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General Government Division

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April 21, 2000

The Honorable Joe Scarborough
Chairman, Subcommittee on Civil Service
Committee on Government Reform
House of Representatives

Subject: Equal Employment Opportunity: Responses to Questions Related to Equal Employment Opportunity and Dispute Resolution Issues

Dear Mr. Chairman:

On March 29, 2000, we testified at an oversight hearing the Subcommittee held on the Equal Employment Opportunity (EEO) complaint process for federal employees.¹ This letter responds to your request of April 7, 2000, in which you raised additional questions about EEO and dispute resolution issues. To respond to these questions, in addition to drawing upon our body of knowledge, we primarily reviewed (1) data published by the Office of Personnel Management (OPM) and the Equal Employment Opportunity Commission (EEOC) and (2) data from OPM's Central Personnel Data File (CPDF) on civilian federal employees. We performed our work in April 2000 in accordance with generally accepted government auditing standards. Because our work was based primarily on publicly available reports and testimonies, including our own previously published reports, we did not seek agency comment on a draft of this report. Our responses to the questions that you asked follow.

Question 1. Please provide the Subcommittee with information that either substantiates or refutes the contention that minorities are placed in positions that are "dead end employment tracks."

GAO has not done any work that specifically addresses this question. However, we reviewed data published by OPM and EEOC about the representation of minorities in the federal

¹ Equal Employment Opportunity: Discrimination Complaint Caseloads and Underlying Causes Require EEOC's Sustained Attention (GAO/T-GGD-00-104, Mar. 29, 2000).

workforce. These data show that from fiscal years 1993 through 1998, the proportion of the federal workforce made up by minorities increased by 1.5 percentage points. More important to your question, both the number and percentages of minority representation in mid- and senior-level federal white-collar jobs increased.

According to the 1999 edition of OPM’s fact book on the federal civilian workforce, minorities made up 29.7 percent of the federal workforce in September 1998.² This represented a slight increase from September 1993, when 28.2 percent of the federal workforce were members of minority groups. The percentage of Blacks in the federal workforce remained the same (16.7 percent) during this period; the percentages of Hispanics (from 5.6 to 6.4 percent), Asians/Pacific Islanders (from 3.9 to 4.5 percent), and American Indians/Alaska Natives (from 2 to 2.1 percent) all increased.

Data published by EEOC in its Annual Report on the Employment of Minorities, Women and People With Disabilities in the Federal Government for the fiscal year ending September 30, 1998, show that from 1993 through 1998, minorities increased their representation—both in number and percentage—at the mid-level and senior levels of the white-collar federal workforce.³ These gains were made at a time when the nonpostal federal workforce was being downsized. Data about the white-collar workforce are useful in responding to your question because white-collar jobs (1) accounted for about 87 percent of the jobs in the nonpostal federal workforce in 1998 and (2) often provide career paths to mid- and senior-level positions, particularly in the professional and administrative series. For this analysis, we considered mid- and senior-level positions to be those at or equivalent to General Schedule grade 13 and higher. EEOC defined senior-level positions to include Senior Executive Service, Executive Service, Senior Foreign Service, and other employees earning salaries above that of grade 15 of the General Schedule. Table 1 compares minority representation at mid-level and senior level white-collar positions in fiscal years 1993 and 1998.

Table 1: Minority Employment at Mid-Level and Senior Level White-Collar Positions, Fiscal Years 1993 and 1998

| Level | Fiscal Year 1993 | | Fiscal Year 1998 | |
|--------|------------------|---------|------------------|---------|
| | Number employed | Percent | Number employed | Percent |
| GS-13 | 26,461 | 16.1 | 34,237 | 19.2 |
| GS-14 | 11,645 | 12.6 | 13,795 | 15.3 |
| GS-15 | 6,192 | 12.0 | 7,617 | 14.8 |
| Senior | 1,151 | 8.5 | 1,715 | 12.1 |

Source: EEOC

Table I-10 of EEOC’s Annual Report on the Employment of Minorities, Women and People With Disabilities in the Federal Government for the fiscal year ending September 30, 1998, provides detailed data on the number and percentage of men, women, and members of each

² The Fact Book (OWI-99-2, September 1999).

³ EEOC obtained these data from the CPDF.

of the racial groups at the various General Schedule and senior pay levels for fiscal years 1993 through 1998.

Although these data show that minority representation at the middle and senior levels was rising, the data also show that, proportionately, minorities are more likely than Whites to hold General Schedule positions below Grade 13. Similarly, OPM reports that the average grade level of minority employees is lower than that of White federal workers. According to OPM, the average General Schedule grade level for White federal workers in September 1998 was 9.8; the average grade level was 8.1 for Black federal workers, 8.6 for Hispanics, and 7.8 for American Indians. Among Asian federal workers, the average grade level was 9.3.

A 1996 MSPB report analyzed the disparity in the average grade level of minorities and White men in professional and administrative jobs at that time and found that a large portion of the difference was accounted for by differences in education and experience.⁴ Our preliminary analysis of data from the CPDF shows that education levels vary among the different racial groups.⁵ For career federal employees on board on September 30, 1999, 43.4 percent of Whites had a 4-year college degree or higher, compared with 23 percent of Blacks, 28.8 percent of Hispanics, and 21.8 percent of American Indians. Among Asian federal workers, 51.2 percent had a 4-year degree or higher.⁶ Of the career federal workers with 4-year degrees or higher in September 1999, 78.2 percent were White, 10.4 percent were Black, 5.6 percent were Asian, 4.8 percent were Hispanic, and 1.1 percent were American Indian.

MSPB also reported that although a large portion of the grade level differences between minorities and White men could be accounted for by differences in education and experience, even after controlling for these differences, the Board found that there was generally a negative effect on the careers of minorities in professional and administrative positions because of their race or national origin.

Question 2. Has GAO studied the Navy's Pilot Dispute Resolution Program, which is being used to resolve EEO complaints? If so, please provide any comments.

The Navy discussed the results of the department's experiences under its pilot program for resolving EEO complaints at a joint hearing held by this Subcommittee and the Subcommittee on Military Readiness, House Armed Services Committee, on March 9, 2000. The Navy says that its program uses a variety of alternative dispute resolution (ADR) processes. We have not studied the Navy's Pilot Dispute Resolution Program. However, we believe that it is important that any evaluation of ADR program results consider the performance under existing dispute resolution processes in order to identify the value added by the ADR

⁴ Fair & Equitable Treatment: A Progress Report on Minority Employment in the Federal Government, August 1996.

⁵ In OPM's Central Personnel Data File: Data Appear Sufficiently Reliable to Meet Most Customer Needs (GAO/GGD-98-199, Sept. 30, 1998), we reported that the education data element intended to reflect the highest education level achieved by a federal worker was inaccurate in 26 (23 percent) of 113 official personnel folders we reviewed. In 24 of the 26 cases, education levels were understated in the CPDF.

⁶ Of those with degrees, a higher proportion of White (35 percent) and Asian (37 percent) federal workers than Black (25 percent), Hispanic (25.6 percent), and American Indian (27.8 percent) employees had higher than a 4-year degree.

processes that are deployed. The EEO complaint process for federal employees has a pre-complaint or counseling phase during which efforts are made to informally resolve a dispute. According to EEOC, in fiscal year 1998, about 55 percent of “informal” complaints were resolved. An evaluation of ADR program results would need to consider, among other things, the extent to which there are increases in the resolution rate of informal EEO complaints when ADR processes are introduced.

Question 3. EEOC’s Comprehensive Enforcement Program is intended to help EEOC meet its goal to eradicate discrimination in the federal workplace. Do you believe that EEOC will be able to measure progress toward this goal? What do you see as the strongest features of this program? The weakest?

According to EEOC, the Comprehensive Enforcement Program is a strategic approach to federal sector reform and is to promote discrimination prevention by linking improved data analyses, outreach and technical assistance activities aimed at the root causes of discrimination, and a streamlined process for addressing EEO complaints. Although we have not examined initiatives under the program, they are clearly steps in the right direction. However, sustained commitment and follow-through on the part of EEOC will be required if the agency is to achieve meaningful results.⁷

In order for EEOC to measure progress towards its goal of eradicating discrimination, there need to be reliable indicators and measures of discrimination in the federal workplace. An appropriate place to identify such indicators and measures is in the annual performance plans that agencies are to prepare in accordance with the Government Performance and Results Act of 1993. As EEOC noted in its testimony before the Subcommittee on March 29, 2000, it has developed performance measures, which are included in its Fiscal Year 2001 Annual Performance Plan. However, in our view, these measures deal with process (e.g., resolution time, eliminating older cases from inventory) and activities (e.g., number of technical assistance visits and on-site evaluations).

Measures could be developed that gauge the outcome of discrimination prevention efforts. For example, MSPB conducts the Merit Principles Survey approximately every 3 years. Questions 63 and 64 of the 2000 survey deal directly with discrimination in the workplace. Responses to such survey questions could be tracked over time. MSPB’s 2000 survey instrument is available on the agency’s web site (www.mspb.gov).

The strongest feature of the Comprehensive Enforcement Program, in our opinion, is the changes to complaint program regulations that were implemented in November 1999, particularly the requirement for ADR to be used, which lay the groundwork for reducing the flow of cases. Our work has found that ADR usage in federal agencies had prevented some complaints and, by resolving complaints in their early stages, bought about speedier resolution. Other changes could allow nonmeritorious cases to be weeded out and two or more complaints by the same complainant to be consolidated. If reductions in case flow

⁷ GAO/T-GGD-00-104, Mar. 29, 2000.

occur, agencies and EEOC may be able to work towards reducing backlogs and the time taken to process a case.

EEOC has said that effectively pursuing its goals under the Comprehensive Enforcement Program will depend on its receiving additional resources. EEOC remains overwhelmed with hearings and appeals cases, which will limit the agency's ability to deploy existing resources for oversight, technical assistance, and prevention activities. EEOC also said that improved data analysis for identifying the nature and extent of workplace conflicts is a key component of the Comprehensive Enforcement Program. However, steps EEOC is taking to improve data analysis through its own efforts and in conjunction with the Interagency Federal EEO Task Force are in their formative stages, and results are not expected for 2 or 3 years. In addition, improvements in data collection and reporting will also depend, in part, on whether EEOC fulfills its plans to develop a standardized EEO complaint data collection and reporting system. Furthermore, because of the importance of agencies in the EEO process, EEOC's ability to achieve its goals will depend on its leadership in securing the commitment and cooperation of agencies.

As discussed above, EEOC has been overwhelmed with hearings and appeals cases. In an attempt to keep up with increasing caseloads, EEOC's administrative judges (who conduct hearings) and appeals attorneys have worked to increase the number of cases they resolve each year.⁸ Increases in productivity can sometimes come at the expense of quality. However, EEOC's performance plan does not contain indicators to measure the quality of its hearings and appeals decision processes. In contrast, MSPB, its Fiscal Year 2000 and 2001 Annual Performance Plan, tracks the percent of cases upheld by the Court of Appeals for the Federal Circuit to measure performance against its objective of issuing high-quality decisions that are held to be legally sound upon review by the Board and the Courts.

Question 4. More agencies will be using ADR in more cases to meet the new requirement from EEOC. Based on the work that you have done, what are the prerequisites to a successful ADR program?

In our report on employers' experiences with ADR in the workplace, in addition to describing how organizations developed ADR capacity, we discussed lessons learned by five federal and five private organizations in making ADR work.⁹ These lessons included

- the need for visible support by top management,
- the importance of involving employees in ADR program development,
- the importance of employing ADR processes early in a dispute before positions have solidified and underlying interests have been obscured, and
- the need to balance the desire to settle and close cases against the need for fairness to employees and managers alike.

⁸ Equal Employment Opportunity: Complaint Caseloads Rising. With Effects of New Regulations on Future Trends Unclear (GAO/GGD-99-128, August 16, 1999).

⁹ Alternative Dispute Resolution: Employers' Experiences With ADR in the Workplace (GAO/GGD-97-157, Aug. 12, 1997).

In addition, we reported that limited attention has been given to evaluating the results of ADR programs. We believe that it is important for an ADR program to have an evaluation component. These lessons are discussed in more detail in our report (which we are providing) on pages 26 and 27, as well as in the case illustrations for each of the 10 organizations. A copy of the report is also available on GAO's web site (www.gao.gov).

As agreed with your office, we plan no further distribution of this letter until 10 days after its issuance, unless you publicly release its contents earlier. We will then send copies of this letter to Senators Daniel K. Akada, Thad Cochran, Joseph I. Lieberman, and Fred Thompson; and Representatives Robert E. Andrews, John Boehner, Dan Burton, William L. Clay, Elijah E. Cummings, Chaka Fattah, William F. Goodling, Steny H. Hoyer, Jim Kolbe, John M. McHugh, David Obey, Harold Rogers, Jose E. Serrano, Henry A. Waxman, and C.W. Bill Young in their capacities as Chair or Ranking Minority Members of Senate and House Committees and Subcommittees with jurisdiction over human capital issues. We will make copies of this letter available to others upon request.

If you or your staff need additional information, please call Anthony Lofaro or me on (202) 512-8676.

Sincerely yours,



Michael Brostek
Associate Director, Federal Management and
Workforce Issues

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