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# REPORT TO THE CONGRESS

093665



BY THE COMPTROLLER GENERAL  
OF THE UNITED STATES

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## The Equal Employment Opportunity Commission Has Made Limited Progress In Eliminating Employment Discrimination

Although the Equal Employment Opportunity Commission has had some success in obtaining relief for victims of discrimination in specific instances, it does not appear to have yet made the substantial advances against employment discrimination which will be necessary to make a real difference in the employment status of minorities and women.

The Equal Employment Opportunity Commission can do much toward achieving its potential as a viable force in eliminating employment discrimination through improved management controls over its program and administrative operations. However, this is contingent upon achieving a higher degree of stability and continuity in top-level management positions within the Commission.

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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

In this report we assess the Equal Employment Opportunity Commission's effectiveness in eliminating employment discrimination and discuss some of the factors which contributed to the agency's limited progress.

We made our review at the request of the Chairman, Senate Committee on Labor and Public Welfare, pursuant to the Budget and Accounting Act, 1921 (31 U.S.C. 53), and the Accounting and Auditing Act of 1950 (31 U.S.C. 67). Because of the widespread congressional and public interest in the Commission, the committee agreed that our report should be issued to the Congress.

Copies of this report are being sent to the Director, Office of Management and Budget, and to the Chairman, Equal Employment Opportunity Commission.

*James B. Stacks*

Comptroller General  
of the United States

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ABBREVIATIONS

EEOC	Equal Employment Opportunity Commission
GAO	General Accounting Office
OFCCP	Office of Federal Contract Compliance Programs

COMPTROLLER GENERAL'S  
REPORT TO THE CONGRESS .

THE EQUAL EMPLOYMENT  
OPPORTUNITY COMMISSION  
HAS MADE LIMITED PROGRESS  
IN ELIMINATING EMPLOYMENT  
DISCRIMINATION

D I G E S T

The Equal Employment Opportunity Commission 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.)

The Commission's objectives are to

--provide relief to victims of employment discrimination through the receipt, investigation, and resolution of individual charges alleging discrimination and

--eliminate patterns and practices of discrimination in employment systems (usually referred to as systemic discrimination). (See p. 2.)

GAO's assessment of the Commission's effectiveness in achieving these objectives was hampered by inadequate data on program results and by difficulties in isolating other significant variables which may have a positive or negative impact on the equal employment opportunity posture of employers (i.e., economic conditions, union agreements, labor market conditions, and the equal employment enforcement activities of other Federal agencies). Care must be exercised in using the assessment results to the extent that the impact of these other variables cannot be isolated. (See pp. 7 and 38.)

GAO's analyses of data which were available indicated that the direct results of the Commission's individual charge and systemic discrimination activities have been minimal. (See p. 7, 38, and 39.)

A number of interrelated factors have contributed to the Commission's limited impact on employment discrimination. (See pp. 18 and 45.) Many are management problems which can and should be addressed by the Commission; others are outside management's control. (See pp. 18 and 45.)

GAO believes that a major underlying cause of the management problems it found at the Commission was the frequent turnover in the top management positions of chairman and executive director. The exercise of meaningful management control over and accountability for the results of the Commission's operations are contingent upon achieving a much higher degree of stability and continuity in top-level management positions within the Commission. (See pp. 60 and 64.) The management problems GAO identified included

- weaknesses in administrative controls over charge processing (see p. 18),
- limited use of State and local fair employment practices agencies (see p. 23),
- questionable benefits of the expedited charge-processing strategy (see p. 26),
- inadequate coordination between compliance and litigation activities (see p. 29),
- inadequate quality control reviews of district office charge resolutions (see p. 33),
- problems in the allocation of resources to field activities (see p. 35),
- combination of individual charge resolution and systemic activities (see p. 45),
- problems in the collection and use of employment statistics (see p. 48),

- inadequate compliance monitoring (see p. 51),
- inadequate procedures for handling cases against State and local governments (see p. 54),
- limited use of litigation authority (see p. 57), and
- lack of coordination with the Office of Federal Contract Compliance Programs (see p. 58).

GAO believes the Commission can do much toward achieving its full potential as a viable force in eliminating employment discrimination through improved management controls over its administrative and program operations (see p. 62) and recommends that the Chairman take certain specific actions to address these problems. (See p. 64.)

#### AGENCY COMMENTS

To expedite this report, the Senate Committee on Labor and Public Welfare requested that GAO eliminate or substantially reduce the time period normally allowed for advance review and preparation of agency comments and that any advance review by the Commission be made under controlled conditions in GAO's offices. However, the matters in this report were discussed with officials on various occasions and their views were considered in preparing the final report. (See pp. 6 and 67.)

Nevertheless, the Commission stated that the constraints placed on its review of the draft report effectively prohibited the agency from making an indepth analysis of the report. Nonetheless, the Commission took exception to GAO's conclusions on the grounds that the report failed to recognize the substantial direct and indirect impact it has had on employment practices since its inception.



GAO does not question the fact that the Commission has played a major role in changing employment systems practices. However, both the Commission and the courts have held that statistical data which shows that minorities and women are not participating in an employer's work force at all levels in reasonable relation to their presence in the population and labor force constitutes strong evidence of discriminatory practices, even though such practices are neutral in intent and fairly and impartially administered.

Accordingly, GAO believes the Commission's effectiveness should be measured by the extent to which its activities have improved the relative employment status of minorities and women, rather than on the basis of changes in employment systems practices which may or may not result in equal employment opportunity. (See p. 67.)

## CHAPTER 1

### INTRODUCTION

One of the basic principles of our American way of life is individual freedom, including the freedom to pursue the work of one's choice and to advance in that work considering only individual qualifications, talents, and energies. Over the years, however, discriminatory employment practices have denied many this basic right, and various constitutional guarantees, Federal civil rights laws, State fair employment laws, and Presidential orders have not substantially alleviated this situation. Congressional concern over the continued failure of existing laws to adequately protect the rights of American citizens was a predominant factor in the eventual enactment of the landmark Civil Rights Act of 1964.

Title VII of the act (42 U.S.C. 2000e) which became effective July 2, 1965, prohibits employment discrimination on the basis of race, color, religion, sex, or national origin in classification, selection, hiring, upgrading, benefits, layoffs, or any other condition of employment. It also created and empowered the Equal Employment Opportunity Commission (EEOC) to seek out and eliminate unlawful employment practices in accordance with procedures prescribed in the law. Title VII, as amended by the Equal Employment Opportunity Act of 1972, extends EEOC's jurisdiction to virtually all non-Federal employers with 15 or more employees, including State and local governments, private firms, and educational institutions. Employment agencies, labor organizations, and joint labor-management apprenticeship programs sponsored by employers, unions, or educational institutions are also covered, without regard to size of work force.

EEOC's enforcement powers were initially limited to the informal methods of conference, conciliation, and persuasion when it found reasonable cause to believe a discrimination charge to be true. The 1972 amendments to title VII strengthened EEOC's enforcement capabilities. These amendments authorized EEOC to file suit in Federal district courts against employers when a remedy could not be achieved through informal means and to take action on its own initiative against employers believed to be engaged in a pattern or practice of employment discrimination, except that any litigation against a State or local government, governmental agency, or political subdivision would be handled by the U.S. Attorney General.

## OBJECTIVES

Title VII of the Civil Rights Act of 1964 establishes two basic operating objectives for EEOC:

- Provide relief to victims of employment discrimination through the receipt, investigation, and resolution of individual charges alleging discrimination.
- Eliminate patterns and practices of discrimination in employment systems (usually referred to as systemic discrimination).

## ORGANIZATIONAL STRUCTURE

EEOC is headed by a chairman and four other commissioners appointed by the President by and with the advice and consent of the Senate for terms of 5 years. The chairman oversees EEOC's administrative operations, providing overall executive direction, and with the advice and consent of the other commissioners, determines policy and establishes general guidelines for program development. These individuals are assisted in carrying out their activities by an executive director, a general counsel, and other staff offices. (See app. I.)

The executive director reports directly to the chairman and is the top line manager of all EEOC compliance activities. His duties include

- assuring policy, procedure, and program implementation;
- developing operational standards;
- reviewing program operations;
- recommending policy, procedure, and program changes;  
and
- directing field compliance operations.

The general counsel, appointed by the President and responsible to the chairman, conducts EEOC litigation and provides legal advice on all phases of EEOC's work.

The bulk of EEOC's activities are carried out, under the supervision of the executive director, through 7 regional and 32 district offices throughout the country. The regional offices conduct various liaison activities concerning EEOC

programs and functions and provide general administrative supervision for all EEOC regional activities. The district offices, under the direction of the regional offices, perform all enforcement functions, which include participating in both national and regional compliance projects. In addition there are five regional litigation centers, under the supervision of the general counsel, which conduct all litigation approved by the commissioners.

RESOURCES AND WORKLOAD

EEOC has had periods of rapid expansion in both workload and resources. Its initial budget of \$3.25 million and staff of 190 for fiscal year 1966 were predicated on the receipt of 2,000 charges, annually, but nearly 10,000 charges were received during its second operating year. During fiscal years 1969-75 the number of charges filed annually increased from 12,148 to 71,023, while its budget increased from approximately \$9 million to \$55 million and its authorized staff grew from 579 positions to 2,384. For fiscal year 1976, about \$63 million was appropriated and an additional 200 positions were authorized to EEOC.

As of June 30, 1975, EEOC's actual staff of 2,114 was distributed as follows:

<u>Location</u>	<u>Staffing</u>
Headquarters	565
Regional offices	139
District offices	1,133
Regional litigation centers	<u>277</u>
Total	<u><u>2,114</u></u>

Analyses of EEOC's charge workload data as of June 30, 1974, showed that most charging parties alleged employment discrimination by private employers on the basis of race or sex. The issues most frequently raised were hiring, terms and conditions of employment, wages, promotion, demotion, and firing.

CHARGE-PROCESSING PROCEDURES

EEOC's compliance process begins with the filing of an employment discrimination charge. When received in a district office, the charge is screened to insure that EEOC has jurisdiction. If the alleged discrimination occurred within the

bounds of a State or local entity which has an EEOC-approved 1/ fair employment practices agency, the charge is referred to that agency for handling for a period of 60 days, pursuant to title VII. If a charge cannot be referred because there is no approved State or local agency, or when the State or local agency fails to reach an acceptable resolution of the charge during the referral period, the charge is processed by the recipient EEOC district office, and the employer who is the subject of the charge is notified, as required by title VII, that the charge has been filed with EEOC.

The charge is then investigated by the district office. Typically, an EEOC investigator visits the employer's place of business and interviews cognizant officials, the charging party, and coworkers and reviews employment records to establish the facts. Sometimes, however, the information is obtained through correspondence. After the investigation, the investigator prepares a letter of determination which summarizes the facts and states a conclusion as to whether reasonable cause exists to support a finding of discrimination, and the district office notifies all parties of its determination.

When reasonable cause is found, district office personnel attempt to negotiate an agreement between the employer and the charging party through informal methods, such as conference, conciliation, and persuasion. Under EEOC procedures this agreement also may be negotiated prior to or pending the formal announcement of a reasonable cause determination where the facts are uncontested and the employer has indicated a willingness to settle. A conciliation agreement negotiated at this stage is referred to as a pre-determination settlement. Conciliation agreements, whether negotiated before or after a determination of reasonable cause, are characterized by EEOC as successful negotiated settlements. As a general rule, such agreements will set forth the relief to be granted to the charging party, as well as any other corrective actions required to eliminate unlawful employment practices disclosed by EEOC's investigation.

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1/ State and local governments whose fair employment practices laws and enforcement agencies meet certain minimum standards may apply to EEOC for approval to investigate and resolve title VII charges of discrimination which occurred within their respective jurisdictions.

When reasonable cause is found and district office personnel are unable to negotiate a conciliation agreement, the charge is closed out by the district office as an unsuccessful settlement attempt, and the case is referred to the cognizant regional litigation center to be considered for possible litigation.

When the district office does not find reasonable cause to believe that discrimination occurred, all parties are so notified, the charging party is advised of his or her right to litigate the matter at his or her own volition, and the charge is closed as a no-cause finding.

As will be discussed in greater detail in chapter 2, most of the charges filed with EEOC are closed out on the basis of an administrative or clerical action, rather than going through the district office's regular investigation and conciliation process. Such cases are classified by EEOC as administrative closures.

All charges closed by EEOC's district offices through any of the above means are reported as resolved. EEOC's reported charge resolution statistics include those charges closed by district offices as unsuccessful settlement attempts even though such cases are referred to the litigation centers for possible litigation.

#### SCOPE OF REVIEW

Our evaluation, which was completed in January 1976, focused primarily on determining to what extent EEOC had achieved its two basic operating objectives of (1) providing relief to individual victims of discrimination and (2) eliminating systemic discrimination, and on identifying factors which had limited its effectiveness. We interviewed cognizant officials and reviewed policies, regulations, practices, and procedures at EEOC headquarters in Washington, D.C., litigation centers and regional and district offices in Atlanta, Birmingham, Chicago, Detroit, Los Angeles, San Francisco, and Washington, D.C. We also interviewed officials of State fair employment practices agencies and members of the private bar.

In addition, we analyzed EEOC's individual charge resolutions for several recent years, made various statistical analyses of the results of successful negotiated settlements, made case studies of selected successful negotiated settlements, and made a nationwide questionnaire survey of charging

parties and employers who had participated in recent successful negotiated settlements. Except for the questionnaire results which show the degree of charging party and employer satisfaction with the successful negotiated settlements in which they participated, we did not attempt to assess the quality of EEOC's charge resolutions. We also obtained information on EEOC's systemic discrimination activities authorized under section 707 of the Civil Rights Act of 1964, as amended; however, we were unable to obtain sufficient data with which to assess the impact of these activities on the overall problem of systemic discrimination.

As the Senate Committee on Labor and Public Welfare directed, we did not follow our normal procedures for obtaining formal agency comments on this report. However, the matters in this report were discussed with agency officials on various occasions during the course of our review. At the completion of our fieldwork, EEOC officials were also provided with copies of an informal statement of facts for their review and comments (although the statement of facts did not contain any conclusions or recommendations, it served as the basis for this report). In addition, a number of EEOC officials reviewed copies of an advance draft of this report under controlled conditions in our offices during the period June 3 to 11, 1976. The views of these officials, as expressed in each of these meetings, have been noted and incorporated into our report, where appropriate.

## CHAPTER 2

### RESULTS OF EEOC'S INDIVIDUAL CHARGE RESOLUTION ACTIVITIES

A definitive assessment of the impact that the Equal Employment Opportunity Commission's individual charge resolution activities <sup>1/</sup> have had on employment discrimination is difficult to make because of a lack of adequate data. Nevertheless, our analysis of data which was available within EEOC, as well as from outside sources, strongly suggests that such efforts have had a minimal effect on the problem.

- Charges have not been resolved in a timely manner. On the average, charging parties have had to wait about 2 years for their complaints to be resolved; in some instances, charges have been pending in EEOC's backlog for periods ranging up to 7 years.
- Most charges were closed administratively without any EEOC enforcement action, partly due to the time factor noted above. Only about 11 percent of EEOC's charge resolutions resulted in successful negotiated settlements.
- An individual with a charge pending in EEOC's 1974 workload had a probability of 1 in 33 of getting a successful negotiated settlement during that year.
- In those cases where EEOC found evidence of discrimination, charging parties had only about a 50-percent chance of getting relief through some type of negotiated settlement.

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<sup>1/</sup>The phrase "individual charge resolution activities" as used in this report refers to EEOC's voluntary compliance activities involving charges of discrimination filed with EEOC pursuant to section 706 of the Civil Rights Act of 1964, as contrasted with the systemic discrimination activities authorized by section 707 of the act. Individual charges may be filed with EEOC by, or on behalf of, one or more persons whose rights under title VII are believed to have been violated or by a commissioner.



- A sample survey of the cases which resulted in successful negotiated settlements indicated that about 62 percent of the charging parties were generally satisfied with the results of their settlement. However, the degree of satisfaction decreased in descending order, respectively, with the remedies of money, hiring provisions, promotion, transfer, and rehiring provisions. Tabulation of the survey results by type of remedy showed that the charging parties were satisfied more than dissatisfied with only the first two of these remedies.
- A sample survey of employers involved in the same successful negotiated settlements indicated that in about 38 percent of the cases, they were satisfied with EEOC's investigative process, and in about 43 percent of the cases, they were satisfied with the investigators. In about 41 and 44 percent of the cases, respectively, employers were generally satisfied with EEOC's conciliation process and conciliators.

CHARGES ARE NOT BEING  
RESOLVED IN A TIMELY MANNER

Although there are no specific time requirements in EEOC's legislation for resolving charges, the legislation and its history suggest it was the Congress' intent that EEOC attempt to process charges within 180 days--a deferment period of 60 days, if applicable, for State or local agency action and 120 days for EEOC. More specifically, section 706(b) of title VII states that EEOC "shall make its determination on reasonable cause as promptly as possible and, so far as practicable, not later than one hundred and twenty days from the filing of the charge" (excluding the deferment period, if applicable). Section 706(f)(1) provides that if EEOC has neither conciliated the charge nor filed a civil action within 180 days after the charge is filed (excluding the deferment period, if applicable), the charging party may litigate the matter on his or her own.

On the average, charging parties have had to wait about 2 years for their complaints to be resolved. Some charges have remained in EEOC's charge backlog for periods ranging up to 7 years. As a result, many charges become dated and are administratively closed because EEOC cannot locate the charging party, or the charging party no longer wishes to pursue the matter.

An EEOC analysis of a sample of 48,164 fiscal year 1975 charge resolutions showed that on a national basis it took an average of 22 months to resolve an individual charge: this included 17 months for nondeferred charges and 26 months for charges that are initially referred to State or local agencies. This analysis also showed a wide variance in processing times among field locations: several district offices averaged more than 3 years per charge, while others averaged between 14 and 16 months per charge. More recently, EEOC estimated that the average time required to process a charge had increased to about 25 months on a national basis due to an increase in the size of its charge backlog.

As of June 30, 1975, EEOC's backlog totaled 126,340 charges, some of which dated back to fiscal year 1968. The following summary data taken from EEOC's open-charge inventory system as of June 30, 1975, indicates the length of time charging parties have waited for their complaints to be resolved.

<u>Fiscal year in which charge was filed</u>	<u>Number of open charges</u>
1968	2,213
1969	3,260
1970	4,245
1971	5,917
1972	8,114
1973	18,550
1974	30,812
1975	46,919
Unspecified	<u>6,310</u>
Total	<u>126,340</u>

These statistics were the best available at the time of our review. However, as discussed on pages 19 and 20 of this report, EEOC has had high error rates in its open-charge inventory system, and the data cannot be fully relied upon until it has been verified by a physical inventory of open charges in all EEOC district offices.

Further analysis of EEOC's June 30, 1975, backlog showed that only about 10 percent of the open charges had progressed beyond the investigative phase.

<u>Stage</u>	<u>Number of charges</u>	<u>Percent</u>
Preinvestigative analysis--charges received but not yet investigated, including referrals to State and local agencies	28,570	23
Investigation--charges pending or under investigation	84,275	67
Predetermination settlement--charges intended for or in process of settlement in cases where facts are uncontested and employer has indicated willingness to settle	585	1
Determination--charges investigated and awaiting determination of reasonable cause	4,945	4
Conciliation--charges on which reasonable cause found and settlement under negotiation	<u>6,354</u>	<u>5</u>
Total	<u>a/124,729</u>	<u>100</u>

a/Total does not agree with that shown on page 9 for backlog as of June 30, 1975, because of inconsistencies in EEOC records.

MOST CHARGES ARE CLOSED ADMINISTRATIVELY  
WITHOUT EEOC ENFORCEMENT ACTION

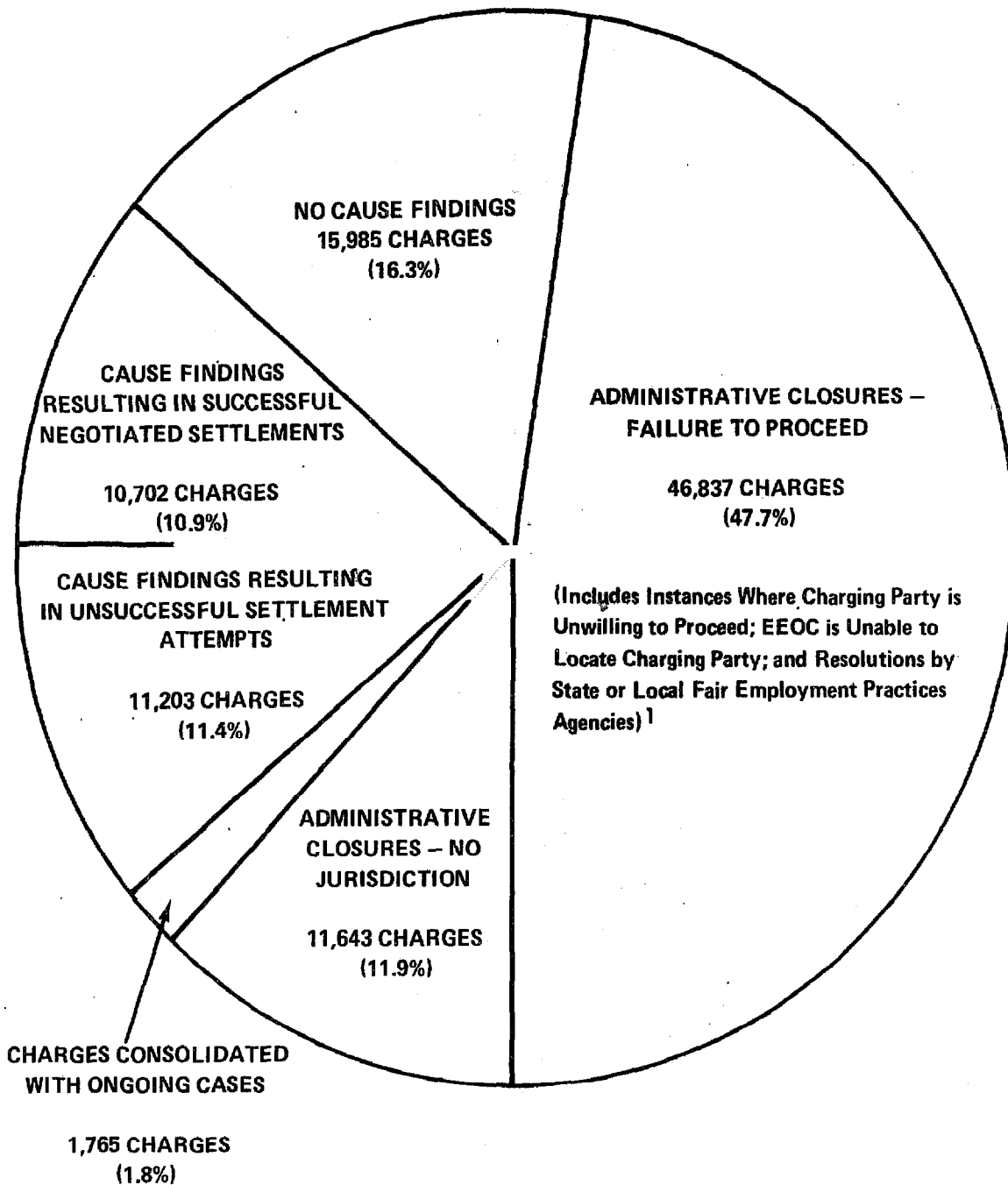
One of the primary measures EEOC uses to gauge its performance is the number of charges resolved annually. In its internal management reports, published statistics, and reports and statements to the Congress, EEOC has used the growth in resolved charges to demonstrate its increased effectiveness in attacking employment discrimination. As previously noted, however, the phrase "charge resolutions," as used by EEOC, is synonymous with charge closures--they range from charges closed by simple clerical actions to those closed after extended investigative and conciliative efforts. Only a small number represent successful negotiated settlements for charging parties.

Reports show that from July 1, 1972, to March 31, 1975, EEOC resolved 98,135 charges. Data analysis shows, however, that only about 11 percent of these resolutions were considered by EEOC to be successful negotiated settlements. In another 11 percent of the cases, EEOC found reasonable cause to believe that discrimination had occurred but was unable to negotiate a successful settlement of the charges. As discussed in chapter 3, EEOC's management information system did not contain the data necessary for us to determine to what extent these charging parties may have later received some form of relief through EEOC litigation. Approximately 16 percent of EEOC's reported charge resolutions were no-cause findings. The remaining 61 percent were closed administratively for such reasons as lack of EEOC jurisdiction, unwillingness of the charging party to proceed, inability to locate the charging party, and resolution of the charge by a State or local fair employment practices agency and by consolidation with other charges.

EEOC's management information system did not show the specific reason why a particular charge was closed administratively as a failure to proceed. Since some of the reasons for such closures may provide relief to the charging party, such as successful resolution of the charge by a State or local fair employment practices agency, we analysed 441 charges closed administratively as a failure to proceed in October 1974 by 5 EEOC district offices. The results follow.

<u>Reasons for closure</u>	<u>Number of charges</u>
Charging party failed to respond to EEOC's request for information	151
Unable to locate charging party	142
Charging party did not wish to proceed (no reason specified)	63
Private litigation being pursued by charging party	35
Complaint resolved by employer	22
No jurisdiction	15
Resolved by State or local fair employment practices agency	3
Other	<u>10</u>
Total	<u><u>441</u></u>

**RESULTS OF CHARGE RESOLUTIONS ACHIEVED BY EEOC ON 98,135  
CHARGES: JULY 1, 1972 - MARCH 31, 1975**



<sup>1</sup> At the time of our fieldwork EEOC reported resolutions by State and local fair employment practices agencies as administrative closures -- failure to proceed. EEOC has since revised its data systems to account separately for such resolutions.

The analysis showed that charging parties received relief in 1 of the 3 resolutions by State or local fair employment practices agencies and in the 22 charges resolved by employers. Although EEOC was not directly involved in obtaining relief for the charging parties in these particular cases, it is possible that EEOC may have contributed indirectly to these successful resolutions by funding the State or local fair employment practices agency. Also, the employer who settled with the charging party might have been trying to avoid an EEOC investigation.

We believe that the length of time charges take to be investigated and resolved, as discussed in the preceding section, is a significant factor in EEOC's high rate of administrative closures classified as failure to proceed, particularly within the first four categories listed in the above table.

#### LOW PROBABILITY OF NEGOTIATING SETTLEMENTS DURING A GIVEN YEAR

Another EEOC perspective used to assess the effectiveness of the individual charge resolution process is the total charge workload--the total number of charges on hand at the beginning of a given period plus the charges received during that period, reduced to a base of 100 charges.

Analysis of EEOC's 1974 charge workload data showed that only 3 of every 100 charges in the total workload were successfully resolved through negotiated settlements during 1974. Another way of stating this is that any individual with a pending charge in the 1974 workload had a probability of about 1 in 33 of having a successful resolution negotiated during that year. Moreover, reducing the base by the number of charges closed administratively and those on which no discrimination was found, still results in only 1 in 28 charging parties in the 1974 workload receiving a successful settlement in that year. Again, these probabilities reflect, in part, EEOC's lack of timeliness in processing charges.

#### OVERALL NEGOTIATED SETTLEMENT SUCCESS RATE BELOW THE MINIMUM ACCEPTABLE LEVEL ESTABLISHED BY THE CONGRESS

EEOC also measures effectiveness by success rates in negotiating predetermination settlements and conciliation agreements in those cases in which it has reason to believe discrimination has occurred. These rates are computed as the ratio of the number of successful negotiations to the

number of attempted negotiations. EEOC's quarterly statistics over the past 3 fiscal years have shown wide fluctuations in both the predetermination and conciliation success rates--the predetermination settlement success rates ranged from 20 to 69 percent; the conciliation success rates ranged from 23 to 49 percent.

The use of separate rates for predetermination settlements and conciliations as measures of effectiveness, however, can be misleading because of the dependent relationship between the two. The only significant difference is that a predetermination settlement takes place before EEOC has issued a formal letter of determination that there is reasonable cause to believe discrimination had occurred, whereas the same settlement would be called a conciliation if it took place after a letter of determination was issued. Any intensified management effort to select out its better supported cases to increase EEOC's predetermination settlement success rate will tend to reduce its conciliation success rate.

A more meaningful assessment of EEOC's effectiveness in cases which its investigations indicate that discrimination has occurred would be the combined results of its predetermination and conciliation efforts.

During its deliberations on the 1972 amendments to EEOC's enabling legislation, the Congress made frequent reference to the fact that EEOC was able to achieve a successful negotiated settlement in less than half of the cases in which there was reason to believe that discrimination had occurred. This performance was characterized "very ineffective" and was one of the reasons the Congress gave EEOC litigation authority to pursue cases where voluntary compliance fails.

Our analysis of EEOC's combined predetermination settlements and conciliations before and after passage of the 1972 amendments showed that EEOC has not appreciably improved its effectiveness in obtaining successful settlements when it has reason to believe discrimination has occurred. EEOC's average success rate for the 6 fiscal years preceding the 1972 amendments was 47.8 percent compared to an average of 49.2 percent for fiscal years 1973-75, an increase of only 1.4 percent. As discussed in greater detail in chapter 3, a major reason for this lack of improvement is the fact that, as of June 30, 1975, EEOC had successfully litigated only about 1 percent of the over 12,800 charges involved in unsuccessful conciliation attempts during fiscal years 1973-75.

CHARGING PARTY AND EMPLOYER PERCEPTIONS OF  
EEOC'S INVESTIGATION AND CONCILIATION PROCESS

Charging parties and employers who were involved in successful negotiated settlements had mixed opinions about EEOC's investigation and conciliation process. Most charging parties expressed general satisfaction with the terms of their settlements and with the manner in which EEOC had handled their cases; however, there was general dissatisfaction with the adequacy of certain remedies. Less than half of the employers expressed general satisfaction with the manner in which EEOC handled the settlement.

Because of the highly complex and rapidly expanding body of case law on employment discrimination, we did not consider it practicable nor desirable to develop the criteria necessary for a comprehensive qualitative evaluation of EEOC's individual charge resolution activities. As an alternative, we used a nationwide mail survey of individuals and employers who were parties to successful negotiated settlements to gain some insight into the degree of "customer" satisfaction. EEOC views these settlements as success stories, but since they account for only about 11 percent of EEOC's total charge resolutions, the survey results cannot be projected to EEOC's total compliance effort.

From a universe of 1,235 successful settlements negotiated during the first 10 months of fiscal year 1974, we selected a random sample of 285 agreements. We mailed questionnaires to the charging parties and employers involved in those agreements, requesting their comments on the degree of satisfaction with the results received and/or the process in general and with EEOC personnel. A summary of their views follows. (For details on sample selection see app. II.)

Charging party perceptions

A tabulation of charging party replies to our questionnaire survey showed that, generally, charging parties were satisfied with their settlements in 62.2 percent of the cases. However, the degree of satisfaction varied, in descending order, respectively, with the remedies of money, hiring provisions, promotion, transfer, and rehiring provisions. Analysis of the survey results by type of remedy showed that the charging parties were satisfied more than dissatisfied with the money and hiring provision. Also in over 80 percent of the cases, the charging parties felt that the EEOC investigators and conciliators were thorough. In about 81 percent of the cases, charging parties indicated



that they would go back to EEOC again, some because there was nowhere else to go.

Since we found charging parties were generally satisfied with their overall settlements, we used a statistical test known as discriminant analysis to identify factors which might have been associated with the charging parties' overall satisfaction. (See app. II for an explanation of this technique and the technical details of our analysis.) Our analysis identified several factors which, at the 95-percent confidence level, had a substantially significant association with charging parties' satisfaction with their overall settlement. Money seemed to affect satisfaction most. However, there were also substantially positive relationships between overall employee satisfaction and EEOC's assistance in explaining the charge investigation and conciliation process to them. Also we found that charging party satisfaction with their settlements was not significantly related to the length of time it took for EEOC to settle their charges, even though about 76 percent of them had waited at least 1 year for a settlement. What appeared to matter most was the remedy itself.

### Employer perceptions

The employers involved in the negotiated settlements we sampled represented a wide range of industries, including construction, manufacturing, retail merchandising, finance, service, insurance, wholesale merchandising, food, and communications. Geographically the respondents represented 33 States and the District of Columbia. They ranged in size from 2 to 150,000 employees, with over half of them employing fewer than 500 people.

Overall, employers were less satisfied than the charging parties with EEOC's conciliation process and personnel. However, their views were similar to those of the charging parties.

The tabulation of employers' responses to our questionnaire showed that:

- Employers in about 38 and 43 percent of the cases, respectively, were satisfied with the investigative process and investigators. Most often the employers felt that EEOC's investigators were efficient, qualified, thorough, and willing to discuss or resolve issues, but not impartial. In addition, the investigation process was not considered to be timely.

--Employers in about 44 and 41 percent of the cases, respectively, expressed satisfaction with conciliators and the conciliation process. Most often conciliators were deemed to be qualified, thorough, efficient, and willing to discuss or resolve issues, but not impartial. The conciliation process, however, was considered to be timely.

Generally, employers were more satisfied with the conciliation process and conciliators than with the investigative process and investigators.

A discriminant analysis showed employers' satisfaction with the EEOC investigation process was based on their satisfaction with investigators. Other factors which influenced the employers' satisfaction were whether they were given an adequate opportunity to give their side and whether they felt the investigator was impartial and willing to discuss the issues.

In addition, data supported the criticisms generally made that:

- (a) EEOC's charge settlement process was untimely--it took an average of 17.5 months from charge filing to settlement.
- (b) EEOC's investigations were on a basis broader than the original charge--about 44 percent of the employers felt that EEOC's investigation was focused both on resolving the individual charge and looking into systemic matters.
- (c) EEOC did not communicate adequately with employers during investigations--about 48 percent of the employers were never advised or were advised only occasionally of the investigators' progress.

## CHAPTER 3

### FACTORS LIMITING THE EFFECTIVENESS OF INDIVIDUAL CHARGE RESOLUTION ACTIVITIES

A number of factors appear to have limited the effectiveness of the Equal Employment Opportunity Commission's individual charge resolution activities. Although some of these factors are not directly controllable by EEOC, 1/ many are management problems which can and should be addressed by EEOC. These include weaknesses in administrative controls over charge processing, limited use of State and local fair employment practices agencies, questionable benefits of the expedited charge-processing strategy, inadequate coordination between EEOC's compliance and litigation activities, inadequate quality control reviews of district office charge resolutions, and problems in the allocation of resources to field activities. Each of these matters is discussed below.

#### NEED TO IMPROVE ADMINISTRATIVE CONTROLS FOR PROCESSING CHARGES

EEOC has not established adequate administrative controls for its charge-processing system. Existing management information systems do not provide EEOC officials with timely and accurate data on the current status or final disposition of individual charges nor on the program and cost effectiveness of its line operations. In addition, poor screening of incoming correspondence has resulted in incomplete and unmeritorious allegations of employment discrimination being formally recorded as charges (estimated to be 7 to 10 percent of the charge backlog). Further, there is insufficient

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1/Examples of factors not directly controllable by EEOC include (1) the sheer volume of incoming charges, (2) the relative dearth of fair employment practices case law which only recently has developed to the point of being highly supportive of EEOC's charge resolution activities, (3) conflicting lower court decisions in title VII cases, (4) employer challenges to EEOC determinations of reasonable cause due, in part, to their unfamiliarity with developments in title VII case law, and (5) employer challenges to EEOC's operating procedures. These factors are not discussed further in this report because little can be done about them.

monitoring of EEOC's charge backlog to identify uninvestigated open charges which may no longer be viable, whether because of age or other factors.

These problems are important because EEOC should consider charge workload and productivity statistics in making budget and program priority decisions, and, because data inaccuracies can conceal problems and delay the formulation and implementation of appropriate corrective actions.

#### Problems in existing information systems

In testimony before congressional committees and in annual budget submissions to the Congress, EEOC has cited charge workload statistics in justifying existing program resources and in requesting additional resources. In addition, charge workload statistics form the core of EEOC's internal performance management system which is used to evaluate program effectiveness.

EEOC has two information systems which contain essentially the same data on the status and disposition of charges:

- A complaint statistical reporting system which was developed to track activity on individual charges.
- A work measurement system which was developed to provide information on the line operation's program performance and cost effectiveness.

#### Complaint statistical reporting system

Since the spring of 1973, EEOC has recognized that a significant record maintenance and control problem has existed within the complaint statistical reporting system. EEOC's May 1973 report on the results of an internal study of its charge backlog noted that the inactive inventory was understated by 10,593 charges in its field offices and that 22 of its 32 field offices had discrepancies of 20 percent or greater in their inventory count. In June 1973 EEOC awarded a contract to redesign the system. The contractor tested the validity of the 77,402 charge records maintained in the system and noted a wide variety of serious discrepancies, including the following:

- 11,433 deferred charges on which additional actions were reported but which were not recorded as returned to EEOC.

--10,346 charges reported as returned from deferral but not reported previously as deferred.

--5,788 charges assigned to investigation had not been reported as such.

The contractor identified slow response time, redundant recording of information, and intermittent loss of quality control as the major causes of these discrepancies.

During fiscal year 1975, the contractor tested portions of a new record system in the Dallas region. Although certain portions of the new system worked well during the testing phase, the contract was terminated before completion because EEOC headquarters officials were concerned with the long-range cost implications of the contract, as well as certain system design problems which became apparent during the test phase.

Serious record maintenance problems continue to exist throughout the rest of the system. In December 1974, 1 district reported a 37-percent reduction in its recorded charge backlog by eliminating closed charges which were erroneously recorded as open. These charges had been closed for an average of 4 years, many as long as 6 years, yet were still carried as open charges. Another recent charge verification project for all EEOC charges or cases over 24 months old removed 2,349 charges--about 32 percent of charges examined--from an active status.

EEOC officials attributed these continuing problems to the lack of effective information system procedures, trained personnel, and an effective information verification process.

#### Work measurement system

In 1973 EEOC implemented a work measurement system. This system relies on two basic records: (a) a time/function record which is a daily record of the number of hours and minutes that employees spend on specific work functions and (b) the work unit report which is a calendar-month report of the charge output that each district office has in specific work functions.

Although EEOC has not evaluated the work measurement system as extensively as the complaint statistical reporting system, we believe there is a need for such an evaluation.

In 5 of the 6 district offices visited, we found the information reported to headquarters in their work unit reports during fiscal year 1975 was not supported by the underlying information in the work unit logs. In a monthly report for one district office, for example, the work unit report showed 135 closures while the supporting documentation showed 306 closures. In another district office, several work unit logs supporting work unit report figures could not be located. At a third district office, a monthly report showed no State or local fair employment practices agency activity for a particular month, while the work unit log showed 209 new charges had been referred to and 100 charges returned from such agencies during that period. One district director admitted to undercounting in one month to show better production in the next.

#### Inadequate screening of incoming complaints

EEOC needs to develop effective procedures for screening incoming complaints to insure that only bona fide complaints alleging employment discrimination are recorded as charges. The lack of such procedures has led to some charging party abuses of the system and inflated charge workload figures. "Spurious and patently unmeritorious" charges use valuable staff resources which could be more effectively used in processing bona fide complaints.

EEOC records many allegations of employment discrimination as charges even though it does not receive enough information from the complainants to pursue them as title VII charges. Then, as discussed in chapter 2, when efforts to contact the complainants to obtain the omitted information are unsuccessful, these charges are closed administratively as a failure to proceed. This procedure results in an overstatement of EEOC's workload statistics and distorts the data on charge resolutions. EEOC headquarters noted that in one region where complaint screening procedures were tightened, improved operational effectiveness and efficiency resulted.

A related problem is that EEOC receives and includes in its workload and productivity statistics complaints of alleged employment discrimination that are spurious and lacking in merit, but begins its processing as if they were valid charges. Such complaints, however, may represent complainant's attempts to abuse the system by filing unwarranted charges. One example of such abuse is the case of an individual who filed 150 charges with EEOC, claiming discrimination based on national

origin, maintaining that he was Transylvanian and a vampire. Similarly, in another case a minority individual had 135 separate charges filed with EEOC. An EEOC official thought this individual was literally earning his living by filing charges with EEOC. He applied for a job and, when he was not hired, filed a charge of employment discrimination with EEOC but then settled out of court for a lump sum.

EEOC officials estimated that 7 to 10 percent of their charge backlog consisted of patently unmeritorious charges. A time and motion study made at one district office showed that 62 minutes are spent on recording and processing each charge.

EEOC's compliance manual states charging parties are not expected to be aware of all of the technicalities of drafting a charge, and district office personnel must exercise discretion to distinguish between an "inartfully written charge and a frivolous one." The manual goes on to say that, when in doubt, the document should be accepted as a charge.

We believe that more effective screening procedures can be devised for incoming correspondence alleging discrimination which will preserve the rights of complainants and satisfy other legal requirements but which will reduce efforts EEOC now devotes to invalid charges. The screening process may also be improved by using professional staff. (See p. 37.)

#### Charging party contact program should be expanded

In our report "Review of Selected Activities of the Equal Employment Opportunity Commission District Office in Memphis" (B-175042, Sept. 28, 1973), we noted that a number of charges pending in EEOC's backlog no longer had merit, particularly when they had not been investigated promptly and the situations causing the charges to be filed had changed. EEOC had not established any followup procedures to identify and close out such cases other than investigation. We recommended that EEOC:

"Require all field offices to review pending charge files and, for charges filed before a cutoff date (to be specified by EEOC), request verification from the claimant that the claim is still valid. When the claimant acknowledges that the claim is no longer valid or when he cannot be located, the charges should be closed."

Based on this recommendation, EEOC began a charging party contact program for most uninvestigated charges 2 years and older, asking charging parties by letter if they still wanted their charges pursued. Although EEOC headquarters has not compiled any summary statistics on the overall impact of the program, available data indicates that it has eliminated many cases from the active workload. For example, the San Francisco district office obtained 210 closures from 420 followup letters (50 percent). Similarly the Detroit district office sent out 1,184 followup letters and by March 31, 1975, had closed 524 charges (44 percent). EEOC officials told us this procedure will be continued during fiscal year 1976.

EEOC has no such program for charges less than 2 years old. In one region, however, applying this program to such charges resulted in a number of closures. This suggests that some charges less than 2 years old are actually no longer active and should be closed.

We believe EEOC should respond to all charges in a timely manner. In the meantime, however, it should expand the contact program to include all charges where investigations are not timely. This procedure would help reduce the backlog to active charges and provide EEOC officials with current and accurate workload statistics for management purposes. Rather than recommending an arbitrary time frame for followup, such as 12 or 18 months, we suggest that EEOC institute pilot programs in several district offices using various criteria to determine the optimum followup time from a cost-effective standpoint.

NEED FOR BETTER USE  
OF STATE AND LOCAL FAIR  
EMPLOYMENT PRACTICES AGENCIES

Tens of thousands of the charges, which EEOC receives annually, allege discrimination in jurisdictions with approved State and local fair employment practices agencies. These agencies, therefore, represent a considerable resource to EEOC for resolving charges. Although EEOC has recognized their potential, its district offices' limited and uneven use of and assistance to these agencies has severely curtailed their impact on EEOC's charge resolutions.

EEOC's enabling legislation provides for cooperative enforcement efforts between it and agencies charged with enforcement of State or local antidiscrimination laws and requires EEOC to give substantial weight to the final findings and orders of such agencies when determining whether or not



there is reasonable cause to believe the allegations in a complaint. Under EEOC procedures, State and local agencies apply for designation as approved agencies. If EEOC finds they have adequate employment discrimination enabling legislation and administrative resources, they are approved to resolve charges on a referral basis from EEOC. As of June 1975, EEOC had approved 51 such agencies. EEOC procedures require the district offices to review the accuracy of each final action by the State or local agency, which has 60 days to process a charge before jurisdiction returns to EEOC.

Before fiscal year 1974, EEOC's main concern with State and local fair employment practices agencies was to increase their perception and understanding of employment discrimination to assure that charging parties would not lose their Federal rights when their case was processed by a State or local agency. Between fiscal years 1969 and 1973, EEOC awarded these agencies contracts or grants totaling \$5.8 million for such purposes. However, in fiscal year 1974, EEOC concentrated on charge processing, and in fiscal years 1974 and 1975, a total of \$6 million in contracts was awarded to these agencies for this purpose. EEOC now considers State and local agencies a resource for resolving charges and has a regional liaison officer in each region to coordinate activities and negotiate contracts with these agencies. Also 15 high-volume EEOC district offices have been allocated positions for deferral coordinators who have the primary responsibility of reviewing these agencies' final actions on charges.

Planned and actual resolutions by agencies have been limited

In 1975 EEOC received about 75,000 charges. According to data compiled by EEOC's State and Local Relations Division, during this period nearly 45,000 charges were referred to State and local fair employment practices agencies for resolution, as required by title VII. In establishing its goals for the year, EEOC anticipated that it would accept only 13,360 State and local resolutions. Actual operating statistics for the year showed that of the 45,000 referrals, only about 14,500 (32 percent) were completed and only about 10,900 (24 percent) were accepted by EEOC as follows:

	<u>Number</u>	<u>Percent</u>
Administrative closures	3,872	26.7
No-cause findings	5,376	37.1
Settlements	1,660	11.5
Resolutions rejected by EEOC	<u>3,582</u>	<u>24.7</u>
	<u>14,490</u>	<u>100</u>

EEOC information also indicated a wide variance in district office acceptance rates for State and local agencies' final actions. Acceptance rates in district offices with a significant volume of activity in fiscal year 1975 ranged from 19 to 98 percent. EEOC officials attributed the variance to differences in the quality and capabilities of State and local agencies and the negative attitudes of some district offices which view State and local agencies as competitors.

EEOC headquarters has attempted to change negative district office attitudes towards State and local agencies, but its efforts have had limited success. Officials told us several field offices have made good progress toward implementing an effective program relationship with the agencies, such as those in the Philadelphia region, while other offices have not. Some district offices, for example, provide State and local agencies with a detailed explanation of rejections which can help these agencies improve their work; other district offices reject final agency actions without fully explaining why. In addition,

--Two district offices reviewing final actions of the same State agency accept these actions at widely varying rates: in fiscal year 1975, one office accepted 49 percent while the other office accepted 95 percent.

--Field officials have sometimes been uncooperative: one regional director refused to contribute resources to a special task force project to reduce a large backlog of unreviewed State and local agency final actions, indicating that it would adversely affect the region meeting its other compliance goals.

EEOC officials stated that the field staff's resistance to cooperating with State and local fair employment practices agencies stems from two factors: personality clashes between EEOC and State and local agency personnel, and the apprehension that an effective State and local program threatens the current field compliance structure.

However, given the large volume of incoming complaints and the magnitude of the problem of systemic discrimination, we believe such fears are unfounded.

Technical assistance to agencies has been curtailed

EEOC has acknowledged that while many State and local fair employment practices agencies have highly trained staffs and

use sophisticated methods of charge resolution, others still need considerable training and technical assistance. Certain EEOC officials were concerned that the new emphasis on contracting for charge resolutions from such agencies had curtailed EEOC's technical assistance to them. Also curtailed were special projects designed to test new ideas for expanding the State and local agencies' relationship with EEOC. Among these was a pilot project to determine whether those State and local agencies with sophisticated compliance review procedures can assist EEOC in its compliance reviews, particularly in reviewing affirmative actions required in nationwide EEOC agreements.

While EEOC officials stated that charge resolution should be the primary goal of EEOC's relationship with State and local agencies, they emphasized the need for a balanced approach which continues needed technical assistance and other related activities designed to strengthen and expand the role of these agencies. Consequently, while a variety of problems still need to be resolved, the increased involvement of State and local fair employment practices agencies remains as one of EEOC's most promising opportunities for alleviating current and future charge workload problems.

NEED TO ASSESS BENEFITS  
DERIVED FROM EXPEDITED  
CHARGE-PROCESSING STRATEGY

To expedite the resolution of charges against large employers, EEOC has devised a policy of incorporating into negotiated agreements with these employers a provision that the employers investigate and resolve charges that may be filed with EEOC against them. This policy is called expedited charge processing and EEOC's fiscal year 1976 planning guidelines state that it will continue to be an important strategy directed toward providing relief to individual victims of employment discrimination.

Under these agreements, charges are to be investigated and conciliated by employers on a priority basis. Generally, EEOC serves the charge and requests the employer to reply with individual settlement proposals. Settlement terms acceptable to the charging parties are concurred in by EEOC; however, if the charging parties do not agree to the terms EEOC will either investigate the matter or advise them of their right to sue, whichever is appropriate. The fiscal year 1976 planning guidelines also depict this strategy as having a higher rate of productivity than other charge resolution activities since the employer's cooperation is insured through prior agreement, and the employer, rather than EEOC, expends resources to investigate the matter.

During fiscal year 1975, EEOC anticipated that 8,000 charges would be resolved through expedited charge processing; the majority of these charges were outstanding against a number of employers covered by four national agreements. In addition, about 2,500 charges were projected to be resolved under agreements which EEOC expected to negotiate with other employers. In the spring of 1975, however, only two of the four national agreements were operative (the other two were involved in litigation), and no new national agreements had been reached. Headquarters officials were aware that in some instances expedited charge processing had also been incorporated into local agreements negotiated by district offices; however, they did not know to what extent this had occurred or how effective it had been.

We could not evaluate fully the results of this strategy because data was not available on the number of charges resolved under these agreements or the number of all such agreements in effect on a local basis. However, based on information we developed, as well as available EEOC data for one of the two national agreements in effect, there were indications that the expedited charge processing had met with very limited success: many charges were not resolved by such means, the overall quality of settlements achieved was unknown, and projected EEOC cost savings did not appear realistic.

Many charges not resolved by  
expedited charge processing

The only data EEOC had on expedited charge processing was for its agreement with a major communications company <sup>1/</sup> for April 1, 1974, through September 30, 1974. This data showed that 284 charges filed against the company were resolved by it during this period. However, an additional 1,423 charges could not be resolved on an expedited basis and had to revert to EEOC for processing; that is, the employees found the settlement terms offered by the company unacceptable and EEOC had to investigate and conciliate the matters. Consequently, the agreement does not appear to have relieved EEOC of substantial workload responsibilities for charges filed against the company.

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<sup>1/</sup>The agreement also covers a number of subsidiary and associated companies.

Overall quality of settlements achieved  
under expedited charge processing is unknown

The cooperation and good faith of the employer to investigate charges fairly and to reach an equitable settlement on them is critical to the effectiveness of expedited charge processing. We learned from EEOC district office officials, however, that some employers have abused the process.

In each EEOC district office coordinators are assigned to handle the nationwide agreements. It is the coordinator's responsibility to keep in regular contact with employee representatives and to work toward the efficient and fair resolution of charges with them. However, EEOC field officials told us coordinators have had problems with some employers. For example, in a memorandum to an EEOC regional director, one coordinator made the following comments:

- Employers make up their minds about the merits of a charge and never change their views, even after an investigation and decision or determination.
- Employers bring up extraneous matters as a reason for failing to submit a reasonable offer.

In another instance a coordinator was forced to subpoena information on two charges because the employer refused him access to his records.

One district director commented that expedited charge processing simply was not working on a massive scale. He contended that under this strategy, for example, the individual employee may receive an acceptable resolution of his charge, but the basic employment practice or systemic discrimination underlying the complaint would remain unresolved.

EEOC officials in the field and at headquarters told us that no evaluations have been made of the quality of settlements obtained under expedited charge processing. In addition, we found that no attempts have been made either to assess the quality of remedies provided or to poll employees regarding their satisfaction with settlements. We believe EEOC has a responsibility to assure that the quality of employer resolutions and remedies provided under the expedited charge processing strategy is consistent with title VII standards.

EEOC does not know whether expedited charge processing is cost effective

One anticipated advantage to EEOC of expedited charge processing was economy. It was believed that since the employer incurred the investigation costs, processing of charges under this strategy should be less costly for EEOC. However, EEOC has not determined whether expedited charge processing is in fact more economical and did not have sufficient data for us to make such a determination.

Several factors indicate that significant savings to EEOC under expedited charge processing are questionable. For example, data for the first quarter of fiscal year 1975 shows that over 67 percent of all charges reportedly resolved under the expedited charge-processing procedures of one national agreement actually reverted to EEOC for processing under its regular charge-processing procedures. Also the costs of district office coordinators are part of the process costs. One headquarters official noted that this structure makes expanded use of the process impractical since the cost of having individual coordinators for every company participating in such an agreement would be prohibitive. In addition, there are special recordkeeping procedures needed for large employers; in the instance of one nationwide employer, special recordkeeping procedures had to be devised to maintain an accurate count of charges filed and pending against it.

We believe EEOC has a responsibility to assure that expedited charge processing (or any other alternative strategy used by EEOC in carrying out its responsibilities under title VII) is cost effective.

NEED TO IMPROVE COORDINATION BETWEEN COMPLIANCE AND LITIGATION ACTIVITIES

EEOC's effectiveness in carrying out its individual charge resolution responsibilities depends, in part, on close coordination and cooperation between its compliance and litigation activities. Compliance activities provide the input for litigation of individual charges which cannot be successfully settled through voluntary methods. A good record of successful litigation of such cases, in turn, should increase EEOC's effectiveness in achieving voluntary compliance.

During its deliberations on the 1972 amendments to EEOC's enabling legislation, the Congress acknowledged that exclusive reliance on the voluntary methods of charge resolution--negotiation, persuasion, and conciliation--mandated by EEOC's original legislation had proved to be ineffective. One fact

frequently cited as indicative of this ineffectiveness was that less than 50 percent of EEOC's conciliation attempts were successful negotiated settlements. It was argued that giving EEOC authority to litigate charges would accomplish two things: first, it would provide the means whereby individuals could get relief when EEOC's voluntary compliance methods failed; second, the very existence of litigation authority would significantly enhance EEOC's ability to achieve successful settlements through informal means.

Accordingly, in 1972 the Congress empowered EEOC to litigate those charges which could not be resolved through voluntary means (except that litigation against State and local governments, governmental agencies, or political subdivisions would be handled by the Attorney General). Litigation was intended to be an integral part of the overall compliance process, beginning with the receipt and investigation of a charge and continuing uninterrupted through conciliation and a final court proceeding, if necessary. According to EEOC's general counsel, litigation "is the logical extension of compliance, not an alternative form of enforcement." Therefore, EEOC's district offices refer all charges involved in unsuccessful conciliation attempts to the litigation centers.

During fiscal years 1973-75 EEOC was unable to negotiate successful settlements for over 12,800 charges for which it had reasonable cause to believe that discrimination had occurred. As of June 30, 1975, EEOC's litigation activities had produced favorable court settlements for only about 1 percent of these cases. It should be noted, however, that this time period represented EEOC's first 3 years of operation with litigation authority and that a certain amount of lead time was required to organize and staff its litigation activities. In addition, a general counsel official pointed out that favorable court settlements of charges which had previously failed voluntary settlement attempts would usually result in the successful voluntary settlement of other charges pending against these particular employers. (Available data for fiscal year 1975 indicated that an average of two open charges were resolved as a result of each favorable court settlement.)

Detailed information on the number of charges actually referred to litigation centers during this 3-year period and the results of the centers' review were not readily available at EEOC. However, EEOC's fiscal year 1975 workload statistics showed that about 80 percent of the charges reviewed by the litigation centers were rejected as unsuitable for litigation. Rejected charges are returned to the district

offices which then inform the charging parties of their right to litigate at their own volition.

Charges recommended for litigation by the litigation centers are forwarded to EEOC headquarters for further review and consideration. The headquarters review, in turn, generally results in a number of additional rejections. Detailed data on charge rejections at the headquarters level was not readily available; however, the reasons for such rejections were similar to those of the litigation centers. From fiscal year 1972 through fiscal year 1975, a total of 696 cases were authorized for litigation, and of these, 467 cases were filed in court (the latter included 229 cases filed in fiscal year 1975 which were less than the goal of 352 cases planned for the year). EEOC's charge litigation activity through fiscal year 1975 is summarized below.

	Fiscal year				Total
	1972	1973	1974	1975	
Cases authorized for litigation	10	166	210	310	696
Cases filed	6	114	118	229	467
Favorable court settlements	-	5	29	79	113
Dismissed--no appeal	-	(a)	15	23	38

a/Information not available.

As of June 30, 1975, 545 litigation cases were in EEOC's workload: 229 cases authorized for litigation but not filed and 316 cases pending litigation or appeal. In addition, some of the cases authorized for litigation were settled informally before suit was filed, but nationwide data on the extent of these settlements was unavailable at EEOC. However, information obtained at three litigation centers indicated that such settlements were few.

Officials of EEOC's general counsel's office stated that a major factor contributing to the litigation centers' high rejection rate was that differing standards of evidence were used in EEOC's compliance and litigation processes: compliance used a standard of "reasonable cause"--enough evidence to warrant an informal settlement attempt--and litigation used a standard of "preponderance of evidence"--enough evidence to sustain a formal court case. This contention was supported by our analysis of about 600 rejection memos issued from January 1 to March 31, 1975, which indicated that the primary reason for center rejection was "evidence equivocal and insufficient to support litigation." Some of the other



reasons cited included lack of impact, staleness of evidence, age of case, dissolution of business, and litigation center's inability to contact the charging party.

The Atlanta center had a lower rejection rate (45 percent) than the other two centers (89 percent). Inquiries at the Atlanta center indicated that its relatively low rejection rate was attributable to certain actions it had taken with respect to the district offices it served:

- The Atlanta regional office held training sessions for district office compliance personnel. Center attorneys frequently served as instructors and resource persons to provide compliance personnel with the viewpoints of the Atlanta litigation center.
- In April 1974, the Atlanta center developed a checklist of the reasons cases were most frequently rejected. This was distributed to each district office to correct file deficiencies.
- The regional attorney designated one litigation unit to work closely with each district office.
- The Atlanta center attorneys were encouraged to spend considerable time at the district offices and to provide advice, when requested, regarding evidence needed for litigation.

In contrast to the Atlanta center, efforts at improving coordination between the other two litigation centers and their district offices had little success. One regional attorney stated that efforts to reconcile the differing evidence standards had broken down. Several trial attorneys in the same center told us that litigation and compliance personnel sometimes acted more like adversaries than segments of the same agency.

In our opinion the two different evidence standards and less-than-full cooperation between district offices and litigation centers have hindered EEOC's effectiveness. Given that EEOC has successfully litigated relatively few charges, it is not surprising that litigation authority has not significantly increased EEOC's effectiveness in obtaining successful negotiated settlements.

EEOC officials have stated that separate standards of evidence are necessary in carrying out EEOC's compliance and

litigation responsibilities. While this may be so, we believe the Atlanta experience clearly demonstrates that existing problems can be reconciled.

NEED TO IMPROVE QUALITY REVIEWS  
OF DISTRICT OFFICE CHARGE RESOLUTIONS

EEOC's regional offices have the responsibility of reviewing the quality of charge resolution actions taken by district offices. The regional offices' quality review activities, however, are not made uniformly and do not provide effective feedback of results to EEOC management and field personnel. A new quality review system (mathematica) under consideration for nationwide adoption would retain these weaknesses.

Regional quality reviews  
not made effectively

Regional offices are required to make reviews of district office investigation, determination, and conciliation activities to assure high-quality charge resolutions and to identify problem areas requiring management attention. However, EEOC headquarters has not issued any guidelines to the regional offices on quality review activities.

At the time of our review, regional quality review activities consisted of "face audits," which were examinations of determination letters and conciliation agreements to determine if they were consistent with EEOC policy, and "hard audits," which included examinations of the investigative files to determine if the determination letters and agreements were accurate and met EEOC's evidential standards. Investigators and conciliators interviewed in three district offices overwhelmingly emphasized the importance of hard audits in a quality review process, and one field administrator said that hard audits should be a vital part of any EEOC quality review system.

Although hard audits were generally considered the most effective means for quality review by EEOC field personnel, this procedure appeared to have been used effectively in only one of the three EEOC regional offices we visited. This regional office made an audit annually of each of its district offices which included individual hard audits of selected determination letters and conciliation agreements. A written report was prepared on the results of each annual audit, and the district office was required to report on the corrective actions taken on noted deficiencies. The second region also made yearly hard audits at each of its district offices;

however, regional personnel were unable to provide us with audit reports or other documentation showing their audit findings because the findings and the corrective actions taken thereon were communicated orally by the region to the district offices. The third region made hard audits on a time-available basis only, and all findings and corrective actions were communicated orally.

Because of the lack of documentation, we were unable to evaluate on an overall basis the adequacy and effectiveness of EEOC's quality review activities. However, the lack of uniform quality review guidelines from EEOC headquarters and the failure of two of the three regions to document their findings would appear to limit the effectiveness of quality review activities in assuring high-quality charge resolutions and in assisting management at the headquarters, regional, and district office levels to identify and correct problem areas.

We believe EEOC headquarters should develop systematic review procedures for the use of hard audits and should provide for effective feedback of results to EEOC management and field office personnel.

Proposed new quality review system  
will not correct existing weaknesses

Prior to the beginning of our review, EEOC had completed a test of a new quality review system--called mathematica--which was intended to supplement its other quality review activities. At the time of our fieldwork, EEOC was analyzing the results of the pilot study and actively considering the nationwide implementation of the new system. This system uses a computer to analyze data from face audits. If this system is to be effective, EEOC needs to revise it as follows.

- Mathematica would analyze only data from face audits. Since face audits are relatively superficial compared with hard audits, we believe the hard audits should be included in the proposed system.
- Mathematica's output would be in summary form and not identify individuals who worked on the cases analyzed. We believe that the basic data output should be detailed to identify individual investigators and conciliators working on the cases reviewed to increase mathematica's usefulness to district office officials.
- Mathematica's output would not be timely, according to an EEOC headquarters official, because feedback

on data gathered and analyzed under the system would not be available for at least 6 months. We believe the results of quality review activities should be communicated to EEOC management and field office personnel as soon as the reports are finalized.

NEED TO REEVALUATE RESOURCE ALLOCATIONS TO FIELD ACTIVITIES

EEOC's production and charge workload statistics suggest that reallocating resources among its field activities could improve enforcement activities. Resources need to be reallocated in three areas: the distribution of resources among district offices, the distribution of and/or need for regional offices, and the type of staff resources within the district offices. Each of these matters is discussed below.

Resources allocated to district offices not based on workload

EEOC has apparently not allocated its resources by charge workload and productivity. District offices with large workloads and high productivity have much the same staff resources as those with small workloads and apparent low productivity.

The following table compares charge receipt and production data for two district offices for fiscal year 1975.

<u>Office</u>	<u>Authorized strength</u>	<u>Charge receipts</u>	<u>Output per month</u>	
			<u>Investigations</u>	<u>Conciliations</u>
A	45	2,353	14	13
B	38	1,480	2	4

Although office A was authorized only 18 percent more positions than office B, it received 59 percent more charges and apparently had a much higher level of productivity. Similar variations exist among many other district offices. EEOC officials acknowledged that several district offices have consistently produced less than others and said that a thorough examination of production factors could lead to the closing and/or relocation of several district offices and the reallocation of staff resources among district offices.

At the completion of our fieldwork, EEOC was considering a project designed to use productivity and workload information as a basis for allocating resources among district offices to increase charge resolutions. We believe that

allocating resources on such bases would result in better productivity.

Questionable need for regional offices

There are wide variances in the number of district offices and personnel supported by EEOC's seven regional offices, as shown by the following table.

<u>Regional office</u>		<u>District offices supported</u>	
<u>Name</u>	<u>Authorized positions</u>	<u>Number</u>	<u>Authorized positions</u>
Atlanta	23	6	261
Chicago	20	6	213
Dallas	22	5	218
Kansas City	19	2	94
New York	21	4	123
Philadelphia	20	4	153
San Francisco	20	5	204

During its first several years EEOC operated without regional offices, having administrative officers assigned to each district office. In fiscal year 1971 it established the regional office structure to assume responsibility for administrative matters, liaison with other Federal and governmental agencies, coordination of legal activities, and voluntary programs. EEOC's planned regional network will eventually include 10 regions which conform to uniform regional boundaries established for other Federal agencies and programs.

Several district officials questioned the need for regional offices as they have no charge resolution responsibilities. The officials said EEOC's regional offices were not productive from an operations viewpoint, and their continued existence was poor resource management. They believed regional office responsibilities could be effectively delegated to district offices, with an administrative officer in each district office assuming administrative responsibility. They stated that dealing directly with headquarters would eliminate an unnecessary intermediate organization and make available about 140 positions nationwide, part of which could be allocated to charge resolution activities.

In contrast, headquarters officials strongly supported the regional office concept stating that dealing with 32 district offices separately would be administratively impossible. They also stated that no studies were planned for either evaluating the effectiveness of the regional

office structure or examining the variances in their support of district offices.

We believe a reassessment of current resource allocations to regional offices is warranted, including the need for the present regional office structure.

Type of staff resources allocated to district office preinvestigation analysis units

Every EEOC district office has a preinvestigation analysis unit whose primary responsibilities include the receipt of charges, their screening and referral to State and local fair employment practices agencies, and the tracking of charges as they are processed by the district office. This unit plays a pivotal role in the charge resolution process, historically having accounted for about 30 percent of all charges resolved through administrative closure.

The unit is staffed by paraprofessionals with a career ladder of GS-5 to GS-9 and serves as a bridge to the higher grade professional career ladder for investigators and conciliators. EEOC officials stated that because of this the unit has traditionally had a high vacancy rate and that professional staff have been diverted from their own investigation and conciliation work to keep the unit staffed. In view of the unit's importance in the charge resolution process, several EEOC operating officials had urged its professionalization, and in 1970, EEOC's Office of Compliance recommended that it be staffed by professional personnel.

However, despite this unit's importance, it has not been authorized any professional positions other than a deferral coordinator, which was recently placed in 15 district office units to review final actions taken by State and local agencies. Although these positions have a career ladder of GS-12, the responsibilities are limited to deferral actions. At the conclusion of our fieldwork, EEOC was considering staffing its preinvestigation analysis units with other professional positions. We believe these units should be staffed with professionals.

## CHAPTER 4

### RESULTS OF EEOC'S

#### SYSTEMIC DISCRIMINATION ACTIVITIES

At the time of our review, the Equal Employment Opportunity Commission measured the results of its systemic discrimination activities primarily by cumulative data on the number of persons benefited and the dollar value of backpay or other wage adjustments. While these criteria may provide a valid measure of impact on a one-time basis for individuals or groups in a given company, we do not believe they are a valid measure of EEOC's impact on the problem of systemic discrimination itself.

We believe the best criterion for measuring EEOC's effectiveness in this area is the equal employment opportunity posture of employers. A presumption embodied in the law and frequently articulated by the courts in fair employment practices cases is that in the absence of all discrimination, the racial, ethnic, and sexual composition of an employer's work force at all levels should reasonably represent the total labor market area work force (or the community population, depending upon circumstances). Since most minorities and women are in lower paying service/maintenance/clerical type jobs primarily because of discriminatory employment practices of a systemic nature, the best indication of EEOC's impact on this problem would be the extent to which the relative position of minorities and women in an employer's work force is improved as a direct result of EEOC intervention.

The use of this criteria to measure the effectiveness of EEOC's systemic discrimination activities, however, is complicated by the fact that there are a number of other factors which may also have a positive or negative impact on the equal employment opportunity posture of employers--such as economic conditions, union agreements, labor market conditions, and the equal employment enforcement activities of other Federal agencies--and care must be exercised in using such evaluation results to the extent that the impact of these other variables cannot be isolated.

Because of constraints on time and resources, it was not practicable to fully isolate these variables in a comprehensive evaluation. However, we were able to deal with them on a limited scale through the use of statistical analysis techniques and individual case studies. In the

aggregate, our analyses suggest that EEOC has had little impact on alleviating problems of systemic employment discrimination. Comparisons of nationwide employment statistics, as well as analyses of data for employers under conciliation agreements, show little change over the years in the employment status of minorities and women. In addition, EEOC's systemic activities have not achieved the litigation goals established for fiscal year 1975.

#### CHANGES IN NATIONWIDE EMPLOYMENT STATISTICS SHOW MIXED RESULTS

Since 1966 EEOC has made an annual employment survey of the nation's private employers by its Employer Information Report EEO-1 Form. This form is required to be submitted annually by all private employers subject to EEOC jurisdiction with 100 or more employees. It reports the status of the employment of minorities and women in nine broad job categories. From 1966 to 1974 the number of employees covered by the EEO-1 form rose from 25,570,605 to 33,865,626, representing approximately 35.1 percent and 39.4 percent, respectively, of the total nationwide employed work force.

A comparison of nationwide EEO-1 statistics for 1966 and 1974, as summarized in the table on page 40, shows mixed results regarding changes in the employment status of minorities and women during this period. From a positive standpoint, it should be noted that the total employment participation rate for white women, minority women, and minority men increased 2.2 percent, 3 percent, and 1.9 percent, respectively, during this 8-year period. In addition, the increases in participation rates in certain of the better paying job categories (i.e., officials and managers and professionals for white women; officials and managers and skilled craftsmen for minority males) were above the increases in their participation rates in total employment. However, in other instances the increases in the participation rates for individual job categories were either below the total employment participation rate increases in the better paying jobs or above the total employment participation rate increases in the lower paying jobs--that is, in some cases the extent of underutilization of minorities and women in the better paying jobs and overutilization of minorities and women in the lower-paying jobs--compared with their total employment participation rates, actually worsened during this 8-year period.

Although these statistics may be interpreted in different ways depending upon one's perspective, minorities



and women continue to be concentrated in the lower paying job categories. In addition, based on the rates of change between 1966 and 1974, it will be many years before they achieve some degree of parity in the better paying job categories.

Because of the many other factors which affect the national employment picture, it was not feasible to determine with any degree of accuracy the extent to which those gains reflected in the EEO-1 data may have been directly or indirectly attributable to EEOC's activities. Furthermore, these statistics, which were the latest available from EEOC, do not reflect the economic downturn which resulted in massive layoffs and unemployment during 1975. Minorities and women hired in recent years were among the groups hardest hit by the downturn since employers generally follow the practice of last hired, first fired.

Participation Rates of Women and Minorities

by Work Force Category

as Reported on EEO-1 Forms

	1966			1974			Changes in participation rates (increase or decrease(-))		
	<u>Participation rate</u>			<u>Participation rate</u>			<u>(increase or decrease(-))</u>		
	White	Minor-	Minor-	White	Minor-	Minor-	White	Minor-	Minor-
	women	women	men	women	ity	ity	women	women	ity
					men	men			men
	----- (percent) -----								
Total employment	28.0	3.5	7.9	30.2	6.5	9.8	2.2	3.0	1.9
White collar:									
Officials and managers	9.1	.4	1.5	12.0	1.1	4.0	2.9	.7	2.5
Professionals	13.0	1.0	2.5	25.3	2.9	4.3	12.3	1.9	1.8
Technicians	27.7	3.4	3.1	25.3	5.5	6.2	-2.4	2.1	3.1
Salesworkers	36.4	2.5	1.9	41.3	4.8	4.4	4.9	2.3	2.5
Office and clerical	68.1	4.3	1.6	68.9	10.6	2.9	.8	6.3	1.3
Blue collar:									
Craftsmen (skilled)	5.6	.7	5.5	6.2	1.5	10.0	.6	.8	4.5
Operators (semi-skilled)	24.1	3.6	10.9	23.7	7.3	14.8	-.4	3.7	3.9
Laborers (unskilled)	18.7	5.3	22.9	22.1	8.8	22.2	3.4	3.5	-.7
Service workers	31.8	11.5	16.6	36.7	15.2	16.1	4.9	3.7	-.5

CONCILIATION AGREEMENTS HAVE  
LIMITED IMPACT ON EMPLOYMENT PATTERNS

Although virtually all of EEOC's conciliation agreements arose out the investigation of individual charges under section 706 of the Civil Rights Act of 1964, a primary strategy of EEOC's compliance process has been to incorporate provisions into the agreements requiring employers to eliminate systemic discriminatory employment practices identified by EEOC through expanding its investigation of individual charges to include "like and related issues." Our analysis of employment statistics for employers before and after they executed conciliation agreements, however, showed little improvement in the employment patterns of minorities and women. These results agree with other studies which noted that EEOC has had only limited success in improving the employment status of minorities and women. These studies indicate that while progress has been made these groups still face continuing serious employment problems. Several of these studies noted that more powerful variables (i.e., national economic conditions) often diluted EEOC's impact.

Employment patterns of firms with  
conciliation agreements vary little  
from those without agreements

Since conciliation agreements provide for special efforts in the employment of minorities and women, an indication of the impact of a conciliation agreement on an employer can be determined by comparing its employment data with that of a similar firm. To accomplish this we paired 32 employers who conciliated agreements during July 1970 to December 1971 with similar firms which had not conciliated with EEOC. This pairing was to hold constant all factors affecting employment except one--successful conciliation; the paired companies were the same size, in the same geographical area, and engaged in the same industry.

From their annual EEO-1 forms we obtained employment data for these firms and compared the status of blacks and women 1/ in these companies both before and 1 or more years after the conciliation agreements were executed. Our comparison showed no statistically significant difference between black and female employment patterns of the firms with

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1/This particular statistical test was limited to blacks and women because we were unable to compile sufficient data from EEOC's records to make a statistically valid analysis on other minority groups.

conciliation agreements and those similar firms without conciliation agreements. (See app. III.)

We believe this result is indicative of the lack of significant EEOC impact, even though the total isolation of the conciliation agreement as the only variable to the complete exclusion of all possible indirect influences was impossible, and the absence of complete data for many firms made a nationwide projection of results impossible.

Studies show EEOC conciliation agreements had little impact

We used the case study technique for yet another perspective on the impact of EEOC's conciliation agreements. From the firms that entered into conciliation agreements between fiscal years 1970 and 1973, we selected seven firms in various geographical areas for analysis: three manufacturers, two financial concerns, and two service organizations.

Our analysis of the firms' experiences under their conciliation agreements showed that the agreements apparently had little or no direct impact on their employment posture. The firms' employment postures before and 1 or more years after executing their conciliation agreements generally indicated only slight improvement in both the participation and distribution of minorities and women in their employment structure; in some cases these factors actually decreased, apparently because of the recent economic downturn. Also in one case the firm had a complete turnover in management and the new management was totally unaware of the conciliation agreement.

Moreover, some employers made negative comments on the manner in which EEOC conducted the compliance process. They said EEOC was biased in favor of the charging party, untimely in resolving the charges which added to the costs of backpay settlements, and pressured them to conciliate on its terms. Furthermore, in those instances where some positive changes had occurred, the firms attributed these to such factors as their own internal equal employment activities and more qualified individuals in the labor market, rather than to EEOC.

Even though our case studies were limited to seven conciliation agreements, we believe they serve as another indication that EEOC has met with only limited success in both improving systems through conciliation and improving the environment in which to deal with employment discrimination.

IMPACT OF LITIGATION AND NATIONWIDE AGREEMENT  
ACTIVITIES ON SYSTEMIC DISCRIMINATION

At the time of our fieldwork EEOC had settled only one systemic discrimination litigation case and had limited information on the results of only one of its nationwide agreements. Consequently, we did not have sufficient data to assess the impact of these activities on the problem of systemic discrimination. Although both activities appear to have the potential for substantially enhancing EEOC's effectiveness, much will depend upon the extent to which EEOC uses them.

Litigation of systemic cases

Before the 1972 amendments to EEOC's enabling legislation, the Department of Justice had exclusive authority to litigate systemic discrimination cases under title VII of the Civil Rights Act of 1964. With the enactment of the 1972 amendments, EEOC had concurrent systemic litigation jurisdiction with the Department of Justice until March 24, 1974, when EEOC became the only Federal agency with authority to bring systemic litigation actions against private employers under section 707 of the Civil Rights Act of 1964. However, such actions against State and local governments, governmental agencies, or political subdivisions are still the sole responsibility of the Department of Justice.

During the period when it had concurrent systemic litigation jurisdiction with Justice, EEOC did not initiate any enforcement actions. With the complete transfer of this jurisdiction in March 1974 from Justice, EEOC planned to file 40 cases and to settle 5 cases by June 30, 1975. However, EEOC did not meet these goals as shown below.

<u>Status of systemic activity</u>	<u>Number of cases</u>
Charges approved for investigation	39
Cases in investigation	34
Cases with cause determinations	3
Cases filed	2
Cases settled	1

While we did not attempt to assess the extent to which the one settlement had improved the relative position of minorities and women in this particular employer's work force, we do not believe a single settlement will have any noticeable impact on the overall problem of systemic discrimination.

EEOC officials stated that the bulk of their systemic litigation activities involved the litigation of cases developed from individual charges. They explained that some of the 113 charges that were successfully litigated in fiscal years 1973-75 (discussed on pp. 30 to 32) included systemic remedies as part of the settlements--such as comprehensive affirmative action plans affecting entire work forces. However, at the time of our fieldwork, there were no standardized EEOC reporting procedures for accumulating settlement results. We did not attempt to obtain this data since the bulk of the cases were settled in fiscal year 1975, and the impact of their systemic remedies on the employment status of minorities and women probably would not be evident for some time.

### Nationwide agreements

EEOC is currently participating, along with other Federal civil rights enforcement agencies, in five nationwide agreements wherein the employers have promised affirmative actions to alter alleged discriminatory features of their employment practices. Two of these agreements, signed in 1973 and 1974 with the same group of affiliated companies, provided for multimillion dollar backpay and other wage adjustments. A third agreement became effective in September 1974. The two remaining agreements were not yet operative, according to EEOC officials, because of intervention by civil rights groups and negotiation difficulties.

EEOC headquarters had not compiled sufficient data to permit a comprehensive assessment of the impact of the three agreements. However, as of August 1974, EEOC's monitoring of compliance reports submitted by the above mentioned group of affiliated companies under their 1973 agreement, and a subsequent nationwide review disclosed widespread noncompliance with the agreement. EEOC and the other Federal agencies who were parties to the agreement are seeking relief for employees affected by the noncompliance.

## CHAPTER 5

### FACTORS WHICH LIMITED THE EFFECTIVENESS OF EEOC'S

#### SYSTEMIC DISCRIMINATION ACTIVITIES

We have identified a number of factors which appear to have limited the effectiveness of the Equal Employment Opportunity Commission's systemic discrimination activities. Like those discussed in chapter 3, many of the factors we identified are management problems which can and should be addressed by EEOC. These include difficulties in trying to achieve both systemic and individual charge resolution objectives through combined activities, problems in the collection and use of employment statistics, inadequate compliance monitoring of conciliation agreements and consent decrees, inadequate procedures for handling discrimination cases against State and local governments, limited use of litigation authority for systemic cases, and lack of coordination with the Office of Federal Contract Compliance Programs (OFCCP). However, one of the factors limiting EEOC's effectiveness is outside its control--frequent turnover in top management positions--and was a major underlying cause of the management problems we identified.

#### NEED TO SEPARATE SYSTEMIC AND INDIVIDUAL CHARGE RESOLUTION ACTIVITIES

EEOC's two basic operating objectives are to resolve individual charges of employment discrimination and to eliminate systemic employment discrimination. Historically, EEOC has attempted to accomplish both objectives by combining its investigations of individual charges with its systemic activities. However, this approach has not been particularly effective but actually has been a significant factor hampering the achievement of both goals.

#### Individual charges expanded to deal with systemic discrimination

Before the 1972 amendments, EEOC's authority to seek out and eliminate systemic discrimination was not clearly stated in title VII. Nevertheless, EEOC attempted to deal with the problem by expanding the scope of its investigations of individual charges to include like and related issues. In essence, the individual charge served as EEOC's entree into the employment practices of the employer named in the charge. Despite strong opposition from employers, EEOC used this approach extensively in seeking out systemic discrimination since it was the only apparent means available at the time.

The 1972 amendments, however, unequivocally established EEOC's authority to seek out and eliminate systemic discrimination and, combined with the Supreme Court's March 1971 decision in Griggs vs. Duke Power Company (401 U.S. 424), made possible a more direct and effective approach for seeking out systemic discrimination by using employment statistics (statistical inference). Nevertheless, investigators in a number of district offices have continued to expand their investigations of individual charges to include like and related issues even though the practice

--significantly increases the amount of time required to complete an investigation (two officials estimated that it could increase investigation time by as much as 10 times);

--appears to be in contravention of EEOC headquarter's priority emphasis on reducing its backlog of individual charges; and

--appears to be less effective than the statistical inference approach for dealing with systemic discrimination.

In our September 28, 1973, report on EEOC's Memphis district office (see p. 22) we pointed out that no action had been taken on recommendations in various internal and external studies that EEOC reevaluate its policy of broadening its investigations of each individual charge to include all like and related issues.

In November 1973 EEOC revised its compliance manual to permit investigators to limit the scope of their investigations to the specific issue(s) alleged when only one charge had been filed against a particular employer. Current compliance manual guidelines imply that EEOC's policy is to expand its investigations of individual charges to include like and related issues, but an investigation may be limited in scope if certain conditions exist. The guidelines appear to give district office personnel considerable discretion in making this determination.

Although expanding investigations to include like and related issues may have been of some value in combating systemic discrimination before the 1972 amendments, we believe it also contributed to the growth in EEOC's backlog of individual charges because of the additional time required in expanding investigations beyond the specific issues alleged in the individual charge. Accordingly, any decision

on the continuation of this practice should take into consideration not only the cost/benefit ratios of both approaches for dealing with systemic discrimination, but also its correlative impact on the effectiveness of EEOC's individual charge resolution activities.

Systemic activities impeded  
by including individual charges

As part of the overall strategy for reducing its backlog, EEOC has attempted to include individual charge resolutions in the systemic discrimination activities authorized by the 1972 amendments. EEOC's fiscal year 1975 plans called for 35 percent of its resources nationwide to be deployed in activities designed to eliminate discriminatory features of employment systems, including: 3,000 charge resolutions through nationwide systemic investigations; 1,000 charge resolutions through regional systemic investigations; and 5,500 charge resolutions through local systemic investigations. Including individual charge resolutions in systemic activities has impeded EEOC in attacking systemic problems on a national, regional, and local basis.

During fiscal year 1974, EEOC selected five nationwide respondents for systemic investigation. EEOC anticipated that 3,184 charges would be incorporated into these investigations, with 1 additional case to be started in 1974 and 5 more cases in 1975. Also seven cases were to be completed in fiscal year 1975. However, as of the end of fiscal year 1975, EEOC had not made determinations of reasonable cause on any of the five initial national respondent investigations. An EEOC headquarters official stated that incorporating individual charges into systemic investigations contributed to the slow progress in the systemic area. The official explained that charge incorporation is extremely time consuming and a heavy procedural and administrative burden because all charges against the firms selected for national systemic investigation must be screened for charges not having systemic implications. For the above five firms, only 50 percent of the pending charges were ultimately incorporated into the investigations. The EEOC official stated that if systemic investigations were relieved from the burden of including individual charges pending against employers selected for investigation, then systemic activities could be greatly accelerated.

Systemic investigations of regional employers have also been slowed by including individual charges pending with EEOC. In fiscal years 1974 and 1975, separate attempts were



made to initiate systemic activities at the regional and district office levels. Each of these attempts entailed a program of cooperative effort between district office compliance staffs and litigation centers. However, these efforts were abandoned primarily because of EEOC headquarters' pressure on district offices to resolve individual charges and reduce the backlog. The abandonment of the 1975 cooperative effort resulted in the shifting of regional systemic responsibilities to litigation centers. The centers, though, are still hindered in their systemic activities by the requirement to include and resolve open individual charges within systemic cases.

At the local employer level, field systemic activities have also suffered from pressure to include individual charges to reduce the charge backlog. An EEOC nationwide audit in fiscal year 1975 noted that the formal systemic activities authorized by the 1972 amendments were practically nonexistent in EEOC's field offices. Also, officials in six district offices we visited told us that their systemic activities have been limited with the increasing pressure to reduce the charge backlog.

#### NEED TO IMPROVE COLLECTION OF EMPLOYMENT STATISTICS

The need for statistical information to determine the existence of discrimination in an employment system has been recognized in congressional actions, Supreme Court decisions, and EEOC guidelines. Section 709(c) of EEOC's enabling legislation authorizes it to require every employer, employment agency, and labor organization subject to its jurisdiction to maintain records relevant to determining whether unlawful employment practices have been or are being committed and to require reports to be submitted to it based on these records.

Based on this authority, EEOC has made an annual employment survey of the Nation's private employers by the annual Employer Information Report EEO-1 form since 1966. Each year approximately 200,000 EEO-1 forms are mailed asking employers to report employment data from any one payroll period between January and April--about 160,000 of the forms are returned. In August 1975 an EEOC official estimated that \$552,040 was spent in collecting and disseminating EEO-1 information.

This information is intended for EEOC use in its compliance, litigative, and systemic activities and by

other Federal and State agencies in their compliance efforts. However, there are inadequacies in the data collected and delays in data dissemination, and EEOC has made only limited use of the data in its systemic discrimination activities.

#### Data collected not complete

EEOC officials told us that many employers do not report employment data. They estimated that the approximately 160,000 annual EEO-1 reports received represent only about 80 percent of the companies which should be filing them. They also said that EEOC has had to rely on this estimate because it had no way to identify the universe of employers which fell within the EEO-1 reporting requirements and that this made it impossible for EEOC to follow up on nonreporting employers.

According to an EEOC official, data which would allow EEOC to identify nonreporting employers is onhand at the Bureau of Census and the Social Security Administration. However, both of these agencies have refused EEOC access to such data, citing confidentiality requirements. Although the enabling legislation of both agencies contain prohibitions on the use or disclosure of information supplied to them, the Social Security Act prohibits the disclosure of such information except as the Secretary of Health, Education, and Welfare specifically prescribes by regulation. At the time of our review, the departmental regulation concerning disclosure of Social Security Administration records and information did not authorize the release of any data to EEOC. However, we found nothing in the act which would preclude the Secretary from revising the regulation to grant EEOC access to the information it needs to identify the universe of employers which should file annual EEO-1 reports. We believe the Chairman of EEOC should take the initiative in working with the Secretary to resolve this matter.

In addition there are indications that the EEO-1 data may contain inaccuracies. Headquarters and field personnel told us EEOC had found instances of inaccurate reporting during investigations. However, no systematic verification of report information, even on a sample basis, is currently made, and EEOC relies totally upon the employer to correctly interpret EEO-1 reporting instructions.

Problems with timeliness of  
data dissemination and format  
of data collected

Officials in five EEOC district offices we visited generally cited problems with the untimely distribution of the EEO-1 reports: they were generally 1 to 2 years old. EEOC officials indicated that the main reason for the untimely distribution was the lack of adequate funding for the retrieval of collected information.

The format of the EEO-1 report has not changed since 1966. In a study of EEO-1 data prepared for EEOC in 1968, improvement recommendations were made, including adding data on average earnings for the firm's major occupations to permit identification of minority and female concentrations in low-paying positions and adding data on labor market variables in the firm's locale to enhance the report's usefulness. Investigators in six district offices we visited also suggested that improvements in the report's format could be effected by the addition of average salary and wage information for each job category and the addition of more definitive job categories. An EEOC official stated that an informal telephone canvas of all EEOC district offices has been made to obtain suggestions to improve EEO-1 data but that no action had been taken on the results.

According to headquarters personnel of EEOC's general counsel's office, the EEO-1 reports are used by their staff in their regional systemic discrimination program activities. However, the use of such information in sophisticated methodologies for selecting targets for systemic enforcement activities has been minimal. In fiscal year 1973 EEOC developed a computerized target selection model for use at national and regional levels to identify employment discrimination, using a series of indexes calculated from EEO-1 reports to rank employers on the basis of minority and/or female employment patterns. The model was used in fiscal year 1973 to rank companies on a national and regional basis. An EEOC official said sophisticated analysis built upon EEO-1 information could be extremely helpful. However, no additional use of the existing model or development of alternative models was planned at the time of our review.

NEED TO IMPROVE MONITORING OF  
COMPLIANCE WITH CONCILIATION  
AGREEMENTS AND CONSENT DECREES

EEOC's enforcement activities result in two kinds of systemic compliance mechanisms: conciliation agreements and consent decrees. The former have generally resulted from investigations of individual charges which showed systemic problems and which, consequently, contain systemic affirmative action requirements for the employers involved. The consent decrees have similar affirmative action provisions, but these generally result from systemic investigations per se which do not go to trial but are settled out of court, with EEOC, the employer, and the court all signatories to the decree.

Under EEOC procedures, district offices are responsible for monitoring employer compliance with the conciliation agreements, and litigation centers have similar responsibilities for consent decrees. Implementation of these responsibilities, however, appears to have been inadequate for assessing employer compliance with these enforcement actions.

Inadequate compliance  
monitoring activities

EEOC procedures state that the objectives of compliance reviews--i.e., monitoring employer compliance with conciliation agreements--are to insure, among other things, that discriminatory features of employment systems are eliminated, as promised, and the agreed upon remedy is achieved. To attain this objective EEOC's compliance manual outlines two types of compliance reviews for district offices:

- Desk audits of written reports submitted by the employer on a schedule dictated by the agreement.
- Onsite reviews requiring a visit to the employer's facility by the district staff.

District offices we visited, however, were apparently carrying out such compliance reviews only on a limited basis. Compliance activities were generally limited to desk audits of those reports that were received by the district offices. Suspense files which serve as the basic record for district office compliance review activities were generally not maintained. Consequently, several district offices had (1) no record of receiving required written reports from many respondents or of any subsequent desk audits

made on reports received and (2) no means of readily determining which reports had not been submitted as required. In one district office for example, the records for 20 conciliation agreements signed between July 1 and December 31, 1974, showed that their status reporting dates had passed, but suspense file entries showed that only 7 of the required reports had been received. Furthermore, no entries had been made to show whether these seven reports had been reviewed and approved. In another district office the respondents had not submitted all the required reports for 6 of the 16 conciliation agreements which had reporting requirements.

Onsite followup reviews, required in cases of non-reporting, were seldom made by the district offices we visited. Five of the seven offices had made no onsite followup reviews during fiscal year 1975. At the sixth district office officials maintained that three or four onsite reviews had been made, but none of these reviews were documented as required, although general information was available on one review. The seventh district office had made only one fully documented onsite review during fiscal year 1975. Both instances, where onsite reviews were made, showed noncompliance with conciliation agreements.

District office officials cited several reasons for their lack of effort in the compliance review area, including

- lack of incentive (credit) for compliance review activities in the EEOC internal performance measurement system and
- lack of adequate staff resources to make reviews.

Cases where district office compliance reviews indicate respondent noncompliance are to be forwarded to the field litigation centers for litigation. Officials of EEOC's general counsel's office stated that litigation in support of conciliation agreements had been minimal because of the lack of district office compliance review activity.

We did not make detailed analyses at litigation centers of their compliance review activities. However, from our limited work, it appeared that their monitoring of consent decrees was also inadequate. Litigation centers had not been given formal guidance in, or required to follow, any systematic procedures for monitoring consent decrees, and the extent of consent decree monitoring varied widely among the centers visited.

- One litigation center had organized a separate compliance unit and was actively monitoring 14 different cases. According to center staff, onsite visits were being made.
- A second litigation center relied on the attorney responsible for litigating the settlement to monitor the decree. Onsite visits were normally not made. One attorney assigned this responsibility said the other workload made it impossible to effectively monitor decrees.
- The third litigation center visited also relied on individual attorneys to monitor successful decrees. No formal system for monitoring respondent consent decree compliance existed. Onsite reviews were not made.

Insufficient data gathered to  
measure effects of systemic remedies

Obtaining qualitative and quantitative data to evaluate and improve remedies for eliminating job discrimination is an important objective of compliance review and postconsent decree activities; however, sufficient information was not gathered to effectively identify or evaluate the impact of the remedies.

A wide variance exists in systemic remedies provided in conciliation agreements and consent decrees, ranging from a simple promise to make a statement of nondiscrimination policy to specific goals and timetables calling for important changes in hiring and promotion practices. To evaluate the systemic impact of these remedies, EEOC relies on two measures: (1) total persons benefited--all those receiving money benefits immediately or during the first year of an agreement and specific persons receiving non-cash benefits and (2) total dollar benefits--the total of all immediate cash settlements plus the total of all economic benefits during the first year after the settlement.

EEOC officials recognize that these two measures are not good indexes of success. In fact, EEOC's 1973 compliance performance measurement guide lists these as measures for evaluating the success of individual charge resolution activities rather than systemic activities.

EEOC officials also stated that a high degree of inaccuracy may be present in the dollar-benefit and persons-benefited figures, which made it difficult to use this data

to measure the relative success of the wide variety of specific remedies effected by conciliation agreements and consent decrees. For example, one district office was reporting the same benefits under the same agreement every month instead of only once. EEOC officials acknowledged that their benefit figures have not been audited.

As discussed at the beginning of chapter 4, we believe that other criteria, such as the extent of change in the relative position of minorities and women in the employer's work force occurring after the execution of a conciliation agreement or consent decree, would better indicate EEOC's impact on the problem of systemic discrimination.

Although EEOC officials acknowledged deficiencies in the measures used to determine systemic activities' impact, they also said that an information system providing meaningful systemic data would be impractical to administer and would require considerable additional research. However, an information system with apparent capabilities to both identify and evaluate systemic program activities is in use at the New York City Commission on Human Rights. The system collects information through the monitoring of employer compliance with conciliation agreements. As of January 2, 1975, 49 cases were in compliance monitoring. Under this system, the local agency has the capability to compile reports on a wide variety of systemic remedies, ranging from hires and promotions to eliminated pre-employment credit checks. In addition, the system has produced comparative reports showing the changes in minority and/or female employment patterns for companies subject to the local agency's conciliation agreements. Thus the existence of this system suggests that an EEOC systemic measurement system capable of providing detailed remedy information and comparative impact information may be neither difficult to devise nor impractical to administer. We believe the design and implementation of such a system should receive priority consideration by EEOC.

NEED TO ESTABLISH EFFECTIVE PROCEDURES  
FOR HANDLING EMPLOYMENT DISCRIMINATION CASES  
AGAINST STATE AND LOCAL GOVERNMENTS

Under the 1972 amendments to EEOC's enabling legislation, its jurisdiction for administrative charge processing was extended to include State and local governments, governmental agencies, and political subdivisions, but litigative authority over employment discrimination cases against such entities remained with the Department of Justice.

In fiscal year 1975 EEOC designed a special program, as part of its systemic activities, directed at eliminating discriminatory features of State and local government employment systems. This program entailed a cooperative effort between EEOC and Justice concerning (1) educational institutions and other public service agencies, such as hospitals and police departments, where a lack of minority and women employees could affect the quality of services to these groups and (2) employment and referral practices of State employment services. Although EEOC did not have data on this special program's results as of September 1975, both Justice and EEOC officials said the strategy had little success. In carrying out the program, the continuous coordination necessary to assure its effective implementation was lacking.

EEOC's fiscal year 1976 program plan calls for charges against public (governmental) employers and State employment agencies to be handled as regular systemic cases. Although EEOC officials have noted special difficulties in resolving these cases because they involve relatively new and unique issues and situations, special procedures have not been developed to assist the field offices in handling them.

Lack of coordination with Department of  
Justice on special public employer program

The design of the special public employer program called for constant flow of information, early targeting procedures, and close contact with Justice attorneys to enable EEOC district offices to earmark public employer cases for litigation at an early stage. Working with Justice attorneys, EEOC was to investigate charges for possible litigation which would reduce the chance that Justice would need to reinvestigate the case if it was not conciliated. However, Justice representatives and the EEOC official responsible for carrying out this program stated that, except in isolated instances, the anticipated coordination generally did not take place.

District office participation was generally poor; and Justice's education section and State and local government section received very few public employer referrals from EEOC district offices. In fact, cases sent to Justice originated almost exclusively in five district offices. Since Justice prefers a geographical mix of court cases, litigative efforts in this area have been hampered.



Six of the seven district offices we visited had not developed any special coordination procedures with Justice. Moreover, two district office directors had little or no knowledge of the special program, and a third director told us he ignores such strategies altogether. One district office did implement the program by furnishing Justice representatives with appropriate records and working with them on one case. However, this district office established no targeting procedures for the program, and the public employers investigated were only those named in the charge. None of the seven district offices had initiated any special compliance procedures for these charges, and six of the offices processed the charges as any other charge despite the need for special handling to achieve a reasonable degree of resolution and/or litigative success.

Lack of special procedures  
for handling charges against  
public employers

Investigators and conciliators we interviewed at EEOC district offices have had difficulty in investigating cases against public employers. Investigators in one district office cited a lack of cooperation by the employers, problems in determining specific responsibilities within their organizations, and the increased amount of time and documentation required. Several conciliators we interviewed had similar problems and also had problems obtaining backpay for charging parties from agencies with limited operating budgets, and problems dealing with school districts that had not yet adjusted to Federal regulations. In addition, one conciliator said public employer cases usually fail conciliation because the employers consider the EEOC investigations to be inadequate.

Higher education is one public employment area in which EEOC has recognized the need for special attention. In June 1974 an EEOC report showed that between January 1973 and January 1974 EEOC's higher education charge volume nearly quadrupled--charges from women outnumbered charges from blacks about two to one--and that the increase was due, in part, to the newness of EEOC's jurisdiction in this area. This report also estimated such charges were received at twice the rate EEOC could process them; thus the higher education charge backlog was actually growing faster than EEOC's entire backlog. Furthermore, the report stated that EEOC had made only limited progress in processing these charges because of problems similar to those contributing to its general backlog, the need to resolve complex policy matters, and

lengthy investigations. Some of the more specific problems cited in the report included:

- Blue-collar guidelines applied to white-collar professional jobs.
- Universities hire in very small numbers compared to private industry which makes periodic statistical comparisons more difficult.
- University employee selection criteria vary and are largely judgmental.
- Performance criteria are more flexible and subjective in professional jobs than in blue-collar jobs, particularly with regard to promotion and tenure.

Problems such as these complicate and lengthen EEOC's investigations of higher education cases. Considered together with pressures to decrease EEOC's charge backlog, it is not unreasonable to suppose that these cases have not received very high priority at the district office level. In fact, Department of Justice officials stated that the paucity of public employer case referrals by EEOC generally could be their low priority in district offices due to EEOC's backlog.

Despite these problems, as of September 1975, EEOC had neither issued any guidelines to its field staff to assist in processing public employer charges nor developed a unified policy for handling higher education charges.

#### NEED TO INCREASE LITIGATION SUPPORT OF EEOC'S SYSTEMIC ACTIVITIES

Although litigation of systemic discrimination cases is among those activities deemed by EEOC's Office of the General Counsel to have the highest of priorities, litigative support of EEOC's systemic enforcement activities has been limited and was significantly below the planned goals for fiscal year 1975, as discussed in chapter 4.

EEOC's initial systemic case handling procedures entailed a cooperative approach between its general counsel and compliance staffs by establishing joint teams to initiate and develop systemic litigation cases. EEOC's fiscal year 1975 program plan provided that specific resources be set aside by both staffs for this purpose, with joint teams headed by a senior level attorney proceeding according to the following timetable:

Respondent designation	2 weeks
Investigation	3 months
Determination	2 weeks
Conciliation	1 month

However, the two staff groups were unable to coordinate their activities and EEOC decided to assign full responsibility for systemic activities to the general counsel's staff. According to EEOC officials, the compliance staff was reluctant to commit resources because of the pressure to reduce the charge backlog. Consequently, a change was made in April 1975 to shift all responsibilities for systemic cases to the general counsel staff and not to continue using the combined approach.

EEOC officials stated that the failure to achieve fiscal year 1975 systemic litigation goals also was attributable to the transfer of 76 cases from Justice to EEOC upon its assuming sole responsibility for systemic lawsuits. The 76 cases were mostly in a postconsent decree posture when transferred, and general counsel officials told us that this added workload resulted in a diversion of staff resources from EEOC's own planned litigation activities.

NEED TO IMPROVE COORDINATION  
WITH OFFICE OF FEDERAL CONTRACT  
COMPLIANCE PROGRAMS

Federal contractors, whether public or private entities, may be subject to the equal employment opportunity enforcement authority of both EEOC and the Department of Labor's Office of Federal Contract Compliance Programs. OFCCP is responsible for the implementation and administration of Executive Order 11246, as amended, which prohibits employment discrimination by Federal contractors and subcontractors on the basis of race, color, religion, sex, or national origin. The Director of OFCCP has delegated primary enforcement responsibility for nonconstruction contractors to certain other Federal agencies (designated as compliance agencies).

In May 1970 Labor and EEOC entered into a memorandum of understanding which was intended to reduce the duplication of compliance activities, facilitate the exchange of information, and establish procedures for processing cases against Government contractors subject to the provisions of the Executive order. Notwithstanding this effort, a GAO report ("The Equal Employment Opportunity Program for Federal Nonconstruction Contractors Can Be Improved" (MWD-75-63, Apr. 29, 1975))

noted duplicate reviews and requirements that contractors supply both agencies with the same data. In an apparent effort to correct these problems, EEOC and Labor entered into a subsequent memorandum of understanding in September 1974, but it appears this memorandum also had not yet been effectively implemented.

Failure to effectively implement  
the 1974 memorandum of understanding

The 1974 memorandum of understanding contemplated that EEOC and OFCCP would exchange needed program information, coordinate investigative activity, work toward effectively developing mutually compatible investigative procedures and compliance policies, and make periodic reviews of the implementation of the memorandum. However, EEOC has done little in each of these four areas, as follows.

- Program information apparently is not being exchanged. Under the agreement EEOC regional offices were to obtain from OFCCP compliance agencies copies of reports outlining contractor compliance reviews proposed for each calendar quarter and a listing of such reviews completed, indicating their results. None of the three regional offices or seven district offices we visited were given these reports.
- Investigative activity is not being effectively coordinated. Although program activities were to be coordinated before their initiation, several EEOC district office investigators said they became aware of OFCCP activities only when they encountered its personnel at an employer's place of business. Instances of simultaneous compliance activity with attendant employer irritation were cited in several district offices.
- Efforts to develop mutually compatible investigative and compliance procedures have met with little success. A task force that was to work toward this goal has met several times but no formal agreement was reached, and none of the three regional offices we visited has made any significant efforts to develop such procedures. Thus, incompatible compliance procedures impeded effective coordination. For example, one EEOC investigator worked out a coordinated compliance approach on a case with an OFCCP compliance agency only to be thwarted by the EEOC conciliator who insisted on an EEOC conciliation agreement because he wanted to seek different

remedies and did not want to lose credit for the agreement.

--Periodic reviews of the implementation of the memorandum have been minimal. Only one of the three EEOC regional offices we visited held more than one joint review session. One of these sessions resulted in a list of recommendations to significantly alter the agreement, but according to a headquarters official, EEOC has taken no actions on the recommendations. In addition, information on the level of information exchanged between EEOC and OFCCP was not recorded at either headquarters or regional offices we visited.

#### ADVERSE EFFECT OF FREQUENT TURNOVER IN TOP MANAGEMENT POSITIONS

Since its inception EEOC has had frequent turnover in the positions of chairman and executive director, with attendant staff turnover in other top level jobs. During the period 1965 through 1975, EEOC had 10 chairmen or acting chairmen and 10 executive or acting executive directors. Such turnover was a major factor adversely affecting EEOC's effectiveness in achieving its operating objectives.

Pursuant to title VII of the Civil Rights Act of 1964, responsibility for EEOC administration is vested in the chairman who, in turn, has the power to appoint the executive director and other key staff officials. The executive director is directly responsible to the chairman, and, as EEOC's top manager, his functions include the administration of headquarters operations, program planning and evaluation, and supervision of field compliance activities.

Although title VII provides that the chairman and other commissioners shall be appointed by the President, by and with the advice and consent of the Senate, for a term of 5 years, in actual practice these individuals serve at the pleasure of the President. Both EEOC officials and the news media have indicated that political considerations were involved in at least some of the turnover in the positions of chairman and executive director.

With each turnover there is a certain amount of disruption, particularly at the headquarters level--each new chairman tends to bring in his own key staff personnel, goes through a get acquainted process at headquarters and in the field, reorganizes some of the headquarters and/or field offices, authorizes new studies of EEOC's problems, and makes major policy and program strategy

changes in EEO's approach to the employment discrimination problem.

During our fieldwork we noted that district offices had been slow to respond to several program innovations directed by EEOC headquarters. According to several mid-level EEOC officials, frequent turnover in the positions of chairman and executive director had created an uncertainty of direction which inhibited the responsiveness of EEOC managers to program changes. We were told that they tend not to take new high-level management initiatives seriously because of the historically short tenure of most of the individuals in these positions.

The problem of too frequent turnover in the positions of chairman and executive director is particularly important because (1) it appears to be a major underlying cause of some of the problem areas discussed in this report and (2) complicates, if not completely precludes, the exercise of meaningful management control over and accountability for the results of EEOC's operations.

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It should be noted that some of the factors identified in this chapter as affecting the effectiveness of EEOC's systemic discrimination activities are not only interrelated in certain respects but may also have an impact on the effectiveness of EEOC's individual charge resolution activities. This is particularly true for EEOC's efforts to achieve both of its objectives through combined activities and the frequent turnover in top management positions within EEOC.

## CHAPTER 6

### CONCLUSIONS AND RECOMMENDATIONS

#### CONCLUSIONS

We believe that the great promise of title VII of the Civil Rights Act of 1964, as amended by the Equal Employment Opportunity Act of 1972, remains essentially unfulfilled. Although the Equal Employment Opportunity Commission has had some success in obtaining relief for victims of discrimination in specific instances, it does not appear to have yet made the substantial advances against employment discrimination which will be necessary to make a real difference in the employment status of minorities and women. We believe EEOC can do much toward achieving its full potential as a viable force in eliminating employment discrimination through improved management controls over its program and administrative operations.

The basic thrust of our evaluation was to determine how effective EEOC had been in achieving its two basic operating objectives and to identify any factors which tend to limit its effectiveness. Although our review efforts were hampered because of inadequate program results data and difficulties inherent in trying to isolate on an after-the-fact basis all significant outside variables which may have affected the problem, various quantitative and qualitative measures and statistical analyses of available data indicate that the direct results of EEOC's individual charge and systemic discrimination activities have been minimal.

Viewed from the charging parties' perspective, they have had to wait about 2 years for their charges to be resolved, and then only about 11 percent received relief through some form of successful negotiated settlement. Of those few who were involved in successful negotiated settlements, about two-thirds were generally satisfied with the settlements.

Conversely, EEOC's individual charge and systemic discrimination enforcement activities have had little direct impact on employers. With the passage of time, most individual charges filed against them were administratively closed rather than going through EEOC's regular investigation and conciliation process. In those few cases in which the employers agreed to negotiated settlements, any noncompliance with the agreements might go unnoticed since EEOC apparently carried out compliance reviews only on a limited basis. (Our finding that employment patterns of firms with conciliation agreements

varied little from those without agreements suggests that such noncompliance may be extensive.) For those individual charge cases in which EEOC found discrimination but the employers refused to negotiate settlements, the likelihood that they would face litigation action by EEOC has been negligible. Similarly, the relatively small number of employers involved in or targeted for systemic discrimination reviews as of June 30, 1975, compared to the large number of employers subject to EEOC's jurisdiction, indicated that the prospect of any given employer being selected for systemic review was also negligible. Although we did not have sufficient data to evaluate the actual impact of EEOC's formal systemic activities on the employment status of minorities and women, as of June 30, 1975, only two systemic litigation cases had been filed, only three nationwide agreements were operative, and there was widespread non-compliance with the one nationwide agreement for which EEOC had data.

We recognize that EEOC may have made certain indirect contributions toward alleviating the problem of employment discrimination through such means as:

- the ripple effect of a successful EEOC enforcement action which includes a substantial backpay settlement and
- the potential deterrent effect which may result from the mere existence of EEOC.

However, any indirect benefits which might have resulted from EEOC's operations would be even more difficult to isolate and measure than the direct results of its operations. Nevertheless, we do not believe that considering indirect benefits would materially affect our conclusions since the direct and indirect results of EEOC's operations are inexorably related.

EEOC's limited impact on the problem of employment discrimination appears to stem from a number of interrelated factors, some of which may impact on the effectiveness of both individual charge and systemic discrimination enforcement activities. Many of the factors we identified are management problems which can and should be addressed by EEOC. Others are outside of EEOC's management control.

One of the more significant factors limiting EEOC's effectiveness has been its policy of trying to combine individual charge resolution activities with systemic discrimination activities by expanding individual charge investigations to include all like and related issues and by incorporating individual charge resolution goals into its systemic



activities. Although both strategies may appear to have merit, we believe the negative effects, as discussed on page 46, far outweigh any potential benefits which might be derived. Other factors which EEOC should address include: weaknesses in its administrative controls over charge processing, inadequate use of State and local fair employment practices agencies, questionable benefits derived from the expedited charge-processing strategy, limited support of compliance activities by litigation centers, inadequate quality control reviews of district office charge resolution activities, problems in resource allocations to field activities, incomplete and untimely collection and dissemination of employment data, inadequate monitoring of employers' compliance with conciliation agreements and consent decrees, lack of effective procedures for handling systemic discrimination cases against State and local governments, limited use of litigation authority for systemic cases, and failure to coordinate its enforcement activities with the equal employment opportunity activities of the Department of Labor's OFCCP.

Although we noted several factors outside EEOC's control that limited its effectiveness, the most significant of these has been the frequent turnover in top management positions of chairman and executive director. In our opinion, the extent of turnover in these two positions complicates, if not completely precludes, the exercise of meaningful management control over and accountability for the results of EEOC's operations. We believe this turnover was a major underlying cause of the problems discussed in this report.

## RECOMMENDATIONS

To improve EEOC's effectiveness in achieving its two basic operating objectives, we recommend that the Chairman take action to:

- Improve EEOC's administrative controls over its individual charge-processing activities by (1) developing and implementing an integrated management information system which will provide timely and accurate data on the status and disposition of individual charges, workload, staff productivity, program results, and cost effectiveness of charge resolution activities, (2) developing more effective procedures for screening incoming complaints to insure that charging party abuses of the system do not result in inflated workload and productivity figures, and (3) expanding the charging party contact program to include uninvestigated charges less than 2 years old to identify those which may no longer be active and to provide management with

more accurate workload statistics. (It may be necessary for EEOC to experiment with various time frames to determine the optimum followup time from a cost-effective standpoint.)

- Maximize the use of approved State and local fair employment practices agencies in resolving individual charges. In some instances, this may necessitate strengthening the technical capabilities of certain State and local agencies.
- Evaluate the expedited charge-processing strategy to determine whether its benefits compensate for the questionable overall quality of the settlements being reached and the increased costs of coordinators and special recordkeeping procedures required to monitor this program.
- Strengthen the relationship between EEOC's individual charge compliance and litigation activities by (1) requiring closer coordination between litigation centers and district offices and (2) reconciling the problems caused by the different evidence standards used in EEOC's compliance and litigation processes.
- Improve EEOC's quality control reviews of district office charge resolutions by (1) requiring more extensive use of hard audits, (2) documenting the findings and corrective actions taken, and (3) providing for more effective communication of the results of quality control reviews to EEOC management and field personnel.
- Reevaluate EEOC's resource allocations to its field activities taking into consideration (1) the wide variances in charge workload and productivity among district offices, (2) the wide variances in the number of district offices and personnel supported by EEOC's seven regional offices, (3) whether the current regional office structure is warranted, including alternative methods of accomplishing the administrative functions now performed by the regional offices, and (4) the need to staff the preinvestigation analysis units with professionals.
- Separate EEOC's individual charge resolution activities from its systemic discrimination activities, except when the benefits of a combined approach would clearly outweigh the negative effects, as noted in our review.

- Improve EEOC's collection of employment statistics for use in its own compliance, litigative, and systemic activities and in other Federal and State agencies' equal employment opportunity enforcement activities by (1) identifying and following up on employers who fail to comply with the EEO-1 reporting requirements, (2) providing for more timely dissemination of the employment statistics to both internal and external users, and (3) revising the EEO-1 format to include other essential data such as average salary and wage information for the employers' major occupations.
- Improve the monitoring of employer compliance with conciliation agreements and consent decrees by (1) requiring more intensive and extensive followup reviews to insure that discriminatory features of employment systems are eliminated as promised, (2) documenting the results of these compliance reviews, and (3) obtaining enough qualitative and quantitative data on changes in the employment status of minorities and women to evaluate EEOC's impact on the problem of systemic discrimination.
- Establish effective procedures for handling the relatively new and unique issues and situations being encountered in EEOC's systemic discrimination cases against State and local governments, governmental agencies, and political subdivisions, including special coordination procedures with the Department of Justice, which must handle the litigation of such cases.
- Increase litigation support of EEOC's systemic discrimination activities.
- Improve EEOC's coordination with OFCCP by requiring effective implementation of the 1974 memorandum of understanding.

## CHAPTER 7

### AGENCY COMMENTS AND OUR EVALUATION

The Senate Committee on Labor and Public Welfare, on whose behalf this review was undertaken, requested that we not obtain formal agency comments on this report or that we at least substantially reduce the time period normally allowed for the advance review and preparation of agency comments to expedite the report. The committee also requested that we safeguard the draft report to prevent premature publication or other disclosure of the information contained therein and that any advance review by EEOC be made under controlled conditions at our offices.

As discussed on page 6, the matters in this report were discussed with EEOC officials during the course of our review and at the completion of our fieldwork. In addition, EEOC officials were permitted to review copies of an advance draft of this report under controlled conditions in our offices. However, in its written comments (see app. IV), EEOC took exception to both the tone and conclusions of the report and to the limited opportunity given the agency to review and respond to the advance draft. EEOC stated that the time limitation and the requirement that agency officials review the draft report on our premises effectively prohibited EEOC from making an indepth analysis of the report.

It appears these constraints may have hampered EEOC in its review of the report since the agency's written comments did not adequately address our findings, conclusions, and recommendations. Accordingly, we have not followed our normal practice of incorporating the agency's written comments and our evaluation thereof into the body of the report. One of the issues raised by EEOC, however, does require comment.

EEOC stated that our conclusions failed to recognize the substantial direct and indirect impact that title VII, through EEOC, has had on employment practices in this country during the past 11 years. In addition, EEOC pointed out that the courts have struck down one time-honored employment practice after another which have operated to discriminate against minorities and women and that its own enforcement program as well as its appearances in over 340 private actions as amicus curiae had contributed to this progress.

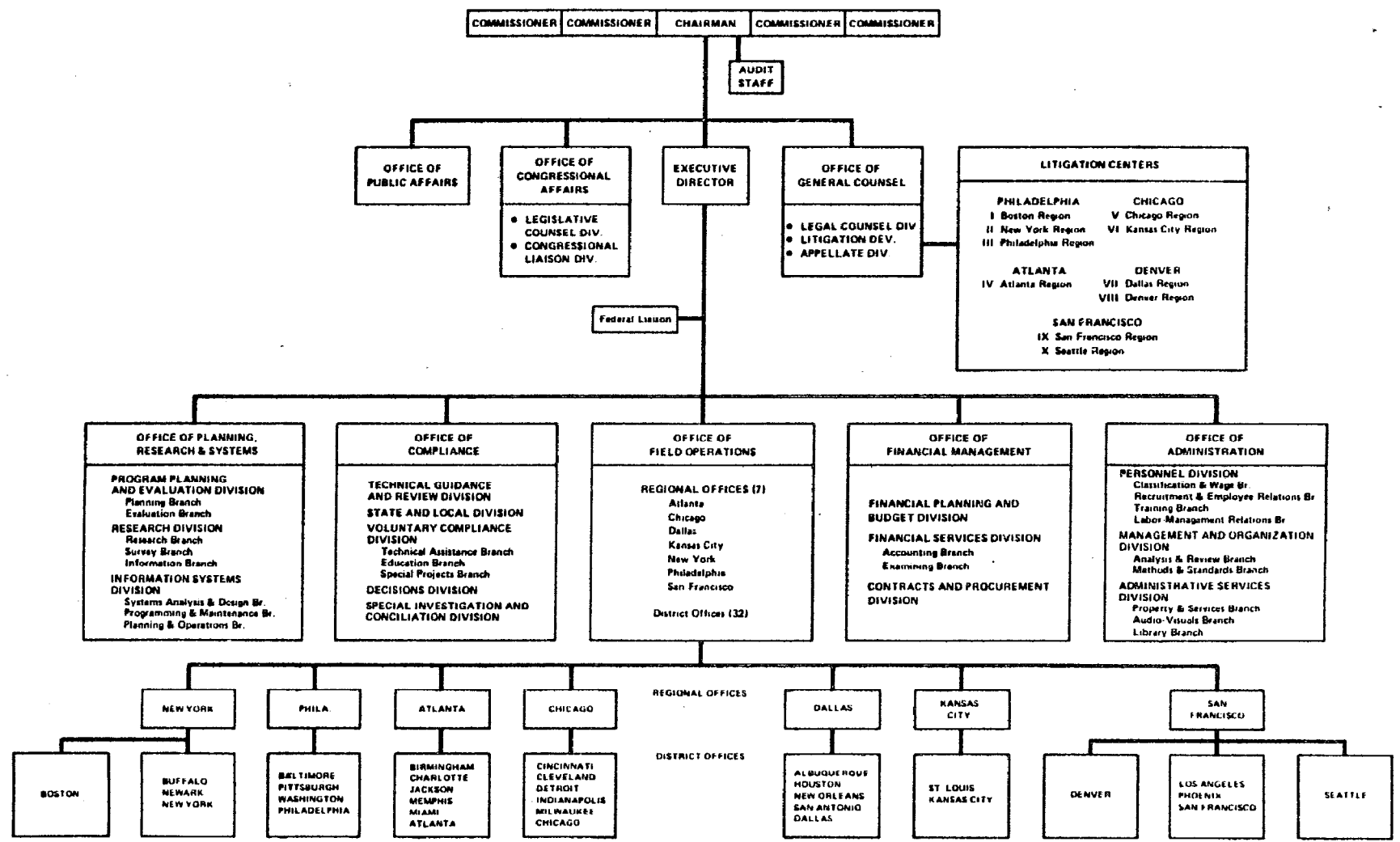
We do not question the fact that EEOC has played a major role in changing employment practices. What we do question is whether these changes in employment systems processes have produced demonstrable results--that is, to what extent have

the changes brought about by EEOC improved the relative employment status of minorities and women? Because of the highly complex nature of employment discrimination, changes in employment systems processes should be viewed as a means to an end rather than the end itself. In this regard it is important to note that both EEOC and the courts have made extensive use of statistical data on the relative employment status of women and minorities in determining the possible existence of employment discrimination. Statistical data which shows that minorities and women are not participating in an employer's work force at all levels in reasonable relation to their presence in the population and labor force constitutes strong evidence of discriminatory practices, even though such practices may be neutral in intent and fairly and impartially administered.

Accordingly, we believe EEOC's effectiveness should be measured by the extent to which its activities have affected the relative employment status of minorities and women, rather than on the basis of changes in employment systems processes which may or may not result in equal employment opportunity.

EEOC's written comments also listed a number of corrective actions which had been taken since the completion of our fieldwork or which were underway or planned for the future. However, the listed actions were not presented in sufficient detail to enable us to evaluate them without additional audit work. These matters will be addressed in a followup review at some later date.

ORGANIZATION  
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION



STATISTICAL ANALYSES OF THE QUESTIONNAIRE SURVEYOF CHARGING PARTIES AND EMPLOYERS

We used statistical analysis techniques to analyze the results of our questionnaire survey. Our approach follows.

SAMPLE SELECTION

We randomly selected 324 cases from a list of 1,235 cases EEOC identified as having been successfully conciliated between July 1973 and April 1974. A successfully conciliated case is one where an employer has signed a formal agreement to (1) provide redress to a charging party who had alleged the discrimination and (2) provide necessary revisions to any discriminatory employment or referral practices. In return, the charging party has agreed to waive his or her right to sue the employer for relief under title VII of the Civil Rights Act of 1964. Even though each case can have one or more employers and charging parties as participants, in our sample, over 90 percent of the cases had only one employer and one charging party as participants. From our initial sample, we eliminated 39 cases. Most cases were eliminated because complete addresses were not available or because some employers were included more than once. Therefore, our mailout was to an employer and charging party representing each of 285 randomly selected successful cases. (See tables 1 and 2 for more detailed information on the sample, universe, and projections.)

PURPOSE OF ANALYSES

Our analyses were intended to identify factors which may have influenced the charging parties' satisfaction with their settlement and the employers' overall satisfaction with EEOC's investigation process.

ANALYTIC TECHNIQUE USED

Our approach included two separate discriminant analyses: one to identify the factors significantly associated with a charging party's overall satisfaction with his settlement and the other to identify the factors significantly associated with an employer's overall dissatisfaction with EEOC's investigation process.

Discriminant analysis

This technique is used to statistically distinguish between two or more groups of cases. To distinguish between two groups, the analyst selects a collection of discriminating factors that measure characteristics on which the two groups may be expected to differ. The mathematical objective of discriminant analysis is to weigh and linearly combine the discriminating factors so that the two groups are forced to be as statistically distinct as possible. Of course, no single discriminating factor will perfectly differentiate between the two groups. However, by taking several discriminating factors and mathematically combining them, the analyst hopes to find a single dimension on which one group is clustered at one end and the other group at the other end.

We used this technique to identify those factors which differentiated charging parties who were satisfied from those who were not satisfied overall with their settlement and to identify those factors which differentiated employers who were satisfied from those who were dissatisfied overall with EEOC's investigation process.

The following are the discriminating factors included for each analysis.

Charging party's satisfaction/dissatisfaction  
with settlement

- Satisfaction/dissatisfaction with money 1/ settlement.
- Length of time it actually took to get a settlement.
- Whether the time it took was less than, equal to, or greater than expected.
- Whether EEOC personnel helped them understand the investigation process.
- Whether EEOC personnel helped them understand the conciliation process.
- Whether they felt that the investigation process was hard to understand.

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1/The other factors of hiring, promotion, transfer, and re-hiring were not included in the discriminant analysis because of an insufficient rate of occurrence.



--Whether they felt that the conciliation process was hard to understand.

Employer's satisfaction/dissatisfaction with  
EEOC's investigation process

--Satisfaction/dissatisfaction with EEOC investigator overall.

--Whether the investigation was limited to the individual's charge or was expanded to include the class of persons affected.

--The average number of staff hours an EEOC investigator spent at employer's location gathering evidence on each charge.

--Whether employer was given an adequate opportunity to tell his side of dispute.

--The extent the employer was advised of the progress of EEOC's investigation.

--Whether the employer rated the investigator as qualified.

--Whether the employer rated the investigator as impartial.

--Whether the employer rated the investigation as timely.

--Whether the employer rated the investigator as efficient.

--Whether the employer rated the investigator as willing to discuss issues.

--The average time lapse from end of investigation until beginning of conciliation.

Tables 3 and 4 provide the statistical details of the analyses. The factors in each table are listed in descending order of significance; they were the only factors shown by our analyses to be statistically significant at the 95-percent confidence level. Following are definitions of the terms used in the tables:

U-statistic--The proportion of the variance in the dependent factor not explained by the independent factors (discriminating factors).

F-statistic--A measure of the relationship between a given independent factor and the dependent factor in the discriminant equation. F-statistic values in excess of 3.84 indicate at least a 95-percent chance that there is a statistically significant relationship.

TABLE 1  
DISTRIBUTION OF RANDOM SAMPLE  
FOR CHARGING PARTIES AND EMPLOYERS

	No. of cases	
	<u>Charging party's views</u>	<u>Employer's views</u>
Initial universe	1,235	1,235
Initial random sample	324	324
Excluded due to repeat appearance of employer	18	18
Excluded due to no address available for charging party or employer	18	18
Excluded by clerical error	<u>3</u>	<u>3</u>
Final random sample	<u>285</u>	<u>285</u>
Returned:		
Undelivered (No longer at mailing address)	87 ( 30.5%)	15 ( 5.3%)
Out of business	-	6 ( 2.1%)
Management change	-	6 ( 2.1%)
No experience with settlement	16 ( 5.6%)	10 ( 3.5%)
Declined to answer	5 ( 1.8%)	6 ( 2.1%)
General response only	0 ( 0.0%)	2 ( 0.7%)
Usable replies	140 ( 49.1%)	169 ( 59.3%)
Not returned	<u>37 ( 13.0%)</u>	<u>71 ( 24.9%)</u>
	<u>285 (100.0%)</u>	<u>285 (100.0%)</u>

TABLE 2  
PROJECTIONS OF ORIGINAL RANDOM SAMPLE  
(95-percent confidence level)

Category	Charging parties				Employers			
	No. of cases in sample	Projected no. of cases in universe	No. of cases sampling error (+ or -)	Projected range of cases	No. of Cases in sample	Projected no. of cases in universe	No. of cases sampling error (+ or -)	Projected range of cases
No address available for initial mailout	18	69	27	42 to 96	18	69	27	42 to 96
Same employer is re- peated in another case	18	69	27	42 to 96	18	69	27	42 to 96
Excluded by clerical error	3	12	11	3 to 23	3	12	11	3 to 23
Returned:								
Undelivered (no longer at mail- ing address)	87	331	51	280 to 382	15	57	25	32 to 82
Out of business	0	0	0	0	6	22	15	7 to 37
Change in management	0	0	0	0	6	22	15	7 to 37
No experience with settlement	16	60	25	35 to 85	10	38	20	18 to 58
Declined to answer	5	19	14	5 to 33	6	22	15	7 to 37
General response only	0	0	0	0	2	8	*	a/2 to 23
Usable replies	140	534	57	477 to 591	169	645	58	587 to 703
Not returned	37	141	37	104 to 178	71	271	48	223 to 319
	<u>324</u>	<u>1,235</u>			<u>324</u>	<u>1,235</u>		

a/Binomial noncentral limits formula used due to small percentage of occurrence.

TABLE 3

DISCRIMINANT ANALYSIS OF FACTORS  
WHICH INFLUENCE CHARGING PARTIES'  
SATISFACTION WITH OVERALL SETTLEMENT  
 (95-percent confidence level)

<u>Factor</u>	<u>F-statistic</u>	<u>Cumulative U-statistic</u>
Whether charging parties were satisfied with money settlement	112.24	0.3248
Whether EEOC personnel helped charging parties understand conciliation process	8.28	0.2809
Whether EEOC personnel helped charging parties understand the investigation process	7.92	0.2438
Whether charging parties felt their settlement took shorter or longer than expected	4.55	0.2238

F-statistic of discriminant equation:

44.22

(Note: While each of the computed F-statistic values above exceeds 3.84 and therefore indicates at least a 95-percent chance that there is a statistically significant relationship between the factors and charging party satisfaction with the overall settlement, the magnitude of the F-statistic for money settlements indicates a confidence level of 99.99+ percent. Regarding the cumulative U-statistic, the charging parties' satisfaction with the money settlement explains all but 32 percent of the satisfaction with the overall settlement; charging parties' satisfaction with the money settlement and their understanding of the conciliation process explains all but 28 percent of their satisfaction with the overall settlement; etc.)

TABLE 4

DISCRIMINANT ANALYSIS OF FACTORS WHICH  
INFLUENCE EMPLOYERS' SATISFACTION WITH  
EEOC'S INVESTIGATION PROCESS

(95-percent confidence level)

<u>Factor</u>	<u>F-statistic</u>	<u>Cumulative U-statistic</u>
Employers' overall satisfaction with EEOC investigators	138.74	0.3569
Whether employer was given adequate opportunity to give his side	11.36	0.3105
Employers' rating of EEOC investigators' impartiality	4.73	0.2921
Employers' rating of investigators' willingness to discuss issues	5.16	0.2731

F-statistic of discriminant equation:  
49.25

(Note: While each of the computed F-statistic values above exceeds 3.84 and therefore indicates at least a 95-percent chance that there is a statistically significant relationship between the factors and employer satisfaction with EEOC's investigation process, the magnitude of the F-statistic for the employers' overall satisfaction with EEOC investigators indicates a confidence level of 99.99+ percent. Regarding the cumulative U-statistic, the employers' satisfaction with EEOC investigators explains all but 36 percent of the satisfaction with the investigation process; employers' satisfaction with both the EEOC investigators and whether they were given an opportunity to give their side explains all but 31 percent of the satisfaction with the investigation process; etc.)

STATISTICAL ANALYSIS OF CONCILIATION AGREEMENT IMPACT  
ON RESPONDENT EMPLOYMENT OF BLACKS AND FEMALES

STATISTICAL TEST USED

We used the paired "t" test to evaluate the impact of EEOC conciliation agreements on the employment patterns of the affected organizations. We paired organizations with conciliation agreements with similar companies 1/ without conciliation agreements and compared the changes in their black and female employment profiles for the period 1969-72. We wanted to know if the effect of the conciliation agreement would result in a positive increase in the percentage of blacks and females in the job categories analyzed. The statistical measure used to make this determination was the t test.

T test

The t test is used on paired observations to provide a measure of the probability that the items being paired are statistically the same for the variable being evaluated. Consequently, to determine if the firms with conciliation agreements showed improvement in their black and female employment pattern, we tested the hypothesis that the change in the percentage of blacks and females in the organization with a conciliation agreement was no different than that of a firm with no conciliation agreement. If we could reject this hypothesis with a 95-percent level of confidence, then we would be justified in saying that the conciliation agreement appeared to have an effect, and the average difference between the firms would enable us to determine if the effect was an improvement.

Tables 1 and 2 show how the t statistic was calculated for total black and female employment as a percentage of total employment.

Results of the t test

Tables 3 through 5 show that the t statistic calculated for each of the job categories is below that needed to reject the hypothesis being tested. Therefore, we must conclude that the EEOC conciliation agreement had no statistically demonstrable effect for the given time period.

---

1/Companies were paired according to size, Standard Metropolitan Statistical Area, and Standard Industrial Classification.

TABLE 1

Data Used to Calculate t Value for Difference in Change of Percent of  
Black and Females to Total Employees Between Companies with EEOC  
Conciliation Agreements and Those Without Agreements

Pair Number	Companies With EEOC Agreement			Companies Without EEOC Agreement			Difference in Change of Percent Between Companies (3)-(6)
	1969 (1)	1972 (2)	(2)-(1) (3)	1969 (4)	1972 (5)	(5)-(4) (6)	
1	22.065	18.490	-3.575	28.837	28.635	-.202	-3.373
2	11.701	13.535	1.834	5.022	4.285	-.737	2.571
3	13.299	17.676	4.377	30.000	12.903	-17.097	21.474
4	9.947	12.995	3.048	2.416	3.886	1.480	1.568
5	10.780	10.658	-.122	3.321	4.389	2.968	-3.090
6	97.700	91.900	-5.800	7.218	11.780	4.562	-10.362
7	25.961	40.769	14.808	12.831	19.123	6.292	8.516
8	11.351	21.476	10.125	4.545	8.256	3.711	6.414
9	.001	.001	.000	12.669	16.557	3.888	-3.888
10	11.493	18.602	7.109	14.721	5.580	-9.141	16.250
11	21.182	23.699	2.517	45.424	46.303	.879	1.638
12	39.781	38.492	-1.289	21.910	24.399	2.489	-3.778
13	9.107	11.295	2.188	1.253	1.739	.486	1.702
14	7.681	5.508	-2.173	27.120	28.094	.974	-3.147
15	4.513	6.288	1.775	18.902	21.341	2.439	-.664
16	4.480	2.068	-2.412	6.787	9.134	2.347	-4.759
17	15.435	25.871	10.436	17.377	25.255	7.878	2.558
18	4.411	8.241	3.830	21.472	31.598	10.126	-6.296
19	.001	.001	.000	3.448	3.529	.081	-.081
20	9.493	15.441	5.948	3.030	4.109	1.079	4.869
21	58.285	63.448	5.163	46.464	42.702	-3.762	8.925
22	15.544	16.504	.960	20.512	29.078	8.566	-7.606
23	32.978	28.571	-4.407	5.113	4.237	-.876	-3.531
24	5.945	6.500	.555	20.658	27.165	6.507	-5.952
25	5.823	3.571	-2.252	1.533	1.470	-.063	-2.189
26	24.668	24.779	.111	31.345	32.698	1.353	-1.242
27	78.800	86.600	7.800	34.375	46.075	11.700	-3.900
28	10.800	11.000	.200	.000	.761	.761	-.561
29	31.468	34.407	2.939	14.922	23.519	8.597	-5.658
30	28.228	25.642	-2.586	37.451	37.753	.302	-2.888
31	73.041	72.026	-1.015	79.675	79.586	-.089	-.926
32	20.800	29.352	8.552	25.691	27.789	2.098	6.454
totals	716.762	785.406	68.644	606.042	665.638	59.596	9.048
average	22.399	24.544	2.145	18.939	20.801	1.862	.283

TABLE 2

CALCULATION OF "t" VALUE FOR DIFFERENCE IN CHANGE OF  
PERCENT OF BLACKS AND FEMALES TO TOTAL EMPLOYEES  
BETWEEN COMPANIES WITH EEOC CONCILIATION AGREEMENTS  
AND THOSE WITHOUT AGREEMENTS

Notation:

N--Number of pairs

$\bar{X}D$ --Average difference between members of pair

SD--Standard deviation

D--Difference between pair members

$$\bar{X}D = \frac{\sum D}{N} = \frac{.09048}{32} = .00283$$

$$SD = \sqrt{\frac{\sum D^2}{N-1} - \frac{(\sum D)^2}{N(N-1)}} = \sqrt{\frac{.14042}{31} - \frac{(.09048)^2}{32 \times 31}} = .06724$$

$$t = \frac{\bar{X}D - 0}{SD/\sqrt{N}} = \frac{.00283}{.06724/\sqrt{32}} = .23787$$

t (.05) where N = 32 is about 2.039

Since the calculated t value (.23787) is less than 2.039, our hypothesis must be accepted, that is, there is no statistical difference between the companies with agreements and those without agreements.



TABLE 3

Black Conciliation Agreements

<u>Job Category</u>	<u>Sum of Differences</u>	<u>Sum of Squared Differences</u>	<u>Mean of Differences</u>	<u>Standard Deviation</u>	<u>-t-</u>
officials & managers	.00363	.02720	.00017	.03599	.02151
professionals	.36541	.15802	.01661	.08506	.91585
technicians	-2.01625	1.40521	-.09165	.24107	-1.78315
sales workers	.04830	.05538	.00220	.05130	.20072
office & clerical	.50258	.30738	.02284	.11870	.90267
craftsmen (skilled)	.18819	.45766	.00855	.14737	.27226
operatives (semi-skilled)	-1.14281	3.32402	-.05195	.39428	-.61795
laborers (unskilled)	.39613	2.22177	.01801	.32474	.26007
service workers	1.56885	4.58380	.07131	.46146	.72482
total employees	.29441	.12516	.01338	.07598	.82616

Number of Pairs (N) -- 22  
 Degrees of Freedom = N - 1 or 21  
 Critical t-value = 2.080

TABLE 4

Female Conciliation Agreements

<u>Job Category</u>	<u>Sum of Differences</u>	<u>Sum of Squared Differences</u>	<u>Mean of Differences</u>	<u>Standard Deviation</u>	<u>-t-</u>
officials & managers	.08460	.00618	.00846	.02464	1.08583
professionals	-.78365	.43020	-.07836	.20243	-1.22421
technicians	-.03582	.22422	-.00358	.15779	-.07178
sales workers	.24365	.03374	.02436	.05558	1.38620
office & clerical	-.35837	.45227	-.03584	.22097	-.51287
craftsmen (skilled)	-.16317	.00879	-.01632	.02609	-1.97742
operatives (semi-skilled)	.68548	.28812	.06855	.16368	1.32431
laborers (unskilled)	-.83591	.55239	-.08359	.23154	-1.14163
service workers	-.33987	.13390	-.03399	.11659	-.92180
total employees	-.20393	.01526	-.02039	.03512	-1.83603

Number of Pairs (N) -- 10  
 Degrees of Freedom = N - 1 or 9  
 Critical t-value = 2.262

TABLE 5

Either Black or Female Conciliation Agreements

<u>Job Category</u>	<u>Sum of Differences</u>	<u>Sum of Squared Differences</u>	<u>Mean of Differences</u>	<u>Standard Deviation</u>	<u>-t-</u>
officials & managers	.08823	.03338	.00276	.03269	.47708
professionals	-.41824	.58822	-.01307	.13711	-.53925
technicians	-2.05207	1.62943	-.06413	.21981	-1.65031
sales workers	.29195	.08912	.00912	.05281	.97726
office & clerical	.14421	.75966	.00451	.15647	.16292
craftsmen (skilled)	.02502	.46645	.00078	.12266	.03606
operatives (semi-skilled)	-.45733	3.61214	-.01429	.34104	-.23705
laborers (unskilled)	-.43978	2.77416	-.01374	.29882	-.26017
service workers	1.22898	4.71770	.03841	.38815	.55972
total employees	.09048	.14042	.00283	.06724	.23787

Number of Pairs (N) -- 32

Degrees of Freedom = N - 1 or 31

Critical t-value = about 2.039



OFFICE OF THE  
VICE CHAIRMAN

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION  
WASHINGTON, D.C. 20506

June 11, 1976

Honorable Elmer B. Staats  
Comptroller General of the United States  
7000 General Accounting Office  
441 G. Street, N. W.  
Washington, D. C. 20548

Dear Mr. Staats:

This letter constitutes our response to a General Accounting Office draft report on the activities of the Equal Employment Opportunity Commission, requested by the Senate Labor and Public Welfare Committee.

Before commenting on the substance of the report, I must take exception to both the tone and conclusions of the report and to the limited opportunity given our agency to respond to the alleged inadequacies set forth in the report. In lieu of the normal sixty-day response period, this Commission was given, after much protest, a mere nine days (June 3 - June 11, 1976) including Saturday and Sunday, to reply to a report that had taken your agency more than two years to complete. Further, I object to the fact that the Equal Employment Opportunity Commission was required to review the report on GAO premises, thus denying us the privilege of having simultaneous comparison of the draft report and our working papers. We were thus effectively prohibited from undertaking an in-depth analysis of this technical report.

As to the substance of the report, in general, GAO does not appear to have grasped the nature of employment discrimination as a persistent, pervasive and increasingly complex phenomenon in America. Without that understanding it is difficult, if not impossible, to truly gauge to what extent internal management problems of this agency contribute to the alleged negligible impact of EEOC in resolving charges of discrimination. The inflammatory chapter headings do not appear to be supported by the substantive findings. Furthermore, this report exhibits a lack of understanding of the statutory requirements of Title VII and thus fails to appreciate the total performance of the Equal Employment Opportunity Commission.

In response to those conclusions which were in the draft report shown to EEOC, our agency is only too aware of how elusive full employment equality has been for minorities and women. However, the conclusions fail to recognize the substantial direct and indirect impact that Title VII, through the EEOC, has had on employment practices in this country during the past eleven years.

Without access to the data base used in the GAO report and in the limited time provided to us for response to the draft, we are unable to understand some conclusions. GAO appears to have based its conclusions on the premise that all charging parties who file complaints with EEOC are lawfully entitled to relief. By these statistics, 28.2% of the charging parties were not entitled to relief through successful negotiated settlements either because of lack of jurisdiction or because no unlawful employment discrimination occurred. Therefore, using these statistics, if this 28.2% is eliminated, the conclusions would change considerably. In addition, GAO indicates 47.7% administrative closures. The report gives the erroneous impression that all charging parties included in the 47.7% administrative closures were lawfully entitled to relief.

Both the number of charge resolutions included in GAO's analysis and the period of time covered by the analysis are used by GAO to suggest that the results are the product of EEOC inefficiencies. The GAO fails to draw the logical conclusion that this charge resolution process may not be the most effective and efficient way to have a major impact on eliminating employment discrimination and providing relief to individual victims of discrimination. However, this is the process provided for in Title VII, and to cite the normal operation of a charge resolution process as conclusive evidence of EEOC's "failures" is unwarranted.

The conclusion that "employers have had little to fear" from EEOC activities is inappropriate. Rather than to instill fear, the Commission's mandate is to eliminate employment discrimination. That this is being achieved is evidenced by the manner in which employers now conduct their businesses. The courts have struck down one time-honored employment practice after another which has operated to discriminate against minorities and females. Our own enforcement program as well as our appearances in over 340 private actions as amicus curiae has contributed to this progress.

In assessing our systemic litigation efforts, the report cites only our activities under Section 707. Any assessment of our systemic activities must include the 660 suits brought under Section 706(f)(1)

as well. Employment discrimination is, by definition, class discrimination. With very few exceptions, whenever the Commission brings suit based on a charge of individual discrimination, the suit seeks relief for all those similarly situated. In the section 707 pattern or practice area, 74 Commissioners' charges have been brought against 375 respondents.

The report states that due to the absence of formal guidance, the General Counsel's monitoring of consent decrees appears to be inadequate. Lawsuits, and the resulting consent decrees, are addressed on a case-by-case basis. In each decree, we insist on provisions calling for regular, detailed compliance reports as part of each of our court settlements. In many decrees, we also build in a grievance mechanism so that individuals may call instances of non-compliance to our attention. When the evidence suggests that the respondent is not in compliance, we move in court to enforce the decrees. Contrary to the report, the Commission has addressed the alleged noncompliance with "one nationwide decree" (presumably the Bell System). On May 9, 1975, the Commission and the Bell System filed a supplementary agreement seeking to resolve the alleged noncompliance in United States District Court in Philadelphia.

With regard to conciliation agreements, EEOC has in fact filed law suits alleging noncompliance. We conduct compliance reviews only when warranted because all conciliation agreements do not require follow up since many are self executing, i.e., involve one-time action such as payment of backpay with charging party declining a job offer, elimination of an arrest record question from application forms, etc.

We cannot agree that respondents who refuse to enter into voluntary agreements are less likely to be subject to litigation. In the period covered by the report, 696 cases were authorized for litigation with 467 cases actually filed. Taking the lower figure, this means that one case was filed approximately every three days. Since each case involved a de novo review of the evidence, as well as an argument of the law, the frequency with which such cases are filed is significant. To date we have filed 762 lawsuits, 300 in the current fiscal year alone, with settlements increased at a rate of 38%.

As to indirect benefits, there is no doubt that the results of EEOC's operations are difficult to isolate and measure. The case studies conducted by GAO involved only seven firms with conciliation agreements. These seven firms attribute any improvements in their employment practices to reasons other than the conciliation agreement, such as the firms own

internal EEO effort and better qualified applicants. Why were applicants better qualified after signing an agreement than before signing of the agreement? Is it possible that the firms did a more extensive and thorough recruitment effort after they signed an agreement and thus found more qualified and better qualified applicants? We are convinced that the improvement in the employment practices of these respondents is attributable to the impact of the substantial body of law developed under Title VII, as well as to these respondents' having been charged with employment discrimination.

The GAO's conclusions fail to recognize that any evaluation of EEOC's quantitative and legal impact must be set against a cultural and socio-economic background. Racism and sexual stereotyping are so pervasive and deep rooted in our society that the expectations of minorities and women to achieve full employment equality may indeed be eluded for some time despite more intensified institutional and legal efforts.

As to the specific recommendations, EEOC notes that corrective action and implementation have occurred with much of this action and implementation taking place in FY 1976.

Our impressions of the GAO recommendations are underscored below. EEOC's comments follow:

Develop and implement an integrated management information system to provide timely and accurate information.

- Signed contract with GSA, National Archives and Records Service (GSA/NARS) to determine total information requirements and define total system. Findings expected in July, 1976.
- Installed mini-computer, shifting regular processing in-house to increase efficiency and reduce costs to EEOC. Program modifications, volume testing and parallel runs to be complete by close of FY 1976.
- Automating data entry system using MT/ST to reduce the time lag between district office records and status of charges in the computer.
- Analyzed Work Measurement System (primary management information tool for field compliance performance) in January and March, 1976. Error rate is less than 4% of total transactions.
- Corrected Complaint Statistical Reporting System, resulting in removal of 26,000 inactive charges.

-- Completed functional design of new charge information system to eliminate double-booking, thereby reducing reporting requirements currently imposed on district offices.

-- Finalized, with cooperation of GAO, Financial Management system. Expect full operation of new system to begin October 1, 1976.

Develop more effective procedures to screen incoming complaints to get rid of abuses.

-- Section 706(b) of Title VII presently requires:

Whenever a charge is filed . . . the Commission shall serve a notice of a charge . . . and shall make an investigation thereof . . . .

-- Improved charge intake procedure to identify non-jurisdictional charges.

-- Increased training and supervision of Pre-Investigation Analysis personnel.

-- Providing counseling to reduce non-meritorious charges without impinging on charging parties' legal rights.

Maximize the use of state and local fair employment practices (FEP) agencies.

-- Integrated FEP charge processing activities into the EEOC's Work Measurement System.

-- Amended compliance manual to include review and acceptance of FEP findings.

-- Increased field personnel resources directly dedicated to FEP liaison monitoring and technical assistance.

-- Accepted 72% of FEP agency final actions in tenth month of FY 1976.

-- Evaluating FEP activities to develop recommendations for FY 1977 and 1978. Total evaluation is impossible because of uncertainties of state and local legislative processes.



Evaluate the expedited charge resolution procedure to see if benefits compensate for overall quality.

- Revised Work Measurement System. Information provided to GAO on this point.
- Evaluation of data received under this revision will occur at the end of the year. Data received will provide the answers to the benefits question.

Closer coordination between the district offices and the litigation centers.

- Regular meetings of heads of litigation and compliance units occur.
- Continuing identification of charges for possible litigation at early stages in compliance process.
- Attorneys coordinate with district offices.

Reconcile different evidentiary standards.

- Reasonable cause standards (as defined in Section 706(b) of Title VII) vs. preponderance of the evidence standard (as defined by the courts) cannot be reconciled under existing statute and court interpretations.
- Legislative intent of Congress established a lower evidentiary standard for administrative process.
- Incapacity of General Counsel's Office to accept all conciliation failures (8,000 in FY 1976) for suit due to limited resources.

Improve quality control reviews.

- Terminated "Mathematica" face audit/statistical sampling experiment over a year ago.
- Hard audits of the compliance process are complete in 30 of the 32 district offices. More intensive coverage requires staffing far beyond presently available resources.

Evaluate resource allocations to the field.

- Analyses are very detailed. Simple linear analysis can be misleading because of complexity of charge, economy of geographic area, level of industrialization, and deferral.

- Allocated over 180 new field positions to district offices in January 1976 based on workload and productivity.
- Shifted boundary lines to equalize district office workloads.
- Establishing outstations of district offices to expedite service to charging parties.

#### Regional offices.

- Delegations of program and management authority to regional offices give them a more effective role in, e.g., coordination of district office activities.
- Coordination of complex systemic activities is planned for the future.
- Seven rather than ten regional offices exist because EEOC recognizes that workload can be handled without having a regional office in each of the ten "federal cities."

#### Separate individual from systemic charges.

- Title VII requires Commission to follow identical administrative processes in individual (Section 706) and systemic (Section 706 and 707) enforcement actions.

#### Improve conciliation and consent decree monitoring.

- Five percent of field resources planned for conciliation review in FY 1977.
- Six suits filed for breach of contract when follow-up showed violations of conciliation agreements.
- Controls and incentives added to monitor consent decrees and conciliation agreements.
- Require monitoring provisions in consent decrees.
- Built in grievance mechanism in consent decree so non-compliance comes to EEOC's attention.

- Review of compliance by staff attorneys transmitted to senior staff in Washington.
- Compliance review of 80 active pattern-or-practice decrees sent to EEOC by Justice Department in 1974. Enforcement and modification sought in 20 cases.
- Supplemental agreement filed by EEOC and Bell Telephone System (May 9, 1975) to resolve alleged non-compliance.

Establish procedures to handle new and unique charges.

- Procedures and standards used in industrial context apply in resolution of charges against state and local governments and education institutions.
- Numerous decisions and letters of determination have been issued with regard to these employers.
- District offices must consult with headquarters Decisions Division prior to issuing determination letters in these areas.
- Novel issues treated at EEOC headquarters. Approval by full Commission required.
- EEOC and Department of Justice are developing Memoranda of Understanding for closer cooperation.

Increase systemic litigation.

- The courts note employment discrimination is, by definition, class discrimination. With few exceptions, relief for all similarly situated persons in suits filed on individual charges is required.
- GAO's assessment of systemic activities must include systemic cases brought under Section 706(f)(1), as well as Section 707.
- Section 707 activity accelerated; 74 Commissioner's charges issued, 26 investigations completed, 5 law suits filed.
  - Example -- April, 1976 -- A major airline and EEOC entered a nationwide agreement.
  - Example -- June, 1976 -- A leading securities firm and EEOC entered into a nationwide agreement.
- 206 trucking companies, EEOC, and Department of Justice have entered a national non-discrimination agreement.

-- Backpay issues continue to be litigated with regard to an international union, against whom liability has been found.

-- Substantial impact through law enforcement is reflected in the manner in which the nation's employers conduct their businesses.

Improve collection of statistics.

-- Refusal of Social Security Administration (SSA) to permit EEOC to develop complete universe from SSA's employer address file. Alternative methods cost prohibitive.

-- Filed ten suits against employers who have failed to file some EEO-1 forms.

-- Similar to the Internal Revenue Service efforts to track down citizens who have never filed tax returns, EEOC would have to spend an enormous amount of funds, appropriated for substantive charge resolutions, to track down employers who have never filed EEO-1's.

-- Requirement of statement as to filing of EEO-1 forms is made in every charge investigation.

-- Decreased time in developing, mailing out, receipt and analysis of employer information reports.

Increase coordination with OFCC programs, Memorandum of Understanding.

-- Law suits filed by employers to enjoin implementation (access to data, etc.) has chilling effect on entire memorandum.

-- Implementation and active contests of law suits continue. Must await court decision to fully implement memorandum.

This completes our response to the General Accounting Office draft report on the Equal Employment Opportunity Commission.

Sincerely,

*Ethel Bent Walsh*

Ethel Bent Walsh  
Vice Chairman

cc: Honorable Harrison A. Williams, Jr.  
Honorable Jacob K. Javits

PRINCIPAL OFFICIALS OF THE  
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION  
RESPONSIBLE FOR ACTIVITIES  
DISCUSSED IN THIS REPORT

	<u>Tenure of office</u>	
	<u>From</u>	<u>To</u>
<b>CHAIRMAN:</b>		
Franklin D. Roosevelt, Jr.	June 1965	May 1966
Luther Holcomb (acting)	May 1966	Sept. 1966
Stephen N. Shulman	Sept. 1966	July 1967
Luther Holcomb (acting)	July 1967	Aug. 1967
Clifford L. Alexander	Aug. 1967	Apr. 1969
William H. Brown III	May 1969	Dec. 1973
Luther Holcomb (acting)	Dec. 1973	Jan. 1974
John H. Powell, Jr.	Jan. 1974	Mar. 1975
Ethel Bent Walsh (acting)	Mar. 1975	May 1975
Lowell W. Perry	May 1975	May 1976
Ethel Bent Walsh (acting)	May 1976	Present
<b>EXECUTIVE DIRECTOR:</b>		
Herman Edelsberg	Oct. 1965	Mar. 1967
Gordon Chase	Mar. 1967	Jan. 1969
George Draper (acting)	Jan. 1969	Jan. 1970
Joseph Fagan	Jan. 1970	Aug. 1971
George Draper (acting)	Aug. 1971	Jan. 1972
Alvin Golub (acting)	Jan. 1972	May 1972
Thomas Cody	May 1972	Apr. 1974
Harold Fleming (acting)	Apr. 1974	July 1975
Alvin Golub (acting)	July 1975	Sept. 1975
B. G. Mathis	Sept. 1975	May 1976
Vacant	May 1976	July 1976
Larry Ramirez (acting)	July 1976	Present
<b>GENERAL COUNSEL:</b>		
Charles T. Duncan	Aug. 1965	Oct. 1966
Richard Berg (acting)	Oct. 1966	May 1967
Kenneth Holbert (acting)	May 1967	Dec. 1967
Daniel Steiner	Dec. 1967	July 1969
Russell Spector (acting)	July 1969	Dec. 1969
Stanley Hebert	Dec. 1969	Aug. 1971
John de J. Pemberton (acting)	Aug. 1971	June 1972
William Carey	June 1972	Mar. 1975
Julia Cooper (acting)	Mar. 1975	July 1975
Abner Sibal	July 1975	Present

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