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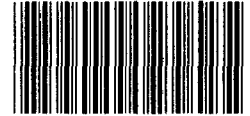
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EEO Complaint Processing by the  
House Office of Fair Employment  
Practices

Statement of  
Nancy Kingsbury, Director,  
Federal Human Resource Management Issues,  
General Government Division



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Processing of EEO Complaints by the House  
Office of Fair Employment Practices  
Summary statement by  
Nancy Kingsbury, Director  
Federal Human Resource Management Issues

As requested by the Congressional Caucus for Women's Issues, GAO reviewed the House Office of Fair Employment Practices' (OFEP) process for handling employment discrimination complaints. As part of this request, GAO compared OFEP's process to the procedures followed by the Senate and the Equal Employment Opportunity Commission (EEOC).

OFEP does not investigate complaints. Instead, OFEP follows a three-step process that consists of (1) counseling and mediation; (2) formal complaint, hearing, and OFEP review; and (3) final review by an eight-member review panel. There are some differences between OFEP's, the Senate's, and EEOC's processes, such as the investigation of complaints and extent of judicial review.

Since OFEP began operations in November 1988, it has received over 1,200 inquiries or expressions of concern relating to the issues it addresses--fair employment practices and violations of the Fair Labor Standards Act. According to OFEP's records, about one third of these contacts involved specific concerns about these issues; the remainder were identified as only general inquiries. Sixteen employees initiated informal complaints as a result of these contacts, and 7 of the 16 employees filed formal complaints. The employees most often alleged that they were discriminated against on the basis of race, age, and/or color. The issue cited most often by the complainants was termination of employment.

Although the number of complaints filed since OFEP began operations is relatively small, it is unclear whether this reflects a high turnover rate among House employees or confidentiality concerns (as suggested by the OFEP Director), a lack of meritorious cases, or problems with OFEP's process itself.



Mr. Chairman and Members of the Committee:

I am pleased to be here today to present the results to date of our review of the House Office of Fair Employment Practices (OFEP). The Congressional Caucus for Women's Issues asked us on December 9, 1992, to review OFEP's procedures for handling employment discrimination complaints, compare that office's procedures to those of the Senate and the Equal Employment Opportunity Commission (EEOC), and provide our observations on OFEP's process. The Women's Caucus also asked us to review case files and collect complaint statistics for the 4 years since OFEP was established in 1988. Specifically, we gathered data on the (1) number, type, and resolution of complaints; (2) progression of complaints through the process; and (3) number of complaints that resulted in a finding of discrimination.

#### BACKGROUND

OFEP began operations in November 1988. It was established to carry out the functions assigned under the Fair Employment Practices Resolution (House Resolution 558). The resolution, which was adopted by the House of Representatives on October 4, 1988, was later incorporated as Rule 51 into the rules of the House, effective January 3, 1991. Section 2 of Rule 51 prohibits discrimination in personnel actions on the basis of race, color, national origin, religion, sex (including marital or parental status), disability, or age. The protections afforded under Rule 51 apply to employment positions paid by the Clerk of the House--such as, staff employed in Members and committee offices--and any employment positions in a legislative service organization or other entity paid through funds from the clerk-hire allowance.

The functions assigned to OFEP consist of considering alleged violations of section 2 of Rule 51 and alleged violations of the Fair Labor Standards Act (FLSA). FLSA provides standards for the payment of minimum wages and overtime compensation. The FLSA was amended by the Equal Pay Act of 1963 to also prohibit discrimination on the basis of sex in the payment of wages for the performance of equal work in the same office.

OFEP was authorized four permanent positions--director, counselor, mediator, and secretary--that are currently filled by individuals appointed by the Chairman and Ranking Minority Member of the Committee on House Administration.

#### OFEP COMPLAINT PROCESSING

To carry out its responsibilities, OFEP uses a three-step process consisting of (1) counseling and mediation; (2) formal complaint, hearing, and OFEP review; and (3) final review by a review panel. Under this process, persons who believe they have been discriminated against must contact OFEP for counseling no later

than 180 days after the alleged violation. If the complainant decides to continue the process after counseling, which lasts no longer than 30 days, he or she may either voluntarily participate in mediation or file a formal complaint. Mediation is an attempt to resolve the matter before a formal complaint is filed by bringing the complainant and the alleged perpetrator together with a mediator. Mediation begins after counseling and can continue even after a formal complaint has been filed.

If the complainant decides to file a formal complaint with OFEP, it must be done within 30 days after the counseling period has ended. Because OFEP is not authorized under House Rule 51 to investigate complaints, the next step in the process is the hearing. The hearing must be requested within 10 days after filing the complaint and must be held no later than 40 days after it is requested. The hearing is conducted by a hearing officer who, like the OFEP staff, is appointed by the Chairman and Ranking Minority Member of the House Administration Committee.

According to OFEP personnel, the complainant has the initial burden of proving that he or she was discriminated against by presenting witnesses and/or documents at the hearing. The alleged perpetrator is permitted to respond by also presenting witnesses and documents in an attempt to show that discrimination did not occur. Each party has a right to be represented by counsel at the hearing.

After the hearing, OFEP is to issue a written decision within 30 days to both parties, either of whom may appeal to an eight-member review panel<sup>1</sup> if they are dissatisfied with the decision. If either party is also dissatisfied with the review panel's decision, there is no further recourse.

#### HOW OFEP'S DISCRIMINATION COMPLAINT PROCESS DIFFERS FROM EEOC AND THE SENATE

The Women's Caucus asked us to compare EEOC's procedures with those of the House and Senate. This information is presented in appendix I. EEOC's procedures for processing federal employees'

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<sup>1</sup>The eight-member review panel is formed at the beginning of each Congress and is composed of (1) two elected officers or employees of the House of Representatives, appointed by the Speaker; (2) two employees of the House of Representatives appointed by the minority leader of the House; and (3) four members of the Committee on House Administration, two appointed by that Committee's chairman and two appointed by that Committee's ranking minority party member. Of the two Committee on House Administration members appointed to the panel by that Committee's chairman, one is also appointed to be chairman of the review panel.

complaints are the most detailed. Thus, we judgmentally selected 10 of EEOC's complaint processing steps and determined whether the House, Senate, and EEOC private sector procedures allow for or require their performance (see appendix I). We did not attempt to determine the merits of the respective processing steps.

We noted from our comparison that the House OFEP procedures and the Senate Office of Fair Employment Practices' procedures differ in some respects. For example:

- Senate procedures require employees to request mediation, which must be completed in 30 days unless an additional 30 days is authorized. OFEP does not require mediation, but if mediation occurs, it does not have to be completed within a certain time frame.
- Senate procedures require the automatic referral of formal complaints to an independent, three-member hearing board, appointed by the Senate office director. The hearing board members are not Senators, Senate employees, or officers. OFEP requires that a hearing be requested in writing, and the hearing be conducted by a hearing officer, who is a House employee.
- Senate procedures allow the parties more time to engage in discovery in preparation for the hearing since the hearing is to be held within 90 days<sup>2</sup> after the formal complaint is filed. OFEP procedures require that the hearing be held within 40 days after it is requested.
- Senate procedures allow employees to appeal the hearing board's decision to the Senate Select Committee on Ethics. Employees also may appeal directly to the U.S. Court of Appeals for the Federal Circuit if no appeals have been made to the Senate Ethics Committee and the employees have received a final decision. Within the House, decisions may only be appealed to an eight-member review panel.

It should also be noted that EEOC's complaint processes are different from those in the House and Senate. For example:

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<sup>2</sup>Section 307(d)(2) of the Civil Rights Act of 1991 says that the hearing shall be conducted "no later than 30 days after filing of the complaint . . . , except that the office may, for good cause, extend up to an additional 60 days the time for conducting a hearing." According to the Senate office deputy director, the additional 60 days is always granted because 30 days is not enough time for the parties to conduct discovery.

- Executive branch employees have a shorter time period (45 days versus 180 days for Senate and House employees) to contact their agencies for counseling.
- Private sector employees are not required to participate in counseling or mediation before filing a complaint.
- Complaints filed by executive branch employees are investigated by their executive agencies, and complaints filed by private sector employees are investigated by EEOC or the appropriate state or local agency. In OFEP and the Senate, complaints are not investigated.

RIGHTS AND REMEDIES AFFORDED HOUSE  
EMPLOYEES COMPARED TO SENATE, EXECUTIVE  
BRANCH, AND PRIVATE SECTOR EMPLOYEES

Under House Rule 51, House employees generally have the same substantive rights regarding employment discrimination that Senate, executive branch, and private sector employees have under the various equal employment opportunity and civil rights laws. A more detailed comparison is provided in appendix II.

It should be noted that although House employees generally have the same substantive rights as other employees, the remedies are limited to those outlined in section 9 of House Rule 51. These include (1) monetary compensation; (2) injunctive relief; (3) costs and attorney fees; and (4) employment, reinstatement to employment, or promotion with or without back pay. Employees of the Senate, executive branch, or the private sector may also be awarded compensatory damages for intentional discrimination.

OFEP HAS RECEIVED MANY  
CONTACTS BUT FEW COMPLAINTS

Since OFEP was established in November 1988, many individuals have contacted it to ask about its process and/or to express a specific concern about issues addressed by that office. Over 1,200 contacts were made to OFEP during January 1989 through March 1993. The OFEP Director estimated that 80 to 90 percent of these contacts were from employees, and the remaining 10 to 20 percent were from supervisors or managers of employing offices.

According to OFEP's records, almost a third of the contacts (398) related to individuals requesting information and expressing a specific concern that either related to a fair employment practice or FLSA. However, as shown in table 1, 16 of these contacts resulted in a complaint during the period covered by our review.



Table 1: Contacts Received in Calendar Years 1989 through 1993 that Related to a Specific Concern as Compared to Total Discrimination Complaints Initiated

Year	Total contacts <sup>a</sup>	Number of informal complaints initiated <sup>b</sup>	Percent of contacts resulting in complaints
1989	90	6	7
1990	75	1	1
1991	72	5	7
1992	122	3	2
1993 <sup>c</sup>	39	1	3
Totals	398	16	4 <sup>d</sup>

<sup>a</sup>Figures in this column represent contacts that OFEP received in which individuals asked for information and expressed a specific concern.

<sup>b</sup>Informal complaints are those in which employees contacted OFEP in person, in writing, or by phone alleging discrimination and subsequently initiated counseling.

<sup>c</sup>Represents contacts made during the period January 1, 1993 through March 31, 1993.

<sup>d</sup>This figure represents the percent of total contacts resulting in complaints (16 divided by 398).

Source: OFEP.

During calendar years 1989 through 1993 (as of March 31, 1993), 16 employees initiated informal complaints, and 7 of the 16 filed a formal complaint. Table 2 shows a breakout of the complaints by year.

Table 2: Total Number of Informal and Formal Complaints Received by OFEP During Calendar Years 1989 through 1993

Year	Informal complaints	Formal complaints
1989	6	1
1990	1	1
1991	5	2
1992	3	3
1993 <sup>a</sup>	1	0
Total	16	7

<sup>a</sup>Represents complaints received during the period January 1, 1993 through March 31, 1993.

Source: OFEP.

Although we have not examined the matter in depth, the number of complaints appears relatively small when compared to federal government organizations of similar size. The OFEP Director cited two possible reasons for the relatively small number of complaints. One reason cited was high turnover of House employees which, according to the OFEP Director, may be a contributing factor because employees believe they will not be working for the particular employing office that long. The other reason cited related to employees being concerned about the employing office becoming aware of the complaint.

Additional information about the complaints that were filed is presented in appendix III.

GAO'S OBSERVATIONS

Although OFEP has received a large number of inquiries or expressions of concern in recent years, few of these contacts have resulted in complaints. It is unclear whether this reflects high turnover rates and confidentiality concerns, as suggested by the OFEP Director, a lack of meritorious cases, or problems with OFEP's process itself.

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Mr. Chairman, this concludes my testimony. I would now welcome any comments or questions that you may have.

COMPARISON OF COMPLAINT PROCESSING PROCEDURES

Complaint processing steps required or allowed by the various complaint processing entities	EEOC			
	Executive branch <sup>a</sup>	Private sector <sup>b</sup>	OFEP	Senate
Counseling required	Yes	No	Yes	Yes
Mediation allowed	Yes	Yes <sup>c</sup>	Yes	Yes
Complaint filing required	Yes	Yes	Yes	Yes
Complaint investigation required	Yes	Yes	No	No
Final decision without a hearing allowed	Yes	Yes	No	No
Hearing allowed	Yes	No	Yes	Yes
Decision after a hearing allowed	Yes	No	Yes	Yes
Appeal of hearing decision allowed	Yes	No	Yes	Yes
Final administrative decision allowed	Yes	No	Yes	Yes
Judicial review by a federal court allowed	Yes <sup>d</sup>	Yes <sup>d</sup>	No	Yes <sup>e</sup>

<sup>a</sup>Under EEOC regulation 1614, all of these steps, except those related to a hearing and judicial review, are carried out by executive branch agencies.

<sup>b</sup>Procedures may vary depending upon whether the complaint is handled by a state or local agency.

<sup>c</sup>According to EEOC regulation 1601, EEOC may encourage the parties to settle the complaint on mutually agreeable terms before it makes a determination that reasonable cause exist that discrimination occurred.

<sup>d</sup>Judicial review of final executive agencies' or EEOC's decisions is a de novo review by a federal district court. A de novo review is not based on the record established at the administrative level before the appeal to the court. In other words, the court conducts a new trial.

<sup>e</sup>Judicial review under the Senate procedures is done by the U.S. Court of Appeals for the Federal Circuit and, like all appellate reviews, is based on the record developed at the administrative level.

Source: GAO's analysis of EEOC's, OFEP's, and Senate's procedures.

COVERAGES PROVIDED TO HOUSE, SENATE,  
EXECUTIVE BRANCH, AND PRIVATE SECTOR EMPLOYEES UNDER VARIOUS  
EQUAL EMPLOYMENT OPPORTUNITY AND CIVIL RIGHTS LAWS

	Federal sector			Private sector
	House	Senate	Executive branch	
Are employees covered by the:				
Civil Rights Act of 1964?	Yes	Yes <sup>a</sup>	Yes	Yes
Age Discrimination in Employment Act (ADEA) of 1967?	No <sup>b</sup>	Yes <sup>a</sup>	Yes	Yes
Equal Pay Act (EPA) of 1963?	Yes	No	Yes	Yes
Rehabilitation Act of 1973?	No	Yes <sup>a</sup>	Yes	No <sup>c</sup>
Americans with Disabilities Act (ADA) of 1990?	Yes	Yes <sup>a</sup>	No <sup>d</sup>	Yes

<sup>a</sup>Senate employees receive the same protections as executive branch employees and private employees under section 302 of the Civil Rights Act of 1991. Section 302 of this act states that personnel actions affecting Senate employees shall be made free from discrimination based on race, color, religion, sex, national origin, age, handicap, or disability within the meaning of the various laws prohibiting discrimination on these bases.

<sup>b</sup>The ADEA does not apply to House employees. However, House Rule 51 states, in part, that personnel actions affecting employment positions in the House of Representatives shall be made free from discrimination based on age.

<sup>c</sup>The Rehabilitation Act does not apply to private sector employees because it was enacted to prohibit discrimination against handicapped federal employees in the executive branch.

<sup>d</sup>Although the ADA does not apply to executive branch employees, they are protected under the Rehabilitation Act of 1973, which contains similar provisions.

Source: GAO's analysis of the various equal employment opportunity and civil rights laws.

ADDITIONAL INFORMATION REGARDING THE  
COMPLAINTS THAT WERE FILED WITH OFEP FROM 1989 - 1993

Generally, the 16 complainants alleged during the informal process that they were discriminated against based on race, age, or sex in being terminated from employment or in working conditions, such as payment of overtime, selection for assignments, and implementation of office policy on taking leave. These same bases and issues were also raised in the seven formal complaints. Tables III.1 and III.2 show a breakout of the issues and bases raised in the 16 informal complaints and 7 formal complaints, respectively.

Table III.1: Sixteen Informal Complaints Received During January 1989 Through March 1993, by Bases and Issues

Issues	Bases								Totals
	Race	Color	Sex	Age	Handicap	Religion	National origin	Reprisal	
Hiring				1	1				2
Sexual harassment									0
Promotion			1	1					2
Working conditions <sup>a</sup>	2		1	4				1	8
Termination	5		2	2	1				10
Totals	7		4	8	2			1	22 <sup>b</sup>

<sup>a</sup>The category working conditions includes issues related to payment of overtime, selection for assignments, and implementation of office policy regarding taking leave.

<sup>b</sup>The totals do not add up to the number of complaints because some employees raised more than one issue and/or basis.

Source: OFEP.

Table III.2: Seven Formal Complaints Received During January 1989 Through March 1993, by Bases and Issues

Issues	Bases								Totals
	Race	Color	Sex	Age	Handicap	Religion	National origin	Reprisal	
Hiring					1				1
Sexual harassment									0
Promotion			1						1
Working conditions <sup>a</sup>	2	1		2				1	6
Termination	2	2	1	1	1		1		8
Totals	4	3	2	3	2		1	1	16 <sup>b</sup>

<sup>a</sup>The category working conditions includes issues related to payment of overtime, selection for assignments, and implementation of office policy regarding taking leave.

<sup>b</sup>The totals do not add up to the number of complaints because some employees raised more than one issue and/or basis.

Source: OFEP.

Table III.3 shows how far into the process each case went. Most of the cases stopped before the hearing phase.

Table III.3: Progression of Cases Through OFEP's Discrimination Complaint Process

Phases of process	Number of cases that stopped at each phase
Counseling	3
Mediation	5
Formal Complaint	3
Hearing	0
OFEP Decision	1
Review Panel Decision	3
Totals	15 <sup>a</sup>

<sup>a</sup>Total does not add up to 16 cases because 1 case was still open as of early May 1993.

Source: OFEP.

Fifteen of the 16 informal complaints had been resolved as of early May 1993. The 15 complaints were resolved as follows:

- Six complaints were resolved with either a formal or informal agreement entered into between the parties.
- Five complaints were closed because the employees decided not to continue the process for various reasons.
- Four complaints resulted in final decisions by OFEP and the review panel.

One of the four final decisions resulted in a finding of discrimination; the remaining three did not. The decision finding discrimination was rendered by the review panel on November 14, 1989. In finding discrimination, the review panel ruled that the employee was entitled to (1) monetary compensation for lost overtime, (2) additional pay authorized under section 9(2) of the House resolution for serious violations, and (3) injunctive relief. The review panel also ordered the employing office to seek implementation of the following measures.



- The employee's supervisors were to consider the employee available, along with other employees, for certain assignments.
- The employing office was to include a copy of the review panel's decision in all of the employee's personnel files.
- The employing office was to advise its employees that it intends to adhere to the principles of the Fair Employment Practices Resolution, that the hearing procedure is available to them, and that it will not retaliate against them for invoking or participating in the hearing procedure.

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