



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Office of Federal Operations
P. O. Box 77960
Washington, D.C. 20013

November 24, 2010

Via electronic and U.S. mail

Mina Raskin, Director
Equal Employment Opportunity
Federal Bureau of Prisons
U.S. Department of Justice
320 First Street, N.W.
Washington, D.C. 20534

Dear Ms. Raskin:

Enclosed please find the U.S. Equal Employment Opportunity Commission's Final Program Evaluation Report for the Federal Bureau of Prisons.

We appreciate the courtesies and cooperation you extended to our staff during the course of this review and your continued commitment toward ensuring equal opportunity in the workplace. We look forward to working with you as your agency implements the recommendations contained in our report.

Sincerely,

A handwritten signature in cursive script that reads "Carlton M. Hadden".

Carlton M. Hadden, Director
Office of Federal Operations

Cc (via U.S. mail only):
Harley G. Lappin, Director
Federal Bureau of Prisons

Enclosures

**U.S. Equal Employment Opportunity Commission
Final Program Evaluation Report**

Federal Bureau of Prisons

November 2010

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EXECUTIVE SUMMARY

Title VII of the Civil Rights Act of 1964 (Title VII) and Section 501 of the Rehabilitation Act of 1973 (Rehabilitation Act) mandate that all federal personnel decisions be made free of discrimination and require federal agencies to establish affirmative programs of equal employment opportunity (EEO) for all federal employees and applicants. 42 U.S.C. §2000e-16 and 29 U.S.C. §791. A crucial part of any federal EEO program is that each employee must be conversant with the EEO process, and must, without fear of retaliation, feel free to avail himself or herself of its protections, participate in EEO proceedings, and/or oppose any perceived discriminatory practices. The Equal Employment Opportunity Commission (EEOC) has been given oversight responsibility for federal agencies' EEO programs. Pursuant to this authority, EEOC's Office of Federal Operations (OFO) conducted an evaluation of the Federal Bureau of Prisons (BOP). The decision to commence this evaluation was prompted by concerns over the unusually large number of complaints BOP employees filed during fiscal years 2003-2006 in which they alleged retaliation. A class action complaint (that EEOC did not certify) alleged a pattern and practice of retaliation against BOP and included supporting declarations from current and former BOP employees. This, as well as other anecdotal information, suggested a level of perceived retaliation at BOP higher than in other federal agencies. There also was particular concern about whether BOP employees were experiencing harassment following participation in EEO activity and about the level of EEO awareness at BOP facilities. The goal of this program evaluation, therefore, was to assess whether fear of retaliation was a genuine issue at BOP and, if so, to offer recommendations to the agency that will enable it to eliminate that fear and enhance employee faith in the integrity of the agency's EEO program and in the agency's commitment to equal employment opportunity.

In order to make this assessment, OFO sent a questionnaire to each of BOP's more than 35,000 employees, received and analyzed data from BOP headquarters, interviewed headquarters personnel, and chose three BOP facilities at which to conduct onsite reviews and employee interviews.

Our findings reveal both that BOP employees have an unusually heightened fear of retaliation and that BOP's EEO program has several deficiencies that might adversely affect its employees' perception of it. Each of the facilities at which we interviewed is geographically removed from the others, directly supervised by a different warden, and physically different from the others; however employee perceptions and misperceptions, as well as their lack of knowledge about, and confidence in, BOP's EEO program, were strikingly similar, as was the leadership style, view of EEO, and perceived abuse of the BOP vouchering system. Moreover, in each of the facilities at which we conducted interviews, it became clear that many employees, particularly managers, had worked in various BOP facilities throughout their careers and therefore were able to speak about issues from broad, not merely facility-specific, experience. Finally, we note that the first hand information we received from the employees and managers we interviewed in person was consistent with anecdotal information we received from other sources, including the administrative record developed in the above-referenced case alleging across-the-board retaliation at BOP.

Individually and collectively, this information revealed both that BOP employees have an unusually heightened fear of retaliation and that BOP's EEO program has several deficiencies that might adversely affect its employees' perception of it. Based upon the data, analysis and interviews described above, our findings are as follows:¹

Finding 1: *There is widespread fear of retaliation among BOP employees.*

Finding 2: *BOP employees lack confidence in BOP's EEO program.*

Finding 3: *BOP employees are unfamiliar with the EEO process and their rights.*

Each of these findings is inextricably intertwined with the other, as fear, lack of confidence and lack of knowledge each affects the very core of BOP's EEO program. Because of the interrelationship of these findings, our recommendations set forth below are not tied to a single finding but, rather, are of a holistic nature and intended to assist BOP in reprogramming its EEO function. Moreover, in the spirit of OFO's partnership with the federal EEO community and in furtherance of the federal government's goal of becoming a model EEO employer, we also set forth herein an action plan designed to assist BOP in its efforts to implement our recommendations.

A summary of our recommendations is set forth below:²

Recommendation 1: *BOP's EEO office must be realigned.*

- The EEO office should be moved out of the Office of General Counsel.
- The EEO Director should report directly to the agency head.

Recommendation 2: *BOP must increase management support for EEO.*

- BOP should revise and reissue its EEO policies.
- BOP immediately should provide mandatory EEO training.
- Managers should be held accountable for EEO violations.
- Each area facility should have an EEO counselor.

Recommendation 3: *BOP's headquarters EEO office must monitor its field operations.*

- BOP should conduct counselor conferences.

¹ Detailed support for these findings is set forth infra.

² Detailed recommendations appear infra.

- BOP should conduct onsite facility reviews.

Recommendation 4: *BOP should take steps to ensure confidentiality.*

Recommendation 5: *BOP should abolish the vouchering system.*

We are confident that by working to address these problem areas in the measured and proactive manner detailed herein below in the action plan, we can assist BOP to implement and promote an EEO program that more effectively prevents reprisal to employees and officials who exercise their rights guaranteed to them under Title VII and the other statutes EEOC enforces. Our goal is for BOP employees to have more confidence in the integrity of the agency's EEO program and, therefore, better be able to access the EEO program without fear of reprisal.

INTRODUCTION

It is the policy of the federal government to prohibit discrimination in employment because of race, color, sex, national origin, religion, age, disability, or genetic information, and to promote the full realization of equal employment opportunity for all persons. See 29 C.F.R. § 1614.101. To implement this policy, each federal agency must maintain a continuing affirmative program to promote equal opportunity and to identify and eliminate barriers to participation by all persons in the full-range of employment opportunities. The Equal Employment Opportunity Commission (EEOC) is responsible for the review and evaluation of all federal sector equal employment opportunity (EEO) efforts. Pursuant to this responsibility, EEOC representatives conduct reviews of EEO program areas involving program management, personnel practices, training, and recruitment. Furthermore, EEOC periodically reviews agency EEO complaints processing programs. 29 C.F.R. § 1614.104(b). Finally, EEOC provides annual reports to the President and Congress on the federal workforce and agencies' efforts to eradicate discriminatory employment practices.

Pursuant to 29 C.F.R. 1614.101(b), no person shall be subject to retaliation for opposing any practice made unlawful by Title VII of the Civil Rights Act, the Age Discrimination in Employment Act, the Equal Pay Act, or the Rehabilitation Act, or for participating in any stage of administrative or judicial proceedings under those statutes.³ The retaliation clauses prohibit any adverse treatment that is based on a retaliatory motive and is reasonably likely to deter the complainant or others from engaging in protected activity. The anti-reprisal provision of Title VII, pursuant to which EEOC's regulations were promulgated, protects those employees who participate in the EEO process, as well as those who oppose discriminatory employment practices. Courts have interpreted section 704(a) of Title VII to provide broad protection to those who oppose such practices, reasoning that the enforcement of Title VII depends on the willingness of employees to challenge unlawful employment practices or policies. EEOC has also recognized that an agency's continuing duty to promote the full realization of equal employment opportunity in its policies and practices extends to every aspect of agency personnel policy and practice in the employment, advancement, and treatment of employees.

EEOC's Office of Federal Operations (OFO) conducted this program evaluation after determining that the Federal Bureau of Prisons (BOP) had an unusually high level of EEO complaints alleging retaliation during fiscal years 2003-2006.⁴ A class action complaint (that

³ Title II of the Genetic Information Nondiscrimination Act of 2008, which became effective on November 21, 2009, also prohibits retaliation.

⁴ For example, in FY 2003, 66.4% of BOP's EEO complaints contained retaliation allegations, as compared to 40.1% government wide. In FY 2004, complaints containing retaliation allegations at BOP were 46.7% as compared to 40.8% in government wide complaints. In FY 2005, complaints containing retaliation allegations at BOP were 73.7%, as compared to 39.3% government wide. In FY 2006, 58.2% of BOP's EEO complaints contained retaliation allegations, as compared to 39.1% government wide; by FY 2007, the gap had narrowed to 47.46% (BOP) and 42.53% (government wide).

EEOC did not certify), as well as anecdotal information, also suggested a level of perceived retaliation higher than in other federal agencies. There also was particular concern as to whether BOP employees were experiencing harassment following participation in EEO activity, and as to the level of EEO awareness at BOP facilities. The goal of this program evaluation, therefore, was to assess whether fear of retaliation was a genuine issue at BOP and, if so, to offer recommendations to the agency that would enable it to eliminate that fear and enhance employee faith in the integrity of the agency's EEO program and its commitment to equal employment opportunity.

BACKGROUND⁵

BOP is a component of the United States Department of Justice (DOJ). BOP's mission is "to protect society by confining offenders in the controlled environments of prisons and community-based facilities that are safe, humane, cost-efficient, and appropriately secure, and that provide work and other self-improvement opportunities to assist offenders in becoming law-abiding citizens." Its vision statement is that it, "judged by any standard, is widely and consistently regarded as a model of outstanding public administration, and as the best value provider of efficient, safe and humane correctional services and programs in America." According to BOP's website, this vision will be realized when, among other things:

- [Its] talented, professional, well-trained, and diverse staff reflect the Bureau's culture and treat each other fairly
- Staff work in an environment free from discrimination
- A positive working relationship exists where employees maintain respect for one another
- The workplace is safe, and staff perform their duties without fear of injury or assault
- Staff maintain high ethical standards in their day-to-day activities
- Staff are satisfied with their jobs, career opportunities, recognition, and quality of leadership.

BOP is responsible for the custody and care of more than 204,000 federal offenders and had more than 35,000 employees. It consisted of 115 institutions, six regional offices, a Central Office (headquarters) located in Washington, D.C., two staff training centers, and 28 community corrections offices. The regional offices and Central Office provide administrative oversight and support to BOP facilities and community corrections offices.

Responsibility for BOP's EEO program rests with the agency's EEO Office (EEOO), which is tasked to "provide thorough, expedient, impartial processing and management of discrimination complaints by [BOP] employees and prompt responses to inquiries, while promoting informal resolution. Additionally, through training, the [EEOO] promotes an environment free of

⁵ This information represents BOP as of November 2009, when EEOC presented to BOP a draft of this report. We acknowledge that certain figures have since changed. We also acknowledge that BOP reported to us that in response to that draft, it has made a number of changes to its EEO program. We expect BOP formally to report these and other post-evaluation changes in the quarterly reports described in the proposed Action Plan at pages 31-32.

discrimination and harassment.” Responsibility for the affirmative action portion of BOP's EEO program rests with the Affirmative Action Branch, which falls under the supervision of the Human Resource Management Division.

BOP's EEEO and its Labor Law Branch are housed within the Office of General Counsel, (OGC) which also has responsibility for BOP contract, real estate and environmental matters, EEO complaints, Government ethics, labor/management and personnel issues, Freedom of Information Act/Privacy Act requests, and alternative dispute resolution (ADR). In addition, OGC provides legal assistance on correctional issues, and coordinates BOP's rule-making process and continuing professional education programs.

BOP's EEEO reports to the Associate General Counsel for Discrimination Complaints and Ethics. That Associate General Counsel reports to the Deputy General Counsel and the General Counsel.

BOP's EEEO is responsible for BOP's employment discrimination complaint processing, including EEO counseling and coordinating ADR requests. The DOJ Complaint Adjudication Office (CAO) issues BOP's final agency decisions. BOP's EEEO reviews all appeals filed with EEOC's Office of Federal Operations (OFO), coordinates and reports on compliance of all adverse decisions, and, coordinates and provides training to all staff on EEO issues and preventative training to managers. The EEEO also develops policy in accordance with DOJ, EEOC, and any other legal mandates.

The Labor Law Branch also reports to the Deputy General Counsel and General Counsel. The Labor Law Branch is responsible for serving as the agency representative in EEO and other matters. As such, it serves as counsel in all EEOC hearings and assists the United States Attorneys Offices in EEO cases filed in federal district court. The Labor Law Branch also provides legal guidance to management on EEO issues.

OBJECTIVES, SCOPE AND METHODOLOGY

OFO commenced this program evaluation in August 2007 by issuing a letter to BOP's EEO Director outlining EEOC's concerns and attaching a Request for Information (RFI) (Attachment A). The RFI was narrowly tailored and primarily sought information relevant to retaliation.

BOP requested that we delay the program evaluation and this office consented. On October 18, 2007, the participants held a teleconference to discuss questions regarding the RFI. BOP submitted the bulk of its response to the RFI during November-December 2007, and provided supplementary information in February 2008. On January 30, 2008, a team of OFO staff conducted an entrance conference at BOP headquarters. Following that conference, we interviewed relevant headquarters personnel, including the Associate General Counsel for Discrimination and Ethics, an EEO Officer, a Senior Affirmative Action Specialist, an EEO Specialist, a Senior EEO Specialist, the Chief, Labor Management Relations and Employees Section, an EEO Counselor, and two members of BOP's Office of Research & Evaluation. We also analyzed all available documents, including BOP's Form 462 reports on its EEO complaints process, EEO policies/procedures, ADR policies/procedures, anti-harassment policies,

reasonable accommodation policies/procedures, recruiting materials, training materials and all other responses to the RFI.

Given the subject focus of this program evaluation (retaliation), we determined that it would be useful to conduct interviews of facility employees regarding their experience with and perception of the EEO program. We accordingly formulated a one page employee questionnaire that sought basic information such as EEO complaint filing experience, knowledge of the EEO process and experience with retaliation. (Attachment B) Our intent was to use these responses to determine which facilities we would visit to conduct in person interviews. With assistance from EEOC's Office of Information Technology and with BOP's cooperation, we succeeded in ironing out numerous technical difficulties and on April 3, 2008, we emailed the questionnaire (in a PDF fillable format) to each of BOP's more than 35,000 employees for voluntary response. As seen in Attachment B, BOP provided some language to include in the cover letter that OFO used for its questionnaire that among other things, permitted use of 30 minutes official duty time for completion, and clarified that the questionnaire would have no bearing on existing or potential employment discrimination complaints. We set April 24, 2008 as the response deadline, which gave BOP employees approximately three weeks to respond, and the cover letter informed employees that we would accept responses by email, fax or U.S. mail. We also set up an email address to which employees could submit any questions pertaining to the questionnaire.

We ultimately received approximately 3,400 responses via email, fax and U.S. mail.⁶ In June, 2008, we began the lengthy manual process of compiling results for analysis. The results of this analysis, along with our data collection, headquarters interviews, and a review of BOP's Prison Social Climate Surveys⁷ formed the basis for our onsite selections. We ultimately decided upon: Victorville, California; Butner, North Carolina; and Lexington, Kentucky.⁸ Depending on the outcome of those interviews, we left open the possibility of visiting additional facilities.

The onsite interviews at Victorville, Butner and Lexington each were conducted by a team of two OFO employees well versed in EEO law and with experience conducting interviews. A different team visited each site; however each team received the same training prior to making initial contact with the facility. In addition each team reviewed BOP's RFI responses, OFO-collected statistical data, and individual information for its facility.

⁶ We accepted late responses, the last of which we received in September, 2008.

⁷ The Prison Social Climate Survey was developed by BOP's Office of Research and Evaluation and has been reviewed by the Executive Board of the Council of Prison Locals. It is administered in various forms to staff at BOP facilities on a rotating basis. The questionnaire measures staff impressions and attitudes about conditions at the facility where they work. Its purpose is to provide BOP management with information for monitoring operations, evaluating the effectiveness of policy and procedures, and assessing progress toward meeting strategic planning goals.

⁸ A brief profile of each selected facility is included in Attachment C.

Each of the onsite visits was conducted in a similar manner: After ascertaining from BOP headquarters available scheduling dates and getting permission to make direct contact with the facility, the team contacted the union president and the warden to inform him that EEOC would be conducting an onsite visit. In each case, the team requested the union president's assistance in informing employees about the opportunity to talk to EEO representatives and in setting up interviews. In each instance, the union president sent out an email to staff and in two facilities, the warden or acting warden also issued an email. In each facility, employees were given cell and office phone numbers and an email address to use to contact the OFO evaluation team. Due to the fact that the program evaluation focused on retaliation, it was important to conduct the interviews in a manner that would most ensure confidentiality and minimize employees' fear of reprisal. Consequently, all staff level employee interviews were conducted at off site locations that were not disclosed to management. Many were conducted after business hours.

Each team also interviewed facility management personnel. Although some managers preferred to speak off site, most management interviews were conducted onsite during duty hours and were coordinated by the warden or his representative.

The bulk of the interviews were conducted in September-October 2008. Some required subsequent follow-up. At the conclusion of each onsite review, each OFO interview team worked independently to transcribe interview notes, memorialize observations and impressions, and draft recommendations on the state of real or perceived reprisal issues at the facility and how, if at all, BOP might improve upon its EEO program or processes. In an effort to determine whether there existed any trends among or between these otherwise distinct facilities, each team worked independently and had no contact with, or feedback from, the other teams. Upon review of each team's work product, a markedly consistent pattern emerged and resulted in this report.

On November 10, 2009, EEOC issued to BOP's EEO Officer/Senior Counsel for Dispute Resolution a draft of this report to afford BOP the opportunity to correct any factual errors by November 24, 2009. EEOC timely received BOP's response, from BOP's Assistant Director/General Counsel, (Attachment D) and corrected factual errors addressed therein. At BOP's request, EEOC also afforded BOP management an opportunity to meet in person to discuss the draft report prior to issuance; we met with a cadre of BOP managers on January 26, 2010. At that meeting, we provided an open forum for BOP to address any substantive issues in the report as to which the agency had concerns or on which it needed clarification. Following that meeting, BOP requested an additional opportunity to provide written comments. We accepted these comments on March 12, 2010 (Attachment E). We also conducted a technical assistance session with BOP EEO personnel on April 26, 2010. Although we intended that session to be a broader review of BOP's EEO program and progress under EEO Management Directive MD-715, BOP again wished to discuss the instant evaluation, and accordingly we again addressed concerns and responded to questions. We then held two telephone conferences with DOJ officials. At the second such conference, in October 2010, DOJ requested another opportunity for BOP to submit written comments. We accepted those on October 21, 2010 (Attachment F). Finally, and again at BOP's request, on November 9, 2010, we conducted another technical assistance session to address organizational and other changes BOP was planning or implementing as a result of its review of our November 2009 draft report.

BOP generally does not dispute the existence of troubling retaliation issues or that the draft recommendations we shared were sound and would be useful once implemented. Rather, BOP's main objection to the draft appears to be EEOC's conclusion that retaliation is "widespread." We are confident in each of our findings and in the sound bases upon which they rest; BOP, however, misapprehends the basis for our finding that fear of retaliation is widespread. Contrary to BOP's assertions, and as discussed in this report and during our in-person meetings with BOP officials, our finding of widespread fear of retaliation is not a finding dependant upon statistical sampling or one that would require an underpinning of statistical significance. Moreover, our conclusion is not based solely, or even primarily, upon the survey and/or in person interviews but is based upon information from multiple and diverse sources, each of which firmly points to that same conclusion. First and as noted above, BOP's own bureau-wide statistics show that during fiscal years 2003-2006, BOP employees alleged retaliation in their EEO complaints at an unusually high rate as compared to the government-wide rate.⁹ Anecdotal evidence also supports this finding. For example, in a case alleging across-the-board retaliation at BOP, the record contains sworn statements from 59 current or former employees alleging retaliation. These sworn retaliation allegations were from a cross section of BOP employees and former employees who worked in different jobs, at different grades and at different facilities; moreover they were quite similar to the numerous accounts of retaliation or feared retaliation we heard repeatedly during our in person interviews.

We note also that even if our findings were based solely upon our survey and ensuing interviews, our experience in these types of evaluations gives us confidence that the results of those interviews and the manner in which we conducted them would in fact be sufficient to support our findings. Although each of the facilities at which we interviewed is geographically removed from the others, directly supervised by a different warden, and physically different from the others, the similarities in employee perceptions and misperceptions, as well as their lack of knowledge about, and confidence in, BOP's EEO program, were strikingly similar, as was the leadership style and view of EEO. We especially found disturbing the consistent view of managerial misuse of BOP's vouchering system. Moreover, in each of the facilities at which we conducted interviews, it became clear that many employees, particularly managers, were long tenured and had worked in various BOP facilities throughout their careers. They, and the declarants in the above-referenced case, did not limit their comments and observations to isolated incidents but spoke from experience about incidents and issues that occurred and arose in numerous facilities over a number of years. Many spoke of events and incidents in other facilities that affected not only themselves but also co workers, friends and even relatives who worked at BOP. Finally, as noted above, after completing its facility interviews, each interview team was sequestered from the others until it had transcribed its notes and drafted its preliminary findings and recommendations. Especially given this protocol, the similarity in facts reported and recommendations proffered was nothing short of striking. As such, we remain confident of our findings and ready to move forward with BOP to address these serious issues. We appreciate and acknowledge BOP's expression of genuine concern over our findings and willingness to work with us in implementing our recommendations to improve its EEO program.

⁹ See n. 3.

FINDINGS

Our findings, and the factual bases for those findings, are set forth below. Due to the nature of those findings, the assurances the evaluation teams gave to those interviewed and a widespread concern about possible reprisal, the facts are presented without attribution or any identifying characteristics wherever possible.¹⁰

Finding 1: *There is widespread fear of retaliation among BOP employees.*

As noted throughout this report, a primary goal of this program evaluation was to determine whether fear of retaliation is widespread at BOP. In order to do that, it was necessary to determine whether, in the first instance, employees and managers knew the definition of retaliation or whether they were confusing the concept/definition of retaliation with other issues that may be present in the workplace. In fact, many BOP employees and management officials did not know the definition of EEO retaliation and some were surprised when OFO representatives told them the EEO definition of retaliation, as they did not know how broad the definition was, the low burden of proof required, and that in order for an act to be considered EEO retaliation the employee must have participated in prior protected EEO activity or opposed discrimination.

The vast majority of BOP non-supervisory employees interviewed reported an atmosphere of overall retaliation by management. Multiple employees stated that employees who engage in the EEO process or report discrimination are viewed as troublemakers. One employee reported that an associate warden told employees that they should not report things. Other employees similarly reported that employees who filed EEO claims were often confronted by management and co-workers who expressed the opinion that the complainants were insubordinate or had problems with authority.

This fear of retaliation was immediately apparent during the interviews with OFO representatives. One employee stated that it was surprising that anyone was willing to speak with the OFO representatives at all. Employees felt that eventually everyone would know who participated in the OFO interviews and that these participants would suffer retaliation. Another employee stated that other employees were unwilling to speak with OFO representatives because they would be put on “the list” and risk retaliation. Additionally, an employee stated that individuals were afraid to put their names on the OFO surveys because they thought their identities would be revealed and they would experience retaliation. Many management officials were also hesitant to be candid in the interviews with the OFO representatives, and one even asked to go off the record. Another, however, came back to speak to the OFO evaluation team a second time to report that the warden had reported during a management meeting that he had a list of everyone who was going to speak to the OFO evaluation team.

¹⁰ As noted above, in its March and October 2010 written comments, BOP asserts that it has begun implementing some of the recommendations contained in the draft it received in November 2009. Although we acknowledge these efforts, we have not changed our findings, recommendations, or the facts in support of them; we will assess BOP’s improvements during the follow up phase (Action Plan) of this evaluation.

Interviewees recounted both personal experiences as victims of retaliation as well as a general climate in which retaliatory animus permeated the workplace. It is clear that employees with whom we spoke stated that there is an overarching fear that an employee who reports discrimination to an EEO counselor will suffer retaliation by management. As a result, many employees do not report discrimination. One management official acknowledged that harassment does not get reported, stating “I am not going to say that harassment has not happened here, ... but there are no official reports of it.”

Some typical responses describing the overall atmosphere of retaliatory animus include the following:

- The whole environment is negative, punishment and shame based. It is not just because of EEO, it is across the board. I felt very isolated when I filed my complaint. People will not assist you and people treat you differently once they know you have filed a complaint and you have been targeted by management . . . People treat you as if you are taboo. Employees are afraid to associate with you. I noticed you took your job in your own hands when you complained.
- If you cross [a] supervisor for any reason the supervisor is coming after you to make your life difficult. You experience adverse terms and conditions of employment. Administrative staff will hold a grudge and take things personally if the EEO process is used . . . if an employee complains about anything, even non-EEO, you are retaliated against.
- No corrective action is taken if you report harassment. Management will harass you more than before if you allege harassment. They harass you so much you have to file an EEO complaint. This is based on you just complaining. Employees believe EEO may have an adverse effect on their careers.
- One interviewee asserted that “once you file a complaint management will immediately punish you.” This same employee stated that employees believe filing is frowned upon by the warden and that if one talks to the EEO counselor it then gets back to the warden. S/he also stated that employees are ostracized if they complain about EEO, and that they are moved, demoted, or receive unfavorable terms and conditions of employment (e.g., switched from day watch to night watch or switched to a less desirable position) if they file a complaint. S/he believes that “employees are simply penalized for filing complaints,” and that if the employee disagrees and or angers management, the employee is demoted.
- One non-supervisory employee, who had filed a complaint, maintained that retaliation was worse for people who file an EEO complaint than for someone who goes through the grievance process. S/he stated: “It’s common knowledge that if you go against the grain something will happen

to you. You could be removed from job duty, pulled from post, given unfavorable working conditions. . . I believe this is for all complaints I believe retaliation comes directly from the warden. This employee also felt that managers will “keep an eye” on employees who file complaints, and that if supervisors are changed “there are notes passed on from one supervisor to the next” about what is going on with the person, who is then perceived in a negative manner.

- A management official¹¹ stated: “We have bred a culture of retaliation. We have inherently allowed harassers to oversee the harassers. They filter the information so things...get said a certain way and the truth does not come out.” Further, a management official stated, “the culture here . . . is that if you accuse someone of [discrimination], you will be retaliated against. So people take the heat and deal with [discrimination] personally, they don’t report it. The staff knows that they will be retaliated against. So why bother?”

These general views were illustrated by a host of specific examples provided by employees. Many employees in different facilities under different supervisors and wardens had not only the same beliefs and fears about retaliation but had experienced markedly similar, if not identical, consequences for filing complaints, speaking to an EEO counselor or simply complaining to management in general.

Examples abound:

- Multiple employees reported to us that they were subjected to Office of Internal Affairs (OIA) or Office of Inspector General investigations shortly after engaging in EEO activity. According to management officials, only wardens can initiate an OIA investigation; the investigations are reported in a written format; and there is no specified time limit for the investigation.¹² Employees reported that the investigations were often kept open for indefinite or prolonged periods of time, which effectively suspended their careers because employees under investigation are ineligible for transfers, promotions, awards, and reassignments.
- A number of employees reported that they are hesitant to report discrimination, harassment, and retaliation because they fear that they will become the subject of intense and extended Special Investigative Services inquiries.¹³ Numerous employees reported that members of executive staff order extensive and intense

¹¹ Most management officials stated that they are not aware of retaliation. See *infra*.

¹² BOP’s OGC states that any staff, not only a warden, can refer a matter to OIA.

¹³ Special Investigative Services investigates all non-EEO claims, including allegations of employee misconduct.

internal investigations against employees based upon false accusations after they report discrimination. Employees reported being investigated, some more than ten times, after they complained of discrimination, harassment, or retaliation.

- Employees reported that managers also retaliate against employees by disclosing complainants' EEO activity to co-workers and labeling complainants as "troublemakers" who are disloyal to the agency.
- Many employees related the experience that after they reported discrimination, management lowered appraisals, moved the employee to a different part of the facility, changed his/her job duties and/or denied one or more promotions. Some reported that the harassment continued.
- Employees reported that after filing an EEO complaint they were immediately left out of meetings, were publicly reprimanded and demeaned, that their co workers were told not to confide in them, and that management refused to speak to them.

A number of employees whose spouses also work at BOP reported that both they and their spouse experienced retaliation when one of them filed an EEO complaint. The retaliatory "punishment" meted out in these cases was similar to that imposed upon other employees who experienced reprisal and included: (1) denial of promotions; (2) becoming the subject of investigations; (3) being placed on the least desirable shifts; (4) having performance evaluations lowered; (5) being denied training that the agency previously had agreed to provide; (6) being separated from the spouse via being denied transfers; (7) being excluded from meetings; (8) being ostracized and accused of being untrustworthy; (8) being issued "bogus" disciplinary memoranda; and (9) having quality step increases revoked.

A number of employees identified "vouchering" as a tool used for retaliation and a reason for not reporting discrimination. According to these employees, vouchering is an agency-wide informal system used when an employee applies for a promotion or reassignment. Through the vouchering system, the hiring supervisor calls the employee's current and past supervisors for recommendations. During this phone call the past or current supervisor relays information regarding the employee's job duties and qualifications. There are no strict boundaries during these phone calls, and employees are aware that management officials may relay an employee's prior protected EEO activities to the hiring supervisors. Management officials stated that managers often identify an employee as a "troublemaker" or a "snitch" during a vouchering call. A management official stated that when he hears the word "troublemaker" he knows that means the employee causes problems and the supervisor should "watch [his] back, watch what [he] says, watch what [he] does." Other management officials identified the term "troublemaker" as someone who files union grievances and EEO complaints. One management official stated that while it was not appropriate to relay EEO information during a vouchering call, many supervisors do discuss an employee's EEO activity because there is no agency oversight over the information relayed. Another management official characterized the vouchering system as "the good ole boys network." The vouchering system results in employees' fear that if they file an EEO complaint they will never be promoted.

Employees also do not report discrimination, harassment, and retaliation because they believe they involuntarily will be transferred. Three employees stated that if an employee alleges discrimination or harassment, management will move the employee to another position, perhaps in a different facility, as a form of retaliation instead of addressing the issue. Numerous employees described their own personal experience with this, as well as a well known incident where three women alleged a member of executive staff sexually harassed them and the women were subsequently transferred to different locations. This was confirmed by a management official, who stated “the agency will never admit when it is wrong. They will move the employee instead of permitting the manager to appear to be in the wrong.”

Union officials painted a bleak picture of the climate of retaliation at the agency. Union officials stated that management discourages people from filing EEO complaints. For example, one union official asserted that management’s response to a complaint was “how can we get the person to drop it (the complaint),” or “how can we get the person fired.” The union official also stressed that the warden was retaliatory and “as vindictive a manager” as s/he had met, and that managers and supervisors will fall in line with the warden’s policy, even if they don’t agree with him, in an effort to keep their jobs. S/he also related a story that the warden retaliated against one employee by disallowing a compressed work schedule because the employee testified against BOP in court. A union official also noted that, while s/he had been retaliated against for union involvement (and that the agency retaliates for all types of issues), the agency may view EEO a little differently because “it costs them money.” S/he also suggested that management does not believe that harassment/retaliation is occurring, so they do not step forward to stop it. One headquarters employee opined that most of the problems are likely due to the fact that management had just lost an arbitration involving mandatory overtime and that it was about to cost the agency over 30 million dollars, resulting in tension between the union and management. In general, the employee felt that staffing was thin and employees were overworked and disgruntled.

Another union official alleged that managers may use investigations and counseling letters to hold things over employees' heads, and that senior management retaliated against a manager who participated in a trial against BOP by moving the manager’s office into a four by four room that had been a bathroom. S/he noted that two other line staff were also reassigned to a storage closet (for both employees) to work because of their union affiliation and lawsuit participation. The union official stated that any time someone disagrees with management or questions the system, whether EEO related or involving union activity, there is retaliation.

In sharp contrast to the overarching view of the non-supervisory employees, most management officials did not see retaliation as an issue. One supervisor, when asked about a retaliatory perception by employees, stated simply that “I don’t know why employees believe that it is a retaliatory environment.” Another stated that “there have been very few instances of harassment,” and although s/he remembered “a couple of complaints since I have been here,” s/he couldn’t “give any specific examples of retaliation” (noting that s/he has “only seen two valid claims of retaliation” in his/her career). Another manager opined that employees thought that there was rampant retaliation because employees think reprisal occurs when they do not get

what they expected and assume that everyone knows they previously engaged in EEO activity.¹⁴ Another offered that “employees may not think they are being heard,” because there had been a drastic change of management style, particularly with the current warden, who is “rigid and changed [the environment] to focus on accountability, which causes conflict.” One warden denied that there ever had been any allegations of retaliation brought to his attention. One manager stated that he had not witnessed any retaliatory actions and dismissed employees’ perceptions of rampant retaliation at the facility as merely employees complaining “about anything they are unhappy about.” Two managers stated that employees thought that there was a retaliatory atmosphere because managers have too many employees to supervise and have a difficult time supervising employees. Another opined that there was “no retaliation, just short staffing.”

Several managers expressed a belief that the EEO process was being misused by disgruntled employees and overzealous unions who present non-meritorious claims to gain leverage over management and obtain favorable settlements and awards. A manager stated that one flaw of the EEO process is that the process does not give allowance for management fully to assess settlement possibilities because the union wants answers “tomorrow” and EEO counseling is so short there is no time to assess settlement opportunities. Another manager similarly opined that employees perceived a retaliatory atmosphere because they “have a sense of entitlement,” make excuses for bad behavior, and want money. A warden expressed the belief that the EEO process is sometimes harmful to people because it affects managers negatively even when there is no finding. He also stated that he felt that the union misuses EEO as just another avenue to pursue claims. Finally, a number of managers acknowledged that although they do not believe that there is retaliation, the fact that all EEO complaints are taken to the warden may add to the misperception.

Finding 2: *BOP employees lack confidence in BOP’s EEO program.*

A consistent theme among the three facilities at which EEO conducted onsite was that employees lacked confidence in BOP’s EEO program. Although some of that lack of confidence may be attributable to their lack of knowledge and awareness of their rights,¹⁵ most of it is attributable to an employee perception that management has an attitude that EEO is not important, that employees who speak with counselors are just whining and looking for money, that there is no confidentiality in the EEO process because everything is reported to the wardens, and that the agency tolerates harassment and does nothing to punish management officials who engage in it. The widespread fear of retaliation detailed in Finding 1 above clearly also is interrelated to the lack of confidence in the process as a whole.

¹⁴ This manager acknowledged that s/he has witnessed managers refer to an employee’s EEO activity when recommending a non-selection and has witnessed other management officials divulge employees’ EEO activity.

¹⁵ See *infra* Finding 3.

This lack of confidence begins with informal counseling which, as the employee's first entry into the EEO program after experiencing perceived discrimination, arguably is the most important part of the EEO process. Unfortunately, the interviews conducted with management, employees, and EEO counselors during the onsite clearly demonstrate that the EEO counseling process at BOP has been severely compromised. It appears that counselors are not trained adequately or given time to do their work, are put under pressure to settle cases regardless of the circumstances, and that the involvement of the warden in the EEO process has intimidated counselors and potential counselees alike.

In the first instance, it appears that the importance of counseling is not emphasized, as in none of the facilities visited were there any full-time dedicated counselors.¹⁶ At FCC Victorville, EEO counseling is a collateral duty. At the time of the onsite, there were three EEO counselors within the complex whose experience in the position ranged from two months to eighteen months. Counselors are permitted to spend 20% of their official time a week on EEO counseling and if a counselor requires additional time to work on EEO duties, it must first be approved by his supervisor and the warden. On paper, two collateral duty counselors were assigned to Lexington, however at the time of the onsite in September 2008, one counselor had just been replaced and one position was vacant with no apparent prospect of being filled. Commenting on this state of affairs, one union official stated that at one time there had been no EEO counselors for "about two years," and another union official stated that, at one time, there had been no EEO counselors for five months. The Lexington warden reported that this was about to change as of January 2009, as the facility planned to have regional EEO counselors handle complaints for the entire region instead of onsite collateral duty counselors. In Butner, the EEO counselor is full time (non collateral duty) but splits his time traveling among facilities in North Carolina, Maryland, Houston, Miami, and Atlanta.

Employee perception of the counseling process (and often the counselors themselves) generally was negative regardless of whether the counselors were collateral duty or full time. Most interviewed were unable to identify any current EEO counselors and/or did not know how many were available. As such, contacting counselors was difficult. For example, if an employee knew the name of a counselor, s/he could find the contact information for the counselor through the internal employee phone listing. However, if the employee did not know the counselor's name, s/he would have to use the internal Sallyport, where the name and contact information of the counselors can only be found after approximately 5-6 mouse clicks. An employee stated that s/he once had a very hard time locating the EEO counselors' contact information, and just as s/he was about to give up pursuing the EEO process, s/he finally found the contact information "buried on Sallyport." Furthermore, although the EEO training materials direct employees to the bulletin boards in their facilities for EEO counselor contact information, the OFO team did not see such information posted. Given these issues, employees and management alike opined that it would be easier to contact an EEO counselor if it was a permanent, full time position.

¹⁶ This is consistent with information from headquarters EEO officials, who reported that all but five counselors were collateral duty. BOP's OGC stated that in the absence of a collateral duty EEO counselor due to resignation, transfer, etc., employees receive counseling through the Central Office EEO staff.

Difficulty in getting time and attention from a counselor was an issue regardless of whether the counselor was full time or collateral; in addition to the issues described above, Butner employees reported that it was extraordinarily difficult to contact the counselor, who is often out of the office because he serves as the EEO counselor for facilities in Maryland, Houston, Miami, and Atlanta.

Employees also lack trust in counselors' ability to perform this essential EEO function. Employees reported that the pre-complaint stage was extremely long and they had to get the Central Office involved just to get the counselor to issue a Notice of Final Interview and a Right to File a Formal Complaint. Further, counselors have lost employees' pre-complaint reports, resulting in them not being included in the Report of Investigation, and the counselors have been unable to remember the witnesses with whom they spoke. Additionally, employees feel that collateral duty counselors are not particularly knowledgeable because it is not their full time job. For example, employees reported not getting an adequate explanation of rights and responsibilities, that the written materials differed from what the counselor said, and that employees were not told of their right to representation. Further, one counselor allegedly told an employee that employees were not permitted to conduct their own investigations and gather witness affidavits. One collateral counselor agreed and stated "I can't put in the time I should put into it because it is a collateral duty," and another collateral counselor stated the position should be filled by a dedicated, full time employee. Another, more general, criticism concerning the EEO process was that EEO counselors were not given enough time to complete their work, with a particular counselor apparently being told by management that s/he would have to use her/his own time to work on a case. One interviewee stated that because counselors are collateral duty, managers are not responsive to EEO work if there is other work that needs to be completed, and that because of this an EEO counselor in her/his department refused to handle her/his case. Other comments on the EEO process included statements that employees did not believe the program really works, that it takes too long to get a resolution, and that the system not only lacked counselors, but also lacked adequately trained counselors.

Employees also simply do not trust the counselors and do not generally view them as neutral. Many employees adamantly felt that the EEO counselors were biased in favor of management. Specifically, an employee stated that EEO counselors are selected by the wardens based upon their abilities to bend to the will of management and their willingness to be manipulated.¹⁷ One employee stated that if an EEO counselor shows favoritism to management, they will be rewarded through "awards, promotions, glowing evaluations, training opportunities, etc., as appeasement for compliance with management's wishes." Several employees reported that a counselor gave them erroneous information about their rights and EEO law, which some employees attributed to the counselor's desire to undermine their EEO claims and curry favor with management. Most employees expressed their feeling that the counselor was biased toward management in general and toward the complex warden in particular.

Employee perception that the entire EEO process – beginning with counseling – lacks confidentiality is widespread. This overall perception deters employees from reporting

¹⁷ According to BOP's OGC, collateral counselors are nominated by the wardens and selected by the EEO Officer, and full time counselors are selected by, and work for, the EEO Office.

discrimination, harassment, and retaliation. Employees believe that the wardens immediately are informed when an employee contacts an EEO counselor. Some EEO counselors stated that when an employee contacts them, they inform the wardens of that fact, what the employee is alleging, and who was named as the discriminating official. One warden justified this practice by stating that the only way an issue can be resolved is if wardens immediately are notified that someone reported an issue to a counselor. In one facility, employees stated that one of the counselors is the warden's best friend and that the warden is aware of everything that the employees tell the counselor. One counselor stated: "as an EEO counselor, when a complaint is filed, I always have to talk to the warden (though the complaint can be kept anonymous), and that "the warden makes the ultimate decision about the requested remedy." Some employees also believe that the wardens tell other managers and that word then gets around the entire facility. This creates fear of retaliation because it is likely that the alleged discriminator immediately will know that an employee sought the assistance of an EEO counselor. Further, this leads to the employee being labeled as a "troublemaker" and a "snitch" among co-workers. Many individuals also said that often the employees tell their friends that they spoke with an EEO counselor, which creates rumors. Regardless of how the information is getting out, the end result is that many people feel that the EEO process lacks confidentiality.

Several individuals interviewed also asserted that management believes that the EEO counselor's job is to stop the complaint from going forward, and a number of interviewees indicated that in fact counselors had dissuaded employees from filing complaints. Speaking to this issue, a union official stated that s/he believes management doesn't want complaints to be highlighted, so it tries to keep the process at the local level so as not to "rock the boat." Another union official claimed that EEO counselors are told to settle EEO complaints as quietly and as cheaply as they can, and to discourage persons from filing EEO complaints.

Many of those interviewed also alleged that EEO counselors historically have suffered retaliation from management. It is a common view that once the counselors approach managers about EEO issues, the counselors begin to receive negative treatment. In this regard, a management official stated that EEO counselors initially take the position for the right reasons, however, once they are in the position they are not given promotions and awards because management views them as troublemakers. The management official stated that he knows of several counselors who experienced this negative treatment and then realized that if they continued to act as counselors, they would never have successful BOP careers. One counselor allegedly was told that s/he would not get a certain position just because s/he was an EEO counselor. Another interviewee felt that EEO counselors wanted to help, but that the upper echelon of management "doesn't allow" EEO counselors "to create a place where they can make a change." The interviewee maintained that many EEO counselors resign because it is a difficult job and difficult to make changes, and because the warden was very combative and disrespectful" as it relates to EEO."

A number of employees and union officials opined that the EEO counselors' lack of availability, knowledge and perceived impartiality explained why employees often choose the union grievance process over the EEO process: "When there is a complaint most people go to the union instead of the EEO counselor. It could be because the union has more experience in employment issues and there is a high turnover rate of EEO counselors."

Employee lack of confidence in the EEO process also is fueled by their view that management does not support it. When answering the OFO representatives' questions during the interviews, one management official displayed a complete indifference towards the EEO process, stating that the EEO process was a waste of time and that it was only taken advantage of by mediocre and lazy employees. He stated, "I think the EEO program is pretty worthless" and he continuously rolled his eyes when answering questions about the process. Another management official stated that he believes the EEO process is only used as a "crutch" by employees who do not get exactly what they want. Another management official stated that the EEO process is "a waste of the agency's time and a waste of my time." A majority of management officials felt that most EEO claims are frivolous. For example, one management official stated 80% of EEO complaints were frivolous, while another said 60% were frivolous.

The lack of management support for the EEO process results in management recommending use of the EEO process only as a last resort, if at all. There is a perception among management that issues should first be dealt with informally without going to an EEO counselor. A management official stated that he has never referred a complaint to an EEO counselor and never would because it is a waste of time. Another management official stated that management prefers to address issues within the chain-of-command and avoids going to an EEO counselor. And yet another management official stated that management should handle the situation first, and he would only refer an employee to an EEO counselor if the employee pitched his/her case to show why s/he thought it was an EEO violation and provided some sort of evidence to corroborate the allegation. Further, an employee stated that an EEO counselor told him to settle the matter with the supervisor instead of pursuing the EEO process. One EEO counselor stated that BOP is very "military-istic" in the sense that problems are expected to be dealt with informally through management, and not through the EEO process.

Some management officials do not support the EEO process because they view it as a way for employees to make money. There was a general negative attitude towards employees who ask for money as a remedy for alleged discrimination. One management official said that when an employee asks for money it shows they are just after money and probably did not experience discrimination. Another management official stated that employees file EEO complaints because we are "in a generation where [employees] feel they are entitled to something" and "employees will lie to get money or get what they want." Another management official stated that employees are greedy and the EEO process encourages employees to lie in order to get money. Another management official stated that "damages are weasel words."

Further adding to employees' lack of trust in the EEO process is the perception that management gets away with unlawful activity such as discrimination, harassment, and retaliation. One employee said that employees continuously see management get away with discrimination, harassment, and retaliation because the people with the power to discipline management officials never take EEO matters seriously. The employee explained that this deters employees from pursuing the EEO process. Further, an employee noted that when management officials know they can get away with discrimination, it makes managers feel more comfortable retaliating against employees because they know there will not be any consequences. Some non-supervisory employees who have engaged in the EEO process or complained about management, the warden, or "rocked the boat," seem to believe that workplace harassment is prevalent and

management does not interject to prevent the harassment, and in some instances is its actual source. One interviewee, who stated that s/he decided to retire because of her/his treatment, stated:

I tried talking to my boss when I believed I was being harassed. It did not help because s/he was the one harassing me. I then went to an EEO counselor for the second time and chose to file a complaint. I went to go talk to the warden while my complaint was being processed and that did not help the situation. I did not go to my boss's boss because I believe that is where it may have originated. Management will band together and deny anything is going on.

In addition, several non-supervisory employees interviewed indicated that harassment may actually be rewarded, at least for those in management positions. These individuals suggested that it was commonly assumed that a former assistant warden at the facility was accused of harassment and then promoted for his conduct by reassignment to another facility.

A management official stated that he does not know of any measures that ever have been taken to prevent discrimination, harassment, and retaliation from recurring after it is reported, and the template that is in place now is not effective. Another management official stated that he is not aware of a manager ever being the subject of a formal finding of discrimination, but he is aware that discrimination by management occurs without repercussion.

Many employees were not aware of a single management official who was disciplined for discrimination, harassment, or retaliation. One warden stated that he was in the process of disciplining a manager for harassment but that other than that, he was not aware of any disciplinary action taken against a management official based upon a complaint of discrimination, harassment, or retaliation. Another warden recalled that the agency once moved a supervisor to another facility as a form of corrective action after an EEO harassment complaint. Finally, employees believed that EEO standards are not considered in management performance evaluations: A manager named as a discriminator, findings of discrimination, and demonstrable support or non-support for the EEO process are not factors in the decision to promote a management official.

Finding 3: *BOP employees are unfamiliar with the EEO process and rights.*

To support its EEO program, BOP provides EEO training to employees during its Annual Refresher Training (ART), which lasts one week and covers a wide range of topics. A request for the ART training materials disclosed that the EEO portion of it is based upon a standard Power Point slide-show and lesson plan provided by headquarters. The slides reveal a training session titled "Discrimination and the EEO Process" and discuss a combination of laws regarding EEO, Whistleblower protection, and the No Fear Act. A majority of the presentation focuses on the latter two issues. Although sexual harassment is emphasized in the training, the lesson plan material and slides do specifically state that sexual and non-sexual harassment is covered and prohibited, and that harassment can occur under any of the covered bases. The lesson plan (under the heading "Identify two responses to Discrimination") also provides verbiage explaining protection from retaliation and provides a definition of retaliation with

examples of protected activity. The instructions for use of the materials state that “the lesson plan for the EEO presentation must be strictly complied with. Please use the slide show in its entirety.” A margin notation under the section “Identify two responses to Discrimination (to include sexual and non-sexual harassment)” provides instructions to “Remind staff to become acquainted with the Bureau’s policy and procedures for reporting harassment.” The slides in this section also include an “option” to notify the harasser that the harassment is unwelcome, or to report harassment to a list of six officials.

Interviewees stated that the EEO portion of the ART training is supposed to last ½ hour but some people reported that it consisted of a dry reading of the slides, generally is rushed through, is a “sleeper” that can be “ignored,” and lasts approximately 10-15 minutes. A number of employees and managers indicated that the training was presented in a monotonous manner that communicated that the agency has a cavalier view of EEO training as a “dreaded duty.” In some facilities the training is conducted by an EEO counselor and in some a warden or assistant warden conducts the presentation. Regardless of who conducts it and regardless of whether the presentation lasts 15 or 45 minutes, the overwhelming consensus of those interviewed -- employees, management officials, and even those conducting the training -- is that the EEO training offered is inadequate in scope and concept and poorly presented. Many of the interviewees (apart from those instructing the class) also appeared to be unfamiliar with the EEO information intended to be conveyed at the ART, although most of those individuals interviewed believed that they could find the information elsewhere if needed. Many of those interviewed opined that the EEO portion of the ART is considered the least important part of the week.

According to a number of interviewees, managers receive some additional training apart from the yearly one-hour review in the form of training for new managers and with regard to sexual harassment. However, a review of materials and information provided indicates that the initial manager training contains no EEO component, and that the anti-sexual harassment training, at best, occurs on an infrequent and inconsistent basis.¹⁸

The inadequacy of BOP’s EEO training best reveals itself, however, through employees’ lack of knowledge of the EEO complaints process. Many employees and management officials lacked the basic foundational knowledge of the EEO complaint process. For example, some management officials could not list any of the protected EEO bases, did not know what management’s rights were during the EEO process, were unfamiliar with what was confidential during the complaint process, did not know when employees were entitled to an investigation, did not know who conducted the investigations, and were not familiar with the deadlines for responding to reports of discrimination, harassment, and retaliation. One management official stated that an employee can only establish discrimination if there is an admission of guilt from the accused party. That same management official stated that in a situation where it is one party’s word against another party’s word, the complainant will lose because their allegation is unsubstantiated and physical evidence of discrimination is necessary to prove discrimination.

¹⁸ In Lexington, a number of interviewees, including union officials and managers, mentioned that management provided a one time extensive EEO training one or two years ago as a result of a settlement agreement. Other than that, EEO training occurred only as part of the ART training.

Another management official stated that only veteran employees who have been with the agency for a long time know that the EEO process even exists.

Employees additionally displayed a lack of knowledge of the formal complaint process, including issues and procedures arising during the investigation stage. Employees varied in their belief as to whether EEO investigators are contracted by BOP, are BOP employees, or are EEOC employees. Further, employees have had negative experiences with the investigators, which deter them from filing future EEO complaints. For example, one employee stated that the investigation took an extremely long time, that s/he could not get in touch with the investigator, and that the investigator spoke to all of the agency's witnesses but did not speak to most of the employee's witnesses. Another employee stated that once the agency decided that a particular investigator sided with employees too many times, the agency stopped hiring that investigator. Moreover, employees were not aware of their rights during the EEO process. One employee was not aware that s/he was allowed a reasonable amount of official time to complete the formal complaint, while another was not aware that a coworker could act as a representative.

It also appeared that most management officials were not aware of employees' rights during the EEO process. For example, some management officials were not aware that employees have a right to official time to work on their complaint and a number of others were not aware that representatives and witnesses are also allowed a reasonable amount of official time to participate in the EEO process. Further, most management officials were not aware that employees could have non-attorney representation.

Interviews also revealed that knowledge and use of ADR was almost non-existent at two facilities. Many employees stated that they were never told about their option to select ADR during the pre-complaint or formal complaint stage. One EEO counselor appeared to have no knowledge of ADR. Further, a management official stated that he has never heard of ADR, and that ADR is not discussed during the ART.¹⁹ In one facility a warden acknowledged that ADR is not used very much or very well and believed that this is because ADR Specialists are chosen by management and the union, because employees want money and perceive ADR as not attaining that goal, and because the union dislikes ADR.

Part of the explanation for why employees were so unaware of the EEO process may be explained by the agency's failure to disseminate adequately its overall EEO Policy statement. BOP's OGC states that BOP's Director issues the agency's EEO Policy Statement on an annual basis. The Policy Statement reads: "Reprisal against anyone who engages in protected activity will not be tolerated." It further directs employees to EEOC's and the Office of Special Counsel's websites for more information. This statement is disseminated by email, and although

¹⁹ A review of the ART EEO Power Point slides reveals that ADR is mentioned during the training; the lack of knowledge among staff regarding ADR solidifies the ineffectiveness of the training.

each employee has an email address,²⁰ it appeared that most employees and managers did not read or otherwise pay attention to emails regarding EEO policies. Most employees and managers knew, however, that they could access the EEO Policy Statement through the Sallyport intranet system.

Employees may also be unaware of EEO matters because the agency has not properly posted EEO policy and counselor contact information. In Victorville, when employees and management officials were asked where the EEO policy or EEO counselor contact information was physically posted within the complex, no one could identify a location. Employees and management officials stated that they saw Whistleblower posters, but have never seen anything about EEO posted within the complex. During a tour of two of the Victorville facilities, including employee break rooms and centralized employee bulletin boards, OFO representatives did not see a single EEO posting. In Butner, OFO representatives saw an EEO poster prominently displayed at the medical center. Although the OFO team did not inspect the other Butner facilities for EEO postings, union officials stated that EEO posters are often placed in hidden areas, and that the average employee is not aware of her rights. Union officials stated that in their assessment, management does a bad job at informing employees of EEO rights.

The lack of comprehensive training and appropriate dissemination of information also was apparent in the realm of workplace harassment, as there appeared to be no clear and comprehensive guidance for employees and managers on how to report harassment, or what the agency's legal obligations and responsibilities are, if any, once harassment is reported in the workplace. This was particularly clear at Lexington. Although it was well accepted by employees that harassment of any kind in the workplace was, at least in theory, not to be tolerated, the majority of employees interviewed were unclear as to the actions that must be taken to prevent and correct workplace harassment. As an illustration, the OFO interview team was referred to three Program Statements/Directives that were to be used for instances involving harassment (P3713.23/*Discrimination and Retaliation Complaints Processing*/May 12, 2005, 3420.09/*Standards of Employee Conduct*/ February 5, 1999, and 3730.05/*WorkPlace Violence Prevention*/ March 23, 2004), and were told that these policies worked together to address the different manifestations of harassment. However, upon review of all three directives, it is apparent that Lexington does not have a written anti-harassment policy or an effective procedure in place to address allegations of workplace harassment as it is clear that the documents do not, individually or collectively, form a sufficiently defined anti-harassment policy. The *Discrimination and Retaliation Complaints Processing* statement almost exclusively defines the EEO process, the *Standard of Employee Conduct* statement defines acceptable workplace conduct relating to employees and inmate/employee interaction, and the *Workplace Violence Prevention* policy is strictly designed to prevent violent behavior or the potential threat of violent behavior.

The *Discrimination and Retaliation Complaints Processing* Program Statement, while specifically addressing sexual harassment (in chapter 14), fails to address any other form of

²⁰ While each BOP employee has an agency issued email account and access to a computer, some staff do not use computers as part of their daily duties and may not check their agency email accounts on a daily basis.

workplace harassment. Moreover, although chapter 14 defines sexual harassment, outlines employee and management responsibility, and details the complaint process, it does not provide an outline for an immediate management response for employees who allege sexual harassment. We note that in the sexual harassment section titled “complaints,” employees are given the “option” to notify the harasser that the behavior is not welcomed, and if the conduct continues, or the employee is uncomfortable confronting the harasser, to choose to notify a number of designated officials (a list that also is reproduced in the ART training materials). The sexual harassment section of the *Discrimination and Retaliation Complaints Processing* statement, under, “Responsibilities” states that “the responsibility to report under the *Program Statement on Standards of Employee Conduct* will apply.” However, the *Program Statement on Standards of Employee Conduct* contains no reference point specifically concerning harassment, stating only in the section on “Official Investigation” that “[e]very employee is required to report to management immediately any violation or attempted violation of any law or regulation. . . .”²¹ Otherwise, the *Program Statement on Standards of Employee Conduct* discusses a variety of employee conduct, none of which involves sexual or other harassment related conduct as defined by Title VII.

Finally, the *WorkPlace Violence Prevention* statement references harassment only briefly. In the portion titled “Definitions,” it states that “[i]n some circumstances, sexual harassment may be a form of workplace violence,” and that “[o]ther Bureau directives prohibit staff behavior which is otherwise intimidating, bullying, or harassing.”

This same lack of guidance and unfamiliarity with the agency's anti-harassment policy was evident at Victorville and Butner as well. In Victorville, no one interviewed was aware of a separate anti-harassment or sexual harassment policy. This lack of clarity and/or clearly defined policy may also help to explain why most employees first contact the union office in cases of harassment. As noted above, during interviews a majority of non-supervisory employees did not believe the EEO office was capable of effectively addressing any of their harassment or retaliation claims. EEO counselors were perceived as either being in the “warden’s pocket,” ill-informed, or simply overworked and unable to address the employees' harassment concerns. Therefore, with no clear policy guidance to address harassment or trust in the EEO office, employees have been left to seek assistance from the union as the only viable option if they believe they are being harassed.

RECOMMENDATIONS

As noted above in the Executive Summary, EEOC believes that the changes required to remedy the issues addressed in our findings -- fear of retaliation, lack of confidence in BOP’s EEO program, and lack of familiarity with the EEO process and employee rights -- must be implemented in a proactive and measured way that includes established time frames and monitoring. Moreover, the changes recommended below clearly must occur throughout the agency -- in both headquarters and field operations -- and not just in the three facilities highlighted or only at certain facilities. In proffering these recommendations, we recognize that after reviewing our initial draft evaluation and recommendations, BOP began implementing

²¹*Program Statement on Standards of Employee Conduct, 13(a.)*

certain of them and in its March 12, 2010 and October 21, 2010 submissions provided a status of its progress.

Recommendation 1: *BOP's EEO office must be realigned*

- The EEO office should be moved out of the Office of General Counsel
- The EEO Director should report directly to the agency head

EEOC's regulations establish that "the EEO Director shall be under the immediate supervision of the agency head." 29 C.F.R. § 1614.102(b) (4). Chapter 1(III) of EEOC's Management Directive (MD) 110 explains that "[b]y 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." This requirement is echoed in Section II(B) of EEOC's MD-715.

BOP's organizational structure is in clear violation of these requirements. Moreover, both the EEO office and the Labor Law Branch are located within BOP's Office of General Counsel. The Labor Law Branch is responsible for serving as the agency representative in EEO matters. Pursuant to MD-110 at 1-2, 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. EEOC requires agencies to maintain distance between the fact-finding and defensive functions of the agency in order to enhance the credibility of the EEO office and the integrity of the EEO complaints process. This separation is required because impartiality, and the appearance of impartiality, is important to the credibility of the EEO program. We realize that at BOP, the EEO complaints division and the agency representatives report to the General Counsel through different supervisors; nevertheless by housing these two functions within the Office of General Counsel, BOP has created at least the appearance of conflict that impinges on the credibility and integrity of BOP's EEO program.

Recommendation 2: *BOP must increase management support for EEO*

MD-715 requires agency heads and other senior management officials to demonstrate a firm commitment to equality of opportunity for all employees and applicants for employment. Agencies must translate equal opportunity into everyday practice and make those principles a fundamental part of agency culture. Section II(A) of MD-715 provides that commitment to equal opportunity must be embraced by agency leadership and communicated through the ranks from the top down. BOP management's support for the EEO process must be increased. We are especially concerned that some management officials expressed a belief that EEO was mostly a forum whereby employees and unions manipulated management. This attitude toward the EEO process no doubt contributes to the view (or actual practice) that management does not regard the EEO process seriously or as important. We found no indication, moreover, that any management officials have sought to address the systemic underlying issues such as inadequate EEO training, fear of retaliation, or lack of confidence in the EEO process. Rather, it appears that headquarters

management is not well connected with the operations of the EEO program at the facilities and that facility management has a very short-sighted approach to EEO that merely offers grudging, piecemeal consolation to individual complainants without remedying the broader factors that perpetuate discrimination and retaliation.

Recognizing that attitude changes and realignments cannot happen immediately, we note that BOP immediately could increase management support for EEO by embracing the suggestions in this report. Further, executive staff should stress their open door policy and encourage staff to bring EEO issues to their attention. Management should not view the EEO process as a last resort; the EEO process should work hand-in-hand with management in an attempt to create a diverse workplace free of discrimination, harassment, and retaliation. The benefits of management's encouragement of the utilization of the EEO process should be stressed to management during training.

Strengthening the relationship between the agency and the union will foster a better relationship between the agency and other administrative processes, such as the EEO process. BOP employees and management officials blur union activity and EEO activity, and animosity towards one process is viewed as animosity towards the other as well. If the agency demonstrated better support towards all administrative remedies available to employees, it would help diminish the chilling effect on the EEO process.

Finally, executive staff should make it a priority to ensure that no discrimination exists, including race and sex discrimination. Program Manager positions could be created to help assist executive staff address any concerns from particular protected groups. Executive staff should also ensure that employees are aware of their right to a reasonable accommodation, and should ensure that clear guidelines for requesting a reasonable accommodation are available through training, information posted on centralized bulletin boards, and materials available through EEO counselors. BOP staff should be made aware that there is a Reasonable Accommodation Coordinator (RAC) available to assist individuals with their requests for reasonable accommodations.

- BOP should revise and reissue EEO policies

Section II(A) of MD-715 provides: "It is the responsibility of each agency head to take such measures as may be necessary to incorporate the principles of EEO into the agency's organizational structure." This section also establishes that "agency heads must issue a written policy statement expressing their commitment to EEO and a workplace free of discriminatory harassment. This statement should be issued at the beginning of their tenure and thereafter on an annual basis and disseminated to all employees." At the time of EEOC's onsite visits, there was no distinction between the anti-harassment policy, sexual harassment policy, and EEO policy, which caused confusion among employees and management officials. The agency head immediately should issue a strong EEO policy statement that effectively is communicated to all employees at least once a year. To further demonstrate its commitment to EEO in the workplace, BOP should establish a broad-based anti-harassment policy, with effective procedures for preventing and addressing complaints as noted above, that addresses both sexual and non-sexual harassment. For guidance in implementing this recommendation, BOP may wish to consult

EEOC's *Model EEO Programs Must Have An Effective Anti-Harassment Program*, issued September, 2005 at <http://www.eeoc.gov/federal/harass/index.html>. Appendix 5 to that report contains information on best practices and recommends and attaches the anti-harassment policies at the Department of Labor and Social Security Administration.

There also should be more effective measures in place to ensure that employees read the annual policies. For example, in addition to using email, BOP should post the documents on centralized bulletin boards in each facility and post a notice on the main page of Sallyport with a link to the document each time a new document is issued.

- BOP immediately should provide mandatory EEO training

The findings set forth above demonstrate that BOP employees, both staff and managers, are in need of immediate, in-depth, and effective EEO training. Management should immediately receive at least sixteen hours of mandatory EEO training with a class size of no more than 45 attendees. Employees should also immediately receive at least eight hours of voluntary EEO training with a class size of no more than 45 attendees. The training should be provided by an outside, neutral source; not by BOP or DOJ officials. The training should include scenarios that help demonstrate EEO issues. Further, executive staff must be instructed to support fully the training and not to relay or insinuate to their subordinates that it is a waste of time. In addition to the immediate training, annual EEO training should continue but be held separate from the ART training. As noted throughout this report, particular emphasis must be placed on counselor training.

- Managers should be held accountable for EEO violations

One of the common themes that emerged during this program evaluation was the employee perception that managers “get away” with discrimination. As such, it should be a top priority of executive management to extinguish the perception that management condones unlawful behavior. Management officials should be held responsible through reasonable disciplinary action, as well as through performance appraisals that take into consideration EEO criteria, as discussed in MD- 715, Section II. Further, findings of discrimination against a manager should be taken into consideration for management officials’ year end awards.

- Each area facility should have an EEO counselor.

Considering the size of the staff at each facility EEOC visited and the myriad of problems unearthed in the EEO program, each such facility should have at least one full time, permanent EEO counselor position. The counselors should report to the newly-repositioned headquarters EEO office rather than to a warden or his/her designee. EEO counselors should not hold the position as a collateral duty and must be neutral parties who do not have any prior relationships that could cause a conflict of interest. Counselors must be adequately trained on the proper role of EEO personnel and must receive up-to-date refresher training on changes in EEO laws and emerging EEO issues. The contact information for the counselors must be prominently displayed on centralized bulletin boards and must be easily accessible in Sallyport. The counselors should also send out periodic emails to the entire staff reminding them of the

availability of the EEO program and their rights and responsibilities. Finally, counselors should be able to meet with employees at a location that will not immediately put the warden or other management on notice that an employee is reporting an EEO issue.

Recommendation 3: *BOP's headquarters EEO office must monitor its field operations*

- BOP should conduct counselor conferences
- BOP should conduct onsite facility reviews

As noted above in Recommendation 2, it appears that headquarters management is not well connected with the operations of the EEO program at the facilities. In addition to and as part of providing the training described in Recommendation 5, the newly-aligned headquarters EEO office should design and implement a program to monitor EEO program operations at the facilities. Such a program should include, at the minimum, regularly scheduled counselor conferences and a rotating schedule of quarterly comprehensive onsite facility reviews. EEOC OFO personnel are available to assist in designing such a plan.

Recommendation 4: *BOP must take steps to ensure confidentiality*

Confidentiality within the EEO process must be ensured. The warden should not immediately be notified when a complainant contacts an EEO counselor unless the complainant requests that the counselor do so. Procedurally, the warden should not be notified unless and until the complainant files a formal EEO complaint of discrimination. The counselor may contact the alleged discriminator in an attempt to resolve the matter informally at a lower level, but complainants must be made aware of their right to remain anonymous during the pre-complaint stage. It must be stressed to all staff that EEO information is confidential. Anyone found breaching confidentiality should be disciplined in an appropriate, progressive manner.

Recommendation 5: *BOP should abolish the vouchering system*

The agency should abolish the informal vouchering system. Management officials should be held responsible through reasonable disciplinary action, as well as through performance appraisals that take into consideration EEO criteria, as discussed in MD- 715, Section II. Further, findings of discrimination against a manager should be taken into consideration for management officials' year end awards. As a suggestion, recommendations can be filtered through a third party to ensure that inappropriate information is not relayed. For example, an individual from Human Resources (HR) can collect a written statement from current and prior supervisors explaining an applicant's job duties and dates in the position. Once an HR official confirms that the information relayed is appropriate and does not contain EEO information, the information can be passed to the hiring official. Alternatively, a standardized form can be created for supervisors to use for recommendations. This form should include a reminder for managers that it is illegal to relay certain information to third parties, including EEO related information. The forms should be kept and included with the application materials. Additionally, it should be stressed in training to all staff that an employee's participation in prior protected EEO activity should never be relayed to other management officials and employees who do not need to know,

and should never be a factor in a manager's decision to hire or fire an employee. Finally, managers who disclose EEO information or rely on EEO information during the hiring process should be disciplined.

ACTION PLAN

As noted above, EEOC's OFO personnel are available to assist BOP with implementation of the above recommendations and in fact have been doing so since we first shared our draft report in November 2009. Our experience has taught us that the best way to so assist an agency is to work in concert with it by, e.g., providing technical assistance and monitoring progress. Fully recognizing that certain changes already have occurred and that some may take more time than others, we offer the following action plan:²²

1. Beginning on January 15, 2011, BOP will submit to EEOC a quarterly progress report on its efforts to implement each of the recommendations, and sub parts, contained herein. Such report will contain a description of BOP's efforts during the previous quarter, successes it has obtained, a detailed action plan for the upcoming quarter, and goals for FYs 2011 and 2012.
2. Following its review of the quarterly report, OFO will schedule a technical assistance meeting with BOP, during which we will review BOP's progress and offer suggestions, as well as schedule any follow up technical assistance visits BOP and EEOC mutually deem to be in BOP's EEO program's best interests.
3. OFO recommends that the first report contain the following:
 - a. Step by step plan to realign EEO office, with a proposed schedule of implementation (Recommendation 1)
 - b. Drafts of new EEO policies, including separate anti-harassment and reasonable accommodation policies (Recommendation 2)
 - c. Plan to disseminate new policies to all employees (Recommendation 2)
 - d. Draft training plan (Recommendation 2)
 - e. Schedule of disciplinary action for managers found to have engaged in discrimination (Recommendation 2)
 - f. List of counselor assignments by facility (Recommendation 2)
 - g. Schedule of counselor conferences (Recommendation 3)
 - h. Schedule of rotating quarter facility reviews (Recommendation 3)

²² This plan has been modified from the original draft.

- i. Draft guidance to wardens and counselors about confidentiality in the EEO process (Recommendation 4)
- j. Draft standard operating procedure for obtaining supervisor references and a memorandum explicitly prohibiting use of an informal vouchering system (Recommendation 5)

CONCLUSION

By complying with the recommendations set forth above, the Federal Bureau of Prisons will be better positioned to enhance employee faith in the integrity of the agency's EEO program and in the agency's commitment to equal employment opportunity.

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Office of Federal Operations
P.O. Box 19848
Washington, D.C. 20036

August 10, 2007

Mina Raskin, Director
Equal Employment Opportunity
Federal Bureau of Prisons
U. S. Department of Justice
320 First Street, N.W., Home Owners Loan Corporation Building
Washington, D.C. 20534

Dear Ms. Raskin:

As part of the Equal Employment Opportunity Commission's (EEOC) oversight responsibility for federal agency equal employment opportunity (EEO) programs, the EEOC's Office of Federal Operations will conduct a program evaluation of the Federal Bureau of Prisons. We will examine the EEO complaints processing program and the anti-harassment program to ensure compliance with the Commission's regulations.

Under Title VII, Section 717(b)(2) of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e-16(b)(2); Section 15(b)(1) of the Age Discrimination in Employment Act of 1967 (ADEA), as amended, 29 U.S.C. 633a; Sections 501 and 505 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 791 and 794a; and 29 C.F.R. §1614.104(b), the EEOC is responsible for overseeing federal agencies' equal employment programs and anti-harassment programs.

We have scheduled the program evaluation for September 17, 2007 – January 18, 2008. During our review, we would like to contact each employee at each facility and invite them to respond to a brief set of questions, after which we may contact employees and managers at various facilities to discuss the EEO program and/or the anti-harassment program.

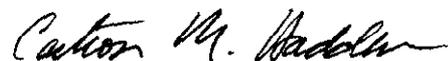
In addition, we would like to meet with personnel who have responsibilities related to the handling of complaints in the EEO process and the anti-harassment program. To facilitate this process, we request that you ask your staff and colleagues to provide us with the information described in the enclosed Request for Information (RFI). I have designated Jamie Price, Attorney-Advisor, EEOC Office of Federal Operations, Federal Sector Programs, as the Commission's contact person. You should transmit the information to Ms. Price in both electronic format and hard copy, no later than September 3, 2007. Ms. Price's email address is jamie.price@eeoc.gov.

We will conduct an entrance conference with your program officials on the first day of the program evaluation. Following this conference, we will begin distributing our invitations to agency employees. We also expect to conduct interviews with other BOP officials and employees. We request the assistance of your staff to ensure that an interview schedule is developed. After the review is completed, a report of findings and recommendations will be

issued. We will conduct an exit conference to discuss the findings and recommendations contained in the report. We welcome and encourage your attendance as well as that of a representative of the BOP Director at both conferences.

If you or your staff has any questions Ms. Price may be contacted at 202-663-4484. Please provide her the name and telephone number of a contact person to help coordinate our visit. Your cooperation is greatly appreciated.

Sincerely,



Carlton M. Hadden, Director
Office of Federal Operations

Enclosure

cc: The Honorable Harley G. Lappin, Director
Federal Bureau of Prisons
U. S. Department of Justice
320 First Street, N.W., Home Owners Loan Corporation Building
Washington, D.C. 20534

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Office of Federal Operations

REQUEST FOR INFORMATION

For each of the following questions, where appropriate, please provide the data requested for the Federal Bureau of Prisons (BOP) for Fiscal Years 2001-2006, and the first two quarters of FY 2007 separated by fiscal year and BOP facility, unless otherwise indicated. Please provide, if necessary, any and all keys needed to decipher any agency specific codes.

1. Please provide the total number of BOP employees at each BOP facility. For each BOP facility, please provide the following for each employee: 1) name; 2) title; 3) email address and 4) work phone number.
2. Does BOP have an EEO Policy Statement? If so, is the policy re-issued annually? Please provide a copy of the EEO Policy Statement for the Bureau.
3. Please provide BOP's anti-harassment policy, procedures, training materials, and brochures.
4. Please identify the name, title, telephone number and email address of the BOP official(s) who has oversight of the EEO program at each BOP facility.
5. Please identify the name, title, telephone number and email address of the BOP official(s) who has oversight of the anti-harassment program at each BOP facility.
6. Please identify the number of EEO complaints filed at each BOP facility that alleged retaliation between FY 2001 and FY 2006 and the first two quarters of FY 2007. Please provide the facility name, agency case number, the name of the complainant, and the manner in which the complaint was resolved by the agency: 1) finding of discrimination; 2) no finding of discrimination; 3) dismissal; 4) settlement; or 5) withdrawal from the EEO process.
7. Please identify the number of cases handled by BOP's anti-harassment program between FY 2001 and FY 2006 and the first two quarters of FY 2007. For each case, provide the facility name, the case number, the name of the BOP employee, the findings of the investigation, the number of days that each case was open (the date from the employee reporting the claim to the date that the agency made a decision), and the type of corrective action taken by the agency. If harassment was found, but no corrective action was taken, specify the reasons for inaction.
8. Please explain why the number of retaliation complaints for FY 2006 differs between the "No Fear" data and the Form 462. Please identify which numbers are correct: the "No Fear" data reports 178 complaints alleging retaliation; and the Form 462 reports 188 complaints alleging retaliation.

9. Please identify how many employees have received training in BOP on the following topics: (a) EEO process, and (b) anti-harassment program. For each topic, explain whether the training is voluntary or mandatory, the manner in which the training is presented (i.e., in-person, CD, etc.), and how often the agency provides each type of training to employees.
10. Please identify how many BOP managers have received training on the following topics: (a) EEO process; (b) anti-harassment program; (c) management skills; and (d) communication skills. For each topic, explain whether the training is voluntary or mandatory, the manner in which the training is presented (i.e., in-person, CD, etc.), and how often the agency provides each type of training to managers.
11. Please provide a list of BOP employees who have been disciplined following a reported incident of harassment or retaliation. In addition, please provide the disciplinary procedures that BOP utilizes.
12. Please provide all reports addressing climate assessment surveys of BOP employees and managers between FY 2001 - FY 2006 and the first two quarters of FY 2007. If a report was not prepared, please provide a summary of the findings.
13. Please provide a BOP organizational chart and a BOP telephone directory for each BOP facility.
14. Please describe the Office of General Counsel's involvement if any, in the EEO complaint process, including but not limited to, reporting relationships, review of proposed final agency decisions, or review of EEO policy decisions.

FCC Victorville

The Victorville Federal Correctional Complex (FCC) is located in Victorville, California. The Complex consists of three main facilities: FCI Victorville Medium I, a medium security Federal Correctional Institution; FCI Victorville Medium II, a medium security Federal Correctional Institution that also contains a Federal Penitentiary Camp; and USP Victorville, a high security United States Penitentiary. The Complex opened with the activation of FCI I in June 2000, the Federal Penitentiary Camp in August 2000, the USP in July 2004, and the FCI II in December 2004.

The Complex Warden, also known as the CEO of the Complex, has oversight of the entire facility and sole oversight of USP. He has held the position since April 3, 2005. Below him is a Warden for FCI I, who has been in his position since April 17, 2005, and a Warden for FCI II, who has been in her position since October 30, 2005. Each of the three facilities has two Associate Wardens.

According to the documentation BOP provided, FCC Victorville has approximately 870 employees. However, according to the Associate Warden with oversight of Affirmative Action, there were 916 employees complex-wide at the time of our visit.

FCC Butner

FCC Butner consists of five facilities: a minimum-security facility (the Camp); a Federal Medical Center (FMC); two medium-security Federal Correctional Institutions (FCI 1 and FCI 2); and a low-security Federal Correctional Institution (the Low). FCI 1 is the original Butner facility, which opened in 1976; the Camp opened in 1991; the Low opened in 1995; the FMC opened in 2000; and FCI 2 opened in 2006. FCC Butner is located in north-central North Carolina near the Research Triangle area of Durham, Raleigh, and Chapel Hill.

FCC Butner houses approximately 4,300 offenders and employs about 1,400 staffers, including 100 public health officers. With its five institutions, FCC Butner is BOP's largest complex.

Butner FCC management is comprised of three Wardens: one for FMC, one for FCI 2, and one for Camp, Low, and FCI 1. Although the three Wardens technically are co-equals with regard to their individual institutions, decisions affecting Butner FCC as a whole are within the authority of the FMC Warden.

FMC Lexington

BOP Federal Medical Center (FMC) is located in Lexington Kentucky and opened as a federal prison in 1974. BOP FMC is commonly referred to as "the campus." The campus houses three buildings on its property and employs approximately 440 personnel. One building is known as Treadway Arms and central staff employees occupy that

building. The other two buildings on the campus house the inmates. The campus is coed; however, each prison building (facility) houses same-sex inmates.

The main prison facility serves as an administrative prison facility and houses approximately 2,034 male inmates. As an administrative prison facility, FMC has a special mission, which is to serve as a hospital and medical referral center for male inmates with serious or chronic medical problems. The second building on the campus is adjacent to the FMC, is defined as a minimum security satellite facility, and houses approximately 271 female inmates. The minimum security satellite facility has dormitory housing, a relatively low staff-to-inmate ratio, and work-release programs.

Currently, the campus is managed by one Warden who has oversight responsibility over the entire BOP FMC campus. The Warden's immediate management team consists of three Associate Wardens and one Executive Manager who is not an Associate Warden. There are four primary divisions on the campus. The Executive Manager and each Associate Warden is assigned a division. The four divisions in FMC are: Programs (drug rehabilitation, education, correction services); Operations (the daily business of the prison facility); Clinical (the hospital) and Unicorn (prison industry (call center and cable wires)).

At the time of our visit to BOP FMC, the Warden had been there since October 2005. Ordinarily, it is BOP's practice to assign and reassign Wardens and Associate Wardens every two or three years to the FMC in Lexington, KY. However, we were informed that the current Warden is nearing retirement and a decision was made to not reassign him to another facility. The Warden's anticipated retirement date is June/July 2009.



U.S. Department of Justice

Federal Bureau of Prisons

Washington, D.C. 20534

November 24, 2009

Carlton M. Hadden
Director, Office of Federal Operations
Equal Employment Opportunity Commission
P.O. Box 19848
Washington, D.C. 20036

Dear Mr. Hadden:

The Federal Bureau of Prisons (BOP) was notified in August 2007, that the Office of Federal Operations (OFO) of the Equal Employment Opportunity Commission would be conducting a review of "the EEO complaints processing program and the anti-harassment program to ensure compliance with the Commission's regulations". The draft Evaluation Report was sent to the BOP on November 10, 2009.

In your cover letter you asked the BOP to respond to the draft concerning factual errors by November 24, 2009. You indicated your final report will be issued the next day, on November 25, 2009. By letter dated November 18, 2009, the BOP requested an extension of time in order to respond, and requested to schedule the meeting mentioned in your August 10, 2007, letter prior to the report being issued. These requests were denied.

The BOP takes the findings of the proposed report very seriously, and will work with your office concerning the recommendations. It is in the best interest of the agency to improve our EEO program, as we strive to be a model government program. The agency is committed to a diverse and equitable workplace for all staff, and to fostering an atmosphere where staff feel comfortable in raising issues concerning their employment.

The BOP would like to meet with your staff, partially to discuss the research methodology employed. The report does not contain information needed to fully assess and interpret the findings. For example, how many staff were asked to participate and how many interviews were completed? How was the information

analyzed to reach the conclusions? Are these findings based on general impressions from researchers, or was there an analysis of the qualitative information obtained in interviews (e.g., a coding instrument used to quantify the statements and an assessment of theme-frequencies to identify patterns in the responses)? It is difficult for the BOP to address the findings of the report without these details concerning methodology.

The agency is also concerned that the sample of staff responses was not representative of the BOP. Generally, a response rate of 10% to electronic surveys would not meet the threshold level for social science research. In regard to the in-person interviews, the three facilities were selected because they appeared to have abnormally high rates of EEO problems relative to the agency. It is also unclear whether the Warden/Union President notified all staff in the facility to request participation, or whether the staff interviewed were selected by the Union. Again, it is unknown how many interviews were conducted, but it appears the number of interviews was small. These factors counsel against findings that can be generalized to the entire agency.

The following information is provided in response to your request for clarification of factual errors:

- Page 6: In the third full paragraph, please note that the responsibility for the Affirmative Action portion of the BOP's EEO program rests with the Affirmative Action Branch, which falls under the supervision of the Human Resource Management Division.
- Page 7: In the second to last paragraph, the proper title is "Associate General Counsel for Discrimination Complaints and Ethics. Also "the EEO Officer."
- Page 11: The last bullet on the page references the Office of Internal Affairs (OIA). Please note that any staff, not just the Warden, can refer a matter to OIA for investigation. Please see Attachment A - Program Statement 1210.24, concerning this issue.
- Page 12: The report states, "Investigations are kept open for indefinite or prolonged periods of time." OIA has internal guidelines for the completion of investigations, although complications may extend these deadlines.
- Page 12: The first full bullet statement, and footnote 6, indicate that staff are fearful of investigations by

local Special Investigative Services. The acronym "SIS" stands for Special Investigative Supervisor. Also, the determination as to which allegations are investigated locally, and which are investigated by the national OIA office or other Department of Justice components, is made at the Central Office level. Therefore, there is oversight at the national level of investigations that are opened. Please see Attachment A - Program Statement 1210.24, concerning this issue.

- Page 12: The report discusses "Vouching." The informal term for reference checking within the BOP is "vouchering,". Reference checking is a formal process, governed by policy which uses a specific form. The required form is retained with the selection materials. Please see Attachment B - Program Statement 3000.03, section 335.7.
- Page 15: In the second full paragraph, the report suggests that EEO counseling services may not be available at all institutions. In the absence of a collateral duty EEO counselor due to resignation, transfer, etc., employees receive counseling through the Central Office EEO staff.
- Page 15: Footnote 9 should state there are five full time EEO counselors.
- Page 16: In the last full paragraph the report states, ". . .an employee stated that EEO counselors are selected by the warden. . ." Full time EEO counselors are selected by the EEO Office and are members of the EEO staff. Collateral duty EEO counselors are nominated by the warden, and are selected by the EEO Officer, as per policy.
- Page 19: In the third full paragraph, the report notes, "Many employees were not aware of a single management official who was disciplined for discrimination, harassment or retaliation." Pursuant to the Privacy Act, staff are not made aware of disciplinary action taken against other staff. Each year, the BOP provides a report pursuant to the No Fear Act stating discipline imposed for violators of the anti-discrimination laws.
- Page 19: Under "Finding 3", the report notes training does not change from year to year. The EEO Annual Refresher

Training Power Point slide-show and lesson plan are changed annually in accordance with guidance from the Department of Justice, the EEOC, new initiatives, and a review of EEO complaints.

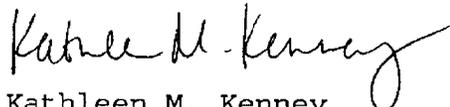
Page 20: The report discusses training for managers in the second full paragraph. The agency conducts training for new supervisors (e.g., New Lieutenants Training, New Warden Training, New Associate Warden Training, and Principles of Leadership, previously called Core Skills, provided to Department Heads). Part of this course includes training on workplace discrimination and EEO policies. The eight-hour course, Civil Treatment for Managers, is a licensed product from an outside vendor, Employment Learning Innovations (ELI). The course is taught by BOP employees who have been certified by ELI to teach the course. Institutions can also request this training for their managerial staff at any time. Similar training for non-supervisory staff (Civil Treatment for Employees), is also available.

Page 21: The report indicates the Director has not issued "an EEO Policy Statement for the year." The Director annually issues a Commitment Letter during the first part of the fiscal year, with the latest being published on October 20, 2009. Please see Attachment C - statements from 2007, 2008, and 2009.

Page 25: The report suggests the BOP does not have a Reasonable Accommodation Coordinator (RAC). In accordance with the Department of Justice Reasonable Accommodation Manual, the BOP has assigned staff for this responsibility since 2002. The RAC has recently been elevated to a full time, GS-15 level position.

Thank you for the opportunity to review the draft report. We look forward to discussing these matters further with your staff.

Sincerely,



Kathleen M. Kenney
Assistant Director/General Counsel

Enclosures



U.S. Department of Justice

Federal Bureau of Prisons

Washington, DC 20534

March 12, 2010

Dexter Brooks
Director, Federal Sector Programs
Office of Federal Operations
U.S. Equal Employment Opportunity Commission
131 M Street, N.E.
Washington, DC 20507

Dear Mr. Brooks:

Thank you for the opportunity for the Bureau of Prisons (BOP) to provide additional comments regarding the draft Program Evaluation issued on November 10, 2009, by the U.S. Equal Employment Opportunity Commission (EEOC). As mentioned in our meeting on January 26, 2010, the BOP takes the findings in the draft report very seriously and is committed to addressing the issues raised in the report. We are providing these substantive comments in addition to those sent on November 24, 2009, for consideration as you finalize the report.

I. The BOP's Implementation of Draft Recommendations

The BOP is committed to fairness and equal opportunity in the workplace and continuously strives to be a model employer with a model EEO program. As such, given your evaluation, we are seriously considering options to best meet the EEOC's recommendations. As indicated below, some recommendations are already in the process of being implemented, while some require further study.

For example, Recommendation 1 states that the EEO Officer should report directly to the agency head. The BOP recognizes the concerns identified by the report, and is committed to establishing an organizational structure that is free of perceived conflicts of interest. We are actively evaluating our organizational structure to determine the best course of action to address the EEOC's concerns in light of the particular organizational and logistical challenges this recommendation presents for the agency. We hope to work cooperatively with you in resolving the concerns raised in this regard.

Recommendation 2 states that management support for EEO must be increased. Although many of our managers fully support the EEO program, the BOP has adopted a comprehensive plan for addressing this recommendation. We have already begun additional training to ensure that employees are aware of their responsibilities in this regard. Training has already been, or will be, provided to all Wardens during Regional Meetings. The Director will also be addressing EEO issues during a national video-conference on March 23, 2010, which will be viewed by Wardens, Associate Wardens, Department Heads, and other supervisors in all BOP facilities. Training will also be provided to all Employee Services Managers at a national conference during the week of April 25th, 2010. The EEO Office is also developing a training module discussing retaliation in particular, as well as other EEO issues, to be provided to managers at individual institutions and offices. This training module will be completed by April 2, 2010, and will be used in concert with our other training modules, to meet recommendation #5, discussed below.

In addition, Recommendation 2 notes the absence of program managers related to the EEO constituencies. Please note that the BOP has a strong Affirmative Employment program, which falls within the Human Resource Management Division. Every institution has collateral duty program managers which meet regularly, address recruitment and retention issues, and sponsor diversity training at the local level. The BOP also has full time Affirmative Employment/Diversity staff located at the Regional and Central Office levels to support the agency's diversity efforts. Also, the BOP has had a national Reasonable Accommodation Coordinator (RAC) since 2002. In 2009, the agency made the RAC a full time GS-15 position.

Recommendation 3 states that BOP should revise and reissue EEO policies, including its anti-harassment policies, and more effectively disseminate them. The BOP agrees with this recommendation, and is in the process of updating its existing policy, and drafting an anti-harassment policy. These drafts will be completed by June 25, 2010. However, please note that all BOP policy affecting the working conditions of bargaining unit staff, including the anti-harassment policy, must be negotiated with the Union prior to implementation. This is a lengthy process with a backlog of policies waiting to be negotiated. In the interim, the Director will continue to issue his annual statement to all staff regarding EEO principles and the agency's commitment to these principles.

Recommendation 4 would require a full time counselor at each area facility. The BOP recognizes that the establishment of full time counselors would address the perceptions concerning availability, expertise, and impartiality. However, the BOP continues to face significant budget shortfalls, and staff shortages that affect security and safety must have first priority. The cost of this recommendation is estimated at approximately \$8.6 million. Further, an analysis of the work load of the current full time counselors does not indicate that a full time counselor at each facility is needed. However, the BOP will explore the possibility of establishing additional full time counselor positions to provide as much access to staff as possible. Recommendations for additional positions will be submitted to the BOP's Resource Allocation Committee meeting in early August, 2010.

In addition, we have already taken into consideration your finding in the draft report that some staff did not know who counselors were or their contact information. We have recently instructed our field locations to create an easily accessible page on their intranet sites that clearly lists their EEO counselor contact information to ameliorate this problem.

Recommendation 5 provides that the BOP should have mandatory training for all staff, and that this training should be conducted by an outside provider. The BOP is generally supportive of this recommendation. As will be explained further below, the BOP has a long-standing mandatory training requirement for all staff and EEO counselors. The content of some of the training the BOP uses is provided by an outside provider. Although using an outside provider for all training may not be fiscally possible, the agency will continue to explore ways to improve and expand the training provided. A formal assessment of training opportunities, to include on-line classes, will be completed by June 25, 2010.

Recommendation 6 concerns greater oversight of the EEO programs in the field by the EEO Officer. The BOP agrees additional oversight will be beneficial, and is in the process of implementing this recommendation. The BOP also has a very active internal audit office, known as Program Review, which makes site visits to all facilities on a regular basis. The BOP will add items related to the EEO program to the Program Review guidelines by June 25, 2010, in order to assist with the oversight in this area.

Recommendation 7 addresses the need for confidentiality of the EEO process, and states that Wardens should not be notified of complaints unless the complainant requests that the counselor do so. The BOP recognizes and supports the need for confidentiality in the EEO process. The counseling forms used by BOP staff clearly indicate the complainant's right under EEOC regulations to remain anonymous if he or she chooses to do so.

In addition, Wardens are usually contacted as the agency official with the necessary authority to informally resolve issues. The BOP has found it beneficial to have this intervention, so that issues can be addressed early in the process, before they escalate to the point that there is permanent damage to the workplace. BOP leadership has been trained and advised to attempt early, informal resolution of all workplace concerns. Thus, the comments in the draft report regarding the EEO counselors contact with the Warden would impede this progress. We are hopeful that the additional training to our managers referenced in response to recommendation #2 will address this concern. In addition, we will be evaluating how best to balance concerns regarding confidentiality with the need for effective management response to workplace issues.

Recommendation 8 concerns the misperception that the BOP is not holding managers accountable for EEO violations. We assure you that BOP does, in fact, hold managers accountable if they are found to have violated EEO policies or civil rights laws. This misperception exists, in part, due to the requirements of the Privacy Act. Under the Act, the agency is not permitted to inform a complainant of the discipline of another staff member. We look forward to working with the EEOC to determine best practices for changing this misperception.

Finally, Recommendation 9, which asks the BOP to abolish its vouchering system, creates concerns for the agency. The BOP agrees that it is imperative that EEO activity not be misused or considered in any fashion in selecting applicants for positions within the agency. However, for an agency of this size, an efficient and uniform reference checking mechanism is necessary for the selection process. The BOP has a formal vouchering system, defined in policy and with a mandatory form, in place to assist in the selection process for internal selections. In light of the recommendations in the draft report, the BOP has revised its mandatory form so that it is explicit that management officials are prohibited from discussion and/or considering prior EEO activity in relation to selections.

Enclosed please find a copy of the relevant policy and the amended vouchering form. The BOP will continue to re-emphasize to management officials that it is prohibited to discuss and/or consider prior EEO activity in relation to selections. Further, the BOP would welcome the opportunity to work with the EEOC to determine best practices concerning reference checks, which we can incorporate into our policy and provide to our managers.

II. Report Findings

The BOP recognizes that the recommendations in the draft report will improve our EEO program, and we look forward to working with the EEOC to this end. However, we would like to address some of the conclusions in the draft report that we believe are overly broad considering the scope of the evaluation.

As was discussed during the in-person meeting, we are concerned by the conclusion that "widespread" fear of retaliation exists in BOP based upon the survey and the limited interviews conducted. As you know, the draft report states that 3400 individuals responded to the survey. This represents less than ten percent of BOP's total staff of over 37,000. In addition, as you stated at the meeting, EEOC interviewed only approximately eighty staff at three BOP locations. These interviews were not random, and were self selected or arranged by the Union officials.

The BOP does not question the perceptions of the staff members interviewed as part of the report, and takes the issues identified very seriously. However, the three findings of the report indicate there is a "widespread" fear of retaliation, and suggest that all or most BOP employees lack confidence in the program and are unfamiliar with the EEO process. We believe that the relatively small number of staff interviewed, as well as our own continuous surveys of staff, do not support the broad conclusions of these findings.

In addition to the language of the three findings, the report uses similarly broad statements throughout to reach underlying conclusions. Without providing further context, these statements could be read to suggest that a larger study was conducted, and are not supported as conclusions applicable to the entire agency. Specific examples of these underlying conclusions can be cited for your use if requested.

We respectfully request that the EEOC consider modifying its findings to exclude the word, "widespread," and to clarify that the findings reflect only the views of those interviewed in three BOP facilities. The BOP requests that the number of staff interviewed be explained fully in the report, and that specific support be provided for each underlying conclusion. Further, as we discussed at the meeting, we would appreciate if the report included a summary of the 3400 responses by survey question. We greatly appreciate your consideration of these requests.

III. Additional Information Concerning the Findings

Finally, the BOP would like to take this opportunity to provide you further information concerning our training and Alternative Dispute Resolution (ADR) programs. We feel an explanation of our existing efforts in these areas can assist in your review of the BOP's program.

As indicated above, the BOP recognizes that improvements to training provided to staff can be made, and we continue to evaluate our efforts. However, we also would like to provide additional information regarding the agency's current EEO training in order to respond to the conclusion on page 20 that the agency's EEO training is inadequate. The training provided to all staff during Annual Refresher Training was designed to meet the requirements of the No Fear Act and to provide a slide show that could be taught consistently nationwide. Copies of the slide show were provided to the evaluators (see enclosed). The report states that the slide show does not emphasize EEO issues. However, the majority of the slides cover the anti-discrimination laws and the EEO process.

In addition to Annual Refresher Training required for all 37,000 staff, all newly selected Wardens and Associate Wardens receive EEO training by the EEO Officer. Further, all newly selected Wardens and Associate Wardens, receive training developed by an outside provider titled, "Civil Treatment for Managers." This course is six to eight hours in length, and discusses the importance and benefits of a diverse workforce. This course is also taught during our mandatory Principles of Leadership class for all department heads in the agency. Finally, the BOP provides an initial 32 hour training class for new EEO counselors, and an additional eight hours of continuing education for existing counselors on an annual basis.

The BOP has invested time and resources in providing training to staff on EEO issues and workplace concerns. While it is clear from your evaluation that we can improve upon the delivery of the presentations, the agency has been committed, and will continue to be committed, to providing training on EEO matters.

The report also notes, on page 21, that the use of ADR was "non-existent at two facilities" and that ADR was not widely used. However, the BOP offers several ADR programs. Mediation is actively used in the EEO process by the BOP. The BOP has an interagency agreement with the FBI to use their staff as mediators. In FY 2009, the BOP used mediation/ADR to attempt informal resolution of 40 EEO complaints. Sixteen of these complaints were resolved, constituting a 40% resolution rate.

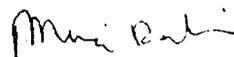
In addition to ADR conducted as part of the EEO process, the agency has established local programs in order to assist in the resolution of workplace disputes. Local Dispute Resolution Specialists are selected by the Wardens and Union officials in an attempt to resolve issues that may not fall into the EEO process, or other administrative forums. This program is active at forty-nine BOP facilities. In addition, the BOP established a full time Ombudsman program in 2000, in order to provide staff with a neutral point of contact to resolve workplace issues.

Again, while recognizing the BOP can improve its programs, we respectfully request that this further information concerning training and ADR programs be considered as part of the EEOC's review.

IV. Conclusions

Please note, this response represents our initial review of the draft report and recommendations, and we look forward to working with the EEOC on additional measures the BOP can consider. As we continue to work on implementing your recommendations, we would appreciate consideration of these comments, as well as those provided to the EEOC on November 24, 2009, in the final report. We greatly appreciate the opportunity you have provided the BOP to express its concerns both in person and in writing. If you have any questions, please do not hesitate to contact me at (202) 514-6165.

Sincerely,



Mina Raskin
EEO Officer

- (3) The individual selected and the supervisor of the position will be required to sign a training agreement. A sample training agreement is shown in Attachment 3-17.
- (4) Upon completion of the training program, the target position may be announced locally and selection made through normal merit promotion procedures. Alternatively, the trainee may be promoted to the target position without further competition if the target position was clearly stated in the original detail-for-training announcement.
- (5) The crediting plan for Apprentice Positions, dated July 1984, will be used in filling these details-for-training.
- (6) The details will be for periods of 120 days up to a total of one year. The trainee will be retained in the current series and grade. The detail will be documented with a remark such as: "Detailed for training to an Electrical Equipment Repairer position."
- (7) The trainee will remain eligible for step increases and career promotions based on the current series and grade.

335.7 REFERENCE CHECKING

1. PURPOSE AND SCOPE. To establish procedures to enable selecting officials to check the references of candidates in the best qualified and/or non-competitive group.
2. STAFF AUTHORIZED TO PERFORM REFERENCE CHECKS. The selecting official or designee is authorized to conduct reference checking.
3. REFERENCE CHECK CONTACTS. Three categories of references may be checked:
 - individuals in the applicant's current or past chain of command;
 - for technical positions, individuals expected to have knowledge of the applicant's technical skills (i.e., institutional, regional and/or Central Office counterparts); and

- personal and professional references provided by the applicant.

4. WHO MAY BE REFERENCE CHECKED. Candidates whose applications will be forwarded to the selecting official (i.e., best qualified candidates and those in the non-competitive group) may be reference checked.

For non-bargaining unit positions (regardless of the bargaining unit status of the applicants), one has the option of conducting checks on all, some, or none of the candidates.

For bargaining unit positions (regardless of the bargaining unit status of the applicants), one has the option of conducting checks on all or none of the candidates.

Additionally, in the case of **bargaining unit positions**:

- The decision to reference check candidates on one list (e.g., the best qualified list or non-competitive list) requires that all of the candidates on that list be checked. It does not, however, require that the candidates on the other list be checked as well, unless the selecting official so desires. For example, the decision to reference check the best qualified list requires that all of the best qualified candidates are checked, but the non-competitive applicants need not be checked unless the selecting official wishes to reference check that list and vice versa. Once, however, the decision is made to reference check anyone on a list, **all candidates on that list** must be checked.
- If the decision is made to reference check, the "all or none" requirement applies to the first level of checks only. Should the selecting official or other designees decide to do a subsequent reference check on any of the candidates, the subsequent reference checking need not be performed on all of the candidates.
- Applicants will be notified as to whether reference checking was conducted for the vacancy after the selection is made.

5. APPROPRIATE AREAS OF INQUIRY. The attached Confidential Reference Check form will be used (see Attachment 3-27). The questions outlined on the attached form are required and follow-up questions for clarification purposes are permissible.

Additionally, should the reference checker determine that additional job-related questions are necessary, those questions are to be added to this form and asked of all applicants who are reference checked for that vacancy.

The reference checker is authorized to verify the information the applicant submitted.

Questions shall be framed so they do not indicate an applicant's race, sex, color, religion, national origin, disability or sexual preference.

The form will be used to record the results of the reference checking, ensuring that specific ratings are not directly linked to specific references. Checks may be used to distinguish each reference received in the appropriate boxes. Additional forms may be used, if more than three references are contacted.

6. INAPPROPRIATE AREAS OF INQUIRY. Inquiries are to be related to the employee's job performance and knowledge, skills and abilities. Inquiries shall not address any of the following topics:

- age,
- marital status,
- dependents,
- country of origin,
- race,
- sex,
- religious practices,
- sexual preference,
- medical history,
- prescription drug use,
- disability or other physical condition,
- workers compensation claims,
- authorized use of leave, or
- labor union participation.

7. MAINTENANCE. For **non-bargaining unit positions** (regardless of the bargaining unit status of the applicants), the reference check form will be confidential and maintained in the Merit Promotion File in accordance with established procedures for file retention.

For **bargaining unit positions** (regardless of the bargaining unit status of the applicants), the applicant's reference check form

will be accessible to the applicant after a selection has been made or the Merit Promotion File is otherwise closed. The reference check forms will be maintained in the Merit Promotion File in accordance with established procedures for file retention.

C O N F I D E N T I A L
 REFERENCE CHECK

Applicant: _____ Vacancy Announcement: _____

Title/Location of Vacancy: _____

As noted in the Human Resource Management Manual (CN ***), selecting officials, or their designee, may elect to check the references of Best Qualified or non-competitive applicants for a vacancy. The questions outlined below are required when references are checked and follow-up questions for clarification purposes are permissible. Additionally, should the reference-checker determine that additional job-related questions are necessary for a specific vacancy, those questions are to be added to this form and asked of all applicants whose references are checked for that vacancy. **Reference checkers may not discuss, and must take extreme care to ensure that questions posed in no way solicit: an applicant's race, color, sex, religion, national origin, age, disability, sexual orientation, gender identity, parental status, or any prior EEO activity (including whether the applicant has filed a complaint of discrimination or retaliation).** A summary of the reference-checking results for each applicant is to be recorded on this form and retained in the applicable promotion file. Results are not to be directly linked to the reference contacted.

Current Skill/Ability Level	Not Observed	Below Average	Average	Above Average
Administrative Skills (e.g., establishes plans, develops systems and processes, prioritizes and organizes work)				
Oral Communication Skills (e.g., fosters open communications, listens, delivers presentations, interpersonal skills, builds relationships, diplomacy)				
Written Communication Skills				
Technical Expertise				
Responsiveness (e.g., commitment to quality, meets expectations and deadlines)				
Analytical Ability (e.g., problem solving abilities, sound judgement, ability to analyze issues)				
Additional Job Related Questions/comments:				
Additional Job Related Questions/comments:				

Disciplinary Actions within last two years, if known: .

Would you employ the individual in this position?

Supervisory Positions Only: Leadership Skills (e.g., provides direction, fosters teamwork, motivates staff, values diversity, promotes agency mission, ability to train subordinates)	Not Observed	Below Average	Average	Above Average
Supervisory Positions Only: Is applicant mobile?	(Yes)	No	Unknown	

References: (Name) _____ (Title) _____
 (Name) _____ (Title) _____
 (Name) _____ (Title) _____
 Form completed by: (Name) _____ (Title) _____ (Date) _____



U.S. Department of Justice

Federal Bureau of Prisons

Washington, DC 20534

October 21, 2010

Dexter Brooks
Director, Federal Sector Programs
Office of Federal Operations
U.S. Equal Employment Opportunity Commission
131 M Street, N.E.
Washington, DC 20507

Dear Mr. Brooks:

We appreciate the opportunity to review the second draft of the U.S. Equal Employment Opportunity Commission (EEOC) Program Evaluation Report and to update the information provided to you in our letter of March 12, 2010. The Federal Bureau of Prisons (BOP) is committed to ensuring equal employment opportunity in all of its facilities and looks forward to continuing to work with your office regarding the EEOC's recommendations.

Although we are committed to working with the EEOC to address the EEOC's recommendations, BOP does not agree with the findings of the Program Evaluation. As we discussed in the meeting between BOP and EEOC on January 26, 2010, we remain concerned at the small sample of staff used to reach the conclusions of the report. We recommend that EEOC include further context regarding the scope of the evaluation in the final report. Currently, the report states that from the approximately 35,000 employees surveyed, 3,400 responses (9%) were received. During our meeting, EEOC staff committed to include a redacted summary of the responses to the survey in order to provide support for the findings. In addition, at the meeting, EEOC staff stated that approximately 80 staff members out of BOP's approximately 37,000 person workforce were interviewed. This information was not included in the final report, and without this context, the report inadvertently creates the perception that its conclusions are based on interviews of a much larger group of staff members.

The exceedingly low response rate referenced above raises significant concerns about the reliability and validity of any conclusions from these data, particularly since the interviews with employees were conducted at only three of BOP's 115 facilities. Moreover, during the same time period as the EEOC interviews, BOP collected survey data from staff using a highly representative sampling structure to create generalizable findings; the survey included specific questions regarding staff perceptions of retaliation for reporting workplace problems. Only 5.7% of staff reported that they failed to take formal action regarding a problem they had in the workplace due to fear of retaliation in 2007 (See attachment A for details). Although we are concerned about any level of fear of retaliation among our workforce, this does not indicate that, with respect to BOP as a whole, there exists a widespread fear of retaliation as indicated in the EEOC analysis.

Recognizing that the report focuses on staff perceptions concerning retaliation, we believe it is important to also consider the low level of adverse findings, by the Department of Justice (DOJ) and the EEOC Office of Federal Operations (OFO), rendered during the program evaluation period. For example, in fiscal year (FY) 2006, only six adverse decisions alleging reprisal as a basis were entered either by the DOJ Complaint Adjudication Office, or by OFO; whereas in FY 2007, there was just one adverse decision. In FY 2008, no adverse decisions concerning retaliation were issued against the agency; and in FY 2009, there were only three adverse decisions concerning retaliation. While we share your concern that the staff interviewed by the EEOC expressed a fear of retaliation in the workplace, data of actual findings of reprisal by third parties, including the EEOC, provide important context concerning the workplace in the three facilities examined during the evaluation.

Notwithstanding the BOP's position regarding the EEOC's findings, it is our goal to ensure that BOP is a model federal employer, and as we have stated since the initial draft report, we greatly appreciate your recommendations. Indeed, if even one employee fears retaliation, that is one too many, and we welcome the opportunity to address the issue.

To that end, we have already incorporated many of the initial recommendations and have provided below an update of the actions initiated following the issuance of the first draft of the report in November, 2009.¹

EEOC Recommendations

Recommendation 1: BOP's EEO office must be realigned.

We have adopted your recommendation to relocate the EEO office outside of the Office of General Counsel. Effective immediately, the office will be moved to the Program Review Division (PRD), which is the independent audit arm of the agency. The PRD Assistant Director will be designated as the EEO Director of the Federal Bureau of Prisons, have oversight responsibilities for the EEO and report directly to the Director. Under the direction of the PRD Assistant Director, the Central Office(headquarters) EEO Officer will retain day-to-day supervision of the EEO Office and its functions. I also note that the EEO Office and Affirmative Action Branch, which is located in the Human Resource Management Division, have increased their communications and will continue to examine areas in which they can work together.

Recommendation 2: BOP must increase management support for EEO.

On October 22, 2010, the Director of BOP will issue his annual commitment letter, which affirms the importance of the EEO process, management's role in the process, and the nexus to BOP's mission. This commitment letter also reiterates the requirement that all EEO activities be kept confidential.

The BOP EEO Office has increased its training efforts. Last spring, the EEO Officer provided in-person training to all wardens at their regional wardens' meetings. The training module focused on retaliation and was created after reviewing training provided by the EEOC. On June 3, 2010, the EEO officer provided training regarding the EEO process to all BOP supervisors via video conference. In addition, the EEO Office has created a training module focusing on retaliation and all managers are required to review it before March 31, 2011.

¹ Please note that we are providing this update consistent with the formatting change in the recommendations in the more recent draft report, rather than in the format previously provided.

Finally, the EEO presentation during this year's Annual Training will focus on Alternative Dispute Resolution (ADR). A DVD will be shown, that was prepared with collaboration from several Department of Justice EEO offices, which illustrates a mediation session. Although we are unable to provide separate in-person EEO training annually to all of our staff, we are committed to utilizing this Annual Training for that purpose. The Annual Training provides the best forum to reach all of our staff annually, and gives them the opportunity to ask questions about the EEO program and process. We are committed to ensuring that only qualified staff, competent to answer questions on EEO matters, will provide Annual Training. We believe that the increased training will strengthen managers' and staff's understanding of, and support for, the EEO process.

While we recognize the EEOC has suggested that BOP provide 16 hours of training to all managers and 8 hours to all staff, with class sizes no greater than 45 participants, by an outside source, it is not economically feasible to undertake such an expensive project in these times of budgetary cutbacks. Specifically, to accomplish this recommendation, we would need to hold 113 separate 2-day training classes for supervisors, and 731 classes for the remaining 32,928 non-supervisory staff. Assuming training costs of a low minimum cost of \$100/participant per day, the estimated cost to meet this recommendation would be \$4,315,000 without including the costs associated with staffing issues such as shift reassignments and overtime. As described above, we have taken steps to increase training and will continue to investigate other economically feasible ways, such as online training modules, to enhance the training of our 37,000 BOP employees.

Full-Time EEO Counselor Positions

The BOP agrees that staff should have access to a full-time EEO counselor. Based upon the steps outlined below, by January 2011, BOP will eliminate the collateral duty EEO officers in all locations except Guaynabo, Puerto Rico, and Honolulu, Hawaii, which will retain a collateral duty counselor due to their locations.

To effectuate this change and based on careful analysis, BOP has determined that placing 3 full-time EEO officers within each of its six regions will provide EEO accessibility and service to all of its staff. We have implemented this plan by hiring thirteen additional full-time EEO counselors. Training has been scheduled for the week of November 30, 2010, and the new EEO counselors should be in place by late January, 2011. With the addition of the five existing full-time EEO counselors, a total of eighteen EEO counselors will provide EEO counseling services for all staff at the BOP. We will monitor their workload and, if the need arises and resources permitting, additional full time EEO officers can be hired.

The EEO Office has notified each facility to ensure that the name and contact information for their respective EEO counselors are listed on an easily accessible staff bulletin board and on the institution's intranet site. The EEO Office has drafted guidelines that BOP's Program Review Division will use during site visits to periodically ensure this information is available. An article announcing the full-time counselor program will be posted on BOP's intranet. Further, all counselors will be introduced to the staff they will service at institution staff recalls.

With regards to revising and reissuing EEO policies, the EEO Office has already drafted an anti-harassment policy based on the EEOC's publication, Model EEO Programs Must Have an Effective Anti-Harassment Program, issued September, 2005, which is pending final review. As we have previously advised, all BOP policies that affect the working conditions of the bargaining unit staff must be negotiated with the union prior to issuance. We will provide a copy of the proposed policy to the union as soon as practicable and it will be placed in the queue for negotiations, consistent with our Master Agreement. We will make every effort to expedite the negotiations. Once issued, any new policy will be posted on our intranet, and a link to this policy will be added on the EEO Office page.

Finally, in an effort to ensure the success of this new program, and in the spirit of positive labor relations, the EEO Office and the National Fair Practices Coordinator of the Council of Prison Locals have agreed to meet on a monthly basis in the first year (and thereafter as needed) of the implementation of the full time EEO counselor program. These meetings are designed to provide a dialogue to ensure that staff

members receive proper EEO counseling at the local and regional levels.

Recommendation 3: BOP's headquarters EEO office must monitor its field operations.

The full-time EEO counselors who are either physically located at, or will routinely visit, a BOP institution, will be in a position to directly monitor and connect with the institutions on a routine basis. All of the full-time EEO counselors will report directly to the Central Office EEO officer, and will not be supervised by any institution staff. As noted above PRD Assistant Director who reports directly to the Director, will oversee the Central Office EEO Officer.

Further, the full-time EEO counselors will participate in scheduled Affirmative Action meetings at their assigned facilities on a regular basis, which will provide them with information about the full range of issues to ensure that EEO matters are raised at the local level. Any concerns that the EEO counselors may have will be directed to the Central Office EEO Office for any necessary intervention.

In addition, as noted above, the EEO Office has prepared review guidelines for the Program Review Division to use when conducting their periodic site visits. These reviews will ensure that EEO information is readily accessible to all BOP staff at each of its facilities.

Recommendation 4: BOP must take steps to ensure confidentiality.

As noted above, on October 22, 2010, the Director of BOP will issue a reminder to all BOP staff, through his annual commitment letter, of the requirement that EEO matters be kept confidential. In addition, the use of full-time EEO counselors who report directly to the Central Office EEO Office, and are wholly outside the supervisory chain in the respective facilities to which they are assigned, is a significant step to ensuring confidentiality. Similarly, the appearance of a conflict of interest created by use of collateral duty EEO officers will be minimized once the new EEO counselors are in place. Confidentiality will be stressed when providing training

to the new EEO counselors. As informal resolution requires the warden's notification, the steps outlined previously will remind wardens of the requirement of strict confidentiality.

Recommendation 5: BOP should abolish the vouchering system.

As indicated in our March 12, 2010, letter, the BOP does not have an informal vouchering system. In 1996, BOP abolished its previous informal vouchering system, and in 1998, established its current standardized reference checking which includes a written form, specific questions to be asked, and explicitly prohibits any information relating to race, color, sex, national origin, religion, age, disability, or sexual preference. A revised mandatory standardized vouchering form, highlighting a change to make clear that the person filling out the form cannot ask about any prior EEO activity, in addition to the other bases, of the person being vouchered, was provided to the EEOC in March, 2010. To the extent there is any confusion regarding informal vouchering, BOP will issue reminder guidance to make clear to our managers that they are required to use the standardized reference checking form when vouchering staff. We will also address the issue in training provided to managers.

Finally, BOP will provide the EEOC with an update of our progress in January, 2011. After the submission of that report, the BOP and EEOC can discuss any further action that may be required. The BOP welcomes the EEOC's assistance, as needed, to meet the recommendations of this report.

Thank you for reviewing our comments and progress updates to the draft June 2010, Program Evaluation Report. The BOP will continue to work on the above recommendations as it continues to strive to achieve a model EEO program. If you have any questions or need additional information, please contact me at (202) 305-0195.

Sincerely,



Mina Raskin
EEO Officer

cc: The Honorable Jacqueline A. Berrien,
Chair, EEOC

Carlton M. Hadden,
Director, Office of Federal Operations, EEOC

Richard Toscano,
Director, EEO Staff, Justice Management Division,
Department of Justice

Attachment A

The Prison Social Climate Survey (PSCS) is administered annually to a representative sample of Bureau field staff. The sample is selected using a stratified random proportional probability sample, to ensure that underrepresented but important subgroups are adequate in size at each prison, and that the sample is more representative than a simple random sample of the same size. The survey administered in 2007 (relevant results summarized below) generated a 70.4% response rate. As described below, the results of the survey reveal that less than 6% of staff failed to file a formal complaint regarding problems they were experiencing at work due to fear of retaliation from management.

There are four versions of the questionnaire employed during each administration of the PSCS. Each version contains some identical items (e.g. demographics and job duties) and some unique items (e.g. stress, health, training, etc.). Staff members are randomly assigned to one of the four versions as determined by their birth day and birth month. Two of the four versions included questions to pertaining problematic experiences at work during the prior six months at the current facility, the reporting behavior related to such experiences, and perceptions or beliefs about fear of retaliation. A total of 4,569 staff responded to these two versions. The six month reference period for the responses was May – October 2007.

Key Variables

Several items were used to measure the existence of staff problems in the workplace and their reaction to such problems. First, a set of items were used to indicate whether a problem existed that could have been addressed formally or informally. This was constructed from answers to a checklist of potential problems. Next, a battery of potential actions was used to construct a measure of “formal action taken” or “informal action taken.” Finally, a battery of items solicited from staff the reasons that kept them from reporting their problem (if applicable), which were used to create an indicator of “fear of management retaliation.” A second item was created to indicate “fear of any retaliation,” if staff suggested they didn’t report either because of a fear of management retaliation or fear of career impacts.

Results

Out of the 4,569 staff who responded, a total of 1,056 reported more than one “problem” which they attempted to resolve formally or informally with management. The categories of problems are diverse, including problems with other staff, inmates, advancement, schedules, leave time, over time, shifts, etc. The strong majority of those who did have a problem took some type of formal or informal action to report their problem(s) to management in order to resolve them. Specifically, 865 took informal actions, 365 took formal actions, and 897 (77.8%) took both. (The categories are not mutually exclusive and thus the 897 overlap with the prior count categories of formal and informal). Of the 255 staff who did not take any *formal* action, a small group reported that they feared retaliation by management (60 non-reporters) or (negative) career impact (58 non-

reporters). Of the 255 staff who did not take *informal* action, 69 reported fear of management retaliation, and 58 reported fear of (negative) career impact. In total, 5.7% of staff declined to take formal action concerning a problem in the workplace due to fear of retaliation by management.



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Office of Federal Operations
P. O. Box 19848
Washington, D.C. 20036

The Equal Employment Opportunity Commission (EEOC) is responsible for overseeing federal agencies' equal employment programs and anti-harassment programs pursuant to Title VII, Section 717(b)(2) of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e-16(b)(2); Section 15(b)(1) of the Age Discrimination in Employment Act of 1967 (ADEA), as amended, 29 U.S.C. 633a; Sections 501 and 505 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 791 and 794a; and 29 C.F.R. §1614.104(b). As part of the EEOC oversight responsibility for federal agency equal employment opportunity (EEO) programs, the EEOC's Office of Federal Operations will conduct a program evaluation of the Federal Bureau of Prisons.

In an effort to evaluate the Federal Bureau of Prison's EEO Complaint Processing program the EEOC requests your cooperation in completing the following questionnaire. Participation is strictly voluntary but may not be done anonymously. For statistical purposes we ask that each employee only submit one set of responses. All responses will be kept confidential. Please limit responses to events which occurred at the Federal Bureau of Prisons during the October 1, 2002, to September 30, 2007 time frame.

Please return your responses by April 24, 2008, to EEOCBOPQ@eoc.gov or mail to EEOC/FSP/JLP, PO Box 19848, Washington, DC 20036 or fax to (202) 663-4939. If you have any questions, please email them to BOPQuestion@eoc.gov.

Notice from BOP Management: Please note that this confidential, voluntary survey is for informational purposes only and does not pertain to any formal or informal complaint of discrimination that you may have filed or intend to file against the Federal Bureau of Prisons (BOP). An EEO representative is not necessary to assist you in completing the survey. Completion of this survey will have no bearing on any complaint of discrimination that you presently have and will not be considered a contact with the EEO counselor, the BOP's EEO Office, or the EEOC for EEO complaint filing purposes. Please do not submit evidence or documents pertaining to any EEO complaint or instance of discrimination with this survey.

You may use up to 30 minutes of duty time to complete the survey.

FY 2008 Questionnaire for the Federal Bureau of Prison Employees

1. Does your facility have an EEO policy?
2. Do you know who to contact if you feel you are or have been discriminated against on the job?
3. Have you ever filed an EEO complaint at a BOP facility? At which BOP facility?
_____.
4. Have you filed more than one EEO complaint? At which BOP facility?
_____.
5. Have you received any EEO training? How long ago? _____.
6. Have you ever been retaliated against/treated adversely because of your race, color, sex, national origin, religion, age or disability? If so by whom?
_____. Did you file an EEO complaint? If not, why not?
_____.
7. Have you ever been retaliated against/treated adversely because you cooperated with an internal investigation of alleged discriminatory practices? If so by whom?
_____. Did you file an EEO complaint? If not, why not?
_____.
8. Have you ever been retaliated against/treated adversely because you served as a witness in an EEO investigation or litigation? If so by whom?
_____. Did you file an EEO complaint? If not, why not?
_____.
9. Have you ever been retaliated against/treated adversely because you opposed unlawful practices at the agency? If so by whom?
_____. Did you file an EEO complaint? If not, why not?
_____.
10. Have you ever been retaliated against/treated adversely because you requested a reasonable accommodation? If so by whom?
_____. Was the accommodation denied? Did you file an EEO complaint? If not, why not?
_____.
11. Have you ever been retaliated against/treated adversely because you requested a religious accommodation? If so by whom?
_____. Was the accommodation denied? Did you file an EEO complaint? If not, why not?
_____.
12. Are you a manager or supervisor? Who is your current supervisor?
_____.
13. Would you be willing to talk to an EEOC employee about your experiences?
If so, please, provide your name, address, phone numbers and the best times to reach you.
_____.

Name _____ Facility _____

Email Form

Print Form to Mail or Fax