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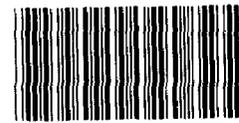
Before the Committee on Governmental Affairs
U.S. Senate

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ALCOHOL, TOBACCO
AND FIREARMS

Bureau's Handling of Sexual
Harassment and Related
Complaints

Statement for the Record by
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Mr. Chairman and Members of the Committee:

We are pleased to submit for your hearing today this statement for the record. At your request, we examined certain procedures and practices of the Department of Treasury's Bureau of Alcohol, Tobacco and Firearms (BATF) for the investigation and resolution of equal employment opportunity (EEO) complaints, with specific emphasis on sexual harassment. BATF's cooperation and responsiveness in ensuring unrestricted access to personnel and documents greatly facilitated the examination.

In brief, we determined that BATF has not adequately developed, implemented, or communicated the roles of its Offices of Internal Affairs, Equal Employment Opportunity (EO), and Law Enforcement and Treasury's Regional Complaint Centers in addressing incidents of alleged sexual harassment¹ and other discriminatory behavior. This has, on occasion, resulted in separate inquiries into the same incident by these offices. On five occasions between February 1989 and January 1993, BATF's Director distributed policy statements to BATF employees requiring a harassment-free working environment. However, implementation of that policy varied extensively in the offices we visited. Concerns and observations surfaced from among the employees we interviewed and from our analysis about the confidentiality, objectivity, and independence of some of BATF's inquiries that we reviewed. In addition, BATF employees' general lack of knowledge about actual or potential BATF actions against harassers compounded the employees' concerns.

¹Sexual harassment is a form of sex discrimination. Equal Employment Opportunity Commission (EEOC) regulations state, in part, the following:

"Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when:

- "Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;
- "Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or
- "Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment."

METHODOLOGY

Since it is BATF's practice to involve its Offices of EO and Internal Affairs in investigations of alleged sexual harassment² incidents, we examined general policy and procedures of both offices as well as selected cases involving both entities. We also reviewed investigations by BATF's Office of Law Enforcement and Treasury's Regional Complaint Centers. In addition, we conducted a more detailed examination of three specific sexual harassment complaints and reviewed files and conducted interviews concerning eight other reported incidents of alleged discrimination, including allegations of sexual harassment, gender and national origin discrimination, and retaliation.

We interviewed 50 current and former BATF and Treasury personnel and private attorneys in 7 states and the District of Columbia. The interviewees included male/female and supervisory/nonsupervisory personnel involved in each step of the complaint process, including complainants, individuals who allegedly engaged in or condoned sexual harassment, attorneys for each, coworkers, regional and headquarters EO and Internal Affairs managers, and Treasury and Internal Affairs investigators. We also reviewed EO, Internal Affairs, and Regional Complaint Center case files; court documents; personal records; individuals' contemporaneous notes; internal memorandums; and official BATF policy and procedures. On the basis of our overall review of the 11 incidents, we made the following observations.

STATISTICS AND RESOURCES

According to EEO statistics provided by BATF, 198 formal EEO complaints were filed from 1988 to 1993. From 1988 to 1992, 198 employees were counseled. From 1987 to 1993, seven sexual harassment complaints were filed, of which six originated in the Office of Law Enforcement and one, in the Office of Compliance Operations.

In the agency chain of command, BATF's Director of EO works closely with the agency Director, who is charged with administering the EEO program. EO has six regional managers, each of whom has a part-time student co-op as an assistant. These regional managers assist

²BATF's training manual on EEO characterizes allegations of sexual harassment as falling under one of two categories: "quid pro quo" and "hostile work environment." BATF defines quid pro quo as an instance in which a "supervisor asks for sexual favors in exchange for tangible job benefit[s]," and hostile work environment is "unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct which creates an intimidating, hostile or offensive working environment."

and direct collateral-duty³ BATF EEO counselors in the various field offices.

BATF EEO COMPLAINT PROCEDURES

A BATF employee who believes he or she has been sexually harassed, and wishes to pursue legal remedies, must first participate in an informal process. That informal process requires the employee to contact a BATF EEO collateral-duty counselor within 45 days of the last discriminatory event. Within the next 30 days, during which the complainant has the right to anonymity, the EEO counselor attempts to resolve the matter informally. If resolution is not reached within 30 days and the parties have not agreed to an extension, the counselor must hold a final interview with the complainant and advise him or her of the right to file a formal complaint within 15 days.

Investigations of formal complaints filed by BATF employees are conducted through the Treasury Department's Regional Complaint Centers where an EEO specialist assigns a collateral-duty EEO investigator. For example, if a BATF Special Agent files a formal sexual harassment complaint, a regional EEO specialist will assign a collateral-duty investigator from the Treasury Department, such as an Internal Revenue Service employee, to conduct the formal investigation. Attachment I depicts BATF's EEO complaint process.

We were given varying reports of the collateral-duty counselors' grasp of the subject knowledge and their availability. Employees cited several cases in which they felt the counselors had been very successful in informal resolution of the issue. However, in one case, an alleged victim complained that she had to contact three counselors before one could be found with either the knowledge or the time to assist.

ROLES OF BATF INTERNAL OFFICES IN ADDRESSING SEXUAL HARASSMENT INCOMPLETELY DEVELOPED, IMPLEMENTED, AND COMMUNICATED

The roles that BATF's internal offices play in addressing sexual harassment are not fully developed, implemented, or communicated to BATF employees. We found no consistency as to when the Office of Internal Affairs or Office of Law Enforcement becomes involved in resolving allegations of sexual harassment.

Development of BATF Roles

According to BATF's EO, since its fiscal year 1992 implementation of a training plan, approximately 53 percent of BATF employees have received training specifically addressing BATF's policies and

³A "collateral-duty employee" is an employee who agrees to serve as an EEO counselor in addition to the employee's regularly assigned duties.

procedures for handling EEO and sexual harassment complaints. Our interviews with BATF employees indicated that they were generally familiar with the avenues of redress available for EEO and sexual harassment concerns but not with BATF's policy on the role of internal offices.

The management of Internal Affairs initially advised us that their office investigated only those cases in which an alleged assault or physical touching had occurred and that the decision to examine hostile environment and "verbal harassment" cases was made on a case-by-case basis. We reviewed at least one situation in which Internal Affairs investigated an incident wherein the initial allegation did not involve "physical touching." However, Internal Affairs did not investigate another case whose initial allegation did involve physical touching. Subsequently, Internal Affairs management stated that in practice they will get involved whenever requested by BATF management. According to BATF officials, the physical-touching policy was developed at a fall 1992 executive session, at which Office of Law Enforcement management specifically requested Internal Affairs' involvement. This decision was, however, never communicated to BATF employees.

BATF Order 8600.1D states that the Office of Internal Affairs has primary responsibility for investigating allegations concerning employee conduct. Certain minor infractions of the rules may be investigated by the appropriate manager. This determination will be made by the Office of Internal Affairs after a discussion with the appropriate management official, such as an official in the Office of Law Enforcement.

Implementation and Communication of Multiple Investigations Policy

Of those individuals who had firsthand experience with BATF's handling of discrimination complaints, a significant number interviewed expressed a general lack of confidence in the independence and objectivity of BATF's process for investigating and resolving complaints. In the majority of cases we reviewed, more than one of the three BATF entities--EO, Internal Affairs, and Office of Law Enforcement management--became involved at some point and, in some cases, separately inquired into the same incident. Many of the individuals we interviewed expressed a concern about the exchange of information between these entities. This exchange included discussions of who had filed complaints, which investigative steps to pursue, and the results of those investigative steps. Such exchanges may not engender employee confidence concerning the independence of subsequent investigations or afford individuals confidence that their concerns for anonymity will be respected.

EO employee guidance on how to address sexual harassment incidents advises the alleged victim of sexual harassment to (1) if possible, confront the harasser directly to make it clear the behavior is not appreciated; (2) document the incident; (3) contact the employee's

own supervisor or the alleged harasser's supervisor if the harasser is the employee's supervisor; and (4) if the harasser's supervisor fails to act, contact the BATF EEO counselor or EEO manager. The guidance further states that a supervisor's responsibility is, among other points, to advise employees of their points of contact--their supervisor, EEO Counselor, or Regional EEO Manager--to report sexual harassment.

The guidance does not address notification of Internal Affairs or the Office of Law Enforcement in these situations. However, the practice in four cases we reviewed, was for BATF managers, when notified, to contact Internal Affairs or Office of Law Enforcement management, which then initiated an investigation separate from the EEO process. According to a complainant, when she contacted her supervisor to allege sexual harassment, the supervisor told her that Internal Affairs had to be contacted. When she asked if any alternatives existed, the supervisor told her no.

IMPLEMENTATION OF DIRECTOR'S POLICY OF HARASSMENT-FREE WORKPLACE VARIES

The BATF Director distributed five policy statements requiring "harassment-free" working environments, on February 22, 1989; October 24, 1991; April 6, 1992; January 8, 1993; and January 19, 1993. Supervisory personnel are charged with implementing that policy in their offices. However, implementation varied among the offices visited.

In one office that we visited, some employees stated that the manager had made it clear that unwelcome behavior would not be tolerated and problems brought to his attention would be addressed. In other offices, employees we interviewed cited instances in which supervisory personnel not only tolerated but also initiated such activities as making statements about female employees' anatomy, laughing when strippers were brought into the office, telling sexually explicit jokes, dancing with bikini undergarments on their head, and engaging in other activities that can create a hostile work environment.

In three cases reviewed, female employees stated that they did not want to report the harassment because they did not believe management would support or believe them. In other cases, women stated that because they feared alienating coworkers, they frequently faced harassment by keeping quiet or by responding in kind--joking or making crude comments back.

Federal guidelines and case law require that employers take immediate and appropriate action to stop the harassment. Proportionate disciplinary action, if any, should be taken upon resolution of an investigation. In this regard, the actions of some managers did not appear consistent with their obligations to report the harassment and take immediate and appropriate action. For example, some midlevel managers told us that they did not

report the harassment to protect the interests of the victims who had stated that they wanted no action taken because of various concerns, such as fear of reprisal. In one case, a manager knew about an employee being sexually harassed at least 17 months before the complainant finally decided to file a formal sexual harassment complaint. At the request of the employee, the manager did not report the incident because the employee was afraid for her job and concerned that the Special Agent in Charge would not believe her.

The BATF Director, in the January 19, 1993, memorandum, assured BATF employees of fair, professional, and responsive treatment when alleging discrimination, including sexual harassment and reprisal. The memorandum encouraged employees who believe they have been harassed to use the existing system, go to whatever BATF office with which they felt most comfortable, or go directly to him or the EO Director.

CONCERNS RAISED ABOUT BATF INTERNAL INVESTIGATIONS

We noted the following concerns pertaining to BATF's internal investigations. Depending on which BATF office conducts an investigation, the complainant is not afforded the same procedural rights. Some employees perceived a lack of objectivity on the part of Internal Affairs investigators and Office of Law Enforcement management. In addition, Internal Affairs investigators and Law Enforcement managers who conducted investigations did not exhibit full knowledge of investigative elements pertinent to sexual harassment investigations, which could affect the sufficiency of their investigations. Certain investigative techniques--the use of polygraphs, destruction of agents' notes, and insensitive interview techniques--used by Internal Affairs investigators also raised concerns.

Separate Investigations of Complaints Do Not Afford the Same Rights

We noted, among other things, that the procedural rights afforded alleged victims of sexual harassment may differ depending on which BATF office investigates the incident. Federal EEO regulations entitle federal employee complainants to have a representative during any part of the complaint process. In contrast, Internal Affairs policy and practices in a noncriminal inquiry permit the investigating agent to deny individuals the opportunity to have anyone present during an interview. Exceptions are made for bargaining-unit employees in certain situations in accordance with BATF Orders. In one case we reviewed, after reporting sexual harassment to her manager, one alleged victim was required to participate in an Internal Affairs interview. The alleged victim stated that she had asked for a female employee to be present during her initial interview but her request was refused.

Perceptions of Lack of Objectivity

EEOC policies provide that employees should have the right to complain about harassment without fear of reprisal and with confidence that the details of their complaints will be given only to those specifically charged with investigating and resolving the issues. However, we received a number of complaints about a perceived lack of objectivity on the part of Internal Affairs investigators and Office of Law Enforcement management. In three cases reviewed, employees stated that they believe a lack of objectivity led the investigating agent to ignore certain investigative leads offered by the employees that may have affected the investigations' outcome. In responses to BATF management after disciplinary action was initiated, two alleged harassers stated that relevant employee statements were not taken. The alleged harassers submitted affidavits from other individuals not interviewed that contradicted or were not consistent with details in other affidavits in the Internal Affairs reports on the alleged incidents.

Our work showed that in one incident, the Deputy Associate Director of the Office of Law Enforcement conducted an investigation of a field office supervisor who reported to him. Because of a prior working relationship between the Deputy and the supervisor--Special Agent in Charge and Assistant Special Agent in Charge of a field office--the complainant questioned the objectivity of the inquiry.

In this case, the Director of BATF's EO notified the Deputy shortly after an employee had filed an informal sexual harassment complaint and requested anonymity. The Deputy then contacted the alleged harasser, a supervisor, in the context of addressing a potential management problem. Although the Deputy stated that he did not release the complainant's name, the complainant was easily identified through the discussion of the specific incidents involved in the allegation. Thus, the complainant felt her right to anonymity during the informal stage of the EEO process was compromised by the exchange of information between EO and Office of Law Enforcement management. The possible conflict between the right to anonymity and agency responsibility was not, in the complainant's view, adequately addressed.

The Director of BATF acknowledged that the problems created when an individual makes an allegation but wants no one told are a challenge. We appreciate the challenge that BATF faces and acknowledge the Director's concern. However, it is critical that the dilemma be resolved.

Concern With Sufficiency of Internal Investigations

One goal of all investigations is to establish the facts surrounding alleged incidents. In our opinion, individuals assigned to conduct investigative activities should have a knowledge of the applicable law, rules and regulations, and

pertinent guidelines. EEOC has established investigative guidelines to help its investigators in obtaining relevant facts on alleged sexual harassment. However, some Internal Affairs investigators and Office of Law Enforcement managers that we interviewed did not exhibit an essential understanding of pertinent investigative guidelines, relevant case law, and elements of proof associated with sexual harassment complaints. A senior manager in the Office of Law Enforcement maintained that because Internal Affairs investigated only physical assaults or touching and not sexual harassment complaints, Internal Affairs investigators were sufficiently trained to handle assault-related sexual harassment investigations. As stated earlier, on at least one occasion, however, Internal Affairs investigated an incident of sexual harassment wherein the initial allegation did not involve physical touching.

The list of recent training courses for Internal Affairs showed none that addressed investigations of sexual harassment cases. While the BATF Director and a senior Internal Affairs manager stated that they felt additional training in this area would be beneficial, an Internal Affairs investigator engaged in investigating sexual harassment incidents stated he felt that Internal Affairs' current training had sufficiently equipped him to conduct these investigations.

In three cases, our comparison of BATF's internal reviews with reviews by EEO investigators from outside BATF, who are assigned by Regional Complaint Centers, and our reviews revealed different findings. In two cases, the outside entities obtained corroboration of the allegations that was either lacking or contradicted in the reviews by Internal Affairs and the Office of Law Enforcement. In another case, no coworkers were interviewed about a significant allegation.

EEOC guidelines provide that the investigator in a sexual harassment case should search thoroughly for corroborative evidence of any nature. Supervisory and managerial employees as well as coworkers should be asked about their knowledge of the alleged harassment. Persons with whom the alleged victim discussed the incident, such as coworkers or doctors, should be interviewed. When questioned as to why coworkers had not been interviewed about a significant allegation during the course of an investigation for one case, an Internal Affairs investigator stated a concern for the complainant's and alleged harasser's privacy had precluded them from discussing the issue with coworkers who may have had relevant information. For another case, an EEO investigator told us that there was no evidence that Internal Affairs had interviewed witnesses offered by the alleged harasser in support of the alleged harasser's position. In this same case, we found no evidence that the investigator had interviewed a friend of the alleged victim, although the investigator knew the alleged victim had confided in the friend at the time of the alleged harassment. In a third case, we found no evidence that the investigator had asked the

complainant whether, at the time of the incident, the individual had confided in others about the incident. Our inquiry revealed that the complainant had done so. In a fourth case, not all witnesses of an alleged incident of sexual harassment were interviewed before disciplinary action was proposed.

EEOC guidelines also suggest that the investigator should determine whether the employer was aware of other instances of harassment and if so what the management response was. In one case, an Internal Affairs investigation developed no evidence of other employees being similarly harassed by the same individual. However, the external EEO investigator, assigned to the investigation by a Regional Complaint Center, determined both that an additional individual stated that she had been harassed and that at least one manager had known about the incident. In another case, a BATF management review of alleged harassment cited no evidence of other employees' objections to the alleged harasser's behavior. Our query of staff in the same office yielded information from employees who had also found the statements and behavior unwelcome. Additionally, the individual admitted to us that he had engaged in behavior that he had previously denied when questioned by BATF management.

Concerns Raised About Internal Affairs Investigative Techniques

Other procedural issues raised through interviews included BATF's policies regarding the use of polygraphs and destruction of notes made by Internal Affairs agents. In two of the cases reviewed, polygraphs were made available to the alleged victim and harasser. According to one sexual harassment complainant, once Internal Affairs began its investigation, the complainant was asked to immediately take a polygraph. The complainant stated that taking the polygraph made her "feel humiliated and like a criminal." Our review of the two case files and discussions with the investigators revealed a heavy reliance by Internal Affairs investigators on the polygraph results in determining future investigative steps. Additionally, Internal Affairs employees advised us that their agents' notes on noncriminal cases are destroyed when the cases are closed. Thus, when a discrepancy arose about an alleged victim's statement during Internal Affairs interviews, agents' notes could not be reviewed because they had been destroyed.

Two females we interviewed complained of BATF's use of male agents for interviews involving sensitive issues. Further, one female complained of Internal Affairs interviews conducted with her by two males in a hotel room. Internal Affairs officials stated that they will change this practice of two males interviewing females in hotel rooms.

In our opinion, investigators should be sensitized to the psychological ramifications of harassment and how they might affect investigative techniques employed with alleged victims and witnesses. We believe it is appropriate, whenever possible, to use

same-sex investigators to discuss sensitive details of alleged sexual harassment. However, as it has historically had, Internal Affairs currently has only 1 female investigator in its total of 24 investigators. Internal Affairs officials indicated they have attempted and have difficulty recruiting women into Internal Affairs investigator positions. No female investigator from Internal Affairs was involved in the cases we reviewed.

EMPLOYEES LACK KNOWLEDGE OF DISCIPLINARY ACTIONS AGAINST HARASSERS

In the BATF Director's October 24, 1991, policy statement to all BATF employees on discrimination, he stated, "I am determined that any overt acts of discrimination by any employee, supervisor, manager or executive will be dealt with severely up to dismissal with special emphasis on racial or sexual harassment." However, in our interviews, employees displayed a lack of knowledge of disciplinary actions the agency had taken or would take against employees engaged in discriminatory behavior.

Although we have not evaluated the recommendations contained in a 1988 report prepared for the Merit Systems Protection Board on sexual harassment, we note that it recommends that agencies state the range of disciplinary penalties that can be taken against harassers and include reinforcing facts. The report notes such reinforcing facts can include summary information about penalties already levied within the agency or at other agencies against harassers. Further, in determining employer responsibility, the courts look to whether the corrective action taken will demonstrate to the employer's other employees that future harassment will not be tolerated. BATF management advised us that sanctions and penalties taken against those who have engaged in discriminatory behavior are not officially communicated to employees.

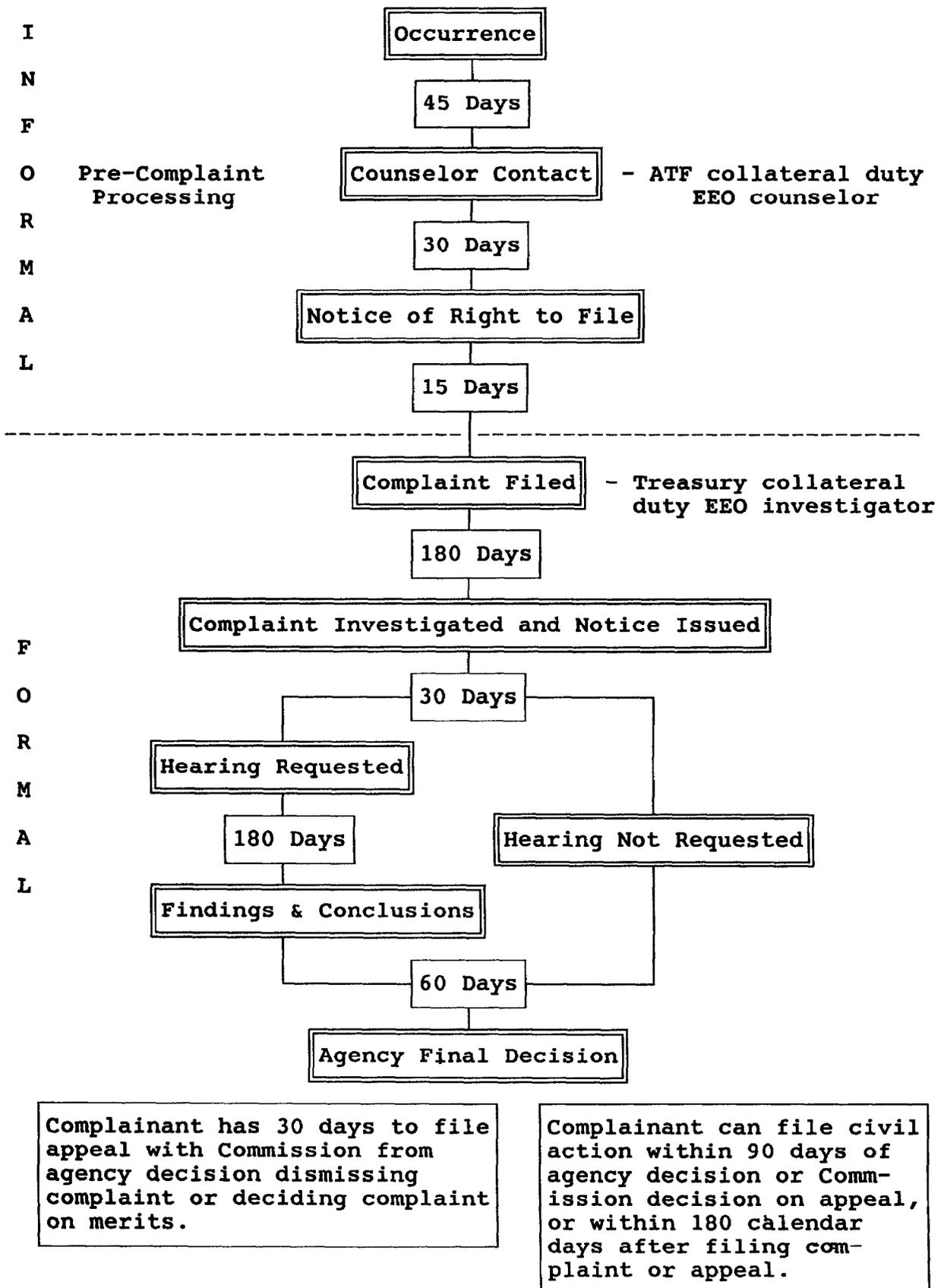
According to a BATF manager, when an employee is alleged to have engaged in sexual harassment, an investigation is undertaken. A representative of BATF's Office of Chief Counsel stated that if the agency's investigation supports the allegation, it will generally charge the employee with misconduct associated with the act.

We found that discipline actions taken by BATF included the demotion of a supervisory agent for "conduct unbecoming a special agent," which included making inappropriate statements to a job applicant and asking her inappropriate personal questions. Recently a supervisory employee was removed for "inappropriate, unsolicited and unwanted advances toward a female special agent"; and a second was removed for improper behavior toward two female employees. In these two cases, the allegations ranged from improper, sexually oriented statements and gestures to assault. Another employee was suspended for 14 days without pay for "conduct unbecoming an agent," related to allegations that he had made inappropriate comments to female employees. In the cases we reviewed, we also noted that four alleged victims had been

transferred or offered transfers before resolution of their complaints.

Finally, we note that the BATF Director convened a task force to examine the extent to which the present system discourages or encourages employee participation, the comprehensiveness of current training, the uniformity and seriousness of actions taken in response to findings of discrimination, and the degree to which current EEOC and Departmental policies and guidelines contribute to any weaknesses disclosed. The task force findings were not available for review. Findings are expected in early June 1993.

OVERVIEW OF FEDERAL SECTOR COMPLAINT PROCESSING
UNDER 29 C.F.R. PART 1614



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