

May 2006

EQUAL
EMPLOYMENT
OPPORTUNITY

DOD's EEO Pilot
Program Under Way,
but Improvements
Needed to DOD's
Evaluation Plan



G A O

Accountability * Integrity * Reliability

Highlights of [GAO-06-538](#), a report to congressional addressees

EQUAL EMPLOYMENT OPPORTUNITY

DOD'S EEO Pilot Program Under Way, but Improvements Needed to DOD'S Evaluation Plan

Why GAO Did This Study

Delays in processing of equal employment opportunity (EEO) complaints have been a long-standing concern. In 2000, as part of the Department of Defense's (DOD) fiscal year 2001 authorization act, Congress authorized DOD to carry out a 3-year pilot program for improving processes to resolve complaints by civilian DOD employees by testing procedures that would reduce EEO complaint processing times and eliminate redundancy, among other things. The act requires two reports from GAO—90 days after the first and last fiscal years of the pilot program's operation. In December 2005 and January 2006, we provided briefings on our initial review of the pilot program. This report (1) describes key features and status of the three programs and (2) assesses DOD's plan for evaluating the effectiveness of the pilot program.

What GAO Recommends

GAO recommends that DOD develop a sound evaluation plan that includes key evaluation features to accurately and reliably assess the pilot programs' results.

DOD generally concurred with the recommendation and stated that it would incorporate our recommended key features into the evaluation plan as appropriate.

www.gao.gov/cgi-bin/getrpt?GAO-06-538.

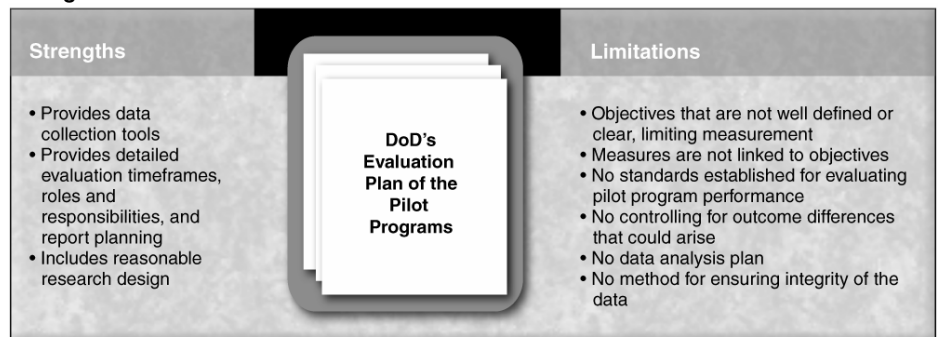
To view the full product, including the scope and methodology, click on the link above. For more information, contact George H. Stalcup at (202) 512-9490 or Stalcupg@gao.gov.

What GAO Found

In August 2004, the Secretary of Defense authorized 2-year programs in (1) Defense Logistics Agency (DLA), (2) the Defense Commissary Agency (DeCA), and (3) components of the U.S. Air Force (USAF) which became operational in fiscal year 2005. While the legislation stated that the pilot program is exempt from procedural requirements of current Equal Employment Opportunity Commission (EEOC) regulations, to a large extent two of the three programs were designed and are operating within existing EEOC requirements, with a specific emphasis on alternative dispute resolution (ADR) as encouraged in DOD's memo soliciting pilot program proposals. ADR techniques include, but are not limited to, conciliation, facilitation, mediation, or arbitration and usually involve the intervention or facilitation by a neutral third party. After the first year, program officials reported low case activity and stated that they plan to request approval from the Secretary to continue their respective programs for a third year. To carry out the programs, officials used similar strategies—outreach to inform eligible staff about the pilot programs, staff training, and the use of electronic data collection—but implemented them differently.

Our assessment of DOD's evaluation plan for the pilot program found both strengths and limitations (see figure below). A sound evaluation plan contains such features as criteria for determining program performance and measures that are directly linked to program objectives. Such key features increase the likelihood that the evaluation will yield sound results, thereby supporting effective program and policy decisions. Lacking these key features, DOD is limited in its ability to conduct an accurate and reliable assessment of the program's results, and Congress is limited in its ability to determine whether features of the overall program have governmentwide applicability. Officials from DOD's pilot program oversight entities have acknowledged shortcomings and have indicated a willingness to modify the plan.

Strengths and Limitations of DOD's Evaluation Plan



Source: GAO.

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Abbreviations

ADR	alternative dispute resolution
AFB	Air Force Base
AJ	administrative judge
CORE	Compressed Orderly Rapid Equitable
C.F.R.	Code of Federal Regulations
DOD	Department of Defense
DeCA	Defense Commissary Agency
DLA	Defense Logistics Agency
EEO	equal employment opportunity
EEOC	Equal Employment Opportunity Commission
ERO	early resolution opportunity
MCAS	Marine Corps Air Station
MD-110	Management Directive-110
MSPB	Merit Systems Protection Board
PECP	Pilot for Expedited Complaint Processing
RESOLVE	Reach Equitable Solutions Voluntarily and Easily
USAF	United States Air Force

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May 5, 2006

Congressional Addressees

Federal employees or applicants for employment who allege that they have been discriminated against by a federal agency may file a complaint with that agency.¹ The Equal Employment Opportunity Commission (EEOC) has established procedures for federal agencies to process equal employment opportunity (EEO) complaints, including time frames for taking certain actions, and use of alternative dispute resolution (ADR) programs.² The federal EEO complaint process consists of two stages—informal, or precomplaint counseling, and formal, when a complaint is filed with the agency. Delays in the processing of EEO complaints have been a long-standing concern of EEOC, other federal agencies, and Congress. As an example of such delays, from fiscal years 1993 to 2003, the time the federal government took to investigate a formal EEO complaint rose from an average low of 171 days to an average high of 343 days.³

In 2000, as part of DOD's fiscal year 2001 authorization act,⁴ Congress authorized the Department of Defense (DOD) to carry out a 3-year pilot program for improving processes for the resolution of EEO complaints by civilian employees of DOD. The legislation provided that the pilot program was to include procedures to reduce EEO complaint processing times, eliminate redundancy, reinforce accountability, and provide for early resolution. While not prescribing details of how the pilots were to be designed or operated, the authorizing legislation provided that complaints processed under the pilot program shall be subject to the procedural

¹Federal employees are protected by various federal laws that prohibit employment discrimination because of race, color, religion, sex, national origin, age, or handicap. 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. (See app. I.)

²ADR techniques include but are not limited to, conciliation, facilitation, mediation, or arbitration. ADR techniques usually involve intervention or facilitation by a neutral third party.

³*Federal Sector Investigations – Time and Cost* (EEOC, Office of Federal Operations). An agency has 180 days to investigate a formal complaint and provide the complainant with a copy of the investigative file, which can be extended by 90 days when both parties agree. 29 C.F.R. 1614.108(e).

⁴Section 1111 of P.L. 106-398 (Oct. 30, 2000).

requirements established for the pilot program and exempt from the procedural requirements or other regulations, directives, or regulatory restrictions prescribed by EEOC. The programs DOD authorized in August 2004 were in (1) the Defense Commissary Agency (DeCA), (2) Defense Logistics Agency (DLA), and (3) components of the U.S. Air Force (USAF), and they became operational in fiscal year 2005.

The 2001 authorization act requires GAO to submit two reports on the pilot program—90 days after the first and last fiscal years of pilot program operation. We provided briefings on the results of our initial review of common features and preliminary case activity for the three programs to interested congressional committees in December 2005 and January 2006. This report provides additional information by (1) describing key features and status of the programs and (2) assessing DOD’s plan for evaluating the effectiveness of the pilot program.

To describe the three programs and their key features, we reviewed documents provided by DOD officials and interviewed those officials. In addition, we reviewed information about the federal regulations governing the federal EEO complaint process⁵ and our reports.⁶ To assess DOD’s plan for evaluating the effectiveness of the pilot program, we reviewed the plan and DOD’s 6- and 9-month evaluation reports. We also interviewed DOD officials about the evaluation reports. We consulted social science and evaluation literature, along with our publicized guidance, to identify key features of an evaluation plan. On the basis of criteria gathered from these sources, we identified strengths and limitations of DOD’s plan. As the pilot program and the evaluation efforts were already under way when we began our review, we focused on the plan’s strengths and those specific limitations where it would still be possible for DOD to implement improvements.

⁵29 C.F.R. Part 1614.

⁶GAO, *Federal Employee Redress: An Opportunity for Reform*, [GAO/T-GGD-96-42](#) (Washington, D.C.: Nov. 29, 1995); *Equal Employment Opportunity: Rising Trends in EEO Complaint Caseloads in the Federal Sector*, [GAO/GGD-98-157BR](#) (Washington, D.C.: Jul. 24, 1998); *Equal Employment Opportunity: Complaint Caseloads Rising, With Effects of New Regulations on Future Trends Unclear*, [GAO/GGD-99-128](#), (Washington, D.C.: Aug. 16, 1999); and *Equal Employment Opportunity: Discrimination Complaint Caseloads and Underlying Causes Require EEOC’s Sustained Attention*, [GAO/T-GGD-00-104](#) (Washington, D.C.: Mar. 29, 2000).

Program officials provided data on case activity for the three programs. The data are preliminary and because we do not use them to develop findings, we did not conduct a data reliability assessment. Because we did not assess the reliability of the data, the data are of undetermined reliability.

We conducted our review in the Washington, D.C., metropolitan area from August 2005 through March 2006 in accordance with generally accepted government auditing standards.

Results in Brief

All three programs are under way and emphasize the use of ADR techniques to resolve allegations before they reach the formal complaint stage—an option already available under the current EEO regulations and encouraged in DOD’s memo soliciting pilot program proposals. While the legislation provided DOD considerable latitude in designing its program, to a large extent, two of the three pilot programs DOD authorized were designed to operate within the parameters existing under law and EEOC regulations. In the case of DLA, program officials indicated that the program’s ADR features are the same as those in the current EEO process. DeCA’s program emphasizes early resolution before the start of the informal precomplaint stage of the current process through the use of a trained EEO facilitator who attempts to negotiate resolution. In addition, according to a DeCA official, DeCA’s program seeks to reduce processing time frames in the formal stage of the complaint process and replaces paper documents with electronic files. Unlike the other two programs, USAF’s focuses on the formal stage, combining the two-step investigative and hearing phases of the current EEO process into a single fact-finding process aimed at reducing processing time and including voluntary participation in ADR. The three programs also featured common implementation strategies—DeCA’s and USAF’s programs conducted outreach to inform eligible staff about the programs, and all three programs conducted staff training and used electronic data collection. According to DOD and the pilot program officials, as a result of the low case activity, program officials will seek to extend their respective programs for an additional (third) year.

Our initial assessment of DOD’s evaluation plan for the pilot program found both strengths and limitations. One strength of the plan was the inclusion of forms for collecting baseline data (before the programs began) and program data, which provides a tool for the programs to measure some aspects of their progress. Although DOD developed an evaluation plan for

the overall pilot program, the plan lacked some key features of a sound evaluation plan, including measures that are directly linked to the program objectives, criteria for determining individual pilot program performance, and an appropriate data analysis plan for the evaluation design. The lack of established key evaluation features in DOD's plan increases the likelihood of insufficient data, further limiting confidence in pilot program results. Without confidence in pilot program results, DOD will be limited in its decision making regarding this pilot program, and Congress will be limited in its decision making about the pilot program's potential broader application.

We provided a draft of this report to the Secretary of Defense for his review and comment. DOD generally concurred with our recommendations. Concerning our recommendation that DOD establish regular intra-agency exchange of information, DOD stated that it would begin convening quarterly meetings with DOD pilot program managers to discuss and exchange relevant information regarding pilot implementation processes. As for the recommendation to develop a sound evaluation plan, DOD partially concurred and stated that it will consider and incorporate our recommended key features into its pilot program evaluation plan as appropriate. DOD's written comments are reprinted in appendix II.

Background

As of January 1, 2000, all federal agencies covered by EEOC regulations were required to establish or make available an ADR program for both the informal and formal complaint stages of the EEO process.

On March 9, 2000, at a joint hearing held by the Subcommittee on Civil Service of the House Committee on Government Reform and the Subcommittee on Military Readiness of the House Armed Services Committee, the Navy discussed the results of its experiences under its 18-month pilot program for resolving EEO complaints through the use of ADR, which resulted in resolution on an average of 31 days.

The Floyd D. Spence National Defense Authorization Act, for fiscal year 2001, authorized the Secretary of Defense to carry out at least three pilot programs—one at a military department and two at DOD agencies. The

programs were authorized to operate for 3 years. The act exempts the programs from EEOC's procedural requirements or restrictions.⁷

In 2004, DOD authorized the following as pilot programs: (1) DLA, which provides worldwide logistics support—munitions and supplies—for the missions of military departments; (2) DeCA, which operates a worldwide chain of commissaries providing groceries to military personnel, retirees, and their families at a discount; and (3) 31 bases of the USAF, accounting for about one-third of USAF bases with federal EEO programs. The pilot programs were authorized by the Secretary for 2 years with an option for an additional (third) year.

The legislative objectives for the programs are to:

- reduce processing time,
- eliminate redundancy,
- reinforce local management and chain of command accountability, and
- provide the parties involved with early opportunity for resolution.

The legislation also provides that pilot program participants voluntarily participate in the pilot program, and that participants maintain their right to appeal final agency decisions to EEOC and file suit in federal district court as is the case in the federal EEO complaint process.

The Office of the Deputy Undersecretary of Defense for Civilian Personnel Policy, the Office of the Deputy Undersecretary for Equal Opportunity, and the Office of Complaint Investigations within the Civilian Personnel Management Service have ongoing responsibility for oversight, monitoring, and evaluation of the overall pilot program.

Under EEOC regulations, during the informal, or precomplaint counseling stage, ADR techniques can be used. Counselors are to advise individuals that, when the agency agrees to offer ADR in the particular case, they may choose to participate in either counseling or in ADR. If the matter is not resolved by counseling or if ADR is unsuccessful, the counselor is required to inform the employee in writing of his or her right to file a formal

⁷See, for example, 29 C.F.R. Part 1614.

discrimination complaint with the agency. ADR can also be used after an agency receives a formal complaint.

After a complainant files a formal discrimination complaint, the agency must decide whether to accept or dismiss the complaint and notify the complainant. If the agency dismisses the complaint, the complainant can appeal the dismissal to EEOC.⁸ If the agency accepts the complaint, it has 180 days to investigate the accepted complaint and provide the complainant with a copy of the investigative file.⁹ Within 30 days of receipt of the copy of the investigative file, the complainant must choose between requesting (1) a hearing and decision from an EEOC administrative judge (AJ)¹⁰ or (2) a final decision from the agency. When a hearing is not requested, the agency issues a final decision. A complainant may appeal an agency's final decision to EEOC.

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 can issue a final order notifying the complainant whether or not the agency will fully implement the decision of the AJ, and the employee can file an appeal with EEOC.¹¹ 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. See appendix I for more details and associated time frames related to the EEO complaint process.

⁸An 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.

⁹This period can be extended an additional 90 days when both parties agree.

¹⁰A 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.

¹¹If the agency does not issue a final order within 40 days, the decision of the AJ becomes the final action of the agency.

The Three Programs Emphasize ADR Techniques, Share Common Implementation Strategies, and Report Low Case Activity

Although features of the three programs vary by agency and focus on different stages of the complaint process, they all emphasize the use of ADR techniques available under the current federal EEO process. They also share common implementation strategies, including outreach to eligible staff to inform them about the programs, staff training, and electronic data collection. In its 9-month evaluation, DOD observed that pilot program activity had been lower than anticipated; DOD did not provide a baseline for its comparison or elaborate on the reason for this occurrence. After 12 months, program officials continue to report low case activity.

DOD's Pilot Program Emphasizes ADR Techniques

In developing the overall EEO pilot program, DOD allowed DLA, DeCA, and USAF to determine their individual program design. However, in its memo soliciting pilot program proposals, DOD encouraged potential participants to work with the Office of Complaint Investigations to develop the format and content of their proposals, offering the assistance of the Office's experienced staff of certified complaint investigators and mediators with success in using ADR techniques. Two of the programs—DLA and DeCA—emphasize the use of ADR in the informal stage, consistent with federal EEO regulations. Program officials said that their programs are attempting to address the legislative objective of providing early opportunity for resolution by focusing on ADR. The third program, in selected bases of the USAF, changes the formal stage of the federal EEO process by combining the investigative and hearing phases after a complainant has filed a formal complaint. This program also emphasizes the use of ADR techniques both during the informal stage as well as at the time a complainant files a formal complaint.

DLA's Pilot Program

DLA's program, Pilot for Expedited Complaint Processing (PECP), began in October 2004 at DLA headquarters in Fort Belvoir, Va.¹² DLA considers

¹²According to DLA, 1,545 employees are eligible to participate in PECP.

several types of cases, such as those that challenge government policy, inappropriate for PECP and screens them out.¹³

The PECP process is similar to the informal stage of the current EEO process. DLA officials said the PECP process has three steps. The first step occurs when an employee who believes he or she has been discriminated against makes initial contact with DLA's EEO office. An EEO Intake Specialist collects specific information about the employee's concerns and drafts an intake report, which includes a description and basis of the claim. The EEO Intake Specialist advises the employee orally and in writing about (1) PECP and how it compares to the federal counseling process and (2) the employee's right to opt out of the pilot program at any time before the filing of a formal complaint. The second step begins when the employee chooses to participate in PECP. At this time, the EEO Intake Specialist discusses and offers the employee ADR. The EEO Intake Specialist also informs the employee that participating in ADR is optional and can be used at any stage of the complaint process. The EEO Intake Specialist considers two methods of ADR— mediation or facilitation. Mediation is the primary method used by PECP.¹⁴ According to DLA, the method of ADR used is based on the employee's claim and the EEO Intake Specialist's assessment of the method that would more likely encourage communication between the employee and management and resulting resolution.

Under the third step, ADR takes place. DLA pilot program officials acknowledged that the pilot program's ADR features do not differ from those offered under the current EEO process. DLA has an ADR program called Reach Equitable Solutions Voluntarily and Easily (RESOLVE), which is used when mediation is offered. RESOLVE is managed by DLA's General Counsel. According to DLA officials, RESOLVE mediators cannot mediate

¹³Other types of cases that would be inappropriate for PECP include those that (1) involve potentially precedent setting issues; (2) significantly affect other employees who are not part of the ADR proceedings; (3) involve prohibited personnel practices or sensitive issues regarding the health, safety, and security of DLA employees; (4) concern disputed law, not fact; and (5) involve unsuccessful prior ADR attempts or breaches of the confidentiality of a previous ADR session.

¹⁴Mediation is a process in which a trained neutral third party helps disputants negotiate a mutually agreeable settlement. A mediator has no authority, does not render a decision, but may suggest some substantive options to encourage the parties to expand the range of possible resolutions under consideration. Any decision must be reached by the parties themselves.

precomplaints or complaints involving organizations they may service in another capacity, thus ensuring the neutrality of the mediator.¹⁵

DeCA's Pilot Program

DeCA's program, Early Resolution Opportunity (ERO), began in February 2005 and covers 23 stores¹⁶ in three zones (DeCA West Zone 16-San Diego, Calif.; DeCA East Zone 28-Virginia Beach, Va; and DeCA East Zone 6-San Antonio, Tex.). Using ADR techniques, ERO seeks to provide early resolution opportunities, because according to DeCA, ineffective communication between employees and supervisors or managers often results in perceptions of discrimination. Moreover, DeCA believes that disputes can be resolved before they enter the informal counseling stage if a trained EEO facilitator¹⁷ can intervene to negotiate resolution. Cases that involve alleged violent acts, theft, sexual harassment, termination, or may be precedent setting, are ineligible for ERO.¹⁸

ERO is divided into two steps. In the first step, a trained DeCA facilitator attempts to resolve a claim before the start of the informal stage of the current process. Employees at stores participating in ERO can call a toll-free number to discuss their concerns with a trained facilitator. For example, an employee could call about perceived discrimination over schedule changes, and the facilitator may discuss what had occurred and rationale for schedule changes (e.g., to cover absences). According to DeCA officials, some employees "self screen" during the facilitation

¹⁵According to DLA, if an internal mediator is used, DLA works to ensure his/her neutrality by never having that person serve as a mediator in the same case in which he/she was an Intake Specialist.

¹⁶According to DeCA, it has 2,083 employees who are eligible to participate in ERO in three zones: **DeCA West, Zone 16:** Camp Pendleton, El Centro, Imperial Beach, North Island, San Diego, San Onofre, Miramar Marine Corps Air Station (MCAS), and 29 Palms (stores in Southern California) and Yuma MCAS and Yuma Proving Ground (both located in Western Arizona); **DeCA East, Virginia Beach, Zone 28:** Fort Eustis, Langley Air Force Base (AFB), Little Creek Naval Air Base, Oceana Naval Air Station, Portsmouth Naval Station, Norfolk Naval Base, and Fort Lee (stores located in Central Virginia); and **DeCA East, San Antonio, Zone 6:** Fort Hood I and II, Fort Sam Houston, Lackland AFB, Randolph AFB, and Dyess AFB (stores located in Central Texas).

¹⁷Facilitation, a form of ADR, involves the use of techniques to improve the sharing of information in a meeting between parties to a dispute, focusing on the process involved in resolving a matter.

¹⁸According to DeCA, a definitive or authoritative resolution of the matter is required for precedential value. An ADR proceeding is not likely to be accepted, generally, as an authoritative precedent.

process, deciding not to pursue an EEO complaint or to pursue another avenue, such as the negotiated grievance process.¹⁹

The second step of ERO, which follows if facilitation is unsuccessful in resolving the employee's concerns, involves calling in a third-party mediator. According to a DeCA official, DeCA uses mediators from DOD's Office of Complaint Investigations, because they are trained, experienced ADR professionals, and have a greater perception of neutrality as they do not work for DeCA.

If mediation fails, an individual may choose to file a formal complaint. According to a DeCA official, ERO seeks to reduce the processing time of the formal stage. To help achieve this goal, DeCA reduces processing times for two phases of the formal stage of the complaint process: (1) after a complainant files a formal complaint, DeCA has set a goal in ERO of 14 days to accept, partially accept, or dismiss it; and (2) after the report of investigation is completed, DeCA sends a notice informing the complainant that he or she has 7 days to either request a hearing or a final agency decision, reducing the time from 30 days under EEOC regulations. In addition, to further reduce processing time for ERO cases, paper documents are replaced with electronic files.²⁰ Finally, according to a DeCA official, officials from DeCA and the Office of Complaint Investigations can download relevant case documents from a secure shared drive for complaints filed under both ERO and under the current EEO process.

USAF's Pilot Program

USAF's program, called Compressed Orderly Rapid Equitable (CORE), focuses on the formal phase of the EEO complaint process. The program began January 1, 2005, at 29 continental U.S. sites and 2 overseas offices that we refer to as test bases.²¹ Although the 31 test bases account for less than one-third of all USAF bases with EEO programs, they produce over 80

¹⁹When a person is employed by an agency subject to 5 U.S.C. 7121 and is covered by a collective bargaining agreement that permits claims of discrimination to be raised in a negotiated grievance procedure, a person wishing to file a complaint or a grievance on a claim of alleged employment discrimination may raise the claim under either Part 1614 or the negotiated grievance procedure, but not both.

²⁰Formal complaints under the current EEO process are not expedited in this way.

²¹These test bases are as follows: Altus, Bolling, Brooks, Charleston, Columbus, Dobbins, Dover, Edwards, Eglin, Elmendorf, Hanscom, Hill, Holloman, Homestead, Keesler, Kirtland, Lackland, Langley, Laughlin, Los Angeles, March, McGuire, Nellis, Peterson, Ramstein, Scott, Seymour Johnson, Tinker, Travis, Robins, and Wright-Patterson.

percent of all USAF EEO complaints. Cases that involve class and mixed-case complaints²² or cases related to claims already accepted under the current federal EEO complaint process are not eligible to participate in CORE.²³

CORE has a two-step process that begins at the time the complainant files a formal complaint. Until a complaint is filed, USAF officials attempt early resolution of allegations of discrimination in the informal stage using the current federal EEO process.²⁴ If resolution is not achieved during this stage, the complainant must choose between CORE and the current federal EEO process. The first step of CORE involves mediation. If the complainant declines mediation or mediation is unsuccessful, step two begins, and a CORE Fact-Finding Conference is conducted. USAF defines this conference as a “non-adversarial, impartial fact-gathering procedure.” The conference is conducted by a CORE fact-finder, provided by the Office of Complaint Investigations. During the conference, the fact-finder hears testimony from witnesses and receives documentary evidence; also at this time, a verbatim transcript is taken by a certified court reporter. Following the conference, the fact-finder completes the record of the complaint and recommends a decision²⁵ in the case to the director of the USAF Civilian Appellate Review Office. The director of the USAF Civilian Appellate Review Office may accept, reject, or modify the fact-finder’s recommended decision. The director then prepares a final agency decision for signature by the director of USAF Review Boards Agency.²⁶ The director of USAF Review Boards Agency issues the final agency decision. Any further action

²²A complaint is a mixed-case complaint if it is a matter that can be appealed to the Merit Systems Protection Board such as removal, reduction in grade or pay, or suspension for more than 14 days.

²³According to USAF officials, 128,074 employees are eligible to participate in CORE.

²⁴USAF asks all aggrieved parties to choose between ADR and informal counseling in the informal stage. In addition, during the initial counseling session of the informal stage, the individual is briefed on the CORE process and told that if he or she decides to file a formal complaint, a decision must be made whether to use CORE or follow the current federal EEO process.

²⁵Under the current EEO complaint process, fact-finding conferences may be used by agencies in developing an appropriate factual record. The fact-finders, under this process, are not responsible for providing a recommended decision.

²⁶The Director of Air Force Review Boards Agency is a position with delegated authority from the Secretary of the Air Force to make decisions under 29 C.F.R. 1614.110 on individual EEO complaints.

on the complaint, including rights to appeal to EEOC and file a lawsuit, are governed by current federal EEO complaint procedures.

According to USAF, by combining the investigative and hearing phases of the current federal EEO complaint process, USAF aims to issue a final agency decision within 127 days or less of filing the formal complaint; the current process can take up to 360 days plus another 70 days to provide the complainant and the agency their allotted time for decision making. USAF officials also indicated that through the CORE Fact-Finding Conference, each complainant gets their “day in court,” whereas under the current EEO process, complainants often wait months to request a hearing and can have their complaint dismissed by an EEOC AJ without a hearing.

DOD’s EEO Pilot Programs Share Common Implementation Strategies

The three programs share common implementation strategies but implement them differently. In our review of the programs and subsequent discussions with DOD and program officials, DeCA and USAF conducted some level of outreach to program-eligible employees to inform them about the programs. For example, DeCA officials went to participating stores and handed out brochures describing ERO. According to USAF program officials, outreach on CORE included sending a letter to all participating bases from the Chief of Staff for Personnel as well as a notice to the unions. Additionally, CORE was publicized in USAF news service and governmentwide media.

We also found that agencies varied in how they trained their EEO employees about the programs. USAF officials used contractors to train some employees in CORE over a 1-week period; in turn, those employees trained others. DLA officials had informal in-house employee training. DeCA sent EEO officials and an attorney from its headquarters trained in ERO to each of its three zones to train EEO managers as well as managers and supervisors at its 23 stores.

Finally, all three programs used electronic data collection for tracking and monitoring, with each program developing its own electronic data collection method. For example, USAF uses EEO-Net system and software to collect program data.²⁷ USAF also uses USAF-specific software, the Case Management and Tracking System, to manage the EEO process, including

²⁷EEO-Net is designed to automate data entry, case tracking, and reporting requirements.

CORE, and an electronic case identifier to mark CORE cases to help in monitoring those program cases that reach EEOC on appeal. DeCA currently uses an Access database to track ERO activity, and DLA uses an Excel spreadsheet to track PECP activity.

Officials from both the programs and DOD's EEO pilot program oversight entities have indicated their willingness to share information. As we have previously reported, by assessing their relative strengths and limitations through collaboration,²⁸ agencies can look for opportunities to address resource needs by leveraging each others' resources and obtaining additional benefits that would not be available if they were working separately. While the focus of our earlier work was on coordination between agencies from different departments, the findings would also be applicable to agencies within a department that are engaged in similar activities.

DOD's EEO Pilot Programs Report Low Case Activity

In its 9-month evaluation report, DOD stated that program activity for all three programs had been lower than anticipated. At the end of the first year, program officials reported continued low program activity. However, in its report, DOD did not provide a baseline for its comparison or elaborate on the reason for this occurrence. Instead, DOD's evaluation plan states that data collected during the pilot program are to be measured against fiscal year 2004 baseline data. Therefore, we are including fiscal year 2004 data as reported to EEOC for each program for comparison purposes. Since many cases are still going through the program process, for comparison, we report only the number of initial contacts or formal complaints.

According to DeCA officials, from January 1, 2005, through January 31, 2006, 42 employees contacted DeCA's EEO office; of those, 41 were offered participation in ERO, and all opted for ERO. Of those who completed ERO, 16 did so with resolution; 9 did so without resolution, and 14 are still in

²⁸Collaboration among federal agencies can take many forms, including establishing mutually reinforcing or joint strategies to achieve an outcome; identifying and addressing needs by leveraging resources; and developing mechanisms to monitor, evaluate, and report the results of collaborative efforts. See GAO, *Results-Oriented Government: Practices That Can Help Enhance and Sustain Collaboration Among Federal Agencies*, [GAO-06-15](#) (Washington, D.C.: Oct. 21, 2005).

process. Data are not available for DeCA test stores for fiscal year 2004, the year before ERO was implemented.²⁹

According to DLA officials, from January 1, 2005, through January 31, 2006, 15 employees contacted DLA's EEO office; of those, 13 were offered participation in PECP, and 12 opted for it. Of those who completed PECP, 10 did so with resolution; 1 declined participation, and 1 withdrew the precomplaint; 1 opted out of PECP. For fiscal year 2004, the year before DLA implemented PECP, 26 employees contacted DLA's headquarters EEO office.

According to USAF officials, from January 1, 2005, through January 31, 2006, a total of 634 formal complaints were filed USAF-wide. The CORE process was available to 534 of the complainants. Of those complainants offered CORE, 104 opted to process their complaint using CORE. Of these 104, 63 have been closed with resolution, and 28 CORE cases are still in progress. Thirteen complainants opted out of CORE and chose to return to the current EEO process. For fiscal year 2004, the year before USAF implemented CORE, 667 formal complaints were filed USAF-wide; of these, 488 were filed at what are now CORE test sites.

DOD's 9-month report stated that case activity was lower than expected. As a result of the low case activity, program officials have said they will seek to extend their respective programs for an additional (third) year. According to the authorizing memo from DOD implementing the pilot program, in April 2006 program officials can request to extend the pilot program for a third year. At the time of this report, DeCA and USAF had made requests of DOD to extend the operation of their pilot programs for a third year.

²⁹For fiscal year 2004, 222 employees contacted their particular EEO offices DeCA-wide.

Although Containing Some Strengths, Limitations in Its Evaluation Plan Will Hinder DOD's Ability to Assess Pilot Program Results

Our initial assessment of DOD's evaluation plan for the pilot program found both strengths and limitations. One strength of the plan was the inclusion of forms for collecting baseline data (before the programs began) and pilot program data, which provides a tool for the pilot programs to measure some aspects of their progress. Although DOD developed an evaluation plan for the overall pilot program, the plan lacked some key features of a sound evaluation plan, including measures that are directly linked to the program objectives, criteria for determining pilot program performance, and an appropriate data analysis plan for the evaluation design. Without such features, DOD will be limited in its ability to conduct an accurate and reliable assessment of the programs' results. In addition, the lack of established key evaluation features in DOD's plan increases the likelihood of insufficient or unreliable data, further limiting confidence in pilot program results. Without confidence in pilot program results, DOD will be limited in its decision making regarding this pilot program, and Congress will be limited in its decision making about the pilot program's potential broader application.

Officials from DOD's pilot program oversight entities have acknowledged shortcomings and have indicated a willingness to modify the plan.

Strengths of DOD's Evaluation Plan

Considering the evaluation plan itself and interviews with DOD officials, we found that DOD's plans for assessing the pilot programs had some strengths, including:

- **Forms in the evaluation plan for collecting baseline data (before the pilot programs began) and pilot program data.** According to the evaluation plan, baseline data from fiscal year 2004 are recorded on a template (i.e., a modified version of EEOC Form 462) appropriate to the part of the complaint process the pilot program focuses on. Data collected during the programs will be measured against the baseline data collected in the prior year's EEOC Form 462.³⁰ Pilot program and nonpilot program data are to be collected by an Individual Data Report form, which is to collect processing-time data, comparative information

³⁰Agencies are to use EEOC Form 462 to report the discrimination complaint processing statistics for individual complaints of discrimination, including such information as total number of individuals counseled during a reporting period, number counseled where counseling was completed within 30 days, and the number of formal complaints filed.

on early ADR, and early management involvement in cases at each pilot program site. Comparing data from the modified EEOC Form 462 to data from the program as well as to nonprogram cases is expected to help DOD determine whether processing times and redundancy were reduced concerning early resolution and streamlining as a result of the pilot program.

- **Detailed time frames, roles and responsibilities, and report planning in the evaluation plan.** The evaluation plan includes a schedule that details tasks, roles and responsibilities, and milestones for completing set tasks in evaluating the pilot program. This schedule provides a framework that is organized and easy to follow.
- **Inclusion of reasonable research design.** The evaluation plan includes a reasonable method for assessing pilot program results. Because the pilot program legislation mandates voluntary participation in the program, DOD was restricted from one form of design (i.e., randomly assigning employees alleging or filing complaints of discrimination to participate in the pilot program). As a result, DOD chose to compare prepilot and postpilot program data as well as pilot and nonpilot program cases.

In addition, DOD officials said that the plan can be adjusted to the extent feasible to ensure that the data collected are sufficient for evaluating the pilot program.

Without Key Evaluation Plan Features, DOD Will Be Limited in Its Ability to Assess Pilot Programs' Results

DOD's plan for evaluating the effectiveness of the pilot program lacks some key features that are essential to assessing performance. Well-developed evaluation plans, which include key evaluation features, have a number of benefits, perhaps most importantly, increasing the likelihood that evaluations will yield methodologically sound results, thereby supporting effective program and policy decisions. The lack of established key evaluation features in DOD's plan increases the likelihood of insufficient or unreliable data, limiting confidence in pilot program results. Without confidence in pilot program results, DOD will be limited in its decision making regarding this pilot program, and Congress will be limited in its decision making about the pilot program's potential broader application.

Some key features of a sound evaluation plan include:³¹

- well-defined, clear, and measurable objectives;
- measures that are directly linked to the program objectives;
- criteria for determining pilot program performance;
- a way to isolate the effects of the pilot programs;
- a data analysis plan for the evaluation design; and
- a detailed plan to ensure that data collection, entry, and storage are reliable and error-free.

DOD's evaluation plan contains the following limitations:

- The objectives in DOD's evaluation plan are not well defined or clear, which makes measurement problematic. For example, the evaluation plan identifies management accountability as an objective without defining it, who it applies to, and how it will be measured. Without well-defined, clear, and measurable objectives, the appropriate data may not be collected, thus hindering the assessment of pilot program progress.
- DOD's data collection efforts are not linked to objectives in the evaluation plan. For example, the evaluation plan contains a variety of surveys that the individual pilot programs can use to measure customer satisfaction, but customer satisfaction is not included in the evaluation plan as an objective of the plan. Directly linking objectives and measures is a key feature of an evaluation plan. Without such linkage, data collection efforts may not directly inform stated objectives, and in turn, may not inform the evaluation effort.

³¹P.H. Rossi, M.W. Lipsey, and H.E. Freeman, *Evaluation: A Systematic Approach* (Thousand Oaks, Calif.: 2004); GAO, *Designing Evaluations*, [GAO/PEMD-10.1.4](#) (Washington, D.C.: May 1991); GAO, *Assessing Social Program Impact Evaluations: A Checklist Approach*, (Washington, D.C.: October 1978); B.R. Worthen, J.R. Sanders, & J.L. Fitzpatrick, *Program Evaluation: Alternative Approaches and Practical Guidelines* (New York: 1997); L. Scharf, "Evaluating ADR Programs", in *Federal ADR Program Manager's Resource Manual*.

-
- DOD's evaluation plan does not establish standards for evaluating pilot program performance. For example, DOD's plan does not state the amount or type of change required to indicate that a pilot program has succeeded in reducing processing time. Without targets or standards for determining success, it will be difficult to determine if the pilot program was effective.
 - DOD's evaluation plan does not mention controlling for possible outcomes that are attributable to factors other than the effects of the programs. A preferred research method is to use random assignment of program participants to provide greater confidence that results are attributable to a program. As we mentioned, DOD was restricted from randomly assigning employees alleging or filing complaints of discrimination to participate in the pilot program. As a result, other factors, such as the type of complaint, complainant, or the mediator may affect pilot program outcomes. Establishing controls for such factors could help isolate the effects attributable to the pilot programs. When an evaluation design involves, for example, a comparison between prepilot and postpilot program conditions, the research design should include controls to ensure that results will be attributable to the pilot program and not to other factors.
 - DOD's evaluation plan does not explain how the data will be analyzed. Although the evaluation plan has templates for collecting data, including pilot program baseline data, individual data reports, and various surveys, it does not state how the data collected will be analyzed. A data analysis plan is a key feature of an evaluation plan as it sets out how data will be analyzed to determine if program objectives have been met. Without a data analysis plan, it is not clear how the data will be analyzed to inform the objectives of the evaluation and assess the performance of the programs.
 - DOD's plan does not explain how the integrity of the data collected will be ensured. A detailed plan to ensure that data collection, entry, and storage are reliable and error-free is a key feature of an evaluation plan that gives greater confidence to data quality and reliability and to any findings made from these data. Without a detailed plan to ensure that data collection, entry, and storage are reliable and error-free, confidence in pilot program results will be limited.

Conclusions

All three programs share a common feature of emphasizing the use of ADR to meet the legislative mandate to improve the efficiency of the EEO complaint process. In addition, although authorized to operate outside of current EEOC regulations, to a large extent, two of the three programs have been designed by DOD to operate within the requirements of current regulations. While sharing common strategies in such areas as electronic data collection, the pilot programs implemented them differently. As the challenges of the 21st century grow, it will become increasingly important for DOD to consider how it can maximize performance and results through the improved collaboration of its organizations. Officials from the programs and DOD's EEO pilot program oversight entities have indicated their willingness to share information and strategies.

To better ensure that it will provide useful results, DOD needs to make changes to its evaluation plan. Although DOD's evaluation plan had some strengths, the plan's shortcomings may impede DOD's ability to produce sound results that can inform both program and policy decisions regarding the overall pilot program. The lack of key evaluation features, such as clear and measurable objectives, measures linked to these objectives, and established criteria for determining pilot program performance may limit confidence in pilot program results.

Recommendations for Executive Action

To improve the performance and results of the pilot program, we recommend that the Secretary of Defense direct the Deputy Undersecretary of Defense for Civilian Personnel Policy, the Deputy Undersecretary for Equal Opportunity, and the Civilian Personnel Management Service to take the following actions:

Establish regular intra-agency exchanges of information on outreach strategies, training, and electronic data collection from which the pilot programs could achieve potential benefits that would not be available if working separately.

Develop a sound evaluation plan to accurately and reliably assess the pilot programs' results, including such key features as

- well-defined, clear, and measurable objectives;
- measures that are directly linked to the program objectives;

-
- criteria for determining pilot program performance;
 - a way to isolate the effects of the pilot programs;
 - a data analysis plan for the evaluation design; and
 - a detailed plan to ensure that data collection, entry, and storage are reliable and error-free.

Agency Comments

We provided a draft of this report to the Secretary of Defense for his review and comment. The Principal Deputy Undersecretary of Defense provided written comments, which are included in appendix II.

DOD generally agreed with our recommendations. Regarding the establishment of regular intra-agency exchanges of information among the pilot programs to leverage potential benefits, DOD stated that it will hold quarterly meetings with pilot program managers. Concerning the development of an evaluation plan that accurately and reliably assesses the pilot programs' results, DOD partially concurred with the recommendation and stated that it would consider and incorporate the recommended key features into the evaluation plan as appropriate. However, DOD also stated that the purpose of the plan was to assist pilot program evaluators in their work by specifying those procedures, tools, and objectives that would be unique to the pilot programs. In its comments, DOD reasons that because all pilot program officials agreed on a particular objective, which was common to both the pilot and traditional EEO complaint procedures, that it was not necessary to link data collection efforts to that objective or incorporate either the objective or the data collection effort in the evaluation plan. Because the plan is the long-term guide for the pilot program evaluation process and because staff changes occur, it is important that DOD include all objectives and methods they intend to use in the plan, allowing the evaluation process to be more transparent and provide clearer guidance to the pilot program officials on evaluation procedures.

In its response, DOD also commented on our observation that to a large extent two of the three pilot programs were designed and are operating within existing EEOC requirements. DOD noted that this was due in large part to a presidential memorandum issued when the legislation was signed. The memorandum, which addressed the implementation of the pilot program, required that a complaining party be allowed to opt out of the

pilot program at any time. According to DOD, adhering to this requirement necessitated using a similar design to the current EEO process so that complaining parties who decided to opt out would not be penalized by having to start at the very beginning of the current EEO complaint process. It is not clear to us that ensuring the ability to opt out at any point necessitates returning the complaining party to the very beginning of the current EEO process in all cases. Rather, the complaining party would be returned to the current EEO process at an appropriate point based on what was achieved through the pilot program process. Overall, we see nothing in the presidential memorandum that would limit DOD's legitimate use of the procedural flexibility granted by Congress through the pilot program authority.

We will send copies of this report to other interested congressional parties, the Secretary of Defense, and the Chair of EEOC. 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 your staff have questions about this report, please contact me on (202) 512-9490. Key contributors to this report are listed in appendix III.

Sincerely yours,

A handwritten signature in black ink that reads "George H. Stalcup". The signature is written in a cursive style with a large initial "G" and "S".

George H. Stalcup
Director, Strategic Issues

List of Congressional Addressees

The Honorable John Warner
Chairman

The Honorable Carl Levin
Ranking Member
Committee on Armed Services
United States Senate

The Honorable Duncan Hunter
Chairman

The Honorable Ike Skelton
Ranking Member
Committee on Armed Services
House of Representatives

The Honorable George V. Voinovich
Chairman

The Honorable Daniel K. Akaka
Ranking Member
Subcommittee on Oversight of Government Management,
the Federal Workforce, and the District of Columbia
Committee on Homeland Security and Governmental Affairs
United States Senate

The Honorable Jon C. Porter
Chairman

The Honorable Danny K. Davis
Ranking Member
Subcommittee on the Federal Workforce and Agency Organization
Committee on Government Reform
House of Representatives

EEO Laws and Regulations Applicable to Federal Employees

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 equal employment opportunity (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.

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 The EEOC has established regulations providing for the 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,

¹42 U.S.C. secs. 2000e et seq.

²29 U.S.C. sec. 206(d).

³29 U.S.C. secs. 621 et seq.

⁴29 U.S.C. secs. 791 and 794a.

⁵For 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).

⁶29 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).

within 45 days of the effective date of the action. 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.

Counseling is to be completed within 30 days from the date the employee contacted the EEO office for counseling unless the employee and agency agree to an extension of up to an additional 60 days. If ADR is chosen, the parties have 90 days in which to attempt resolution. If the matter is not resolved within these time frames, 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 and notify the complainant. If the agency dismisses the complaint, the complainant has 30 days to appeal the dismissal to EEOC.⁸ If the agency accepts the complaint, it has 180 days to investigate the accepted complaint and provide the complainant with a copy of the investigative file.⁹ Within 30 days of receipt of the copy of the investigative file, the complainant must choose between requesting (1) a hearing and decision from an EEOC administrative judge (AJ)¹⁰ or (2) a final decision from the agency. When a hearing is not requested, the agency must issue a final decision within 60 days. A complainant may appeal an agency's final decision to EEOC within 30 days of receiving the final decision.

⁷ADR 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 process.

⁸An 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.

⁹This period can be extended an additional 90 days when both parties agree.

¹⁰A 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.

Appendix I
EEO Laws and Regulations Applicable to
Federal Employees

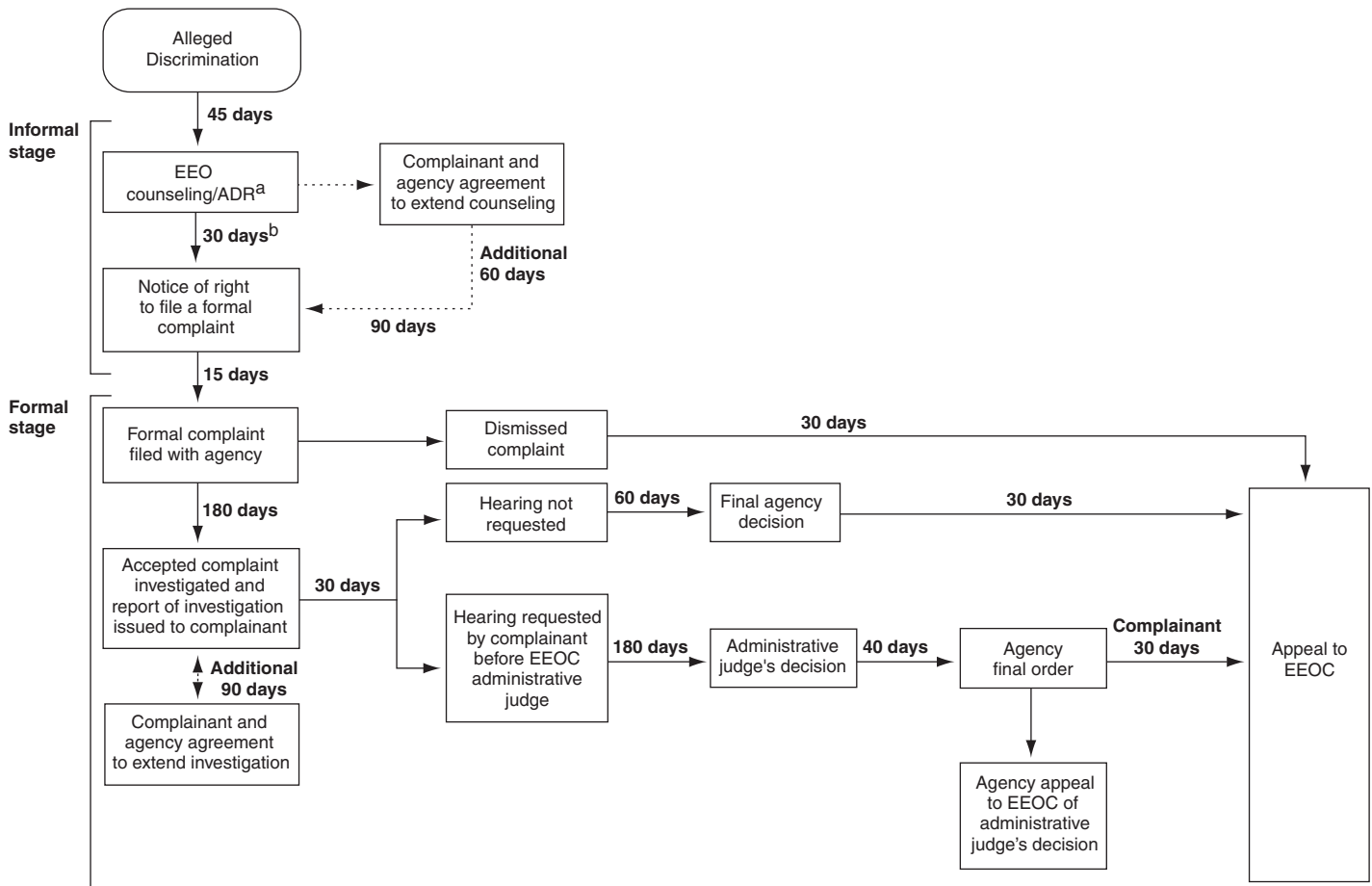
In cases where a hearing is requested, the AJ has 180 days to issue a decision and send the decision to the complainant and the agency.¹¹ If the AJ issues a finding of discrimination, he or she is to order appropriate relief. After the AJ decision is issued, the agency has 40 days to issue a final order 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 of the agency's final order.¹² 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. Parties have 30 days in which to request reconsideration of an EEOC decision. Figure I illustrates the EEO complaint process.

¹¹The AJ can extend this time for issuing a decision by making a written determination that good cause exists to do so.

¹²If the agency does not issue a final order within 40 days, the decision of the AJ becomes the final action of the agency.

**Appendix I
EEO Laws and Regulations Applicable to
Federal Employees**

Figure 1: The EEO Administrative Complaint Process with Related Time Frames



Source: GAO, based on EEOC regulations.

^aWhere 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.

^bWhere ADR is chosen, the parties have up to 90 days in which to attempt resolution.

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,¹³ the complaint is a “mixed-case complaint.” EEOC

¹³MPSB is an independent quasijudicial agency in the executive branch that adjudicates employee appeals of personnel actions and conducts studies of the federal merit system.

Appendix I
EEO Laws and Regulations Applicable to
Federal Employees

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.¹⁴

A complainant may file a civil action in federal district court at various points during and after the administrative process.¹⁵ The filing of a civil action will terminate the administrative processing of the complaint. A complainant may file a civil action within 90 days of receiving the agency's final decision or order, or EEOC's final decision. A complainant may also file a civil action after 180 days from filing a complaint with his or her agency, or filing an appeal with EEOC, if no final action or decision has been made.

¹⁴For 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 grievance.

¹⁵There are different time requirements for filing a civil action in district court alleging discrimination under the Equal Pay Act and for filing civil actions relating to mixed-case complaints. See 29 C.F.R. sec. 1614.408 and sec. 1614.310.

Comments from the Department of Defense



PERSONNEL AND
READINESS

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APR 20 2006

Mr. George H. Stalcup
Director, Strategic Issues
U.S. Government Accountability Office
441 G Street, N.W.
Washington, DC 20548


Dear Mr. Stalcup:

This is the Department of Defense response to the GAO draft report, "EQUAL EMPLOYMENT OPPORTUNITY: DoD's EEO Pilot Program Under Way, but Improvements Needed to DoD's Evaluation Plan," dated March 28, 2006, (GAO Code 450467/GAO-06-538). We have reviewed the draft report and generally concur with its recommendations. Specific responses to the report's recommendations are attached.

In several places, the report expresses concern that the general design of the DoD pilot programs seem to operate within the existing parameters of law and regulation rather than creating a totally new process. This parallelism was necessitated by a memorandum to the Secretary of Defense issued by the President when he signed the authorizing legislation. In that memorandum, the President directed that participation in the pilot programs should be strictly voluntary and that pilot design should provide that complaining parties could opt out of the pilot program at any time. In order not to penalize complaining parties who opt out of the pilot program by making them start the traditional complaint process at the very beginning with pre-complaint counseling, the DoD pilots were designed to parallel the traditional complaint process so that individuals who do opt out could be inserted into the appropriate phase of the traditional process.

Thank you for the opportunity to review and comment upon the draft report.

Sincerely,


Gail H. McGinn
Performing the Duties
of the Principal Deputy



GAO DRAFT REPORT – DATED MARCH 28, 2006
GAO CODE 450467/GAO-06-538

"EQUAL EMPLOYMENT OPPORTUNITY: DoD's EEO Pilot Program Under
Way, but Improvements Needed to DoD's Evaluation Plan"

DEPARTMENT OF DEFENSE COMMENTS
TO THE RECOMMENDATIONS

RECOMMENDATION 1: The GAO recommended that the Secretary of Defense direct the Deputy Undersecretary of Defense for Civilian Personnel Policy, Deputy Undersecretary for Equal Opportunity, and the Civilian Personnel Management Service to establish regular intra-agency exchanges of information on outreach strategies, training, and electronic data collection from which the pilot programs could achieve potential benefits that would not be available if working separately. (p. 19-20/GAO Draft Report)

DOD RESPONSE: The DoD concurs with this recommendation. Quarterly meetings will be held with DoD pilot program managers to discuss and exchange relevant information regarding pilot implementation processes.

RECOMMENDATION 2: The GAO recommended that the Secretary of Defense direct the Deputy Undersecretary of Defense for Civilian Personnel Policy, Deputy Undersecretary for Equal Opportunity, and the Civilian Personnel Management Service to develop a sound evaluation plan to accurately and reliably assess the pilot programs' results, including such key features as

- Well-defined, clear, and measurable objectives;
- Measures that are directly linked to the program objectives;
- Criteria for determining pilot program success;
- a way to isolate the effects of the pilot programs;
- a data analysis plan for the evaluation design; and
- a detailed plan to ensure that data collection, entry, and storage are reliable and error-free. (p. 19-20/GAO Draft Report)

DOD RESPONSE: The DoD partially concurs with the recommendation. The DoD will consider and incorporate these recommendations into our evaluation plan as

appropriate. However, it should be noted that the principal purpose of the DoD document was to assist pilot evaluators in their work by specifying those procedures or tools that would be unique to the pilots. When pilot and traditional procedures were common, there did not appear to be a need to include them. For example, the EEOC uses time consumed in each of the various phases of processing discrimination complaints as the principal measure to assess federal agency effectiveness. From the very beginning, therefore, DoD pilot planners agreed that a principal objective of the pilots would be to significantly reduce the processing time between the filing of a formal written complaint and the issuance of a final agency decision. Since everyone involved with the pilots accepted and agreed with that objective, it did not seem necessary to state it in the monitoring document. Also, since the pilot programs would rely upon the same staff and procedures to record and enter statistical data necessary for both the traditional complaint process and the pilot process, there did not appear to be a need to outline the methodology in the monitoring document.

GAO Contact and Staff Acknowledgments

GAO Contact

George H. Stalcup, (202) 512-9490 or stalcupg@gao.gov

Staff Acknowledgements

In addition to the individual named above, Belva M. Martin, Assistant Director; Karin K. Fangman; Cindy Gilbert; Emily Hampton-Manley; Anthony Patterson; Rebecca Shea; Linda Sidwell (detailee); and Kiki Theodoropoulos made key contributions to this report.

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