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Health, Education, and
Human Services Division

B-279114

February 3, 1998

The Honorable Charles T. Canady
Chairman, Subcommittee on the Constitution
Committee on the Judiciary
House of Representatives

Subject: U.S. Commission on Civil Rights: Update on Its
Response to GAO Recommendations

Dear Mr. Chairman:

As you requested, we are providing information for the Subcommittee's use in the reauthorization process of the U.S. Commission on Civil Rights. We have summarized the findings of our July 1997 report on the management of the Commission and have included the status of the Commission's progress in implementing the recommendations we made.¹

The Commission on Civil Rights, established by the Civil Rights Act of 1957, works on a broad array of issues, which, at the time of our review, included racially motivated church burnings; racial and civil unrest in major metropolitan cities; and the national debate over the continuing need for federal affirmative action programs and policies. In fiscal year 1997, the Commission had a budget of \$8.74 million, 8 part-time commissioners, and a staff of 84. The commissioners have two principal responsibilities: (1) investigating claims of voting rights violations and (2) studying and disseminating information—often collected through specific projects—on the impact of federal civil rights laws and policies.

Last July, we reported on Commission activities in preparation for the agency's reauthorization. More specifically, your Subcommittee had asked us to provide information on the Commission's management of projects during fiscal years 1993 through 1996 and general management issues at the Commission. Our report was based on reviews of Commission records, interviews with the

¹U.S. Commission on Civil Rights: Agency Lacks Basic Management Controls
(GAO/HEHS-97-125, July 8, 1997).

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commissioners and staff director at the time and other responsible Commission officials, and our observations from Commission meetings we attended.

In summary, we found broad management problems at the Commission. It appeared to be an agency in disarray, with limited awareness of how its resources were used. For example, the Commission could not provide key cost information for individual aspects of its operations, such as its regional offices; its complaints referral process; its clearinghouse; public service announcements; and, in one case, a project. Furthermore, significant agency records documenting Commission decision-making were reported lost, misplaced, or nonexistent. The Commission had not established accountability for resources and did not maintain appropriate documentation of agency operations. We concluded that a lack of these basic, widely accepted management controls made the Commission vulnerable to resource losses due to waste or abuse.

Problems found in the Commission's general management of its operations were also present in the Commission's management of projects. For example, Commission records available to us for projects completed or ongoing during fiscal years 1993 through 1996 showed that projects accounted for only about 10 percent of the Commission's appropriations. The Commission's guidance for carrying out projects was outdated and the process described to us for actually conducting projects was largely ignored. Specific time frames were not set for most projects, and when they were, project completion dates exceeded the estimates by at least 2 years. We found that, overall, projects took a long time to complete, generally 4 years or more. Also, Commission management did not systematically monitor project costs or time frames to ensure project quality and timeliness. We concluded that the Commission's management of projects appeared weak or nonexistent.

In our report, we made two general recommendations that the Commission develop and document policies and procedures that assign responsibility for management functions, and provide mechanisms for accountability of Commission operations. We made three specific recommendations that included updating the Code of Federal Regulations (C.F.R.) regarding the Commission's operations, updating the Commission's internal guidance, and establishing a management information system. The Commission accepted all of the recommendations and has been working to satisfy them. As of January 23, 1998, the Commission's new staff director stated that her performance in that role has satisfied the two general recommendations and that Commission efforts were under way to satisfy the three specific recommendations. The time frame for implementation of the first specific recommendation is expected

to slip from September 1998 to mid-fiscal year 1999; implementation of the second recommendation is expected to be complete by September 1998; and the time frame for full implementation of the third recommendation has slipped from October 1997 and is now expected by February 1998.

BACKGROUND

The Commission on Civil Rights was created to protect the civil rights of people within the United States. It is an independent, bipartisan, fact-finding agency directed by eight part-time commissioners. Four commissioners are appointed by the president, two by the president pro tempore of the Senate, and two by the speaker of the House of Representatives. No more than four commissioners can be of the same political party, and they serve 6-year terms. The Commission accomplishes its mission by (1) investigating charges of citizens being deprived of voting rights because of color, race, religion, sex, age, disability, or national origin; (2) collecting and studying information concerning legal developments on voting rights; (3) monitoring the enforcement of federal laws and policies from a civil rights perspective; (4) serving as a national clearinghouse for information; and (5) preparing public service announcements and advertising campaigns on civil rights issues. The Commission may hold hearings and, within specific guidelines, issue subpoenas to obtain certain records and have witnesses appear at hearings. It also maintains state advisory committees and consults with representatives of federal, state, and local governments and private organizations to advance its fact-finding work.

The Commission is required to issue reports on the findings of its investigations to the Congress and the president, and to recommend legislative remedies. It also must submit to the president and the Congress at least once annually a report that discusses the Commission's monitoring of federal civil rights enforcement in the United States. Because it lacks enforcement powers that would enable it to apply remedies in individual cases, the Commission refers specific complaints it receives to the appropriate federal, state, or local government agency for action.²

²Several agencies have enforcement authority for civil rights issues. For example, the Equal Employment Opportunity Commission is charged with enforcing specific federal employment antidiscrimination statutes, such as title VII of the Civil Rights Act of 1964, the Americans With Disabilities Act of 1990, and the Age Discrimination in Employment Act of 1967. Also, the Assistant
(continued...)

Projects conducted by the Commission to study various civil rights issues are largely the responsibility of its Office of the General Counsel with a staff of 15 and the Office of Civil Rights Evaluation with a staff of 9 in fiscal year 1997. The largest component of the Commission is the Regional Programs Coordination Unit with 2 staff members in the Washington, D.C., office and 25 staff members in six regional offices. The regional offices direct the Commission's work, which is carried out through 51 advisory committees—one in each state and the District of Columbia—composed of citizens familiar with local and state civil rights issues.

SUMMARY OF REPORT FINDINGS

Commission's Management Reflected an Agency in Disarray

The Commission's management of operations at the time of our review showed a lack of control and coordination. The Commission had not updated its depiction of its organizational structure as required under the Freedom of Information Act nor its administrative guidance to reflect a major reorganization that occurred in 1986. Obsolete documentation of the agency's operating structure and administrative guidance left the public and Commission employees unsure of the agency's procedures and processes for carrying out its mission. Moreover, Commission officials reported key records were lost, misplaced, or nonexistent, which left insufficient data to accurately portray Commission operations. Agency spending data were centralized, and Commission officials could not provide costs for individual offices or functions. We also found that the Commission had never requested audits of its operations, and information regarding Commission audits in its fiscal year 1996 report on internal controls was misleading.

Agency Policies and Procedures Unclear

The Commission had no documented organizational structure available to the public that reflected current information on procedures and program processes of the Commission. The Freedom of Information Act requires federal agencies to publish and keep up to date the depictions of their organizational structure and to make available for public inspection and copying the agencies' orders,

²(...continued)

Attorney General for Civil Rights in the Department of Justice is the enforcement authority for civil rights issues for the nation.

policies, and administrative staff manuals and instructions. The C.F.R., the principal document for publishing the general and permanent rules of federal agencies, showed the Commission's organizational structure as of May 1985,³ but the Commission's organizational structure at the time of our work was substantially different because of a major reorganization in 1986.

In addition, the Commission's Administrative Manual had been issued in May 1975, but the Commission had paid little attention over the last 10 years to maintaining and updating it to accurately reflect agency operations. The purpose of the manual was to translate administrative policy derived from the various legislative and regulatory policies affecting the day-to-day operations of the Commission into procedures that the Commission staff could rely on for guidance in carrying out the agency's mission. The Commission's major reorganization in the mid-1980s, coupled with a high turnover of staff in key positions, made up-to-date operating guidance especially important for maintaining continuity and performing work efficiently and effectively. The directors of the two offices responsible for conducting projects, however—who had been employed at the Commission for 5 and 2-1/2 years, respectively, at the time of our work—had only the 1982 version of the Administrative Manual to rely on for official procedures for conducting projects.

Commission officials told us then that, although it was outdated, the guidance in the manual still reflected the basic Commission policy for conducting projects. We found, though, that projects did not follow all steps outlined in this guidance, and could not, for some steps, because the offices involved no longer existed.

Commission officials told us then that they were in the process of updating the Administrative Manual and had updated 8 of 73 administrative instructions; but the administrative instruction for implementing projects was not one of the 8. The former staff director⁴ told us that she had recently convened a task force, made up of the two office directors responsible for conducting projects and the special assistant to the staff director, to revamp the administrative instruction for projects. As of June 16, 1997, Commission officials said that the task force had met at least three times over the past several months and that the Commission expected to have a final version of the administrative instruction to propose to the new staff director when that individual was appointed.

³U.S. Commission on Civil Rights mission and functions: 45 C.F.R., part VII.

⁴The staff director at the time of our review resigned effective December 31, 1996. A new staff director joined the Commission on June 30, 1997.

Spending Data Not Maintained
by Office or Function

At the time of our work, Commission officials told us that they maintained a central budget and could not provide the amount or percentage of the budget used by individual offices or functions, such as complaint referrals or clearinghouse activities.⁵ The only function Commission officials gave us separate financial information on then was the projects' costs. But even for project costs, records were poorly maintained, and it was unclear whether the records reflected the true costs for projects. For example, the Commission approved one project's report for publishing on September 9, 1994, and the report showed an issuance date of September 1994. Yet, financial information provided to us showed costs incurred through fiscal year 1996 for this project. A November 1, 1995, letter from the Commission to the Subcommittee on the Constitution showed actual costs for the project of \$261,529, but data Commission officials provided us showed total project costs of \$531,798. At the time of our audit work, the Commission was not able to reconcile these differences.⁶

⁵As a result of the House Committee on the Judiciary, Subcommittee on the Constitution's, July 17, 1997, oversight hearing, the Commission submitted for the record percentages of its annual obligations it attributed to congressionally mandated programs for fiscal years 1993 through 1997. The Commission showed that, on average, 63 percent of its budget goes to civil rights enforcement, monitoring, complaint processing, the clearinghouse program, and state advisory committees and regional offices, while the remaining 37 percent of the budget reflects administrative support for the various functions. We did not verify the percentage data the Commission submitted.

⁶The project evaluated the enforcement of the Fair Housing Amendments Act of 1988. In responding to a draft of our report, the Office of the Staff Director said that the project produced two reports and data provided to the Congress reflected fiscal year 1994 cost while the GAO request represented all costs on the project and adding the costs associated with the two reports reconciled the difference. Records provided us during the audit did not support these comments.

Management Controls Weak

The Commission's management controls over its operations were weak and did not ensure that the Commission could meet its statutory responsibilities⁷ or program objectives. Federal agencies are required under the Federal Manager's Financial Integrity Act to report annually on internal controls to the president and the Congress, but the Commission did not do such a report for fiscal year 1995. Furthermore, the Commission's internal controls report for fiscal year 1996 appeared to misrepresent information concerning audits of the Commission. The report claimed that several administrative activities were randomly audited by the U.S. Department of Agriculture's Office of Inspector General, when in fact no such audits were done. The only direct connection between the Commission and the Department of Agriculture was that the Commission's financial transactions were handled through Agriculture's National Finance Center. Vendors submitted invoices directly to the National Finance Center for payment, and the Commission did not verify the accuracy of the invoices submitted. The Agriculture Inspector General is responsible for auditing the automated systems of Agriculture's National Finance Center. But the Inspector General's office told us that the Commission had never requested any audits of its transactions. We did not find that any other audits of Commission expenditures had been performed.⁸

Commission Projects Were Poorly Managed and Took Years to Complete

Although Commission projects addressed a broad array of civil rights issues, including racial and ethnic tensions in American communities; the enforcement of fair housing, fair employment, and equal education opportunity laws; and naturalization and citizenship issues, its project spending accounted for a small percentage of the Commission's budget. Furthermore, the Commission's efforts to manage these projects fell short in areas such as following project management guidance, meeting projected time frames for completing projects, and systematic monitoring of projects. During fiscal years 1993 through 1996,

⁷The Subcommittee on the Constitution, House Committee on the Judiciary, reported that for fiscal year 1995 the Commission did not meet its statutory requirement to submit to the Congress at least one report that monitors federal civil rights enforcement (104th Congress, House Report 104-846, Sept. 1996).

⁸The Commission is not required by statute to have an Inspector General, and its operations had not been audited by an outside accounting firm.

the Commission completed 5 projects, deferred 10 others, and worked on another 7 that were still ongoing at the end of fiscal year 1996.

Project Spending Accounted for Small
Percentage of Commission's Budget

Although the Commission appeared to spend about 10 percent of its resources annually on projects, we were unable to verify project spending because of the Commission's poor record-keeping. According to Commission records then, costs incurred for ongoing and completed projects during fiscal years 1993 through 1996 ranged from about \$33,000⁹ for a completed project on funding for federal civil rights enforcement to about \$764,000 for a project on racial and ethnic tensions in Los Angeles that had been ongoing throughout the 4-year period.¹⁰

Projects Took Years to Complete

The Commission had no overall standard for assessing a project's timeliness or for estimating the time needed for specific projects. While an estimate of the time needed to conduct projects was required in proposals, very few projects had estimated time frames for completing projects. For the projects that did specify time frames, the actual time a project took to be completed was 2 to 3 years beyond its planned duration. Only two of the five completed projects had anticipated start and finish dates, but both overran their time frames. Both had anticipated time frames of 1 year, but one project took 3 years (Federal Title VI Enforcement to Ensure Nondiscrimination in Federally Assisted Programs, issued June 1996), and the other took 4 years (The Fair Housing

⁹The total cost of this project was not known because Commission officials did not, as they had for other projects, account for staff salaries spent to conduct the project.

¹⁰The Commission submitted for the record information on program and project cost data following the House Committee on the Judiciary, Subcommittee on the Constitution's oversight hearing, July 17, 1997. According to the Commission, the 10-percent figure did not consider the full scope of the Commission's programs, such as civil rights enforcement and monitoring, which averaged 20 percent of the budget during fiscal years 1993 through 1996. These two areas generally covered the projects the Commission had under way at the time of our review. However, the information the Commission submitted did not show how the percentages were determined, and we have not tried to verify this data. We could, however, verify the 10 percent cited in our report.

Amendments Act of 1988: The Enforcement Report, issued Sept. 1994). The Commission attributed delays in meeting estimated time frames to staff turnover, limited staff resources, and the need to update factual information.

Projects Were Not Systematically Monitored

The Commission did not systematically monitor projects to ensure quality and timeliness of project results and to help set priorities. At the time of our work, the only formal mechanism in place to inform the commissioners about the status of projects was used at the discretion of the staff director, who may have reported the status orally or in a monthly report to the commissioners.¹¹ We found that the commissioners received only limited updates on some projects in the staff director's monthly report. The staff director did receive periodic updates about the progress of projects being conducted by the Office of Civil Rights Evaluation. However, because of frequent staff turnover and misfiled or lost records, we could not determine whether the staff in the general counsel's office similarly informed the staff director about project progress.

Commissioners did not receive information routinely on the costs of projects or personnel working on the projects. After a vote to approve a project, commissioners were not informed of (1) which projects the staff director decided to start, (2) when projects were actually started, (3) cost adjustments for projects, (4) time frame changes, or (5) personnel changes, all of which could have affected the timeliness and quality of projects. All of the commissioners told us that they were not involved in assigning projects or specific tasks to the staff and that those duties were strictly the responsibilities of the staff director. However, most commissioners expressed a desire to receive routine reports on the status of individual projects, specifically, costs and time frames for completion, so they would know when to expect draft reports. In fact, most of the commissioners told us then that they frequently had no knowledge of the status of a particular project from the time they approved it until a draft report was given to them for review. Some commissioners told us then that communication was a big problem at the Commission and that improvement in this area up and down staff levels could have helped to resolve the problem.

¹¹While the Commission held planning meetings to discuss future projects, those meetings were held annually and therefore did not serve to routinely inform the commissioners about the status of projects.

Conclusions and Recommendations

Our overall assessment of the Commission was that its operations lacked order, control, and coordination. Management was unaware of how federal funds appropriated to carry out the agency's mission were being used, it lacked control over key functions, and it had not requested independent audits of Commission operations. These weaknesses made the Commission vulnerable to misuse of its resources. The lack of attention to basic requirements applying to all federal agencies, such as up-to-date descriptions of operations and internal guidance for employees, reflected poorly on the overall management of the Commission.

Projects embodied a key component of the Commission's operations, yet the management of projects was haphazard or nonexistent. No overall standard existed for assessing the timeliness of projects or for estimating how long projects should have taken. And the lack of project documentation, systematic monitoring to detect delays, and review priorities seriously hampered the Commission's ability to produce, issue, and disseminate timely reports.

In our report, we recommended that the Commission develop and document policies and procedures that (1) assign responsibility for management functions to the staff director and other Commission officials and (2) provide mechanisms for holding them accountable for properly managing the Commission's day-to-day operations. We stated that the Commission's effort should include:

- updating the C.F.R. to provide for public access to the current organizational structure, procedures, and program processes of the Commission;
- updating internal management guidance so that staff are assured that their efforts comply with the administrative policies of the Commission, applicable legislation, and federal rules and regulations; and
- establishing a management information system for commissioners and staff to use to plan projects and track progress using the best information available about projects' expected and actual costs, time frames, staffing levels, and completion dates.

In the Commission's comments on our draft report, half of the commissioners agreed with our assessment, while the other half challenged the report. All of the commissioners agreed, however, to implement the recommendations. In

fact, the Commission chairperson and the Office of the Staff Director reported that some efforts already were under way to implement the recommendations.

COMMISSION'S PROGRESS IN ADDRESSING
GAO'S RECOMMENDATIONS

On September 8, 1997, the Commission staff director wrote to the Senate Committee on Governmental Affairs and the House Committee on Government Reform and Oversight outlining actions the Commission intended to take to implement our recommendations, as required by 31 U.S.C. section 720. According to the Commission's plan, the commissioners would be kept informed monthly, through the staff director's report, of the progress being made to implement our recommendations. The Commission's target date for full implementation of all recommendations is September 30, 1998.

In that letter, the staff director stated that the Commission expected the update of the C.F.R. to require a comprehensive review and rewrite of the regulations, which was already in progress. Suggested changes to the C.F.R. were to be presented to the commissioners for approval in late fall 1997, after which clearance from the Office of Management and Budget would be obtained. Completion of the update of the C.F.R. was planned for the end of fiscal year 1998. The staff director reported that a task force had been established to review and, where applicable, rewrite the Administrative Instructions, which provide internal management guidance to Commission staff. The Commission expected the extensive update and rewrite of the internal guidance to be completed by the end of fiscal year 1998. The Commission expected to have a management information system that would accurately track the status of projects, and the resources committed to those projects, in place and operational by October 1, 1997.

As of January 23, 1998, when we met with the Commission staff director and other Commission officials, the Commission's progress to satisfy our recommendations was on target for some of the Commission's efforts, but some time frames for full implementation of other recommendations have slipped. The Commission's efforts to keep the commissioners informed about the progress in implementing recommendations have been successful. The staff director's monthly report to the commissioners includes data on the status of actions to address our recommendations. The Commission has a staff director in place who is responsible for managing the day-to-day operations of the Commission and assigning responsibilities to staff and holding them accountable.

Commission officials reported that their progress to update the C.F.R. will not meet the targeted completion date of September 30, 1998. These officials now expect to present the revised C.F.R. information to the commissioners by September 30, 1998, and they estimate that the date this information is finalized will be mid-fiscal year 1999. However, Commission officials reported that their work is on target for updating the agency's internal guidance. According to them, they have completed the draft of 41 of the Commission's 73 administrative instructions and expect to have all of the guidance updated by September 30, 1998, as planned.

The Commission's efforts to have a viable management information system in place and operational by October 1, 1997, will have slipped 4 months as of February 1, 1998. According to Commission officials, the Commission had a system in place as of October 1, 1997, but it did not meet the needs of the agency. The officials said that they have revamped the system and now expect to demonstrate the system to the commissioners on February 6, 1998, and expect the system to be operational by February 28, 1998. However, on the basis of our discussions with these officials, their inability to adequately explain how the system will work, and the staff's inability to provide us a report in less than a week, we question whether this system will meet the Commission's needs and will provide the commissioners with the data they need on time.

AGENCY COMMENTS

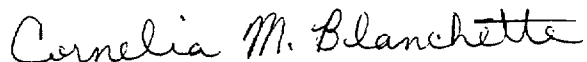
We provided a draft of this correspondence to the Commission. The Commission's staff director responded that the Commission generally agreed with our assessment of its response to our recommendations. The staff director provided additional information explaining why some actions might take longer than originally anticipated. The staff director also stated that our report's finding that project spending accounts for a small percentage of the Commission's budget continues to be a misunderstanding, and it implies that the Commission's sole mandate is to conduct projects. We agree that projects are but one category of expenses at the Commission and pointed out that fact in our report. The Commission's comments on this draft are included in their entirety in the enclosure.

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As agreed with your office, we are also sending a copy of this correspondence to the Ranking Minority Member of your Subcommittee. We will make copies available to others who request them.

If you have any questions about this correspondence, please contact me at (202) 512-7014. Major contributors to this correspondence include Sigurd R. Nilsen, Assistant Director; Jacqueline Harpp, Evaluator-in-Charge; Patricia M. Bundy, Evaluator; and Stefanie Weldon, Senior Attorney.

Sincerely yours,



Cornelia M. Blanchette
Associate Director, Education and
Employment Issues

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COMMENTS FROM THE U.S. COMMISSION
ON CIVIL RIGHTS



OFFICE OF STAFF DIRECTOR

UNITED STATES COMMISSION ON CIVIL RIGHTS
WASHINGTON, D.C. 20425

February 2, 1998

Cornelia M. Blanchette
Associate Director, Education and
Employment Issues
United States General Accounting Office
Washington, D.C. 20548

Dear Ms. Blanchette:

Thank you for the opportunity to review and comment upon your draft correspondence summarizing the GAO's report on the management of the U.S. Commission on Civil Rights and our progress in implementing the recommendations from your July 1997 audit report. Those recommendations advised the Commission to develop policies and procedures designed (1) to assign responsibility for management functions to the staff director and other Commission officials and (2) to hold these officials accountable for the proper management of the Commission's day-to-day operations. To meet these goals, the GAO recommended that Commission efforts include:

- Updating the C.F.R. to provide for public access to the current organizational structure, procedures, and program processes of the Commission;
- Updating the internal management guidance so that staff are assured that their efforts comply with the administrative policies of the Commission, applicable legislation, and federal rules and regulations;
- Establishing a management information system for Commissioners and staff to use to plan projects and track progress using the best information available about projects' expected and actual costs, time frames, staffing levels and completion dates.

On September 8, 1997, I forwarded a letter to Congress, following 31 U.S.C. §720 requirements, broadly outlining the steps taken and to be taken by Commission staff to implement the GAO's audit recommendations. The Commission's plan included:

- Performing a comprehensive review and update of the regulations governing the Commission;

- Establishing a task force to review and, where applicable, rewrite the Administrative Instructions (AIs) used to provide management guidance to Commission staff; and
- Creating a management information system (MIS) that will effectively track the status of Commission projects and the resources committed to those projects.

On January 23, 1998, GAO representatives met with me and other Commission officials to assess the status of the Commission's progress on these reforms. As demonstrated at that meeting, I am pleased to report that we have made substantial progress in satisfying the audit recommendations. Specifically, in response to the GAO's first recommendation, Commission staff have completed proposed revisions to three sections of the Commission's regulations covering the organization and functions of the Commission, the rules on hearings, reports and meetings of the Commission, and the operations and functions of State Advisory Committees. These proposed revisions are ready for submission to the Commission's union, AFSCME AFL-CIO, Local 2648, after which they may be distributed to the Commissioners for review and approval. The remaining sections of the Commission's regulations encompassing the implementation of the Freedom of Information and Privacy Acts, standards of ethical conduct for employees, and enforcement of nondiscrimination on the basis of disability in Commission programs or activities are presently under review. As indicated in my letter of September 8, 1997, completion of the staff's update of the C.F.R. is expected by the end of this fiscal year.

In response to the GAO's recommendation that the Commission update its internal management guidance, a task force was established to review the Commission's administrative instructions (AIs). To date, the task force has completed its review and proposed recommendations for action, including retention, cancellation, or revision, for each of the agency's AIs. Forty-one of the agency's 73 AIs have been redrafted, and the task force expects to complete its mandate by September 30, 1998, as planned.

The GAO's third recommendation provides for the establishment of a management information system (MIS) to track project costs and monitor changes in time frames, staffing levels, and completion dates. Before summarizing the staff's progress on the development of a MIS to plan projects, I should first address a continuing misunderstanding, reflected again in footnotes 5 and 10 of your draft correspondence, that project spending accounts for a small percentage of the Commission's budget. Based upon my discussions with relevant Commission officials, any analysis of Commission appropriations should reasonably include the figures and percentages applicable to those activities, entities, or other requirements mandated by legislation. These include (a) the enforcement program, (b) the monitoring program, (3) complaint processing, (4) Public Service Announcements (5) State Advisory Committees, and (5) the Commissioners and their assistants. Commission officials have previously stated, in private sessions with the GAO as well as in public testimony before the Congress, that assessment of these legislative mandates provide a more realistic picture of how the Commission's appropriation is expended. A conclusion that only 10% of the Commission's appropriation is project related, implies that the Commission's sole mandate is to conduct projects. However, projects are but one category of

expenses under the general heading of enforcement and monitoring. A more appropriate and reasonable comparison of project costs in this instance, however, would consist of a comparison of total project costs to total costs allocated to the individual program offices responsible for project implementation.

Staff efforts to design an effective MIS are ongoing. As noted in your draft correspondence, the Commission had in place, as pledged in my September 1997 letter to Congress, an operational MIS system. Products of the system were distributed and reviewed by the Commissioners, and the system was determined to be inadequate to meet the needs of the agency. Thus, Commission staff pursued and adopted alternative means to develop the new MIS. The overall objective of the MIS is to provide a comprehensive method of managing and reporting on Commission projects from approval to completion. More specifically, the system will assist managers in the planning, scheduling, tracking, cost assessment, and reporting on Commission approved projects. The heart of the MIS system is off-the-shelf computer software specifically designed for project management. The system's capabilities include the ability to generate certain information on a recurring basis including:

1. *Project summary reports* which display the number of tasks and resources, the project costs, the total amount of work, and the project start and finish dates;
2. *Resource usage reports* which identify the task to which each resource is assigned;
3. *Over-allocated resources reports* which display all over-allocated resources and the tasks to which they are assigned;
4. *Cost Information reports* which display a list of planned and actual resource costs.
5. *Over-budget resource reports* which display a list of resources whose costs are going to exceed the baseline costs; and
6. *Budget reports* which display the budgeted costs of each task and the variance between budgeted costs and current costs.

As indicated in the January 23, 1998 meeting, the MIS will be presented to the Commission at its February 1998 monthly meeting.

While the Commission staff continue to forge ahead toward full implementation of the GAO recommendations, as explained during the January 23, 1998 meeting, several external challenges must be met to achieve that goal. For example, the Administrative Procedure Act and Executive Order 12866, as well as Commission regulations and procedures, mandate certain procedures and timeframes for the promulgation of agency regulations. However, certain necessary tasks within these requirements permit unpredictable timeframes.¹ Still, I will require that Commission staff submit draft regulations far in advance of prescribed timeframes, and I will encourage prompt action by the Commission to reach agreement on proposed final regulations. Similarly, as referenced above, Article IV of the collective bargaining agreement (CBA) between AFSCME AFL-CIO, Local 2478 and the Commission on Civil Rights, confers upon the union "the right to consultation prior to the issuance of new regulations on matters affecting personnel policies, practices or working conditions." In addition, management is also required under the CBA to

¹ See enclosed chart.

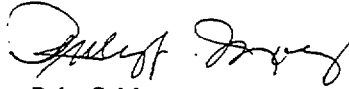
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consult with the union on various matters covered by the agency's Administrative Instructions prior to final issuance. Again, I will endeavor to facilitate prompt agreement on any matters of concern, while simultaneously honoring the rights of the union and complying the staff's commitment to complete its work by September 30, 1998, as planned.

In closing, I would like to reiterate our commitment to the full and prompt implementation of the GAO's recommendations to improve the efficiency and accountability of agency operations. However, as emphasized at the January 23, 1998 meeting, the commitment to comply with the GAO's recommendations by the end of this fiscal year refers to those steps that may be independently completed by Commission staff and cannot reasonably encompass additional requirements imposed by binding contracts, or other applicable laws, rules or regulations.

Sincerely,



Ruby G. Moy
Staff Director

Encl.

Table: Required Action Pursuant to the Administrative Procedure Act (APA), Executive Order 12866, and Commission procedures to promulgate rules and regulations.¹

Time Required	Action Needed
Unspecified 8 days prior to meeting	<ul style="list-style-type: none"> Provide draft regulations to Commissioners in advance of public meeting Publication of Notice in Federal Register that Commissioners will address proposed regulations at a public meeting
Unspecified	Commission approval of proposed regulations at public, monthly Commission meeting or special, public meeting pursuant to 45 C.F.R. § 701.11.
14 - 90 days	Submission of draft action to OMB of proposed rulemaking or other preliminary regulatory actions prior to a notice of proposed rulemaking
Unspecified	Publish proposed regulations in Federal Register
60 days	Public notice and comment period ²
Unspecified	Revision of proposed regulations by Commission staff, if necessary, following receipt of public comments
Unspecified 8 days prior to meeting	<ul style="list-style-type: none"> Provide proposed final regulations to Commissioners in advance of public meeting Publication of notice in Federal Register that Commissioners will address proposed final regulations at a public meeting
Unspecified	Review and approval of final proposed regulations by Commissioners at public, monthly Commission meeting or special, public meeting pursuant to 45 C.F.R. § 701.11.
30 days	Final action published in Federal Register 30 days prior to effective date of regulations

As the table above indicates, a minimum of 120 days is necessary to fulfill the required notice and comment period to the public (through the Federal Register) and OMB. This time frame may increase substantially should OMB deem that the proposed regulations are "significant."³ In such case, the OMB review may require an additional 76 days. In addition, the Commission's collective bargaining agreement requires additional review and approval procedures with the AFSCME AFL-CIO, Local 2478.

¹ 5 U.S.C. § 553 (1997); Exec. Order No. 12,866, 58 Fed. Reg. 51,735 (1993). There are some exceptions to which the APA and E.O. 12866 do not apply. For example, the notice of proposed rulemaking under the APA does not apply to interpretative rules, general statements of policy, or rules of agency organization, procedure or practice. See 5 U.S.C. § 553(b)(3)(A). Similarly, E.O. 12866 does not apply to regulations "limited to agency organization, management, or personnel matters." 58 Fed. Reg. 51,734. The notice of proposed rulemaking under the APA also does not apply when the agency for good cause finds that notice and public procedure thereon are impractical, unnecessary, or contrary to the public interest. 5 U.S.C. § 553(B).

² Executive Order 12866 states that "each agency should afford the public a meaningful opportunity to comment on any proposed regulation, which in most cases should include a comment period of not less than 60 days." 58 Fed. Reg. 51,739-51,740.

³ Significant regulatory action means any regulatory action that is likely to result in a rule that may "(i) have an annual effect on the economy of \$100 million or more...;(ii) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (iii) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (iv) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order." 58 Fed. Reg. 51,737-51,738. While it is unlikely that the Commission's regulations would be deemed significant by OMB under this definition, this provision remains a factor in assessing the timeframe for regulatory action.

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