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Report to Congressional Requesters

June 2003

ENVIRONMENTAL PROTECTION AGENCY

Continued Improvement Needed in Assessing Equal Employment Opportunity

GAO-03-462

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Continued Improvement Needed in Assessing Equal Employment Opportunity

GAO Accountability • Integrity • Reliability

Highlights

Highlights of GAO-03-462, a report to congressional requesters

Why GAO Did This Study

Minority employees at the EPA reported for a number of years that the agency had discriminated against them based on their race and retaliated against them for filing complaints. These issues were aired at hearings held by the House Committee on Science at which EPA said it would take actions to ensure a fair and discrimination free workplace. GAO was asked to review (1) the accuracy of EPA's EEO data, (2) various issues about the processes used to resolve discrimination complaints, and (3) the disciplinary actions taken for managers who discriminate.

What GAO Recommends

GAO recommends that EPA

- evaluate its new EEO software system to ensure it results in a reliable system for tracking cases and accumulating accountability data,
- finalize standard operating procedures for EEO complaint processing, and
- develop a process to assess all cases in which discrimination is found or allegations of discrimination are settled to determine whether managers, or other employees, should be disciplined.

In commenting on the report, EPA said it would develop policies for disciplining managers found to discriminate but did not comment on the other recommendations.

www.gao.gov/cgi-bin/getrpt?GAO-03-462.

To view the full report, including the scope and methodology, click on the link above. For more information, contact Victor S. Rezendes at (202)-512-6806 or rezendesv@gao.gov.

What GAO Found

EPA had difficulty providing accurate EEO data because of a data system that the agency believes was unreliable and was further compromised by data entry problems. When GAO identified problems with the information EPA provided, the agency manually reconstructed data for fiscal years 1995 through 2002. The reconstructed data indicate that during this period 548 EPA employees filed 679 discrimination complaints, and the agency closed 588 complaints. Complaints were closed with 125 dismissals, 48 withdrawals, 178 settlements, 5 remands, and 222 agency decisions not supporting the claimant. GAO cannot attest to the accuracy of these numbers but believes they are indicative of the situation at EPA. EPA recently procured new software to facilitate accurate tracking and reporting of EEO information and believes the software will rectify data problems.

EPA has never had official standard operating procedures for complaint processing, which are required by regulation. Rather, EPA said that complaints were processed under general guidance provided by the Equal Employment Opportunity Commission (EEOC) until draft procedures, prepared in July 2001, were put into use.

EPA has taken a long time to process discrimination complaints with cases averaging 650 days from filing to closing over fiscal years 1995-2002. A major contributing factor was that investigations, which are supposed to be done in 180 days, averaged a total of 465 days. The firms used by EPA failed to conduct thorough investigations and their reports did not provide complete or factual accounts of the incidents leading to the complaints. As a result, investigations often had to be redone, adding to the amount of time needed to complete them. Over the last year, EPA has discontinued the use of these firms and contracted with new ones that it believes are doing a much better job. EPA has also increased its own staffing for EEO matters to try to reduce processing times.

EPA does not have a specific process for determining whether managers involved in discrimination complaints did in fact discriminate and if so whether managers should be disciplined. EPA officials told us that they have relied on training to rectify and prevent discriminatory conduct. Other agencies have formal processes to evaluate each case in which discrimination is found or a complaint is settled to determine whether discipline is warranted. EPA will be required to collect and report the number of agency employees disciplined for discrimination or harassment under the provisions of the Notification and Federal Employee Anti-Discrimination and Retaliation Act, effective in October 2003. A process like those in place at other agencies should also help EPA meet this requirement.

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Abbreviations

ADR	Alternative Dispute Resolution
EEO	equal employment opportunity
EEOC	Equal Employment Opportunity Commission
OCR	Office of Civil Rights

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G A O
Accountability * Integrity * Reliability

United States General Accounting Office
Washington, D.C. 20548

June 26, 2003

The Honorable Eddie Bernice Johnson
Ranking Minority Member
Subcommittee on Research
Committee on Science
House of Representatives

The Honorable Sheila Jackson Lee
House of Representatives

The Honorable Elijah Cummings
House of Representatives

The Honorable Albert Wynn
House of Representatives

Four federal statutes-Title VII of the Civil Rights Act of 1964, as amended; the Equal Pay Act of 1963; the Rehabilitation Act of 1973; and the Age Discrimination in Employment Act of 1967-make it unlawful for a federal employer to discriminate against an employee on the basis of race, color, religion, sex, national origin, disability, or age. For a number of years, some Environmental Protection Agency (EPA) employees reported that, based on race, EPA officials treated them differently from other employees in terms of promotion, retention, and other employment-related decisions and retaliated against employees for filing complaints. In addition, EPA has faced charges that its Office of Civil Rights (OCR) has not conducted proper and timely investigations of discrimination complaints, specifically not meeting the 180-day time frame for completing complaint investigations as required by regulation. Moreover, the agency allegedly did not take disciplinary action against managers found to have participated in discriminatory conduct.

These issues were the subject of hearings by the House Committee on Science in the fall of 2000. EPA officials said at the hearing that they would take a number of actions to improve the equal opportunity environment, including providing sensitivity training to managers. EPA also said it would improve its processing of discrimination complaints and improve its system for tracking complaints.

In light of the issues raised at the hearing, you asked us to review (1) the accuracy of EPA's equal employment opportunity data on the number of

complaints and complainants since 1990 by type of complaint, settlement method, outcome, and average processing time, (2) the processes to resolve discrimination complaints, (3) the staffing levels assigned for complaint resolution, (4) the components of the new plan devised to speed complaint adjudication, and (5) the disciplinary actions the agency takes against managers involved in discriminatory conduct.

We reviewed equal employment opportunity legislation and regulations providing guidance to federal agencies and EPA's processes developed to implement these programs. Although you asked for data going back to 1990, we are unable to provide these data because the agency expressed no confidence in any data prior to 1995. EPA provided data for the fiscal years 1995-2002 period but due to an unreliable data system, we could not independently verify the data provided. The EPA information covered the number of discrimination complaints and complainants; complaints closed, including those closed through settlement; and average processing times. We analyzed the numbers, obtained internal supporting documentation, and reviewed forms used to comply with Equal Employment Opportunity Commission (EEOC) reporting requirements. We interviewed EPA officials and reviewed documentation, including policies, statistics, and the development of the plan establishing a course of action to alleviate past problems with discrimination case backlogs. We also reviewed EPA's record of taking disciplinary actions against managers found to have participated in discriminatory conduct. Our work was done from February 2002 through April 2003 in accordance with generally accepted government auditing standards.

Results in Brief

EPA did not have accurate EEO information because of problems with its data system, especially related to data entry problems. We identified problems with the data EPA provided us for 1995 through 2002. EPA then manually reconstructed the discrimination complaint data that are provided in this report. Although we did a limited review of these data and believe that they are indicative of EPA's situation, we cannot attest to their accuracy. EPA recently procured new software to facilitate accurate tracking and reporting of EEO information and believes that the new system will rectify data problems.

EPA's manually reconstructed data for fiscal years 1995 through 2002 show that during this period 548 EPA employees filed 679 discrimination complaints, and the agency closed 588 complaints. The closed discrimination complaints consisted of 125 dismissals, 48 withdrawals, 178

settlements, 5 remands, and 222 agency decisions not in favor of the complainant. EPA made no findings of discrimination during this time. Our analysis showed that discrimination complaints focused mainly on race, reprisal, gender, and age; the main issues addressed were nonselection for promotion, appraisal, harassment, and time and attendance. For the 178 discrimination cases EPA settled during the 8 years, the average number of days from complaint filing to settlement was 671 days. Overall, EPA discrimination complaint investigations during these years were completed in an average of 465 days, significantly longer than the allowed time, which is normally 180 days. Only 8 percent of investigations were completed within the time limit. For all 588 complaints closed, the average number of days from complaint filing to closing was 663 days. When compared to the other 23 agencies that are required to comply with the Chief Financial Officers (CFO) Act of 1990, EPA's total number of days to process a complaint from filing to closing ranked fifth highest in 2002.

EPA has never had standard operating procedures for complaint processing, which are required by regulation (29 C.F.R.1614.104 (a)). EPA officials told us that discrimination complaints were processed under general guidance provided by EEOC. In July 2001, EPA's OCR prepared draft standard operating procedures to process complaints, and OCR officials say they currently use these procedures. The procedures are still in draft.

In EPA's 2001 Federal Managers' Financial Integrity Act report, EPA officials identified OCR staffing levels as a material weakness requiring attention. OCR staffing levels have risen in the past 3 years as have the number of complaints. Since 2000, OCR has added a team leader, equal employment opportunity specialists, a program analyst, and clerical staff. OCR intends to hire additional staff in fiscal year 2003. Last year, OCR augmented its EEO staff by training an additional 20 EPA staff members to serve as EEO counselors on a part-time basis.

In addition to increasing OCR staffing, EPA has taken other steps to reduce discrimination complaint processing times. OCR terminated contracts with private EEO investigative firms that it considered ineffective. OCR said that investigations conducted by previous contractors did not meet EEOC requirements and had to be redone, which led to increased processing times and backlogs. The new contractors are, according to OCR officials, providing timely and sufficient investigations. In addition, EPA's Administrator created a complaint case closure task team in May

2001 to reduce the extensive discrimination complaint backlog, which totaled 139 cases pending over 180 days without a completed investigation as of June 2001. When the team was dissolved in October 2001, only 12 of the 139 cases did not have completed investigations. As of March 2003, a total of 29 pending discrimination complaint cases did not have investigations completed within 180 days.

Since 1995, EPA has not disciplined any managers or employees for discriminatory conduct. However, agency officials said that the agency had used training to rectify and prevent discriminatory conduct. EPA does not have a specific process for determining whether managers involved in discrimination complaints did in fact discriminate and, if so, whether managers should be disciplined. Other agencies, such as the Internal Revenue Service (IRS) and the Department of Agriculture, have processes and policies that hold managers and employees accountable for discriminatory conduct. IRS and Agriculture review cases in which discrimination was found or settlement agreements were reached to determine if discrimination occurred. If a manager or employee is found to have discriminated, the agencies can take corrective action, such as reprimands, suspensions, reductions-in-grade, or removals. Besides lacking a process to determine if managers discriminated, EPA does not have a process in place to track disciplinary actions taken against managers. EPA will be required to collect and report the number of agency employees disciplined for discrimination, harassment or retaliation under the provisions of the Notification and Federal Employee Anti-Discrimination and Retaliation (No FEAR) Act, effective in October 2003 (Pub. L. 107-174).

We recommend that EPA ensure that its EEO software system procurement resulted in a reliable system for tracking cases and accumulating accountability data for EEOC. EPA should also finalize its draft complaint processing procedures and develop a process that assesses every case in which discrimination is found, or allegations of discrimination are settled, to determine whether managers, or other employees, should be disciplined.

In commenting on the report, EPA said it generally agrees with our findings. The agency said in response to the third recommendation that it would develop policies and procedures that will allow EPA to address effectively the issue of disciplinary action against any manager or employee found to have discriminated. This action would not fully address the recommendation because it does not address cases in which allegations of

discrimination are settled. EPA's comments did not mention the other two recommendations. EPA's comments are reprinted in appendix I.

Background

EPA was established in 1970 to protect human health and safeguard the natural environment. EPA is staffed with large numbers of technically trained personnel; more than half of its employees are engineers, scientists, and environmental protection specialists. Today, it employs 18,000 people.

EPA is headquartered in Washington, D.C., and has 10 regional offices and laboratories across the country. EPA's OCR, a staff office in the Office of the Administrator, is responsible for managing the agency's discrimination complaints program. This program is intended to ensure that all EPA employees and applicants for employment are afforded equal employment and advancement opportunities free of discrimination. Moreover, OCR is responsible for the timely processing and resolution of discrimination complaints. Specifically, discrimination complaints are processed by OCR's Compliance and Internal Resolution Team.

Over the years, allegations and complaints have been made that EPA tolerates discrimination, retaliates against whistleblowers, and fails to take corrective action on these matters. The agency's policies and practices were further questioned when an employee won a high profile court case in 2000.[1] EPA's EEO practices have also attracted congressional interest in general and about untimely complaint processing in particular. Hearings before the House Committee on Science in October 2000 highlighted alleged discriminatory conduct.

EPA, like other federal agencies, is required to comply with the nation's civil rights laws. Title VII of the Civil Rights Act of 1964, as amended, makes it illegal for employers to discriminate against their employees or job applicants on the basis of race, color, religion, sex, or national origin (42 U.S.C. 2000e et.seq). The Equal Pay Act of 1963 protects men and women who perform substantially equal work in the same establishment from sex-based wage discrimination (29 U.S.C. 206(b)). The Age Discrimination in Employment Act of 1967, as amended, prohibits employment discrimination against individuals who are 40 years of age and older (29 U.S.C. 621 et seq.). Sections 501 and 505 of the Rehabilitation Act

[1] Coleman-Adebayo v. Browner, Administrator, U.S. Environmental Protection Agency, No. 1.98cv1939 (D.D.C., Aug. 5, 1998).

of 1973, as amended, prohibit discrimination against qualified individuals with disabilities who work or apply to work in the federal government (29 U.S.C. 791 and 794a). Federal agencies are required to make reasonable accommodations to qualified employees or applicants with disabilities except when such accommodation would cause an undue hardship. EEOC is responsible for enforcing all of these laws. In addition, a person who files a complaint or participates in an investigation of an EEO complaint or who opposes an employment practice made illegal under any of the statutes enforced by EEOC is protected from retaliation or reprisal.

EPA's EEO program, like those in other agencies, is subject to several regulations. EPA is responsible for developing and implementing its own equal employment program, including establishing or making available alternative dispute resolution programs and adopting complaint processing procedures as required by 29 C.F.R. Part 1614. EEOC Management Directive 110 (*Federal Complaints Processing Manual*) provides general guidance on how agencies should process employment discrimination complaints. Agencies are also required to provide EEO discrimination complaint data to EEOC (29 C.F.R.1614.602.). EEOC compiles these data and reports them to Congress each year in the *EEOC Annual Report on the Federal Workforce*.

System for Tracking EEO Data Was Unreliable, but EPA Is Taking Steps to Improve

Information contained in EPA's discrimination complaint data system was unreliable because of data entry problems. EPA officials also maintain that the computer software, which was obtained from a now defunct supplier, was flawed and not able to report data accurately. Reliable discrimination complaint data are necessary for EPA's OCR to track complaints and look for trends that might indicate the need for specific actions and to respond to EEOC reporting requirements. EPA recently implemented a new EEO data system and is taking steps to train staff members and hold them accountable for maintaining the data system.

EEO Data Tracking System Was Unreliable

Officials attributed data system weaknesses in part to a now defunct data management company whose data system was used to track and process discrimination complaint information. Officials said the system was flawed and was further compromised because EPA's EEO specialists did not always enter, update, or maintain discrimination complaint data. As a result, EPA had difficulty providing accurate EEO information. Moreover, EPA had trouble discerning if there are trends in workplace problems that

lead to EEO complaints; this in turn has inhibited understanding sources of conflict and planning corrective actions.

EEOC regulations point out that agencies should make every effort to ensure accurate record keeping and reporting of EEO data. Data fosters transparency, which provides an incentive to improve performance and enhance the image of the agency in the eyes of both its employees and the public. We initially requested discrimination complaint data for a 10-year period (1991-2000). However, OCR officials said they had no confidence in discrimination complaint data prior to fiscal year 1995 because the data are unreliable and source documents were not available to permit its reconstruction.

OCR provided discrimination complaint data for fiscal years 1995 through 2002; however, in reviewing these data, we found that the information was incorrect. These data understated the actual number of discrimination complaints on hand, the number of new discrimination complaints filed, the number of complaints closed, and the year ending numbers. Also the data provided to us differed from the discrimination complaint data reported to EEOC. For example, the number of discrimination complaints on hand at the end of fiscal year 2000 was reported to us as 176, but EPA reported to EEOC that the number was 264. The number of new discrimination complaints filed in 2000 was reported to us as 79, but the number reported to EEOC was 75.

After we pointed out some problems with the data, OCR manually reviewed source documents and revised these numbers. We did not verify the accuracy of the revised numbers because doing so would have required considerable effort to reconstruct all the data. To determine if the numbers provided for complaints on hand, new, closed, and ending were supportable, we reviewed the information EPA reconstructed, including handwritten notes. We also selected a number of supporting documents for review and found that the data reported agreed with the supporting documentation. These documents were also reviewed to determine if the numbers of complaints reported to us matched those reported to EEOC. Although we believe the reconstructed numbers are indicative of the situation at EPA, we cannot attest to the overall accuracy of these data.

Table 1 shows the number of complaints on hand at the start of the year and the number of new, closed, and on hand at the end of the year for fiscal years 1995 through 2002 as reported to EEOC. The number of complaints closed fluctuated from a low of 44 in 1999 to a high of 123 in 2001.

Table 1: EPA Discrimination Complaints by Year as Reported to EEOC, Fiscal Years 1995-2002

Complaints	1995	1996	1997	1998	1999	2000	2001	2002
On-hand	145	142	145[a]	167[a]	197	243	189[b]	149[c]
New	76	62	83	116	78	75	85	104
Closed	78	57	63	86	44	54	123	83
Ending	**142[d]**	**147**	**165**	**197**	**243[d]**	**264**	**157[d]**	**171[d]**

Source: EPA.

Note: Notes based on GAO analysis of EPA data.

[a]Differs from ending number for undetermined reasons.

[b]Differs from 2000 ending balance because EPA discovered that it had failed to remove 75 cases closed during 2000.

[c]Differs from the ending number for 2001 because EPA discovered that it had failed to remove 8 cases closed during 2001.

[d]Column does not total correctly because of EPA reporting errors.

For fiscal years 1995 through 2002, a total of 548 people filed 679 complaints. The number of discrimination complainants is usually less than the number of complaints filed because more than one complaint can be made by a complainant. As table 2 shows, the number of complainants and discrimination complaints filed spiked in fiscal years 1998 and 2002. OCR officials could not provide any explanation for the increased complainants and complaints filed in these years.

Table 2: Number of Complainants and Complaints Filed by Fiscal Year, 1995-2002

Fiscal year	Number of complainants	Complaints filed
1995	40	76
1996	48	62
1997	73	83
1998	90	116
1999	60	78
2000	68	75
2001	78	85
2002	91	104
Total	**548**	**679**

Source: EPA.

The agency closed 588 complaints during this period, including 125 dismissals;[2] 48 withdrawals; 222 agency decisions, none of which found for the complainant; and 178 settlements. Settlements represented 30 percent of all discrimination complaints closed over the period. In each year from fiscal year 1996 to 2000, the number of cases settled at the agency numbered less than 20, while 54 cases were settled in 2001. These settlements represented 44 percent of all discrimination complaint cases closed in 2001. According to agency officials, a number of settlements were reached during 2001 as part of an effort to eliminate the large number of backlogged complaints.

Settlements can be achieved by different methods. For example, for the years 1996 through 2001, a total of 29 discrimination complaint cases were settled at the EEOC hearing stage while another 7 cases were settled while pending before federal district courts. Beginning in 2000, as required by EEOC, EPA began a program to make Alternative Dispute Resolution (ADR)[3] available in precomplaint and formal complaint processes. The agency uses mediation as its alternative method to resolve EEO complaints and administrative grievances. During the first 6 months of fiscal year 2003, there were 18 requests for mediation, of which 14 EEO cases were accepted for mediation, 1 case is under review, and 3 cases are pending further action.

The data showed that headquarters discrimination complaints focused mainly on race, reprisal, gender, and age. The specific issues addressed in these complaints were non-selection for promotion, appraisal, and harassment. Similarly, in regional offices the most often cited bases for discrimination complaints were race, reprisal, and gender. The specific issues most cited in the regional complaints were non-selection for promotion, appraisal, harassment, and time and attendance. Table 3 lists the percentages of complaints by the bases of complaint. Table 4 lists the percentages of complaints by the issues of the complaint.

[2] In lieu of accepting a complaint for investigation, federal agencies, can dismiss a complaint for several reasons as listed in 29 C.F.R.1614.107.

[3] ADR refers to any procedure agreed to by the parties of a dispute that is used to resolve issues in controversy including, but not limited to, conciliation, facilitation, mediation, or arbitration.

Table 3: Percentage of Total Discrimination Complaint Cases Represented by Various Bases, Fiscal Years 1997-2001

	Race		Age		Sex		Reprisal		Other	
FY bases	Hdq.	Region	Hdq.	Region	Hdq.	Region	Hdq.	Region	Hdq.	Region
1997	20	27	15	22	25	19	26	20	13	12
1998	27	23	15	27	15	14	22	22	20	14
1999	28	24	12	22	17	18	33	25	10	12
2000	22	26	18	18	14	17	27	26	19	13
2001	25	28	11	14	18	19	26	26	19	13

Source: EPA.

Note: Other bases for discrimination complaints include religion, national origin, and disability.

Table 4: Percentage of Total Discrimination Complaint Cases Represented by Various Issues, Fiscal Years 1997-2001

	Promotion/ Non-Selection		Evaluation/Appraisal		Harassment		Time/Attendance		Other	
FY issues	Hdq.	Region	Hdq.	Region	Hdq.	Region	Hdq.	Region	Hdq.	Region
1997	36	63	14	9	6	9	10	13	34	7
1998	38	56	15	10	6	13	6	7	35	16
1999	41	53	13	14	17	14	4	2	25	16
2000	41	43	2	2	8	15	13	6	36	34
2001	43	40	3	5	25	18	1	8	28	30

Source: EPA.

Note: There are 25 issues categories; the top 4 are listed and the remaining issues are categorized under other.

EPA takes a long time to process complaints. Over the fiscal years 1995-2002 period, it took an average of 663 days from the time a complaint was filed until it was closed. A major contributing factor to this lengthy process was the time used to investigate complaints. Over the same 8-year period, the average time to complete an investigation was 465 days.

EEOC regulations require EPA and other agencies to complete investigations within 180 days of receiving discrimination complaints unless the period is extended.[4] In 2002, the average number of days for completed investigations was 427 days in comparison to the 180-day standard. Discrimination complaint cases closed in 2002 took an average 839 days to process. When compared to the other 23 agencies that are required to comply with the CFO Act, EPA's total number of days to process a complaint from filing to closing ranked fifth highest in 2002.

EPA Addressing Reliability of Data System

EPA is taking steps to improve data system reliability. It contracted with a company to procure an EEO data system and to train employees on how to use the new software program. This software (EEO-Net) is designed to automate data entry, case tracking, and reporting requirements. The procurement process began in February 2002, and it was originally estimated that the new system would be in place and fully operational in June 2002. An EPA official told us that the EEO-NET system became operational on January 15, 2003.

OCR is depending on this new system to alleviate many of the inaccuracies and inconsistency problems with discrimination complaint data. Its implementation is also expected to permit identification of trends, to alert both regional and headquarters staff members of problem areas, and to serve as an early warning system. According to EPA officials, the new system is expected to automatically and accurately generate data for completing *EEOC's Annual Federal Equal Employment Opportunity Statistical Report of Discrimination Complaints*. The Air Force has successfully used the EEO-Net software program for over 3 years for military personnel and is installing the program for use with its civilian workforce. Officials at the National Labor Relations Board, Broadcast Board of Governors, Government Printing Office, and EEOC have all recently installed the system and are pleased with the results thus far.

As discussed previously, data in the old system were not accurately entered, updated, or maintained by EEO specialists. In an interim effort to resolve these data problems, OCR hired a person whose responsibilities include entering, updating, and maintaining the data. OCR is also developing new performance standards for EEO specialists that rate them

[4] The period can be extended when the parties agree and under other circumstances. 29 C.F.R.1614.108 (e), 29 C.F.R.1614.108(f), 29 C.F.R.1614.606.

on inputting and maintaining the data. The new performance standards are intended to ensure that the data problems do not occur again. Specialists are to be held accountable for maintaining accurate discrimination complaint data as part of their assigned duties.

EPA Lacks Standard Procedures for Resolving Complaints, but This Is Being Addressed

According to OCR officials, EPA has never adopted standard operating procedures for processing internal complaints of discrimination, but it developed draft procedures in July 2001. Although these procedures are in draft form, OCR's staff uses them as guidance. EPA officials said they were waiting until the EEO-Net software is fully operational to finalize the standard operating procedures. The system became operational in January 2003, but as of May, the procedures were still in draft form.

The draft standard operating procedures provide detailed step-by-step instructions for OCR's staff to follow, from when a complaint is filed through final resolution. For example, Section II,"Checklist for Preparing Correspondence," includes instructions on when and how to prepare mailings related to discrimination complaints. Section IV of the procedures addresses the steps necessary for OCR to process individual complaints, including steps to follow upon complaint receipt, complaint acknowledgment, request for EEO Counselor's Report, and all subsequent steps of the process up to the complaint's resolution at the formal stage. The draft standard operating procedures also identify data that can be used by OCR for trend analysis and address management and tracking of counselor assignments.

Staffing Levels Assigned for Complaint Resolution

OCR's staffing has increased from four to nine in the past 8 years, and the office plans to hire additional staff members. (See table 3.) EEOC regulations require that agencies provide sufficient resources to their EEO programs to ensure efficient and successful operation.[5] EPA's 2001 *Federal Managers' Financial Integrity Act Report* stated that EPA was unable to process complaints in a timely manner and identified this situation as a material weakness and an agency weakness. The most recent report states that OCR had hired additional staff members and made other changes, such as changing contactors who conduct investigations, and now believes it

[5] 29 C.F.R. Part 1614.102 (a) (1).

can ensure the timely processing of discrimination complaints and recommends that this material weakness be closed.

Table 5: OCR Staffing, Fiscal Years 1995-2002

Staffing	1995	1996	1997	1998	1999	2000	2001	2002
GS-15	1	1	1	1	1	1	1	1
EEO Specialist	3	3	3	2	2	3	4	4
GS-13 Program Analyst	0	0	0	1	1	1	1	1
GS-12/ Management Analyst	0	0	0	0	1	1	1	1
Data Analyst	0	0	0	0	0	0	1	1
Administrative Support	0	0	0	0	0	0	1	1
GS-4 Clerical	0	0	0	1	1	0	0	0
Total staff	**4**	**4**	**4**	**5**	**6**	**6**	**9**	**9**

Source: EPA.

Note: GAO analysis of EPA's OCR staffing data.

OCR officials told us that additional staffing would help facilitate timely processing of discrimination complaints. In June 2002, they said that they had two vacancy announcements out to recruit an additional GS-13 Equal Employment Specialist to process complaints and one GS-14 Senior Equal Employment Specialist to develop final agency decisions, prepare appeal briefs, and process complex complaint cases. OCR is currently planning to fill only the GS-14 position and, as of May 2003, the selection process was still under way.

In addition, OCR embarked on a training effort in 2001 to increase the numbers of collateral duty counselors. As a result, an additional 20 counselors were trained to serve as first points of contact for employees considering filing discrimination complaints. These counselors are not full-time. They perform counseling duties in addition to their other assigned duties. The EEO counselors' responsibility is to ensure that complainants understand their rights and responsibilities under the EEO process. Specifically, the counselor must let the complainants know that they can opt for precomplaint resolution through participation in ADR or EEO counseling. Counselors also determine the claim and bases raised by the potential complaint, determine the complainant's timeliness in contacting

the counselor, and advise the complainant of the right to file a formal complaint if ADR or counseling fails to resolve the dispute.

EPA Took Steps to Speed Complaint Processing

EPA has not processed complaints in a timely manner, and has had a long-standing backlog of overdue cases. The backlog was caused in part by problems with contractors that conducted investigations that did not meet evidence standards as outlined in EEOC regulations.[6] According to OCR officials, some of the investigations performed by companies formerly used by the office failed to provide adequate factual records required by EEOC regulations. As a result, these inadequate investigations did not contain the facts needed, and the investigations were reassigned and redone resulting in more time added to complaint processing. Because of these problems with incomplete and poorly done investigations, OCR terminated contracts with certain investigative firms.

In June 2002, OCR contracted with a new company to conduct discrimination complaint investigations. An OCR official told us that the company has demonstrated its ability to perform thorough and complete investigations that meet EEOC's standards for investigations. OCR now contracts with six companies to investigate complaints and is satisfied overall with the investigations performed. Also, OCR's draft standard operating procedures for processing complaints of discrimination require that, prior to starting an investigation, OCR provide each investigator a copy of its guidelines for conducting EEO investigations to ensure that investigators understand what is required of them. The office currently has a blanket purchase agreement in place to hire four additional companies to perform investigations. Because of the relatively recent start of the contract, an OCR official said that OCR did not have enough statistical data to evaluate contractor effectiveness. However, OCR said that the situation regarding investigations was satisfactory.

In addition, EPA helped speed adjudication of backlogged cases by creating a special task team in May 2001. The initial focus of the team efforts was on the completion of investigations and preparation of final agency decisions on backlogged complaints. Officials provided a final report that discussed the team's actions and how its stated mission was accomplished. At the beginning of the team's work, 139 discrimination complaints were

[6] 29 C.F.R.1614.108 (b).

identified as active with investigations not completed for 180 days or more as of June 1, 2001. The report said that 45 reports of investigation were completed and 17 were drafted and were under review, 18 final agency decisions were issued and an additional 11 were drafted and under review, 10 cases were settled, 9 cases were withdrawn or dismissed, and 27 complainants had requested EEOC hearings. Only 12 of the 139 complaints were still waiting for completion of an investigation.

In February 2002, OCR also selected a contractor to augment OCR's staff by providing EEO counseling, performing EEO investigations, and writing draft agency decisions. All draft agency decisions written by the contractor are to be reviewed and revised, if necessary, by the Office of General Counsel. OCR officials said that OCR staff members are required to review draft decisions written by the contractor within 48 hours. EPA officials said that they hope this policy will help prevent discrimination complaint case backlogs from occurring as they had in the past. Moreover, OCR says it now works during the early stages of the complaint process to move discrimination complaints to the ADR process, as appropriate. If ADR is successful, this can obviate the need for investigations.

EPA Has No Formal Process to Discipline Managers for Discrimination

In the event that a manager or employee is formally found to have discriminated, EPA is supposed to determine on a case-by-case basis whether individual employees should be disciplined. However, EPA does not have a process in place to review discrimination complaint settlements to determine if any manager or employee has participated in improper conduct and should be disciplined. Agency officials said that settlements are no fault, and in settlements no one admits to any wrongdoing and no process is in place to make such determinations. We recognize that EEO complaints can be settled without there having been discriminatory conduct involved in the case. For example, an employee who is not promoted may believe the reason was because of his or her race and file an EEO complaint on this basis. When the case is reviewed the agency could find that while race was not a factor, the manager did not adhere to other requirements of the merit promotion system. As a result, the agency could settle the complaint by agreeing to recompete the promotion and ensure that all rules are followed and that the complainant would receive fair consideration in the recompetition. However, the possibility of settlements not being related to discriminatory conduct does not alter the fact that not having a process to determine whether discrimination was involved means that any settlements involving discrimination may not be identified as such.

EPA officials said that they provide managers the opportunity to change their behavior through training rather than taking disciplinary action. For example, in 2001 senior agency officials expressed concerns about managers' conduct and their compliance with Title VII of the Civil Rights Act of 1964, as amended. These concerns led to a contract with EEOC to conduct a 2-day mandatory training program for all 1,600 EPA managers in June 2002. EPA officials said that the training has improved managers' interaction with employees. However, it is unclear whether the improved management interaction with employees will result in fewer discrimination complaint filings.

Officials also said that the agency has EEO performance standards for Senior Executive Service managers. Managers are evaluated according to their efforts to support EEO and fairness as part of the process for determining who gets awards. In addition, since 2001 EPA has required all employees to sign statements acknowledging the agency's zero-tolerance policy towards discrimination or harassment by managers, supervisors, or employees.

Accountability is a cornerstone of results-oriented management. Because EPA's managers set the conditions and terms of work, they should be accountable for providing fair and equitable workplaces, free of discrimination and reprisal. If EPA's managers are not held accountable for their actions in cases in which discrimination has occurred, employees may not have confidence in the agency's EEO disciplinary process, and employees may be unwilling to report cases of discrimination.

Further, our past work has found that agencies that promote and achieve a diverse workplace attract and retain high-quality employees.[7] For public organizations, this translates into effective delivery of essential services to communities with diverse needs. Leading organizations understand that they must support their employees in learning how to effectively interact with and manage people in a diverse work place. Fostering an environment that is responsive to the needs of diverse groups of employees requires identification of opportunities to train managers in techniques that create a work environment that maximizes the ability of all employees to fully contribute to the organization's mission. A high-performing agency maintains an inclusive workplace in which perceptions of unfairness are

[7] See U.S. General Accounting Office, *A Model of Strategic Human Capital Management*, GAO-02-373SP (Washington, D.C.: March 2002).

minimized and workplace disputes are resolved by fair and efficient means. One way to foster openness and trust by employees is to have in place systems that hold employees responsible for discriminatory actions.

Agriculture and IRS Processes Address Managerial Accountability

Agriculture Process: In February 2003, EEOC issued a report on Agriculture's EEO program. In this report, EEOC applauded Agriculture for "holding managers accountable for their actions and disciplining them where appropriate." Since January 1998, Agriculture has reviewed cases in which discrimination was found or in which there were settlement agreements to determine if employees should be disciplined. The agency's regulations state that managers, supervisors, and other employees are to be held accountable for discrimination, civil rights violations, and related misconduct, as well as for ensuring that Agriculture's customers and employees are treated fairly and equitably. Agriculture agencies are to take appropriate corrective or disciplinary action, such as reprimands, suspensions, reductions in grade and pay, or removal. Final decisions containing a finding of discrimination and settlement and conciliation agreements are referred to the agency's Human Resources Management Office for appropriate action. This office monitors corrective and disciplinary actions taken in EEO and program discrimination matters. As a result of its process, Agriculture has taken over 200 corrective and disciplinary actions against managers and other employees since 1998, including removals, suspensions, and letters of reprimand.

IRS Process: IRS offers another example of an agency process to review settled EEO complaints to assess whether employees should be held accountable. Since July 1998, IRS has been reviewing cases in which discrimination was found or in which there were settlement agreements to determine if the discrimination was intentional. Where an employee has been found to have discriminated against another employee (or against a taxpayer or a taxpayer's representative), the Internal Revenue Service Restructuring and Reform Act of 1998 provides that the individual be terminated (Pub. L.105-206, Section 1203, July 22, 1998). Only the IRS Commissioner has the authority to reduce termination to a lesser penalty.

If there is a finding of discrimination, a settlement agreement is reached, or EEO issues are raised during the negotiated grievance process, IRS's Office of Labor Relations refers the matter to the National Director, EEO Diversity, Discrimination Complaint Review Unit. Local and headquarters EEO offices can also refer cases to the unit. This review is designed to alert management of any EEO-related misconduct regardless of the formal

pursuit of a remedy by an employee. When it receives a case, the unit determines whether formal review and fact-finding is required before making a decision. If so, the case file is forwarded to the Department of the Treasury's Inspector General for Tax Administration, with a copy of the allegation referral form to Labor Relations. Formal reviews are to be completed within 60 days. Labor Relations coordinates with the head of the involved office if the unit finds no potential violations. The office head is responsible for determining the appropriate administrative disposition. The office conducts a limited review of referred cases at the precomplaint stage; after a formal complaint, formal withdrawal, or lapsed case due to employee inaction; or if there was no finding of discrimination. This review makes management aware of any EEO-related misconduct regardless of the formal remedy sought by an employee.

EPA Does Not Track Disciplinary Actions against Managers, but a New Law Requires This Information

Besides not having a process to determine whether managers discriminated in settled cases, EPA does not have a process to track or routinely report data on disciplinary actions taken against managers for discrimination or other types of misconduct. Data of this nature are important because they can be a starting point for agency decision makers to understand the nature and scope of issues in the workplace involving discrimination, reprisal, and other conflicts and problems, and can help in developing strategies for dealing with those issues.

Under the No FEAR Act signed into law in May 2002, agencies are required to accumulate additional information about discrimination cases. The provisions of this act are to take effect October 1, 2003, and will require EPA to begin tracking and accumulating data on disciplinary actions resulting from discrimination. Specifically, the act requires that federal agencies file annual reports with Congress detailing, among other things, the number of discrimination or whistleblower cases filed with them, how the cases are resolved, and the number of agency employees disciplined for discrimination, retaliation, or harassment. These data requirements should alert agencies and employees that they are accountable for their actions in cases involving discrimination, retaliation, or harassment. This legislation demonstrates Congress's high level of interest in discouraging discriminatory conduct and reprisal at federal agencies and the need for managers to be held accountable for such conduct.

Conclusions

EPA did not have accurate data on the numbers and types of discrimination complaints made by its employees, and this in turn made discerning trends in workplace conflicts, understanding the sources of conflict, and planning corrective actions difficult. These types of data are useful in helping to measure an agency's success in adhering to merit system principles, treating its people fairly and equitably, and achieving a diverse and inclusive workforce. Having a data software system that can track cases and provide EEO managers with the information needed to discern trends to enable the development of policies is critical. EPA is relying on its newly procured EEO data system to overcome its data accumulation and reporting problems. Moreover, the agency is relying on that system to provide it the capability to track cases and identify trends that may indicate problems areas. This, in turn, illustrates the importance of the new system's effective operation.

EPA has never had standard operating procedures for EEO complaint processing and has been using draft procedures prepared in July 2001. The agency should finalize the draft procedures to help ensure that OCR staff members know what they are to do and that a uniform process is used nationwide.

EPA does not have a process to determine whether managers should be disciplined for their actions in settled EEO complaint cases. If agency employees have the impression that EPA's discrimination complaint process does not discipline managers who participate in discriminatory conduct, employees may be less willing to participate in the process. Employees are less likely to file discrimination complaints if they perceive that there is no benefit from doing so or if they fear reprisal. A specific process that holds managers accountable for discriminatory conduct may enhance employee confidence in the EEO environment and demonstrate the agency's commitment to providing a fair and discrimination free environment.

Recommendations for Executive Action

We recommend that the EPA Administrator direct that OCR evaluate its new EEO software system to ensure it resulted in a reliable system for tracking cases and accumulating accountability data for EEOC. In addition, the Administrator should direct that the draft standard operating procedures for handling EEO complaints be finalized. The Administrator should also direct that a process be developed that assesses every case in

which discrimination is found or allegations of discrimination are settled to determine whether managers, or other employees, should be disciplined.

Agency Comments

In a June 11, 2003, letter (see app. I), the Director of EPA's Office of Civil Rights commented on a draft of this report. EPA generally agreed with the report's findings. EPA said that the report shows that the agency has made considerable progress in addressing the backlog of cases involving alleged discrimination and that it believes it has in place the procedures and resources to ensure that current and future complaints are timely processed.

EPA's comments did not mention our recommendation to evaluate its new EEO software system to ensure that it meets the agency's need to track cases and accumulate accountability data. The comments also did not address our second recommendation about finalizing standard operating procedures for handling EEO complaints that have been in draft for 2 years and would be EPA's first set of official procedures. As we discussed in the report, action on both of these recommendations is important to assuring an effective EEO assurance program at EPA.

Regarding the recommendation to establish a process to assess whether managers or other employees should be disciplined in cases in which discrimination is found or allegations are settled, EPA said that it would develop policies and procedures that will allow it to address effectively the issue of disciplinary action against any manager or employee found to have discriminated. This action should, when completed, address the part of the recommendation related to disciplinary action when discrimination has been found. However, it does not address the part of the recommendation dealing with the need to assess whether disciplinary action should be taken in cases where allegations of discrimination are settled. As discussed above, a process that holds managers accountable for discriminatory conduct should enhance employee confidence in the EEO environment and demonstrate the agency's commitment to providing a fair and discrimination free environment.

EPA also made several technical comments, which we incorporated in the report where appropriate.

As agreed with your offices, unless you publicly announce its contents earlier, we will make no further distribution of this report until 30 days after its date. At that time, we will send copies to the Administrator of EPA, and interested committees and members of Congress. We will also make copies available to others upon request. In addition, the report will be made available at no charge on the GAO Web site at http://www.gao.gov.

If you have questions, please contact me on (202) 512-6082 or at rezendesv@gao.gov or contact Thomas Dowdal, Assistant Director, at (202) 512-6588 or dowdalt@gao.gov. Jeffery Bass, Karin Fangman, and Anthony Lofaro made key contributions to this report.

Victor S. Rezendes
Managing Director
Strategic Issues

Comments from the Environmental Protection Agency

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JUN 11 2003

OFFICE OF
CIVIL RIGHTS

Mr. Victor S. Rezendes
Managing Director for Strategic Issues
U.S. General Accounting Office
441 G Street, N.W.
Washington, D.C. 20548

Dear Mr. Rezendes:

Thank you for the opportunity to review and provide comments on the General Accounting Office (GAO) draft report entitled Environmental Protection Agency: Continued Improvement Needed in Assessing Equal Employment Opportunity. As you note, EPA has made considerable progress in addressing the backlog of cases involving alleged discrimination. Further, we believe we have the procedures and resources in place to assure that current and future complaints are timely processed. In May 2001, Administrator Whitman created a Task Force to investigate and reduce the long-standing backlog of cases. Within five months, the Task Force reduced the backlog by 87%. As a result of the Administrator's concern for the timely processing of cases, other measures have been instituted that the report addresses. We will continue to evaluate our progress and review and change procedures to improve our efficiency.

We recognize that there is still much we can do to improve how we manage our Title VII responsibilities. We will use the GAO recommendation to develop policies and procedures which will allow us to effectively address the issue of disciplinary action against any manager or employee found to have discriminated. These policies and procedures will ensure that we are taking the actions required by the No FEAR Act. We will ensure that any process established to address this issue is fair to both managers and staff, provides the necessary due process, and does not act as an impediment to the resolution of complaints.

EPA generally agrees with the report findings. Enclosed are specific recommended revisions that we offer for GAO's consideration when preparing the final report. I appreciate this occasion to provide Agency comments on this report. If there are questions or issues that you would like to discuss further, please contact me at 202/564-7272.

Sincerely,

Karen D. Higginbotham
Director

Enclosure

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