

Report on the EEO Directors' Chain of Command in the Federal Sector



Council Of Federal EEO and Civil Rights Executives

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INTRODUCTION

EEO Directors at federal agencies perform a very difficult job. On the one hand, they process discrimination allegations neutrally, objectively, and impartially, to foster quick resolutions within a system designed with a plethora of due process rights. On the other hand, they advocate for the hiring and advancement of women, members of minority groups, and individuals with disabilities into positions where those groups are underrepresented. Not surprisingly, this conflict in roles results in widespread confusion and misunderstandings – by other federal managers and supervisors, by employees, and by affinity groups.

Recognizing the difficulties encountered, Equal Employment Opportunity Commission (EEOC) regulations and implementing guidance have required federal agency's EEO Directors to report directly to the head of their respective agencies. This requirement was put in place to create effective agency EEO programs, to position EEO Directors so as to be less impacted by the day-to-day operations and workplace politics of their agencies, and to not have agency "gatekeepers" preclude information and action by the head of the agency. EEOC's Management Directive 110 sets forth the primary rationale for this requirement:

By placing the EEO Director in a direct reporting relationship to the head of the agency, the agency underscores the importance of equal employment opportunity to the mission of each federal agency and ensures that the EEO Director is able to act with the greatest degree of independence. Placing the EEO Director under the authority of others within the agency may undermine the EEO Director's independence, especially where the person or entity to which the EEO Director reports is involved in or would be affected by the actions of the EEO Director in the performance of his/her implementation of the agency program set forth in 29 C.F.R. 1614.102.

Over the years, many federal agencies have chosen to disregard this requirement. This practice has had an adverse impact on the funding and staffing of some EEO programs, which has had a deleterious effect on the timely adjudication of complaints. While complainants recover the attorney's fees if they win their complaints, the delays encountered by an inefficient complaints program often have a detrimental effect on the physical and mental health of complainants, as well as on their financial resources when they are forced to come up with the funds to pay the retainer fees for their legal representatives. EEOC has stated that, because of outside pressures, they could not enforce this regulation. The Council of Federal EEO and Civil Rights Executives (henceforth, the Council) questioned what legal authority would EEOC have to enforce the remaining regulations if it turned a blind eye to the most crucial of the regulations regarding EEO Directors. The Council believes a key component to an effective EEO program -- one based on prevention of discrimination, resolution of discrimination claims that arise in an efficient, expeditious, fair manner, and fully embracing the concept of diversity -- is for the EEO Director to report directly to the head of the agency. It, therefore, sought the support of other affinity groups to accomplish this worthy and necessary goal.

As a first step, the Council examined the effect of this reporting structure on the operations of an agency's EEO program. Beginning in FY 2000, EEOC gathered data from each agency on the reporting authority of its EEO Director.¹ While EEOC's Office of Federal Operations Annual Report on the Federal Workforce for Fiscal Year 2000 (hereinafter The Report) had not yet been issued at the time this report was prepared, the Council obtained an advance copy of it. We examined components of the EEO program in light of the agency's reporting structure for its EEO Director. The information set forth below is based on The Report.²

EXECUTIVE SUMMARY

Forty-three percent (40 of 93) of federal agencies violate EEOC's requirement that its agency EEO Director report to the head of the agency. The larger agencies tend to violate this requirement more frequently. The EEO Directors at 12 of the 39 small agencies (with 1,000 or less employees) do not report to the head of the agency, while the EEO Directors at 28 of the 54 large agencies (with 1,001 or more employees) do not report to the head of the agency. Of the 16 largest agencies, only six EEO Directors report to the head of the agency³.

Most egregious, at 6 agencies, not only do the EEO Directors not report to the head of the agency, but they report to a personnel or human resources official. Neutrality, objectivity and impartiality in the processing of discrimination complaints are virtually impossible under these circumstances since the personnel or human resources staff in most cases advise and assist managers in taking the personnel actions claimed to be discriminatory. These agencies are:

Defense Office of the Secretary
Defense National Imagery & Mapping Agency
Department of Veterans Affairs
National Transportation Safety Board
Office of Personnel Management
Social Security Administration

This report is presented with the following sections:

- I. The Regulatory and Management Directive Requirements
- II. Compliance With EEOC Regulations and EEOC Management Directive 110

I. THE REGULATORY AND MANAGEMENT DIRECTIVE REQUIREMENTS

EEOC's regulations, 29 C.F.R. 1614.102(b)(4), state the following:

In order to implement its program, each agency shall: Designate a Director of Equal Employment Opportunity (EEO Director), EEO Officer(s), and such Special Emphasis Program Managers (e.g., People With Disabilities Program, Federal Women's Program and Hispanic Employment Program), clerical and administrative support as may be necessary to carry out the functions described in this part in all organizational units of the agency and at all agency installations. The EEO Director shall be under the immediate supervision of the agency head.

EEOC's Management Directive 110, Chapter 1, states:

Each federal agency shall appoint a Director of Equal Employment Opportunity (EEO Director), who shall be under the immediate supervision of the agency head. 29 C.F.R. 1614.102(b)(4). The EEO Director shall be responsible for the implementation of a continuing affirmative employment program to promote equal employment opportunity and to identify and eliminate discriminatory practices and policies. The EEO Director cannot be placed under the supervision of the agency's Director of Personnel or other officials responsible for executing and advising on personnel actions.

II. COMPLIANCE WITH EEOC REGULATIONS AND EEOC MANAGEMENT DIRECTIVE 110

The Largest Executive Agencies

Only six EEO Directors in the largest executive departments reported to agency heads in FY 2000, and therefore the agencies are in compliance with 29 C.F.R. 1614.102(b)(4). These five agencies are:

Department of the Air Force
Department of the Army
Department of Energy

Department of Health & Human Services
Department of the Treasury⁴
Department of Transportation

The EEO Directors in the remaining ten of the largest executive departments do not report to the agency heads. These agencies are:

Department of
Agriculture
Department of Commerce
Department of Education
Department of Housing &
Urban Development
Department of the Interior

Department of Justice
Department of Labor
Department of the Navy

Department of State
Department of Veterans
Affairs

Agencies with 1,001 or More Employees (including the sixteen largest Executive Agencies)

Only 26 of the 54 EEO Directors of agencies with 1,001 or more employees reported to the agency heads in FY 2000. This means that 28 of the large agencies are not in compliance with 29 C.F.R. 1614.102.(b)(4). The table below identifies which agencies fall in which category.

Reports to Agency Head

Agency for International Development
Army & Air Force Exchange Service
Central Intelligence Agency
Defense Contract Audit Agency
Defense Contract Management Agency
Defense Education Activity
Defense Information Systems Agency
Defense Logistics Agency
Defense National Guard Bureau
Defense National Security Agency
Defense Security Service
Department of the Air Force
Department of the Army
Department of Energy
Department of Health & Human Services
Department of the Treasury
Department of Transportation
Federal Communications Commission
Federal Emergency Management Agency
Government Printing Office
International Broadcasting Bureau
NASA
National Archives & Records
Administration
Railroad Retirement Board
Securities and Exchange Commission
United States Postal Service

Does Not Report to Agency Head

Defense Commissary Agency
Defense Finance & Accounting Service
Defense Inspector General
Defense National Imagery & Mapping
Agency
Defense Office of the Secretary
Department of Agriculture
Department of Commerce
Department of Education
Department of Housing & Urban
Development
Department of the Interior
Department of Justice
Department of Labor
Department of the Navy
Department of State
Department of Veterans Affairs
Environmental Protection Agency
Equal Employment Opportunity
Commission
Federal Deposit Insurance Corporation
Federal Energy Regulatory Commission
General Services Administration
National Labor Relations Board
National Science Foundation
Nuclear Regulatory Commission
Office of Personnel Management
Small Business Administration
Smithsonian Institution
Social Security Administration
Tennessee Valley Authority

Agencies with 1,000 or Less Employees

In contrast to the large agencies, 27 of the 39 EEO Directors of agencies with 1,000 or less reported to the agency heads in FY 2000. This means nearly two-thirds of the small agencies are in compliance with 29 C.F.R. 1614.102.(b)(4). The table below identifies which agencies fall in which category.

Reports to Agency Head

Commodity Futures Trading Commission
Consumer Product Safety Commission
Court Services & Offender Supervision
Agency
Defense Human Resources Activity
Defense Intelligence Agency
Defense Nuclear Facilities Safety Board
Defense Threat Reduction Agency
Export-Import Bank
Farm Credit Administration
Federal Housing Finance Board
Federal Maritime Commission
Federal Mediation & Conciliation Service
Federal Retirement Thrift Investment Board
Federal Trade Commission
International Boundary & Water
Commission
International Trade Commission
John F. Kennedy Center for the Arts
National Credit Union Administration
National Endowment for the Humanities
Office of Administration (Executive Office
of the President)
Office of Management & Budget
Office of National Drug Control Policy
Office of U.S. Trade Representative
Overseas Private Investment Administration
Pension Benefit Guarantee Corporation
United States Naval Home
United States Tax Court

Does Not Report to Agency Head

Corporation for National Service
Defense Tricare Management Activity
Federal Election Commission
Federal Labor Relations Authority
Federal Reserve Board
Merit Systems Protection Board
National Endowment for the Arts
National Gallery of Art
National Transportation Safety Board
Peace Corps
Selective Service System
United States Soldiers and Airmen's Home

EEO Directors Reporting to Personnel Officials

EEOC's Management Directive 110, Chapter 1, requires:

The EEO Director cannot be placed under the supervision of the agency's Director of Personnel or other officials responsible for executing and advising on personnel actions.

Agencies must avoid conflicts of position or conflicts of interest as well as the appearance of such conflicts. For example, the same agency official(s) responsible for executing and advising on personnel actions may not also be responsible for managing, advising, or overseeing the EEO pre-complaint or complaint processes. Those processes often challenge the motivations and impacts of personnel actions and decisions. In order to maintain the integrity of the EEO investigative and decision making processes, those functions must be kept separate from the personnel function (emphasis added).

Despite this EEOC Directive, five EEO Directors -- four at large agencies and one at a small agency -- report to various personnel officials. A sixth agency has a combined Human Resources/EEO office.

EEO Directors Reporting to Personnel Officials	
Agency	EEO Director Reports to:
Defense, Office of the Secretary	Director, Personnel and Security
Defense National Imagery & Mapping Agency	Assistant Deputy Director of Human Development
Department of Veterans Affairs	Assistant Secretary for Human Resource
National Transportation Safety Board	Personnel Director and Deputy Manager
Office of Personnel Management	Director, Office of Human Resources and EEO
Social Security Administration	Deputy Commissioner for Human Resources

EEO Directors Reporting to Legal Officials

No agency indicated that its EEO Director reported to a legal office. This is appropriate, since EEOC's Management Directive 110, Chapter 1 states:

Heads of agencies must not permit intrusion on the investigations and deliberations of EEO complaints by agency representatives and offices responsible for defending the agency against EEO complaints. Maintaining distance between the fact-finding and defensive functions of the agency enhances the credibility of the EEO office and the integrity of the EEO complaints process. Legal sufficiency reviews of EEO matters must be handled by a functional unit that is separate and apart from the unit which handles agency representation in EEO complaints. The Commission requires this separation because impartiality and the appearance of impartiality is important to the credibility of the equal employment program.

For example, it would be intrusive for the individual who represented the agency in an equal employment hearing to have authority to approve decisions with respect to resolution in the same or related cases. Impartiality or appearance of impartiality is undermined where members of the office where the representative is employed have the legal sufficiency function with respect to cases in which a colleague served as agency representative.

However, the Council notes that it has received repeated complaints from its members that, in practice, legal staffs usurp the authority of the EEO Director, interfere with the operations of the EEO Office, especially in regard to processing discrimination complaints, and/or significantly delay the processing of discrimination complaints.

Endnotes

¹ A Council member indicated at the March 19, 2002 meeting that EEOC could improve the information collected on the reporting authority of EEO Directors in the future by narrowing the definition of EEO Directors to those management officials who had day-to-day responsibility of EEO Offices. Several Council members reported that although they managed their EEO Offices, they did not report to their agency heads.

² We changed the reporting authority of the EEOC's EEO Director from reporting to the agency head to not reporting to the agency head based on the public statement of the EEO Director at a meeting of EEO Directors that was held in 2002 at EEOC.

³ Some Council members indicated that even when EEO Directors report directly to agency heads, they lack the influence enjoyed by other executives who report to agency heads.

⁴ The EEO Director from the Treasury Department indicated at the March 19, 2002 Council meeting that although she handled the day-to-day operations of her EEO Office, she did not report to her agency head. The point being that while some agencies indicated that their EEO Directors reported to the agency heads, in some instances, these were not the EEO officials who had day-to-day control of these offices.