

March 25, 2003

GEORGE L. LOPEZ  
VICE PRESIDENT, SOUTHWEST AREA OPERATIONS

SUBJECT: Audit Report – Sexual Harassment Prevention Measures in the Arkansas and Rio Grande Districts - Southwest Area  
(Report Number LH-AR-03-009)

This report presents the results of our audit of sexual harassment prevention measures in the Arkansas and Rio Grande Districts - Southwest Area (Project Number 02YG010LH008). Our overall objective was to determine if the districts had adequate policies and procedures in place to prevent sexual harassment in the workplace, and to effectively address sexual harassment complaints to mitigate liability. This report is based on a self-initiated review, and is the ninth in a series of ten reports we will be issuing regarding sexual harassment prevention measures Postal Service-wide.

We found that the Arkansas and Rio Grande Districts' sexual harassment policies and procedures were adequate and most employees found responsible for sexual harassment or inappropriate actions/comments were appropriately disciplined, or corrective action was taken. We also found that although no Postal Service national policy existed regarding the retention time for informal complaint files, both districts were retaining files for at least 6 years and storage was adequate. We also found, however, that some areas needed improvement. Specifically, Rio Grande District policy did not require that disciplined managers/supervisors be considered for exclusion from the Pay for Performance Program. As a result, one disciplined manager/supervisor received Pay for Performance. In addition, most of the sexual harassment complaints in the Rio Grande District were not effectively addressed, however, they were in the Arkansas District.

The report included three recommendations to help the Rio Grande District improve its sexual harassment prevention program. Management agreed with recommendations 1 and 2, and the first part of recommendation 3. The actions taken or planned should correct some of the issues identified in the report. However, management did not agree with the second part of recommendation 3 to fully document actions taken to address complaints. The Office of Inspector General (OIG) considers that part of recommendation 3 as unresolved and will address it in a separate

capping report to the senior vice president, Human Resources. Management's comments and our evaluation of these comments are included in this report.

The OIG considers recommendations 1 through 3 significant and, therefore, requires OIG concurrence before closure. Consequently, the OIG requests written confirmation when corrective actions are completed. These recommendations should not be closed in the follow-up tracking system until the OIG provides written confirmation that the recommendations can be closed.

We appreciate the cooperation and courtesies provided by your staff during the audit. If you have any questions, please contact Chris Nicoloff, director, Labor Management, at (214) 775-9114, or me at (703) 248-2300.

B. Wayne Goleski  
Assistant Inspector General  
for Core Operations

Attachment

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## EXECUTIVE SUMMARY

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### Introduction

This report presents the results of our audit of sexual harassment prevention measures in the Arkansas and Rio Grande Districts, located in the Southwest Area. This review was self-initiated to determine if the districts had adequate policies and procedures in place to prevent sexual harassment in the workplace, and to effectively address sexual harassment complaints to mitigate liability.

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### Results in Brief

The audit revealed that the Arkansas and Rio Grande Districts' sexual harassment policies and procedures were adequate and most employees found responsible for sexual harassment or inappropriate actions/comments were appropriately disciplined, or corrective action was taken. We also found that although no Postal Service national policy existed regarding the retention time for informal complaint files, both districts were retaining files for at least 6 years and storage was adequate. We also found, however, that some areas needed improvement. Specifically, Rio Grande District policy did not require that disciplined managers/supervisors be considered for exclusion from the Pay for Performance Program. As a result, one supervisor received Pay for Performance. In addition, while all of the sexual harassment complaints in the Arkansas District were effectively addressed, most of the complaints in the Rio Grande District were not.

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### Summary of Recommendations

The report included three recommendations to help the Rio Grande District improve their sexual harassment prevention program. We recommended management instruct the Rio Grande District manager to establish controls to ensure employees receive appropriate discipline when found responsible for sexual harassment or inappropriate actions/comments of a sexual nature. We also recommended that managers/supervisors disciplined for sexual harassment or inappropriate actions/comments of a sexual nature, are considered for exclusion from all pay for performance or other bonus programs. Finally, we recommended that controls be established to ensure that managers and supervisors effectively address all sexual harassment complaints and inappropriate actions/comments of a sexual nature and fully document detailed evidence of the actions taken to address complaints.

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**Summary of  
Management’s  
Comments**

Management agreed with recommendations 1, 2, and the first part of recommendation 3. However, management disagreed with the second part of recommendation 3 to fully document actions taken to address complaints. They stated that Postal Service policy allowed some matters to be resolved simply and directly between the parties without a formal written record. Management stated to require documentation on every minor incident of inappropriate workplace behavior would potentially undermine the ability of supervisors to quickly and effectively resolve minor workplace issues. Management also stated that although all matters would be fully investigated, not all complaints would result in a full written record.

Management also disagreed with the finding that most complaints were not effectively addressed in the Rio Grande District. Management stated that an effective investigation is one that provides sufficient and timely information thereby allowing management to take appropriate remedial action or to close the matter properly. They stated that although no “formal” investigation was conducted on eight of the complaints, management did conduct an inquiry. Management also stated a complaint handled effectively is one where the Postal Service incurs no liability or where the complainant is satisfied with the ultimate result of management’s investigation. Additionally, management stated the time required to investigate complaints varied, depending upon circumstances of the allegation and the passage of a few days or weeks to conduct an investigation should not lead to the conclusion that complaints were not effectively addressed.

Finally, management stated the report simplified or broadened the definition of sexual harassment. Management’s comments, in their entirety, are included in Appendix B of this report.

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**Overall Evaluation of  
Management’s  
Comments**

Management’s comments are responsive to recommendation 1, 2, and the first part of recommendation 3 and the actions taken or planned should correct some of the issues identified in the report. However, management’s comments are not responsive and did not meet the intent of the second part of recommendation 3 to fully document actions taken to address complaints. We do not agree that documenting actions would potentially undermine the ability

of supervisors to quickly resolve minor workplace issues. Documenting action management took after they address the complaint has no impact on how quickly a matter can be resolved. It does, however, play an important role in determining credibility and mitigating liability. Postal Service policy is clear that serious complaints must be documented, and further provides that “When in doubt, document.” We believe the policy does not limit management from documenting all actions, it simply establishes a floor, not a ceiling for addressing complaints.

We also believe the audit results support the assertion that most complaints were not effectively addressed. Management did not provide documented evidence that showed how the complaints were effectively addressed. We believe the measurements contained in Equal Employment Opportunity Commission guidance relating to whether management’s response to a complaint was prompt, thorough, impartial, and documented were the appropriate standards to use when determining how effectively a complaint was addressed and resolved.

Finally, we do not agree that the report simplified or broadened the definition of sexual harassment. Some of the complaint files we reviewed may not have risen to the legal definition of sexual harassment; however, they did meet the Postal Service’s criteria for when such complaints should be addressed, and they fell within the scope of our review.

The OIG considers recommendation 3 as unresolved and will address it in a separate capping report.<sup>1</sup>

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<sup>1</sup>We will issue a capping report on the audit results in the nine areas we visited, including the Southwest Area, where recommendations regarding national policy will be made to the senior vice president, Human Resources.

## INTRODUCTION

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### **Background**

Sexual harassment is defined by law as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature that becomes a term or condition of employment. According to a Postal Service Law Department report, in fiscal years (FY) 2000 and 2001, the Postal Service paid approximately \$284,416<sup>2</sup> for sexual harassment judgments and settlements in the Southwest Area.

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### **Objective, Scope, and Methodology**

Our overall objective was to determine if the districts had adequate policies and procedures in place to prevent sexual harassment in the workplace, and to effectively address sexual harassment complaints to mitigate liability. Our objective, scope, and methodology are discussed in Appendix A.

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### **Prior Audit Coverage**

We did not identify any prior audits or reviews related to the objective of this audit in these two districts.

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<sup>2</sup> This amount represents ten complaints. None of these complaints were within the scope of our review.

## AUDIT RESULTS

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### **Policies and Procedures Adequate**

We found that the Arkansas and Rio Grande Districts had adequate policies and procedures that should enable district management to identify and prevent sexual harassment or inappropriate actions/comments, and provide management with guidance to respond effectively to complaints, thus mitigating liability and costs.

We also found that the districts:

- Established as district policies, Postal Service Publication 552, Manager's Guide to Understanding Sexual Harassment, and Publication 553, Employee's Guide to Understanding Sexual Harassment.
- Established sexual harassment fact-finding teams at the district level to investigate all complaints.
- Provided service talks for employees on sexual harassment.

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**Most Employees  
Appropriately  
Disciplined or  
Corrective Action  
Taken**

We found that most employees responsible for sexual harassment or inappropriate actions/comments were appropriately disciplined, or corrective action was taken. In one case, however, discipline was not severe enough given the circumstances of the case.

Equal Employment Opportunity Commission 1990 and 1999 guidelines recommended agencies take immediate and appropriate corrective action, including discipline, when sexual harassment occurred. Postal Service policy stated employees engaged in sexual harassment would be subject to disciplinary action, up to and including removal. The policy also stated that disciplinary action might result even if the conduct was not sexual harassment as defined by the law, but was inappropriate and of a sexual nature.

Our review of formal and informal<sup>3</sup> complaints in the Arkansas and Rio Grande Districts showed that:

- Of the six formal and informal sexual harassment complaints filed in the Arkansas District, sexual harassment or inappropriate actions/comments were not substantiated in one, and substantiated in five.
  - In the five substantiated complaints, five employees were involved and all were appropriately disciplined or corrective action was taken.
- Of the 20 formal sexual harassment complaints filed in the Rio Grande District, sexual harassment or inappropriate actions/comments were not substantiated in 4, and substantiated in 8. For the remaining eight complaints, management did not conduct an inquiry or investigation to determine whether sexual harassment or inappropriate actions/comments had occurred, and thus no discipline or corrective action was considered or taken.

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<sup>3</sup>The term “informal” complaint refers to those not filed in the Equal Employment Opportunity process.

- In the eight substantiated complaints, seven<sup>4</sup> employees were involved. Six were appropriately disciplined and one was not.
- The harasser was the complainant’s supervisor and the two were not separated after the complaint was made. Instead, the supervisor was instructed to refrain from contact with the complainant. However, he violated the instruction and had repeated contact with the complainant which resulted in a verbal altercation. The supervisor placed the complainant off the clock and instructed her not to return to work the following day.
- This supervisor had a previous history of harassment and district officials stated they recommended the postmaster remove the supervisor. However, the postmaster, who was the deciding official, determined the harasser had potential for rehabilitation and issued him a letter of warning in lieu of a 14-day suspension.

We believe the supervisor should have been removed from employment given his supervisory position, his disregard of instructions given, and his subsequent retaliation against the complainant, leaving the Postal Service vulnerable to liability.

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**Recommendation**

We recommend the vice president, Southwest Area Operations, instruct the Rio Grande District manager to:

1. Establish controls to ensure managers/supervisors receive the appropriate discipline for sexual harassment or inappropriate actions/comments of a sexual nature.

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**Management’s  
Comments**

Management agreed with the recommendation and stated the district already had controls in place to ensure managers/supervisors receive the appropriate discipline. They stated the Human Resources manager, for instance, after sending a recommendation for discipline to a

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<sup>4</sup> In one of the eight complaints where sexual harassment or inappropriate actions/comments were substantiated, the alleged harasser was a customer and not a Postal Service employee, thus, no disciplinary action could have been considered.

supervisor/postmaster, monitors the recommendation to determine whether the deciding official followed it. Management also stated, however, this follow-up process—which complies with Merit Systems Protection Board regulations—will not replace the deciding official’s judgment once he or she has considered all appropriate factors. Management also stated it was worth noting that the Postal Service incurred no liability in this complaint.

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**Evaluation of  
Management’s  
Comments**

Management’s actions taken or planned are responsive to the recommendation and should correct the issues identified in this report.

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**Managers/  
Supervisors Not  
Considered for  
Exclusion From Pay  
for Performance**

We found the Rio Grande District policy did not require that disciplined managers/supervisors be considered for exclusion from the Pay for Performance Program when found responsible for sexual harassment or inappropriate actions/comments. As a result, one supervisor received Pay for Performance.<sup>5</sup>

Equal Employment Opportunity Commission guidelines included a reduction in wages as an effective corrective measure to stop harassment and ensure it does not reoccur. Postal Service policy stated an employee whose conduct was clearly unacceptable may be excluded from the Pay for Performance Program. The Postal Service described unacceptable behavior as “notoriously disgraceful or immoral conduct, or other conduct prejudicial to the Postal Service.”

We found:

- None of the five employees in the Arkansas District responsible for sexual harassment or inappropriate actions/comments were eligible for the Pay for Performance Program.
- Seven employees in the Rio Grande District were found responsible for sexual harassment or inappropriate actions/comments. One was a manager/supervisor who was eligible for the Pay for Performance Program and was not considered for exclusion. The employee received \$1,719 in Pay for Performance in FY 2001. This is the same supervisor that we found had not received the appropriate discipline based on his behavior.
  - District management stated they only exclude employees who: (1) received an unacceptable performance evaluation, (2) were downgraded from a management/supervisory position to a craft position, or (3) were terminated.

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<sup>5</sup> The Pay for Performance Program, formerly referred to as the Economic Value Added Program, was an incentive award program for nonbargaining employees. The amount of money received by each employee was based on a group achievement of performance targets and financial measurements.

We believe sexual harassment meets the Postal Service’s definition of unacceptable behavior or immoral conduct and all managers/supervisors found responsible for sexual harassment or inappropriate actions/comments of a sexual nature should be considered for exclusion from the Pay for Performance Program. Such exclusion could be an effective corrective measure to stop harassment and ensure it does not reoccur.

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**Recommendation**

We recommend the vice president, Southwest Area Operations, instruct the Rio Grande District manager to:

2. Establish controls to ensure managers/supervisors disciplined for sexual harassment or inappropriate actions/comments of a sexual nature, are considered for exclusion from all pay for performance or other bonus programs.

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**Management’s  
Comments**

Management agreed with the recommendation. They stated the Pay for Performance Program was no longer in existence, however, they would ensure that disciplined employees were considered for exclusion from any future pay for performance programs. Regarding the finding, management acknowledged the Rio Grande District’s policy did not automatically require a supervisor’s exclusion from the Pay for Performance Program.

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**Evaluation of  
Management’s  
Comments**

Management’s actions taken or planned are responsive to the recommendation and should correct the issues identified in this report.

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**Many Complaints Not Effectively Addressed**

Our audit disclosed that all six complaints in the Arkansas District were effectively addressed. However, 13 of 20 complaints were not effectively addressed in the Rio Grande District. Equal Employment Opportunity Commission guidelines defined an “effective” investigation as a prompt, thorough, and impartial review with documented evidence. Postal Service policy required managers to conduct sexual harassment inquiries promptly and investigate all complaints, and document “serious” complaints with detailed evidence.<sup>6</sup>

We found that:

- Postal Service national policy did not require that “all” complaints be documented—only those that managers believed were “serious.”
- Of the 20 formal and informal complaints filed in the Rio Grande District, 7 were effectively addressed and 13 were not.
  - For the 13 not effectively addressed, 4 were not prompt, 1 was not thorough, and 8 were not investigated.
  - District management provided numerous reasons why complaints were not effectively addressed. For example, for the complaints that were not investigated, management said after reviewing the Equal Employment Opportunity complaint form, they decided sexual harassment had not occurred.

Complaints not effectively addressed could result in liability because the Postal Service cannot demonstrate it exercised reasonable care to prevent and promptly correct harassing behavior. We believe the lack of a Postal Service policy requiring documentation of all complaints may have been a factor. We will address this issue in a separate report.

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<sup>6</sup> Publication 552 was revised effective September 2001, and replaced the term “serious” with the statement “some complaints can be resolved simply and directly between the parties without the need for a formal written record.” The revised policy also provided that managers/supervisors needed to decide early in the process whether formal documentation was warranted, and that a good rule of thumb was when in doubt, document.

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**Recommendation**

We recommend the vice president, Southwest Area Operations, instruct the Rio Grande District manager to:

3. Establish controls to ensure managers and supervisors effectively address all sexual harassment complaints and inappropriate actions/comments of a sexual nature and fully document detailed evidence of the actions taken to address complaints.

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**Management's  
Comments**

Management agreed with the part of the recommendation that all sexual harassment complaints be promptly, thoroughly and impartially investigated and stated they had already established protocols.

Management also stated they were firmly committed to providing an effective mechanism to combat sexual harassment and to provide a work environment free of sexual harassment. In addition, management stated the Rio Grande District's management had enhanced procedures in the last year to ensure that all complaints continued to be promptly investigated and that any actions to address the harassment or inappropriate conduct would be documented in accordance with Postal Service policy.

Management disagreed with the second part of the recommendation to fully document detailed evidence of the actions taken to address complaints. They stated that Postal Service policy allowed some matters to be resolved simply and directly between the parties without a formal written record. They said this allowed managers maximum flexibility and speed to deal with those minor, one-time events such as an off-color joke or careless remark. Management stated to require documentation on every minor incident of inappropriate workplace behavior would potentially undermine the ability of supervisors to quickly and effectively resolve minor workplace issues. Additionally, they stated when frivolous and baseless charges of harassment are levied; managers need not create a written record on the unjustly accused employee. Management stated that although all matters would be fully investigated, not all complaints would result in a full written record with detailed evidence.

Management also disagreed with the finding that many complaints in the Rio Grande District were not effectively

addressed. They stated that an effective investigation is one that provides sufficient and timely information thereby allowing management to take appropriate remedial action or to close the matter properly. Management stated a complaint handled effectively is also one where the Postal Service incurs no liability or where the complainant is satisfied with the ultimate result of management's investigation. They also stated the report did not mention that the Postal Service did not incur liability in any of the complaints classified as not effectively addressed, and that the complainants did not raise additional issues after the matters were closed.

Management also stated that while it was true the district had not conducted "formal" investigations for the eight complaints identified, an inquiry was conducted in each of the complaints. Management stated, in some complaints remedial actions were not taken because it was determined the allegations did not fall within the definition of sexual harassment. They also stated in one complaint where it was alleged the supervisor yelled at the complainant, the supervisor immediately apologized to the complainant. Management stated this situation did not fall within the definition of sexual harassment as stated in the law, regulations, or Postal Service policy. Management also said one complainant alleged two incidents of sexual harassment and management reviewed both and found the allegations unsubstantiated. Management agreed, however, in this case management inquiries were not properly documented. Management also stated, in two other matters, the complainants met either with the supervisor or the counselor/investigator and withdrew their complaints after the meetings.

Management also stated the report failed to articulate what standards or criteria were used to reach the conclusion that the complaints were not investigated promptly. Management said for the four complaints found to be not promptly addressed, the time required to investigate complaints varied, depending upon circumstances of the allegation. Management disagreed that the passage of a few days or weeks to conduct an investigation should lead to the conclusion that complaints were not effectively addressed.

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**Evaluation of  
Management's  
Comments**

Management's actions taken or planned are responsive to the first part of the recommendation and should correct the issues identified in the report. Management's comments are not responsive to the second part of the recommendation to fully document actions taken to address complaints. We do not agree with management that documenting actions would potentially undermine the ability of supervisors to quickly resolve minor workplace issues. Documenting action management took after they address the complaint has no impact on how quickly a matter can be resolved. It does, however, play an important role in determining credibility and mitigating liability. Specifically, it provides a record of the action taken to address and resolve sexual harassment complaints. Postal Service policy is clear that serious complaints must be documented, and further provides that "When in doubt, document." We believe the policy does not limit management from documenting all actions, it simply establishes a floor, not a ceiling for addressing complaints.

We also believe the audit results support the assertion that most complaints in the Rio Grande District were not effectively addressed. The measurements we used to determine if a complaint was effectively addressed were contained in Equal Employment Opportunity Commission guidance. These measurements were related to whether or not management's response to the complaint was prompt, thorough, impartial, and documented. We believe these measurements are the appropriate standards to use to ensure the Postal Service does not incur future liability and that the work environment is free of sexual harassment or inappropriate actions/comments that could be offensive to other employees. Management's claim that the report did not mention that the Postal Service did not incur liability in any of the complaints classified as not effectively addressed, is inaccurate. The report clearly states that the complaints we reviewed were not included in the settlement figure for FYs 2000 and 2001. We cannot comment whether or not the complainants in the cases we reviewed raised issues after their initial complaints were resolved as we did not include that as a measurement of effectiveness. Additionally, we believe that when the Postal Service incurs no liability in some cases, it could simply mean the victim did not pursue their claim.

Regarding management's claim that informal inquiries were conducted for the eight complaints we said no investigations were conducted, no evidence was provided to us in the form of documentation to support inquiries had occurred. Had the complainants in these cases pursued their claims through the Equal Employment Opportunity process, the Postal Service may not have had the information needed to show proper action had been taken.

We do not agree that some complaints did not fall within the definition of sexual harassment. As stated in the report, the complaint files we reviewed were obtained from the Postal Service Equal Employment Opportunity case file database and district management, and were classified as sexual harassment by those sources. Our intent was to determine how management addressed an allegation of sexual harassment at the time it was received, regardless of what was determined after the investigation. Also stated in the report is our inclusion of complaints defined by Postal Service as inappropriate actions/comments of a sexual nature.

Finally, we do not agree that complaints in the Rio Grande District addressed from 11 days to 1 year should be considered prompt, and that the passage of a few days or weeks to conduct an investigation should not lead to the conclusion that complaints were not effectively addressed. We determined that complaints not addressed within 48 hours would not be considered prompt. This standard was based on Equal Employment Opportunity Commission and Postal Service guidelines, the definitions of "prompt" and "immediate" (used in guidelines and policy), and discussions with Postal Service Headquarters officials. In addition, the standard was discussed with, and agreed to, by headquarters officials prior to audit work. One vice president told us he expected his managers or supervisors to respond to a complaint within 24 hours. Additionally, we did not make our determination of promptness based on how long it took to complete the inquiry or investigation, but rather how long it took management to respond when they became aware of the allegation.

We view the disagreement on this recommendation as unresolved and it will be addressed in a separate report.

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**File Retention and  
Storage Adequate**

Our audit found there was no Postal Service policy regarding the retention time for informal complaint files. However, both districts retained informal complaint files for at least 6 years and storage of files was also adequate.

Equal Employment Opportunity Commission guidance stated formal sexual harassment complaint files should be retained for at least 4 years after resolution of the complaint. Postal Service policy stated once an inquiry/investigation was conducted, files should be forwarded for storage, to the district Human Resources manager. According to a headquarters senior Postal Service manager, the intent of this policy was to centrally locate the files with the Human Resources manager.

Retaining and storing informal complaint files in a central location ensures file availability if needed to mitigate liability. We will address the need for a national retention policy in a separate report.

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<b>Additional Management's Comments</b>	Management stated the report simplified or broadened the definition of sexual harassment, which seemed to result in the inclusion of complaints that did not fall within the precise legal definition of sexual harassment.
<b>Evaluation of Management's Comments</b>	We do not agree with management that the report broadened the definition of sexual harassment. Some of the complaint files reviewed may not have risen to the legal definition of sexual harassment; however, they did meet the Postal Service's criteria for when such complaints should be addressed. In addition, they fell within our scope and audit objectives that included coverage of the Postal Service policy regarding inappropriate actions/comments of a sexual nature. Specifically, that policy states "that even if a certain behavior does not seem to be "sexual harassment" as defined by law, if it is inappropriate, stop it!"

## APPENDIX A. OBJECTIVE, SCOPE, AND METHODOLOGY

Our objective was to determine if the Arkansas and Rio Grande Districts, in the Southwest Area, implemented adequate policies and procedures to prevent sexual harassment<sup>7</sup> in the workplace and to effectively address sexual harassment complaints to mitigate liability. Our district selections were based on interviews with the senior vice president, Human Resources; vice president, Diversity Development; and the Southwest Area vice president. We also considered the number of closed formal sexual harassment complaints in each of the nine Southwest Area districts.

To accomplish our objective, we reviewed applicable laws, policies, procedures, and other documents including Equal Employment Opportunity Commission guidelines, Postal Service national policies, the Southwest Area, and the Arkansas and Rio Grande District policies for preventing sexual harassment in the workplace. We also reviewed Postal Service national policy regarding the Pay for Performance Program. In addition, we reviewed previously issued Office of Inspector General reports related to sexual harassment issues. Further, we interviewed Postal Service Headquarters, Southwest Area, and Arkansas and Rio Grande District officials.

To determine if adequate policies and procedures were in place to prevent sexual harassment from occurring in the workplace, we identified Equal Employment Opportunity Commission key recommendations to agencies regarding policies and procedures that should be in place to prevent sexual harassment and reduce the risk of agency liability. We then reviewed the Postal Service national, Southwest Area, and Arkansas and Rio Grande Districts' policies and procedures to determine if the recommendations were included.

To determine whether district managers effectively addressed informal sexual harassment complaints to mitigate liability, we analyzed the documentation contained in formal and informal complaint files that were filed and closed<sup>8</sup> in FYs 2000 and 2001,<sup>9</sup> for the two districts we selected. We recorded information related to promptness, thoroughness, impartiality, and the level of documentation. These fiscal years were chosen because they were the most recent and complete fiscal years at the time of our fieldwork. The number of formal and informal closed complaints was obtained from the Postal Service Equal Employment Opportunity case file database and district management, respectively. We then excluded those complaints where the employees filed their complaints directly with the Equal Employment Opportunity office and requested confidentiality. These were excluded because honoring the request for confidentiality precluded the Equal Employment Opportunity office from notifying district

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<sup>7</sup> For the purpose of this report, we used the legal definition of sexual harassment defined, in part, in 29 C.F.R. § 1604.11(a), as unwelcome sexual conduct that is a term or a condition of employment. In addition, we included the Postal Service policy regarding inappropriate actions/comments of a sexual nature when reviewing sexual harassment complaint files.

<sup>8</sup> Sexual harassment complaints may be considered closed for a number of reasons including: (1) the inquiry/investigation was completed, (2) a settlement had been reached, (3) the complaint was withdrawn, or (4) discipline or corrective action was taken.

<sup>9</sup> We used the Postal Service fiscal years that started September 11, 1999, and ended September 7, 2001.

management that a complaint had been made. This in turn precluded management from conducting an investigation. We determined there were 26 closed complaint files as follows:

District	Complaints		Total Complaints Per District
	Formal	Informal	
Arkansas	2	4	6
Rio Grande	13	7	20
Total	15	11	26

We also determined if the retention and storage of informal files were adequate using Postal Service national, area, and district policies as well as Equal Employment Opportunity Commission guidelines.

In addition, we determined whether employees found responsible for sexual harassment received appropriate discipline using Equal Employment Opportunity Commission guidelines, Postal Service policies and procedures, and some elements of the Douglas Factors.<sup>10</sup> We included in this determination whether or not managers or supervisors found responsible for sexual harassment or inappropriate actions/comments were considered for exclusion from the Pay for Performance Program.

This audit was conducted from February 2002 through March 2003 in accordance with generally accepted government auditing standards and included such tests of internal controls as were considered necessary under the circumstances. We discussed our conclusions and observations with appropriate management officials and included their comments, where appropriate.

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<sup>10</sup> The Douglas Factors were developed as a result of case law (*Douglas v. the Veterans' Administration*) where the Merit Systems Protection Board ruled that management must document certain factors to be considered in making a determination of appropriate disciplinary action.

## APPENDIX B. MANAGEMENT'S COMMENTS

GEORGE L. LOPEZ  
VICE PRESIDENT, SOUTHWEST AREA OPERATIONS



February 5, 2003

B. WAYNE GOLESKI  
ASSISTANT INSPECTOR GENERAL  
FOR CORE OPERATIONS

Subject: **Response to Draft Audit Report  
Sexual Harassment Prevention Measures in the  
Arkansas and Rio Grande Districts - Southwest Area  
LH-ARA-03-DRAFT ("Draft Report")**

Thank you for the opportunity to respond to the Draft Report concerning the policies and procedures used in the Arkansas and Rio Grande Districts to address sexual harassment complaints. As we discuss below, the Southwest Area agrees in part with your findings and recommendations. We disagree, however, with some of the Draft Report's findings and recommendations and have concerns with some of the terminology used in the Draft Report.

The Draft Report states that its purpose was to determine a) "if the districts had adequate policies and procedures in place to prevent sexual harassment in the workplace," and b) "to effectively address sexual harassment complaints to **mitigate liability.**" (Emphasis added).

We are pleased that the Draft Report found that the two districts had adequate policies and procedures in place and that, with one exception, the management in Arkansas and Rio Grande took appropriate action and/or discipline in the instances where employees were found responsible for sexual harassment or inappropriate actions. We are also pleased that the Draft Report found the districts' storage of "informal complaint files" (that is, non EEO management inquiry files) adequate. There is, of course, always opportunity for improvement and Rio Grande's management has enhanced its procedures in the last year to ensure that all complaints continue to be promptly investigated and that any actions taken to address the harassment or inappropriate conduct be documented in accordance with postal policy as stated in Publication 552.

We must disagree, however, with the Draft Report's finding that Rio Grande did not "effectively" address most of the complaints your auditors reviewed, particularly because none of those complaints resulted in liability to the Postal Service, one of the stated purposes of your audit. We discuss this more fully below. Nonetheless, on balance, we are pleased with the Draft Report's findings and the opportunity that it provides us to continue to improve our processes. The Southwest Area is firmly committed to provide a workplace environment free of sexual harassment and to properly address any complaints.

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Before we address your recommendations, we have the following general comments or concerns about the Draft Report:

1. Some of the language used in the Draft Report lacks specificity. For instance, the Draft Report found that four complaints in the Rio Grande were not investigated promptly but it fails to articulate what standards or criteria the auditors used to reach that conclusion.
2. The Draft Report simplifies or broadens the definition of sexual harassment. For instance, the Draft Report found the Rio Grande District did not effectively address one complaint that involved an allegation (yelling) that does not fall within the precise legal definition of sexual harassment. Sexual Harassment is defined in 29 CFR section 1604.11(a) as:

Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, (2) submission to or rejection of such conduct by an individual is used as a basis for employment decisions affecting such individuals, or (3) 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.

3. Many Complaints Not Effectively Addressed.

The Draft Report found that the Rio Grande District did not effectively address 13 of the 20 complaints because "4 were not prompt, 1 was not thorough and 8 were not investigated." Management's position is that an effective investigation is one which provides sufficient and timely information thereby allowing management to take appropriate remedial action or to close the matter properly.

A complaint handled effectively is also one where the Postal Service incurs no liability or where the complainant is satisfied with the ultimate result of management's investigation. The Draft Report fails to mention that the Postal Service did not incur liability in any of the 13 cases mentioned above or that the employees in question did not raise any further issues after the matters were closed. In fact, as we explain below, in one instance, the complainant withdrew the complaint after a single meeting with the investigator; another complaint was resolved early through the REDRESS process; and one other after a meeting with the supervisor. In three instances, the Postal Service issued a Final Agency decision finding no discrimination.

No investigation conducted

The Draft Report found that Rio Grande did not investigate eight complaints. While it is true that there may have been no "formal" investigations, management did conduct an inquiry in each of the matters in question. In some, management did not take any remedial action after it determined that the allegations did not fall within the definition of sexual harassment. For instance, one complaint alleged that the supervisor yelled at the complainant and told her to take her breaks in the break room. The supervisor apologized immediately to the

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complainant. This situation simply does not fall within the confines of sexual harassment or misconduct of a sexual nature as stated in the law, regulations, or postal policy.

In another instance, a complainant alleged two incidents of sexual harassment. Management reviewed both incidents and found the allegations unsubstantiated. We agree, however, that in this case the management investigations were not properly documented. The same complainant had previously complained of sexual harassment by different individuals and in different locations and those complaints were also without merit.

In two matters, the complainants met either with the supervisor or the counselor/investigator and withdrew their complaints after those meetings. The Draft Report's conclusion overlooks the fact that, in accordance with postal policy as stated in Publication 552, some complaints can be addressed and are more effectively addressed simply and directly between the parties without the need for a formal written report.

Four investigations not conducted promptly

The time required to investigate allegations of sexual harassment varies depending on the circumstances of the particular allegation, the number of witnesses who need to be interviewed, and the employees' availability. Therefore, we disagree that the passage of a few days or weeks to conduct an investigation necessarily leads to the conclusion that the complaints were not addressed effectively.

In one instance, on June 26, 2001, an employee contacted an EEO counselor alleging that her supervisor had used foul language. The complainant requested REDRESS mediation. The initial management review indicated that the allegations did not meet the sexual harassment definition and therefore no further management investigation was necessary. The EEO process continued and the complainant resolved the matter to her satisfaction during a REDRESS mediation on September 27, 2001.

Another complainant on December 9, 1999, informed her supervisor of an alleged incident that supposedly had occurred in October 1999. That same day the supervisor interviewed the alleged harasser who denied the allegations. The supervisor continued his investigation but found no grounds to proceed further. On May 15, 2000, the EEO office received the written complaint and the Sexual Harassment team was sent out on May 22, 2000. The investigation did not substantiate complainant's allegations.

In another, the complainant alleged that a co-worker had sexually harassed her on March 5, 2001, the fact-finding investigation was conducted on April 12, 2001, and the alleged harasser, was disciplined on May 1, 2001. In another case the management inquiry was conducted within 14 days after the allegation and the fact finding process was completed within 35 days.

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Appropriate discipline not given in one case

The Draft Report found that one individual was not given adequate discipline. In this instance, the deciding official, a postmaster, did not follow the District's recommendation to remove the alleged harasser and instead, considering the Douglas factors, determined that the individual had the potential for rehabilitation and issued a 14-day suspension. While reasonable individuals may come to different conclusions as to the level of discipline that should be imposed under given circumstances, MSPB law is clear that, a) a deciding official must consider the Douglas factors prior to deciding what discipline to issue; and b) it is improper for a person who reviews such a decision to substitute his/her judgment for that of the deciding official. It is also worth noting that the Postal Service incurred no liability in this case.

Pay for Performance

We agree that Rio Grande's policies at the time did not automatically exclude the supervisor involved in this matter from the Pay for Performance award. Such discipline was usually considered as part of the merit review.

Adequate Policies and Procedures

As we stated previously, we agree with the Draft Report's finding that the policies and procedures in Arkansas and Rio Grande are adequate and agree also with the findings that the districts:

- Established as district policies, Postal Service Publication 552, Managers Guide to Understanding Sexual Harassment, and Publication 553, Employee's Guide to Understanding Sexual Harassment.
- Established sexual harassment fact-finding teams at the district level to investigate all complaints.
- Provided service talks for employees regarding sexual harassment.
- The Arkansas District issued appropriate discipline in the five cases of substantiated sexual harassment.
- The Arkansas District effectively addressed sexual harassment complaints.

In addition to the foregoing, in January 2003, the Rio Grande District reiterated the need for a prompt "Initial Management Inquiry Process" as soon as a complaint is presented.<sup>1</sup> This process requires

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<sup>1</sup> See attached minutes of quarterly meeting January 17, 2003 and sexual harassment training log from June 30, 2000 to the present.

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District's Manager of Human Resources to determine whether there is a need to activate the Sexual Harassment Fact Finding Process. The District is also promptly addressing all allegations of sexual harassment without waiting to receive the employee's official written complaint to determine whether in fact the allegations fall within the purview of the Sexual Harassment regulations. As soon a contact is made, the District documents the contact and starts the appropriate file.<sup>2</sup>

Moreover, to reiterate the Southwest Area's commitment for a work environment free of sexual harassment, on October 18, 2002, I sent to each Southwest employee the attached letter emphasizing Postal Service policy and my expectations that all employees will adhere to such policy. We will continue the message through letters and other Southwest Area publications. And, no later than February 28, 2003, I will send a letter to all District Managers emphasizing again the need to properly document the files as required by Postal Service policy.

Draft Report's Recommendations:

**We recommend the vice president, Southwest Area Operations, instruct the Rio Grande District manager to:**

1. ***Establish controls to ensure managers/supervisors receive the appropriate discipline for sexual harassment or inappropriate actions/comments of a sexual nature.***

We agree that the District should have controls in place and it already does so. For instance, the Manager of Human Resources, after sending a recommendation for discipline to a supervisor/postmaster, monitors the matter to determine whether the deciding official followed such recommendation. In compliance with MSPB regulations, however, this follow up process will not replace the deciding official's judgment once she or he has considered all appropriate factors.

2. ***Establish controls to ensure managers/supervisors disciplined for sexual harassment or inappropriate actions/comments of a sexual nature are considered for exclusion from all pay for performance or other bonus programs.***

The Pay for Performance mechanism is no longer in existence, but we agree that the District will ensure consideration is given to excluding disciplined employees from any future program that may replace Pay for Performance.

3. ***Establish controls to ensure managers and supervisors effectively address all sexual harassment complaints and inappropriate actions/comments of a sexual nature and fully document detailed evidence of the actions taken to address the complaints.***

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<sup>2</sup> The District's procedures and approach in handling sexual harassment complaints are viewed favorably by the employees as indicated by the improvement in the VOE survey as it applies to questions 24c and 25. See attached.

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The Southwest Area has already established protocols for managers and supervisors to effectively address all sexual harassment complaints and inappropriate conduct of a sexual nature. Although we see no need to establish any new controls, we agree with that all sexual harassment complaints should be promptly, thoroughly and impartially investigated, and as stated above, we have already enhanced some of the existing protocols. We disagree, however, with the second part of the recommendation to the extent that it requires managers and supervisors to "fully document detailed evidence of the actions taken to address complaints" even if the allegations do not constitute sexual harassment or inappropriate conduct of a sexual nature. Postal Service policy found in Publication 552 allows some matters to be resolved simply and directly between the parties without a formal written record. The rationale is to allow managers maximum flexibility and speed to deal with those minor, one-time events such as an off-color joke or careless remark. To require documentation regarding every minor incident or inappropriate workplace behavior would potentially undermine the ability of supervisors to quickly and effectively resolve those issues. In addition, when frivolous and baseless charges of harassment are levied, managers need not create a written record on the unjustly accused employee. Therefore, in accordance with the Postal Service guidelines identified above, the Southwest Area will continue to fully investigate all matters of alleged sexual harassment, but not all harassment complaints will result in a written record.

If you have any further questions or require additional information, please feel free to contact my office.



George L. Lopez

Attachments

cc: Suzanne Medvidovich  
Susan Ducheck  
Murry Weatherall  
Peter A. Sgro  
Doris Godinez-Phillips

<b>Agenda</b>		<i>Quarter I Performance Review Rio Grande Performance Cluster</i>		
Meeting Leader:		Lawrence K. James, District Manager		
Date & Time:		Friday, January 17, 2003 from 7:30 a.m. – 12:00 a.m.		
Location:		District Office, 1 Post Office Dr., San Antonio TX 78284		
TOPIC	PRESENTER	OUTCOME	DURATION	TIME
Breakfast	All		30 Minutes	7:30 a.m. – 8:00 a.m.
Opening Remarks	Lawrence K. James, District Manager	<input type="checkbox"/> Agenda <input type="checkbox"/> Set expectations	15 Minutes	8:00 a.m. – 8:15 a.m.
Gender Difference Training	Susan Barela, Senior Diversity Program Coordinator, Chicago	To gain a better understanding of generational differences	90 Minutes	8:15 a.m. – 9:45 a.m.
Break	All	R & R	20 Minutes	9:45 a.m. – 10:05 a.m.
Employee Issues <input type="checkbox"/> SWA Law Department and Sexual Harassment <input type="checkbox"/> Initial Management Inquiry Process for Sexual Harassment <input type="checkbox"/> Appreciative Conversations	<input type="checkbox"/> Denean Avery, Attorney, SWA Law Department <input type="checkbox"/> Sandy Towey, Workplace Analyst <input type="checkbox"/> Jeff Claye, Labor Relations Manager	<input type="checkbox"/> To discuss current postal issues <input type="checkbox"/> To understand the steps to take to protect the employee and reduce liability <input type="checkbox"/> Overview of Appreciative Conversations, a course to improve quality of one to one employee conversations	75 Minutes	10:05 a.m. – 11:20 a.m.
Repositioning the Workforce	Complement Team	To provide an update of the cluster's repositioning efforts	30 Minutes	11:20 a.m. - 11:50 a.m.
Closing Remarks	All	Recap meeting and discuss expectations for Qtr IV	10 Minutes	11:50 a.m. – 12:00 noon

**Quarter I Performance Review**  
**January 17, 2003 - Page 11**

**Gender Difference Training – Susan Barela, Senior Diversity Program Coordinator, Great Lakes Area**

- Have to learn to relate with different people
- Creates diverse thoughts
- Challenge of diversity to keep open mind about people
- Diversity of Pueblo Colorado much like San Antonio
- 25% Hispanic
- **Suggested book: The End of Work by Jeremy Rifkin**
- Communication in the workplace
- Need for affirmation during conversation
- Power - women normally at a disadvantage
- Geography has an impact
- Women tend to find similarities, while men look for differences
- Education opportunities
- Psychological measures
- DISC & Myers Briggs Assessments
- Gender Quiz

**Initial Management Inquiry Process (IMIP) for Sexual Harassment – Sandy Towey and Jeff Claye**

- Handout and form
- Talk to alleged victim first, then the alleged harasser and then any witnesses
- Two parties are separated until investigation occurs
- Rio Grande Cluster: Always go to the Human Resources Manager
- Manager, Human Resources determines next steps
- Formal investigation, etc.
- Fact Finding Team trained by the SWA
- When investigating, it is a very sensitive subject
- The more information you get during the interview, the better
- This is a separate process from the EEO process
- 48-hour period to complete IMIP (suggest completion as quickly as possible)
- Under contract, you do have authority to pull them from their assigned duty until an investigation occurs
- IMIP may lead you to a more in-depth situation
- Have alleged witness make statement if they claim they saw or heard nothing
- In addition, get written statements from alleged victim and harasser
- Even if behavior has gone on for a long time, once we have been put on notice we have obligation to investigate situation
- Lack of information from the alleged victim does not limit your liability
- Publication 552 – review booklet

**SWA Law Department – Denean Avery, Attorney**

- System in place to have avenue to report abuse
- Have to continue to deal with employees making allegations
- Some develop into retaliation complaints
- Ensure you treat everyone the same

**Quarter I Performance Review**  
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SWA Law Department, Continued

- Ensure you do things "by the book"
- Document everything (pre-D, conversations about performance, your own notes, etc.)
- While we are winning more cases, the number of cases are not decreasing
- They have a right to file a complaint
- Do not take it personal, they have their own agenda
- *It's part of the job to deal with these employees*
- At some point, the person really believes they are being targeted
- It can become the biggest focus of their lives
- Make sure you handle it the same way for everybody
- As long as you do the process by the book and do not take it personal, we can defend the removals
- Do not become discouraged and back off
- Go through the process of progressive discipline
- That's the only way the system is going to work
- Any allegation with substance, we need to initiation action against the individual
- Have to take immediate action
- Then we have a defense and EEOC would not make USPS liable
- Allegations of harassment by customer to employee
  - As an agency, we have to take some action to resolve situation
  - Contact Human Resources and the Inspection Service will interview the customer
  - Management has responsibility for workplace climate
- Have to deal with complaints even if we know they are false
- Law Department is here to support you

**Appreciative Conversations**

- Process to speak with employees
- Best Practice in Arizona
- VOE Index Score and responses are on positive trend
- Office with high VOE Scores are the most productive and effective
- Two Kinds of Conversations
  - Task Performance
  - *Relationship Enhancement*
- EIWA in Arizona conducted over 30 focus groups to determine what was being done to improve conversations
- Results: "Show me daily that you care."
- Arizona provided Rapport in wallet format - reminders to improve conversations
- Supervisors encouraged to practice one daily
- If you catch people doing the right thing, they will do it more
- Dignity and Respect
- Balanced approach necessary
- *Respect people for what they do and who they are*
- Conditional Respect (doing) vs. Unconditional Respect (being)
- Opportunity to have Postmaster and supervisors trained
- Role-playing
- Give EIWA a call
- Handouts go with training course

**Sexual Harassment Training**

<b>What</b>	<b>Date(s)</b>	<b>Presenter</b>
Quarter I Performance Review	January 17, 2003	SWA Law Department
Quarter III Performance Review	June 25, 2002	SWA Law Department
Quarter II Performance Review	April 18, 2002	SWA Law Department
Executive Management Committee Meeting	February 26, 2002	Human Resources Manager
Staff Meeting	February 13, 2002	District Manager
Quarter I Performance Review	January 10, 2002	SWA Law Department
Staff Meeting	August 23, 2001	Handout
AP 8 Performance Review	May 4, 2001	District Manager
Quarter II Performance Review	April 19, 2001	SWA Law Department
Staff Meeting	April 5, 2001	District Manager
Quarter IV Performance Review	October 6, 2000	SWA Law Department
Town Hall Meeting	June 30, 2000	Human Resources Manager, SWA

## VOE Survey Index for 2002 Rio Grande Sexual Harassment Favorable Responses

Question 24C: In past 12 mths, I have personally been sexually harassed by a postal employee  
 Question 25: I believe that discrimination & sexual harassment are being adequately addressed by management

