



U.S. Department of Agriculture



Office of Inspector General
Northeast Region

Audit Report

Review of the U.S. Department of Agriculture's Accountability for Actions Taken on Civil Rights Complaints

Report No. 60601-04-Hy
May 2007



UNITED STATES DEPARTMENT OF AGRICULTURE
OFFICE OF INSPECTOR GENERAL
Washington, D.C. 20250



May 14, 2007

REPLY TO

ATTN OF: 60601-04-Hy

TO: Margo M. McKay
Assistant Secretary
Civil Rights

ATTN: Debbie Hamilton
Executive Assistant
Civil Rights

FROM: Robert W. Young /s/
Assistant Inspector General
for Audit

SUBJECT: Review of the U.S. Department of Agriculture's Accountability for Actions Taken
on Civil Rights Complaints

This report presents the results of our review of the U.S. Department of Agriculture's Accountability for Actions Taken on Civil Rights Complaints. Your written response, dated May 1, 2007, is included as Exhibit D with excerpts of the response and the Office of Inspector General's position incorporated into the Findings and Recommendations section of the report, where applicable.

We have reached management decision for Recommendations 1, 3, and 4. Please follow your agency's internal procedures in forwarding documentation for final action to the Office of the Chief Financial Officer.

In order to achieve management decision on Recommendations 2, 5, 6, 7, and 8, please furnish a reply within 60 days describing the timeframes required to implement the proposed corrective actions. Please note that Departmental Regulation 1720-1 requires a management decision to be reached on all recommendations within a maximum of 6 months from report issuance and completion of final action within 12 months of management decision.

We appreciate the courtesies and cooperation extended to us by members of your staff during this audit.

Executive Summary

U.S. Department Agriculture's Accountability for Actions Taken on Civil Rights Complaints (Audit Report No. 60601-04-Hy)

Results in Brief

Processing civil rights complaints within established¹ timeframes has been a long-standing concern at the U.S. Department of Agriculture (USDA). In February 1997, the Secretary's Civil Rights Action Team identified USDA's inability to process Equal Employment Opportunity (EEO) complaints timely and effectively, noting that it took an average of nearly three years to complete a case. In March 2000,² we reported on the Office of Civil Rights' (CR) efforts to process and track EEO complaints. Our report highlighted weaknesses in CR's operating environment for tracking and processing its complaint inventory. At that time, CR took an average of two years to close a case, its file room was not properly managed, and case files were disorderly and improperly stored. We found that 18 case files were missing and case files were stored in employees' office spaces and in a borrowed shopping cart. Our current work disclosed that although CR's processing time to complete a case has fallen from three years³ in 1997 to slightly under 1.5 years in 2006, its efforts have not been sufficient to ensure that EEO complaints are effectively tracked and timely processed.

CR has the responsibility for developing civil rights policy, providing coordination and leadership for equal opportunity and civil rights activities, providing technical assistance and training to USDA agencies, ensuring compliance with applicable regulations, and investigating and resolving complaints regarding USDA employment and programs operated or assisted by USDA.

In response to a request from two U.S. Senators, we identified and evaluated the adequacy of USDA's controls over tracking and processing EEO complaints. In making this assessment, we analyzed EEO complaint data in CR's complaint processing and tracking system (i.e., the Civil Rights Enterprise System (CRES)) for formal cases with initial contact dates⁴ from the start of fiscal year (FY) 2004, through the end of the third quarter of FY 2006. This universe of complaints totaled 1,481 open and closed cases. In addition, we selected a sample of 64 complaints⁵ for a detailed analysis to determine whether the documentation on file supported the information in the system. For the cases in our sample, we reconciled data recorded in the CRES to documents in the physical case files and determined whether the case files contained required documentation. We found that material weaknesses

¹ Required timeframes for processing EEO complaints are established in 29 Code of Federal Regulations (C.F.R.), Part 1614, Federal Sector Equal Employment Opportunity.

² Audit Report No. 60801-03-Hq, Office of Civil Rights Management of EEO complaints, issued March 2000.

³ Years are based on calendar days.

⁴ Initial contact date is the date a complainant first contacts an EEO counselor.

⁵ We used the software application, Audit Command Language (ACL), to select our sample. ACL analysis of the number of complaints in the universe assisted in our decisions on the number of complaints to review and the specific complaints to be selected for review.

continued to persist in CR's control structure and environment. Specifically, CR had not: (1) established the necessary framework to monitor the processing of complaints and to intervene when established timeframes were not met, (2) sufficiently strengthened its controls over the entry and validation of data in its information system, and (3) established adequate controls to ensure case files could be located timely and the files contained the required documentation. As a result, CR cannot effectively track and timely process EEO complaints. We included in Exhibit A the statistical data requested by the U.S. Senators on the bases of discrimination for the universe of complaints we reviewed.

Processing Timeframes

- CR did not meet established timeframes for processing EEO complaints. The CR Director attributed this condition to several factors, including unrealistic timeframes established by the Equal Employment Opportunity Commission (EEOC), a substantial inventory of backlogged complaints, an influx of new cases, staffing and resources, as well as individual agencies not meeting their responsibilities.⁶ The CR Director stated that through the Office of the Assistant Secretary for Civil Rights (ASCR) Strategic Plan,⁷ its weaknesses in timely processing of complaints will be corrected in the next five years. However, CR did not have a formal plan with action items and reasonable and measurable milestones to address its complaint processing delays. We also determined that CR did not have an adequate monitoring framework to track the processing of complaints and to intervene when timeframes were not met. We found that CR's processing time to complete a case averaged 504 days or just under 1.5 years; a significant improvement over the 3 years reported in 1997. However, this average still exceeds the 270-day processing timeframe established by the EEOC.⁸ As of August 2006, 304 of the 582 open cases⁹ had an average age of 534 days with resolution still pending.¹⁰

Complaint Tracking

- In February 2005, CR began implementation of the CRES, a web-based application that allows USDA agencies and CR to use one automated system for processing and tracking EEO complaints at both the informal

⁶ The processing of EEO complaints is a shared responsibility of USDA. Agencies are responsible for the processing and entry of data in CRES during the informal stage, and for investigations and hearings during the formal stage. CR is responsible for processing and entering data in CRES for the acceptance or dismissal of complaints and final agency decisions during the formal stage. CR has the overall responsibility for ensuring that USDA is accurately reporting on its EEO activities and timely processing its EEO complaints.

⁷ The ASCR Strategic Plan is a document used by the ASCR to align its organization and budget structure with organizational priorities, missions, measurable objectives, and strategies to achieve these objectives.

⁸ According to the CR Director, the 270-day timeframe does not account for the 5-10 days it takes to send and receive complaint related information through the U.S. mail. We found this was not specifically addressed in EEOC regulations.

⁹ Open cases have not been settled by the agency, adjudicated by CR, or withdrawn by the complainant.

¹⁰ In establishing the average amount of time for cases that have exceeded the established timeframes for complete resolution, we only included cases that were within CR's control (i.e., we excluded cases that involved a decision by an EEOC administrative judge).

and formal stages.¹¹ CR uses CRES to complete and file required reports such as the annual report on the status of informal and formal EEO complaints.¹² However, we determined that CR implemented CRES without sufficient business rules¹³ to ensure the sufficiency of the complaint data. For example, from the universe of 1,481 cases in CRES, we found that informal alternative dispute resolution (ADR) data was not entered for 625 cases. Omitted entries for this data element give the appearance that ADR was not offered to the complainant. According to EEO complaint processing procedures,¹⁴ agencies are required to offer, or decide not to offer,¹⁵ ADR to aggrieved persons during the informal stage of complaint processing. A business rule could have been set in the system to require an entry for ADR before an end user could enter data in CRES associated with other stages of the EEO process. In order to ease the transition to CRES for USDA agencies, a CR official stated that the agency planned to phase in the necessary business rules. We found, however, CR did not have a plan for identifying, developing, testing, and implementing the needed business rules.

- We selected a sample of 64 cases in order to reconcile information recorded in CRES with documentation recorded in the case file. CR was not able to locate two case files; however, one of these case files was recreated by CR.¹⁶ Therefore, we reviewed 63 of the 64 cases. For 11 of the 63 cases, data recorded in CRES was not supported by documentation in the physical case file. For example, for one complaint, the complainant's race recorded in CRES was White, whereas the documentation in the case file supported that the complainant's race was African-American. Other examples of erroneous data included the initial contact dates, formal filing dates, acceptance dates, reports of investigation (ROI) issuance dates and hearing request dates. According to established management control procedures,¹⁷ managers are responsible for ensuring the accuracy of data recorded. The errors in the information system occurred because CR had not implemented a process to validate the accuracy of information entered into CRES. As a result, CRES was not always a reliable source of information about EEO complaints at USDA.

¹¹ According to CR officials, CRES was fully implemented the end of June 2005.

¹² According to CR officials, prior to the implementation of CRES, agencies did not have an enterprise system to track informal EEO complaints.

¹³ Business rules are protocols installed in the system to prevent omissions of data by end users for required stages in the EEO process.

¹⁴ Departmental Manual (DM) 4300-1, EEO Complaint Processing Procedures, Chapter IV, Informal EEO Complaint Process, dated July 20, 2001.

¹⁵ Agencies are not required to offer informal ADR if the complaint involves violence or criminal activity.

¹⁶ In March 2007, CR provided us with the one missing case file that was not recreated. Based on our review, we found that this case file did not contain the initial formal complaint, initial acceptance letter of the complaint, and the initial ROI for us to review. However, for the documentation we were able to review, the data entered in CRES was accurate.

¹⁷ Departmental Regulation (DR) 1110-002, USDA Management Control Manual, Chapter 2, dated November 29, 2002.

Physical Case Files

- According to CRES, CR was storing over 5,700 closed case files that have exceeded the four year retention requirement¹⁸ as of October 2006.¹⁹ CR, however, has not developed a plan with action items and timeframes for destroying these closed cases. CR also needs to perform a physical inventory of complaints and case files to ensure that additional cases, not identified by CRES, do not also need to be destroyed.
- Our review disclosed that CR has made some progress since our March 2000 report towards organizing and properly storing case files. However, based on our sample, we found that CR has not established adequate controls over its file room operations to ensure that physical case files can be located timely and that the files contain the documentation required for processing the complaints. A Departmental regulation²⁰ requires that records shall be filed using standardized procedures and techniques so that they are easily retrievable. CR needed more than a month to locate 13 of the 64 case files selected for review and initially could not locate 2 case files. CR recreated one of the missing case files and provided the second in March 2007 (originally requested in September 2006). To address this weakness, CR needs to develop and implement procedures to track and control the physical location of files. Our review of the 63 available case files disclosed that 21 did not contain all of the required complaint processing documentation to reconcile with CRES, e.g., acceptance of complaint letters and ROIs. To address this weakness, CR needs to implement processes and procedures to control case file organization and the flow of documents associated with processing EEO complaints to include receipt, transfer, filing, and safeguarding of documents in the case file.

The U.S. Senators also requested that we identify and evaluate USDA's process to hold employees accountable for discriminatory actions toward other employees or in administering USDA programs. This process, implemented January 18, 2006, consists of CR referring any findings of discrimination to the appropriate Human Resource (HR) office. The HR director then reviews the case and determines whether disciplinary action is appropriate for the act of discrimination and reports the results to CR and USDA's Office of Human Capital Management. We determined that USDA's policy for holding employees accountable for discriminatory actions was adequate; however, we could not fully evaluate the process because only two cases involving discriminatory action by an employee have been referred

¹⁸ The National Archives General Records Schedule 1, Item 25, EEO Complaints.

¹⁹ The General Records Schedule requires that EEO cases be destroyed four years from the date they are closed. However, at the exit conference, CR officials stated that a closed case in CRES is not necessarily ready for destruction. For example, a case currently in court litigation should not be destroyed. CR officials stated that they plan to address how cases are defined in CRES (i.e., closed) as they respond to the findings and recommendations in our report.

²⁰ DR 3080-001, Records Management, dated April 30, 2004.

by CR since the policy was implemented. We found that disciplinary action against the employees involved was not taken because one employee retired and the other no longer works for USDA. Prior to January 18, 2006, CR was not involved in the process for determining employee disciplinary actions. This process was handled by the agencies' HR offices. Accordingly, we did not make any recommendations for this objective.

At the request of the two U.S. Senators, we also reviewed USDA's implementation of a recommendation in EEOC's Onsite Report, dated February 26, 2003. The recommendation was to ensure that there was proper separation between the Office of the General Counsel (OGC) and CR regarding legal sufficiency reviews of reports of investigation and final agency decisions. Information provided by CR and OGC personnel disclosed that this recommendation has been implemented and OGC has created a separate and independent unit within OGC to conduct legal sufficiency reviews. Accordingly, we are not making any recommendations on this matter.

Finally, we evaluated allegations made in three Hotline Complaints. We received two in June 2006 and one in December 2006.

- The first complaint alleged that CR was settling cases when the cases reached the formal stage instead of the informal stage, which is costing USDA thousands of dollars. We found, as outlined in a Departmental manual,²¹ that the individual USDA agencies are responsible for entering into settlement agreements, not CR. The complaint also alleged that CR was compiling "Annual Federal Equal Employment Opportunity Statistical Report of Discrimination Complaints" (EEOC 462 report) submitted by individual agencies without review. We found that CR generates the EEOC 462 report from CRES for the Department. CR did not compile reports submitted by individual agencies; therefore, there was no need for CR to review the individual agency reports for this purpose. Accordingly, we are not making any recommendations related to this complaint.
- The second and third complaints alleged that the software application for reporting data on the "Federal Agency Annual EEO Program Status Report" (EEOC MD-715 report) was flawed. We found that CR identified errors in the preparation of the EEOC MD-715 report and continues to work with the contractor to upgrade the system to ensure that the information provided to EEOC is accurate. Accordingly, we are not making any recommendations related to these complaints.

Timely processing of EEO complaints has been a long-standing concern at USDA. Although improvements have been made, we found that CR's efforts

²¹ DM 4300-001, EEO Complaint Processing Procedures, dated July 20, 2001.

to ensure that employee complaints are effectively tracked and timely processed have not been sufficient and material weaknesses continue to persist in CR's control structure and environment. Specifically, CR had not established the necessary framework to monitor the processing of complaints so that its personnel can intervene when established timeframes are not being met. In addition, CR had not sufficiently strengthened its controls over the entry and validation of data in CRES or established adequate controls to ensure case files could be located timely and contained all of the required documentation.

Recommendations In Brief

To address weaknesses in CR's ability to timely process complaints, the agency should develop a detailed formal plan to process EEO complaints timely and effectively. CR should also implement a monitoring framework to track the processing of complaints and intervene when timeframes are not being met. When interventions are needed, the monitoring framework should require reporting to the CR Director on the reasons timeframes were exceeded.

To strengthen controls over the entry and validation of data in CRES, CR needs to identify the business rules and implement a plan for testing and applying these rules. In addition, CR needs to implement a process for validating the accuracy of information entered in CRES.

CR needs to develop and implement procedures to control and monitor case file documentation and organization, including procedures to document which CR divisions or units are responsible for receiving, transferring, filing, and safeguarding documents in the file folder. CR should perform a physical inventory of its documentary case files to identify which of the 5,700 case files, depicted in CRES as closed in excess of four years, need not be retained. To improve the organization of its file storage areas, CR should implement an action plan to destroy the unneeded files and develop a method for continued monitoring of the retention status of its case files.

Agency Response

CR agreed with the report's eight recommendations. We have incorporated excerpts from CR's response in the Findings and Recommendations section of this report, along with the OIG position. CR's response is included as Exhibit D.

OIG Position

Based on CR's response, we were able to reach management decision on Recommendations 1, 3, and 4 of the report's eight recommendations. To reach management decision for Recommendations 2, 5, 6, 7, and 8, CR needs to provide a timeline with milestone dates for significant steps for

implementing those actions that are not scheduled to be completed within the next year.

Abbreviations Used in This Report

ACL	Audit Command Language
ADR	Alternative Dispute Resolution
ASCR	Assistant Secretary for Civil Rights
C.F.R	Code of Federal Regulations
CAD	Complaints Adjudication Division
CR	Office of Civil Rights
CRES	Civil Rights Enterprise System
DM	Departmental Manual
DR	Departmental Regulation
ECD	Employee Complaints Division
EEO	Equal Employment Opportunity
EEOC	Equal Employment Opportunity Commission
FAD	Final Agency Decision
FY	Fiscal Year
HR	Human Resource
OCFO	Office of the Chief Financial Officer
OGC	Office of the General Counsel
OIG	Office of Inspector General
ROI	Report of Investigation
USDA	U.S. Department of Agriculture

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Background and Objectives

Background

The U. S. Department of Agriculture’s (USDA) Office of Civil Rights (CR) is responsible for resolving all complaints of discrimination that are made against USDA. These complaints generally fall into two main categories: (1) complaints of discrimination in the award or distribution of Federal program benefits (program complaints), and (2) complaints of discrimination arising from the terms, conditions, and privileges of employment (EEO complaints).

Title VII of the Civil Rights Act of 1964, as amended, prohibits employment discrimination based on race, color, religion, sex, or national origin. The Age Discrimination in Employment Act of 1967 prohibits employment discrimination against individuals who are 40 years of age or older. The Rehabilitation Act of 1973, as amended, prohibits employment discrimination based on disability. Employment discrimination complaints are processed under the Equal Employment Opportunity Commission’s (EEOC) regulations found in Title 29 Code of Federal Regulations, Part 1614-Federal Sector Equal Employment Opportunity (EEO).

The Secretary of Agriculture's Memorandum 1030-57, dated March 7, 2003, gave the Assistant Secretary for CR (ASCR) the full authority and responsibility for leadership and oversight of USDA’s civil rights, equal employment opportunity, outreach, and alternative dispute resolution (ADR) functions. CR accepts or dismisses, investigates, and adjudicates complaints of discrimination arising out of USDA employment and Federally-assisted or conducted programs. Complaints may be initiated by USDA employees, applicants for employment, and USDA program participants and customers.

CR prepares USDA’s “Federal Agency Annual EEO Program Status Report” (EEOC Form MD-715 report), the “Annual Federal Equal Employment Opportunity Statistical Report of Discrimination Complaints” (EEOC Form 462 report), and the “Notification and Federal Employee Anti-Discrimination and Retaliation (No FEAR) Act” report. CR procured two web-based applications to prepare these reports. CR began implementation of the Civil Rights Enterprise System (CRES) in February 2005.²² CRES allowed USDA agencies and CR to use one automated system for processing and tracking EEO complaints at both the informal and formal stages.

The EEO complaint process begins at the informal stage when an aggrieved person contacts a USDA agency’s EEO counselor to report an act of discrimination. The EEO counselor notifies the aggrieved person of his or her rights and responsibilities and has 30 days (or up to 90 days if an extension is

²² According to CR officials, CRES was fully implemented the end of June 2005.

granted or ADR²³ is used) to resolve the issues discussed. If resolution is achieved within the established timeframes, a settlement agreement is prepared and signed. If there is no resolution, the EEO counselor must notify the aggrieved person of her or his right to file a formal complaint with CR.

If a formal complaint is filed, CR is to complete processing of the complaint within 270 days. CR's Employment Complaints Division (ECD) reviews each new complaint and determines whether it should be accepted for further review or dismissed in accordance with Departmental directives based on EEOC regulations.²⁴ If the complaint is dismissed, a final agency decision (FAD) stating the reasons for the dismissal is issued to the complainant and the agency. If the complaint is accepted, an investigation must be initiated by the involved agency. The Department has 180 days from the date the formal complaint is filed to issue a Report of Investigation (ROI). Upon receipt of the ROI, the complainant has 30 days to request a hearing by an EEOC administrative judge or a FAD by CR. If a FAD is requested, CR's Complaints Adjudication Division (CAD) must issue a FAD based on the facts identified in the ROI within 60 days of the request. If a hearing is requested, CAD must provide a written final decision to the complainant within 40 days of the receipt of the administrative judge's decision. This 40-day period is not included in the 270-day timeframe. A flowchart of this formal process is shown in Exhibit B.

In March 2000, we issued our first report²⁵ on CR's processing of EEO complaints. The report highlighted weaknesses in CR's operating environment for tracking its complaints inventory, reporting on its performance, processing complaints, and working with other USDA agencies. In September 2005, we issued a report²⁶ that followed up on our prior recommendations for CR program and EEO complaints. We concluded that CR had strengthened its controls by implementing corrective actions for 22 of our 43 recommendations. However, we found that CR did not institute management controls to monitor corrective actions or report actions taken to the Office of the Chief Financial Officer (OCFO).

In April 2006, two U.S. Senators requested that Office of Inspector General (OIG) look into several issues involving civil rights at USDA. Based on their request, as further refined in discussions with staff from the Committee on Agriculture, Nutrition, and Forestry, we agreed to evaluate USDA's progress with regard to addressing EEO complaints and employee accountability for acts of discrimination. The audit was designed to provide statistical data regarding employee complaints filed in fiscal years (FY) 2004, 2005, and the first three quarters of FY 2006, and USDA's response to a recommendation made in EEOC's Onsite Report, dated February 26, 2003, regarding proper

²³ ADR is any of a number of conflict resolution techniques used to assist the complainant and agency in resolving EEO complaints.

²⁴ ECD uses an accept/dismiss checklist in Appendix A of Departmental Manual (DM) 4300-1, EEO Complaint Processing Procedures.

²⁵ Audit Report No. 60801-03-Hq, Management of EEO complaints—Phase VII, March 2000.

²⁶ Audit Report No. 60016-01-Hy, Follow-up on Prior Recommendations for Civil Rights Program and Employee Complaints, September 2005.

separation between the Office of the General Counsel (OGC) and CR involving legal sufficiency reviews of reports of investigation and final agency decisions.

Objectives

Our overall objective was to evaluate USDA's progress with regard to addressing EEO complaints and employee accountability for acts of discrimination. Specifically, we identified and evaluated the adequacy of USDA's: (1) controls to track and process EEO complaints, and (2) processes to hold employees accountable for discriminatory actions towards other employees or in administering USDA programs.

In June and December 2006, OIG received Hotline Complaints concerning CR. We incorporated the issues raised into our objectives by reviewing CR's contract with a software application supplier and by examining CR's role in the informal and formal complaint resolution processes.

To accomplish our objectives, we interviewed CR staff, managers, USDA agency CR staff, and Departmental officials to obtain information on CR's employee accountability process and EEO complaint process tracking controls. We also reviewed EEO complaint data from CRES for our universe of 1,481 formal cases with an initial contact date²⁷ within the period beginning in FY 2004 through the third quarter of FY 2006.

²⁷ Initial contact date is the date a complainant first contacts an EEO counselor.

Findings and Recommendations

Section 1. Controls for Timely Processing Complaints

Finding 1

EEO Complaints were Not Timely Processed

CR has made improvements in the amount of time needed to process complaints but additional efforts are needed. In February 1997, the Secretary's Civil Rights Action Team identified USDA's inability to process EEO complaints timely and effectively, noting that it took an average of nearly 3 years to complete a case. Our current work disclosed that CR's processing time to complete a case averaged just less than 1.5 years. However, this average still exceeds the 270-day processing timeframe established by EEOC.

The CR Director attributed this condition to several factors, including unrealistic timeframes established by EEOC, a substantial inventory of backlogged complaint cases, an influx of new cases, staffing and resources, as well as individual agencies not meeting their responsibilities. The CR Director stated that through the ASCR Strategic Plan,²⁸ CR's weaknesses in the timely processing of complaints will be corrected within the next five years. However, CR did not have a detailed formal plan with action items and reasonable and measurable milestones to address its complaint processing delays.

The processing of EEO complaints is a shared USDA responsibility. Agencies are responsible for processing and entering data into CRES during the informal stage, and for investigations and hearings during the formal stage. CR is responsible for processing and entering data into CRES for acceptance or dismissal of complaints and for final agency decisions during the formal stage. CR has the overall responsibility for ensuring that USDA is accurately reporting on its EEO activities and timely processing its EEO complaints.

We determined that CR did not have an adequate monitoring framework to track the processing of complaints and to intervene when timeframes were not being met. Reliable standard management reports from CRES are not available to CR managers for monitoring the processing of complaints. In addition, CR managers are not required to report to the CR Director on cases that are exceeding established timeframes.

If CR accepts a formal EEO complaint, the agency is to process the complaint and issue a final agency decision within 270 days. This timeframe

²⁸ The ASCR Strategic Plan is a document used by the ASCR to align its organization and budget structure with organizational priorities, missions, measurable objectives, and strategies to achieve these objectives.

includes 180 days from the time the complaint is filed to the completion and issuance of the ROI, 30 days for the complainant to select whether the complaint is to be decided by an EEOC administrative judge or CR, and 60 days for CR to issue a FAD.

We analyzed the amount of time it took CR to process and resolve complaints based on data in the CRES system as of August 22, 2006. Our universe of 1,481 EEO complaints included formal cases with initial contact dates in FY 2004, FY 2005, and the first three quarters of FY 2006. We excluded 12 complaints from our universe because these cases were class action complaints, which are not within CR's control. These cases are being handled as part of several class actions by EEOC.

Open Cases

Open cases are cases that have not been settled by the agency, adjudicated by CR or an administrative judge, or withdrawn by the complainant. As of August 22, 2006, we determined that 919 of the 1,469 cases in our universe were open. Table 1 below shows whether the open cases involved a request for an EEOC hearing.

Table 1.

Status	Number of Open Cases
No Hearing Requested	582
Hearing Requested	337
Total	919

For complaints without a request for an EEOC hearing, 304 of the 582 cases exceeded the 270-day timeframe. The processing time ranged from 293 to 1,019 days, with an average of 534 days and a median of 503 days. We also observed that benchmarks for actions to be taken within the 270-day timeframe were not met. According to data in CRES:

- CR did not ensure the ROI was completed within 180 days from the date the formal complaint was filed for 213 of the 304 cases;
 - CR did not annotate acceptance in CRES for 29 of the 213 cases;
 - CR did not annotate acceptance in CRES for 21 of the 213 cases until after the 180-day timeframe for completing the ROI; and
- CR did not issue a FAD within 90²⁹ days of the date the ROI was issued for 209 of the 304 cases.

²⁹ The 90-day period includes the 30 days allowed for the complainant to make an election for a FAD or an administrative judge decision and 60 days for the issuance of the FAD.

For the 337 open cases with an EEOC hearing request, we only assessed the 180-day timeframe for accepting the case and completing the ROI, which is CR’s responsibility. The 270-day timeframe did not apply to the 337 complaints wherein the complainant elected to have an EEOC administrative judge render the decision. In these cases, CR had 40 days to provide the complainant with the FAD after receiving the administrative judge’s decision.

- CR did not ensure that the ROI was completed within 180 days from the date the formal complaint was filed for 178 of the 337 cases. In addition, we found that for the 178 cases:
 - CR did not annotate acceptance in CRES of 13 cases until after the 180-day timeframe for completing the ROI had passed;
 - CR did not annotate acceptance or the completion of an investigation for 2 cases; and
 - CR did not complete the FAD for 11 cases within the 40 days following the decision by the EEOC administrative judge. The CR Director attributed these untimely FADs to a lack of coordination with the agency representatives to ensure that they submitted the administrative judge’s decisions in a timely manner.

Closed Cases

We determined that 550 of the 1,469 cases have been closed. Table 2 below shows the types of events that closed the cases and denotes whether the cases involved a request for an EEOC Hearing.

Table 2.

Closure Event	No Hearing Requested	Hearing Requested	Totals
Withdrawal ³⁰	47	33	80
Settlement agreement	105	92	197
Administrative Judge Decision	N/A	74	74
FAD based on procedural dismissal	77	49	126
FAD based on merits of the complaint	67	6	73
Total	296	254	550

In our analysis of the amount of time it took to completely resolve complaints, we excluded the 254 complaints where a hearing was requested with an EEOC administrative judge. The timeframe for rendering a decision for these complaints is not within CR’s control. However, we assessed the

³⁰ A complainant may withdraw a complaint at any time during the EEO process including after submitting a request for a hearing.

180-day timeframe for accepting or dismissing each case and completing the ROI, which is within CR's control.

CR's average timeframe for complete resolution for the 296 cases without a hearing request was 243 days. However, this average is not representative of CR's processing times because it includes cases settled by USDA agencies, closures by withdrawal, and procedural dismissals by CR. To obtain a better understanding of CR's processing times, we focused on the 67 cases wherein CR issued a FAD based on the merits of the complaint. These types of cases require an in-depth analysis by CR. We determined that the average time for processing these 67 cases and issuing a FAD was 504 days and the median was 502 days, well over the 270-day established timeframe. One case took 867 days to complete. In addition, for these 67 cases, CR needed an average of 306 days to issue the FAD following the completion of the ROI, more than 3 times the length of the 90-day established timeframe.

We determined that 355 of the 550 closed cases were investigated. We assessed the 180-day timeframe for accepting each case and completing the ROI, which is CR's responsibility. We determined that CR did not ensure that the ROI was completed within 180 days for 135 of the 355 cases. CR also did not annotate acceptance of 3 of the 135 cases until after the timeframe for completing the ROI had elapsed. CR's time for accepting or dismissing the cases and completing the ROI ranged from 69 to 520 days, with an average of 196 days.

CR officials acknowledged that they are not meeting established timeframes for processing EEO complaints. The CR Director stated that there are several reasons why timeframes are not being met and they are trying to meet the timeframes based on their strategic plan. However, CR did not have a formal plan to detail how it will meet the timeframes. Also, CR did not have adequate controls to track the processing of complaints and to intervene when timeframes were not being met.

Recommendation 1

CR should develop a detailed formal plan to process EEO complaints timely and effectively. Specifically, this plan should identify the weaknesses, provide action items for addressing these weaknesses, and establish reasonable and measurable timelines for completing the actions.

Agency Response.

CR agreed to produce a detailed plan for the timely and efficient processing of EEO complaints, including identification of weaknesses and action items. The detailed plan will be completed by June 29, 2007. CR acknowledged that many EEO cases are processed beyond the regulatory timeframes.

CR's response presented various statistical data to demonstrate the agency's commitment to improve the timely processing of EEO complaints. For example, for FADs issued on the merits, CR's response stated that USDA's average processing time of 582.1 days in FY 2004 and 422.3 days in FY 2005 was better than the government-wide average of 597.9 days in FY 2004 and 479.2 days in FY 2005.

CR also identified three areas the agency needs to address in order to improve the timely processing of EEO complaints: (1) lack of adequate staffing to address current workload; (2) too many cases reach the adjudication process that could have been addressed earlier; and (3) CAD did not receive timely information needed to close complaints.

OIG Position.

We accept CR's management decision; however, we question the data used by CR to demonstrate the agency's commitment to improve the timely processing of complaints. According to the EEOC Annual Report on the Federal Work Force FY 2005, where CR obtained the government-wide averages for FADs issued on the merits, USDA's average processing time for a merit-based FAD was 1,093.9 days in FY 2004 and 736.2 days in FY 2005.

Recommendation 2

Develop and implement controls to monitor the processing of complaints and to intervene when timeframes were not being met. These controls should include reporting mechanisms to the CR Director to provide the reasons why specific cases are exceeding established timeframes.

Agency Response.

CR agreed to develop and implement controls to monitor and address cases that significantly exceed regulatory timeframes through the following actions:

- Develop reports showing the cases pending acceptance or dismissal including the days lapsed, and the cases pending adjudication including the days lapsed to ensure ECD Chief and CAD Chief issue documents to the complainants timely or intervene when timeframes are not being met. This task will be completed by May 31, 2007.
- The ECD Chief will institutionalize a practice of intervening if a draft acceptance letter or dismissal decision is not presented for review within the 45 days following the formal complaint filing date and taking appropriate actions to ensure that an acceptance letter is issued within 60 days or that a dismissal decision is issued within 120 days following the filing date. This task will be completed by May 31, 2007.

- The CAD Chief will develop goals for addressing the cases pending a FAD on the merits. The goals will address the cases already beyond the regulatory time period, those that are expected to exceed the regulatory timeframe based on the pending workload, and new cases entering the adjudication process. The plan will show how the inventory will be addressed going forward so that a 90 percent level of timely merit FADS can be achieved. This task will be completed by September 28, 2007.
- Reassess performance standards for specialists in ECD and CAD to ensure quality and timeliness in the completion of assigned cases. This task will be completed by October 31, 2007.
- CR will require that the Statements of Work used by the agencies to procure the services of contract investigators contain standard provisions regarding timeliness and quality. This task will be completed by December 31, 2007.
- CR will request that the EEOC provide technical assistance with investigations of EEO complaints, including training on conducting legal sufficiency reviews and a process review to identify factors impacting timeliness and suggestions for streamlining investigations. This task will be completed by June 30, 2008.

OIG Position.

We concur with CR's proposed actions for implementing Recommendation 2. However, in order to reach management decision, CR needs to establish the timeframe by which cases are considered to significantly exceed regulatory timeframes. In addition, CR needs to provide a timeline with milestone dates for significant steps in its plan for requesting and obtaining feedback from EEOC regarding training on legal sufficiency reviews and a process review to identify factors impacting timeliness and suggestions for streamlining investigations.

Section 2. Controls Over Complaints Tracking System

We determined that CR had not sufficiently strengthened its controls over the entry and validation of complaint data. Specifically, CR did not institute the necessary edit checks (business rules³¹) to ensure the completeness of complaint data entered into the information system (i.e., CRES) that the agency began implementing in February 2005. In addition, data recorded in CRES did not always reconcile with documentation in the physical case files because no process was implemented to validate the accuracy of the data. As a result, the information system did not provide a fully reliable source of data on USDA EEO complaints.

In February 2005, CR began implementing CRES, a web-based application that allowed USDA agencies and CR to enter data and use one automated system for processing and tracking EEO complaints at both the informal and formal stages. According to CR officials, prior to the implementation of CRES, agencies did not have an enterprise system to track informal EEO complaints. CR uses CRES to complete and file required reports such as the annual EEOC Form 462 Report, which provides information on the status of informal and formal EEO complaints.

Finding 2

Insufficient Business Rules for CRES

CR and the applicable USDA agencies enter complaint data into CRES. CR then uses data from CRES to complete and file required reports. However, CR did not include the necessary business rules in CRES to ensure that all required data were entered by USDA agencies when the system was being implemented in February 2005.³² As a result, CRES was not always a reliable source of data for reports filed to demonstrate that USDA was complying with the established EEO process.

The data gathered from CRES for the EEOC Form 462 Report submitted for FY 2005 was not fully accurate. The CR Director explained that this was disclosed to EEOC and the data was the best data available to CR at that time.³³ She stated that the system was new and a margin of error will therefore exist. The report provides information on the status of informal and formal EEO complaints. The following highlight examples of complaint data, at the informal and formal stages, which were not correctly presented in CRES for the 1,481 cases in our universe.

³¹ Business rules are protocols installed in the system to ensure data are entered for required stages in the EEO process.

³² According to the CR Director, CR intended to phase in business rules over time in order to make the initial use of the system easier for the agencies.

³³ We confirmed that in Appendix A of the FY 2005 EEOC Form 462 Report CR disclosed that CRES was a new system and some corrections may have to be made as CR continues to enhance quality control.

- Informal ADR data were not entered for 625 cases;
- Informal closure data were omitted in 6 cases; and
- Formal acceptance dates for 29 cases were omitted, even though data in CRES indicated that investigations had been initiated.

According to EEO complaint processing procedures,³⁴ agencies are required to offer ADR to aggrieved persons during the informal stage of complaint processing. However, agencies are not required to offer informal ADR if the complaint involves violence or criminal activity.

We selected a sample of 64 cases in order to reconcile information recorded in CRES with documentation recorded in the case file. Because CR was not able to locate or recreate 1 case file, we only reviewed 63.³⁵ We analyzed our sample of 63 cases to evaluate why informal ADR data had not been entered in CRES. Because CRES was used to track complaints, documentation in the case files should support the data USDA agencies record in CRES. Informal ADR data were not entered for 28 of the 63 cases in our sample. For 19 of the 28 cases, the documentation in the case files did not clearly show whether ADR was offered. For 9 of the 28 cases, the documentation clearly stated whether or not ADR was offered; however, the responsible USDA agencies did not make accurate entries in CRES.

Omitted entries for data elements raise questions about the sufficiency of the data recorded in CRES and whether data from this system can be used to demonstrate that USDA was in compliance with these aspects of the EEO process. Business rules could be set in the system to require an entry for one stage before a user could enter data in CRES associated with subsequent stages of the EEO process. As of October 31, 2006, CR had not identified and incorporated all of the business rules necessary to ensure the integrity of the EEO complaint data in CRES. In addition, CR did not have a plan for accomplishing these tasks.

In order to ease the transition to CRES for USDA agencies, CR planned to phase in the necessary business rules. However, in responding to our inquiries, CR could not provide the plan for incorporating the rules. CR provided us with a list of business rules for CRES formal events. However, we determined that the list did not constitute a formal action plan for identifying, developing, testing, and implementing the listed rules. CR also had not begun work on establishing business rules for the informal process or developing a plan to implement them during the course of our field work. During the exit conference, CR officials stated that they have begun

³⁴ DM 4300-1, EEO Complaint Processing Procedures, Chapter IV, Informal EEO Complaint Process, dated July 20, 2001.

³⁵ In March 2007, CR provided us with the one missing case file that was not recreated. Based on our review, we found that this case file did not contain the initial formal complaint, initial acceptance letter of the complaint, and the initial ROI. However, for the documentation we did review, the data entered in CRES was accurate. The ADR data for this case was entered in CRES and supported by documentation in the case file.

implementing additional business rules and a plan to implement the other necessary business rules was currently in process.

Recommendation 3

Identify all the business rules necessary for entering EEO complaint data into CRES at the informal and formal stages of complaint processing. Implement a plan with action items and timeframes to develop, test, and apply the needed business rules.

Agency Response.

CR agreed to provide a formal plan for developing, testing and implementing business rules in CRES no later than June 29, 2007.

OIG Position.

We accept CR's management decision.

Finding 3

CRES Data Not Supported by Case File Documentation

For 11 of the 63 EEO complaints selected for review (over 17 percent of the sampled complaints), the data recorded in CRES were not supported by the documentation in the physical case file. For example, for one complaint, the complainant's race recorded in CRES was White, whereas the supporting documentation described the complainant as African-American. The errors in the information system occurred because CR had not implemented a process to validate the accuracy of data entered into CRES. As a result, CRES was not always a reliable source of information about EEO complaints at USDA.

According to CR's performance standards, managers are responsible for the integrity of data in CRES and should perform periodic audits to ensure accuracy of entries. However, we found that this standard was not consistently applied because CR did not have an established data validation process. According to one CR manager, physical case files are compared to CRES data once per month to ensure accuracy. Another CR manager stated that the assigned Equal Opportunity Assistant verifies the accuracy of data entered in CRES. However, neither manager could provide documentation to support that these data integrity checks were performed.

In addition to the previously noted example of the error in recording the complainant's race in CRES, we found the following dates were erroneously recorded:³⁶

³⁶ The total number of errors will not equal 11 because 2 cases had more than one discrepancy.

- Initial contact dates for four cases;
- Formal filing dates for two cases;
- Acceptance dates for two cases;
- ROI issuance dates for two cases; and
- Hearing request dates for two cases.³⁷

When dates are entered in error, CRES cannot be reliably used to analyze whether complaints are processed within established timeframes. Because CR has the overall responsibility³⁸ for ensuring that USDA is accurately reporting on its EEO activities and timely processing its EEO complaints, CR needs to implement a formal verification process to ensure data integrity.

Recommendation 4

Develop and implement a formal process to validate the accuracy of information entered in CRES. The process should include an independent, second-party verification of data accuracy by CR at the agency level on a sample basis.

Agency Response.

CR agreed to develop and implement a formal process to validate the accuracy of information entered into CRES by taking the following steps:

- Ensure that a comprehensive data dictionary is available to all users on CRES' intranet website. A data dictionary defines all of the data fields in the system so that users are inputting data in a consistent fashion. This task will be completed no later than June 29, 2007.
- Implement an automated quality control tool that will highlight errors in logic and inconsistent data entries. The automated quality control tool will be implemented no later than October 31, 2007.
- Assign audit responsibilities to staff not involved in data entry. The assigned individual(s) will review data entries for a sample of cases at least twice a year and make a record of the results of the audit. The CR Director will determine what further action is required depending on the results of the audit. The audit procedures will be in place no later than July 31, 2007. The first audit will be completed no later than November 30, 2007.

³⁷ The initial contact dates, ROI issuance dates, and hearing request dates are entered by the agencies; and the formal filing dates and acceptance dates are entered by CR.

³⁸ Secretary of Agriculture Memorandum 1030-57, dated March 7, 2003.

OIG Position.

We accept CR's management decision.

Section 3. Controls Over Physical Case Files

In March 2000, we reported that CR's file room was not properly managed and case files were disorderly and improperly stored, noting that 18 case files were missing and case files were stored in employees' office spaces and in a borrowed shopping cart. Our review disclosed that CR has made some progress towards organizing and properly storing case files. However, CR had not established adequate controls over its file room operations to ensure that physical case files can be located timely and that the files contain all of the documentation required for processing the complaints.

The CR Director explained that CR is working towards a paperless environment and agreed that controls would be needed in the interim to strengthen this area of CR's operations.

Finding 4

CR's File Room Operations were Not Efficient

CR could not readily account for and provide 15 of the 64 case files selected for review. This occurred because CR lacked procedures to control and monitor the physical location of files. As a result, CR was unable to provide requested case files in a timely manner. CR needed more than a month to locate 13 of the 15 requested case files and could not locate 2 case files; however CR was able to recreate 1 of the 2 missing case files.³⁹

A Departmental regulation⁴⁰ requires that records shall be maintained so that they are easily retrievable. Offices shall strive to standardize filing procedures and filing techniques for official records. Document filing systems are to be designed, in part, to enhance the current use of files.

We selected a sample of 64 cases to reconcile information recorded in CRES with documentation recorded in the case files. Because of the aforementioned missing case file, we only reviewed 63 cases.

A data field in CRES was designed to track case file location. However, we found that CRES was not reliable for tracking the case file location because the data field was not regularly updated. We observed that case files were kept in several rooms on different floors throughout the building where CR is located. We also observed that these file rooms lacked the space needed to hold all of the physical case files, which caused CR's file room staff to store case files on desks, in boxes, and in no particular order. Two of the file rooms served as storage closets for boxed case files rather than as file rooms. In addition, we learned that even though the building managers informed CR

³⁹ In March 2007, CR provided the second missing case file (originally requested in September 2006).

⁴⁰ DR 3080-001, Records Management, dated April 30, 2004.

management that placing case files on the top shelves was a fire hazard, this practice has continued.

A Departmental regulation⁴¹ requires that all USDA records shall be listed and described in an approved records schedule and shall be disposed of as authorized by that schedule. According to the General Records Schedule, Item 25, EEO Complaints should be destroyed four years from the official closure date of the case.

According to CRES, CR was storing over 5,700 closed case files that have exceeded the four year retention requirement as of October 2006.⁴² CR's actions to eliminate these closed cases included preparing a list of cases that are past their retention period, circulating this list within CR to ensure that these cases do not need to be retained, and destroying those cases that received approval. CR officials stated that a case that has been closed beyond four years is not necessarily ready for destruction. For example, a case involved in a legal trial must be retained until the litigation is concluded. However, CR did not know how many of these case files were located at its office in Washington, DC, how many are stored offsite, or how many have already been destroyed. CR has not performed a physical inventory to identify how many of these cases are in their possession or how many additional cases, not identified by CRES, require destruction. In addition, CR did not have a formal plan with action items and timeframes for the destruction of these closed cases.

In order to standardize file room operations and make them more efficient, CR needs to implement procedures to control and monitor case file location and disposition.

Recommendation 5

Develop and implement procedures to control and monitor case file physical location and disposition.

Agency Response.

CR agreed to develop comprehensive records management procedures for EEO complaints case files no later than September 30, 2008.

OIG Position.

We concur with CR's proposed action for Recommendation 5; however, to reach management decision, CR needs to provide a timeline with milestone

⁴¹ DR 3080-001, Records Management, dated April 30, 2004.

⁴² The General Records Schedule requires that EEO cases be destroyed four years from the date they are closed. However, at the exit conference, CR officials stated that a closed case in CRES is not necessarily ready for destruction. For example, a case currently in court litigation should not be destroyed. CR officials stated that they plan to address how cases are defined in CRES (i.e., closed) as they respond to the findings and recommendations in our report

dates for significant steps in its plan to implement procedures to control and monitor case file location and disposition.

Recommendation 6

Develop and implement a formal plan with action items and timeframes for identifying and destroying the paper files of those cases for which all actions have been completed and the four year retention period has been exceeded.

Agency Response.

CR agreed to implement a formal plan for identifying and properly disposing of paper case files, when appropriate. Because of the volume of case files that must be reviewed for possible destruction and the amount of work that must be done to prepare a file for destruction, CR believes that an external contractor is needed to complete the process in an efficient manner. In addition, an external contractor will have the expertise needed to recommend procedures for carrying out the destruction of records in accordance with industry best practices. These actions will be completed no later than September 30, 2008.

OIG Position.

We concur with CR's proposed action for Recommendation 6: however, to reach management decision, CR needs to provide a timeline with milestone dates for significant steps in its implementation plan for identifying and properly disposing of paper case files.

Recommendation 7

Perform and document a physical inventory of complaints and case files to determine whether there are any additional cases, not identified by CRES that should be destroyed.

Agency Response.

CR agreed to include a physical inventory as part of the Statement of Work for the contractor retained to carry out the activities identified in Recommendation 6. This task will be completed no later than September 30, 2008.

OIG Position.

We concur with CR's proposed action for Recommendation 7; however, to reach management decision, CR needs to provide a timeline with milestone dates for significant steps in its implementation plan for performing a physical inventory of complaints and case files.

Finding 5**Physical Case Files Did Not Contain Required Documentation**

For 21 of the 63 cases reviewed, CR did not ensure that the physical case files contained required documentation e.g., counselor's reports, acceptance letters, ROIs, FADs or administrative judges' decisions, and settlement agreements. This occurred because CR did not have processes and procedures to control the flow of documents associated with EEO complaints. As a result, CR did not always have documentary assurance that its actions were supported.

A Departmental regulation⁴³ requires that records shall be maintained so that they are easily retrievable. Offices shall strive to standardize file arrangement systems, filing procedures, and filing techniques for official records.

According to CR officials, the agency did not have policies and procedures to specify responsibilities for receiving, transferring, filing, and safeguarding documents associated with EEO complaints. However, the Director of CR explained that procedures are currently being developed to address these responsibilities and improve file room operations.

By reconciling the information in CRES with the documentation in the 63 case files reviewed, we found that 21 case files were missing the following documentation needed to support information in CRES:⁴⁴

- 4 did not include a counselor's report;
- 11 did not include the ROI;
- 4 did not contain the settlement agreement;
- 2 did not have a FAD or administrative judge's decision; and
- 8 were missing other documents such as the acceptance letter, dismissal letter, formal complaint, or withdrawal letter.

In addition, we found complaint documentation misfiled in 2 of the 63 case files. These case files included information on another person's complaint.

Recommendation 8

Develop and implement processes and procedures to control the flow of documents associated with processing EEO complaints. This should include procedures documenting which CR divisions or units are responsible for

⁴³ DR 3080-001, Records Management, dated April 30, 2004.

⁴⁴ The total number of errors will not equal 21 because 5 cases had more than one discrepancy.

receiving, transferring, filing, and safeguarding documents in the file folder. These procedures should also provide instructions on how to record and monitor the transfer of documents within the agency.

Agency Response.

CR is in the process of institutionalizing its records management procedures. The procedures will address the way documents that make up a case file are handled, transferred, stored and maintained. In addition, procedures will be implemented to address how documents are transferred between the agencies and the Office of Civil Rights. These tasks will be completed no later than September 30, 2008.

OIG Position.

We concur with CR's proposed action for Recommendation 8; however, to reach management decision, CR needs to provide a timeline with milestone dates for significant steps in its implementation plan for controlling the flow of documents associated with processing EEO complaints.

Scope and Methodology

To accomplish our objectives, we performed fieldwork at CR's offices in Washington, DC. Our work included an analysis of EEO complaint data in CR's information system, CRES, for formal cases with initial contact dates from the start of FY 2004 through the end of the third quarter of FY 2006. We selected this period in order to assess the actions taken by CR's current management team. This universe of complaints totaled 1,481 cases. By using the software application Audit Command Language (ACL), we selected a sample of 64 complaints for a detailed analysis to determine whether the physical case files had supporting documentation. ACL analysis of the number of complaints in the universe assisted in our decisions on the number of complaints to review and the specific complaints to be selected for review.

We interviewed:

- CR staff, managers, and other USDA agencies civil rights staff in order to obtain information on CR's employee accountability process, EEO complaint processing controls, and its tracking and processing systems,
- An official at the Office of Human Capital Management to discuss actions taken on USDA's policy on employee accountability, and
- An official at OGC to followup on the implementation of a recommendation discussed in the EEOC Onsite Report dated February 26, 2003. EEOC recommended that USDA ensure proper separation of responsibilities between the OGC and CR in the conduct of legal sufficiency reviews of ROIs and FADs.

We also:

- Reviewed the EEO complaints file rooms to determine whether case files are organized and easily retrievable,
- Compared the documentation in the case files with the data entered in CRES to determine whether data had been entered correctly,
- Analyzed CRES data to determine if complaints were processed timely,
- Reviewed CRES to determine whether the system had sufficient edit checks to ensure data are accurate and complete, and

- Reviewed a selected software application to determine if the application accurately reported employment data for the Federal agency Annual EEO Program status report (MD-715 report).

Fieldwork was conducted from July 2006 through March 2007. Our audit was conducted in accordance with Generally Accepted Government Auditing Standards.

Exhibit A – Complaints by Bases of Discrimination for our USDA Universe

Exhibit A – Page 1 of 3

The following tables illustrate by agency⁴⁵ the bases of discrimination for our universe of 1,481 cases. Some cases have more than one basis of discrimination; therefore the total will not equal the number of complaints for each FY.

Bases of Discrimination Complaints for USDA Universe - FY 2004																	
Total Number of Complaints by Agency	RACE				COLOR	RELIGION	REPRISAL	SEX		NATIONAL ORIGIN			DISABILITY	SEXUAL ORIENTATION	PARENTAL STATUS	MARITAL STATUS	TOTAL
	AMERICAN-INDIAN/NATIVE	AMERICAN-ASIAN/PACIFIC ISLANDER	BLACK	WHITE				MALE	FEMALE	HISPANIC	OTHER	MENTAL					
AMIS 17	2	0	0	1	0	0	9	2	3	0	1	6	0	1	0	0	25
APHIS 63	0	5	10	2	2	6	28	7	14	0	14	17	5	7	0	0	118
ARS 27	0	1	3	0	0	1	16	0	4	1	4	7	3	1	0	0	41
CRSD 32	0	0	15	3	5	0	17	6	8	1	1	9	0	6	0	0	71
CREES 2	0	0	2	0	0	0	0	0	0	0	0	2	0	0	0	0	4
ERS 1	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	1
FAS 8	0	0	3	0	0	0	4	1	3	0	0	1	0	2	0	0	14
FNCS 7	0	0	1	3	2	0	4	3	0	0	1	4	1	1	0	0	20
FS 141	5	4	16	8	3	0	74	15	44	13	1	24	6	3	0	0	216
FAS 52	0	2	8	8	2	2	21	5	10	12	6	10	6	3	0	0	95
FSIS 62	2	9	3	7	6	10	28	6	13	5	17	23	4	13	0	0	146
GPSA 6	0	0	2	0	2	0	3	1	2	0	0	2	0	2	0	0	14
INAD 2	0	0	1	0	0	0	0	0	1	0	0	1	0	0	0	0	3
MASS 0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
NRCS 52	1	1	9	15	9	0	30	6	15	0	6	18	1	5	0	0	116
OCFO 18	0	0	0	0	0	0	16	1	5	0	0	5	0	0	0	0	27
OIG 4	0	0	2	0	1	0	3	0	1	0	0	1	0	0	0	0	8
RD 49	0	3	2	2	0	0	24	6	9	2	2	18	2	10	0	0	80
RHS 0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
RMA 7	1	0	0	0	0	2	4	1	2	0	0	4	0	2	0	0	16
TOTAL 550	11	25	77	49	32	21	281	60	134	34	54	152	28	56	1	0	1015

⁴⁵ CR provided us with base data for our universe by its initial contact date; therefore our agency totals include formal complaints by its initial contact date.

Bases of Discrimination Complaints for USDA Universe - FY 2005																
Total Number of Complaints by Agency	RACE				COLOR	RELIGION	REPRISAL	SEX		NATIONAL ORIGIN		DISABILITY	SEXUAL ORIENTATION	PARENTAL STATUS	MARITAL STATUS	TOTAL
	AMERICAN-INDIAN/ALASKAN NATIVE	AMERICAN-ASIAN PACIFIC ISLANDER	BLACK	WHITE				MALE	FEMALE	HISPANIC	OTHER					
AMS 4	0	0	1	0	1	0	3	1	1	1	0	0	0	0	0	9
APHIS 56	0	0	12	7	7	1	33	7	4	8	18	6	10	0	0	113
ARS 35	2	2	6	0	2	1	19	2	7	1	3	2	6	0	0	65
CRSD 48	2	4	25	4	14	10	27	10	24	1	9	4	9	0	0	166
CREES 2	0	1	2	0	0	0	0	0	2	0	1	0	0	0	0	7
ERS 2	0	0	0	0	0	0	1	0	0	0	1	0	0	0	0	2
FAS 7	0	0	6	0	4	0	4	2	5	0	1	0	1	0	0	26
FNCS 14	0	1	2	1	3	0	8	1	3	1	2	5	0	0	0	27
FS 141	4	2	22	13	6	4	78	24	42	17	7	34	9	24	0	286
FAS 72	2	2	18	13	8	3	45	17	12	1	12	20	4	8	0	166
FSIS 100	1	16	21	6	20	13	42	14	16	4	25	32	6	17	0	233
GIPSA 6	0	0	3	1	2	0	4	0	1	0	0	1	0	1	0	13
NAD 5	0	0	4	2	1	0	2	2	3	0	0	4	0	1	0	19
NASS 2	0	0	0	0	0	0	0	0	1	0	0	1	0	0	0	2
NRCS 54	4	1	17	4	7	4	27	5	16	2	6	24	4	9	0	130
OCFO 10	0	0	16	0	0	0	7	2	1	0	0	1	1	0	0	28
OIG 4	0	0	2	0	2	0	0	0	1	0	0	2	1	0	0	8
RD 60	3	0	5	3	2	0	33	5	20	3	4	29	3	8	1	119
RHS 0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
RMA 3	0	0	0	0	0	0	4	0	1	0	0	3	0	0	0	8
TOTAL 625	18	29	162	54	79	36	337	92	160	31	79	214	40	94	0	1427

Bases of Discrimination Complaints for USDA Universe- Quarters 1, 2, and 3 of FY 2006																	
Total Number of Complaints by Agency	RACE				COLOR	RELIGION	REPRISAL	SEX		NATIONAL ORIGIN			DISABILITY	SEXUAL ORIENTATION	PARENTAL STATUS	MARITAL STATUS	TOTAL
	AMERICAN-INDIAN/ALASKAN NATIVE	AMERICAN-ASIAN/PACIFIC ISLANDER	BLACK	WHITE				MALE	FEMALE	HISPANIC	OTHER	MENTAL					
AMS	3	0	0	1	0	0	0	0	2	0	1	1	0	0	0	0	6
APHIS	21	0	0	3	2	1	13	7	4	4	7	2	4	0	1	0	49
ARS	17	0	3	1	1	1	6	3	3	2	3	1	1	0	0	0	25
CRSD	25	1	1	13	3	4	11	8	10	0	5	14	2	5	1	0	80
CREES	2	0	0	1	0	0	1	0	0	0	0	0	0	0	0	0	2
ERS	1	0	1	1	0	0	1	0	0	0	0	0	0	0	0	0	3
FAS	1	0	0	1	0	0	1	0	0	0	0	0	0	0	0	0	2
FNCS	8	0	0	0	1	0	5	2	0	0	0	2	0	0	0	0	10
FS	73	2	1	6	7	1	35	7	17	12	3	24	2	15	0	0	134
FAS	30	0	0	7	7	4	12	4	2	1	3	13	3	4	0	0	62
FSIS	44	0	5	5	2	6	20	3	6	3	9	14	4	6	1	1	92
GIPSA	3	0	0	1	0	1	2	2	1	1	0	2	0	0	0	0	10
NAD	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
NASS	2	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0	2
NRCS	37	0	1	9	3	3	22	5	5	2	5	12	1	4	0	0	73
OCFO	4	0	1	1	0	0	2	0	1	0	1	1	0	0	0	0	7
OIG	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
RD	19	1	1	4	1	0	10	1	6	0	0	8	5	2	0	0	39
RHS	13	0	0	1	1	0	6	1	1	0	1	5	1	0	0	0	18
RMA	3	1	0	1	0	0	2	1	0	0	0	0	0	0	0	0	5
TOTAL	306	5	14	56	28	21	15	150	41	58	21	35	106	41	3	1	619

Exhibit B – The Office of Civil Rights’ Process for a Formal EEO Complaint

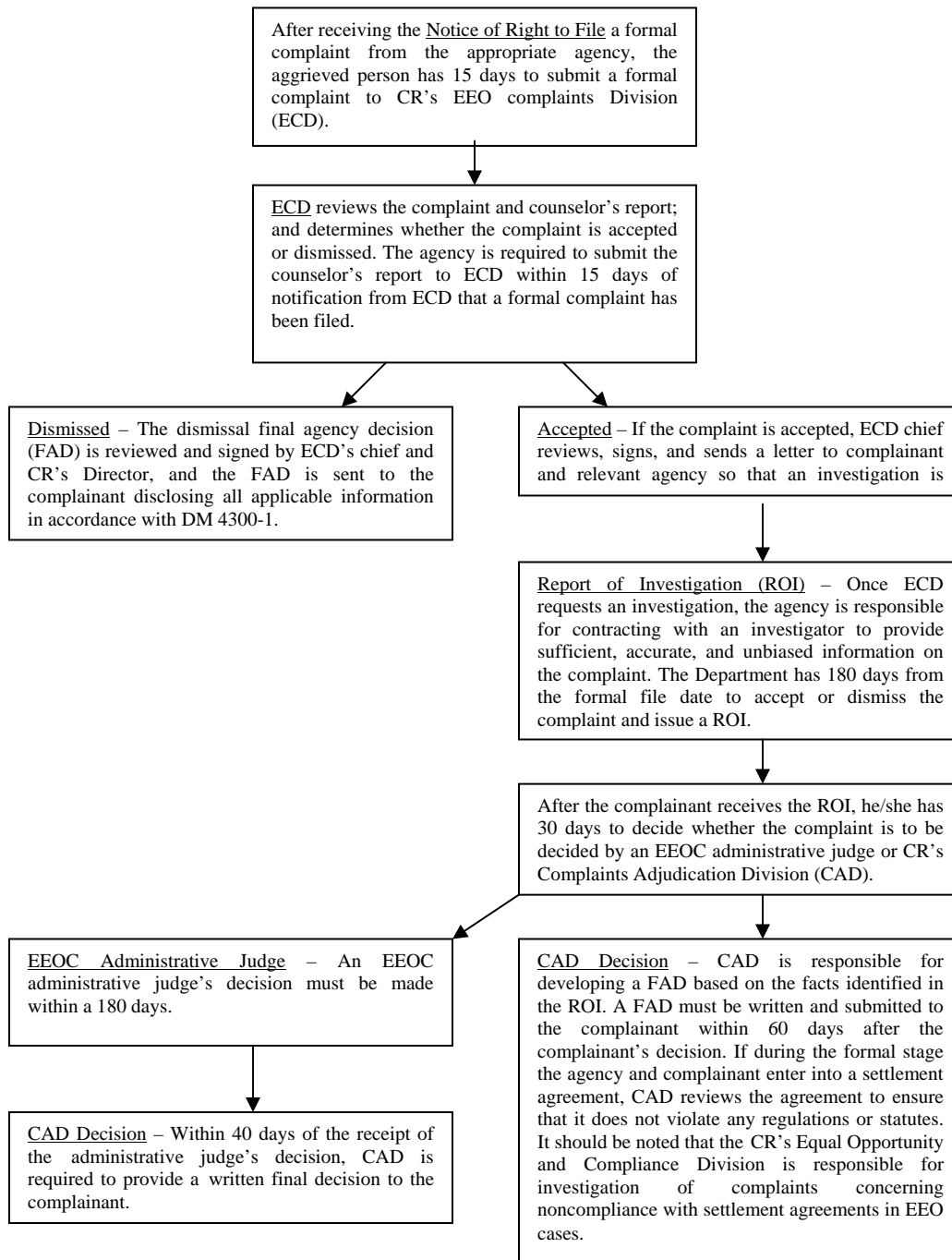


Exhibit C – Glossary of Terms

The following words or acronyms have particular meanings when used in the context of the USDA Equal Employment Opportunity (EEO) Complaint System:

Administrative Judge - An individual assigned by the Equal Employment Opportunity Commission (EEOC) to conduct a hearing on a complaint, if requested by the complainant.

Agency - One of the primary components (Administration, Office, or Service) of USDA.

Alternative Dispute Resolution - Any of a number of conflict resolution techniques listed in DR 4710-1, “Alternative Dispute Resolution,” which use a neutral third party to assist the complainant and agency in resolving EEO complaints, including, but not limited to, mediation, facilitation, and arbitration.

Basis - The prohibited factors of discrimination (i.e., race, color, sex, age [over 40], religion, national origin, disability, parental or marital status, political beliefs, sexual orientation, genetics, or reprisal).

Complaint - An allegation, formal or informal, that an action or decision in USDA (if an individual complaint) or a policy or practice of USDA (if a class action complaint), which has personally affected an employee was discriminatory on a prohibited basis.

Complaint Process or System - The entire set of actions possible on an EEO complaint, including counseling, acceptance, rejection, dismissal, investigation, resolution, hearing, decision, appeal, and civil action.

Days - all timeframes referenced in days are calendar days.

EEO Counselor - An individual assigned to discuss and attempt to resolve informal EEO complaints within USDA.

EEOC Form MD-715 Report – EEOC requires agencies to report annually on the status of activities undertaken pursuant to its equal employment opportunity program under Title VII and activities undertaken pursuant to its affirmative action obligations under the Rehabilitation Act. Agency reports must include a plan that sets forth steps it will take in the future to correct deficiencies or further improve efforts undertaken.

EEOC Form 462 Report - EEOC requires all Federal agencies and departments with 100 or more employees to provide EEO complaints data, including counseling data, on form number 462 no later than October 31, for the prior FY.

Employee - An individual employed, previously employed, or seeking employment (applicant) in any position within USDA.

Equal Employment Opportunity Commission - The EEOC is the Federal agency with the overall responsibility for implementing Title VII (Employment) of the Civil Rights Act of 1964 and other laws prohibiting discrimination in Federal employment.

Final Agency Decision – FAD means a conclusive determination, by USDA, of a formal equal employment opportunity or program complaint that disposes of all of the issues involved. FAD includes findings on each issue of alleged discrimination raised by the complainant, as well as appropriate remedies and relief when discrimination is found. The final decision also informs the complainant of his or her right to appeal to the EEOC or to file a civil action in the appropriate U.S. District Court, and of the applicable time frames.

Formal Complaint - An allegation that was not resolved in counseling and which has been filed with the USDA for investigation and additional processing.

Informal Complaint - An allegation concerning any issue that is presented to an EEO counselor.

Issues - The action or decision (including a failure to act or decide) or a policy or practice of USDA that has affected an employee which is alleged to have been discriminatory.

Report of Investigation - A report sent to the complainant that contains information to address each accepted issue and basis in the complaint.

Exhibit D – Agency's Response



United States
Department of
Agriculture

Office of the
Assistant Secretary
for Civil Rights

Office of
Civil Rights

1400 Independence
Avenue SW

Washington, DC
20250

TO: Robert W. Young
Assistant Inspector General for Audit
Office of Inspector General

THROUGH: Margo M. McKay
Assistant Secretary for Civil Rights

Margo M. McKay MAY 11 2007

FROM: Sadhna G. True
Director

Sadhna G. True MAY 1 2007

SUBJECT: OIG Draft Audit Report No. 60601-04-Hy

Thank you for the opportunity to respond to the draft Audit Report No. 60601-04-Hy, "Review of the U.S. Department of Agriculture's Accountability for Actions Taken on Civil Rights Complaints." We welcome the opportunity to highlight the progress we have made in our civil rights complaint process and to develop future plans for improving the process. The following is our formal response to the recommendations in the draft Audit Report.

Recommendation 1

CR should develop a detailed formal plan to process employment complaints timely and effectively. Specifically, this plan should identify the weaknesses, provide action items for addressing these weaknesses, and establish reasonable and measurable timelines for completing the actions.

Agency Response

The Office of Civil Rights will adopt Recommendation 1 by producing a detailed plan for timely and efficient processing of employment complaints, including identification of weaknesses and action items.

The Office of Civil Rights acknowledges that many EEO cases are processed beyond the regulatory timeframes. Nevertheless, we have made significant progress in improving timely processing. The data demonstrates that the complaint process is being monitored and managed to improve performance in the area of timeliness.

Management in the Office of Civil Rights has been committed to improving timeliness, and this commitment is illustrated in the progress that has been made. According to the 462 reports filed annually with the EEOC, the percentage of timely ROIs issued has increased from 1.1% in FY 2003 to 48.5% in FY 2006. Moreover, the average

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processing time for ROIs in FY 2006 was 215.0 days for USDA, while the government-wide average in FY 2005, the last year for which data is available, was 237.4 days.

Similarly, for FADs issued on the merits, USDA's average processing time in FY 2004 and FY 2005 was better than the government-wide average.

FAD processing times	FY 2004	FY 2005
USDA	582.1 days	422.3 days
Government-wide	597.9 days	479.2 days

Several external factors have negatively impacted complaint processing over the past two fiscal years, including the FY 2005 reorganization of the Office of Civil Rights, the process of migrating data from the legacy systems and paper files into the Civil Rights Enterprise System, changes in leadership, and a high level of attrition in staffing. The Complaints Adjudication Division, in particular, has been impacted by staff attrition, resulting in an increase in cases pending adjudication.

The OIG audit team conducted a study of 1,469 EEO cases and from that study, identified individual complaints for which the regulatory timeframes were not met. The audit team judged overall timeliness of complaint processing against a baseline of 270 days. In other words, the audit team assumed that any complaint (other than those at the hearing stage) pending for more than 270 days was untimely.

The federal sector EEO process is very complex. It is difficult to identify and address every factor that impacts timeliness. Moreover, the factors impacting timeliness are not constant or even predictable. The process relies on individual responses to specific legal requirements and on individuals performing specialized, highly technical tasks. Moreover, the person initiating the complaint can cause delays in the process simply by not adhering to the rules and procedures created by the EEOC. All of these things are very difficult for the Office of Civil Rights to predict or control.

Moreover, complaints may extend beyond the 270-day time period used by the OIG audit team and still be timely. OIG derived this timeframe by adding together the 180-day period in which to issue a Report of Investigation (ROI), the 30-day period during which the complainant is required to make an election, and the 60-day period for the agency to issue a Final Agency Decision (FAD).

The regulations provide, however, that the 180-day investigative period may be extended by mutual agreement of the parties. 29 C.F.R. § 1614.108(e). If the ROI is issued within the extended period, it is still counted as timely by the EEOC. In addition, the complainant has 30 days to elect a hearing or immediate final decision, and the 30-day period begins to run upon the complainant's *receipt* of the ROI. The agencies generally use certified mail to send ROIs so that they can track the date of receipt. The amount of time it takes for the complainant to receive the ROI is beyond the agency's control. If the complainant fails to make an election, then the period in

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which a FAD should be issued timely begins to run on the 31st day following the complainant's receipt of the ROI.

Investigations and hearings are handled by the agencies, and in some instances, delay in processing occurs at the agency level. The agency's timeliness is addressed in the performance evaluation of each Agency Head on the civil rights element in each executive's performance plan. Through the performance rating, the Assistant Secretary for Civil Rights holds the agencies responsible for completing their EEO complaint processing duties in a timely manner.

Similarly, the managers in the Office of Civil Rights are rated on timeliness in complaint processing. The managers have primary responsibility for adapting processes and adjusting priorities as needed to ensure that complaints are addressed within the regulatory timeframes, to the extent possible.

In order for a complaint to be processed within the regulatory timeframes, the following must take place: (1) the complaint must be accepted for processing within 60 days of being filed to allow sufficient time for the investigation to take place; (2) there can be no delay in contracting for the investigation, to give the investigator sufficient time to complete the ROI (delays are common at the end of the fiscal year and when the Department is operating on a continuing resolution); (3) the Complaints Adjudication Division must be aware on day 1 of the 60-day period for completing a FAD that the case is pending a FAD; and (4) a specialist must begin preparing the draft FAD no later than day 5 of the 60-day period to allow sufficient time for the FAD to be reviewed, edited and finalized for signature by the 60th day. The essential ingredients are clear mechanisms for sharing information and sufficient staffing to meet the incoming workload.

The Office of Civil Rights has identified three areas to address in order to improve timely processing of EEO complaints: (1) lack of adequate staffing to address current workload; (2) too many cases reach the adjudication process that could have been addressed earlier; and (3) the Complaints Adjudication Division does not receive timely information needed to close complaints.

The detailed plan for timely and efficient processing of employment complaints, including identification of weaknesses and action items, will be completed by **June 29, 2007**. Final action on Recommendation 1 will be achieved by producing a copy of the plan.

Recommendation 2

Develop and implement controls to monitor the processing of complaints and to intervene when timeframes are not being met. These controls should include reporting

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mechanisms to the CR Director to provide the reasons why specific cases are exceeding established timeframes.

Agency Response

The Office of Civil Rights will adopt Recommendation 2 by developing and implementing controls to monitor and address cases that significantly exceed regulatory timeframes.

As stated previously, management in the Office of Civil Rights is committed to improving the timeliness of complaint processing and has implemented a number of mechanisms for monitoring timeliness. Most of these tools are part of the Civil Rights Enterprise System. For instance, the automated 462 report in the Civil Rights Enterprise System provides information on complaints pending in the intake, investigation, hearing and adjudication stages. This summary data can be reviewed to monitor overall progress in moving complaints from one stage to the next.

In addition, the Office of Civil Rights is developing customized reporting tools in the Civil Rights Enterprise System to monitor workload at the intake and adjudication stages. The Office of Civil Rights will meet the requirements of Recommendation 2 through the following action items:

- A. Develop a report showing the cases pending an accept/dismiss determination and the number of days pending since the formal complaint was filed. This task will be completed by **May 31, 2007**.
- B. Institutionalize the procedure for acknowledging receipt of formal complaints if an acceptance letter or dismissal decision is not issued within 30 days of the filing date. This task will be completed by **May 31, 2007**.
- C. The Chief, Employment Complaints Division, will institutionalize a practice of intervening if a draft acceptance letter or dismissal decision is not presented for review within 45 days following the date of filing of the formal complaint. The case may be reassigned or other appropriate actions taken to ensure that an acceptance letter is issued within 60 days following the filing date or that a dismissal decision is issued within 120 days following the filing date. This task will be completed by **May 31, 2007**.
- D. Reassess performance standards for specialists in the Employment Complaints Division to ensure quality and timeliness in the completion of assigned cases. This task will be completed by **October 31, 2007**.

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- E. The Office of Civil Rights will require that the Statements of Work used by the agencies to procure the services of contract investigators contain standard provisions regarding timeliness and quality. This task will be completed by **December 31, 2007**.
- F. The Office of Civil Rights will request that the EEOC provide technical assistance with investigations of EEO complaints, including training on conducting legal sufficiency reviews and a process review to identify factors impacting timeliness and suggestions for streamlining investigations. This task will be completed by **June 30, 2008**.
- G. Develop a report showing the cases pending adjudication, including cases requiring a FAD on the merits, cases pending a final order following a decision by an EEOC Administrative Judge, and cases pending a decision on an allegation of non-compliance. The report will show the number of days the complaint has been pending in the adjudication process. This task will be completed by **May 31, 2007**.
- H. The Chief, Complaints Adjudication Division, will develop goals for addressing the cases pending a FAD on the merits. The goals will assume that temporary EEO specialists will be brought on board and full staffing will be attained within a reasonable time period. The goals will address the cases already beyond the regulatory time period, those that are expected to exceed the regulatory timeframe based on the pending workload, and new cases entering the adjudication process. The plan will show how the inventory will be addressed going forward so that a 90% level of timely merit FADs can be achieved. This task will be completed by **September 28, 2007**.
- I. Reassess performance standards for specialists in the Complaints Adjudication Division to ensure quality and timeliness in the completion of assigned cases. This task will be completed by **October 31, 2007**.

Final action on Recommendation 2 will be achieved by producing documentation demonstrating that the above actions have been completed.

Recommendation 3

Identify all the business rules necessary for entering EEO complaint data into CRES at the informal and formal stages of complaint processing. Implement a plan with action items and timeframes to develop, test, and apply the needed business rules.

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Agency Response

The Office of Civil Rights will adopt Recommendation 3 by providing a formal plan for developing, testing and implementing business rules in the Civil Rights Enterprise System, iComplaints module.

The Civil Rights Enterprise System has revolutionized the way in which discrimination complaints are processed in USDA. Phase I of the system was implementation of iComplaints, a commercially-available EEO complaints tracking system. The purchase order for iComplaints was issued on September 30, 2004, and the system was implemented during FY 2005. The iComplaints system was being used to process EEO complaints by July 1, 2005. The legacy database systems maintained by the Office of Civil Rights were taken off-line on December 31, 2005.

Prior to the implementation of iComplaints, USDA had no enterprise-wide system for tracking EEO complaint activity. The Office of Civil Rights had two legacy database systems for tracking formal complaints, and these systems were not available to the civil rights staff in the agencies. Similarly, the agencies maintained their own systems, some electronic and some based on paper records, for tracking informal EEO complaint activity. The Office of Civil Rights and agencies engaged in a cumbersome and time-consuming reconciliation process to ensure that all records were in agreement.

When the idea of the Civil Rights Enterprise System was first posed, some of the agency personnel were skeptical that it would be successful, some were opposed to it, some accepted it, and some were enthusiastic. The process of educating the civil rights community about the benefits of an enterprise system, demonstrating the new system's features, obtaining and incorporating feedback into the system, testing it in the USDA environment, training the users of the system, and migrating data from legacy systems and paper files into the new system was difficult and laborious. Nevertheless, the efforts were ultimately successful, and the USDA civil rights community is now very enthusiastic about iComplaints.

One of the management priorities during implementation was that the system should be easy to use. In addition, the system was adapted, as needed, for the USDA environment, because the system was designed for a more centralized process. For instance, developing a process for transferring access to the electronic record for a case from an agency civil rights office to the Office of Civil Rights (and vice versa) was a complex procedure. Such procedures were necessary to ensure that the office with data entry responsibility at a particular stage was the only office working on the case at a given time.

The OIG audit team concluded that the lack of business rules indicated a lack of sufficient controls over the entry and validation of complaint data. The audit team found missing data in a sample of cases and based its finding on this survey. For

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clarification, a business rule is a requirement that a data field be completed before the user can proceed to the next stage.

As mentioned previously, data and information from stand-alone systems and paper files for existing cases were entered into the iComplaints system during implementation. If data could not be verified, then it was not transferred to the new system. This was to prevent the phenomenon of “garbage in, garbage out.” Thus, if agencies did not keep records to validate events during the informal process, such as an offer and rejection of ADR, those events were not entered into the new system. If business rules had been in place during data migration, the users would have been forced to enter “guesstimates” in data entry fields where data was unavailable or could not be verified.

Following implementation and intense efforts to correct data entry deficiencies through research, training and internal quality control procedures, the Office of Civil Rights began to phase in business rules. Critical business rules that impact mandatory reports, such as the EEO Form 462 report, were identified for the first round of implementation. After these business rules were applied to the system, feedback was obtained from the user community, and adjustments were made, as needed. Often, the impact, or domino effect, of a business rule cannot be fully appreciated until it is put in place and applied to specific cases. The Office of Civil Rights continues to follow this careful process of developing, testing, adjusting and refining the business rules.

Final action on Recommendation 3 will be achieved by providing a formal plan for developing, testing and implementing business rules in the Civil Rights Enterprise System, iComplaints module. This task will be completed no later than **June 29, 2007**.

Recommendation 4

Develop and implement a formal process to validate the accuracy of information entered in CRES. The process should include an independent, second-party verification of data accuracy by CR at the agency level on a sample basis.

Agency Response

The Office of Civil Rights will adopt Recommendation 4 by developing and implementing a formal process to validate the accuracy of information entered into the Civil Rights Enterprise System, iComplaints module.

The Office of Civil Rights has a great deal of confidence in the data in the iComplaints system because of the process that was used to migrate legacy data and the procedures in place for data entry. Nevertheless, errors are bound to occur, particularly since data entry occurs in a decentralized fashion. The office or unit responsible for a particular stage of complaint processing is also responsible for entering the data for those activities. Thus, investigation and hearing data fields are completed by the agency civil

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rights offices, whereas intake and adjudication data fields are completed by the appropriate division in the Office of Civil Rights.

The Office of Civil Rights has used a variety of methods for auditing data accuracy in the iComplaints system. Constant communication occurs between the Office of Civil Rights and agency civil rights staffs to ensure that data entry is correct. As the complaint moves from one stage to the next, an informal review occurs to ensure that data from the prior stage is logical and complete. The EEO Form 462 reporting module in iComplaints contains a quality control feature that alerts the user to entries that are illogical or inconsistent.

The Office of Civil Rights will take the following steps to improve the integrity of the iComplaints data:

- A. Ensure that a comprehensive data dictionary is available to all users on the Civil Rights Enterprise System intranet website. A data dictionary defines all of the data fields in the iComplaints system so that users are inputting data in a consistent fashion. This task will be completed no later than **June 29, 2007**.
- B. Implement an automated quality control tool in iComplaints that will highlight errors in logic and inconsistent data entries. The agencies will have access to the tool and can run it as needed. The Office of Civil Rights will run the tool for each agency/subcomponent on a quarterly basis and report any errors found to the office/unit responsible for the data entry. The automated quality control tool will be implemented no later than **October 31, 2007**.
- C. The Office of Civil Rights will assign audit responsibilities to staff not involved in data entry. The assigned individual(s) will review data entries for a sample of cases at least twice a year and make a record of the results of the audit. The Director, Office of Civil Rights, will determine what further action is required depending on the results of the audit. The audit procedures will be in place no later than **July 31, 2007**. The first audit will be completed no later than **November 30, 2007**.

Final action on Recommendation 4 will be achieved by producing documentation demonstrating that the above actions have been completed.

Recommendation 5

Develop and implement procedures to control and monitor case file physical location and disposition.

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Agency Response

The Office of Civil Rights will adopt Recommendation 5 by developing comprehensive records management procedures for the EEO case files.

The Office of Civil Rights has made significant progress in institutionalizing records management procedures. Because responsibility for the EEO complaint process has been moved around frequently in USDA during the past 20 years and because so much attention was focused on reducing the inventory of pending complaints, records management has not received sufficient oversight and attention.

The Office of Civil Rights, however, is focusing greater attention on how records are created, maintained, handled and stored. The Civil Rights Enterprise System has the capacity to support a paperless records environment, and reliance on paper is decreasing. In the meantime, records management procedures will be improved to ensure that existing records are handled in an efficient manner.

As part of the reorganization plan approved in 2005, the Office of Civil Rights created a Data Management & Customer Service Division. This division has overall responsibility for all information-related functions in the office, including the Civil Rights Enterprise System, records management, responding to external information requests, FOIA and Privacy Act. Creation of this division was the first step in integrating records management into an overall vision of how information is maintained, retrieved and disseminated.

Final action on Recommendation 5 will be achieved by producing and implementing comprehensive records management procedures for the EEO case files. This task will be completed no later than **September 30, 2008**.

Recommendation 6

Develop and implement a formal plan with action items and timeframes for identifying and destroying the paper files of those cases for which all actions have been completed and the four year retention period has been exceeded.

Agency Response

The Office of Civil Rights will adopt Recommendation 6 by implementing a formal plan for identifying and properly disposing of paper case files, when appropriate.

Developing and implementing standard document retention procedures in the Office of Civil Rights has been a continuing challenge. With EEO cases, it is often difficult to tell when a case is truly over. For instance, a complainant may file a civil action, which

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brings an end to administrative processing, but does not mean that the administrative record can be destroyed. The Office of Civil Rights is not always informed of the final result of the civil action and thus is reluctant to destroy the record without clear guidance. Another situation is where an EEO complainant alleges long-standing harassment and raises issues that were raised in prior complaints. Without the earlier complaint record, the Office of Civil Rights will be unable to determine how the overlapping issues were handled previously. The records from prior complaints might support dismissal of certain claims in the new complaint. Thus, there has been an institutional reluctance to destroy records in accordance with the retention schedule.

Because of the volume of case files that must be reviewed for possible destruction and the amount of work that must be done to prepare a file for destruction, the Office of Civil Rights believes that an external contractor is needed to complete the process in an efficient manner. In addition, an external contractor will have the expertise needed to recommend procedures for carrying out the destruction of records in accordance with industry best practices.

Final action on Recommendation 6 will be achieved by obtaining the services of an external contractor to review and inventory all EEO case files, create destruction procedures, and implement those procedures. This task will be completed no later than **September 30, 2008**.

Recommendation 7

Perform and document a physical inventory of complaints and case files to determine whether there are any additional cases, not identified by CRES that should be destroyed.

Agency Response

A physical inventory will be part of the Statement of Work for the contractor retained to carry out the activities identified in Recommendation 6. The review of files that should be destroyed will not rely solely on the Civil Rights Enterprise System, but rather will involve actual review of the records currently maintained by the Office of Civil Rights.

Final action on Recommendation 7 will be achieved by obtaining the services of an external contractor to review and inventory all EEO case files, create destruction procedures, and implement those procedures. This task will be completed no later than **September 30, 2008**.

Recommendation 8

Develop and implement processes and procedures to control the flow of documents associated with processing civil rights complaints. This should include procedures

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documenting which CR divisions or units are responsible for receiving, transferring, filing, and safeguarding documents in the file folder. These procedures should also provide instructions on how to record and monitor the transfer of documents within the agency.

Agency Response

As discussed in the response to Recommendation 5, the Office of Civil Rights is in the process of institutionalizing its records management procedures. The procedures that will be implemented to address Recommendation 5 also will address the way documents that make up a case file are handled, transferred, stored and maintained. In addition, procedures will be implemented to address how documents are transferred between the agencies and the Office of Civil Rights.

The Office of Civil Rights will take the following actions to improve management of EEO case files:

- A. Produce and implement comprehensive records management procedures for the EEO case files. This task will be completed no later than **September 30, 2008**.
- B. Produce and implement procedures for the agencies to follow in transferring and safeguarding documents that are part of an EEO complaint file, including the EEO Counselor's Report, ROI and hearing record. This task will be completed no later than **September 30, 2008**.

Final action on Recommendation 8 will be achieved by producing documentation demonstrating that the above actions have been completed.

If there are any questions about the response to the draft audit report, please contact me at (202) 720-5212.