedule (GRS) 1, Item 25 on destruction of EEO records, which said "Official Discrimination Complaint Case Files" states the "[o]riginating agency's file containing complaints with related correspondence, reports, exhibits, withdrawal notices, copies of decisions, records of hearings and meetings, and other records. Cases resolved within the agency, by EEOC or by a U.S. Court. Destroy 4 years after resolution of the case." In addition, MD-110 Chapter 6 (IX)(E)(2) provides "[t]he agency originating the EEO case will retain the original ('official') file during the appeals process and send only duplicate copies to EEOC for use in the appeal." Further, "[the] agency sending duplicates will certify that the file contains everything that is in the original." Moreover, Chapter 6 (IX)(E)(4) requires the originating agency to retire the original case file to the Federal Records Center.

lead EEO Specialist at BOD stated that she keeps track of the EEOC orders, through the iComplaints system, and by a spreadsheet that she created and updates every two weeks. According to her interview in November 2012, she had worked with compliance for the last couple of months but she did not receive any training until a week before our interview.

Also, during our onsite visit, the BOD lead EEO Specialist described the compliance process as follows: (1) she receives an e-mail from OCREO notifying her that EEOC issued an order; (2) she sends an e-mail to the field CREO office with the AJ or OFO order attached. If the order is from OFO, it is her job to submit the compliance report to OFO. However, she stated that because OCREO has no authority over the regions, if the region fails to comply in a timely manner there is nothing she can do. Moreover, she stated that she received no instructions on how to handle those situations, and there is no SOP regarding the compliance process, but she planned to address this issue in the near future. She further stated that she was not responsible for settlement agreements or any type of payments to complainants, such as, back pay, compensatory damages, etc. She stated that Headquarters processes all payments to complainant.

In addition, the Branch Chief of CCP stated that her division was responsible for processing the hearing request. She explained that once her unit receives notice of a hearing request they send the request to the region, and the region scans and sends the file to EEOC. We find that prior to the onsite visit there was no follow-up/tracking system in place to ensure timely submission of files to the Hearings Unit.

Further, we note that from FY 2011 until 2013 SSA submitted MD-715 reports, stating it was examining its compliance process to ensure that it met the timely reporting requirements, but there was no effective plan for addressing or correcting this deficiency in its reports.

Recommendations for Finding 7:

- a. SSA should conduct an extensive analysis of its process from when a complainant files an appeal until the agency submits the file to OFO to determine the aspects of the process that it can modify or change to come into compliance with EEOC regulations. Specifically, the agency should look at all aspects of the process, for example, how the agency becomes aware that a complainant has filed an appeal, which division receives the notification, which division is responsible for collecting the entire file, and which division is responsible for submitting the file to OFO.
- b. SSA should consider assigning a specific OCREO employee or creating a task force to handle complaint files for appeals. The assigned OCREO employee(s) should be an expert on the EEO complaint process. Accordingly, after reviewing the complaint file, the employee(s) can identify when a complaint file is not complete and collect the relevant documents before sending the file to OFO.

- c. SSA should also create a specific tracking method to track appeals to ensure timely file submission in compliance with EEOC regulations.
- d. Further, regarding the missing and destroyed files, SSA needs to identify how many files were destroyed, how many are missing, and establish a plan to re-create those files.
- e. SSA should hold employees, including managers, accountable if they destroy or lose files. We remind SSA of its obligation under the NARA requirements.
- f. SSA must complete and return Exhibit 3 within 10 days of receipt of this final program evaluation report, which contains a list of cases that OFO has yet to receive a complete case file for the appeal. The agency is hereby notified that if it fails to submit complete case files or show good cause why it cannot do so within thirty (30) days from the date it certifies the results on Exhibit 3, sanctions up to and including a default judgment will be imposed in these cases.

The Agency shall submit the files or good cause evidence and arguments, if any, by overnight mail, within 30 days to:

Office of Federal Operations
P.O. Box 77960
Washington, DC 20013

or by personal delivery to:

Office of Federal Operations (202/663-4599)
131 M Street, N.E.
Washington, D.C.

Finding 8: SSA's Tracking System Does Not Accurately Reflect the Appropriate EEO Data

At the time of our evaluation, OCREO and field CREO Offices were able to follow and automatically track all data entry, updates or modifications, including the status of each EEO complaint through its electronic tracking system (iComplaints). However, during our evaluation OCREO CCP employees stated that the system was not accurate due to the failure to enter key data into the system. For example, some OCREO employees stated that on occasions, because the closure code was not entered into the system, the AC did not receive the triggering mechanism which results in not issuing timely final orders after receiving an EEOC AJ's decision.

OCREO employees further identified as another major problem that OCREO and field CREO employees were entering inaccurate data in the system. For example, they shared of instances where employees entered a case as dismissed when the complainant actually requested a FAD. As a result, OCREO employees reported that

SSA's annual 462 report submissions are not an accurate reflection of the SSA's EEO complaint process. In addition, some OCREO employees stated that employees do not enter the correct dates into the system. It was stated that "sometimes they just guess, and sometimes they enter dates that make the work look timely." Some CCP employees stated that employees had received proper training on how to use iComplaints on several occasions, and periodically receive e-mails regarding how to enter the right data in iComplaints. At the time of our evaluation, employees stated that there was no support from management regarding this matter, in that SSA was not holding employees accountable for inaccurate or untimely data entry.

Recommendations for Finding 8:

- a. SSA should establish a SOP on entering EEO data into its complaint processing electronic tracking system (iComplaints). The SOP should include examples of typical complaint processing situations that occur in SSA and the proper way to code the entries for those situations.
- b. SSA should provide training to employees that include the use of the tracking system and how to correctly enter the data. The iComplaints data needs to be accurate, reflect the status of each EEO complaint and should capture and reflect the accurate timeframe for the EEO complaint process.
- c. SSA should hold employees accountable for accurate and timely data entry through employee performance appraisals.

Finding 9: SSA Does Not Have a Uniform Training Program

EEOC regulations provide that each agency shall "[r]eview, evaluate, and control managerial and supervisory performance in such a manner as to ensure a continuing affirmative application and vigorous enforcement of the policy of equal opportunity and provide orientation, training, and advice to managers and supervisors to assure their understanding and implementation of the equal employment opportunity policy and program." 29 C.F.R. § 1614.102(a)(5). Section II(B) of MD-715 establishes that a model EEO program must "recruit, hire, develop, and retain supervisors and managers who have effective managerial, communications, and interpersonal skills." Section II(B) also requires agencies to "[p]rovide managers and supervisors with appropriate training and other resources to understand and successfully discharge their duties and responsibilities."

In our RFI, OFO requested SSA identify how many managers and employees received EEO training on their role and responsibilities regarding anti-harassment in the workplace between FY 2009 and FY 2011 and the first two quarters of FY 2012. SSA responded that from FY 2010 through the second quarter of FY 2012, 46 new employees received training during New Employee Orientation. Moreover, managers and employees received nationwide training on the No FEAR Act in 2010, via video on

demand. In addition, SSA stated that new employees receive EEO training that includes anti-harassment training.

We find that at the time of our evaluation, SSA did not have any uniform policy or procedure regarding its EEO training program. Within the PPQAT Unit, there were three trainers available to deliver training to the Regions and HQ Offices. Although PPQAT was available to offer training, the division was neither required nor responsible for developing, reviewing or monitoring training throughout the various regions. Further, at the time of our evaluation, each field CREO office was responsible for providing EEO training to its employees and supervisors. While various Regions may ask PPQAT staff to conduct EEO training, they are not expected to engage in this consultation. We also found that all field CREO offices had provided some level of EEO training to both employees and managers on topics such as the EEO process, anti-harassment, No FEAR Act, ADR and reasonable accommodation.

At the time of our evaluation, the information received in reference to EEO training showed that Region VIII appeared to have trained all of its employees. Region IV (ATL) appeared to have a training program that had trained approximately 50% of its employees. Region V had trained approximately 40% employees on the EEO process. In addition to the EEO courses, many SSA Regions reported that they also offered diversity and sensitivity training programs. Further, OCREO had recently proposed a training package that was under review by the Regional Executive Staff. The training package focused on anti-harassment for managers and supervisors.

At the time of our evaluation, we reviewed presentations from the different Regions on EEO matters. Upon review of the presentations, we note that SSA's lack of a structured EEO training program appears in the varying degrees. In particular, the anti-harassment presentations defined sexual harassment as possibly a hostile work environment claim and a tangible employment action claim. It defined non-sexual harassment as a possible hostile work environment claim. The presentation's distinction between sexual and non-sexual harassment were unnecessary and confusing. While most people are familiar with sexual harassment, harassment can arise under any protected EEO bases. Moreover, there are two standards for all harassment claims; hostile work environment and/or tangible employment action. See EEOC Enforcement Guidance on Vicarious Employer Liability for Unlawful Harassment by Supervisors, Notice 915.02, June 18, 1999.

Recommendations for Finding 9:

- a. SSA should develop and provide, on a regular basis, uniform mandatory EEO training, including training on anti-harassment, No FEAR Act, reasonable accommodation to all of its employees, managers and supervisors.

- b. SSA should develop consistent and uniform material for EEO training programs. OCREO should periodically review the materials to ensure that they are uniform and up-to-date.
- c. SSA should establish mandatory uniform training guidelines for all its Offices and Regions that includes a centralized database that tracks all EEO program, anti-harassment and reasonable accommodation training for all SSA employees.
- d. SSA should succinctly and clearly define harassment standards in all related training and program material.

Lack of a Uniform Anti-Harassment Program

Finding 10: SSA Has Not Developed and Implemented an Effective/Efficient Anti-Harassment Policy And Procedures

In *Burlington Industries Inc. v. Ellerth*, 524 U.S 118, the Supreme Court stated, “Title VII is designed to encourage the creation of anti-harassment policies...” The Court also noted that “while proof that an employer had promulgated an anti-harassment policy with complaint procedures is not necessary in every instance as a matter of law,” failure to do so would make it difficult for an employer to prove that it exercised reasonable care to prevent and correct promptly any harassment.

An anti-harassment policy and complaint procedure should contain, at a minimum, the following elements:

- (1) clear explanation of prohibited conduct;
- (2) assurance that employees who make claims of harassment or provide information related to such claims will be protected against retaliation;
- (3) clearly described complaint process that provides accessible avenues for employees with concerns;
- (4) assurance that the employer will protect the confidentiality of the individuals bringing harassment claims to the extent possible;
- (5) complaint process that provides a prompt, thorough, and impartial investigation; and
- (6) assurance that the employer will take immediate and appropriate corrective action when it determines that harassment has occurred.

An employer should provide every employee with a copy of the policy and complaint procedure, and redistribute it periodically. Other measures to ensure effective dissemination of the policy and complaint procedure include posting them in central locations and incorporating them into employee handbooks. If feasible, the employer should provide training to all employees to ensure that they understand their rights and responsibilities. See EEOC Enforcement Guidance: Vicarious Employer Liability for Unlawful Harassment by Supervisors, Notice 915.02, June 18, 1999 (hereinafter, referred to as EEOC Enforcement Guidance).

Although EEO offices in many agencies are often responsible for establishing anti-harassment policies, it is important to understand that the EEO process and anti-harassment programs do not exist for the same purposes. The EEO process is designed to make individuals whole for discrimination through damage awards and equitable relief paid by the agency and to prevent the recurrence of the unlawful discriminatory conduct. The intent of the internal anti-harassment program is to take immediate and appropriate corrective action, including the use of disciplinary actions, to eliminate harassing conduct regardless of whether the conduct violates the law. Ultimately, the goal of the anti-harassment program is to prevent harassing conduct before it can become “severe or pervasive.” See EEOC’s Report “Model EEO Programs Must Have An Effective Anti-Harassment Program” http://www.eeoc.gov/federal/model_eeo_programs.cfm.

In 2001, SSA issued an anti-harassment policy, “Policy for the Prevention and Elimination of Harassment in the Workplace,” (hereinafter referred to as AH policy). In addition, on September 1, 2010, SSA issued its EEO Policy Statement, “The Social Security Administration Policy Prohibiting Discrimination Against Employees and Applicants for Employment,” (hereinafter referred to as “EEO policy”) which contained brief information on “Maintaining a Non-Hostile Workplace Free of Discriminatory Harassment.” (Submitted with SSA’s FY 2011 MD-715 Report) However, at the time of our evaluation, SSA had not issued a uniform anti-harassment policy and procedure. As a result of not having a comprehensive anti-harassment policy, there has been no uniform agency-wide practice for addressing harassment claims at SSA. Further, OCREO staff stated that they had drafted a general anti-harassment policy and related procedures, but could not provide a projected issuance date for the policy.

In reviewing the draft the anti-harassment policy, we find that it indicated several venues for reporting harassment. It was unclear how to report harassment through the agency anti-harassment program or whether there was an anti-harassment program separate from the EEO complaint process. Further, SSA employees in HQ were instructed to report incidents of harassment to a number of venues. Additionally we found the draft anti-harassment policy specifically noted in bold type that to preserve an individual’s rights to the EEO process they should contact the Dispute Resolution Team. This contact information could be confusing to SSA’s employees because at the time of our evaluation, there was no Dispute Resolution Team on the current OCREO organizational chart. Moreover, we noted the anti-harassment policy lists contacts within the traditional EEO complaint process blurring the line between the anti-harassment program and the EEO process.

Additionally, we find that SSA had not adequately disseminated the information about its anti-harassment program. When we asked employees about the agency’s anti-harassment policy some OCREO and field CREO employees expressed no knowledge of SSA’s anti-harassment program. Some OCREO employees stated that they do not know who to contact or how to report harassment claims other than with an EEO counselor. Some OCREO employees and field CREO managers stated that they never received a copy of the anti-harassment policy; and others, were not even aware that

such a policy existed. As a part of our evaluation, we requested SSA provide a list of the official(s) who have responsibility for the anti-harassment program. At the time of our evaluation, we contacted the officials listed for SSA headquarters, and learned that these officials are only responsible for conducting an investigation when requested to do so by a management official in headquarters or from a region. They stated they make no decisions or recommendations, they merely provide the investigation information to the requester.

Further, we find that at the time of the onsite visit, SSA had not established a uniform or standard investigation process for harassment claims. The OCREO staff stated that “since 2009, the Director of the Division of Quality Service (DQS) and a Special Projects Officer or Branch Chief have been responsible for oversight, tracking, and, in some instances, the investigation of anti-harassment activities in HQ and regional/field offices...DQS works closely with the Office of Appellate Operations Human Resources.” During our interview with the DCHR, he explained that depending on the nature of the allegation, an investigation team might be comprised of persons from the Office of Labor Management Relations, the Office of General Counsel; or management would simply convene a team to conduct an investigation. When teams from various parts of HR and a program component work together, HR contributes to any recommendations to discipline managers.

Moreover, some regions had their own anti-harassment policy/procedures, and others have no policy/procedure in place. The field CREO managers stated that the Regions operate their own investigation process, with no guidance from HQ. Additionally, the AC remarked that OCREO was not responsible for the regions’ anti-harassment policies and there was not a central anti-harassment coordinator managing the program. The AC stated that, while preparing the response to our RFI, it became apparent that the current decentralized programmatic structure has resulted in multiple processes and procedures.

In addition, interviews with field CREO managers and OCREO employees revealed that there are not uniform procedures for interim relief and/or corrective action for harassment claims. For example, one region specifically stated it only grants interim relief if the allegation is sexual harassment. Whereas, several other regions reported interim relief and corrective action varied depending on the allegation and the outcome. Several OCREO employees reported that, when they personally alleged harassment against an OCREO manager, rather than moving the involved management official, SSA moved them to other divisions within OCREO. SSA’s failure to act exposes the agency to possible liability for harassing behavior in accordance with *Burlington Industries v. Ellerth*, 524 U.S. 742 (1998) and *Faragher v. City of Boca Raton*, 524 U.S. 775 (1998).

At the time of our evaluation, field CREO managers were not advising employees of the anti-harassment program, or of their right to use the anti-harassment program in addition to the EEO complaint process. Most field CREO managers reported that, at their discretion or that of the regional HR personnel, they conduct some type of an initial

inquiry. One field CREO Manager stated that they might discuss the allegation with management, HR and/or GC to determine whether an investigation is necessary without any input from the employee. Assuming a decision to conduct an inquiry occurs, the procedures vary by Region and office. Moreover, once a Region or office decided to pursue an investigation, management determined who might conduct the investigation and the length of time for completing the investigation. Several of field CREO managers reported that HR personnel conduct harassment investigations. Field CREO managers stated that once the investigative team was selected the timeline for completing the investigation varied by region and ranged from no defined days to anywhere from three to sixty days.

While senior leaders appear to know the law, they did not understand the process and did not recognize the need for a management inquiry when an employee alleges harassment. OCREO managers stated that while there is an anti-harassment policy, there are not clearly defined procedures. As a result, some OCREO employees including managers were unsure of which division was responsible for the anti-harassment program. Some OCREO managers reported that sometimes they preferred to consult with the union rather than utilize the agency's anti-harassment program.

Based on our review, it appears that staff agency-wide were unclear about the anti-harassment program. While several Regional Managers were able to identify the division responsible for managing the anti-harassment program in their region, other managers were unable to identify whether the region maintained a tracking system and/or had limited knowledge of the actual tracking process. In addition, several OCREO employees stated that OCREO does not have a centralized tracking process or anti-harassment coordinator. As a result, there SSA lacked a uniform method for tracking harassment claims raised outside of the EEO formal process and thus preventing it from evaluating the effectiveness of its anti-harassment program. Likewise, SSA was unable to determine whether claims made through its anti-harassment program were also processed through its formal EEO process.

SSA's FY 2011 462 report revealed that allegations of harassment were made in 52% of their filed complaints which far exceeded the government wide average of 32%. In FY 2012, SSA reported that in 49% of its filed complaints contained allegations of harassment, still exceeding the government wide average of 38%; and in FY 2013, SSA reported that 55% of its complaints contained allegations of harassment, while the government wide average was 44%. In addition to these numbers, beginning in fiscal year 2009 continuing through fiscal year 2012, EEOC received multiple communications from OCREO employees alleging hostile work environment, improper processing of harassment complaints filed by OCREO employees, breach of confidentiality, and retaliation.

Recommendations for Finding 10:

- a. SSA should update its anti-harassment policy and procedures to provide uniform enforcement and implementation of the policy throughout its Offices and

Regions. The updated policy and procedures should provide points of contact to raise issues of harassment. The updated policy should be in accordance with the EEOC Enforcement Guidance.

- b. SSA should ensure that every employee receives a copy of the anti-harassment policy and procedures, and that it is posted in a manner that will give the documents the widest possible visibility.
- c. SSA should assign oversight of the uniform anti-harassment program to a specific office within the agency. If SSA assigns OCREO with the responsibility to oversee the anti-harassment program, the agency needs to clearly identify to employees that the process is separate from the EEO process and also create a separate process for handling inquiries where an OCREO employee raises issues of harassment. SSA should designate an agency program management official/anti-harassment coordinator who will accept harassment claims for its anti-harassment program, initiate investigations, and decide whether to take corrective actions within HQ and its Regions.
- e. SSA should ensure that the anti-harassment policy, procedures and process avoid possible conflicts of interest or even the perception of a conflict of interest in the process.
- f. SSA should establish a uniform tracking system for harassment complaints initiated through its internal anti-harassment program that is utilized by all Offices and Regions.

**Perceived and Potential Conflicts of Interest
on Social Security Administration's EEO Complaint Process**

Finding 11: OCREO's employees perceive a conflict of interest concerning the role of agency's representatives in SSA EEO complaints process.

Chapter 1, Section III of MD-110 establishes that agencies must avoid conflicts of position or conflicts of interest as well as the appearance of such conflicts. In particular, Chapter 1, Section III of MD-110 explains that heads of agencies must not permit intrusion on the investigations and deliberations of EEO complaints by agency representatives and offices responsible for defending the agency against EEO complaints. Maintaining distance between the fact-finding and defensive functions of the agency enhances the credibility of the EEO office and the integrity of the EEO complaint process. A functional unit that is separate from the unit that handles agency representation in EEO complaints must handle legal sufficiency reviews of EEO matters. The Commission requires this separation because the impartiality and the appearance of impartiality are important to the credibility of the EEO program.

The Agency Representative should have no role in the pre-complaint process except when there is an ADR attempt or other informal settlement efforts. At the investigation

stage, which is not an adversarial process, generally, the Agency Representative should not review management affidavits. Where the Agency Representative does review responsible management affidavits during the investigative process there should be no substantive changes to the affidavit made by the Agency Representative nor should a responsible management official be forced or perceive that they are being forced to change an affidavit to state any untrue, misleading information or omission. The Agency Representative should not improperly influence or coach management or other witnesses during the investigative process.

If SSA issues a FAD and does not have the necessary resources for legal sufficiency, it may ask a non-litigating section of the General Counsel's Office to review the decision for legal sufficiency. If the case proceeds to hearing, then the General Counsel staff becomes fully involved. Any additional real or perceived involvement in the EEO process other than in the hearing process may result in damaging the credibility of the EEO program.

At the time of our evaluation, several OCREO employees perceived intrusion by the General Counsel's Office in the EEO program. We find that at the time of the onsite visit, there were three former General Counsel attorneys, including the AC, responsible for managing OCREO. In his previous division, the AC was responsible for the defense of the agency during EEO hearings and on appeal. As the DCHR stated during his interview, the AC was a fixture in GC ("the go to guy") so putting him in the OCREO was a big deal.

The AC also received approval to bring two colleagues from the General Counsel staff to OCREO (the Deputy EEO Director and a Senior Advisor to the EEO Director). The Deputy EEO Director worked in Employee/Labor Relations, advising managers in Boston, and participated in EEO hearings for General Counsel. The Senior Advisor was a supervisory attorney in the General Counsel's General Law Division and supervised a group responsible for litigating civil rights and EEO cases.

Several OCREO employees expressed a belief that this past experience created a perceived conflict of interest. Employees at the OCREO questioned whether employees could view OCREO as neutral with three former GC employees in senior level positions. One OCREO employee asked, "What does it say about your EEO program if the GC attorney is now the EEO Director?" Another OCREO employee stated, "It made sense that the AC brought people he could trust, but it is very suspicious that all of the people came from GC with very little EEO background." This person also pointed out that except for the former AC, three of the last four EEO Directors at SSA had no EEO background.

Several OCREO employees also reported that they perceived the AC and the Deputy EEO Director as not neutral because they had a pro-management stance due to their experience and background. OCREO employees pointed to specific instances when the AC disagreed with what they believed to be clear findings of discrimination. Employees stated investigators now submitted interrogatories rather than conduct face-

to-face or telephonic interviews. As a result, there were fewer questions with less follow-up. There was also a perception among several OCREO staff that the General Counsel staff was now directing contract investigators on what issues to investigate and whom they should interview.

Onsite visit Interviewees provided mixed feedback on the General Counsel's Office involvement during EEO investigations. A variety of opinions exists concerning the involvement of General Counsel staff in reviewing management affidavits during investigations. In stating that General Counsel does not have final approval of management statements, AC said that "we [GC] are not here to defend your [management's] bad decisions." The Deputy EEO Director and some OCREO employees agreed that for some levels of management, General Counsel staff may review affidavits for consistency (that is for clarity and completeness), but will not change the substance of the documents. However, other CREO employees stated that General Counsel staff should not review for any purposes affidavits during the EEO investigation process.

Several OCREO employees reported that after General Counsel staff reviewed some affidavits, management officials made changes to the final document. One OCREO employee noted that an investigator provided two versions of one affidavit in an ROI. One version contained a statement to the effect that the General Counsel representative present was the management official's representative, while the signed version did not contain that statement. As a part of our evaluation, we reviewed a ROI submitted to us by an OCREO employee containing signed and unsigned affidavits from three different agency's witnesses. It appears that the unsigned affidavits were before the General Counsel review, and after the review, the affidavits were signed with changes in the witnesses' statements. See Exhibit 3.

Additionally, we find that the perception amongst OCREO employees was that the EEO office gave management advance notice of findings of discrimination so they can settle the matter before the issuance of a final decision. The AC confirmed that OCREO had a prior practice of warning the component that it should settle before issuing a FAD. During our evaluation, he stated that he changed this practice so the settlement discussions should occur after the Report of Investigation (ROI) is prepared. The complaint data suggests that such a pattern has existed for at least the last five fiscal years. From FY 2009 to FY 2013, SSA has not issued a finding of discrimination in any of the 2,292 complaints closed. Moreover, during the last five fiscal years SSA has settled 235 cases at the formal stage. We cannot speculate as to whether the settled cases would have resulted in a finding of discrimination.

We find that a majority of OCREO employees interviewed expressed concerns about the General Counsel Office's involvement during the EEO investigation process and perceived the involvement as a conflict of interest. We continue to note that the investigative process is a non-adversarial fact-finding process. Accordingly, SSA should assure participants in EEO investigations that they should give candid, truthful responses to EEO investigators. The agency must avoid actions that might create the

appearance that it is influencing employee's responses during the investigative process. See *Complainant v Department of the Treasury*, EEOC Appeal No. 0120082225 (February 4, 2011).

Recommendations for Finding 11:

- a. In light of the staffing changes in OCREO, SSA should avoid even the appearance that the General Counsel Office is interfering with the EEO process, especially during the investigative phase.
- b. SSA should ensure that an appropriate firewall exists between those General Counsel employees assisting OCREO in the EEO process and those General Counsel employees participating in SSA's defense functions.
- c. SSA should ensure that those OCREO employees that recently came from OGC recuse themselves from any case they may have previous knowledge of by way of their previous work in General Counsel.
- d. SSA should ensure the General Counsel employees are not altering any management officials' testimony during the EEO investigation.

Finding 12: Implementation of SSA's Delegation of Authority to Resolve Internal OCREO Employees' Complaints of Discrimination and/or Harassment Appears to be Ineffective and Unfair

In November 2009, the DCHR issued a delegation of authority for handling EEO pre-complaints and complaints filed by employees in OCREO stating the SSA Commissioner had delegated this authority to the Acting Deputy Chief of Staff with administrative support provided through the Deputy Commissioner for Budget, Finance and Management's Office (OBFM). The memorandum addressed to OCREO employees included an attachment with process procedures. The Management Analyst who works in the OBFM is responsible for obtaining counselors, investigators, and decision writers, while the DCS issues the decisions and has settlement authority. The Management Analyst maintains the hard copy of the files, which are not accessible to OCREO staff. During the onsite visit, interviews indicated that OCREO staff was aware of the delegation of authority with the Management Analyst and the Deputy Chief of Staff responsible for processing EEO complaints filed by OCREO employees. In general, we find that SSA has established an effective structure to address the conflict of interest matters.

However, we found several issues which affect the fairness and confidentiality of the process. Our interviews indicated that the Management Analyst utilized the same contractors as OCREO to perform counseling, conduct investigations, and write decisions. To obtain the contractors, the Management Analyst submits a request to the CCP Deputy Director, who is the Contracting Officer in OCREO. The CCP Deputy Director acknowledged that she has a relationship with the contractor, but not the

individual investigators. According to one senior level OCREO employee, a contractor confided they do not conduct truly impartial neutral investigations in conflict of interest cases because OCREO pays them. The AC and other OCREO staff acknowledged that a better solution for processing conflict of interest complaints might be to enter into an interagency agreement with another agency.

Additionally, we learned that several EEO complaints named the CCP Deputy Director as the responsible management official (RMO). Nevertheless, the process was followed and the Management Analyst continued to forward all complaints to the CCP Deputy Director for assignment to contractors. Several OCREO employees stated the obvious, that when the Contracting Officer is the named RMO, she should have no involvement in processing the complaint. In addition, several OCREO employees stated that the CCP Deputy Director delayed counseling and the investigation in complaints where she was the RMO. An OCREO employee suggested removing the contracting function from OCREO and using different contractors for conflict of interest cases.

Further, we learned that although the Management Analyst did not enter the complainant's name in the iComplaints system, several OCREO employees stated that they could identify the complainant based on the issues and bases in the case. In addition, some OCREO employees suggested that the CCP Deputy Director does not maintain confidentiality for the conflict of interest cases. Some OCREO employees also noted that the Management Analyst inadvertently provided paperwork about their complaints to the wrong people in OCREO. We note the CCP Deputy Director stated that SSA asked MicroPact to modify its iComplaints application so that OCREO staff cannot view conflict of interest cases. It was unclear if this modification had occurred.

Recommendations for Finding 12:

- a. SSA should establish a process to ensure that OBFM and related staff have independent access to contracts necessary for EEO professional services and that the CCP division has no involvement or contact with the contractors for conflict of interest cases.
- b. SSA should provide basic EEO training to the agency's officials responsible for processing and coordinating on EEO complaints which present a conflict for interest for OCREO to process.
- c. SSA should establish the ability to track conflict of interest complaints for reporting purposes while maintaining the confidentiality of the process.

OTHER GENERAL RECOMMENDATIONS

Our review of the materials submitted in response to the July 9, 2012 Request for Information and our overall review of the SSA EEO programs lead to the following general recommendations:

- a. Form SSA-675, "EEO Counseling Report," should include whether the EEO Counselor attempted resolution, and a brief summary of informal resolution attempts including any contacts made and or documents reviewed in accordance to EEOC MD-110, Appendix G.
- b. SSA's EEO Handbook dated May 2008, Agency Supplemental Information provided by SSA in its Agency Response to the RFI, could benefit from the following update recommendations:
 - 1) Add appropriate references to the Genetics Information Nondiscrimination Act of 2008 (GINA);
 - 2) Add appropriate references for gender-identity discrimination to the description of "discrimination based on sex" section. See *Complainant v. Department of Justice*, EEOC Appeal No. 0120120821 (April 20, 2012). Additionally, add references for claims of discrimination due to non-conformity to sex-stereotypes under descriptions of discrimination based on sex. See *Complainant v. Social Security Administration*, EEOC Appeal No. 0120110008 (January 11, 2013); *Complainant v. U.S. Postal Service*, EEOC Appeal No. 0120110873 (July 1, 2011; *Complainant v. U.S. Postal Service*, EEOC Request No. 0520110649 (December 20, 2011);
 - 3) Provide up-to-date information on reprisal/retaliation that includes the protected activities of both opposition to discrimination and participation in the process;
 - 4) Include appropriate references to the American with Disabilities Amendments Act of 2008 throughout the handbook including the appendices and ensure appropriate definitions are updated;
 - 5) Consider updating the Sexual Orientation section of the handbook with the current EEOC case law and fact sheet;
 - 6) Consider adding reference to EEOC's Enforcement Guidance on Consideration of Arrest and Conviction Records in Employment Decisions under Title VII of Civil Rights Act of 1964;
 - 7) Consider adding reference to "reasonable suspicion standard" to Employee Role in accordance with MD-110 Chapter 5 Section IV.A.1;
 - 8) Consider adding reference to reasonable amount of official time in accordance with MD-110 Chapter 6 Section VIII.C;
 - 9) Consider adding the EEO Counselor's role as set out in MD-110 Chapter 2 Section III before the goal of the counselor is given;

- 10) Consider referencing the dismissal grounds set forth 29 C.F.R. § 1614.107(a) where dismissals are discussed;
- 11) Consider adding reference to the right to appeal in discussion of final agency decisions;
- 12) Consider adding reference to the right to request a reconsideration of the appellate decision along with the right to file a civil action;
- 13) Ensure that referenced points of contact to report harassment mirror the contacts listed in SSA's Anti-harassment Policy;
- 14) Ensure that all points of contact for EEO programs are current including those listed in the appendices; and
- 15) List up to date references for all applicable Executive Orders.

CONCLUSION

We find that with respect to EEOC's regulations, directives and the findings in this report, SSA should ensure that:

- (1) the EEO Director reports to, or has access to, the agency head;
- (2) OCREO has authority over the regional CREO offices;
- (3) sufficient resources are allocated for an efficient EEO pre-complaint process;
- (4) an effective ADR program is in place agency-wide;
- (5) it timely issues Accept/Dismissal letters and meets all regulatory requirements for EEO investigations;
- (6) it timely issues final agency actions;
- (7) it timely submits case files to OFO for appeals and timely complies with EEOC issued orders;
- (8) its complaint tracking system accurately reflects complaint data;
- (9) a uniform training system is in place for EEO programs;
- (10) an effective/efficient anti harassment policy and procedures are in place and implemented consistently;

- (11) the role of the agency's representatives in the EEO complaint process are defined and clarify to avoid the perception of a conflict of interest.
- (12) an effective and fair process is utilized to process OCREO and field CREO employee's complaints of discrimination.

Within 60 days of receipt of this evaluation report, SSA shall provide EEOC a Corrective Action Plan setting forth the specific activities the agency intends to take to address the recommendations made in this report and specific time frame for completing such activities. In addition, SSA shall submit to EEOC a quarterly progress report on its effort to implement each of the report's recommendations. SSA's Corrective Action Plan and quarterly report should include an update on each of the specific planned activities.

AGENCY RESPONSE

We provided a draft of this report to SSA for review and comment. We received written comments from the agency. Their comment letter is reproduced in Exhibit 2. From the response, SSA indicates that it has begun implementation of several recommendations.



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Office of Federal Operations
P. O. Box 77960
Washington, D.C. 20013

July 5, 2012

Michael J. Astrue, Commissioner
U.S. Social Security Administration
6401 Security Boulevard
Baltimore, MD 21235

Dear Commissioner Astrue,

As a part of the Equal Employment Opportunity Commission's (EEOC) oversight responsibility for federal agency equal employment opportunity (EEO) programs, the EEOC's Office of Federal Operations will conduct a program evaluation of the Social Security Administration. Our program evaluation will focus on SSA's complaint processing and its anti-harassment programs to ensure compliance with the laws, regulations and other written instructions enforced by the EEOC. Specifically, we will be evaluating SSA's practices and procedures involving compliance with EEOC orders, case file submissions for hearings and appeals, requests for information and trend letter instructions. The evaluation will also look at how SSA deals with conflict of interest cases under SSA's anti-harassment policy and at possible causes for the high level of complaints alleging harassment. The scope of this review is subject to change during the course of our evaluation.

Under Title VII, Section 717(b)(2) of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e-16(b)(2); Section 15(b)(1) of the Age Discrimination in Employment Act of 1967 (ADEA), as amended, 29 U.S.C. 633a; Sections 501 and 505 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 791 and 794a; the Genetics Information Nondiscrimination Act of 2008; and 29 C.F.R. § 1614.104(b), the EEOC is responsible for overseeing federal agencies' equal employment programs and anti-harassment programs.

We have scheduled the program evaluation for July 5 - December 31, 2012. During our review, we may contact employees and managers at various headquarters offices and/or field organization offices to discuss aspects of the EEO complaint processing program and/or the anti-harassment program.

In addition, we would like to meet with personnel who have responsibilities related to the handling of complaints in the EEO process and the anti-harassment program. To facilitate this process, we request that you ask your staff to provide us with the information described in the enclosed Request for Information (RFI). I have designated Jamie Price, Director, Reports and Evaluation Division, EEOC Office of Federal Operations, Federal Sector Programs as the Commission's contact person. You should transmit the information to Ms. Price in both print and electronic formats, no later than July 25, 2012. Ms. Price's email address is jamie.price@eeoc.gov.

After receiving the response to this RFI, we will conduct an entrance conference with the program officials. We also expect to conduct interviews with SSA officials and employees. We request the assistance of your staff to ensure that an interview schedule is developed. After the review is completed, a report of findings and recommendations will be issued. We will conduct an exit conference to discuss the findings and recommendations contained in the report. We welcome and encourage your attendance or that of your Designee at both conferences.

Ms. Price may be contacted at (202) 663-4484, if you or your staff has any questions. Please provide her the name and telephone number of a contact person to help coordinate our visit and an interview schedule. Your cooperation is greatly appreciated.

Sincerely,

A handwritten signature in blue ink, appearing to read "Dyler Brook for", is written over the typed name.

Carlton M. Hadden, Director
Office of Federal Operations

Enclosure

cc: Reginald F. Wells, Deputy Commissioner
Human Resources
U.S. Social Security Administration
6401 Security Boulevard
Baltimore, MD 21235

Alan S. Frank, Associate Commissioner
Office of Civil Rights and Equal Opportunity
U.S. Social Security Administration
6401 Security Boulevard
Baltimore, MD 21235

REQUEST FOR INFORMATION

For each of the following questions please provide the data requested for the Social Security Administration (SSA) for Fiscal Years (FY) 2009-2011 and the first two quarters of FY 2012 separated by fiscal year and SSA individual headquarters' offices/field organizations, unless otherwise indicated. Please provide, if necessary, any and all keys needed to decipher any agency specific codes and/or acronyms.

1. SSA's OCREO Structure

- a. Please provide a current organizational chart for the Office of Civil Rights and Equal Opportunity and for any other Civil Rights Offices or EEO program staff located in different headquarters, regional, hearing or field offices, and processing and teleservice centers. Identify the name, grade, title, position, telephone number, address and e-mail address of each employee in any of the offices.

2. Compliance

- a. Please provide an overview of SSA's internal EEO compliance process and provide a copy of any standard operating procedures. Please explain the duties and responsibilities of the EEO employees who carry out the agency's EEO compliance. Please provide an update on the progress made thus far on the FY 2011 MD-715 plan to explore including compliance with EEOC orders in the performance standards of agency employees.
- b. SSA stated in its FY 2005 MD-715 Report that the agency provided on the job training for its EEO Compliance Officers and established a formal protocol to ensure compliance activities are accomplished in a timely manner. Please provide a copy of the training conducted and a copy of the protocol developed. Also state whether SSA Compliance Officers received EEO training on the complaint process, and/or compliance, between FY 2009 and FY 2011 and the first two quarters of FY 2012, who conducted the training, and provide a copy of the training conducted.
- c. Please describe all actions taken by SSA to ensure that the compliance misrepresentation made to EEOC in the case involving Barbara M. Murchison (Murchison v. Astrue, 689 F. Supp. 2d 781, 790-94 (D. Md.2010), aff'd in part, vacated in part, remanded, 10-1200, 2012 WL 475581 (4th Cir. Feb. 15, 2012)) has not occurred in any other compliance activity and will not occur in any future compliance activity. Please provide documentation related to all such actions. Please identify the individual(s) responsible for addressing the compliance misrepresentation and for taking action to correct the problems identified in the Murchison case.
- d. We note that SSA submitted Part Hs in its FY 2010 and FY 2011 MD-715 reports, wherein SSA stated that it does not timely submit complaint files to the EEOC's Hearing Unit (in accordance to 29 C.F.R. § 1614.108(g)) nor does it timely submit complaint files to the EEOC Appellate Review Program within the regulatory time frame (in accordance to 29 C.F.R. § 1614.403(e)). Please provide an update of the progress made

thus far in the scheduled two-year review of the standard operating procedure (SOP) and in transferring resources dealing with these activities. Please also provide a copy of the current (SOP) the agency is using to monitor/track its compliance with these regulations.

- e. SSA has a record of submitting incomplete files to the OFO on appeal in violation of MD-110 Chapter 9 Section IV Part F as evidenced by show cause orders OFO has issued in FY 2011 and FY 2012. Since SSA has not reported this deficiency in any of its MD-715 reports, please state what plans, if any, the agency is considering or has implemented to eliminate this heretofore unidentified deficiency.
- f. Please provide copies of the quality assurance assessments SSA reported doing for the "EEO compliance process" and "records management" in its FY 2011 Executive Summary and identify the individual(s) responsible for conducting the quality assurance assessments.
- g. In February 2011, the EEOC's Agency Oversight Division (AOD) sent SSA a Request for Information (RFI) regarding Monique Smith with a response due by March 10, 2011. To date, AOD has not received SSA's response to the RFI. Please include the response to the Smith request with the response to the instant request for information. Please provide the practice/procedure that SSA has in place to comply with the EEOC's written instructions and requests for information, and identify the individual(s) responsible for such compliance.

3. **Anti-Harassment Program**

- a. Please identify the office/location, name, title, telephone number and e-mail address of the SSA official(s) who has responsibility for the Anti-Harassment program at headquarters and any SSA regional/field organization/offices.
- b. Please provide a copy of SSA's anti-harassment procedures referred to in the anti-harassment policy submitted with SSA's FY 2011 MD-715 report. Also, please provide a copy of any forms (if any) an employee must complete throughout the process.
- c. Please identify the number of incidents handled by SSA's anti-harassment program between FY 2009 and FY 2011 and the first two quarters of FY 2012. For each incident, provide: (1) the individual headquarters' office/field organization name, (2) the incident or reference number, (3) the name of the SSA employee, (4) whether a detailed fact-finding investigation was conducted, by whom, and the relationship to the SSA employee reporting the incident, (5) the finding of the investigation, (6) the number of days that each incident was open (from the date the employee reported the incident to the date that the agency issued a decision), and (7) if appropriate the type of corrective action taken by the agency. If harassment was found but no corrective action was taken specify the reason(s) for inaction.
- d. Please explain, if possible, why the number of complaints filed alleging harassment increased from 142 in FY 2009 to 254 in FY 2010.

- e. For each of the 142 EEO complaints filed at SSA that alleged harassment in FY 2009, the 254 EEO complaints filed in FY 2010 that alleged harassment and the 257 EEO complaints alleging harassment filed in FY 2011 and those EEO complaints filed in the first two quarters of FY 2012 - provide: (1) the individual headquarters' office name/field organization name, (2) the agency case number, (3) complainant's name, (4) the number of processing days for each complaint, (5) the final outcome of the complaint (withdrawal, finding of discrimination, settlement, non-finding of discrimination, procedural dismissal or referred to MSPB), (6) if appropriate the type of corrective action taken by the agency, (7) whether there was an appeal to OFO on the case; (8) when the agency completed compliance on the case. If harassment was found but no corrective action was taken specify the reason(s) for inaction.
- f. Please describe the procedure(s)/practice(s) that SSA uses to avoid conflict of interest or the appearance of conflict of interest when an employee reports harassment under the anti-harassment policy and/or files an EEO complaint.
- g. Please explain the process that SSA uses to determine what type of corrective action is appropriate when there is a finding of harassment under SSA's anti-harassment policy as well as under the 1614 complaint process.
- h. Please identify how many of SSA's employees in each of SSA's locations, including managers and supervisors, that have received EEO training on their role and responsibilities regarding anti-harassment in the workplace including all anti-harassment policies and procedures between FY 2009 and FY 2011 and the first two quarters of FY 2012 and provide a copy of the training provided.
- i. In its FY 2011 MD-715 report, SSA stated it had created a "Managers Only" web page, to provide managers and supervisors a better understanding of their roles with regard to EEO. Please provide a detailed explanation of the information provided on the web page and copies of any anti-harassment training provided using that forum.



SOCIAL SECURITY ADMINISTRATION

RESPONSE TO THE U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION'S FEBRUARY 2014 DRAFT PROGRAM EVALUATION REPORT

March 26, 2014

SOCIAL SECURITY ADMINISTRATION

RESPONSE TO THE U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION'S FEBRUARY 2014 DRAFT PROGRAM EVALUATION REPORT

Background

The Social Security Administration (SSA) administers an effective Equal Employment Opportunity (EEO) program in compliance with Equal Employment Opportunity Commission (EEOC) regulations at 20 C.F.R. Part 1614 and EEOC management directives. We strive to achieve a model EEO program and continuously explore ways to ensure our EEO program is most effective and efficient.

In 2012,¹ you evaluated SSA's EEO program, examining our reporting structure, EEO complaint processing program, conflict of interest case processing, and anti-harassment policy and procedures. We welcomed your evaluation and looked forward to your findings and recommendations. We provide below a response to each of your twelve findings and our actions to implement your recommendations toward becoming a model EEO employer.

Findings, Recommendations, and Responses

Finding 1: SSA's Associate Commissioner of OCREO Does Not Report to the Commissioner of the Social Security Administration

In the draft Program Evaluation Report (Report), you noted that EEO regulations and directives require each Federal agency's EEO Director to be under the immediate supervision of the agency head. You advised that our organizational structure violates this requirement and recommended that we restructure our organization to ensure that the EEO Director (our Associate Commissioner for Civil Rights and Equal Opportunity, or OCREO) has a direct reporting relationship with and meaningful access to the Commissioner.

You also recommended that the EEO Director and staff have an effective way of informing the Commissioner and senior managers of the EEO program status, and that they should be involved in and consulted on management and personnel policies and practices.

We are constantly assessing our organizational structure to ensure efficiency and effectiveness. We recognize the EEOC regulation that calls for the EEO Director to serve under the immediate supervision of the agency head. We have determined, however, that organizationally and functionally, our current structure provides meaningful access to our agency head and an effective level of EEO Director communication, support, and involvement in agency policymaking.

¹ In a July 5, 2012 letter, you notified then-Commissioner Michael J. Astrue of your plan to conduct a program evaluation of SSA's EEO program from July 5 through December 31, 2012, as part of your oversight responsibilities for Federal agency EEO programs.

Under our current structure, the EEO Director meets quarterly with the Acting Commissioner to discuss various EEO issues and annually provides a thorough overview to the Acting Commissioner on the agency's EEO program and practices. In addition, the EEO Director has direct access to senior management and holds annual workforce profile and Alternative Dispute Resolution (ADR) meetings with every Deputy Commissioner. The EEO Director also maintains ongoing communication with senior management, responding to numerous ad hoc requests to discuss particular EEO issues.

We note that other Federal agencies have the same reporting structure as SSA. We would be interested in any EEOC studies or reports showing how those agencies are less effective or unable to be a model EEO employer or reach model EEO program status.

Finding 2: SSA's Associate Commissioner of OCREO Has No Authority Over The Regional Civil Rights and Equal Opportunity (CREO) Offices

After reviewing our decentralized field organization structure, you reminded us of EEOC regulations saying that the EEO Director is responsible for advising the agency head on the preparation of national and regional EEO plans, procedures, regulations, reports, and other EEO policy matters. You counseled that such a structure maintains agency-wide coordination and ensures the consistency, integrity, and fairness of the EEO process.

Under our current structure, the Regional Civil Rights and Equal Opportunity (CREO) Managers report to their respective Regional Commissioner, not the EEO Director. You do not believe this allows the EEO Director to adequately communicate evolving EEO policies and procedures or hold CREO Managers accountable for program effectiveness and efficiency. You recommended restructuring so the EEO Director has oversight over the CREO Offices and can be involved in CREO Manager hiring and appraisals. You also recommended that OCREO review all EEO program-related materials to guarantee uniform implementation, and establish a mechanism to ensure that the CREO Offices comply with EEOC regulations.

As noted in our response to Finding 1, we are constantly assessing our organizational structure to ensure efficiency and effectiveness. As the agency lead for providing EEO direction and guidance, OCREO already has the authority to set policy and provide oversight for the entire agency, including the CREO Offices. Our EEO program structure, while decentralized, is effective because the EEO Director has oversight, ongoing communication, and formal processes for ensuring agency-wide EEO program compliance with Federal regulations. A direct reporting line between all entities providing EEO services is not necessary to achieve effective EEO programs and ensure compliance with the regulations.

We disagree with your assertion that OCREO cannot adequately communicate evolving EEO policies and procedures to CREO Managers to eliminate inconsistencies or deficiencies within SSA's EEO programs. OCREO and the CREO Managers communicate regularly. For example, OCREO has monthly teleconference meetings with the CREO Managers. In these meetings, we address such topics as EEO case law updates, training on specific parts of the complaint process, class action updates, and tracking system tips, and we provide time for the CREO Managers to

discuss pressing regional issues. In preparation for each meeting, OCREO solicits topics from the CREO Managers and OCREO staff, and subject matter experts address the topics.

In addition to the monthly meetings, OCREO maintains regular and open communications with the CREO Managers and CREO staff. OCREO's Director for Business Operations talks to each CREO Manager at least monthly to share information and offer support, as needed. The CREO staff can also contact any OCREO staff member for assistance. OCREO's policy is to respond promptly to such requests. OCREO's "open door" policy gives CREO staff the ability to communicate freely with OCREO and allows OCREO to provide timely guidance and instructions on all aspects of our EEO program.

You recommended that we consider developing a structure that would allow the EEO Director to provide input on CREO Manager hiring and performance appraisals. We will discuss implementing this recommendation with the Office of Public Service and Operations Support (OPSOS), the Office of Operations support unit for the CREO Offices. In addition, we agree to work toward implementing the recommendation that OCREO review and approve all EEO program-related materials to guarantee uniform implementation of the EEO process in the regions.

Finally, you recommended that OCREO establish a mechanism to ensure the CREO Offices' timely compliance with EEOC regulations and orders. OCREO shares information with Deputy Commissioner-level Executive Officers and the Regional CREO Managers so they can communicate the EEO message within their offices and promote EEO compliance throughout the agency. OCREO also works with OPSOS to ensure timely CREO Office compliance.

We continue to explore mechanisms to improve our CREO Offices' timely compliance with EEOC regulations and orders and to adjust our current procedures, including contact with the direct-line supervisor of the CREO Manager, as necessary. (We provide additional information on our compliance activities in response to Finding 7.)

Finding 3: SSA Does Not Have Resources to Ensure An Efficient Pre-Complaint Process

The CREO Managers reported in their interviews that they do not have enough resources for full-time EEO Counselors. They also reported that they do not have a standard operating procedure (SOP) for the pre-complaint process. You recommended that OCREO create an SOP, emphasize the importance of timely pre-complaint processing, hire at least one full-time Counselor per region, consider using contract Counselors or EEO Counselors from other agencies, provide adequate training on the role of EEO personnel and refresher training on EEO laws and emerging issues, and ensure reliable EEO tracking by using the employee appraisal system to hold staff accountable for accurate data entry.

Since 2011, we have had an SOP covering the EEO process from pre-complaint to final order. All EEO complaints processing employees in OCREO and the CREO Offices have this SOP. We regularly emphasize to OCREO and CREO staff the importance of effective and timely pre-complaint counseling.

We agree that our pre-complaint process would be more efficient if we had been able to devote additional resources (e.g., staff, training) to them. In recent years, we were under a hiring freeze and unable to fill critical vacancies.

We have informed the Regional Commissioners of the need for resources in the CREO Offices to provide full support of all regional SSA components. We anticipate some hiring authority in FY 2014; if this happens, the Regional Commissioners will consider hiring for CREO Office vacancies as they allocate hiring in their regions. Until the Regional Commissioners are able to resolve each CREO Office's staffing needs, we will continue our practice of contracting out counseling cases for the regions that request assistance. Currently, we have two EEO analysts in OCREO who maintain weekly contact with the CREO offices on their counseling case status and offer contractor assistance if it appears cases may be delayed.

While it might enhance the effectiveness of our EEO programs if we had the staff resources to increase the number of full-time Counselors, we question the assumption that having more full-time Counselors will improve the timeliness of the complaint process and decrease backlogs. In our experience, collateral duty counselors effectively and efficiently perform EEO counseling duties.

Providing adequate training on EEOC regulations, policies, and directives and our agency program is crucial to the success of each Counselor and our EEO program as whole. We fulfill the EEOC requirement of providing eight hours of Counselor refresher training each year. This training includes the proper role of EEO personnel, changes in EEO laws and emerging EEO issues, and the importance of timely, well-written counseling reports.

In addition to annual refresher training, we provide special training to our Counselors at various times. In September 2012, we brought the CREO Managers to SSA Headquarters for training that included a full day of instruction on writing acceptance/dismissal letters; this was training the CREO Managers could share with their own staff. The training provided CREO staff with a better understanding of the vital importance a timely and well-written counseling report has to a complaint. In June 2013, we provided a one-day training on complaints processing and cultural diversity to CREO Managers who were visiting SSA Headquarters. We have also surveyed the CREO Offices about their training needs and are in the final stages of establishing a training plan to meet those needs.

Through FY 2012, we did not have funding for as much training as we would have liked. When Carolyn W. Colvin became Acting Commissioner in FY 2013, she set a high priority on EEO training, giving us leadership support for our continued efforts to improve the efficiency of our pre-complaints process.

In response to your recommendation about ensuring the accuracy of our complaint tracking system, we continually stress to staff the importance of an accurate and honest record of complaint processing activities, including accurate data on the average time it takes to complete the pre-complaint process. We provide ongoing training and guidance to all employees whose

job duties require using our iComplaints EEO tracking system.² The iComplaints administrator creates SOPs, provides iComplaints tips and best practices at monthly OCREO/CREO meetings, and regularly answers iComplaints questions from OCREO and CREO staff. (We provide additional information on our iComplaints EEO tracking system in response to Finding 8.)

Finding 4: SSA Does Not Have an Effective ADR Program

Pursuant to the regulatory requirement to have an ADR program for the pre-complaint and formal complaint processes, we implemented and maintain an effective ADR process. We disagree with your conclusion that our ADR program is not effective. The Acting Commissioner is a strong advocate for ADR and encourages management participation. We are exploring sending a Commissioner-issued broadcast to all employees, emphasizing the Acting Commissioner's strong support for ADR, as recommended in the draft Report.

Our ADR program requires EEO Counselors to inform aggrieved parties at the informal stage about the agency's ADR program, including how it works, how to participate, and the right to file a formal complaint if the ADR is not successful. Our complaints processing SOP tells Counselors to inform aggrieved parties of the "benefits of [ADR] and the option of selecting ADR instead of traditional counseling."

Our *Notice of Rights and Responsibilities in the EEO Process*, form SSA-677, outlines the aggrieved party's right to choose between the ADR "process and traditional EEO counseling, and receive information regarding each procedure. When you agree to participate in ADR and the matter is not resolved during that process, the written notice terminating the EEO counseling period will be issued upon completion of ADR or within ninety (90) calendar days of the date of initial contact with the EEO Counselor, whichever is earlier." The *Notice of Rights and Responsibilities* also informs aggrieved parties of their right to file a complaint within 15 calendar days of receiving from the Counselor the *Notice of the Right to File a Formal EEO Complaint of Discrimination* (form SSA-678) once ADR has ended.

We have a longstanding history of encouraging the use of ADR in EEO cases. The OCREO website, which is available through our internal website to all SSA employees, provides extensive information on the ADR process. The website explains what ADR is; defines negotiation, mediation, fact-finding, and arbitration; lists the benefits of ADR; and provides links to an ADR PowerPoint presentation and a video on ADR called "Something We Can All Agree On," introduced by Dr. Reginald F. Wells, the Deputy Commissioner for Human Resources. We also have an ADR Frequently Asked Questions factsheet on our internal website.

OCREO has been aggressively marketing the ADR program as an alternative to the formal complaint process, to improve participation and resolution rates; ADR promotion is a top OCREO priority. In FY 2013, the EEO Director held workforce profile meetings with each Deputy Commissioner and used these meetings to discuss the benefits of ADR and encourage greater participation. In every case, he received a commitment from the respective Deputy Commissioner to increase his or her component's ADR participation. We have continued to

² CREO staff, Counselors, and OCREO complaint processing staff have been using iComplaints since 2005. We work closely with the iComplaints contractor to add additional functionality as resources permit.

advance an agenda that encourages case resolution at the earliest opportunity and throughout all stages of the EEO complaint process.

We have several other ADR initiatives planned or currently underway, including:

- exploring mandatory management participation in ADR when a complainant requests it;
- implementing a plan to train over 1,080 SSA Headquarters managers on the benefits of ADR, to start in April 2014. The goal is for managers to understand how ADR resolves disputes at the lowest level, reduces costs, and promotes a healthier and more cooperative work environment;
- creating a one-hour Video-on-Demand (VOD) as an annual refresher for managers and employees;
- establishing designated management officials at the component level to mediate complaints whenever ADR is requested and the matter is deemed appropriate for ADR;
- training in-house collateral duty mediators;
- benchmarking other agencies that have established a stand-alone component housing an ADR program that handles all workplace disputes, not just EEO matters, to learn the pros and cons of such an arrangement; and
- drafting an internal ADR operating manual that benchmarks best practices from other agencies' programs.

Our efforts to promote ADR are proving successful. We have seen a 60 percent success rate for complaints accepted into ADR over FYs 2012 and 2013.³ This trend continued in the first quarter of FY 2014. Management's acceptance rate has steadily increased as well, from 64 percent in FY 2012 to 66 percent in FY 2013 and 70 percent through March 21, 2014, as reflected in the table below.

FISCAL YEAR	PERCENT
2012	64
2013	66
2014*	70

*Through March 21, 2014

³ Sixty percent of the cases did not become formal complaints because the ADR resulted in a settlement or because the aggrieved person either withdrew his or her pre-complaint or decided not to file a formal complaint at the end of the pre-complaint process.

We agree with the recommendation to conduct regular evaluations of the efficiency and effectiveness of our ADR program and will immediately establish plans to improve the ADR program if we identify problems. We will discuss the feasibility of adopting your recommendation to hold management officials accountable through performance appraisals that take into consideration EEO criteria, including ADR participation.

Finding 5: SSA Untimely Issues Acceptance/Dismissal Letters and Fails to Meet the Regulatory Requirements for an EEO Investigation

Acceptance/Dismissal Letters

You reported that SSA had not established a process for timely issuing acceptance/dismissal letters and had a substantial number of cases waiting for acceptance/dismissal letters at the time of your evaluation. You recommended that we establish an efficient, uniform process or SOP for acceptance/dismissal letters and ensure that only individuals with the proper training issue the letters.

We have been working to improve timely issuance of acceptance/dismissal letters and as you recommended, we ensure proper training for the staff who issue the letters; we also provide acceptance/dismissal letter instructions in our SOP. In November 2010, we distributed the SOP for complaints processing to all staff in the Center for Complaints Processing (CCP), the OCREO component responsible for the EEO discrimination complaints and ADR programs for both SSA Headquarters and field operations. In 2011, we revised and reissued the SOP and included acceptance, partial acceptance, and dismissal templates. In 2012, we created a new template for full dismissals, basing it on the format provided at the complaints process training received that year, which was mandatory for all OCREO staff. That training included two full days on writing acceptance/dismissal letters.

For OCREO staff use, our OCREO-specific shared drive houses a variety of information, including SOPs, letter and decision templates, training materials, complaints processing reminders, and expert guides on EEO and Merit Systems Protection Board law and practice. We also share relevant information with the CREO Offices.

For FY 2012, we issued 405 acceptance/dismissal letters, with an average processing time of 54 days. For FY 2013, we issued 554 acceptance/dismissal letters, with an average processing time of 44 days.

FISCAL YEAR	ACCEPTANCE/ DISMISSAL LETTERS PROCESSED	AVERAGE PROCESSING TIME
2012	405	54 days
2013	554	44 days

These processing times meet the EEOC's target of issuing acceptance/dismissal letters within 60 days of the filing of the formal complaint.

Regulatory Requirements for an EEO Investigation

You noted that the regulations require agencies to develop an impartial and appropriate factual record on which to make findings on a complainant's claims. The draft Report raised concerns about the following areas in our EEO processing:

- Reports of Investigation (ROI) timeliness;
- lack of management cooperation in investigations, resulting in delays;
- data accuracy;
- failure to hold contractors accountable for untimely or deficient ROIs, resulting in large numbers of returns to correct deficiencies; and
- ROI reviewers' inability to contact investigators directly.

Our records reflect that our ROI timeliness rate in FY 2013 was 40 percent; it is 42 percent thus far in FY 2014. Our ROI timeliness challenges have multiple causes:

- To increase productivity, in June 2013, we reorganized the complaints processing unit into two branches, dividing the caseload by regions. We cross-trained staff so they could handle all aspects of the complaint process instead of a single function. With the learning curve resulting from the reorganization, our processing time for investigations did increase, but we expect that with more of the staff trained in all aspects of the complaint process, our processing times will ultimately decrease. We believe the staff is now more capable of performing counseling intakes, writing acceptance/dismissal letters, reviewing ROIs, and developing correspondence associated with appeals and final orders.
- With our FY 2013 OCREO/CREO staff training on amendments in lieu of new complaints to avoid fragmenting cases, we more quickly identified claims that are like or related. This change resulted in a 31 percent increase in amendments from FY 2012 to FY 2013. This growth in turn increased processing times for some investigations. However, it also reduced the need to consolidate cases, which reduced the risk of fragmentation and ultimately will reduce overall processing times.
- Contract Counselors have repeatedly complained that managers and complainants do not respond timely to information and interview requests or in returning signed affidavits. If management is not cooperative, OCREO follows up, documents the attempts to obtain timely compliance, and moves forward with the investigation. In meetings and training sessions with employees, OCREO repeatedly stresses the importance of timely responses but ultimately does not have any authority to compel employees to respond within the contractors' timeframes.

- We continue to identify cases we should have released but instead held in abeyance due to one of the three class actions filed against SSA. Five of these identified cases were over 1,000 days old. Our average processing time increased once we processed them.
- Returning deficient ROIs for correction can also add to delays if there are requests for new interviews or re-interviews, which require providing the complainant with time to rebut the new testimony.

We recognize that we have had challenges with ROI timeliness, and as stated above, we believe our current efforts will ultimately improve our timeliness. However, another concern you reported is that of data and ROI accuracy. In discussing these concerns, you reported that several OCREO employees claimed that when an ROI was “untimely, some OCREO managers move[d] the case file to the next fiscal year to look timely, and that they manipulate[d] the data in the iComplaints tracking system.” You also reported that OCREO employees said that in some instances, OCREO Managers instructed them to close investigations without revision even if the investigation was not adequate.

If the reported practices existed, they occurred before the current EEO Director began his tenure in January 2012. These practices certainly have not been a part of OCREO’s case processing procedures for over two years. As the EEO Director emphasized in his July 2012 discussion with the OFO Program Evaluation staff, at the very beginning of his tenure in 2012, he told OCREO staff that if they had been delaying closing cases to make them look timelier or closing investigations even if they were not adequate, they were to stop immediately. He directed staff to release all ROIs when completed, without regard to fiscal year numbers and to stop closing investigations without an adequacy review.

We agree that we have not regularly held the ROI contractors responsible for untimely and deficient work, although the percentage of deficient ROIs returned for corrections is not as high as the 50-60 percent you reported. In FY 2012, we issued 339 ROIs and returned 114 (34 percent) to the contractor to correct deficiencies. In FY 2013, we issued 384 ROIs and returned 115 (30 percent).

We have evaluated our ROI review processes and identified areas where we did not have an effective procedure to ensure timeliness. We have instituted a more effective approach and trained the Contracting Officer’s Representatives (COR) who are responsible for ensuring that contractors comply with the Statement of Work. The CORs will now request and receive status reports from the investigators. When a deadline is approaching, the COR will check with the investigator to determine whether he or she will meet the deadline and if not, discuss possible solutions. We are maintaining internal tracking systems so we can identify and address potential delays.

We are also increasing our efforts to hold contractors accountable for deficiencies. We have made changes to the Blanket Purchase Agreement (BPA) and are continuing efforts to draft a new BPA that will ensure quality and timeliness. The new BPA will be in effect by October 2014.

You recommended that we consider allowing ROI reviewers to contact investigators directly by listing them as the point of contact on Call Orders. Our contracting office has historically advised that there can be only two individuals assigned to one contract and we cannot permit direct contact between the ROI reviewer and the contractor. However, to respond to your recommendation, we are currently exploring a new option to train ROI reviewers as Task Managers, which would allow direct reviewer/investigator contact. As we explore this option, we will facilitate ROI reviewer/contractor communication by including a COR in each conversation between an ROI reviewer and a contractor.

Finding 6: SSA Does Not Timely Issue Merit Final Agency Decisions

We agree that we do not comply with the regulatory deadlines for issuing Final Agency Decisions (FAD). We have seen increasingly poor quality in the draft FADs that several contractors provide. To resolve this issue, we are working with new contractors who were not originally on the BPA. We also revised the BPA and Statement of Work for FAD contractors, clarifying the required FAD elements and providing FAD templates for the contractors' use in an attempt to obtain a better work product.

As noted in Finding 5, we are currently exploring an option to train staff as Task Managers, which would allow direct FAD analyst/contractor contact to eliminate the "middle man" and improve communication. In the meantime, we will facilitate FAD analyst/contractor communication by including a COR in each conversation.

To eliminate any inefficiencies arising by having two different divisions handling FADs, we are considering combining the entire formal EEO process in one division.

The final recommendation cited in the draft Report asks us to consider authorizing the FAD staff to draft FADs rather than simply review the contractor-prepared drafts. The FAD staff already has that authority. In fact, in FY 2013, the FAD supervisor decided to draft mixed cases in house. We have determined, however, that while drafting FADs from scratch may eliminate contractor deficiencies, it will not increase the timeliness given our current resources.

We believe that better contractor management and communications, efficient organization of the full complaints processing function, and proper training will improve our FAD timeliness and quality.

Finding 7: SSA Does Not Timely Submit Complaint Files for Appeals to the Office of Federal Operations (OFO) and Fails to Comply Timely with EEOC Orders

Submitting Complaint Files to OFO

You reported that we fail to submit complaint files to OFO in a timely manner for appeal cases and that many times the file is incomplete. You recommended that we analyze our process to determine where we can make improvements and consider assigning a specific employee or creating a task force to handle appeal complaint files. You also asked us to create a system to

track appeals and ensure timely file submission; identify any missing or destroyed files; hold employees accountable for improper file destruction; and complete Exhibit 3 (listing case files OFO had not yet received) and then submit those files.

We have already analyzed our process for submitting complaint files to OFO, and as a result, we developed and implemented a process to track incoming appeals and orders to produce the file. Our tracking system captures complainant and case-identifying information, the appeal date, and actions taken to submit the complaint file to OFO.

We run weekly reports to capture appeal requests so we can prepare and forward case files before there is any need for OFO to issue an order to produce. We have experienced staff assigned to handle the complaint files; they review each file and make every effort to obtain any missing relevant documents before sending the file to OFO.

You reported that several employees claimed that when OCREO converted from paper to electronic files, several complaint files went missing or were destroyed. OCREO investigated that allegation when employees first brought it to management's attention well over a year ago and found no evidence to support the claim. The only complaint files destroyed were those that had reached their regular destruction date pursuant to National Archives and Records Administration requirements.

All OCREO employees took SSA's mandatory records management training in 2013. We would hold our employees accountable through progressive discipline if they improperly destroyed files or lost them through negligence or carelessness.

Finally, you asked us to complete and return Exhibit 3, which contains a list of cases for which we had not provided the case file as of the date of the draft Report. The Appendix attached at the end of this response (page 21) contains a completed Exhibit 3, showing when we sent a file to OFO, the tracking number, the receipt date, and who signed for the file, and confirms that we have now submitted the case file for each of the identified SSA cases.

We note that we could more efficiently submit case files to OFO if the Administrative Judges (AJ) would send the complete case file to the agency with the final decision and order as MD-110 instructs. The chapter on "Transmittal of the Decision and Hearing Record" states that the AJ "shall send to the parties copies of the record produced at the hearing stage of the process, including the transcript of the hearing, if any, as well as the decision." MD-110 Ch. 7, III., F.

Our experience is that the AJs have for several years declined to send the hearing record to the agency as MD-110 requires, citing budget restrictions. When asked to assist the agency's efforts to independently recreate the hearing record, the AJs often decline, which impedes the agency's ability to respond efficiently to OFO's file requests.

Complying with EEOC Orders

In the draft Report, you described the compliance process in place at the time of your Program Evaluation. You asked us to establish a compliance SOP to ensure timely and efficient compliance with all EEOC orders.

Since your Evaluation, we have taken significant steps to expand and formalize our compliance process to ensure timely compliance with all EEOC orders. We have both a Compliance Officer and a Settlements Officer. The Compliance Officer is responsible for ensuring timely and appropriate compliance with EEOC orders. The Settlements Officer is responsible for ensuring compliance with the requirements in EEO complaint settlements, obtaining proof of compliance, and investigating and drafting decisions on formal settlement breach allegations. Each serves as backup to the other, as necessary. Both Officers provide weekly updates to their supervisor, the Director for Business Operations, and meet biweekly with the EEO Director and his Deputy to discuss compliance and settlements issues and provide assistance and guidance.

Compliance Officer: Recognizing the critical importance of compliance, at the beginning of his tenure, the EEO Director appointed a Compliance Officer to review our compliance status, fulfill any outstanding compliance responsibilities, and review and revise, as necessary, our existing compliance procedures. When that first Compliance Officer left the agency in 2012, the EEO Director immediately appointed a new Compliance Officer and arranged training for her from the EEOC on ROI Sufficiency Reviews, Final Agency Actions, and Compliance and Hearings.

At the time of your Program Evaluation, we had separate SOPs for EEOC compliance and settlements. Beginning in early 2013, we began drafting an expanded and more comprehensive Compliance/Settlements SOP that includes step-by-step instructions for implementing requirements in EEOC orders and settlements. The draft SOP contains detailed guidance and numerous samples demonstrating the types of documentation considered acceptable proof of compliance. We expect to issue this SOP by the end of FY 2014.

Under our current procedures, once the Compliance Officer receives an order, she contacts the component against which the finding was made and provides the compliance requirements and applicable deadlines, and identifies the office responsible for implementing the requirements. She follows up with a telephone call to review each compliance requirement and explain the actions needed to ensure that all parties understand their responsibilities and due dates, and she maintains regular contact with the office to provide guidance.

At least weekly, the Compliance Officer reviews the pending compliance requirements on the tracking spreadsheet she created and sends reminder emails to the employees responsible for implementing the requirements. The Compliance Officer consults frequently with the OFO Compliance Officer responsible for SSA. Once she receives proof of compliance, the Compliance Officer reviews it, sends a compliance report to OFO, and maintains these documents in agency records. When an order requires a back pay, compensatory damages,

or attorney fee payment, the Compliance Officer ensures timely back pay calculations and payments.

The Compliance Officer has established a collegial working relationship with OPSOS for those compliance matters involving our regional offices, and serves as a liaison between the CREO Offices and the OFO Compliance Officer. Before a CREO Office compliance requirement is late, OCREO contacts OPSOS to request assistance in obtaining proof of compliance. OPSOS can elevate the matter to upper-level regional management if initial contacts are unsuccessful in obtaining the required proof of compliance.

As a result of our close and cooperative relationship with OPSOS, we have closed or submitted proof of compliance for all outstanding requirements from one regional office that had numerous overdue requirements. In addition, that regional office's compliance timeliness and responsiveness have improved significantly.

According to our records, of 35 open OFO compliance requirements in FY 2014, we completed 33 timely. In addition, since August 2012, we have closed or taken steps to close all of the cases that were pending over 400 days. The January 20, 2014 OFO Federal Appeals Pending list (the last received) showed only two cases that had been pending over 400 days. We submitted final proof of compliance for one of those cases on February 20, 2014 and final proof for the last case on March 6, 2014.

Settlements Officer: In addition to maintaining a comprehensive program for ensuring the agency's compliance with EEO settlement requirements, both formal and informal, the Settlements Officer is responsible for requesting and following up on all monetary payments from the SSA Office of Finance.

Finding 8: SSA's Tracking System Does Not Accurately Reflect the Appropriate EEO Data

You acknowledged that our electronic tracking system, iComplaints, allows OCREO and the CREO Offices to input and update relevant case data and obtain case status information. You reported, however, that some employees claimed that iComplaints was not accurate because employees either failed to input data or to enter it accurately. You recommended that we establish an SOP on entering EEO data, provide adequate training on iComplaints data entry, and hold employees accountable for accurate and timely data entry through their performance appraisals.

We have an iComplaints User Guide that is accessible within the application itself. The guide is also available to OCREO staff on our shared drive and to the CREO Offices on their own SharePoint sites. The iComplaints administrator regularly updates the guide when the iComplaints contractor sends out new releases.

OCREO staff also provides ongoing training and guidance to all employees who use iComplaints. The iComplaints administrator creates SOPs, provides iComplaints tips and best practices at monthly OCREO/CREO meetings, and regularly answers iComplaints questions from OCREO and CREO staff. Our ongoing training and access to the User Guide and our SOPs

address your recommendation that we establish an SOP on entering EEO data and provide training on iComplaints.

Further, we addressed the recommendation to hold employees accountable for accurate and timely data entry in iComplaints by routinely stressing to OCREO and CREO staff how essential it is to record accurate complaint information because data integrity is critical for reliable and trustworthy management information. To facilitate accurate data entry, OCREO has worked with the iComplaints contractor to implement business rules requiring employees to enter data in a certain order, which helps eliminate missing data.

In addition, on February 24, 2014, OCREO transferred the responsibility for iComplaints from the complaints processing unit to OCREO's data and statistical analysis team. The new team is taking a multi-prong approach to data integrity – it will analyze and identify the source of any data errors, ensure that only necessary users can access iComplaints, review and revise system rules, improve existing reports, and create any new reports management needs. We expect the transfer to improve the quality of data tracking, increase complaint processing efficiency, and provide enhanced management information.

In response to the last recommendation, we already have a mechanism for holding employees accountable for accurate data entry. If we identify an employee who demonstrates a pattern of inaccurate or untimely data entry, we can address his or her conduct under the Demonstrates Job Knowledge Performance Element and the Achieves Business Results Performance Element of our appraisal system.

Finding 9: SSA Does Not Have a Uniform Training Program

In your draft Report, you said that it appears we do not have any uniform policy or procedure for our EEO training program. You noted that the CREO Offices are responsible for providing EEO training to regional employees and the Headquarters trainers are not required or responsible for developing, reviewing, or monitoring the regional training activities. You also reported inconsistencies in how we present anti-harassment training.

You recommended that Headquarters and regional offices collaborate on developing and providing mandatory EEO training to all agency employees; OCREO and Office of the General Counsel (OGC) review and approval of all training; establishment of training guidelines and a database to track all training; clarification of the anti-harassment standards; distribution of our anti-harassment policy and procedures; and separate EEO training for managers and employees.

We understand the critical importance of EEO training and providing consistent training across the agency. Through FY 2012, our training budget was extremely restricted. When Acting Commissioner Colvin assumed leadership in FY 2013, she stressed the importance of EEO training and eased training budget restrictions, which allowed us to provide a significant level of training in FY 2013 and the first two quarters of FY 2014. Through in-house and contractor trainers, we:

- conducted the required 8-hour EEO Counselor refresher trainings via interactive video teleconference to over 200 Counselors and CREO staff nationwide;

- provided intensive EEOC training to all OCREO staff on the full EEO process;
- trained all complaint processing staff on amendments in lieu of initiating a new EEO pre-complaint;
- provided a one-day training on complaints processing and cultural diversity to CREO Managers visiting SSA Headquarters on June 26, 2013;
- prepared a mandatory-viewing Management Pitfalls training VOD for all managers;
- developed and provided EEO training for current and new employees nationwide on such topics as basic EEO, complaint process overview (including ADR), cultural sensitivity and diversity, religious accommodation, and anti-harassment;
- developed and presented the mandatory biennial No FEAR Act training; and
- provided reasonable accommodation training for management.

To the extent that the CREO Managers expressed concern about a lack of training, we have been working diligently to address this concern. Some CREO Managers entered their positions without any EEO background. We have a wealth of information available by VOD and Interactive Video Teletraining that they can use at their convenience. At each month's OCREO/CREO teleconference meeting, we provide learning opportunities on current subjects of interest and offer a roundtable at which CREO staff can ask questions and share information. In September 2012, we brought all the CREO Managers to Headquarters for a week-long training on pre-complaint counseling and the formal complaints process, compliance, required Federal sector reports, workforce profiles, anti-harassment, cultural sensitivity, and iComplaints.

This fiscal year, we again asked the CREO Managers to identify their training needs. Based on their responses, we are finalizing our plans to visit seven regions and provide training for CREO staff and agency managers that includes counseling, complaints processing, data reports, cultural sensitivity, anti-harassment, and religious accommodation.

In addition, at the request of the Office of Operations, in FY 2014, OCREO will provide EEO training to all of the approximately 2,000 Operations managers at the GS-13 level and above.

We will continue to work closely with the CREO Managers, the Office of the General Counsel (OGC), the Office of Human Resources (including the Offices of Learning, Personnel, and Labor-Management and Employee Relations), and agency managers to identify additional training needs and determine the best way to address them. We agree with the recommendations to review all training materials to ensure uniformity and establish uniform training guidelines for all offices. We will work with our agency partners toward achieving these goals. Regarding the recommendation to vet training materials through OGC, we regularly clear our training materials through them.

Under Finding 10, we address our anti-harassment policy and program, which includes the recommendation to establish training that clearly defines the two standards for harassment claims and to distribute to employees our anti-harassment policy and procedures, including the opportunity for dual processing.

Finally, you recommended that we provide separate training for employee groups and supervisor and manager groups to allow for the greatest participation and focus for each group. We have long recognized the importance of providing training forums that encourage free and open discussion and have regularly provided separate training to manager-only and employee-only groups. We also have VODs that are available only to supervisors and managers, as well as VODs that are available to all employees.

Finding 10: SSA Has Not Developed and Implemented an Effective Anti-Harassment Policy and Procedures

We agree that agencies should have a well-defined anti-harassment policy and complaint procedure that they distribute periodically to all employees. You recommended that we update, distribute, and post our anti-harassment policy; assign oversight to a specific office; ensure our process avoids any conflicts of interest; establish a tracking system; ensure we can determine whether employees are bringing complaints through both the EEO and anti-harassment processes; evaluate whether there are any patterns to the complaints; and confirm that resolutions are effective.

As you noted, we issued our anti-harassment policy in 2001. We recently revised the agency's anti-harassment policy, and Acting Commissioner Colvin will release it in FY 2014. The revised policy addresses all of the requirements in the draft Report as follows:

- a clear explanation of the prohibited conduct;
- assurance of protection against retaliation;
- a clearly described complaint process;
- assurance of confidentiality to the extent possible;
- a prompt, thorough, and impartial investigation; and
- immediate and appropriate corrective action if harassment occurred.

The revised anti-harassment policy clearly explains the two standards for harassment claims, the opportunity for dual processing, and agency contacts for reporting harassment (with sufficient options to avoid even the perception of a conflict of interest in the process). We will distribute this revised policy to every agency employee by email, make it available on the internal OCREO website, post information about it in locations accessible to all employees, and base all future anti-harassment training on it.

We appreciate your remaining recommendations and recognize the benefits of appointing a centralized anti-harassment coordinator and implementing a centralized tracking system. We will consider the feasibility of establishing a program similar to the unified program you recommend.

Finally, OGC and the Office of Labor-Management and Employee Relations are discussing ways to improve the agency's policies and processes involving workplace investigations, including those involving harassment complaints. We expect this coordinated effort will further address the issues you identified in the draft Report.

Finding 11: SSA's General Counsel Improperly Intervenes in SSA's EEO Complaint Process

You advised that agencies should avoid conflicts of position or interest and maintain distance between their fact-finding and defensive functions. You noted that the investigative process is non-adversarial and agencies should encourage EEO participants to answer candidly and truthfully. You asserted that OGC should have no role in the pre-complaint process except for ADR or other informal settlement efforts and should not review management affidavits at the investigative stage. You reported that "[s]everal OCREO employees questioned whether employees could view OCREO as neutral now with three former GC employees in senior-level [OCREO] positions." You also suggested that OGC attorneys made "substantive" changes to managers' affidavits and forced agency managers to change their affidavits to offer "untrue, misleading information."

You recommended that we avoid even the appearance that OGC is interfering with the EEO process: establish a firewall between OGC employees involved in OCREO's EEO functions and OGC employees that participate in agency defense; require that the former OGC employees who are now the EEO Director, Deputy Director, and Senior Advisor recuse themselves from cases they worked on in OGC; and ensure that OGC is not altering any management official's testimony.

We make every effort to avoid even the appearance of a conflict of interest in our fact-finding and defensive functions (i.e., our EEO program and OGC, respectively). We are interested only in maintaining OCREO's complete neutrality and in obtaining candid and truthful answers through our EEO process. Therefore, we maintain a firewall separating EEO fact-finding functions from OGC's defensive function.

Relating to the concern of OCREO's neutrality given that three former OGC employees are in senior-level positions in OCREO, the draft Report offers no explanation on how their past OGC experience impedes their ability to remain "neutral" or any evidence establishing a lack of neutrality.

The draft Report sets "prohibitions" against OGC involvement in SSA's EEO process that are not found in current EEOC regulations and are contrary to the revised draft MD-110. While the draft Report asserts "[a]t the investigative stage . . . generally the GC should not review management affidavits," it provides no citation supporting this claimed prohibition. However,

OFO's recent draft MD-110, released for public comment, specifically contradicts the statement in this regard:

(Q12) May an agency representative review the affidavit of a management official who is the subject of a complaint of employment discrimination?

(A12) Yes. Because the agency will be accountable for the actions of a management official who is the subject of a complaint of employment discrimination, an agency representative may review such management official's affidavit. However, an agency representative should not direct the witness in how to respond to the questions contained in the affidavit.

Draft MD-110, Ch. 1, IV. E., at 11 (2013).

The draft Report also does not contain any actual evidence supporting the assertion that OGC attorneys made substantive changes to managers' affidavits and forced agency managers to change their affidavits. You did not interview anyone from OGC during the Program Evaluation. The only support for the finding that OGC attorneys were asking managers to change their affidavits to add "untrue, misleading information" was a vague assertion that management officials made unidentified changes to a document after consulting with an OGC attorney. Another OCREO employee claimed to find two versions of an affidavit in an ROI. One version contained a statement that the "[O]GC representative present was the management official's representative." The second version lacked this statement.

We note that neither account supports the draft Report's conclusions. Indeed, the Report appears to accuse OGC attorneys of suborning perjury, a charge the Report should support with more evidence than it presents.

To the extent that the recommendations for Finding 11 contravene OGC's authority to provide confidential legal advice to agency officials and defend the agency, we disagree with these recommendations.

Finding 12: Implementation of SSA's Delegation of Authority to Resolve Internal OCREO Employees' Complaints of Discrimination and/or Harassment Appears to be Ineffective and Unfair

You recognized that "[g]enerally, SSA has established an effective structure to address the conflict of interest cases," but raised several concerns that could affect the fairness and confidentiality of the process. During the Program Evaluation, the EEO Director acknowledged those concerns, which involved:

- the participation of OCREO's Contracting Officer Technical Representative (COTR) in obtaining contractors for counseling and investigations in conflict cases – even in those cases naming the COTR as the responsible management official; and

- the lack of full confidentiality for conflict cases in the iComplaints tracking system, although we do not enter conflict complainants' names in the system.

You recommended that we address these two concerns and ensure that we provide EEO training to the officials responsible for processing conflict cases and coordinating the contractors.

Since the time of the Program Evaluation, we have corrected the two identified concerns. We can also confirm that the conflict case processing official, a Management Analyst (MA) in the Office of Budget, Finance, Quality, and Management, has had extensive EEO training, starting as early as 1994. Her training includes basic EEO, EEO law, investigations, and acceptance/dismissal letters.

Under current procedures, OCREO is not involved in any conflict case. The MA facilitates the assignment of a contract EEO Counselor. If a case becomes a formal complaint, the MA obtains an independent contractor through the U.S. Postal Service (USPS) to prepare a recommendation to accept or dismiss the complaint (in FY 2012, SSA signed an Interagency Agreement to work with USPS on conflict cases). For accepted issues, the MA facilitates the assignment of a contract investigator. If the complaint needs a FAD, the Deputy Chief of Staff issues it.

The MA has full control of the assignment of contractors in conflict cases. As of March 14, 2014, no one in OCREO is involved with contractor assignment or FAD preparation.

To protect conflict complainants' confidentiality, OCREO worked with the iComplaints contractor and successfully modified the application so OCREO staff can no longer access or see individual conflict cases in iComplaints.

We would like to note that while several OCREO employees reportedly claimed that the CCP Deputy Director, as COTR, delayed the counseling and investigation in those complaints naming her as the responsible management official, we have not discovered any evidence supporting these claims. In fact, we searched the database for cases listing the CCP Deputy Director as an RMO and found that all of them progressed to contracting very timely.

Other General Recommendations

Based on the materials we submitted in response to your July 9, 2012 Request for Information, you provided two additional recommendations.

- The first recommendation was to revise the EEO Counseling Report, form SSA-675, to include whether the EEO Counselor attempted resolution and a brief summary of informal resolution attempts. We agree that this information could be helpful and will look into revising the EEO Counseling Report to include it.
- The second recommendation involved extensive suggestions for updating our EEO Handbook. We agree that we need to update the EEO Handbook, and when we do, we will address each of OFO's suggested changes.

Conclusion

Thank you for performing the program evaluation and for your thoughtful findings and recommendations. We will continue our efforts to become a model EEO employer, and we count on the cooperative and collegial working relationship we have with OFO.



Alan S. Frank

Associate Commissioner

for Civil Rights and Equal Opportunity
Social Security Administration

March 26, 2014

APPENDIX

EXHIBIT 3

Appeal #	Appellant Name	SSA Case #	EEOC Hearing #	Date Appeal Request Received by EEOC	File Sent to EEOC	Tracking #	Received by EEOC	Signed By
120120473		OCO201005365SA		11/3/2011	3/7/2014	1Z75R91EA895375648	3/10/2014	
120123228		BOS1106105SA	520201200154X	8/16/2012	3/5/2014	1Z75R91E0190826828	3/6/2014	
120123279		SF0901705SA	550201000025X	8/27/2012	3/20/2014	1Z75R91EA896762576	3/21/2014	
120123512		ATL1205835SA		9/7/2012	11/30/2012	1Z 75R 91E A8 9433 4470	12/4/2012	
120123535		BOS1104445SA		9/11/2012	9/14/2012	798969527760	9/17/2012	
120123450		DAL1101295SA	450201200047X	9/14/2012	3/5/2014	1Z75R91EA899210862	3/6/2014	
120130080		SF1001035SA	550201000321X	10/4/2012	3/5/2014	1Z75R91EA897525875	3/6/2014	
120130576		CHI1105275SA	532201200012X	11/30/2012	3/4/2014	1Z75R91EA898617774	3/6/2014	
120130874		SF1106965SA	550201200082X	12/17/2012	1/16/2014	1Z75R91EA898543326	1/17/2014	
120131081		DAL1105635SA	490201200033X	1/7/2013	11/26/13 & again on 01/15/14	1Z75R91EA896942372	1/16/2014	
120131016			480201000497X	1/11/2013	3/4/2014	1Z75R91EA898818762	3/6/2014	
120131637		NY1204285SA		3/11/2013	3/14/2013	1Z75R91E0399337166	3/15/2013	
120131593		PH1301635SA		3/22/2013	5/2/2013	7006 0810 0002 4093 0718	5/8/2013	
120131699		CHI1103945SA	440201200031X	3/25/2013	3/19/2014	1Z75R91EA899331197	3/20/2014	
120132084		ATL1202175SA	420201200237X	4/30/2013	5/10/2013	1Z75R91E0392571988	5/13/2013	
120133402		ATL130252		9/16/2013		Received OFO Decision closing case file dated March 6, 2014.		
120140007		ODAR1000265SA		9/16/2013	9/25/2013	1Z75R91E0396646391	9/26/2013	
120140286		ODAR1104375SA		10/17/2013	3/13/2014	1Z75R91EA899127757	3/14/2014	
120140416		ODAR1104485SA		10/24/2013	11/8/2013	1Z 75R 91E 03 9794 8152	11/12/2013	
120140450		F2012R0004		10/22/2013	This is not an SSA case			

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SECTION D - DELIVERABLES AND REPORTING REQUIREMENTS

In addition to the current terms and conditions noted in GSA contract number GS-22F-9784H, SSA requires the following:

D-1 DELIVERY SCHEDULE

Delivery times begin the day after receipt of the assigned cases. All delivery dates will be noted on the call order.

Deliverable	BPA Section	Submit To	Delivery Time
Case Assignment	C-10	OCREO Office Mailbox (email)	2 Business Days
Status Report	C-23	COTR	1 st Business Day of every month
Counseling Report	C-30	EEOCT (fax)	30 Calendar Days
ROI	C-31	COTR	65 Calendar Days
FAD	C-29	COTR	30 Calendar Days
*Mixed Case/Agency Basis	C-31	COTR	95 Calendar Days

*When a case is identified as a mixed case or an agency basis case, an investigation **and** FAD are required. These cases will be annotated with an asterisk (*) on the call order.

D-2 CONSIDERATION FOR LATE DELIVERY

If the Contractor fails to submit the SSA-675, ROI or FAD within the required timeframe, to include any approved extensions, the Contractor agrees to provide consideration (loss of fees) to the Government as follows:

<u>Time Beyond Due Date</u>	<u>Penalty</u>
Ten (10) calendar days beyond due date	10% of original fee
Twenty (20) calendar days beyond due date	30% of original fee
Thirty (30) calendar days beyond due date	50% of original fee
Forty (40) calendar days beyond due date	70% of original fee
Fifty (50) calendar days beyond due date	100% of original fee

If the Contractor fails to deliver the required SSA-675, ROI or FAD Report on the fiftieth day beyond the due date, the Contractor must return the case file to the COTR. Lateness beyond 50 days may result in Termination for Cause in accordance with the provisions of FAR 8.406-4, Termination for Cause and FAR 12.403(c).

D-3 PENALTIES FOR CORRECTING DEFICIENCIES

After reviewing the Report of Investigation/Final Agency Decision if the COTR determines the product is deficient in quality because information essential to the claims in the complaint is absent, the investigative summary is poorly drafted or the case file is not properly organized, the COTR may return the case file to the Contractor to remedy the deficiency. If the COTR returns the ROI or FAD for revision, the Contractor will be subject to the loss of fees or payment as follows:

<u>Time to Complete Revision</u>	<u>Penalty</u>
Fifteen (15) calendar days	No Penalty
Thirty (30) calendar days	10% of original fee
Forty-five (45) calendar days	25% of original fee
Sixty (60) calendar days	50% of original fee

If the Contractor fails to correct the noted deficiencies on the sixtieth day following return of the case file from the COTR to the Contractor for revision, then the Contractor must transmit the case file back to the COTR. Under this circumstance, the Contractor will receive no compensation for the investigation.

SSA EXHIBIT 4

Appeal Number	Appellant Name	SSA Case Number	EEOC Hearing Number	Date Appeal Request Received
0120123512		ATL120583SSA		9/7/2012
0120123535		BOS110444SSA		9/11/2012
0120131637		NY120428SSA		3/11/2013
0120131593		PH130163SSA		3/22/2013
0120140286		ODAR110437SSA		10/17/2013

FYI the [REDACTED] case is an SSA case that we redocked from an 01 appeal to 0220140013 and we have located the file.

AFFIDAVIT
UNSIGNED VERSION

STATE OF: MARYLAND

COUNTY OF: BALTIMORE

I, [REDACTED], make the following statement freely and voluntarily to [REDACTED], who has identified herself to me as a Contract EEO Investigator for the following federal agency: Social Security Administration, investigating a complaint of discrimination filed by [REDACTED], knowing that this statement may be used in evidence. I understand that this statement is not confidential and may be shown to the interested parties (those with a legal right to know).

This statement was made with my representative [REDACTED] present. Removed

I hereby solemnly swear or affirm:

Q: What is your current title, grade and series?

A: I am a Supervisory IT Specialist. I am a GS-2210-14.

Q: How long have you been in your current position?

A: Since the end of March 2011.

Q: What is your organizational unit, smallest to largest?

A: I am in the Software Testing Branch (STB), Division of Integration and Environmental Testing (DIET), Office of Telecommunications and Systems Operations (OTSO).

Q: Who are your current immediate and second level supervisors?

A: [REDACTED] is my current immediate supervisor and [REDACTED] is my second level supervisor.

Q: Do you have knowledge of [REDACTED] previous EEO activity? If so, please explain.

A: I believe that [REDACTED] previously filed an EEO complaint for having been moved off the night shift, but I am not sure. I do not recollect anything beyond that.

Q: How long have you been [REDACTED] supervisor?

A: Since the end of March 2011. Deleted

Q: [REDACTED] asserts that she is disabled. Are you aware of [REDACTED] disability or medical conditions? If yes, when and how did you become aware?

A: I am aware of her conditions and that [REDACTED] claims to have Multiple Sclerosis (MS). While she provides doctors notes, I don't believe she has provided anything that has officially diagnosed her as having MS. "claims" changed to "asserts" Answer reworted

Q: [REDACTED] asserts her physical condition has been ignored even though she has provided medical documentation of her illness. Specifically, she contends that she has provided you and other members of management with medical documentation concerning her physical condition. Please explain whether you received any medical documentation from [REDACTED] and, if so, under what circumstances.

A: I am new to my position and I cannot say whether management has ignored her physical condition since many of her complaints were prior to my appointment to my current position. Highlight removed

Q: [REDACTED] asserts that she requested on-the-job training. Are you aware of this request? If so, please explain.

A: I know that [REDACTED] has been provided training by one coworker, who has since retired, and another coworker, [REDACTED]. These coworkers worked with [REDACTED] while [REDACTED] was her supervisor. [REDACTED] receives assistance and has signed up for various classes. She has not specifically requested on-the-job training from me, but she has expressed a desire to get Highlight reworted

"
more involved. Based on my observation of her skill level, I have been trying to
set up some one-on-one training as she does need more training. One-on-one
training would consist of someone sitting with her at least one hour per week.

" Quotes
removed.

Q: Are you aware of other employees who have received similar training as that requested by [REDACTED]? If yes, please explain.

A: I believe [REDACTED] has received more training in comparison to her colleagues. But this is based on my understanding of the training she was provided under [REDACTED] supervision.

Q: Are you aware if [REDACTED] made a request for FMLA? If yes, are you aware of management's response? Explain.

A: I am not familiar with [REDACTED] request for FMLA.

Q: Are you aware of other employees similarly situated to [REDACTED] who have been granted FMLA?

A: No, I am not aware of anyone else who has been granted FMLA.

Q: [REDACTED] asserts that she requested a quiet workspace as a reasonable accommodation. Were you involved in responding to this request? If yes, please explain.

A: I am aware of [REDACTED] request for a quiet workspace, but I was not involved in this decision. She has not made this request to me.

Q: Are you aware of [REDACTED] request for a space heater as a reasonable accommodation for use in her work area? If so, please explain.

A: I am aware of [REDACTED] request for a space heater. She made this request via email about two or three months ago. I checked to see if we could increase the heating in the area. Just last week, they adjusted the heat. Last week, [REDACTED] submitted documentation requesting a heater as a reasonable accommodation.

Quote
reworded

Highlight
removed

Her request included information that I assume was provided by her doctor, indicating her request for a space heater was due to her MS. I approved her request and her request has been forwarded to the Center for Disability Services. This is the first request for an accommodation I have received and I am not sure what the next step is, or whether her request will be approved.

Q: [REDACTED] asserts she requested and was denied advanced sick leave. Are you aware of this request? If so, please explain.

A: I am aware [REDACTED] requested advanced sick leave, but his was before I became her supervisor. She has made no recent requests for advanced sick leave from me.

Q: [REDACTED] contends that two other employees, [REDACTED] and [REDACTED] may have been granted advanced sick leave. Are you aware of their requests? If so, please explain.

A: I am not aware of anyone being granted advanced sick leave.

I have read this statement, consisting of _____ pages, and it is true, complete, and correct to the best of my knowledge and belief.

Signature

Date

AFFIDAVIT
SIGNED VERSION

STATE OF: MARYLAND

COUNTY OF: BALTIMORE

I, [REDACTED], make the following statement freely and voluntarily to [REDACTED], who has identified herself to me as a Contract EEO Investigator for the Social Security Administration (SSA or Agency), investigating a complaint of discrimination, HQ-11-0411, filed by [REDACTED] (Complainant), knowing that this statement may be used in evidence. I understand that this statement is not confidential and may be shown to the interested parties (those with a legal right to know).

I hereby solemnly swear or affirm:

Q: What is your current title, grade and series?

A: I am a Supervisory IT Specialist. I am a GS-2210-14.

Q: How long have you been in your current position?

A: Since March 2011.

Q: What is your organizational unit, smallest to largest?

A: I am in the Software Testing Branch (STB), Division of Integration and Environmental Testing (DIET), Office of Telecommunications and Systems Operations (OTSO).

Q: Who are your current immediate and second level supervisors?

A: [REDACTED] is my current immediate supervisor and [REDACTED] is my second level supervisor.

Q: Do you have knowledge of [REDACTED] previous EEO activity? If so, please explain.

A: I believe Complainant previously filed an EEO complaint for having been moved off the night shift, but I am not sure. I do not recollect anything beyond that.

Q: How long have you been [REDACTED] supervisor?

A: Since March 2011.

Q: [REDACTED] asserts that she is disabled. Are you aware of [REDACTED] disability or medical conditions? If yes, when and how did you become aware?

A: I am aware that Complainant "asserts" that she has Multiple Sclerosis (MS). The Justification statement on Complainant's Request for Reasonable Accommodation dated September 9, 2011, and her Certification of Health Care Provider for Employee's Serious Health Condition (Family and Medical Leave Act), dated May 16, 2011 states that she has MS. Quote changed from "claims" to "asserts"

Q: [REDACTED] asserts her physical condition has been ignored even though she has provided medical documentation of her illness. Specifically, she contends that she has provided you and other members of management with medical documentation concerning her physical condition. Please explain whether you received any medical documentation from [REDACTED] and, if so, under what circumstances.

A: I cannot say whether management has ignored her physical condition since many of her complaints were prior to my appointment to my current position. I have received doctor's slips from her. Highlight not in unsigned version

Q: [REDACTED] asserts that she requested on-the-job training. Are you aware of this request? If so, please explain.

A: "I am not specifically aware of any of Complainant's requests for on-the-job training before I became her supervisor." However, I know that Complainant was provided training by one coworker who has since retired and another coworker, [REDACTED]. These coworkers provided on-the-job training to Complainant while [REDACTED] was her Team Leader. Quote not in unsigned version

Q: Are you aware of other employees who have received similar training as that requested by [REDACTED]? If yes, please explain.

A: I believe Complainant has received more training in comparison to her colleagues. But this is based on my understanding of the training she was provided under [REDACTED] supervision.

Q: Are you aware if [REDACTED] made a request for FMLA? If yes, are you aware of management's response? Explain.

A: I was not familiar with Complainant's request for FMLA "prior to this interview." Quote not in unsigned version

Q: Are you aware of other employees similarly situated to Complainant who have been granted FMLA?

A: No, I am not aware of anyone else who has been granted FMLA.

Q: [REDACTED] asserts that she requested a quiet workspace as a reasonable accommodation. Were you involved in responding to this request? If yes, please explain.

A: I am aware of Complainant's request for a quiet workspace, but I was not involved in this decision. She did not make that request to me.

Q: Are you aware of [REDACTED] request for a space heater as a reasonable accommodation for use in her work area? If so, please explain.

A: I am aware of Complainant's request for a space heater. "She filed an electronic request about three months ago." On September 9th, 2011, Complainant submitted a paper Request for Reasonable Accommodation. Her request included information that I assume was provided by her doctor, indicating her request for a space heater was due to her MS. Quote reworted

Q: [REDACTED] asserts she requested and was denied advanced sick leave. Are you aware of this request? If so, please explain.

A: I am aware that Complainant requested advanced sick leave, but this was before I became her supervisor. She has made no recent requests for advanced sick leave to me.

Q: [REDACTED] contends that two other employees, [REDACTED] and [REDACTED] [REDACTED] may have been granted advanced sick leave. Are you aware of their requests? If so, please explain.

A: I am not aware of anyone being granted advanced sick leave.

I have read this statement, consisting of ____4____ pages, and it is true, complete, and correct to the best of my knowledge and belief.

[REDACTED]

Signature

9/23/11
Date

AFFIDAVIT
UNSIGNED VERSION

STATE OF: MARYLAND

COUNTY OF: BALTIMORE

I, [REDACTED], make the following statement freely and voluntarily to [REDACTED], who has identified herself to me as a Contract EEO Investigator for the following federal agency: Social Security Administration, investigating a complaint of discrimination filed by [REDACTED], knowing that this statement may be used in evidence. I understand that this statement is not confidential and may be shown to the interested parties (those with a legal right to know).

This statement was made with my representative [REDACTED] present. Highlight removed

I hereby solemnly swear or affirm:

Q: What is your current title, grade and series?

A: I am a Branch Chief, GS-343-14.

Q: How long have you been in current position?

A: Two and a half years.

Q: What is your organizational unit, smallest to largest?

A: I am in the Office of Telecommunications and Systems Operations.

Q: Who are your current immediate and second level supervisors?

A: [REDACTED], Executive Officer, is my immediate supervisor and [REDACTED], Associate Commissioner, is my second level supervisor.

Q: What are your current job responsibilities in your position?

A: My current responsibilities involve some HR functions, budget, travel, overtime, labor relations, and building and access issues.

Q: Are you aware of the incidents [REDACTED] has alleged within her current EEO complaint? If yes, please explain.

A: Yes. I am aware that "she was denied FMLA and requested some reasonable accommodations, including a request to move to another cubicle. I am also aware that she requested, and was denied advanced sick leave. Quotes reworded

Q: Do you have any knowledge of [REDACTED] request for advanced sick leave and whether it was approved or denied? If yes, please explain.

A: In my job, I provide counseling and mentoring to managers about agency rules and policies. In about February of this year, [REDACTED] asked for advanced sick leave. It was denied, at which time it was suggested to her that she file for FMLA so that she could take sick leave without penalty. Filing for FMLA would require that she provide medical documentation, however, [REDACTED] did not provide any documentation until May. The dates she was requesting were not the same as she had requested for advanced sick leave, they were in the past, and FMLA is not granted retroactively. Her medical documentation was not submitted in a timely manner so her request was denied. Highlight not in signed version

Q: Does the agency have requirements that must be met for advanced sick leave to be granted? If yes, please describe.

A: Yes, the agency has personnel policies in place concerning requirements of advanced sick leave. One requirement is that an employee must submit medical documentation with their request for leave. The documentation is deemed acceptable by the manager. If the manager deems the documentation as unacceptable, the manager can ask for better documentation. Answer reworded

Q: Is there an expectation that a requesting employee be able to pay the leave back?

A: There is a cap of the amount of leave an employee can receive, and yes there is an expectation that the leave be paid back. Highlight reworded

Q: Are you aware of the reasons why [REDACTED] request for advanced sick leave was denied?

A: I believe it was based on her leave patterns and, because of the nature of her work, she needed to be present at work. Response different in signed version

Q: Are you aware of other employees who have been similarly situated to [REDACTED] and have been granted sick leave? Specifically, she alleges that [REDACTED] and [REDACTED] might have been granted advanced sick leave. Do you have any knowledge of this?

A: No I am not aware if [REDACTED] or [REDACTED] were granted advanced sick leave. I am also not aware of any other employee in [REDACTED] office was granted advanced sick leave.

I have read this statement, consisting of _____ pages, and it is true, complete, and correct to the best of my knowledge and belief.

Signature

Date

AFFIDAVIT
SIGNED VERSION

STATE OF: MARYLAND

COUNTY OF: BALTIMORE

I, [REDACTED], make the following statement freely and voluntarily to [REDACTED] who has identified herself to me as a Contract EEO Investigator for the (Social Security Administration or Agency), investigating a complaint of discrimination, HQ-11-0411, filed by [REDACTED] (Complainant) knowing that this statement may be used in evidence. I understand that this statement is not confidential and may be shown to the interested parties (those with a legal right to know).

I hereby solemnly swear or affirm:

Q: What is your current title, grade and series?

A: I am a Branch Chief, GS-343-14.

Q: How long have you been in current position?

A: Two and a half years.

Q: What is your organizational unit, smallest to largest?

A: I am in the Office of Telecommunications and Systems Operations (OTSO).

Q: Who are your current immediate and second level supervisors?

A: [REDACTED], Executive Officer, is my immediate supervisor and [REDACTED],

Associate Commissioner, is my second level supervisor.

Q: What are your current job responsibilities in your position?

A: My current responsibilities involve some human resource functions, budget, travel, overtime, labor relations, and building and access issues.

Q: Are you aware of the incidents [REDACTED] has alleged within her current EEO complaint? If yes, please explain.

A: I am aware "that Complainant alleges"that she was denied leave under the Family and Medical Leave Act (FMLA) and requested some reasonable accommodations, including a request to move to another cubicle. I am also aware that Complainant alleges that she requested, and was denied, advanced sick leave.

quote not
in
unsigned
version

Q: Do you have any knowledge of [REDACTED] request for advanced sick leave and whether it was approved or denied? If yes, please explain.

A: "In or around February of this year, 2011, Complainant asked for advanced sick leave. [REDACTED], Complainant's second-level supervisor, denied Complainant's request for advanced sick leave. [REDACTED] suggested to Complainant that she file for FMLA leave so that she could take leave without pay. Filing for FMLA required that Complainant provide medical documentation, however, she did not provide any documentation until May. FMLA leave cannot be used retroactively. "

Quote reworted from unsigned version

Q: Does the agency have requirements that must be met for advanced sick leave to be granted? If yes, please describe.

A: Yes, the agency has personnel policies in place concerning requests for advanced sick leave. One requirement is that an employee must submit medical documentation with their request for leave. If the manager deems the documentation as unacceptable, the manager can ask for better documentation.

Q: Is there an expectation that a requesting employee be able to pay the leave back?

A: Yes according to agency policy there must be a reasonable expectation that the employee will return to duty and that the employee has the ability to pay the leave back.

Q: Are you aware of the reasons why [REDACTED] request for advanced sick leave was denied?

A: I am not specifically aware of the reasons for [REDACTED] denial of Complainant's request. Highlight not in unsigned version

Q: Are you aware of other employees who have been similarly situated to [REDACTED] and have been granted sick leave? Specifically, she alleges that [REDACTED] and [REDACTED] might have been granted advanced sick leave. Do you have any knowledge of this?

A: I am not aware if [REDACTED] or [REDACTED] were granted advanced sick leave. I am also not aware of any other employee in Complainant's office that was granted advanced sick leave.

I have read this statement, consisting of 3 pages, and it is true, complete, and correct to the best of my knowledge and belief.

[REDACTED]
Signature
10/5/11
Date

AFFIDAVIT
UNSIGNED VERSION

STATE OF: MARYLAND

COUNTY OF: BALTIMORE

I, [REDACTED], make the following statement freely and voluntarily to [REDACTED], who has identified herself to me as a Contract EEO Investigator for the following federal agency: Social Security Administration, investigating a complaint of discrimination filed by [REDACTED], knowing that this statement may be used in evidence. I understand that this statement is not confidential and may be shown to the interested parties (those with a legal right to know).

This statement was made with my representative [REDACTED] present. Highlight removed

I hereby solemnly swear or affirm:

Q: What is your current title, grade and series?

A: I am a Lead Computer IT Specialist/Team Lead. I am GS-13, step 10.

Q: How long have you been in your current position?

A: A little over two years.

Q: What is your organizational unit, smallest to largest?

A: I am in Lands Software Testing (LST), Software Testing Branch (STB), Division of Integration and Environmental Testing (DIET), Office of Telecommunications and Systems Operations (OTSO).

Q: Who are your current immediate and second level supervisors?

A: My current immediate supervisor is [REDACTED] and [REDACTED] is my second level supervisor.

Q: Do you have knowledge of [REDACTED] previous EEO activity? If so, please explain.

A: I was not aware of [REDACTED] previous EEO activity until she told me. She told me shortly after she came into her current position in September 2009. During this time, [REDACTED] was [REDACTED] immediate supervisor. I was her team leader. I was acting in [REDACTED] position after he left the agency.

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Q: How long were you [REDACTED] supervisor?

A: When the previous branch chief, [REDACTED] left, I rotated as the acting branch chief until [REDACTED] was appointed, which was for almost one year.

Q: [REDACTED] asserts that she is disabled. Are you aware of [REDACTED] disability or medical conditions? If yes, when and how did you become aware?

A: When we were introduced to one another, [REDACTED] mentioned to me during a casual conversation that she has Multiple Sclerosis (MS) and issues with her medications.

Q: [REDACTED] asserts her physical condition has been ignored even though she has provided medical documentation of her illness. Specifically, she contends that she has provided you and other members of management with medical documentation concerning her physical condition. Please explain whether you received any medical documentation from [REDACTED] and, if so, under what circumstances.

A: [REDACTED] would always provide me with copies of her medical documentation, as well as [REDACTED]. Although this did not occur at first, I cannot recall at what date [REDACTED] began submitting copies of medical documentation to me. It seemed to be for everything, even things that were not related to her medical conditions. I would just find them in an envelope on my chair or desk. I would open them and file them.

Highlight
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to
"Dr.'s
notes"
and "MS"

Q: [REDACTED] asserts that she requested on-the-job training. Are you aware of this request? If so, please explain.

A: [REDACTED] came into her current position from a night shift position where she worked on mainframes. Her day shift position is in a department that is client server oriented. She had no training whatsoever in her new position when she first arrived. It was a difficult transition. A GS-13 level coworker was assigned to [REDACTED] to provide her training. Although this coworker has since retired, he sat with [REDACTED] and provided guidance because she had no experience in her new position. [REDACTED] worked with [REDACTED] for a few months. However, he had a medical condition that was affecting his ability to work. As such, he began doing less and less. He eventually retired and [REDACTED] did not have anyone to rely on. However, she was subsequently put with other coworkers who could assist her if she had questions.

Highlight
removed

[REDACTED] would say that she needed help and she did because of her skill level. So we tried to put her with someone when she made these requests. I think she believed she needed more help. However, we had a shortage of employees, and we could not put someone with her full time. Despite this, whenever she let us know she needed help, we put her with someone.

Q: [REDACTED] specifically contends that three employees, who were hired after her, were given training and more assignments. Please respond.

A: [REDACTED] is referring to [REDACTED], [REDACTED] and [REDACTED]. All three employees are outstanding scholars with degrees and knowledge of computers. When [REDACTED] came into the department, she knew absolutely nothing about computers. For example, she did not know how to look at a C Drive on a computer. I was very limited in what work I could assign to her. All

Highlight
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three employees [REDACTED] refers to hit the ground running. They were given some training, but they possessed a lot of knowledge [REDACTED] did not. I could give them any assignment. I could tell [REDACTED] felt left out because they were getting different assignments. She had mentioned wanting more work, but I gave her what she could reasonably accomplish. She was at a disadvantage. But the work assignments were based on her experience and job knowledge, not her medical condition. Again, whenever she asked for help, we gave it to her. We also provided online training for her for basic computer programs, such as Excel, just to get her used to working on a computer.

Highlights
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Q: Are you aware if [REDACTED] made a request for FMLA? If yes, are you aware of management's response? Explain.

A: I am aware that she made a FMLA request, but I was not privy to the specifics. After [REDACTED] left, all leave matters regarding [REDACTED] went through [REDACTED]. [REDACTED] I was not allowed to receive her leave requests.

Q: Are you aware of other employees similarly situated to [REDACTED] who have been granted FMLA?

A: There may have been instances when employees have filed for FMLA, but I have no knowledge of whether it has been granted.

Q: [REDACTED] asserts that she requested a quiet workspace as a reasonable accommodation. Were you involved in responding to these requests? If yes, please explain.

A: I am aware that [REDACTED] made a request for a quieter workspace. She requested to move into a cubicle of an employee who had recently retired. She made a reference to her reasons being because it was a quieter space, but there

was no mention that it was due to, or affected, her condition. The space she wants is only about 15 feet away from where she currently sits and I do not believe it is any quieter than where she sits now. She did not make any mention of an accommodation. I told [REDACTED] that I would see what I could do. I went through the chain of command and her request was denied. I am not sure who denied the request, but it may have been [REDACTED] or it may have been an administrative decision. Highlight removed

Q: Are you also aware of [REDACTED] request for a space heater for her work area? If so, please explain.

A: I am aware of this request, but I am not aware whether or not it has been denied. I believe [REDACTED] asked to have the temperature in the area raised, but I believe [REDACTED] still requested a heater.

Q: [REDACTED] asserts she requested and was denied advanced sick leave. Are you aware of this request? If so, please explain.

A: Again, all of [REDACTED] leave issues went through [REDACTED]. [REDACTED] only interacted with [REDACTED] with regard to her leave.

Q: [REDACTED] contends that two other employees, [REDACTED] and [REDACTED] may have been granted advanced sick leave. Are you aware of their requests? If so, please explain.

A: I have no knowledge of whether either [REDACTED] or [REDACTED] received advanced sick leave.

I have read this statement, consisting of _____ pages, and it is true, complete, and correct to the best of my knowledge and belief.

Signature

Date



AFFIDAVIT

SIGNED VERSION

STATE OF: MARYLAND

COUNTY OF: BALTIMORE

I, [REDACTED], make the following statement freely and voluntarily to [REDACTED], who has identified herself to me as a Contract EEO Investigator for the Social Security Administration (SSA or Agency), investigating a complaint of discrimination, HQ-11-0411, filed by [REDACTED] (Complainant), knowing that this statement may be used in evidence. I understand that this statement is not confidential and may be shown to the interested parties (those with a legal right to know).

I hereby solemnly swear or affirm:

Q: What is your current title, grade and series?

A: I am a Lead Computer IT Specialist/Team Lead. I am a GS-13, step 10.

Q: How long have you been in your current position?

A: A little over two years.

Q: What is your organizational unit, smallest to largest?

A: I am a Team Leader in the Lan Software Testing Team (LSTT), Software Testing Branch (STB), Division of Integration and Environmental Testing (DIET), Office of Telecommunications and Systems Operations (OTSO).

Q: Who are your current immediate and second level supervisors?

A: My current immediate supervisor is [REDACTED] and [REDACTED] is my second level supervisor.

Q: Do you have knowledge of [REDACTED] previous EEO activity? If so, please explain.

A: I was not aware of Complainant's previous EEO activity until she told me. She told me shortly after she came into her current position in September 2009.

Q: How long were you [REDACTED] supervisor?

A: When the previous branch chief, [REDACTED] resigned from his position with the agency I rotated as the acting branch chief for almost one year until [REDACTED] was appointed.

Q: [REDACTED] asserts that she is disabled. Are you aware of [REDACTED] disability or medical conditions? If yes, when and how did you become aware?

A: When we were introduced to one another, Complainant mentioned to me during a casual conversation that she has Multiple Sclerosis (MS) and issues with her medications.

Q: [REDACTED] asserts her physical condition has been ignored even though she has provided medical documentation of her illness. Specifically, she contends that she has provided you and other members of management with medical documentation concerning her physical condition. Please explain whether you received any medical documentation from [REDACTED] and, if so, under what circumstances.

A: Complainant would provide me with copies of her **doctor's notes**, as well as [REDACTED] **Highlight was "medical documentation"**
[REDACTED]. Although this did not occur at first, I cannot recall at what date [REDACTED] began submitting copies of medical documentation to me. It seemed to be for everything, even things that were not related to her **MS**, such as routine **Highlight was "medical conditions"**
annual appointments. I would just find them in an envelope on my chair or desk. I would open them and file them.

Q: [REDACTED] asserts that she requested on-the-job training. Are you aware of this request? If so, please explain.

A: Complainant came into her current position from a night shift position where she worked on mainframes. Her day shift position is in a division that is client server oriented. She had no

training whatsoever in her new position when she first arrived. It was a difficult transition. A GS-13 level coworker, [REDACTED] was assigned to provide Complainant training. [REDACTED] sat with Complainant and provided guidance because she had no experience in her new position. [REDACTED]. [REDACTED] worked with Complainant for a few months. [REDACTED] eventually retired and Complainant did not have anyone to rely on. However, she was subsequently put with other coworkers who could assist her if she had questions.

Q: [REDACTED] specifically contends that three employees, who were hired after her, were given training and more assignments. Please respond.

A: Complainant is likely referring to [REDACTED], [REDACTED] and [REDACTED] [REDACTED]. All three employees are outstanding scholars with degrees in and knowledge of computers. In comparison, when Complainant came into the department, she had a very limited knowledge of computers. Because of Complainant's limited knowledge, I was in turn very limited in what work I could assign to her. I assigned work based on Complainant's experience and job knowledge, not her medical condition.

Highlight
not in
unsigned
version

Q: Are you aware if [REDACTED] made a request for leave under the Family and Medical Leave Act (FMLA)? If yes, are you aware of management's response? Explain.

A: It is my understanding that Complainant inquired about requesting FMLA leave but I was not privy to the specifics. After [REDACTED] left, all leave matters regarding Complainant were directed to [REDACTED]. I did not receive her leave requests.

Q: Are you aware of other employees similarly situated to [REDACTED] who have been granted FMLA?

A: I have no specific knowledge of whether FMLA leave has been granted to other employees. Reworded

Q: [REDACTED] asserts that she requested a quiet workspace as a reasonable accommodation. Were you involved in responding to these requests? If yes, please explain.

A: I am aware that Complainant made a request for a quiet workspace, however, Complainant did not make the request as a reasonable accommodation. Complainant did not mention that the request was due to, or affected, her condition. The cubicle she requested is only about 15 feet away from where she currently sits and I do not believe it is any more quiet than where she sits now. Nevertheless, I told Complainant that I would see what I could do. I went through the chain of command and her request was denied. I am not sure who denied the request.

Q: Are you also aware of [REDACTED] request for a space heater for her work area? If so, please explain.

A: I am aware of this request, but I am not aware whether or not it has been denied. I believe [REDACTED] asked to have the temperature in the area raised, but I believe Complainant still requested a heater.

Q: [REDACTED] asserts she requested and was denied advanced sick leave. Are you aware of this request? If so, please explain.

A: I am not specifically aware of this request. Complainant's leave requests went through [REDACTED]. Reworded

Q: [REDACTED] contends that two other employees, [REDACTED] and [REDACTED] may have been granted advanced sick leave. Are you aware of their requests? If so, please explain.

A: I have no knowledge of whether either [REDACTED] or [REDACTED] received advanced sick leave.

I have read this statement, consisting of ____ pages, and it is true, complete, and correct to the best of my knowledge and belief.

[REDACTED]

Signature *J*

9/22/11

Date