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EQUAL EMPLOYMENT OPPORTUNITY

Rising Trends in EEO Complaint Caseloads in the Federal Sector



B-279407

July 24, 1998

The Honorable Elijah E. Cummings
Ranking Minority Member
Subcommittee on Civil Service
Committee on Government Reform and Oversight
United States House of Representatives

The Honorable Albert R. Wynn
United States House of Representatives

This briefing report responds to your request that we develop and analyze information about the inventories of unresolved equal employment opportunity (EEO) complaints at federal agencies and the Equal Employment Opportunity Commission (EEOC) and how trends in the number of complaints filed and the time taken to process them have contributed to inventory levels. The report presents analyses of (1) trends in the size of inventories and the age of cases in inventory at the various stages of the EEO complaint process, (2) trends in the number of complaints filed by federal employees and the time taken by agencies and EEOC to process them, and (3) implications of these trends. This report also presents data on complaints filed by U. S. Postal Service workers and how these have contributed to EEOC's caseloads.¹ Selected Postal Service-related complaint statistics are included in appendix I. In addition, as agreed with your offices, we are providing selected complaint statistics about the Departments of Agriculture and the Interior (see app. II). On July 21, 1998, we briefed you on the results of our review. This report provides the substance of that briefing.

Background

Federal employees, including postal workers, are protected by a variety of laws against discrimination because of race, color, sex, religion, national origin, age, or disability.² (See app. III for a brief discussion of these laws.) In addition, federal employees are protected from retaliation for filing a complaint, participating in an investigation of a complaint, or opposing a prohibited personnel practice.

Federal employee EEO complaints are to be processed in accordance with regulations (29 C.F.R. part 1614) promulgated by EEOC. These regulations

¹We refer to the Postal Service as a federal agency, even though it is an independent governmental establishment, because it is bound by most of the same discrimination complaint processes that apply to most federal agencies.

²Applicants for federal employment may file complaints with a federal agency that they believe engaged in discriminatory conduct.

also establish processing time requirements for each stage of the complaint process. Under these regulations, federal agencies decide whether to dismiss or accept complaints employees file with them and investigate accepted complaints. After the investigation, a complainant can request a hearing before an EEOC administrative judge, who may issue a recommended decision that the agency is to consider in making its final decision. An employee dissatisfied with a final agency decision or its decision to dismiss a complaint may file an appeal with EEOC. Generally, federal employees must exhaust the administrative process before pursuing their complaints in court.

Postal workers who are covered under collective bargaining agreements and who allege discrimination have more redress opportunities than other federal workers covered under collective bargaining agreements. These postal workers can take two courses of action concurrently: (1) file a discrimination complaint under the federal employee discrimination complaint process and also (2) file a grievance through procedures under the collective bargaining agreement. Other federal workers who are employed by agencies subject to the provisions of title 5 of the U.S. Code and covered under collective bargaining agreements must choose between these two redress paths.

In November 1995 and in subsequent testimonies, we stated that the redress system for federal employees, particularly the EEO complaint process, was inefficient, time consuming, and costly.³ We noted, among other things, that the discrimination complaint process was burdened by a number of cases that were not legitimate discrimination complaints; some were frivolous complaints or attempts by employees to get a third party's assistance in resolving workplace disputes unrelated to discrimination. Similarly, EEOC reported in its 1996 study that ". . . there may be a sizable number of disputes in the 1614 process [so named for the regulations governing the process] which may not involve discrimination issues at all. They reflect, rather, basic communications problems in the workplace."⁴ Accordingly, the number of discrimination complaints is not a reliable indicator of the level of discrimination occurring in the federal workplace.

³Federal Employee Redress: An Opportunity for Reform (GAO/T-GGD-96-42, Nov. 29, 1995); Federal Employee Redress: A System in Need of Reform (GAO/T-GGD-96-110, Apr. 23, 1996); and Civil Service Reform: Redress System Implications of the Omnibus Civil Service Reform Act of 1996 (GAO/T-GGD-96-160, July 16, 1996).

⁴ADR Study, U.S. Equal Employment Opportunity Commission, Office of Federal Operations, Oct. 1996.

In a discrimination complaint process recognized as inefficient and time consuming, and burdened with many cases that do not really involve discrimination issues, employees with EEO complaints can wait a long time to have them resolved. In the fall of 1997, the Civil Service Subcommittee, House Committee on Government Reform and Oversight, held hearings in which federal employees voiced their concerns about lengthy processing times and growing inventories of EEO complaints awaiting disposition.

Results in Brief

Agencies' complaint inventories and, even more so, EEOC's hearings and appeals inventories, have increased since fiscal year 1991. At agencies, the number of unresolved complaints in inventory rose about 102 percent, from 16,964 at the end of fiscal year 1991 to 34,267 by the end of fiscal year 1997. At EEOC, during this period, the inventory of hearing requests from complainants increased 218 percent, from 3,147 to 10,016, while the inventory of appeals filed by complainants increased 581 percent, from 1,466 to 9,980.

As the size of the inventories grew, so did the average length of time that cases had been in inventory as well as the proportion of cases remaining in inventory longer than allowed by regulations. Regulations require an agency to decide whether to dismiss or accept a complaint, investigate an accepted complaint, and report the investigation results to the complainant within 180 days from the filing of a complaint. (In some cases, agencies are allowed an additional 90 days to complete an investigation.) At agencies, in fiscal year 1996 (the latest year for which detailed agency complaint data were available), about 49 percent of cases pending the initial dismissal or acceptance decision had been in inventory longer than the 180-day time limit, an increase from about 13 percent in fiscal year 1991, while the proportion of complaints pending investigation more than 180 days was larger in fiscal year 1996 (about 59 percent) than in fiscal year 1991 (about 51 percent). Regulations also require that EEOC issue a recommended decision within 180 days of a request for a hearing. At EEOC, in fiscal year 1997, 50 percent of the hearing requests had been in inventory longer than the 180-day time limit, an increase from about 22 percent in fiscal year 1991. There are no time limits governing EEOC's processing of appeals. However, as an indication of the increase in time it takes, EEOC data show that in fiscal year 1997, 58 percent of the appeals cases had been in inventory longer than 200 days, an increase from about 3 percent in fiscal year 1991.

The size of the inventories and the age of cases in them increased as agencies and EEOC did not keep up with the influx of new cases during the 1990s. At agencies, the number of complaints increased, from 17,696 in fiscal year 1991 to 27,587 in fiscal year 1997 (about 56 percent). At EEOC, during fiscal years 1991 to 1997, requests for hearings increased from 5,773 to 11,198 (94 percent), while appeals to EEOC of agency decisions rose from 5,266 to 8,453 (about 61 percent). Postal workers have accounted for a large and disproportionate share of complaints, hearing requests, and appeals. This share, after declining in fiscal years 1992 and 1993, began to increase, coinciding with an increase in the proportion of the federal workforce represented by postal workers. In fiscal year 1993, postal workers represented 23.5 percent of the federal workforce and accounted for 40 percent of complaints, about 33 percent of hearing requests, and about 35 percent of appeals. By fiscal year 1996, postal workers represented 31.2 percent of the federal workforce and accounted for 50 percent of complaints, about 43 percent of hearing requests, and about 44 percent of appeals.

With the increased caseloads, EEOC and, to some extent, agencies, took longer on average to process complaints, contributing to the size and age of the inventories. The average amount of time EEOC took to process a hearing request increased from 173 days in fiscal year 1991 to 277 days in fiscal year 1997. Also, the time EEOC took to adjudicate an appeal had increased from 109 days in fiscal year 1991 to 375 days in fiscal year 1997. The trend was not as clear at agencies. Overall, however, the average number of days to close a case increased from 341 days in fiscal year 1991 to 379 days in fiscal year 1996. Agencies took longer to close and issue final decisions in cases that involved a hearing before an EEOC administrative judge than it took them to close other cases. In fiscal year 1996, for example, this figure was 613 days. Because a hearing precedes an agency's final decision, the longer EEOC takes to process a hearing request, the longer it will take an agency to make its final decision.

There are a variety of factors that can affect inventory levels and case processing. One factor is the relationship between the influx of cases and the capacity of staff to process them. At EEOC, the number of hearing requests received each year per administrative judge rose about 31 percent, from 109 in fiscal year 1991 to 143 in fiscal year 1996, because of the influx of new cases. The hearings inventory grew because the average number of cases processed and closed each year per administrative judge, despite increasing 23 percent from 95 to 117 during this period, was, except for fiscal year 1993, always less than the average

number of requests received. The number of appeals received each year per attorney increased about 54 percent, from 133 in fiscal year 1991 to 205 in fiscal year 1996. The appeals inventory grew because the average number of cases processed and closed each year per attorney, despite increasing 18 percent from 133 to 157 during this period, was, except for fiscal year 1991, always less than the average number of appeals received. For agencies, the data EEOC reported did not allow a precise comparison of the number of staff to caseloads at the various stages of the complaint process.

The implications of these trends are that inventories of cases pending will grow even larger in the future, particularly at EEOC, and that cases will take even longer to process than they do today. EEOC projects that incoming hearing requests and appeals will continue to increase. To deal with these increases, EEOC requested funding for additional administrative judges to process hearing requests and attorneys to process appeals in its fiscal year 1999 budget request. Even with these additional resources, however, EEOC projects that, by the end of 2002, its hearings inventory will grow to 15,950, with cases taking an average of 510 days to process, and its appeals inventory will grow to 18,953, with cases taking an average of 900 days to process. Without additional resources, EEOC projects that inventories will grow even larger, with cases taking still longer to process. Further, considering recent trends, it appears likely that a large proportion of EEOC's hearings and appeals caseloads will be composed of postal worker's complaints.

At agencies, it is unclear if, and to what extent, complaint filings will continue their generally upward trend. Recent trend data show that postal workers have driven the overall increase in the number of complaints filed since fiscal year 1994. While the overall number of postal worker complaints increased from 10,221 in fiscal 1994 to 14,326 in fiscal year 1997, the overall number of complaints filed by nonpostal workers decreased from 14,371 in fiscal year 1994 to 13,261 in fiscal year 1997. EEOC has not studied the reason for these trends. It is unclear whether the overall reduction in the number of complaints filed by nonpostal employees signals a moderation in the future flow of nonpostal cases through the process. It is also unclear whether postal worker complaint filings will continue to grow. Considering recent trends, however, the Postal Service seems likely to continue to be a significant factor in the volume of complaints.

Scope and Methodology

In developing information about complaint inventories, we focused on complaints that fall within the jurisdiction of EEOC, although certain allegations of discrimination may also be adjudicated by the Merit Systems Protection Board (MSPB).⁵ We did so for two reasons. First, the vast majority of discrimination complaints fall within EEOC's jurisdiction. Second, concerns about case inventories and lengthy processing times raised in hearings before the Subcommittee on Civil Service and in other forums have focused on complaints within EEOC's jurisdiction.

We developed and analyzed complaint caseload trends for agencies, including the Postal Service, as well as for EEOC's hearings and appeals caseloads generally for fiscal years 1991 through 1997.⁶ Agencies' complaint data for fiscal year 1997, which EEOC provided and which we used in our analysis, were preliminary and limited to the overall number of complaints filed with the agencies and the overall number of complaints in agencies' inventories. Because more detailed fiscal year 1997 agency complaint data were not available at the time of our review, our analysis of the age of cases in agencies' inventories and the time taken by agencies to process complaints was limited to fiscal years 1991 through 1996, except for the Postal Service, which gave us fiscal year 1997 data directly. For EEOC, our analysis included first quarter fiscal year 1998 data for the age of cases in its hearings inventory and the average time to process hearing requests. We selected 1991 as a base year because it preceded intensive government downsizing, the implementation of new laws expanding civil rights protections and remedies, and the implementation of new regulations governing the federal employee EEO complaint process.

To develop and analyze information about the trends in the size and age of inventories, the number of complaints filed by federal employees, and the amount of time taken by federal agencies and EEOC to process complaints, we obtained data from EEOC, principally those data reported by EEOC in its annual Federal Sector Report on EEO Complaints Processing and Appeals, and from the Postal Service. We did not verify the data in EEOC's reports or those provided by the Postal Service. In addition, we interviewed EEOC and Postal Service officials to obtain their perspectives on inventories, complaint trends, and processing times. To make observations about the

⁵MSPB adjudicates, among other things, employee appeals of firings or suspensions of more than 14 days, including cases in which an appellant alleges that the firing or suspension occurred because of unlawful employment discrimination. These are known as "mixed cases." MSPB's decisions in mixed cases may be reviewed by EEOC.

⁶Some data were not available for each fiscal year because of differences in the type of data EEOC collected from agencies.

implications of the trends, we drew upon our analysis of the trend data and discussions with EEOC and Postal Service officials.

In addition to providing aggregate data on federal agencies, in consultation with your offices, we developed and analyzed data on the (1) Postal Service using data reported by EEOC and obtained from the Postal Service and (2) Departments of Agriculture and the Interior using data reported by EEOC.

There is one known limitation to the data presented in this report. That concerns the quality of the data that were available for our analysis. Although we did not verify data, we found inconsistencies in the data reported by EEOC and the Postal Service. In analyzing data in the annual Federal Sector Report on EEO Complaints Processing and Appeals for this and a related report,⁷ we found inconsistencies in data EEOC reported about individual agencies. We considered some of these inconsistencies material, including errors we found in detailed tables of agencies' complaint inventories for fiscal year 1996. We brought these inconsistencies to EEOC's attention and obtained corrected figures. In addition, before issuing a bound version of the fiscal year 1996 Federal Sector Report on EEO Complaints Processing and Appeals, EEOC corrected errors that we found in materials it provided us before publication. Moreover, EEOC, which prepares the annual reports using data provided by federal agencies but does not verify the information agencies report, said that there are inconsistencies in some agencies' data. EEOC also said that it had initiated actions to improve the quality and timeliness of its processes to collect and report federal EEO complaint data. Further, after reviewing the complaint data report for fiscal year 1997 that the Postal Service submitted to EEOC, we brought questionable figures about the average age of cases in the Postal Service's complaint inventory to a Postal Service official's attention. These questionable figures, which we considered material, were corrected by the Postal Service, which submitted revised data to EEOC and undertook an examination of the computer program it uses to compile the statistics.

We performed our work in Washington, D.C., from February through July 1998 in accordance with generally accepted government auditing standards.

⁷Equal Employment Opportunity: Administrative Judges' Recommended Decisions and Agencies' Actions (GAO/GGD-98-122R, June 10, 1998).

Agency Comments

We received comments on a draft of this report from EEOC and the Postal Service. The Postal Service said that the report appeared to be a very thorough and balanced presentation and offered comments of a clarifying nature. The Postal Service, in offering an observation about the discrimination complaint process for federal employees, said that “further efforts at overhauling this very cumbersome system should be undertaken by the various stakeholders to insure that prompt and fair handling of claims with merit are possible.” The Postal Service said that one measure it has taken to deal with the complaint process is an organizationwide alternative dispute resolution (ADR) program. EEOC provided comments of a technical or clarifying nature. We considered the Postal Service’s and EEOC’s comments and made changes as appropriate in finalizing this report.

We are sending copies of this briefing report to the Chairman of the Civil Service Subcommittee, House Committee on Government Reform and Oversight, and to the Chairman and Ranking Minority Members of other congressional committees with responsibilities related to the EEO complaint processes for federal employees and the Postal Service. We are also sending copies to the Chairman of the EEOC, the Postmaster General, the Directors of the Office of Personnel Management and the Office of Management and Budget, and other interested parties. We will make copies of this report available to others on request.

Major contributors to this report are listed in appendix IV. Please contact me on (202) 512-8676 if you or your staff have any questions concerning this report.



Michael Brostek
Associate Director, Federal Management
and Workforce Issues

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Abbreviations

ADR	alternative dispute resolution
EEO	equal employment opportunity
EEOC	Equal Employment Opportunity Commission
FY	fiscal year
MSPB	Merit Systems Protection Board

Introduction

GAO Objectives

Develop and analyze

- Trends in the size and ages of cases in agencies' and EEOC's complaint inventories
 - Trends in the number of complaints filed and the time taken by agencies and EEOC to process them
 - Implications of the trends
-

GAO Scope and Methodology

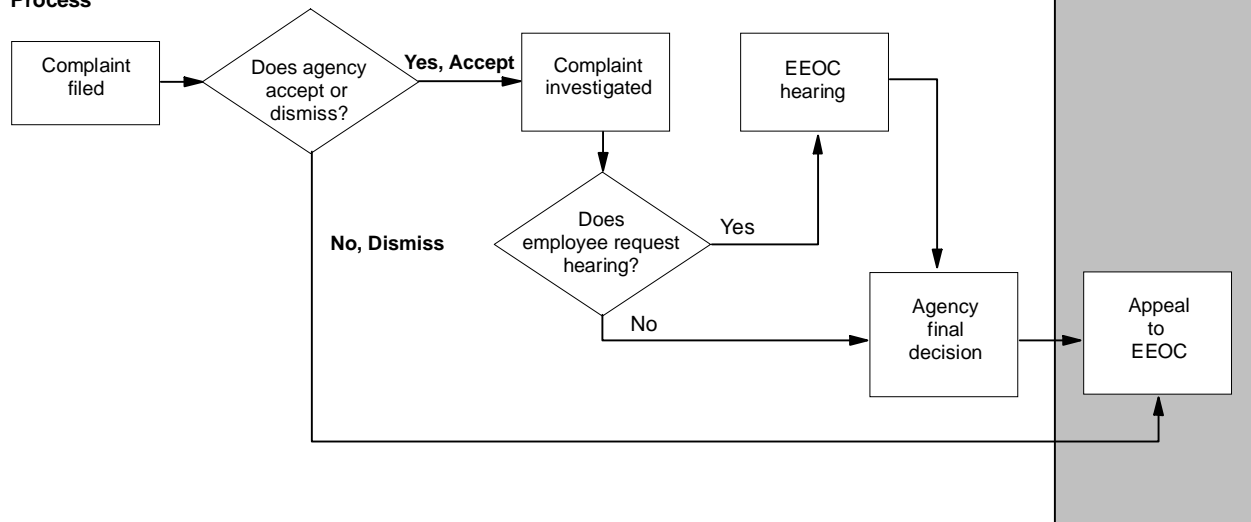
- Compiled information about complaints in EEOC's jurisdiction
 - Obtained and analyzed information in EEOC and Postal Service reports
 - Interviewed EEOC and Postal Service officials
-

GAO Processing Federal Employee EEO Complaints

Processing Days

- 450 days allowed from date a complaint is filed to an agency decision with a hearing.
- 270 days allowed from date a complaint is filed to an agency decision without a hearing.
- 180 days allowed to dismiss/accept and investigate complaint.
- 180 days from a hearing request to a decision.

Process



Source: GAO analysis of 29 C.F.R. part 1614 and EEOC Management Directive 110.

Agencies and EEOC process federal employees' EEO complaints under regulations⁸ promulgated by EEOC, which also establish processing time standards. Employees unable to resolve their concerns through counseling can file a complaint with their agency, which either dismisses or accepts it (the first stage) and, if the complaint is accepted, conducts an investigation (the second stage). Agencies are to decide whether to accept

⁸29 C.F.R. part 1614.

a complaint, investigate it, and report investigation results within 180 days from the complaint's filing.

After receiving the investigation results, an employee who pursues a complaint has two choices: (1) request a hearing before an EEOC administrative judge (the third stage) who issues a recommended decision, which the agency can accept, reject, or modify in making its final decision or (2) forgo a hearing and ask for a final agency decision (the fourth stage). An employee has 30 days to make this decision. When a hearing is requested, the administrative judge is to issue a recommended decision within 180 days of the request. An agency is to issue its final decision within 60 days of receiving an administrative judge's recommendation or a request for a final decision. Up to this point, EEOC standards have allowed complaint processing to take up to 270 days without a hearing, 450 days with one.

An employee dissatisfied with a final agency decision or its decision to dismiss a complaint may appeal to EEOC, which is to conduct a de novo⁹ review (the fifth stage). The employee has 30 days to file an appeal, but regulations do not establish time standards for EEOC's review. The final (sixth) stage within the administrative process is that the complainant or agency may request EEOC to reconsider its decision from the appeal within 30 days of receiving the decision. However, regulations do not establish time standards for the EEOC's reconsideration.

EEOC has proposed revisions to the regulations, including the following: (1) In cases that administrative judges decide, judges would issue final and not recommended decisions. (2) In addition to employees, agencies would be able to appeal judges' decisions. (3) Appeals of administrative judges' decisions would be based on the substantial evidence standard of review rather than on a de novo standard.¹⁰

⁹A complete review of all evidence from the beginning of a case.

¹⁰Substantial evidence is the degree of relevant evidence that a reasonable person might accept as adequate to support a conclusion.

GAO Not All Cases Go Through All Stages
of the Complaint Process

A complaint may not go through all stages of the process if it is

- Dismissed
 - Withdrawn
 - Settled
-

**Not All Cases Go Through
All Stages of the Complaint
Process**

Complaints that are dismissed by the agency, withdrawn by the complainant, or settled by the parties may not go through all the stages of the complaint process at agencies.

Complaints may be dismissed in the first stage of the complaint process. There is no further processing of a dismissed complaint by an agency except in cases in which a complainant appeals the dismissal to EEOC and EEOC remands the complaint to the agency for further action.

Withdrawals and settlements may occur at any point before a final agency decision. For example, a complainant may withdraw a complaint or an agency may pursue a settlement after reviewing investigation results. Likewise, a complainant may withdraw a complaint or an agency may pursue a settlement based on facts raised during a hearing before an EEOC administrative judge. If an agency does not comply with the terms of a settlement agreement, however, the complaint may be reinstated.

Dismissals, withdrawals, and settlements accounted for 69.1 percent of complaints closed by agencies in fiscal year 1996. Of the 25,150 complaints agencies closed in fiscal year 1996, 8,904 (35.4 percent) were dismissed, 2,653 (10.5 percent) were withdrawn, and 5,830 (23.2 percent) were settled. In the remaining 7,763 cases (30.9 percent), agencies issued final decisions.

Trends in the Size and Age of Cases in the Complaint Inventory

GAO Complaint Inventories Have Risen and Cases Have Been in Inventory Longer

- Agencies' complaint inventories increased 102 percent from FY 1991 to FY 1997
 - EEOC's hearings inventory increased 218 percent from FY 1991 to FY 1997
 - EEOC's appeals inventory increased 581 percent from FY 1991 to FY 1997
 - Cases have remained in inventory for increasingly longer periods, often longer than allowed by regulations
-

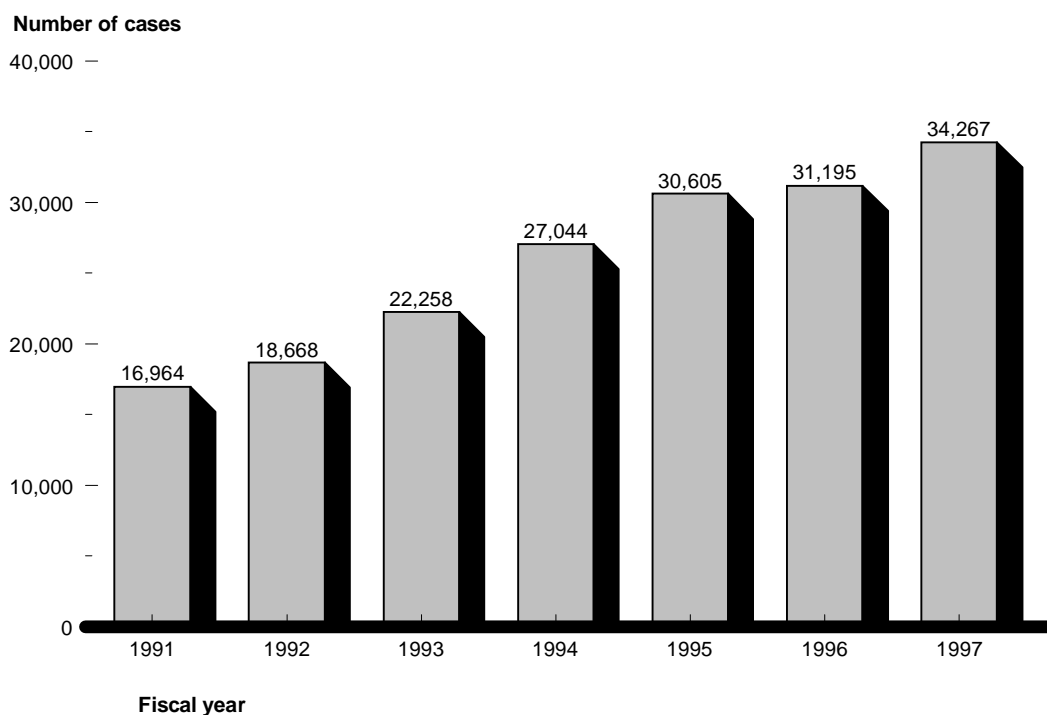
Agencies' complaint inventories and, even more so, EEOC's hearings and appeals inventories, have increased since fiscal year 1991. At agencies, the number of unresolved complaints in inventory rose about 102 percent, from 16,964 at the end of fiscal year 1991 to 34,267 by the end of fiscal year 1997. At EEOC, during fiscal years 1991 to 1997, the number of pending hearing requests increased 218 percent, from 3,147 to 10,016, while the number of cases pending appeal rose 581 percent, from 1,466 to 9,980.

**Briefing Section II
Trends in the Size and Age of Cases in the
Complaint Inventory**

As the number of complaints in inventory increased, so has the average length of time the average case has been in inventory. At agencies, after generally declining during fiscal years 1991 to 1994, the average age of the cases in inventory began to rise, reaching a peak of 397 days in fiscal year 1996. How long cases remain in the agency inventory, depends, in part, on how long cases remain in EEOC's hearings inventory. After reaching a low of 105 days in fiscal year 1993, the average age of a case in EEOC's hearings inventory rose to 243 days in fiscal year 1997. The average age of cases in EEOC's appeals inventory increased more rapidly, from a low of 87 days in fiscal year 1992 to 285 days in fiscal year 1997.

Another measure of inventory age is the proportion of cases that have been in process longer than allowed by regulations. With greater frequency, agencies and EEOC have not met the time standards. At agencies, in fiscal year 1996, about 49 percent of cases pending the initial dismissal or acceptance decision had been in inventory longer than the 180-day time limit, an increase from about 13 percent in fiscal year 1991, while the proportion of complaints pending investigation more than 180 days was larger in fiscal year 1996 (about 59 percent) than in fiscal year 1991 (about 51 percent). At EEOC, in fiscal year 1997, about 50 percent of the hearing requests had been in inventory longer than the 180-day time limit, up from about 22 percent in fiscal year 1991. There are no time limits governing EEOC's processing of appeals. However, EEOC data show that in fiscal year 1997, 58 percent of the appeals cases had been in inventory longer than 200 days, up from 3 percent in fiscal year 1991.

GAO Agencies' Complaint Inventories Have Grown



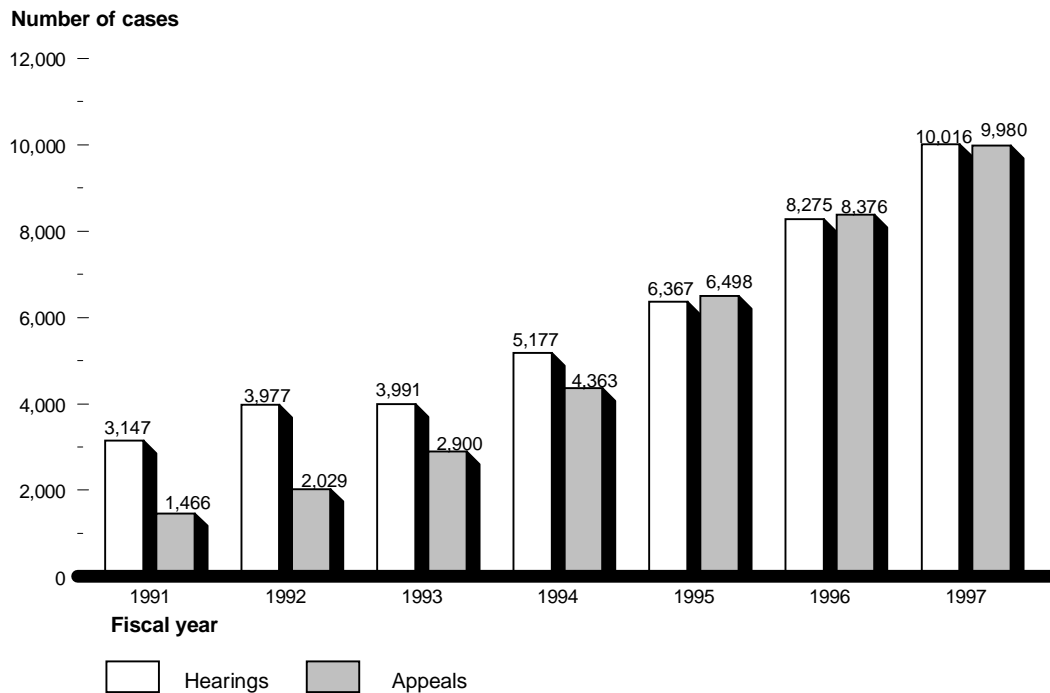
Source: GAO analysis of EEOC data.

**Agencies' Complaint
Inventories Have Grown**

At agencies, the number of unresolved complaints in inventory rose about 102 percent, from 16,964 at the end of fiscal year 1991 to 34,267 by the end of fiscal year 1997. The larger proportion of the growth in agencies' inventories has been in the earlier—acceptance/dismissal decision and investigation—stages. Cases pending acceptance/dismissal grew from 2,075 (12.2 percent of the agencies' inventory) at the end of fiscal year 1991 to 6,029 (19.3 percent of the inventory) by the end of fiscal year 1996. At the same time, cases pending investigation increased from 5,514 (32.5 percent of the inventory) to 12,305 (39.4 percent of the inventory).

The Postal Service's inventory of complaints increased about 242 percent, from 3,963 to 13,549 during fiscal years 1991 to 1997. In fiscal year 1997, Postal Service cases accounted for 39.5 percent of the 34,267 complaints in overall agency inventories. (See app. I, table I.1.)

GAO EEOC's Hearings and Appeals Inventories Have Increased



Source: GAO analysis of EEOC data.

**EEOC's Hearings and
Appeals Inventories Have
Increased**

EEOC's inventories of cases in the hearing and appeal stages increased at a greater rate than agencies' complaint inventories. During fiscal years 1991 to 1997, the number of pending hearing requests increased 218 percent, from 3,147 to 10,016. At the same time, the number of cases pending appeal rose 581 percent, from 1,466 to 9,980.

The portion of EEOC hearings and appeals inventories represented by postal workers' cases has increased since fiscal year 1993. Postal workers' cases were 45.9 percent of EEOC's hearings inventory in fiscal year 1997; in fiscal year 1993, this figure was 27.4 percent. Similarly, postal workers' cases were 43.3 percent of EEOC's appeals inventory in fiscal year 1997; in fiscal year 1993, this figure was 32.4 percent. (See app. I, table I.1.)

GAO Average Age of the Complaint Inventory at Agencies FYs 1991 - 1996

Stage of process	Number of days in inventory since complaint filed					
	1991	1992	1993	1994	1995	1996
Dismiss/accept	120	154	313	196	376	425
Investigation	260	279	305	257	249	281
Hearing	532	547	484	377	467	487
Agency decision	653	599	438	366	504	510
Overall average age	379	376	368	289	367	397

Source: GAO analysis of EEOC data.

Agencies report data on the average age of cases in inventory for each of the four stages of the complaint process as well as an overall average. After declining through fiscal year 1994, the overall average age of the cases in inventory began to rise, reaching a peak of 397 days in fiscal year 1996.

**Briefing Section II
Trends in the Size and Age of Cases in the
Complaint Inventory**

Agencies have the most direct control over cases in the first two stages of the complaint process—dismissal/acceptance and investigation. A notable increase in the age of cases came in the complaints pending dismissal/acceptance category, the first stage of the complaint process. Except for fiscal year 1994, when it decreased, the average age of complaints in the first stage increased from 120 days at the end of fiscal year 1991 to 425 days by the end of fiscal year 1996. The average age of cases in the second stage of the process—investigation—increased in fiscal year 1996 after declining in fiscal years 1994 and 1995.

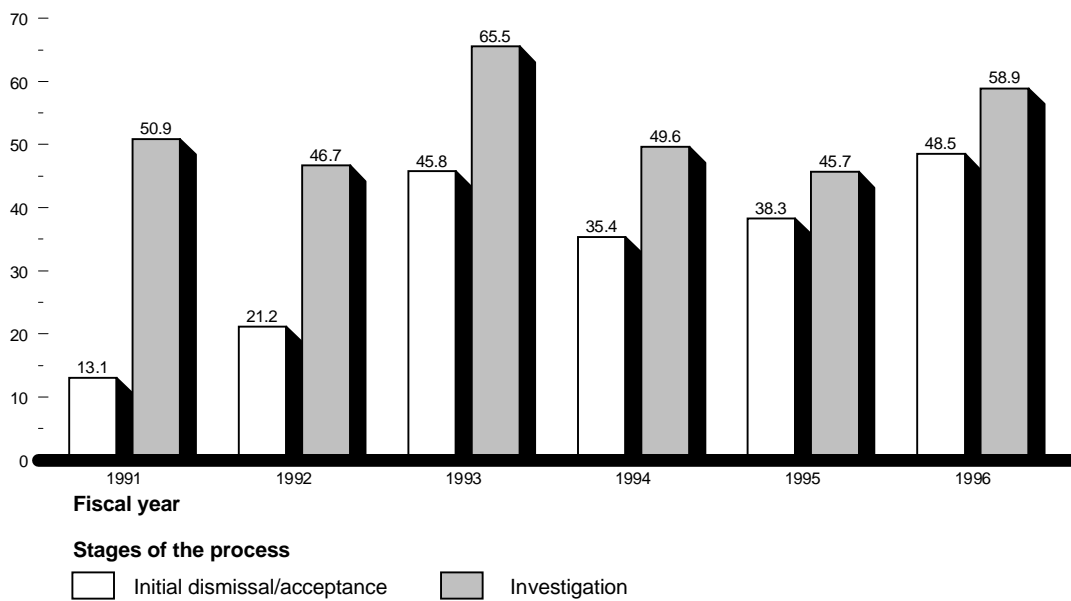
Complaints generally have not remained in the Postal Service's inventory as long as they have in other federal agencies'. In fiscal year 1996, for example, the last year for which comparable figures were available, the average age of complaints in the Postal Service's inventory was 315 days compared with 443 days for other federal agencies. However, this figure for the Postal Service increased to 494 in fiscal year 1997 (no comparable figure for other agencies was available). (See app. I, table I.2.)

How long cases remain in the agency inventory at the hearing and final agency decision stages depends, in part, on how long cases remain in EEOC's hearings inventory. The average age of cases in the hearing and final agency decision stages trended upward in fiscal years 1995 and 1996. This increase can be partly attributed to an increase in the average age of cases in EEOC's inventory of hearing requests, which we will discuss later in this report (see pp. 30 and 31).

GAO Agency Cases Pending Dismissal/ Acceptance and Investigation

Frequently, agencies did not dismiss/accept and investigate complaints in 180 days.

Percentage of cases pending more than 180 days



Source: GAO analysis of EEOC data.

**Agencies' Cases Pending
Dismissal/Acceptance and
Investigation**

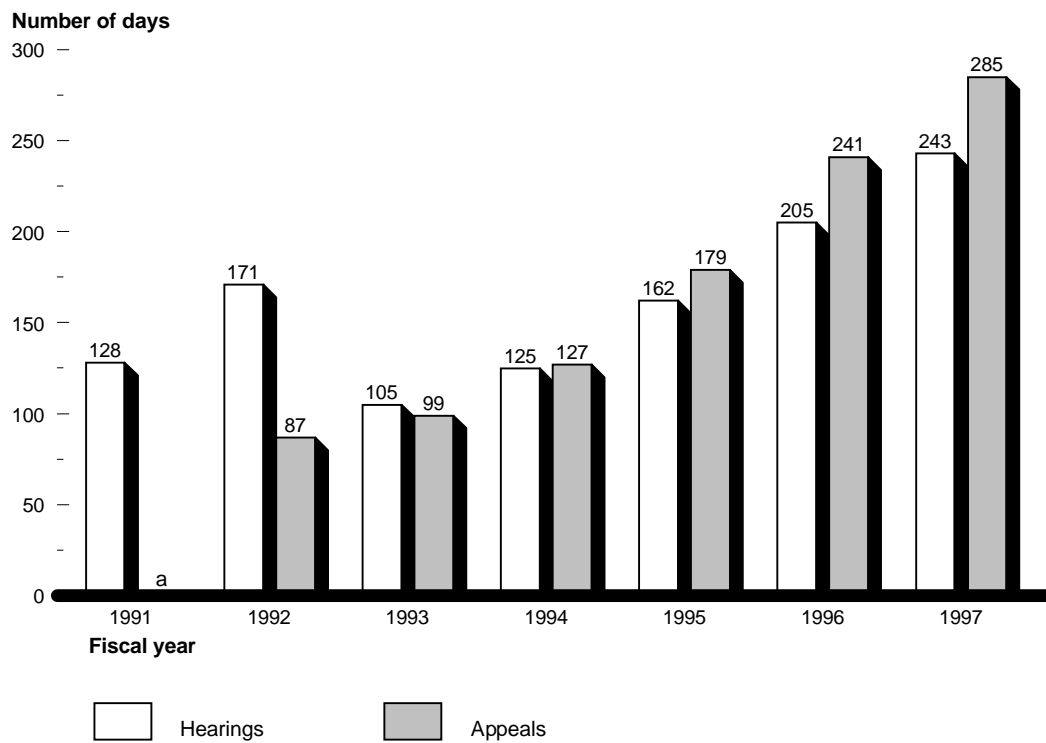
The average length of time cases have been in inventory is just one measure of inventory age. Another measure is the proportion of cases that have been in process longer than allowed by regulations.

Regulations require an agency to decide whether to dismiss or accept a complaint, investigate an accepted complaint, and report the investigation results to the complainant within 180 days from the filing of the complaint. (In some cases, agencies are allowed an additional 90 days to complete an investigation.¹¹) Frequently, agencies have not met the 180-day time standard. In fiscal year 1996, for example, 48.5 percent of the cases pending the initial dismissal or acceptance decision had been in the inventory more than 180 days. Although this figure has fluctuated, there has been an overall upward trend since fiscal year 1991, when 13.1 percent were not completed within the required time. In addition, the proportion of complaints pending investigation that were in inventory more than 180 days fluctuated between 45.7 and 65.5 percent during fiscal years 1991 to 1996. However, the proportion of complaints pending investigation more than 180 days was larger in fiscal year 1996 (about 59 percent) than in fiscal year 1991 (about 51 percent). There were no data on the number of cases pending investigation more than 180 days in which an extension had been authorized.

The Postal Service, like other federal agencies, frequently has not met the 180-day requirement to dismiss or accept a complaint, investigate an accepted complaint, and report the investigation results to the complainant. (See app. I, table I.3.)

¹¹Regulations allow this extension when the parties agree to it.

GAO Average Age of EEOC's Hearings and Appeals Inventories Has Increased



^aNot reported.

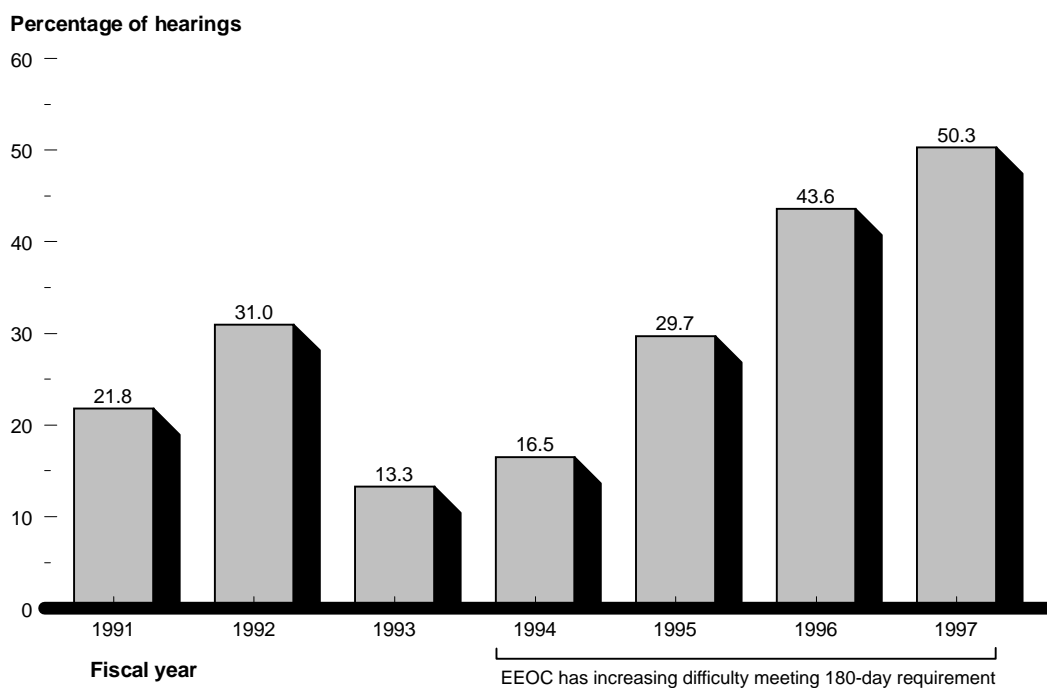
Source: GAO analysis of EEOC data.

**Average Age of EEOC's
Hearings and Appeals
Inventories Has Increased**

Overall, EEOC has experienced increases in the average age of cases in both its hearings and appeals inventories. After reaching a low of 105 days in fiscal year 1993, the average age of a case in EEOC's hearings inventory rose to 243 days in fiscal year 1997. The upward trend has continued in the first quarter of fiscal year 1998, with the average age further increasing to 261 days.

The average age of cases in the appeals inventory increased more rapidly. From a low of 87 days in fiscal year 1992, the average age of a case in EEOC's appeals inventory increased to 285 days in fiscal year 1997.

GAO Proportion of EEOC's Hearings Inventory Older Than 180 Days Has Risen

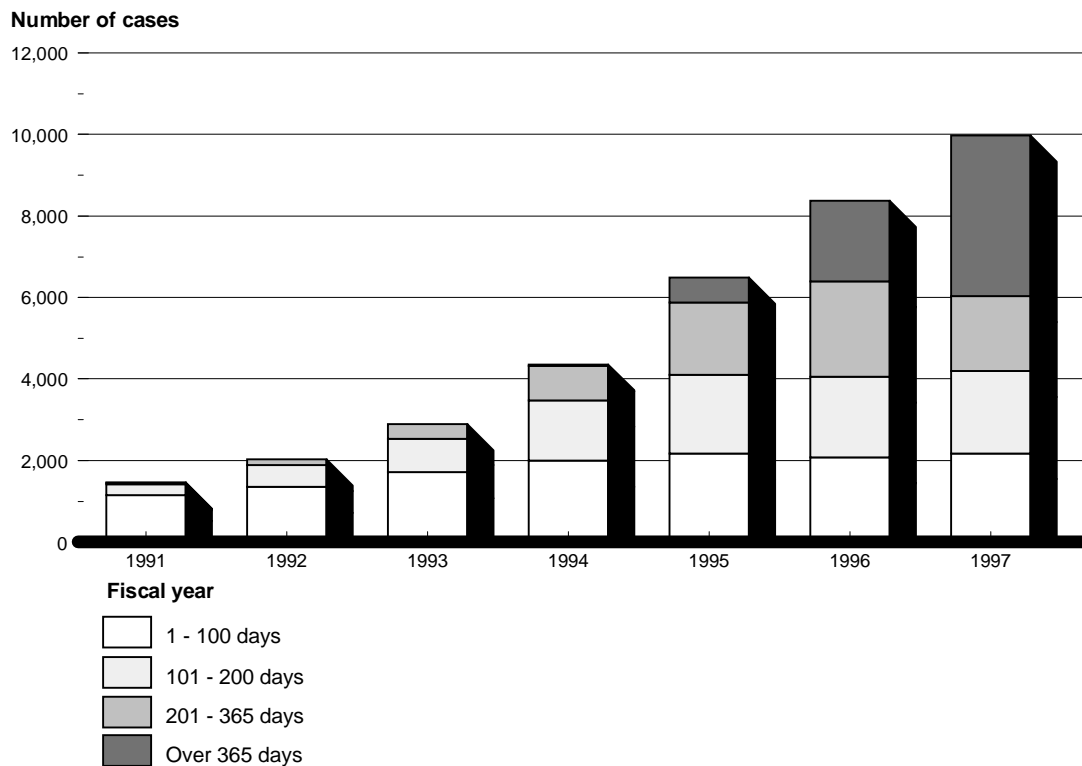


Source: GAO analysis of EEOC data.

**Proportion of EEOC's
Hearings Inventory Older
Than 180 Days Has Risen**

As discussed earlier, another indicator of inventory age is the proportion of cases that have not been processed within the time limits established in regulations. Regulations require that an administrative judge issue a decision within 180 days of EEOC's receipt of a request for a hearing, a standard that EEOC has had increasing difficulty meeting since fiscal year 1993. In fiscal year 1993, about 13 percent of the cases in EEOC's hearings inventory exceeded the 180-day standard. By fiscal year 1997, however, this figure had increased to about 50 percent. First quarter fiscal year 1998 data show that the percent of the cases in the hearings inventory exceeding the 180-day standard had further increased to 54.2 percent.

GAO More Appeals Have Been in Inventory For Longer Periods of Time at EEOC



Source: GAO analysis of EEOC data.

**More Appeals Have Been
in Inventory for Longer
Periods of Time at EEOC**

Although there is a requirement that EEOC process hearing requests within 180 days, there is no time requirement for its processing of appeals. Still, EEOC reports the age of cases in the appeals inventory along four time strata. These data show, for example, that the proportion of cases in inventory for more than 200 days increased from about 3 percent in fiscal year 1991 to 58 percent in fiscal year 1997. Further, in fiscal year 1997, 39.5 percent of the appeals cases had been in inventory for more than a year, an increase from sixth-tenths of 1 percent in fiscal year 1991.

Trends in the Number of Complaints Filed and the Time Taken to Process Them

GAO The Number of New Cases and the Time to Process Them Increased

- Complaints filed with agencies increased 56 percent from FY 1991 to FY 1997
 - Requests for EEOC hearings increased 94 percent from FY 1991 to FY 1997
 - Appeals to EEOC increased 61 percent from FY 1991 to FY 1997
 - Agencies are taking longer to process cases at the early stages
 - EEOC's processing times rose sharply
-

Agencies and EEOC had an influx of new cases during the 1990s. Overall, the number of complaints federal employees filed with their agencies increased about 56 percent, from 17,696 in fiscal year 1991 to 27,587 in fiscal year 1997. At EEOC, during this period, requests for hearings increased 94 percent, from 5,773 to 11,198, while appeals rose 60.5 percent, from 5,266 to 8,453. Postal workers, when compared with their representation in the federal workforce, accounted for a

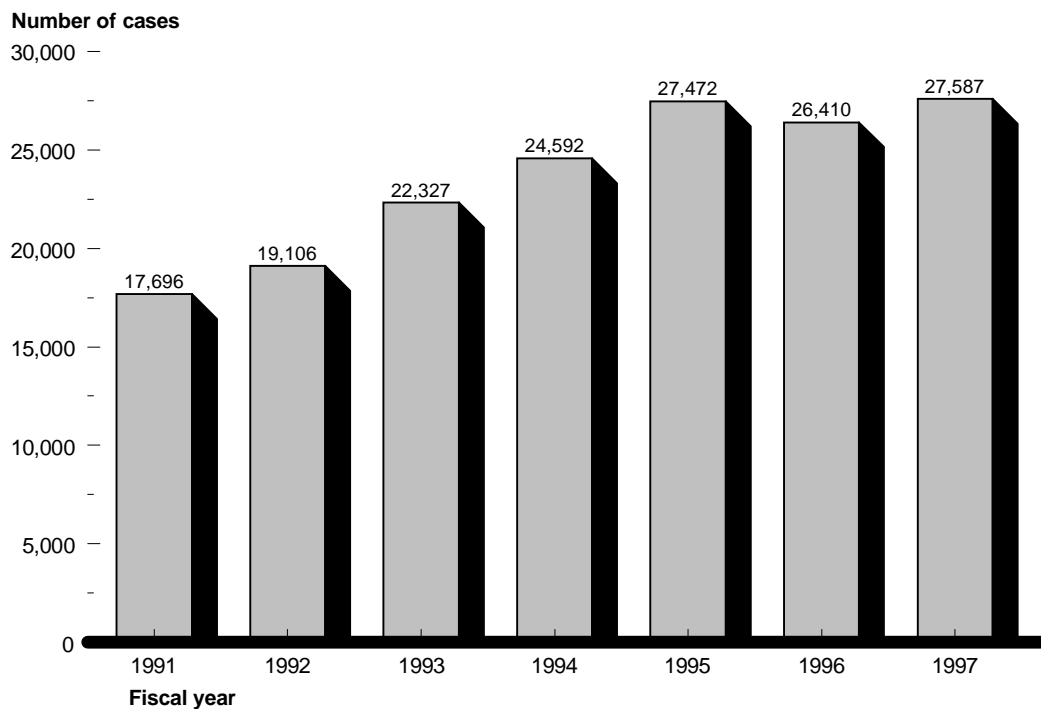
Briefing Section III
Trends in the Number of Complaints Filed
and the Time Taken to Process Them

disproportionately high and increasing share of the complaints, hearings requests, and appeals.

As agencies and EEOC experienced increased caseloads, average processing times increased. In fiscal year 1996, for example, agencies took an average of 228 days to dismiss a case, an increase from 155 days in fiscal year 1995. Similarly, the average time to conduct investigations increased to 240 days in fiscal year 1996 from 171 days in fiscal year 1993. Both of the 1996 figures exceeded the 180-day time standard. EEOC also took much longer to process cases. From 173 days in fiscal year 1991, the average amount of time EEOC took to process hearing requests increased to 277 days in fiscal year 1997, far in excess of the 180-day limit specified in regulations. The increase in the average amount of time EEOC took to process appeals was greater, increasing from 109 days in fiscal year 1991 to 375 days in fiscal year 1997.

A variety of factors can affect inventory levels and case processing. One factor is the relationship between the influx of cases and the capacity of staff to process them. At EEOC, during fiscal years 1991 to 1996, the number of hearing requests received per administrative judge and the number of appeals received per attorney increased. The hearings inventory grew as the average number of hearing requests processed and closed each year by administrative judges was, except for one year, always less than the average number of requests received. The appeals inventory grew as the average number of cases processed and closed each year by attorneys was, except for one year, always less than the average number of appeals received. (See pp. 52 and 53 for details.) For agencies, the data EEOC reported did not allow a precise comparison of the number of staff to caseloads at the various stages of the complaint process.

GAO The Number of Complaints Filed With Agencies Has Increased



Source: GAO analysis of EEOC data.

**Number of Complaints
Filed With Agencies Has
Increased**

Agencies, including the Postal Service, had to deal with an influx of new cases during the 1990s. The number of complaints federal employees filed with their agencies increased sharply from 17,696 in fiscal year 1991 to 27,472 in fiscal year 1995, declined to 26,410 in fiscal year 1996, then increased again in fiscal year 1997 to 27,587. The number of new complaints filed with agencies was about 56 percent greater in fiscal year 1997 than in fiscal year 1991. Data also show that increases in the total number of complaints filed since fiscal year 1994 were largely driven by postal workers' complaints.

Complaints filed by postal workers increased from 7,772 in fiscal year 1991 to 13,322 in fiscal year 1995, decreased slightly to 13,252 in fiscal year 1996, then increased again to 14,326 in fiscal year 1997. (See app. I, table I.5). A closer examination of the complaint statistics shows that, when the number of postal worker complaints is subtracted from the total number of complaints filed, the number of complaints filed by nonpostal workers decreased, from 14,371 in fiscal year 1994 to 14,150 in fiscal year 1995 and decreased further to 13,158 in fiscal year 1996, before increasing slightly to 13,261 in fiscal year 1997.

GAO Postal Workers Have Accounted for an
Increasing Share of Complaints Filed

The number of postal workers' complaints has represented a disproportionate and increasing share of complaint filings

- The percentage of the federal workforce made up by postal workers has increased
 - Postal workers are more likely to file complaints than nonpostal workers
-

The number of postal workers' complaints has represented a disproportionate and increasing share of federal employee complaint filings. In fiscal year 1991, postal workers represented 23.9 percent of the federal workforce but accounted for 43.9 percent of the complaints filed. By fiscal year 1996, postal workers represented 31.2 percent of the federal workforce while accounting for 50.2 percent of the complaints filed. (See app. I, tables I.4 and I.5.)

**Briefing Section III
Trends in the Number of Complaints Filed
and the Time Taken to Process Them**

We identified two factors that may help explain these trends. One factor is that from fiscal year 1991 to fiscal year 1996, the number of nonpostal federal workers decreased about 18 percent, from 2,378,934 to 1,948,009, while the number of postal workers increased about 18 percent, from 748,121 to 883,370. The increase in the proportion of complaints represented by postal workers closely matched the increase in postal workers' representation in the federal workforce. The other factor is that postal workers have been more likely to file complaints. For example, in fiscal year 1996, there were 15 complaints filed for every thousand postal workers compared with 6.8 complaints filed for every thousand nonpostal workers. Comparable figures in fiscal year 1991 were 10.4 complaints for every thousand postal workers and 4.2 complaints for every thousand nonpostal workers.

The Postal Service Manager, EEO Compliance and Appeals, identified two reasons for postal workers' higher propensity to file complaints. First, postal workers can simultaneously file an EEO complaint under the administrative process for federal employees and an EEO grievance under their collective bargaining agreement. About 40 percent of postal workers who have filed a complaint under the federal employee EEO complaint process have filed a grievance about the same matter. Second, about 85 percent of postal workers are blue-collar workers covered under collective bargaining agreements. This group of employees, according to the Postal Service official, tends to file complaints more often than white-collar workers.

GAO Increases in Complaints Filed With
Agencies Attributed to Several Factors

- Downsizing
 - Availability of compensatory damages under the 1991 Civil Rights Act
 - Increased awareness of protections against disability-based discrimination
 - New regulations improving access to complaint process
-

**Increases in Complaints
Filed With Agencies
Attributed to Several
Factors**

In our August 1997 report about employers' experiences with alternative dispute resolution (ADR) processes in the workplace,¹² we reported that the increase in discrimination complaints can be attributed to several factors, according to EEOC, dispute resolution experts, and officials of federal and private-sector organizations that we studied.

One factor that experts and officials cited for the increase in complaints was downsizing, which resulted in appeals of job losses and reassignments.

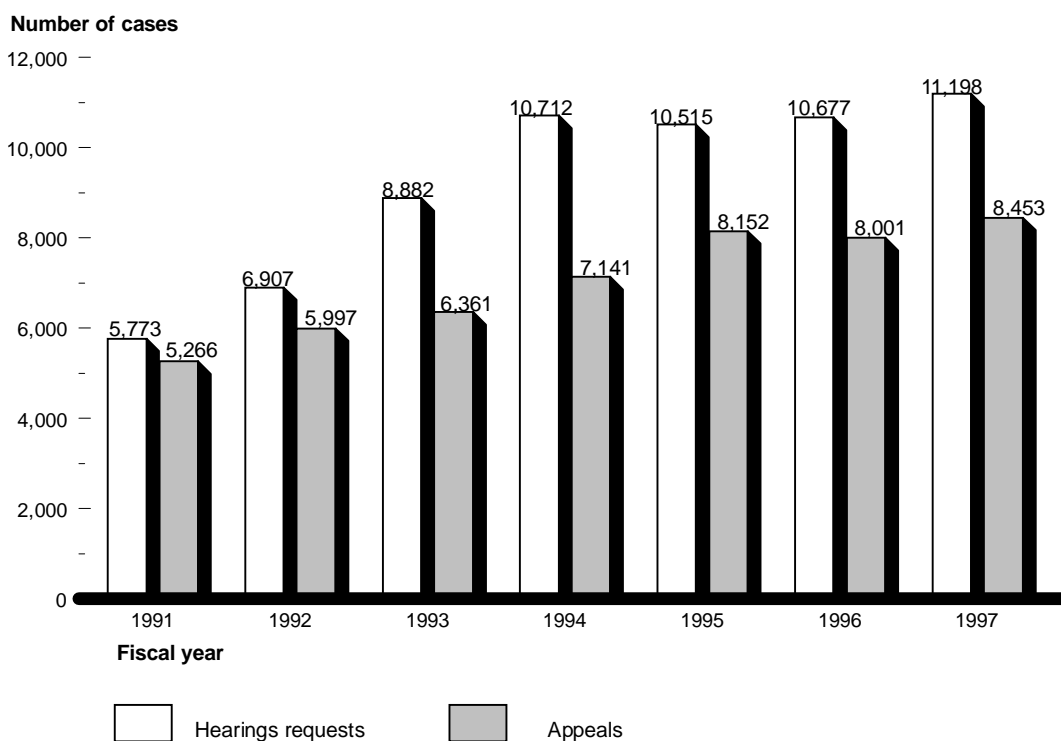
A second factor was the Civil Rights Act of 1991, which allows compensatory damages of up to \$300,000 to be awarded to employees in cases where the employer has engaged in unlawful, intentional discrimination. The availability of compensatory damages motivated some employees to file complaints.

A third factor was the Americans With Disability Act of 1990, which expanded discrimination protection. While federal workers were protected under the Rehabilitation Act of 1973, the publicity surrounding the Americans With Disabilities Act made federal workers more aware of their protections under the Rehabilitation Act, according to EEOC and Postal Service officials.

EEOC and Postal Service officials also told us that the implementation in October 1992 of revised regulations governing the EEO complaint process for federal employees (29 C.F.R. part 1614) was a factor because it provided improved access to the complaint process.

¹²Alternative Dispute Resolution: Employers' Experiences With ADR in the Workplace (GAO/GGD-97-157, Aug. 12, 1997).

GAO Hearings Requested and Appeals Filed Have Increased at EEOC



Source: GAO analysis of EEOC data.

Hearings Requested and Appeals Filed Have Increased at EEOC

Accompanying the increase in complaint filings were increases in EEOC's caseloads of requests for hearings before EEOC administrative judges and appeals to EEOC of final agency decisions. During fiscal years 1991 to 1997, requests by complainants for hearings before an EEOC administrative judge increased 94 percent, from 5,773 to 11,198,¹³ while complainants' appeals to EEOC of final agency decisions rose 60.5 percent, from 5,266 to 8,453.¹⁴

As with complaints, postal workers' hearing requests and appeals have represented a disproportionately large and increasing share of EEOC's workload. The numbers of hearing requests and appeals by postal workers, after increasing in fiscal year 1992, decreased in fiscal year 1993. In fiscal year 1993, postal workers represented 23.5 percent of the federal workforce but accounted for 33 percent of hearing requests and 35 percent of appeals. By fiscal year 1996, postal workers represented 31.2 percent of the federal workforce while accounting for 42.9 percent of hearing requests and 44.2 percent of appeals. (See app. I, tables I.4 and I.5.) In fiscal year 1997, postal workers' cases accounted for 47.1 percent of hearing requests and 44.2 percent of appeals. (See app. I, table I.5.)

¹³At the hearing stage, a case can be settled by the parties, withdrawn by the complainant, remanded to the agency by the administrative judge for further action, or result in a decision by an administrative judge. In fiscal year 1997, administrative judges rendered decisions in 3,294 (35 percent) of the 9,424 requests for hearings processed by EEOC. Of these decisions, 9.9 percent contained findings of discrimination. We addressed trends in these areas in *Equal Employment Opportunity: Administrative Judges' Recommended Decisions and Agencies' Actions* (GAO/GGD-98-122R, June 10, 1998).

¹⁴Appeals statistics consist mainly of appeals of final agency decisions and dismissals (about 85 percent of total appeals in fiscal year 1997) but also include reconsideration requests, appeals of MSPB and grievance decisions, and petitions for enforcement and clarification.

GAO Complaint Processing Time at Agencies FYs 1991 - 1996

Number of days from date complaint filed to date closed

Type of closure	1991	1992	1993	1994	1995	1996
Dismissals	207	215	217	174	155	228
Withdrawals	304	270	280	217	237	318
Settlements	310	328	367	312	300	370
Decisions without hearings	a	a	312	546	453	558
Decisions with hearings	a	a	791	640	572	613
Overall average processing time	341	349	366	356	305	379

^aSeparate data not reported for closures with and without hearings.

Source: GAO analysis of EEOC data.

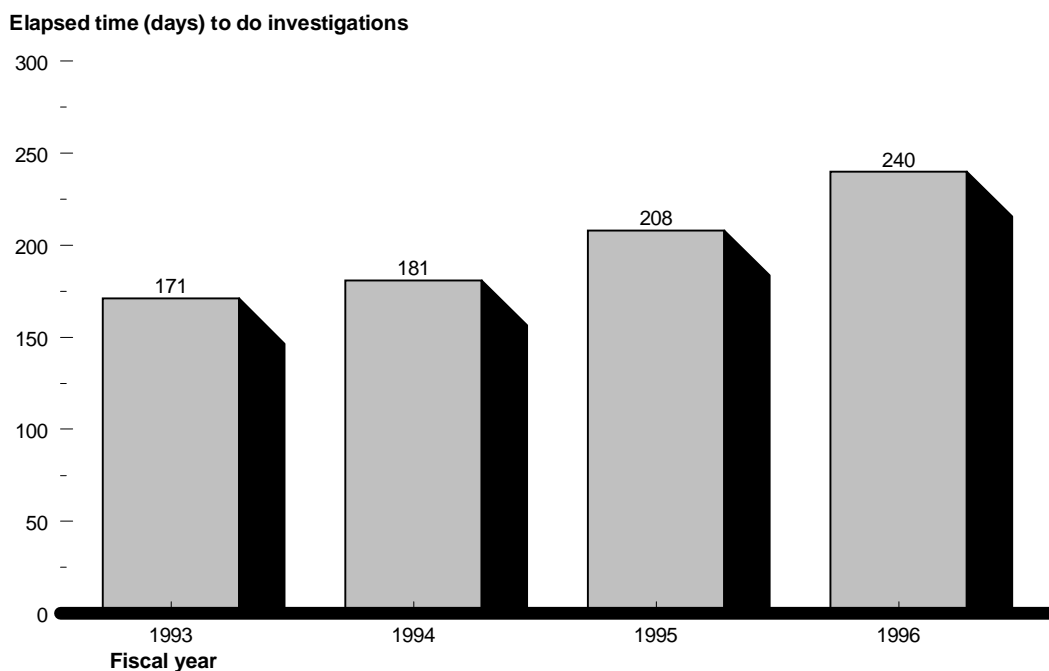
EEOC reports the average time taken by agencies to process a complaint from its date of filing by type of closure rather than by each stage of the complaint process. The reported data show that the average time to process a complaint, after declining in fiscal years 1994 and 1995, went back up in fiscal year 1996 to 379 days. This was the lengthiest processing time for the 6 fiscal years 1991 to 1996. Compared with nonpostal

Briefing Section III
Trends in the Number of Complaints Filed
and the Time Taken to Process Them

agencies, the Postal Service has processed cases more quickly. In fiscal year 1996, the Postal Service's average time to close a case was 330 days while nonpostal agencies took an average of 427 days. This represented a slippage, however, in the Postal Service's processing time compared with fiscal year 1991 when it took an average of 230 days to close a case. (See app. I, table I.6.) On the other hand, nonpostal agencies average closure time in fiscal year 1991—434 days—was about the same when compared with fiscal year 1996.

Using the average processing time for case closure does not measure the steps in the process against the time standards associated with those steps. For example, agencies are to make a decision to dismiss a complaint within 180 days of its filing. In fiscal year 1996, agencies, on average, did not meet this standard because the average time to make the dismissal decision was 228 days. In addition, an average masks the time taken from the filing of a complaint to closing a case by issuing a final agency decision. Closing a case with a final decision—with or without an EEOC hearing—takes longer than cases that are dismissed, withdrawn, or settled. In fiscal year 1996, agencies closed cases in an average of 379 days. However, in cases closed with the issuance of a final agency decision without a hearing, agencies took an average of 558 days, which exceeded the amount of time allowed under regulations—270 days (see pp. 16 and 17). In cases in which an administrative judge issued a decision, average closure time was higher—613 days, which also exceeded the amount of time allowed under regulations—450 days. It is also important to note that the processing times agencies report for the issuance of final agency decisions does not include any time involved in appeals of final agency decisions to EEOC.

GAO Average Time for Agencies' Complaint Investigations Has Increased



Source: GAO analysis of EEOC data.

One factor affecting case processing times is the time required to conduct complaint investigations, which has steadily increased. In fiscal year 1993 (the earliest year for which data were reported), investigations took an average of 171 days from the time a case was assigned to an investigator to when the investigation was completed. By fiscal year 1996, this figure had increased to 240 days. The average time to conduct investigations does not

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and the Time Taken to Process Them**

include the time it took the agency to decide to accept a case and assign it to an investigator.

As the number of complaints increased, EEOC reports show that the number of complaint investigations performed by agency personnel and contractors increased overall during fiscal years 1993 to 1996. The number of complaint investigations performed by agency personnel increased from 8,555 in fiscal year 1993¹⁵ to 10,470 in fiscal year 1996. In addition, the number of investigations completed by contractor investigators increased from 3,091 in fiscal year 1993¹⁶ to 3,493 in fiscal year 1996.

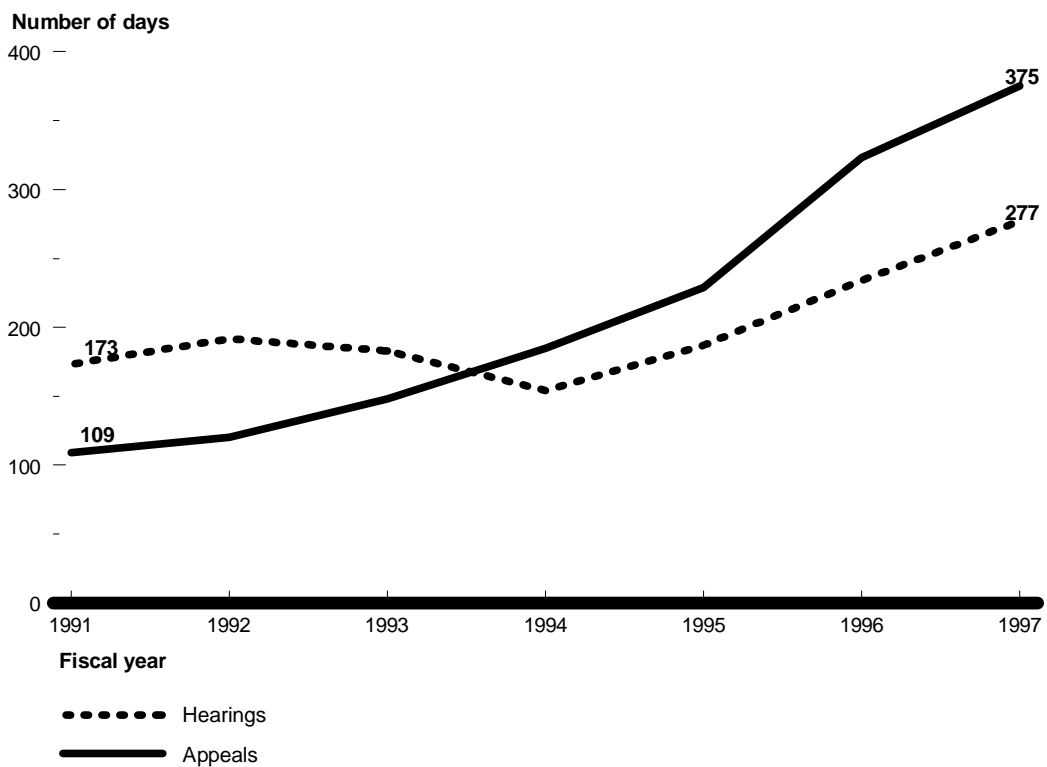
Although the average time to close a case is less at the Postal Service than at nonpostal agencies, the Postal Service takes longer to complete complaint investigations. In fiscal year 1993, investigations at the Postal Service took an average of 196 days from the time a case was assigned to an investigator to when the investigation was completed; nonpostal agencies took an average of 162 days. By fiscal year 1996, these figures had increased to 271 and 214 days respectively. In fiscal year 1997, the length of time to complete a complaint investigation at the Postal Service further increased to an average of 431 days.

The Postal Service said that increases in the amount of time required to conduct investigations has been affected by claims for compensatory damages, which, it said, accompany virtually every formal complaint. The Postal Service also said that, in some cases, the investigation into compensatory damages can require more time than the investigation into the underlying claim of discrimination.

¹⁵Data for fiscal years 1991 and 1992 were not reported.

¹⁶In fiscal year 1992, 2,381 investigations were performed by contract investigators; data for investigations performed by agency personnel were not reported. Data for fiscal year 1991 were not reported.

GAO EEOC Processing Times for Hearings and Appeals Have Increased



Source: GAO analysis of EEOC data.

**Briefing Section III
Trends in the Number of Complaints Filed
and the Time Taken to Process Them**

**EEOC Processing Times
for Hearings and Appeals
Have Increased**

EEOC has been taking longer to process hearing requests and adjudicate appeals.

From a low of 154 days in fiscal year 1994, the average amount of time EEOC took to process hearing requests increased to 277 days in fiscal year 1997. By the first quarter of fiscal year 1998, this average had increased to 289 days. As we discussed earlier, the longer EEOC takes to process a hearing request, the longer the total time will be before a final decision in the case can be made by an agency.

There was an even greater increase in the average amount of time EEOC took to process appeals. This figure increased from 109 days in fiscal year 1991 to 375 days in fiscal year 1997.

GAO Relationship Between New Cases and
Capacity of Staff to Process Them

- Capacity of staff to process new cases a factor in inventory levels and processing time
- At EEOC, the influx of new cases exceeded the capacity of staff to process them

A variety of factors can affect inventory levels and how long it takes to process cases. One factor is the relationship between the influx of cases and the capacity of staff to process them. At EEOC, the influx of cases during fiscal years 1991 to 1996 exceeded the capacity of its staff to process them, despite overall increases in staffing levels and productivity.

At EEOC, the number of administrative judges available for hearings increased overall, from 53 in fiscal year 1991 to 75 in fiscal year 1996. Still,

**Briefing Section III
Trends in the Number of Complaints Filed
and the Time Taken to Process Them**

the number of new hearing requests each year per administrative judge increased about 31 percent, from 109 in fiscal year 1991 to 143 in fiscal year 1996, because of the influx of cases. The hearings inventory grew because the average number of cases processed and closed each year per administrative judge, despite increasing about 23 percent overall during this period, from 95 to 117, was, except for fiscal year 1993, always less than the average number of requests received. The number of attorneys processing appeals declined from 40 in fiscal year 1991 to 39 during fiscal years 1992 through 1996. This reduction, combined with the influx of new cases, resulted in the number of appeals received each year per attorney increasing about 54 percent, from 133 in fiscal year 1991 to 205 in fiscal year 1996. The appeals inventory grew because the average number of cases closed each year per attorney, despite increasing 18 percent during this period, from 133 to 157, was, except for fiscal year 1991, always less than the average number of appeals received.

While EEOC reported agency staffing levels and caseloads, the data reported did not allow a precise comparison of the number of staff to caseloads at the various stages of the complaint process. The staffing data reported by EEOC showed that the number of EEO counselors, counselor/investigators, and investigators at agencies declined overall from 16,169 full-time, part-time, and collateral-duty staff in fiscal year 1992¹⁷ to 12,317 in fiscal year 1996. The reductions were mainly among part-time and collateral-duty staff whose levels decreased from 15,418 to 10,910. All but 17 of the reductions occurred at nonpostal agencies. Although part-time and collateral duty staffing levels decreased, the number of full-time staff, while fluctuating, was, in fact, higher in fiscal year 1996 than in fiscal 1992—1,407 versus 751.¹⁸

¹⁷Data for fiscal year 1991 were not reported.

¹⁸The number of full-time staff at nonpostal agencies increased 118 percent, from 496 to 1,081, mostly in the counselor ranks. At the Postal Service, the number of full-time staff, made up almost exclusively of counselor/investigators, increased about 28 percent, from 255 to 326.

Implications of the Trends in Inventories, New Cases, and Processing Time

GAO Implications of Trends for EEOC

- EEOC projects that hearings and appeals inventories will grow larger and cases will take longer to process
 - Final agency decisions likely will be further delayed because of slower EEOC processing of hearing requests
 - A large proportion of the hearings and appeals caseloads will consist of postal workers' complaints
-

The implications of these trends are that inventories of cases pending will grow even larger in the future, particularly at EEOC, and that cases will take even longer to process than they do today.

EEOC projects that incoming hearing requests and appeals will continue to increase. To deal with these increases, EEOC's fiscal year 1999 budget request proposes funding for 19 additional administrative judges to process hearing requests (an increase of about 25 percent) and 14

**Briefing Section IV
Implications of the Trends in Inventories,
New Cases, and Processing Time**

additional attorneys to process appeals (an increase of about 36 percent). However, EEOC projects that, even if the budget request is approved, its hearings and appeals inventories will grow.

With the additional administrative judges, EEOC projects that by the end of fiscal year 2002, the hearings inventory will be 15,950, an increase from 10,016 at the end of fiscal year 1997. Meanwhile, the average length of time to process hearing requests is projected to increase from 390 to 510 days. Without additional administrative judges, the hearings inventory is projected to grow even more, to 24,500 by 2002, with cases taking an average of 990 days to process. As hearings requests remain in EEOC's inventory for longer periods, agencies will be delayed in issuing final decisions for cases in which a hearing was requested.

Similarly, with the additional attorneys, EEOC projects that by the end of fiscal year 2002, the appeals inventory will be 18,953, an increase from 9,980 at the end of fiscal year 1997. The average length of time to process appeals is projected to increase from 510 to 900 days. Without the additional attorneys, the inventory is projected to rise to 26,583, with appeals taking 1,680 days to process.

In addition, considering recent trends, it appears likely that a large proportion of EEOC's hearings and appeals caseload will consist of postal worker's complaints.

GAO Implications of Trends for Agencies

- At agencies, it is unclear whether the number of complaints filed will continue its generally upward trend
 - Postal workers' complaints have driven the overall increase in complaints filed since FY 1994 and will likely continue to be a significant factor in the volume of complaints
-

**Implications of Trends for
Agencies**

At agencies, it is unclear if, and to what extent, complaint filings will continue their generally upward trend. Except for fiscal year 1996, the number of complaints filed with agencies increased each year during fiscal years 1991 to 1997. A closer analysis of trends shows that complaints filed by postal workers have driven the overall increase in the number of complaints filed since fiscal year 1994. While the overall number of postal worker complaints increased from 10,221 in fiscal 1994 to 14,326 in fiscal year 1997, the number of complaints filed by nonpostal workers decreased from 14,371 in fiscal year 1994 to 14,150 in fiscal year 1995 and decreased further to 13,158 in fiscal year 1996, before increasing to 13,261 in fiscal year 1997. EEOC has not studied the reasons for these trends. It is unclear whether the overall reduction in the number of complaints filed by nonpostal employees signals a moderation in the future flow of nonpostal cases through the process. It is also unclear whether the number of complaints filed by postal workers will continue to grow. Considering recent trends, however, the Postal Service seems likely to continue to be a significant factor in the volume of complaints.

GAO Possible Reasons for Decrease in
Non-Postal Complaints Since FY 1994

- Federal government shutdown
 - Downsizing initiatives drawing to close
 - Smaller federal workforce
 - Use of alternative dispute resolution (ADR) processes
-

**Possible Reasons for
Decrease in Non-Postal
Complaints Since FY 1994**

While EEOC did not study the reason for the overall decline in the number of new complaints by nonpostal workers from fiscal year 1994 to fiscal year 1997, EEOC officials offered several possible explanations for this decrease.

One possible reason was the federal government shutdowns in October and December 1995 and January 1996, which reduced the opportunity both for discriminatory acts to occur and for the filing of complaints in fiscal year 1996.

Another possible reason was that agency downsizing initiatives were drawing to a close; thus, workers would be less likely to resort to the complaint process to preserve their jobs.

Yet another reason could have been the smaller numbers of federal workers resulting from downsizing. Excluding the Postal Service, which increased its workforce, the federal workforce of agencies within EEOC's jurisdiction decreased about 8 percent, from 2,122,193 in fiscal year 1994 to 1,948,009 in fiscal year 1996.

A further possible reason for the decrease in complaints in fiscal year 1996 could have been agencies' use of alternative dispute resolution (ADR) processes in the precomplaint counseling stage, which may have resolved issues that otherwise would have led to complaints.¹⁹

Because of the high number of EEO complaints, in 1994, the Postal Service began a pilot ADR program that used mediation. The Postal Service found that more than 70 percent of the cases mediated were resolved and, in March 1998, announced the nationwide rollout of the ADR program called REDRESS (Resolve Employee Disputes, Reach Equitable Solutions Swiftly). The Postal Service believes that REDRESS will have a substantial impact on reducing its future caseloads, with a resulting affect on EEOC's caseloads. The Postal Service said that the program will be fully implemented by 2000.

¹⁹Mediation was the most widely practiced ADR technique used by federal agencies, as reported in *Alternative Dispute Resolution: Employers' Experiences With ADR in the Workplace*, (GAO/GGD-97-157, Aug. 12, 1997).

Selected Complaint Data on the U.S. Postal Service

Table I.1: Total and Postal Service Inventories of Complaints, Hearing Requests, and Appeals and Postal Service as a Percentage of the Totals for Fiscal Years 1991-1997

	1991	1992	1993	1994	1995	1996	1997
Complaints							
Total	16,964	18,668	22,258	27,044	30,605	31,195	34,267
Postal workers	3,963	4,626	5,026	6,893	10,105	11,357	13,549
Percent	23.4%	24.8%	22.6%	25.5%	33.0%	36.4%	39.5%
Hearing requests							
Total	3,147	3,977	3,991	5,177	6,367	8,275	10,016
Postal workers	1,440	1,837	1,094	1,827	2,567	3,327	4,594
Percent	45.8%	46.2%	27.4%	35.3%	40.3%	40.2%	45.9%
Appeals							
Total	1,466	2,029	2,900	4,363	6,498	8,376	9,980
Postal workers	^a	837	940	1,470	2,563	3,558	4,317
Percent	^a	41.3%	32.4%	33.7%	39.4%	42.5%	43.3%

^aNot available.

Source: GAO analysis of EEOC and Postal Service data.

Table I.2: Average Age (Days) of Complaints in the Postal Service's Inventory Since Complaint Filed, by Stage of the Complaint Process for Fiscal Years 1991-1997

Stage of process	1991	1992	1993	1994	1995	1996	1997
Dismiss/accept	^a	27	146	182	540	582	320
Investigation	207	217	183	212	145	163	405
Proposed disposition ^b	267	237	^c	^c	^c	^c	^c
Hearing	494	502	180	284	307	322	887
Agency decision	^a	^a	179	210	239	251	302
Overall	399	356	176	212	287	315	494

^aNo cases reported.

^bWhen the agency notified the complainant in writing of its proposed disposition of the complaint and of the right to a final decision with or without an EEOC hearing.

^cDiscontinued as a reporting category.

Source: GAO analysis of EEOC and Postal Service data.

**Appendix I
Selected Complaint Data on the U.S. Postal
Service**

Table I.3: Percentage of Postal Workers' Complaints Pending Dismissal/Acceptance and Investigation More Than 180 Days for Fiscal Years 1991-1997

Stage of process	1991	1992	1993	1994	1995	1996	1997
Dismissal/acceptance	^a	0	62.2	40.0	53.7	61.9	26.2
Investigation	50.4	48.2	71.8	55.8	40.4	58.6	48.6

^aNo cases reported.

Source: GAO analysis of EEOC and Postal Service data.

Table I.4: Postal Workers as a Percentage of the Federal Workforce for Fiscal Years 1991-1996

Fiscal year	1991	1992	1993	1994	1995	1996
Percent of workforce	23.9	23.2	23.5	27.2	28.6	31.2

Source: GAO analysis of EEOC data.

Table I.5: Total and Postal Workers' Complaints, Hearing Requests, and Appeals and Postal Workers as a Percentage of Total Complaints, Hearing Requests, and Appeals for Fiscal Years 1991-1997

	1991	1992	1993	1994	1995	1996	1997
Complaints							
Total	17,696	19,106	22,237	24,592	27,472	26,410	27,587
Postal workers	7,772	8,469	8,858	10,221	13,322	13,252	14,326
Percent	43.9%	44.3%	39.8%	41.6%	48.5%	50.2%	51.9%
Hearing requests							
Total	5,773	6,907	8,882	10,712	10,515	10,677	11,198
Postal workers	2,605	3,337	2,933	3,934	4,451	4,583	5,275
Percent	45.1%	48.3%	33.0%	36.7%	42.3%	42.9%	47.1%
Appeals							
Total	5,266	5,997	6,361	7,141	8,152	8,001	8,453
Postal workers	2,250	2,649	2,227	2,450	3,436	3,534	3,734
Percent	42.7%	44.2%	35.0%	34.3%	42.1%	44.2%	44.2%

Source: GAO analysis of EEOC and Postal Service data.

**Appendix I
Selected Complaint Data on the U.S. Postal
Service**

Table I.6: Postal Service Complaint Processing Time in Days by Closure Category for Fiscal Years 1991-1997

Closure category	1991	1992	1993	1994	1995	1996	1997
Dismissals	134	150	154	135	116	208	197
Withdrawals	256	256	266	213	218	296	300
Settlements	217	211	307	279	280	341	401
Decision without hearing	^a	^a	227	520	393	512	439
Decision with hearing	^a	^a	734	721	510	527	689
Overall	230	233	296	315	247	330	353

^aSeparate data not reported for closures with and without hearings.

Source: GAO analysis of EEOC and Postal Service data.

Selected Complaint Data on the Departments of Agriculture and the Interior and Other Reporting Federal Agencies

	Agriculture	Interior	All reporting federal agencies
Size of inventory-FY 1996	1,405	774	31,195
Size of inventory-FY 1991	410	529	16,964
Percent increase (rounded)	243%	46%	84%
Average age of inventory-FY 1996 (days)	649	570	397
Average age of inventory-FY 1991 (days)	420	471	379
Percent increase (rounded)	55%	21%	5%
Average age of inventory pending dismissal/acceptance-FY 1996 (days)	408	675	425
Average age of inventory pending dismissal/acceptance-FY 1991 (days)	16	115	120
Percent increase (rounded)	2,450%	487%	254%
Average age of inventory pending investigation-FY 1996 (days)	619	322	281
Average age of inventory pending investigation-FY 1991 (days)	194	283	260
Percent increase (rounded)	219%	14%	8%
Number of complaints filed-FY 1996	566	369	26,410
Number of complaints filed-FY 1991	288	340	17,696
Percent increase (rounded)	97%	9%	49%
Average overall processing time-FY 1996 (days)	942	574	379
Average overall processing time-FY 1991 (days)	675	525	341
Percent increase (rounded)	40%	9%	11%
Average time to dismiss a complaint- FY 1996 (days)	715	448	228
Average time to dismiss a complaint-FY 1991 (days)	408	388	207
Percent increase (rounded)	75%	15%	10%
Average time to complete investigation-FY 1996 (days)	563	296	240
Average time to complete investigation-FY 1993 ^a (days)	263 ^b	214	171
Percent increase (rounded)	114%	38%	40%

^aNot reported in fiscal years 1991 and 1992.

^bFigure is for fiscal year 1994; "0" reported for fiscal year 1993.

Source: GAO analysis of EEOC data.

Antidiscrimination Statutes Applicable to Federal Employees

Title VII of the Civil Rights Act of 1964, as amended, makes it illegal to discriminate in employment based on race, color, religion, sex, or national origin.

Section 501 of the Rehabilitation Act of 1973, as amended, makes it illegal to discriminate against federal employees and applicants for employment based on disability. Federal agencies are required to make reasonable accommodations to the known physical and mental limitations of qualified employees or applicants with disabilities. Section 501 also requires affirmative action for hiring, placement, and promotion of qualified individuals with disabilities.

The Equal Pay Act, as amended, prohibits employers from discriminating on the basis of sex in the payment of wages where substantially equal work is performed under similar working conditions.

The Age Discrimination in Employment Act, as amended, protects people 40 years of age and older by prohibiting age discrimination in hiring, discharge, pay, promotions, and other terms and conditions of employment.

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