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BY THE COMPTROLLER GENERAL

Report To The Congress

OF THE UNITED STATES

Further Improvements Needed In EEOC Enforcement Activities

In 1976 GAO reported that the Equal Employment Opportunity Commission's management problems were thwarting its enforcement activities. Since the report, EEOC has made many changes to correct its problems in handling individual charges of employment discrimination filed with it and in developing and investigating self-initiated charges.

Additional steps need to be taken to help ensure that the changes are effective. For example:

--EEOC needs to cease settling charges that are without reasonable cause because this undermines its enforcement activities.

--The Congress needs to give EEOC authority to sue State and local governments.

In October 1978 EEOC also started to assume enforcement responsibilities transferred to it by the President's Reorganization Plan No. 1 of 1978. Further, the Office of Management and Budget needs to advise the President to consolidate programs now administered by EEOC and the Department of Labor.

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COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON D.C. 20548

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To the President of the Senate and the
Speaker of the House of Representatives

This report discusses the Equal Employment Opportunity Commission's enforcement of title VII of the Civil Rights Act of 1964 and the transfer to the Commission of other Federal civil rights responsibilities under Reorganization Plan No. 1 of 1978. These laws prohibit employment discrimination on the basis of race, color, religion, national origin, sex, or age in public and private employment.

We are sending copies of this report to the Director, Office of Management and Budget, and to the Acting Chairman of the Equal Employment Opportunity Commission.

Milton J. Socolar

Acting Comptroller General
of the United States

COMPTROLLER GENERAL'S
REPORT TO THE CONGRESS

FURTHER IMPROVEMENTS NEEDED IN EEOC ENFORCEMENT ACTIVITIES

D I G E S T

The Equal Employment Opportunity Commission (EEOC) has taken steps to correct most of the problems pointed out in a 1976 GAO report. (See p. 6.) However, some of EEOC's actions may be thwarting its efforts to eliminate employment discrimination. (See p. 11.)

EEOC enforces title VII of the Civil Rights Act of 1964, which prohibits discrimination in employment on the basis of race, color, religion, sex, or national origin. (See p. 1.) GAO reviewed EEOC procedures and practices at its headquarters and 3 of 22 district offices. The three offices were "model" offices which EEOC used to test new procedures before implementing them nationally. (See p. 3.)

After GAO's 1976 report, EEOC introduced the "rapid charge process" to resolve discrimination charges filed with it. This process emphasizes prompt charge resolution through negotiated settlements which are obtained in face-to-face meetings among the charging party (employee), the respondent (employer), and EEOC staff. EEOC was settling about 50 percent of its charges through these negotiated settlements. (See p. 8.)

However, the positive results of this process are misleading. The rapid charge process has overemphasized obtaining settlement agreements with the result that EEOC has obtained negotiated settlements for some charges on which GAO believes there was no reasonable cause to believe that the charges were true. The settlement agreements for these charges have little substance--they normally provide for employers to remove information related to the charge from the charging party's personnel file--and they distort the results of the rapid charge process by inflating the number of settlements. (See p. 12.)

Negotiated settlements of these charges also undermine EEOC's credibility because

--charging parties and employers said they were pressured into settlements they disagreed with and

--charging parties were led to believe that, since the charges were resolved with settlement agreements, their charges had merit but EEOC handled them ineffectively. (See p. 17.)

GAO recommends that EEOC not obtain settlement agreements for charges that, absent a settlement, would be closed as no cause. When EEOC determines that persons have filed such charges, they should be advised to withdraw them or EEOC should close the charges with a finding of no cause. (See p. 26.)

EEOC is required to refer employment discrimination charges filed with it to State and local agencies that have their own employment discrimination laws. It has agreements with 65 of 91 such agencies and refers a significant number of charges to them, reimbursing them for some of the costs for resolving charges. However, there are more opportunities for EEOC to share its charge workload with these agencies, such as arranging with those 26 with whom it does not have agreements, to resolve charges. (See p. 19.)

EEOC also needs to file suit more timely once this decision has been made. GAO's analyses in two offices showed that EEOC averaged more than 7 months to file suits after informal settlement attempts failed. However, title VII requires charging parties to file suit within 90 days after receiving a notice of right-to-sue from EEOC. EEOC should establish similar time standards for filing suit in Federal court for charges on which it decides to sue, such as 90 days after the decision to litigate, to help expedite relief. (See p. 22.)

EEOC does not have authority to litigate charges filed under title VII of the Civil Rights Act of 1964 against a State or local government, but must refer them to the Department of Justice. Because of limited resources, Justice has not pursued many of these charges. Consequently, EEOC does not emphasize them in its enforcement activities.

Under the equal pay and age discrimination acts, EEOC can sue State and local governments. For consistency with other legislation and to ensure greater attention to this area, the Congress should amend title VII to authorize EEOC to litigate such charges. (See p. 23.)

EEOC has improved its system for addressing patterns and practices of employment discrimination, referred to as "systemic discrimination." Each district office has a systemic unit, which is under the management control of the district office but receives technical advice and direction from the headquarters systemic unit. GAO found that, in two of four district offices, management generally was not supportive of systemic activities because it used systemic staff to resolve individual charges. Consequently, the systemic program began operating slowly, and district offices averaged only about two systemic cases each by the end of fiscal year 1979. (See p. 32.)

EEOC's systemic program is similar to the Department of Labor's activities to enforce Executive Order 11246, which prohibits employment discrimination by Federal contractors and requires them to take affirmative action to employ minorities and women. Consequently, EEOC either had selected for investigation or was investigating employers even though Labor had recently reviewed them. GAO recommends that the Office of Management and Budget (OMB) advise the President that the two programs should be merged to eliminate duplication. A merger would be consistent with other consolidation changes made by President Carter under Reorganization Plan No. 1 of 1978, which was used to reorganize Federal enforcement programs dealing with employment discrimination. (See p. 34.)

GAO recommends that EEOC make other improvements in the systemic program, such as obtaining more complete data from employers about their employment of minorities and women and aggressively monitoring employers' compliance with conciliation agreements and consent decrees. (See pp. 36 and 37.)

AGENCY COMMENTS AND GAO'S EVALUATION

EEOC disagreed with some of GAO's conclusions and recommendations and stated that it was taking actions related to others. EEOC disagreed, in part, because it said that GAO's draft report was not clear in its use of certain terms related to rapid charge processing. GAO has clarified this in the final report, but believes that further improvements are needed. (See pp. 26 and 39.)

OMB said it generally concurred with GAO's findings that EEOC had made progress since GAO's 1976 report. (See p. 30.) But OMB did not agree with GAO's recommendation to consolidate EEOC's and Labor's programs, as well as some of GAO's recommendations to solve problems identified. GAO believes its recommendations will improve the Federal equal employment opportunity program. (See p. 39.)

Contents

ABBREVIATIONS

EEOC	Equal Employment Opportunity Commission
GAO	General Accounting Office
OFCCP	Office of Federal Contract Compliance Programs
OMB	Office of Management and Budget

GLOSSARY

Affirmative action	Steps taken by a respondent to remedy or eliminate the effects of employment discrimination.
Aggrieved person	The person actually affected by the unlawful employment practice alleged in the charge. Usually this person is the charging party, but sometimes an organization or person acts as a charging party and files a charge on behalf of an aggrieved person.
Cause determination and no-cause determination	The decision made by the Commission in its administrative processing of a charge as to whether or not there is reasonable cause to believe that the charge is true.
Charge	In the employment discrimination context, a claim that an unlawful employment practice has occurred which is filed by or on behalf of an aggrieved person with the Commission or with a State or local fair employment practice agency.
Charging party	The individual person, union, or organizational entity that files a charge of employment discrimination.
Class	As used in the term "discrimination on a class basis," it refers to discrimination on the basis of race, color, religion, sex, national origin, age, or (in the Federal sector) handicap. When used in the term "class complaint," it refers to discrimination against a group on the bases listed.
Conciliation	The process engaged in by the respondent, the Commission, and the charging party/ persons aggrieved to attempt to resolve a charge of employment discrimination, after the Commission has made a finding that there is reasonable cause to believe that the charge is true.
Litigation worthiness	A standard used by the Commission in making its determination whether or not reasonable cause exists to believe that a charge is true. When the Commission finds reasonable

	cause under this standard, it indicates that the Commission has made a determination that the claim has sufficient merit to warrant litigation if the matter is not thereafter conciliated by the Commission or by the charging party.
Negotiated settlement	An agreement reached between the person aggrieved by alleged employment discrimination and the respondent, which resolves the charge of discrimination at issue. This occurs before the Commission has made a cause or no-cause finding on the charge. In signing such an agreement, the Commission commits itself only to cease the administrative processing of the charge against the respondent; it does not approve the terms of the agreement.
Reasonable cause	Title VII requires that the Commission must determine whether or not there is reasonable cause to believe that a particular charge of discrimination is true. To find reasonable cause in backlog cases, the Commission must determine whether, upon consideration of all the evidence, a reasonable man could conclude that the respondent has engaged in an employment practice made unlawful by title VII. If under the circumstances there is at least one set of fact findings which a reasonable man might make which would, in the Commission's view of the law, constitute a violation of title VII, then the decision must be "cause." See "Litigation worthiness," above, for the reasonable cause standard used in the processing of current cases.
Remedy (noun)	Those actions which are determined to be necessary to correct the effects of the employment discrimination identified through the charge process.
Respondent	The employer, union, or employment agency against which an employment discrimination charge has been filed.
Systemic discrimination	In the employment discrimination context, an unlawful employment practice or set of practices which exists in a particular component, or all components of a respondent's business and which has an adverse

impact upon members of a class or classes. Systemic discrimination focuses upon patterns of discrimination, as contrasted with individual acts of discrimination which may occur because of the specific interaction of individual persons.

Note: Glossary provided by EEOC.

CHAPTER 1

INTRODUCTION

Equal employment opportunity is a right of every American and a key factor in realizing the fruits of the American way of life. A job and its earnings essentially dictate how a person lives since they affect access to housing, education, health services, and alternatives for use of free time. Because many citizens were denied equal employment opportunity through discriminatory employment practices, a broad range of laws and Executive orders were enacted to ensure that all people who want to work have an equal opportunity to pursue the work of their choice to the limits of their qualifications and desires.

The Equal Employment Opportunity Commission (EEOC) is the leading Federal agency for enforcing Federal equal employment opportunity laws and regulations and for coordinating such programs. EEOC was created by title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000e), which became effective July 2, 1965, to enforce the law's prohibition against employment discrimination on the basis of race, color, religion, sex, or national origin in the classification, selection, hiring, upgrading, benefits, layoffs, or any other condition of employment.

AUTHORITY AND RESPONSIBILITY

EEOC's jurisdiction under title VII extends to virtually all non-Federal employers with 15 or more employees, including private companies, State and local governments, and educational institutions. Title VII authorizes EEOC to attack employment discrimination in two ways: investigating individual charges alleging employment discrimination filed with it and initiating investigations to identify and eliminate patterns or practices of employment discrimination, commonly called systemic discrimination. If EEOC is unable to resolve a charge informally through conference, conciliation, or persuasion, it or the charging party can sue on the matter in Federal court; however, if the charge is against a State or local government, then the Department of Justice must bring the suit.

President Carter's Reorganization Plan No. 1 of 1978 increased EEOC's authority and responsibility and made it the principal agency for enforcing Federal equal employment opportunity requirements. The purpose of the plan was to consolidate Federal equal employment opportunity activities and to lay a foundation for a unified, coherent Federal structure to combat job discrimination in all its forms. The plan transferred the following responsibilities to EEOC between July 1978 and July 1979.

--Enforcement of section 717 of title VII, as amended (42 U.S.C. 2000e-16), and Executive Order 11478, as amended, which prohibit employment discrimination against Federal employees and require Federal agencies to develop affirmative action programs for employing minorities and women (formerly enforced by the Civil Service Commission).

--Enforcement of section 501 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 791), which prohibits discrimination by Federal departments and agencies against handicapped individuals in Federal employment and requires those entities to develop affirmative action programs for employing handicapped individuals (formerly enforced by the Civil Service Commission).

--Enforcement of the Fair Labor Standards Act Amendments of 1974, as amended (29 U.S.C. 633(a)), which prohibits age discrimination in Federal employment (formerly enforced by the Civil Service Commission).

--Enforcement of the Equal Pay Act of 1963, as amended (29 U.S.C. 206(d)), which prohibits non-Federal employers from paying different wages, because of sex, to men and women doing substantially equal work in the same establishment (formerly enforced by the Department of Labor).

--Enforcement of the Age Discrimination in Employment Act of 1967, as amended (29 U.S.C. 621-634), which prohibits discrimination by non-Federal employers on the basis of age (formerly enforced by the Department of Labor).

--Administration of section 715 of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000e-14), which requires Federal departments and agencies to coordinate the implementation of equal employment opportunity legislation, orders, and policies (formerly a responsibility of the Equal Employment Opportunity Coordinating Council).

ORGANIZATIONAL STRUCTURE

EEOC is headed by a Chairman (hereafter referred to as the Chair) and four other commissioners appointed to 5-year terms by the President with the advice and consent of the Senate. The Chair is responsible, among other things, for EEOC policy implementation and administration, and for carrying out the laws EEOC enforces.

EEOC's General Counsel, appointed for a 4-year term by the President with the advice and consent of the Senate, conducts

litigation under title VII, represents EEOC when it is a defendant in a legal suit, and provides legal advice to it.

The Executive Director, under the Chair's direction, manages and administers EEOC's staff, policies, procedures, and programs. The Executive Director administers most of EEOC's activities in 22 district and 27 area offices nationwide. (See organization chart, app. I.)

RESOURCES

EEOC's staff and budget have grown as its responsibilities have increased. Between June 30, 1975, and September 30, 1979, EEOC's personnel increased by about 72 percent, as shown in the table below.

EEOC Staff Assigned (note a)

Location	June 30, 1975	Sept. 30, 1979	Percent increase
Headquarters	565	963	70.5
Field	1,549	2,667	72.2
Total	2,114	3,630	72.4

a/Authorized staffing was 2,384 and 3,804, respectively.

Similarly, EEOC's budget has grown from $55 million in fiscal year 1975 to $119.4 million in fiscal year 1980.

OBJECTIVES, SCOPE, AND METHODOLOGY

We made our review to follow up on our previous report "The Equal Employment Opportunity Commission Has Made Limited Progress In Eliminating Employment Discrimination" (HRD-76-147, Sept. 28, 1976). We did our work at EEOC headquarters in Washington, D.C., and the three "model" district offices in Baltimore, Chicago, and Dallas between January and September 1979. We selected these three offices because they adopted the new EEOC field office structure and charge processing procedures on September 26, 1977. The other 19 nonmodel district offices did not adopt most of these changes until January 29, 1979, after the new procedures were tested in the 3 model offices.

Our review focused on EEOC's

--actions to address problems discussed in our 1976 report and

--implementation of the new responsibilities it received under Reorganization Plan No. 1 of 1978.

As part of our review, we conducted a questionnaire survey to obtain the perceptions of a sample of employers and charging parties that experienced EEOC's new charge processing procedures at its model district offices between September 1977 and April 1979. The survey included reviewing the files for some of the sampled charges to ascertain the nature of evidence supporting each charge. (See app. III for discussions of our sample selection procedures and our statistical analysis for the questionnaire survey.)

The detailed charge processing data used in chapter 2 were taken from unverified manually prepared EEOC reports. While we found errors in the data, we did not make a complete analysis of data reliability because it was not practicable. Instead, we used the data provided since they were used by EEOC and were the only data available. EEOC officials acknowledged that the data were not totally reliable and stated that they were developing and installing a computer supported data handling and reporting system to address such problems.

This review also showed that some of the problems noted in our earlier report "Major Federal Equal Employment Opportunity Programs for the Private Sector Should Be Consolidated" (HRD-78-72, June 9, 1978) continue.

CHAPTER 2

EEOC HAS MADE SIGNIFICANT IMPROVEMENTS IN ENFORCING TITLE VII

EEOC has made many significant improvements in its procedures and practices since 1976 that increase its ability to attack employment discrimination. However, we found it difficult to isolate the impact that EEOC's enforcement activities have had on the employment status of minorities and women.

A PROFILE OF EEOC'S TASK

During the fourth quarter of 1978, Labor reported that the U.S. civilian work force totaled about 101.5 million. EEOC's jurisdiction covers about 70 million of these workers, including about 15.5 million at various levels of government.

Inherent in the law and court decisions is the presumption that in the absence of all discrimination, the racial, ethnic, and sexual composition of an employer's work force in all job categories should reasonably represent the composition of the labor market area from which the employer gets workers.

If this composition is not found, then underrepresentation exists. Appendix II, which compares EEOC data on the status of minorities and women employed in the United States between 1966 and 1978, shows that an underrepresentation of minorities and women continues in many job categories, although some progress has been made. For example, while the underrepresentation gap for white women in 1966 in the officials and managers category was 18.9 percentage points (that is, the difference between their participation rate in total employment of 28.0 percent and in the officials and managers category of 9.1 percent), the gap was reduced in 1978 by 2.4 percentage points to 16.5 percent. This 2.4 percentage points gain is also shown in (1) the difference between the change in the participation rates for white women in total employment of 3.7 percentage points and (2) the officials and managers category of 6.1 percentage points. Similar analyses showed improvements for minorities and women in other categories, especially for white women in the professional and technician categories where their underrepresentation gaps were reduced from 9.0 and 8.3, to 1.3 and 0.6 percentage points, respectively.

However, the table also shows that minorities and women generally continue to experience the effects of past employment practices. White women, for example, continue to hold office and clerical positions at participation rates more than twice their rate

of representation in total employment. The same applies to minority women in service worker occupations and minority men working as unskilled laborers; both groups participate at rates greater than their representation in total employment.

Similarly, Department of Labor data showed that since 1967, the wage and salary differences have increased between white males and minorities and women. In addition, while all full-time wages and salaries had more than doubled since 1967, white women's wages and salaries increased at a lesser rate than did white male wages and salaries. Women generally enter the work force at lower wage levels.

EEOC has been in existence about 15 years, and during this time it has received thousands of individual employment discrimination charges and resolved many of them with some type of settlement through informal means of conference and conciliation and through formal litigation. For example, from its reorganization on January 29, 1979, to September 30, 1979, EEOC reported that 23,403 individual charges were resolved. Of these, about 30 percent (or 6,910 charges) were resolved with some kind of settlement between the charging party and the employer.

Yet, as stated in our 1976 report, we cannot determine to what extent EEOC's activities have contributed to improving the employment status of minorities and women. Besides EEOC's activities, societal behavior, economic conditions, union agreements, labor market conditions, and equal employment opportunity enforcement activities of other Federal agencies have influenced the improvements.

EEOC ACTIONS AFTER OUR PRIOR REPORT

In 1976 we reported that some of interrelated factors, including many management problems, limited EEOC's impact on employment discrimination. As a result of these problems, EEOC was unable to resolve individual charges in a timely manner, and most charges were closed administratively without any EEOC enforcement actions. Since our 1976 report, EEOC has made procedural and administrative changes that addressed many problems discussed in that report and improved its ability to deal with employment discrimination. A major contribution to EEOC's success in instituting these reforms was the stability in its top management positions.

Specifically, changes EEOC has instituted include:

--Establishing an Office of Policy Implementation to centralize and systematize new equal employment opportunity policy through guidelines, interpretations, and rulings.

--Establishing a field office structure that consolidated all authority and responsibility for charge resolutions in the district offices. EEOC eliminated its five regional litigation centers and seven regional offices and established a district and area office structure that provides broader geographic coverage and makes EEOC more accessible.

--Expanding EEOC's relationship with State and local government fair employment practices agencies through contracts for resolving charges and enhancing the agencies' abilities to resolve charges. EEOC adopted a uniform funding formula for resolving charges, tying it to the agencies' performance to provide an incentive for them to increase charge resolutions.

--Training EEOC personnel and State and local government fair employment practices agencies' staffs to administer the new charge processing system. EEOC officials said 4,000 persons have completed the training program.

--Replacing the clerical staff with professional staff in the charge intake unit, which screens incoming complaints to eliminate those that are untimely and not within EEOC's jurisdiction.

--Locating EEOC attorneys in district offices to work with equal opportunity specialists when investigating charges and developing a single standard of evidence for deciding whether cause exists on a charge and for litigation. This avoids additional investigation when charges cannot be settled informally and need to be litigated.

--Establishing a separate charge processing system for resolving backlogged charges through negotiation, in which charging parties are contacted to identify active charges and settle them. EEOC reported that by using these procedures, the June 30, 1975, backlog of about 126,000 charges had been reduced about 56 percent, to about 55,000 charges, by September 30, 1979. EEOC planned to have the backlog cleared by the end of fiscal year 1982.

--Establishing a management accountability system which includes plans for on-line computer support to give field managers the capability for constant program feedback on the status of the active workload and on the progress in meeting their program objectives.

EEOC reported that, during the first 8 months its new rapid charge and extended processing procedures were in operation in all its field offices, the following benefits were achieved:

Number of persons benefited	6,281
Number of persons benefited monetarily	2,858
Amount of benefits	$9,866,000
Amount per person benefited monetarily	$3,400
Number of persons receiving other than dollar benefits	3,423

Significant changes in charge processing

Along with the foregoing, EEOC has made three additional changes in its charge processing procedures. These procedures, as discussed below, greatly enhance its potential effectiveness in enforcing title VII and concern the processing of individual charges and the development of systemic and class charges.

Rapid charge process

Perhaps EEOC's most important change since 1976 was the introduction of the "rapid charge process" to resolve new individual charges. (See ch. 3.) The rapid charge process heavily emphasizes the charging party and the respondent negotiating quick no-fault settlements of charges. Although not a party to this negotiation, EEOC acts as a moderator/advisor. If the charge cannot be resolved in the rapid charge process, EEOC may send the charge to its extended processing unit for additional investigation and conciliation, as was formerly done with most charges.

EEOC tested the rapid charge process in its three model offices from September 26, 1977, to January 26, 1979, and implemented it in all 22 district offices on January 29, 1979. EEOC's success at getting settlements through the rapid charge process was demonstrated during the first 8 months that the process was in use in all offices. EEOC data showed that through September 30, 1979, of the 8,819 charges closed from January 29, 1979, about 50 percent were negotiated settlements.

EEOC also reported that the resolutions took an average of 44 days from the date the charge was filed to the date it was resolved. In addition, we found no unmanageable accumulation of new unresolved charges that were older than 180 days, as we did during our earlier review. However, the inventory of unresolved charges over 180 days old was increasing in the Baltimore and Dallas district offices and could, without better management, become unmanageable.

Comparable data are not available for EEOC settlements before January 29, 1979, under the old processing procedures. However, we reported in 1976 that EEOC achieved settlements in about 11 percent of the charges resolved between July 1, 1972, and March 31, 1975, and that resolutions took an average of about 2 years to achieve. Also, EEOC officials stated that under the rapid charge process the average monetary benefit per settlement has increased to $3,400 from the $1,400 under the old procedures, or an increase of about 150 percent.

Systemic program

Another important change was EEOC's designation of a separate unit in each district office to develop and investigate systemic charges. EEOC also established criteria for these units to use in selecting employers to investigate and procedures for processing systemic charges.

EEOC previously based its systemic work primarily on expanding individual charges filed with it; however, its systemic investigations are now primarily self-initiated, based on EEOC's analyses of data on employers' work forces. To initiate a systemic charge, EEOC district offices must demonstrate that the charge meets at least one of several targeting criteria. These criteria, in essence, require district offices to demonstrate that the employer:

--Has low representation of minorities and women in its employment (1) based on their availability in the labor force or (2) as compared to other employers in the same labor market who employ persons with the same general level of skills.

--Employs minorities and women primarily in lower paying jobs.

--Uses employment policies and practices, not justified by business necessity, that adversely affect minorities and women in hiring, assignment, promotion, etc.

To facilitate implementation of the program by its field offices, EEOC is focusing on worst cases first, that is, cases that have the greatest potential for success, and on local and regional employers. Field offices are to target employers with 500 to 2,500 employees, while headquarters targets employers with over 2,500 employees. As of September 1979, EEOC had 45 systemic charges under investigation that were developed under its new procedures.

Early Litigation Identification program

To fill the gap in coverage between the rapid charge processing of individual charges, which are usually narrow in scope, and systemic charges, which cover broader issues, EEOC instituted

a program to expand individual charges that have a potential impact for a class of persons, such as pregnant women. For some charges, a remedy for the charging party on an individual charge would not provide a remedy for other similarly situated individuals or preclude them from being subjected to the same discrimination, unless EEOC expanded the charge and settlement to include them.

This Early Litigation Identification program was instituted in April 1979. Although charges selected for expansion are processed in the district office extended processing unit instead of in the rapid charge unit, EEOC attempts to settle or conciliate these charges the same way as an individual charge.

As of September 30, 1979, EEOC had identified 693 charges under this program, of which 636 charges were still active.

Charge status		Number
Charges identified		693
Disposition of charges:		
Dropped from program	5	
Withdrawn:		
With settlement	5	
Without settlement	2	
Settled or conciliated	42	
Charging party given right-to-sue notice	3	57
Charges on hand--September 30, 1979		636

For fiscal year 1980, EEOC planned to have a workload of 723 cases, an average of about 33 cases for each district office.

CONCLUSIONS

EEOC's organizational changes and new procedures and processes go a long way toward addressing its past problems and enabling it to enforce title VII effectively. As of September 30, 1979, however, many of these improvements represented only the potential for success because they were still relatively new and in their implementation stages. Moreover, some additional matters need to be considered to help ensure that EEOC's reforms fulfill their potential, such as:

--Not settling charges under the rapid charge process that lack reasonable cause and authorizing EEOC to sue State and local governments under title VII. (See ch. 3.)

--Improving the collection of employment data from private employers and aggressively monitoring conciliation agreements and consent decrees. (See ch. 4.)

CHAPTER 3

FURTHER IMPROVEMENTS NEEDED IN INDIVIDUAL CHARGE PROCESSING

Under the rapid charge processing system, EEOC resolves about 50 percent of the charges with negotiated settlements. However, some charges on which no-cause closures appear appropriate to us are being resolved with settlement agreements--this undermines EEOC's credibility. Therefore, EEOC should not settle such charges if there is not reasonable cause to believe that the charges are true.

EEOC has significantly increased State and local government fair employment practices agencies' contributions to resolving charges; however, it needs to explore additional opportunities for sharing more of its workload with them. Also, because it has averaged over 7 months to file suit after deciding to litigate a charge, EEOC needs to establish standards for filing suit timely. Furthermore, EEOC's lack of authority under title VII to sue State and local governments has retarded its ability to pursue charges against them; the Congress should amend title VII to authorize such suit by EEOC.

SOME CHARGES SHOULD NOT BE CLOSED WITH NEGOTIATED SETTLEMENT AGREEMENTS

As discussed in chapter 2, EEOC's rapid charge process has greatly improved the processing and resolution of individual charges. However, in implementing the rapid charge process, EEOC field offices have overemphasized the negotiated settlement aspect of the process when they obtained negotiated settlement agreements instead of dismissing charges when there is not reasonable cause to believe that they are true. This has distorted the statistics on the results of the rapid charge process and tended to undermine EEOC's credibility with charging parties and employers.

The rapid charge process

Section 706 of title VII requires EEOC to investigate charges and make reasonable cause determinations. If, after an investigation, EEOC concludes that a charge is without merit (no reasonable cause), it is to be dismissed; if the charge has merit (reasonable cause exists), EEOC is to attempt to eliminate the alleged unlawful employment practice through informal methods of conference, conciliation, and persuasion. If an informal settlement is not achieved, EEOC can either litigate the charge or issue the charging party a right-to-sue letter.

EEOC believes that section 706 does not preclude it from settling a charge at any time without making a reasonable cause determination. EEOC officials said such settlements are consistent with the means used to resolve legal disputes in other areas, such as contracts, torts, and labor-management relations. Accordingly, EEOC's rapid charge process encourages its field offices to obtain negotiated settlements for individual charges.

Under the rapid charge process, all complaints filed with EEOC are screened in a charge intake unit to make a preliminary determination of whether EEOC has jurisdiction and whether the charge was filed on time. For complaints which are filed on time and are within EEOC's jurisdiction, the intake unit generally writes a statement of the charge, obtains information about the employer's treatment of other employees in similar situations, and obtains the names of witnesses. The charge is then forwarded to a factfinding unit for further processing and investigation.

Factfinding consists of EEOC's obtaining the facts on a charge from both the charging party and employer (respondent), and EEOC's attempt to get the parties to agree on a resolution. In the factfinding unit an equal opportunity specialist generally prepares an investigation plan, contacts both the charging party and respondent by telephone, and establishes a factfinding conference date. EEOC generally makes a limited investigation of the charge, which usually entails sending a questionnaire to the respondent and interviewing witnesses and the charging party.

The factfinding conference is held to bring the charging party and the respondent together in a face-to-face meeting to discuss the charge and the facts which EEOC obtained. The conference places emphasis on the parties' achieving a negotiated settlement. If a settlement is reached, EEOC prepares a "no-fault settlement agreement" which is signed by all the parties: the charging party, respondent, and EEOC. In signing the agreement, EEOC does not judge the merits of the charge or the settlement. If settlement is not reached during the conference, EEOC may either close the charge by issuing a no-cause decision (no violation of title VII) or investigate the charge further for possible conciliation or litigation. As discussed earlier, EEOC data showed that through September 30, 1979, about 50 percent of the charges were settled with agreements.

Settlement agreements obtained for questionable charges

The three district offices we reviewed strongly emphasized obtaining negotiated settlements of all charges. Consequently, they resolved some charges through negotiated settlements rather than making no-cause determinations, even though available evidence,

obtained either before or during the factfinding conference, suggested that there was not reasonable cause to believe the charges were true; that is, the charges would have been closed as no cause if they had not been settled. At one district office, our review showed that 31 (25 percent) of 120 sample charges that were resolved through negotiated settlement agreements appeared to lack reasonable cause.

Typically, these charges involved individuals who were fired for alleged job infractions, such as excessive absenteeism, poor job performance or work habits, and violations of company policy. These charges were generally work grievances, and the information EEOC developed through factfinding did not substantiate a title VII violation; as a result the settlement agreements generally did not provide for substantial relief. It was not uncommon for such settlement agreements to provide only that the charging party not sue on the charge and that the respondent (1) purge the charging party's employment records of all information related to the charge and (2) give the charging party a neutral employment reference consisting only of the dates of employment and positions held. In some instances, the respondent also agreed to pay the charging party a sum of money, not to contest the charging party's unemployment compensation claim, or to change its records to show the charging party resigned and was not fired.

For example, a black male filed a charge alleging racial discrimination in his firing. He stated that he was fired from his job as a bank mail driver because he allowed someone else in his car. He said that he did not have anyone in the car, and that he was fired because of his race. Before the factfinding conference, the respondent provided EEOC information which showed that the complainant (1) was a bank driver who delivered bank documents, including canceled checks and securities, between bank branches and (2) was fired for violating bank policy because he had alcoholic beverages in his bank car, was intoxicated while on duty, and had someone who was not a bank employee in the car. The respondent provided EEOC depositions from bank employees who attested to, among other things, the complainant's actions and threats he made that he would file a charge with EEOC if he was fired for being intoxicated. The charge was resolved with a negotiated settlement agreement which stated that the respondent would purge the complainant's records of all data related to the charge and give him a neutral reference.

In another case, a black female charged that, while on 2 days of sick leave, she was fired because of her race from a job as a nursing assistant at a nursing home, although she had always received satisfactory ratings and had received no complaints about her work. She also alleged that a Caucasian nursing assistant,

whose work was unsatisfactory, was allowed to take time off whenever she wanted. Before the factfinding conference the respondent submitted EEOC data which showed, among other things, that (1) the charging party had a history of difficulty in complying with the respondent's attendance requirements and had been warned about this, (2) for the 3 days before she was fired, the charging party had failed to notify the respondent of her absence, the reasons for it, and how long it would last, and she could not be contacted, (3) the Caucasian nursing assistant had not been treated differently, and (4) about 87 percent of the respondent's nursing assistants were black. The charge was settled with an agreement which provided that the respondent would eliminate from the charging party's records all data related to the charge and, if another employer asked about the charging party's employment with the respondent, only the dates of the charging party's employment and the positions held would be provided.

Such settlement agreements were obtained even though information provided before or during the factfinding conferences strongly indicated that there was no reasonable cause to believe the charges were true. EEOC appeared to obtain such agreements because of its strong emphasis during the rapid charge process on resolving charges with settlement agreements. For example, although a fact finder drafted a no-cause determination for a charge which was not settled during factfinding, the charge was resolved with a settlement agreement because the respondent later telephoned and stated that he would sign a settlement agreement the fact finder had proposed during the factfinding conference.

Given the emphasis on reaching a settlement, EEOC staff greatly influenced parties to agree to negotiated settlements. One EEOC district office director stated that about 35 percent of the district's negotiated settlements were probably of questionable merit. He also said that about 15 percent of no-cause decisions were made before the factfinding conference, many charges were settled by telephone, and about 30 percent of all settlements were made before the factfinding conference. The director at another office echoed these views, stating that most settlements occurred without a factfinding conference, and that a high percentage of settlements were inherently no cause. Both directors said that settlement agreements are negotiated on charges that are really without merit, because, under the rapid charge process and during the factfinding conference, the EEOC staff is not to judge the merits of a charge, but only to get the parties to settle it.

Therefore, EEOC's settlement rate of about 50 percent seems to overstate the results of its rapid charge process because it includes the settlements of charges that should have been closed as no cause.

In addition, the settlement of charges lacking reasonable cause is allowing individuals to abuse the charge process by filing discrimination charges to get benefits under title VII not related to discrimination, such as "clean" work records and "neutral" references.

EEOC headquarters officials stated that the agency must accept every title VII complaint even though many are in the nature of grievances that allege discrimination. Some respondents may settle these charges knowing that, if they do not, the charges will come up again in another form, costing them additional time and money to defend. Also, these officials said that a systematic approach to obtaining settlements before a full investigation and resolution of a charge on its merits is critical to any high-volume complaint operation to prevent a substantial charge backlog. Since title VII requires EEOC to accept a charge if it alleges discrimination, its caseload contains a variety of weak to strong charges. They added that the settlement of weak cases usually provides minimal relief, which is appropriate. According to the officials, if weak charges could not be settled early in the process, they would require full investigation which would be wasteful of resources that could be used more productively for cases of greater merit.

We do not believe that charges lacking reasonable cause should be settled. When EEOC develops information, either before or during the factfinding conference, showing that a charge appears to lack reasonable cause, EEOC should either advise the charging party to withdraw it, or close it as no cause. As discussed on pages 17 through 19, charges lacking reasonable cause should not be resolved with settlement agreements. Moreover, statistics on such settlements distort the results of the rapid charge process by inflating the number of "positive" resolutions and imply that more charging parties are getting substantive relief than is the case. Also, some charging parties' comments showed that they were led to believe that the charges had merit because they were resolved with settlement agreements, but that EEOC did not do enough to get them an adequate settlement. (See pp. 18 and 19.)

Charging party and respondent satisfaction with rapid charge process differ

We sent a questionnaire to a random sample of respondents and their charging parties who had experienced the rapid charge process at the three model offices. (See apps. III and IV.) We asked them about their satisfaction with how EEOC processed their charges and requested them to provide any other comments about their experiences with EEOC that they wished to make.

Our questionnaire survey showed that charging parties and respondents differ in their satisfaction with the rapid charge process. Most respondents were satisfied with the process, whereas charging parties had mixed opinions on it.

Respondents mostly satisfied

Most respondents replying to our questionnaire were satisfied with the way EEOC resolved the charges against them. (See app. III.) For example, at least 69 percent of the respondents said that they had an adequate opportunity to present their side of the dispute, were satisfied with the EEOC investigator or fact finder, and believed that the EEOC staff was qualified, thorough, and amiable. However, only about 57 percent said the staff was impartial. The respondents also were satisfied with the procedures EEOC used to obtain the facts and to reach settlement on the charges.

Charging party satisfaction varied

Charging parties had mixed feelings about their experience with the rapid charge process: they were satisfied overall with the EEOC personnel, but not with the settlements and how they were reached. (See app. III.) For example:

--About 58 percent thought that the EEOC investigator or fact finder got most or nearly all of the facts on their cases, while about 30 percent did not think so.

--About 59 percent thought that the fact finder had adequate control of the factfinding conference, while about 25 percent thought control was poor.

--About 51 percent were satisfied with the investigator or fact finder assigned to their case, and about 35 percent were not.

--About 50 percent were satisfied with the way the investigator or fact finder got the facts in their cases, while about 31 percent were not.

On the other hand, charging parties tended to be more dissatisfied than satisfied on issues dealing with their settlements. For example:

--About 44 percent felt dissatisfied with the way the investigator or fact finder helped them reach a final settlement, while about 41 percent were satisfied.

--About 48 percent were dissatisfied overall with the way their charges were handled, while about 42 percent were satisfied.

--About 47 percent were dissatisfied with their settlements, and 42 percent were satisfied.

EEOC credibility with public undermined

The analysis of questionnaire responses indicated that EEOC's emphasis on resolving charges lacking reasonable cause with settlement agreements was undermining its credibility and title VII enforcement efforts. These settlements appeared to explain the divergences in respondents' feelings about EEOC impartiality and in charging parties' opinions about their settlements.

As shown in appendix IV, about 22 percent of the respondents that replied to our questionnaire were dissatisfied overall with the way the charges against them were resolved. Our analysis of their narrative comments showed they were dissatisfied because they said EEOC had pressured them into executing settlement agreements for charges that they believed were without merit. These respondents stated that the EEOC fact finder or investigator pressured, coerced, harassed, intimidated, or blackmailed them into agreements with threats of lengthy and costly investigations and requests for employment data if they refused to settle. At times, this occurred even though the EEOC staff had admitted that the charges had no merit.

Respondents said it was cheaper for them to bow to EEOC pressure and pay charging parties "token" or "nuisance" fees of $50 and $100 to settle charges, rather than to be involved in lengthy and costly formal investigations. They characterized these settlements as the lesser of two evils. One respondent said that although his work force was 100 percent black and 90 percent female, he still settled charges filed against him although none were found meritorious. Specific comments the dissatisfied respondents had included the following:

--Factfinding was a sham, charade, or farce.

--EEOC staff was not neutral or impartial, but biased against respondents and acted as advocates for charging parties--i.e., respondents were deemed guilty and had to prove their innocence.

--EEOC was more interested in getting the charges resolved with an agreement, regardless of the facts and merits of the charges.

--EEOC staff believed that they had to get something for the charging parties and pressured respondents to pay them money or to give them other benefits, such as a neutral employment reference or "clean" work record to which they were not entitled.

One respondent's comments, extracted below, appeared to best capsulize dissatisfied respondents' perceptions of the rapid charge process. The respondent stated that, in general, the rapid charge process is very helpful to complainants and respondents in routine cases, but that EEOC

> "* * * is misusing and abusing its authority in selected cases against employers to reach results that it wishes to see without adequate basis for its positions under the law. The broad, almost unlimited, investigating authority is often used as a bargaining tool by investigators to coerce employers into settlements simply because of the great expense that would be incurred in preparing evidence for the agency.* * * The agency is sending a message to employers that it will make it more convenient to settle charges brought before it without regard to the merits of an individual charge than to attempt to show that the charge has no basis in fact.* * * It is apparent that the agency is currently more concerned with establishing a record of substantial success in resolving complaints than it is with eliminating discrimination in employment. This program * * * will * * * build up substantial ill will in the business community."

Respondents' comments also indicated that, for some, their satisfaction with the rapid charge process was superficial and tenuous. About 26 percent of the respondents who said they were satisfied with how EEOC processed their charges indicated in their narrative comments that the charges were without merit and that they were satisfied only because the settlement was favorable to them--e.g., provided for neutral references and clean work records. Their criticisms of the settlement process were the same as the comments made by dissatisfied respondents.

The settlement of charges lacking reasonable cause may be creating an unfavorable image for EEOC among charging parties. Although all charging parties that replied to our questionnaire had their charges resolved with settlement agreements, about 48 percent were dissatisfied with the rapid charge process. Their narrative comments showed that they were dissatisfied mainly because the settlements did not give them what they wanted--reinstatement with back pay or a larger cash payment. Among other things, charging parties stated that (1) they were pressured by

EEOC into accepting less, either with threats of the charges being closed for no cause or with statements that the proposed settlements were the best they could get, (2) the EEOC staff, during the factfinding conference, ignored their evidence, accepted respondents' statements, and were intimidated by respondents, and (3) they were presented the agreements to sign and were not given the opportunity to hear the respondents' arguments and were not aware of or consulted during settlement negotiations.

Based on our review of charge files and analyses of the respondents' and charging parties' narrative comments, we believe that these dissatisfied charging parties may have had charges that should have been withdrawn or closed as no cause. However, the charging parties believed that, because EEOC pressured them and respondents to settle, the charges had merit, and they were disappointed when the settlements were less than what EEOC's actions had led them to expect.

NEED TO INCREASE STATE AND LOCAL AGENCIES' INVOLVEMENT IN RESOLVING CHARGES

EEOC has increased the use of State and local fair employment practices agencies in resolving individual charges and, correspondingly, in reducing its workload. However, EEOC has opportunities to further increase the use of such agencies by

--amending its criteria for contracting with agencies and

--exploring additional means for the agencies to increase their charge resolutions.

These actions should further reduce EEOC's processing of individual charges and allow it to allocate more resources to attacking systemic and class employment discrimination, as discussed in chapter 4.

State and local agencies can increase their charge processing capacity

Section 706 of title VII provides that when EEOC receives a charge alleging that employment discrimination occurred in a State or local political jurisdiction which has (1) a law or ordinance prohibiting employment discrimination and (2) an agency to enforce that law or ordinance, EEOC must refer the charge to that agency for at least 60 days and must lend substantial weight to the agency's findings on it. If EEOC does not accept the agency's findings, or the agency does not process the charge within 60 days, EEOC will process the charge. In addition, section 709 provides that EEOC may pay State and local agencies for processing charges.

State and local governments have adopted a variety of approaches to attacking employment discrimination. Most States have State fair employment practices agencies that enforce nondiscrimination legislation; other States have only local agencies that enforce such laws while some States have both.

In our 1976 report, we stated that EEOC had made limited use of these agencies to resolve charges and had curtailed technical assistance to improve the agencies' ability to resolve individual charges. As a result, the agencies resolved only about 32 percent of the 45,000 charges EEOC referred to them during 1975. Also, EEOC accepted the agencies' findings for only 75 percent of their resolutions because some did not meet its standards.

EEOC has since taken steps to increase its use of State and local agencies. It budgeted $10.4 million for the agencies' support in fiscal year 1978, and $15 million each in fiscal years 1979 and 1980. EEOC used these funds to contract with

--65 agencies for $11.4 million to resolve about 32,500 charges at a rate of $350 per resolution in fiscal year 1979,

--63 agencies for about $4 million to improve their effectiveness in resolving charges, and

--69 agencies for about $6.5 million to reduce the agencies' charge backlogs.

Of the nearly 25,000 charges filed with it from January 29 to September 30, 1979, EEOC referred to the agencies about 13,200 (about 53 percent). Also, from November 1, 1978, to July 31, 1979, EEOC accepted the agencies' findings for about 95 percent of their resolutions--an increase of about 20 percentage points from the rate we found in our previous review.

In view of the success it has had in improving the agencies' productivity, we believe EEOC should explore additional opportunities to further expand the agencies' roles in charge processing.

Revising criteria to allow smaller agencies to contract with EEOC

In those cases in which EEOC contracts with State and local fair employment practices agencies to resolve charges, the agencies are reimbursed $350 for each charge. Generally these agencies must contract for a minimum of 100 charge resolutions per year--$35,000 minimum contract. State agencies and local agencies in States without such an agency are exempt from the minimum requirement.

EEOC developed the 100-charge/$35,000 minimum funding criteria based on its estimate that these agencies' direct and indirect costs would be about $35,000 annually for processing charges it referred to them. EEOC, however, made no cost/benefit study when determining this minimum. Also, EEOC views the $350 payment as a contribution toward the agencies' charge resolution costs, and not necessarily full reimbursement for them.

As of September 1979, EEOC had designated 87 agencies to which it could refer charges. These agencies, called "706 Agencies," had met the requirements of section 706 and EEOC's procedural regulations (29 C.F.R. 1601.70, et seq.). EEOC had contracts with only 65 agencies. These contracts or work-sharing agreements generally provided that the local EEOC district office and the State or local agency share the charge workload on some basis (such as EEOC and the agencies each processing 50 percent of the charges). Some agreements included provisions which ensured that EEOC would refer enough charges to the agencies so they could meet the minimum number of charge resolutions.

Three local agencies in the Baltimore district, although designated by EEOC as referral agencies, did not have contracts with EEOC. Officials at two agencies were interested in getting contracts with EEOC to resolve charges. EEOC told one agency that it could not get a contract because it failed to meet the 100-charge requirement. The other agency (which wanted a contract but did not want to be reimbursed for resolving charges) was told that it would not get a contract because EEOC had a contract with the State agency, and that monitoring an additional contract would be an administrative burden for the district office. EEOC officials told us that, based on past experience, it would be burdensome to contract with the "smaller" agencies that handle less than 100 charges per year because it would have to provide them with technical assistance and training in resolving the charges.

We believe EEOC's 100-charge/$35,000 minimum funding criteria, and its unwillingness to expand its relationship with local agencies in States where EEOC has agreements with the State agencies, are too rigid because they are causing EEOC to miss opportunities for further sharing its charge workload with local agencies. We believe that EEOC should consider on a case-by-case basis all local agency requests to process charges and should not disregard out-of-hand contracting with a particular "small" agency just because of past experience with other "small" agencies. It may well be that for some of the agencies, as with the one agency mentioned above, charges would be referred for resolution without reimbursement.

NEED TO FILE SUIT MORE TIMELY TO EXPEDITE RELIEF

Title VII authorizes EEOC to initiate a civil suit against a respondent if it is unable to conciliate an acceptable settlement of a charge. If EEOC does not initiate a suit within 180 days after a charge is filed, it may give the charging party a notice of right to sue, or the charging party may request this notice. The charging party then has 90 days in which to initiate a suit.

EEOC has not been timely in initiating litigation. In the Baltimore district office, for example, 18 cases failed conciliation between July 1976 and October 1979, and it averaged 7.2 months before initiating litigation on them. One case was settled 9 months after EEOC authorized suit but before the suit was filed in court. The status of the other 17 cases follows.

Action	Number of cases	Number of months	
		Average	Range
Time to file suit after EEOC authorized litigation (note a)	13	4.5	1 to 17
Time since EEOC authorized litigation for cases not yet filed in court	4	8.5	5 to 11

a/Five cases were settled after suits were filed (from 4 to 12 months after filing), but before a trial was held.

For the 13 cases in which suits were filed in court, EEOC averaged 12.7 months from the date the charges failed conciliation to the date the suits were filed.

The Dallas district office's experience was a little better. It had filed 12 suits as of December 15, 1979, in an average 8.7 months after conciliation failed.

EEOC officials attributed their litigation delays mostly to heavy court dockets and the low priority that civil cases like title VII suits have in Federal courts since the Speedy Trial Act (Public Law 93-619) gives criminal cases higher priority. However, delays also occurred because EEOC did not file suits timely after conciliation failed.

EEOC officials said the intervening time between the date conciliation fails and the date a suit is filed is not necessarily dead time. They said conciliation attempts continue during this time, and suits may be delayed for a few months if an out-of-court settlement appears possible.

We believe that the time EEOC takes to file a civil suit in court after conciliation fails could be reduced. While there is merit to EEOC's continued conciliation attempts, it appears that conciliation would have a greater chance of success after a suit is filed, as indicated by the Baltimore district office's experience. Therefore, we believe that, if EEOC decides to sue on a charge, it should promptly initiate litigation, possibly within 90 days after a charge fails conciliation, as title VII already requires charging parties to do.

NEED FOR AUTHORITY TO SUE STATE AND LOCAL POLITICAL SUBDIVISIONS

Title VII gives EEOC limited authority for resolving charges against State and local governments. EEOC can investigate such charges and, when it finds cause, attempt to settle them informally through persuasion, conciliation, or conference. If these methods fail, however, EEOC has to refer the charge to the Department of Justice for litigation. EEOC's lack of authority to litigate such charges has hampered its enforcement of title VII in State and local governments.

EEOC officials stated that some State and local governments have not cooperated with EEOC in its charge investigations because they know that it cannot bring suit against them, and that past experience has shown Justice probably will not sue them. EEOC officials added that they do not give a high priority to investigating possible discrimination in State and local governments because they do not want to start something they cannot finish. EEOC neither targets State and local governments for systemic work nor identifies individual charges for inclusion in its Early Litigation Identification program.

For example, charges against State and local entities made up 27 percent of the workload of the Baltimore district office's extended processing unit as of August 14, 1979, but they represented 55 percent (11 of 20 charges) of the unsuccessful conciliations. Of these 11 charges, EEOC referred 7 to Justice. As of October 1979, Justice had issued the charging parties notices of right to sue for three charges and had not made a decision on the other four.

Similarly, the Chicago district office had a group of charges that were filed against a local city government in May 1978. However, the city did not respond to EEOC's request for data on the charges until 6 to 11 months after the request was made. The city made general offers to settle the charges in November 1978, but it made no specific offer. The charges had not been settled by August 1979.

A Justice official told us Justice pursues charges referred by EEOC if the charge has systemic potential or involves a precedent-setting issue. Justice will not pursue a charge if it involves one or a few individuals or the case is not clear cut. EEOC annually refers 300 to 500 charges to the Department, but Justice litigates very few of them. This official added that pursuing these charges would not be the best use of Justice's limited resources.

For example, EEOC referred 200 charges to Justice between January 29 and September 30, 1979, of which Justice retained only 25 for further consideration and issued right-to-sue notices on the others. Justice declined to pursue the other 175 charges mainly for these reasons: (1) the charge had a narrow impact because it involved a single issue and one person or concerned issues that were unique to the charging party and (2) in Justice's opinion, the facts developed on the charges did not justify prosecution. For example, the facts appeared to show that discrimination occurred from one perspective, while they also showed that other factors, such as a personality clash or poor personnel management practices, were involved.

EEOC's lack of litigation authority to sue State and local governments under title VII is also an anomaly because it is inconsistent with EEOC's authority under the Equal Pay Act and the Age Discrimination in Employment Act. Both of these laws authorize EEOC to sue State and local governments to obtain compliance.

We believe EEOC should have the authority to sue State and local governments under title VII. In deference to Justice's role as the Government's legal counsel, however, the provision for such authority could parallel that of agencies such as the Consumer Product Safety Commission. The Consumer Product Safety Act (15 U.S.C. 2076) provides that the Commission may litigate a civil matter if, within 45 days after requesting the Attorney General for representation on a matter, the Attorney General has not notified the Commission in writing that he will represent it in the action. Appendix V contains a suggested amendment to section 706(f)(1) of title VII of the Civil Rights Act of 1964 that incorporates similar provisions.

CONCLUSIONS

EEOC's new individual charge processing procedures are generally effective in providing relief to charging parties. Charges are resolved timely, and State and local fair employment practices agencies have a significant role in resolving charges. However, additional changes need to be made to improve the individual charge processing procedures.

The rapid charge process appears to be an effective, practical procedure for quickly resolving individual charges and providing charging parties appropriate relief. However, the process has overemphasized obtaining negotiated settlement agreements, and some charges that probably should have been resolved with a no-cause decision, because the information developed showed that discrimination was not an issue in the matter, were resolved instead with negotiated settlements. It appears that EEOC's staff unduly pressured respondents and charging parties to settle charges lacking reasonable cause. This practice has undermined EEOC's credibility and enforcement activities and overstated the achievements of the rapid charge process. We believe it also allowed some individuals to abuse EEOC's charge process by filing charges under title VII as a means to pressure respondents and obtain relief, such as a "clean" work record or "neutral" reference, even though they suffered no discrimination. To maintain its credibility, EEOC needs to discontinue settling charges without reasonable cause.

EEOC has had considerable success in sharing the resolution of charges with certain State and local fair employment practices agencies. However, its criteria for sharing the workload are arbitrary and limit the opportunity for further sharing. Therefore, EEOC needs to consider revising its work-sharing criteria to include other such agencies. It should also consider alternative methods to increase State and local agency charge processing, such as contracting with them on a nonreimbursable basis.

In addition, EEOC has been untimely in initiating litigation when it has decided to sue on charges that were not resolved through conciliation. Filing such suits more timely--for instance, within the 90-day period that title VII already requires for charging parties--would improve the opportunities for out-of-court settlements. Moreover, EEOC's lack of authority to sue State and local governments under title VII is inconsistent with its authority under the equal pay and age discrimination acts and has impeded EEOC's enforcement of title VII. These governments have not cooperated with EEOC in settling charges against them, and EEOC does not include them in its systemic work and Early Litigation

Also, Justice has not pursued most charges EEOC referred to it. Therefore, EEOC should be given the authority to litigate such charges. However, in deference to Justice's role as the Government's legal counsel, it should be given the initial opportunity to bring suit on the charges.

RECOMMENDATIONS TO EEOC

We recommend that the Acting Chairman, EEOC, direct the Executive Director:

--To discontinue negotiating settlements on charges lacking reasonable cause (charges that would be closed as no cause if they are not settled) and to a close them with a no-cause decision or advise charging parties to withdraw them.

--To consider (1) revising the criteria for contracting with State and local fair employment practices agencies to include agencies presently excluded and (2) using alternatives to the present contracting procedures, such as contracting on a nonreimbursable basis.

We also recommend that the Acting Chairman direct the General Counsel to file suits more timely and adopt a standard that suits should be filed within a certain time, such as 90 days after a decision is made to litigate.

RECOMMENDATION TO THE CONGRESS

We recommend that title VII of the Civil Rights Act of 1964 be amended to provide that EEOC may initiate litigation on a charge against a State or local government if the Department of Justice decides not to sue within a specified time. Suggested legislative language for such an amendment is in appendix V.

AGENCY COMMENTS AND OUR EVALUATION

EEOC comments

In its comments on a draft of this report (see app. VI), EEOC stated that we were not clear on what we meant by a "weak" charge--a charge of questionable merit. We intended the term "weak" charge to refer to a charge on which there was not reasonable cause to believe that the charge was true and, as such, would be closed with a no-cause determination if it was not resolved with a negotiated settlement agreement. We have clarified our discussion of such charges in this report.

EEOC also discussed the difficulties in determining whether cause exists on a charge and its staff's role and responsibilities in factfinding. EEOC emphasized that such determinations are not easily made because its staff is not certain that it has all the relevant facts. However, EEOC stated that rapid charge processing does not require settling cases when the evidence conclusively establishes that a charge has no merit. EEOC added that it believed that such instances were minimal and stated that it would explore methods to minimize them even further.

EEOC said that the three examples in our report represented different situations. It stated that the charge in the third example on page 14 should have been closed as no cause, rather than with a settlement agreement. EEOC also stated, in effect, that no-cause resolutions in the two examples on pages 13 and 14 would not necessarily have been proper based on the information available, and that the settlements were appropriate. We believe, however, from the facts available, that if they had not been settled these charges probably would have been closed as no cause. Moreover, our main concern is not so much about whether the charges were handled properly, but rather about the EEOC fact finder's role during factfinding conferences. In this regard EEOC said that it (1) continually monitors settlement efforts and continues to take steps to minimize instances of overreaching by fact finders and (2) would prepare and transmit promptly to the field additional instructions on this matter to the extent appropriate. In our opinion, such instructions should provide that charges without reasonable cause--that is, charges that would be closed as no cause if they were not settled in factfinding--should not be settled and the charging parties should be requested to withdraw them; if they do not, then EEOC should close the charges as no cause and the fact finders should not encourage their settlement.

EEOC's comments appeared to overemphasize the difficulty in making no-cause determinations during factfinding and are inconsistent with what its field officials told us about the nature of charges, as discussed on page 14. EEOC's statistics show that its district offices close cases for no cause after factfinding. For the 8 months ended September 30, 1979, as well as during fiscal year 1980, its district offices closed 25 percent of the charges resolved in the rapid charge process with no-cause determinations. Therefore, it appears that the consideration of charges during factfinding provides EEOC's staff adequate evidence for no-causing charges since such determinations are being made.

EEOC also took exception to our conclusion that the negotiated settlement of charges without reasonable cause inflated the results of the rapid charge process. EEOC said that its reports clearly separated monetary and nonmonetary benefits arrived at through negotiated settlements. However, our concern was not the size or

charging parties stated that they would return to EEOC, and about 62 percent said they were satisfied with their settlements. In contrast, in response to the current questionnaire, only 64 percent of the charging parties said they would return to EEOC while only 42 percent said they were satisfied with their settlements. Thus, there appears to be a decrease in charging party satisfaction since EEOC's reorganization.

EEOC also commented that the results from contracting with small local fair employment practices agencies would not justify its cost. According to EEOC, such contracts would result in a small increase of charge resolutions which would not be commensurate with the expense of the EEOC staff work (monitoring, training, and technical assistance) that would be required. EEOC estimated that the 21 local agencies with which it could contract would only increase its charge resolutions by about 350 charges--i.e., the charges these agencies process that are not now part of EEOC's workload. In addition, EEOC discussed its progress and improvements in contracting with fair employment practices agencies during the past several years. EEOC stated that the savings anticipated in staff and money, from its recent initiative to certify fair employment practices agencies to resolve charges without an EEOC review, is greater than any other step that could be taken to increase the use of fair employment practices agencies, especially the use of small agencies which would be counterproductive in terms of cost and efficiency.

We agree that EEOC should not contract with any of the 21 small agencies for processing their charges. Rather, we recommended that EEOC should explore, on a case-by-case basis, contracting with these agencies to transfer some of its own workload to them. Based on our review, we believe that the potential exists for such contracts. EEOC appears to be dismissing such contracts out of hand.

In its comments EEOC stated that it has improved its timeliness in authorizing suits for those charges which are not conciliated and on which it decides to sue. EEOC stated that current data showed that district offices are making litigation recommendations to headquarters within 30 days and obtaining final approval for litigation from headquarters within 90 days. In addition, EEOC stated that we did not adequately recognize that litigation is not an automatic procedure after conciliation fails: a number of factors need to be considered before a suit can be filed, and an immediate suit may not be appropriate in all cases. For example, EEOC said that in some cases litigation approval is given on the basis that a settlement effort be made before filing suit. Also, an authorization to litigate may encourage settlement before filing.

nature of benefits arrived at in settling these charges, and we recognize the significance of nonmonetary relief in appropriate circumstances. Our concern is that charges without reasonable cause were settled and that the negotiated settlement of such charges inflated EEOC's settlement rate. Our questionnaire results as well as comments we received from EEOC district office officials indicated that the settlement rate could be overstated by 10 to 15 percentage points since it included the negotiated settlement of charges without reasonable cause.

In its comments, EEOC also stated that the results of our questionnaire survey appeared to contradict the conclusion that the settlement of weak charges was undermining its credibility, particularly with employers. EEOC pointed out that over 75 percent of the employers said they were satisfied with the rapid charge process. According to EEOC, charging party and respondent criticisms stemmed from their dissatisfaction with the results of settlement, which involves the give and take of compromise, and it does not mean that either party was pressured into settling or actually felt pressured.

EEOC's assertion, that employers' dissatisfaction in a few cases will not be sufficient to overcome their general satisfaction with the rapid charge process, is inconsistent with the results of our questionnaire. As discussed on page 18, about 26 percent of the satisfied respondents indicated that their satisfaction was tenuous and stemmed only from the favorable settlements of charges that they believed had no merit. Similarly, EEOC's other assertion, relating dissatisfaction to the give-and-take nature of the settlement process, is not in context with our questionnaire results. While such dissatisfaction could occur in general, the dissatisfaction we found appeared related to the settlement of a charge without reasonable cause: respondents stated they were pressured to give charging parties benefits to which they were not entitled, and charging parties stated they were pressured into accepting less than they believed appropriate.

EEOC also stated that, while some charging parties may have been dissatisfied with the settlement process, it is far more likely that charging parties would be discouraged and disappointed had they obtained no relief at all. According to EEOC, the latter attitude characterized charging parties before its reorganization, but in contrast, our questionnaire results showed that in the vast majority of cases charging parties would return to EEOC if they experienced another employment discrimination problem. While we have no data which reflect charging parties' attitudes directly before EEOC's January 1979 reorganization, EEOC's assertion appears inconsistent with the results of our two questionnaires. In response to the questionnaire used in our previous review (as discussed on pages 15 and 16 of that report), 81 percent of the

EEOC appears to have made significant improvements in its timeliness in processing cases for suit, and we recognize that immediate suit may not be appropriate in every case. However, we believe that EEOC should adopt an internal time standard for filing suit after conciliation fails. Such a standard would help ensure that suits are filed timely; as our review showed, respondents are more encouraged to settle charges after suit is filed than after suit is authorized.

OMB comments

In commenting on a draft of the report (see app. VII), the Office of Management and Budget (OMB) agreed that EEOC should be authorized to sue State and local governments under title VII. Also, OMB stated that the objective of our recommendation regarding the settlement of charges without reasonable cause under the rapid charge process was sound, but that it did not get at the crux of the problem. OMB stated that another severe weakness in the rapid charge process was EEOC's inability to obtain adequate supporting data for the charging party before the factfinding conference, while the respondent possesses all relevant data. Because of this, EEOC is not always able to ensure full relief for charging parties under this process, since it does not fully investigate charges. OMB recommended that EEOC take three actions to address these issues:

--Give impartial assistance to the charging party and respondent.

--Aggressively develop as much information as possible before factfinding and carefully avoid undue pressure on either the charging party or the respondent.

--Close some obviously meritless cases at intake.

OMB stated that EEOC was already implementing the last two actions.

The actions suggested by OMB are mostly a normal part of the rapid charge process, except for carefully avoiding undue pressure on the charging party or the respondent. We believe that EEOC could avoid such pressure by advising charging parties, in appropriate circumstances (e.g., when requested during the factfinding conference), that their charges appear not to have merit and should be withdrawn, as discussed on page 15.

OMB also stated that our use of the questionnaire to obtain charging party and employer opinions on the adequacy of the rapid charge process was not appropriate for determining its validity. However, we did not use the questionnaire to gauge the validity

of the rapid charge process. Rather, we used the questionnaire results to show that the negotiated settlement of charges without reasonable cause was undermining EEOC's credibility with charging parties and respondents.

CHAPTER 4

EEOC NEEDS TO MAKE ADDITIONAL CHANGES TO STRENGTHEN ITS SYSTEMIC PROGRAM

EEOC characterizes its systemic program as the most effective means to attack patterns or practices of employment discrimination. We reported in 1976 that EEOC had not been effective in carrying out the program. Since that report, EEOC has made changes to improve its systemic program, including improvements in its target selection and charge processing procedures. However, EEOC's district offices made slow progress in implementing these changes.

Although many changes were too recent for us to assess their effectiveness, additional improvements are needed to strengthen the systemic program. For instance, EEOC needs to obtain more complete data from employers regarding their employment of minorities and women and to more aggressively monitor compliance with conciliation agreements and consent decrees. Also, since EEOC's systemic program and the activities of the Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) to enforce Executive Order 11246 overlap, they should be merged to eliminate duplicative efforts, as previously recommended.

DISTRICT OFFICES SLOW IN IMPLEMENTING SYSTEMIC PROGRAM

The responsibility and authority for the systemic program is divided between two EEOC headquarters components: the Office of Field Services and the Office of Systemic Programs. This division has hampered the district offices' implementation of the systemic program.

Since January 29, 1979, each EEOC district office has had a separate systemic unit. EEOC plans to have five to seven systemic charges in process in each district office at any one time. Generally, each unit has five people which will be increased when staff becomes available as district offices eliminate their individual charge backlogs. The systemic units are managed by district office directors who are accountable to the headquarters Office of Field Services. On the other hand, the headquarters Office of Systemic Programs is responsible for providing technical advice and direction to the systemic units.

Inadequate field emphasis on systemic program

As of September 30, 1979, EEOC's systemic program initiated only 45 charges for all 22 district offices. Two district offices had no systemic charges, and five had only one charge each. None

of the 45 charge investigations had been completed. The three oldest charges had been under investigation for a year or more, and it appeared that they would exceed the program's milestone criteria of 12 to 15 months for completing a systemic charge investigation, since the investigations were only about 50 percent completed.

The district offices' slow start in initiating the systemic program was attributable generally to their inadequate emphasis on systemic work. For example, although district offices reported that their systemic units were fully staffed (i.e., five staff members each) by June 1979, the Office of Systemic Programs later learned that district office managers often detailed personnel from their systemic units to help resolve individual charges.

In addition, visits by Office of Systemic Programs staff to the three model offices and one other district office to review the progress of systemic investigations showed a lack of management emphasis on the systemic program in all but one model office. During some of these visits, the headquarters staff performed managerial and supervisory duties that were the basic responsibility of district office officials. For example, at one district office the headquarters staff advised the systemic program staff how to organize their investigation materials and which investigation areas to emphasize. Other problems the headquarters staff found included:

--In one district office, the systemic activities were inadequately supervised. This resulted in unproductive work and lost time because data submitted by respondents had been overanalyzed and had not been properly arrayed for the analysis that was underway. It appeared that staff working on charges did not know what to do next.

--In another district office, the systemic program staff and management officials were not familiar with EEOC's systemic program manual and appeared to have a limited understanding of the kind of data analyses needed to demonstrate systemic discrimination.

EEOC officials stated that these conditions were "startup" problems that are typical of a new program. While this may have been the case to some extent, we believe the major factor nevertheless was a lack of commitment to the systemic program by the field offices because they mainly emphasized processing individual charges. For example, a September 1979 visit by the systemic program staff to one of the model offices showed that the problems they identified with the investigation of two charges during a May visit had not been corrected. In addition, the systemic program

staff stated that the Office of Field Services had not been fully responsive to these problem areas when informed of them.

EEOC's Chair has characterized the systemic program as the most effective way for EEOC to attack employment discrimination. Accordingly, in a draft of this report we recommended that the Executive Director emphasize the importance of the systemic program to field officials. In commenting on the draft report, EEOC and OMB stated that this was done after the completion of our review. (See apps. VI and VII.)

NEED TO CONSOLIDATE EEOC'S SYSTEMIC PROGRAM AND LABOR'S CONTRACT COMPLIANCE PROGRAM

Most Federal contractors are subject to compliance reviews by both EEOC under title VII and OFCCP under Executive Order 11246, as amended, and section 503 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 793).

In our 1976 report, we stated that EEOC and OFCCP were not coordinating their programs even though they had a memorandum of understanding calling for coordination and cooperation. As a result, about 50 percent of the Federal contractors were subjected to duplicate reviews.

In our 1978 report, we recommended that the Congress consolidate the title VII and the Federal contract compliance programs because of the inefficient use of Government resources in similar reviews and the confusion and frustration that these reviews cause employers.

Our review disclosed that some of these problems continue. EEOC depends heavily on information OFCCP has on employers' personnel systems and practices to supplement its own data in preparing systemic charges. EEOC also continues to investigate employers as potential targets for its systemic program and to select charges against employers for its Early Litigation Identification program, even though OFCCP may have recently completed an investigation, planned to make one, or was conducting an investigation of the same employer. For example:

--One EEOC district office had 14 systemic cases identified (4 charges, 2 potential charges, and 8 companies targeted for investigation), and 26 individual charges under investigation in its Early Litigation Identification program.

However, OFCCP had completed contract compliance program reviews of 10 of these employers within the last 12 months, and had scheduled a review of another employer.

--In another district, EEOC and OFCCP officials said they rarely coordinated their activities. They stated that they communicated with each other only to request and exchange information.

--Another EEOC district office had 14 systemic and early litigation identification charges. According to OFCCP, two of the employers had been reviewed within the previous 12 months, two had reviews in progress, and two others were under consent decrees being monitored by the Department of Justice.

EEOC officials said they were working with OFCCP officials to develop a new memorandum of understanding for the two agencies to coordinate their work and cooperate with each other. However, we do not believe that a memorandum of understanding is the answer. Recent actions by both agencies add impetus to the need to consolidate these programs. For example, OFCCP reviews center around an employer's affirmative action activities and include such matters as whether the employer has an affirmative action plan, whether it was followed, and whether it met OFCCP's requirements. However, EEOC has recently issued voluntary affirmative action guidelines for employers which are similar to OFCCP's guidelines. In addition, OFCCP has recently expanded its contract compliance reviews to include such issues as employee availability, disparate treatment, job progression, and concentrations of employees in certain job classifications, which also are issues that EEOC considers in its systemic reviews.

Given these recent actions, EEOC systemic activities and OFCCP contract compliance reviews are very similar. Both programs have the same general intent and procedure. In transmitting Reorganization Plan No. 1 of 1978 to the Congress, President Carter stated that by 1981, after he had reviewed how EEOC and Labor were exercising their new responsibilities, he would determine whether further reorganization actions were appropriate. We continue to believe that the consolidation of the contract compliance program and EEOC's title VII program has merit. Such a consolidation would be consistent with the actions already taken to consolidate Federal equal employment opportunity responsibilities under the reorganization plan.

NEED TO IMPROVE COLLECTION OF EMPLOYMENT STATISTICS

EEOC requires employers with 100 or more employees to submit annually an EEO-1 report form which contains employment data by sex, race, and national origin in nine job classifications. In our 1976 report, we stated that the EEO-1 format was inadequate because it lacked employee salary data. Although EEOC continues to use the EEO-1 report and plans to increase its accessibility, it has not revised the EEO-1 format to include salary data.

EEOC personnel said that EEO-1 data have limited use for systemic program targeting. Although many systemic targets were initially identified by analyzing EEO-1 data, EEOC often had to use information gathered by other agencies, primarily OFCCP, to obtain data the EEO-1 report could provide if it were expanded.

EEOC systemic program personnel said the EEO-1 report would be more useful if it included wage and salary information and more detailed breakouts of the job categories. This information would help EEOC determine whether minorities and women are being paid wages and salaries commensurate with others in their job classifications or whether they hold the lower paying positions in each classification.

EEOC officials told us they are making a study of data needs for EEOC and other Federal agencies with the intention of improving the EEO-1 report for all users. When we completed our review, EEOC had not projected a completion date for this study.

NEED FOR AGGRESSIVE COMPLIANCE MONITORING OF CONCILIATION AGREEMENTS AND CONSENT DECREES

Conciliation agreements and consent decrees formalize employers' agreements to resolve charges of discrimination in their employment systems. A conciliation agreement results from an EEOC administrative processing of a charge and is signed by the employer, charging party, and EEOC. A consent decree results from an out-of-court settlement of a suit that EEOC filed on a charge; EEOC, the employer, and the court are signatories to the decree.

EEOC procedures require district offices to monitor employers' compliance with conciliation agreements and consent decrees. In 1976 we reported that EEOC's monitoring program was inadequate for assessing employer compliance with these enforcement actions. Our review showed little improvement in this area.

EEOC's compliance and general counsel manuals state that in monitoring such agreements and consent decrees the staff is responsible for, among other things,

--preparing a control list to ensure that compliance reports required from each employer are filed promptly;

--analyzing employer reports on actions taken to comply with the agreement or decree; and

--conducting onsite inspections, if needed, to determine when employers violated the terms of their agreements and decrees.

However, our review showed that:

--Two district offices we visited did not have a control list to indicate which employers were to file reports or when the reports were due. In one district office we were unable to determine how many agreements and decrees were being monitored.

--One district office had consummated 21 conciliation agreements and 6 consent decrees since September 1977. As of July 1979 the district office had reviewed only one of the consent decrees and none of the conciliation agreements. According to district office officials, they had not made the reviews because they lacked staff.

--None of the three district offices had made any onsite visits to verify that the employer compliance reports were complete and accurate.

EEOC officials said they were developing a new system for the field offices to use in monitoring compliance with conciliation agreements and consent decrees. We believe any system EEOC develops should provide for aggressive monitoring to ensure compliance with agreements and decrees, since the real value of these agreements and decrees is in the results achieved through them. For example, during our 1976 review, one of EEOC's litigation centers had a separate unit set up to monitor compliance with consent decrees. An EEOC official said this center took an aggressive approach to monitoring compliance which included making site visits. As a result, this center was more effective than the others in enforcing the decrees.

CONCLUSIONS

EEOC's systemic program is basically just getting off the ground. While the program appears to provide EEOC with an effective means to attack patterns or practices of employment discrimination, its potential is yet to be realized. Aside from startup problems, a major factor in the program's slow pace was a lack of commitment by EEOC's field offices. This problem, however, appears to have diminished since the completion of our review.

The pace of the systemic program has also been affected by inadequacies in the data provided by EEO-1 reports--a problem noted in our earlier report. Accordingly, EEOC should expedite revising the form to include employee salary data.

Given the changes OFCCP made to the contract compliance program and EEOC's issuance of affirmative action guidelines, the potential overlap between the two agencies has increased. Both agencies have essentially the same concerns in their enforcement activities and consider the same issues in their employer reviews. Therefore, OFCCP's contract compliance program should be consolidated with EEOC's title VII systemic activities.

EEOC has also been lax in monitoring compliance with conciliation agreements and consent decrees. To ensure that employers take the actions they have agreed on, EEOC needs to develop a system for compliance monitoring which would include centralized control in each district office, timely review of employer compliance reports, and onsite visits, as appropriate.

RECOMMENDATIONS

We recommend that the Acting Chairman of EEOC:

--Expedite revising the EEO-1 report to provide improved data including employee wage and salary data.

--Emphasize the importance of compliance monitoring and establish procedures to ensure that monitoring is performed promptly and that onsite visits are made to verify reports, as appropriate.

We also recommend that the Director of OMB advise the President that the contract compliance function under Executive Order 11246 should be transferred from OFCCP to EEOC.

AGENCY COMMENTS AND OUR EVALUATION

EEOC comments

In its comments, EEOC stated that it had activities underway to implement an aggressive and consistent monitoring system. We believe such a system should provide for prompt monitoring and onsite verification visits when appropriate.

EEOC also stated that it had completed a preliminary study of improving the EEO-1 form and it was developing revisions to the form in coordination with other Federal agencies. While the EEO-1 is being revised to make it more effective, EEOC is giving considerable attention to developing a comprehensive Government-wide recordkeeping sytem to meet all Government employment-related data needs under titles VI and VII of the Civil Rights Act of 1964. EEOC stated that this system will simplify and substantially reduce the recordkeeping and reporting burden for all private and public sector employers. We believe that the revised EEO-1 form should include wage and salary data and that it should be issued promptly.

OMB comments

In commenting on the draft report, in a letter dated December 8, 1980, OMB stated that a consolidation of EEOC and OFCCP's contract compliance program at this time would negatively affect both agencies. OMB based its comments on the preliminary findings of a study it was conducting of the two agencies, which showed that significant modifications would be needed in the contract compliance program before a merger could be accomplished. OMB also stated that, aside from the possible further reduction of duplicative investigations and compliance reviews for contractors, our report gave little evidence that the transfer would strengthen the Federal Government's equal employment opportunity program. EEOC did not comment on this recommendation.

We do not discuss any other benefits of a transfer mainly because the issue in this report is a followup to our June 1978 report, as discussed on page 34. We recognize that there may be some negative aspects of such a consolidation, and OMB should ensure that they are minimized. We believe the consolidation will improve the Federal equal employment opportunity program because greater coverage will be obtained from available resources since separate reviews will be eliminated.

CHAPTER 5

RESPONSIBILITIES TRANSFERRED TO EEOC WERE NOT PROMPTLY IMPLEMENTED

The President's Reorganization Plan No. 1 of 1978 transferred to EEOC certain employment discrimination program responsibilities from other agencies. However, in receiving these responsibilities, EEOC inherited some large workloads and received few personnel. Thus, some transferred programs experienced delays and loss of continuity.

FEDERAL EQUAL EMPLOYMENT OPPORTUNITY ACTIVITIES

On January 1, 1979, EEOC assumed the former Civil Service Commission's responsibilities for reviewing Federal agencies' affirmative action plans, holding hearings on Federal employee equal employment opportunity complaints, and processing appeals from agency decisions on such complaints. But, since EEOC received few incumbents with these responsibilities, it was unable to maintain program continuity which resulted in an increased work backlog. During the 9-month period, January 1 to September 30, 1979, EEOC established procedures, developed an organizational framework for carrying out the new responsibilities, and filled vacant positions.

Affirmative action programs

Federal agencies are required to develop affirmative action plans for their employees, including minorities, women, and the handicapped. The agencies submit the plans to EEOC for review to ensure their conformity to its guidelines and requirements.

Although EEOC received 26 personnel positions from the Civil Service Commission's field offices to review affirmative action plans, only 4 positions were filled. Also, the Civil Service Commission transferred to EEOC about 150 to 180 fiscal year 1979 plans that had not been reviewed. The shortage of personnel restricted EEOC's ability to review the plans, but EEOC said it was able to do a cursory review of the plans in headquarters with the four transferred personnel.

EEOC has made procedural changes to its guidelines for agencies developing affirmative action plans, and will require agencies to develop multiyear plans, recognizing that affirmative action goals take a number of years to be met. EEOC will emphasize that agency officials are accountable for carrying out the plans,

and it will make onsite visits to agencies to verify the accomplishments claimed in their plans.

Complaint hearings activities

Federal employees who believe their agencies have discriminated against them may file discrimination complaints with their agencies. The agencies investigate the complaints, decide whether they have merit, and take action when appropriate. Employees may also request that the investigation include a hearing which basically establishes a record of the facts on their complaints and a recommended resolution to the agency. Such hearings are held by EEOC on a reimbursable basis, and the conclusions reached are advisory to the agencies.

In order to give EEOC a fresh start in carrying out the responsibility to hold such hearings and to avoid the transfer of incomplete cases, EEOC and the Civil Service Commission agreed that EEOC would conduct all hearings requested after November 21, 1978, and that the Civil Service Commission would conduct all hearings requested before that date. However, when this responsibility was transferred on January 1, 1979, only 5 of the 42 hearing examiner positions transferred were filled. To deal with this shortage, EEOC contracted with 38 law professors to hold hearings while it recruited and trained new staff. Consequently, EEOC had held only 270 of the nearly 2,500 hearings requested as of September 30, 1979.

By September 30, 1979, EEOC had filled all 42 positions and added 28 positions from other activities because hearing requests were 34 percent higher than that experienced by the Civil Service Commission.

Appeal of complaint resolutions

Federal employees who disagree with the decisions their agencies make on their discrimination complaints may file an appeal with EEOC. If the employees disagree with EEOC's decisions, they may file suits in Federal court for a review of the merits of their complaints.

EEOC, in implementing the appeals responsibility, had problems similar to those that it had with the hearings function. The appeals responsibility was transferred to EEOC from the Civil Service Commission on January 1, 1979. It received a backlog of about 3,500 cases and only 4 staff members to fill 30 transferred staff positions. Also, for the 9 months ended September 30, 1979, EEOC received an additional 1,732 appeals.

EEOC was processing these two groups of appeals separately. The cases transferred from the Civil Service Commission were handled by a task force of attorneys EEOC hired temporarily. The task force began its work in late June 1979. The task force's authorized staffing was 50, but only about 30 people were hired as of September 30, 1979. An EEOC official said that staffing fluctuated because the work was temporary, and once employees found permanent employment elsewhere, they resigned. The new cases which were filed with EEOC are being processed by its permanent staff at headquarters. All of the 30 headquarters appeals positions were filled by September 30, 1979; however, most staff were hired during August and September 1979.

Because EEOC did not have sufficient staff to process appeals, as of September 30, 1979, it had processed only 194 appeals: 150 of the 3,500 backlog cases, and 44 of the 1,732 new cases it received. On September 30, 1979, EEOC had an inventory of 5,038 cases.

EQUAL PAY AND AGE DISCRIMINATION ACT ACTIVITIES

On July 1, 1979, the responsibilities for enforcing the Equal Pay Act of 1963 and the Age Discrimination in Employment Act of 1967 were transferred from the Department of Labor to EEOC. Under these two laws, EEOC receives, investigates, and resolves charges of age discrimination and sex-based wage discrimination against private employers.

EEOC assumed responsibility for these two laws with less difficulty than it experienced in the transfer of responsibilities relating to Federal employees discussed above. This transfer was smoother because EEOC received 130 incumbents in the 221 positions it received from Labor for enforcing these laws. Consequently, while EEOC received a backlog of 1,197 complaints from Labor on July 1, 1979, and received 2,423 additional complaints by September 30, 1979, it resolved 645 complaints during the 3-month period. By September 30, 1979, the remaining positions were filled and all staff trained.

FEDERAL AGENCY COORDINATION

The responsibilities of the Equal Employment Opportunity Coordinating Council were transferred to EEOC on July 1, 1978. Since the Council had no staff authorized, the Office of Interagency Coordination, which EEOC established to carry out the responsibility, operated with a temporary staff and used task forces made up of personnel detailed from other EEOC activities to do its work. By September 30, 1979, the Office was authorized

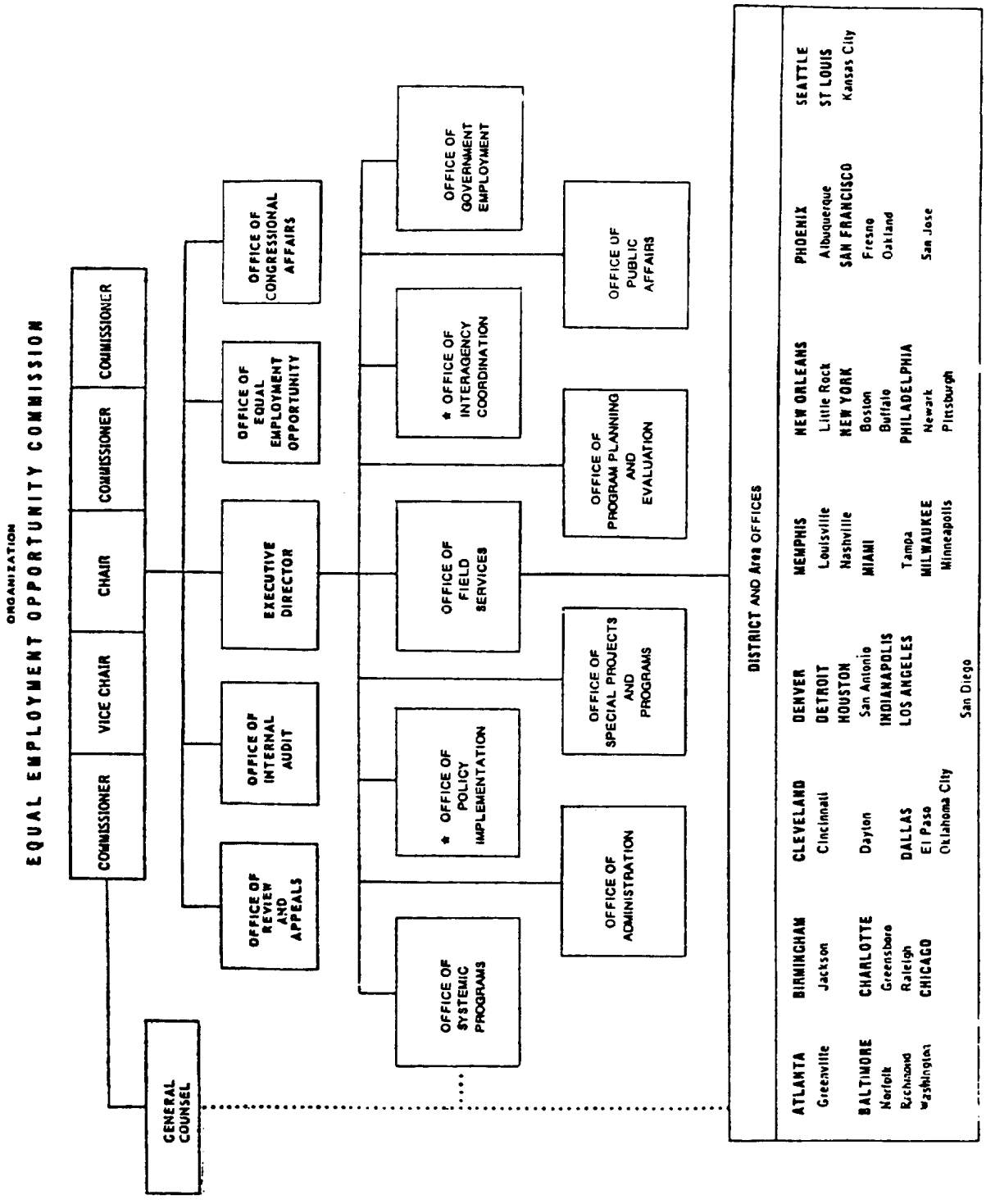
25 positions (21 professionals and 4 clerical), most of which were either filled or committed.

Through the task forces, the Office was able to carry out its responsibilities and meet agency requests for assistance without major difficulty. The Office developed a work agenda and began, among other things, a study of all Federal equal employment opportunity programs and activities, with the goal of standardizing all procedures and practices that may now be duplicative and inconsistent. It is also participating in an EEOC study to revise the EEO-1 report, discussed in chapter 4, and it has helped the Office of Personnel Management issue regulations implementing the Federal Equal Opportunity Recruitment Program as required by section 310 of the Civil Service Reform Act of 1978 (Public Law 95-454).

CONCLUSION

EEOC's implementation of the President's Reorganization Plan No. 1 of 1978 had mixed results. EEOC assumed some of the transferred responsibilities smoothly while experiencing difficulties with others. The main factor for these differences was the availability of staff to carry out the new responsibilities. It appears that EEOC has generally resolved its staffing problems and has integrated the new responsibilities into its operations.

APPENDIX I


ORGANIZATION
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
COMMISSIONER
VICE CHAIR
CHAIR
COMMISSIONER
COMMISSIONER
GENERAL COUNSEL
OFFICE OF REVIEW AND APPEALS
OFFICE OF INTERNAL AUDIT
EXECUTIVE DIRECTOR
OFFICE OF EQUAL EMPLOYMENT OPPORTUNITY
OFFICE OF CONGRESSIONAL AFFAIRS
OFFICE OF SYSTEMIC PROGRAMS
* OFFICE OF POLICY IMPLEMENTATION
OFFICE OF ADMINISTRATION
OFFICE OF SPECIAL PROJECTS AND PROGRAMS
OFFICE OF FIELD SERVICES
OFFICE OF PROGRAM PLANNING AND EVALUATION
* OFFICE OF INTERAGENCY COORDINATION
OFFICE OF PUBLIC AFFAIRS
OFFICE OF GOVERNMENT EMPLOYMENT
DISTRICT AND Area OFFICES
ATLANTA
Greenville
BIRMINGHAM
Jackson
CLEVELAND
Cincinnati
DENVER
DETROIT
HOUSTON
San Antonio
San Diego
MEMPHIS
Louisville
Nashville
MIAMI
Tampa
MILWAUKEE
Minneapolis
NEW ORLEANS
Little Rock
NEW YORK
Boston
Buffalo
PHILADELPHIA
Newark
Pittsburgh
PHOENIX
Albuquerque
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Fresno
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LITIGATIONS OPERATIONS
* Reports to the Commission on Policy Matters

APPENDIX II

PARTICIPATION RATES OF WOMEN AND MINORITIES

BY WORK FORCE CATEGORY

AS REPORTED ON EEO-1 FORMS

Category	1966 Participation rate			1978 Participation rate			Changes in participation rates increase or decrease(-)		
	White women	Minority women	Minority men	White women	Minority women	Minority men	White women	Minority women	Minority men
	(percent)								
Total employment	28.0	3.5	7.9	31.7	7.9	10.3	3.7	4.4	2.4
White collar:									
Officials and managers	9.1	0.4	1.5	15.2	1.8	5.0	6.1	1.4	3.5
Professionals	19.0(a)	1.5(a)	2.5	30.4	4.0	5.2	11.4	2.5	2.7
Technicians	19.7(a)	2.9(a)	3.1	31.1	6.8	7.1	11.4	3.9	4.0
Salesworkers	36.4	2.5	1.9	44.1	6.3	4.9	7.7	3.8	3.0
Office and clerical	68.1	4.3	1.6	68.8	13.2	3.3	0.7	8.9	1.7
Blue collar:									
Craftsmen (skilled)	5.6	0.7	5.5	6.7	1.9	11.8	1.1	1.2	6.3
Operators (semiskilled)	24.1	3.6	10.9	23.8	8.5	15.5	-0.3	4.9	4.6
Laborers (unskilled)	18.7	5.3	22.9	23.6	10.4	21.5	4.9	5.1	-1.4
Service workers	31.8	11.5	16.6	38.5	16.1	15.4	6.7	4.6	-1.2

Note: These data summarize the responses of private employers with 100 or more employees to EEOC's annual survey with its Employer Information Report EEO-1.

a/ A similar table in our 1976 report showed the participation rates for white and minority women in the professionals category as 13.0 and 1.0, respectively, and for the technicians category as 27.7 and 3.4, respectively. We have changed these rates in this table because, according to EEOC, nurses were counted as technicians in the 1966 EEO-1 report but as professionals in all other years' reports.

ANALYSES OF QUESTIONNAIRE RESULTS

PURPOSE AND SAMPLE SELECTION

We sent a questionnaire to charging parties and employers who participated in EEOC's rapid charge process from September 1977 through April 1979 in EEOC's Dallas, Chicago, and Baltimore district offices. For each office we obtained a list of charges which were settled with a negotiated settlement and used statistical sampling techniques to take a stratified random sample from each list. We selected our sample using a statistical formula and considered, among other things, the size of the universe, a 95-percent confidence level, a ±5 percent sampling error rate, and the ability to present the results of all three offices taken as whole. We initially selected random samples of 120 charges for each district office and added 10 and 8 charges, respectively, to our Chicago and Baltimore samples to replace missing files. We used three sets of random numbers to select the charges for the questionnaires.

QUESTIONNAIRES USED

We designed separate questionnaires for the employers and charging parties, and pretested the employer questionnaire in the Dallas area. The employer questionnaire was in two parts: part I was to obtain specific information on the selected charge, and part II was to obtain data on employers' overall experiences with EEOC. The charging party questionnaire was patterned after one we had used in our 1975 study of EEOC (see p. 3), and we believed there was no need to pretest it. Although the questionnaire sent to charging parties was generally different from the one sent to employers, each contained questions about

--EEOC control of the factfinding conference,

--overall rating of the EEOC fact finder/investigator,

--satisfaction with how the EEOC fact finder/investigator obtained facts,

--satisfaction with how the EEOC fact finder/investigator got the parties to settle, and

--overall rating of EEOC's handling of the case.

We obtained about 59 percent returned usable replies for the charging party questionnaire. For part I to our respondent survey, we received about 71 percent usable replies. For part II, we had about 70 percent usable responses. (See tables 1 to 3.)

RESULTS

We tabulated our responses for each questionnaire and for each of the three district offices, and weighted them so that they could be combined and projected to the universe. The combined projected responses for selected items of the charging party and employer questionnaires are included in tables 4 and 5, respectively.

Statistical sampling enabled us to draw conclusions about both universes on the basis of information in samples of each universe. The results from a statistical sample are subject to some uncertainty (i.e., sampling error) because only a portion of the universe has been selected for analysis. The sampling error consists of two parts: confidence level and range. The confidence level is the degree of confidence that can be placed in the estimates derived from the sample. The range is the upper and lower limit between which the actual universe value will be found.

For example, a random sample of charging parties responding to our questionnaire (see table 4) showed that about 42 percent of them were satisfied with the settlement they received. Using a sampling error formula with a 95-percent confidence level, the true percentage of responding charging parties would be within plus or minus 6 percent of the sample results. Thus, if all the charging parties in the universe were questioned, chances would be 95 in 100 that the actual percent of charging parties who were satisfied with their settlement would be between 36 (42 - 6) and 48 (42 + 6) percent. The upper and lower limits (range) for all estimates presented in chapter 3 are shown in tables 4 and 5.

Table 1

Charging Party Questionnaire

		Universe estimate		Range (95% confidence)	
Questionnaires	Sample	Number	Percent (note a)	Number	Percent
Returned:					
Usable	225	1,200	59.0	±94	±4.6
Not usable (undeliverable)	81	445	21.9	±80	±3.9
Not returned	72	390	19.2	±76	±3.7
Total	378	2,035	100.1		

a/Totals more than 100 percent because of rounding.

APPENDIX III

Table 2

Employer Questionnaire (Part I)

Questionnaires	Sample	Universe estimate Number	Universe estimate Percent	Range (95% confidence) Number	Range (95% confidence) Percent
Returned:					
Usable	268	1,446	71.1	±87	±4.3
Not usable (undelivered, out of business, change of personnel)	58	310	15.2	±68	±3.3
Not returned	52	279	13.7	±66	±3.2
Total	378	2,035	100.0		

Table 3

Employer Questionnaire (Part II)
Unique Employers (note a)

Questionnaires	Sample	Universe estimate Number	Universe estimate Percent	Range (95% confidence) Number	Range (95% confidence) Percent
Returned:					
Usable	239	1,292	69.7	±87	±4.7
Not usable (undelivered, out of business, change of personnel)	57	303	16.4	±66	±3.6
Not returned	48	258	13.9	±62	±3.3
Total	344	1,853	100.0		

a/A total of 268 employers returned usable responses, but 29 responded more than once because our sample included more than one charge against them. The data in the table are based on counting employers only once.

APPENDIX III

Table 4

Projections of Charging Party Replies to Selected Questions

Description	Universe estimate		Range (95% confidence)	
	Number	Percent	Number	Percent
Satisfied with settlement received	504	42.0	421 to 587	36.0 to 48.0
Dissatisfied with settlement received	563	46.9	478 to 648	40.8 to 53.0
Fact finder got:				
Facts	699	58.2	609 to 789	52.2 to 64.2
Little or no facts	353	29.4	281 to 425	23.9 to 34.9
Adequate control	707	58.9	616 to 798	52.9 to 64.9
Poor or no control	304	25.4	236 to 372	20.1 to 30.7
Satisfied with fact finder	615	51.2	528 to 702	45.1 to 57.3
Dissatisfied with fact finder	421	35.1	343 to 499	29.3 to 40.9
Satisfied with way got facts	597	49.8	511 to 683	43.7 to 55.9
Dissatisfied with way got facts	375	31.3	301 to 449	25.6 to 37.0
Satisfied with way fact finder got settlement	488	40.7	407 to 569	34.7 to 46.7
Dissatisfied with way fact finder got settlement	523	43.6	440 to 606	37.6 to 49.6
Satisfied overall with handling of charge	503	41.9	421 to 585	35.9 to 47.9
Dissatisfied overall with handling of charge	571	47.6	485 to 657	41.5 to 53.7
Narrative comments:				
Pressured and overall dissatisfied	142	11.8	93 to 191	7.8 to 15.8
Pressured and overall satisfied	20	1.7	2 to 38	0.2 to 3.2

Table 5

Projections of Employers (Respondents) Replies to Selected Questions

Description	Universe estimate		Range (95% confidence)	
	Number	Percent	Number	Percent
Fact finder was:				
Qualified	1,073	74.2	977 to 1,169	69.3 to 79.1
Impartial	820	56.7	727 to 913	51.2 to 62.2
Thorough	1,000	69.2	904 to 1,096	64.0 to 74.4
Amiable	1,129	78.1	1,034 to 1,224	73.5 to 82.7
Satisfied with fact finder assigned	1,098	75.9	1,003 to 1,193	71.2 to 80.6
Given adequate chance to give side	1,219	84.3	1,125 to 1,313	80.2 to 88.4
Satisfied with way got facts	1,087	75.2	992 to 1,182	70.4 to 80.0
Satisfied with way got settlement	1,026	71.0	930 to 1,122	65.9 to 76.1
Satisfied with overall handling of charge	1,047	72.4	951 to 1,143	67.4 to 77.4
Narrative comments:				
Pressured and overall dissatisfied	202	14.0	145 to 259	10.2 to 17.8
Pressured and overall satisfied	174	12.0	121 to 227	8.4 to 15.6
Satisfied overall and gave negative comment	276	26.3	210 to 342	20.5 to 32.1

U.S. GENERAL ACCOUNTING OFFICE

SURVEY OF CHARGING PARTIES TO NEGOTIATED SETTLEMENTS

UNLESS OTHERWISE INDICATED, PERCENTAGES ARE BASED ON THE PROJECTED 1200 CHARGING PARTIES RETURNING USEABLE REPLIES. PERCENTAGES ARE ROUNDED TO THE NEAREST WHOLE NUMBER AND MAY NOT TOTAL 100.

INSTRUCTIONS:

Please answer the questions based only on the negotiated settlement listed in the cover letter. Please ignore the numbers printed next to the blocks and in parentheses. They are only listed to help our keypunchers in coding the answers for computer analysis.

1. How did you feel on the whole about that settlement? *(Check only one.)* (18)

	RESPONSE PERCENTAGES
1. ☐ Very satisfied	10
2. ☐ Generally satisfied	32
3. ☐ Not sure	10
4. ☐ Generally dissatisfied	19
5. ☐ Very dissatisfied	28
6. ☐ Don't recall	0 1/
NO ANSWER	1

2. Which of the following conditions were involved in this case? *(Check all that apply.)*

	RESPONSE PERCENTAGES			RESPONSE PERCENTAGES
1. ☐ Hiring	16	1. ☐	Job advertisement	4
1. ☐ Promotion	25	1. ☐	Job classification	14
1. ☐ Firing	51	1. ☐	Job referral	4
1. ☐ Transfer	11	1. ☐	Training	12
1. ☐ Wage practices	15	1. ☐	Other: *(specify)* 16	

Please answer question 3 based only on the conditions you checked above.

1/ Actually 0.3%.

3. How did you feel about that settlement in more detail? *(Check one block for each part listed.)*

	1 Very Satisfied	2 Generally Satisfied	3 Not Sure	4 Generally Dissatisfied	5 Very Dissatisfied	6 Does Not Apply	No answer
	APPLICABLE 2/ RESPONSE PERCENTAGES						
Money settlement	☐ 7	☐ 19	☐ 8	☐ 13	☐ 26	☐ 11	26
Hiring consideration	☐ 13	☐ 16	☐ 10	☐ 8	☐ 27	☐ 84	26
Promotion consideration	☐ 7	☐ 25	☐ 7	☐ 15	☐ 34	☐ 75	13
Training consideration	☐ 9	☐ 14	☐ 0	☐ 21	☐ 45	☐ 88	11
Rehiring consideration	☐ 5	☐ 3	☐ 6	☐ 12	☐ 28	☐ 49	47
Transfer arrangement	☐ 0	☐ 10	☐ 10	☐ 9	☐ 51	☐ 89	22
Other *(Please write in this space)*: _____	☐ 3	☐ 17	☐ 7	☐ 2	☐ 32	☐ 85	39

2/ Percentages are based only on those answering relevant parts to question 2, except for money settlement which is based on 1066 projected responses.

4. Was the primary investigator or fact finder that you dealt with on this case a representative of the Equal Employment Opportunity Commission or the State (local) fair employment practices agency? *(Check only one.)* (36)

	RESPONSE PERCENTAGES
1. ☐ The Equal Employment Opportunity Commission	92
2. ☐ State (Local) fair employment practices agency	2
3. ☐ Don't recall	4
NO ANSWER	1

Please base your answers to the remaining questions only on your experiences with the agency you checked above. *(Please turn over.)*

APPENDIX IV

5. Were you told of your right not to agree to the settlement proposed by the employer? (37)

	RESPONSE PERCENTAGES
1. ☐ Yes	61
2. ☐ No	27
3. ☐ Don't recall	11
NO ANSWER	1

6. If you had known you could have rejected the proposed settlement, would you have done so? *(Check only one.)* (38)

	APPLICABLE RESPONSE PERCENTAGES 3/
1. ☐ Definitely No	4
2. ☐ Probably No	10
3. ☐ Not sure	16
4. ☐ Probably Yes	30
5. ☐ Definitely Yes	39
6. ☐ Does not apply	
NO ANSWER	2

7. Were you told of your right to sue in Federal court on your own? (39)

	RESPONSE PERCENTAGES
1. ☐ Yes	57
2. ☐ No	32
3. ☐ Don't recall	10
NO ANSWER	1

8. Did EEOC or the State (local) fair employment practices agency help you understand its charge filing process, its investigation or fact finding process, and its settlement process? *(Check one block for each process.)*

	RESPONSE PERCENTAGES						
Process	NO ANSWER	1 Yes		2 No		3 Don't Recall	
Charge filing	7	☐	67	☐	18	☐ 8	(40)
Investigation or fact finding	12	☐	55	☐	26	☐ 7	(41)
Settlement	12	☐	58	☐	24	☐ 6	(42)

3/ Based only on those answering No or Don't recall to question 5.

9. Has the employer or union lived up to its part of the settlement? *(Check only one.)* (43)

	RESPONSE PERCENTAGES
1. ☐ Yes, lived up to all or nearly all of it	39
2. ☐ Yes, lived up to most of it	12
3. ☐ Lived up to half of it	7
4. ☐ No, lived up to only some of it	11
5. ☐ No, lived up to little or none of it	19
6. ☐ Don't recall	6
NO ANSWER	6

10. Do you think the investigator or fact finder got the facts in your case? *(Check only one.)* (44)

	RESPONSE PERCENTAGES
1. ☐ Yes, got all or nearly all of the facts	31
2. ☐ Yes, got most of the facts	27
3. ☐ Got about half of the facts	9
4. ☐ No, got some of the facts	14
5. ☐ No, got few or none of the facts	16
6. ☐ Don't recall	2
NO ANSWER	1

11. In your opinion, how well did the fact finder control the fact finding conference? *(Check only one.)* (45)

	RESPONSE PERCENTAGES
1. ☐ Complete control	14
2. ☐ Very good control	22
3. ☐ Adequate control	23
4. ☐ Poor control	18
5. ☐ No control at all	8
6. ☐ Don't recall	5
NONE HELD OR NO ANSWER	11

APPENDIX IV

12. If you felt that the fact finder did not have adequate control of the fact finding conference, what were the problems? *(Check all that apply.)*

		APPLICABLE RESPONSE PERCENTAGES 4/
1. ☐	Interruptions by the employer's attorney	29
1. ☐	Interruptions by others who were with the employer	30
1. ☐	Other: *(Please explain)* _____	48

4/ Based only on those answering Poor or No control in question 11.

13. How satisfied were you overall with the investigator or fact finder assigned to your case? *(Check only one.)* (49)

		RESPONSE PERCENTAGES
1. ☐	Very satisfied	19
2. ☐	Generally satisfied	32
3. ☐	Not sure	9
4. ☐	Generally dissatisfied	14
5. ☐	Very dissatisfied	21
6. ☐	Don't recall	1
	NO ANSWER	4

14. How satisfied were you with the way the investigator or fact finder got the facts in your case? *(Check only one.)* (50)

		RESPONSE PERCENTAGES
1. ☐	Very satisfied	16
2. ☐	Generally satisfied	34
3. ☐	Not sure	13
4. ☐	Generally dissatisfied	13
5. ☐	Very dissatisfied	19
6. ☐	Don't recall	2
	NO ANSWER	4

15. How satisfied were you with the way the investigator or fact finder helped you and the employer reach a final agreement? *(Check only one.)* (51)

		RESPONSE PERCENTAGES
1. ☐	Very satisfied	13
2. ☐	Generally satisfied	27
3. ☐	Not sure	11
4. ☐	Generally dissatisfied	18
5. ☐	Very dissatisfied	26
6. ☐	Don't recall	1
	NO ANSWER	4

16. Considering your answers to questions 5 thru 15, how satisfied overall were you with the way your charge was handled? *(Check only one.)* (52)

		RESPONSE PERCENTAGES
1. ☐	Very satisfied	16
2. ☐	Generally satisfied	26
3. ☐	Not sure	9
4. ☐	Generally dissatisfied	23
5. ☐	Very dissatisfied	25
6. ☐	Don't recall	1
	NO ANSWER	1

Please use the space below to give your reasons for satisfactions and dissatisfactions.

Satisfactions (53)	Dissatisfactions (54)
39%	52%

APPENDIX IV

17. Has your settlement helped make the job better for others like yourself? *(Check only one.)* (55)

	RESPONSE PERCENTAGES
1. ☐ Definitely yes	11
2. ☐ Probably yes	13
3. ☐ Not sure	13
4. ☐ Probably no	19
5. ☐ Definitely no	26
6. ☐ No basis to judge	15
NO ANSWER	4

18. Did your getting a settlement help other workers decide to file charges also? *(Check only one.)* (56)

	RESPONSE PERCENTAGES
1. ☐ Definitely no	16
2. ☐ Probably no	19
3. ☐ Not sure	21
4. ☐ Probably yes	12
5. ☐ Definitely yes	6
6. ☐ No basis to judge	24
NO ANSWER	4

19. Would you go to the EEOC or the State (local) fair employment practices agency again if you had another employment problem? *(Check only one.)* (57)

	RESPONSE PERCENTAGES
1. ☐ Definitely yes	44
2. ☐ Probably yes	22
3. ☐ Not sure	12
4. ☐ Probably no	6
5. ☐ Definitely no	13
NO ANSWER	4

Please explain your answer: 64% gave reasons (58)

20. If you have any comments on any of these questions or any other matters not covered, please feel free to express your views. You may use the rest of the page if you wish. Thank you very much for your help. (59)

60% commented

APPENDIX IV

APPENDIX IV

U.S. GENERAL ACCOUNTING OFFICE

SURVEY OF RESPONDENTS
TO NEGOTIATED SETTLEMENTS

PART I: SPECIFIC CASE ONLY

UNLESS OTHERWISE INDICATED, PERCENTAGES ARE BASED ON THE PROJECTED 1466 EMPLOYERS RETURNING USEABLE REPLIES. PERCENTAGES ARE ROUNDED TO THE NEAREST WHOLE NUMBER AND MAY NOT TOTAL 100.

1. Was the primary investigator or fact finder that you dealt with on this case a representative of the Equal Employment Opportunity Commission or the State (local) fair employment practices agency? *(Check only one.)* (18)

	RESPONSE PERCENTAGES
1. ☐ The Equal Employment Opportunity Commission	92
2. ☐ State (local) fair employment practices agency	2
3. ☐ Don't recall	2
NO ANSWER	3

Please base your answers to the remaining questions in Part I only on your experiences with the agency you checked above.

2. In your opinion, was the investigator or fact finder you dealt with on this case qualified, impartial, thorough, and amiable? *(Check one block for each characteristic.)*

	RESPONSE PERCENTAGES					
	1 Definitely Yes	2 Probably Yes	3 Not Sure	4 Probably No	5 Definitely No	NO ANSWER OR 6 No Basis to Judge
QUALIFIED	☐ 39	☐ 35	☐ 10	☐ 1	☐ 3	☐ 11
IMPARTIAL	☐ 29	☐ 28	☐ 12	☐ 11	☐ 7	☐ 13
THOROUGH	☐ 34	☐ 35	☐ 7	☐ 4	☐ 5	☐ 16
AMIABLE	☐ 48	☐ 30	☐ 2	☐ 3	☐ 3	☐ 14

Please comment on the strengths and weaknesses of the investigator or fact finder you dealt with on this case.

Strengths (23)	Weaknesses (24)
41%	31%

3. In your opinion, how well did the fact finder control the fact finding conference? *(Check only one.)* (25)

	RESPONSE PERCENTAGES
1. ☐ Complete control	16
2. ☐ Very good control	28
3. ☐ Adequate control	30
4. ☐ Poor control	4
5. ☐ No control at all	1
6. ☐ Don't recall	2
NONE HELD OR NO ANSWER	20

4. If you felt that the fact finder did not have adequate control of the fact finding conference, what were the problems? *(Check all that apply.)*

	APPLICABLE RESPONSE PERCENTAGES 5/
1. ☐ Interruptions by the charging party's attorney	0
1. ☐ Interruptions by others who were with the charging party	17
1. ☐ Other: *(Please explain)* _____	73

5/ Based only on those answering Poor or No control to question 3.

5. How satisfied were you overall with the investigator or fact finder assigned to resolve the charge filed against you? *(Check only one.)* (29)

	RESPONSE PERCENTAGES
1. ☐ Very satisfied	25
2. ☐ Generally satisfied	51
3. ☐ Not sure	6
4. ☐ Generally dissatisfied	9
5. ☐ Very dissatisfied	4
6. ☐ Don't recall	1
NO ANSWER	5

6. How did the investigator or fact finder get information from you about the specific charge? *(Check all that apply.)*

	RESPONSE PERCENTAGES	
1. ☐ Telephone	53	(30)
1. ☐ Questionnaire	65	(31)
1. ☐ On-site interview	23	(32)
1. ☐ Other: *(Please explain)* 18		(33)

APPENDIX IV

7. If a questionnaire was used, how many of the questions did you feel were relevant to the specific allegation? *(Check only one.)* (34)

	APPLICABLE RESPONSE PERCENTAGES 6/
1. ☐ All of them	10
2. ☐ Most of them	46
3. ☐ About half of them	22
4. ☐ Some of them	14
5. ☐ None of them	0 7/
6. ☐ Don't recall	4
NO ANSWER	3

6/ Based only on those checking Questionnaire in question 6.
7/ Actually 0.4%.

8. Were you given an adequate opportunity to give your side of the dispute during the investigation or fact finding process? *(Check only one.)* (35)

	RESPONSE PERCENTAGES
1. ☐ Definitely yes	56
2. ☐ Probably yes	28
3. ☐ Not sure	2
4. ☐ Probably no	2
5. ☐ Definitely no	3
6. ☐ Don't recall	0
NO ANSWER	8

9. How satisfied were you with the procedures which the investigator or fact finder followed in obtaining the facts of the case? *(Check only one.)* (36)

	RESPONSE PERCENTAGES
1. ☐ Very satisfied	18
2. ☐ Generally satisfied	57
3. ☐ Not sure	3
4. ☐ Generally dissatisfied	10
5. ☐ Very dissatisfied	3
6. ☐ Don't recall	1
NO ANSWER	8

10. How satisfied were you with the procedures which the investigator or fact finder followed to enable you and the charging party to reach a final agreement? *(Check only one.)* (37)

	RESPONSE PERCENTAGES
1. ☐ Very satisfied	21
2. ☐ Generally satisfied	50
3. ☐ Not sure	5
4. ☐ Generally dissatisfied	12
5. ☐ Very dissatisfied	6
6. ☐ Don't recall	1
NO ANSWER	6

11. Considering your answers to questions 2 thru 10, how satisfied overall were you with the way the complaint against you was resolved? *(Check only one.)* (38)

	RESPONSE PERCENTAGES
1. ☐ Very satisfied	21
2. ☐ Generally satisfied	51
3. ☐ Not sure	2
4. ☐ Generally dissatisfied	17
5. ☐ Very dissatisfied	5
6. ☐ Don't recall	1
NO ANSWER	4

Please give your reasons for satisfactions and dissatisfactions.

Satisfactions (39)	Dissatisfactions (40)
43%	36%

END OF PART I

APPENDIX IV

PART II: OVERALL EXPERIENCE

UNLESS OTHERWISE STATED, PERCENTAGES ARE BASED ON THE PROJECTED 1292 UNIQUE EMPLOYERS RETURNING USEABLE REPLIES.

1. How many employees (or union members) did you have on your rolls as of December 31, 1978? *(Check only one.)* (41)

		RESPONSE PERCENTAGES
1. ☐	15 – 50	12
2. ☐	51 – 250	24
3. ☐	251 – 500	10
4. ☐	501 – 1,000	11
5. ☐	1001 or more	38
	NO ANSWER	5

2. Do you have an equal employment opportunity (EEO) program? (42)

		RESPONSE PERCENTAGES
1. ☐	Yes	82
2. ☐	No	15
	NO ANSWER	4

If yes, continue. If no, go to Question 6.

3. If you have an EEO program, what kind is it? *(Check all that apply.)*

		APPLICABLE RESPONSE PERCENTAGES 8/
1. ☐	A general grievance procedure which can be used to handle discrimination complaints as well as other job complaints.	73
1. ☐	A special staff member (staff office) whose duty it is to handle discrimination complaints only.	26
1. ☐	A special staff member (staff office) whose duty it is to provide EEO counseling services to all employees.	38
1. ☐	Other *(Please specify)* _____	25

8/ Based only on those answering Yes to question 2.

4. During calendar year 1978, about what percent of the EEO complaints filed with your internal program were successfully settled between you and the charging party without outside involvement? *(Please provide your best estimate in the blank.)* BASED ON 643 PROJECTED RESPONSES

MEAN= 70
MEDIAN= 85

_____ *(Percent)*

5. During calendar year 1978, about what percent of the EEO complaints filed with your internal program were later filed with EEOC or State (local) fair employment practices agencies? *(Please provide your best estimate in the blank.)* BASED ON 650 PROJECTED RESPONSES (49 - 50)

MEAN= 17
MEDIAN= 5

_____ *(Percent)*

6. Considering all of the EEO charges filed against you which were processed by EEOC and the State (local) fair employment practices agencies (706 agencies) in the last year, how do you feel overall about the way each processed the charges? *(Check one box for EEOC and one box for State (local) agencies.)* (51 - 52)

EEO CHARGES PROCESSED BY EEOC		RESPONSE PERCENTAGES	EEO CHARGES PROCESSED BY 706 AGENCIES
☐ 13	1. Very satisfied	4	☐
☐ 50	2. Generally satisfied	19	☐
☐ 7	3. Not sure	4	☐
☐ 13	4. Generally dissatisfied	13	☐
☐ 6	5. Very dissatisfied	4	☐
☐ 6	6. No basis to judge	18	☐
5	NO ANSWER	38	

Please explain answers: _____

7. This questionnaire is being used to obtain data from many different kinds of establishments throughout the country. It cannot provide information in the same depth as that obtained in a personal interview or through narrative responses. Therefore, if you feel that there are issues which need further clarification, please feel free to comment on them here or on the other side of this page. Any further information you can give us will be greatly appreciated. 45% commented (53)

APPENDIX IV

APPENDIX V

PROPOSED AMENDMENT TO

SEC. 706(f)(1) OF TITLE VII OF THE

CIVIL RIGHTS ACT OF 1964, AS AMENDED

(f)(1) If within thirty days after a charge is filed with the Commission or within thirty days after expiration of any period of reference under subsection (c) or (d), the Commission has been unable to secure from the respondent a conciliation agreement acceptable to the Commission, the Commission may bring a civil action against any respondent not a government, governmental agency, or political subdivision named in the charge. In the case of a respondent which is a government, governmental agency, or political subdivision, if the Commission has been unable to secure from the respondent a conciliation agreement acceptable to the Commission, [the Commission shall make a written request to the Attorney General for representation in such civil action. If the Attorney General does not within the 45-day period beginning on the date such request was made notify the Commission in writing that the Attorney General will represent the Commission in such civil action, the Commission may bring the civil action against the respondent in the appropriate United States district court through its own legal representative.] The person or persons aggrieved shall have the right to intervene in a civil action brought by the Commission or the Attorney General in a case involving a government, governmental agency, or political subdivision. If a charge filed with the Commission pursuant to subsection (b) is dismissed by the Commission, or if within one hundred and eighty days from the filing of such charge or the expiration of any period of reference under subsection (c) or (d), whichever is later, the Commission has not filed a civil action under this section or the Attorney General has notified a civil action in a case involving a government, governmental agency, or political subdivision, or the Commission has not entered into a conciliation agreement to which the person aggrieved is a party, the Commission, or the Attorney General in a case involving a government, governmental agency, or political subdivision shall so notify the person aggrieved and within ninety days after the giving of such notice a civil action may be brought against the respondent named in the charge (A) by the person claiming to be aggrieved, or (B) if such charge was filed by a member of the Commission, by any person whom the charge alleges was aggrieved by the alleged unlawful employment practice. Upon application by the complainant and in such circumstances as the court may deem just, the court may appoint an attorney for such complainant and may authorize the commencement of the action without the payment of fees, costs, or security. Upon timely application, the court may, in its discretion, permit the Commission, or the Attorney General in a case involving a government,

governmental agency, or political subdivision, to intervene in such civil action upon certification that the case is of general public importance. Upon request, the court may, in its discretion, stay further proceedings for not more than sixty days pending the termination of State or local proceedings described in subsections (c) or (d) of this section or further efforts of the Commission to obtain voluntary compliance.

Note: The proposed amended portion is enclosed in brackets and underscored.

APPENDIX VI

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
WASHINGTON, D.C. 20506

DEC 11 1980

OFFICE OF THE CHAIR

Mr. Gregory J. Ahart
Director
Human Resources Division
U. S. General Accounting Office
441 G Street, N. W.
Washington, D. C. 20546

Dear Mr. Ahart:

I appreciate your giving me the opportunity to comment on the GAO Report to the Congress on EEOC enforcement activities.

The Report notes that the "EEOC has made significant improvements in enforcing Title VII," and cites the stable staffing of top management positions; a total reorganization of field structure, including the full integration of administrative and legal personnel into cohesive units; establishment of a centralized Office of Policy Implementation for the development of agency policy statements and guidelines; introduction of new rapid charge processing procedures; thorough training of field (as well as State and local) personnel in the new processes; professionalization of intake personnel, who provide careful screening of incoming charges; development of special processing procedures for backlog charges; and establishment of a management accountability system.

These improvements were appropriate for GAO to note because many of them were taken in direct response to a 1976 GAO Report, a report that sharply criticized Commission management and enforcement of Title VII. Thus, for example, in 1976 the GAO Report cited the Commission's low remedy rate and the slow processing of charges. By the time of the most recent GAO review, however, very significant improvements had occurred, which were reflected in the Commission's success in resolving employment discrimination disputes. A comparison of relevant data on agency activity for FY '77 (the last year during which prior procedures were in effect nationwide) and FY '80 (under new procedures) presents these improvements in striking contrast:

	1977	1980
Percentage of Settlements	14	47
Benefits (Monetary)	3,948,000	43,082,000
Number of People Benefitted	2,007	29,251
Time for Processing	2 years	140 days

GAO note: Page references have been changed to agree with the final report.

APPENDIX VI

This growth in successful charge resolution, with higher benefits for aggrieved persons, occurred simultaneously with a drastic reduction in the backlog of EEOC charges--the first permanent reduction in the history of the Commission. Thus, for the first time, new charge resolution was not delayed or impeded because of the staggering backlog of dated charges. Indeed, through its application of specialized processing procedures, the agency was able, again for the first time, to reduce its backlog, so that by the end of FY '80, approximately two-thirds of the 100,000 charge backlog were resolved, with total backlog elimination projected for the end of FY '82. And, as the GAO notes, these improvements were accomplished during a time when the EEOC was absorbing the additional functions of enforcing the Equal Pay Act, the Age Discrimination in Employment Act, and federal sector equal employment opportunity and affirmative action through Section 717 of Title VII and Section 501 of the Rehabilitation Act.

The Report notes that the most important change since the 1976 Report has been the introduction of the rapid charge processing system. Rapid charge procedures call for a professionalized counselling process at intake and a speedy convening of a "fact finding conference," a face-to-face meeting conducted by a specially trained investigator designed to begin factual development of the case and, if possible, to yield settlement.

Reviewing the rapid charge processing procedures in particular, the GAO report notes that "the EEOC's success at getting settlements...was demonstrated during the first 8 months that the process was in use in all offices" and concludes that the "EEOC's organizational changes and new procedures and processes go a long way towards addressing its past problems and enabling it to enforce Title VII effectively." (GAO Report, p. 10) While the Report suggests and addresses additional areas where improvements are needed, its overall positive tone is gratifying and encourages us in our belief that the procedures now in place are those best suited for remedying employment discrimination in this country.

The balance of this report addresses the areas of concern raised by GAO.

I. RAPID CHARGE PROCESSING (Pages 11-19)

While the GAO report notes the improvement in case processing resulting from the rapid charge processing system, there is a narrow area of disagreement. The Report states that some unspecified percentage of charges which are resolved through no-fault

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settlements are "weak" or, in fact, "no cause" charges. The Report argues that these charges should not be settled, but rather that the EEOC should counsel the charging parties to withdraw their charges or that the Commission should issue no cause determinations on these charges. These are generally cases involving discharges, allegedly for job infractions. Settlement often provides for the purging of records, a neutral reference, and perhaps a small amount of money. The report raises two concerns about settling these cases: first, that settlement of these charges results in an overstatement of Commission success since EEOC settlement figures include these settlements; and second, that the Commission's credibility is undermined both with a small number of employers, who assert that they have felt coerced into settlement out of fear of continued investigation and possible litigation, and with a somewhat larger number of charging parties, whose expectations about the merits of their claims and the relief to which they are entitled are raised as a result of the settlement process. Thus, it is said, they unrealistically believe they are entitled to relief far greater than that which they receive.

It is not altogether clear what is meant by a "weak" charge. On page 11, the Report refers to "weak" charges as those of "questionable merit." Examples on pages 13-14 deal with two cases in which employer evidence introduced during factfinding tended strongly to refute the charging party's allegations of discrimination. Notwithstanding this evidence, the charges were resolved through negotiation of a settlement agreement, rather than issuance of no-cause determinations. By contrast, the example on page 14 involves a situation in which a no-cause decision had been drafted after the completion of factfinding, but was not issued because the respondent notified the EOS that he was willing to sign an agreement which had been proposed during the conference. In reaching its conclusion that "weak" charges should be withdrawn or no-caused rather than settled, the Report treats the situations described in the foregoing examples as if they were the same. In fact, they are not, and different dispositions of each are appropriate under the agency's rapid charge processing procedures.

It must be noted that the choosing of a few cases to illustrate a point of concern is helpful, but in fairness any such analysis should be balanced by an indication, as we think is clear here, that the examples provided are not typical of rapid charge processing. This is by no means clear in the GAO analysis. To the extent that negotiated settlements are being pursued in cases in which the factfinding EOS has conclusively determined that there is no reasonable cause to believe the charge is true, a

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situation we believe to be quite rare, the Report's criticisms of course are well-taken. Thus, for example, in the situation described on page 14 (a no-cause decision had been reached but was not issued because the respondent changed his mind about settling), a settlement would not be authorized under rapid charge processing. The appropriate disposition would have been to issue the no-cause determination. Rapid Charge processing does not call for settling cases where the evidence conclusively establishes that a charge has no merit. The Report does not specify the number of such instances; but we believe their numbers are minimal at best. In any case we will explore methods to minimize them even further.

Substantially different considerations apply, however, to the procedures which should be followed with regard to those charges which appear to be "weak." The fact that a charge appears to be weak during factfinding does not mean that it has no merit or, indeed, that it is of questionable merit. Factfinding is the beginning of the investigative process. A substantial number of charges are settled at this stage. Many charges which settle may appear to be marginal upon a subsequent review of case files. However these files may necessarily contain incomplete evidence because the parties chose to halt the investigatory process with a settlement. Moreover, this apparent weakness may result from several other factors, not all of which are related to the merits of the charge.

As Title VII enforcement has developed, violations have become more subtle and the evidence needed for proof more circumstantial and, in many instances, more complicated. Few cases involve evidence of overt bias; and as evidence becomes more subtle, hard conclusions as to the merits of a case are difficult. This is especially so with respect to discharge cases where testimony is bound to conflict and where evidence as to the treatment of other employees in similar situations may be unclear. Some cases will indeed fall on the "weak" side of the spectrum, although they cannot be said to be conclusively without merit for purposes of a Title VII investigation.

Particularly at the factfinding stage, many cases will appear to be on the weak side. The evidence adduced during the factfinding conference will frequently provide strong support for the employer's explanation as to why an adverse action was taken. This is only logical. Employers have in their possession all the relevant employment data and records; they have immediate access to supervisors and other employees who prepare witness statements; and they have had an opportunity to develop a cohesive and comprehensive statement in response to the charge.

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Employers are often represented by counsel at the factfinding conference; those who are not generally have received the assistance and advice of counsel in developing their positions. By contrast, many charging parties have no access to the evidence which supports their allegation of discrimination. Nor are they often represented by counsel. As a result, it is not surprising that the evidence presented by a respondent during factfinding will appear stronger than that of the charging party. The role of the EOS is to develop as much evidence as is possible within the factfinding conference format, while at the same time acting as facilitator of settlement negotiations. And the EOS must not prejudge the merits of the charge during the conference.

Indeed development of the first example cited by the Report on page 13 illustrates the problem with pre-judging the merits of a charge during the factfinding conference. This case involved a bank mail driver who was fired allegedly for conduct contrary to bank policy. The employer presented evidence that the discharge was indeed cause-related in that the charging party had run afoul of the bank's policy. On the basis of this evidence and a post-hoc review of the files, the GAO concluded that the charge was of questionable merit. However, had there been no settlement reached and had the charge been referred to the continuing investigation unit, more extensive evidence supporting the plaintiff's allegations might well have been developed. For example, a review of personnel records might have disclosed that white employees who had engaged in similar conduct had not been discharged. It is true in some cases that a no-cause determination can be issued after factfinding has been completed, without additional investigation. This determination can be made on the basis of all the evidence that has been developed during the factfinding process. However, at the point at which a settlement offer is made during the factfinding conference, it is simply not always possible to determine whether the evidence developed thus far is sufficient to support a no-cause determination. Were an EOS required to anticipate a final disposition in advance principally on the basis of employer evidence, and therefore to terminate the factfinding and settlement process, the process would be professionally flawed. In addition, the Commission would be open to criticism for relying disproportionately on employers' evidence and potentially adequate and even strong cases would be lost--with many charging parties denied remedies altogether, regardless of the ultimate merits of their charges.

In any system which has an inventory as large as the Commission's, 56,000 charges, settlement of very weak charges will unquestionably occur. This is the exception rather than the rule. The Report's focus on a few examples gives the impression, however, that settlement of very weak charges is the norm. We submit that a few "worst case" examples are not representative of the dis-

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position of such charges. This is not to say that the bank mail driver case or other cases which appear marginal at the fact-finding stage would ultimately result in meritorious findings. The point is that, at that stage of the process, where the evidence is weak but not wholly conclusive, it may be more appropriate for all concerned to settle the case.

For settlement of weak cases is a benefit for charging parties, respondents and the Commission alike. For the charging party in a discharge case, the cleansing of records and/or a neutral job reference is invaluable for the future, even when such a remedy does not meet the expectations of the charging party in a weak case.

For the employer, settlement means a fast and final resolution of a matter which otherwise might require extensive investigation and/or enforcement action, with all the cost and time burdens unavoidably involved. If a case is not settled at fact-finding, the Commission is legally required to complete its investigation. Even if a charge is dismissed for "no cause", the charging party is entitled to bring an independent action. By settling a case at factfinding, the respondent saves the expense and time of a continued investigation and insulates himself against further liability.

Settlement is also cost efficient for the Commission. Title VII is a very high volume operation. The Commission has a 56,000 charge caseload. Professionalized intake practices now result in the screening out of charges totally devoid of merit. But, despite intake screening, public awareness of Title VII charge caseloads is growing at a time when the prospect for increased resources appears dim. In these circumstances, when speedy service is essential to the entire Commission process, good sense dictates settling a case at factfinding, rather than prolonging an investigation to make certain that weak cases are no caused.

But the Report's greatest concern with the negotiation of settlement agreements in those cases which it considers to be weak is that such agreements may undermine the credibility of the Commission in the eyes of employers and charging parties. However, the results of the GAO survey would seem to contradict this conclusion, particularly with respect to employer perceptions. The Report's data show that the great majority of employers--over 75%--are satisfied with Commission processes. This is an impressively high figure, especially in light of the remedy rate and dollar amount which employers pay complainants in rapid charge processing. It shows a considerably improved level of

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employer satisfaction over that found in the 1976 Report. In that Report, the GAO survey results showed that employers were satisfied with the investigative process only 38% of the time and with the conciliation process 41% of the time. Moreover, focus on charging party or employer dissatisfaction with remedies obtained as reflective of a loss of credibility misconceives the nature of the settlement process. Settlement emphasizes give-and-take and ultimately compromise. This means that in some instances, employers will believe they have given more than they should have and/or that charging parties will believe they have received less than what they deserved. Especially in those cases which they believe to be meritless, employers may assert that any relief is inappropriate. But, just as it is inappropriate to preclude relief merely on the basis of the apparent weakness of a case, it is similarly inappropriate to conclude that dissatisfaction with the relief provided or received in these few cases will overcome the general satisfaction with rapid charge processing and undermine the credibility of the EEOC.

Focusing on charging parties, the Report notes that, while the substantial number of charging parties are impressed with the professionalism of Commission investigators, many charging parties who entered into agreements calling for non-monetary relief are disappointed with the results of rapid charge processing and believe that the Commission has compromised their interests in the process of settling charges. The Report notes however that many of these disappointed charging parties were individuals whose charges were weak in the first place, and that continuation of the process misled the charging parties into believing that their charges had merit and that they were entitled to greater relief. Some charging parties stated that they had been pressured into settlements or not fully informed as to all evidence or settlement positions. The fact that, post facto, some charging parties may feel dissatisfied is not surprising. A grievant generally measures his satisfaction against the question of full relief--and full relief is generally not available in a compromise or settlement setting. As any government intake officer can attest, grievants who file claims invariably consider their cases strong from the outset. The fact of filing most often signals a grievant's faith in his case, and even when he knows he must settle as the objective facts unroll, he is often not moved substantially from his initial subjective faith in the justness of his cause.

While some charging parties may have been dissatisfied with the settlement process, it is far more likely that charging parties would be discouraged and disappointed with the EEOC had they obtained no relief whatsoever. Indeed, that was the characteristic attitude of charging parties prior to reorganization.

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By contrast, as the GAO survey's results show, in the vast majority of cases charging parties would return to the EEOC if they experienced another employment discrimination problem.

The GAO asserts that its conclusion that the Commission has lost credibility with some charging parties and respondents is bolstered by its analysis of the narrative comments to its survey (see pages 17-19). The Report includes examples taken from these narrative comments which are asserted to be typical of the attitudes of those who felt they had been pressured into accepting settlements in certain cases. But, as the GAO recognizes, the criticism of both charging parties and respondents stems from their dissatisfaction with the results of settlement. As we have stressed this dissatisfaction is fairly typical and certainly is not unique to the Title VII negotiated settlement process. And again, the mere fact of dissatisfaction with a settlement does not mean that either party was pressured into settling (or, for that matter, that either party actually felt pressured). Nor can Commission employees sit silently during the factfinding process. Straightforward, honest counselling of charging parties and respondents as to their rights and responsibilities and the stages of processing (including the possibility of continued investigation and enforcement action) is clearly essential. Such counselling must be realistic. On some occasions, the unwitting result of this type of third party counselling may be that some charging parties and/or respondents feel that they must settle during factfinding. If so, this is an unfortunate, and unintended result. But the Commission would clearly be remiss in carrying out its statutory obligations were it to abandon realistic counselling throughout the process.

Our Operations Evaluation Unit continually monitors our settlement efforts; and we continue to take steps through this process, as well as others, to minimize instances of overreaching on the part of our factfinders. To the extent that additional instructions to the field on this point are appropriate, however, we shall prepare and transmit them promptly.

Finally, the Commission takes the strongest exception to the GAO Report's claim that settlements obtained in these so-called "weak" cases inflate the results of rapid charge processing, as reflected in Commission reports. Commission reports clearly separate monetary and non-monetary benefits, with the "weaker" settlements largely falling into the latter category. The Commission's success with regard to monetary benefits in particular has been substantial: almost two-thirds of all negotiated settlements include monetary relief of approximately $3,500. This is not to suggest, however, that non-monetary relief, even in a marginal

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case, is hollow or insignificant. As noted, often relief such as a neutral reference, expungement of records or revocation of a letter of discipline are not only entirely appropriate to many situations, but may be more valuable than monetary relief to the charging party's future in making it possible for him to obtain another job.

Above all, it must be remembered that settlement is a vital tool in legal matters, especially in the administrative process. Compromise is the hallmark of settlement. In promising cases, parties settle for money, employment or other significant benefits. In weak cases, settlements entailing cleansing of records or neutral references are wholly appropriate. The GAO Report indicates that settlements provided in weak cases were consistent with the strength of the case. This is precisely how the legal process works in other areas where weak appearing cases are involved. It would be anamolous and inappropriate to make this area of the law an exception.

II. STATE AND LOCAL AGENCY CHARGE PROCESSING (Pages 19-27)

The GAO Report notes that EEOC has increased the use of State and local agencies in resolving individual charges and in reducing its workload. However, the GAO findings and recommendations make two points: (1) that EEOC should expand its contracting program to include additional local agencies with 706 status, and (2) that EEOC should work further with agencies to increase their charge resolutions.

The summary states that..."these actions should further reduce EEOC's processing of individual charges and allow it to allocate more resources to attacking systemic and class employment discrimination,..."

Expand our Contracting Program to Encompass Additional 706 Agencies

EEOC presently contracts with 44 State and 25 local agencies; there are an additional 23 agencies with 706 status which are not under contract. It is suggested that the charge resolution capability of these agencies, if addressed to charges now processed by EEOC, would free up EEOC resources to undertake more systemic and class action work.

But, there would only be minimal yield and disproportionate cost and staff burden from this proposal. If effected the result would be a minimum increase of 350 charges, or less than 1% of our deferral agency workload. When measured against the expense of

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staff work (monitoring, training, and considerable technical assistance) that would be required by EEOC, the recommendation appears highly undesirable.

Twenty-one of these 23 agencies are located in states where there is a state agency, with statewide jurisdiction, to which EEOC defers and with which we have charge resolution contracts covering the state as a whole. These 21 agencies have a present combined workload of roughly 1,000 employment charges cognizable under Title VII. The two remaining agencies are state personnel commissions with jurisdiction only over state agency employment. Of the above 1,000 charges, roughly 650 ultimately reach EEOC for substantial weight review, either through worksharing relationships between the local agency and the state agency with which we contract, or through informal relationships with local agencies which allow us to review their investigative files rather than to expend resources developing the same evidence. A substantial portion of the remaining 350 charges are filed solely with the local agency and adjudicated by it, and do not enter either the State's or EEOC's workload.

It is clear that the resources saved by contracting with these agencies for only 350 charges would be minimal and would be more than offset by staff resources required to negotiate, monitor and process financial paperwork for the contracts, to train local personnel in modern charge processing techniques and to help revise their entire management operations--a commitment EEOC believes it must make to assure adequacy of charge resolutions with all 706 agencies.

Work to Increase Agencies' Charge Resolution

EEOC has shown it is deeply committed to increasing state agency charge resolution responsibilities and, as a primary part of EEOC's own reorganization, has greatly increased its work with the 706 agencies with which it contracts, to assist them in increasing their production of charge resolutions acceptable under Federal standards. In FY 1979, 706 agencies contracted for 32,547 charge resolutions; in FY 1980, contract agencies' capability had increased to 38,740 charge resolutions. FY 1981 charge resolution contracts call for 41,299 resolutions by the 69 State and local agencies with which EEOC contracts. In three years we have achieved a 27% increase in the number of charges handled by State and local agencies.

Commencing in FY 1981 EEOC has been allocated resources sufficient to increase the base amount of contribution for charge resolution to $375. Quality incentives, initiated by EEOC in FY 1980 and effective in FY 1981, have encouraged agencies to

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compete for up to 10% per charge over this amount for a maximum of $412.50 per charge. Almost all agencies qualified for all or part of this increase. These additional monies will permit agencies to hire more staff and increase their production further. With this increased production, Commission resources are being freed for work in other program areas, including, as recommended in the report, class action work. By the end of FY 1982 all but a handful of agencies backlogs will have been eliminated, enabling them to process an even larger share of our joint current workload.

Central to our efforts to improve agency productivity has been our concentration on training and other assistance to enable agencies to consistently produce charge resolutions meeting Federal standards. This massive training, technical help, and management assistance effort have made it possible for EEOC to move to "certification" of 706 agencies in FY 1981. Agencies which have performed acceptably under contract for at least four years, and whose work product met Federal standards in at least 95% of the case-by-case substantial weight reviews over the past twelve months will be certified by the Commission without a case-by-case review. The agencies' files and processes will be subject to regular spot checks, and any party "aggrieved" by the agency's final finding may request and receive a review by EEOC. The savings to EEOC in staff and money, anticipated by certification is far greater than any other step that could be taken to increase the use of State and local agencies especially the use of small agencies, whose involvement we feel strongly would be counter-productive in cost and efficiency terms.

EEOC expects agencies whose workloads comprise 50% of currently contracted for resolutions to be certified in FY 1981, based upon their past performance. We expect additional agencies to be certified in FY 1982, based upon their performance in this contract year. In total, 86% of the agencies with which we contract meet the four year contract criterion at present and, additional agencies are currently in their fourth year. This will mean that both EEOC and deferral agency staff will be released from the review process and our staff largely allocated to other programs.

Clearly, this systematic program of contract management has yielded and will continue to yield high efficiency in utilization of EEOC/706 Agency resources for our joint charge workload.

III. INITIATION OF LITIGATION (Pages 22-23)

The GAO Report is critical of the time lapse between the failure of conciliation of a charge and the filing of a subsequent suit to enforce Title VII. The delays" in processing of charges following failure of conciliation refer primarily to cases in

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which failure of conciliation occurred prior to implementation of the Commission's Early Litigation Identification Program in FY 1980. The time lapse, noted in the cases reviewed by GAO, an average of 7.2 months between failure of conciliation and initiation of litigation, has since been largely eliminated. More current data shows that District Office legal units are completing their case reviews following failure of conciliation, making litigation recommendations within 30 days and obtaining final approval for litigation from the General Counsel and the Commission within 90 days.

In any case, the report's criticism fails to adequately recognize that litigation is not an automatic procedure after failure of conciliation. Completion of a litigation recommendation requires extensive analysis of the evidence, judgment on the likelihood of success on the merits and the cost of prosecuting the case, a decision as to the amount and kind of relief to be requested and an analysis of other factors as well. Even after litigation has been approved, delay in filing a complaint may be appropriate. While, as a general rule, a complaint is filed immediately after approval of suit, there are some cases where litigation approval is given upon condition that a settlement effort be made before filing. Also, an authorization to litigate may encourage settlement prior to filing. In some instances profesional and tactical considerations may dictate that immediate court filing is inappropriate. For example, the facts and circumstances of a case may suggest that discovery requests and documents be prepared and ready when the complaint is filed, or that filing await the resolution of a key legal issue pending in court.

Thus contrary to the assumption made by the report, it is not always appropriate to file a suit immediately upon failure of conciliation and approval of litigation. Congress anticipates the use of the courts as a last resort in Title VII matters, where efforts to conciliate and avoid litigation are stressed.

IV. SYSTEMIC PROGRAM (Pages 32-39)

We are pleased to note that the GAO Report is positive in its recognition of EEOC's demonstrated commitment to a thoroughgoing program of systemic and class action enforcement and of EEOC's substantial progress in effectively attacking patterns or practices of employment discrimination. As the report indicates, the timing of the GAO review was such that it was not possible to assess accurately the results of the improvements in process and the program's effectiveness.

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Since the period covered by the report, we can note continued improvement and progress in the systemic program, especially with the concerns expressed in the report that some field offices lacked sufficient commitment, that some systemic units were ineffective, and that some offices were unresponsive to headquarters direction. Presently the field offices are all functioning at a level which negates any need to provide an "additional impetus" to the program. There are 107 signed charges in active processing with additional proposals being generated in the projected timeframes, decisions have been drafted and are under headquarters review, and settlement discussions are underway in some cases. The emphasis and direction given to the systemic program at the highest levels has eliminated any need to consider changing the operational control of the field units.

In recognition of the importance of improving our efforts toward compliance monitoring of agreements and consent decrees, the Commission has reviewed the problem and developed a report outlining solutions. Activities are currently underway to implement an aggressive and consistent monitoring system. The project has considerable priority, especially in light of the rapidly expanding systemic program.

Finally, as indicated in the GAO Report, the Commission recognizes the need to improve the EEO-1 Report. The preliminary study referred to by GAO has been completed and we are developing revisions in coordination with other federal agency users, principally the Department of Labor, Office of Federal Contract Compliance Programs. While the revisions are directed toward making the EEO-1 data more effective, considerable attention is being given to developing one comprehensive, government-wide recordkeeping system to meet all government employment-related data needs under Title VI, Title VII and E.O. 11246. This consolidated and coordinated approach, approved by OMB and carried out under EEOC's responsibilities under E.O. 12067, will simplify and substantially reduce the recordkeeping and reporting burdens for all private and public sector employers while providing the data necessary to continue the federal commitment to equal employment opportunity.

Again, I appreciate the opportunity to comment on the report. If I can be of further assistance please let me know.

Sincerely yours,

Eleanor Holmes Norton

Eleanor Holmes Norton
Chair

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EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

December 8, 1980

William J. Anderson, Director
General Government Division
U.S. General Accounting Office
Washington, D.C. 20548

Dear Mr. Anderson:

Thank you for the opportunity to comment on your draft proposed report, "Further Improvements Needed in EEOC Enforcement Activities." This office is currently doing its own study of the progress of the Equal Employment Opportunity Commission and the Office of Federal Contract Compliance Programs since Reorganization No. 1 of 1978 and as part of the study has consulted with your staff. Our comments, especially those on the systemic program, reflect data collected several months after the data for your report was gathered.

Generally we concur with the report's findings that EEOC has made substantial gains since your 1976 report, particularly in the coordination of attorneys and investigators and in the development of a management accountability system. In fact, the latter system was cited by the OMB management newsletter as being one of the most innovative systems in government. We also support the conclusion that continued progress can only occur if further changes are made in EEOC's operations:

-- to improve the effectiveness of the rapid charge process system
-- to give EEOC authority to litigate against State and local political subdivisions
-- to increase the effectiveness of the systemic program.

While we have some concern about the nature of the weaknesses identified in the rapid charge process and systemic program, we do not agree with some of the recommendations for solving the problems identified. And, we most strongly disagree with your recommendation to transfer the contract compliance program to EEOC. This is based in large part on our recent experience of reviewing both EEOC and OFCCP offices simultaneously.

The two last approaches are already being implemented.

STATE AND LOCAL GOVERNMENT COMPLAINTS

Another recommendation made by the report to improve the overall individual charge processing system is that EEOC should be given authority to sue State and local governments if suit is not initiated by the Department of Justice within a specified time period. We agree that such authority is needed since EEOC resources are currently expended in the investigation of these cases though few are ever litigated. In addition, the present system implicity condones employment practices by State and local governments which would be effectively prohibited for private employers. A number of individuals have indicated that EEOC's inability to file suit against State and local employers leads to alarming disregard by them of EEO statutes. The State and local governments' knowledge that DOJ will "never get around to them" also results in less cooperation in factfinding and investigations and in fewer settlements.

SYSTEMIC PROGRAM

A major problem identified in the report is EEOC's slow implementation of the systemic program. Since the rapid charge process allows the settlement of individual charges without modifications to employment policies, it is more crucial than ever that an effective systemic program be conducted to eliminate patterns of discriminatory practices in the work environment.

Your report states that the main reason for the difficulties experienced in the systemic program is the division of responsibility between the Office of Systemic Programs and the Office of Field Services. It is stated further that the solution is to stress the importance of the systemic program and if necessary to consolidate supervision under the Office of Systemic Programs. In our visits, we have noted that there is some evidence that the systemic program has not been continuously supported by field managers. In fact, each field office that we visited was candid in stating that systemic units were not really functional until this year. We believe, however, that the failure to establish the systemic program was the result of the Commission's general commitment to utilizing all available resources to reduce its backlog rather than to any intrinsic organizational defect. In addition, the Office of Systemic Programs suffered initially from a lack of continuity in leadership. A program as new as systemic cannot have three or four managers in as many years without suffering severe consequences. As the backlog diminishes, the Chair and field managers are giving greater emphasis to the systemic program. EEOC staff are alert to potential systemic cases that go through the rapid charge process and work with charging parties to

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RAPID CHARGE PROCESS

Regarding the rapid charge process, the report describes the problem of settling charges of questionable merit. It does not address, however, another serious weakness of the system which is the inability, prior to the fact finding conference, to obtain adequate supporting data for the charging party while the respondent has possession of all of the relevant data. Because of this, EEOC is not always able to ensure full relief for charging parties.

Both inequities are inherent in any system which attempts to obtain some measure of justice quickly rather than delay negotiations until a full investigation has been completed. Both problems should therefore be considered in a balanced analysis of the rapid charge process. Under this process, some weak charges will necessarily be settled since such charges may be taken to court by charging parties. Absent investigation, though, it is impossible to determine how many ostensibly weak charges are in fact "undeserving" of no-fault settlements. As for the charging parties, even the Commission's control of the factfinding conference cannot make up for the disparity of resources between charging parties and respondents. Respondents have access to comparative employment records and often bring legal counsel to the factfinding conferences. Charging parties, especially those who have allegedly been discharged because of discrimination, are unlikely to have comparable resources, and as a result, the strongest aspect of their case may not be supported by the appropriate evidence at the factfinding stage.

The promotion of compromise settlements through the rapid charge process naturally tends to leave all parties less than totally satisfied. We feel that the technique of using a "questionnaire" to elicit opinions from both charging parties and employers on the adequacy or inadequacy of the rapid charge process is only valid to determine whether or not the expectations of both charging parties and respondents have been met. Such data certainly could have no bearing on the validity of EEOC's process. Nonetheless, the survey results indicate a surprisingly high number of positive responses from participants. The report recommends that EEOC discontinue obtaining negotiated settlements on weak charges. The objective of the recommendation is sound, but it does not get to the crux of the problem. We would recommend that EEOC instruct staff:

1) to give impartial assistance to both charging parties and respondents;
2) to aggressively develop as much information as possible prior to factfinding and carefully avoid undue pressure on either the charging parties or respondents to settle;
3) to close some obviously meritless cases at the point of intake.

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develop these cases as fully as possible. The field systemic units have targeted a substantial number of employers for systemic investigations. These cases are now in the pipeline and should begin bearing significant fruit in the next six months.

While we support your recommendation that the Executive Director emphasize the importance of the systemic program to field officials we recognize that this has already been done to a large extent. However, the further recommendation that, if necessary, the Office of Systemic Programs should temporarily consolidate all authority over the program does not address the unresolved issues in the systemic program. We would view any such consolidation at this point as extremely disruptive and, in fact, unworkable as long as systemic units are located within district offices.

CONSOLIDATION OF EEOC'S SYSTEMIC PROGRAM AND LABOR CONTRACT COMPLIANCE PROGRAM

A final recommendation upon which we would like to comment is that the Director of the Office of Management and Budget should advise the President that the contract compliance function under E.O. 11246 should be transferred from the Department of Labor to the Equal Employment Opportunity Commission. Aside from the possible further reduction of duplicative investigations and compliance reviews for contractors, your report gives little evidence that such a transfer of function would strengthen the Federal Government's EEO program. The preliminary findings of our study show that significant modifications would be needed in the Office of Federal Contract Compliance Program before a merger could be accomplished. At this time, a consolidation would negatively affect both EEOC and OFCCP.

Again, we appreciate the opportunity to respond to your draft report, "Further Improvements Needed in EEOC Enforcement Activities". Please call on us, if we can assist you further.

Sincerely,

Nathaniel Scurry

Nathaniel Scurry
Assistant to the Director
for Civil Rights

(209570)

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