

OFFICE OF THE GENERAL COUNSEL

MEMORANDUM GC 00-06

August 10, 2000

TO: All Regional Directors, Officers-in-Charge, and Resident Officers**FROM:** Leonard R. Page, General Counsel**SUBJECT:** Impact Analysis Program Modifications

The Impact Analysis Committee recently reviewed the status of Impact Analysis in light of the field's experience under the system and our improved budgetary circumstances. The committee was guided by the underlying principle of Impact Analysis, which is to ensure that our resources continue to be focused on resolving cases with the greatest public impact. In addition, the Committee recognized that reducing the number of cases in the Regions' inventory of situations pending preliminary investigation is a matter of concern to the Administration, Congress and the public and, accordingly, remains one of the Agency's most important priorities.¹

A review of Regional Office performance under Impact Analysis demonstrates that substantial improvement has been made in timely processing cases over the past few years. At the end of FY 1997, the first full year cases were processed pursuant to Impact Analysis principles, the national cumulative percentage of unexcused overage cases was 18.3, 30.1 and 22.5 for Categories 3, 2 and 1, respectively. As of April 2000, the cumulative percentages for FY 2000 had been reduced to 10.5, 14.9 and 13.1, respectively. Moreover, our case intake has decreased over the past two years from 39,618 to 36,657 to 33,392 cases in Fiscal Years 1997 through 1999, respectively. Our case intake for the current fiscal year is, to date, approximately the same as last fiscal year. Our field FTE in Fiscal Years 1997 through 1999 was 1341.1, 1299.6 and 1259, respectively. The estimated field FTE for FY 2000, however, is approximately 1335 and the field FTE should increase this fiscal year.

In view of the above, I concur with the committee's recommendation regarding the reduction of time goals for Category 2 and 1 cases filed on or after October 1, 2000. Thus, Category 2 cases, which currently have a time goal of 11 weeks, will have a 9 week time goal for disposition. Category 1 cases, instead of a 15 week time frame, will have a goal of 12 weeks. Category 3 cases will retain their 7 week goal. The current allowable overage percentages of 10, 15 and 15 percent for Categories 3, 2 and 1, respectively, remain unaltered for FY 2001. In agreement with the committee, I believe that the modifications in the time goals will have the desired result of reducing the case inventory and are capable of being achieved by most Regional Offices.

I have also adopted the committee's recommendation that certain Section 8(a)(1) and (3) discrimination cases involving a loss of employment and a refusal to refer for employment, which are currently included in the Investigative Stage as Category 2, should be upgraded in the Litigation Stage to Category 3 upon merit determination.² (Please note that such cases should continue to be categorized as 2 for the Investigative Stage). Given the lengthy trial calendar in many Regions, moving such merit cases to Litigation Stage Category 3 on the trial calendar is a meaningful effort to assist those employees whom we have determined to have suffered greatly as a result of exercising rights protected by the Act. Not all meritorious Section 8(a)(1) and (3) loss of employment and refusal to refer cases, however, are worthy of such recategorization. For example, "salting" refusal to hire cases,³ as well as cases where the alleged discriminatees have been reinstated or do not desire reinstatement, should not be upgraded.

As suggested when Impact Analysis was initially established, we will continue to reassess the appropriate time frames and other components of Impact Analysis based upon our experience under the system, as well as staffing, training and other resources. If you have any questions concerning this memorandum, please contact your AGC or Deputy.

/s/
L. R. P.

cc: NLRBU

¹ Other factors considered by the committee were the increased emphasis over the past several years in considering Section 10(j) in appropriate cases and on compliance issues, as well as more expeditious processing of R cases. It was also recognized that, although we have substantially increased our FTE this year, these newly hired employees are not fully trained so as to be able to handle the full panoply of cases.

² Section 8(a)(4) cases are already recategorized to category 3 upon merit determination.

³ The alleged discriminatees in such cases do not normally suffer economic or emotional consequences as great as traditional discriminatees.