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Testimony before the Senate Committee on Governmental Affairs; by Elmer B. Staats, Comptroller General.

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Authority: Executive Order 11246. H.R. 11280 (95th Cong.). S. 2640 (95th Cong.). Age Discrimination in Employment Act. Civil Rights Act. Equal Pay Act. Fair Labor Standards Act.

The purpose of Reorganization Plan No. 1 of 1978 is to put the Equal Employment Opportunity Commission (EEOC) at the center of equal employment opportunity enforcement and to consolidate the different governmental units that now have major EEO responsibilities under various statutes, Executive Orders, and regulations. The Reorganization Plan is a step toward developing a Federal equal employment program which should result in more uniform practices and eliminate duplication and inconsistency. The proposed legislation deals with the following: receipt and processing of appeals, development of policy, affirmative action plans, and review of agency actions under affirmative action plans. Matters for concern involve title VII litigation authority for State and local governments and Government EEO contract compliance activities. (HRS)

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March 9, 1978

STATEMENT OF ELMER B. STAATS
COMPTROLLER GENERAL OF THE UNITED STATES
BEFORE THE
COMMITTEE ON GOVERNMENTAL AFFAIRS
UNITED STATES SENATE
CONCERNING
THE PRESIDENT'S REORGANIZATION PLAN NO. 1 OF 1978

I APPRECIATE YOUR INVITATION TO APPEAR HERE TODAY TO DISCUSS THE PRESIDENT'S REORGANIZATION PLAN NO. 1 OF 1978. THE PURPOSE OF THE PLAN IS TO PUT EEOC AT THE CENTER OF EQUAL EMPLOYMENT OPPORTUNITY ENFORCEMENT AND CONSOLIDATE THE DIFFERENT GOVERNMENTAL UNITS THAT NOW HAVE MAJOR EEO RESPONSIBILITIES UNDER VARIOUS STATUTES, EXECUTIVE ORDERS, AND REGULATIONS. WE BELIEVE THE REORGANIZATION PLAN, IN GENERAL, IS A STEP TOWARD DEVELOPING A FEDERAL EQUAL EMPLOYMENT PROGRAM WHICH SHOULD RESULT IN MORE UNIFORM PRACTICES AND ELIMINATE DUPLICATION AND INCONSISTENCY.

THE LIMITED TIME AVAILABLE HAS PRECLUDED US FROM THOROUGHLY ANALYZING AND REACHING A POSITION AT THIS POINT ON ALL THE MANY AREAS INVOLVED IN IMPLEMENTING THE PLAN. WE CAN, HOWEVER, STATE AT THIS TIME THAT WE FAVOR THE BASIC CONCEPTS AND GOALS EMBODIED IN THE PRESIDENT'S REORGANIZATION PLAN.

AS YOU ARE AWARE, STATUTES, AND EXECUTIVE ORDERS ACCUMULATING OVER THE PAST 40 YEARS HAVE GIVEN EQUAL EMPLOYMENT RESPONSIBILITY TO 18 SEPARATE AGENCIES. IN HIS REORGANIZATION MESSAGE, THE PRESIDENT OBSERVED THAT THIS HAS CREATED WASTEFUL DUPLICATION AND BEWILDERING INCONSISTENCY THAT IS BURDENSOME AND CONFUSING TO EMPLOYERS AND INDIVIDUALS ALIKE.

REVIEWS CONDUCTED BY THE GENERAL ACCOUNTING OFFICE DURING THE PAST SEVERAL YEARS HAVE CONFIRMED THIS FOR BOTH THE FEDERAL AND THE NON-FEDERAL SECTORS. WE BELIEVE THAT EMPLOYERS SHOULD NOT BE SUBJECTED TO MULTIPLE FEDERAL AGENCY REVIEWS OF EQUAL EMPLOYMENT USING DIFFERENT CRITERIA AND STANDARDS. SINCE MID-1973, THE EQUAL EMPLOYMENT OPPORTUNITY COORDINATING COUNCIL HAS BEEN ATTEMPTING TO FORMULATE AND PUBLISH A UNIFORM SET OF GUIDELINES ON EMPLOYEE SELECTION PROCEDURES. FAILURE TO ADOPT SUCH GUIDELINES HAS RESULTED IN DIFFERENT SELECTION STANDARDS BEING APPLIED IN THE FEDERAL AND NON-FEDERAL SECTORS, AND NON-FEDERAL EMPLOYERS BEING SUBJECTED TO DIFFERENT SETS OF GUIDELINES BY DIFFERENT FEDERAL AGENCIES.

ADDITIONALLY, FEDERAL AND CERTAIN STATE AND LOCAL GOVERNMENTS ARE SUBJECT TO A NUMBER OF LAWS AND CIVIL SERVICE REGULATIONS THAT DO NOT APPLY TO PRIVATE EMPLOYERS, SUCH AS VETERANS° PREFERENCE, RULE-OF-THREE SELECTION REQUIREMENT (OR SIMILAR SELECTION PROCEDURES), AND MERIT EXAMINATION AND SELECTION. ALL OF THESE HAVE SEVERELY LIMITED JOB OPPORTUNITIES FOR THOSE WHO ARE NON-VETERANS AND MINORITIES.

WE BELIEVE THE FOLLOWING COMMENTS MAY BE USEFUL TO THE COMMITTEE IN ITS CONSIDERATION OF THE PROPOSED REORGANIZATION PLAN.

In the private sector, employment is governed largely by informal or formal agreements arrived at by the parties involved and circumscribed by laws of general application such as the Fair Labor Standards Act and the Civil Rights Act. In the Federal sector, employment is governed not only by these statutes but also by a vast body of other complex laws and regulations which have evolved since 1883 to create and implement a Federal merit system. These laws and regulations make mandatory such things as competitive selection promotion and retention; veterans preference; and prohibitions against adverse actions except for such cause as will promote the efficiency of the service. So completely is Federal personnel management controlled by the laws and regulations of the merit system that employees' and applicants' equal employment concerns are inextricably intertwined in merit principles.

To illustrate further. The proposed legislation the President sent to the Congress on March 2, 1978, introduced as a bill to reform the civil service laws (H.R. 11280 and S. 2640), defines merit system principles in pertinent part as follows:

"RECRUITMENT SHOULD BE FROM QUALIFIED CANDIDATES FROM APPROPRIATE SOURCES IN AN ENDEAVOR TO ACHIEVE A WORK FORCE FROM ALL SEGMENTS OF SOCIETY, AND SELECTION AND ADVANCEMENT SHOULD BE DETERMINED SOLELY ON THE BASIS OF RELATIVE ABILITY, KNOWLEDGE, AND SKILLS, AFTER FAIR AND OPEN COMPETITION WHICH ASSURES THAT ALL RECEIVE EQUAL OPPORTUNITY."

"ALL APPLICANTS AND EMPLOYEES SHOULD RECEIVE FAIR AND EQUITABLE TREATMENT IN ALL ASPECTS OF PERSONNEL MANAGEMENT WITHOUT REGARD TO POLITICAL AFFILIATION, RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, MARITAL STATUS, AGE; OR HANDICAPPING CONDITION, AND WITH PROPER REGARD FOR THEIR PRIVACY AND CONSTITUTIONAL RIGHTS."

THE PROPOSED LEGISLATION GOES ON TO DEFINE PROHIBITED PERSONNEL PRACTICES IN PERTINENT PART, AS FOLLOWS:

"ANY EMPLOYEE WHO HAS AUTHORITY TO TAKE, DIRECT OTHERS TO TAKE, RECOMMEND, OR APPROVE ANY PERSONNEL ACTION, SHALL NOT, WITH RESPECT TO SUCH AUTHORITY UNLAWFULLY DISCRIMINATE FOR OR AGAINST ANY EMPLOYEE OR APPLICANT FOR EMPLOYMENT ON THE BASIS OF POLICIAL AFFILIATION, RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, MARITAL STATUS, AGE, OR HANDICAPPING CONDITION."

GIVEN THESE INEXTRICABLE INTERRELATIONSHIPS BETWEEN MERIT PRINCIPLES AND EQUAL EMPLOYMENT, THE QUESTION BECOMES: HOW CAN YOU TRANSFER THE EQUAL EMPLOYMENT CONSIDERATIONS TO EEOC AND STILL MAINTAIN THE INDEPENDENCE OF CSC IN CARRYING OUT PERSONNEL MANAGEMENT FUNCTIONS? IT HAS BEEN PROPOSED THAT THIS CAN BE ACHIEVED BY COOPERATION BETWEEN THE PARTIES INVOLVED, IN THIS CASE THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION AND THE CIVIL SERVICE COMMISSION. WHILE THE RELATIONSHIP BETWEEN THE TWO CURRENTLY APPEARS TO BE SMOOTH, THIS HAS NOT ALWAYS BEEN THE CASE AND MAY NOT BE IN THE FUTURE. THEREFORE THE FRAMEWORK MUST BE SUFFICIENTLY STRUCTURED TO REQUIRE A SMOOTH RELATIONSHIP INDEPENDENT OF THE PERSONALITIES INVOLVED.

CSC CHAIRMAN CAMPBELL PROVIDED THIS COMMITTEE A MEMORANDUM OF UNDERSTANDING DESCRIBING THE ANTICIPATED RELATIONSHIPS AS FOLLOWS:

RECEIPT AND PROCESSING OF APPEALS

BEGINNING OCTOBER 1, 1978, ALL DISCRIMINATION APPEALS RELATING SOLELY TO DISCRIMINATION WILL BE FILED DIRECTLY WITH EEOC AND PROCESSED BY IT. UNDER DELEGATION FROM EEOC, BEGINNING OCTOBER 1, 1978, ALL APPEALS INVOLVING BOTH TITLE V AND TITLE VII MATTERS WILL BE FILED WITH AND ACTED UPON BY MSPB. THE DECISION OF MSPB WILL BE FINAL UNLESS WITHIN 30 DAYS THE EMPLOYEE REQUESTS EEOC TO REVIEW THE ELEMENTS OF THE CASE INVOLVING TITLE VII.

EEOC WILL GENERALLY LIMIT ITS REVIEW OF CASES TO SITUATIONS WHERE THE DECISION APPEARS TO CONFLICT WITH THE GENERAL BODY OF DECISIONS AND PRINCIPLES ESTABLISHED UNDER TITLE VII; OR THE DECISION HAS A SUBSTANTIAL IMPACT ON THE GENERAL POLICIES OF EEOC.

MSPB WILL MAKE THE ENTIRE FILE AVAILABLE TO EEOC. THE LATTER MAY EXAMINE THE MATTER ON THE RECORD, GRANT A DE NOVO HEARING OR REMAND THE CASE TO MSPB FOR FURTHER HEARINGS AT ITS OPTION.

MSPB WILL STRIVE TO COMPLETE ITS ACTION ON A CASE INVOLVING TITLE VII SO AS TO ALLOW 45 DAYS OUT OF THE STATUTORY 180 DAY LIMIT FOR POSSIBLE ACTION BY EEOC. EEOC SHALL ACCORD OPM A RIGHT TO COMMENT PRIOR TO THE ISSUANCE BY EEOC OF ANY DECISION OR ORDER IN ANY MSPB CASE BEFORE IT FOR REVIEW.

DEVELOPMENT OF POLICY

CSC (OR OPM) MUST CONSULT WITH EEOC PRIOR TO ISSUING ANY CHANGES IN REGULATION OR POLICY AFFECTING TITLE VII OR OTHER DISCRIMINATION LAWS PRIOR TO OCTOBER 1, 1978.

EEOC WILL ALLOW OPM THIRTY DAYS FOR COMMENT PRIOR TO ISSUING AN ORDER, REGULATION OR POLICY AFFECTING FEDERAL EMPLOYEES. EEOC WILL GIVE FULL CONSIDERATION TO CHANGES RECOMMENDED BY OPM.

IF OPM BELIEVES THAT A PROPOSED EEOC ORDER, REGULATION OR POLICY IS SERIOUSLY DELETERIOUS TO THE CIVIL SERVICE SYSTEM OR CONTRARY TO LAW, THE MATTER WILL BE REFERRED TO THE EXECUTIVE OFFICE OF THE PRESIDENT.

AFFIRMATIVE ACTION PLANS

EEOC WILL ISSUE THE REGULATIONS GOVERNING SUBMISSION OF AGENCY AFFIRMATIVE ACTION PLANS. AGENCY PLANS WILL BE SUBMITTED THROUGH OPM AND ITS RECOMMENDATIONS CONSIDERED BY EEOC BEFORE GRANTING APPROVAL.

REVIEW OF AGENCY ACTIONS UNDER AFFIRMATIVE ACTION PLANS

EEOC WILL EXERCISE THE AUTHORITY TO REVIEW AGENCY ACTION UNDER THEIR AFFIRMATIVE ACTION PLANS.

THE OPM WILL INCLUDE AFFIRMATIVE ACTION MATTERS IN ITS REGULAR COMPLIANCE INSPECTIONS, REPORTING ITS FINDINGS TO EEOC.

WE AGREE THAT EEOC SHOULD BE RESPONSIBLE FOR DEVELOPING OF EEO POLICY, ISSUING REGULATIONS GOVERNING AFFIRMATIVE ACTION PLANS, AND REVIEWING OF THE AGENCIES' AFFIRMATIVE ACTION PLANS. HOWEVER, WE ARE CONCERNED ABOUT THE PROPOSED METHOD FOR RECEIPT AND PROCESSING OF APPEALS.

EEOC Chair Norton testified that the appeals process for Federal employees will require a new organizational office at EEOC. They will establish an office of complaint examiners who will, after review and investigation, recommend decisions and orders to be approved by panels headed by individual commissioners. She also testified that both EEOC and the Civil Service Commission will continue to have an interest in "so-called 'mixed' cases," those cases having both civil service regulation and Title VII aspects. She pointed out that the Presidents' Reorganization Plan authorizes EEOC to make a limited delegation to CSC. This authority will be used to authorize the CSC or the new Merit System Protection Board to hear and initially decide "mixed" cases with a right of review of the Title VII matter by EEOC.

Chair Norton further testified that "The Delegation will avoid forum shopping and duplicative appeals without abridging the rights of Federal employees to full access to the EEOC, as private sector employees now have."

We find it difficult to understand how setting up a new organizational office in EEOC and involving two agencies in the adjudication of Federal employees equal employment complaints is an improvement over having the total responsibility in one agency as currently exists. The simple question as to who decides a case is "mixed" becomes a basis for confusion and disagreement. Given the

DEFINITIONS OF "MERIT PRINCIPLES" AND "PROHIBITED PERSONNEL PRACTICES" IT IS DIFFICULT TO VISUALIZE A COMPLAINT WITH EQUAL EMPLOYMENT ASPECTS THAT DOES NOT ALSO RELATE TO PERSONNEL PRACTICES; I.E., HIRING, FIRING, PROMOTIONS, ETC. THUS, EMPLOYEE FORUM SHOPPING WOULD BE ENCOURAGED, IN OUR OPINION, NOT AVOIDED.

A CLEAR DISTINCTION BETWEEN AN EQUAL EMPLOYMENT AND MERIT PRINCIPLE COMPLAINT IS DIFFICULT, IF NOT IMPOSSIBLE, AND EMPLOYEES FREQUENTLY PERCEIVE THEIR PROBLEMS TO BE BOTH. PLACING THE ADJUDICATION OF THESE COMPLAINTS IN DIFFERENT ORGANIZATIONS WILL INVITE DUPLICATE OR TWO TRACK APPEALS ON THE SAME ISSUES SIMULTANEOUSLY, OR SEQUENTIALLY, TO EEOC AND CSC. IN ADDITION TO WASTING TIME, EFFORT AND MONEY, THIS SITUATION POSES A VERY REAL POTENTIAL FOR DIFFERING DEFINITIONS OF ISSUES, INCONSISTENT INTERPRETATIONS OF LAWS, REGULATIONS AND IRRECONCILABLE DECISIONS.

AN ADDITIONAL PROBLEM IN HAVING EEOC RESPONSIBLE FOR RECEIPT AND PROCESSING APPEALS IS THAT IT ESTABLISHES THE SAME KIND OF ROLE CONFLICT THAT THE CIVIL SERVICE REFORM PROPOSALS SEEK TO CORRECT. EEOC WOULD IN EFFECT BE THE ENFORCEMENT AS WELL AS THE ADJUDICATIVE AGENCY. IN THE CASE OF COMPLAINTS BY EEOC EMPLOYEES, EEOC COULD BECOME THE DEFENDENT AS WELL.

AS AN ALTERNATIVE TO THE PROVISION OF THE REORGANIZATION PLAN, WE ARE INCLINED TO FAVOR THE APPROACH TAKEN IN THE MARCH 2, 1978, PROPOSED LEGISLATION WHICH IS AS FOLLOWS:

"NOTWITHSTANDING ANY OTHER PROVISION OF LAW, AN EMPLOYEE WHO HAS BEEN AFFECTED BY AN ACTION APPEALABLE TO THE BOARD (MERIT SYSTEM PROTECTION BOARD) AND WHO ALLEGES THAT DISCRIMINATION PROHIBITED BY SECTION 2302(B)(1) OF THIS TITLE WAS BASIS FOR THE ACTION SHOULD HAVE BOTH THE ISSUE OF DISCRIMINATION AND THE APPEALABLE ACTION DECIDED BY THE BOARD IN THE APPEAL DECISION UNDER THE BOARDS' APPELLATE PROCEDURES."

THIS ALTERNATIVE WOULD AVOID MANY OF THE PROBLEMS WE MENTION AND SAVE CONSIDERABLE TIME BY HAVING ALL ISSUES OF A COMPLAINT DECIDED BY THE SAME ADJUDICATIVE BODY.

ADDITIONALLY, EEOC SHOULD BE GIVEN THE AUTHORITY TO INTERVENE, ON TITLE VII MATTERS, WITH ALL THE RIGHTS OF A PARTY IN ALL THE ADJUDICATORY PROCEEDINGS OF MSPB AND IN ANY SUBSEQUENT APPEALS TO THE COURTS.

OTHER MATTERS GIVING US CONCERN RELATE TO TITLE VII LITIGATION AUTHORITY FOR STATE AND LOCAL GOVERNMENTS AND THE HANDLING OF EEO CONTRACT COMPLIANCE ACTIVITIES.

TITLE VII LITIGATION AUTHORITY FOR STATE AND LOCAL GOVERNMENTS

SECTION 5 TRANSFERS FROM THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION TO THE ATTORNEY GENERAL ALL FUNCTIONS CONCERNING THE INITIATION OF LITIGATION WITH RESPECT TO STATE OR LOCAL GOVERNMENTS OR POLITICAL SUBDIVISIONS UNDER SECTION 707 OF TITLE VII. THE TRANSFER WOULD INCLUDE ALL NECESSARY FUNCTIONS RELATED THERETO, INCLUDING INVESTIGATION, FINDINGS, NOTICE AND OPPORTUNITY TO RESOLVE THE MATTER WITHOUT LITIGATION. THE WHITE

HOUSE RELEASE ACCOMPANYING THE PLAN STATES THAT THIS TRANSFER IS INTENDED TO CLARIFY THE ATTORNEY GENERAL'S AUTHORITY TO INITIATE LITIGATION AGAINST STATE AND LOCAL GOVERNMENTS ENGAGED IN A "PATTERN OR PRACTICE" OF DISCRIMINATION AND THAT EEOC'S AUTHORITY TO INVESTIGATE COMPLAINTS FILED AGAINST STATE AND LOCAL GOVERNMENTS IS IN NO WAY DIMINISHED. EEOC WILL REFER THOSE WARRANTING LITIGATION TO THE ATTORNEY GENERAL. THE WHITE HOUSE RELEASE FURTHER STATED THAT THE DEPARTMENT OF JUSTICE AND THE EEOC WILL COOPERATE SO THAT JUSTICE SUES ON VALID REFERRALS AS WELL AS ON ITS OWN "PATTERN OR PRACTICE" CASES.

THE REASON FOR THE TRANSFER SEEMS TO BE THAT WHILE THE ATTORNEY GENERAL HAS IMTERPRETED THE 1972 AMENDMENTS TO SECTION 707 OF TITLE VII AS AUTHORIZING HIM TO INITIATE, ON HIS OWN, "PATTERN OR PRACTICE" EQUAL EMPLOYMENT CASES INVOLVING STATE AND LOCAL GOVERNMENTS, CERTAIN DISTRICT COURTS CONCLUDED EITHER THAT THE ATTORNEY GENERAL CANNOT BRING SUCH SUITS AT ALL, OR THAT HE CAN DO SO ONLY AFTER A REFERRAL FROM EEOC.

WE BELIEVE THE PROPOSED TRANSFER RAISES TWO SIGNIFICANT ISSUES WHICH THE COMMITTEE MAY WISH TO CONSIDER.

FIRST, IT APPEARS THAT SECTION 5 COMPLETELY REMOVES EEOC'S AUTHORITY TO ROUTINELY MONITOR EMPLOYMENT PATTERNS AND PRACTICES IN STATE AND LOCAL GOVERNMENTS AS PART OF ITS REGULAR VOLUNTARY COMPLIANCE PROGRAM. WE BELIEVE THAT THE MONITORING OF

EMPLOYMENT PATTERNS AND PRACTICES IS MORE OF A PROGRAM FUNCTION THAN A LITIGATION FUNCTION, AND THAT IT IS BOTH CONSISTENT AND COMPATABLE WITH EEOC'S OTHER PROGRAMMATIC FUNCTIONS SUCH AS MONITORING EMPLOYMENT PATTERNS AND PRACTICES IN THE PRIVATE SECTOR. SINCE THE JUSTICE DEPARTMENT IS PRIMARILY A LITIGATIVE AGENCY, AND THE PRIMARY REASON FOR THIS PROPOSED TRANSFER IS TO PERMIT THE ATTORNEY GENERAL TO INITIATE HIS OWN "PATTERN OR PRACTICE" LITIGATION UNDER TITLE VII AGAINST STATE AND LOCAL GOVERNMENTS, THERE IS THE POSSIBILITY THAT THE PROGRAM FUNCTION MAY NOT RECEIVE THE COVERAGE FROM THE JUSTICE DEPARTMENT THAT IT WOULD FROM AN AGENCY WHOSE SOLE MISSION IS TO SEEK OUT AND ELIMINATE EMPLOYMENT DISCRIMINATION.

THE SECOND ISSUE WHICH THE COMMITTEE MAY WISH TO PURSUE FURTHER IS THAT THE DEPARTMENT OF LABOR, UNDER THE SUPERVISION OF THE ATTORNEY GENERAL, PRESENTLY HAS LITIGATION AUTHORITY OVER STATE AND LOCAL GOVERNMENTS UNDER THE EQUAL PAY ACT AND THE AGE DISCRIMINATION IN EMPLOYMENT ACT, AND THAT THIS AUTHORITY WOULD BE TRANSFERRED TO EEOC UNDER SECTIONS 1 AND 2 OF THE REORGANIZATION PLAN. THIS REPRESENTS SOMETHING OF AN ANOMALY SINCE EEOC DOES NOT HAVE LITIGATION AUTHORITY OVER STATE AND LOCAL GOVERNMENTS IN TITLE VII MATTERS EVEN THOUGH IT IS THE RECOGNIZED TITLE VII EXPERT WITHIN THE FEDERAL GOVERNMENT. MOREOVER, NEITHER THE REORGANIZATION PLAN NOR THE ACCOMPANYING WHITE HOUSE RELEASES CONTAINED ANY EXPLANATION FOR THE APPARENT INCONSISTENCY IN GIVING EEOC LITIGATION AUTHORITY OVER STATE

AND LOCAL GOVERNMENTS IN EQUAL PAY AND AGE DISCRIMINATION MATTERS, WHILE CONTINUING TO DENY EEOC LITIGATION AUTHORITY OVER STATE AND LOCAL GOVERNMENTS IN TITLE VII MATTERS.

ACCORDINGLY, THE COMMITTEE MAY WISH TO CONSIDER RECOMMENDING TO THE PRESIDENT THAT SECTION 5 OF THE REORGANIZATION PLAN BE AMENDED TO (1) LEAVE THE "PATTERN OR PRACTICE" PROGRAM RESPONSIBILITIES OVER STATE AND LOCAL GOVERNMENTS WITH EEOC, AND (2) TRANSFER THE ATTORNEY GENERAL'S TITLE VII LITIGATION AUTHORITY OVER STATE AND LOCAL GOVERNMENTS TO EEOC. WE BELIEVE THESE RECOMMENDATIONS ARE MORE IN LINE WITH THE PRESIDENT'S STATED GOAL OF CONSOLIDATING EQUAL EMPLOYMENT PROGRAMS INTO A SINGLE FEDERAL STRUCTURE THAN SECTION 5 AS PRESENTLY WRITTEN.

GOVERNMENT'S EEO CONTRACT COMPLIANCE ACTIVITIES

REORGANIZATION PLAN NO. 1 DOES NOT PROPOSE TO TRANSFER OR CONSOLIDATE AGENCY FUNCTIONS RELATING TO THE GOVERNMENT'S EEO CONTRACT COMPLIANCE ACTIVITIES WHICH ARE PRESENTLY CARRIED OUT BY THE DEPARTMENT OF LABOR AND ELEVEN OTHER AGENCIES. IN HIS FEBRUARY 23, 1978, MESSAGE TO THE CONGRESS, THE PRESIDENT SAID HE WOULD ISSUE AN EXECUTIVE ORDER TO CONSOLIDATE WITHIN THE LABOR DEPARTMENT THE GOVERNMENT'S CONTRACT COMPLIANCE ACTIVITIES UNDER EXECUTIVE ORDER 11246. THE PRESIDENT ALSO SAID THAT BY 1981, AFTER HE HAD AN OPPORTUNITY TO REVIEW HOW EEOC AND LABOR HAD EXERCISED THEIR NEW RESPONSIBILITIES, HE WOULD DETERMINE WHETHER FURTHER ACTION WOULD BE APPROPRIATE.

GAO RECENTLY COMPLETED A REVIEW OF THE GOVERNMENT'S MAJOR

EEO PROGRAMS FOR THE PRIVATE SECTOR. WE CONCLUDED THAT THERE IS SUBSTANTIAL DUPLICATION AND OVERLAP IN GOVERNMENT'S ADMINISTRATION AND ENFORCEMENT OF THE TITLE VII AND CONTACT COMPLIANCE PROGRAMS. ALTHOUGH THE TITLE VII AND CONTRACT COMPLIANCE PROGRAMS HAVE SIMILAR OBJECTIVES AND DUAL JURISDICTION OVER MANY OF THE SAME EMPLOYERS, THE PROGRAMS USE DIFFERENT APPROACHES AND HAVE FAILED TO ADEQUATELY COORDINATE THEIR ACTIVITIES WHEN EVALUATING THE EQUAL EMPLOYMENT OPPORTUNITY STATUS OF THESE EMPLOYERS.

BOTH PROGRAMS HAVE CONCENTRATED EVALUATION EFFORTS ON MANY OF THE SAME FEDERAL CONTRACTORS WHILE THE EQUAL EMPLOYMENT OPPORTUNITY POSTURE OF MANY OTHER FEDERAL CONTRACTORS AND PRIVATE EMPLOYERS REMAINS UNDETERMINED. IN SOME CASES, EEOC AND THE COMPLIANCE AGENCIES IMPOSED THE SAME REMEDIES ON CONTRACTORS AND, IN OTHER CASES, THE FINDINGS WERE DIFFERENT AND REMEDIES INCONSISTENT.

WE BELIEVE THAT THE UNDERLYING CAUSE OF MANY PROBLEMS BETWEEN THE TITLE VII AND CONTRACT COMPLIANCE PROGRAMS IS THE DIVISION OF RESPONSIBILITY BETWEEN EEOC AND LABOR AND THE GOVERNMENT'S OVERALL EXPERIENCE INDICATES TO US THAT THESE PROGRAMS SHOULD BE CONSOLIDATED WITHIN A SINGLE AGENCY.

PRESIDENT CARTER'S REORGANIZATION PLAN NO. 1, HOWEVER, WOULD CONTINUE THE DUAL JURISDICTION. WHILE THE PRESIDENT'S PLAN TRANSFERS TO THE EQUAL EMPLOYMENT OPPORTUNTIY COMMISSION SEVERAL NONDISCRIMINATION RESPONSIBILITIES CURRENTLY HELD BY

OTHER GOVERNMENT UNITS, INCLUDING SOME HELD BY THE DEPARTMENT OF LABOR, IT RETAINS THE CONTRACT COMPLIANCE PROGRAM IN LABOR. SOME IMPROVEMENT WOULD BE MADE BY THE PRESIDENT'S STATEMENT THAT HE WILL ISSUE AN EXECUTIVE ORDER ON OCTOBER 1, 1978, TO CONSOLIDATE THE CONTRACT COMPLIANCE PROGRAM--NOW THE RESPONSIBILITY OF LABOR AND ELEVEN COMPLIANCE AGENCIES--INTO THE DEPARTMENT OF LABOR.

ADMITTEDLY, PLACING ALL CONTRACT COMPLIANCE ACTIVITIES UNDER THE DEPARTMENT OF LABOR SHOULD IMPROVE MANAGEMENT CONTROL OF THIS FUNCTION. BUT, THE FUNDAMENTAL PROBLEM OF HAVING TWO AGENCIES--EEOC AND LABOR--WITH SIMILAR OBJECTIVES AND DUAL JURISDICTION OVER MANY OF THE SAME EMPLOYERS HAS NOT BEEN RESOLVED.

ONE ADDITIONAL OBSERVATION. WE BELIEVE THAT WITH THE ELIMINATION OF THE EQUAL EMPLOYMENT COORDINATING COUNCIL, A METHOD NEEDS TO BE PROVIDED TO RESOLVE DIFFERENCES BETWEEN EEOC AND THE PROPOSED OPM. ACCORDINGLY, WE SUGGEST THAT THE LANGUAGE IN THE MEMORANDUM OF UNDERSTANDING BETWEEN EEOC AND CSC BE INCORPORATED IN THE REORGANIZATION PLAN AS FOLLOWS:

> "IF OPM BELIEVES THAT A PROPOSED EEOC ORDER, REGULATION OR POLICY IS SERIOUSLY DELETERIOUS TO THE CIVIL SERVICE SYSTEM OR CONTRARY TO LAW; THE MATTER WILL BE REFERRED TO THE PRESIDENT FOR RESOLUTION."

THIS COMPLETES MY PREPARED TESTIMONY. MY COLLEAGUES AND I WILL BE PLEASED TO RESPOND TO ANY QUESTIONS THE COMMITTEE MAY HAVE.