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Testimony

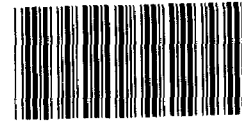
Subcommittee on Select Education and Civil Rights,
Committee on Education and Labor, House of Representatives

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EEOC

An Overview

Statement of Linda G. Morra, Director, Education and
Employment Issues, Human Resources Division



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SUMMARY

EEOC upholds a basic right of Americans: the right to equal employment opportunity regardless of race, color, religion, sex, national origin, age, or disability. How well EEOC performs this mission has been the subject of congressional hearings and a number of GAO reports. In these times of shrinking resources, government agencies are rethinking their roles and how they do business. EEOC may also need to change.

HOW EEOC OPERATES. EEOC carries out its mission through 50 field offices that receive, investigate, and resolve charges of employment discrimination in the private sector; it coordinates these activities in the public sector. In fiscal year 1993, EEOC's budget was \$220 million and it was authorized 2,793 full-time equivalent positions by the Congress.

EEOC'S INCREASING RESPONSIBILITIES AND WORKLOAD. EEOC's responsibilities and workload have generally been increasing over the years. In 1964, when EEOC was established, it was responsible for investigating employment discrimination charges relating to race, color, religion, sex, or national origin. Since that time, EEOC has become responsible for administering additional laws: (1) the Equal Pay Act of 1963, (2) the Age Discrimination in Employment Act of 1967, (3) the Equal Employment Act of 1972, (4) Section 501 of the Rehabilitation Act of 1973, (5) the Americans With Disabilities Act (ADA) of 1990, and (6) the Civil Rights Act of 1991.

CONCERNS ABOUT EEOC'S OPERATIONS. In addition to general concerns about EEOC's ability to fulfill its increased responsibilities and greater workload, GAO--as well as civil rights organizations--have raised specific concerns about EEOC's operations. These concerns include (1) the increasing time it takes EEOC to investigate and process charges, the increasing inventory of charges awaiting investigation, and the adequacy of investigations; (2) the high proportion of "no cause" findings, that is, determinations that the evidence does not sufficiently support the discrimination charge; (3) the limited number of litigation actions and systemic investigations initiated by EEOC; and (4) the usefulness of the data collected from some state and local Fair Employment Practices Agencies.

Mr. Chairman and Members of the Subcommittee:

We are pleased to be here today to (1) present an overview of the Equal Employment Opportunity Commission (EEOC) and (2) discuss some concerns about EEOC operations that have been raised over the years.

EEOC upholds a basic right of Americans: the right to equal employment opportunity regardless of race, color, religion, sex, national origin, age, or disability. How well EEOC performs this mission has been the subject of congressional hearings and several GAO reports (see attachment I). Within the next few months, we will be reporting on EEOC's enforcement of the Age Discrimination in Employment Act to the Chairman of the Senate Special Committee on Aging.

Mr. Chairman, EEOC's world has changed drastically since the Commission was established by the Civil Rights Act of 1964. A key question arises: With substantial increases in staff unlikely, does EEOC have the processes in place that will allow it to respond effectively to the demands of its new environment--increasing responsibility and workload? In these times of shrinking resources, government agencies are rethinking their roles and how they do business. EEOC may also need to change.

Let me proceed by focusing on (1) a brief description of how EEOC operates, (2) its increasing responsibilities and workload, and (3) concerns about its operations.

BACKGROUND

EEOC carries out its mission through 50 field offices that receive, investigate, and resolve charges of employment discrimination in the private sector, and it coordinates these activities in the public sector. In fiscal year 1993, EEOC's appropriation of \$220 million budgeted for 2,793 full-time equivalent positions.

EEOC is one of several federal agencies responsible for enforcing equal employment opportunity laws and regulations. Other agencies include, for example,

- the Department of Justice, which is authorized to file suit in federal district court against state and local government employers charged with discrimination, but only after EEOC has processed the case and failed in conciliation efforts;
- the Department of Labor's Office of Federal Contract Compliance Programs (OFCCP), which enforces laws against discrimination by federal government contractors and subcontractors; and
- the Merit Systems Protection Board, which serves as an avenue of appeal for federal employees with employment discrimination complaints related to various personnel actions.

By law, a five-member commission heads EEOC. The President appoints the members, with the consent of the Senate, for rotating 5-year terms. No more than three members can be in the same political party. The President designates one member to serve as Chairman and another as Vice Chairman. As of July 1993, EEOC lacked one commissioner, and the President had not appointed a Chairman.

About 90 percent of EEOC's annual budget is used for enforcement, mainly in the private sector. By law, each charge, except those involving age discrimination, is to be "fully investigated." By policy, EEOC fully investigates age discrimination charges in the same way. In effect, EEOC emphasizes that all charges should receive equal treatment. At a minimum, EEOC's full investigation procedures require EEOC staff to obtain pertinent evidence, interview relevant witnesses, and verify the accuracy and completeness of evidence obtained. The remaining portion of EEOC's budget is used to develop and provide the policy and program directives EEOC needs to carry out its mission, to help employers in complying with the laws, and to help employees understand their rights.

EEOC has work-sharing agreements with state and local Fair Employment Practices Agencies (FEPAs). Under these agreements, EEOC agrees to pay for the processing of employment discrimination charges filed with, or deferred to, the FEPAs. For fiscal year 1992, the FEPAs conducted about 43 percent of the investigations of discrimination charges. EEOC monitors the FEPAs through reviews of individual investigation results to ensure that they meet EEOC's standards.

Most of EEOC's efforts to combat employment discrimination take place as a result of discrimination charges being filed. EEOC initiates some efforts by educating employers and employees through seminars; providing technical assistance to employers, employees, and state agencies; and coordinating federal agency efforts. On behalf of groups, EEOC also initiates investigations of possible discriminatory practices. Charges related to group discriminatory practices are called "class actions" when individuals in the private sector initiate them and "systemic" when EEOC initiates them.

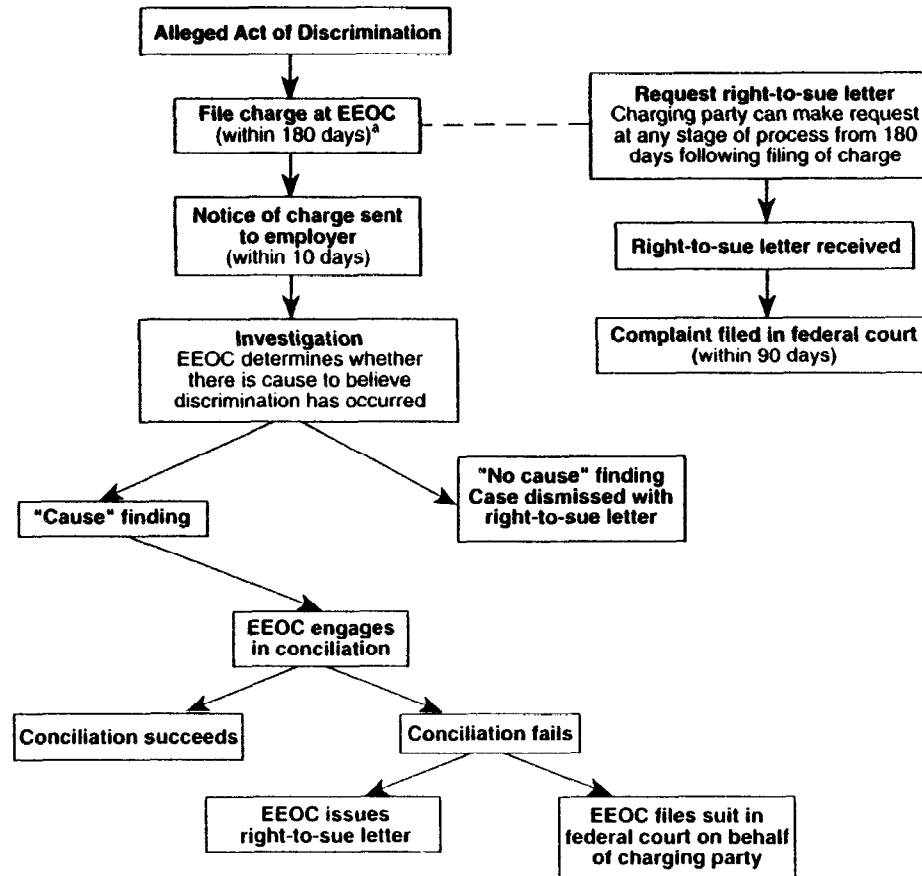
In addition, EEOC collects and maintains minority profile data from private employers with (1) 100 or more employees and (2) 50 or more employees, if the employers are awarded federal contracts totaling \$50,000 or more. It shares this information with other federal agencies working on discrimination issues, such as the OFCCP in the Department of Labor. EEOC uses the profile data to monitor discrimination patterns by employers and to help develop the cases in systemic investigations.

What Happens When a Charge Is Filed

As shown in the flow chart on the next page (see fig. 1), EEOC's procedures begin with the investigation of a discrimination charge that an individual has filed, at no

Figure 1

GAO EEOC Procedures in Private Sector Cases



^aIn jurisdictions where there are state or local laws prohibiting employment discrimination, this period will be 300 days.

Source: This figure is based on an EEOC chart that describes the procedures for processing charges brought under Title VII of the Civil Rights Act. These procedures generally apply to the processing of charges brought under the other statutes for which EEOC has responsibility.

cost, with either EEOC or a FEPA. The alleged discrimination may have occurred while the individual--that is, the charging party (I'll call her Ms. Smith)--was applying for a job or while she was employed. Ms. Smith needs only to allege that some act of discrimination has occurred. First, Ms. Smith files the charge--specifying the act, date of alleged discrimination, and the law that was violated. EEOC staff interview her to obtain as much information as possible about the alleged discriminatory act. EEOC notifies the employer about Ms. Smith's charge and requests relevant information from the employer. EEOC also interviews any witnesses who have direct knowledge of the alleged discriminatory act. If the evidence shows there is no reasonable cause to believe that discrimination occurred, Ms. Smith and the employer are notified. Nevertheless, EEOC gives Ms. Smith a right-to-sue letter--a document that allows her to take private court action if she is dissatisfied with EEOC's resolution of the determination charge. (Ms. Smith may not take her case to court without the right-to-sue letter.)

If the evidence shows that Ms. Smith has reasonable cause to believe that discrimination occurred, EEOC conciliates, that is, attempts to persuade the employer to voluntarily eliminate and remedy the discrimination. Remedies may include Ms. Smith's placement in the job she previously sought, reinstatement to the job she had lost, back pay, restoration of lost benefits, or damages to compensate for actual monetary loss.

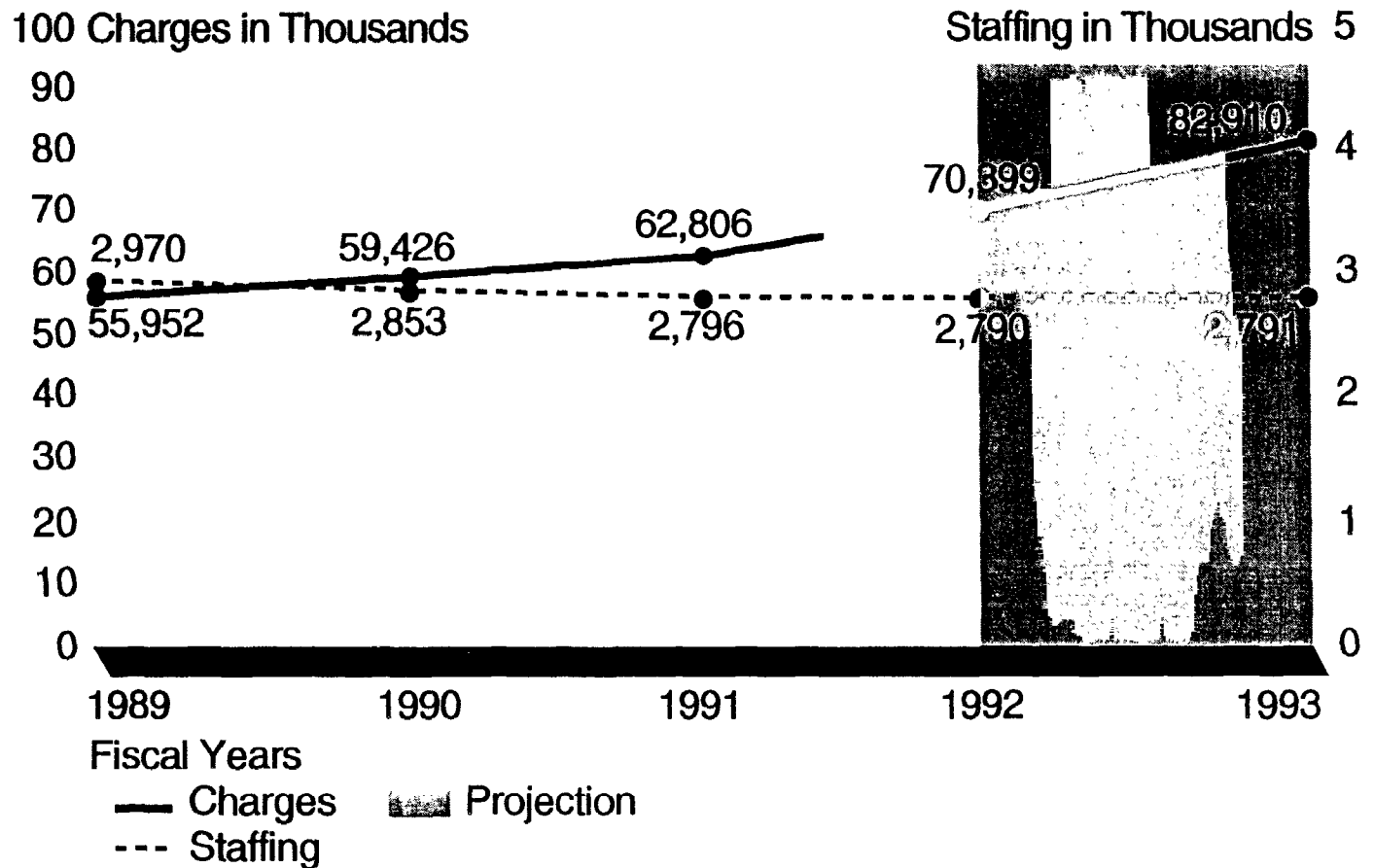
EEOC would consider filing a lawsuit in federal district court on Ms. Smith's behalf if conciliation fails. Because of resource limitations, EEOC cannot litigate all such cases. In place of EEOC litigation, Ms. Smith may initiate private court action.

EEOC'S INCREASING RESPONSIBILITIES AND WORKLOAD

EEOC's responsibilities and workload have generally been increasing over the years. From 1989 to 1992, the number of charges received to process increased 26 percent, while staffing decreased 6 percent. EEOC anticipates an additional increase of about 18 percent in charges received in fiscal year 1993 over fiscal year 1992, with no additional increase in staffing (see fig. 2).

Figure 2

GAO Charges EEOC Received to Process Increasing and Staff Decreasing



Note: Fiscal year charges received are projected, based on second-quarter fiscal year 1993 data for charges received.

In 1964, EEOC was responsible for investigating employment discrimination charges relating to race, color, religion, sex, or national origin. In 1978 and 1979, EEOC assumed responsibility for administering additional laws: (1) the Equal Pay Act of 1963, which prohibits payment of different wages to men and women doing the same work; (2) the Age Discrimination in Employment Act of 1967, which prohibits employment discrimination against workers aged 40 and over; (3) the Equal Employment Act of 1972, which gave EEOC the right to file suit in federal district court to achieve compliance with Title VII; and (4) Section 501 of the Rehabilitation Act of 1973, which bars federal agencies from discrimination on the basis of disability. Before EEOC assumed these additional responsibilities, these laws were administered by the Department of Labor. Also in 1978, Executive Order 12067 gave EEOC the responsibility to provide leadership for, and coordination among, the other federal agencies that enforce equal employment opportunity.

More recently, EEOC became responsible for enforcing the Americans With Disabilities Act (ADA) of 1990. This law, covering some 43 million Americans with one or more physical or mental disabilities, provides a clear and comprehensive mandate for eliminating employment discrimination against those with disabilities. Finally, EEOC's responsibility was increased further with the passage of the Civil Rights Act of 1991; a key provision of this law allows employees who think they have been discriminated against to file for compensatory and punitive damages.

The passage of ADA and the Civil Rights Act of 1991 is adding to EEOC's workload in two ways: (1) more charges are being filed and (2) because they are often complex, these charges take longer to process.

To meet this increased workload, EEOC has argued that it needs more staff. In a 1988 report, we raised concerns over how EEOC determines staffing needs and recommended that the Chairman conduct a study to determine (1) the number of charges an individual investigator should be able to "fully investigate" annually and (2) the resources EEOC would need to fully investigate all charges filed.¹ This information would provide a better basis for EEOC to determine its staffing needs and develop a budget to carry out its investigative work. It would also provide a better basis for establishing realistic goals and expectations for staff in EEOC district offices. EEOC disagreed with our assessment of the need for such a study and none has been done.

CONCERNS ABOUT EEOC OPERATIONS

In addition to our general concerns about EEOC's ability to fulfill its increased responsibilities and greater workload, we--as well as civil rights organizations--have raised specific concerns about EEOC's operations. These concerns include (1) the increasing time it takes EEOC to investigate and process charges, the increasing inventory of charges awaiting investigation, and the adequacy of investigations; (2) the high proportion of "no cause" findings, that is, determinations that the evidence does not sufficiently support the discrimination charge; (3) the limited number of litigation actions and systemic investigations initiated by EEOC; and (4) the usefulness of the data collected and reported by some FEPAs.

Because about 90 percent of EEOC's efforts are in the private sector, again my statement will focus on this sector.

Increasing Time to Investigate Charges, Increasing Inventory, and Adequacy of Investigation

The average time for completing an EEOC investigation of a charge in the private sector increased from 254 days in fiscal year 1991 to 292 days in fiscal year 1992 (a 15 percent increase). EEOC measures average time from the date a charge is filed until the date it appraises the charging party and the employer of the results of the investigation. This increase occurred even though the average number of completed

¹Equal Employment Opportunity: EEOC and State Agencies Did Not Fully Investigate Discrimination Charges (GAO/HRD-89-11, Oct. 11, 1988).

cases per investigator also increased--from 88.5 resolutions in fiscal year 1991 to 92.8 in fiscal year 1992.

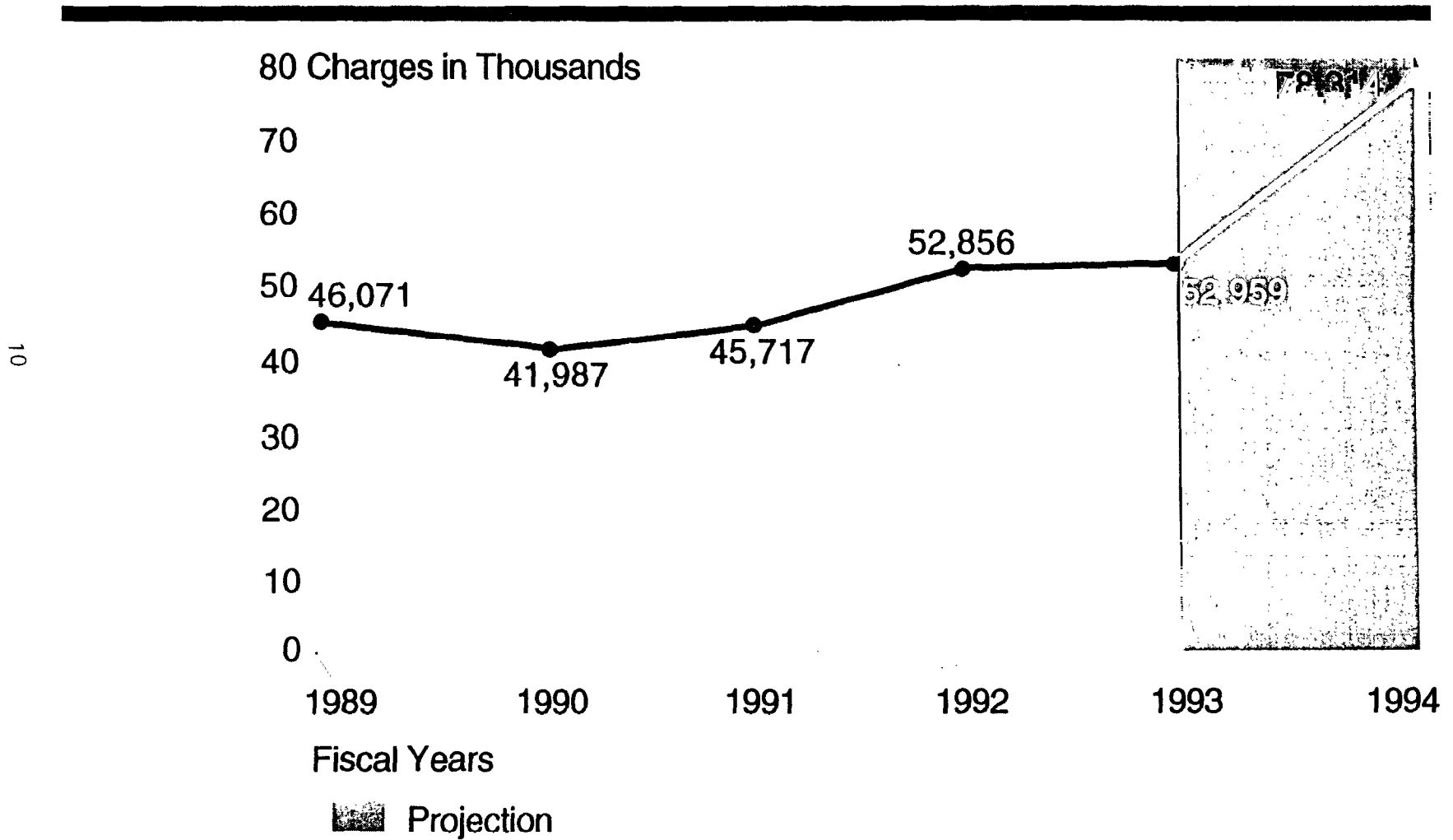
EEOC's inventory of cases carried over from previous years also continues to increase and age. From fiscal year 1989 through fiscal year 1992, the inventory rose nearly 15 percent (see fig. 3).

During that period, the average age of cases in the inventory increased from 7.9 months to 10.4 months. EEOC estimates that by fiscal year 1994, the average age of cases in the inventory will more than double, to 21.3 months (see fig. 4).

The full investigation approach, as described in EEOC's manual of compliance standards, requires EEOC to investigate all charges and give all the same degree of attention. In 1988, we reported that our review of a sample of cases, closed as "no cause" determinations by EEOC district offices and state agency FEPAs, showed that from 40 to more than 80 percent of the charges were not fully investigated. Deficiencies included failing to verify critical evidence, interview relevant witnesses, and compare charging parties with similarly situated employees. EEOC's increasing workload, the resultant pressures experienced by EEOC investigators to complete investigations quickly, and the possible effects of both on the adequacy of investigations have been discussed at congressional hearings in recent years.

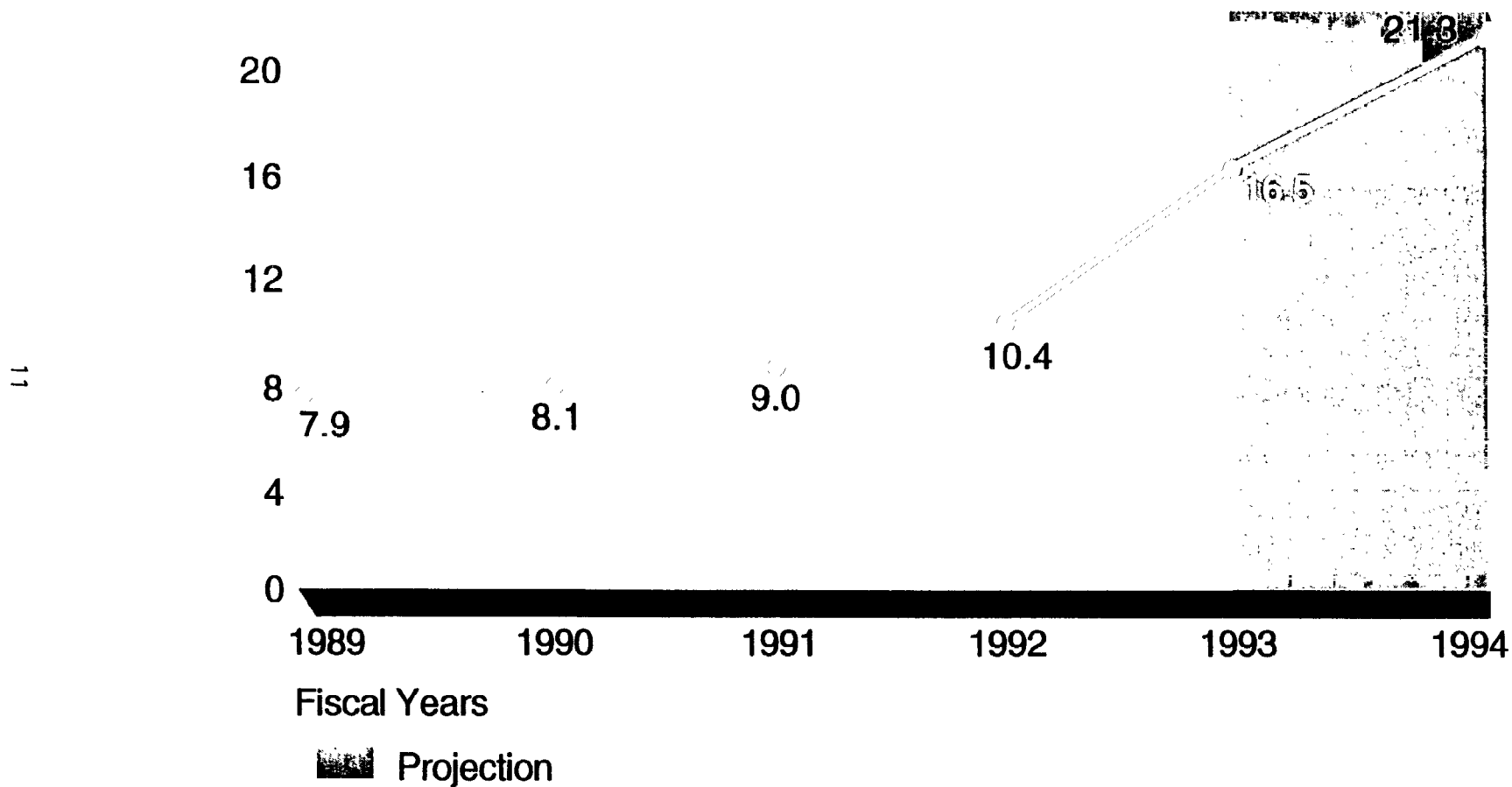
Figure 3

GAO Charges in EEOC Inventory Increasing



GAO Average Age of Charges in EEOC Inventory Increasing

24 Charges in Months



High Rate of "No Cause" Findings

In fiscal year 1992, EEOC processed more than 68,000 discrimination charges. Only 2.4 percent resulted in "reasonable cause" findings. Of the remaining charges, 6.4 percent were settled through conciliation and 6.8 percent were settled through withdrawal and included monetary benefits. An additional 23.4 percent of the charges was closed administratively for various reasons, such as the charges were withdrawn or the charging party did not cooperate with the investigation. About 61 percent were closed with no reasonable cause since EEOC determined the evidence did not support the discrimination charge.

EEOC's rate of "no cause" determinations has been high for many years. We noted, in our 1988 report, that several investigators said that some "no cause" determinations were cases closed prematurely to avoid investigators' receiving a lower performance rating for failing to meet deadlines for case closures. In recent years, two legal service organizations have voiced similar concerns over the possible unwanted effect of this rating system on the number of "no cause" determinations.

EEOC Initiates Few Litigation Actions and Systemic Investigations

EEOC has been criticized for failing to litigate more cases and initiate more systemic investigations (which are, as mentioned earlier, like class actions, but EEOC-initiated). Arguments for more EEOC litigation stem from the belief that court decisions have a far-reaching effect on eliminating discrimination in the workplace and, in a sense, are more cost-effective than individual investigations. However, of the total charges received each year, EEOC litigates less than 1 percent on behalf of charging parties. In fiscal year 1992, EEOC litigated 447 charges. EEOC has no plans to increase either staff in the Office of General Counsel or litigation efforts, an EEOC official said in July 1993.

In fiscal year 1992, special units in EEOC initiated 50 systemic investigations. EEOC officials say that they cannot initiate more systemic investigations because they are labor intensive. The officials also believe that if more EEOC staff were assigned to systemic investigations, there would be less staff to work on the individual charges that EEOC must, by law, investigate. A contrary view holds that if EEOC initiated more systemic investigations and assigned sufficient staff to them, a possible result might be fewer individual charges brought to EEOC.

Usefulness of Data Reported by Some FEPAs Is Questionable

Although EEOC uses the data from its information system to track the age of discrimination charges, answer questions on particular cases, and produce internal and external reports, the usefulness of data collected and reported by some FEPAs is questionable.

We cited several data collection and reporting problems at EEOC district offices and FEPAs in our 1989 report, and recommended that EEOC address these problems.² Since that report, EEOC has improved the accuracy and completeness of the data collection activities in its field offices. EEOC officials believe this part of the information system is now operating relatively well. According to EEOC, the FEPAs' cooperation in collecting and reporting data, however, varies from excellent to poor, and the quality and completeness of the data submitted to EEOC also vary. As a result, the usefulness of the data submitted by some FEPAs is questionable. EEOC is continuing to work with the FEPAs to improve the data they collect and provide.

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Given the tension between EEOC's increasing responsibilities and workload and the concerns about EEOC's operations, the Subcommittee is holding this hearing at a most appropriate time. We hope that some of the issues raised today will help the Subcommittee in planning for future EEOC hearings and will help to make EEOC more efficient and effective.

Mr. Chairman, that concludes my prepared statement. I will be happy to answer any questions you or other members of the Subcommittee may have.

²ADP Systems: EEOC's Charge Data System Contains Errors, but System Satisfies Users (GAO/HRD-90-5, Dec. 12, 1989).

RELATED GAO PRODUCTS

Federal Employment: Sexual Harassment at the Department of Veterans Affairs
(GAO/T-GGD-93-12, Mar. 30, 1993).

Affirmative Employment: Assessing Progress of EEO Groups in Key Federal Jobs
Can Be Improved (GAO/GGD-93-65, Mar. 8, 1993).

Information on EEO Discrimination Complaints (GAO/GGD-93-6RS, Dec. 31, 1992).

Age Employment Discrimination: EEOC's Investigation of Charges Under 1967 Law
(GAO/HRD-92-82, Sept. 4, 1992).

Federal Workforce: Continuing Need for Federal Affirmative Employment
(GAO/GGD-92-27BR, Nov. 27, 1991).

Federal Affirmative Employment: Status of Women and Minority Representation in the
Federal Workforce (GAO/T-GGD-92-2, Oct. 23, 1991).

Federal Affirmative Action: Better EEOC Guidance and Agency Analysis of
Underrepresentation Needed (GAO/T-GGD-91-32, May 16, 1991).

Federal Affirmative Action: Better EEOC Guidance and Agency Analysis of
Underrepresentation Needed (GAO/GGD-91-86, May 10, 1991).

EEO at Justice: Progress Made but Underrepresentation Remains Widespread
(GAO/GGD-91-8, Oct. 2, 1990).

ADP Systems: EEOC's Charge Data System Contains Errors but System Satisfies
Users (GAO/IMTEC-90-5, Dec. 12, 1989).

Equal Employment Opportunity: Women and Minority Aerospace Managers and
Professionals, 1979-86 (GAO/HRD-90-16, Oct. 26, 1989).

Discrimination Complaints: Payments to Employees by Federal Agencies and the
Judgement Fund (GAO/HRD-89-141, Sept. 25, 1989).

Equal Employment Opportunity: EEOC and State Agencies Did Not Fully Investigate
Discrimination Charges (GAO/HRD-89-11, Oct. 11, 1988).

Equal Employment Opportunity Commission's Charge Data System (GAO/T-IMTEC-
88-5, June 24, 1988).

Equal Employment Opportunity: EEOC Birmingham Office Closed Discrimination Charges Without Full Investigation (GAO/HRD-87-81, July 15, 1987).

Equal Opportunity: Information on the Atlanta and Seattle EEOC District Offices (GAO/HRD-86-63FS, Feb. 21, 1986).

Survey of Appeal and Grievance Systems Available to Federal Employees (GAO/GGD-84-17, Oct. 20, 1983).

Problems Persist in the EEO Complaint Processing System for Federal Employees (GAO/FPCD-83-21, Apr. 7, 1983).

Inquiry Into Alleged Operating and Management Problems in EEOC's Office of Review and Appeals (GAO/FPCD-82-68, Aug. 25, 1982).

Age Discrimination and Other Equal Employment Opportunity Issues in the Federal Work Force (GAO/FPCD-82-6, Nov. 20, 1981).

Implementation: The Missing Link in Planning Reorganizations (GAO/GGD-81-57, Mar. 20, 1981).

Equal Employment Opportunity Commission Needs to Improve Its Administrative Activities (GAO/HRD-81-74, Apr. 21, 1981).

Further Improvements Needed in EEOC Enforcement Activities (GAO/HRD-81-29, Apr. 9, 1981).

Achieving Representation of Minorities and Women in the Federal Work Force (GAO/FPCD-81-5, Dec. 3, 1980).

Development of an Equal Employment Opportunity Management Information System (GAO/FPCD-80-39, Mar. 4, 1980).

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