



U.S. Department of Agriculture
Office of Inspector General

Office of the Assistant Secretary for Civil Rights' Equal Employment Opportunity Complaint-Final Agency Action Process

March 2025

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Audit Report 60601-0003-23



IMPORTANT NOTICE

This audit report contains sensitive information that has been redacted for public release due to privacy concerns.

Office of the Assistant Secretary for Civil Rights' Equal Employment Opportunity Complaint-Final Agency Action Process

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OIG determined whether OASCR processed final agency decisions and final agency orders for [REDACTED] formal EEO civil rights complaints filed in [REDACTED] in a timely manner.

OBJECTIVE

Our objective was to determine whether OASCR processed FADs and FAOs for [REDACTED] formal EEO civil rights complaints filed in [REDACTED] in a timely manner.

REVIEWED

We interviewed OASCR officials and reviewed applicable regulations and OASCR's policy and procedures for processing FADs and FAOs. We also reviewed an EEOC management directive and case law. In addition, we reviewed [REDACTED] EEO complaints filed against [REDACTED] in [REDACTED].

RECOMMENDS

As OASCR has implemented corrective actions during our audit, we will not be making any recommendations.

WHAT OIG FOUND

The Office of the Assistant Secretary for Civil Rights' (OASCR) mission is to provide leadership and direction for the fair and equitable treatment of all U.S. Department of Agriculture (USDA) employees while ensuring the enforcement of civil rights. OASCR ensures compliance with applicable laws, regulations, and policies for USDA employees regardless of race, color, national origin, sex (including gender identity and expression), religion, age, disability, sexual orientation, marital or familial status, political beliefs, parental status, or protected genetic information.

We found that OASCR timely processed [REDACTED] final agency orders (FAOs) that we reviewed with respect to formal equal employment opportunity (EEO) civil rights complaints filed against [REDACTED] in [REDACTED]. However, we found that OASCR did not process [REDACTED] final agency decisions (FADs) in a timely manner, ranging from [REDACTED] calendar days late. This occurred because OASCR's policies and procedures did not define the "issuance date" or address how to separate claims with different processing requirements. Since OASCR uses the same policies and procedures for processing all USDA FADs, this issue may impact the [REDACTED] FADs processed in [REDACTED] that we did not review. As a result, according to case law, complainants may request that the Equal Employment Opportunity Commission (EEOC) sanction OASCR for untimely decisions, which ultimately puts the USDA at risk. In addition, the EEOC documentation states that delays undermine the effectiveness and integrity of the EEO process.

OASCR officials agreed with our finding and have implemented corrective actions related to the issues identified during our audit.



DATE: March 13, 2025

**AUDIT
NUMBER:** 60601-0003-23

TO: Patricia St. Clair
Associate Secretary for Civil Rights
Office of the Assistant Secretary for Civil Rights

ATTN: Joelle Bowers Oxley
Management and Program Analyst/Audit Liaison
Office of the Assistant Secretary for Civil Rights

FROM: Steve Rickrode
Acting Assistant Inspector General for Audit

SUBJECT: Office of the Assistant Secretary for Civil Rights' Equal Employment Opportunity
Complaint-Final Agency Action Process

This report presents the results of our audit of Office of the Assistant Secretary for Civil Rights' Equal Employment Opportunity Complaint-Final Agency Action Process. We are not making any recommendations in this report since OASCR implemented corrective actions during our fieldwork. No further action by your staff is required.

We appreciate the courtesies and cooperation extended to us by members of your staff during our fieldwork and subsequent discussions. This report contains publicly available information and will be posted in its entirety to our website (<https://usdaoig.oversight.gov>) in the near future.

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Background and Objective

Background

The U.S. Department of Agriculture’s (USDA) Office of the Assistant Secretary for Civil Rights (OASCR) ensures compliance with applicable laws, regulations, and policies for USDA employees. The Center for Civil Rights Enforcement (CCRE), through the Employment Directorate, supports OASCR’s mission to provide leadership and direction for the fair and equitable treatment of all USDA employees while ensuring enforcement of civil rights. Federal employees, former employees, or job applicants may file a discrimination complaint if they believe that they have suffered discrimination in terms, conditions, or privileges of employment due to an action or decision (including a failure to act or decide) by an official, non-employee or employee of USDA and that the action or decision was motivated by any of the protected bases listed in Figure 1.¹

Protected Bases			
USDA Employee 	<ul style="list-style-type: none"> ✓ Race ✓ Color ✓ Religion ✓ Sex <ul style="list-style-type: none"> ○ Pregnancy ○ Sexual Orientation ○ Gender Identity ✓ National Origin 	<ul style="list-style-type: none"> ✓ Age (40 and older) ✓ Physical/Mental Disability ✓ Genetic Information ✓ Marital/Familial/Parental Status ✓ Political Beliefs ✓ Prior Protected Activity 	USDA Employee Applicant 

Figure 1: This figure provides further details on all protected bases for filing an equal employment opportunity (EEO) complaint. Figure by the Office of Inspector General (OIG).

The EEO complaint process consists of a pre-complaint process and formal process explained in detail in Exhibit A.^{2, 3}

The OASCR Employment Directorate consists of three divisions: Employment Complaints Division (ECD), Employment Investigations Division (EID), and Employment Adjudication Division (EAD). CCRE, through the EAD, writes and issues final agency decisions (FADs)⁴ and

¹ USDA Departmental Regulation 4300-007, *Processing Equal Employment Opportunity (EEO) Complaints of Discrimination* (Aug. 4, 2021).

² *Id.*

³ The Government Accountability Office conducted an audit (GAO-25-105804, *Equal Employment Opportunity: USDA Could Strengthen Efforts to Address Workplace Discrimination Complaints*, Jan. 2025) that (1) describes the nature of USDA employee discrimination complaints in fiscal years (FYs) 2015 through 2023, (2) examines USDA’s efforts to address EEO complaints, and (3) examines USDA’s efforts to address discrimination in the workplace.

⁴ OASCR issues a FAD if the complainant is not eligible to elect a hearing before an Equal Employment Opportunity Commission (EEOC) administrative judge or elects OASCR to issue a FAD. USDA Departmental Regulation 4300-007, *Processing Equal Employment Opportunity (EEO) Complaints of Discrimination* (Aug. 4, 2021).

final agency orders (FAOs).⁵ See Figure 2 below for a brief overview of each division’s responsibilities.

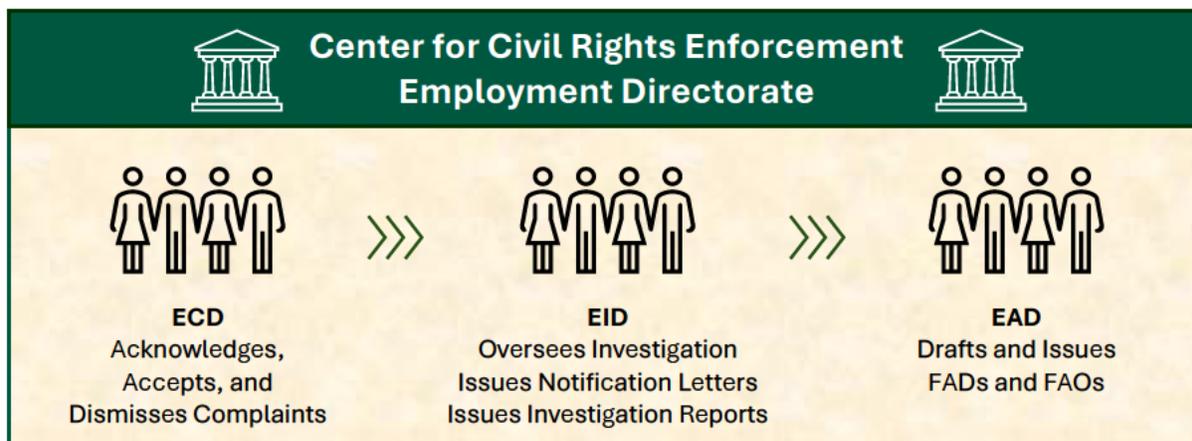


Figure 2: This figure provides further details on ECD, EID, and EAD responsibilities within the EEO complaint process. Figure by OIG.

Non-Mixed-Case Versus Mixed-Case Complaints

Depending on the facts and circumstances of an EEO complaint, a complaint may be classified as a non-mixed-case complaint or mixed-case complaint.⁶ A non-mixed-case complaint is processed by OASCR, while a mixed-case complaint can be processed by either OASCR or the Merit Systems Protection Board (MSPB).⁷ The complainant must choose either OASCR or the MSPB to process the complaint, but not both. However, only certain employees may appeal to the MSPB and only for certain types of employment actions.⁸ After the MSPB issues a final decision, the complainant may petition the EEOC to consider the decision as it pertains to the allegations of discrimination. Further, the complaints have different timelines. Figure 3 below provides details of the differences between a mixed-case and a non-mixed-case complaint.

⁵ OASCR issues a FAO after an EEOC administrative judge adjudicates the complaint and issues a decision. EEOC, *Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614 (EEO-MD-110)* (Aug. 2015).

⁶ A complaint may consist of multiple claims. When the complaint consists of mixed-case and non-mixed-case claims, the mixed-case claims are separated from the non-mixed-case claims resulting in two complaints. One complaint consists of the mixed-case claims while the other complaint consists of the non-mixed-case claims. The complaints are processed separately. EEOC, *Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614 (EEO-MD-110)* (Aug. 2015).

⁷ The MSPB is an independent, quasi-judicial agency in the Executive Branch that serves as the guardian of Federal merit systems. The merit system principles are nine basic standards that govern management of the Executive Branch workforce and serve as the foundation of the Federal civil service. The prohibited personnel practices are 14 actions that are forbidden for employees who have the authority to make personnel actions. MSPB, *The Merit System Principles* (Oct. 2020).

⁸ For information about who can file and the actions that can be appealed to the MSPB, see 5 C.F.R. § 1201.3. EEOC, *Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614 (EEO-MD-110)* (Aug. 2015).

What is the Difference?	
	
Mixed-Case Complaints	Non-Mixed-Case Complaints
<ul style="list-style-type: none"> • MSPB and OASCR have jurisdiction.⁹ • MSPB does not process complaints alleging discrimination on the bases of political beliefs or marital, familial, or parental status.¹⁰ • OASCR or MSPB processes the complaint.¹¹ If OASCR processes the complaint: <ul style="list-style-type: none"> ○ Investigation must be completed in 120 calendar days. ○ Complainant may not request an EEOC hearing. ○ FAD must be issued within 45 calendar days of completing the investigation. 	<ul style="list-style-type: none"> • MSPB does not have jurisdiction.¹² • OASCR processes complaints alleging discrimination on the bases of political beliefs or marital, familial, or parental status.¹³ • OASCR processes the complaint.¹⁴ <ul style="list-style-type: none"> ○ Investigation must be completed in 180 calendar days. ○ Complainant may elect a FAD or an EEOC hearing. ○ FAD must be issued within 60 calendar days of receiving the complainant's request for a FAD. ○ If the complainant does not make an election, the FAD must be issued within 60 calendar days of the end of the 30-day period for the complainant to request a hearing or a FAD.

Figure 3: This figure explains the differences between mixed-case and non-mixed-case complaints. Figure by OIG.

FAD

EAD drafts and issues a FAD based on the information in the investigation report. A FAD contains the:

- findings and conclusions of each claim in the complaint;
- appropriate remedies and relief if discrimination is found;
- complainant's appeal rights;
- complainant's right to file a civil action in a U.S. District Court;
- name of the proper defendant in any such lawsuit; and
- applicable time limits for appeals and lawsuits.

⁹ EEOC, *Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614 (EEO-MD-110)* (Aug. 2015).

¹⁰ USDA Departmental Regulation 4300-007, *Processing Equal Employment Opportunity (EEO) Complaints of Discrimination* (Aug. 4, 2021).

¹¹ EEOC, *Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614 (EEO-MD-110)* (Aug. 2015).

¹² *Id.*

¹³ USDA Departmental Regulation 4300-007, *Processing Equal Employment Opportunity (EEO) Complaints of Discrimination* (Aug. 4, 2021).

¹⁴ *Id.*

For processing time frames, please see Figure 3.

FAO

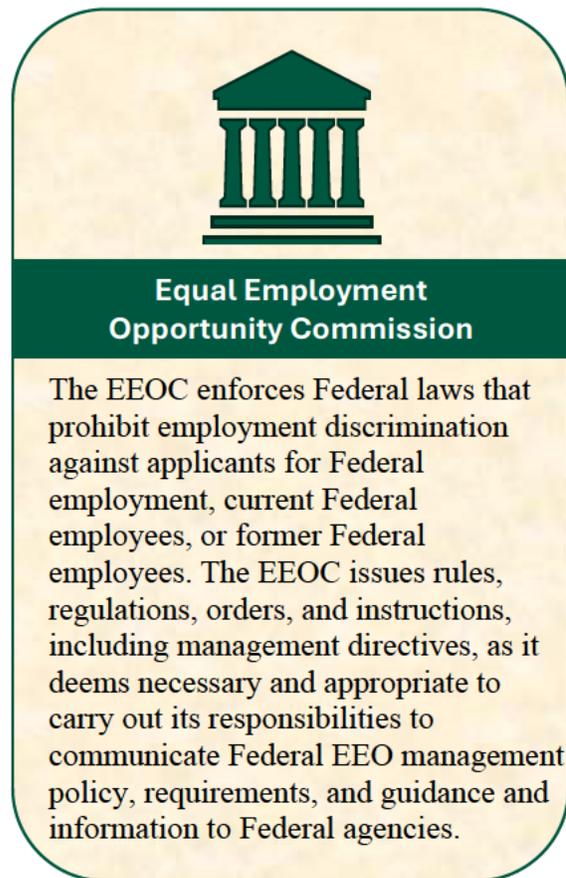
For complainants who elect a hearing before an EEOC administrative judge, EAD will issue an FAO instead of a FAD. EAD must issue an FAO within 40 calendar days of receiving the EEOC administrative judge's decision.¹⁵ The FAO refers to OASCR's decision to either fully implement¹⁶ or not fully implement the EEOC administrative judge's decision. The FAO also includes the:

- complainant's right to file an appeal with the EEOC;
- complainant's right to file a civil action in a U.S. District Court;
- name of the proper defendant in any such appeal or civil action; and
- applicable time limits for appeals or civil actions.

If EAD does not issue the FAO within 40 calendar days, the EEOC administrative judge's decision is final.

Objective

Our objective was to determine whether OASCR processed FADs and FAOs for [REDACTED] formal EEO civil rights complaints filed in [REDACTED] in a timely manner.



¹⁵ After the hearing, the EEOC administrative judge issues a decision to OASCR, as well as the complainant and the complainant's representative, if any. EEOC, *Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614 (EEO-MD-110)* (Aug. 2015).

¹⁶ The term "fully implement" means that OASCR adopts without modification the decision of the EEOC administrative judge. If OASCR does not fully implement the EEOC administrative judge's decision, OASCR must simultaneously appeal to the EEOC. EEOC, *Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614 (EEO-MD-110)* (Aug. 2015).

Finding 1: OASCR Did Not Process All [REDACTED] FADs in a Timely Manner

OASCR did not process [REDACTED] FADs in a timely manner for formal EEO civil rights complaints filed against [REDACTED] in [REDACTED]. Specifically, we found that OASCR issued FADs that were untimely, ranging from [REDACTED] calendar days late, to the complainants. This occurred because OASCR's policies and procedures did not define the "issuance date" or address how to separate claims with different processing requirements—mixed-case complaint versus non-mixed-case complaint.¹⁷ Since OASCR uses the same policies and procedures for processing all USDA FADs,¹⁸ this issue may potentially impact the [REDACTED] FADs processed in [REDACTED] that we did not review.¹⁹ As a result, according to case law, complainants may request that the EEOC sanction OASCR for untimely decisions, which ultimately puts USDA at risk.²⁰ In addition, the EEOC documentation states that delays undermine the effectiveness and integrity of the EEO process.²¹

For mixed-case complaints, OASCR must issue the FAD within 45 calendar days²² of completing the investigation.²³ For non-mixed-case complaints, OASCR must issue the FAD within 60 calendar days of receiving the complainant's request for a FAD on the record.²⁴ The EEOC management directive contained broad language that mixed-case claims should be processed separately from non-mixed-case claims but did not clearly detail how to process a non-mixed-case complaint with a request for a mixed-case claim as an amendment.²⁵ In addition, the EEOC management directive noted that Federal agencies are responsible for developing and implementing their own complaint processing procedures consistent with the EEOC's

¹⁷ A complaint can have more than one claim. According to the EEOC, an EEO claim is an assertion of an unlawful employment practice or policy. An EEO claim has two components: the employment practice or policy being challenged and the basis of discrimination. EEOC, *Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614 (EEO-MD-110)* (Aug. 2015).

¹⁸ The Departmental Regulation covers all informal, formal, and class complaints of alleged employment discrimination filed by USDA employees, former employees, and applicants for employment against USDA Mission Areas, agencies, and staff offices. USDA Departmental Regulation 4300-007, *Processing Equal Employment Opportunity (EEO) Complaints of Discrimination* (Aug. 4, 2021).

¹⁹ [REDACTED]

²⁰ After reviewing EEOC case law, we noted that the EEOC, at its discretion, can sanction OASCR for not issuing FADs timely. The EEOC considers several factors, such as the consequences resulting from the delay in justice, before sanctioning an agency. *Anthony M. v. Donovan*, EEOC No. 2019003380 (Sept. 22, 2020).

²¹ *Crysta T. v. Department of Agriculture*, EEOC Appeal No. 0120151930 (May 17, 2017).

²² The first day counted is the day after the event from which the time begins to run and the last day of the period shall be included unless it falls on a Saturday, Sunday, or Federal holiday. In such cases, the period shall be extended to include the next business day. EEOC, *Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614 (EEO-MD-110)* (Aug. 2015).

²³ EEOC, *Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614 (EEO-MD-110)* (Aug. 2015).

²⁴ USDA Departmental Regulation 4300-007, *Processing Equal Employment Opportunity (EEO) Complaints of Discrimination* (Aug. 4, 2021).

²⁵ EEOC, *Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614 (EEO-MD-110)* (Aug. 2015).

regulation.²⁶ The EEOC does not consider a FAD issued until the FAD is no longer within the “dominion and control of the agency.”²⁷ OASCR would be the agency in this scenario.

Complaints

We found that one FAD [redacted] complaint was issued [redacted] days late. [redacted] See Figure 4 for a timeline of important dates relevant to [redacted]

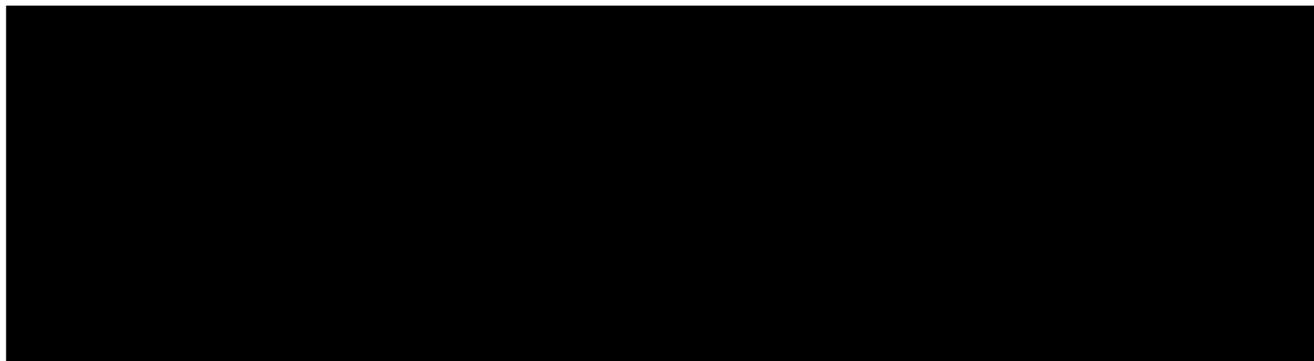


Figure 4: The timeline above highlights when important events occurred and when the FAD was due for [redacted] Figure by OIG

OASCR officials concurred [redacted] was not issued within [redacted] calendar days. According to OASCR officials, [redacted] In February 2022, OASCR issued a memorandum proposing revisions to its policies and procedures [redacted] While we found that the proposed revisions specifically addressed how to process [redacted] we determined that the proposed revisions were not formally approved and incorporated into OASCR’s policies and procedures until October 11, 2024.³¹ OASCR concurred and

²⁶ *Id.*

²⁷ *Krawczewicz v. Department of Commerce*, EEOC No. 01822048 (Aug 3, 1983).

²⁸ [redacted]

²⁹ [redacted]

³⁰ [redacted]

³¹ OASCR officials stated that the proposed memorandum was unofficially implemented in June 2024, but OASCR officials were unable to provide us with documentation of its implementation until October 11, 2024.

implemented corrective actions during our audit. As such, we will not be making any additional recommendations.

Complaints

We found that two FADs [REDACTED] complaints were each issued [REDACTED] calendar days late. See Figure 5 for a timeline of important dates relevant to [REDACTED]

We concluded that the two FADs remained within the “dominion and control of the agency”³² and were not issued within the required time frame.

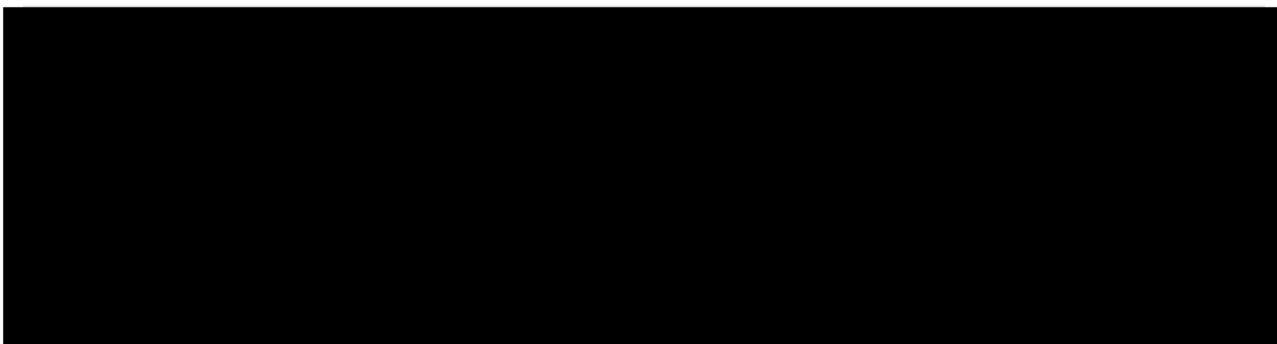


Figure 5: The timeline above highlights important dates for [REDACTED] Figure by OIG.

This occurred because OASCR’s policies and procedures did not define the “issuance date” for a FAD. [REDACTED]

[REDACTED] According to the EEOC, a FAD is not considered issued if the document is within the “dominion and control of the agency.”³³ Based on this, a FAD is not issued until OASCR sends the FAD to the complainant. To ensure OASCR staff have a consistent understanding of when a FAD is considered issued, we recommended that OASCR update its policies and procedures to include the definition of “issuance date.” OASCR concurred and on November 26, 2024, updated its policies and procedures with the issuance date being the date a FAD is transmitted via email correspondence to the complainant.

During the course of our audit, OASCR took corrective action and updated its policies and procedures to ensure its staff understand how to better address these complaints. As such, we will not be making any recommendations.

³² *Krawczewicz v. Department of Commerce*, EEOC No. 01822048 (Aug 3, 1983).

³³ *Id.*

Scope and Methodology

We conducted a performance audit to determine whether OASCR processed FADs and FAOs for formal EEO complaints filed against [REDACTED] in [REDACTED] in a timely manner. We performed fieldwork with the OASCR national office located in Washington, DC, from [REDACTED]. We discussed the results of the audit with OASCR officials on [REDACTED] and included their comments, as appropriate.

We compiled a list of formal EEO complaints filed against [REDACTED] in [REDACTED] using OASCR's information system. OASCR verified that the list was correct. The universe consisted of [REDACTED] EEO complaints filed against [REDACTED]; [REDACTED]

[REDACTED] We reviewed all [REDACTED] EEO complaints which included [REDACTED] FAOs and [REDACTED] FADs. Of the [REDACTED] FADs, [REDACTED] FADs [REDACTED]

To accomplish our audit objective, we:

- reviewed regulations, laws, EEO-MD-110, EEOC case law, OASCR's policies and procedures and other published guidance related to processing FADs and FAOs to gain an understanding of the adjudication process;
- interviewed OASCR officials responsible for processing FADs and FAOs;
- reviewed publicly available reports regarding discrimination complaints; and
- reviewed OASCR's EEO complaint file documentation, to include, but not limited to, complaint submission forms, emails, acceptance letters, election forms, FADs (if applicable), and FAOs (if applicable).

We assessed internal controls deemed significant to the audit objective, including controls defined in the Government Accountability Office's *Standards for Internal Control in the Federal Government*. Specifically, we assessed:

Component	Principle
Control Activities	Management should implement control activities through policies.
Risk Assessment	Management should define objectives clearly to enable the identification of risks and define risks tolerances.
Risk Assessment	Management should identify, analyze, and respond to risks related to achieving the defined objectives.

Because our review was limited to these internal control components and underlying principles, it may not have disclosed all internal control deficiencies that may have existed at the time of this audit.

During the audit, we obtained read-only access to OASCR's EEO information system to download applicable complaint file documents. We did not perform tests to determine the overall reliability of the information system, as evaluating the effectiveness of the system was not part of the audit objective. In addition, we did not rely on information processed or generated by the

information system, as we relied on source documents such as emails. The information system was a repository for EEO complaint documents and designed to generate legally mandated reports. Therefore, we make no representation regarding the adequacy of any agency information system or the information generated from the system.

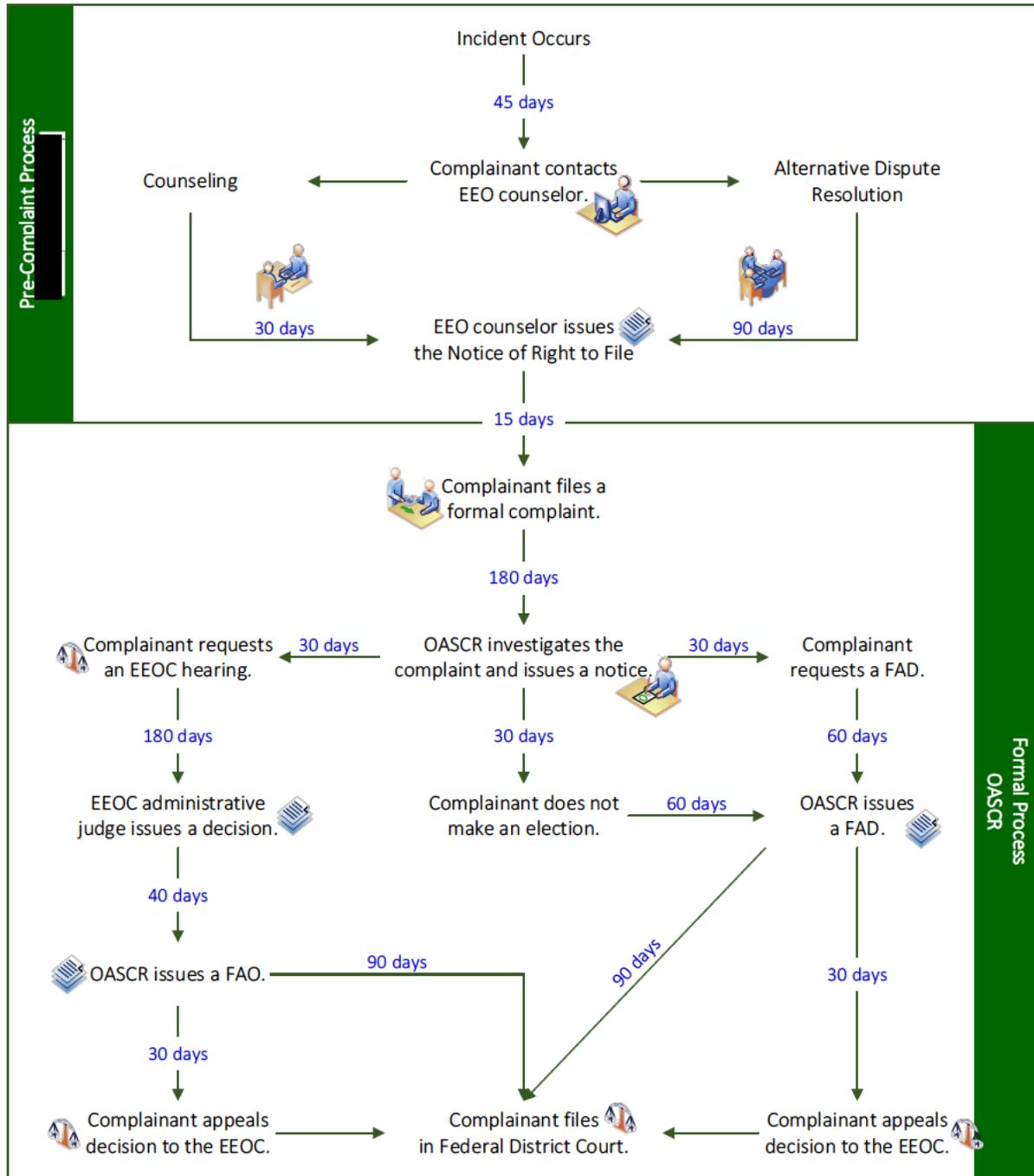
We conducted this performance audit in accordance with generally accepted government auditing standards. These standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings, conclusions, and recommendations based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our finding, conclusion, and recommendations based on our audit objective.

Abbreviations

C.F.R.	Code of Federal Regulations
CCRE	Center for Civil Rights Enforcement
EAD	Employment Adjudication Division
ECD	Employment Complaints Division
EEO	equal employment opportunity
EEOC	Equal Employment Opportunity Commission
EID	Employment Investigations Division
FAD	final agency decision
FAO	final agency order
FY	fiscal year
MSPB	Merit Systems Protection Board
OASCR	Office of the Assistant Secretary of Civil Rights
OIG	Office of Inspector General
USDA	U.S. Department of Agriculture

Exhibit A: Federal Sector EEO Complaint Process

The flowchart details the general process for processing Federal EEO complaints. For more information on processing EEO complaints, please see 29 C.F.R. Part 1614 or *Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614*.³⁴



³⁴ EEOC, *Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614 (EEO-MD-110)* (Aug. 2015).



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