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February 18, 2010

Mr. Stephen Llewellyn
Executive Officer, Executive Secretariat
Equal Employment Opportunity Commission
Room 6NE03F, 131 M Street, NE
Washington, D.C. 20507

Dear Mr. Llewellyn:

Federally Employed Women (FEW) appreciates the opportunity to submit these comments in response to the proposed rule revising the Commission's federal sector complaint processing regulations (EEOC 2010-0001/FR Doc #E9-30162). We support the work of the Equal Employment Opportunity Commission (EEOC) to improve and make these regulations more efficient. FEW offers the following views on the different aspects of the proposal.

Agency Process

Compliance with EEOC Directives:

While FEW supports the fact that EEOC has included language about compliance with its regulations, management directives and bulletins in this proposal, we believe that enforcement must be much more stringent on agencies than proposed. These reports, especially the MD-715, are critical in determining whether federal agencies are striving toward and achieving greater diversity of their workforce, especially at the more senior levels. While the compliance numbers went up this past year for MD-715 reports, FEW was extremely disappointed to learn that in 2006, only 50 percent of federal agencies submitted timely MD-715 reports. We believe that part of the reason they went up was because FEW issued a Press Release about the 2006 dismal numbers that was picked up in several media outlets. They could easily go down again.

FEW firmly believes that there needs to be some type of enforcement. One suggestion would be to list non-complying agencies in the Federal Register or other publications, as well as

distributing this list to Congress. It seems to us that most federal agencies would not want to be seen missing mandated deadlines by those who control their budgets. Additionally, over the next 5 to 10 years, there is going to be more competition among federal agencies to recruit and retain quality employees because of the vast number of retirements expected. Agencies are not going to want potential employees to see that they are not meeting certain deadlines – especially those that concern diversity and discrimination reporting.

Pilot Projects for Processing Complaints:

Another proposed change would be the allowance of pilot projects for processing complaints. FEW supports this initiative. We have seen in the past that untested changes have been made to large components of the federal personnel system without first determining whether all the potential problems and issues have been ironed out. This simply leads to massive problems for tens of thousands of federal workers and their managers covered under the changes. The end result is that large amounts of time and funding have been wasted. Rather new initiatives should be tried out with smaller groups to ensure that all potential problems are solved.

As for the time period for these pilot projects, FEW believes that 12 months might not be long enough to ensure that the program will work. However, we do not condone pilot projects being conducted for many years without any decisions made on their effectiveness. Therefore, we would support the clause that allows two additional 12-month extensions (for a total of three years) if a feasible presentation has been made to EEOC on why the extensions are needed. FEW does not necessarily support an automatic extension for these projects, but rather extensions after some explanation has been given by the agencies.

Time Limit Notification After 180 Days:

FEW participated in the EEOC Federal Sector Workgroup and expressed much concern about the length and timeliness issue for investigations. Therefore, FEW greatly supports this EEOC proposal to require agencies to inform the employees who filed a complaint that the investigation would not be completed within 180 days and when it is anticipated to be completed. FEW also supports the requirement that the agency inform the employee of her/his right to request a hearing at that time.

While FEW does applaud this suggestion, we would add that we think more work needs to be done in the area of timeliness of completing investigations. The process is still woefully slow and

has not been improving much since 2005 when the average time to complete an investigation averaged 237 days. FEW would urge EEOC to revitalize the Federal Sector Working Group to develop more ways to improve this broken system.

FEW would also suggest that EEOC consider adopting a standard format for investigative plans that would be used by all government agencies. This would make the process more transparent as well as contribute to the completion of these investigations in a timelier manner. Additionally, a major problem with the timeliness issue is because of a lack of staff and sufficient resources to ensure investigations are completed on time. Many agencies rely on collateral duty trained employees which simply results in an overloaded portfolio. Agencies should be required to ensure that these Equal Employment Opportunity (EEO) officers are able to dedicate a certain percentage of their time solely to discrimination complaints.

EEOC Process

Electronic Filing:

While FEW appreciates the fact that electronic filing would improve and quicken the complaint process, we remain concerned about those employees who do not have access to this technology. Therefore, we would suggest that EEOC retain the language that electronic submissions are encouraged, but not required. There should be no adverse impacts to employees who submit paper copies.

Class Complaints

Expedited Processing of Appeals:

As mentioned above, FEW remains very concerned about the length of time it takes to complete the complaints process. Therefore FEW would support a requirement for an expedited process of appeals of decisions to accept or dismiss class complaints to within 90 days upon receipt of the appeal.

Additional Issues/Suggestions

Quality of Training:

One issue not included in this proposal is that of training. Currently EEO officials and investigators receive only 32 hours of training. This is far from what is needed to train these

officials in proper equal employment laws and dispute processes. FEW would propose that EEO managers and officials should be given, at minimum, two weeks (or 80 hours) of training. After completing this training, new investigators should then train under the tutelage of an experienced investigator. Current investigators should also receive 24 hours of annual refresher training. Finally, FEW would recommend that all investigators pass a written examination following their training before conducting any investigations to ensure they fully understand the process and system.

Conflict of Interest:

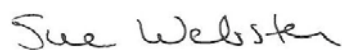
FEW would like to point out our belief that there is a big problem with agencies investigating themselves. While FEW believes that agencies should have a first shot at fixing the dispute or problem, appeals of the decisions should be brought before a separate entity. This should be a single, independent adjudicatory body within the Executive branch.

FEW would propose that a Federal Employment Board be established that merges the various organizations that currently are responsible for the adjudication of federal employment disputes, including the Merit Systems Protection Board, the Federal Labor Relations Agency and the Office of Personnel Management. This board would provide single forum for dispute resolutions within the Executive branch should the agencies be unable to reach a resolution acceptable to all parties. The Board's judge would issue a final, binding decision on employment disputes. Board members could be appointed by the President and confirmed by the Senate.

FEW is a private, non-profit organization founded in 1968 after the issuance of Executive Order 11375 that added sex discrimination to the list of prohibited discrimination in the federal government. FEW has grown into a proactive organization with over 100 chapters in 10 regions throughout the U.S. FEW serves the more than one million federally employed women (both civilian and military) and is the only organization dedicated solely to eliminating sex discrimination in the federal workplace.

Thank you again for this opportunity to comment.

Sincerely,

A handwritten signature in cursive script that reads "Sue Webster".

Sue Webster, FEW National President