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13 July 2005

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Chief of Naval Operations
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Mr. John M. Molin
Deputy Under Secretary of Defense for Equal Opportunity
1000 Defense Pentagon
Washington, DC 20301-1000

Sirs:

I am a career Department of the Navy employee, serving for over 33 years. I am also an Equal Employment Opportunity (EEO) Professional with more than 25 years in that field. I hold a Master of Social Work from the University of Washington, and I work with my local community as a social work professional.

This letter is to forward the matters of enclosure (1) for your review and investigation. In my tenure as an EEO Professional in the Department of the Navy, I have witnessed the decline and subjugation of a program dedicated to taking care of the people in our workforce. Beyond the issues of legal non-compliance, we cannot expect to succeed as a government entity, or as a country, unless we take care of our people.

The Department of Defense cites at 32 CFR 191, the heads of components are to "*Treat equal opportunity and affirmative action programs as essential elements of readiness that are vital to accomplishment of the national security mission.*" I know of no other DOD or Navy program 'vital to the national security mission' that would tolerate the failures described in the attached information.

Therefore, I respectfully request that a full audit be conducted of the legal compliance and operation of EEO Programs within the Department of the Navy. I believe it is in the interest of the Armed Services Committee, the Committee on Government Reform, and selected Members of Congress, to provide oversight to ensure that a credible and impartial audit be undertaken, with resulting deficiencies reported and corrected. I have attempted to work with Navy senior civilian leadership on this matter without results.

Very respectfully,


JOY BUTLER

Enclosure (1)
Department of the Navy's Legal Non-
Compliance in EEO Program Operations

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Department of the Navy's Legal Non-compliance in Equal Employment Opportunity (EEO) Program Operations

Operation of the EEO Program within the Federal Service is governed by 42 USC Sec. 2000e-16. [Section 717] (b), 29 CFR 1614, and Equal Employment Opportunity Management Directives 110 and 715, et al. Within DOD, guiding regulation is held at 32 CFR 191 and DOD 1440.1, *"Treat equal opportunity and affirmative action programs as essential elements of readiness that are vital to accomplishment of the national security mission."*

Navy leadership standards for EEO Program operation were published by the Chief of Naval Operations through OPNAV 12720.4b and 12720.8, which remain active.

The Department of the Navy (DON) Civilian Human Resources (HR) leadership is currently in violation of this body of regulation. Although admonished by DOD, EEOC, Congressional Representatives, and National Civil Rights Officials, Navy HR officials have openly defied compliance to the law, resulting in the failure of Navy to achieve mission requirements. The Navy is unique within the Department of Defense and is the only large organization in the entire Executive Branch of the Federal Government that places EEO under the direction and authority of the Human Resources Office.

These deficiencies seriously impact the civil rights of employees within the Department of the Navy, and further impact achievement of the Human Capital Strategy vital to future manning requirements. Equality of opportunity is essential to attracting, developing and retaining the most qualified workforce to support the Navy's achievement of its strategic mission.

History of Legal Non-Compliance

- The Department of the Navy restructured the Civilian Personnel Function and Equal Employment Opportunity Function, citing in an 18 September 1991 directive, *"EEO will be incorporated within the HRO structure,"* This structure is in direct violation of statute.
- The promise of the 1991 document has not been realized, *"This memorandum implements decisions which substantially improve the efficiency and effectiveness of the Department of the Navy's civilian personnel and Equal Employment Opportunity (EEO) functions A portion of the savings generated from the decision to move to the HRO concept will be used to enhance EEO Program effectiveness."* In reality, resources, mandated by statute, are minimal or non-existent since 1991.
- Personnel Directors were given direct authority over the EEO Program and some dual-hatted as the Deputy EEO Officer. This structure is in direct conflict with statute and, ironically, Navy's own 1991 guidance, *"The Deputy Equal Employment Opportunity Officer (DEEOO) will be the key*

manager within the HRO supporting EEO Programs... The DEEOO will be classified in the GS-260, EEO, occupational series.”

- Navy HR systematically dismantled previously successful EEO Programs at field activities. Many large Navy organizations today are devoid of a dedicated EEO Professional (GS-260 series). HR Specialists have been given EEO duties on a collateral duty basis, and undertake minimal EEO tasks, often from remote sites. These specialists, serving as EEO Counselors, have been told they are ‘management representatives,’ and therefore are not ‘neutral.’

Note: Consistent with established CNO guidance of record, the CNO’s EEO Program did not reorganize in 1991, and has remained part of the Command Cadre. It is, therefore, the only organization within Navy compliant with the law.

Results of Legal Non-compliance:

Failure to achieve EEO program results is reflected in Navy’s published Affirmative Employment Program for Minorities and Women issued in 2003, acknowledging:

- “Lack of consistency in the execution of DON’s EEO Program as to resources, training, and understanding of roles and responsibilities.
- “Significant underrepresentation exists for White, Hispanic and Native American women in all groups in the DON Blue Collar work force.
- “Significant underrepresentation exists for White, Black and Native American women in all groups in the DON Fire- Fighter/Police positions (other occupations).
- “Significant underrepresentation exists in the representation of Minorities and Women in grades 13-15 and SES.
- “Trend analysis of discrimination complaints identified continuation of Reprisal claims and the most prevalent issues are non-sexual harassment, promotion/non-selection, terms and conditions of employment and assignment of duties.
- “Significant underrepresentation of Hispanics continues in total DON Workforce. The use of external recruitment tools for improving Hispanic representation is limited or inefficient.
- “Data collection methods to monitor and assess applicant flow, recruitment efforts and hiring trends are insufficient.
- “Roles and definitions of recruitment responsibilities are unclear within DON.
- “There is no corporate information system to accurately monitor training and development program participation.

- “Current methods of evaluating EEO Program effectiveness are inefficient.”

Equal Employment Opportunity Commission’s (EEOC’s) Management Directive 715 Deficiencies

EEOC’s latest regulatory issuance of October 2003 contains specific requirements for a Model EEO Program. Navy HR continues to struggle with addressing the elements and measures for compliance contained in this regulation. Navy has not published the FY04 annual report. The initial assessment of 128 items resulted in a 40-60% non-compliance reported by Navy installations. Some major commands have refused to release the report due to the shortfalls identified, and others released the assessment to higher authority only after it had been artificially upgraded.

Additional concerns:

Navy’s Discrimination Complaint caseload remains the highest in Federal Government, exceeded only by the Postal Service.

HR Directors, tasked with giving personnel advise, are also deciding how to process complaints.

HR Directors circumvented MD-715 reporting requirements due to a negative assessment.

In some activities, Office of Counsel continues to intrude into the discrimination complaint process by advising on personnel actions taken, advising on the subsequent complaint filed, and then defending the activity in third party review, creating a conflict of interest prohibited by statute.

HR Directors are appointed outside the GS-200 series with no HR/EEO qualifying experience, and subsequently dual-hatted as Deputy EEO Officer.

The absence of formal Navy EEO policy

The Navy is deficient in the issuance of formal policy regarding EEO Program requirements:

- Failed to issue formal Discrimination Complaint guidance reflecting EEOC MD110
- Failed to issue formal Reasonable Accommodation Guidance as directed by Executive Order and EEOC directive
- Failed to issue an Affirmative Employment Program (AEP) Plan following the 1991 restructuring, the first Navy AEP was issued in April 2003.
- Failed to issue formal guidance on EEOC MD-715 implementation

Despite DOD IG Recommendations, Congressional concern, EEOC recommendations and Federal Civil Rights Council intervention, the Department

of the Navy remains committed to a position of non-compliance and failure to achieve their mission in this program as mandated by statute.

Navy Non-Compliance to Statute and Regulation

- 42 USC Sec. 2000e-16. [Section 7171 (b) ... the Equal Employment Opportunity Commission shall have authority to enforce the provisions of subsection (a) of this section ... and shall issue such rules, regulations, orders and instructions as it deems necessary and appropriate to carry out its responsibilities under this section. The head of each such department, agency, or unit shall comply with such rules, regulations, orders, and instructions.
- 29 CFR 1614.102(b)(4) ... The EEO Director shall be under the immediate supervision of the agency head.
- 32 CFR 191(b) The Heads of DoD Components, or their designees, shall:
 - (2) Ensure that their Components comply with EEOC and OPM guidance and this part.
 - (3) Treat equal opportunity and affirmative action programs as essential elements of readiness that are vital to accomplishment of the national security mission.

- EEOC MANAGEMENT DIRECTIVE 110 (*Emphasis added*)

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.**

EEO DIRECTOR - INDEPENDENT AUTHORITY AND REPORTING RELATIONSHIPS

Federal agencies shall place the EEO Director in a direct reporting relationship with the head of the agency. 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.

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.**

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. **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.

- EEOC Management Directive 715

Element 2 Strategic Commitment

Assessment Measure: Is the EEO Director under the direct supervision of the agency head?

Element 6 Responsiveness and Legal Compliance

The head of the agency or agency head designee shall certify to the EEOC that the agency is in full compliance with the EEO laws and EEOC regulations, policy guidance, and other written instructions

- OPNAV (Chief of Naval Operations) Instruction 12720.8 5f. The head of each activity is responsible for complying with applicable EEO/EO laws and regulations. Civilian EEO programs shall be implemented in accordance with EEO laws, regulations, directives, instructions, etc. , issued by higher level authorities within and outside of the Department of the Navy.

- OPNAV (Chief of Naval Operations) Instruction 12720.4B. Enclosure (1)(3) The DEEO and SAEEO will be supervised by the head of the activity and have direct access to that individual to discuss EEO program issues.