United States General Accounting Office

GAO

Report to Congressional Requesters

July 2003

# EQUAL EMPLOYMENT OPPORTUNITY

# SSA Region X's Changes to Its EEO Process Illustrate Need for Agencywide Procedures

GAO-03-604

July 2003

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GAO Accountability • Integrity • Reliability

Highlights

Highlights of GAO-03-604, a report to congressional requesters

## Why GAO Did This Study

Employees at the Social Security Administration's (SSA) Region X—which covers Alaska, Idaho, Oregon, and Washington—expressed concern about the Region's equal employment opportunity (EEO) process for employment discrimination complaints. GAO was asked to (1) provide information for fiscal years 1997 through 2001 on the composition of the Region X workforce and for personnel actions such as promotions, awards, and adverse actions by EEO group; (2) describe the EEO complaint process in Region X and any changes to it; (3) assess whether the Region's process is consistent with federal regulations and related guidance; and (4) assess the familiarity with the EEO process of the Region's employees and their attitude toward it.

## What GAO Recommends

GAO recommends that SSA adopt agency-specific procedures for counselors to use in processing discrimination complaints, so employees have the same process everywhere. GAO also recommends that Region X take actions to enhance its EEO environment to increase trust and, where necessary, address differences in personnel actions across racial, ethnic, and gender groups.

SSA agreed with GAO's findings and cited actions it was taking on two of GAO's three recommendations.

www.gao.gov/cgi-bin/getrpt?GAO-03-604.

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

## What GAO Found

In a geographic area where minorities represent a small portion of the civilian workforce (about 13.5 percent), Region X generally had a higher percentage of each minority group, except for American Indian and Alaska Natives. Moreover, the percentage of minority employees in Region X had increased from about 19 percent in fiscal year 1997 to about 27 percent in fiscal year 2001. Women represented a much higher proportion of SSA's workforce than of the civilian workforce. Differences among racial/ethnic and gender groups for most of the personnel actions reviewed were not statistically significant.

For fiscal years 1997 and 1998, current and former Region X EEO counselors described a process that mirrored the informal stage of the required federal sector complaint process. In fiscal year 1999, Region X changed its EEO process, so that EEO counselors were no longer allowed to talk with managers but were required to submit their questions in writing. In addition, managers were encouraged to routinely have an attorney from the Office of the General Counsel (OGC) review their written responses before these responses were provided to the EEO counselors. After the changes were in place for about a year, SSA headquarters officials held discussions with Region X officials to explain that having written inquiries and OGC involved in the informal EEO process was not consistent with the intent of resolving issues informally. Beginning early in fiscal year 2001, neither written EEO counselor queries to managers nor OGC involvement was required in the informal process. Region X's former use of written queries and OGC involvement were counter to the spirit of EEO regulations and their related guidance, which emphasize the informal nature of precomplaint counseling.

In doing its work at Region X, GAO found that SSA had issued EEO handbooks for managers and employees, but the handbooks do not contain agency-specific procedures on how EEO counselors are to process complaints of discrimination. Agency-specific procedures are required by EEO regulations. Absent such procedures, components of an agency can use different procedures, as illustrated by Region X, resulting in employees across the country being treated differently.

To gain an understanding of how familiar the Region's employees are with the EEO process and their willingness to participate in it, GAO surveyed all of the Region's employees. Most Region X employees reported having received or seen within the last 2 years written materials about EEO regulations and how to contact regional EEO counselors. Also, almost half the employees reported a willingness to participate in counseling or to file a formal EEO complaint if they believed they had been discriminated against. However, a sizeable portion of employees—about 40 percent—reported being unwilling or uncertain about becoming involved with the processes established for handling EEO complaints.

# Contents


## Letter 1

## Letter 1

Results in Brief 3
Background 6
Composition of the Region X Workforce 8
Region X Made Temporary Changes to the Informal Stage of the EEO Process 17
GAO Survey of Region X Employees about EEO 20
Region X's Temporary Changes Were Counter to the Spirit of EEOC's Regulations and SSA's Guidance 22
Conclusions 25
Recommendations 26
Agency Comments 27

## Appendixes

**Appendix I: Objectives, Scope, and Methodology** 29
Objective 1 29
Objective 2 31
Objective 3 31
Objective 4 32

**Appendix II: EEO Laws and Regulations Applicable to Federal Employees** 34
Laws Prohibiting Discrimination 34
EEOC Regulations Governing the Processing of Employment Discrimination Complaints 34

**Appendix III: Region X Workforce by Grade Level** 39
Region X Employees in Grades GS-13 through GS-15 39
Region X Employees in Grades GS-9 through GS-12 40
Region X Employees in Grades GS-5 through GS-8 41
Region X Employees in Grades GS-1 through GS-4 43

**Appendix IV: Temporary Promotions, Training, and Awards** 46
Experience: Temporary Promotions 46
Training 48
Awards 49

**Appendix V: Region X Adverse Actions, Appeals of Adverse Actions, EEO Complaints, and Grievances** 53

Adverse Actions 53
Adverse Actions Appealed to MSPB 54
Region X EEO Precomplaint Counseling and Formal EEO Complaints Filed 56
Grievances 63
Settlements 64

**Appendix VI: Selected Results of GAO's Survey of Region X Employees on Equal Employment Opportunity** 66
Operations of Region X's CREO 66
Experiences with Situations Involving EEO in Region X 68
Narrative Comments 69

**Appendix VII: GAO Survey of Region X Employees about EEO** 70

**Appendix VIII: Comments from the Social Secuity Administration** 78

**Appendix IX: GAO Contact and Staff Acknowledgments** 84
GAO Contact 84
Acknowledgments 84

# Tables

Table 1: Composition of Region X Workforce in Fiscal Years 1997 and 2001 by EEO Group Compared With CLF and CWF 10
Table 2: Comparison of the Percentage of Competitive Promotions to the Average Percentage Representation of Each EEO Group in the Workforce for Fiscal Years 1997 Through 2001 in Region X 14
Table 3: Comparison of the Percentage of Separations to the Average Percentage Representation of Each EEO Group in the Workforce for Fiscal Years 1997 Through 2001 in Region X 16
Table 4: Final Disposition of Questionnaire 32
Table 5: Percentage Distribution across Grade Levels by Race/Ethnicity and Gender for Fiscal Year 1997 45
Table 6: Percentage Distribution across Grade Levels by Race/Ethnicity and Gender for Fiscal Year 2001 45
Table 7: Comparison of the Percentage of JEPs to the Average Percentage Representation in the Workforce for Fiscal Years 1997 Through 2001 in Region X by EEO Group 47
Table 8: Comparison of the Percentage of Temporary Promotions to the Average Percentage Representation in the Region X Workforce for Fiscal Years 1997 through 2001 by EEO Group 48

Table 9: Comparison of the Percentage of GETA Training to the Average Percentage Representation by EEO Group in the Region X Workforce for Fiscal Years 1998 through 2001 49
Table 10: Comparison of the Percentage of Monetary Awards to the Average Percentage Representation by EEO Group in the Region X Workforce for Fiscal Years 1997 through 2001 50
Table 11: Comparison of the Percentage of Quality Step Increases to the Average Percentage Representation by EEO Group in the Region X Workforce for Fiscal Years 1997 through 2001 51
Table 12: Comparison of the Percentage of Honor Awards to the Average Percentage Representation by EEO Group in the Region X Workforce for Fiscal Years 1997 through 2001 52
Table 13: Types of Adverse Actions in Region X for Fiscal Years 1997 through 2001 by EEO Group 54
Table 14: Adverse Actions in Region X for Fiscal Years 1997 through 2001 That Were Appealed to MSPB and Their Disposition by EEO Group 55
Table 15: Requests for Counseling in Region X and Their Disposition in Fiscal Years 2000 and 2001 56
Table 16: Bases Cited in EEO Counseling for Region X in Fiscal Years 2000 and 2001 57
Table 17: Issues Cited by Individuals Requesting Counseling in Region X in Fiscal Years 2000 and 2001 58
Table 18: Formal EEO Complaints Filed by Region X Employees for Fiscal Years 1997 through 2001 and Their Disposition 59
Table 19: Bases for EEO Complaints Filed in Region X in Fiscal Years 1997 through 2001 60
Table 20: Issues Cited in Complaints Filed for Fiscal Years 1997 through 2001 61
Table 21: Reasonable Accommodations Requested by Region X Employees for Fiscal Years 1997 through 2001 by EEO Group 63
Table 22: Section 9 Grievances Filed in Region X by EEO Group for Fiscal Years 1997 through 2001 64
Table 23: Number of Settlement Agreements and Amounts Awarded on Settlements for MSPB Appeals, EEO Complaints, and a Mixed Case Filed in Region X in Fiscal Years 1997 through 2001 65
Table 24: Minority Status and Sex of Respondents Who Were Unwilling or Uncertain to Participate in Counseling Because They Feared Retaliation 67

Table 25: Minority Status and Sex of Respondents Who Were Unwilling or Uncertain to File a Formal Complaint Because They Feared Retaliation 67
Table 26: Percentage of Respondents Indicating Whether Decisions Were Based on Merit and Free of Bias and Favoritism 68
Table 27: Percentage of Respondents Indicating Decisions Were Sometimes or Never Based on Merit and Free of Bias and Favoritism 69

## Figures

Figure 1: Region X Workforce in Fiscal Years 1997 and 2001 by EEO Group 9
Figure 2: Hiring in Region X for Fiscal Years 1997 and 2001 by EEO Group 13
Figure 3: The EEO Complaint Process with Related Time Frames 37
Figure 4: Region X Employees in Grades GS-13 through GS-15 in Fiscal Years 1997 and 2001 by EEO Group 40
Figure 5: Region X Employees in Grades GS-9 Through GS-12 in Fiscal Years 1997 and 2001 by EEO Group 41
Figure 6: Region X Employees in Grades GS-5 through GS-8 in Fiscal Years 1997 and 2001 by EEO Group 43
Figure 7: Region X Employees in Grades GS-1 through GS-4 in Fiscal Years 1997 and 2001 by EEO Group 44

## Abbreviations

| | |
|---|---|
| ADR | alternative dispute resolution |
| AFGE | American Federation of Government Employees |
| AIAN | American Indian/Alaska Native |
| AJ | administrative judge |
| CLF | Civilian Labor Force |
| CPS | Current Population Survey |
| CREO | Civil Rights and Equal Opportunity |
| CWF | civilian workforce |
| EEO | equal employment opportunity |
| EEOC | Equal Employment Opportunity Commission |
| GETA | Government Employees Training Act |
| GS | general schedule |
| JEP | Job Enhancement Program |
| MD-110 | Management Directive-110 |
| MSPB | Merit Systems Protection Board |
| NAACP | National Association for the Advancement of Colored People |
| OCREO | Office of Civil Rights and Equal Opportunity |
| OGC | Office of the General Counsel |
| SES | Senior Executive Service |
| SSA | Social Security Administration |

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G A O
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**United States General Accounting Office**
**Washington, D.C. 20548**

July 16, 2003

The Honorable Jim McDermott
The Honorable Jennifer Dunn
The Honorable Adam Smith
House of Representatives

An October 2000 report by the Seattle branch of the National Association for the Advancement of Colored People (NAACP)[1] alleged that the Social Security Administration's (SSA) Region X—which covers Alaska, Idaho, Oregon, and Washington and has about 1,800 employees—may have violated federal regulations governing equal employment opportunity (EEO) and the processing of employment discrimination complaints. The report alleges, among other things, that the Office of the General Counsel (OGC) in Region X interfered with EEO precomplaint counseling, the informal stage of the EEO complaint process.[2] In addition, the report alleges that in the informal stage, EEO counselors were required by Region X management to submit written inquires to responsible management officials rather than conversing with them to get information. SSA did not agree with the report's allegations but agreed to two of its recommendations: to provide on-site precomplaint counseling at one of the Region's largest facilities and to provide ongoing training to management on provisions concerning employees' rights in SSA's labor-management agreement. As a result of the NAACP report, you asked us to look at the Region's EEO program.

Federal employees are protected by various federal laws that prohibit employment discrimination because of race, color, religion, sex, national origin, age, or disability (see app. II). In addition, federal employees are protected from retaliation for filing a complaint, participating in an investigation of a complaint, or opposing any practice made unlawful under these antidiscrimination laws. The Equal Employment Opportunity Commission (EEOC) has issued regulations that govern how the discrimination claims of federal employees are to be processed administratively.[3] Federal agencies covered by these regulations are

[1]Seattle Branch of the National Association for the Advancement of Colored People, *Racism and Disparate Treatment Issues: Region 10, Social Security Administration* (Seattle: 2000).

[2]Although the Region handles the informal stage of the EEO complaint process, SSA requires formal complaints be filed with SSA headquarters in Baltimore.

responsible for developing and implementing their own EEO programs and complaint processing procedures consistent with EEOC's regulations.

As agreed with your offices, our objectives were to (1) provide information on the composition of Region X's workforce by EEO group (race/ethnicity and gender) for fiscal years 1997 through 2001 overall and for personnel actions such as promotions, awards, and adverse actions; (2) describe the Region's EEO complaint process and any changes to it during the 5-year period; (3) assess whether the Region's EEO complaint process was consistent with federal regulations and related guidance; and (4) assess the familiarity of the Region's employees with the EEO process and their attitude toward it.

For our discussion of the composition of Region X's workforce as well as the breakdown of personnel actions by EEO group, we used SSA data provided by the Region's human resources management information system for fiscal years 1997 through 2001 for African Americans, American Indian/Alaska Natives (AIAN), Asian/Pacific Islanders (Asian), Hispanics, and Whites.[4] Each racial/ethnic group was broken down by gender. As part of our analysis of the composition of SSA staff for selected personnel actions, we tested to see if statistically significant differences by EEO group occurred.[5] Our analyses of personnel actions are designed to provide information at a common and aggregate level about EEO group differences in personnel actions at Region X and not to determine whether or not discrimination existed. The presence of a statistically significant difference does not prove discrimination, nor does the absence of a statistically significant difference prove that staff have not been discriminated against.

To describe the EEO process in the Region and any changes made to it for the 5-year period, we reviewed documents provided by SSA headquarters and Region X officials and interviewed those officials. To determine whether the Region's EEO complaint process is consistent with federal

[3]29 C.F.R. Part 1614.

[4]These data include temporary employees but do not include SSA components in Region X that are not under the line authority of the then Regional Commissioner (i.e., the Office of Hearings and Appeals, OGC, the Office of Inspector General, and the Regional Office of Quality Assurance).

[5]The presence of statistically significant differences means that we are 95-percent confident that differences could happen by chance less than 5 percent of the time.

regulations, we reviewed EEOC's regulations governing how the discrimination claims of federal employees are to be processed and compared their requirements with the processes employed by the Region. Also, to assess the familiarity of the Region's employees with the EEO process and their attitude toward it, we surveyed all of the Region's employees.

We did our work in Washington, D.C., Baltimore, and Seattle from January 2002 through May 2003 in accordance with generally accepted government auditing standards. Details of our scope and methodology are in appendix I.

## Results in Brief

Women made up over 70 percent of SSA's national workforce in fiscal year 2002, and Region X's workforce has mirrored this throughout all ethnic groups for fiscal years 1997 through 2001, with about two-thirds of its employees being women in each of those years. Also in each year, White employees comprised the majority of the Region X workforce, but their representation declined from about 81 percent of the workforce in fiscal year 1997 to about 73 percent in fiscal year 2001. Conversely, minority employees in Region X increased a corresponding 8 percentage points, from about 19 percent in fiscal year 1997 to about 27 percent in fiscal year 2001. Increases occurred in all minority EEO groups, except for AIAN women; the largest percentage increase occurred among Hispanic women. A comparison of the Region X workforce for fiscal years 1997 and 2001 with the regional Civilian Labor Force shows that Region X generally had a higher representation of minority employees in its workforce for all EEO groups except AIANs.

Concerning selected personnel actions, Hispanic women had the largest increase in the percentage of hires they represent, and African American women had the largest decrease. For each EEO group, we looked at the percentage of promotions and found that most EEO groups were promoted at a rate that was about the same as or slightly higher than each group's average percentage of representation in the workforce. African American men and White women had the highest positive percentage difference (1.1 percentage points) between their percentage of competitive promotions and representation in the workforce. Only White men and African American women were promoted at rates lower than their average percentage representation in the workforce, with a 2.2 and 1.0 percentage-point difference, respectively. Also, for each EEO group, we compared the percentage of separations with the average percentage of the workforce,

and this comparison showed that all minority EEO groups separated at a rate that was slightly higher than the average percentage of each group represented in the workforce for the period. African American women had the largest percentage difference between their percentage of separations and representation in the workforce (1.3 percentage points), followed by AIAN women (1.1 percentage points). Only White men and women separated at rates lower than their average percentage of representation in the workforce.

Our analysis showed no statistically significant differences among EEO groups for most of the personnel actions we reviewed. However, it did show statistically significant differences for some types of awards and adverse actions. The analysis for the 5-year period showed statistically significant differences among races concerning quality step increases and nonmonetary, or honor, awards. In addition, the analysis showed statistically significant differences among races for short-term suspensions and between the sexes concerning removals. This analysis was not designed to determine whether or not discrimination existed but can indicate areas warranting further study by management. Region X has not reviewed these differences to uncover their causes or to determine their appropriateness.

Region X made changes to its EEO process in fiscal years 1999 and 2001. For fiscal years 1997 and 1998, current and former Region X EEO counselors described a process that mirrored the informal stage of the complaint process outlined in EEOC's guidance to federal agencies. In fiscal year 1999, Region X changed its EEO complaint process, so that EEO counselors were no longer allowed to talk with managers about what had transpired between employees alleging possible discrimination and managers but were required to submit their questions in writing. The then Regional Commissioner said the changes were instituted because regional managers said that EEO counselors were not accurately reporting their views. In addition, managers were encouraged to routinely have an attorney from OGC review their written responses before these responses were provided to the EEO counselors. After the changes were in place for about a year, SSA headquarters' officials held discussions with Region X officials to explain that having written inquiries and OGC involved in the informal EEO process was not consistent with the intent of having the process arrive at an informal resolution of issues. Beginning early in fiscal year 2001, EEO counselors were not required to put queries to managers in writing, and OGC involvement was not required in the informal process. The changes Region X made to its complaint process in fiscal year 1999 are

not specifically addressed in federal sector EEOC regulations. Neither EEOC's regulations nor its related guidance addresses the appropriateness of written counselors' queries, written managers' responses, or OGC involvement in the informal process. However, these changes seem to have been counter to the spirit of the regulations and their related guidance, which emphasize the informal nature of precomplaint counseling.

Also, in doing our work at Region X, we found that SSA had issued EEO handbooks for managers and employees that discussed EEO in general and the basic EEO process. However, the handbooks do not contain agency-specific procedures on how EEO counselors are to process complaints of discrimination. Agency-specific procedures are required by EEO regulations. Absent such procedures, components of an agency can use different procedures, as illustrated by Region X, resulting in employees across the country being treated differently.

To gain an understanding of how familiar the Region's employees were with the EEO process and their willingness to participate in it, we surveyed all of the Region's employees on the EEO process and EEO in the Region. Most Region X employees reported having received or having seen within the last 2 years written materials about EEO regulations and how to contact regional EEO counselors. When asked about their willingness, if they believed that they had been discriminated against, to either participate in EEO counseling or to file a formal EEO complaint, almost half of respondents indicated that they would be generally or very willing to participate in counseling or to file a formal EEO complaint. However, a sizeable portion of respondents to our survey—about 40 percent—indicated they were unwilling or uncertain about becoming involved with the processes established for handling EEO complaints. Our survey results indicate that if Region X does not work to improve the perceptions of employees, it may not achieve a trusting workplace.

We recommend that the Commissioner of SSA adopt agency-specific procedures for counselors to use in processing complaints of discrimination to ensure that employees face the same process everywhere. We also recommend that Region X take actions to enhance its EEO environment to increase trust and, where necessary, address differences in personnel actions across racial, ethnic, and gender groups. In commenting on a draft of this report, SSA said it was updating materials dealing with the EEO process and would include procedural guidelines as called for in EEOC's regulations governing federal agencies' EEO procedures. SSA also said that as part of its normal review process, it will

review the statistically significant differences we found in Region X personnel actions. However, SSA did not agree with our recommendation that Region X take actions to enhance its EEO environment to increase trust. SSA's written comments are discussed near the end of this letter and reproduced in appendix VIII.

## Background

SSA administers three major federal programs that provide benefits to more than 50 million people. The Old Age and Survivors Insurance program provides benefits to retired workers and their dependents and survivors. The Disability Insurance program provides benefits to disabled workers. Supplemental Security Income provides income for aged, blind, and disabled individuals with limited incomes and resources. Heading SSA is a Commissioner who leads a central office in Baltimore and 10 regional offices. The field organization, which is decentralized to provide service at the local level, includes approximately 1,300 field offices.

Federal law prohibits discrimination against employees and applicants for employment on the bases of race, color, religion, sex, national origin, age, or disability (see app. II for more details about antidiscrimination laws). Under EEOC regulations, employees or applicants for employment who believe that they have been discriminated against by a federal agency may file a complaint with that agency. Before filing a complaint, the employee must consult an EEO counselor at the agency in order to try to informally resolve the matter. The employee must contact an EEO counselor within 45 days of the matter alleged to be discriminatory or, in the case of a personnel action, within 45 days of the effective date of the action. EEO counselors should determine if the employee believes that his or her problem is the result of one or more of the allowable bases—race, color, sex (including equal pay), religion, national origin, age (40 and over), or disability—or in retaliation for having participated in an activity, such as filing a complaint, that is protected by the various antidiscrimination statutes. Counselors are to advise individuals that, where the agency

agrees to offer alternative dispute resolution (ADR) in the particular case,[6] they may choose to participate in either counseling or in ADR.

After the counselor determines the basis or bases and claims, he or she is to conduct a limited inquiry of the matter, which generally involves speaking or meeting with the two parties. When the counselor has a good grasp of the issues involved, he or she is ready to attempt resolution. Resolution means that the employee and the agency come to terms with the matter and agree on a solution. In seeking resolution, the counselor is to listen to and understand the viewpoint of both parties and act as a neutral and not as an advocate for either the employee or the agency. Counseling is to be completed within 30 days from the date the employee contacted the EEO office for counseling.[7] If the matter is not resolved by the 30th day of counseling or if ADR is unsuccessful,[8] the counselor is required to inform the employee in writing of his or her right to file a formal discrimination complaint with the agency. The written notice must inform the employee of the (1) right to file a discrimination complaint within 15 days of receipt of the notice, (2) appropriate agency official with whom to file a complaint, and (3) duty to ensure that the agency is informed immediately if the complainant retains counsel or a representative.

After a complainant files a formal discrimination complaint, the agency must decide whether to accept or dismiss the complaint. If the agency dismisses the complaint, the complainant can appeal the dismissal to EEOC. If the agency accepts the complaint, it must investigate the complaint and present the complainant with a report of the investigation results. The complainant may then choose between requesting a hearing before an EEOC administrative judge or a final decision from the agency. Because SSA requires all employees to file formal complaints with its headquarters in Baltimore, the formal process was outside of the scope of

[6]ADR generally refers to any procedure agreed to by the parties in a dispute that is used to resolve issues in controversy including, but not limited to, mediation or arbitration. As of January 1, 2000, all federal agencies covered by 29 C.F.R. Part 1614 were required to establish or make available an ADR program during the informal (precomplaint counseling) and formal complaint stages of the EEO process. According to a Region X official, as of March 7, 2003, participation in the ADR process is currently limited to mediation and available to Region X employees within the Seattle commuting area.

[7]Before the end of the 30-day period, the employee may agree in writing with the agency to postpone the final interview and extend the counseling period for up to an additional 60 days.

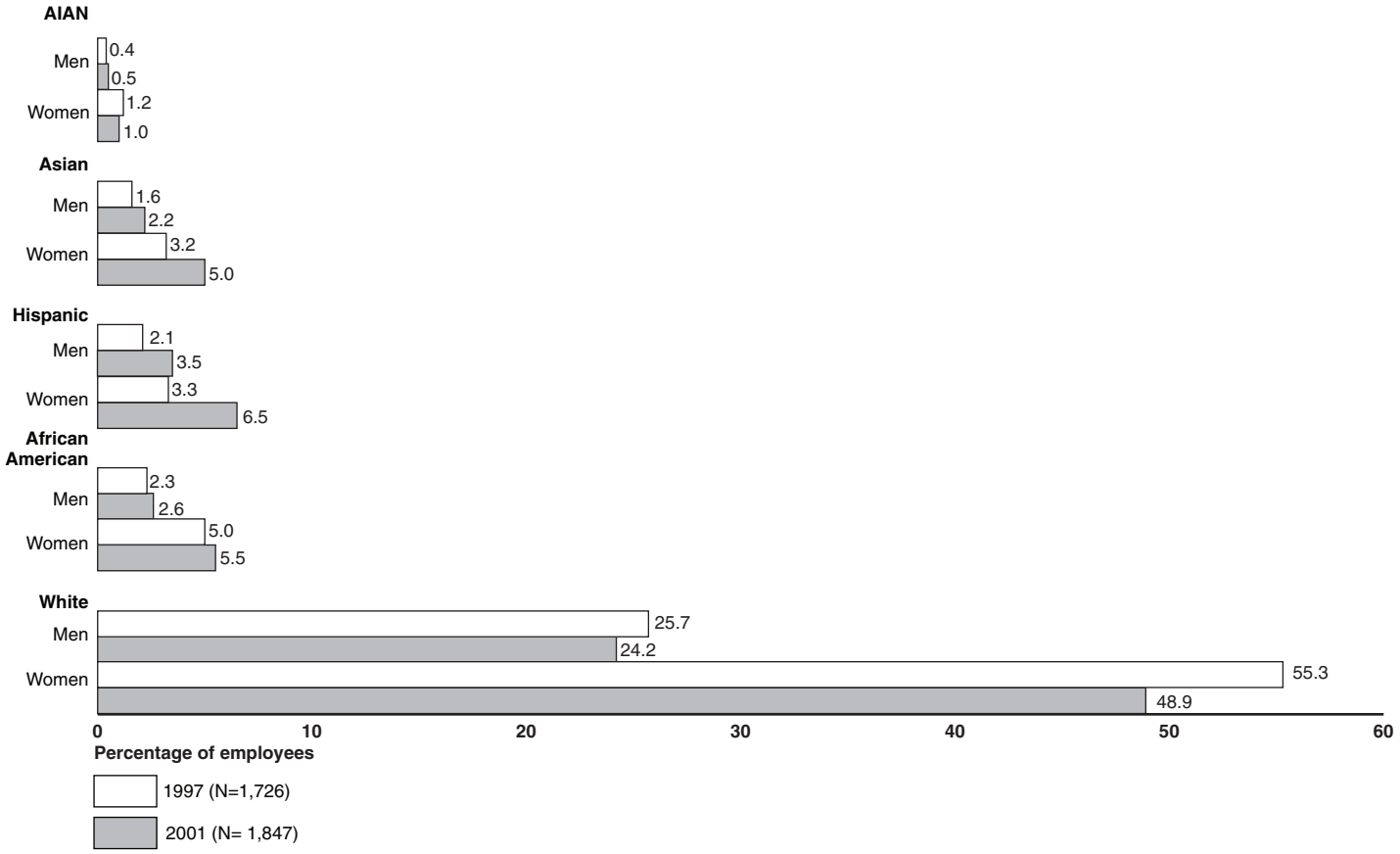
[8]ADR is to be completed within 90 days.

our review. Appendix II provides additional information on the processing of employment discrimination complaints.

## Composition of the Region X Workforce

SSA's national workforce is predominantly women—about 71 percent in fiscal year 2002—and Region X's workforce mirrors this in all ethnic groups. For each of fiscal years 1997 through 2001, about two-thirds of all Region X employees were women. The majority of Region X employees were age 40 and over, constituting about three-quarters of the workforce in each year. The number of employees with disabilities increased slightly from about 10 percent in fiscal year 1997 to 11 percent in fiscal year 2001. Over the 5-year period, most of the Region X workforce was in the general schedule (GS) grade levels 5 through 12. The distribution across grade levels by EEO group varied somewhat but was generally close to the representation of the various EEO groups in the Region's workforce. The main differences were higher proportions of men in the GS-13 through 15 grade levels and higher representation of African Americans and Hispanics in the GS-5 through 8 grades. As discussed in the section on hiring, substantial numbers of African Americans and Hispanics have been hired over the last few years, which may explain their higher representation in grades GS-5 through 8. See appendix III for a discussion of grade levels by EEO group. Figure 1 shows the Region X workforce by EEO group for fiscal years 1997 and 2001.

**Figure 1: Region X Workforce in Fiscal Years 1997 and 2001 by EEO Group**




Source: Region X data.

From fiscal year 1997 to fiscal year 2001, the EEO group that experienced the largest increase in its percentage of the workforce was Hispanic women, who almost doubled from 57, or 3.3 percent of the workforce, to 120, or 6.5 percent. This increase was followed by that of Asian women, who increased by almost two-thirds from 55, or 3.2 percent of the workforce, in fiscal year 1997 to 93, or 5.0 percent of the workforce, in fiscal year 2001. The percentage of the workforce represented by White men and women and by AIAN women declined over the 5-year period.

To judge its diversity, SSA compares its workforce with the Civilian Labor Force (CLF). Because the CLF data SSA uses are based on 1990 census

data, we also calculated regional civilian workforce (CWF) data of those age 18 and older in the four states covered by Region X for fiscal year 2001, based on 2001 Current Population Survey data.[9] Table 1 shows data on the composition of the Region X workforce in fiscal years 1997 and 2001 and compares those workforces to data on the CLF and CWF. Region X generally had a higher or equal representation of minority employees in its workforce for all EEO groups compared with both the CLF and the CWF, except AIAN men in fiscal years 1997 and 2001 and AIAN women in fiscal year 2001. In addition, the representation of White men in the Region was below the CLF and the CWF for both fiscal years 1997 and 2001.

**Table 1: Composition of Region X Workforce in Fiscal Years 1997 and 2001 by EEO Group Compared With CLF and CWF**

| | Region X workforce | | | | Regional | |
|---|---|---|---|---|---|---|
| | As of September 30, 1997 | | As of September 30, 2001 | | CLF (FY 1990) | CWF (FY 2001) |
| **EEO group** | **Number** | **Percent** | **Number** | **Percent** | **Percent** | **Percent** |
| African American men | 39 | 2.3 | 48 | 2.6 | 1.1 | 1.1 |
| African American women | 87 | 5.0 | 101 | 5.5 | 0.9 | 1.1 |
| AIAN men | 7 | 0.4 | 9 | 0.5 | 0.9 | 1.0 |
| AIAN women | 21 | 1.2 | 19 | 1.0 | 0.8 | 1.5 |
| Asian men | 27 | 1.6 | 41 | 2.2 | 1.6 | 1.8 |
| Asian women | 55 | 3.2 | 93 | 5.0 | 1.6 | 2.2 |
| Hispanic men | 36 | 2.1 | 65 | 3.5 | 2.3 | 2.2 |
| Hispanic women | 57 | 3.3 | 120 | 6.5 | 1.5 | 2.6 |
| White men | 443 | 25.7 | 447 | 24.2 | 49.1 | 43.2 |
| White women | 954 | 55.3 | 904 | 48.9 | 40.0 | 43.3 |
| **Total** | **1,726** | **100.1** | **1,847** | **99.9** | **99.8** | **100.0** |

Source: Region X data and GAO analysis of Current Population Survey.

Note: Totals do not sum to 100 percent due to rounding.

[9]The Current Population Survey is a monthly survey of about 50,000 households conducted by the Bureau of the Census and is the primary source of current information on the labor force characteristics of the U.S. population.

## Composition of Selected Personnel Actions by EEO Group

We reviewed the EEO groups of those individuals who in fiscal years 1997 through 2001 were hired, promoted, separated, or received awards or against whom Region X took adverse actions. For most of the personnel actions we reviewed, our analysis showed no statistically significant differences among EEO groups, but it did show statistically significant differences for some types of awards and adverse actions.[10] The analysis showed statistically significant differences among races and between the sexes concerning quality step increases for fiscal year 2001. We also found statistically significant differences by race/ethnicity for nonmonetary, or honor, awards. Our statistical analysis showed no significant differences among EEO groups for written reprimands; however, it showed statistically significant differences among races for suspensions and statistically significant differences between the sexes concerning involuntary separations. Human capital management principles include certain internal safeguards to help achieve consistency, equity, nondiscrimination, and nonpoliticization in the performance management process. One of these safeguards can be reviewing the results of personnel actions for statistically significant differences across groups. According to a Region X official, the Region has not reviewed such differences to uncover their causes or to determine their appropriateness.

### Hiring

From fiscal 1997 through fiscal year 2001, hiring among all minority groups except AIAN men and women increased as a percentage of those hired. The largest increase occurred among Hispanics. Hiring of Hispanic women increased from 9, or 5.1 percent of all hiring, in fiscal year 1997 to 21, or 9.8 percent in fiscal year 2001. Hiring of Hispanic men increased from 4, or 2.3 percent of all hiring, in fiscal year 1997 to 14, or 6.5 percent in fiscal year 2001. According to SSA officials, one of the reasons for the increase in Hispanic hires was that in fiscal year 1998 the Region hired 57 Spanish language bilingual telephone service representatives[11] when Spanish language calls began being routed to the Auburn Teleservice Center as part of the national phase-in of the "direct-in" option of service for the Spanish-speaking

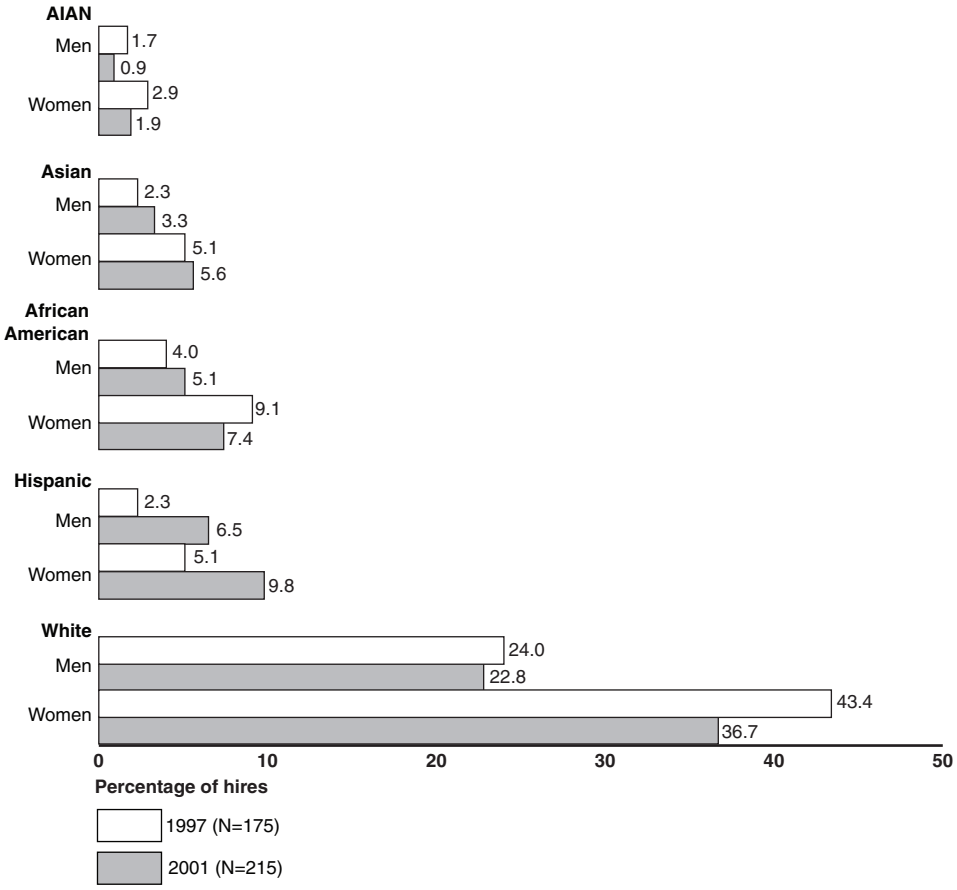
[10]We were unable to determine whether minorities and women were significantly less likely to be hired or promoted because we had no data on applicants by race/ethnicity and gender.

[11]Telephone service representatives provide information to inquirers about eligibility and benefits paid under SSA programs.

public.[12] African American women had the largest decrease in the percentage of hires they represent, and the percentage of AIAN men and women declined slightly. Figure 2 shows hiring in Region X by EEO group for fiscal years 1997 and 2001. All EEO groups were hired at rates that were above their representation in the workforce, except White men and women.

[12]"Direct-in" refers to when a caller is first connected to the 1-800-number, hears an option that allows the bypass of English prompts, and allows the caller to go directly to Spanish prompts. According to a Region X official, in fiscal year 2002, the number of Spanish calls handled by Spanish bilingual employees in the teleservice center in Auburn, Wash., reached a high of 362,200.

**Figure 2: Hiring in Region X for Fiscal Years 1997 and 2001 by EEO Group**




Source: Region X data.

## Promotions

Promotions involve either the selection of a current or former federal employee for a higher grade position, using procedures that compare the candidates on merit (i.e., competitive promotions), or promotion of an employee without competition when the employee had earlier been competitively selected and had demonstrated readiness for the next grade (i.e., career ladder promotions). Because career ladder promotions do not involve current competition, we focused on competitive promotions. We calculated the percentage of promotions received by members of each EEO group over the 5-year period and compared it with the group's average percentage of the workforce overall. This comparison showed that most EEO groups were promoted at a rate that was generally about the same as or somewhat higher than each group's average percentage of

representation in the workforce for the period. African American men and White women had the largest positive percentage difference (1.1 percent) between their percentage of competitive promotions and representation in the workforce. Only White men and African American women were promoted at rates lower than their average percentage of representation in the workforce, with a 2.2 and 1.0 percentage difference, respectively.[13] Table 2 compares the percentage of competitive promotions to the average percentage representation of each EEO group in the workforce for fiscal years 1997 through 2001 in Region X.

**Table 2: Comparison of the Percentage of Competitive Promotions to the Average Percentage Representation of Each EEO Group in the Workforce for Fiscal Years 1997 Through 2001 in Region X**

| EEO group | Total competitive promotions for 5 years | Percentage of competitive promotions | Average percentage representation in the workforce (5 years) |
|---|---|---|---|
| African American men | 25 | 3.6 | 2.5 |
| African American women | 30 | 4.3 | 5.3 |
| AIAN men | 4 | 0.6 | 0.4 |
| AIAN women | 12 | 1.7 | 1.0 |
| Asian men | 13 | 1.9 | 1.9 |
| Asian women | 31 | 4.5 | 4.0 |
| Hispanic men | 20 | 2.9 | 3.0 |
| Hispanic women | 35 | 5.1 | 5.4 |
| White men | 156 | 22.6 | 24.8 |
| White women | 364 | 52.8 | 51.7 |
| **Total** | **690** | **100.0** | **100.0** |

Source: GAO analysis of Region X data.

Experience, training, and awards are among the elements considered in the merit promotion process. Appendix IV describes by EEO group, those employees in Region X who participated in selected training opportunities and received temporary promotions and awards during fiscal years 1997

[13]Hispanics were promoted at slightly lower rates than their representation in the workforce. Hispanic men represented 2.9 percent of competitive promotions and 3.0 percent in the Region's workforce for the 5-year period. Hispanic women represented 5.1 percent of competitive promotions and 5.4 percent of the Region's workforce.

through 2001. Concerning awards, our statistical analysis showed that for the 5-year period, Whites were significantly more likely to receive quality step increases than African Americans, Hispanics, and AIANs; Asians were significantly more likely to receive quality step increases than Hispanics and AIANs; and African Americans were significantly more likely to receive quality step increases than Hispanics. There were no statistically significant differences between men and women. Because the Region acknowledged a disparity among racial/ethnic groups concerning quality step increases and began trying to address this disparity in fiscal year 1997, we also did a statistical analysis of quality step increases for fiscal year 2001 alone. By fiscal year 2001, only two statistically significant differences remained—women were significantly more likely to receive quality step increases than men and Hispanics were significantly less likely to receive quality step increases than African Americans or Whites—which shows substantial progress. Our analysis also showed that for the 5-year period, Asians were significantly more likely to receive nonmonetary, or honor, awards than Whites, African Americans, and Hispanics. Also, AIANs were significantly more likely to receive honor awards than Hispanics.

Our statistical significance analysis was not designed to determine whether or not discrimination occurred. However, the analysis could indicate areas warranting further study.

## Separations

Separations include voluntary transfer to another SSA regional office, resignation, retirement, and involuntary removal or termination. Involuntary separations are discussed under adverse actions. Although there were definite increases in the percentage of separations among specific EEO groups for fiscal years 1997 through 2001, all EEO groups experienced fluctuations in separations over the 5 years we reviewed. In addition, the percentage of separations accounted for by retirements increased from about a third in fiscal year 1997, to about 40 percent in fiscal year 1998, peaked at about 55 percent in fiscal year 1999, declined to almost 40 percent in fiscal year 2000, and returned to about a third in fiscal year 2001.

We calculated the percentage of separations each EEO group represented over the 5-year period and compared it with the average percentage of the workforce by EEO. This comparison shows that all minority EEO groups separated at a rate that was slightly higher than the average percentage each group represented in the workforce for the period. African American women had the largest percentage difference between their percentage of separations and representation in the workforce (1.3 percentage points),

followed by AIAN women (1.1 percentage points). Only Whites separated at rates lower than their average percentage representation in the workforce. Table 3 compares the percentage of separations to the average percentage of each EEO group in the workforce for fiscal years 1997 through 2001 in Region X.

**Table 3: Comparison of the Percentage of Separations to the Average Percentage Representation of Each EEO Group in the Workforce for Fiscal Years 1997 Through 2001 in Region X**

| EEO group | Total separations for 5 years | Percentage of separations | Average percentage representation in the workforce (5 years) |
|---|---|---|---|
| African American men | 20 | 2.6 | 2.5 |
| African American women | 50 | 6.6 | 5.3 |
| AIAN men | 4 | 0.5 | 0.4 |
| AIAN women | 16 | 2.1 | 1.0 |
| Asian men | 19 | 2.5 | 1.9 |
| Asian women | 37 | 4.9 | 4.0 |
| Hispanic men | 27 | 3.6 | 3.0 |
| Hispanic women | 48 | 6.3 | 5.4 |
| White men | 174 | 22.9 | 24.8 |
| White women | 365 | 48.0 | 51.7 |
| **Total** | **760** | **100.0** | **100.0** |

Source: GAO analysis of Region X data.

## Adverse Actions

Region X took 142 adverse actions over the 5-year period.[14] These actions included written reprimands, short-term suspensions (i.e., 14 days or less), long-term suspensions (i.e., 15 days or more), demotions, and terminations or removals. Of the 142 actions, 65, or about 46 percent, were for individuals who entered computer databases without authorization. Our statistical analysis showed no significant differences among EEO groups for written reprimands. However, for short-term suspensions, AIANs and African Americans were significantly more likely to receive suspensions of 14 days or less than Whites. Also, men were significantly more likely to

[14]Of the 142 actions, 8 were for performance, not conduct.

experience a removal or termination than women. As mentioned earlier, our statistical analysis was not designed to determine whether or not discrimination existed but can identify areas worthy of further study by management. Appendix V contains detailed information on adverse actions, appeals of such actions, formal EEO complaints filed, and grievances filed under the union grievance procedure for fiscal years 1997 through 2001 in Region X.

## Region X Made Temporary Changes to the Informal Stage of the EEO Process

Region X made changes to its informal EEO process in fiscal years 1999 and 2001. For fiscal years 1997 and 1998, current and former Region X EEO counselors described an informal process that mirrored the federal sector complaint process outlined in EEOC's guidance. In fiscal year 1999, Region X made changes to this process, under which EEO counselors were no longer allowed to talk with managers but were required to submit questions in writing to managers about what had transpired between employees and managers. In addition, managers were encouraged to routinely have an attorney from OGC review their written responses before these responses were provided to the EEO counselors. In fiscal year 2001, after discussions with SSA headquarters officials had occurred, additional training was provided (for EEO counselors, OGC, and executive staff), and the then Regional Commissioner made conference calls to every manager about this issue, EEO counselors were again allowed to talk with managers. Counselors said revoking the changes brought the process back to what it was previously.

Because the Region could not provide us with documentation on how it carried out its EEO complaint process or how it changed, we contacted former and current EEO counselors and discussed this area with regional officials. For fiscal years 1997 and 1998, Region X EEO counselors described an informal process similar to the informal stage of the federal sector complaint process outlined in EEOC guidance Management Directive 110 (MD-110).[15] First an employee would approach an EEO counselor, who would take notes about the person's complaint, including the claim being made and the basis or bases for the complaint. The EEO counselor would then advise the employee of his or her rights. The counselor would call the manager identified by the employee, identify for the manager the issues and bases of the complaint, and get the manager's

[15]EEOC uses MD-110 to supplement its EEO regulations (29 C.F.R. Part 1614) with additional guidance relating to the processing of complaints.

input on what had transpired. Several counselors said that after meeting or talking with the employees and managers, they would typically read back managers' statements to them to make sure that they had captured what the managers said. One counselor mentioned letting managers read the statement.

According to SSA headquarters and Region X officials, in fiscal year 1999, Region X made changes to the procedures in the informal stage of its EEO complaint process. These changes (1) required Region X EEO counselors to put in writing questions to managers and (2) commonly involved the Region's OGC in the informal stage of the process. The then Regional Commissioner referred to these changes collectively as the "written approach." After these changes took place, EEO counselors were no longer allowed to talk with managers. In addition, according to the then Regional Commissioner, as part of the written approach, managers were encouraged to routinely have an attorney from OGC review their written responses before these responses were provided to the EEO counselors.

SSA's then Associate Commissioner of the Office of Civil Rights and Equal Opportunity (OCREO) said that he thought the written queries came out of Region X managers' distrust of what the EEO counselors attributed to managers in their reports. The then Regional Commissioner said that regional managers had reported that EEO counselors were not accurately reflecting managers' views in the counselors' reports, including a manager who in January 1998 said at a hearing on a formal EEO complaint that he had not said things attributed to him. In addition, according to the then Regional Commissioner, EEO counselor training was inadequate before 1999, and the change to written queries was put in place about the same time that the Region put in place a formal training process for EEO counselors.[16] The then Regional Commissioner said that she wanted to use the written approach to give managers the opportunity to give their views until training was completed.

[16]A Region X official said that in 1999 Region X management instituted an intensive training plan to address subject matter needs of EEO specialists and established the practice of reinforcing each EEO counselor's role as a neutral third party. This new training in the Region was put into place about the same time that EEOC began requiring specific training for EEO counselors. According to EEOC's Director of Federal Sector Programs, EEOC guidance did not have a specific training requirement for EEO counselors until November 9, 1999, when the regulations and guidance were revised. Under the revised guidance, EEOC requires new EEO counselors to receive a minimum of 32 hours of EEO counselor training before assuming counseling duties.

Also, in 1999, the Region began relying more on OGC in matters concerning employee relations. In a memo dated February 4, 1999, the Region announced that a new partnership had been put in place and that OGC would be providing advice and counsel on all employee relations issues and cases. According to the memo, these issues and cases were to include misconduct, performance and attendance problems, reasonable accommodation for employees with disabilities, and standards of conduct. The memo does not refer to OGC involvement in EEO complaints and cases. However, according to the then Regional Commissioner and others, in fiscal year 1999, OGC began reviewing managers' written responses to counselors' inquiries during the informal stage of the EEO process. The then Associate Commissioner of OCREO said that after the February 1999 memo, he believes that it became normal in Region X for managers to consult with OGC. He said that he thought that the OGC involvement was gradual in the beginning. The Regional Chief Counsel said that not every manager availed himself or herself of OGC's services.

The then Associate Commissioner of OCREO said that he started in his position in March 2000 and that he thought he first became aware that Region X was involving OGC in a routine way in the EEO process in summer 2000. The then Associate Commissioner said that he and the then SSA Deputy Commissioner for Human Resources agreed that there was a perception that Region X's reliance on OGC went beyond the informal process. The then Associate Commissioner said that during the informal process, there should be a limited inquiry and that it should not prevent EEO counselors from talking with managers or involve OGC. The then Associate Commissioner said that SSA headquarters officials held discussions with Region X officials to explain that having OGC involved in the informal EEO process gave the appearance that the "deck is stacked against employees." In discussions between SSA headquarters and Region X officials, the then Associate Commissioner said that both headquarters and regional officials agreed that it would be good to have training to get the process back to what was outlined in EEOC's guidance. As a result, the then Associate Commissioner said that SSA headquarters sent OCREO staff to the Region to provide training in October 2000 on basic counseling, limited inquiries, and report writing. According to the then Associate Commissioner, the training was provided to the Civil Rights and Equal Opportunity (CREO) staff, including EEO counselors and the CREO manager, OGC, and executive staff.

In addition, the then Regional Commissioner said that she spoke with the Area Director for Alaska and Washington, the Area Director for Idaho and

Oregon, and the Director of the Auburn Teleservice Center[17] and told them that OGC was not to be used during the informal stage of inquiry. After the training took place, the then Regional Commissioner said that she also had conference calls with every manager about this issue. According to a Region X official, these conference calls took place on October 8, 2000. Notes from a Region X official concerning these conference calls indicate the following topics on the informal stage of the EEO process were discussed:

- The role of the counselor is to conduct a neutral and limited inquiry, not an investigation.
- Counselors will no longer submit questions in writing; they will engage in a verbal dialogue with managers and supervisors, with emphasis on informality.
- It is important to remember that a counselor is not trying to prove right or wrong. He or she is working toward a solution.
- Resolution during informal counseling varies with the nature of complaint.

Because the Region did not provide documentation that the written approach was no longer a part of its informal EEO process, we contacted Region X officials and former and current EEO counselors to confirm that such a change took place. According to two Region X EEO counselors who were in those positions at the time, beginning in early fiscal year 2001, they no longer had to put their queries in writing and were again allowed to talk with managers.

## GAO Survey of Region X Employees about EEO

To gain an understanding of how familiar the Region's employees are with the EEO process, their willingness to participate in it, and their views on the work environment, we surveyed all of the Region's employees on the EEO process and EEO environment in the Region and achieved a 75 percent response rate. According to the results of our survey, most Region X employees are familiar with the EEO process, with almost two-thirds of Region X employees reporting having received or having seen

[17]The Auburn Teleservice Center is one of SSA's four largest such centers with telephone service representatives.

within the last 2 years written materials about the federal government's EEO regulations and written materials describing how to contact regional EEO counselors. Most respondents indicated that they believed decisions concerning job or project assignments, training, formal ratings, and monetary awards were always or mostly based on merit and free of bias and favoritism. However, 23 percent of respondents reported that they felt they had been discriminated against. For example, when asked if they felt they were denied a job, promotion, or other job benefit because of unlawful discrimination, 10 percent of respondents cited race, 8 percent cited age, and 8 percent cited sex. In addition, when asked if they chose not to apply for a promotion or developmental opportunity because they felt they had little or no chance of being selected, 11 percent of respondents indicated that age was the reason for not applying, 10 percent indicated race was the reason, and 6 percent indicated sex was the reason.

When asked about their willingness, if they believed that they had been discriminated against, to either contact Region X's CREO to participate in counseling or to contact OCREO in Baltimore to file a formal EEO complaint, almost half of respondents indicated that they would be generally or very willing to participate in counseling or to file a formal EEO complaint. About 40 percent of respondents indicated that they were unwilling or uncertain to participate in counseling or to file a formal EEO complaint if they believed that they had been discriminated against. When asked to describe their reason for this unwillingness or uncertainty, about 55 percent indicated that they were unwilling or uncertain to participate in counseling, and 51 percent, to file a formal EEO complaint because they feared retaliation. Also, 45 percent of respondents indicated that they were unwilling or uncertain to participate in counseling because of a concern that their contact with the EEO counselor would not be kept confidential. Our prior work has shown that leading organizations work to ensure that they create a workplace that is free of discrimination and in which employees do not fear or experience retaliation for engaging in activities protected by antidiscrimination laws.[18] Our survey results indicate that if Region X does not work to improve the perceptions of employees, it may not achieve a trusting workplace. Appendix VI discusses more of the results of our survey, and appendix VII contains a copy of our questionnaire and the responses to the questions.

[18]U.S. General Accounting Office, *Human Capital: The Role of Ombudsmen in Dispute Resolution* GAO/GGD-01-466 (Washington, D.C.: Apr. 13, 2001) and *A Model of Strategic Human Capital Management* GAO-02-373SP (Washington, D.C.: Mar. 15, 2002).

## Region X's Temporary Changes Were Counter to the Spirit of EEOC's Regulations and SSA's Guidance

The changes Region X made to the informal stage of its EEO process are not specifically addressed in federal sector EEO regulations. Neither EEOC's regulations nor the related guidance—MD-110—directly addresses the appropriateness of written counselors' queries, written managers' responses, or OGC involvement in the informal process. However, these changes were counter to the spirit of the regulations and the related guidance, which emphasize the informal nature of precomplaint counseling. In addition, these changes were counter to SSA's EEO handbook for managers and supervisors, which discusses meetings and conversations between counselors and managers but not written inquiries.[19]

One of the stated purposes of precomplaint counseling is for employees who believe they have been discriminated against to attempt to informally resolve the matter.[20] MD-110 states that in almost all instances, informal resolution, freely arrived at by all parties involved in the dispute, is the best outcome of a counseling action. Appendix A to MD-110, which contains methods for seeking resolution, suggests that during precomplaint counseling, the counselor talk or meet with agency officials to explain the employee's allegations, afford the agency an opportunity to present its position concerning the allegations, and suggest how the problem might be resolved.

SSA's then Associate Commissioner of OCREO said that the changes made by Region X in the informal EEO process, although not illegal, were counter to the spirit of the regulations and the related guidance, MD-110.[21] The then Associate Commissioner said that by having written EEO counselor queries and managers' responses and involving OGC, the informal stage of the EEO process in Region X was more like an investigation in the formal stage of the EEO process. In addition, in a June 2001 letter to a Region X employee, SSA's then Deputy Commissioner for Human Resources wrote that, "Except in rare instances, OGC should not be involved in the precomplaint process." When asked whether OGC was

[19]Social Security Administration, *Equal Employment Opportunity Handbook for Managers and Supervisors of the Social Security Administration* (Baltimore: Nov. 1995).

[20]29 C.F.R. sec. 1614.105(a).

[21]SSA's then Associate Commissioner of OCREO said that he prefaced all of his remarks about the EEO process in Region X with the fact that his office did not find or see anything illegal or that any person had been discriminated against.

involved in the informal stage of the EEO complaint process in other SSA regions, the then Associate Commissioner for OCREO said that he has never had any complaints or allegations that OGC was involved in the informal part of the process in other regions.

In addition, the EEOC regulations require that all agencies ensure that all agency employees provide full cooperation to EEO personnel in the processing and resolution of precomplaint matters.[22] According to a recent EEOC report,[23] the involvement of OGC during the informal stage of the EEO process may thwart attempts during counseling to resolve matters before the filing of a formal complaint. An EEOC official responsible for overseeing agencies' EEO programs said that involving OGC in the informal stage of the process causes EEOC concern because complaints should be resolved informally and OGC involvement can hinder the counselor's ability to facilitate resolution. This official added that having managers put responses to counselors' queries in writing and involving OGC at the informal stage of the process could drag out the process and that the longer the process takes, the less likely it is to result in an informal settlement. In addition, the EEOC official said that EEOC encourages alternative dispute resolution (ADR), and requiring managers to put responses in writing is counter to ADR. Finally, the EEOC official said that written EEO counselor queries and managers' responses and the involvement of OGC in the informal process were counter to the spirit of the regulations.

Written counselors' queries and written managers' responses were counter to SSA's EEO handbook for managers, which discusses meetings and conversations between counselors and managers. The handbook also discusses EEO counselors contacting responsible management officials to discuss the issues causing concern,[24] the basis or bases for the complaint, and the remedy sought by the employee. The handbook for managers also states that the manager's cooperation with the counselor is required by regulation and that the manager may have a representative present when meeting with an EEO counselor. Thus, the language in the handbook for managers is similar to appendix A of MD-110, which suggests that the

[22]29 C.F.R. sec. 1614.102(b)(6).

[23]U.S. Equal Employment Opportunity Commission, *Onsite Report: U.S. Department of Agriculture* (Washington, D.C.: Feb. 26, 2003).

[24]According to SSA officials, SSA is currently revising its EEO handbook for managers and supervisors as well as its employees' edition.

counselor talk or meet with agency officials and points out the requirement of EEOC's regulations that all agencies ensure that all agency employees provide full cooperation to EEO personnel in the processing and resolution of precomplaint matters.

## SSA Has Not Adopted Procedures for Counselors Processing EEO Complaints as Required by EEOC Regulations

In doing our work on Region X, we asked SSA headquarters and Region X for documents pertaining to the processing of EEO complaints. Among other things, SSA provided its EEO handbook for managers and supervisors as well as its employees' edition, which inform managers and employees what they can expect when faced with the EEO process. However, the handbooks, which were issued in November 1995, do not contain agency-specific procedures on how EEO counselors are to process such complaints. Under EEOC's regulations, agencies have certain responsibilities for maintaining a continuing affirmative program to promote equal opportunity and to identify and eliminate discriminatory practices and policies.[25] In order to implement their programs, the regulations require agencies to (1) make written materials available to all employees and applicants informing them of the variety of EEO programs and administrative and judicial remedial procedures available to them and (2) prominently post such materials in all personnel and EEO offices and throughout the workplace.[26] In addition, the regulations require agencies to adopt procedures for processing—both at the informal and formal stage—individual and class complaints of discrimination that are consistent with all other applicable provisions of the regulations and the instructions for complaint processing contained in MD-110.[27]

SSA has addressed two of these regulatory requirements. It has communicated in memorandums to all employees its policy prohibiting discrimination against employees and applicants for employment, most recently in a February 10, 2003, memorandum. SSA headquarters and Region X officials provided us with copies of the written materials containing information on the administrative and judicial remedial procedures available. On a visit to Region X, we saw such written materials posted on a wall in the Auburn Teleservice Center. We also used SSA's

[25] 29 C.F.R. sec. 1614.102 (a).

[26] 29 C.F.R. sec. 1614.102 (b) (5).

[27] 29 C.F.R. sec. 1614.104 (a).

Intranet to reach the Seattle Civil Rights and Equal Opportunity Web site and confirm that the information is available electronically to Region X employees as is current information about whom to contact. SSA's EEO handbooks for managers and employees discussed earlier also provide much information to their target groups. However, SSA has not fully implemented the third regulatory requirement to adopt agency-specific procedures for processing EEO complaints. When asked if SSA had adopted procedures for processing EEO complaints, the then Associate Commissioner for OCREO and Region X's manager for CREO said that SSA follows the processes and procedures outlined in the guidance on the EEOC regulations—MD-110.

An EEOC official responsible for overseeing agencies' EEO programs said that EEOC anticipated that an agency would have step-by-step, agency-specific procedures on how the agency would implement the broader requirements covered by EEOC's regulations and related guidance. The EEOC official said that EEOC anticipated that when agencies adopted such procedures, they would be in writing, so others could review them, if necessary. According to the EEOC official, having agency-specific guidance is important so that people processing complaints know exactly how to implement the regulations. The official said he thinks it is appropriate for agencies to have standard operating procedures, especially when they have more than one installation or operations spread across installations or regions, to help ensure consistent compliance with the regulations. The EEOC official said that it was an issue of fairness to both the employees in the EEO offices because they need to know what to do and what is expected of them and to those who may file a complaint because they are entitled to similar treatment across geographic areas for fairness.

## Conclusions

Our analysis showed no statistically significant differences for most of the personnel actions we reviewed. However, we found statistically significant differences among groups for certain awards and adverse actions in Region X. This analysis was not designed to determine whether or not discrimination existed. However, the analysis can identify areas worthy of further study by management. Human capital management principles include reviewing personnel actions to identify and address statistically significant differences across groups in order to help ensure EEO in the workplace. Region X has not reviewed such differences to uncover their causes or to determine their appropriateness.

Concerning whether the Region's EEO complaint process is consistent with federal regulations, Region X's changes to written queries and OGC involvement in its informal EEO complaint process are not specifically addressed in federal sector EEO regulations. However, these changes were counter to the spirit of the regulations and the related guidance, which emphasize the informal nature of precomplaint counseling and informal resolution. In addition, these changes were counter to SSA's EEO handbook for managers and supervisors, which discusses meetings and conversations between counselors and managers.

In doing our work at Region X, we found that although SSA had issued EEO handbooks in November 1995 for managers and supervisors as well as employees, the handbooks do not contain agency-specific procedures on how EEO counselors are to process complaints of discrimination. Agency-specific procedures on how to process EEO complaints—both at the informal and formal stage—are required by EEOC's regulations and are especially important if employees are geographically dispersed, as in SSA, to ensure that all employees have the same process available to them. Without agency-specific procedures for EEO counselors to process complaints of discrimination, counselors in different components could use different procedures, with the result that employees are not treated consistently. Also, agency-specific procedures could alert managers to possible problem areas when they consider changing processes and could help prevent changes like the temporary ones in Region X that ran counter to the spirit of EEOC's regulations.

In addition, a sizeable portion of respondents to our survey—about 40 percent—indicated they were unwilling to become or uncertain about becoming involved with the processes established for handling EEO complaints. Frequently cited reasons for concern about becoming involved with the EEO process were a fear of retaliation and that contact with the EEO counselor would not be kept confidential. These concerns could deter individuals in Region X from exercising their rights concerning EEO.

## Recommendations

We recommend that the Commissioner of SSA:

- Direct the Regional Commissioner of Region X to review the statistically significant differences we found in adverse actions and awards to determine why they occurred and what, if any, corrective action is needed.

- Adopt standard operating procedures for EEO counselors that include step-by-step procedures for processing complaints of discrimination so that counselors and others involved in the process across the country know what to do and employees face the same process everywhere.

- Direct the Regional Commissioner of Region X to establish a plan to (1) enhance the Region's EEO environment to increase trust and (2) measure the plan's effectiveness, such as with a periodic survey of employees.

## Agency Comments

In a letter dated June 26, 2003 (see app. VIII), SSA's Commissioner said that the agency acknowledged the report's general findings and said that SSA is committed to ensuring equal treatment for all employees and that its policies and practices are in compliance with EEOC's procedures for processing complaints of discrimination. Regarding our first recommendation, SSA said that it would continue to monitor statistically significant differences. However, SSA did not address the extent to which it would take action, if needed. We continue to believe that this is an important component of following up and alleviating concerns. Regarding our second recommendation that it adopt standard operating procedures for EEO counselors, SSA stated that it has standard operating procedures in the form of EEO handbooks and an EEO training manual that SSA uses to instruct EEO counselors on how to process EEO complaints. As discussed in the draft report, the handbooks did not provide detailed procedures on how EEO counselors are to process EEO complaints. However, the comments state that SSA is going to update the handbooks and training manual to provide the procedural guidelines called for in EEOC's regulations governing the EEO process for federal agencies.

SSA said that it agrees all regions should foster an environment where employees feel they can raise concerns and take part in a process designed to resolve complaints and acknowledged that the change to the EEO process in Region X may have caused some distrust. However, SSA disagreed with our third recommendation that the Regional Commissioner of Region X establish a plan to enhance the Region's EEO environment to increase trust and measure the plan's effectiveness. The comments said that our survey found that 51 percent of the Region's employees were very or generally willing to participate in EEO counseling, 13 percent were as willing as unwilling, and 10 percent were uncertain. SSA also said that because Region X is no longer following the change to the EEO process that may have caused some distrust, implementing a plan to improve trust

will not be necessary. Our survey was conducted in early 2003, or about 2 years after the "written approach" to the informal stage of EEO complaint processing was discontinued. Our survey found that 40 percent of employees were unwilling or uncertain about using the current EEO process, indicating to us a need to focus on enhancing the environment to increase trust. While SSA said it would share best practices from other human resource management audits with Region X, a periodic focus on Region X would, in our view, provide knowledge of issues specific to Region X.

We will send copies of this report to the Commissioner of SSA, the Director of the Office of Management and Budget, and interested congressional committees. We also will make copies available to others upon request. In addition, the report is available on GAO's home page at http://www.gao.gov. If you or your staff have questions about this report, please contact me on (202) 512-6806 or Kiki Theodoropoulos, Senior Analyst, on (202) 512-4579. Key contributors to this report are listed in appendix IX.

Victor S. Rezendes
Managing Director, Strategic Issues

# Objectives, Scope, and Methodology

As agreed, our objectives were to (1) provide information on the composition of Region X's workforce by EEO group (race/ethnicity and gender) for fiscal years 1997 through 2001 overall and for personnel actions such as promotions, awards, and adverse actions; (2) describe the EEO complaint process and any changes to it in the Region for the 5-year period; (3) assess whether the Region's EEO complaint process is consistent with federal regulations and related guidance; and (4) assess the familiarity with the EEO process of the Region's employees and their attitude toward it.

## Objective 1

To identify the composition of Region X's workforce by EEO group (race/ethnicity and gender) for fiscal years 1997 through 2001 in general and for selected personnel actions (i.e., hires, promotions, separations, awards, training, and adverse actions), we used SSA data provided by the Region's human resources management information system for the 5-year period.[1] These data were limited to those employees of Region X who were under the line authority of the then Regional Commissioner and, therefore, do not include employees of the Office of Inspector General, Office of Hearings and Appeals, the Office of the General Counsel, and the Regional Office of Quality Assurance.

We assessed the reliability of data provided by Region X on the workforce, hires, promotions, separations, and awards for fiscal years 1997 and 2001 by comparing them against the number of employees for Region X in the Office of Personnel Management's Central Personnel Data File and doing electronic data testing for obvious errors in completeness, accuracy, and reasonableness. We found data on the workforce, permanent promotions, separations, and quality step increases to be sufficiently reliable for fiscal years 1997 and 2001 for the purposes of this report. We did not check the reliability of data on temporary promotions because they included details to lateral positions, which are not counted as temporary promotions in the Central Personnel Data File. Data on race/ethnicity for hires reported to us by Region X were significantly different from such data for SSA Region X hires in the Central Personnel Data File.

[1]Region X provided data on the following EEO groups: African American men and women, American Indian/Alaska Native (AIAN) men and women, Asian/Pacific Islander (Asian) men and women, Hispanic men and women, and White men and women.

We discussed the differences with SSA headquarters and Region X officials to determine the reason for them. The lead human resources official in Region X said that when a new hire is processed via an accession action, the employee cannot be paid until the personnel action is released and updated through the Federal Personnel and Payroll System, the automated personnel action processing system SSA uses. During fiscal years 1997 through 2001, the official said that often, because of time constraints, the system—which required a code for race/ethnicity—was coded with unverified data (i.e., White) so the action could go through and the employee be paid.[2] The official said that in August 2002 SSA began requiring the human resources staff processing the new hire personnel actions to have the completed form with race/ethnicity submitted electronically or by fax on the day the employee reports for duty, so the data can be coded properly into the initial accession action. An OPM official analyzed Region X data on hires and confirmed that submissions of subsequent personnel actions updated race/ethnicity for some Region X employees. As a result, we decided the data on hires were sufficiently reliable for our purposes.

We assessed the reliability of data on selections to the Job Enhancement Program, adverse actions and their appeals, EEO counseling requests, EEO complaints, reasonable accommodations, grievances, and settlements, by doing in-depth comparisons of narratives concerning the data with the data provided by Region X. In cases where we found differences, we discussed inconsistencies with regional officials and took steps to correct them. We determined that the data on Job Enhancement Program selections, adverse actions and their appeals, EEO counseling requests, EEO complaints, reasonable accommodations, grievances, and settlements were sufficiently reliable for the purposes of this report.

To judge its diversity, SSA compares its workforce with the Civilian Labor Force (CLF). Because data on the U.S. CLF that SSA uses are based on 1990 census data, we decided to use data from the 2001 Current Population Survey, which is a monthly survey of about 50,000 households conducted by the Bureau of the Census and is the primary source of current information on the labor force characteristics of the U.S. population. To

[2]According to the Region X official, such coding was done with the knowledge and confidence that the code would be corrected when the new employee paperwork was received, usually within the following week, providing accurate race/ethnicity data based on the new employee's self-identification for the system.

identify the fiscal year 2001 regional civilian workforce, we used the March 2001 Current Population Survey to identify the number of individuals 18 or older working in the private sector and for federal, state, and local governments in the states of Alaska, Idaho, Oregon, and Washington.

As part of our analysis, for our discussion of the composition of SSA staff for selected personnel actions, we determined whether statistically significant differences by race/ethnicity or gender occurred. Our analyses of personnel actions are not designed to show that discrimination does or does not exist; instead they are designed to provide information at a common and aggregate level about race/ethnicity and gender differences in personnel actions at Region X. Therefore, our results should not be interpreted to indicate whether discrimination has or has not occurred. The presence of statistically significant difference does not prove discrimination, nor does the absence of statistically significant difference prove that staff have not been discriminated against. The presence of statistically significant differences means that we are 95 percent confident that differences could happen by chance in less than 5 percent of the cases.

## Objective 2

To describe the EEO process in Region X and any changes made to it for the 5-year period, we reviewed documents provided by SSA headquarters and Region X officials and interviewed those officials. Because the Region was not able to provide us with written documentation on how it carried out the informal stage of the EEO complaint process and when changes to the process occurred, we contacted former and current Region X EEO counselors and headquarters officials and relied on their views concerning when these changes took place.

## Objective 3

To determine whether the Region's EEO complaint process was consistent with federal regulations, we reviewed EEOC's regulations[3] and the related guidance—EEOC's Management Directive 110 (MD-110)—governing how the discrimination claims of federal employees are to be processed administratively and compared their requirements with the processes described by SSA headquarters and Region X officials. We also reviewed a recent EEOC on-site report on the U.S. Department of Agriculture, part of which concerned the involvement of OGC in the informal part of the EEO

[3]29 C.F.R. Part 1614.

process. In addition, we contacted an EEOC official responsible for overseeing agencies' EEO programs to identify EEOC's views concerning whether the types of changes Region X made to its EEO process were consistent with federal regulations and the related guidance.

## Objective 4

To assess the familiarity with the EEO process of the Region's employees and their attitude toward it, we designed and sent questionnaires to all SSA Region X employees to get their views on EEO. We pretested the questionnaire instrument to minimize measurement error and assure ourselves that respondents could interpret the questions correctly and could provide the information requested. We modified question wording and questionnaire format on the basis of what we learned from these pretests.

SSA provided us with the home addresses for all individuals employed by Region X as of August 27, 2002. On September 18, 2002, we mailed 1,801 questionnaires to these home addresses. One individual returned the questionnaire, indicating that he or she was no longer an employee of Region X. Because this individual did not answer any questions in the survey, we dropped this individual from the universe of employees, resulting in a revised universe of 1,800 Region X employees. After the initial and a follow-up mailing, we received 1,364 questionnaires. However, we received 9 questionnaires in which the tracking number for nonresponse follow-up had been removed (see table 4). Therefore, our analysis is based on 1,355 questionnaires, for a response rate of 75.3 percent. Table 4 summarizes the disposition of the questionnaire returns for the revised universe of 1,800.

**Table 4: Final Disposition of Questionnaire**

| Disposition | Number | Percent |
|---|---|---|
| Useable returns | 1,355 | 75.3 |
| Delivered but not returned | 436 | 24.2 |
| Returned but not useable[a] | 9 | 0.5 |
| **Total** | **1,800** | **100.0** |

Source: GAO analysis.

[a]We received nine questionnaires in which the tracking number for nonresponse follow-up had been removed. Because anyone who did not respond to the initial mailing was sent two questionnaires, these nine questionnaires were not included in our analysis because they may have been duplicates.

The questionnaire offered respondents the option of providing additional comments relating to any of the items discussed therein. Of the 1,355 useable returns, 307 respondents, or 22.7 percent, provided narrative comments. The questionnaire results express the viewpoints and attitudes of SSA Region X employees. All responses were anonymous; if respondents included references to names, these references were marked out before questionnaires were submitted to data entry.

All data were double-keyed and verified as part of the data entry process. Computer analyses were performed to identify inconsistencies (e.g., inappropriate skip patterns) or other indications of errors. All computer analyses were verified by a second independent analyst. Although it was not possible to test the validity of the respondents' answers or the comments they made, we took several steps to check the quality of our questionnaire data. We reviewed and edited completed questionnaires, made internal consistency checks on several items, and rechecked the accuracy of data entry on a random sample of questionnaires. The practical difficulties of administering any questionnaire may introduce errors, commonly referred to as nonsampling errors. For example, differences in how a particular question is interpreted by respondents could introduce unwanted variability in the questionnaire's results. We took steps in the development of the questionnaire, the data collection, and the data analysis to minimize nonsampling errors. These steps, which we discussed earlier, included pretesting and revising the questionnaires accordingly.

The percentage of respondents by race/ethnicity closely mirrored the percentage of each race/ethnicity in the population of Region X employees. The percentage of men and women responding to the survey also matched their respective percentages in the Region X workforce.

The 95-percent confidence intervals for the percentage of respondents who were unwilling or uncertain to participate in counseling or to file a formal discrimination complaint were $\pm$1.4 percentage points. The 95-percent confidence intervals for the reasons why respondents were unwilling or uncertain to participate in counseling or to file a formal discrimination complaint were $\pm$ 2.3 percentage points.

We did our work in Washington, D.C., Baltimore, and Seattle from January 2002 through May 2003 in accordance with generally accepted government auditing standards.

# EEO Laws and Regulations Applicable to Federal Employees

## Laws Prohibiting Discrimination

Title VII of the Civil Rights Act of 1964, as amended, makes it illegal for employers, including federal agencies, to discriminate against their employees or job applicants on the basis of race, color, religion, sex, or national origin.[1] The Equal Pay Act of 1963 protects men and women who perform substantially equal work in the same establishment from sex-based wage discrimination.[2] The Age Discrimination in Employment Act of 1967, as amended, prohibits employment discrimination against individuals who are 40 years of age or older.[3] Sections 501 and 505 of the Rehabilitation Act of 1973, as amended, prohibit discrimination against qualified individuals with disabilities who work or apply to work in the federal government.[4] Federal agencies are required to provide reasonable accommodation to qualified employees or applicants for employment with disabilities, except when such accommodation would cause an undue hardship. 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 antidiscrimination statutes is protected from retaliation. The Equal Employment Opportunity Commission (EEOC) is responsible for enforcing all of these laws.

## EEOC Regulations Governing the Processing of Employment Discrimination Complaints

Federal employees or applicants for employment who believe that they have been discriminated against by a federal agency may file a complaint with that agency.[5] EEOC has established regulations providing for the

[1]42 U.S.C. secs. 2000e et seq.

[2]29 U.S.C. sec. 206(b).

[3]29 U.S.C. secs. 621 et seq.

[4]29 U.S.C. secs. 791 and 794a.

[5]For allegations of discrimination under Title VII and the Rehabilitation Act, filing an administrative complaint is a prerequisite to filing a civil action in court. See 42 U.S.C. sec. 2000e-16(c) and 29 U.S.C. sec. 794a(a)(1).

processing of federal sector employment discrimination complaints.[6] This complaint process consists of two stages, informal, or precomplaint counseling, and formal. Before filing a complaint, the employee must consult an EEO counselor at the agency in order to try to informally resolve the matter. The employee must contact an EEO counselor within 45 days of the matter alleged to be discriminatory or, in the case of a personnel action, within 45 days of the effective date of the action. EEO counselors should determine if the employee believes that his or her problem is the result of discrimination on one or more of the bases—race, color, sex (including equal pay), religion, national origin, age (40 and over), disability—or in retaliation for having participated in activity protected by the various antidiscrimination statutes. Counselors are to advise individuals that, when the agency agrees to offer alternative dispute resolution (ADR) in the particular case,[7] they may choose to participate in either counseling or in ADR.

After the counselor determines the basis or bases and claims, he or she is to conduct a limited inquiry of the matter, which generally involves speaking or meeting with the two parties. When the counselor has a good grasp of the issues involved, he or she is ready to attempt resolution. Resolution means that the employee and the agency come to terms with the matter and agree on a solution. In seeking resolution, the counselor is to listen to and understand the viewpoint of both parties and act as a neutral and not as an advocate for either the employee or the agency. Counseling is to be completed within 30 days from the date the employee contacted the EEO office for counseling.[8] If the matter is not resolved by the 30th day of counseling or if ADR is unsuccessful,[9] the counselor is

[6]29 C.F.R. Part 1614. EEOC has supplemented these regulations with additional guidance relating to the processing of complaints with Management Directive-110 (MD-110), issued November 9, 1999.

[7]ADR generally refers to any procedure agreed to by the parties in a dispute that is used to resolve issues in controversy including, but not limited to, conciliation, facilitation, or mediation. As of January 1, 2000, all federal agencies covered by 29 C.F.R. Part 1614 were required to establish or make available an ADR program during the informal (precomplaint counseling) and formal complaint stages of the EEO processes. According to an SSA Region X official, as of March 7, 2003, participation in the ADR process is currently limited to mediation and is available to Region X employees within the Seattle commuting area.

[8]Before the end of the 30-day period, the employee may agree in writing with the agency to extend the counseling period for up to an additional 60 days.

[9]ADR is to be completed within 90 days.

required to inform the employee in writing of his or her right to file a formal discrimination complaint with the agency. The written notice must inform the employee of the (1) right to file a discrimination complaint within 15 days of receipt of the notice, (2) appropriate agency official with whom to file a complaint, and (3) duty to ensure that the agency is informed immediately if the complainant retains counsel or a representative.

After a complainant files a formal discrimination complaint, the agency must decide whether to accept or dismiss the complaint. If the agency dismisses the complaint, the complainant has 30 days to appeal the dismissal to EEOC.[10] If the agency accepts the complaint, it has 180 days to investigate the accepted complaint and present the complainant with a record of investigation.[11] Once the agency finishes its investigation and the complainant receives the investigation results, the complainant has 30 days to choose between requesting (1) a hearing before an EEOC administrative judge (AJ)[12] or (2) a final decision from the agency. When a hearing is not requested, the agency must issue a final decision within 60 days. In cases where a hearing is requested, the AJ has 180 days to issue a decision and send the decision to the complainant and the agency. If the AJ issues a finding of discrimination, he or she is to order appropriate relief. After the AJ decision is issued, the agency has 40 days to issue a final order notifying the complainant whether or not the agency will fully implement the decision of the AJ, and the employee has 30 days to file an appeal with EEOC.[13] If the agency issues an order notifying the complainant that the agency will not fully implement the decision of the AJ, the agency also must file an appeal with EEOC at the same time. Figure 3 illustrates the EEO complaint process.

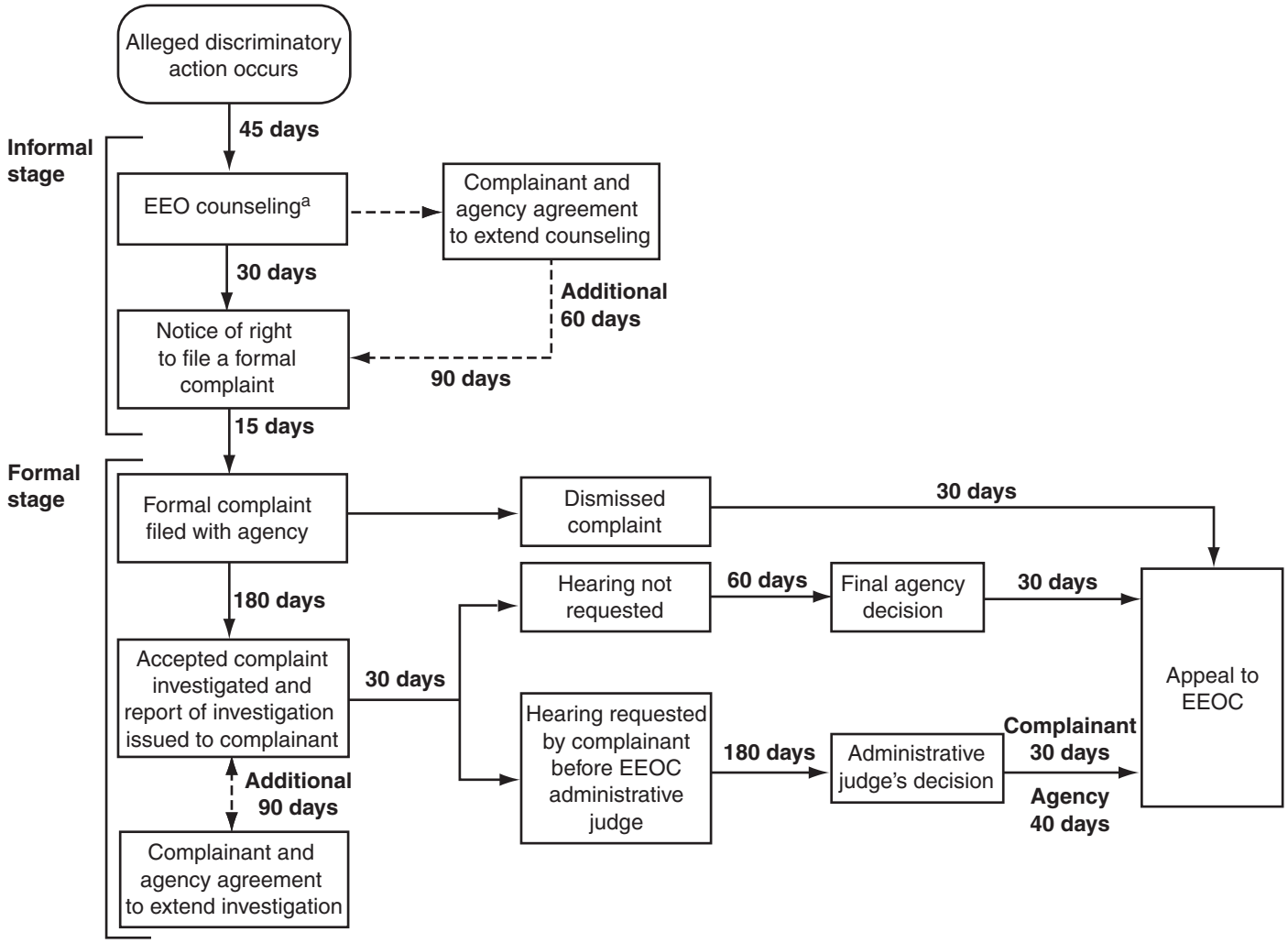
[10]An agency may dismiss an individual's complaint for a number of reasons, including failure to contact an EEO counselor in a timely manner, failure to file a complaint in a timely manner, or failure to state a claim based on covered discrimination.

[11]This period can be extended an additional 90 days when both parties agree.

[12]A complainant may request a hearing at any time after 180 days have elapsed from the filing of the complaint, regardless of whether the agency has completed its investigation.

[13]If the agency does not issue a final order within 40 days, the decision of the AJ becomes the final action of the agency.

**Figure 3: The EEO Complaint Process with Related Time Frames**




Source: GAO, based on EEOC regulations.

[a] Where the agency agrees to offer ADR in the particular case, employees may choose between participation in ADR and counseling activities. ADR generally refers to any procedure agreed to by the parties in a dispute that is used to resolve issues in controversy including, but not limited to, mediation.

If a complaint is one that can be appealed to the Merit Systems Protection Board (MSPB) such as a removal, reduction in grade or pay, or suspension for more than 14 days,[14] the complaint is a "mixed case." With a mixed-case complaint, the complainant has no right to a hearing before an EEOC AJ. However, a complainant may appeal a final agency decision to the MSPB within 30 days of receiving the agency's decision. EEOC regulations provide that an individual may raise claims of discrimination in a mixed case, either as a mixed-case EEO complaint with the agency or a direct appeal to MSPB, but not both. Under EEOC regulations, whatever action the individual files first is considered an election to proceed in that forum. Filing a formal EEO complaint constitutes an election to proceed in the EEO forum; contacting an EEO counselor or receiving EEO counseling does not constitute such an election.[15]

[14]MSPB is an independent quasi-judicial agency in the executive branch that serves as the guardian of federal merit systems.

[15]For employees of agencies subject to 5 U.S.C. sec. 7121(d) and covered by a collective bargaining agreement that permits claims of discrimination to be raised in a negotiated grievance procedure, the employees similarly must elect to file an EEO complaint or a grievance.

# Region X Workforce by Grade Level

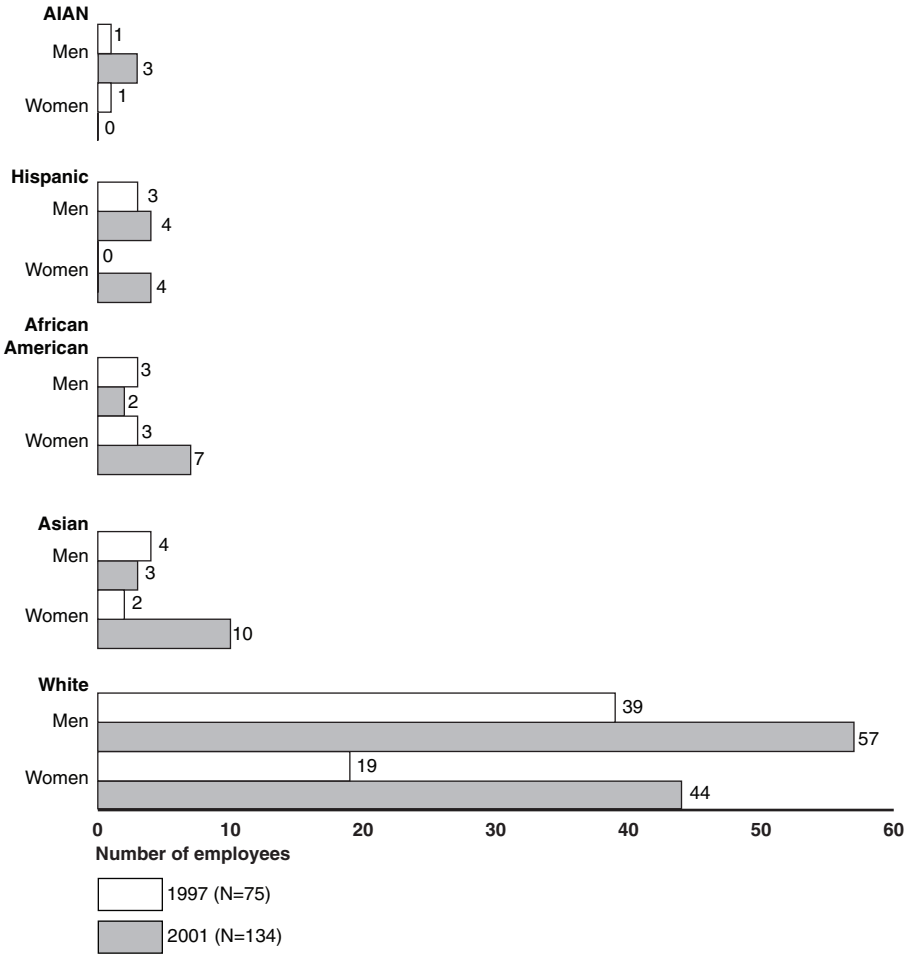
Over the 5-year period from fiscal years 1997 through 2001, with the exception of managers in the Senior Executive Service (SES) and eight wage grade employees, the Region X workforce was in the general schedule (GS) pay plan.[1] The GS pay plan consists of 15 grades. The following sections contain a discussion of Region X employees by EEO group in grade levels GS-13 through 15, GS-9 through 12, GS-5 through 8, and GS-1 through 4.

## Region X Employees in Grades GS-13 through GS-15

A total of 75 employees were in grades GS-13 through GS-15 in fiscal year 1997, and 134 in fiscal year 2001. The largest proportional gain in these grades was among White women, who increased from 19, or about 25 percent of these grades, in fiscal year 1997 to 44, or about 33 percent, in fiscal year 2001. This was followed by a proportional increase in these grades among Asian women, who increased in number from 2, or almost 3 percent of the grades, in fiscal year 1997 to 10, or 7.5 percent, in fiscal year 2001. Proportional increases also occurred among African American women, AIAN men, and Hispanic men. Hispanic women increased from 0 in fiscal year 1997 to 4, or 3 percent of these grades in fiscal year 2001. Figure 4 shows the change in Region X employees in grades GS-13 through GS-15 by EEO group between fiscal years 1997 and 2001.

[1]The then Regional Commissioner, a White man, was the only SES manager in Region X in fiscal year 1997 and most of fiscal year 1998. In fiscal years 1999 through 2001, there were two SES managers in the Region, the then Regional Commissioner, an Hispanic woman, and the then Deputy Commissioner, an African American man.

**Figure 4: Region X Employees in Grades GS-13 through GS-15 in Fiscal Years 1997 and 2001 by EEO Group**



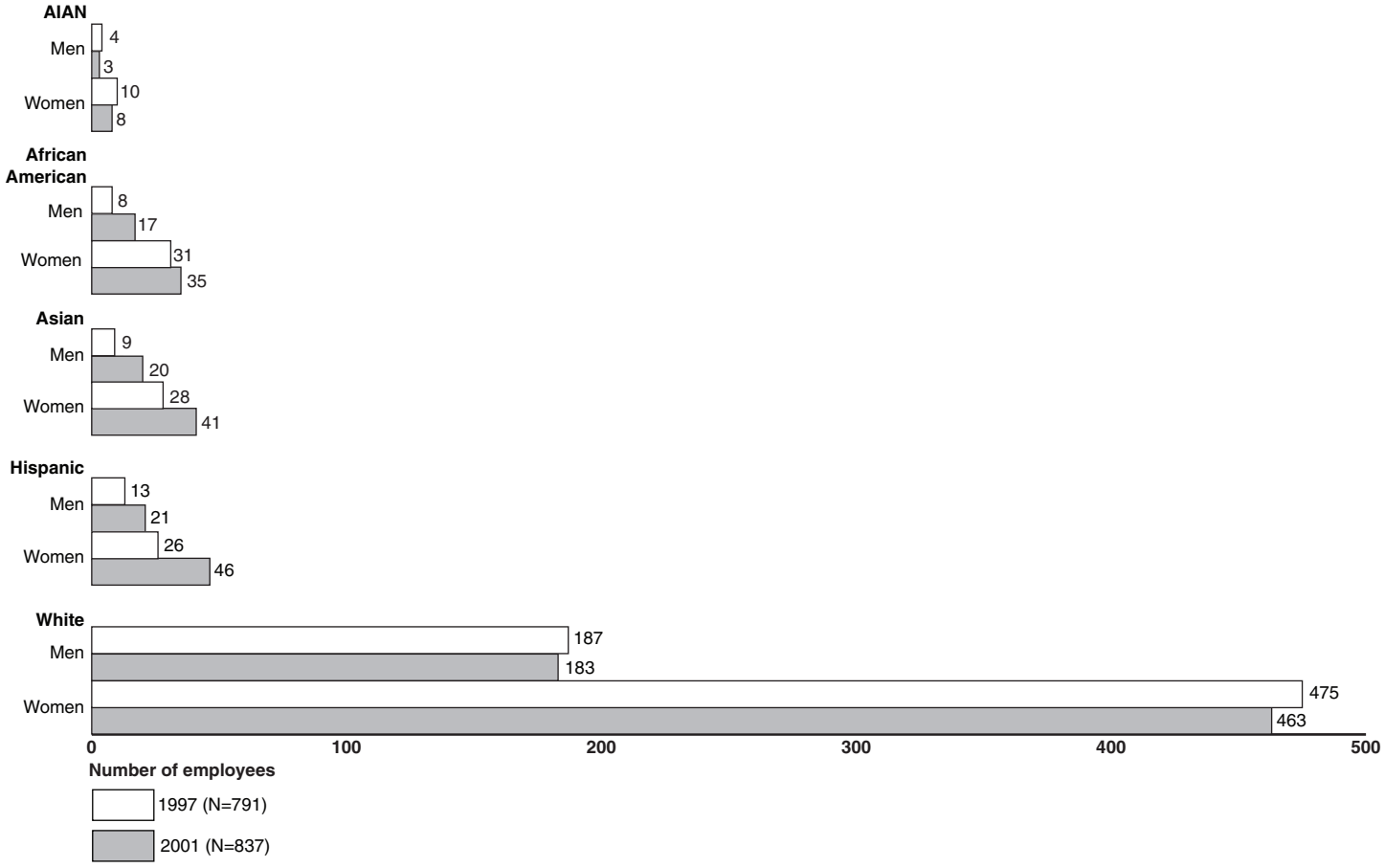

Source: Region X data.

## Region X Employees in Grades GS-9 through GS-12

A total of 791 employees were in grades GS-9 through GS-12 in fiscal year 1997, and 837 in fiscal year 2001. The largest proportional gain in these grades from fiscal year 1997 to 2001 was among Hispanic women, who increased from 26, or 3.3 percent of the grades, in fiscal year 1997 to 46, or 5.5 percent, in fiscal year 2001. This was followed by a proportional increase among Asian women, whose presence in the grades went from 28, or 3.5 percent in fiscal year 1997, to 41, or 4.9 percent, in fiscal year 2001.

Proportional increases also occurred among African American men and women, Asian men, and Hispanic men. Figure 5 shows the distribution of Region X employees in grades GS-9 through GS-12 by EEO group from fiscal year 1997 to fiscal year 2001.

**Figure 5: Region X Employees in Grades GS-9 Through GS-12 in Fiscal Years 1997 and 2001 by EEO Group**



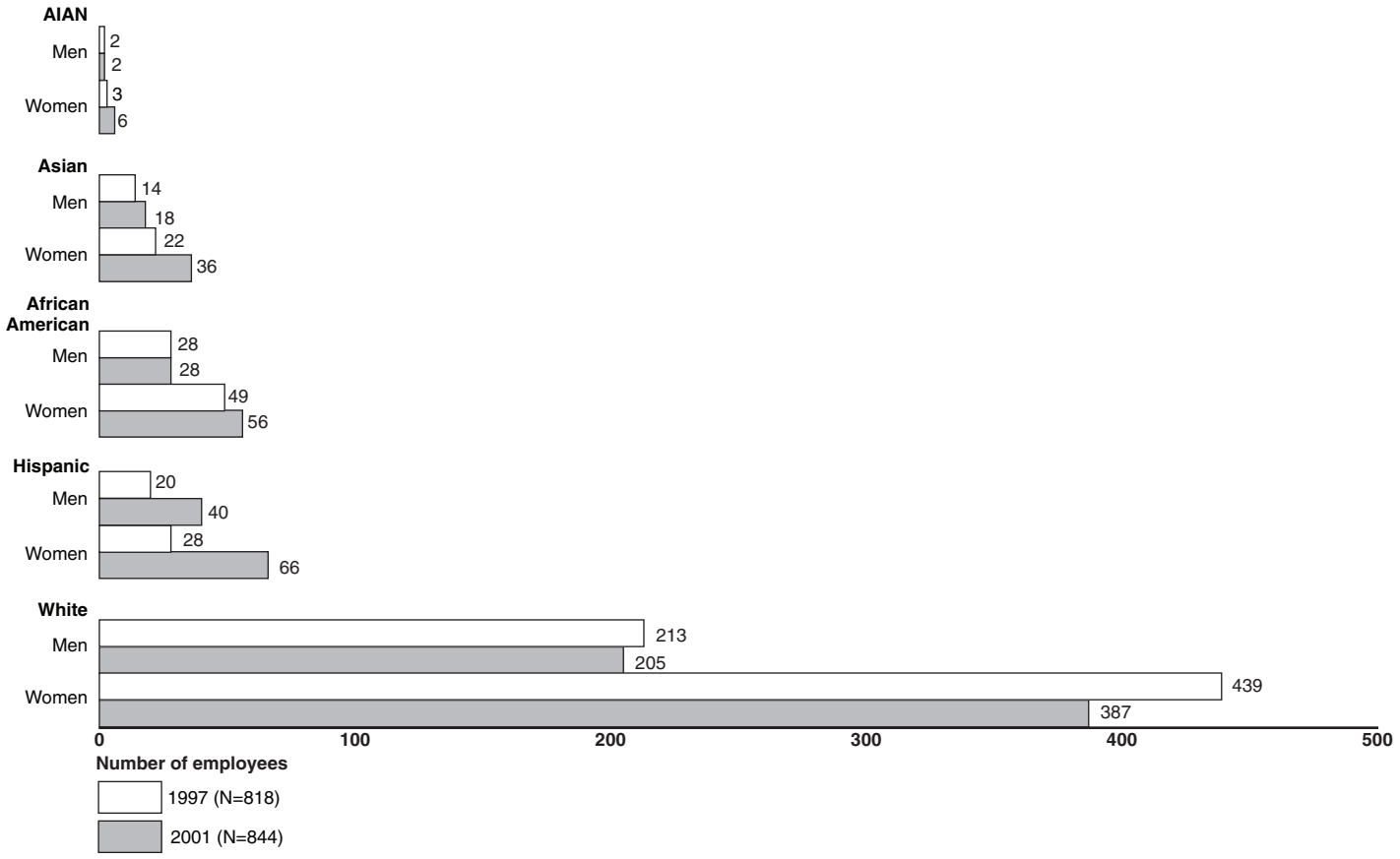

Source: Region X data.

## Region X Employees in Grades GS-5 through GS-8

A total of 818 employees were in grades GS-5 through GS-8 in fiscal year 1997, and 844 in fiscal year 2001. The largest proportional gain in these grades was among Hispanic women, who increased from 28, or 3.4 percent of these grades, in fiscal year 1997 to 66, or 7.8 percent, in fiscal year 2001.

This increase was followed by a proportional increase among Hispanic men, whose presence in these grades doubled from 20, or 2.4 percent in fiscal year 1997, to 40, or 4.7 percent in fiscal year 2001 and Asian women, who increased from 22, or 2.7 percent, to 36, or 4.3 percent. The largest proportional loss occurred among White women, who decreased from 439, or 53.7 percent of the grades in fiscal year 1997, to 387, or 45.9 in fiscal year 2001; this was followed by a loss among White men, who decreased from 213, or 26 percent of the grades in fiscal year 1997, to 205, or 24.3 percent in fiscal year 2001. No change occurred in the number of African American or AIAN men in these grades in fiscal years 1997 and 2001. Figure 6 shows Region X employees in grades GS-5 through GS-8 in fiscal years 1997 and 2001 by EEO group.

**Figure 6: Region X Employees in Grades GS-5 through GS-8 in Fiscal Years 1997 and 2001 by EEO Group**



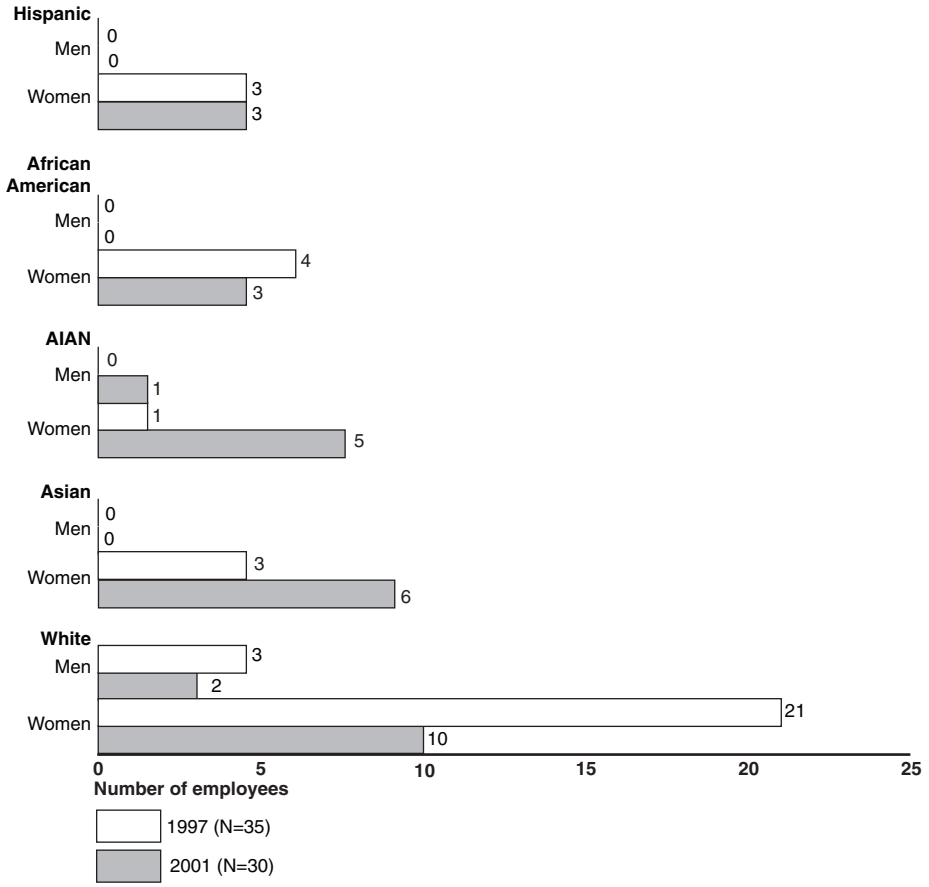

Source: Region X data.

## Region X Employees in Grades GS-1 through GS-4

A total of 35 employees were in grades GS-1 through GS-4 in fiscal year 1997, and 30 in fiscal year 2001. Numbers for both years included students. There were no African American, Asian, or Hispanic men in these grades in fiscal years 1997 and 2001. The largest proportional increase occurred among AIAN women, who increased from 1, or 2.9 percent of these grades in fiscal year 1997, to 5, or 16.7 percent in fiscal year 2001. This increase was followed by a proportional increase in Asian women, who doubled from 3, or 8.6 percent of these grades in fiscal year 1997 to 6, or 20.0 percent in fiscal year 2001. The largest proportional loss was experienced among White women, who decreased from 21, or 60 percent of these

grades in fiscal year 1997 to 10, or 33.3 percent in fiscal year 2001. Figure 7 shows Region X employees in grades GS-1 through GS-4 from fiscal year 1997 through fiscal year 2001 by EEO group.

**Figure 7: Region X Employees in Grades GS-1 through GS-4 in Fiscal Years 1997 and 2001 by EEO Group**




Source: Region X data.

Tables 5 and 6 show the distribution across grade levels by race/ethnicity and gender compared with their representation in the Region's workforce for fiscal years 1997 and 2001, respectively. As shown in the tables, the distribution across grade levels by race/ethnicity or gender varied somewhat but was generally close to the representation of the various racial/ethnic groups or gender makeup of the Region's workforce. The

main differences were higher proportions of men in the GS-13 through GS-15 grade levels and higher representation of African Americans and Hispanics in the GS-5 through GS-8 grades.

**Table 5: Percentage Distribution across Grade Levels by Race/Ethnicity and Gender for Fiscal Year 1997**

| Group | GS-5 through GS-8 | GS-9 through GS-12 | GS-13 through GS-15 | Workforce as of September 30, 1997 |
|---|---|---|---|---|
| African Americans | 9.4 | 4.9 | 8.0 | 7.3 |
| AIANs | 0.6 | 1.8 | 2.7 | 1.6 |
| Asians | 4.4 | 4.7 | 8.0 | 4.8 |
| Hispanics | 5.9 | 4.9 | 4.0 | 5.4 |
| Whites | 79.7 | 83.7 | 77.3 | 81.0 |
| Men | 33.9 | 27.9 | 66.7 | 32.0 |
| Women | 66.1 | 72.1 | 33.3 | 68.0 |

Source: GAO analysis of Region X data.

Note: Because the numbers were so small, we did not include data for grades GS-1 through 4.

**Table 6: Percentage Distribution across Grade Levels by Race/Ethnicity and Gender for Fiscal Year 2001**

| Group | GS-5 through GS-8 | GS-9 through GS-12 | GS-13 through GS-15 | Workforce as of September 30, 2001 |
|---|---|---|---|---|
| African Americans | 10.0 | 6.2 | 6.7 | 8.1 |
| AIANs | 0.9 | 1.3 | 2.2 | 1.5 |
| Asians | 6.4 | 7.3 | 9.7 | 7.3 |
| Hispanics | 12.6 | 8.0 | 6.0 | 10.0 |
| Whites | 70.1 | 77.2 | 75.4 | 73.1 |
| Men | 34.7 | 29.2 | 51.5 | 33.0 |
| Women | 65.3 | 70.8 | 48.5 | 67.0 |

Source: GAO analysis of Region X data.

Note: Because the numbers were so small, we did not include data for grades GS-1 through 4.

# Temporary Promotions, Training, and Awards

Experience, training, and awards are among the elements considered under SSA's merit promotion process. Experience includes such developmental assignments as temporary promotions and outside activities. Training includes both external coursework (e.g., college courses) and internal courses (provided by the agency). Awards include monetary and nonmonetary, or honor, awards. The analysis for the 5-year period showed statistically significant differences among races concerning quality step increases and honor awards. These analyses were not designed to determine whether or not discrimination occurred but could indicate areas warranting further study by management.

The following sections describe by EEO group those who participated in temporary promotion and selected training opportunities or received awards for fiscal years 1997 through 2001.

## Experience: Temporary Promotions

For an employee to receive a temporary promotion to an existing position for which he or she is qualified, the employee must meet (1) established position qualification standards for the position and (2) time-in-grade requirements for promotion. Region X employees can gain experience through two kinds of temporary promotions or lateral assignments. The Job Enhancement Program (JEP) is a regional noncompetitive program that allows employees to voluntarily apply for temporary assignments (both promotions and details to existing positions) as a method of enhancing career development. According to a 2002 SSA report on Region X,[1] JEPs enable regional employees from grades GS-3 up to GS-14 to take a detail for up to 120 days in different positions. Table 7 shows the distribution of those employees selected for JEPs by EEO group over the 5 years.

[1]Social Security Administration, *Human Resources Management Assessment Report for Review Conducted April 29-May 3, 2002 in Region X*, Office of Human Resources (Baltimore: 2002).

**Table 7: Comparison of the Percentage of JEPs to the Average Percentage Representation in the Workforce for Fiscal Years 1997 Through 2001 in Region X by EEO Group**

| EEO group | Total JEPs across 5 years | Percentage of JEPs | Average percentage representation in the workforce |
|---|---|---|---|
| African American men | 21 | 4.0 | 2.5 |
| African American women | 34 | 6.5 | 5.3 |
| AIAN men | 0 | 0 | 0.4 |
| AIAN women | 4 | 0.8 | 1.0 |
| Asian men | 4 | 0.8 | 1.9 |
| Asian women | 14 | 2.7 | 4.0 |
| Hispanic men | 9 | 1.7 | 3.0 |
| Hispanic women | 14 | 2.7 | 5.4 |
| White men | 125 | 24.0 | 24.8 |
| White women | 295 | 56.7 | 51.7 |
| **Total** | **520** | **99.9[a]** | **100.0** |

Source: GAO analysis of Region X data.

Note: JEPs include both temporary promotions and details to lateral positions.

[a]Total does not sum to 100 percent due to rounding.

According to a Region X official, temporary promotions other than those under a JEP can be made noncompetitively for up to 120 days.[2] For promotions greater than 120 days, a vacancy announcement is required for all positions. Some vacancies are announced as not-to-exceed promotions for periods ranging from 1 to 2 years, with a 5-year maximum allowable. Such announcements may state, "this position may be extended or become permanent without further competition." Table 8 compares the percentage of temporary promotions to the average percentage representation of each EEO Group in the workforce for fiscal years 1997 through 2001 in Region X.

[2]If a temporary promotion that was not expected to exceed 120 days was originally made on a noncompetitive basis, any extension beyond 120 days must be made under a competitive procedure. Temporary promotions can be made for either bargaining or nonbargaining unit positions.

**Table 8: Comparison of the Percentage of Temporary Promotions to the Average Percentage Representation in the Region X Workforce for Fiscal Years 1997 through 2001 by EEO Group**

| EEO group | Total temporary promotions across 5 years | Percentage of temporary promotions | Average percentage representation in the workforce |
|---|---|---|---|
| African American men | 4 | 4.3 | 2.5 |
| African American women | 9 | 9.7 | 5.3 |
| AIAN men | 0 | 0.0 | 0.4 |
| AIAN women | 0 | 0.0 | 1.0 |
| Asian men | 2 | 2.2 | 1.9 |
| Asian women | 3 | 3.2 | 4.0 |
| Hispanic men | 4 | 4.3 | 3.0 |
| Hispanic women | 1 | 1.1 | 5.4 |
| White men | 19 | 20.4 | 24.8 |
| White women | 51 | 54.8 | 51.7 |
| **Total** | **93** | **100.0** | **100.0** |

Source: GAO analysis of Region X data.

## Training

When asked for data on training opportunities in Region X for fiscal years 1997 through 2001, the Region provided data on employees who participated in the Government Employees Training Act (GETA) program (for fiscal years 1998 through 2001). Under the GETA program, SSA pays for tuition and book expenses for an employee who enrolls in an approved course taken at a university, college, or other recognized educational institution. Courses covered included American Sign Language; various languages (e.g., Spanish, French, and Russian); writing; and Windows-based computing (e.g., Excel, PowerPoint). Table 9 compares the percentage of individuals receiving GETA training to the average percentage representation by EEO group in the Region X workforce for fiscal years 1998 through 2001.

**Table 9: Comparison of the Percentage of GETA Training to the Average Percentage Representation by EEO Group in the Region X Workforce for Fiscal Years 1998 through 2001**

| EEO group | Total GETA training across 4 years | Percentage of GETA training | Average percentage representation in the workforce |
|---|---|---|---|
| African American men | 8 | 1.8 | 2.5 |
| African American women | 35 | 7.9 | 5.3 |
| AIAN men | 0 | 0.0 | 0.4 |
| AIAN women | 4 | 1.0 | 1.0 |
| Asian men | 8 | 1.8 | 1.9 |
| Asian women | 11 | 2.5 | 4.0 |
| Hispanic men | 12 | 2.7 | 3.0 |
| Hispanic women | 30 | 6.8 | 5.4 |
| White men | 69 | 15.6 | 24.8 |
| White women | 265 | 60.0 | 51.7 |
| **Total** | **442** | **100.1[a]** | **100.0** |

Source: GAO analysis of Region X data.

[a]Total does not sum to 100 percent due to rounding.

## Awards

SSA's awards are divided into monetary and honor awards. According to Region X, monetary awards consist of Recognition of Contribution awards, which recognize employees who have maintained high-quality performance and may be either a one-time performance award paid as a lump sum or a quality step increase, which permanently increases pay; Commendable Act or Service awards, which are granted to an employee—as an individual or as a member of a group—to recognize major accomplishments or contributions that have promoted the mission of the organization; and On-the-Spot awards, which are special act or service awards that recognize employees for noteworthy accomplishments or contributions on individual tasks or assignments.[3] We found for the 5-year period statistically significant differences among races concerning quality step increases and honor awards. Table 10 compares the percentage of

[3]For the 5-year period on which we focused, Region X gave group special act awards only in fiscal year 2001.

monetary awards to the average percentage representation by EEO group in the workforce for the 5-year period.[4]

**Table 10: Comparison of the Percentage of Monetary Awards to the Average Percentage Representation by EEO Group in the Region X Workforce for Fiscal Years 1997 through 2001**

| EEO group | Total monetary awards for 5 years | Percentage of monetary awards | Average percentage representation in the workforce |
|---|---|---|---|
| African American men | 173 | 2.0 | 2.5 |
| African American women | 443 | 5.0 | 5.3 |
| AIAN men | 27 | 0.3 | 0.4 |
| AIAN women | 96 | 1.1 | 1.0 |
| Asian men | 174 | 2.0 | 1.9 |
| Asian women | 296 | 3.3 | 4.0 |
| Hispanic men | 229 | 2.6 | 3.0 |
| Hispanic women | 436 | 4.9 | 5.4 |
| White men | 2,159 | 24.4 | 24.8 |
| White women | 4,823 | 54.5 | 51.7 |
| **Total** | **8,856** | **100.1[a]** | **100.0** |

Source: GAO analysis of Region X data.

[a]Total does not sum to 100 percent due to rounding.

According to the Region X *Affirmative Employment Plan* for fiscal year 1997, the region conducted an analysis of award types and recipient EEO profiles in fiscal years 1996 and 1997. According to this report, in fiscal year 1996, only Whites received quality step increases; the Region began addressing this disparity in fiscal year 1997. Our statistical analysis for the 5-year period showed that Whites were significantly more likely to receive quality step increases than African Americans, Hispanics, and AIANs; Asians were significantly more likely to receive quality step increases than Hispanics and AIANs; and African Americans were significantly more likely to receive quality step increases than Hispanics. There were no statistically significant differences between men and women. Because the

[4]Because more monetary awards are given than there are people in an EEO group in the Region (i.e., some individuals get more than one monetary award), we could not test for statistical significance of monetary awards.

Region acknowledged a disparity among racial/ethnic groups concerning quality step increases and began trying to address this disparity in fiscal year 1997, we also did a statistical analysis of quality step increases for fiscal year 2001 alone. By fiscal year 2001, only two statistically significant differences remained—women were significantly more likely to receive quality step increases than men and Hispanics were significantly less likely to receive quality step increases than African Americans or Whites—which shows substantial progress. Table 11 compares the percentage of quality step increases to the average percentage representation by EEO group in the workforce for the 5-year period.

**Table 11: Comparison of the Percentage of Quality Step Increases to the Average Percentage Representation by EEO Group in the Region X Workforce for Fiscal Years 1997 through 2001**

| EEO group | Total quality step increases for 5 years | Percentage of quality step increases | Average percentage representation in the workforce |
|---|---|---|---|
| African American men | 8 | 1.6 | 2.5 |
| African American women | 22 | 4.4 | 5.3 |
| AIAN men | 0 | 0.0 | 0.4 |
| AIAN women | 2 | 0.4 | 1.0 |
| Asian men | 11 | 2.2 | 1.9 |
| Asian women | 22 | 4.4 | 4.0 |
| Hispanic men | 3 | 0.6 | 3.0 |
| Hispanic women | 12 | 2.4 | 5.4 |
| White men | 130 | 25.7 | 24.8 |
| White women | 295 | 58.4 | 51.7 |
| **Total** | **505** | **100.1[a]** | **100.0** |

Source: GAO analysis of Region X data.

[a]Total does not sum to 100 percent due to rounding.

According to Region X, honor awards consist of the Commissioner's Citation, which is SSA's highest honorary award that is granted to individuals who have made a superior contribution to SSA; the Commissioner's Team Award, which recognizes groups of employees for their team approach in carrying out or supporting SSA's mission of providing quality service in administering national Social Security programs; and the Deputy Commissioner's Citation and the Regional

Commissioner's Citation, both of which recognize SSA employees for outstanding achievements to SSA. Our analysis showed that for the 5-year period, Asians were significantly more likely to receive honor awards than Whites, African Americans, and Hispanics. Also, Native Americans were significantly more likely to receive honor awards than Hispanics. Table 12 compares the percentage of honor awards to the average percentage representation by EEO group in the workforce for the 5-year period.

**Table 12: Comparison of the Percentage of Honor Awards to the Average Percentage Representation by EEO Group in the Region X Workforce for Fiscal Years 1997 through 2001**

| EEO group | Total honor awards for 5 years | Percentage of honor awards | Average percentage representation in the workforce |
|---|---|---|---|
| African American men | 2 | 1.3 | 2.5 |
| African American women | 5 | 3.4 | 5.3 |
| AIAN men | 2 | 1.3 | 0.4 |
| AIAN women | 2 | 1.3 | 1.0 |
| Asian men | 4 | 2.7 | 1.9 |
| Asian women | 11 | 7.4 | 4.0 |
| Hispanic men | 4 | 2.7 | 3.0 |
| Hispanic women | 2 | 1.3 | 5.4 |
| White men | 31 | 20.8 | 24.8 |
| White women | 86 | 57.7 | 51.7 |
| **Total** | **149** | **99.9[a]** | **100.0** |

Source: GAO analysis of Region X data.

[a]Total does not sum to 100 percent due to rounding.

# Region X Adverse Actions, Appeals of Adverse Actions, EEO Complaints, and Grievances

The following sections discuss the adverse actions taken by Region X,[1] appeals of such actions filed with the Merit Systems Protection Board (MSPB), precomplaint EEO counseling sought, formal EEO complaints filed, and grievances filed by Region X employees in fiscal years 1997 through 2001.

## Adverse Actions

Region X took 142 adverse actions over the 5-year period.[2] For nonprobationary employees, the common pattern of progressive discipline is reprimand, short-term suspension (a suspension of 14 days or less), long-term suspension (a suspension of 15 days or more), and removal. Probationary employees face terminations.[3] Of the 142 actions, 65, or about 46 percent, were for individuals who entered computer databases without authorization.[4]

Our statistical analysis showed no significant differences among EEO groups for written reprimands. However, we found statistically significant differences among races for short-term suspensions and between the sexes concerning removals. For short-term suspensions, AIANs and African Americans were significantly more likely to receive suspensions of 14 days or less than Whites. Men were significantly more likely to experience a removal or termination than women. About 14 percent of those who had adverse actions taken against them had disabilities compared with the representation in the Region's workforce of about 11 percent. Table 13 shows the types of adverse actions by EEO group.

[1]Eight actions were for performance, not conduct.

[2]Because numbers of adverse actions were small in each of the 5 years, we combined all actions for the 5-year period.

[3]The Region stated that any of these steps may be bypassed if management determines by the severe nature of the behavior that a lesser form of discipline would not be appropriate.

[4]Other offenses each accounted for less than 10 percent of all actions and included failure to adhere to leave rules or being away without leave and failure to follow standards of conduct.

**Table 13: Types of Adverse Actions in Region X for Fiscal Years 1997 through 2001 by EEO Group**

| EEO group | Written reprimand | Suspension | | Involuntary separation[a] | | Demotion | Total actions | Percent |
|---|---|---|---|---|---|---|---|---|
| | | Short-term | Long-term | Termination | Removal | | | |
| African American men | 0 | 5 | 1 | 1 | 3 | 0 | 10 | 7.0% |
| African American women | 4 | 7 | 1 | 1 | 1 | 0 | 14 | 9.9% |
| AIAN men | 0 | 0 | 2 | 1 | 0 | 0 | 3 | 2.1% |
| AIAN women | 0 | 4 | 0 | 0 | 0 | 0 | 4 | 2.8% |
| Asian men | 1 | 2 | 0 | 0 | 1 | 0 | 4 | 2.8% |
| Asian women | 0 | 3 | 1 | 0 | 1 | 0 | 5 | 3.5% |
| Hispanic men | 1 | 4 | 0 | 1 | 1 | 1 | 8 | 5.6% |
| Hispanic women | 3 | 4 | 0 | 3 | 2 | 0 | 12 | 8.5% |
| White men | 9 | 12 | 2 | 9 | 5 | 0 | 37 | 26.1% |
| White women | 10 | 21 | 5 | 5 | 4 | 0 | 45 | 31.7% |
| **Total** | **28** | **62** | **12** | **21** | **18** | **1** | **142** | **100.0** |

Source: GAO analysis of Region X data.

[a]When a probationary employee is discharged or a temporary employee is separated because of conduct or performance, the action is characterized as a termination. When a nonprobationary employee is discharged, the action is characterized as a removal. Eight other individuals resigned when faced with termination or removal—one African American woman, one Hispanic man, three White men, and three White women.

## Adverse Actions Appealed to MSPB

Employees can appeal adverse actions to MSPB.[5] Appealable actions include removal, reduction in grade or pay, or suspension of 15 days or more. Under the negotiated national agreement between SSA and the American Federation of Government Employees (AFGE), employees may elect to appeal such actions to MSPB or through the negotiated grievance procedure but not both.

Of the 142 adverse actions Region X took from fiscal year 1997 through fiscal year 2001, 15 employee appeals were filed with MSPB. Of these 15 appeals, SSA settled 9; MSPB found that SSA's action was appropriate in 3 cases; MSPB dismissed 2 appeals; and 1 is still pending. Table 14 shows the

[5]MSPB's mission is to ensure that federal employees are protected against abuses by executive branch agency management, that agencies make employment decisions according to merit systems principles, and that federal merit systems are kept free from prohibited personnel practices.

number of Region X employee appeals to MSPB by EEO group and their disposition for the 5-year period.

**Table 14: Adverse Actions in Region X for Fiscal Years 1997 through 2001 That Were Appealed to MSPB and Their Disposition by EEO Group**

| | | Disposition | | | |
|---|---|---|---|---|---|
| **EEO group** | **Appeals filed** | **Settled** | **Affirmed[a]** | **Dismissed** | **Pending** |
| African American men | 2 | 2 | | | |
| African American women | 0 | | | | |
| AIAN men | 1 | | 1 | | |
| AIAN women | 0 | | | | |
| Asian men | 0 | | | | |
| Asian women | 2 | | 2 | | |
| Hispanic men | 0 | | | | |
| Hispanic women | 2 | 2 | | | |
| White men | 3 | 2 | | 1 | |
| White women | 5 | 3 | | 1 | 1 |
| **Total** | **15** | **9** | **3** | **2** | **1** |

Source: GAO analysis of Region X data.

Note 1: Settlements include reduced, rescinded, and mitigated agency actions.

Note 2: One employee may have filed more than one appeal.

[a]Affirmed means that an agency's action was found to be appropriate.

When a federal employee alleges that a removal, reduction in grade or pay, or suspension of 15 or more days is discriminatory, the employee may file a formal EEO complaint, and because the complaint can be appealed either to MSPB or EEOC, the complaint is a "mixed case." Under EEOC regulations, whatever action an employee files first is considered an election to proceed in that forum. For example, filing a formal EEO complaint constitutes an election to proceed in the EEO forum, although contacting an EEO counselor or receiving EEO counseling does not constitute such an election. For Region X employees, who are covered by a collective bargaining agreement that permits claims of discrimination to be raised in a negotiated grievance procedure, they similarly may elect to file an EEO complaint or a grievance. Before filing a grievance that alleges discrimination, the employee may first discuss the allegation with an EEO counselor.

## Region X EEO Precomplaint Counseling and Formal EEO Complaints Filed

SSA is required to prepare and submit an annual report to EEOC that includes the number of individuals counseled, monetary and nonmonetary settlements made during the precomplaint counseling phase, the number of complaints filed during a reporting period, the bases and issues alleged in all complaints filed during a reporting period, and the number and amounts of monetary and nonmonetary settlements of closed complaints.

### Precomplaint Counseling

We requested data for fiscal years 1997 through 2001 on the number of individuals who approached the Region's Civil Rights and Equal Opportunity office to ask for counseling because they felt that they had experienced discrimination. The Region provided data for only the last 2 years because, according to a Region X official, verifiable data were only available for fiscal years 2000 and 2001.[6] Table 15 shows the incidents of counseling requests for fiscal years 2000 and 2001.

**Table 15: Requests for Counseling in Region X and Their Disposition in Fiscal Years 2000 and 2001**

| | | Disposition | | | |
|---|---|---|---|---|---|
| Fiscal year | Requests for counseling[a] | Withdrawn | Settled | Not pursued | Closed[b] |
| 2000 | 38 | 6 | 2 | 2 | 28 |
| 2001 | 35 | 0 | 1 | 11 | 23 |
| **Total** | **73** | **6** | **3** | **13** | **51** |

Source: GAO analysis of Region X data.

[a]Does not necessarily equate to the number of individuals seeking counseling, because one individual may account for more than one request for counseling in each year.

[b]Closed includes matters that were resolved with an informal settlement agreement, resolved without an informal settlement agreement, and unresolved.

Under EEOC regulations, before filing an EEO complaint, in order to try to informally resolve the matter, individuals who believe they have been discriminated against on the basis of race, color, religion, sex (including equal pay), national origin, age (i.e., 40 or over), or handicapping condition

[6]SSA changed its national reporting mechanism from manual to electronic reporting, and beginning in fiscal year 2000, SSA initiated a national database for tracking EEO counseling activity.

or who have suffered retaliation or reprisal must consult an EEO counselor. Table 16 provides the bases cited in fiscal years 2000 and 2001—the 2 years for which Region X provided data on incidents of EEO counseling.

**Table 16: Bases Cited in EEO Counseling for Region X in Fiscal Years 2000 and 2001**

| | Fiscal years | | |
|---|---|---|---|
| **Bases** | **2000** | **2001** | **Total** |
| Race | 14 | 7 | 21 |
| Color | 0 | 0 | 0 |
| Religion | 0 | 0 | 0 |
| Sex | 7 | 12 | 19 |
| National origin | 1 | 0 | 1 |
| Age | 13 | 7 | 20 |
| Disability | 17 | 16 | 33 |
| Retaliation/reprisal | 12 | 5 | 17 |
| Parental status[a] | 0 | 1 | 1 |
| Unstated | 1 | 0 | 1 |
| **Total** | **65** | **48** | **113** |

Source: GAO analysis of Region X data.

Note: One request for counseling may contain one or more bases.

[a]This basis is not covered by the EEOC regulations but is prohibited by Executive Order 13152 (May 2, 2000).

Table 17 shows the issues cited by individuals who requested EEO counseling in fiscal years 2000 and 2001.

**Table 17: Issues Cited by Individuals Requesting Counseling in Region X in Fiscal Years 2000 and 2001**

| Issues | Number of requests for counseling citing issue |
|---|---|
| Assignment of duties | 3 |
| Suspension | 3 |
| Termination | 4 |
| Disparate treatment | 3 |
| Duty hours | 3 |
| Evaluation/appraisal | 2 |
| Harassment (nonsexual) | 18 |
| Harassment (sexual) | 2 |
| Hostile work environment | 2 |
| Promotion/nonselection | 21 |
| Retirement (involuntary) | 2 |
| Time and attendance/leave | 5 |
| Training | 3 |
| Reasonable accommodation | 7 |
| Working conditions | 7 |
| Other | 10 |
| **Total** | **95** |

Source: GAO analysis of Region X data.

Note: One request for counseling may contain one or more issues.

Employees requesting counseling and Region X entered into three informal settlement agreements during counseling requested in fiscal years 2000 and 2001. The informal settlements agreed to included a lump sum payment of $5,000, a letter of recommendation, and a temporary promotion under a JEP.

## Formal EEO Complaints Filed

If employees cannot resolve to their satisfaction the matters for which they sought counseling, they file formal complaints with the Office of Civil Rights and Equal Opportunity in SSA headquarters in Baltimore. Table 18 shows the number of formal complaints filed by Region X employees for fiscal years 1997 through 2001 and the disposition of those complaints.

**Table 18: Formal EEO Complaints Filed by Region X Employees for Fiscal Years 1997 through 2001 and Their Disposition**

| | | Disposition | | | | | | |
|---|---|---|---|---|---|---|---|---|
| | | | | | Finding of discrimination | | | |
| Fiscal year | Filed[a] | Withdrawn | Settled | Dismissed | No | Yes | Total closed | Pending |
| 1997 | 10 | 1 | 6 | 1 | 1 | 1[b] | 10 | 0 |
| 1998 | 26 | 4 | 9 | 7 | 3 | 0 | 23 | 3 |
| 1999 | 23 | 3 | 10 | 4 | 4 | 0 | 21 | 2 |
| 2000 | 16 | 4 | 5 | 4 | 1 | 0 | 14 | 2 |
| 2001 | 14 | 0 | 2 | 3 | 0 | 0 | 5 | 9 |
| **Total** | **89** | **12** | **32** | **19** | **9** | **1** | **73** | **16** |

Source: GAO analysis of Region X data.

Note: For settlements, a global settlement can address more than one filed EEO discrimination complaint, MSPB appeal, or union grievance and may account for more than one individual settlement.

[a]Because one individual may have filed more than one EEO complaint, the number filed is not necessarily equal to the number of complainants.

[b]The EEOC administrative judge hearing the case had a finding of discrimination and offered partial relief, which SSA and the complainant are appealing.

Table 19 shows by fiscal year the bases for the 89 EEO complaints filed by Region X employees in fiscal years 1997 through 2001.

**Table 19: Bases for EEO Complaints Filed in Region X in Fiscal Years 1997 through 2001**

| | Fiscal years | | | | | |
|---|---|---|---|---|---|---|
| **Bases** | **1997** | **1998** | **1999** | **2000** | **2001** | **Total** |
| **Race** | **7** | **12** | **10** | **8** | **5** | **42** |
| African American | 5 | 4 | 8 | 4 | 2 | **23** |
| Asian | 1 | 0 | 0 | 1 | 0 | **2** |
| Hispanic | 1 | 1 | 0 | 0 | 2 | **4** |
| Other | 0 | 1 | 0 | 0 | 0 | **1** |
| White | 0 | 6 | 2 | 3 | 1 | **12** |
| **Color** | **0** | **0** | **0** | **0** | **1** | **1** |
| **Religion** | **0** | **3** | **0** | **0** | **1** | **4** |
| **Sex** | 4 | 25 | 14 | 7 | 3 | **53** |
| Women | 3 | 14 | 5 | 1 | 2 | **25** |
| Men | 1 | 11 | 9 | 6 | 1 | **28** |
| **National origin** | **2** | **3** | **7** | **1** | **1** | **14** |
| **Age** | **0** | **5** | **7** | **7** | **0** | **19** |
| **Handicapping condition** | **2** | **7** | **11** | **9** | **8** | **37** |
| Mental | 1 | 0 | 4 | 3 | 3 | **11** |
| Physical | 1 | 7 | 7 | 6 | 5 | **26** |
| **Retaliation/reprisal** | **4** | **11** | **14** | **8** | **2** | **39** |
| **Total** | **19** | **66** | **63** | **40** | **21** | **209** |

Source: GAO analysis of Region X data.

Note: Because one individual may have filed more than one EEO complaint, the number filed is not necessarily equal to the number of complainants, and one EEO complaint may contain one or more bases.

Table 20 shows the number of issues cited in the 89 EEO complaints filed by Region X employees during fiscal years 1997 through 2001.

**Table 20: Issues Cited in Complaints Filed for Fiscal Years 1997 through 2001**

| Issues | Number of issues cited in complaints filed |
|---|---|
| Assignment of duties | 5 |
| Awards | 8 |
| Reprimand | 7 |
| Suspension | 8 |
| Termination | 4 |
| Duty hours | 2 |
| Evaluation/appraisal | 2 |
| Harassment (nonsexual) | 30 |
| Harassment (sexual) | 2 |
| Hostile work environment | 4 |
| Pay including overtime | 3 |
| Promotion/nonselection | 29 |
| Reasonable accommodation | 16 |
| Retirement (involuntary) | 1 |
| Time & attendance | 11 |
| Training | 3 |
| Working conditions | 19 |
| Other | 4 |
| **Total** | **158** |

Source: GAO analysis of Region X data.

Note: One filed complaint may contain one or more issues.

As shown in table 19, the top four bases for which Region X employees filed EEO complaints were sex, race, retaliation (i.e., for filing a complaint or participating in an investigation of a complaint), and handicapping condition. Of those bases that involved handicapping condition, six also claimed that they were denied reasonable accommodation. Reasonable accommodation includes any modification or adjustment to a job application process, the work environment, or the way a job is customarily performed that enables a qualified applicant with a disability to compete equally or a qualified person with a disability to perform the essential

functions of the position or enjoy equal benefits and privileges of employment.[7]

As shown in table 20, the top four issues cited in the filed complaints were harassment (nonsexual), nonselection for promotion, working conditions, and reasonable accommodation.

The reasonable accommodation process begins when an individual makes a request for the accommodation, followed by a request in writing (completion of a form) or in electronic format. Among the items that can be approved of as an accommodation at the regional level are requests of office equipment costing less than $100, a change in schedule, and requests for reassignment. For office equipment or assistive technologies (e.g., computer hardware or software that enable people with disabilities to perform the essential functions of their job) costing $100 or more, assistive technologies training, and sign language interpreter services, a request must be forwarded to the Disability Services Team in the Office of Civil Rights and Equal Opportunity in SSA headquarters in Baltimore. Table 21 shows the number of accommodations requested by Region X employees for fiscal year 1997 through 2001 and their disposition.

[7]The accommodation must be job related and not items already required for personal use (e.g., hearing aids, prosthetic devices, wheelchairs, and transportation to work). Reasonable accommodation is determined on a case-by-case basis, taking into consideration the individual's specific disability and existing limitations to the performance of a job function, the essential duties of the job, the work environment, and the feasibility of the proposed accommodation.

**Table 21: Reasonable Accommodations Requested by Region X Employees for Fiscal Years 1997 through 2001 by EEO Group**

| | | Accommodation | | | | | Disability Services Team | | |
|---|---|---|---|---|---|---|---|---|---|
| EEO group | Requested | Withdrawn | Approved | Denied | Alternate | Forwarded | Approved | Denied | Alternate |
| African American men | 6 | 0 | 0 | 2 | 1 | 3 | 3 | 0 | 0 |
| African American women | 7 | 0 | 4 | 3 | 0 | 1 | 1 | 0 | 0 |
| Hispanic women | 4 | 1 | 1 | 0 | 0 | 3 | 2 | 1 | 0 |
| White men | 23 | 0 | 9 | 6 | 4 | 4 | 2 | 0 | 1 |
| White women | 45 | 5 | 18 | 4 | 4 | 19 | 7 | 10 | 0 |
| **Total** | **85** | **6** | **32** | **15** | **9** | **30[a]** | **15** | **11** | **1** |

Source: GAO analysis of Region X data.

Note: Multiple categories may be recorded for a single request for accommodation. For example, in one case, an accommodation may be denied. In another case, a request may be forwarded to the Disability Services Team, which may deny the requested accommodation and approve an alternative accommodation. We counted each category of accommodation; therefore, one person may have multiple results to his or her request.

[a]For three requested accommodations that were forwarded to the Disability Services Team, there is no record of the Disability Services Team's decision.

## Grievances

Under the negotiated national agreement between SSA and the AFGE, individual employees or their union representatives may file Section 9 grievances on such matters as adverse actions or EEO issues.[8] At any time after the Section 9 grievance is filed, up to the time the grievance decision is issued, the grievance may be withdrawn. If a management official finds that the grievance has merit, or can agree with the employee/representative on some or all of the points at issue, he or she may grant full or partial relief, giving the employee all or a portion of what was requested.[9] If the management official does not find a violation of the negotiated agreement or workplace policy or practice, or cannot agree to

[8]Such grievances are filed in accordance with Article 24, Section 9 of the SSA/AFGE National Agreement. In addition, the union as an institution may file grievances against a particular level of management in accordance with Article 24, Section 10 of the SSA/AFGE National Agreement; such grievances are not discussed in this report.

[9]Occasionally, management may offer something other than what was requested, which satisfies the employee/representative, and the grievance is resolved.

the requested relief, the grievance is denied. Unresolved Section 9 grievances may be advanced to arbitration by the union. Multiple categories may be recorded for a single grievance. For example, in one case, a grievance may be denied, and the grievant takes no additional action. In another case, a grievance may be denied, and the grievant/representative invokes arbitration, and then does or does not pursue the case. We counted each category of relief or arbitration for each grievance. Table 22 shows the Section 9 grievances filed in Region X for fiscal years 1997 through 2001.

**Table 22: Section 9 Grievances Filed in Region X by EEO Group for Fiscal Years 1997 through 2001**

| | | | Relief | | | Arbitration | | | |
|---|---|---|---|---|---|---|---|---|---|
| EEO group | Grievances filed[a] | Withdrawn[b] | Granted | Partial | Denied | Invoked | Not pursued | Awarded | Settlement reached |
| African American men | 16 | 2 | 2 | 0 | 13 | 8 | 1 | 3 | 3 |
| African American women | 24 | 8 | 7 | 4 | 6 | 2 | 1 | 0 | 0 |
| AIAN men | 2 | 1 | 0 | 0 | 1 | 1 | 1 | 0 | 0 |
| AIAN women | 3 | 0 | 0 | 1 | 2 | 0 | 0 | 0 | 0 |
| Asian men | 1 | 0 | 0 | 0 | 1 | 0 | 0 | 0 | 0 |
| Asian women | 5 | 0 | 1 | 0 | 4 | 0 | 0 | 0 | 0 |
| Hispanic men | 6 | 2 | 2 | 0 | 3 | 3 | 1 | 0 | 1 |
| Hispanic women | 12 | 3 | 1 | 1 | 7 | 3 | 2 | 0 | 1 |
| White men | 57 | 17 | 7 | 6 | 28 | 5 | 2 | 1 | 1 |
| White women | 134 | 20 | 36 | 11 | 66 | 10 | 8 | 0 | 0 |
| **Total** | **260** | **53** | **56** | **23** | **131** | **32** | **16** | **4** | **6** |

Source: GAO analysis of Region X data.

Note 1: One individual may have filed more than one grievance.

Note 2: Multiple categories may be recorded for a single grievance. For example, in one case, a grievance may be denied, and the grievant takes no additional action. In another case, a grievance may be denied, and the grievant/representative invokes arbitration, and then does or does not pursue the case. We counted each category of relief or arbitration, when appropriate, for each grievance; therefore, one person may have multiple categories to his or her grievance.

[a]Two grievances were found not grievable, so they were only counted as filed.

[b]Withdrawn includes five grievances that were withdrawn after arbitration was invoked.

## Settlements

Twenty-one settlement agreements were signed by SSA and the individuals who appealed an adverse action, filed an EEO complaint, or filed a

grievance. These agreements could consist of monetary or nonmonetary terms or both, and five consisted entirely of nonmonetary terms.[10] A global settlement addressed more than one filed EEO discrimination complaint, MSPB appeal, or union grievance; therefore, the number of complaints settled is higher than the number of settlement agreements.[11] Table 23 contains information on settlement agreements for appealed adverse actions, filed EEO complaints, and a mixed case that includes a union grievance for fiscal years 1997 through 2001.

**Table 23: Number of Settlement Agreements and Amounts Awarded on Settlements for MSPB Appeals, EEO Complaints, and a Mixed Case Filed in Region X in Fiscal Years 1997 through 2001**

| Fiscal year settled | Number of settlement agreements[a] | Amount |
|---|---|---|
| 1999 | 2 | $17,820.00 |
| 2000 | 4 | 11,163.91 |
| 2001 | 2 | 8,337.86 |
| 2002 | 11 | 143,831.66 |
| 2003 | 2 | 20,000 |
| **Total** | **21** | **$201,153.43** |

Source: GAO analysis of Region X data.

Note: A global settlement can address more than one filed EEO discrimination complaint, MSPB appeal, or union grievance; therefore, the number of complaints settled may be higher than the number of settlement agreements.

[a]The number of settlement agreements includes five that had only nonmonetary terms. Settlement agreements do not constitute an admission of any wrongdoing, harassment, discrimination, and/or violation of law, statute, or regulation.

[10]The terms of the five nonmonetary settlements agreed to for complaints filed in fiscal years 1997 through 2001 included rescinded terminations, removals, or suspensions; restoration or credit for sick and annual leave; lateral reassignment or promotion; and a handwritten apology.

[11]For EEO complaints alone, 32 complaints filed in fiscal years 1997 through 2001 were settled (as shown in table 18).

# Selected Results of GAO's Survey of Region X Employees on Equal Employment Opportunity

In our survey of Region X employees about EEO, we asked all Region X employees for their views (1) on the operations of Region X's Civil Rights and Equal Opportunity (CREO) office and (2) about their experiences with situations involving EEO in Region X within the past 2 years. Because we received more than a 70 percent response rate (75 percent), our results are representative of the views and attitudes of Region X employees.[1]

## Operations of Region X's CREO

Almost 60 percent of respondents were either generally or very familiar with the responsibilities of the CREO office before reading our description of those responsibilities. In addition, most Region X employees are familiar with the EEO process. About two-thirds of respondents reported having received or having seen within the last 2 years written materials about the federal government's EEO regulations and written materials describing how to contact regional EEO counselors.

When asked about their willingness, if they believed that they had been discriminated against, to either contact Region X's CREO to participate in counseling or to contact the Office of Civil Rights and Equal Opportunity (OCREO) in Baltimore to file a formal EEO complaint, almost half of respondents indicated that they would be generally or very willing to participate in counseling or to file a formal EEO complaint. Also, 3 percent of respondents indicated that they had contacted CREO to participate in counseling in the last 2 years, and 2 percent of respondents indicated that they had contacted OCREO in Baltimore to file a formal complaint during that time.

About 40 percent of respondents indicated that they were unwilling or uncertain to participate in counseling or to file a formal EEO complaint if they believed that they had been discriminated against; we did an analysis of their responses to identify the reason for this unwillingness or uncertainty. About 55 percent of the respondents indicated that they were unwilling or uncertain to participate in counseling and 51 percent to file a formal EEO complaint if they believed that they had been discriminated against because they feared retaliation.

[1]The percentage of respondents by race/ethnicity closely mirrored the percentage of each race/ethnicity in the population of Region X employees. The percentage of men and women responding to the survey also matched their respective percentages in the Region X workforce.

We did a further analysis of those respondents who indicated that they were unwilling or uncertain to participate in counseling if they believed that they had been discriminated against because they feared retaliation. Table 24 shows the breakdown of respondents by race/ethnicity and sex of those who indicated an unwillingness or uncertainty to participate in counseling. Table 25 shows the breakdown of respondents by race/ethnicity and sex of those who indicated an unwillingness or uncertainty to file a formal complaint.

**Table 24: Minority Status and Sex of Respondents Who Were Unwilling or Uncertain to Participate in Counseling Because They Feared Retaliation**

| Race/ethnicity | Percentage of respondents who feared retaliation |
|---|---|
| Nonminority | 73 |
| Minority | 27 |
| **Sex** | |
| Men | 29 |
| Women | 71 |

Source: GAO's survey of Region X employees about EEO.

**Table 25: Minority Status and Sex of Respondents Who Were Unwilling or Uncertain to File a Formal Complaint Because They Feared Retaliation**

| Race/ethnicity | Percentage of respondents who feared retaliation |
|---|---|
| Nonminority | 77 |
| Minority | 23 |
| **Sex** | |
| Men | 28 |
| Women | 72 |

Source: GAO's survey of Region X employees about EEO.

Other reasons respondents indicated for being unwilling or uncertain to participate in counseling if they believed that they had been discriminated against included the concern that their contact with the EEO counselor would not be kept confidential (about 45 percent) and the concern that the matter, if resolved informally, would not result in a mutually satisfactory solution for all parties concerned (about 34 percent). Other reasons respondents indicated for being unwilling or uncertain to file a formal

complaint if they believed that they had been discriminated against included the concern that their complaint would not be handled in a fair manner (about 33 percent).

## Experiences with Situations Involving EEO in Region X

As shown in table 26, most Region X employees responding to our survey indicated that they believed decisions concerning job or project assignments, training, formal ratings, and monetary awards were always or mostly based on merit and free of bias and favoritism. About half of the respondents indicated that they believed that decisions concerning nonmonetary awards and recognition were always or mostly based on merit and free of bias and favoritism. Less than half of the respondents indicated that they believed decisions concerning promotion and career advancement were always or mostly based on merit and free of bias and favoritism.

**Table 26: Percentage of Respondents Indicating Whether Decisions Were Based on Merit and Free of Bias and Favoritism**

| | Percentage of respondents indicating decisions were | |
|---|---|---|
| Type of personnel or pay decision | Always or mostly based on merit and free of bias and favoritism | Sometimes or never or almost never based on merit and free of bias and favoritism |
| Job or project assignments | 61 | 18 |
| Training | 68 | 12 |
| Formal performance appraisals/ratings | 74 | 11 |
| Monetary awards and bonuses | 61 | 21 |
| Promotion and career advancement | 44 | 21 |
| Nonmonetary awards and recognition | 50 | 22 |

Source: GAO's survey of Region X employees about EEO.

Table 27 shows, by sex and minority status, those respondents who indicated that they believed such personnel or pay decisions were sometimes or never or almost never based on merit and free of bias and favoritism.

**Table 27: Percentage of Respondents Indicating Decisions Were Sometimes or Never Based on Merit and Free of Bias and Favoritism**

| Type of personnel or pay decision | Men | Women | Nonminority | Minority |
|---|---|---|---|---|
| Job or project assignments | 7 | 11 | 13 | 6 |
| Training | 5 | 8 | 8 | 4 |
| Formal performance appraisals/ratings | 4 | 6 | 7 | 3 |
| Monetary awards and bonuses | 8 | 14 | 15 | 6 |
| Promotion and career advancement | 9 | 13 | 16 | 6 |
| Nonmonetary awards and recognition | 8 | 15 | 17 | 6 |

Source: GAO's survey of Region X employees about EEO.

## Narrative Comments

The questionnaire offered respondents the option of providing additional comments relating to any of the items discussed therein. Of the 1,355 useable returned questionnaires (see app. I), 307 respondents, or 22.7 percent, provided narrative comments. In descending order, these comments most frequently concerned

- perceived inequities in merit hiring, promotions, and awards (30.3 percent);
- complaints of perceived discrimination or other negative personal experiences (21.5 percent); or
- disgruntlement over affirmative action and workforce diversity (9.4 percent).

# GAO Survey of Region X Employees about EEO

**United States General Accounting Office**

## Survey of SSA Region X Employees About Equal Employment Opportunity

**Introduction**

The U.S. General Accounting Office (GAO), an independent agency of Congress, is reviewing equal employment opportunity (EEO) issues and the EEO complaint process at SSA Region X at the request of Representatives Jim McDermott, Jennifer Dunn, and Adam Smith. As part of this review, we are surveying all SSA Region X employees to get their views on the operations of SSA Region X's Civil Rights and Equal Opportunity (CREO) Office and their experiences concerning EEO.

Your responses will help GAO understand how SSA Region X employees view the Region's EEO operations and their work environment. Responses will be discussed in summary form in a report to congressional requesters and will not include any information that could be used to identify individual respondents. The survey is numbered only to allow us to send follow-up surveys to people who do not respond the first time and will not be used to identify you with your response. The link between you and your response will be destroyed before the report is issued, and your individual responses will not be shared with SSA.

The survey should take about 20 to 30 minutes to complete. Space has been provided at the end of the survey for any comments you may want to make. Additional pages may be added if necessary.

Please complete and return the survey in the pre-addressed envelope within 5 working days to avoid costly follow-up efforts. Because of delays in mail delivery in the Washington, D.C. area, please send the survey to our Norfolk Office in the event the envelope is misplaced.

U.S. General Accounting Office
Norfolk Office
5029 Corporate Woods Drive
Suite 300
Virginia Beach, VA 23462

Attention: Ms. Kiki Theodoropoulos
SSA Region X Survey

If you have any questions, please contact Kiki Theodoropoulos on (202) 512-4579 or at *theodoropoulosv@gao.gov*.

Thank you for your time and cooperation.

## SECTION I—Civil Rights and Equal Opportunity (CREO) Office

**The CREO office manages the Region's equal employment opportunity (EEO), affirmative action, and complaint programs. Among other things, it is responsible for disseminating information on the agency's EEO program and complaint process, developing EEO and affirmative action plans, and processing and resolving discrimination complaints.**

**The following questions ask for your views on the operations of SSA Region X's CREO. Please mark your answers with an "X" ---** ☒

1. **Before reading the description of the responsibilities of SSA Region X's CREO at the beginning of this section, how familiar or unfamiliar were you with these responsibilities?** (*Mark only one response*)

   1. ❒ Very familiar **15%** (196)
   2. ❒ Generally familiar **44%** (751)
   3. ❒ As familiar as unfamiliar **15%** (944)
   4. ❒ Generally unfamiliar **15%** (1130)
   5. ❒ Very unfamiliar **11%** (1,269)

2. **At any time within the past 2 years, do you recall receiving the following materials or seeing them posted at SSA Region X?** (*Mark all that apply*)

| | I received this information | I saw this information posted | I neither received nor saw this information posted | I don't remember whether I received or saw this information posted | Total Respondents |
|---|---|---|---|---|---|
| a. Written materials about the federal government's EEO regulations. | ← **65%** (852) → | | **8%** (105) | **27%** (354) | 1,311 |
| b. Written materials that describe SSA Region X's EEO program. | ← **59%** (768) → | | **10%** (134) | **31%** (405) | 1,307 |
| c. Written materials describing how to contact SSA Region X's EEO counselors, such as their names, locations, and telephone numbers. | ← **63%** (823) → | | **12%** (157) | **25%** (330) | 1,310 |
| d. Notices, memoranda, or newsletters that communicate SSA Region X's EEO complaint policy. | ← **51%** (668) → | | **15%** (194) | **34%** (440) | 1,302 |
| e. Notices, memoranda, or newsletters that communicate SSA Region X's sexual harassment policy. | ← **79%** (1040) → | | **6%** (77) | **15%** (199) | 1,316 |
| f. Notices, memoranda, or newsletters that communicate SSA Region X's reasonable accommodation policy. | ← **48%** (627) → | | **17%** (223) | **35%** (456) | 1,306 |
| g. Other materials *(Please specify)*: | ← **27%** (46) → | | **12%** (21) | **61%** (104) | 171 |

3. **If you believed that you had been discriminated against, how willing or unwilling would you be to contact SSA Region X's CREO to participate in counseling?** (*Mark only one*)

1. ❒ Very willing→***Skip to question 5*** **24%** (317)
2. ❒ Generally willing→***Skip to ques 5*** **27%** (352)
3. ❒ As willing as unwilling **13%** (178)
4. ❒ Generally unwilling **18%** (234)
5. ❒ Very unwilling **9%** (115)

---

6. ❒ Uncertain **10%** (127)

4. **If you were uncertain or unwilling to participate in counseling, which of the following describes your reason(s)?** (*Mark all that apply*)

1. ❒ I would be concerned that my contact with the EEO counselor during the counseling session would not be kept confidential. 274
2. ❒ I would be concerned that I would be assigned to an EEO counselor who was not competent or well trained. 152
3. ❒ I would be concerned that the matter would not be resolved in a timely manner. 167
4. ❒ I would be concerned that too much of my time would be consumer in the complaint process. 210
5. ❒ I would be concerned that the matter, if resolved informally, would not result in a mutually satisfactory solution for all parties involved 227
6. ❒ I would be concerned that I would be alienated from my coworkers. 194
7. ❒ I would fear retaliation. 345
8. ❒ I would not be willing to participate for personal reasons. 96
9. ❒ Other – Please specify: 97

_____

_____

5. **Within the past 2 years, have you contacted SSA Region X's CREO to participate in counseling?**

1. ❒ Yes **3%** (41)
2. ❒ No **97%** (1,283)

6. **If you believed that you had been discriminated against and the matter had not been resolved in counseling, how willing or unwilling would you be to contact SSA OCREO in Baltimore to file a formal discrimination complaint?** (*Mark only one*)

1. ❒ Very willing→***Skip to question 8*** **20%** (263)
2. ❒ Generally willing→***Skip to ques 8*** **26%** (345)
3. ❒ As willing as unwilling **12%** (163)
4. ❒ Generally unwilling **19%** (249)
5. ❒ Very unwilling **12%** (154)

---

6. ❒ Uncertain **11%** (145)

7. **If you were uncertain or unwilling to file a formal discrimination complaint, which of the following describes your reason(s)?** (*Mark all that apply*)

1. ❒ I would be concerned that my complaint would not be investigated in a competent manner. 149
2. ❒ I would be concerned that my complaint would not be thoroughly investigated. 198
3. ❒ I would be concerned that my complaint would not be handled in a fair manner. 233
4. ❒ I would be concerned that my complaint would not be handled in a timely manner. 159
5. ❒ I would be concerned that too much of my time would be consumed in the complaint process. 218
6. ❒ I would be concerned that I would be alienated from my coworkers. 184
7. ❒ I would fear retaliation. 346
8. ❒ I would not be willing to file a formal complaint for personal reasons. 122
9. ❒ Other – Please specify: 90

_____

_____

8. **Within the past 2 years, have you contacted SSA OCREO in Baltimore to file a formal discrimination complaint?**

1. ❒ Yes **2%** (21)
2. ❒ No **98%** (1,304)

## SECTION II—Your EEO Experiences

**The following questions ask for your views about your experiences about situations involving EEO in SSA Region X within the past 2 years.**

9. **Within the past 2 years, how much of the time, if any, have decisions about you in each of the following areas been based on merit and free of bias and favoritism.** *(Mark only one box in each row)*

| | Almost always (1) | Most of the time (2) | As often as not (3) | Some of the time (4) | Never or almost never (5) | Does not apply (6) |
|---|---|---|---|---|---|---|
| a. Job or project assignments | **44%** (581) | **17%** (224) | **6%** (83) | **9%** (114) | **10%** (131) | **14%** (191) |
| b. Training | **51%** (665) | **17%** (222) | **6%** (85) | **6%** (80) | **6%** (83) | **14%** (180) |
| c. Formal performance appraisals/ratings | **56%** (732) | **18%** (243) | **6%** (76) | **5%** (62) | **6%** (77) | **10%** (127) |
| d. Monetary awards and bonuses | **45%** (588) | **16%** (218) | **7%** (90) | **11%** (151) | **10%** (128) | **11%** (145) |
| e. Promotion and career advancement | **34%** (443) | **10%** (129) | **7%** (93) | **8%** (107) | **13%** (177) | **28%** (365) |
| f. Non-monetary awards and recognition | **37%** (487) | **13%** (172) | **8%** (101) | **9%** (123) | **13%** (172) | **20%** (257) |
| g. Other *(Please specify)* _____ _____ | **15%** (14) | **6%** (6) | **3%** (3) | **3%** (3) | **23%** (22) | **50%** (48) |

10. **Within the past 2 years, do you feel you have been denied a job, promotion, or other job benefit because of unlawful discrimination based on any of the following characteristics?** *(Mark only one box in each row)*

| | Yes (1) | No (2) | Don't know/ Can't judge (3) |
|---|---|---|---|
| a. Age | **8%** (111) | **76%** (1,009) | **16%** (209) |
| b. Sex | **8%** (100) | **77%** (1,018) | **15%** (197) |
| c. Handicapping condition | **4%** (48) | **80%** (1,050) | **16%** (209) |
| d. Marital status | **2%** (21) | **86%** (1,125) | **13%** (166) |
| e. National origin | **5%** (66) | **82%** (1,075) | **13%** (172) |
| f. Political affiliation | **1%** (19) | **85%** (1,108) | **15%** (182) |
| g. Race | **10%** (137) | **75%** (988) | **15%** (200) |
| h. Religion | **2%** (21) | **84%** (1,099) | **14%** (183) |
| i. Other (*Please specify*) _____ _____ | **50%** (84) | **33%** (55) | **17%** (29) |

11. **Within the past 2 years, do you feel you have experienced any of the following?** *(Mark only one box in each row)*

| | Yes (1) | No (2) | Don't know/ Can't judge (3) |
|---|---|---|---|
| a. Deliberately misled by an agency official about your right to compete for a job or promotion | **9%** (115) | **80%** (1077) | **11%** (149) |
| b. Influenced by an agency official to withdraw from competition for a federal job or promotion to help another person's chances for getting that job or promotion | **2%** (29) | **89%** (1186) | **9%** (123) |
| c. Denied a job or promotion because one of the selecting or recommending officials gave an unlawful advantage to another applicant | **10%** (139) | **73%** (976) | **17%** (228) |
| d. Denied a job or promotion that went instead to a relative of one of the selecting officials | **2%** (27) | **83%** (1,099) | **15%** (205) |

12. **Within the past 2 years, did you choose not to apply for any promotion or developmental opportunity because you felt you had little or no chance of being selected?** *(Mark only one box in each row)*

| | Yes (1) | No (2) | Don't know/ Can't judge (3) |
|---|---|---|---|
| a. Because of your age | **11%** (145) | **81%** (1,078) | **8%** (106) |
| b. Because of your sex | **6%** (85) | **86%** (1,128) | **8%** (104) |
| c. Because of your handicapping condition | **4%** (51) | **86%** (1,128) | **10%** (136) |
| d. Because of your marital status | **2%** (24) | **91%** (1,193) | **8%** (99) |
| e. Because of your national origin | **4%** (59) | **88%** (1,155) | **8%** (99) |
| f. Because of your political affiliation | **1%** (16) | **91%** (1,191) | **8%** (107) |
| g. Because of your race | **10%** (134) | **82%** (1,084) | **8%** (106) |
| h. Because of your religion | **1%** (11) | **91%** (1,183) | **9%** (111) |
| i. Other (*Please specify*) _____ | **58%** (108) | **31%** (58) | **10%** (19) |

13. **Within the past 2 years, do you feel that you have been retaliated against or threatened with retaliation by management for doing any of the following?** *(Mark only one box in each row)* **If no to all, go to question 18.**

| | Yes (1) | No (2) | Don't know/ Can't judge (3) |
|---|---|---|---|
| a. Making disclosures concerning health and safety dangers; unlawful behavior; and/or fraud, waste, and abuse | **5%** (67) | **88%** (1,149) | **7%** (96) |
| b. Exercising any appeal, complaint, or grievance right | **8%** (110) | **84%** (1,100) | **8%** (105) |
| c. Testifying for or otherwise assisting any individual in the exercise of whistleblowing, equal employment opportunity, or appeal rights | **4%** (51) | **87%** (1,146) | **9%** (115) |
| d. Refusing to obey an unlawful order | **2%** (29) | **90%** (1,168) | **8%** (107) |
| e. Reporting unwanted sexual attention or sexual harassment | **1%** (13) | **91%** (1,191) | **8%** (101) |

| | I was threatened with (1) | This was done to me (2) | Does not apply (3) |
|---|---|---|---|
| a. Poor performance appraisal | 21 | 20 | 196 |
| b. Denial of promotion | 18 | 41 | 182 |
| c. Denial of opportunity for training | 6 | 41 | 189 |
| d. Denial of award | 9 | 69 | 162 |
| e. Assignment to less desirable or less important duties | 9 | 37 | 193 |
| f. Transfer or assignment to a job with less desirable duties or working conditions | 10 | 18 | 206 |
| g. Assignment to a different geographical location | 2 | 10 | 222 |
| h. Suspension from my job | 11 | 8 | 217 |
| i. Fired from my job | 12 | 4 | 222 |
| j. Grade level demotion | 3 | 7 | 221 |
| k. Shunned by coworkers or managers | 14 | 80 | 153 |
| l. Verbal harassment or intimidation | 22 | 83 | 138 |
| m. Required to take a fitness-for-duty exam | 1 | 7 | 223 |
| n. Other *(Please specify)* _____ _____ | 6 | 20 | 18 |

15. **In response to retaliation or threat of retaliation, did you take any of the following actions?** *(Mark all that apply)*

1. ❒ I took no action *(Go to question 17)* 104
2. ❒ Complained to a higher level of agency management 46
3. ❒ Complained to the Office of Inspector General within my agency 2
4. ❒ Complained to some other office within my agency (e.g., the personnel office or CREO office) 14
5. ❒ Filed a complaint through my union representative 49
6. ❒ Filed a formal grievance within my agency 18
7. ❒ Filed an EEO (discrimination) complaint 18
8. ❒ Filed a complaint with the Office of Special Counsel 3
9. ❒ Filed an action with the Merit Systems Protection Board 3
10. ❒ I took an action that has not been specified *(Please specify)* 37

_____

_____

16. **What happened to you as a result of your reporting retaliation or threat of retaliation?** (*Mark all that apply*)

1. ❒ It got me into more trouble 27
2. ❒ It made no difference 39
3. ❒ The action of retaliation was withdrawn 5
4. ❒ The threat of retaliation was withdrawn 9
5. ❒ Actions were taken to compensate me for the action of retaliation 5
6. ❒ Decision concerning the action of retaliation is still pending 22
7. ❒ Other *(Please specify):* 33

_____

17. **If you took no action in response to retaliation or threat of retaliation, why did you choose not to take any formal action?** *(Mark all that apply)*

| | |
|---|---|
| 1. ❒ Not applicable, I took action | 18 |
| 2. ❒ Still might take some action | 6 |
| 3. ❒ Not serious enough | 14 |
| 4. ❒ Didn't know I could | 7 |
| 5. ❒ Process wouldn't solve the problem | 50 |
| 6. ❒ Fear of management retaliation | 71 |
| 7. ❒ Problem was solved informally | 2 |
| 8. ❒ Waited too long/missed deadline | 4 |
| 9. ❒ Too complicated | 8 |
| 10. ❒ Too expensive | 3 |
| 11. ❒ Process isn't fair | 23 |
| 12. ❒ I left the work unit | 8 |
| 13. ❒ Don't know/can't judge | 15 |
| 14. ❒ Other *(Please specify)* | 31 |

_____

_____

## III. Demographic Questions

**Please answer the following questions to help us analyze the results of the survey.**

18. **How many years have you been in your current position at SSA Region X?**

| | |
|---|---|
| 1. ❒ Less than 1 year | **11%** (153) |
| 2. ❒ 1 to less than 3 years | **29%** (390) |
| 3. ❒ 3 to less than 10 years | **30%** (406) |
| 4. ❒ 10 or more years | **29%** (396) |

19. **Are you currently a supervisor or non-supervisor?**

| | |
|---|---|
| 1. ❒ Supervisor | **9%** (123) |
| 2. ❒ Non-supervisor | **91%** (1,212) |

20. **Please indicate your current grade.**

| | |
|---|---|
| 1. ❒ GS-4 | **1%** (7) |
| 2. ❒ GS-5 | **4%** (55) |
| 3. ❒ GS-6 | **4%** (55) |
| 4. ❒ GS-7 | **5%** (72) |
| 5. ❒ GS-8 | **29%** (391) |
| 6. ❒ GS-9 | **6%** (76) |
| 7. ❒ GS-10 | **<1%** (2) |
| 8. ❒ GS-11 | **29%** (392) |
| 9. ❒ GS-12 | **12%** (164) |
| 10. ❒ GS-13 | **6%** (86) |
| 11. ❒ GS-14 | **2%** (28) |
| 12. ❒ GS-15 | **1%** (9) |
| 13. ❒ SES or Executive | **<1%** (2) |
| 14. ❒ Other | **<1%** (6) |

21. **How many years have you been employed with SSA Region X?**

| | |
|---|---|
| 1. ❒ Less than 1 year | **6%** (80) |
| 2. ❒ 1 to less than 5 years | **26%** (352) |
| 3. ❒ 5 to less than 10 years | **18%** (240) |
| 4. ❒ 10 or more years | **50%** (671) |

22. **Please identify your office:**

Name: _____
City: _____
State: _____

23. **Please indicate your sex.**

| | |
|---|---|
| 1. ❒ Male | **33%** (444) |
| 2. ❒ Female | **67%** (889) |

24. **Are you of Hispanic origin?**

| | |
|---|---|
| 1. ❒ Yes | **11%** (140) |
| 2. ❒ No | **89%** (1,188) |

25. **Please indicate your race.** *(Mark only one)*

| | |
|---|---|
| 1. ❒ American Indian/Alaska Native | **1%** (14) |
| 2. ❒ African American/Black | **8%** (103) |
| 3. ❒ Asian/Pacific Islander | **8%** (105) |
| 4. ❒ White | **74%** (950) |
| 5. ❒ Other *(Please specify)* | **8%** (104) |

**If you have any comments relating to any of the items discussed in this questionnaire, please write them here.**
**23%** (307)

# Comments from the Social Secuity Administration

SOCIAL SECURITY
The Commissioner
June 26, 2003

Mr. Victor S. Rezendes
Managing Director, Strategic Issues
U.S. General Accounting Office
Washington, D.C. 20548

Dear Mr. Rezendes:

Thank you for the opportunity to review and comment on the draft report "Equal Employment Opportunity (EEO): SSA Region X's Changes to Its EEO Process Illustrate Need for Agencywide Procedures," (GAO-03-604). We acknowledge the general findings and are committed to ensuring equal treatment for all employees, and that our policies and practices are in compliance with Equal Employment Opportunity Commission's (EEOC) procedures for processing complaints of discrimination.

Enclosed, please find our comments on the report contents and specific recommendations. The report states that the data and analysis were not designed to determine whether or not discrimination existed, but can indicate areas warranting further study. I want to take this opportunity to highlight the results of a comprehensive internal human resources management (HRM) audit conducted in Region X in fiscal year 2002. It is significant because that review included a Merit System Principles Questionnaire (MSPQ) that directly addressed fairness, equity and other trust-related merit principles. We provided a copy of the report to your staff on July 24, 2002, as an internal management document with restricted distribution.

Based on the results of the 2002 HRM report, I believe our current EEO process is fair and consistent with the spirit of EEOC's regulations and guidance. To determine what can be done to further enhance the process, we have begun a national dialogue among SSA's Regional Commissioners to address diversity topics at the regional and national levels. Finally, as we manage our human capital resources, we will continue to support an atmosphere of communication and commitment to equal employment opportunities for all employees.

If you have any questions, please have your staff contact Laura Bell at (410) 965-2636.

Sincerely,

Jo Anne B. Barnhart

Enclosure

SOCIAL SECURITY ADMINISTRATION BALTIMORE MD 21235-0001

**COMMENTS ON THE GENERAL ACCOUNTING OFFICE (GAO) DRAFT REPORT "EQUAL EMPLOYMENT OPPORTUNITY (EEO): THE SOCIAL SECURITY ADMINISTRATION'S (SSA) REGION X CHANGES TO ITS EEO PROCESS ILLUSTRATE NEED FOR AGENCYWIDE PROCEDURES" (GAO-03-604)**

Thank you for the opportunity to review and comment on the draft report. I want to take this opportunity to state our commitment to ensuring equal treatment for all employees and that our policies and practices comply with the Equal Employment Opportunity Commission's (EEOC) procedures for processing complaints of discrimination.

As part of our ongoing efforts to monitor our human resources activities, in Fiscal Year (FY) 2002, our Office of Human Resources (OHR) conducted a comprehensive Human Resource Management (HRM) audit of Region X. The audit included a Merit System Principles Questionnaire (MSPQ) that directly addressed fairness, equity and other trust-related merit principles. The results of the audit were that the Region operates in a "principle-based" manner where managers are encouraged to make decisions consistent with the Merit System Principles. Most notable was the fact that the Region scored significantly higher in the areas of Merit Principles and EEO than the Government average. In addition, approximately 20 best practices were observed in the region and recommended as models of effective HRM practices.

Some of the more notable conclusions provided in the 2002 HRM audit report were:

The Human Resources (HR) and Equal Opportunity (EO) staffs are doing a good job in terms of activities designed to enhance the effectiveness of EO-related processes. These activities include training and developmental programs, improved communications to line managers and employees, targeted recruitment and ongoing monitoring and reporting.

The Seattle Region makes good use of its external hiring authorities. We found no illegal appointments, and we found Seattle to comply with all applicable regulatory requirements.

The Seattle Region conducts its merit promotion activities according to Merit System Principles.

The Region is in compliance with EEO regulations.

Of additional significance are the results of the MSPQ's that were administered prior to OHR's onsite visit to gather information on how well Region X employees perceive the Agency is doing in ensuring that HRM practices conform to the spirit and the letter of the nine Merit Systems Principles that are applicable Government-wide. The validity of these survey results are demonstrated by the fact that the MSPQ was designed and

developed by the Office of Personnel Management (OPM) for use in its oversight reviews. Subsequent adoption by SSA was through a Memorandum of Understanding (MOU) with OPM, which gave SSA the authority to conduct its own internal reviews of HRM practices in lieu of OPM's cyclical agency-wide reviews.

Merit System Principles that reflect fairness, integrity and trust received "favorable" ratings on the MSPQ using OPM's "absolute standards criterion." Some of the more notable results are highlighted below:

> "Recruit, select and advance on the basis of merit." (Percent Favorable = 71.5)
>
> "Treat employees and applicants fairly and equitably." (Percent Favorable = 74.2)
>
> "Maintain high standards of integrity, conduct and concern for the public interest." (Percent Favorable = 82.2)

Comments from the focus group participants were also consistent with the Region X's MSPQ results. Finally, the demographic analysis of the responses indicated that proportionately more minorities were pleased with their supervisors' role in managing poor performers and in helping all employees to improve their job performance. The minority respondents also expressed more favorable attitudes when queried about the performance awards system and about their own opportunities to participate in developing long-range plans in their work units.

In summary, we believe our current EEO process is fair and consistent with the spirit of the EEO regulations and related guidance. In addition, to further enhance our efforts in this area, we have begun a national dialogue among the Regional Commissioners to address diversity topics at the regional and national levels. As we manage our human capital resources, we will continue to support an atmosphere of communication and commitment to equal employment opportunities for all employees.

Our response to the report conclusions and specific recommendations are provided below. In addition, we are providing some technical comments that should be considered in preparing the final report.

**General Comment**

GAO found the change that Region X implemented in 1999 to the EEO process was not in the spirit of the regulations and related guidance.

SSA Response

The written communication process that was implemented in Region X in 1999 was discontinued as of October 2001. The process was used by EEO Counselors on a temporary basis to address management concerns with the existing EEO process.

Management officials had expressed concern that EEO counseling reports did not accurately reflect their statements. In one case, an attempt was made to impugn a manager's credibility at the hearing using a counseling report. Management officials complained that the EEO counselors acted as investigators, and they wanted representation at the informal stage.

Additionally, the Director, Center for Human Resources was having difficulty implementing some informal resolution agreements. Some agreements contained ambiguous language, and others did not comply with Federal law, Agency policy or the collective bargaining agreements. The Office of the General Counsel (OGC) review ensured that informal resolution agreements complied with applicable statutes, regulations, policies and collective bargaining agreements.

An EEOC judge has held that it is appropriate for OGC attorneys to provide advice and guidance to management officials during the EEO process. In that case, OGC attorneys assisted a high level SSA executive in answering interrogatories propounded by the EEO contract investigator. Specifically, the judge stated, "The job and function of the attorneys for the Government generally is to represent their client, the Agency, and its management officials."

**Recommendation 1**

The Commissioner of SSA should direct the Regional Commissioner (RC) of Region X to review the statistically significant differences we found in adverse actions and awards to determine why they occurred and what, if any, corrective action is needed.

SSA Response

We will continue, as part of our ongoing efforts to ensure equity to all employees, to monitor statistically significant differences in the processing of personnel actions in various categories including adverse actions and awards.

However, it should be noted that the GAO data shows that of 142 adverse actions in a 5-year period, 65 (46 percent) were attributed to systems security sanctions cases. We would like to emphasize that these cases are identified largely from security reviews and that the proposing and deciding officials for sanctions cases are required to follow a uniform table of penalties that is applicable Agency-wide. Additionally, to ensure consistency, the deciding official is the same person for all cases in each region. These factors should be taken into consideration when drawing any conclusions from the data.

**Recommendation 2**

The Commissioner of SSA should adopt standard operating procedures for EEO Counselors that include step-by-step procedures for processing complaints of discrimination so that Counselors and others involved in the process across the country know what to do and employees face the same process everywhere.

SSA Response

The Agency has standard operating procedures in place to ensure that all employees, regardless of their geographical location, have the same EEO process available to them.

An EEO Handbook for Managers and Supervisors and an EEO Handbook for Employees were issued in FY 1996, shortly after SSA became an independent agency. These handbooks identify the specific responsibilities of the employees, the counselors and management to ensure that all managers, supervisors and employees, SSA-wide, are aware of the EEO process and their responsibilities. The handbooks are currently being updated to include additional guidance that will ensure that the informal counseling process is conducted within the spirit of the EEOC regulations. The handbook will also include information on the Alternative Dispute Resolution (ADR) process and will be re-issued to all managers, supervisors and employees by the end of Calendar Year 2003. An EEO statement is also posted on all bulletin boards that provide the procedures and timelines for requesting an informal inquiry on EEO issues.

SSA also has a training manual that includes step-by-step procedures for processing informal complaints of discrimination that is used by the CREO Managers and headquarters staff to train EEO Counselors. The manual is used for initial and refresher training and serves as the Agency's standard operating procedures for EEO Counselors. The training manual mirrors much of the same information contained in Appendix A of EEO-MD 110. We plan to update this material with the procedural guidelines as described in CFR 1614.104. We also developed and issued two EEO Counseling Technical Advisory Letters in May of 2003. The letters are designed to supplement the training manual and are used to transmit guidance and EEO technical information to CREO Managers and EEO Counselors to ensure consistency in our EEO counseling program across the Agency.

**Recommendation 3**

The Commissioner of SSA should direct the RC of Region X to establish a plan to 1) enhance the Region's EEO environment to increase trust and 2) measure the plan's effectiveness, such as with a periodic survey of employees.

SSA Response

We agree that all regions should foster an environment where employees feel they can raise concerns and take part in a process designed to resolve complaints. GAO survey data actually show that more than half (51 percent) of the employees are "very willing" (24 percent) or "generally willing" (27 percent) to participate in the EEO counseling phase in Region X. In addition, another 13 percent said that they are "as willing as unwilling" to participate, with a final 10 percent that were "uncertain." Since Region X is no longer following the change to the EEOC process that may have caused some distrust, implementing a plan and specific surveys will not be necessary. We will continue to share best practices learned from our Human Resource audits with Region X, and Region X will be a part of the ongoing national dialogue of Regional Commissioners concerning diversity topics that we mentioned above.

**Technical Comments**

The separation statistics and language in paragraph 1 (page 15) refers to higher separation rates for minorities. It is suggested that the reference show "Region X hired a significant number of minorities in the past few years. Based on the data and their experience that separation rates are always higher in the first several years, the higher percentage of separation rates for minorities can be expected."

In paragraph 1 (page 27), GAO concluded that "a sizeable portion of respondents to our survey – about 40 percent -- indicated that they are unwilling or uncertain about becoming involved with the processes established for handling EEO complaints." Combining the "unwilling" and "uncertain" responses implies "uncertain" as a negative vs. neutral response. It is suggested that the two responses be reported separately.

# GAO Contact and Staff Acknowledgments

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