


OFFICE OF INSPECTOR GENERAL

MEMORANDUM

TO: Nicola Goren
Acting Chief Executive Officer

CC: Frank Trinity
General Counsel

FROM: Gerald Walpin
Inspector General 

DATE: January 6, 2009

RE: Equal Opportunity Complaint Procedures

During the discussion yesterday that I, Jack and Vince had with you and Frank, we all agreed on the objective in processing Equal Employment Opportunity complaints: a fair and impartial investigation. The issue on which we appeared to seek further guidance is the responsibility of the agency head to ensure and direct the procedure to attain that objective. Therefore, following that discussion, we reviewed the controlling regulations. We believe the following cited regulations impose that responsibility on the Corporation itself and, of necessity, on you as the agency head.

29 C.F.R. §1614.102 (a)(2) mandates that “the **agency** shall . . . provide for the prompt, fair and impartial processing of complaints in accordance with this part and the instructions contained in the Commission’s Management Directives.” Subsection (a)(4) requires the agency to “designate a Director of Equal Employment Opportunity. . . to carry out the functions” who “**shall be under the immediate supervision of the agency head.**”

Section 1614.104(a) requires the “agency” to “adopt procedures for processing . . . complaints of discrimination” -- again imposing on the agency, not the EEO Director, that responsibility.

As to procedures to be used in investigating complaints, §1614.108(a) requires that the “investigations . . . shall be conducted by the agency against which the complaint has been filed” -- again a reiteration of the delegation of this responsibility to the “agency.” Subsection (b) gives the agency the discretion to use “any . . . fact-finding methods that efficiently and thoroughly address the matters at issue.”



The Equal Employment Opportunity Management Directive EEO MD-110, referred to above, specifies that you, as head of the agency, have the responsibility to supervise the work on such complaints, in expressly providing that the **“Heads of federal agencies are responsible for ensuring that employment discrimination complaints are processed fairly, promptly, and in strict accordance with”** 29 C.F.R. Part 1614. Chapter 6, ¶VI(c) of that Directive contains the only limitation of agency involvement in the investigations, and that proscribes only that the “person assigned to investigate shall not occupy a position in the agency that is directly or indirectly under the jurisdiction of the head of **that part of the agency in which the complaint arose**” -- thus making clear that, for example, you, as head of the Corporation, have the duty properly to supervise the person investigating a complaint against OIG.

This duty is consistent with the undeniable interest of the Corporation in a fair, impartial, and thorough investigation, no matter how it turns out: if management is found to be right, its decisions should be vigorously defended; if wrong, management should take remedial action.

I welcome further discussion of this subject.