



**U.S. ELECTION ASSISTANCE COMMISSION
OFFICE OF INSPECTOR GENERAL**

DATE: January 24, 2024

TO: U.S. Election Assistance Commission, Acting Executive Director, Jessica Bowers
U.S. Election Assistance Commission, Acting General Counsel, Camden Kelliher
U.S. Election Assistance Commission, Human Resources Manager, Edison Williams

FROM: U.S. Election Assistance Commission, Inspector General, Brianna Schletz

SUBJECT: Memorandum 24-01: Opportunities to Improve Personnel Practices

We are issuing this memorandum to alert the U.S. Election Assistance Commission's (EAC's) Acting Executive Director, Acting General Counsel, and Human Resources (HR) Manager to EAC personnel practices that may not be in accordance with EAC policies and U.S. Office of Personnel Management (OPM) guidance. We are encouraged that EAC's new HR Manager onboarded in October 2023 and already issued communication to EAC that covers HR policies, recruitment, training, and other topics, consistent with addressing the concerns raised in this memorandum. We also recognize EAC has made recent changes in leadership and we hope this information is useful as EAC continues to establish and update operational policies and procedures.

Background

One of the Office of Inspector General's (OIG's) responsibilities is to look into complaints about fraud, waste, abuse, or mismanagement in EAC operations. Within the last few months, OIG received several complaints related to EAC's personnel practices, which alleged that EAC had:

- Circumvented established hiring policies.
- Unnecessarily acquired and disclosed staff's personally identifiable information.
- Been inconsistent in completing performance appraisals and paying out bonuses.
- Retaliated against an employee who disclosed wrongdoing to OIG.

In response to these allegations, OIG reviewed EAC policies and OPM guidance, interviewed EAC staff, and collected documentation supporting recent personnel actions. Based on the evidence collected, OIG identified three areas of concern. We conducted our review and prepared this memorandum in accordance with OIG's quality control standards and the Council of Inspectors General for Integrity and Efficiency's (CIGIE) "Quality Standards for Federal Offices of Inspector General," which require that we conduct our work with integrity, objectivity, and independence.

EAC hiring processes.

Under the Help America Vote Act of 2002 (HAVA), EAC is excepted from certain federal provisions applicable to the appointment and pay of personnel.¹ Despite this exception, EAC must follow civil service law by observing merit system principles (MSPs) and avoiding prohibited personnel practices (PPPs) issued by the U.S. Merit Systems Protection Board (MSPB). Additionally, EAC has approved and published *Interviewing: A Practical Guide for Selection Officials (Interview Guide)*, last updated in 2021, and the *Office of Human Resources Handbook (HR Handbook)*, created in 2011, which direct hiring managers to follow specific steps in the recruitment, interviewing, and selection processes of employment candidates.

Figure 1. Selected MSP standards and PPP activities

#	Merit System Principle	#	Prohibited Personnel Practice
1	Recruit qualified individuals from all segments of society; conduct fair and open competition; select and advance employees based solely on merit.	2	Consider any reference or recommendation for employment that is not directly related to skills of the candidate and the job to be performed.
2	Treat employees and applicants fairly and equitably, with proper regard for their privacy and constitutional rights.	4	Obstruct any person’s right to compete for employment.
4	Maintain high standards of integrity, conduct, and concern for the public interest.	8	Retaliate or threaten retaliation against a whistleblower.
5	Manage employees efficiently and effectively.	9	Retaliate or threaten retaliation for engaging in protected activity such as filing a complaint or appeal.
7	Educate and train employees to improve individual and organizational performance.		
8	Protect employees against favoritism, political coercion and arbitrary action and prohibit abuse of authority.		
9	Protect employees against reprisal for the lawful disclosure of information that is reasonably believed to evidence: (1) a violation of any law, rule, or regulation; or (2) mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.		

Source: U.S. Merit Systems Protection Board, [The Merit System Principles: Keys to Managing the Federal Workforce \(October 2020\)](#).

EAC’s Interview Guide further highlights the essential function of merit systems. Supported by OPM and MSPB, the MSPs are nine standards that govern the management of the federal workforce and form the foundation for the prohibited personnel practices. The 14 PPPs are employment-related activities that are banned in the federal workforce because they violate the merit system through some form of

¹ Help America Vote Act of 2002, Pub. L. No. 107-252, 116 Stat. 1666 (2002).

employment discrimination, retaliation, improper hiring practices, or failure to adhere to laws, rules, or regulations that directly concern the merit system principles. The MSP standards and PPP activities we view as applicable here are shown in Figure 1 and were adapted from Chapter 23 of Title 5 U.S. Code.²

Despite this guidance and governing standards, when reviewing EAC's recent hiring of two staff, we found:

- The hiring manager was not involved in the candidate review and selection, interview, or hiring of any of the applicants. Instead, the former EAC Executive Director stated that, under the authority provided to him under HAVA and EAC policy, he assumed the role of the hiring manager, controlling all aspects of the hiring process while the office's hiring manager was on scheduled leave. The HR Handbook guidance was not followed with respect to its instruction that the Office of Human Resources, along with the hiring manager, should determine which candidates meet minimum qualification requirements.
- The Interview Guide states that selection of best candidates for interviewing should be the next step following the recruitment process. The formal assessment of candidates was completed in September 2023, more than 3 months after the interviews occurred in May 2023, and offer letters were signed by the two selected candidates in May and June 2023, respectively. The assessment, completed by a contractor hired to advise EAC on HR matters, found that there was at least one other candidate who qualified for an interview, but who was not granted an interview. Had EAC involved their contractor at the recruitment phase of the process, each qualified candidate could have received an equal opportunity to move forward with an interview.
- The job posting required documents to submit with the application, to include a resume, three professional references, and a copy of the most recent performance appraisal. One of the two selected candidates did not provide a performance appraisal. The other selected candidate did not provide three professional references and OIG questioned the source of the performance appraisal submitted by this candidate as the report did not have an agency name or logo, a supervisor name, or a supervisor signature.
- Lack of fairness (MSP 1), obstruction (PPP 4), and prohibited consideration (PPP 2) may have played a role in the hiring decisions as, according to two individuals involved in the process, one qualified candidate was not interviewed due to personal reasons involving an EAC employee.
- The Interview Guide's principle to "conduct structured interviews in which each candidate is asked a predetermined set of questions and all candidates are measured against the same criteria" was not followed as interviews were conducted via phone calls with no predetermined questions or recorded interview notes to measure competency and qualification.
- Reference checks were not completed on the two selected candidates. The Interview Guide indicates to always check references regardless of impression.

Deviating from EAC's hiring guidance could result in EAC not hiring the best qualified candidates. The recruitment and selection of these two candidates occurred prior to the HR Manager coming onboard.

² 5 U.S.C. §§ 2301-2302.

EAC attrition and morale.

Key staff from at least four offices have left EAC in just the last year. This includes the Acting General Counsel, the Grants Director, a Senior Advisor, and an Information Technology Specialist who had been with the agency for over 3 years. As a small agency of about 80 employees as of November 2023, frequent changes in personnel, especially at the management level, can have a negative impact to operating as an effective and productive workforce. Vacancies were acknowledged in EAC OIG's most recent top management challenges report.³ MSPB research ties increased intentions to leave an agency to the actual or perceived failure of an agency to abide by the MSPs.⁴ Of the 12 staff members interviewed by OIG in connection with this memorandum, 17 percent shared intentions to leave the agency due to dissatisfaction with aspects of their jobs.

OIG identified several actual or perceived personnel practice deficiencies, which could contribute to low morale and attrition. These include (1) supervisors who are not communicating with their staff; (2) a bonus system that is not based on performance reviews; (3) a perceived requirement for after-hours work; and (4) a lack of training opportunities.

Communication. OIG interviewed staff in one office and approximately 75 percent reported that any type of supervisor communication was infrequent and unscheduled, meaning it was uncommon for their supervisor to call or email regularly, with most communication stemming from ad hoc requests from the supervisor. Moreover, staff shared receiving no responses (at all or not within a reasonable time) to calls or emails directed to their supervisor.⁵ This contravenes MSP 5, which calls for efficient and effective use of the federal workforce.

Bonuses and Pay Raises. In the 2022 Federal Employee Viewpoint Survey (FEVS), 26 percent of EAC staff surveyed responded neutrally or negatively to a question about whether their supervisor had spoken to them in the last 6 months about their performance. See Figure 2 below.

Federal law mandates managers to formally assess employee performance at least once a year. However, when OIG interviewed staff in October and November 2023, performance appraisals had not occurred for more than 80 percent of staff in one office. The supervisor confirmed that performance appraisals were not completed or documented and cited unbearable workload as the reason.

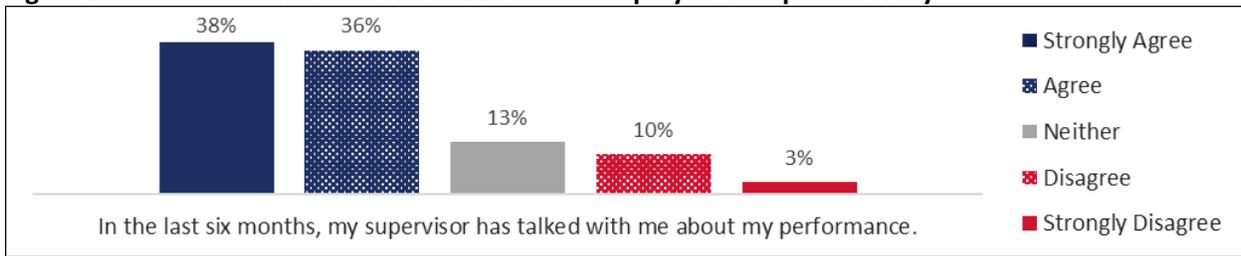
Despite the lack of a performance appraisal, about 88 percent of these employees received bonuses in fiscal year 2023. At least one new hire questioned the impact of their work in their short time with the EAC to substantiate their bonus. Some staff discovered a bonus after reviewing pay statements, whereas others received some form of communication from their supervisor about a bonus.

³ EAC OIG, [Management Challenges for EAC in Fiscal Year 2024, with EAC Response | United States Election Assistance Commission OIG](#) (November 2023).

⁴ U.S. Merit Systems Protection Board, [The Merit System Principles: Keys to Managing the Federal Workforce](#) (October 2020).

⁵ Reasonable time refers to the time, which is fairly necessary, conveniently, to do whatever is required to be done as soon as circumstances permit.

Figure 2. Selected Results from the 2022 Federal Employee Viewpoint Survey

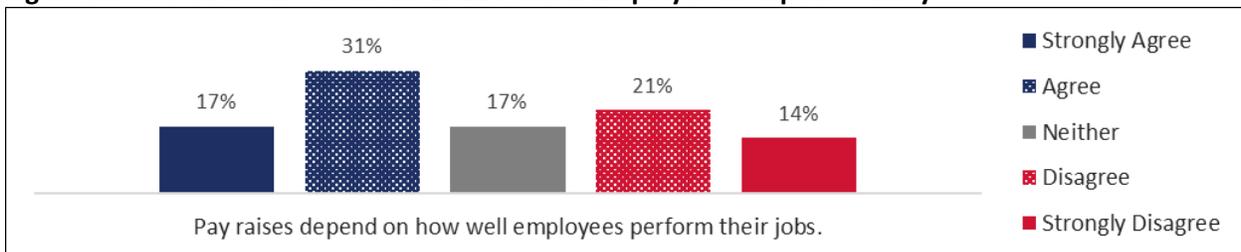


Source: Office of Personnel Management, [Feedback Report for the U.S. Election Assistance Commission Employee Survey \(March 2023\)](#).

Ideally, the bonus system should be tied to performance accomplishments and administered consistently. While the EAC Handbook cites an Awards Standard Operating Procedure, the link is broken. EAC was unable to locate the documents in folders or emails.

Consistent with the 2022 FEVS results where 52 percent of responses were neutral or negative to the question that pay raises depend on how well employees perform their jobs, staff may distrust bonus and pay raise determinations in the absence of measurable criteria.

Figure 3. Selected Results from the 2022 Federal Employee Viewpoint Survey



Source: Office of Personnel Management, [Feedback Report for the U.S. Election Assistance Commission Employee Survey \(March 2023\)](#).

After-hours work. Per the HR Handbook, employees working irregular, occasional, or overtime work are eligible for compensatory time in lieu of overtime pay. However, EAC staff may be engaging in unpaid or unscheduled work. On several occasions, EAC staff have sent emails to a wide distribution between 12 a.m. and 5 a.m. local time and on federal holidays. Additionally, staff reported working more than their scheduled hours while being denied compensatory time off.

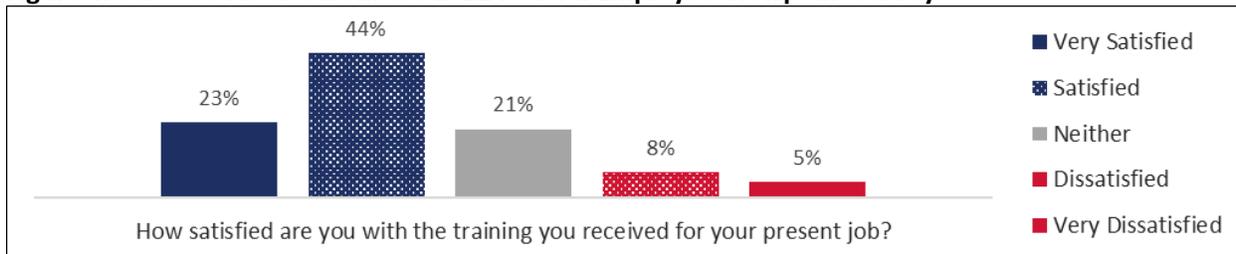
One employee expressed the belief that their salary increase was a direct result of their dedication to their work and specifically working excess hours. Without clearly enforced policies and procedures around work hours, people may develop their own expectations on work productivity and experience burnout, which consequently increases turnover.

Training. According to MSP 7, employees should be provided effective education and training to improve individual and organizational performance. While EAC used a contractor to provide employees basic HR training in August 2022, the HR Handbook is the primary source of information about EAC’s HR policies and procedures. That handbook contains broken web links and refers to outdated federal guidance. Employees are also unfamiliar with its contents—about 42 percent of staff interviewed, including staff who have been with EAC for several years, were unaware of how often they are to

receive a performance appraisal or that a performance appraisal process exists. Similarly, at least two hiring managers did not know that the Interview Guide exists.

Consistent with the 2022 FEVS, staff reported training could improve so they can understand their roles better and use their time more efficiently.

Figure 4. Selected Results from the 2022 Federal Employee Viewpoint Survey



Source: Office of Personnel Management, [Feedback Report for the U.S. Election Assistance Commission Employee Survey \(March 2023\)](#).

EAC's organizational structure and the staff complaint process.

After a long vacancy, EAC hired someone to fill the HR manager position and then subsequently moved the incumbent to a new position as Equal Employment Opportunity (EEO) Officer in early 2023. The HR manager position was filled again in September 2023. The HR manager position reports to the Administrative Officer, a role that often fills the gap on HR actions when the HR manager position is vacant. However, the Administrative Officer is also responsible for procurement, travel, and events, making it difficult to respond to inquiries in a timely manner and to ensure that each office is following appropriate personnel practices. This additional layer of responsibility for the Administrative Officer may lead to privacy concerns as discussed below.

The EEO Officer reports directly to the Executive Director. EAC also has an agreement with the General Services Administration for personnel services, which includes handling EEO complaints, if necessary. Furthermore, EAC has a contractor that provides Human Resources assistance to EAC. Despite these external resources, it is unclear how and when the roles are utilized or where staff are to report concerns and get help.

In addition to an allegation of retaliation for reporting information to OIG, employees also reported feeling unsure where they were supposed to lodge complaints. Employees reported discomfort about multiple people being unnecessarily aware of a complaint if they were to go to HR. In one case, an employee was concerned that the former Executive Director was interfering with the ability of an EEO inquiry to move forward. Currently, EAC policy does not include a process for EEO allegations against the Executive Director.

Research shows that actual or perceived failure to abide by the MSPs can lead to increased EEO complaints.⁶ Federal law protects employees from discrimination based on several factors, to include retaliation. Filing a formal EEO complaint can result in the agency being investigated and results of the investigation being made public, which can lead to negative public attention. The time, personnel, and

⁶ U.S. Merit Systems Protection Board, [The Merit System Principles: Keys to Managing the Federal Workforce](#) (October 2020).

cost associated with completing an investigation are all resources pulled away from other important agency matters. Without clear reporting channels and policies, EAC opens itself to an increase in complaints and a prolonged process for employees to achieve resolution.

According to the U.S. Equal Employment Opportunity Commission's *Fiscal Year 2020 Annual Report on the Federal Workforce Part 1: EEO Complaint Processing Activity*,⁷ reprisal/retaliation was the leading base of complaint allegations among the number of complaints received. Whistleblowers play a critical role in keeping the government honest, efficient, and accountable. When whistleblowers make disclosures of potential wrongdoing, they can help guard the government against waste, fraud, and abuse. By fostering an anti-retaliation work environment, problems in the workplace are less likely to go unreported, concerns are more likely to reach effective resolution, and the agency is more likely to be known as having a positive workplace culture.

Next Steps

We are issuing this memorandum so EAC management is aware of gaps in policies and processes and can take timely action to address them. We did not open an investigation into these matters. However, based on the procedures performed by OIG, we determined that the allegations had merit. For example, while the aforementioned hiring was not in direct violation of law due to EAC's exemptions, it did violate EAC's policy and best practices, and may have violated MSPs. For the purpose of consistent practice across EAC offices and to mitigate future risks, we urge EAC to determine what corrective actions should be taken to rectify inconsistent practices.

On September 25, 2023, OIG published its *Oversight Plan for Fiscal Year 2024*,⁸ which includes an audit of the U.S. Election Assistance Commission's Workforce Planning and Human Capital Procedures. The audit will assess whether EAC's human capital planning is conducted in accordance with federal guidance and determine if procedures are operating efficiently and effectively.

On January 5, 2024, we provided EAC with a copy of this memorandum for its review. EAC acknowledged the memorandum and provided an update on its ongoing efforts to improve personnel practices. The full text of EAC's response is included as Attachment 1.

⁷ U.S. Equal Employment Opportunity Commission, [Fiscal Year 2020 Annual Report on the Federal Workforce Part I: EEO Complaint Processing Activity](#) (March 2023).

⁸ EAC OIG, [Oversight Plan For Fiscal Year 2024 | United States Election Assistance Commission OIG](#) (September 2023).



U.S. Election Assistance Commission
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DATE: January 22, 2024

TO: Brianna Schletz, U.S. EAC Inspector General

CC: Camden Kelliher, U.S. EAC Acting General Counsel and Edison Williams, U.S. EAC Human Resources Manager

FROM: Jessica Bowers, U.S. EAC Acting Executive Director

RE: Acknowledgement of Memorandum on Opportunities to Improve Personnel Practices

This memorandum provides a written response and acknowledgement to the Office of the Inspector General's (OIG's) memorandum alerting the U.S. Election Assistance Commission's (EAC's) Acting Executive Director, Acting General Counsel, and Human Resources (HR) Manager to EAC personnel practices that may not be in accordance with EAC policies and U.S. Office of Personnel Management (OPM) guidance.

As noted in the OIG referral memorandum, the EAC believes that recent changes in leadership will create a more efficient human resources workflow and environment. The information provided by the OIG will be useful as the EAC continues to establish and update operational policies and procedures.

The OIG referral memorandum also notes that the EAC HR Manager was onboarded in October 2023. Since the issuance of this OIG referral memorandum, the EAC HR Manager has also been separated out from the EAC Administration Division. This structure allows for more independence, which is necessary for human resource matters, especially complaints.

EAC leadership thanks the OIG for the Memorandum on Opportunities to Improve Personnel Practices. This information will be taken into consideration as the EAC continues to strengthen overall human resource operations.