

**GENERAL MANAGEMENT:  
Customs Service Employment  
Discrimination Complaint Cases Generally  
Prepared According to Regulations  
and Procedures**

OIG-01-074

May 29, 2001



**Office of Inspector General**

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**The Department of the Treasury**

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## Abbreviations

CFR	Code of Federal Regulations
DO	Departmental Offices
EEO	Equal Employment Opportunity
EEOC	Equal Employment Opportunity Commission
GS	General Schedule
MD	Management Directive
OIG	Office of Inspector General
Customs	U.S. Customs Service

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*The Department of the Treasury  
Office of Inspector General*

May 29, 2001

Charles W. Winwood  
Acting Commissioner  
United States Customs Service

We performed a limited review of settlement agreements between the U.S. Customs Service (Customs) and Customs employees at the GS-15 level and above for the period of October 1989 through September 1999. The overall objectives of this audit were to determine whether the settlement agreements related to employment discrimination complaint cases associated with employees at grades GS-15 and higher were (1) prepared according to regulation and procedure and (2) did not compromise Customs management's decision-making action. We relied on Customs to provide the documentation on all employment discrimination complaint cases that were closed by settlement agreement. Customs produced a computer printout that identified 410 cases that were closed by settlement agreement during our requested time frame, of which eight were at the GS-15 level and above.

The complaint information and settlement agreement terms were reviewed against criteria established in Title 29 Code of Federal Regulations (CFR) 1614, the Equal Employment Opportunity (EEO) Management Directive (MD)-110, and the EEO Counselor Handbook. The criteria we used to evaluate the appropriateness of the settlement agreements was that the agreement should not put the employee in a better position than he or she would have been in if discrimination had not occurred. We also reviewed for the prescribed format of a settlement agreement. A more detailed description of our objectives, scope, and methodology is presented in Appendix 1.

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## Results in Brief

Our audit found that the settlement agreements we reviewed were generally prepared properly and did not compromise management's decision-making action with one exception. We found one questionable case where Customs allowed an employee to remain in one specific office for as long as that individual desired to work in that location. Although it was an acceptable settlement term, the agency has limited its management discretion with regard to staffing that particular office. In addition, we found two areas that needed corrective action. Customs management could not attest to the universe of closed cases involving past and present Customs employees for the time period requested, and the related case documents for one of the eight cases selected for our review could not be located.

Our report includes two recommendations that will assist Customs in remedying the deficiencies identified. Specifically, Customs' EEO Office should create and maintain a centralized database of all settlement agreements for the entire Bureau that includes the grade of complainants for stratification of cases for management review and audit. We are also recommending the Customs EEO Office require the Regional Offices to take steps to ensure that all settlement agreements are complete and accounted for.

Customs concurred with our finding and outlined a set of corrective actions that, when full implemented, will satisfy our recommendations. Customs response to our draft report is provided as Appendix 2.

## Background

The regulations governing the processing of Federal employee discrimination complaints are contained in 29 CFR 1614. These regulations set time limits for each portion of the process, define what can and cannot be accepted as a complaint, who can file a complaint, and how the agency should carry out its EEO responsibilities. The Equal Employment Opportunity Commission

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(EEOC) has provided further guidance and interpretation of 29 CFR 1614 in its EEO MD-110.

The EEOC Regulations in 29 CFR 1614 provide that an aggrieved person and the agency may enter into a settlement agreement at any stage of the complaint process, and that the agreement will be binding on both parties. It further states that the agency shall make reasonable efforts to voluntarily settle complaints of discrimination as early as possible in, and throughout, the administrative processing of complaints, including the pre-complaint counseling stage.

## **Findings and Recommendations**

### **Finding 1 Settlement Agreements Generally Prepared Properly**

Customs prepared the seven settlement agreements we reviewed according to regulations and procedures, with one exception.

In that one exception, Customs allowed the employee to remain in one specific office for as long as that individual desired to work in that location. Although it was an acceptable settlement term, Customs has limited its management discretion with regard to staffing that particular office. In the balance of the settlement agreements reviewed, Customs agreed to pay the complainant attorneys' costs, pay compensatory damages, and/or reassign the plaintiff to another grade or geographic location. These actions were permissible under applicable regulations.

### **Finding 2 Settlement Agreement Documentation Unavailable**

Customs was not able to provide, or account for, the original complaint and settlement agreement documentation for one of the eight cases selected for review.

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In addition, we requested, but Customs management declined to submit, a written attestation to serve as assurance that we were provided all available cases that met our audit criteria. The printout of cases filed for the audit period was provided to Customs management by the Departmental Office's (DO) EEO Office. The Customs EEO Office maintains no records of finalized settlement cases, and therefore had to request a printout of all settlements from DO. The listing of settlement cases also did not include the grade level of the complainants. Therefore, Customs officials had to manually search for the grades of the Customs' employees to extract those cases meeting our criteria. Finally, without a written representation that Customs had provided us with a complete list of settlement agreements with Customs' senior management officials, the scope of our work was not sufficient to enable us to reach a conclusion as to whether all of Customs' settlement agreements with senior management officials complied with all applicable laws and regulations.

### **Recommendations**

1. The Commissioner of Customs should ensure that Customs' EEO Office creates and maintains a centralized database of all settlement agreements with Customs employees. The database should include the grade level of complainants for stratification of cases for management review and audit.

Management Response: Customs has an internal complaint management system pending funding for development. This system will enable Customs to manage the full complaint process effectively, as well as stratify data relative to Customs complaints of discrimination.

OIG Comment: When completed in April 2002, Customs proposed action will satisfy the intent of our recommendation.

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2. The Customs EEO Office should require the Regional Offices to take steps to ensure that all settlement agreements are complete and are accounted for as indicated in the database.

Management Response: Customs will issue written guidance and a Directive that will ensure consistent and proper processing, decision-making authorities, and documentation and record keeping requirements of settlement agreements.

OIG Comment: When completed in September 2001, Customs proposed action will satisfy the intent of our recommendation.

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We would like to extend our appreciation to Customs for their cooperation and courtesies extended to our staff during the review. If you have any questions, please contact me at (202) 927-6512, or C. Samuel McGeorge, Audit Manager, at (202) 927-6344. Major contributors to this report are listed in Appendix 3.

Donald R. Kassel  
National Director, Banking  
and Fiscal Service

The audit objectives were to determine whether Customs settlement agreements with high-level employees related to employment discrimination complaint cases were (1) prepared according to regulation and procedure and (2) did not compromise Customs management's decision-making action. We requested the case histories and associated settlement agreements for both past and present Customs employees at grades GS-15 and higher. We requested cases closed from October 1989 through September 1999.

We relied on Customs to provide the documentation on all employment discrimination complaint cases that were closed by settlement agreement. Customs produced a computer printout which identified 410 cases that were closed by settlement agreement during our requested timeframe. However, an initial problem arose in that the information system which records closed EEO cases does not capture data by employee grade. Therefore, Customs personnel had to manually identify both past and present employees at grades GS-15 and above. Customs identified a total of eight cases which met our review criteria.

The EEO Office at Customs obtained the original complaint information and settlement agreements for our review. The complaint information and settlement agreement terms were reviewed against criteria established in 29 CFR 1614, the EEO MD-110, and the EEO Counselor Handbook. Staff from the Counsel to the Inspector General also assisted in the case reviews and in developing the audit conclusions.

We performed our audit fieldwork between February 2000 and May 2000. The criteria we used to evaluate the appropriateness of the settlement agreements was that the agreement could not put the employee in a better position than he or she would have been in if discrimination had not occurred. We also reviewed for the prescribed format of a settlement agreement.

Except as discussed in the following paragraph, we conducted our audit in accordance with generally accepted government auditing standards. Among other things, those standards require that we obtain sufficient, competent, and relevant evidence about the validity and reliability of the data used to support our findings.

We obtained the list of settlement agreements with Customs senior management officials that were tested during the audit from Customs management. We were unable to apply other audit procedures that would satisfy our objectives as to the completeness of this list of settlement agreements. As discussed in the Findings and Recommendations section of this report, Customs also did not provide the supporting case file documentation for one settlement agreement on its list. The inability of Customs to provide the documentation for this one settlement agreement raises a concern as to whether Customs maintained or provided all documentation related to the other settlement agreements we reviewed. Furthermore, Customs management declined our request for a written representation that it had provided us (1) a complete list of settlement agreements with Customs senior management officials and (2) all documentation related to settlement agreements with Customs senior management officials. Accordingly, the scope of our work was not sufficient to enable us to reach a conclusion, and we are making no such conclusion, as to whether Customs' settlement agreements with all senior management officials during the audit period complied with applicable laws and regulations.



**U.S. Customs Service**

*Memorandum*

DATE: APR 27 2001

FILE: AUD-1-OP BAB

MEMORANDUM FOR MARLA FREEDMAN  
ASSISTANT INSPECTOR GENERAL

FROM: Director,  
Office of Planning

SUBJECT: Employment Discrimination Complaint Cases

Thank you for the opportunity to review and comment upon the report of the Inspector General on employment discrimination cases. In general, we accept the findings of the report. We note, however, several minor concerns that are set forth below.

On page three of the report, the author writes, "our audit found that the settlement agreements we reviewed were generally prepared properly and did not compromise management's decision-making action with one exception." The author proceeds on page eight, however to note, "as discussed in the findings and recommendation section of this report, Customs also could not provide the supporting case file documentation for one settlement agreement on its list. The inability of Customs to provide the documentation for this one settlement agreement raises a concern as to whether it maintained or provided all documentation related to other settlement agreements we reviewed. Accordingly, the scope of our work was not sufficient to enable us to reach a conclusion, and we are making no such conclusion, as to whether Customs settlement agreements with all senior management officials during the audit period complied with applicable laws and regulations."

We believe that the inability to account for one settlement agreement should not result in inconclusiveness and should not redound in any generalization regarding the overall universe of settlement agreements reviewed.

TRADITION

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SERVICE

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HONOR

Next, the report references Customs redaction of names from the report, citing that they could not "definitively determine the names of the aggrieved." As you are aware, names of complainants are subject to the protections of the Privacy Act. Accordingly, Customs Counsel redacted the cases, and to the best of our recollection, this was done with

concurrence by the IG review team. This notwithstanding, we provided the review team letters of acceptance reflecting the issues in the discrimination complaints along with settlement agreements by corresponding Treasury and EEOC case number. This information was sufficient, absent names, to ensure the integrity of the review, as the scope of the review focused on the integrity of the relief granted *not* the person who filed the complaint.

In line with the recommendations provided, we have a number of initiatives, underway prior to the onset of this review, to address data integrity within our operations, and we are pleased that the review team's findings validate the plans which we have in place to address previously identified shortcomings.

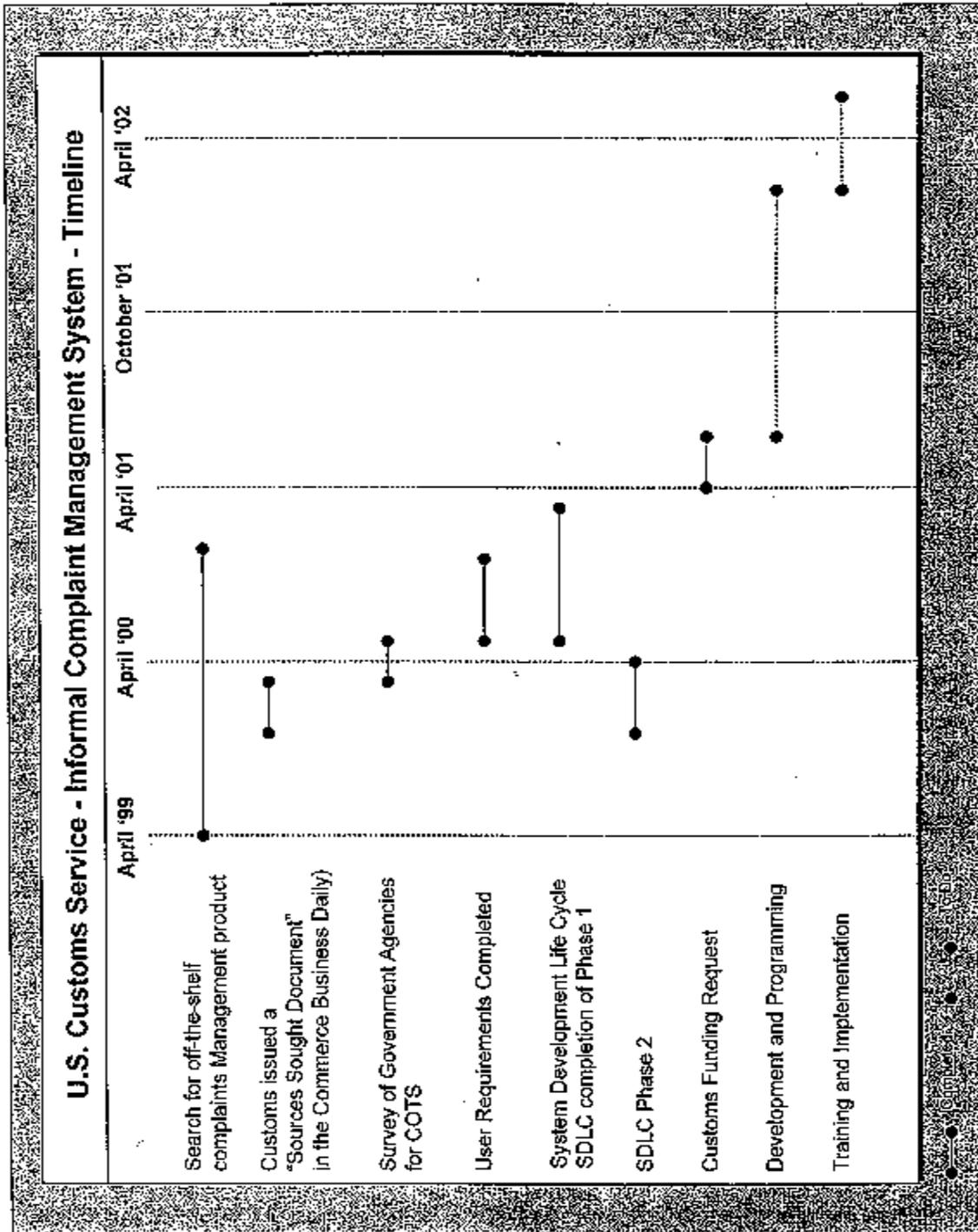
First, we have an internal complaint management system pending funding for development. This system will enable us to manage the full complaint process effectively, as well as stratify data relative to Customs complaints of discrimination. Second, we will issue written guidance and a directive that will ensure consistent and proper processing, decision-making authorities, and documentation and record-keeping requirements of settlement agreements. Our time line reflecting these commitments is attached.

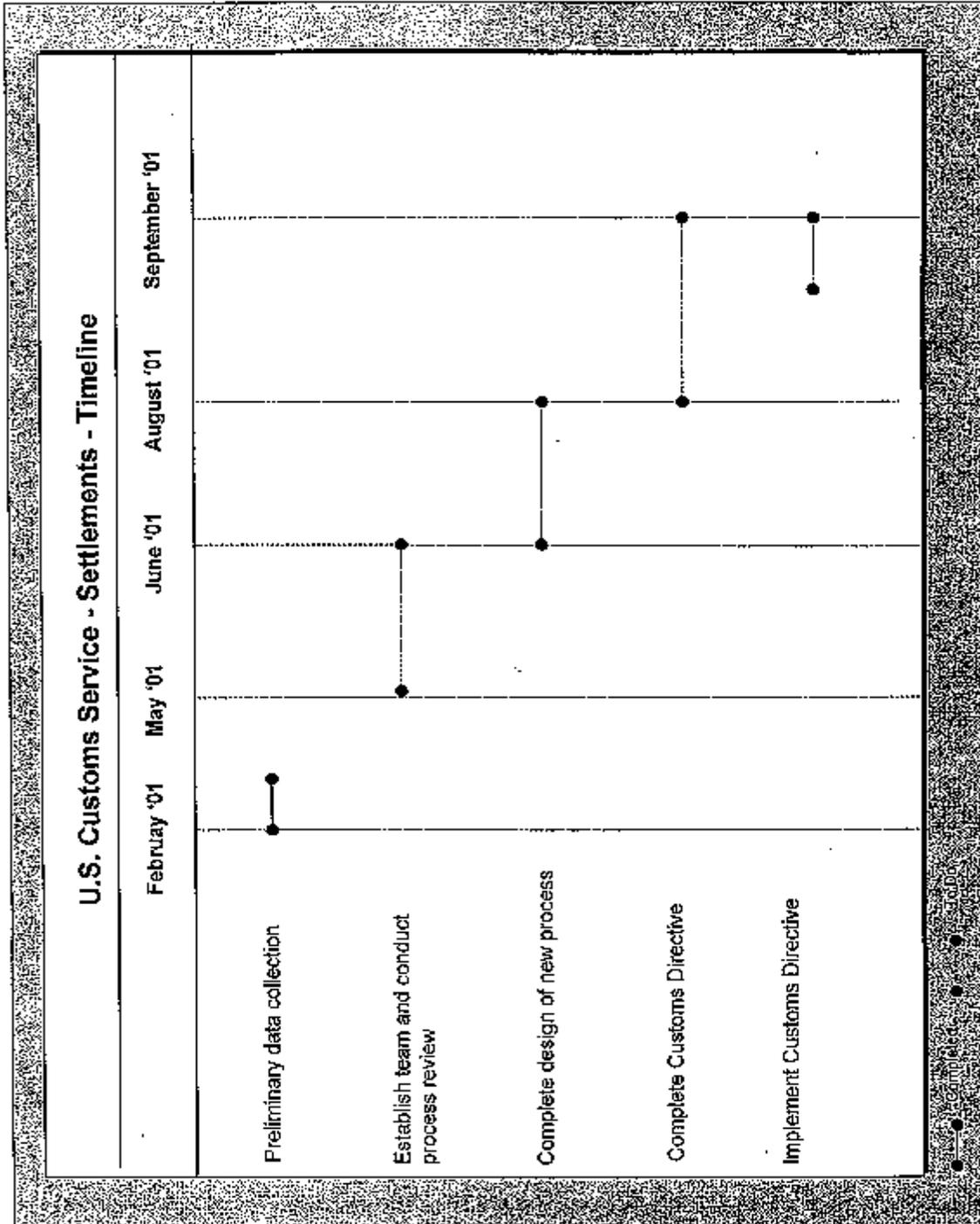
Overall, we accept the findings of the report, and we will continue to undertake measures to ensure our commitment to integrity in the EEO process. We thank the review team for their efforts in this regard. If you have any questions regarding these comments, please have a member of your staff contact Ms. Brenda Brockman at (202) 927-1507.

  
William F. Riley

Cc: Chief of Staff  
G. Zawadski  
Special Assistant, Equal Employment Opportunity

Attachments





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**The Department of the Treasury**

Office of Strategic Planning and Evaluations  
Office of Accounting and Internal Control  
Office of Budget

**US Customs Service**

Acting Commissioner  
Customs Office of EEO  
Director, Evaluation Oversight, Office of Planning

**Office of Management and Budget**

OIG Budget Examiner