



OFFICE OF  
THE CHAIRMAN

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

September 14, 1989

Division Directors  
Office Heads  
Securities and Exchange Commission

Re: Responses to the  
Tatel Report's Recommendations

Following review of the "Report on the Equal Employment Opportunity Program of the Securities and Exchange Commission." dated June 26, 1989, prepared by David S. Tatel (the Report), I have decided to accept and implement the majority of the Report's recommendations.

The Commission's EEO regulations and Policy statements, should be amended and the Commission's EEO procedures should be altered as suggested in the Responses to the Report. Implementation of certain other recommendations will be more heavily dependent on the selection of the new EEO Director, the restructuring of the EEO Office, the nature of new guidelines to be issued by the EEOC, and the Commission's budgetary constraints.

Please review the enclosed "Commission Response to Recommendations on the Tatel Report" and take the steps indicated wherever they are applicable to your division or office.

A handwritten signature in cursive script that reads "David S. Ruder".

David S. Ruder  
Chairman

COMMISSION RESPONSE TO  
RECOMMENDATIONS IN TATEL REPORT

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I. Commission Regulations And Policies Prohibiting Discrimination

A. Regulations

Tatel Recommendation 1 (New EEO Regulations) (pp. 263-64) 1/: That the Commission adopt new EEO regulations that are in compliance with EEOC regulations. Draft regulations SECR 27-1 and 27-2 are an excellent starting point, and should be revised as needed to conform to EEOC requirements.

Chairman's Observations: I concur in the recommendation that new regulations should be adopted. SECR 27-1 and 27-2 should be used as a basis, but should be modelled after the EEOC's regulations and amended to conform with ongoing changes in the EEOC's regulations. The final drafting and adoption of these regulations should await the appointment of a new EEO Director so that the rulemaking process can receive the benefits of his or her insights. I also direct that the new regulations be published in the CFR, following notice and opportunity for comment, and that the obsolete and/or deficient existing regulations be rescinded.

B. Policies

Tatel Recommendation 2 (Revisions to EEO and Affirmative Action Policy Statements) (p. 267): That the Commission's EEO and Affirmative Action Policy Statement be brought into compliance with EEOC requirements by: (a) specifying the bases of prohibited discrimination; (b) emphasizing that managers and supervisors will be accountable in performance evaluations for complying with the policy.

Chairman's Observations: The EEO Office has been instructed to implement this recommendation.

Tatel Recommendation 3 (Revisions To Sexual Harassment Policy) (pp. 269): That the Commission's Sexual Harassment Policy Statement explain that employees who believe they are victims of sexual harassment need not complain first to their supervisors, and may initiate the EEO Complaint process by consulting a counselor.

Chairman's Observations: The EEO Office has been instructed to implement this recommendation.

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1/ References to the Tatel Report are listed as "p. \_\_\_".

### C. Communication of Policies

Tatel Recommendation 4 (Communication Of Policies To New And Existing Employees) (p. 270): That the Commission communicate its policies in writing to all employees annually, and to all new employees when they arrive.

Chairman's Observations: I concur in this recommendation. New employees now receive a packet of EEO information during their orientation. The EEO Office has been instructed to devise the most effective means of communicating written information to all current employees (e.g., at evaluation time, during EEO training sessions, etc.).

Tatel Recommendation 5 (Communication Of Policies By Regional Administrators, Division Directors, And Office Heads) (p. 270): That the Commission encourage all regional administrators, division directors, and office heads to communicate their own commitment to EEO policies.

Chairman's Observations: Memoranda from the Chairman's Office will be issued, at least semi-annually, to remind Office and Division heads of the need to communicate to their staff their commitment to EEO objectives.

Tatel Recommendation 6 (Preparation And Distribution Of Policies Pamphlet) (pp. 270-71): That the format of the written policies be changed from a memorandum to a pamphlet which states key policies and summarizes the counseling and complaint process. This pamphlet should be given to all new employees and recirculated to existing employees on the same date each year (e.g., January 1), and should include: (a) the "Fact Sheet" concerning complaint procedures; (b) the full text of the Commission's basic EEO and sexual harassment policies; and (c) either reprints or summaries (with citations) of other specific topics, such as AIDS.

Chairman's Observations: In conjunction with the revisions to the Commission's policy statements, a pamphlet is being prepared and upon completion will be disseminated to new employees during their orientation, and to all current employees on an annual basis.

D. Understanding the Effectiveness of Regulations And Policies

Tatel Recommendation 7 (Statements Concerning The EEO Counseling And Complaint Process) (p. 273): That the EEO and Affirmative Action Policy state that violations can be pursued through EEO counseling and the complaint process.

Chairman's Observations: The EEO Office has been instructed to implement this recommendation.

Tatel Recommendation 8 (Statements Concerning Reprisal And Discipline) (p. 273): That both the EEO and Affirmative Action Policy and the Sexual Harassment Policy explain that reprisal for pursuing an EEO Complaint is prohibited, and that actions violating the policy may result in discipline.

Chairman's Observations: The EEO Office has been instructed to implement this recommendation.

Tatel Recommendation 9 (Statements Concerning Broader Ramifications Of Sexual Harassment) (pp. 273-74): That the Sexual Harassment Policy include statements similar to the following: "sexual harassment is a form of employee misconduct which undermines the integrity of the employment relationship" and "sexual harassment debilitates morale and interferes in the work productivity of its victims and co-workers".

Chairman's Observations: The EEO Office has been instructed to implement this recommendation.

Tatel Recommendation 10 (Examples Of Conduct Constituting Sexual Harassment; Policy Concerning Sexual Relationships Between Supervisors And Subordinates) (pp. 274-78): That the Sexual Harassment Policy give examples of conduct constituting sexual harassment, and provide policy guidance to employees concerning the extent to which sexual relationships between supervisors and subordinates that do not constitute sexual harassment are acceptable. The policy on this subject: (a) should strongly discourage supervisors from initiating sexual relationships with subordinates even when the relationship would not constitute sexual harassment; (b) should apply to supervisors' relationships with both employees in their supervisory chain and employees outside their supervisory chain whose evaluations, work assignments, or other employment conditions they are in a

position to influence; (c) should identify the risks of supervisory relationships with subordinates, including explanations that: (i) a sexual relationship between a supervisor and a subordinate presents the risk that the supervisor will allow non-merit factors to influence his or her supervisory judgment; (ii) even when the relationship does not cause favoritism, there is a great risk that other people in the office will perceive that it does; and (iii) consensual sexual relationships can lead to claims by others of a hostile work environment, and, if the relationship turns sour, may lead to subsequent allegations of sexual harassment by the lower level employee; (d) should warn supervisors who nevertheless continue such relationships that they risk severe penalties, including termination, if it is established that the end result of such relationships constitutes sexual harassment (including hostile environment) or influences their supervisory judgment; and (e) should state that an employee who believes that he or she has suffered sexual harassment or discrimination due to the existence of a sexual relationship between a supervisor and another employee can file a complaint that will be discreetly, thoroughly and independently investigated.

Chairman's Observations: I concur with the recommendation that a statement be issued that provides guidance to employees as to when personal relationships impede effective functioning in the workplace, or, further, interfere with the work environment and thereby constitute sexual harassment. I have directed that the Commission issue a statement that strongly discourages supervisors from engaging in consensual romantic or sexual relationships with persons in their chain of command, or with persons whom they actually evaluate, supervise or assign to cases. As Mr. Tatel's report states, no federal agency has yet articulated a policy on this issue. I believe the Commission should form a task force comprised of agency employees with the goal of formulating a statement that provides clear guidance on this issue. The Task Force should look to the EEOC definition of sexual harassment in devising guidance for the Commission staff on this issue.

Tatel Recommendation 11 (No Automatic Adverse Action For Supervisor/Subordinate Relationships) (pp. 266-67): That the Sexual Harassment Policy not automatically mandate a transfer or other adverse action when a supervisor and subordinate have a sexual relationship.

Chairman's Observations: I concur with Mr. Tatel's recommendation. See also #10 above.

Tatel Recommendation 12 (Sexual Harassment Training) (pp. 278-79): That there be continued training to enhance the level of understanding of acceptable and unacceptable conduct, and that future training sessions be more closely tailored to the Commission's situation. Training programs should include better examples of the overt and subtle forms of unacceptable behavior.

Chairman's Observations: I concur in this recommendation, and have directed that such training be mandatory for all Commission employees.

Tatel Recommendation 13 (Column In SEC Employee News) (p. 279): That there be a regular EEO column in the SEC Employee News, similar to the Ethics column which currently appears. This column should describe hypothetical EEO problems, discuss EEO developments and court decisions, and inform all employees of EEO training opportunities and events.

Chairman's Observations: I concur in the recommendation that there should be articles published for Commission-wide distribution relating to EEO issues. In fact, the EEO Office has already begun preparation of an EEO Bulletin intended to disseminate EEO related information and discussion of EEO issues.

## II. Structure of The EEO Program

### A. Impact of Combining Functions of EEO Director With Executive Director

Tatel Recommendation 14 (Creation of New EEO Director Position and Organization of EEO Office) (pp. 288-90): That a full time EEO Director position, reporting directly to the Chairman, be created. A corresponding new position description which follows the requirements of EEOC regulation (29 C.F.R. §1623.204(d)) should be prepared. The Executive Director's current role as EEO Director, and the EEO Manager position, should be eliminated. The current functions of the EEO Manager should be given to the EEO Director and to persons reporting to the EEO Director. Below the Level of EEO Director, the existing Equal Opportunity Specialist position, with primary duties in the affirmative action area, should be continued. The currently vacant General Attorney position, with primary duties in the complaint processing area, should be filled. A collateral duty Chief Counsellor, whose primary duty would be to assist counsellors, should be appointed.

Chairman's Observations: I concur in the recommendation that a new position be created for a full-time independent EEO Director who reports directly to the Chairman. As for the structure and

staffing of the new EEO Office, the Tatel recommendations should be implemented, but only after consultation with the new EEO Director, and review of the next fiscal year's budget. In order for the EEO Office to work efficiently, it is important to have the new EEO Director involved in the decision-making with regard to the structure of the EEO Office, and selection of EEO assistants.

Tatel Recommendation 15 (Rank of the EEO Director) (pp. 294-95): That the new EEO Director be a member of the Senior Executive Service.

Chairman's Observations: In view of the importance to the Commission of having an excellent EEO program, the creation of an SES position is justified. It will both symbolize the Commission's commitment to addressing EEO problems and heighten the attractiveness of the position to highly qualified applicants.

Tatel Recommendation 16 (Qualifications of the EEO Director) (pp. 294-95): That the new EEO Director be a lawyer, with recognized management skills, the ability to deal effectively and fairly with employees and managers, and excellent judgment and integrity. A search should be conducted within the Commission to find an individual who meets these qualifications, with the private sector also an option. The Chairman should not be limited in his search to the Equal Opportunity Series (No. 260). The job should be created instead in the General Administrative Series (301), which should attract candidates with broader skills.

Chairman's Observations: I agree that a lawyer may be more likely to possess the attributes necessary to perform the EEO Director's job effectively. However, I do not believe it is wise to make it an absolute requirement and thereby foreclose consideration of non-lawyer EEO specialists who might provide excellent service in the position.

Tatel Recommendation 17 (Location of the EEO Office) (pp. 294-95): That the EEO Office be moved from the 1C level to an office commensurate with the EEO Director's independence and stature.

Chairman's Observations: The EEO Office has already moved to the ninth floor.

B. Impact of Relying on the General Counsel to defend the Commission in Litigation

Tatel Recommendation 18 (Use of Justice Department Lawyers, Rather Than OGC Staff, To Defend Commission In EEO Court Cases) (pp. 297-98): That the Commission discontinue the use of OGC lawyers to defend the agency in EEO court cases, and rely, like most other agencies, on the Department of Justice for that purpose.

Chairman's Observations: I agree with this recommendation. Before turning over the authority to litigate EEO district court cases to DOJ, however, the Commission should negotiate a memorandum of understanding which establishes the Commission's role in any EEO litigation, and, in particular, with respect to settlements.

III. The EEO Complaint Process

A. Counseling

1. Resolution Efforts in Counseling

Tatel Recommendation 19 (Adoption of Draft Regulations Concerning The Counseling Process) (p. 304): That the Commission adopt its draft internal regulations concerning the counseling process. The regulations should: (a) clarify the responsibility of counselors and managers to diligently seek resolutions of all problems brought to counselors; (b) emphasize the Commission's goal of resolving EEO concerns at the lowest possible level as a good management practice; (c) stress that resolutions are not an admission of liability; (d) clarify that supervisors and other employees involved in counseling must promptly cooperate with counselors' requests for meetings; and (e) clarify that counselors should speak to higher level authority if they decide that progress with lower level officials is insufficient.

Chairman's Observations: The EEO Office has been instructed to implement this recommendation.

Tatel Recommendation 20 (Nomination Selection Process For Counselors) (pp. 305-07): That the Commission change the selection procedure for counselors. Collateral duty, rather than full-time counselors, should be retained. The pool of candidates for these positions should be expanded by employing a nomination process whereby all employees in an organizational unit (including supervisors) be asked to nominate an individual to serve as a counselor. From those nominated, the EEO Director, based on factors such as strength of support in the nomination

process and a review of performance records in their primary duties, should identify a smaller pool and ask those individuals to interview. Top management of the organizational units should be asked to encourage employees to interview. In interviews, the EEO Director should focus on the qualifications set forth in the job description for counselors, with emphasis on the "ability to communicate effectively with persons of different grade levels, ages, races, sexes, national origin, and cultural and educational background" and "skill and ability in finding and analyzing facts and in negotiating, consulting and counseling skills." Undue emphasis should not be placed on preexisting knowledge of EEO law.

Chairman's Observations: I concur in the recommendation that the method for selecting counselors be amended. I concur in the recommendation that part-time rather than full-time counselors be utilized. I agree with the recommendation that strong efforts be made to encourage volunteers for counseling positions, especially among attorneys. The following process will be implemented: (1) the EEO Director will be responsible for evaluating whether the volunteers are adequate in number and qualification. (2) The Director will consider the employees' performance records (no one with less than fully successful evaluations can be selected as a counselor), their communication and negotiation skills, and will not disqualify persons for lack of knowledge of EEO law. (3) If the number or quality of volunteers is not adequate, the Commission will then utilize a nomination process, that allows all employees in an organizational unit to nominate individuals, with their prior consent, to serve as counselors. The EEO Director will then evaluate these candidates using the same criteria as employed to evaluate the volunteers.

Tatel Recommendation 21 (Counselor Training) (pp. 307-08): That the Commission's training of counselors focus on two areas: dispute resolution skills and federal personnel practices. A seminar should be arranged promptly for any counselors who have not received focused personnel training. Basic and refresher courses should place greater emphasis on personnel practices and dispute resolution techniques. Counselors should attend a training program focused on counsellors at least once a year to keep their skills current. The EEO Office's recent institution of brown bag lunches and the development of a manual for counselors should continue. The EEO Office should provide counselors with timely updates summarizing significant legal developments, including a synopsis containing the practical implications of cases.

Chairman's Observations: I concur in this recommendation, with two provisos -- (1) the particulars of the counselor-training

program should await the appointment of a new EEO Director; and (2) the cost/benefit of on-site group training should be compared with off-site outside training.

Tatel Recommendation 22 (Collateral Duty Chief Counselor) (pp. 309-10): That the Commission ask one person to serve as collateral duty Chief Counselor, whose primary duty would be to assist counselors. Although Chief Counselor would not regularly counsel directly, he or she might be asked to do so in particularly sensitive cases. Chief Counselor should be an attorney, GS-14 or above, located at headquarters. Chief Counselor should also be involved in the selection, training and monitoring of counselors.

Chairman's Observations: In general, I concur in this recommendation; but, due to the amount of effort required by this position, I believe the Chief Counselor should be a full-time employee in the EEO Office.

Tatel Recommendation 23 (Preparation of Counseling Reports) (p. 311): That counselors submit a brief report on each counseling contact at the beginning and close of counseling. Report at commencement of counseling should include a brief description of the subject of each counseling contact, and any further steps that are to be taken. Report at the conclusion should describe the nature of the resolution or reasons for no resolution.

Chairman's Observations: The EEO Office has been instructed to implement this recommendation.

Tatel Recommendation 24 (Annual Evaluations of Counselors) (p. 312): Counselors should be formally evaluated annually. The recently developed evaluation form should be expanded to include evaluation of counselors' success in resolving problems. Counselors receiving poor evaluations should be targeted for further training or replaced. The EEO Office's current intention of connecting evaluations to the bonus system should be implemented.

Chairman's Observations: The EEO Office has been instructed to implement this recommendation.

## 2. Problems Not Being Taken To Counselors

Tatel Recommendation 25 (Publicizing Information Concerning Counseling) (pp. 312-14): That EEO officials regularly (e.g., twice a year) audit information on bulletin boards to assure that key information is contained in enough places to be seen on a regular basis by Commission employees. Also, in finalizing the draft regulations contained in SECR 27-2, the EEO Director should include a brief explanation of how employees can choose a counselor, including a counselor outside the employee's office. This information should also be included in the EEO pamphlet and other distributions regarding counselors.

Chairman's Observations: The EEO Office has been instructed to implement this recommendation.

### B. Formal Complaints

#### 1. Overview

For the most part the Commission's complaint process complies with EEO requirements. In a few areas, described below, it is not functioning as efficiently as it could be.

#### 2. Communication Concerning the Complaint Process

Tatel Recommendation 26 (Adoption Of Final Regulations Describing The Complaint Process) (p. 318): That the EEO Director finalize the Commission's draft regulations in SECR 27-2 describing the Complaint process.

Chairman's Observations: The EEO Office has been instructed to implement this recommendation.

Tatel Recommendation 27 (Additional Information On Fact Sheet) (pp. 318-19): That the Fact Sheet regarding the filing of a discrimination complaint include: (a) information concerning the right of representation; (b) information concerning the right to ask another employee of the agency to serve as a representative on official duty time; (c) the definition of a "mixed case" and an explanation of the different procedures for such cases; and (d) an explanation of the different procedures for age discrimination complaints. The Fact Sheet should be included as part of the EEO pamphlet previously recommended.

Chairman's Observations: The EEO Office has been instructed to implement this recommendation.

Tatel Recommendation 28 Revision Of Complaint Acceptance Letter (p.319): That the General Attorney revise the complaint acceptance letter, and the form letter sent to all officials involved in a complaint investigation, to inform them of their right to be represented and to ask another Commission employee to be their representative on official duty time.

Chairman's Observations: The EEO Office has been instructed to implement this recommendation.

Tatel Recommendation 29 Notifications Concerning Complaint Status (p.319): That the General Attorney regularly inform complainants and officials charged with discrimination of the complaint's status, either orally with documentation in the file, or using forms similar to those used by the Ethics Counsel.

Chairman's Observations: The new EEO Office should be responsible for keeping complainants and officials charged with discrimination apprised of the status of complaints. The acting EEO Manager currently serves this function, and the new EEO Director should decide how the new EEO Office will carry out this function.

### 3. Representation

Tatel Recommendation 30 (Pool Of Attorneys To Represent Complainants) (p. 320): That the Commission solicit Commission attorneys to form a pool of attorneys willing to represent complainants in the internal complaint process.

Chairman's Observations: I believe that an alternative procedure will better accomplish Mr. Tatel's goal of facilitating complainants' use of Commission attorneys as their representatives. At an early point in the EEO process -- after initial counseling -- complainants should be notified of the right to obtain representation by a Commission attorney. The complainants can then sign a form requesting such representation, and either solicit the particular attorney they desire, or allow one to be designated. Employees also should be provided with a form on which they may decline a Commission attorney as a representative. The EEO Office will prepare, in conjunction with OGC, an information packet for attorneys who represent complainants.

Tatel Recommendation 31 Case-By-Case Evaluation Of Attorney Conflicts Of Interest When Representing Complainants In Administrative Proceedings (p. 320): That the Commission not apply the blanket rule that it is a conflict of interest for Commission attorneys voluntarily to represent complainants in administrative hearings, but instead, assess potential conflicts on a case-by-case basis.

Chairman's Observations: I concur in the recommendation with certain modifications. It is appropriate to permit a case-by-case assessment of conflicts of interest when non-OGC attorneys represent complainants in administrative proceedings prior to the Commission's final decision in the case. Potential benefits include: (1) Encouragement of settlement without resort to litigation; and (2) Emphasis on the fact that all employees have a role in the EEO process.

Because OGC attorneys represent the Commission in administrative proceedings, the blanket prohibition against their representation of complainants should continue to apply. Furthermore, representation of complainants by any Commission attorney in administrative proceedings following the Commission's final determination (such as appeals to the EEOC or the MSPB) should be prohibited in all cases, because it places such attorneys in a conflict-of-interest position.

Tatel Recommendation 32 Case-By-Case Evaluation Of Attorney Conflicts Of Interest In Representing Commission Officials Or Employee Witnesses In Court Cases (p. 323): That a case-by-case analysis be undertaken to determine whether a Commission attorney may ethically represent an official or employee who is a witness in a Court proceeding against the Commission. Before any individual representation is offered, an interview and preliminary investigation be conducted to determine whether the individual's interests differ from those of the Commission. If it appears that the official or employee has acted contrary to agency rules or policies or otherwise is likely to be subject to agency discipline for conduct related to the Court proceedings, a conflict would exist and representation by an agency attorney would be inappropriate. Even if it appears that the Commission's and the individual's interests are aligned, the individual should be apprised of the attorney's dual and potentially conflicting loyalties and of the need to retain private counsel if a conflict should develop. The agency attorney should continually assess the facts as they develop and terminate the individual relationship if a conflict develops.

Chairman's Observations: I concur in this recommendation.

Tatel Recommendation 33 Individual Representation Of Non-Party Commission Officials Or Employees (p. 324): That the Commission not offer individual representation to non-party officials and employees, but instead authorize attorneys to attend and participate fully in proceedings involving those individuals simply as attorneys acting on behalf of the agency.

Chairman's Observations: Tatel's recommendation #32 is the appropriate policy to govern the question of representation of Commission employees generally.

#### 4. Steps of the Process

##### a. Acceptance and Rejection

Tatel Recommendation 34 (Adoption Of Regulations Concerning Acceptance And Rejection Of Complaints) (p. 326): That the EEO Director finalize the draft regulations in SECR 27-2 regarding the requirements for the acceptance and rejection of complaints.

Chairman's Observations: The EEO Office has been instructed to implement this recommendation.

Tatel Recommendation 35 Notification To Complaints Concerning Mixed Case Procedures) (p. 327, n.167): That the provision of SECR 27-2 concerning notification to qualified complainants of the right to file mixed case complaints be expanded to require that employees who incorrectly file mixed case complaints be informed that their complaint is not qualified to be processed as a mixed case complaint.

Chairman's Observations: The EEO Office has been instructed to implement this recommendation.

Tatel Recommendation 36 (General Attorney Review Of Complaints To Be Rejected) (pp. 326-27): That the General Attorney be responsible for reviewing each complaint which is to be rejected in whole or in part to determine whether rejection meets EEOC standards.

Chairman's Observations: I concur in this recommendation, but believe that the determination of which EEO assistant should be responsible for this task should be deferred until selection of the new EEO Director. In the meantime, the acting EEO Manager will perform this function.

b. Appointing Pro Tem Directors

Tatel Recommendation 37 (Appointment Of Pro Tem Directors By Chairman) (pp. 328-29): That the Chairman, rather than the Executive Director's Office (or the independent EEO director, if one is appointed), be responsible for appointing a Pro Tem EEO Director when one is needed.

Chairman's Observations: I concur in this recommendation, with the added requirement that if the Chairman or someone in his office is named as a discriminating official, the EEOC should be consulted and requested to appoint a Pro Tem Director.

Tatel Recommendation 38 (Adoption Of Regulations Concerning Pro Tem Appointments And Pro Tem Authority) (p. 329): That the Commission's regulations set forth in SECR 27-2, when they are finalized, include a description of the process for Pro Tem appointments along with the authority and role of the Pro Tem.

Chairman's Observations: The EEO Office has been instructed to implement this recommendation.

Tatel Recommendation 39 Greater Guidance For Pro Tem Directors; Adoption Of Regulations) (p.329): That Pro Tem Directors be given greater guidance, including the adoption of the draft regulations set forth in SECR 27-2.

Chairman's Observations: The EEO Office has been instructed to implement this recommendation.

Tatel Recommendation 40 Reliance On EEOC, Rather Than EEO Director, For Legal Assistance (pp. 329-30): That EEO Pro Tems avoid relying on the EEO Office for substantive legal guidance during the processing of a complaint to avoid the appearance of a conflict of interest, and instead that they be provided additional written information, including: a list of publications concerning EEO laws; a list of current EEO court decisions; and practical information on processing complaints. In addition, the EEO Director should attempt to arrange in advance for EEOC personnel to provide necessary legal assistance to the Pro Tems, and the letter of appointment should be revised to direct Pro Tem Directors to the EEOC for further guidance.

Chairman's Observations: I concur in the recommendation pertaining to the EEOC's involvement, provided the EEOC is willing to accept this role. If the EEOC is not so inclined, I

recommend that Pro Tems rely on OGC lawyers for advice, except where such representation would create a conflict of interest in the circumstances of a particular case. 2/ OGC lawyers who are representing the Commission in the particular proceeding should be "walled-off" from providing guidance to the Pro Tem Director. The letter of appointment should be revised to direct Pro Tem Directors to the EEOC for guidance, if the EEOC is willing, or to the General Counsel, if the EEOC declines to participate in the recommended capacity. I also concur in the recommendation that Pro Tems be given additional written materials.

Tatel Recommendation 41 (Recruitment Of Pro Tems In Advance Of Case) (p.330): That the Chairman consider recruiting one or two Pro Tem Directors in advance of a need for them in a particular case.

Chairman's Observations: I concur in this recommendation.

c. Investigations

Tatel Recommendation 42 (Restructuring Contracting System For Investigators) (p. 335): That the Commission improve its contracting out system for EEO investigators by restructuring the contracting process to give greater weight to references and work samples, and less to cost. The next investigation contract should be based upon the restructured criteria, and should be let to a firm reputed for its EEO complaint investigations. The contract should contain a renewal option so that the firm can be obtained again if the Commission is satisfied with the work.

Chairman's Observations: I concur in this recommendation, subject to budgetary constraints and the requirements of federal procurement law.

Tatel Recommendation 43 (Monitoring Of Investigations By EEO Office) (p. 336): That the Commission more closely monitor investigations. The General Attorney should carefully review the Plans of Investigation before an investigation begins to make sure that proper people are being interviewed and all relevant documents are being requested. The General Attorney should also

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2/ Such a conflict might arise, for example, if an OGC official as well as an official from the EEO Office were alleged to have discriminated against the complainant, or if an OGC official was alleged to have discriminated and the EEO Director was alleged to have mishandled the EEO complaint against that official.

monitor the progress of investigations and assist the investigator in obtaining documents and affidavits, if necessary.

Chairman's Observations: I concur in this recommendation to the extent that someone in the EEO Office should be responsible for monitoring these functions. While the acting EEO Manager will take responsibility for this task at the present time, the assignment of these responsibilities in the new EEO structure should await the appointment of a new EEO Director.

Tatel Recommendation 44 (Review Of Investigative Reports By EEO Office) (p. 336): That the General Attorney in the EEO Office review investigative reports carefully upon receipt, and make an immediate decision as to whether supplemental investigation is needed. The General Attorney should make sure that key evidence in the report is verified, to the extent possible, with corroborative evidence, and that necessary follow-up questions were asked. If further investigation is needed, the contract investigator should be required to perform it. The General Attorney should forward a copy of the investigative file to the complainant promptly.

Chairman's Observations: I concur that someone in the EEO Office should be responsible for carefully and promptly reviewing investigative reports, but believe that the assignment of these responsibilities should await the appointment of a new EEO Director. In the meantime, the acting EEO Manager will perform this function.

Tatel Recommendation 45 (Evaluations Of Facts And Assessments Of Credibility By Investigators) (p. 339): That investigators provide an evaluation of the facts, including their assessments of witness credibility and independent corroborative evidence, to address any conflicts in the evidence, and suggest which version of the facts they find to have more support. Investigators' reports should not include legal determinations as to whether there was discrimination.

Chairman's Observations: I concur in the recommendation. The role of the investigator is to (1) locate and identify evidence -- documentary or testimonial -- germane to the allegations; (2) summarize all such evidence in the form of affidavits; and (3) provide observations to help the ultimate decision-maker, such as (a) noting a lack of corroboration of evidence with respect to particular allegations, (b) noting conflicts in evidence or (c) assessing which document/testimony is more credible, and (d) providing a basis for the finding. The goal of this process is to have as complete a factual record as possible at the earliest

point in the proceedings. In view of the fact that many Title VII cases turn on questions of credibility of testimony, the assessment of witness testimony can be valuable. At the same time, the assessment of credibility is merely one factor among others identified by the investigator for consideration by the decision-maker and should not be binding on the decision-maker. Most important, the investigator is not charged with the responsibility for determining whether discrimination exists. His/her job is to identify all the relevant facts to be considered.

Tatel Recommendation 46 (Continued Use Of Affidavits Rather Than Court Reporters In Investigations) (p. 341): That the Commission continue to conduct investigations relying primarily on affidavits, rather than using court reporters in all cases. The Commission should consider using court reporters in particularly controversial cases, or in cases where the testimony of employees is likely to have great conflicts on key facts.

Chairman's Observations: I concur in this recommendation.

d. Adjustment

Tatel Recommendation 47 (Improved Timing Of Adjustment Efforts) (pp. 342-43): That the timing of adjustment efforts be improved. Following the completion of each complaint investigation, the EEO Director should schedule a meeting with the Director of Personnel and the officials involved to consider alternatives for adjustment, whether or not the Commission believes discrimination occurred. Such meetings should explore the possibility of adjustment in cases where there is evidence suggesting discrimination occurred, where there are significant fairness issues, or where possible personnel violations exist. In non-meritorious cases, someone from the EEO Office will meet with the complainant to explain why the complaint lacks merit and to give the complainant the opportunity to withdraw the complaint.

Chairman's Observations: I concur in this recommendation. This suggestion is likely to increase adjustments and reduce the amount of time and energy spent on later EEO complaint processing. Finalizing provisions of draft SECR 27-2 will largely implement this recommendation.

Tatel Recommendation 48 (Adoption Of Regulations Concerning Adjustment) (p. 343): That the Commission's draft regulations concerning adjustment be adopted, with a clarification reflecting the current practice of Commission EEO officials which takes into

account the view of the named official, but does not give him control over the issue of adjustment.

Chairman's Observations: I concur in this recommendation, so long as the person chosen to be EEO Director has an opportunity to provide further input into the manner in which the system works.

Tatel Recommendation 49 (Development Of Standards Governing Adjustment) (pp. 344-45): That the Commission develop standards describing the factors to be considered in determining whether to adjust complaints. These factors should not be limited to the question of whether there was proof of discrimination, but instead should include an inquiry as to: whether there is evidence of policies not applied or of inconsistent application of rules; whether employee perceptions of unfairness were reasonable; the reasonableness of complainant's demand; and the availability of alternative solutions. These key factors should be referenced in the Commission's complaint processing regulations.

Chairman's Observations: A list of "adjustment factors" should be included in the regulations governing adjustments, with the proviso that such factors may, but need not be, considered in adjusting complaints, and that other factors may also be taken into account. I want to provide some guidance to the public, complainants and agency employees as to the bases for agency decision-making, but because each case contains unique facts, it is important to preserve Commission flexibility.

#### e. Proposed Dispositions

Tatel Recommendation 50 (Insistence On High Quality Proposed Dispositions) (p. 346): That the EEO Director insist in all cases on high quality proposed dispositions that carefully discuss the facts and the law.

Chairman's Observations: I concur in this recommendation. The new EEO Director should be responsible for implementing procedures designed to ensure high quality decisions.

#### 5. Discipline or Remedial Action

Tatel Recommendation 51 (Determinations Concerning Disciplinary And Remedial Action Required In Each Case) (p. 350): That when each complaint file is closed, whether or not there is a written decision of discrimination, the EEO Director makes a specific and documented determination of whether initiation of disciplinary

action is appropriate, or whether remedial action, such as further training or changed office practices, is warranted. A requirement that these issues be considered should be included in the draft regulations in SECR 27-2 when they are finalized.

Chairman's Observations: In general, I concur with this recommendation. If there has been a finding of discrimination or a possible violation of the conduct regulations, the EEO Director should refer the matter to the Director of Personnel or Ethics Officer, who in turn should determine whether disciplinary action should be considered. Alternatively, where no finding of discrimination has been made, but there is recognition of a managerial problem or error of judgment, the EEO Director should consider methods of addressing the problem and consult with the employee's supervisors. In either case mentioned above, the due process requirements contained in all applicable federal law and regulations as well as in the Commission's internal regulations must be followed.

Tatel Recommendation 52 (Disciplinary And Remedial Procedures) (p. 351): In cases where the EEO Director determines that discipline is necessary, the EEO Director should make a recommendation to the division or office head who supervises the employee, who in turn should take the appropriate steps to have the disciplinary notice issued. In cases where training, counseling, or other remedial action is necessary, the EEO Director should coordinate with the Executive Director, the Director of Personnel and/or the relevant division or office head to see that it is implemented.

Chairman's Observations: The practice to be followed is that set forth in response to recommendation 51.

## 6. Timeliness of the Complaint Process

Tatel Recommendation 53 (Imposition Of Time Limits For Each Stage Of The Complaint Process) (pp. 353-54): That the Commission [establish] time limits for each step of the Complaint process [portion of recommendation redacted].

Chairman's Observations: Time frames for completion of each portion of the complaint process should be established in conjunction with establishment of a new EEO structure at the Commission. The acting EEO Manager currently is monitoring the time spent processing each complaint at each stage of the process in order to identify time lags and to avoid significant delays.

Tatel Recommendation 54 (Tracking Of Complaints By EEO Office) (pp. 354): That the General Attorney keep track of time periods for each complaint and take steps to move forward any complaint that falls behind at any stage of the process. Complaints should be monitored in the Commission's existing computer system to keep track of the number of days since the complaint has been filed and the current status of each complaint, as well as the delay resulting at each phase of the process. When there are unavoidable delays (e.g. the need to interview more witnesses), the reason for the delay should be documented and a new target date for completion established and recorded. The General Attorney should submit monthly printouts to the EEO Director, who should meet with the Chairman.

Chairman's Observations: The EEO Office has been instructed to implement this recommendation, but a final decision regarding responsibility for the system should be made by the new EEO Director.

Tatel Recommendation 55 (Cooperation Of Employees As A Factor In Supervisors' Performance Evaluations) (p. 355): That cooperation of employees in the investigation of complaints should be a factor included in the performance evaluations of supervisors.

Chairman's Observations: I concur in Tatel's recommendation to the extent that it recommends that the performance evaluation of supervisors should include evaluation of their efforts to encourage employees' cooperation in the EEO process. However, because supervisors cannot coerce cooperation, they should not receive reduced evaluations if an employee refuses to cooperate despite the supervisor's sincere efforts to encourage such cooperation.

Tatel Recommendation 56 (Notice To Complainants Concerning Responsibilities In The Complaint Process; Cancellation Of Complaints For Want Of Prosecution) (pp. 355, n.211): That the Commission inform complainants in strong terms of their responsibilities to produce documents promptly, attend scheduled interviews and meetings, and return affidavits in accordance with time limits. The Commission should also exercise its power to cancel complaints for failure to prosecute when complainants do not proceed with the complaint.

Chairman's Observations: I have instructed the EEO Office to implement this recommendation.

Tatel Recommendation 57 (Investigation Contracts For Larger Number Of Investigations) (pp. 355-56): That the EEO Office proceed with its plans to obtain investigation contracts covering a larger number of investigations.

Chairman's Observations: I concur in this recommendation subject to budgetary constraints and to the requirements of federal procurement law.

C. Receptivity of the Commission to EEO Complaints

1. Confidentiality

Tatel Recommendation 58 (Confidentiality Requirements; Development Of Form Setting Forth Confidentiality Rules) (pp. 357-58): That the Commission adopt clear confidentiality requirements which restrict employees who possess information concerning a complaint or counseling from disclosures which are not necessary to pursuing their role in the counseling or complaint process. Confidentiality rules should be included in the Commission's regulations. A form should also be developed to be given to all complainants, investigators, witnesses, and representatives informing them of confidentiality requirements.

Chairman's Observations: I concur in this recommendation. The EEO Office has begun implementation, but will delay finalizing the content of such regulations until after a new EEO Director is appointed.

2. Prevention of Retaliation

Tatel Recommendation 59 (Regulations And Policy Statement Provisions Concerning Retaliation) (p. 360): That the Commission include in its official EEO and sexual harassment policies, and in Commission EEO regulations, specific statements that retaliation for raising allegations of discrimination or sexual harassment is prohibited by law and Commission Policy. This subject also should be thoroughly covered in management training.

Chairman's Observations: The EEO Office has been instructed to implement this recommendation.

3. Fairness of Decisions

Tatel Recommendation 60 (Changes In EEO Structure To Promote Perceptions Of Neutrality And Fairness) (p. 362): That the Commission change its internal EEO structure, as previously recommended, to enhance perceptions of neutrality and fairness in the EEO decision-making process

Chairman's Observations: I concur in this recommendation.

Tatel Recommendation 61 (Policy Statements Concerning Fairness And Impartiality) (p. 362): That the Commission's EEO and sexual harassment policies include statements reflecting the Commission's commitment to the legal requirement of "fair and impartial consideration and disposition of complaints".

Chairman's Observations: The EEO Office has been instructed to implement this recommendation.

#### IV. Allegations of Discrimination and Sexual Harassment That Arise Outside the Complaint Process

Tatel Recommendation 62 (Adoption Of Procedures For Handling EEO And Sexual Harassment Issues Outside Complaint Process) (p. 365): That the Commission adopt procedures for handling EEO and sexual harassment issues that arise outside of the formal complaint process. These procedures should include a requirement that supervisors consult with the EEO Director upon learning of a problem.

Chairman's Observations: I concur in the recommendation that procedures be adopted for handling issues that arise outside of the EEO formal complaint process. The procedures should require the following: (1) supervisors who suspect a problem should bring the problem first to the attention of their Office Heads/Division Directors, unless they are directly involved in the problem, and attempt to resolve it within the Division/Office. Such initial, informal attempts at resolution help preserve the flexibility of all the parties. (2) After pursuing action within the Office, if the problem continues to exist, supervisors should consult the EEO Director. Using this practice, some percentage of personnel disputes can be resolved informally, thereby avoiding escalating all disputes into formal proceedings involving the EEO Director.

Tatel Recommendation 63 (Notice To Employees Concerning Importance Of Responding Effectively To EEO Problems Outside The Complaint Process) (p. 365): That the Chairman and the EEO Director make it clear to all employees that responding effectively to EEO problems that arise outside of the Complaint process is an important part of their responsibilities.

Chairman's Observations: I concur in this recommendation. I have taken steps to communicate it to Commission employees.

Tatel Recommendation 64 (Adoption Of Provisions In SECR 27-1) (pp. 366-67): That the Commission adopt [redacted provisions] contained in draft version of SECR 27-1, with provisions making all supervisors responsible for preventing EEO problems in the workplace and for attempting to resolve issues of discrimination or sexual harassment that arise outside of the complaint process.

Chairman's Observations: I agree with this recommendation that the Commission should adopt the draft version of SECR 27-1. I would also require that supervisors use their best efforts to prevent EEO problems in the workplace. I believe this goal can best be accomplished by improving EEO training, and by evaluating, as part of their overall work performance, supervisors' attention to and satisfaction of their EEO responsibilities.

Tatel Recommendation 65 (Development Of EEO Deskbook For Supervisors) (p. 367): That the EEO Director develop an EEO deskbook to help supervisors respond to EEO issues that are likely to arise. The deskbook should include a description of prevailing legal standards, the relevant Commission regulations and policies, and options available to supervisors. It should include useful information from EEO training programs for supervisors, and should be periodically revised to reflect changing legal standards.

Chairman's Observations: The EEO Office has been instructed to implement this recommendation.

#### V. The Impact of Personnel Practices on EEO

Tatel Recommendation 66 (Examination Of Personnel And Management Practices In Periodic Audits) (p. 371): That the EEO Director include an examination of personnel and management practices in the periodic audits of divisions and offices recommended elsewhere (see infra), and submit his or her findings together with any recommendations resulting from the audits to the Chairman.

Chairman's Observations: I agree with Tatel's recommendation that the Commission should examine personnel and management practices during periodic audits of all Commission offices.

Tatel Recommendation 67 (Personnel Management Evaluations)

(p. 372): That the Director of Personnel be given the resources necessary to conduct periodically the personnel management evaluations required by the Federal Personnel Manual. These evaluations should focus on detecting and correcting personnel practices that may contribute to EEO problems in the workplace.

Chairman's Observations: I believe that additional resources should be directed to the personnel management evaluation process. To accomplish this, additional personnel must be committed to the Office of Personnel, subject to budgetary constraints.

Tatel Recommendation 68 (Mandatory Management Training For Supervisors) (p. 373): That the Commission enforce its requirement that all new supervisors attend management training, and that periodic refresher courses, focusing on personnel regulations and performance evaluations of both probationary and permanent employees, be developed. Periodic training should be included in all performance standards and should be made a condition of future promotions.

Chairman's Observations: I concur in this recommendation to the extent it can be accomplished in a cost-effective manner. Failure to attend training should be a basis for reduction in performance evaluation.

Tatel Recommendation 69 (Counselor Training Concerning Personnel Problems) (p. 373): That counselors be trained and sensitized to report personnel problems that could be a source of EEO tensions.

Chairman's Observations: I concur in this recommendation, and the EEO Office is currently taking steps to implement it.

Tatel Recommendation 70 (PSRB Review Of Commission Performance Ratings By Division And Office; Reduced Ratings For Top Management If Ratings Inflated) (p. 373): That the Performance Standards Review Board, with the assistance of the Office of Personnel, review performance ratings annually and submit an annual report to the Chairman showing the distribution of performance ratings by division and office. Consideration should be given to including a new factor in the performance standards of regional administrators and division directors that would require a reduced rating when the average performance ratings of their employees is inconsistent with the office's substantive evaluation.

Chairman's Observations: I concur in the recommendation that performance information be collected by the Office of Personnel and PSRB on an annual basis. However, I do not believe a system for automatic reductions to ratings is advisable. Many variables comprise both an office's evaluation and an individual's evaluation and therefore there may be no direct cause-and-effect link between the two.

## VI. Affirmative Action and Related Programs

Tatel Recommendation 71 (Notice To All Employees Of Importance Of Affirmative Action Responsibilities) (pp. 378-79): That it be made clear to all supervisory employees that accomplishing the Commission's affirmative action objectives is a critical part of their responsibilities.

Chairman's Observations: The EEO Office has been instructed to implement this recommendation.

Tatel Recommendation 72 (Duties Of EEO Specialist) (pp. 379-80): That the EEO Specialist's primary duties relate to affirmative action, and focus on two key activities: (a) the development of a reporting system that accurately advises all Commission supervisors, on a quarterly basis, of their specific affirmative action responsibilities and accomplishments. (The affirmative action plan status report that was developed and distributed in 1986, referred to in the EEO Manager's 1988 performance standards, should be used as a model); and (b) the development of annual reports for the EEO Director and the Chairman showing the extent to which the Commission's EEO objectives have been achieved Commission-wide and in each division or office.

Chairman's Observations: I concur in this recommendation, but believe the new EEO Director should have input as to which EEO assistant has this responsibility.

Tatel Recommendation 73 (Transfer Of Counseling And Complaint Processing Duties From EEO Specialist To General Attorney) (p. 380): That some of the responsibilities currently contained in EEO Specialist position description, particularly those relating to counseling and complaint processing, be transferred to the General Attorney position when it is filled.

Chairman's Observations: I concur in this recommendation, but believe the new EEO Director should have input as to which EEO assistant has this responsibility.

Tatel Recommendation 74 (Inclusion In EEO Deskbook Of Standards For Consideration Of Race And Sex In Hiring And Promotional Decisions) (pp. 380-81): That the EEO Director include in the EEO deskbook for Commission supervisors standards for considering race and sex in hiring and promotional decisions. These standards should be based on the Supreme Court's decision in Johnson v. Transportation Agency, which allows race or sex to be considered as one of several factors in choosing among otherwise qualified candidates when the purpose is to correct a manifest imbalance between the composition of a particular job group and the relevant labor pool.

Chairman's Observations: I agree that the EEO Deskbook should contain standards for ensuring that affirmative action concerns are reflected in promotion and hiring decisions. The new EEO Director should provide input as to the contents of the deskbook regarding affirmative action, and the deskbook should refer all supervisors to the Office of Personnel or EEO Office if they have any questions or concerns regarding the method of or basis for hiring/promotion.

Tatel Recommendation 75 (Strengthening Of Female And Minority Recruiting Program) (pp. 380-81): That the Personnel Director develop a national minority and female recruiting program for the entire Commission. Recruiters should recruit for all Commission vacancies, including those in both headquarters and regional offices. The Personnel Office should continue its efforts to include women and minorities in the recruiting process. Particularly effective recruiting techniques -- such as recruiting at local law schools with significant minority enrollments, attending job fairs and recruitment programs, summer intern programs, and contacts with minority lawyers and judges, should be institutionalized. The Personnel Office should also develop similar techniques for recruiting other professionals, and should consider contracting with private search firms to help find qualified minority and women candidates where greater underrepresentation exists.

Chairman's Observations: I believe that the new EEO Director should work closely with the Personnel Director to examine our current affirmative action efforts, determine what, if any, changes are necessary, and identify new efforts that would be productive.

Tatel Recommendation 76 (Collection Of Applicant Flow Data) (p.382): That the Director of Personnel begin collecting applicant flow data for all positions throughout the Commission.

Chairman's Observations: I agree that one goal of the EEO process is to ensure that equality of opportunity is a reality for all persons who apply to the Commission for employment. Collection of applicant data for all employees is one method of determining whether certain groups are underrepresented. I have instructed the Office of Personnel to work toward implementation of this recommendation, subject to the constraints imposed by the budget.

Tatel Recommendation 77 (Review Of Hiring Standards) (p. 383): That a review of hiring standards be conducted to determine whether additional formal or informal on-the-job-training programs after hiring or promotion would permit the Commission to reduce hiring and promotional qualifications.

Chairman's Observations: I concur in the recommendation that a review of hiring standards be conducted and am instructing the Office of Personnel to conduct such a review.

Tatel Recommendation 78 (Continued Coordination Of Training Efforts) (p. 384): That the Personnel Director continue to work with division directors and regional administrators to ensure that necessary and appropriate training is available for their employees.

Chairman's Observations: I concur in this recommendation.

Tatel Recommendation 79 (Time-In-Grade Studies For Women And Minorities) (p. 384): That the Commission monitor the skill and training levels of employees and conduct "time-in-grade" studies analyzing the relative upward mobility of minorities and women.

Chairman's Observations: I agree that time-in-grade studies may help assess the upward mobility of women and minorities and that this recommendation should be implemented subject to resources. The goal should be to link actual performance with job mobility. However, such studies should not be used to draw general, agency or office-wide conclusions concerning disparate treatment or impact on various groups. The Office of Personnel should gather the data to conduct such a study.

Tatel Recommendation 80 (Development Of Upward Mobility Plan) (pp. 384-85): That the Director of Personnel work with OPM and

the EEOC to develop an upward mobility plan that is consistent with OPM and EEOC guidelines. This plan should include: a method for periodically identifying target and bridge positions; training of all supervisors in the operation of the upward mobility program; and procedures to evaluate the effectiveness of the program. The Personnel Director should determine whether the preparation of Individual Development Plans for certain or all of the program's employees would be useful. Resources should be made available to permit the Director of Personnel to reinstate the practice of providing new slots for those offices interested in creating upward mobility opportunities for non-professional employees.

Chairman's Observations: I agree that some type of bridge program would provide increased upward mobility for Commission personnel and thereby improve morale and productivity. Accordingly, I have instructed the Office of Personnel to develop an upward mobility program. Implementation of the program would be subject to availability of resources.

Tatel Recommendation 81 (Involvement of Federal Women's Program And Hispanic Employment Program In Affirmative Action Efforts) (pp. 386-87): That the Federal Women's Program and Hispanic Employment Program should be enlisted in the Commission's affirmative action efforts. The existing position descriptions of FWP and HEP coordinators should be amended to emphasize those responsibilities directly related to recruiting minority and women employees. They should be principally responsible for: (a) assisting hiring officials to locate and utilize local sources of eligible women and Hispanics; and (b) identifying classes of female and Hispanic employees for which upward mobility or other training programs are needed. They should also act as a conduit for communications to Program Managers and the EEO Director of employment problems experienced by women or Hispanics. To improve the management of the FWP and HEP, the EEO Director should direct the Program coordinators to report to Program managers. The EEO Director should assign to the Managers the additional duty of advising the EEO Director and Personnel Director concerning employment problems, training needs, and recruitment sources for women and Hispanics. The EEO Director should provide necessary training for Program managers and coordinators to understand their special role in the recruitment process and to utilize the resources necessary to their jobs.

Chairman's Observations: I concur in this recommendation.

## VII. Management of EEO and Affirmative Action Objectives

### A. Performance Evaluations

Tatel Recommendation 82 (Development Of Performance Standards Including EEO And Affirmative Action Elements) (pp. 391-92): That the Chairman order the development of more rigorous performance standards, including a requirement that all supervisory performance standards include EEO and affirmative action elements that are critical, separately stated, and have separate requirements for each rating level. At a minimum, performance standards should include factors relating to the extent to which the supervisor is: (a) accomplishing his or her specific affirmative action goals; (b) dealing cooperatively with counselors; (c) cooperating with EEO investigations and arranging his or her schedule so as to avoid delay; (d) attempting to respond to allegations of discrimination and sexual harassment that arise outside of the complaint process, and promoting a workplace free from discrimination and sexual harassment; (e) attending required EEO training and making it available to his or her subordinates; (f) addressing management and personnel problems that could be contributing to EEO concerns, including performance rating inflation; (g) attending mandatory management training programs; (h) providing upward mobility opportunities for non-professional employees; and (i) taking EEO and affirmative action into account in promotional decisions. Each of these subjects should be should be included in factors that are tailored to reflect the conditions existing in each office. Additional factors may be necessary. Factors should be revised annually to reflect changing conditions.

Chairman's Observations: I concur in this recommendation. Steps to implement it have been taken, and additional steps will be taken after the new EEO Director has been hired.

Tatel Recommendation 83 (Review Of EEO And Affirmative Action Factors By EEO Director) (p. 393): That the Chairman's directive require that all EEO and affirmative action performance factors be reviewed and approved by the EEO Director.

Chairman's Observations: The EEO Office has been instructed to implement the recommendation that EEO and affirmative action performance standards be approved by the EEO Director.

Tatel Recommendation 84 (Appointment Of EEO Director To Performance Review Board and the Executive Resources Board) (p. 393): That the EEO Director be appointed to the Performance Review Board and the Executive Resources Board.

Chairman's Observations: Because the membership of the PRB and ERB includes a limited number of persons, and is not representative of all constituencies in the Commission, I believe the EEO Director need not be a member of either Board. However, the EEO Director should be consulted as to the qualifications of candidates for Commission positions.

Tatel Recommendation 85 (Development Of EEO And Affirmative Action Elements For Non-SES Supervisory And Non-Supervisory Employees) (p. 393): That the Chairman's directive require the EEO Director, with the assistance of the Personnel Director, to develop guidelines for drafting EEO and affirmative action elements for non-SES supervisory positions. The EEO Director should be named to the PSRB, and the PSRB should conduct periodic audits of EEO standards and evaluations of employees under the Performance Management and Recognition System, and draft EEO standards for GM employees. The EEO Director should also work with the Personnel Director to develop standards and procedures for including appropriate EEO and affirmative action factors in the performance standards for all non-supervisory employees.

Chairman's Observations: I concur in this recommendation.

Tatel Recommendation 86 (Statement From Chairman Concerning Standards For "Outstanding" Rating For EEO And Affirmative Action; Supervisors Receiving Less Than "Fully Satisfactory" Rating Ineligible For Promotion) (pp. 393-94): That the Chairman's directive makes it clear to the entire agency that an "outstanding" rating for EEO and affirmative action is not the norm, but is reserved for those supervisors whose EEO and affirmative action performances are truly extraordinary. The directive should also provide that supervisors with EEO or affirmative action ratings that are less than "fully successful" are ineligible for promotion.

Chairman's Observations: I have no objection to this recommendation so long as the job standards and performance evaluations give employees advance notice of the consequences of their conduct.

Tatel Recommendation 87 (Recognition Of Outstanding EEO Evaluations) (p. 394): That the Chairman recognize and reward those regional administrators, division directors, and other senior supervisors who earn outstanding EEO evaluations, and

consider SES employees who demonstrate such accomplishments for special service awards.

Chairman's Observations: Such honorary awards are currently provided for EEO accomplishments.

B. EEO Training for Supervisors

Tatel Recommendation 88 (Mandatory EEO Training Tied To Performance Ratings) (p. 395): That EEO training programs be mandatory, included in supervisory performance standards, and a condition of future promotions.

Chairman's Observations: I concur in this recommendation.

Tatel Recommendation 89 (Reinstitution Of EEO Refresher Courses) (p. 395): That refresher EEO courses be reinstated and held on a regular basis, and that materials from refresher courses be included in supervisors' EEO deskbooks.

Chairman's Observations: I concur in this recommendation, subject to budgetary constraints.

Tatel Recommendation 90 (EEO Component Included In All Basic Management Training) (pp. 395-96): That all basic management training offered by the Commission include a significant EEO component taught either by the EEO Office or one of the Commission's consultants. OPM and other providers of basic management training for Commission supervisors should be urged to include EEO components in their programs.

Chairman's Observations: I concur in this recommendation.

Tatel Recommendation 91 (Tailored Focus To EEO Training) (p. 396): That the EEO Director focus training programs on particular problems that Commission supervisors face. Such programs, for example, should be tailored in part to professionals who are highly educated and motivated, should address problems that arise in high-pressure work environments, and should respond to the needs of supervisors in the public sector. Training programs should also cover each of the EEO and affirmative action factors contained in performance standards. The EEO Director should continuously refocus training programs to deal with additional programs that may be identified in the

Commission's performance evaluation system, in periodic EEO evaluations, or internal control assessments.

Chairman's Observations: I concur in this recommendation, and have directed that it be implemented, subject to budgetary constraints.

Tatel Recommendation 92 (Use Of Games In Training Programs) (pp. 396-97): That games and role-playing be used in all EEO training programs.

Chairman's Observations: I believe that the decision as to the selection of the type of educational technique best suited to the Commission should be made by the people designing the training programs.

### C. Program Evaluation and Internal Controls

Tatel Recommendation 93 (Development Of EEO Evaluation System) (pp. 399-401): That the EEO Director develop a system for evaluating the effectiveness of the Commission's overall EEO effort. The quarterly on-site evaluations promised in the 1988 Affirmative Action Plan should be scheduled promptly. Section 2-3(1) of draft SECR should be adopted as one of the functions of the EEO director. The EEO Director should consult with the Inspector General to ensure that EEO program evaluations are designed and conducted in accordance with proper investigative techniques. Evaluations should be comprehensive and should cover, among other things: (a) the extent to which the Commission's employees understand Commission EEO policies and procedures; (b) effectiveness of counselors; (c) the extent to which office heads and senior supervisors are effectively managing EEO problems outside of the complaint process and attempting to prevent them from occurring; (d) whether management or personnel policies are contributing to EEO problems; and (e) the office's compliance with the Commission's affirmative action and recruiting plans. The results of each evaluation should be reported to the Chairman, and should include recommendations as to any improvement or correction needed, including remedial or disciplinary action with respect to managerial or supervisory employees who have failed in their responsibilities. Thereafter, until all deficiencies are corrected, the EEO Director should submit annual reports to the Chairman describing the actions planned and taken to correct deficiencies.

Chairman's Observations: I agree that the EEO Director develop a system for evaluating the effectiveness of the Commission's overall EEO effort.

Tatel Recommendation 94 (Drafting Of Internal Controls For All Headquarters Divisions And Offices And Regional Offices)

(p. 401): That the internal control recommendations of this report that are implemented be reflected in newly drafted EEO internal controls for all headquarters divisions, and regional offices. All regional administrators, division directors, and office heads should include in their annual reports to the Chairman on internal controls a detailed discussion of each deficiency identified in previous years, corrective steps taken, and a report on the effectiveness of those steps. The EEO Director should periodically modify the internal controls to reflect improvements, changed conditions, or additional problems.

Chairman's Observations: I concur in this recommendation.

Tatel Recommendation 95 (Inclusion Of Internal Controls In Risk Assessment) (p. 401): That the newly drafted internal controls be included in the risk assessment currently being planned, and that the Executive Director process and analyze the EEO internal controls in the same manner as other internal controls. One year after the completion of the 1989 risk assessment, and one year following each subsequent risk assessment, the EEO Director should review with each headquarter's division and office and each regional administrator the progress they are making to correct identified weaknesses. The EEO Director should make such recommendations as may be necessary to correct the weaknesses and submit to the Chairman a report indicating the extent to which identified weaknesses are being corrected. To ensure that the EEO Office complies with its own internal controls, the Chairman should ask the Inspector General to conduct an audit to determine the extent to which the weaknesses identified have been corrected.

Chairman's Observations: I concur in this recommendation.