



OFFICE OF
INSPECTOR GENERAL
U.S. DEPARTMENT OF THE INTERIOR

The Office of Diversity, Inclusion and Civil Rights Applied an Incorrect Legal Standard and Backdated Final Agency Decisions

This is a revised version of the report prepared for public release.



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REPORT OF INVESTIGATION

I. EXECUTIVE SUMMARY

We investigated an allegation that a former Director (Director) of the Office of Diversity, Inclusion and Civil Rights (ODICR) issued final agency decisions (FADs) containing unsupportable findings of discrimination.¹ We also investigated an allegation that the Director, another former senior official with ODICR (Acting Director), and the former Director of ODICR's Adjudication, Compliance & Equity Division (Division Director) backdated or ordered employees to backdate FADs to avoid reporting the untimely issuance of FADs to the Equal Employment Opportunity Commission (EEOC).²

We concluded that, between September 2019 and September 2021, the Director did not apply the correct legal standard when considering discrimination complaints filed against the U.S. Department of the Interior (DOI) and moreover instructed ODICR staff to use the same incorrect legal standard in their consideration of discrimination complaints. As a result, ODICR issued FADs that found that the DOI had engaged in unlawful discrimination in cases where such a finding may not have been made had ODICR applied the correct legal standard. We also concluded that, between June 2018 and September 2021, four ODICR officials—the Director, Acting Director, Division Director, and the Affirmative Employment Program Division Director (Program Director)—backdated FADs and that this created the appearance that those FADs had been issued timely.

Shortly after we discovered that ODICR was using an incorrect legal standard to decide claims of discrimination, we notified DOI officials so they could take appropriate action. We understand that the DOI took immediate action to correct ODICR's use of the incorrect legal standard, and we confirmed that ODICR is no longer applying this incorrect standard to discrimination claims. Similarly, during our investigation, ODICR revised its *EEO Complaints Processing Handbook* to expressly prohibit backdating (the practice of using a signature date on a FAD that precedes the FAD issuance date) and to make clear that the FAD issuance date is the date the FAD is issued by ODICR rather than the date the ODICR Director signs the FAD. We make six recommendations that will promote use of the correct legal standard to determine FADs and adherence to appropriate timelines.

¹ A FAD is a written decision on a complaint of discrimination that an agency's Equal Employment Opportunity office makes without a hearing before an administrative judge. A FAD consists of findings by the agency on each claim of discrimination or, as appropriate, the rationale for dismissing any claims in the complaint. If the agency finds discrimination, the FAD also provides the complainant with remedies and relief. *See* 29 C.F.R. § 1614.110.

² This report refers to the DOI's office of civil rights by its current name, the Office of Diversity, Inclusion and Civil Rights (ODICR). Prior to January 2021, ODICR was called the Office of Civil Rights (OCR).

II. BACKGROUND

DOI employees and applicants who believe they have experienced employment discrimination based on a protected status³ (for example, race, color, or national origin) may file an Equal Employment Opportunity (EEO) complaint with the appropriate DOI bureau or office (bureau EEO office).⁴ The complaint may allege more than one type of discrimination based on one or more protected statuses.⁵

A. The EEO Complaint Adjudication Process

At the DOI, bureau EEO counselors and the ODICR Director process EEO complaints in most instances.⁶ If bureau EEO office staff determine that the complainant satisfies certain regulatory requirements,⁷ the bureau EEO office must accept the complaint for investigation.⁸ An impartial DOI bureau employee or contractor (EEO investigator) investigates each claim of discrimination in the complaint and summarizes the factual findings in a written report of investigation.⁹ The bureau EEO office then issues to the complainant the report of investigation and a notice informing the complainant of the right to choose either a hearing and decision from an EEOC administrative judge or a FAD from ODICR.¹⁰

After receiving the report of investigation and notice, a complainant has 30 days, known as the election period, in which to request a hearing with an EEOC administrative judge or a FAD.¹¹ If the complainant requests a FAD during the election period, ODICR must issue a FAD within 60 days of receiving the FAD request.¹² If the complainant does not submit a request for a hearing or FAD before the election period ends, by default ODICR must issue a FAD within 60 days of the end of the election period.¹³ This deadline is known as the regulatory deadline. If ODICR does not issue a FAD by the

³ Title VII of the Civil Rights Act of 1964 (Title VII) and other Federal laws prohibit workplace discrimination on the basis of a protected status such as race, color, national origin, religion, sex (including pregnancy, sexual orientation, and gender identity), age, disability, and genetic information. *EEOC-CFG-2000-2* § 2 “Threshold Issues” (issued May 12, 2000); U.S. EEOC, “What Laws Does EEOC Enforce?” available at <https://www.eeoc.gov/youth/what-laws-does-eeoc-enforce> (last visited May 15, 2023).

⁴ 29 C.F.R. §§ 1614.103, 1614.105; U.S. EEOC, Management Directive for 29 C.F.R. Part 1614 (MD-110), Chapter 2, § I.A at 2-1 (revised Aug. 5, 2015).

⁵ The different types of discrimination, known as theories of discrimination, include disparate treatment (e.g., a complainant was treated differently than others based on their gender) and hostile work environment harassment (e.g., a complainant was subjected to an offensive work environment on the basis of race and the conduct was sufficiently severe to alter the terms or conditions of the complainant’s employment). MD-110, Chapter 3, § V.B.2.c at 3-16; Carla A. Ford, U.S. Dep’t of Justice, Executive Office for U.S. Attorneys, “Gender Discrimination and Hostile Work Environment,” *Employment Discrimination* Vol. 57, No. 2 at 2, 4 (May 2009) (U.S. Dep’t of Justice Employment Discrimination 2009).

⁶ U.S. Dep’t of the Interior, Office of Civil Rights, *EEO Complaints Processing Handbook* (ODICR EEO Handbook, 2021 version), Chapter 1, § 9 at 22-23, Chapter 10, § 1 at 170 and § 3 at 173 (ver. 2.0 Jan. 2021).

⁷ For example, the office examines whether the complainant made a timely claim; it also confirms that the claim is not the subject of pending civil litigation and is not moot. *See* 29 C.F.R. § 1614.107(a)(1)-(9). There is no substantive analysis of the merits of the claim.

⁸ 29 C.F.R. §§ 1614.105, 1614.106, 1614.107.

⁹ 29 C.F.R. § 1614.108.

¹⁰ *Id.* § 1614.108(f).

¹¹ *Id.* The 30 days, and all other time periods discussed in this report, are calendar days. 29 C.F.R. § 1614.604(a).

¹² 29 C.F.R. § 1614.110(b).

¹³ *Id.*

applicable regulatory deadline, its FAD is untimely under governing law.¹⁴ See Figure 1, below, for an overview of the DOI EEO complaint adjudication process.

Figure 1. DOI EEO Complaint Adjudication Process Overview*

Step 1	The complainant submits a discrimination complaint to the DOI bureau
Step 2	The bureau EEO office (1) determines whether the complainant satisfied regulatory requirements, (2) conducts an investigation, and (3) issues a report of investigation
Step 3	After receiving the report, the complainant has 30 days to request a FAD from the DOI or an administrative hearing before the EEOC
Step 4	If the complainant requests a FAD, the bureau EEO office forwards the notice to ODICR
Step 5	ODICR has 60 days (regulatory deadline) to issue the FAD
Step 6	The complainant has 30 days to appeal the FAD to the EEOC or 90 days to file a civil action in Federal court

* The information in this figure is derived from 29 C.F.R. §§ 1614.103–1614.108, 1614.110, 1614.401, 1614.402, and 1614.407.

B. The Standard of Proof Required to Find Discrimination

ODICR is responsible for issuing FADs for the DOI that, consistent with EEOC regulations, contain a decision regarding whether discrimination has occurred.¹⁵ To make this determination, an ODICR EEO specialist¹⁶ reviews the evidence compiled by the EEO investigator in the report of investigation in light of applicable Federal law.

In order to make a finding that discrimination has occurred, the EEO specialist must determine whether the complainant has demonstrated *by a preponderance of the evidence* that the alleged discrimination occurred.¹⁷ In other words, the EEO specialist must determine whether the complainant has offered evidence showing that it was “more likely than not” that the alleged discrimination occurred.¹⁸ If the

¹⁴ 29 C.F.R. § 1614.110(b); *see also Regina M. v. Dep’t of Veterans Affairs*, EEOC Appeal No. 0120170567 (Sept. 6, 2018) (commenting that the EEOC appropriately sanctioned the agency for failing to comply with the EEOC’s regulations “when it issued its untimely final decision” more than 1 year after the FAD request).

¹⁵ 29 C.F.R. § 1614.110(b); *Departmental Manual* part 373, Chapter 5, “Equal Employment Opportunity Complaints Program” (373 DM 5). The ODICR Director (referred to as the Director of the Office for Equal Opportunity) signs FADs for the DOI, based on a delegation of authority from the Secretary. 373 DM 5.

¹⁶ Although many ODICR EEO specialists are trained attorneys, the U.S. Office of Personnel Management (OPM) classifies the EEO specialist position in the non-attorney EEO Assistance Series (GS–0260). DOI guidance states explicitly that ODICR EEO specialists do not practice law on behalf of the DOI.

¹⁷ *See, e.g., Donita B. v. Dep’t of Agriculture*, EEOC Appeal No. 2021000612 (Sept. 8, 2022) (affirming the agency’s FAD finding no discrimination or unlawful retaliation, where the “[c]omplainant ha[d] not proven, by a preponderance of the evidence, that discriminatory or retaliatory factors motivated the [a]gency’s actions”).

¹⁸ U.S. EEOC, “Guide to Writing Appeal Briefs for Unrepresented Complainants before the EEOC Office of Federal Operations,” at 5 (Jan. 2022), <https://www.eeoc.gov/guide-writing-appeal-briefs-unrepresented-complainants-eeoc-office-federal-operations> (last visited May 15, 2023) (explaining that complainants satisfy the preponderance of the evidence “burden of proof by offering evidence that demonstrates their claim of employment discrimination has a greater than 50% chance to be true;” noting that “if a complainant can [establish] that discrimination *more likely than not occurred*, the complainant meets his or her burden of proof” (emphasis added)).

complainant makes this showing, the FAD must conclude that discrimination has occurred. For any claim in which the complainant cannot make this showing, the FAD must conclude that discrimination did not occur. The EEOC's regulations and decisions do not authorize an agency to apply a lower standard of proof in making its determination regarding whether the Government has discriminated against the complainant.¹⁹

III. RESULTS OF INVESTIGATION

During this investigation, we focused on a selection of FADs that ODICR issued between June 2018 and September 2021 that included findings of discrimination. More specifically, we focused primarily but not exclusively on FADs and related documents that included language suggesting application of the incorrect legal standard—namely, the phrase “in the light most favorable to the complainant.” We also assessed closely FADs that any of the four ODICR officials signed, reviewing the signature dates on the FADs and other evidence for examples of backdating.

A. ODICR Used an Incorrect Legal Standard in Determining Whether a DOI Bureau Had Engaged in Discrimination

At the direction of the Director, ODICR staff used an incorrect legal standard in determining whether a DOI bureau had discriminated against a complainant. As discussed above, the correct legal standard in determining whether discrimination has occurred (i.e., deciding a claim on the merits) is a preponderance of the evidence. This requires the complainant to establish that it is “more likely than not” that discrimination occurred to succeed on his or her discrimination claim.²⁰ In making its determinations regarding whether discrimination had occurred, we found that the Director used, or instructed her staff to use, a lower standard of proof: namely, by viewing the evidence set forth by the complainant “in the light most favorable to the complainant” in deciding whether discrimination had occurred. By using this lower standard of proof in a FAD, “all justifiable inferences” are drawn in the complainant's favor.²¹ Use of this lower standard had the effect of relieving a complainant of the burden to prove the claimed discrimination by a preponderance of the evidence.

Our investigation identified evidence that, in several instances, ODICR staff used an incorrect legal standard in determining whether discrimination occurred. For example, in five FADs that we reviewed, the EEO specialists' findings of no discrimination were revised by the Director and/or the Division Director, who applied the incorrect legal standard, i.e., the “in the light most favorable to the

¹⁹ See *Henry S. v. Dep't of Homeland Security*, EEOC Appeal No. 2022000321 (Nov. 3, 2022) (“At all times, the ultimate burden remains with the [c]omplainant to demonstrate by a preponderance of the evidence that the [a]gency” discriminated against him or her).

²⁰ U.S. EEOC, “Guide to Writing Appeal Briefs for Unrepresented Complainants before the EEOC Office of Federal Operations,” at 5 (Jan. 2022), <https://www.eeoc.gov/guide-writing-appeal-briefs-unrepresented-complainants-eeoc-office-federal-operations> (last visited May 15, 2023).

²¹ *Grzesiak v. U.S. Postal Service*, EEOC Appeal No. 0120072336, 2007 EEO PUB LEXIS 3177, at *6, *8 (Aug. 2, 2007) (affirming agency's finding of no discrimination). As multiple EEO specialists told us and as established in EEOC decisions, it is appropriate for an agency to view a complainant's evidence “in the light most favorable to the complainant” when determining whether a complainant has provided enough information in the complaint to state a claim of discrimination. See, e.g., *Dixon v. Dep't of Veterans Affairs*, EEOC Appeal No. 01A51816 (Mar. 30, 2005) (affirming the administrative judge's decision on summary judgment that even viewing complainant's evidence in the light most favorable to complainant, he failed to establish that agency's articulated reasons were pretext for discrimination). An agency will dismiss a complaint if the complainant has failed to meet its initial burden to provide enough information in the complaint (and in response to the agency's requests during the administrative processing of the EEO complaint) to state a claim of discrimination. Once the complainant has articulated sufficient facts to state a claim if those facts were proven to be true, the complainant must prove the case by a preponderance of the evidence.

complainant” standard, to issue FADs finding that the DOI had discriminated against the complainant (see Figure 2). We identified these FADs from interviews with current and former ODICR employees including the complainant, the Director, and the Division Director, and through documents and emails that we identified from searches of ODICR employees’ email accounts.

Figure 2: Evidence Showing ODICR’s Use of the Incorrect Legal Standard

FAD No.	Date Issued	Incorrect Legal Standard Used in Draft FAD	Incorrect Legal Standard Used in Issued FAD	Application of the Standard
FAD 1	08/20/20	No	Yes (1)	The Director instructed EEO Specialist 2 to apply the “in the light most favorable to the complainant” standard to find discrimination
FAD 2	04/07/21	No	Yes (1)	Even though the text of the FAD recited the “preponderance of the evidence” standard, the Director told us that she applied the “in the light most favorable to the complainant” standard to find discrimination
FAD 3	08/30/21	Yes (1)	Yes (2)	The Director instructed EEO Specialist 1 to add a second protected basis as a finding based on the “in the light most favorable to the complainant” standard
FAD 4	08/27/21	No	Yes (1)	Even though the text of the FAD recited the “preponderance of the evidence standard,” the evidence showed that the Division Director persuaded EEO Specialist 3 to apply the “in the light most favorable to the complainant” standard to find discrimination
FAD 5	03/01/21	No	Yes (2)	The Division Director revised the FAD after viewing the evidence using the “in the light most favorable to the complainant” standard and found discrimination

Both the Director and the Division Director agreed that they applied the “in the light most favorable to the complainant” standard when evaluating claims of discrimination. The Director told us that, while she was the Director of ODICR (from September 2019 to September 2021), she used the “in the light most favorable to the complainant” standard to determine whether discrimination had occurred and “consistently” instructed ODICR staff to do the same. ODICR staff told us that the Director implemented the “in the light most favorable to the complainant” standard after becoming Director in 2019, and that during her tenure, they followed her and the Division Director’s guidance by using the “in the light most favorable to the complainant” standard to evaluate the evidence and determine

whether discrimination had occurred.

The Division Director told us that the Director provided on-the-job training to him and to ODICR's EEO specialists, directing them to view the evidence "in the light most favorable to the complainant" to determine whether discrimination had occurred. The Division Director said he generally applied the preponderance of the evidence standard to determine whether discrimination had occurred because he understood that this was the correct legal standard to use. However, the Division Director told us that when a decision was a "close call" or when there were gaps in the facts, including when a report of investigation provided insufficient evidence to form a conclusion, the Division Director said he followed the Director's guidance by viewing the evidence "in the light most favorable to the complainant" in determining whether discrimination had occurred.

B. ODICR Managers Backdated FADs Creating the Appearance That Untimely FADs Were Issued Timely

We found evidence that, between June 2018 and September 2021,²² the Acting Director, Division Director, Program Director, and Director "backdated" FADs—that is, they used a signature date that preceded the date the FAD was issued.²³

As discussed above, Federal regulations provide that an agency "shall issue [a FAD] within 60 days of receiving notification that a complainant has requested [a FAD]," or—if the complainant does not request a hearing or a FAD—within 60 days of the end of the 30-day election period.²⁴ If an agency does not issue a FAD by the applicable 60-day regulatory deadline, its FAD is untimely under governing law.

EEOC regulations do not specify that a FAD must be signed and dated on its issuance date, and ODICR had no guidance of its own on this topic.²⁵ After it became aware of our concerns about the practices that we describe here, ODICR revised its *EEO Complaints Processing Handbook* to expressly prohibit backdating. The *EEO Complaints Processing Handbook* now provides that the FAD issuance date is the date the FAD is issued by ODICR rather than the date the ODICR Director signs the FAD.

The practice of backdating FADs can lead to confusion, and potentially abuse regarding the date on which the FAD was actually issued. The EEOC requires Government agencies, including the DOI and

²² We used this time period based on the allegations we received from the complainant, which included an allegation that the Acting Director (who preceded the Director) also engaged in backdating along with the Director.

²³ Although this term is not defined in EEOC or DOI guidance, many of the witnesses we interviewed used this word in describing the practice of using a signature date that preceded issuance of a FAD.

²⁴ 29 C.F.R. § 1614.110(b).

²⁵ We note, however, that two ODICR staff members who had experience processing FADs stated to us that, in their experience, the ordinary practice would be to sign and date the FAD on the same date it was issued.

ODICR, to report the timeliness of the FADs it issues.²⁶ The EEOC also requires Government agencies, including the DOI and ODICR, to publish on their websites information relating to the timeliness of processing EEO complaints, including the percentage of FADs issued before the regulatory deadline.²⁷ To the extent the DOI relies on a FAD’s signature date to determine the date on which it was issued (and the evidence we collected showed that ODICR did rely on the signature date to determine the FAD issuance date), the DOI risks inaccurately reporting its timeliness metrics to the EEOC and the public.²⁸ Finally, we found that, during at least one performance rating period between June 2018 and September 2021, the performance standards for ODICR supervisory staff and EEO specialists included timeliness goals for the issuance of FADs before the expiration of regulatory deadlines. These standards specifically provided that failing to meet timeliness metrics, which were connected to regulatory deadlines, could result in an unsuccessful rating on at least one critical element. Thus, absent guidance or direction to the contrary, employees appear to have had an incentive to “backdate” FADs to make them appear timely in order to improve their performance ratings.

In determining whether there was evidence of backdating, we reviewed a sample of the FADs that ODICR issued between June 2018 and September 2021.²⁹ Two of the FADs were brought to our attention by the complainant. We identified the remaining FADs through our collection and review of documents.

1. We Found Evidence That the Acting Director Backdated FADs

The evidence showed that, between June 2018 and March 2019, the Acting Director signed multiple FADs that had a signature date 1 to 15 days earlier than the issuance date.

The Acting Director told us that she reviewed FADs on nights and weekends and signed and dated FADs using the date of the prior business day. She did not recall backdating FADs by more than 1 to 3 days and denied that she backdated FADs by months. She told us that backdating by weeks or months “would have been inappropriate and . . . should have been stopped.”

One ODICR staff member told us, however, that the Acting Director backdated FADs to create an appearance of timeliness and to boost the timeliness rate of the DOI’s FADs. In fact, the evidence confirmed that, between June and December 2018, the Acting Director backdated FADs. For example, the Acting Director signed and dated a FAD August 13, 2018, even though the FAD was not issued until August 28, 2018. Notably, August 13, 2018 was the regulatory deadline. Thus, the FAD appears to have been “backdated” by 15 days using the regulatory deadline as the signature date to make it appear timely. We also found that ODICR recorded the FAD as timely in a spreadsheet tracking fiscal year 2018 FADs.

²⁶ 29 C.F.R. § 1614.602; U.S. EEOC, *EEOC Form 462: Annual Federal Equal Employment Opportunity Statistical Report of Discrimination Complaints, Form Completion Instruction Manual, Fiscal Year 2022 (October 1, 2021–September 30, 2022)* (FY 2022 EEOC Form 462 Instruction Manual) available at <https://www.eeoc.gov/sites/default/files/2022-09/FY%202022%20462%20Instruction%20Manual%20FINAL%20v1%202022Sep29.pdf> (last visited May 17, 2023).

²⁷ 29 C.F.R. §§ 1614.703, 1614.704.

²⁸ We did not investigate whether FADs that were backdated by ODICR resulted in inaccurate reporting to the EEOC.

²⁹ Our sample included 96 FADs.

2. We Found Evidence That the Division Director Backdated FADs

The evidence showed that between June and December 2018, FADs signed by the Division Director bore signature dates that were earlier than the actual issuance dates of the FADs. In one instance, the Division Director signed and dated a FAD as of August 13, 2018 (the regulatory deadline), even though he did not receive the FAD for signature until August 28, 2018, which was the same date the FAD was issued by ODICR.³⁰ When asked, the Division Director could not explain why he dated the FAD 15 days earlier than it was issued; he acknowledged, however, that the evidence showed that “We definitely backdated this case based upon what you have here.”

In another instance, the Division Director signed and dated a FAD as of December 3, 2018, even though he did not receive the FAD “for review and issuance” until December 12, 2018. Again, the signature date coincided with the regulatory deadline even though the Division Director did not receive the FAD until 9 days later. The FAD was ultimately issued on December 14, 2018. When we asked the Division Director why he dated this FAD as of December 3, 2018, he told us that he did not recall why but stated that he did not know any legitimate business reason to backdate a FAD.

3. We Found Evidence That the Program Director Backdated FADs

The evidence showed that, between March and April 2019, the Program Director backdated FADs. In one instance, while she was acting as director,³¹ the Program Director signed and dated a FAD as of January 31, 2019, even though she did not receive the FAD until March 27, 2019, the same date on which the FAD was issued by ODICR.³² In another instance, the Program Director, in her role as acting director, signed and dated a FAD as of March 11, 2019, even though the evidence showed that the EEO Specialist had not prepared the FAD for signature until March 15, 2019. The evidence showed that this second FAD was issued by ODICR on March 27, 2019.

In early April 2019, bureau EEO staff raised concerns to the Division Director and the Program Director about the alleged backdating of these FADs. In response to the bureau EEO staff, the Program Director said that, with respect to the second FAD discussed above, she signed and dated the FAD based on the date she assumed the duties of acting director. The Program Director told us that she did not think this FAD was an example of backdating because the Acting Director “had already made the determination on the FAD and [she] signed it based on [the Acting Director’s] determination.” Regardless of whether this explanation is true, we find this to be an example of backdating because the FAD was not actually signed and dated on the signature date that appears on the FAD.

4. We Found Evidence That The Director Backdated FADs

The evidence showed that, between September 2019 and September 2021, the Director signed multiple FADs that had a signature date earlier than the issuance date by 1 to 7 days.

³⁰ We found two backdated FADs that had the same regulatory deadline of August 13, 2018, the same signature date corresponding to the regulatory deadline, and the same issuance date of August 28, 2018. The Acting Director signed one of the two FADs, and the Division Director signed the other FAD.

³¹ The Program Director acted as director in March 2019, when the Acting Director was unavailable, before the Program Director officially assumed this role in April 2019.

³² The regulatory deadline in this case was February 5, 2019, but had been extended to March 2, 2019.

Similar to the Acting Director, the Director told us that when she was Director of ODICR, she reviewed FADs on nights and weekends and dated them with the date of the prior business day. The evidence we reviewed corroborated the Director's statements and showed that the Director signed multiple FADs after business hours and on weekends using a signature date of the prior business day. The evidence also showed that ODICR staff issued the FADs one or more days after the Director sent the FADs for issuance because they received the signed FADs on weekends, after work hours, or on alternative work schedule days when they were not working.

IV. CORRECTIVE ACTIONS TAKEN BY THE DOI AS A RESULT OF OUR INVESTIGATION

During our investigation, we notified DOI officials that ODICR was using an incorrect legal standard to decide claims of discrimination filed against it. The DOI took immediate action to correct ODICR's use of the incorrect legal standard, and we confirmed that ODICR is no longer applying an incorrect legal standard to determine whether the agency has discriminated against a complainant. In addition, during our investigation, ODICR revised its *EEO Complaints Processing Handbook* to expressly state that the FAD issuance date is the date the FAD is issued by ODICR, not the date the ODICR Director (or his or her designee) signs the FAD.

V. CONCLUSION

We concluded that, between September 2019 and September 2021, the Director used, and also instructed her staff to use, an incorrect legal standard to determine claims of discrimination filed against the DOI. We also concluded that, between June 2018 and September 2021, four ODICR managers—the Acting Director, Division Director, Program Director, and Director—backdated FADs, causing some FADs that were not issued in accordance with the regulatory deadline to appear timely when they were not.

VI. RECOMMENDATIONS AND RESPONSE SUMMARY

We provided a draft of this report to the DOI for review. The DOI concurred with all six of our recommendations. We consider Recommendation 5 implemented and Recommendations 1 through 4 and 6 resolved. Below we summarize the DOI's response to our recommendations, as well as our comments on its response. The DOI's response can be found in its entirety in the Appendix.

We recommend that the DOI:

1. Establish and implement a process to identify any final agency decisions issued between September 2019 and September 2021, in which the Office of Diversity, Inclusion and Civil Rights used an incorrect legal standard.

DOI Response: The DOI concurred with this recommendation and stated that it has started to establish and implement a process for identifying any FADs issued between September 2019 and September 2021 that contained unsupportable findings of discrimination as a result of using or applying an incorrect legal standard. The DOI provided a timeframe for completion of August 31, 2024.

OIG Comment: Based on the DOI’s response, we consider Recommendation 1 resolved. We will consider it implemented when the DOI provides evidence demonstrating that it has established and implemented a process for identifying these FADs. In addition, we note that the other recommendations also have a proposed implementation date of August 31, 2024; given that implementation of Recommendations 2 and 3 likely depend upon implementation of Recommendation 1, we expect that the DOI will need to address this recommendation before August 31, 2024, to meet the target implementation dates for all of the recommendations. If requested, we will assist the DOI in defining the nature and extent of necessary supporting documentation to close the recommendation.

2. For any final agency decisions identified as a result of Recommendation 1, determine whether any disciplinary action or other personnel action was improperly ordered or taken and take corrective action as available and appropriate.

DOI Response: The DOI concurred with this recommendation and stated that it will make the appropriate determinations for FADs identified through the process it is developing and implementing to address Recommendation 1. The DOI provided a timeframe for completion of August 31, 2024.

OIG Comment: Based on the DOI’s response, we consider Recommendation 2 resolved. We will consider it implemented when the DOI provides evidence demonstrating that it has made the appropriate determinations for any disciplinary or other personnel action ordered or taken as a result of the FADs identified through the process described in its response to Recommendation 1. We will work with the DOI to ensure it provides the necessary supporting documentation to close this recommendation at the appropriate time.

3. For any final agency decisions identified as a result of Recommendation 1, determine whether any remedy was improperly ordered or awarded and take corrective action as available and appropriate.

DOI Response: The DOI concurred with this recommendation and stated that it will make the appropriate determinations for FADs identified through the process it is developing and implementing to address Recommendation 1. The DOI provided a timeframe for completion of August 31, 2024.

OIG Comment: Based on the DOI’s response, we consider Recommendation 3 resolved. We will consider it implemented when the DOI provides evidence demonstrating that it has determined, for FADs identified through the process described in its response to Recommendation 1, whether any remedy was improperly ordered or awarded and if so, that the DOI has taken corrective action as available and appropriate. We will work with the DOI to ensure it provides the necessary supporting documentation to close this recommendation at the appropriate time.

4. Review the DOI’s Annual Federal Equal Employment Opportunity Statistical Reports of Discrimination Complaints (Form 462s) submitted to the Equal Employment Opportunity Commission (EEOC) for fiscal years 2018, 2019, 2020, and 2021, and take appropriate steps to ensure the accuracy of all submitted information concerning final agency decisions issued within and beyond the EEOC’s regulatory deadlines.

DOI Response: The DOI concurred with this recommendation and stated that ODICR will review the 2018, 2019, 2020, and 2021 reports and, in consultation with the EEOC, identify and take appropriate steps. The DOI provided a timeframe for completion of August 31, 2024.

OIG Comment: Based on the DOI's response, we consider Recommendation 4 resolved. We will consider it implemented when the DOI provides evidence demonstrating that it reviewed these reports, consulted with the EEOC to identify appropriate steps, and has taken the steps identified in its consultation with the EEOC. We will work with the DOI to ensure it provides the necessary supporting documentation to close this recommendation at the appropriate time.

5. Develop and implement policies and procedures that support the proper administration of final agency decisions (FADs), including processing complaints, applying the correct legal standard, and signing and issuing FADs in accordance with the Equal Employment Opportunity Commission's regulatory deadlines.

DOI Response: The DOI concurred with this recommendation and noted the report's acknowledgement of its completed actions of correcting ODICR's use of the incorrect legal standard and revising its *EEO Complaints Handbook* to expressly prohibit backdating.

OIG Comment: We consider Recommendation 5 implemented. As described in the report, the EEO Complaints Handbook now specifically prohibits backdating, and clarifies the FAD issuance date. Further, DOI took immediate action to correct ODICR's use of the incorrect legal standard, and we confirmed that ODICR is no longer applying this incorrect standard to discrimination claims.

6. Develop and implement appropriate training for Office of Diversity, Inclusion and Civil Rights employees regarding the policies and procedures developed pursuant to Recommendation 5.

DOI Response: The DOI concurred with this recommendation and stated that ODICR will develop and implement employee training in support of the actions taken to address Recommendation 5. The DOI provided a timeframe for completion of August 31, 2024.

OIG Comment: Based on the DOI's response, we consider Recommendation 6 resolved. We will consider it implemented when the DOI provides evidence demonstrating that it developed and implemented employee training related to the correct legal standard and FAD issuance dates. We will work with the DOI to ensure it provides the necessary supporting documentation to close this recommendation at the appropriate time.

VII. SUBJECTS

1. Former Director, ODICR.
2. Former Acting Director, ODICR.
3. Former Division Director, Adjudication, Compliance & Equity Division, ODICR.
4. Program Director, Affirmative Employment Program Division, ODICR.

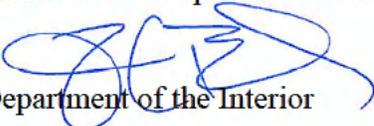


THE DEPUTY SECRETARY OF THE INTERIOR
WASHINGTON

JUN 20 2023

Memorandum

To: Mark Lee Greenblatt
Inspector General, Office of the Inspector General

From: Tommy Beaudreau 
Deputy Secretary, Department of the Interior

Subject: DOI Response to the Office of Inspector General Draft Report of Investigation –
“The Office of Diversity, Inclusion and Civil Rights Applied an Incorrect Legal
Standard and Backdated Final Agency Decisions”, Case Number OI-SI-21-0909-I

This memorandum provides the Department of the Interior’s (Department) response to the Office of Inspector General’s (OIG) Draft Report of Investigation, OI-SI-21-0909-I, regarding an allegation that a former Director of the Office of Diversity, Inclusion and Civil Rights (ODICR) issued final agency decisions (FADs) which contained unsupportable findings of discrimination; and an allegation that former, and one current, ODICR manager(s) backdated FADs.

Thank you for providing the Department the opportunity to address issues raised in the draft report and for providing recommendations. We have taken and continue to take steps that ensure the Department’s Equal Employment Opportunity (EEO) complaint process remains rooted in a commitment to fundamental fairness. As noted in the draft report, your office confirmed that “...ODICR is no longer applying this incorrect standard to discrimination claims...” (OI-SI-21-0909-I Draft Report, page 1). The draft report also confirms that “ODICR revised its *EEO Complaints Processing Handbook* to expressly prohibit backdating...” (OI-SI-21-0909-I Draft Report, page 1).

We have reviewed the six recommendations provided in the draft report. The ODICR Director is the official responsible for implementing our corrective action as described below. All corrective actions are expected to be completed by August 31, 2024.

Recommendation 1: Establish and implement a process to identify any final agency decisions issued between September 2019 and September 2021, in which the Office of Diversity, Inclusion and Civil Rights used an incorrect legal standard.

The Department concurs with this recommendation and has begun to establish and implement a process to identify any FADs issued between September 2019 and September 2021, which contained unsupportable findings of discrimination as a result of using or applying an incorrect legal standard.

Recommendation 2: For any final agency decisions identified as a result of Recommendation 1, determine whether any disciplinary action or other personnel action was improperly ordered or taken and take corrective action as available and appropriate.

The Department concurs with this recommendation and will make appropriate determinations for any FADs identified through the process described in response to Recommendation 1.

Recommendation 3: For any final agency decisions identified as a result of Recommendation 1, determine whether any remedy was improperly ordered or awarded and take corrective actions as available and appropriate.

The Department concurs with this recommendation and will make appropriate determinations for any FADs identified through the process described in response to Recommendation 1.

Recommendation 4: Review the DOI's Annual Federal Equal Employment Opportunity Statistical Reports of Discrimination Complaints (Form 462s) submitted to the Equal Employment Opportunity Commission (EEOC) for fiscal years 2018, 2019, 2020, and 2021, and take appropriate steps to ensure the accuracy of all submitted information concerning final agency decisions issued within and beyond the EEOC's regulatory deadlines.

The Department concurs with the recommendation. The ODICR will review the referenced 2018, 2019, 2020, and 2021 Reports for accuracy and will consult with the EEOC to identify and take appropriate steps.

Recommendation 5: Develop and implement policies and procedures that support the proper administration of final agency decisions (FADs), including processing complaints, applying the correct legal standard, and signing and issuing FADs in accordance with the Equal Employment Opportunity Commission's regulatory deadlines.

The Department concurs and appreciates the acknowledgement of completed actions in the report – “Shortly after we [OIG] discovered that ODICR was using the incorrect legal standard to decide claims of discrimination, we [OIG] notified DOI officials so they could take appropriate action. We [OIG] understand that the DOI took immediate action to correct ODICR's use of the incorrect legal standard, and we confirmed that ODICR is no longer applying this incorrect standard to discrimination claims. Similarly, during our [OIG] investigation, ODICR revised its *EEO Complaints Processing Handbook* to expressly prohibit backdating...” (OI-SI-21-0909-I Draft Report, page 1).

Recommendation 6: Develop and implement appropriate training for Office of Diversity, Inclusion and Civil Rights employees regarding the policies and procedures developed pursuant to Recommendation 5.

The Department concurs with this recommendation. The ODICR will develop and implement appropriate training for its employees in further support of the actions taken and acknowledged in Recommendation 5.

If you have any questions concerning this response, please contact Jennifer Koduru, Deputy Director of ODICR, at [REDACTED]@ios.doi.gov.



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