



United States Department of Agriculture

Office of the Secretary
Washington, D.C. 20250

February 2, 2015

Ms. Carolyn N. Lerner
U.S. Office of Special Counsel
1730 M Street, NW, Suite 300
Washington, D.C. 20036

Subject: OSC File Nos. DI-14-2558, DI-14-4627, and DI-15-0001

Dear Ms. Lerner:

Thank you for the extension of additional time to provide responses to the supplemental questions you asked after receipt of our report dated October 30, 2014. Enclosed are responses to those questions provided to me by Dr. Joe L. Leonard, Assistant Secretary for Civil Rights.

If you have any further questions, you may contact my office at (202) 720-3631, or Phyllis Fong, USDA Inspector General, at (202) 720-8001.

Sincerely,

A handwritten signature in blue ink that reads "Thomas J. Vilsack". The signature is fluid and cursive.

Thomas J. Vilsack
Secretary

Enclosure

**Supplemental USDA Response to OSC File Nos. DI-14-2558, DI-14-4627, and DI-15-0001
February 2015**

1. The ROI provided by SA Ramos did not specifically state whether the allegations were substantiated or unsubstantiated.

While the purpose of the factual investigation was not to find whether the allegations were substantiated or unsubstantiated, the investigation did conclude:

“Our investigation did not reveal any evidence that these complaints were intentionally delayed, destroyed, or deleted by Ms. Scott or another OASCR manager. The investigation further revealed that access permission rights to some COIEEO complaint database information had been changed to protect the integrity and impartiality of the COIEEO complaint process by restricting access to the database information. The investigation further revealed that the structure of OASCR and/or CSD did not directly violate EEOC management directives. However, OASCR's use of contractors to process COIEEO complaints violated USDA Departmental Regulation 4300-009.”

2. The report noted that 112 of 231 formal complaints filed between 2009 and 2014 were not investigated within the 180-day time limit established by law and regulation. While the report determined there was no evidence suggesting these complaints were intentionally delayed, it did not say what measures or corrective actions were taken to address these deficiencies.

First, it is important to note that the ROI covered a broader section of EEO complaints than the Office of the Assistant Secretary for Civil Rights (OASCR) internally classified as “conflict of interest EEO” (COIEEO) complaints than the conflict of interest complaints covered by DR 4300-009. With respect to this broader universe, OASCR implemented substantial measures to improve the COIEEO process that resulted in the rate of cases exceeding the 180-day time limit falling from more than 80% in FY 2009 to 0% in FY 2014.

In FY 2013, OASCR conducted a thorough assessment of the Corporate Services Division (CSD) including addressing deficiencies in timeliness. OASCR conducted an inventory of pending cases and created a stoplight sheet that tracked the age of each complaint against the 180-day deadline. This allowed CSD to identify complaints facing timeliness issues. OASCR expedited processing of complaints facing timeliness issues (180-day timeline), allocating \$75,000 in additional funding for this purpose in FY 2013.

In FY 2014, OASCR made substantial changes within CSD, including changing leadership, shifting personnel, and clarifying duties to develop a staff who could deliver the required results. Leadership instituted new standard operating procedures (SOPs) for CSD staff that emphasize processing time.

In addition, OASCR took steps to address problems identified with contractors responsible for completing EEO investigations. OASCR worked closely with the Office of General Counsel and the Procurement Office to address contracting problems, ultimately replacing MSCG and IMS with a new contractor, Mr. Martin Miser, in November 2014. No COIEEO investigations exceeded the 180-day timeframe in 2014.

3. In addition, the report noted that OASCR's use of contractors to process conflict complaints where the Civil Rights Director is named as a responsible management official violated USDA regulation 4300-009. The report did not address what, if any corrective actions were implemented to resolve these problems.

The current version of DR 4300-009 was adopted by USDA in January 2001, and covered only complaints against "the Department's Director of Civil Rights, a Deputy Director in the Department's Office of Civil Rights, or any person directly supervised by the Director of Civil Rights" as those positions existed in the Department prior to 2001. The position of ASCR was created by the 2002 Farm Bill, and CSD was created under the supervision of the Associate ASCR in 2012. As a result, the definitions and procedures set forth in DR 4300-009 no longer match organizational roles within USDA. In March 2014, OASCR began a comprehensive update to Departmental Regulations regarding EEO complaint processing, in part, to supplant DR 4300-009 with updated guidance that will match current titles and roles within OASCR. OASCR anticipates issuing the updated guidance in FY 2015.

Out of the total COIEEO complaints considered in the report, only 13 involved officials OIG considered to be current equivalents to the officials identified in DR 4300-009 (see ROI, page 5, first paragraph under table) as noted by the IG in her transmittal letter to the Secretary. Although OASCR may have used contractors to process some of these complaints, the investigations of all the complaints falling in this category that remain open are being handled by an outside Federal agency. OASCR is committed to ensuring that complaints in which the ASCR, any person directly supervised by the ASCR, or any person working in CSD is named as an RMO are processed by an outside Federal agency going forward. OASCR intends to finalize memoranda of understanding with one or more outside Federal agencies in FY 2015 to ensure this practice continues.