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## The Center for Organizational Excellence, Inc.

Equal Employment  
Opportunity Commission  
Office of Inspector General

### Draft Report: Evaluation of EEOC Federal Hearings and Appeals Processes

OIG Report Number: 2018-01-EOIG



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### Executive Summary

This evaluation of the Federal hearings and appeals processes of the Equal Employment Opportunity Commission (EEOC) was conducted by The Center for Organizational Excellence, Inc. and CohnReznick LLP on behalf of the EEOC Office of Inspector General (OIG). The main objective of the assessment was to help the Office of Field Programs (OFP) and Office of Federal Operations (OFO) improve the efficiency and effectiveness of the Federal hearings and appeals processes by performing a forward-looking evaluation of key activities and providing recommendations for improvements.

During this engagement, the evaluation team obtained an understanding of policies, procedures and controls in place by conducting interviews, facilitating focus groups, and reviewing relevant documentation, including process documents, dashboards, reports, and reviews. The evaluation was consistent with guidance developed by the U. S. Government Accountability Office (GAO), which recommends the use of logic models in evaluation design.<sup>1</sup> By taking a logic model approach, evaluators can craft a theory of program expectations, identify assumptions and expectations of the program outcomes and how the outcomes are affected by program inputs, activities, and outputs.

In accordance with Quality Standards for Inspection and Evaluation (QSIE)<sup>2</sup> and the logic model approach, we reviewed the following areas of the as-is state for the hearings and appeals processes as part of our evaluation scope:

- Personnel roles and responsibilities
- Caseload management and inventory
- Perceived experience of the complainant and agencies about the process
- Perception of key stakeholders and technology gatekeepers
- Process deviation among district/field offices
- Best practices, ongoing process improvement initiatives, and ideas from internal stakeholders

The evaluation team conducted leadership walkthroughs<sup>3</sup> of key processes with both OFO and OFP and facilitated focus groups with subject matter experts performing the daily work for OFO and OFP. For OFP, the evaluation team also held in-depth discussions with representatives from five offices, including three in-person site visits and two virtual site visits.

The evaluation team developed four key findings and eleven ideas for improvement in OFO and OFP processes. The four findings that should be addressed are:

1. The Office of Field Programs has an outdated *Administrative Judge (AJ) Handbook*<sup>4</sup> with standard operating procedures (SOPs) for the hearings process that are not consistently followed by District and Field offices.

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<sup>1</sup> *Designing Evaluations: 2012 Revision*, United States Government Accountability Office (January 2012).

<sup>2</sup> *Quality Standards for Inspection and Evaluation*, Council of the Inspectors General on Integrity and Efficiency (January 2012).

<sup>3</sup> Walkthroughs consisted of discussing policies and procedures in place, observing processes (as shown in Appendix I and II) and asking leaders to confirm the ordering and description of the steps.

<sup>4</sup> The *AJ Handbook* is the employee handbook for AJs and Supervisory AJs (SAJ). It is a detailed guide outlining the duties and tasks of AJs and SAJs. This document has not been updated since 2002.

2. Organizational structures in some District and Field offices do not match the ideal structure defined by management.
3. Integrated Mission System (IMS)<sup>5</sup> development and upgrades do not match EEOC's reporting and tracking needs.
4. The appeals intake process consistently runs at a slower pace than needed within OFO's Compliance and Control Division (CCD).

In response to a draft version of this report, stakeholders from OFP, OFO, and other EEOC offices concurred with all recommendations. We understand and commend the tremendous effort required to carry out effective and efficient OFO and OFP processes. A summary of recommendations developed from the results of the evaluation are noted below. A complete list of recommendations and ideas for improvement is included in the *Findings and Recommendations* and *Additional Ideas for Improvement to Federal Hearings and Appeals Processes* sections of the report:

In response to Finding 1, OFP should:

- 1.1. Ensure all major processes and procedures are documented accurately and reviewed on an annual basis. The *AJ Handbook* should be updated and disseminated to all new and current AJs. The updated *AJ Handbook* should detail all key tasks and activities of the hearings process. The document should be periodically updated to reference current Pilot Projects for Hearings Case Management, in which offices the Pilot Projects are being implemented, and what steps of the process the Pilot Projects affect. Updates should be based on guidance from OFP management and should be supported by data analysis of Pilot Projects and performance measurement of previous fiscal years (FY). The updated *AJ Handbook* should include standard templates of Notices and Orders<sup>6</sup> an AJ should use during the hearings process. Additionally, it should direct users on how to use and where to find templates.
- 1.2. Standardize on-boarding<sup>7</sup> activities and training programs required for new AJs and other staff working at the District and Field offices, so that the Federal hearings experience is consistent for both complainants and agencies across offices. The updated *AJ Handbook* can be used as a foundation for training material and should include directions on how to access other standardized on-boarding activities and additional training programs.
- 1.3. Ensure future process changes are implemented according to change management best practices noted by GAO. Some of the best practices include:
  - Establish a coherent mission and integrate strategic goals to guide the transformation.
  - Set implementation goals and a timeline to build momentum and show progress from day one.

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<sup>5</sup> IMS is the system used to track, assign and document key actions taken during a case's full lifecycle

<sup>6</sup> A *Notice* is a written document describing obligations, duties, and rights in a legal process. An *Order* is an official proclamation by a judge that defines a ruling or decision to carry out certain steps by one or more parties to a case.

<sup>7</sup> *Onboarding* refers to the mechanism through which new employees acquire the necessary skills, knowledge, and behavior when they are hired at an organization. Usually taking place within the first week of starting a new position in an organization, onboarding includes activities that aid new employees' integration into the organization's culture. During onboarding activities, employees learn how to perform job related functions, get introduced to position-specific standard operating procedures (SOPs) and meet other members of the organization.

- Use the performance management system to define responsibility and assure accountability for change.
- Establish a communication strategy to create shared expectations and report related progress.

In response to Finding 2, OFP should:

- 2.1. Standardize organizational structures used in the District and Field offices to include all resources required for major tasks. OFP should create a guideline that describes the desired standard organizational structure of District and Field offices. This guideline would ensure consistent and standardized minimum staffing for all District and Field offices and assist the director in determining budget, personnel and skills requirements for the District and Field offices.
- 2.2. Standardize the role of the administrative support for all District and Field offices. A position review should be conducted to determine the job title held by support staff, as well as their pay level and their level of responsibility (e.g., determine if legal techs should be assigning cases). Any additional administrative support should be supported by data analysis of caseloads and inventory.
- 2.3. Evaluate availability of resources dedicated to Alternative Dispute Resolution (ADR)<sup>8</sup> per office and determine if the agreement between EEOC and the Federal Mediation and Conciliation Service (FMCS)<sup>9</sup> would provide enough mediation support for the District and Field offices. OFP should also analyze the impact of ADR pilot programs implemented in certain Districts, such as WISE, the Washington Field Office Initiative to Settle Equal Employment Opportunity (EEO) Complaints, to determine if these programs can also be replicated in other Districts. In addition, OFP could record and replicate best ADR practices from offices that report a higher percentage of cases resolved through mediation.

In response to Finding 3:

- 3.1. The Office of Information Technology (OIT), in partnership with OFP and OFO, should re-evaluate IMS requirements, and requirements for the framework of its successor system, to determine what additional reporting functionalities are needed in order to analyze data about staff and office productivity. A Voice of the Customer exercise or a user requirement meeting could serve as starting point to gather current requirements from IMS main users (OFP and OFO) and to determine what other current systems need to be integrated to make them function in alignment with IMS (Power BI, Complainant Portal). Based on our conversations with District and Field offices and OFO, some of the potential requirements may include:
  - Reporting feature for specific types of data and meta-data that should be captured by OFP and OFO for performance measurement.

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<sup>8</sup> *Alternative Dispute Resolution (ADR)* is the mediation program that provides prompt and mutually satisfactory resolution of Federal sector complaints, as an alternative to following the paths of the full hearings process.

<sup>9</sup> *FMCS* was created as an independent agency in 1947 with the mission to promote labor-management cooperation and peace. This agency provides conflict resolution and mediation services to industry, government agencies, and communities.

- Notification feature linked with the Federal Sector EEO Portal (FedSEP)<sup>10</sup>, including a notification for the District and Field Offices when new undocketed cases and files are submitted into FedSEP.
  - Integration with Complainant Portal to allow automated notifications.
- 3.2. OIT developers should meet directly with software users, such as OFO attorneys and supervisory attorneys and OFP AJs and Supervisory AJs (SAJ) to determine additional requirements.
  - 3.3. OIT should explore the inclusion of additional codes, events, and activities<sup>11</sup> required in IMS tracking for specific user needs (e.g., monitoring Pilot Projects).
  - 3.4. OFO and OFP, in partnership with OIT, should consider development of an IMS training guide or document that is consistently updated and reviewed following upgrades, enhancements or modifications of the software. This guide should include all necessary codes for every action item in the process and should be available for all product users. This guide should ensure that product users track all mandated steps in IMS. Given that each office's staff has their own needs within IMS:
    - One guide should be made for OFP legal techs, AJs, and SAJs.
    - A separate guide should be available for OFO CCD staff, attorneys and supervisory attorneys.

In response to Finding 4, OFO should:

- 4.1. Examine the staffing model of the appeals intake process to determine if the dedicated resources are sufficient for ensuring processes are completed in a timely manner. Providing dedicated compliance resources familiar with the various case types to review all documentation would ensure actionable cases with complete documentation are submitted to the Adjudication Stage, which could significantly cut down on timelines for the overall appeals processes.
- 4.2. Examine whether full appeals packets from agencies and complainants can be submitted electronically so that OFO can drive agency compliance with the requirement to submit digital files and consider eliminating CDs and paper records as avenues for submitting documentation. This would significantly reduce the administrative burden required to properly scan all documentation and increase transparency and accountability for measuring timelines in IMS.
- 4.3. Assign a target amount of days for intake so that management can determine if changes implemented impact the efficiency of the process. Goals or measures that involve targeted timeframes allow for assessment of the productivity of the office overall and provide a data-driven analysis to determine if additional staffing is needed for OFO units.
- 4.4. Evaluate and assess timeline improvement after the use of the new contractors. If significant improvements are verified by data, consider improvements to the ongoing staffing model and the possible addition of these contractor positions as permanent roles. OFO should determine and monitor metrics, such as improvement of targeted timelines from one step to another (data can be gathered from IMS).

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<sup>10</sup> The *Federal Sector EEO Portal (FedSEP)* is the EEOC's online data system that allows agencies to electronically submit affirmative employment plans (MD 715 reports), complaint processing data (Form 462), and complaint files for Federal hearings and appeals cases

<sup>11</sup> According to OIT, the Charge/Case Management Modernization effort envisions replacing entered codes with captured events/activities that take place within business process workflows in the system. Accordingly, this recommendation encompasses the capturing of such events/activities in lieu of codes, when appropriate, in conjunction with the Charge/Case Management Modernization effort.

In addition to these recommendations, we provide eleven ideas detailed in a later section to improve the efficiency and effectiveness of the Federal hearings and appeals processes. OFP stakeholders expressed concern with enacting one of the ideas, which we discuss further when presenting Idea 6. Overall, OFO and OFP management, in consultation with OIT when applicable, should work towards implementation of the recommendations associated with the findings, set target dates for planned corrective actions, and determine which of the additional ideas should be prioritized for implementation.

### Background

#### Evaluation Objective and Scope

The objective of this evaluation is to help the EEOC OFP and OFO improve the efficiency and effectiveness of the Federal hearings and appeals processes by performing a forward-looking evaluation of key activities and providing recommendations for improvements. The desired outcome is to identify areas of improvement to increase the overall effectiveness, timeliness and efficiency of some of the most important Federal hearings and appeals processes.<sup>12</sup>

To accomplish the objective, we examined the processes, roles, dashboards and reports produced by OFO and OFP. This included high-level data analysis, review of documentation, interviews and focus groups with EEOC leaders and key staff, development of process maps, and site visits to and interviews with District and Field offices across the country. This evaluation project was initiated on September 28, 2018. We conducted fieldwork from November 2018 through May 2019. During fieldwork, the Federal government shut down for 35 days. The shutdown did not impact our overall ability to gather needed information. However, it led to an extension of the end of the fieldwork phase from March to May 2019.

We conducted this evaluation in accordance with QSIE. In addition, the evaluation was consistent with guidance developed by GAO, which recommends the use of logic models in evaluation design.<sup>13</sup> In a logic model approach, evaluators craft a theory of program expectations, identifying assumptions and expectations of the program outcomes and how the outcomes are affected by program inputs, activities, and outputs. It is important that the logic model outlines the following components of the program:

- **Inputs:** What is invested in the program, usually being human and non-human measurable resources, such as staff, time, technology, available budget with its proper designations, partners, or other materials used.
- **Activities:** What is being done and who is being reached as part of the program. This includes all activities performed seeking to obtain certain outputs. Activities include workshops, meetings, facilitation, assessment, services, job tasks, training, education, outreach, recruitment, or product development. Usually, activities performed would have an effect on stakeholders. Therefore, it is necessary to identify whom these activities impact, such as participants of the program, customers, or target populations.
- **Outputs:** Results of the program activities. Usually outputs are the immediate products or services resulting from the program activities. Examples of outputs are deliverables created, certain services provided to customers, or the ultimate product created by performing program activities.
- **Outcomes:** The ultimate benefits of the program, which fulfill customers' needs or achieve program goals. Outcomes are the impact or difference made by the outputs.

In accordance with QSIE and the logic model approach, we reviewed the following areas of the as-is state for the hearings and appeals processes:

- Personnel roles and responsibilities

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<sup>12</sup> We focused on processes described in key handbooks and those that OFO and OFP personnel considered essential to depict in a comprehensive process map.

<sup>13</sup> *Designing Evaluations: 2012 Revision*, United States Government Accountability Office (January 2012).

- Caseload management and inventory
- Perceived experience of the complainant and agencies about the process
- Perception of key stakeholders and technology gatekeepers
- Process flows and deviations between employees and district/field offices
- Best practices, ongoing process improvement initiatives, and ideas from internal stakeholders

### EEOC Overview

Established by Title VII of the Civil Rights Act of 1964, EEOC began operating in 1965 and is the leading Federal law enforcement agency dedicated to preventing and remedying employment discrimination and advancing equal opportunity for all in the workplace. The basis of EEOC enforcement is set within EEO laws, which includes Title VII of the Civil Rights Act of 1964, as currently amended; and other Acts, such as the Americans with Disability Act (ADA), the Age Discrimination in Employment Act (ADEA), the Equal Pay Act (EPA), Genetic Information Nondiscrimination Act (GINA), and amendments to these acts. The rights and protections that the EEOC safeguards continue to evolve, most recently in 2009 adding protection from discrimination using genetic information.

For much of the EEOC's history, the mission focused on enforcement, such as investigating possible discriminatory acts, punishing transgressors, and providing appropriate remedies and relief for victims. In 2012, the EEOC issued a Strategic Enforcement Plan (SEP) for FY 2013-2016 as a critical step, shifting away from individual complaints to a strategic focus on activities more likely to achieve large-scale systemic impact. The EEOC identified six priority areas most likely to have a strategic impact in advancing equal opportunity and freedom from discrimination in the workplace. Current SEP priorities are discussed in the next section of the report. EEOC revised the SEP for FY 2017-2021.

Effective implementation of the SEP required supporting quality plans, as well as a new case management system, which was piloted in 2014 and launched agency-wide in 2015. On the Federal side, improving quality started with the Federal Sector Complement Plan (FCP), prepared by OFO and OFP, to inform how the Federal sector will implement the SEP. In January 2017, EEOC released the *Federal Sector Quality Practices for Effective Hearings, Appeals and Oversight*<sup>14</sup> to drive excellent and consistent service in adjudicating Federal sector cases.

### Strategic Enforcement Plan (SEP)

In December 2012, EEOC issued the SEP for FY 2013-2016, establishing priority areas and strategies to integrate all components of EEOC's public, private and Federal enforcement. The SEP aimed to have a sustainable impact in advancing EEOC's mission to combat discrimination in the workplace and provide guidance and leadership on equal employment opportunity laws, regulations and compliance.

EEOC evaluated its progress in implementing the original SEP. Feedback from this evaluation showed that original priorities needed modification to ensure consistent implementation in the future. In addition, this evaluation supported the further development of coordinated strategies to address such modified priority areas, so that EEOC could achieve the goal of having a sustainable impact through strategic

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<sup>14</sup> Quality practices set forth by EEOC in 2017 for delivering consistent and excellent service in adjudicating Federal sector cases in the hearings and appeals processes and in providing oversight for Federal agency compliance with EEO laws.

law enforcement. Changes to priority areas from the original SEP included identifying vulnerable workers and undeserved communities within areas for focused attention; narrowing issues for actions that discriminate against individuals with disabilities; extension of the equal pay priority to explicitly reach all workers; clarifying the focus on retaliatory practices in the workplace; and adding to the priorities a focus on issues related to temporary workers, staffing agencies, and independent contractors; and describing discriminatory practices related to workers of Muslim, Sikh, Arab, Middle Eastern, or South Asian descent.

Accordingly, EEOC adopted the SEP for FY 2017-2021, with a clear definition of strategic impact – promoting compliance and development of laws and regulations across EEOC, its stakeholders, communities, and industry. The ultimate goal is to engage staff across programs and offices to operate as “One EEOC.” EEOC’s substantive priorities for FY 2017-2021 are:

1. Eliminating barriers in recruitment and hiring, including:
  - a. Focus on class-based recruitment and hiring practices that discriminate against racial, ethnic and religious groups, older workers, women and people with disabilities.
  - b. Exclusionary policies, channeling steering of individuals into specific jobs due to status in a particular group, job segregation, restrictive application process and screening tools that impact workers based on protected status.
2. Protecting vulnerable workers, including immigrant and migrant workers, and underserved communities from discrimination.
3. Addressing selected emerging and developing Issues, such as:
  - a. Qualification standards and inflexible leave policies against individual with disabilities.
  - b. Accommodating pregnancy related issues under ADA and Pregnancy Discrimination ACT (PDA).
  - c. Protecting lesbians, gay, bisexuals and transgender (LGBT) individuals from discrimination based on sex.
  - d. Clarifying employment relationship and application of workplace civil rights protections.
  - e. Addressing discriminatory practices against Muslim or Sikh, or against Middle Eastern and related ethnic groups.
4. Ensuring equal pay protections for all workers.
5. Preserving access to the legal system.
6. Preventing systemic harassment by:
  - a. Promoting holistic prevention programs, including training and outreach.
  - b. Strong enforcement with appropriate monetary relief and effective injunctive relief to prevent future harassment of all protected groups.

These national priorities are complemented by Federal sector and District-level priorities, which highlight particular issues most salient to these communities that also demand focused attention.

### **Federal Sector Complement Plan to the Strategic Enforcement Plan (FCP)**

OFP and OFO established the FCP to:

1. Describe how the Federal sector will implement the SEP priorities;
2. Identify complementary Federal sector priorities and strategies to address them; and

3. Recommend strategies to improve oversight, consistency and communication across the Federal sector.

For its creation, OFP and OFO formed the Federal Sector Strategic Planning Group, which was comprised of three subgroups: Case Management, Priorities, and Technology Infrastructure. These sub-groups included field managers, SAJs, headquarters staff from OFP's hearings program, and staff from the three OFO divisions. However, most of the FCP content resulted from the work of the Priorities Sub-Group (PSG). The PSG also reviewed data from the prior ten years to determine certain Federal sector trends. The data sources were: EEOC Form 462<sup>15</sup> complaint data; IMS hearings and appeals data; and appellate findings of discrimination by agency, issue and basis.

The FCP's main purpose is to guide and assist the implementation of the SEP priorities in the Federal sector. For each SEP priority, the FCP identified Federal sector priorities or strategies to focus the direction of work and prioritization of cases. In addition, the FCP also presents strategies to improve oversight, consistency, and communication across the Federal Sector. Each strategy presented in the FCP recognizes that it is essential to maximize the sharing of information among various components of the Federal sector process to effectively use all resources.

### Office of Field Programs (OFP)

The EEOC OFP has the mission to eradicate unlawful discrimination in Federal employment through management of different programs across the nation and effective application of EEOC laws in Federal agencies. OFP has 15 District Offices located in major population centers around the country, led by District Directors who are part of the agency's senior management team and by a cadre of mid-level and first-line supervisors, who report to them in the oversight and management of the Field programs' responsibilities and operations. In addition, there are 38 Field, Area and Local offices, which report to their corresponding Districts and expand the presence of EEOC in other cities.

The main functions of OFP Headquarters and Districts include conducting Federal sector hearings by responding to Federal discrimination complaints involving Federal sector employees and a Federal agency; performing outreach on Federal sector; and managing different programs designated to combat discrimination across the nation. OFP oversees Field Management Programs, Field Coordination Programs, State and Local Programs, and the National Systemic Program.

Specifically, for Federal sector hearings, OFP has 24 hearings offices, in which AJs, led by corresponding District's Supervisory Administrative Judges (SAJ), provide Federal sector complainants with a full, fair and impartial adjudication of EEO complaints. Additionally, OFP relies on the ADR program as part of OFP's Field Coordination Programs. This program is optional and both parties – Federal employees and the Federal agency – must agree to it.

In this evaluation, we documented major workflows in the federal hearings process using process maps provided in Appendix I. We developed process maps by examining available documentation and conducting discussions with stakeholders.

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<sup>15</sup> *Annual Federal Equal Employment Opportunity Statistical Report of Discrimination Complaints*, which is an annual report on the Federal workforce that includes, among other data, information on Federal EEO complaints and ADR activities.

### Office of Federal Operations (OFO)

The EEOC OFO has the mission to eradicate unlawful discrimination in Federal employment through vigorous enforcement of Federal EEO laws and effective oversight of Federal agencies. OFO has defined responsibilities, including providing guidance and leadership to Federal agencies on their responsibilities with compliance of the Federal sector EEO program to combat and prevent discrimination at the workplace; developing and implementing EEOC-approved affirmative employment policies; administering the Federal sector appeals process; providing leadership and guidance for all EEOC activities to affect government-wide EEO programs and processes; and ensuring Federal agencies comply with establishing fair adjudication of discrimination complaints brought by Federal employees and applicants.

The OFO organizational structure consists of three main branches led by the Immediate Office of the Director (IOD), which provides oversight and direction in areas such as strategic planning and development; coordinates with the Chair, Commissioners, Office of the General Counsel (OGC), Office of Legal Counsel (OLC) and OFP; and discusses policy issues with the Office of Enterprise Data and Analytics (OEDA).<sup>16</sup> The OFO branches are:

- *Compliance and Control Division (CCD)*: Functions as the central clerical repository for OFO. It includes an Intake Unit and Compliance Unit. CCD main functions consist of
  - Assembling, scanning, and storing appellate case files and related documentation;
  - Receiving all OFO mail;
  - Docketing all appeals in the main system;
  - Requesting complaint files from agencies;
  - Monitoring the intake of documents received via FedSEP and performing quality control reviews on submissions therein;
  - Mailing the decisions issued by OFO attorneys' team regarding a Federal appeal; and
  - Monitoring compliance with OFO decisions towards an appeal.
    - *Appellate Review Programs (ARP)*: Serves as the attorney branch of OFO. It includes three divisions, each having two teams of attorneys led by a supervisory attorney:
      - Appeals Division A, also called Expedited Appeals Division, which is in charge of appeals from agency decisions dismissing complaints of discrimination on procedural grounds (procedural cases);
      - Appeals Division B, which is in charge of adjudicating merit cases<sup>17</sup>; and
      - Review Division, which is in charge of cases that circulate to the commissioners.

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<sup>16</sup> Formerly called the Office of Research, Information, and Planning (ORIP). For consistency, this office will be referred to as OEDA in this report, even when referring to past events.

<sup>17</sup> In law, merits are the inherent rights and wrongs of a legal case, absent of any emotional or technical bias. The evidence is applied solely to cases decided on the merits. In EEOC Federal hearings and appeals, merit cases are cases that are adjudicated to determine if there are findings of discrimination.

ARP's primary functions consist of adjudicating appeals petitions and requests for reconsideration, responding to stakeholder inquiries; drafting decisions on appeals based on the law and review of cases; and assisting agencies in EEO program evaluations and in MD-715<sup>18</sup> feedback letters.

- *Federal Sector Program (FSP)*: Serves as the oversight, evaluation and outreach of EEO programs and procedures within EEOC and Federal agencies. It consists of four divisions: Agency Oversight Division, Training and Outreach Division, Reports and Evaluations Divisions, and Special Operations Division. FSP's main functions include overseeing the Federal sector EEO complaint process and affirmative action programs; providing technical advice and assistance; compiling complaint processing statistics; analyzing data on employment trends; conducting agency EEO program evaluations; reviewing agencies' annual accomplishment reports; publishing annual reports to the President and Congress; and developing new training programs on EEO topics for agencies.

In this evaluation, we documented major workflows in the Federal appeals process through process maps provided in Appendix II. We developed process maps by examining available documentation and conducting discussions with stakeholders.

### Hearings Case Management Pilot Projects

Over the past two years, OFP management implemented a series of Pilot Projects, which allow certain deviations from the traditional process of the hearings program, with the intention of reducing backlog inventories and increasing productivity. Based on a SAJ conference, where ideas were shared to improve the hearings process, OFP management submitted a memo on December 20, 2017 to the then acting Chair of EEOC to inform and discuss Pilot Projects at certain District or Field offices, with the intention of countrywide implementation after evaluation of project effectiveness. The Hearings Case Management Pilot Projects include the following:

- *Determination Following Initial Conference and Preliminary Hearing*: Allows the AJ to conduct a combined Initial Conference (IC) and Preliminary Hearing and issue a streamlined decision on a complaint where, after reviewing the Report of Investigation (ROI) and questioning the Complainant and/or management officials to the extent necessary, the AJ determines that it is unlikely a finding of discrimination would be issued following further development of the record.
- *Issuing a "Notice of Intent to Issue a Decision Without a Hearing"*: Allows the AJ to issue a 15-day Notice of Intent to Issue a Decision Without a Hearing before conducting an IC when it appears that Discovery<sup>19</sup> is not necessary, or that additional Discovery is not needed. It can be used under the

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<sup>18</sup> The *Management Directive 715 (MD-715)* is the policy guidance which the EEOC provides to Federal agencies for their use in establishing and maintaining effective EEO programs. MD-715 provides a roadmap for creating effective EEO programs for all Federal employees as required by Title VII and the Rehabilitation Act. MD-715 took effect on October 1, 2013. Every year, Federal agencies must respond to the EEOC's MD-715 in the form of a report. The full MD-715 and instructions for reporting can be found at the EEOC website.

<sup>19</sup> Discovery is a pre-hearing procedure in which parties are entitled to reasonable development of evidence on issues raised in the complaint. The AJ may limit the quantity and timing of Discovery. The parties are expected to initiate and complete needed Discovery with a minimum of intervention by the Commission's AJ. Methods and procedures of Discovery can be found in the *Management Directive 110 (MD-110)* and *AJ's Handbook*.

following circumstances: dismissal of a case under 1614.107<sup>20</sup>; entering default judgement against the agency as an investigation sanction (failure to provide the ROI, untimely investigation, poor investigation or failure to investigate at all); issuing sanctions, in the absence of showing case, for failure to comply with AJ orders; and issuing summary judgment.

- *Conduct Mini or Targeted Hearings:* Allows the AJ to conduct mini or targeted hearings where a determination of summary judgment is not appropriate but limited or no Discovery is needed. It also allows the AJs to focus on the narrow issues presented.
- *Dismissing Without Prejudice USPS and Tennessee Valley Authority Cases Where a Grievance Procedure is Ongoing:* Allows the AJ to issue an order dismissing, without prejudice, cases filed against the U.S. Postal Service or the Tennessee Valley Authority. Once the grievance procedure is over, the AJ reviews to determine if:
  - The discrimination allegations were appropriately raised and considered;
  - The complainant had the opportunity to receive full relief in that forum; and
  - The AJ could adopt a decision from the grievance forum or accept the agreed-upon settlement or consider compensatory damage claims only. This happens following a re-submission of the hearing request after 45 days of the final disposition of the grievance.
- *Expanding the Summary Judgment Pilot Project to all EEOC Districts:* Allows all District offices to participate in the Summary Judgment Pilot Project that was initially piloted by the Districts of Philadelphia, Charlotte, San Francisco, Los Angeles and the Washington, DC Field Office. Issuing a decision pursuant to this project, an AJ sends an email to a designated email box if decisions in these cases are appealed. OFO can then identify which decisions were issued pursuant to the project and can expedite the processing of these cases for appeals.

The then-acting Chair of EEOC sent a memo on April 27, 2018 to the District Directors, SAJs, AJs, Appellate Review program supervisors, Appellate Review program attorneys, and Directors of OFP and OFO. The memo described EEOC's current need to improve the efficiency and effectiveness of hearings and appeals and reduce backlog inventories. The memo also showed appreciation for the efforts of OFP and OFO towards the creation of these projects and other initiatives.

### **Integrated Mission System (IMS)**

IMS was developed and designed by OIT, in consultation with OGC, OFP, OFO and OEDA. EEOC deployed IMS during FY 2003, replacing several EEOC database systems including the Automated Outreach System, the Litigation Tracking System and the Charge Data System. IMS provides an integrated database application to support intake, mediation, investigation, state and local contract processing, outreach, and litigation. For Federal hearings and appeals, IMS tracks, assigns, and documents key actions performed during a case's full lifecycle. Additionally, IMS is used to generate reports which track performance, efficiency and the age of a case. IMS access is different and unique for OFP, OFO, and other staff members depending on their unit and job position.

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<sup>20</sup> Code of Federal Regulation 1616.107 > Title 29. Labor > Subtitle B. Regulations Relating to Labor > Chapter XIV. Equal Employment Opportunity Commission > Part 16.14. Federal Sector Equal Employment Opportunity – Subpart A. Agency Program To Promote Equal Employment Opportunity > Section 1614.107. Dismissals of Complaints. Full regulation: <https://www.govinfo.gov/content/pkg/CFR-2012-title29-vol4/xml/CFR-2012-title29-vol4-part1614.xml#seqnum1614.107>

### Evaluation Methodology

For this evaluation, we used a logic model approach for the planning, collection and analysis of documentation and data provided by stakeholders. We coordinated meetings, site visits, focus groups and interviews with several stakeholders of the Federal hearings and appeals processes. We developed process maps and examined inputs to the processes, activities performed during the processes, outputs of the processes and expected outcomes of the processes. Major Federal hearings and appeals processes are depicted in Appendices I and II.

### Process Inputs

We requested and reviewed extensive documentation from both OFP and OFO, including relevant policies, procedures, mandates and memos governing the Federal hearings and appeals processes within EEOC. Specifically, we reviewed relevant caseload and inventory data, organization structures, process documentation, technology documentation that describes the use of tools within the Federal hearings and appeals processes, process documentation and templates used by District and Field offices, and information regarding EEOC Pilot Projects.

We identified any process improvement initiatives currently being undertaken by EEOC. In addition, we identified and interviewed stakeholders who did not have direct participation in the processes, but who had an indirect involvement and impact on the Federal hearings and appeals processes through technology development and support; complainant and agencies data analytics; and agencies' discrimination education, outreach and oversight. Stakeholders included the OIT Director of Enterprise Applications and Innovation, the Chief Data Officer (CDO), and the OFO-FSP program manager.

### Process Activities

Evaluators worked with Directors from both OFO and OFP to identify robust process workflow maps highlighting the expected steps taken in both the hearings and appeals processes.<sup>21</sup> The maps were developed using available process documentation and descriptions, and we sought concurrence from OFO and OFP leaders on the process maps. Walkthrough sessions with OFO and OFP leaders served the purpose of confirming accuracy of the process maps, so that they could be further used within the fieldwork phase of the evaluation. We used the hearings process map as a reference for all District and Field office visits, interviews, and meetings with the OFP Focus Group. We used the appeals process map as a reference for the OFO Focus Group.

The process maps highlight the time needed to perform each key activity within the Federal hearings and appeals processes. In addition, we worked with IMS stakeholders to generate any relevant reports needed to review overall enterprise wide timelines, as well as District and Field office specific timelines. We requested and reviewed any key documentation regarding communication methods used to manage change initiatives.

Evaluators also reviewed extensive documentation highlighting Pilot Projects currently being considered as enterprise recommendations. We reviewed documentation highlighting future process improvement

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<sup>21</sup> See Appendix I for hearings workflows and Appendix II for appeals workflows.

initiatives currently being explored, implemented or deployed within EEOC. In addition, we thoroughly reviewed current documentation regarding processes and procedures used to identify and categorize cases early in the hearings process.

### Process Outputs and Outcomes

We worked with OFO and OFP to identify and review key statistics and performance measures, both individual performance plans and organizational dashboards, tracked by EEOC to assess overall efficiency and effectiveness within the hearings and appeals process. We also examined the mechanisms used to measure the effectiveness of Pilot Projects.

### Process Improvement

Throughout the effort, we identified ideas for process improvement. These ideas were not specifically tied to findings but were developed based on review of dashboards and measures and feedback from stakeholder interviews, site visits and focus groups. We categorized ideas for improvement in the following manner:

- Short-Term Implementation: Ideas that could be quickly added into standard procedures within six months.
- Medium Length Implementation: Ideas that would need further refining and planning before implementation. With proper planning and coordination, these ideas could be rolled out within one year.
- Long-Term Implementation: Ideas that would need extensive planning, coordination or potential restructuring before implementation. These ideas would require at least a year before being fully implemented.

### Data and Information Gathering for Analysis

We conducted initial meetings with the Directors of OFP and OFO to determine all necessary documentation to describe the current Federal hearings and appeals processes. In many cases, Directors or other leaders were able to provide documentation or refer us to other stakeholders. Documentation requests included:<sup>22</sup>

- Documentation related to SOPs
- Staffing patterns for OFP and OFO headquarters, as well as EEOC District and Field offices
- Documentation related to past and current process improvement initiatives, changes to the current processes, and Pilot Projects
- Staffing roles and responsibilities
- Performance standards and elements
- Documentation that explains the use of technology for the hearings and appeals process
- Templates of notices, orders and other communications which both OFP and OFO use to communicate internally and externally
- Mandates, SEP and FCP objectives and priorities, and agreements that affect current processes
- Data sheets and reports that include but are not limited to the following:

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<sup>22</sup> For a complete list of documents reviewed, see Appendix IV.

- Overall office resolutions
- Backlogged case inventory
- Transfer of cases
- Timeframes for each step of the process
- Average timelines and fluctuations for each step of the process, if available

### Key Stakeholder Interviews

Interviews were conducted both virtually and in-person and served the purpose of furthering our understanding of the Federal hearings and appeals process. We learned about ongoing initiatives and followed up on issues raised during interviews or focus groups. The following key stakeholders were interviewed throughout the fieldwork phase of this evaluation:

- Director of OFP
- Director of OFO
- OFP Attorney Advisor
- OFO ARP Associate Director
- OFO Attorney Advisor
- Supervisory General Attorney
- Program Manager, OFO - FSP
- Supervisory Equal Employment Specialist, OFO - CCD
- EEOC Chief Data Officer
- Director of Enterprise Applications and Innovation Division – OIT

### Site Visits and Office Interviews

OFP provided the FY 2018 Data Summary Report (DSR) 396. This report contained caseload data from the hearings program, including cases received and transferred, number of case resolutions, pending cases, increase/decrease of case inventory, number of cases with more than 180 days in backlog inventory, AJ availability, average production, caseload per AJ, and other important data. The report shows these data points summarized per office and District.

We used data in this report for selection of District and Field offices visits during the fieldwork phase of the evaluation. Analysis of this data and conversations with OFP management led to five offices being chosen with the following rationale<sup>23</sup>:

- Washington Field Office has the biggest pending backlog, with a higher than average caseload per AJ (255) and a slightly below average resolution time (633 days). In addition, the Washington Field Office is located at EEOC Headquarters.
- The Charlotte District Office had a large caseload per AJ (230) but lower average time for resolution (571 days).
- The Chicago District Office had a very low caseload per AJ (82 cases) and a very low-resolution time (519 days).

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<sup>23</sup> Two of the site visits (Charlotte and New Orleans) were conducted as virtual interviews due to issues with travel funding. District Directors, SAJs, AJs, and administrative staff were still able to view the Hearings Process Map during these virtual interviews.

- The Dallas District Office had the highest caseload per AJ (244) along with the San Antonio Field Office (427), while also having the highest time for resolution (947 days for Dallas and 916 days for San Antonio). These two offices belong to the same District.
- The New Orleans Field Office had a low caseload per AJ (93 cases) and a low-resolution time (483 days), but it was located in a district with a higher than average resolution time.

See Appendix III for the full analysis used to select site visit locations. Each site visit included a discussion with, at minimum, an AJ, the SAJ and the District Director. Management at OFP was consulted before scheduling District and Field office site visits.

The purpose of the visits was to:

- Walk through the current hearings process map;
- Document any deviations to the process for the office;
- Ask follow-up questions to capture any additional deviations from the current processes;
- Identify any differences in resources and use of technology, differences in prioritization of cases, implementation of Hearings Case Management Pilot Projects, and performance measurement;
- Identify obstacles to success and best practices contributing to effective operations in the office; and
- Collect ideas for process improvement.

### Focus Groups

#### OFP Focus Group

Evaluators conducted a virtual focus group with over 20 AJs from offices throughout the country on April 23, 2019. The evaluation team informed each participant of the purpose of the process improvement initiative. We did not associate names with information collected. We walked through hearings process workflows and identified process deviations. For any deviation, we explored whether there was potential for improving efficiency enterprise-wide. The following offices participated in the AJ focus group:

- Charlotte District Office
- Dallas District Office
- Chicago District Office
- Philadelphia District Office
- Memphis District Office
- St. Louis District Office
- Atlanta District Office
- Birmingham District Office
- Miami District Office
- Washington D.C. Field Office
- Seattle Field Office
- Cleveland Field Office
- Denver Field Office

### **OFO Focus Group**

On April 12, 2019, evaluators conducted a focus group with OFO staff from two divisions: CCD and ARP, which are critical in the appeals process. The purpose of the focus group was to walk through the appeals process map and identify deviations from activities depicted in the map. We asked participants to identify any potential improvements and challenges associated with each step.

The following OFO staff participated in the OFO focus group:

- Supervisory General Attorney
- Two Attorney Advisors
- Supervisory Equal Employment Specialist
- Two Supervisory General Attorneys

## Findings and Recommendations

### **Finding 1: The Office of Field Programs has an outdated Administrative Judge (AJ) Handbook with standard operating procedures for the hearings process that are not followed by District and Field offices.**

EEOC employs AJs at all District and Field offices. The Office of Field Programs (OFP) has developed the *U.S. Equal Employment Opportunity Commission Handbook for Administrative Judges July 1, 2002 (AJ Handbook)*, which is used to document all processes, procedures, roles and responsibilities of the AJ. However, it has not been updated since 2002.

For our evaluation, we used the *AJ Handbook* and EEO Management Directive 110 (MD 110)<sup>24</sup> as the basis to develop a complete process map for Federal hearings. After discussions and interviews with OFP management, and a meeting with the Washington Field Office, we learned that the *AJ Handbook* did not accurately reflect the current hearings process. OFP leaders and staff acknowledged the *AJ Handbook* is outdated. Accordingly, the *AJ Handbook*, in conjunction with the EEO MD 110, have been used as reference for AJs and SAJs for the Federal hearings process, but not as standardized mandated SOPs.

The primary deviations to the process as compared to the *AJ Handbook* included:

1. Case Assignment: Cases are not automatically assigned within 15 days, as mandated in the *AJ Handbook*. Assignment of cases usually goes to the SAJ first, who then assigns the cases to an AJ based on certain factors, such as the experience of the AJ or the AJ's inventory. The *AJ Handbook* does not have a mandate on who oversees Case Assignment.
2. Initial Conference: This is a major change in the current hearings process. Currently, an IC is scheduled through the Acknowledgement and Order and takes place after the case has been assigned to the AJ. At the IC, which takes place after AJ's review of the record and overall case assessment, the AJ explains any rulings based on case assessment, grants Discovery if the AJ determines it necessary, and determines if the case can move towards ADR.
3. Discovery: This process is determined at the AJs' discretion at the IC. Timing and scope of Discovery is also determined by the AJ. After the case is assessed, the AJ will conclude that either no more information is needed to supplement the record or may ask for specific supplementary information to be provided by the parties. The *AJ Handbook* states that parties usually are granted Discovery to further develop the record, which has a maximum time allotted of 90 days.
4. Pilot Projects for Case Management: OFP submitted a memo to the EEOC Chair discussing five Pilot Projects for Hearings Case Management. These projects were designed with the intention of streamlining the overall hearings process and reducing backlog inventories. These Pilot Projects modify the SOP at some steps of the hearings process. The *AJ Handbook* does not have any information regarding Pilot Projects for Hearings Case Management. Because the *AJ Handbook*

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<sup>24</sup> This document is the guidance for all EEO related topics and functions. It explains step by step how processes should be followed for all stakeholders, including complainants, agencies, and EEOC. It explains in detail the processes of both Federal hearings and appeals. This is the main document used for training, besides the *AJ Handbook*. The EEO Management Directive 110 has a section for hearings and the role of the AJ, but do not go in detail on specific aspects of the process and SOPs for the Federal hearings program.

serves as the primary source of documented policies and procedures, the Pilot Projects should be documented in the current state and updated as needed when changes occur.

5. The *AJ Handbook* does not set a goal for case assignment to each AJ. Each District and Field office handles assignment of cases to AJs differently.
6. The *AJ Handbook* does not reference the priorities outlined in the *SEP 2017-2021*.

Although the *AJ Handbook* has not been updated since 2002, it is still used as reference material for onboarding. As changes have been implemented, OFP has not ensured all process documentation are current, relevant and located in a centralized document. OFP publishes numerous memos regarding procedural changes, but they are not captured through enterprise-wide SOPs.

Change management efforts have not been conducted according to change management best practices,<sup>25</sup> resulting in documentation not being updated accordingly and inconsistencies in the awareness of policy changes among offices. Pilot Projects for Hearings Case Management are not mentioned in the *AJ Handbook*; they are described in separate memos. Currently, there is no written plan on implementation and how updated processes would differ from those documented in the *AJ Handbook*.

Without a standardized process for handling cases going through the hearings process, EEOC is at risk of District and Field offices operating independently of one another, leading to inconsistent experiences among complainants and agency staff when cases are handled by different offices. EEOC is also at risk of a complainant and government agencies having a vastly different experience based on the jurisdiction in which the hearing request was processed.

During this evaluation, we noted several process deviations in how a District and/or Field office administers key steps in the Federal hearings process, including:

1. Los Angeles District Office AJ reported that the office grants Discovery to all cases regardless of whether Discovery is truly necessary, which can add several months to the process. This is an outdated procedure, but this step is consistent with what is written in the *AJ Handbook*.
2. District and Field offices, with the exception of the Los Angeles District office, which have not implemented the Pilot Projects for Hearings Case Management conduct an IC for all cases, while other offices that implemented Pilot Projects for Hearings Case Management work with all parties to determine if an IC is needed. For instance, according to Pilot Project 2, an AJ could issue a 15-Day Notice of Intent to Issue a Decision without a hearing, after reviewing the ROI and other documentation, and determining the case can be solved before scheduling an IC.
3. Due to a lack of a standardized processes, offices independently determine which cases should be prioritized and processed first. These priorities do not always align with EEOC identified priorities in the SEP. Most District and Field offices stated they prioritized aged cases in their backlog inventory. Additionally, the following District and Field offices reported alternative priorities:
  - a. The Washington D.C. Field Office prioritizes easier cases to get resolved and cases that come from the Merit System Protection Board (MSPB) with pending discrimination claims. The office does not prioritize cases based on the SEP or FCP.

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<sup>25</sup> For some best practices see: *Highlights of a GAO Forum: Mergers and Transformation: Lessons Learned for a Department of Homeland Security and Other Federal Agencies*, United States General Accounting Office (2002).

- b. The Charlotte District Office prioritizes resolving cases in the order they are received. If there is a congressional mandate, it would prioritize cases related to such mandate.
  - c. The New Orleans Field Office uses the FCP as front line for prioritizing cases. Otherwise, the office prioritizes aged cases in the backlog inventory.
  - d. The Chicago District Office prioritizes easier and less complex cases, so that the backlog inventory is reduced and the number of resolutions increase.
4. Caseload assignment to AJs is different at each District and Field office. Based on our site visits to District/Field offices and our OFP focus group discussions, we identified that:
- a. The Washington D.C. Field Office assigns 90 cases per AJ for their inventory. Six cases are given at a time, and the number of cases assigned depends on the AJ's current inventory. The SAJ assigns cases.
  - b. The Charlotte District Office assigns 75 cases per AJ for their inventory every three months. If an AJ has 50 or less cases in their inventory, another 50 cases are added. The SAJ assigns cases.
  - c. The Philadelphia District Office assigns over 100 cases per AJ. The SAJ assigns cases.
  - d. The St. Louis District Office assigns full time AJs 90 cases each (and part time AJs 70 cases each.<sup>26</sup> The SAJ assigns cases.
  - e. The Dallas District Office assigns 60 to 70 cases per AJ. Because they did not have an SAJ at the time of the evaluation, the office's legal tech (hearings clerk) assigned cases.
  - f. The New Orleans Field Office did not provide a specific number of cases assigned per each AJ, but their legal tech assigns cases after reviewing the AJs' inventory for the whole District.
  - g. The Chicago District Office assigns 75-100 cases per AJ. The SAJ monitors inventories and moves cases among the AJs. The target number varies but the office staff mentioned they were aware of OFP management's guideline of 100 cases per AJ.

Other dependent activities, like onboarding, are affected by a lack of standardized documentation for Federal hearings processes. While the outdated *AJ Handbook* and EEO MD 110 are used as references for training new AJs and SAJs, the lack of standardized documentation leads to inconsistent training experiences for AJs between offices.

Moreover, since the *AJ Handbook* is outdated, templates included in the document are also outdated. OFP management submits some templates through IMS that District and Field offices should be using when issuing documents. Some District and Field offices identified using these as forms as a baseline for a new office-independent template (e.g., the Acknowledge and Order form). The District and Field offices build their own forms because they do not feel that the standard documents capture all of the necessary information.

### Finding 1 Limitations

For Finding 1, we did not assess whether any particular process deviations resulted in adverse impacts on outputs or outcomes. Our evaluation provided evidence of numerous deviations and various points in the

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<sup>26</sup> The St. Louis office has two full-time AJs and two part-time AJs.

process where adverse impact may be realized. However, this finding should not be interpreted to suggest that any particular process deviation resulted in an adverse impact on efficiency or effectiveness. Data in OFP's current reports is available at the summary level<sup>27</sup> by office (e.g., total cases aged over 180 days) but not at a granular level to align the impact of any particular process deviation to the ultimate outcome (e.g., how long a particular process step deviates from its target timeline at each office). Also, data is not available in current reports to tie hearings cases to whether or not they were appealed. Accordingly, we cannot determine whether process deviations impacted the rate of cases being appealed.

### Recommendations to Address Finding 1

OFP should:

- 1.1. Ensure all major processes and procedures are documented accurately and reviewed on an annual basis. The *AJ Handbook* should be updated and disseminated to all new and current AJs. The updated *AJ Handbook* should detail all key tasks and activities of the hearings process. The document should be periodically updated to reference current Pilot Projects for Hearings Case Management, in which offices the Pilot Projects are being implemented, and what steps of the process the Pilot Projects affect. Updates should be based on guidance from OFP management and should be supported by data analysis of Pilot Projects and performance measurement of previous fiscal years. The updated *AJ Handbook* should include standard templates of Notices and Orders an AJ should use during the hearings process. Additionally, it should direct users on how to use and where to find templates.
- 1.2. Standardize on-boarding activities and training programs required for new AJs and other staff working at the District and Field offices, so that the Federal hearings experience is consistent for both complainants and agencies across offices. The updated *AJ Handbook* can be used as a foundation for training material and should include directions on how to access other standardized on-boarding activities and additional training programs.
- 1.3. Ensure future process changes are implemented according to change management best practices noted by GAO. Some of the best practices include:
  - Establish a coherent mission and integrate strategic goals to guide the transformation.
  - Set implementation goals and a timeline to build momentum and show progress from day one.
  - Use the performance management system to define responsibility and assure accountability for change.
  - Establish a communication strategy to create shared expectations and report related progress.

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<sup>27</sup> See Appendix III for a sample of the type of data available.

## **Finding 2: Organizational structures in some OFP District and Field offices do not match the ideal structure defined by management.**

District and Field offices lack standardization in employing legal and administrative support to the AJs. OFP management described a legal assistant as a necessary position in field office organizational structures. All District and Field offices within OFP have AJs on staff, with overall numbers varying partially based on caseload. Each District, with the exception of the Dallas District, also has one SAJ. Beyond that, additional resources vary in each office. Some offices employ a legal assistant with a grade level of General Schedule (GS)-5 or GS-6. Other offices employ a paralegal with a grade level GS-11. Other offices noted they did not have any kind of legal aid or clerk at the time of conducting the focus group.<sup>28</sup> Lastly, some Districts, such as the Houston District, noted they did not have their own administrative resource, but they shared one with another Field office in the District.

Without a standard organizational structure, it is difficult to develop a standard evaluation of District and Field office success, to determine staffing needs, and to allocate budget and necessary resources that align with offices' minimum staff requirements. Moreover, if there is not a defined legal assistant role in the office, AJs must perform additional administrative tasks, which can greatly increase the length of time it takes a case to move through the hearings process. The OFP Director's performance plan gives him purview over identifying and correcting "structural organizational inefficiencies."

Currently, only the Washington D.C. Field Office and the Philadelphia District have more than two support administrative staff at the District level. Other offices only have one support administrative staff, despite data showing the offices also having large pending inventories. We noted the following from the DSR 396 FY 2018 report provided by OFP.

- Pending End FY 2018: The Washington D.C. Field office (2,196 cases), the Los Angeles District office (1,171 cases), the Dallas District-wide (1,168 cases), and the Philadelphia District-wide (1,075 cases) data show that these offices and Districts have the most pending cases at the end of FY 2018.
- Over 180 Days Pending Inventory End FY 2018: the Washington D.C. Field office (1,749 cases), the Philadelphia District-wide (960 cases), the Los Angeles District office (908 cases), the Dallas District-wide (900 cases), and the Phoenix District-wide (808 cases) data show that these offices and Districts have the largest inventory of over-180 days pending cases in the overall backlog at the end of FY 2018.

During our site visits and OFP focus group discussions, District and Field offices reported different answers regarding their available resources for ADR. Two District offices (Washington DC and Philadelphia) reported having a mediation program called WISE, in which cases could be assigned to a WISE program mediator before being assigned to an AJ if both parties agreed. The Charlotte District Office reported having employed external resources to help with the process, such as interns and private sector mediators. The New Orleans Field Office did not rely on any additional resources at all for ADR, and sometimes used AJs to mediate cases of other AJs. EEOC recently began a partnership with the FMCS, but at the time of fieldwork, there had not been enough time for implementation in all Districts, or a long

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<sup>28</sup> After our fieldwork, OFP provided a report as of June 26, 2019 showing at least one administrative support personnel per District office, but this included an intern rather than a dedicated resource in one office. Districts vary in the number of administrative support staff as well as in the position titles of the support staff.

enough duration to determine if this mediation option is sufficient to assist with ADR as a reliable resource.

Additionally, during our District and Field office site visits and focus group, we noted that some offices are able to staff full time mediators in house. These are dedicated resources whose sole responsibility is to help with mediation and ADR resolutions. For example, the Dallas District Office and the Philadelphia District Office reported having a full-time mediator employed at their offices.

No specific policy mandates how District and Field offices should design their organizational structure. However, OFP management informed the evaluation team that each office should have an administrative support resource. Therefore, the organizational structure of all District offices for the Federal hearings program should include: Legal assistant, AJs and a SAJ. During the focus group conducted for this evaluation, AJs agreed that the legal assistant is a fundamental position and their support is needed throughout the hearings process.

Without a mandated and consistent organizational structure, District and Field offices reported relying on different resources and staffing. Specifically, it was reported that:

- The Washington D.C. Field Office has one paralegal specialist and one contract clerical as administrative support, but some AJs prefer to do the job themselves for quality assurance. This office contains two types of administrative support staff, one paralegal specialist and one contract clerical resource.
- The Charlotte District Office has a legal technician for support for the District. This District office mentioned that this technician had paralegal duties – of GS 11 – despite her title being of a legal technician.
- The St. Louis District Office reported not having a clerical or administrative staff to help in the process at the time of the focus group. The OFP director later provided a chart showing this office has contracted an intern. However, this is not a full-time permanent position.
- The Philadelphia District Office has two types of extra administrative support. They have one legal assistant at their Baltimore Field office and one legal clerk at the Philadelphia District Office.
- The Dallas District Office has a legal assistant for support called Office Automation Assistant (OAA) or Hearings Clerk by the District and serves for both Dallas and San Antonio as part of one District. However, this District currently does not have a SAJ. Case assignment is performed by the legal assistant based on the AJs' inventory.
- The New Orleans Field Office has a legal assistant, called legal technician by the District, located in Houston and serves for both Houston and New Orleans as part of one District. The office stated that this position is crucial for the process.
- The Chicago District Office has a legal assistant, called hearings clerk by the District, who serves both Chicago and Milwaukee as part of one District. This legal tech has the following responsibilities: checks request for hearings and completeness of ROI; prepares and sends regular Acknowledgement Orders; prepares orders on front end, dismissal, and summary judgements; and docket cases on IMS, as well as a monthly check for undocketed cases. When this position was not funded, the office used subcontractors.

### Finding 2 Limitations

For Finding 2, there is no official guidance on how District and Field offices should be staffed. Accordingly, OFP leaders have discretion to apply their best judgment. The purpose of the finding was to note the areas where staffing was noticeably inconsistent or deviated from leaders' stated preferences.

### Recommendations to Address Finding 2

OFP should:

- 2.1. Standardize organizational structures used in the District and Field offices to include all resources required for major tasks. OFP should create a guideline that describes the desired standard organizational structure of District and Field offices. This guideline would ensure consistent and standardized minimum staffing for all District and Field offices and assist the director in determining budget, personnel and skills requirements for the District and Field offices.
- 2.2. Standardize the role of the administrative support for all District and Field offices. A position review should be conducted to determine the job title held by support staff, as well as their pay level and their level of responsibility (e.g., determine if legal techs should be assigning cases). Any additional administrative support should be supported by data analysis of caseloads and inventory.
- 2.3. Evaluate availability of resources dedicated to Alternative Dispute Resolution (ADR) per office and determine if the agreement between EEOC and the FMCS would provide enough mediation support for the District and Field offices. OFP should also analyze the impact of ADR pilot programs implemented in certain Districts, such as WISE to determine if these programs can also be replicated in other Districts. In addition, OFP could record and replicate best ADR practices from offices that report a higher percentage of cases resolved through mediation.

### **Finding 3: Integrated Mission System (IMS) development and upgrades do not match EEOC's reporting and tracking needs.**

IMS is the key database used to track, assign and document key actions taken during a case's full lifecycle. Accordingly, IMS maintains information on federal complaint hearings records. Information stored includes the complainant's name, address and demographics; the agency's name and address; and particular details of the complaint (such as number of days in certain stages, if IMS action code<sup>29</sup> is available); and activities related to the complaint, such as the number of days at each stage of the appeals process as confirmed by Appeals Action codes. IMS is used by both OFO and OFP to generate some reports, based on groups and categories, using data stored within IMS for each complaint.

For the hearings process, interviewees noted:

- IMS does not have reporting capabilities to generate needed automated reports. Users of IMS usually have to create their own spreadsheets and data analysis reports. Users of IMS use available reporting features of IMS to create reports to assist but have to perform their own analysis constrained by pre-set reporting features.
- AJs desire the following metadata, which are currently difficult to track: the average amount of days certain cases stay in AJ's inventory; number of cases that had an IC; the amount of cases that follow an action related to Pilot Projects; the amount of time a case takes to resolve from the hearing receipt to closure; and other data could be used for performance assessment.

For hearings, when an agency uploads a case into FedSEP, District and Field offices are not notified of an undocketed case in their inventory. Undocketed cases have not gone through the EEOC intake process, and thus have not been officially filed by EEOC staff. The office must manually run a report by agency code to see what undocketed cases are currently assigned to their office. Either the legal assistant or the District SAJ performs this function. Different offices run these reports on different frequencies. Two offices provided additional information about running these extra reports:

- In the New Orleans Field Office, the legal technician handles this process for the District (both New Orleans and Houston). The reports are run on a weekly basis.
- In the Chicago District Office, the hearings clerk handles this process for the District (Chicago and Milwaukee) on a monthly basis.

Currently, if District and Field offices are not regularly checking for undocketed cases, cases could sit in inventory and become aged unnecessarily. Manual procedures to find and docket undocketed cases must be performed due to the lack of integrated notification between FedSEP and IMS.

Inconsistencies in reporting make comparisons between Districts difficult, if not impossible, to interpret and analyze. Additionally, AJs are unable to track and locate any cases that had decisions submitted for appeal. Therefore, they cannot learn any lessons that could be applied to lessen the chance of appeal in the future. Moreover, key activities within the hearings process are not being accurately tracked within IMS, such as consistent scheduling of ICs. Tracking the total number of days from a hearing's request until

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<sup>29</sup> During the stakeholder review of the draft version of this report, OIT noted that the Charge/Case Management Modernization effort envisions replacing entered codes with captured activities/events that take place within business processes workflows in the system.

closing is not an option provided by IMS. Usually, AJs need to create separate spreadsheets for tracking complete information because the case changes from being in the SAJ inventory to the AJ in IMS once it is assigned.

In addition, IMS does not include action codes for cases that participate in Pilot Projects for Hearings Case Management, besides the Summary Judgement Pilot between OFP and OFO. As a result, those performing data entry often choose a 'Miscellaneous' category, making the case untraceable by action. The system does not have another appropriate option. During a meeting with the OIT Director of Enterprise Applications and Innovation Division who oversees IMS, the evaluation team observed that five out of five aged cases did not list a completed IC under the case's activity history. Unless the case was specifically put through one of the new Pilot Programs, an IC should be listed. These cases were aged and should have a documented and completed IC, but the AJ did not manually assign that activity task to the case record.

The Director of Enterprise Applications and Innovation Division stated she does not speak with users in the District and Field offices regarding the hearings process. She usually meets with OFP management for collecting requirements. The Director indicated that not being able to meet directly with the software main users, and being restricted to meeting only with management, hinders collection of requirements and desired key functionality for field staff. In a follow-up email, OIT recommended that unless critical fixes or enhancements to the current IMS are required during the next two years, updates, including those recommended in this report, would become part of the Agency's Charge/Case Management Modernization effort.

OFP and OFO have different access in IMS, and thus different reporting capabilities. OFP personnel noted that it is more difficult to generate reports, and other personal spreadsheets have to be created to monitor key data points. To compensate for some of the noted issues, OFP has incorporated Power BI as an extension to current reporting capabilities, to track some key measures. OFP users noted the following regarding IMS reports:

- Number of days that the case moves from Hearing to Decision (timeline to issue a decision) is not available.
- No communication feature currently exists within IMS. The Chicago District office stated that AJs usually have to create their own communications regarding IMS issues, topics, documents filed, or data.

### **Finding 3 Limitations**

For Finding 3, the evaluators recognize that IMS is a legacy system, with plans for a potential successor system. Accordingly, some of the noted deficiencies are a result of the late period of this particular product's life cycle. Accordingly, the recommendations that follow focus on implementing solutions when most feasible, which may be when a successor system has been established.

### **Recommendations to Address Finding 3**

- 3.1. OIT, in partnership with OFP and OFO, should re-evaluate IMS requirements, and requirements for the framework of its successor system, to determine what additional reporting functionalities

are needed in order to analyze data about staff and office productivity. A Voice of the Customer exercise or a user requirement meeting could serve as starting point to gather current requirements from IMS main users (OFP and OFO) and to determine what other current systems need to be integrated to make them function in alignment with IMS (Power BI, Complainant Portal). Based on our conversations with District and Field offices and OFO, some of the potential requirements may include:

- Reporting feature for specific types of data and meta-data that should be captured by OFP and OFO for performance measurement.
- Notification feature linked with Federal Sector EEO Portal (FedSEP)<sup>30</sup>, including a notification for the District/Field Offices when new undocketed cases and files are submitted into FedSEP.
- Integration with Complainant Portal to allow automated notifications.

3.2. OIT developers should meet directly with software users, such as OFO attorneys and supervisory attorneys and OFP AJs and Supervisory AJs (SAJ) to determine additional requirements.

3.3. OIT should explore the inclusion of additional codes, events, and activities required in IMS tracking for specific user needs (e.g., monitoring Pilot Projects).

3.4. OFO and OFP, in partnership with OIT, should consider development of an IMS training guide or document that is consistently updated and reviewed following upgrades, enhancements or modifications of the software. This guide should include all necessary codes for every action item in the process and should be available for all product users. This guide should ensure that product users track all mandated steps in IMS. Given that each office's staff has their own needs within IMS:

- One guide should be made for OFP legal techs, AJs, and SAJs.
- A separate guide should be available for OFO CCD staff, attorneys and supervisory attorneys.

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<sup>30</sup> The *Federal Sector EEO Portal (FedSEP)* is the EEOC's online data system that allows agencies to electronically submit affirmative employment plans (MD 715 reports), complaint processing data (Form 462), and complaint files for Federal hearings and appeals cases

#### **Finding 4: The appeals intake process consistently runs at a slower pace than needed within OFO's Compliance and Control Division (CCD).**

OFO's *Federal Sector Quality Practices for Hearings, Appeals and Oversight* details the overall appeals process. The initial intake stage of the Federal appeals process is statistically one of the longest steps in the process. However, there are no targets defined for determining the extent to which timelines exceed expectations.

While Federal agencies should submit documentation through FedSEP, complainants may submit documentation through regular mail, which adds scanning and uploading time to IMS to the process. For any packet that is mailed, OFO must scan the entire packet, which can be hundreds of pages.

Presently, the CCD team within OFO rotates staff responsibilities based on who is available, able, and willing to scan in documentation. The simple task of assigning scanning responsibilities takes much longer than stakeholders believe it should. After the documents are scanned, a specialist must review the scanned documentation to ensure clarity, relevance and accuracy. The specialist must also determine to which division within OFO the appeals case should be submitted for processing.

The Intake Stage of the appeals process is divided into sub-steps (with IMS codes in parentheses):<sup>31</sup>

- *Filing to Docketing (1A)*: Average time between the file and docket dates was 23 days. Fluctuations in the number of days in this step ranged from 0 days to a maximum of 1,682 days. Based on interviews and focus groups, stakeholders indicated delays were usually caused by scanning mailed documentation and converting documentation to digital files.
- *Docketing (1A) to Issuance of Acknowledgment of Appeal Letters (1B)*: Average time between docketing a case and issuing the letter acknowledging the appeal was six days. Time spent in this step ranged from a minimum of 0 days to a maximum of 287 days.
- *Issuance of Acknowledgment of Appeal Letters (1B) to Complaint File Receipt (1D)*: Average time between issuance of the acknowledgement letter and complaint file receipt was 69 days. Time spent in this step ranged from a minimum of 0 days to a maximum of 1,002 days. This step includes agency submission timeframes.
- *Parties' submissions of briefs and additional evidence*: IMS codes do not capture the receipt of briefs, but regulatory briefs are due at most 60 days after filing of the appeal.
- *Complaint File Receipt (1D) to ARP Assignment (2D)*: Average time between receipt of the complaint record and assignment to an attorney was 363 days.<sup>32</sup> Time spent in this step ranged from 0 days to a maximum of 2,822 days. Because most cases pass through a team supervisor (IMS codes 2A/B/C) before being assigned to an ARP attorney, this step includes two sub-steps: assignment of the appeal to a team of attorneys by CCD, and assignment of the appeal to an ARP attorney by an ARP team supervisory attorney. The portion of this step that CCD executes is considered part of the

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<sup>31</sup> We obtained timeline data from the FY 2017 Appellate Lifecycle Data.

<sup>32</sup> The *Analysis of FY 2017 Appellate Lifecycle Data* document only reports the total time from Complaint File Receipt to ARP Attorney Assignment. The *Analysis of FY 2017 Appellate Lifecycle Data* document does not specify average assignment times from CCD to the ARP teams (first sub-step) due to variances in assignment procedures depending on the type of case. However, it still considers this step as part of the Intake Stage due to involvement of CCD.

Intake stage. Assignments from CCD to an ARP team of attorneys vary depending of the type of cases assigned. For example, procedural cases more than 60 days old are assigned on a weekly basis to the corresponding team of attorneys. ARP supervisory attorneys assign merit cases on an as-needed basis. Moreover, merit cases that involve SEP/FCP priority issues are assigned to ARP teams periodically after CCD runs an IMS report that lists the cases. Finally, CCD also assigns requests for reconsideration to ARP teams approximately 90 days after the date of filing. To meet the threshold for CCD to assign cases to an ARP team of attorneys, the Complaint Files must be complete, mistake-free, and scanned, if submitted in hardcopy format. When information is invalid or needs clarification, OFO must contact the submitting agency, which increases the overall timeline.

The OFO FY18 Organizational Assessment noted that the CCD Intake Unit made some efforts to increase their staff. In January 2017, CCD was able to employ two Equal Opportunity Assistants (EOA), but these individuals left the EEOC in the 4th quarter of FY 2018. During the OFO Focus Group, attorneys mentioned previously having seven compliance officers to monitor appeal compliance. Currently, there are only three compliance officers. During the January 2019 Federal shutdown, OFO CCD lost two staffers. Efforts to counter the loss of staff included emphasizing the requirement for agencies to submit documentation through FedSEP. However, the CCD Intake Unit reported difficulties performing their assigned duties at the same level of efficiency due to the staffing shortages.

The CCD Supervisory Equal Employment Specialist emphasized the impact of the lack of staffing, which resulted in extending the timeframes for scanning documentation and performing duties such as filing, docketing and issuing acknowledgment letters. During the focus group, attorneys noted that the reduction in resources dedicated to intake resulted in a more time-consuming and potentially incomplete intake process. The reduced staffing puts more pressure on current staff to maintain efficiency, while still ensuring appeals cases are complete and that all information needed for case assignment is accurate.

OFO managers stated that they are opposed to assigning specific required timelines for the different milestones in the appeals process. However, without targeted timelines, there is no in-place mechanism for OFO to monitor and evaluate the efficiency of the intake process and to determine staffing needs in terms of the number and type of staff required.

Although there is no officially monitored target timeline, stakeholders believe timelines are extensive due to an inefficient intake process. For example, several days may pass before a resource is available to scan documentation received in hardcopy form. Additionally, when a thorough review of the initial appeal packet at the intake stage is not completed, more time must be added to the adjudication stage to review the packet for accuracy and relevance.

To address the staffing resource deficiency, the OFO Director issued a memo dated March 22, 2019 supporting the use of contractors to help alleviate workload in the control unit. The initiative was approved, and temporary clerical support service was scheduled to be provided by contractors at the time of our evaluation. The service period for the contractor support was 120 days, with two additional option periods. OFO will evaluate the results at the end of the period of performance to determine what type of continued support is needed.

### Finding 4 Limitations

For Finding 4, the evaluation team recognizes there are currently no official targeted timeframes for the intake process. Accordingly, the finding is based largely on the experiences of those who perform and those who are affected by the process. Tracking progress against targets is required for any quantitative determination of the degree to which the process is inefficient.

### Recommendations to Address Finding 4

OFO should:

- 4.1. Examine the staffing model of the appeals intake process to determine if the dedicated resources are sufficient for ensuring processes are completed in a timely manner. Providing dedicated compliance resources familiar with the various case types to review all documentation would ensure actionable cases with complete documentation are submitted to the Adjudication Stage, which could significantly cut down on timelines for the overall appeals processes.
- 4.2. Examine whether full appeals packets from agencies and complainants can be submitted electronically so that OFO can drive agency compliance with the requirement to submit digital files and consider eliminating CDs and paper records as avenues for submitting documentation. This would significantly reduce the administrative burden required to properly scan all documentation and increase transparency and accountability for measuring timelines in IMS.
- 4.3. Assign a target amount of days for intake so that management can determine if changes implemented impact the efficiency of the process. Goals or measures that involve targeted timeframes allow for assessment of the productivity of the office overall and provide a data-driven analysis to determine if additional staffing is needed for OFO units.
- 4.4. Evaluate and assess timeline improvement after the use of the new contractors. If significant improvements are verified by data, consider improvements to the ongoing staffing model and the possible addition of these contractor positions as permanent roles. OFO should determine and monitor metrics, such as improvement of targeted timelines from one step to another (data can be gathered from IMS).

## Additional Ideas for Improvement to Federal Hearings and Appeals Processes

This section details a number of additional ideas to improve the Federal hearings and appeals processes. These ideas are presented as suggestions for improvement, rather than as specific recommendations to address identified deficiencies. In accordance with our evaluation approach, we have organized ideas based on whether they impact inputs, activities, outputs or outcomes associated with the processes.

### Process Inputs

The following ideas address improvements to the processes governing how information is obtained and reviewed by OFO and OFP. Some activities serve as inputs to other steps in the process and we categorized them accordingly.

#### **Idea 1: OFP should enhance the acknowledgement order and scheduling process to include an Initial Conference (IC) Report.**

During the OFP Focus Group, AJs unanimously noted that unnecessary time and resources are spent in the early stages of the hearings process due to having to track down a complainant, ensure complainant information is up to date and accurate, and validate that the evidence provided supports a potential discrimination finding. Even in instances where they identify that a case that has little evidence to support true discrimination and dismiss the case, unnecessary attorney time has gone into making that determination. The St. Louis, Chicago and Philadelphia District offices use an IC Report for dismissing cases from a non-responsive complainant, ensuring accurate contact information up front to avoid delaying the process later when more documentation is needed quickly. This IC report allows a complainant to make an informed decision about whether to proceed towards a hearing or to seek ADR options.

The IC report used by these District and Field offices includes the following:

1. Full explanation of the hearings process;
2. Statement of understanding and concurrence from the complainant for a desire to schedule a full hearing;
3. Evidence provided by complainants towards identifying discrimination;
4. Accurate and up to date contact information; and
5. List of availability for conducting an actual IC.

By implementing this suggestion, EEOC will achieve the following outcomes:

- Overall case inventory decreases. The OFP DSR396 FY 2018 report shows that the St. Louis District office was able to reduce its inventory by 20 cases by the end of the fiscal year, the Chicago District office was able to reduce its inventory by 67 cases by the end of the fiscal year and the Philadelphia District office was able to reduce its inventory by 164 cases by the end of the fiscal year.
- AJs from District offices implementing IC reports indicated feeling relieved by having updated contact information from the complainants when the IC report was submitted. Therefore,

this idea will enable better understanding and communication throughout the process as well as attaining potential time savings in finding complainants' information.

The length of implementation for this idea is projected to be short (less than six months) because little-to-no added resources are required for change.

**Idea 2: OFO and OFP should continue to enhance instructions given to complainants and submitting agencies to ensure a complete case file submission. OFO and OFP should consider incorporating video trainings, tutorials or pre-recorded instructional videos.**

Through discussions with AJs, attorneys, OFO and OFP management, we noted that an incomplete record submitted by either the originating agency or the complainant causes significant delays in coordinating additional information. Both OFO and OFP personnel identified incomplete case files as a major pain-point during the intake stage of the process. A case cannot be reviewed, and decisions cannot be made, until a complete record has been submitted by the agency and the complainant. Extensive delays occur in a case's timeline if additional information is needed or requested.

During an interview, OFP management also stressed lack of complete case files as a key pain-point and one they hoped would be resolved by the rollout of a more informative, user-friendly complainant portal for filing new hearing requests. By implementing this idea, EEOC will achieve the following outcomes:

- A higher level of knowledge for complainants and agencies on how to submit documentation and Report of Investigation.
- AJs and attorneys will avoid spending time reading unnecessary information or asking the parties to re-submit inaccurate documentation.

The length of implementation for this idea is medium; it requires planning, refining, and implementation time, but it could be rolled out in under a year.

**Idea 3: OFO should consider mandating submission criteria for agencies, including the requirement to highlight, bookmarks or tab key information submitted in a large appeal packet. This is currently a mandated procedure used by OFP.**

OFO Attorneys search an appeal packet to identify documentation cited by agencies, whereas OFP mandates that agencies highlight and bookmark all relevant information submitted in the complete case file. Agencies are asked to submit full case records to EEOC, and OFO attorneys spend excess time trying to find the specific documentation cited as relevant by the originating agency when reviewing the appeal packet.

By implementing this idea, EEOC will achieve the following outcomes:

- Less time required for attorneys searching for relevant information within an extensive case file.
- Improved decision-making timeliness if an attorney is able to quickly identify key case information.

The length of implementation for this idea is medium; it requires planning, refining, and implementation time, but it could be rolled out in under a year.

### **Idea 4: EEOC should review the feasibility of a no longer allowing the submission of paper files or records from agencies and complainants.**

Submitting paper files can add time to both the hearings and appeals processes to adequately intake a new case record. OFP has already mandated that agencies electronically submit hearing packages as stated in an OFP memo, *Federal Hearings Transition to Digital Files* released on Sept. 30, 2016. EEOC has begun initiatives to ensure the digitalization of records going forward. Currently this process is not fully mandated as part of the submission and intake process for both OFO and OFP for the complainants. Until the Complainant Portal is fully implemented, complainants may still submit information by mail.

By implementing this idea, EEOC will achieve the following outcome:

- Less administrative burden required for scanning paper files.
- Improved timeliness of the overall hearings and appeals processes.

The length of implementation for this idea is medium; it requires planning, refining, and implementation but it could be rolled out within six - 12 months. It could be timed to align with the rollout of the Complainant Portal.

### **Activities**

The following ideas address improvements to the processes governing how particular activities are performed and assessed.

### **Idea 5: OFP should consider measuring the effectiveness of Initial Conference (IC) reports (IC) and, based on performance measurement (through IMS entries), mandate the most appropriate and consistent use and duration.**

ICs are used to dismiss cases; resolve them; submit a case for mediation; or, make an early case ruling or decision and can be completed in as little as two hours. District and Field offices use ICs in different ways. However, there has been no assessment on the effectiveness of how ICs are currently performed as part of the overall organizational performance management. ICs are often reengineered through process improvement initiatives implemented by OFP management in order to improve the efficiency of the hearings process. District and Field offices use different types of ICs: Regular IC, IC Targeted to Request Documents<sup>33</sup>, and IC Targeted with Court Reporter<sup>34</sup>, depending on the information available to the AJ in complaint files.

District and Field offices which were visited, interviewed, or participated in the OFP focus group, reported the following:

- The Washington D.C. Field Office uses all three types of IC and has template documents for all the ICs.
- The Charlotte District Office has implemented Targeted ICs. However, the office staff believe this type of IC creates more problems for them than actually helping. All cases go through regular ICs if possible.
- The Los Angeles District Office does not have an IC. Every case produces an Acknowledgment Order, which is sent before cases are assigned to AJs.

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<sup>33</sup> *IC Targeted to Request Documents*: Initial Conference to request specific documents or information.

<sup>34</sup> *IC Targeted with Court Reporter*: if limited testimony is necessary, the AJ can schedule an Initial Conference with a Court Reporter present. It is used very sparingly with no more than 1-2 witnesses and it needs to be held in person or via VTC.

- The St. Louis District Office generates an acknowledgement and order as an order of receipt (IC report) to request more information from the parties. It does not implement ICs for all cases.
- The Atlanta District Office schedules ICs for all cases. This office only implements a Regular ICs.
- The Dallas District Office relies on templates for two types of IC: Regular IC and Targeted IC.
- The New Orleans Field Office only has one Standard/Regular IC for all cases.

Also, currently there is no mandate in the SOPs for an AJ to participate in a certain number of ICs. Therefore, the number of ICs in which an AJ participates is not usually tracked in IMS. The critical performance elements and standards for AJs and SAJs involve a certain percentage of cases to have an IC be rated either Fully Successful or Outstanding but the plans do not specify a targeted length or consistency of use.

By implementing this idea, EEOC will achieve the following outcomes:

- Ensuring that AJs and SAJs record IC action steps in IMS will help track overall organizational performance about the effectiveness of the IC, by evaluating the number of days a case remains in this step, and how quickly the case moves forward towards resolution after completion of the IC.
- By assessing timelines within the IC step, it can be determined whether cases reviewed earlier for merit result in quicker motions or more timely decisions.

The length of implementation for this idea is long, as it requires: a potential change of process to code IC actions in IMS or its successor system; collecting data to analyze possible efficiencies; and then implementing a mandate regarding the standard use of ICs by all District and Field offices.

**Idea 6: Though infrequently used today, when cases are transferred, OFP should standardize the process for transferring cases. The recipient office of transferred cases should handle the case until a determination is made that a hearing needs to be scheduled. Then the office should return the case to the original District and/or Field office to handle the remainder of the process.**

When cases are transferred and hearings are required, geography can be an impediment to progress. Sometimes it is more difficult for the parties and recipient office to meet over great distances. The Chicago District office staff stated that complaints from distant geographic locations could result in parties having a difficult time attending the hearing, as well as presenting certain types of evidence. Additionally, it is more difficult to have witnesses physically present for testimony when the location is further from the agency location. In response to this idea, OFP expressed concern about implementing this practice as a new norm. Specifically, OFP stated that the AJ who handled the transferred case would have to remain involved, due to the time and effort dedicated to the case, and this would result in having to coordinate travel to the original jurisdiction to conduct the hearing. We note that travel for the parties involved in the complaint weighed more heavily on this idea than potential travel for the OFP resources. Accordingly, we suggest that this idea be implemented only when the benefits and convenience to complainants, witnesses, and agency representatives outweigh any increased travel costs for OFP.

By implementing this idea, EEOC will achieve the following outcomes:

- Transfer of cases could result in a collaborative effort of District and Field offices without creating issues caused by geography for the parties.
- Since not all cases require a hearing and could be resolved by summary judgment, offices can still provide full support for those cases.

The length of implementation for this idea is medium; it requires planning, refining, and implementation time, but it could be rolled out in under a year.

### Outputs

The following ideas address improvements to the processes governing what is produced from the process activities.

#### **Idea 7: OFO and OFP should continue to engage in conversations with the Chief Data Officer (CDO) for incorporating more predictive analytics into the Federal hearings and appeals processes.**

The CDO indicated predictive analytics could be used in many ways to improve office effectiveness, but these opportunities are not currently being addressed. During two interviews with the CDO, he said that it would be beneficial to use historical data, regarding office caseloads and processing timelines, to make predictions over future staffing needs. The CDO identified data issues such as unstructured data gathering, lack of use of real time data and trends in discrimination, and EEOC personnel having different access to data systems. The CDO agreed that implementing a data enclave for EEOC to gather internal and external data, store available data, clean data sets and use available cleaned data sets for analysis would be of tremendous help for identifying discrimination trends.

The CDO also mentioned that progress could be made on predictive analysis by enhancing an algorithm that uses predictive analytics to detail the likelihood of discrimination. The CDO explained that any analysis developed could be used to make early predictions about a case's merits but would not replace the human approval process. By implementing this idea, EEOC will achieve the following outcomes:

- Provide a data-driven approach to identifying staffing needs within the OFP District and Field offices.
- Decrease overall pending inventory if cases awaiting review are identified as very likely or very unlikely to find discrimination.

The length of implementation for this idea is long, as suggestions would require more than a year to implement.

#### **Idea 8: OFO and OFP should implement a forum for knowledge sharing between AJs, SAJs, and Appellate Review Program attorneys.**

OFO and OFP lack standardized training protocols. In closing interviews with OFO and OFP leaders, they identified knowledge sharing as an area to explore to bolster continuous training, and plans are currently being considered for the best approach to implementing a knowledge sharing forum.

By implementing this idea, EEOC will achieve the following outcomes:

- A knowledge sharing forum allows judges and attorneys to ask questions and share best practices.
- A knowledge sharing forum provides a source for historical referencing on similar cases and rulings.
- A knowledge sharing forum helps ensure consistency in rulings on similar cases of discrimination.

The length of implementation for this idea is medium; it requires planning, refining, and implementation time, but it could be rolled out in under a year.

**Idea 9: OFP should monitor office performance against targeted timelines for each step of the Federal hearings process at the District and Field office level and integrate additional graphs and visuals for existing reports.**

OFP currently uses Power BI as tool for reporting data regarding resolutions, number of aged cases, total pending cases, transferred cases, average age of cases and other data. However, these reports do not specifically display the amount of time a case is spent in each step of the process, nor do they display visuals regarding District and Field office specific goals.

Employee performance plans include critical performance elements and standards for AJs and SAJs. These performance plans contain goals and measurements at the individual level for case management, case adjudication, conferences and hearings, resolutions and communications. However, the plans are not based on goals and targeted timelines for each step of the hearings process at the District and Field office level. All District and Field offices must address different pending inventories and implement different Pilot Projects that impact the process.

By implementing this idea, EEOC will achieve the following outcomes:

- Displaying data showing targeted timelines for each step of the hearings process per District and Field office would allow a more in-depth analysis of which steps are taking longer.
- Analysis of this data would assist OFP in identifying pain points per District and Field office and further address specific issues in each District and Field office.
- Identifying these issues would further assist in the analysis of the effectiveness of Hearings Case Management Pilot Projects, by allowing a comparative analysis of each step of the process of offices that implement Pilot Projects versus offices that do not implement the Pilot Projects.
- Establishing more granular metrics/targets would allow OFP to create goals specific for District and Field offices (when considering backlog and available resources).

The length of implementation for this idea is medium; it requires planning, refining, and implementation time, but it could be rolled out in under a year.

**Idea 10: OFO should integrate more targeted timelines to be used to track organizational performance at each step of the appeals process.**

OFO monitors data charts through Appellate Monthly Dashboards. OFO also cascades goals from the Senior Executive Services (SES) performance plan of the Director to attorneys and other employees in the organization. However, neither the dashboards nor the SES plans present targeted timelines for key steps in the appeals process. The monthly dashboards present data in terms of pending appeals inventory, percentage of cases resolved under 180 days, aged inventory closures, and aged distribution of closures; there are no established timeline targets to compare data against in order to monitor efficiency at each step of the appeals process.

The Appeals Program does not have mandated deadlines for CCD and ARP staff; however, there are timelines for the Complainant and agency to submit documentation and requests. The FY2016 and FY2017 Appellate Lifecycle Data documents summarize each step of the appeals process and provide an analysis of average number of days that cases stay in each step of the appeals process. However, without

established targeted timelines to use as control measures, the increase or reduction of time at each step of the process cannot be easily interpreted as successful or concerning.

Attorneys stated that Supervisory Attorneys set certain deadlines for drafting decisions to OFO attorneys. Meeting such deadlines would go into the attorney performance plan, but these timeframes are not tracked as targeted timelines for completion at the organizational level.

By implementing this idea, EEOC will achieve the following outcomes:

1. Having targeted timelines assists management by allowing the direct monitoring of efficiency at each step of the appeals process.
2. Aligning timelines to the data already presented for closures would allow for a deeper analysis in terms of efficiency at each step of the appeals process.
3. Rather than pressuring staff to meet these timelines, having actual targets for completion would allow OFO to identify areas where efforts to improve efficiency could be established by either revisiting staffing models or evaluating processes for possible enhancements.

The length of implementation for this idea is medium; it requires planning, refining, and implementation time, but it could be rolled out in under a year.

### Outcomes

The following idea addresses improvements to the processes that impact ultimate process effectiveness.

#### **Idea 11: OFP should integrate core metrics into the monitoring of Hearings Case Management Pilot Projects and initiatives.**

OFP is currently conducting Pilot Projects for Hearings Case Management on a number of initiatives to help make the overall hearings process more effective. By definition, some Pilot Projects are cutting down on timelines by reorganizing the order of procedures while some provide alternate approaches. Metrics and associated data analysis would allow for determining if the Pilot Projects have actually increased productivity, efficiency or effectiveness.

OFP Memos to the Chair presenting the projects and panel presentations on Hearings Case Management Pilot Projects have informed stakeholders about critical progress of the projects. However, no measurement or related target milestones were identified, nor was a method outlined to collect and analyze data from these pilots.

On May 20, 2019, OFP management emailed District Directors to request information regarding the efficiency of their pilot programs. Six open ended questions were sent to District Directors. No questions involved reports of data or data analysis. The questions did not seek offices to report the numbers or analysis of data on timelines or effectiveness of the Pilot Project.

By implementing this idea, EEOC will achieve the following outcomes:

1. Determination of success and improvement of effectiveness and efficiency from the Pilot Projects will be supported by actual data provided by the District and Field offices.
2. Analysis of data would support investigation of the impacts of short- and long-term changes to the current processes resulting from the Pilot Projects.

3. Performing data analysis on Pilot Projects and initiatives would inform decision-making on whether making these projects should be integrated as part of the To-Be process or not.

The length of implementation for this idea is medium; it requires planning, refining, and implementation time, but it could be rolled out in under a year.

### Appendix I — Federal Hearings Process Map

The Federal hearings process map includes four major process owners: Complainant, Originating Agency, OFP, and AJ. Process maps were developed through a combination of available documentation and discussions with stakeholders. Different offices may deviate from these processes as noted throughout the report, but this map represents the general flow of activities. The process unfolds as follows:

- Step 1:** Originating Agency initiates investigation of complaint. The investigation takes 180 days to complete or 360 days in total if there was an amendment to the complaint. Once the investigation is complete, the Originating Agency submits a ROI through FedSEP and then issues a Notice with the Right to Request a Hearing to the Complainant.
- Step 2:** The Complainant requests a hearing with EEOC within 30 days after receiving the Notice with the Right to Request a Hearing. The request can be filed through mail or through the Complainant Portal.
- Step 3:** OFP receives the complaint and starts the process of Case Assignment. The case is assigned to an AJ by the Supervisory Administrative Judge (SAJ), which may take 15 days or more. The timing for assignment usually depends on receiving a complete ROI, caseload inventory, and staffing availability. Once the case is assigned, it is docketed into IMS. The District and Field office submits an Acknowledgement and Order and schedules an IC.
- Step 4:** The assigned AJ reviews the ROI and complaint related documentation and evaluates whether there is a potential transfer of the case, opportunity to write a notice with the intent to write a decision (summary judgement) without a hearing (if the District or Field office implements one of the Hearings Case Management Pilot Projects initiated by OFP HQ), or sanction the agency if the ROI is incomplete, absent or inaccurate. The AJ may also apply rulings to the case, if applicable, in the form of consolidation of complaints, motion to amend complaints and complaint procedural dismissal.
- Step 5:** The AJ conducts the IC. There are three types of ICs: Regular IC; Targeted IC to Request Documents; and Targeted IC with Court Reporter. Some District and Field offices use all three types of IC, while some offices only use a regular IC. During the IC, the AJ discusses the complaint with the parties, establishes relevant rulings, seeks mediation options and determines if Discovery is needed. If Discovery is granted, the AJ issues a Case Management Order, which authorizes the Discovery period, Discovery methods and timeframe of Discovery.
- Step 6:** The AJ reviews material facts of the case. If material facts are not in dispute, then the AJ issues a Decision on Summary Judgment without a Hearing. The AJ issues a summary judgment to the parties with his/her rationale of the decision. If material facts are in dispute, then the AJ will conduct an Objective Hearing on Issues and send a scheduling order with date, time, location, and other instructions regarding the hearing at least 30 days before the hearing date. The AJ may also schedule a prehearing conference in which he/she discusses with the parties how documents will be admitted, which witnesses are allowed, and how testimony will be taken at the hearing. Before the hearing starts, the AJ responds to outstanding agreed motions.

**Step 7:** The hearing takes place at the agreed location, time and date.

**Step 8:** The AJ makes rulings and decisions based on testimony, expert testimony, evidence and exhibits.

**Step 9:** The AJ issues a decision on the complaint within a reasonable time, either through issuing a bench decision (at the end of the hearing) or within 90 days after the hearing takes place if more review of evidence is needed to reach a decision. The AJ sets remedies if the complainant prevails on any issue of the complaint. The AJ issues an Order of Judgement, a decision, a Notice of Appeal Rights and a complete record of the hearing transcript. Documentation is uploaded into FedSEP.

**Step 10:** The Originating Agency submits the Final Agency Decision (FAD) to the complainant on whether the Agency will comply with the AJ's decision within 40 days. Based on the FAD, the complainant may decide to appeal the decision within 30 days. If the Originating Agency disagrees and is not willing to comply with the rulings and disposition, the Originating Agency must appeal within 40 days (through the FAD). If no FAD is submitted within 40 days of receiving the order of judgement and decision, then the AJ decision stands.

Figure 1-B: Hearings Process Map (Part 1 of 4)

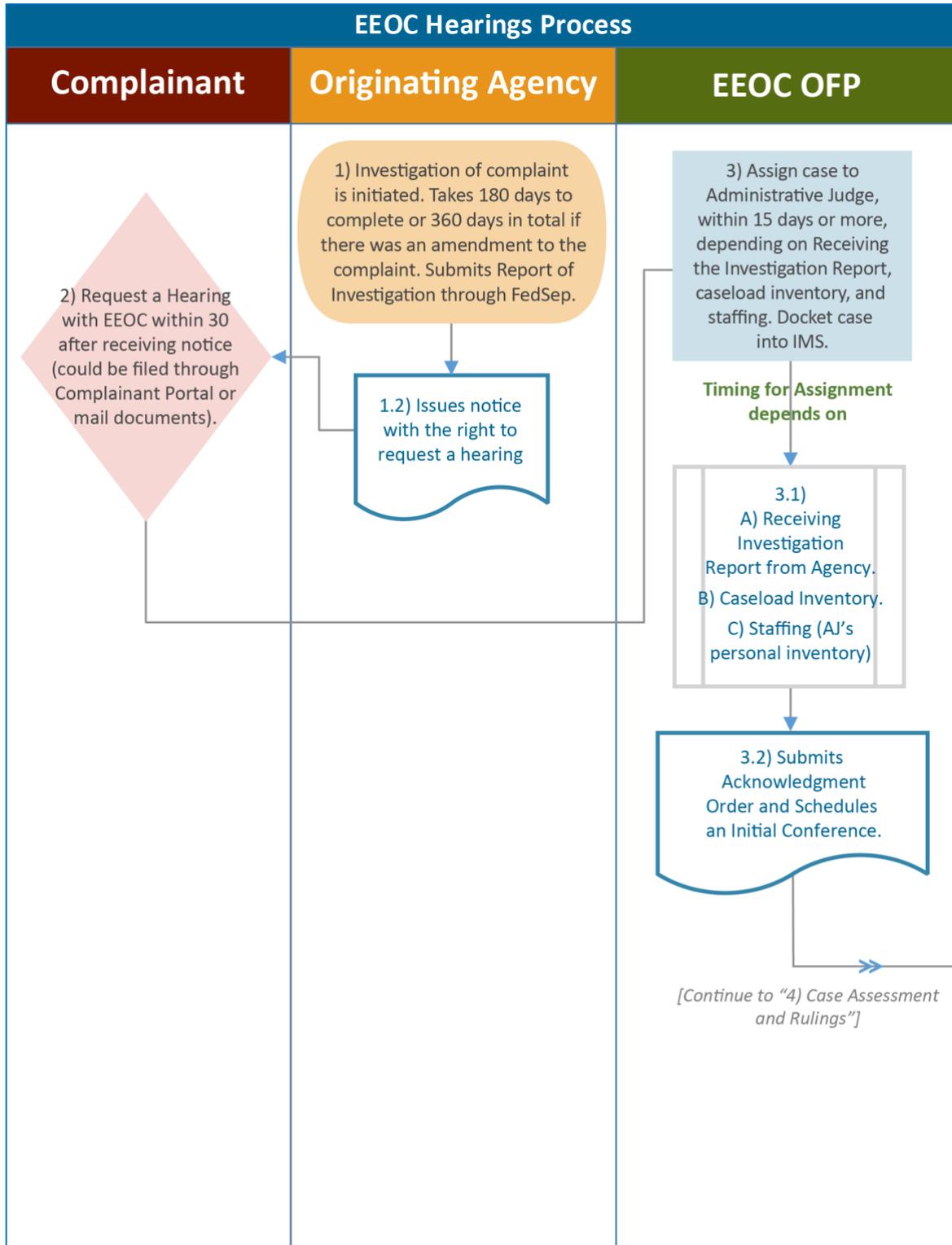


Figure 1-B: Hearings Process Map (Part 2 of 4)

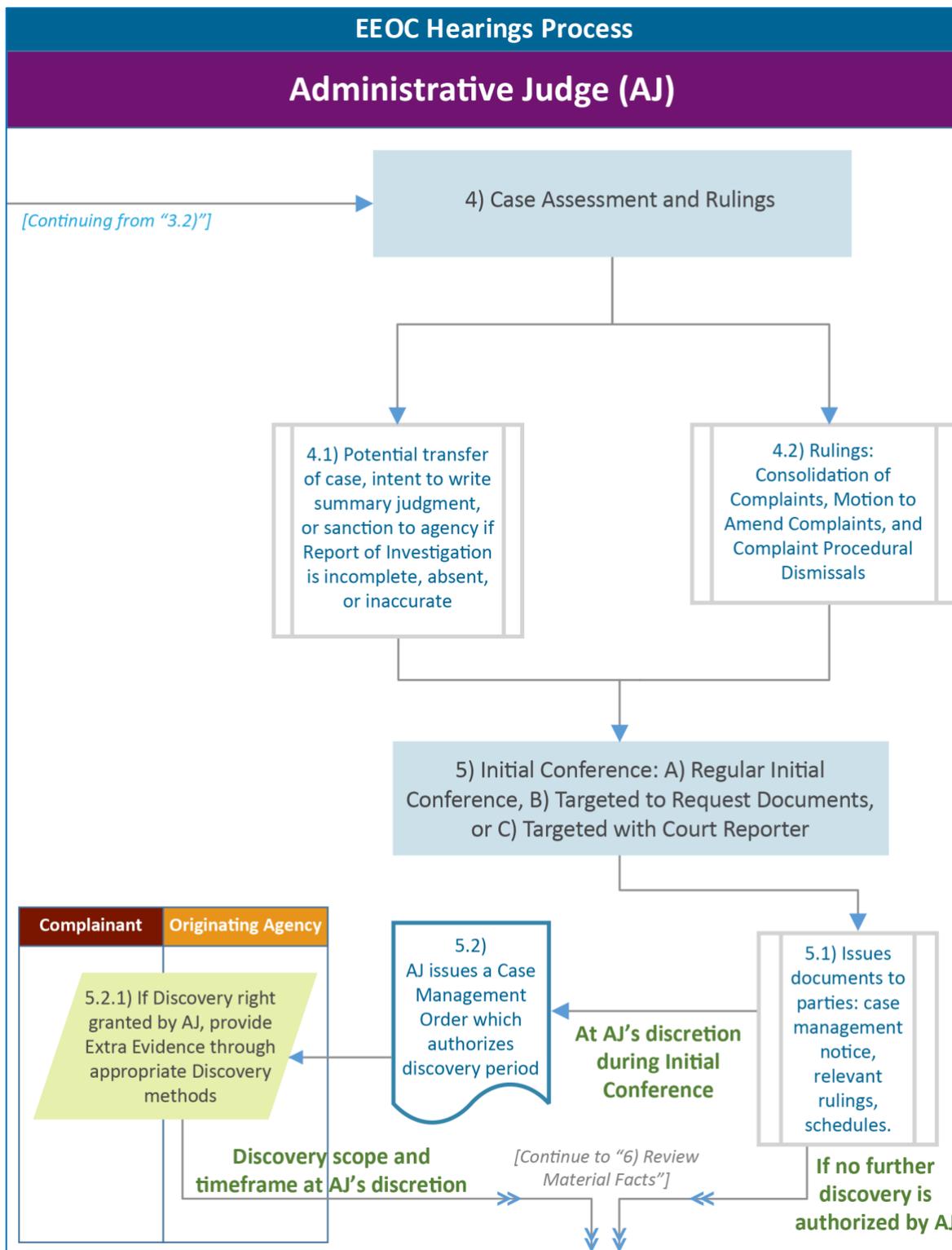


Figure 1-B: Hearings Process Map (Part 3 of 4)

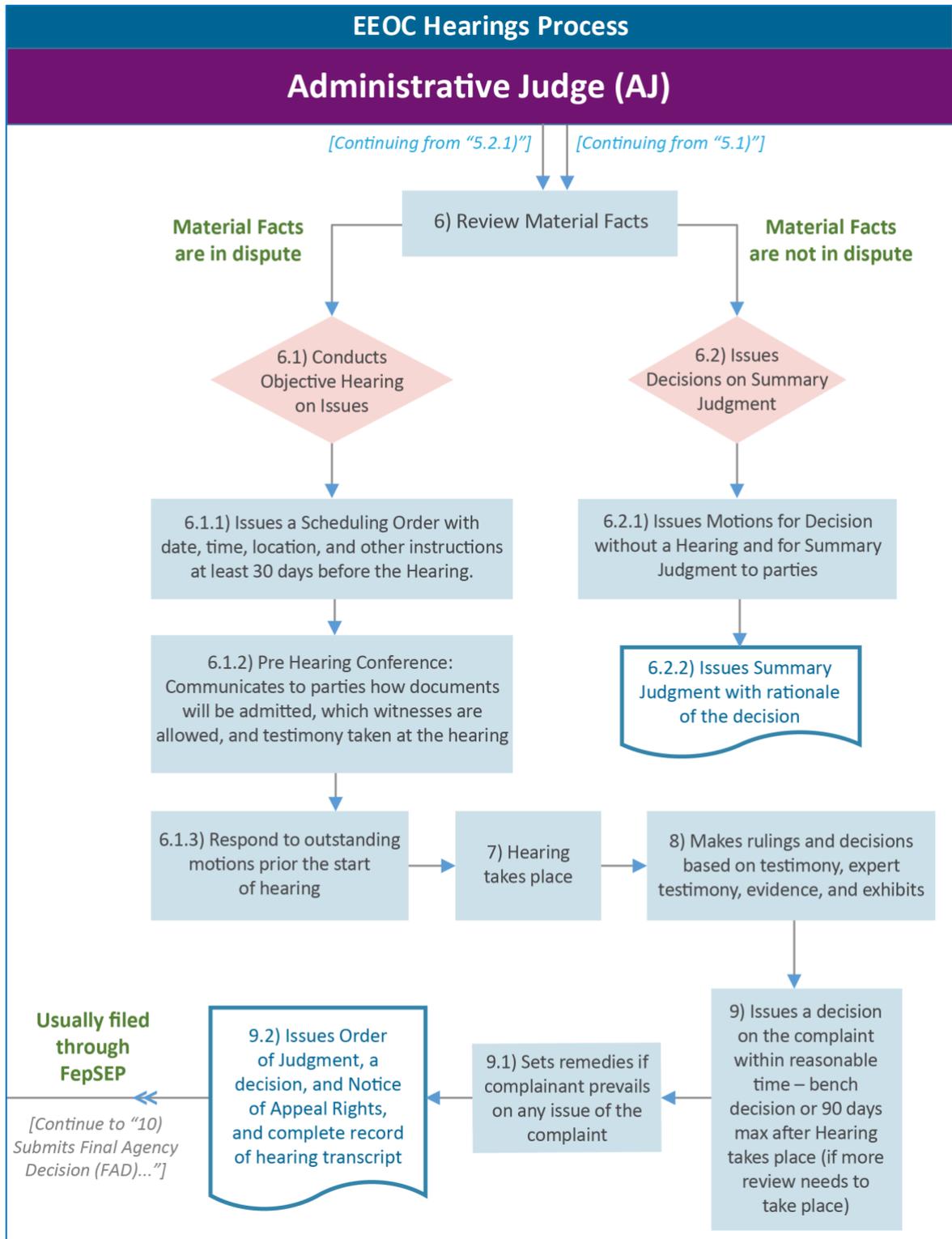
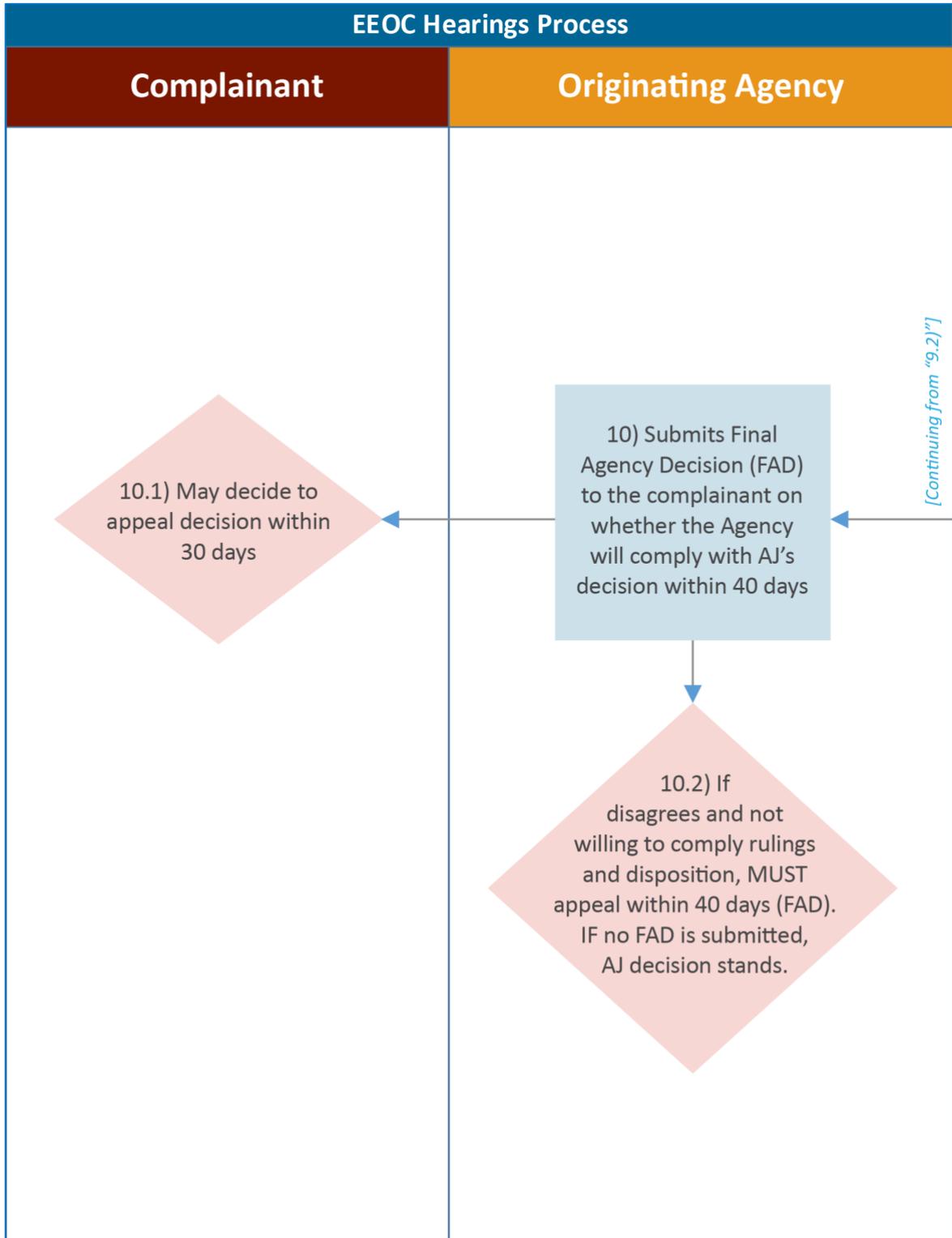


Figure 1-B: Hearings Process Map (Part 4 of 4)



## Appendix II — Federal Appeals Process Map

The Federal appeals process map includes three major process owners: Complainant/Agency, OFO CCD, and OFO ARP. Process maps were developed through a combination of available documentation and discussions with stakeholders. Average timelines were extracted from the Analysis of FY 2017 Appellate Lifecycle Data document. IMS action codes for steps in the appeal process are provided in parentheses.

**Step 1:** Complainant and/or agency files an appeal after receiving a Notice of Appeal or after procedural dismissal. The Complainant and Agency must file the appeal within 30 and 40 days, respectively, of receiving the Notice of Appeal through the FAD.

**Step 2:** CCD receives the appeal files and serves as the central repository for appellate case files. CCD also receives e-mails regarding the complaint, docket appeals, and requests complaint files from the Agency. CCD also notifies the Complainant and Agency about deadlines and the process on how to obtain a status of appeal. CCD also addresses incomplete documentation.

**Step 3:** CCD control staff docket the appeal into IMS (1A)<sup>35</sup>. This step takes 23 days on average to be completed. CCD control staff provide file jackets, perform an intake management review and assign a docket number to the appeal request.

**Step 4:** CCD submits an Acknowledgement of Appeals (1B and 1H) to the Complainant and Agency.

**Step 5:** The Agency submits complaint files through FedSEP. The Complainant may submit additional evidence or documentation that supports the appeal through electronic submission or by mail. All documents must be submitted within 60 days after filing the appeal.

**Step 6:** CCD receives complaint files and documentation, reviews document and files, and makes an entry in IMS (1D) so that the case can be assigned.

**Step 7:** An Assignment of Appeal is managed through the ARP unit (2D). The ARP unit is comprised of three divisions and each division consists of two teams of attorneys headed by a supervisory attorney. Assignment of a case to a division takes 363 days on average. Each ARP division specializes in certain type of cases:

- Appeals Division A (Expedited Appeals): Appeals from agency decisions dismissing complaints of discrimination on procedural grounds (procedural cases).
- Appeals Division B: Adjudicate merit cases in which decisions do or do not have involvement of an AJ.
- Review Division: Process merit and circulation cases (cases that are circulated to the commissioners).

**Step 8:** ARP attorneys complete an objective review of the appeal, which includes the complaint file, investigative report, research, hearing records, and statements/briefs submitted on appeal and submit the draft decision to the Supervisory Attorney (2F). This step takes 50 days on average.

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<sup>35</sup> The numbers in parentheses are IMS action codes used for each step of the appeals process.

- Step 9:** The Supervisory Attorney reviews the draft decision. Once approved, he/she submits the draft decision to the Division Director for review (2H). This step takes 5-14 days on average.
- Step 10:** Generally, the Division Director has a final say to issue a decision. However, in some cases, the Division Director sends the draft decision for further review to the ARP Director and/or to the Director of OFO (2I). Some Federal sector cases are reserved for circulation to the commissioners (2J). The decision that is approved by a majority of the commission is submitted after signature of the Executive Officer of the Executive Secretariat (2K or 2S). Circulation cases may take up to 2 years to get resolved.
- Step 11:** The ARP Division Director, ARP Director, or Director of OFO approves and signs the decision and sends to CCD (2N).
- Step 12:** CCD communicates the decision to the Agency with compliance orders and informs the Complainant of procedural rights. The case is closed in IMS (2X).
- Step 13:** CCD notifies the parties of monitoring procedures and regularly communicates with parties to ensure compliance of orders. If the Agency decision is affirmed, then the Complainant may file a request for reconsideration with EEOC within 30 days of receiving the decision. The Complainant may choose to go to Federal Court instead within 90 days of receiving the decision. If the Agency decision is reversed, then CCD starts compliance monitoring. A new code is entered in IMS for compliance actions.

Figure 2-B: Appeals Process Map (Part 1 of 3)

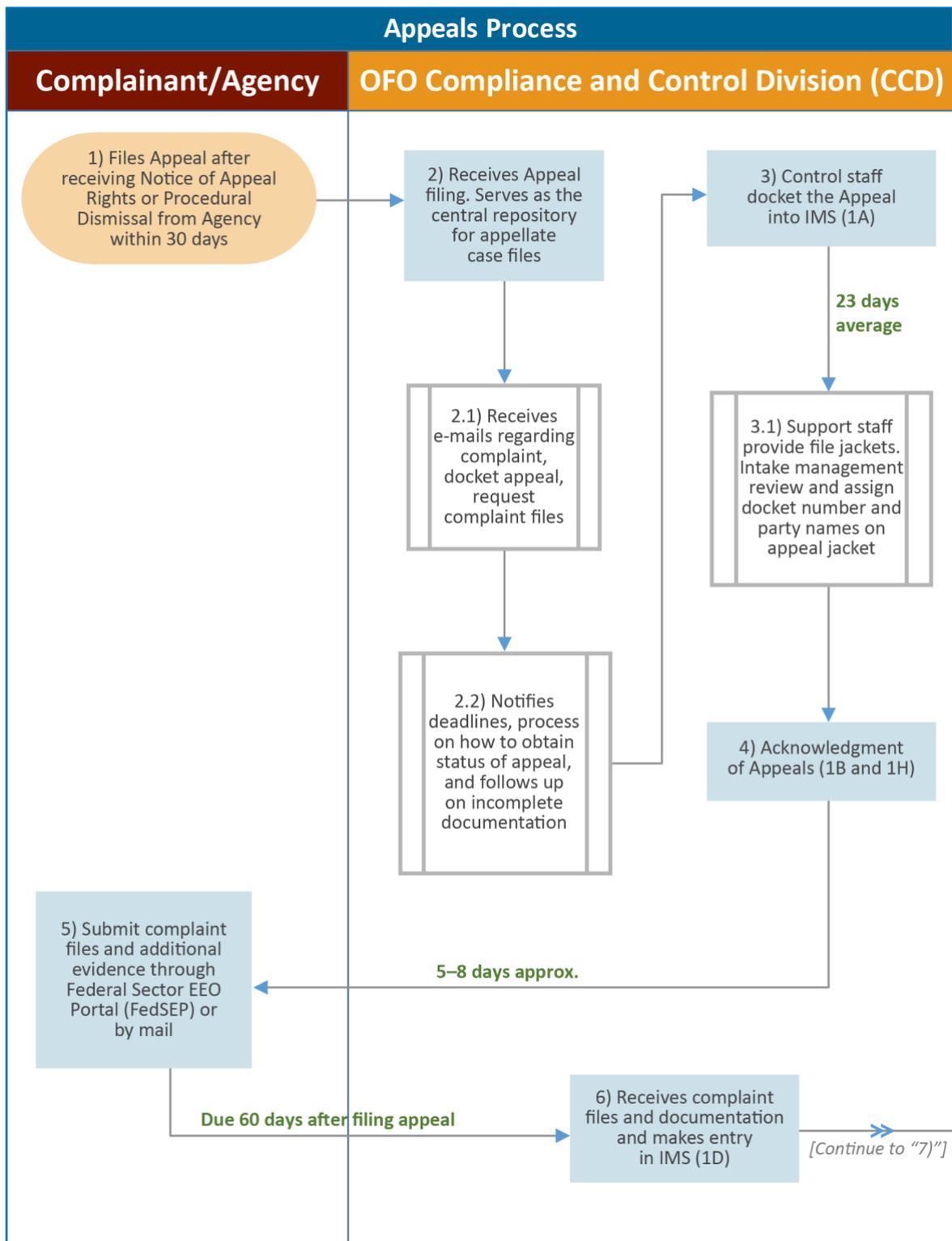


Figure 2-B: Appeals Process Map (Part 2 of 3)

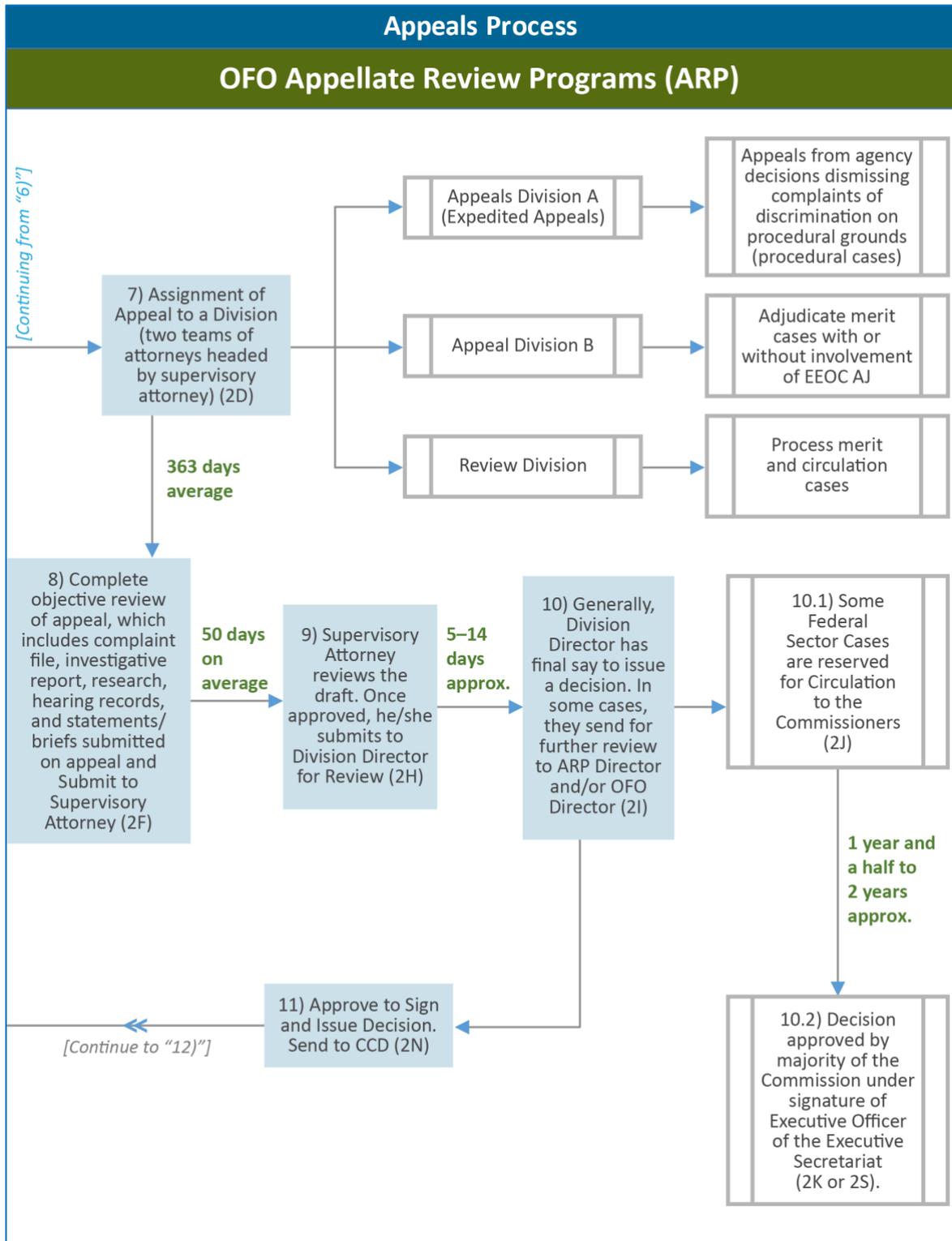
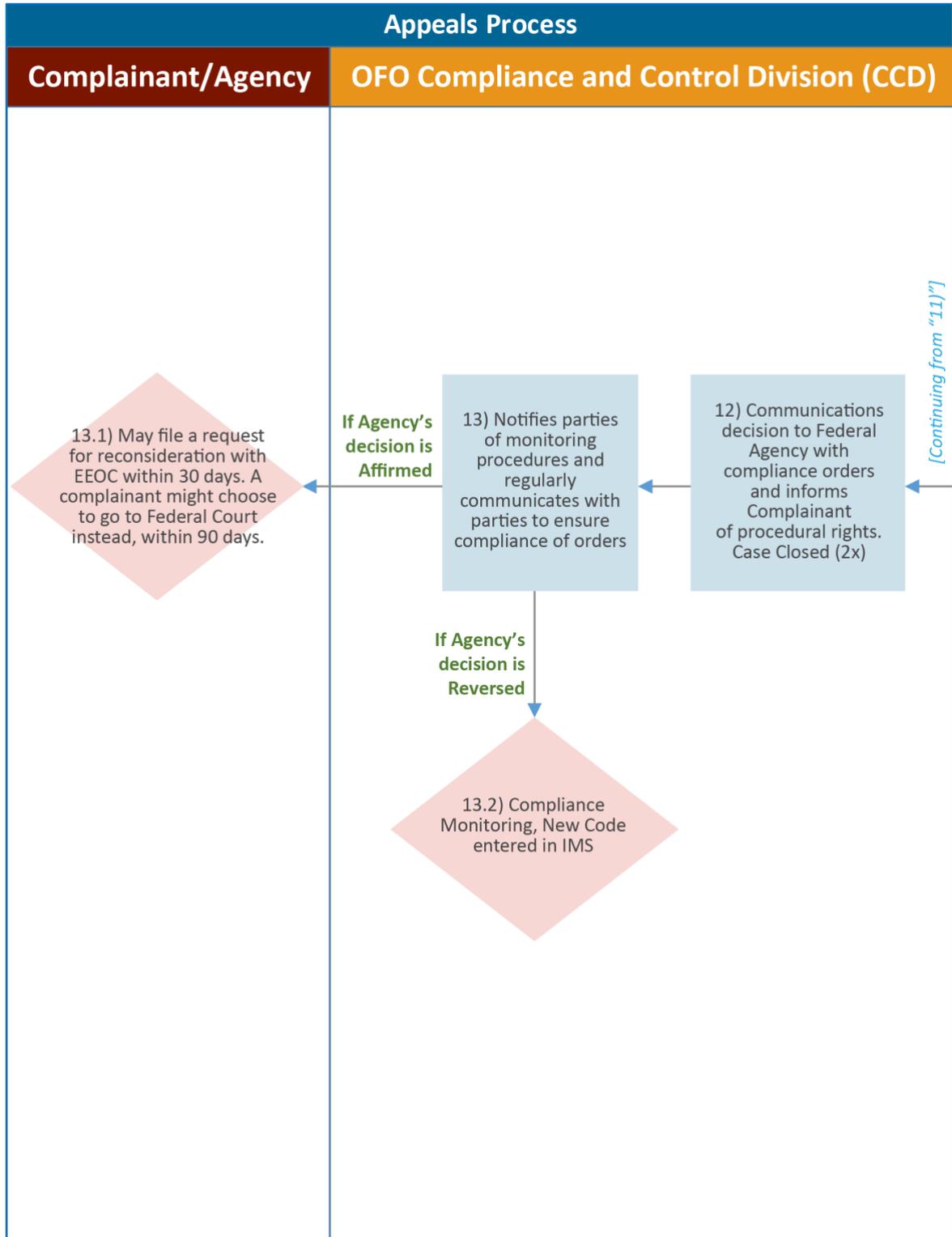


Figure 2-B: Appeals Process Map (Part 3 of 3)



### Appendix III — Site Visits

The following table summarizes decisions for site visits.<sup>36</sup> Locations selected for interviews are indicated with an asterisk (\*).

Office (District)	Average Processing Time (in days)	Caseload per AJ	Analysis
TOTAL	659	189	
Atlanta	616	296	Higher than average caseload but lower than average processing time
Birmingham	688	157	Lower than average caseload but higher than average processing time
Charlotte*	571	230	Higher than average caseload but lower than average processing time
Chicago*	519	82	Lower than average caseload and lower than average processing time
Milwaukee (Chicago)	410	149	Lower than average caseload and lower than average processing time
Dallas*	947	244	Higher than average caseload and higher than average processing time
San Antonio (Dallas)	916	427	Higher than average caseload and higher than average processing time
Houston	889	173	Lower than average caseload but higher than average processing time
New Orleans* (Houston)	483	93	Lower than average caseload and lower than average processing time (but higher than average processing time when considered as part of the Houston District)
Indianapolis	542	258	Higher than average caseload and lower than average processing time
Detroit (Indianapolis)	766	229	Higher than average caseload and higher than average processing time
Los Angeles	673	182	Lower than average caseload but higher than average processing time

<sup>36</sup> Two of the site visits (Charlotte and New Orleans) were conducted as virtual interviews due to issues with travel funding. District Directors, SAJs, AJs, and administrative staff were still able to view the Hearings Process Map during these virtual interviews.

## Evaluation of EEOC Federal Hearings and Appeals Processes

Office (District)	Average Processing Time (in days)	Caseload per AJ	Analysis
Memphis	789	158	Lower than average caseload but higher than average processing time
Miami	609	135	Lower than average caseload but higher than average processing time
New York	616	265	Higher than average caseload but lower than average processing time
Philadelphia	773	154	Lower than average caseload but higher than average processing time
Baltimore (Philadelphia)	522	91	Lower than average caseload and lower than average processing time
Cleveland (Philadelphia)	563	174	Lower than average caseload and lower than average processing time
Phoenix	699	328	Higher than average caseload and higher than average processing time
Denver (Phoenix)	754	122	Lower than average caseload but higher than average processing time
San Francisco	738	123	Lower than average caseload but higher than average processing time
Seattle (San Francisco)	521	104	Lower than average caseload and lower than average processing time
St. Louis	733	215	Higher than average caseload and higher than average processing time
Washington, DC*	633	255	Higher than average caseload but lower than average processing time. This office has the largest caseload of all District and Offices, according to the DSR396 report.

Source: FY 2018 Data Summary Report (DSR) 396

### Appendix IV — Documentation Reviewed

Throughout the fieldwork phase of this evaluation, COE engaged and coordinated with stakeholders to receive documentation for review and analysis. Documentation requested included:

- SOP and related documentation.
- Staffing patterns for OFP and OFO headquarters, as well as EEOC District and Field offices.
- Documentation related to past and current process improvement initiatives, changes to the current processes, and Pilot Projects.
- Staffing roles and responsibilities.
- Performance standards and elements.
- Documentation that explains the use of technology for the hearings and appeals process.
- Templates of notices, orders, and other communications which both OFP and OFO use to communicate internally and externally.
- Mandates, SEP and FCP (which included priorities), and agreements that affect current processes.
- Data sheets and reports that include but not limited to the following:
  - Overall office resolutions
  - Backlogged case inventory
  - Transfer of cases
  - Timeframes for each steps of the process
  - Average times and fluctuations that each step of the process took, if available.

#### General EEOC Documentation

- EEO Management Directive (MD) 110
- EEOC and FMCS Memorandum of Agreement (MOA) Final
- EEOC Organizational Chart
- EEO Complaint Flowchart
- Federal Sector Quality Practices for Effective Hearings, Appeals, and Oversight
- Strategic Enforcement Plan (SEP) 2017-2021
- Federal Sector Complement Plan to the Strategic Enforcement Plan
- Highlights of GAO Forum Best Practices
- E-mail with IMS stakeholder briefing feedback

#### OFP Documentation

- Administrative Judge (AJ) Handbook
- OFP DSR396 Report FY18
- Critical Performance Elements and Standards - AJ
- Critical Performance Elements and Standards – SAJ
- OFP Director Performance Management Plan
- OFP Power BI Snapshot
- Memo from Chair Lipnic Discussing Pilot Projects
- Memo from OFP to the Chair Presenting Hearings Case Management Pilot Projects
- Federal Sector Conference Panel Presentation on Hearings Case Management Projects

- New Implementation of Hearings Case Management Project 1
- OFP FedSEP Digital File Policy
- OFP Administrative Support Staffing
- Request of Pilot Project Information from District and Field Offices e-mail
- WISE Mediation Program FAQ Brochure
- Intro to WISE Mediation Program Fact Sheet
- Training on Hearings Case Management Projects Washington DC Field Office
- Welcome to the Office of Field Programs (OFP)
- Washington DC Field Office Notice of Dismissal (template)
- Washington DC Field Office Case Management Order (template)
- Acknowledgement and Order Initial Conference Project Request for Information (template)
- Acknowledgement and Order Initial Conference with Court Reporter (template)
- Washington DC Field Office Notice of Dismissal (template)
- Washington DC Field Office Decision and Order After Initial Conference (template)
- Washington DC Field Office Notice of Proposed Summary Judgement (template)

### OFO Documentation

- Attorney Deskbook Revised 2018
- OFO Staffing Pattern as of December 10<sup>th</sup>, 2018
- FY2017 Appeal Data Lifecycle 01-07 cases
- FY2017 Appeal Data Lifecycle 05 cases
- Analysis of FY 2016 Appellate Lifecycle Data
- Analysis of FY 2017 Appellate Lifecycle Data
- IMS Federal Appeals Action Codes
- Submitted OFO FY 18 Organizational Assessment
- Project Plan Summary Judgment
- Instructions for HotDocs on the Web
- LSS Form 462 Graphical Report
- MD-715 SOP
- AG37 (Form 462) Agency Report
- OFO Attorney Performance Plan and OFO Director Performance Plan
- OFO Associate Director ARP Performance Plan
- FY 2018 ARP Monthly Dashboard - September
- FY 2019 ARP Monthly Dashboard – May
- Weekly Closure Report – Redacted
- Findings Closure Report - Redacted
- OFO Processing Digital Decisions Instructions
- OFO CCD Control Contractors memo
- OFO Contractors -- Control Unit Milestone

## Appendix V— Major Contributors to this Report

Lyn McGee, Vice President, Evaluation Oversight, The Center for Organizational Excellence, Inc.

Dr. Paul Eder, Project Manager/ Business Process Specialist, The Center for Organizational Excellence, Inc.

Roberto Calderon, Business Process Analyst, The Center for Organizational Excellence, Inc.

Amanda Gibbs, Evaluation Specialist, CohnReznick

Chris Matthews, Business Process Specialist, The Center for Organizational Excellence, Inc.

## Appendix VI — Stakeholder Comments on Draft Report

### OFP Response



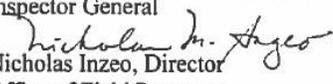
Office of  
Field Programs

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION  
Washington, D.C. 20507

February 5, 2020

#### MEMORANDUM

To: Milton Mayo  
Inspector General

From:   
Nicholas Inzeo, Director  
Office of Field Programs

Subj: Comments on Draft Report: Evaluation of EEOC Federal Hearings and Appeals Processes

Thank you for the opportunity to review and comment on your draft report regarding the Federal Hearings and Appeals Process. We met with members of your team on various occasions and shared many ideas and projections for the improvement of our program. On July 25, 2019, the Chair's Office as well as leadership of Office of Federal Operations (OFO) and the Office of Field Programs (OFP) met with your team to discuss your preliminary findings. We appreciate the opportunity to review your revised draft.

Your principal recommendation regarding the Hearings Program (Finding 1) addresses the need to have the Administrative Judge Handbook (AJ Handbook) updated. We agree with the recommendation. Following completion of FY 2019, OFP coordinated with the Chair's office and we jointly decided that OFP should make the projects part of the standard operating case management practices of the hearings program. As a result, we have updated the AJ Handbook and have circulated two drafts to OFO and have also circulated it for comments to the District Directors and Supervisory Administrative Judges (SAJs) in our district offices. Once the comments are reviewed and the AJ Handbook is finalized, we will circulate it to all the administrative judges nationwide.

In the draft, you refer to the recent OFP initiatives on case management. As we discussed, OFP developed pilot programs to improve the efficiency of the hearings program. In order to improve our processes and performance, we embarked on a series of steps designed to create efficiencies while at the same time ensuring we were serving our mission to eradicate discrimination. Our first step was meeting with the Supervisory Administrative Judges to discuss possible strategies

consistent with our goals and expectations for the program. After meeting with the Supervisory Administrative Judges in September 2017 and receiving their proposals, OFP coordinated with OFO and OLC on the proposals and submitted to the Acting Chair a memo detailing the proposed pilot projects which would be implemented nationwide.

Offices were directed to implement projects in the second and third quarter of 2018. In order to follow up on the implementation of the projects and ensure communication and receive feedback from offices, OFP held bi-monthly meetings with individual Districts. At the first meeting with the Directors and SAJs, we established case management goals. In addition, a team consisting of an OFP representative and two supervisory administrative judges visited offices to train and assist in the implementation of the projects. The administrative judges were provided with templates to be used for each of the pilot projects. This corps of champions for change inspired and identified other champions for change in field offices. Performance plans for Directors, SAJs and AJs were revised in FY 2019 and FY 2020 to provide meaningful measures for implementing the new initiatives. By the conclusion of FY 2019, all offices nationwide had implemented the pilots and were managing their inventories consistent with the new processes.

Standardizing the new pilots into consistent new processes required a period of adjustment and evaluation. Updating the AJ handbook prematurely would have hindered this process and could have led to confusion among the SAJs and AJs. The templates discussed earlier served as short-term supplements to the AJ Handbook while the projects were operating as pilots. The pilots have been incorporated into our case management practices and we are confident that the revised AJ Handbook will provide a blueprint and guidance for administrative judges in managing their case inventory. The AJ Handbook will provide the framework for training of the Administrative Judges. In addition to the AJ Handbook OFP developed a model Acknowledgment Order and Initial Conference Order which was distributed to the offices and became the standardized orders used by all offices starting on January 6, 2020. These Orders will ensure consistency in the hearings process nationally.

The Acknowledgment Order contains a Preliminary Case Information (PCI) Request which must be returned by the parties identifying any additional information needed to process the case. The PCI is a tool used by the parties to notify the assigned Administrative Judge what evidence they believe is missing from the Report of Investigation (ROI) and necessary for a fair resolution of the case. The PCI will also assist the Administrative Judge in determining next steps

in the processing of the case, such as: issuance of a Notice of Intent to Issue a Decision Without a Hearing; Notice of Intent to Dismiss based on procedural grounds; or the scheduling of an Initial Conference. The parties will be required to review the ROI and briefly identify what evidence is needed in support of their case. The PCI will also request basic case information, such as: identifying agency dismissed claims; and status of grievance or MSPB process. Submission of the PCI would not preclude the parties from requesting additional evidence or discovery at the time an Initial Conference is held. The order and instructions on how to file the PCI are included in the Acknowledgment Order issued to the parties. OFP will work with OIT to develop a fillable document which the parties can fill out and transmit electronically to the administrative judges. The document will provide updated contact information for the parties as well as assist the administrative judge in assessing how next to proceed, i.e., with an Initial Conference, a 15-day notice or a dismissal on procedural grounds. The Initial Conference has provided the framework for implementation of the changes in the processing of hearing requests. The reduction in our inventory reflects the success of our initiatives and OFP will continue to develop improvements utilizing the digital system to measure our progress.

We agree with your recommendation (Finding 2) that the Hearings Program be provided with staff and resources and further develop ADR Programs in the field. OFP has strived to ensure all offices have a hearing clerk to assist with the docketing of cases, however, we recognize limitations on budget and resources have sometimes impacted this effort. OFP will continue to work with the Office of the Chair to seek to ensure budgetary needs of the hearing units are addressed within the context of all the budget needs of the agency.

ADR initiatives have been implemented in the hearing's units for some time. In 2017, all offices were directed to implement a pro-bono ADR program in their offices. Offices with larger inventories, such as the Philadelphia and Washington Field Office, have developed very effective ADR/mediation programs to assist with case management. The Hearings programs has also been utilizing internal resources such as EEOC staff mediators, who in the past only mediated private sector cases, to assist in the hearings program. To further use ADR effectively in the hearings process, OFP is in the process of gathering information to determine the most successful ADR programs in the Hearing Units and identify particular strategies and resources which could assist all offices with their programs.

We agree with the Report's suggestion to re-evaluate requirements for the successor to the IMS system. The Technology Modernization Fund / IMS Modernization initiative is redesigning the legacy system and will allow offices to improve processes, provide OIT with requirements, and ultimately digitize the files and processes. OFP is meeting with OIT to discuss requirements and to suggest improvements to case management and processing of requests for hearing. For instance, we anticipate that the Model Acknowledgment Order (including the Preliminary Case Information) and Initial Conference Order will be sent out automatically generated through the digital case processing system. OFP is collecting recommendations from the Supervisory Administrative Judges as to reports that should be developed and generated by the system. The Modernization initiative has a governing structure and a feedback mechanism so that the team of OIT and OFP experts can structure the IT requirements most effectively.

OFP has already implemented some of the additional suggestions in the Report for improvement of the process. After reviewing initiatives implemented by some offices, especially the Initial Conference Report, and discussing them with OFO, we developed the new Acknowledgment Order and PCI. The Acknowledgment Order and the PCI were developed to work in tandem with the incorporation of the projects into our processes, with the Initial Conference as a basic tenant of case management. We worked closely with OFO to develop the PCI which both offices agree is a better mechanism than the Initial Conference Report to obtain needed information.

The Report recommends that transferred cases should be sent back to the originating office if a hearing is scheduled. We disagree that this recommendation be implemented as the norm as it ignores the time and effort spent by an AJ in preparing a case, an effort which would be duplicated if the case is returned to the original office for a hearing to be held. A second factor impacting whether to send such cases back to the originating office, is whether travel will be required. Assuming that travel for the receiving office was the factor leading to this conclusion, if an AJ in the originating office would also have to travel for the hearing, then we do not believe that there is a reason for the receiving office to return the case.

Again, we thank you for the opportunity to review this revised draft. Should you want to discuss any of our comments or understand the progress of our efforts since the July 2019 meeting, please feel free to contact me.

### OFO Response

We are not commenting.

### OIT Response

Thank you for the opportunity to comment on the draft report. We have the following comments:

1. The report refers to codes, or IMS codes, in multiple locations. It should be noted that the Charge/Case Management Modernization effort envisions replacing entered codes with captured events/activities that take place within business process workflows in the system.
2. We would like to clarify the statement, “The Director of Enterprise Applications and Innovation Division stated she does not speak with users in the District and Field offices”, with the following additional information:
  - “The Director of Enterprise Applications and Innovation Division stated she does not speak with users in the District and Field offices regarding the Hearing[s] processes.”
3. We would like to clarify the statement, “In a follow-up email, OIT recommended that unless errors are deemed critical, updates would be made in future technology enhancements but would not be integrated into the IMS legacy system” with the following language:
  - “In a follow-up email, OIT recommended that, unless critical fixes or enhancements to the current IMS are required during the next two years, updates, including those recommended in this report, would become part of the Agency’s Charge/Case Management Modernization effort.”

MA

Bryan Burnett | Chief Information Officer  
U.S. Equal Employment Opportunity Commission (EEOC)

### Chief Data Officer Response

I’ve reviewed the document and do not have any suggested revisions or comments. I feel they did a good job of capturing and reporting my comments when I was interviewed and their “idea” derived from my interview is a good one (at least I think it is!).

### EEOC Legal Counsel Response

No comment

## Appendix VII — Abbreviations and Acronyms

ADR	Alternative Dispute Resolution
AJ	Administrative Judge
ARP	Appellate Review Programs
CDO	Chief Data Officer
CCD	Compliance and Control Division
DSR 396	Data Summary Report 396
EEO	Equal Employment Opportunity
EEOC	Equal Employment Opportunity Commission
FAD	Final Agency Decision
FCP	Federal Sector Complement Plan to the Strategic Enforcement Plan
FedSEP	Federal Sector EEO Portal
FMCS	Federal Mediation and Conciliation Service
FSP	Federal Sector Programs
FY	Fiscal Year
GAO	Government Accountability Office
GS	General Schedule
IC	Initial Conference
IOD	Immediate Office of the Director
IMS	Integrated Mission System
MD 110	EEO Management Directive 110
MD 715	EEO Management Directive 715
MOA	Memorandum of Agreement
MSPB	Merit System Protection Board
OEDA	Office of Enterprise Data and Analytics
OFO	Office of Federal Operations
OFP	Office of Field Programs

<b>OGC</b>	Office of the General Counsel
<b>OIG</b>	Office of Inspector General
<b>OIT</b>	Office of Information Technology
<b>OLC</b>	Office of Legal Counsel
<b>QSIE</b>	Quality Standards for Inspection and Evaluation
<b>ROI</b>	Report of Investigation
<b>SAJ</b>	Supervisory Administrative Judge
<b>SEP</b>	Strategic Enforcement Plan
<b>SES</b>	Senior Executive Service
<b>SOP</b>	Standard Operating Procedures
<b>WISE</b>	Washington Field Office Initiative to Settle EEO Complaints