

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

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January 12, 2016

The Honorable Tom Vilsack
Secretary, Department of Agriculture
1400 Independence Avenue, SW
Washington, DC 20250

Dear Secretary Vilsack:

Thank you very much for the briefing, provided to my staff in November, by the Office of Compliance, Policy, Training and Cultural Transformation within the Office of the Assistant Secretary for Civil Rights regarding the Department's Equal Employment Opportunity (EEO) program. This briefing was very helpful, and it helped refine our remaining questions, which I set forth below.

Questions About the Department's MD-715 Reporting

Pursuant to the Civil Rights Act of 1964, the Equal Employment Opportunity Commission (EEOC) is "responsible for the review and evaluation of the operation of all agency equal employment opportunity programs, periodically obtaining and publishing (on at least a semiannual basis) progress reports from each such department, agency, or unit."

The EEOC issued Management Directive 715 (MD-715), which sets forth the steps that agencies must follow to comply with the Civil Rights Act. The MD-715 states that "agencies have an ongoing obligation to eliminate barriers that impede free and open competition in the workplace." It also states that "[a]s part of this on-going obligation, agencies must conduct a self-assessment on at least an annual basis to monitor progress and identify areas where barriers may operate to exclude certain groups."¹

Despite this requirement, it appears that the Department failed to file aggregate MD-715 reports in 2011, 2012, and 2013.

The EEOC has also issued "Instructions to Federal Agencies for Equal Employment Opportunity Management Directive 715 (EEO MD-715)" that explain the specific forms and information that agencies must submit. These instructions provide that any "covered agency"

¹ Equal Employment Opportunity Commission, *Equal Employment Opportunity Management Directive 715* (Oct. 1, 2003) (online at www.eeoc.gov/federal/directives/md715.cfm).

that employs “1,000 or more employees in permanent FT/PT appointments” must file the MD-715 annual report Parts A through F and Parts H through J with Workforce Data Tables with the EEOC.²

The Department’s FY 2014 Form 715-01 appears to cover a number of entities within the Department that, because of their size, should be separately filing Parts A through F, H through J, and the workforce data tables of the MD-715 annual report with the EEOC. On page 3 of the Department’s FY 2014 Form 715-01, the Part D “list of Subordinate Components Covered in this Report” identifies 17 services and agencies including the “Headquarters (DA, Staff Offices & OSEC)” as well as, for example, the “Food and Nutrition Service,” “Forest Service,” “Natural Resources Conservation Service,” and “Grain Inspection, Packers and Stockyards.” According to Table A2 in the Department’s FY 2014 Form 715-01, 11 of these agencies and services have more than 1,000 employees.³

While the agencies and services that have been listed in Part D of the MD-715 appear to be covered in the workforce data tables, it is not clear that the agencies and services that have 1,000 or more employees have prepared and submitted Parts A through F and Parts H through J of the MD-715 report to the EEOC. Instead, data from these agencies and services seems to be collated into the Department’s FY 2014 Form 715-01.

The Department’s FY 2014 MD-715-01 includes a Part G (“Self-Assessment Checklist”). Although submission to the EEOC by covered agencies of Part G is voluntary, “all covered agencies, regardless of size, are required to complete the Self-Assessment Checklist as PART G and retain a copy for EEOC review upon request.”⁴

The Part G included in the Department’s FY 2014 MD-715-01 does not distinguish the data it is reporting among the agencies and services listed in Part D, and it is unclear if the agencies and services required to complete the Self-Assessment Checklist have done so. Although the Part H “Plan to Attain the Essential Elements of a Model EEO Program” identifies agencies in the sections designated for “responsible officials”—which may indicate that the designated agencies have the deficiencies identified in Part G and must implement plans to attain the essential elements of a model EEO program—it is not clear if this is the case, and no “responsible officials” within individual agencies and services are identified in Part H.

In addition, the Department’s FY 2014 Form 715-01 states: “The success of USDA’s recent efforts to confront a history of Civil Rights abuses has been recognized and verified by a host of internal and external parties and metrics.”⁵ However, the Department’s FY 2014 EEOC

² Equal Employment Opportunity Commission, *Instructions to Federal Agencies for Equal Employment Opportunity Management Directive 715* (EEO MD-715) (Sept. 27, 2004) (online at www.eeoc.gov/federal/directives/715instruct/).

³ Department of Agriculture, *FY2014 EEOC Form 715-01 Federal Agency Annual EEO Program Status Report*.

⁴ *Id.*

⁵ *Id.*

Form 715-01 Part G Self-Assessment notes that nearly 30 compliance indicators for the USDA's EEO program performance have not been met.

In order to further investigate these issues, I request that the Department provide the following information:

1. Please explain why the Department did not file aggregate MD-715 reports for 2011, 2012, and 2013.
2. Please explain the steps the Department has taken to collect data for these years to enable trend analyses to be performed.
3. Please identify each agency and service within the Department that has 1,000 or more employees and indicate whether that agency or service filed Parts A through F and Parts H through J of the MD-715 annual form with the EEOC for the most recent fiscal year and, if so, the dates on which each agency or service filed these documents.
4. Please indicate whether each agency and service within the Department that has 1,000 or more employees completed a Part G ("Self-Assessment Checklist") and retained copies within their agency or service files.
5. Please provide copies of the Part G Self-Assessment reports completed by each agency and service within the Department that has at least 1,000 employees for 2013 and 2014.
6. Please describe whether the Department tracks recruitment efforts and analyzes efforts to identify potential barriers in accordance with MD-715 standards.
7. Please explain whether the Department implemented adequate data collection and analysis systems that permit tracking of the information required by MD-715 and related instructions.
8. Please explain whether sufficient resources have been provided to conduct effective audits of field facilities' efforts to achieve a model EEO program and eliminate discrimination under Title VII and the Rehabilitation Act.
9. Please identify the designated agency official or other mechanism in place to coordinate or assist with processing requests for disability accommodations in all major components of the agency.
10. For each of the nearly 30 deficiencies identified in the Part G Self-Assessment Checklist in the Department's FY 2014 Form 715-01, please identify the agency or agencies where the deficiency exists, the dates on which the deficiencies were first identified, and the dates by which the deficiencies will be resolved.
11. Please provide the external reviews and metrics that verify the Department's EEO program is effective in ensuring that "all its personnel actions are 'made free' of any discrimination based on race, color, religion, sex, national origin or reprisal" when the

agency appears to be lacking in resources and procedures to collect and analyze EEO data and ensure that compliance with civil rights statutes is achieved.

**Questions About the Office of Special Counsel Letter Regarding the Department's
Office of Assistant Secretary for Civil Rights**

On May 18, 2015, the Office of Special Counsel (OSC) issued a letter to President Obama regarding "the U.S. Department of Agriculture's (USDA) report based on disclosures of wrongdoing at the Office of the Assistant Secretary for Civil Rights (OASCR), Washington, D.C." OSC found that the Department's report confirmed that "OASCR has an unusually high number of complaints filed against its own leadership." OSC also found that the Department's report "demonstrated that OASCR has been seriously mismanaged, thereby compromising the civil rights of USDA employees."⁶

According to data provided by the Department, between 2011 and 2015, there were 85 informal and 42 formal complaints filed against senior managers at headquarters, including 40 informal and 24 formal complaints in 2014.

OSC concluded its letter with the following recommendation:

Given the seriousness of these concerns, the corrective actions appear to only partially resolve the identified wrongdoing. While they adequately address the management and conduct of OASCR going forward, the proposed actions do not provide sufficient redress for affected individuals. The agency should consider reviewing cases to determine whether harm resulted from delays and how affected individuals should be made whole.⁷

In order to further investigate these issues, I request that the Department provide the following information:

1. For each formal complaint filed against a senior manager at headquarters, please provide the bases of the complaint and an indication of whether the senior manager against whom the complaint was filed works in the Department's EEO function.
2. Please provide an overview of the resolution of each complaint, including whether the final decision was made by the Department or the EEOC, or, for complaints that are still pending, the total number of days the complaint has been pending.

⁶ Letter from Special Counsel Carolyn N. Lerner, Office of the Special Counsel, to President Barack Obama (May 18, 2015) (online at <https://osc.gov/PublicFiles/FY2015/15-24%20DI-14-2556%2c%20DI-14-4627%2c%20and%20DI-15-0001/15-24%20DI-14-2556%2c%20DI-14-4627%2c%20and%20DI-15-0001%20Letter%20to%20the%20President.pdf>).

⁷ *Id.*

3. Please provide the number of individuals affected by complaints that were not acted on within the legally mandated period, as well as the Department's plan for making the affected individuals whole.
4. Please provide a proposed timeline for implementing the plan described in Item 3, directly above.

In addition to the information requested above, I also request a staff-level briefing with the staff member identified as the MD-715 Preparer, Geraldine Herring, Chief of the Compliance Division.

Please provide the requested information, including the briefing, no later than February 12, 2016. If you have questions regarding these requests, please contact Portia Bamiduro of my staff at 202-225-5051.

Sincerely,



Elijah E. Cummings
Ranking Member

cc: The Honorable Jason Chaffetz, Chairman