

GAO

Testimony

Before the Committee on Labor and Human Resources,
U.S. Senate

For Release on Delivery
Expected at 9:00 a.m.
Tuesday, May 23, 1995

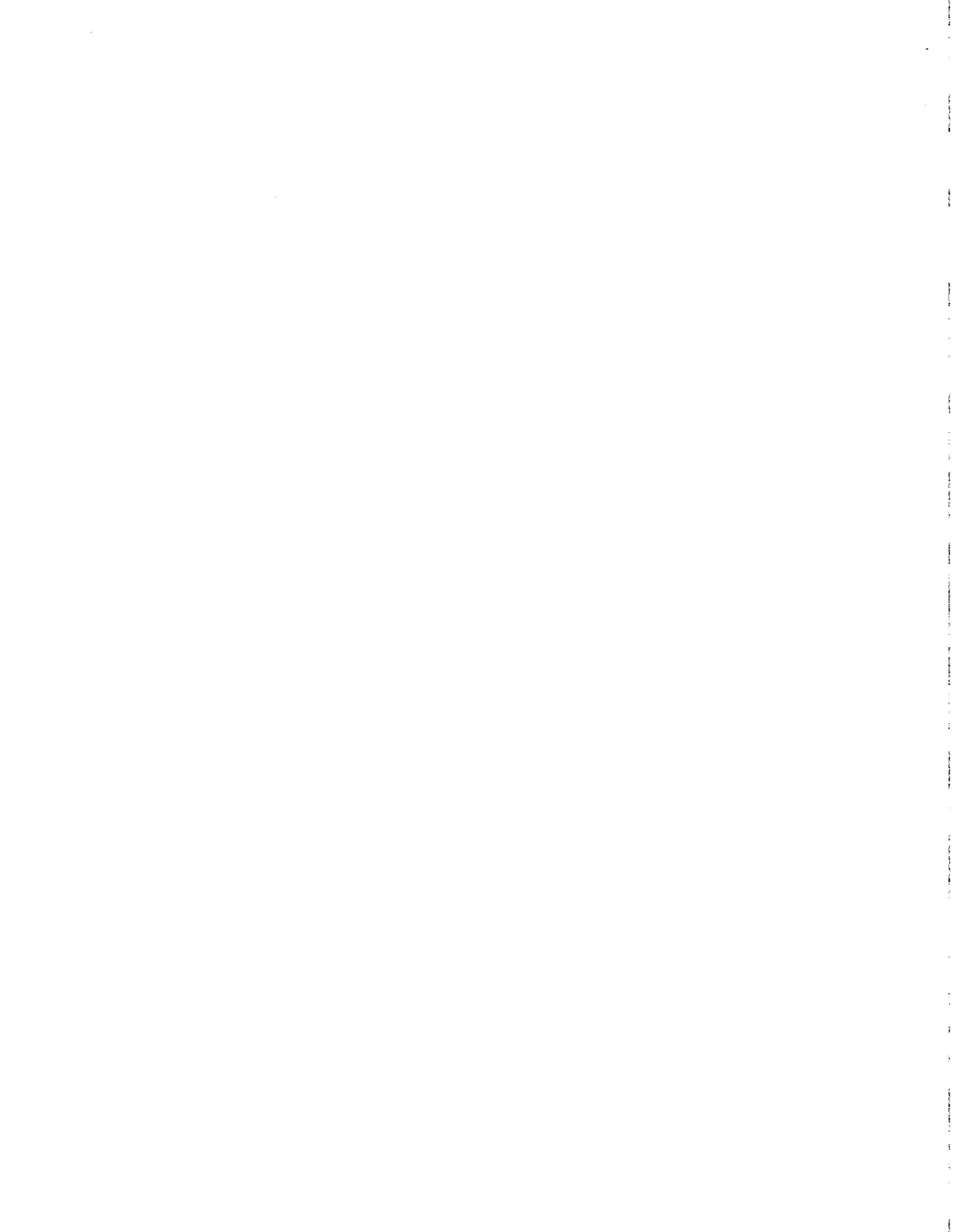
EEOC

Burgeoning Workload Calls
for New Approaches

Statement of Linda G. Morra, Director,
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Madam Chairman and Members of the Committee:

Thank you for inviting us to testify today on the Equal Employment Opportunity Commission (EEOC). EEOC's mission, briefly stated, is to uphold 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 several GAO reviews, the most recent resulting in a report in February 1994.¹

I would like to focus my comments today on EEOC's mission and budget, its overwhelming workload of discrimination charges from the private sector, current approaches it is taking to address this workload, and other approaches that EEOC should consider in attempting to carry out its mission. My comments are based on our previous work, EEOC reports and documents, and interviews with EEOC staff. Numbers and projections come from EEOC.

In summary, EEOC's world has changed drastically since EEOC was established by the Civil Rights Act of 1964. By law, EEOC must accept every charge of employment discrimination. It is burdened with a growing and aging inventory of pending charges. In addition, because of employees' increased awareness of their rights and the number of nondiscrimination laws, EEOC faces a large and growing inflow of new charges.

To continue to approach its mission as it has in the past and reduce the current inventory of pending charges, EEOC would require large numbers of new staff. The economic climate, however, indicates that substantial increases in staff to handle EEOC's burgeoning workload are unlikely.

EEOC's new Chairman recognizes this dilemma. He has discontinued EEOC's long-standing policy of fully investigating every charge in favor of a policy that targets investigative resources on the basis of the strength of a charge's evidence of discrimination. He has also directed EEOC beginning in October 1, 1995, to first provide selected cases the opportunity to attempt settlement through mediation before using the traditional charge process.

These changes are among options we have discussed in our previous reports on EEOC, and we believe they are steps in the right direction. However, in light of a workload that has been rising dramatically since fiscal year 1990, we doubt that these new steps alone can solve EEOC's charge processing problem.

¹EEOC's Expanding Workload: Increases in Age Discrimination and Other Charges Call for New Approach (GAO/HEHS-94-32, Feb. 9, 1994).

Instead, it may be time for EEOC, with the help of the Congress and others, to reexamine its mission and how it is carried out. This process could lead to dramatic changes for EEOC.

EEOC MISSION AND BUDGET

Individuals who believe they have been discriminated against when applying for a job or while employed--by a private employer, labor union, or employment agency--may file a charge at no cost with EEOC. The charge may be handled by any of the 50 field offices that receive, investigate, and resolve charges of employment discrimination in the private sector.²

If the charge includes sufficient information to identify the involved parties and describe the alleged unlawful employment practices, EEOC accepts it. EEOC notifies the employer of the charge and requests information from the employer and any witnesses who have direct knowledge of the situation that led to the charge. If the evidence does not show reasonable cause to believe discrimination occurred, EEOC dismisses the case with a right-to-sue letter that says (1) EEOC is not going to sue and (2) a statute of limitations exists that dictates the deadline for the charging party to file suit. If the evidence shows reasonable cause exists to believe discrimination occurred, EEOC generally attempts conciliation. If conciliation attempts fail, EEOC may go to court.

In fiscal year 1995, more than 80 percent of EEOC's \$233 million appropriation and about 90 percent of its 2,860 full-time-equivalent positions are being used to support the direct enforcement of four federal laws:

- the Equal Pay Act of 1963, which prohibits payment of different wages to men and women doing the same work;
- title VII of the Civil Rights Act of 1964, which prohibits employment discrimination based on race, color, religion, sex, or national origin;
- the Age Discrimination in Employment Act of 1967, which prohibits employment discrimination against workers aged 40 and over; and

²Most federal employees must file their employment discrimination charges with the Equal Employment Office in their own agencies. If dissatisfied with a decision, these employees may file an appeal with EEOC or file a civil action in federal court. EEOC also investigates discrimination charges filed by state and local government employees.

- the Americans With Disabilities Act of 1990, which protects persons in the private sector and state and local governments from discrimination based on disability.

EEOC's mission also includes overseeing some of the activities of the Fair Employment Practices Agencies (FEPA). There are about 100 of them in 47 states. The FEPAs enforce in states and localities laws that generally parallel the federal nondiscrimination laws, and generally a person may file an employment discrimination charge with either EEOC or the FEPAs.

Under contractual agreements, EEOC reimburses FEPAs for each charge they resolve according to EEOC standards. In fiscal year 1994, the FEPAs resolved more than 48,000 employment discrimination charges. This represented about 40 percent of all federally covered charges resolved in that year.

In addition to this work in the private sector, EEOC-- according to Executive Order 12067 issued in 1978--is responsible for providing leadership for, and coordination among, the other federal agencies that enforce equal employment opportunity. These agencies include

- the Department of Labor's Office of Federal Contract Compliance Programs, which enforces laws against discrimination by federal government contractors and subcontractors; and
- 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.

In addition, EEOC works with

- the Merit Systems Protection Board, which serves as an avenue of appeal for federal employees with employment discrimination complaints related to various personnel actions; and
- the United States Commission on Civil Rights, which evaluates federal laws and the effectiveness of government equal opportunity programs, and also serves as a national clearinghouse for civil rights information.

EEOC's fiscal year 1995 appropriation of \$233 million is allocated among three major budget activities:

1. The bulk of EEOC's budget, about \$187 million (80 percent) supports investigation and litigation activities. EEOC responds to employment discrimination charges filed by individuals and classes of individuals. EEOC also initiates its own charges to (1) seek relief from systemic discrimination against a class of persons and (2) interpret through judicial decision what constitutes employment discrimination.

2. About \$26.5 million (11 percent) pays the costs of charge investigations by state and local FEPAs, which in fiscal year 1995 received a fee of \$500 for each case they investigated for EEOC.

3. About \$20 million (9 percent) goes for executive direction and program support. Among other things, this money funds (1) EEOC's top management positions, (2) education, outreach, and technical assistance to public and private employers and employees, (3) EEOC's activities as a focal point for all federal enforcement of equal employment opportunity laws, and (4) the collection of minority profile data from private employers. EEOC shares these data with other federal agencies working on discrimination issues; it also uses the data to monitor discrimination patterns by employers and to develop cases in systemic investigations.

WORKLOAD GROWTH CHALLENGES EEOC'S ABILITY TO RESPOND

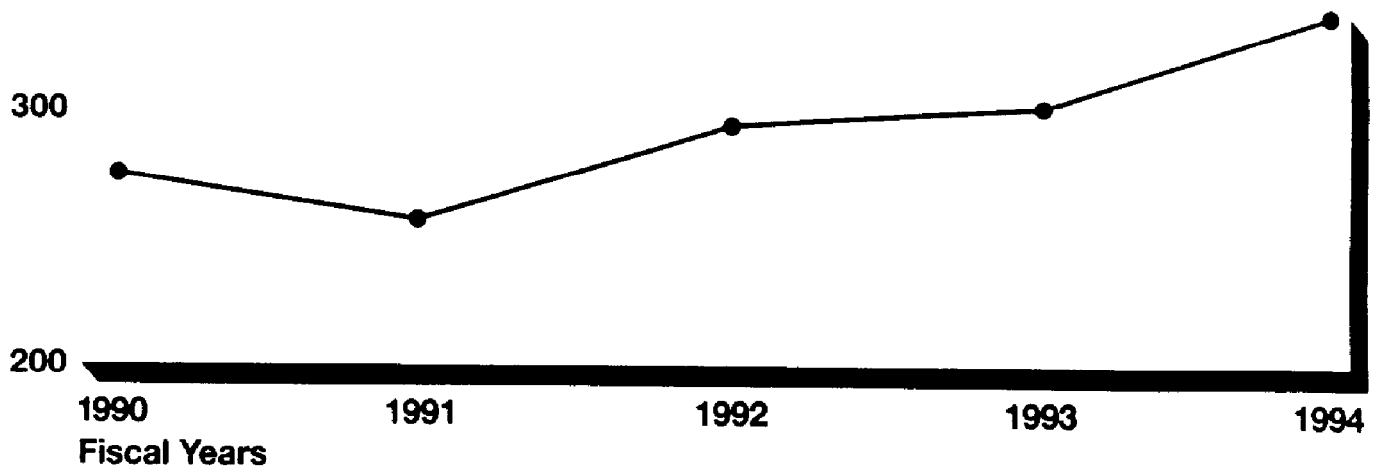
The amount of time a person could expect to wait to have EEOC complete its processing of discrimination charges has increased each fiscal year since 1991. The increase in processing time resulted from (1) a large and growing number of new charges filed and (2) a large and aging inventory of charges that have been filed and are awaiting investigation.

Average Time to Process Charges Has Increased

As figure 1 shows, in fiscal year 1994, EEOC took an average of 328 days to complete the processing of a discrimination complaint, an increase of 34 days over fiscal year 1993. Charge investigators--who averaged more than 97 charge resolutions in fiscal 1994--are working at their maximum, according to EEOC officials. Thus, no increase in resolutions per investigator is expected.

Figure 1: Average Time to Process Charges Has Increased

400 Average Time in Days



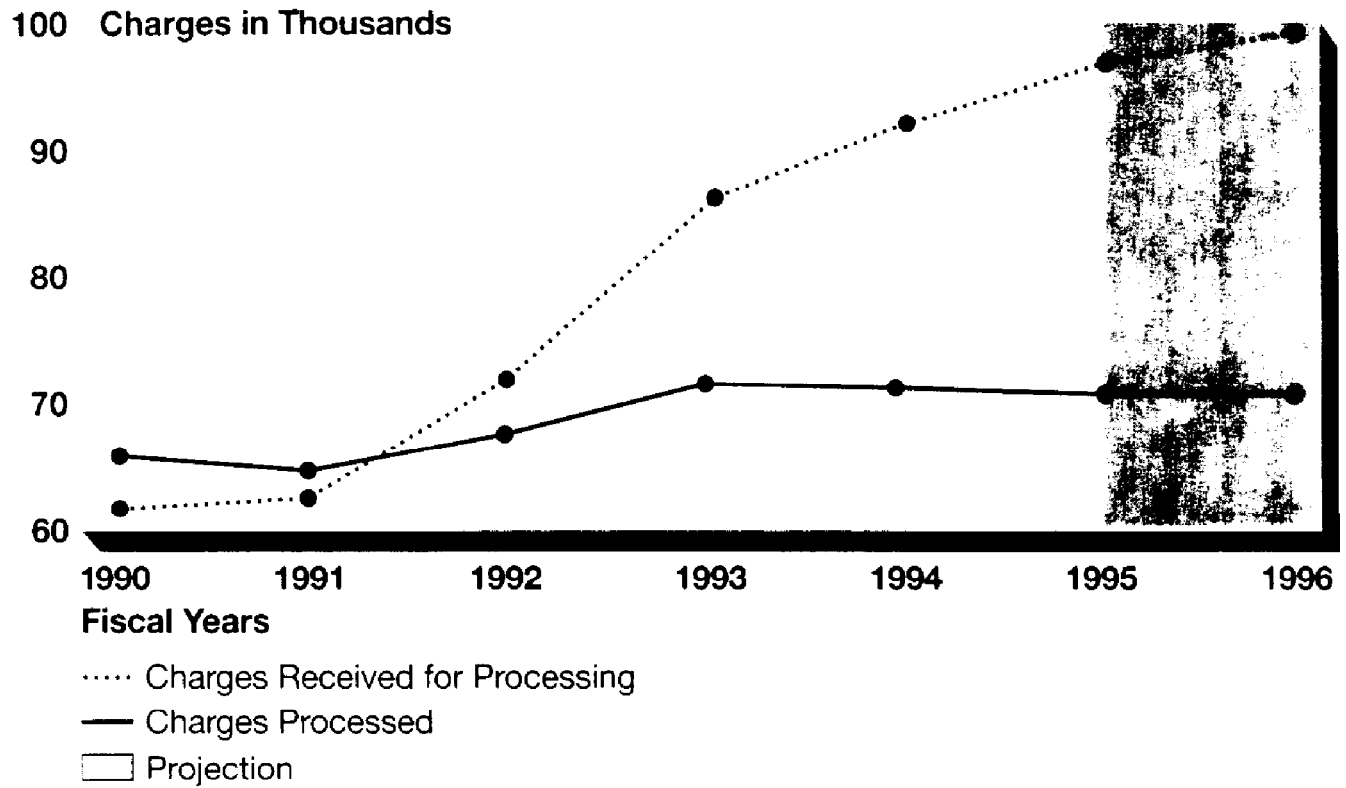
Long processing times not only delay the outcomes of charges, but can also affect the nature of the outcomes. The longer it takes to investigate a charge, the greater the potential for difficulty in (1) locating witnesses; (2) obtaining from witnesses credible accounts of the actions alleged to be discriminatory; and (3) securing settlements, because the larger liability involved after a long period of time could make some employers less willing to settle.

Average times to process charges will continue to increase, EEOC officials estimate, because the number of unresolved charges carried forward from one year to the next is increasing significantly.

EEOC's Workload Has Increased

In fiscal year 1990, EEOC received a total of 62,135 charges for processing. In fiscal year 1994, EEOC received a total of 91,189 charges for processing--an increase of 47 percent. As shown in figure 2, for fiscal years 1995 and 1996, EEOC expects an even greater increase in the number of charges received for processing.

Figure 2: Charges Received Continue Increasing as Charges Processed Level Off



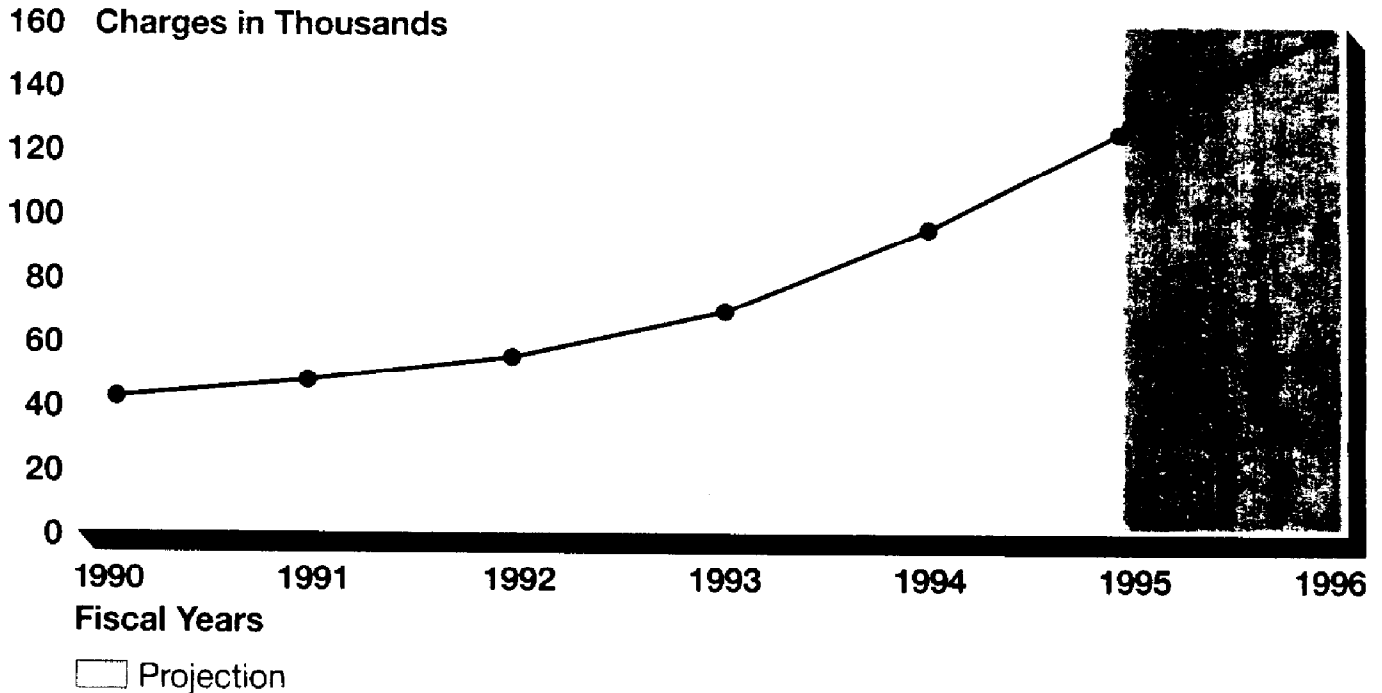
The increasing number of incoming charges affects the time a person can expect to wait to have a case investigated because generally EEOC tries--except for charges that need immediate attention, such as sexual harassment and retaliation--to process charges in the order they are filed. Thus, investigators normally would give priority to cases remaining from previous fiscal years. This means that although EEOC will receive a charge--and notify the employer and ask for information--the new charge will be processed after previously filed charges unless extenuating circumstances exist.

The disparity between the number of incoming cases and those that get processed causes EEOC to fall farther behind in its workload. The result: the number of unresolved charges carried over continues to increase EEOC's pending inventory.

Number of Unresolved Charges Carried Forward Is Increasing

The number of unresolved charges carried over from fiscal year 1993 to fiscal year 1994 totaled 96,945, a 33-percent increase over the 73,124 charges carried forward to fiscal year 1993. As shown in figure 3, EEOC expects that the number of charges carried forward will continue to increase annually.

Figure 3: Charges in EEOC Inventory Are Increasing



In fiscal year 1994, 31,656 charges (about 35 percent) included allegations of race discrimination; 25,860 (about 28 percent) included allegations of sex discrimination; and 18,859 (21 percent) included charges of disability discrimination³. In fiscal year 1992, before full implementation of the Americans With Disabilities Act, disability discrimination accounted for only 1,077 charges. EEOC cited disability discrimination charges as a principal cause for the sharp increase in workload since fiscal year 1992.

³A single charge may allege discrimination under several statutes; for example, age, race, and sex.

INITIATIVES TO ADDRESS EEOC'S CHARGE PROCESSING PROBLEM

The new Chairman of EEOC has taken decisive action in addressing some of EEOC's operational problems. He formed task forces in December 1994 to review three areas of primary importance: the processing of private sector charges, the adoption of Alternative Dispute Resolution (ADR) procedures in processing charges, and EEOC's relationship with state and local FEPAs. The first two task forces completed their work and submitted final reports to the Chairman in March 1995. The task force on FEPAs also submitted a report at that time, but EEOC decided that additional work was needed to achieve the planned objectives.

Revised Methods of Processing Charges

In April 1995, based on task force results, EEOC announced changes in the way it processes private sector employment discrimination charges. EEOC announced that it will rescind its full investigation policy, in effect since 1983, which required it to investigate fully every charge filed. Under the new procedures, EEOC field offices will have more discretion and the authority to dismiss some charges when they receive them. As soon as guidance and implementation instructions are issued, EEOC will begin categorizing charges according to three priorities. The first category is for charges that appear more likely than not to involve discrimination, and these will be fully investigated. The second category includes charges that appear to have some merit but will require additional evidence to determine whether a violation occurred. The third group includes charges that can be immediately dismissed without investigation. Cases already in EEOC's inventory will also be assigned to these three categories. This priority system is sometimes referred to as "triage."

According to EEOC, these changes in processing private sector charges will shift authority and responsibility for enforcement and litigation decisions from headquarters to the field, delegate authority for decisionmaking to lower levels of the organization, empower employees to make decisions at the front line, and decentralize authority.

At the same time, EEOC called for the establishment of a national enforcement plan to identify priority issues and set out an administrative and litigation enforcement strategy. The draft plan is to be developed and presented for review by June 30, 1995. EEOC also stated that early settlement will be encouraged at all stages of the administrative process. Furthermore, rather than pursuing full relief for charging parties, EEOC announced it will accept settlements providing "substantial" relief when evidence indicates a violation, or "appropriate" relief at an earlier stage in the investigation.

Alternative Dispute Resolution Procedures

EEOC also announced it will initiate in October 1995 a voluntary ADR program using mediation to handle some of its workplace discrimination charges. Under this planned program, some workers filing charges and their employers could work with a neutral mediator to settle discrimination disputes, rather than going through EEOC's traditional investigative and enforcement channels. If the employer and employee fail to reach a resolution, the charge will be returned to EEOC's regular caseload. EEOC plans to randomly select cases for mediation, and estimates that eventually about 10 percent of eligible charges will be included in the mediation program.

In initiating the use of ADR procedures to resolve discrimination charges, EEOC acknowledged that many details of the new program will have to be worked out, including the issuance of policies and procedures, the development of evaluation standards, and the recruiting and training of qualified persons to serve as mediators.

EEOC's action to adopt ADR procedures is consistent with the Administrative Dispute Resolution Act, which encourages federal agencies to use ADR procedures to resolve disputes. Although the EEOC ADR program will begin on a small scale, if it reaches EEOC's estimated projection of 10 percent of the total discrimination charge caseload, more than 10,000 charges a year would be mediated, making this the most ambitious ADR program in the federal government to date to resolve employment discrimination disputes, according to data compiled by the Administrative Conference of the United States.

Other Strategies to Improve Charge Processing

Our February 1994 report presented, in addition to ADR and triage, several other strategies identified by civil rights experts we interviewed that might also help to improve EEOC's charge processing. Among these are the following:

- Give investigators more training in the kinds of evidence needed to determine the merits of charges and refer cases that may warrant litigation to EEOC commissioners for review.
- Have investigators specialize in certain charges, such as those involving age, disability, race, or sex, rather than having them continue as generalists who must attempt to master the technical requirements and nuances of all equal employment opportunity laws.

- Involve EEOC lawyers earlier in the investigative process to better educate investigators on legal issues and to ensure that cases are properly investigated and developed to facilitate litigation when warranted.
- Create specialized professional intake positions, giving investigators--who usually must work intake for a portion of each month--more time to investigate charges.

Each of these options has advantages and disadvantages. To our knowledge, EEOC has not incorporated any of the options into its current charge processing approach. Finally, the President's National Performance Review (NPR) recommended several actions related to charge processing and other issues that EEOC has initiated.⁴

PROCESSING PROBLEM MAGNITUDE ARGUES FOR NEW FOCUS

EEOC has taken the initiative to revamp its charge processing system through the use of ADR and triage. Obviously, it is too early to estimate how much these changes will improve EEOC's charge processing--and its ability to confront its pending inventory and new charges. However, even if ADR, triage, and the other suggested approaches help EEOC address its backlog, the pending inventory and number of new cases are of such magnitude that exploring other approaches, including some with a preventive focus, appears warranted.

Shift Some Charges to FEPAs

In our February 1994 report, we interviewed equal employment opportunity experts and asked them for their suggestions on addressing EEOC's workload. One option identified was reallocating responsibilities and resources between EEOC and the FEPAs. Under this option the FEPAs would be given responsibility to investigate more individual charges. This approach could be funded by reallocating some of EEOC's budget to the states to perform the investigative work. EEOC would ensure that the states adhered to established standards in investigating charges.

⁴NPR recommendations that EEOC has initiated include placing more emphasis on customer service; developing an agencywide strategic plan that is consistent with the Government Performance and Results Act of 1993 (GPRA); streamlining its headquarters and field operations to minimize managerial review and delegate authority to staff at the frontline level; and reducing the number of internal regulations.

This approach is not itself a panacea. Historically, the FEPAs have complained that the \$500 they receive from EEOC for processing a charge is too little. Some FEPAs will not volunteer to investigate more charges unless EEOC's processing fee rises significantly. Moreover, many of the FEPAs have, themselves, large inventories of pending charges. In addition, for those states that currently lack working agreements to investigate discrimination charges, EEOC would have to continue charge processing operations or work with the states to develop such agreements.

Increase Systemic Investigations

Another option, also identified in our February 1994 report and related to the prior option, would have EEOC focus more on efforts to reduce systemic discrimination,⁵ a strategy that proponents believe would maximize use of EEOC's limited resources. From fiscal year 1990 to fiscal year 1994, special units in EEOC initiated an average of 41 systemic investigations a year.

In the past, EEOC officials have said that they cannot initiate more systemic investigations because the investigations are labor intensive. The officials also said they believed that if more EEOC staff were assigned to systemic investigations, there would be fewer staff to work on individual charges.

We recognize that asking for more systemic investigations would require more personnel who are highly trained and experienced. Moreover, on average, systemic investigations take longer to complete than do individual investigations. Nevertheless, we find worth pursuing the approach suggested by those civil rights experts who want EEOC to increase its systemic investigations by working with constituent groups and doing a better job of identifying likely targets for compliance reviews. They hold that by focusing its efforts on systemic actions involving large groups or classes of workers, EEOC investigations would have greater effect and could reduce the number of individual charges. Civil rights experts also have said major or complex civil rights issues can be better addressed through systemic investigations.

⁵EEOC investigates workplace patterns and practices that discriminate--or could discriminate--against a class of employees or applicants for employment. These investigations are done pursuant to charges, which are called "class actions" when private parties originate them and "systemic charges" when brought by EEOC.

Education, Outreach, and Technical Assistance

As noted in our June 1994 report, in our case study on workplace regulation,⁶ some employers and employee organizations expressed their displeasure with EEOC's current mode of operation and called for changes in how equal employment opportunity laws are enforced. Some urged EEOC to develop a more service-oriented and less adversarial approach in carrying out its activities by improving information access and educational assistance to employers, workers, and unions. They also wanted EEOC to recognize good-faith compliance efforts.

In our June 1994 report some employers suggested a greater use of mediation to resolve civil rights and other workplace conflicts to avoid the high cost of litigation. Also, some employers suggested the expansion of such mediation procedures as a means to resolve workplace disputes, including having EEOC require that charging parties and employers attempt mediation before litigation.

They also reported that they had some success in using a nonbinding internal mediation process to avoid civil rights lawsuits. The idea of EEOC encouraging employers to establish or strengthen their own ADR systems to resolve employment disputes, including discrimination complaints, merits consideration as EEOC proceeds to implement its ADR procedures. In this regard, we recently surveyed a sample of businesses to learn the extent to which they have developed ADR policies to resolve discrimination complaints. We will be issuing our report on this subject soon.

As previously mentioned, EEOC devotes relatively few resources to outreach and technical assistance activities and has direct contact with a small proportion of the millions of workplaces and workers in the United States. In fiscal year 1994, EEOC reported that its outreach activities included 1,282 presentations by program staff in its field offices to 77,717 persons. These staff also conducted technical assistance seminars for 5,905 persons. Also in fiscal year 1994, EEOC's Office of Legal Counsel staff made more than 340 public presentations providing interpretation of and training involving federal laws. These presentations were given to a variety of private employer, professional, protected group, and other organizations, as well as to federal, state, and local government agencies. EEOC also reported receiving on its toll-free telephone line more than 170,000 requests for publications and sending out 985,000 publications that explained EEOC policies and procedures.

⁶Workplace Regulation: Information on Selected Employer and Union Experiences (GAO/HEHS-94-138, June 30, 1994).

EEOC conducts these activities in part to apprise both employers and employees of the high cost involved when a dispute has escalated to the extent that it reaches EEOC. Charging parties face a long wait, often in work circumstances that are strained and perhaps even threatening. In addition, employers face the expense of defending a civil rights action, and the possibilities of negative publicity, inappropriate actions by the charging party, and a decline in the morale and perhaps productivity of other employees. Furthermore, no matter what the resolution, ill will may linger long after the case is closed. If EEOC can make clear to both sides the consequences of becoming involved in discrimination actions, some believe that over time the number of such charges would decrease.

CONCLUSION

EEOC's mission of enforcing equal employment opportunity laws is as important today as when EEOC was established in 1964. Since then, however, EEOC's responsibilities have increased greatly because of the additional nondiscrimination laws it must enforce and workers' greater awareness of their civil rights. As a result, its workload of private sector charges has continued to grow. EEOC's resources, however, have not increased during the last 5 years, and the likelihood of future resource increases seems remote.

Throughout its history, EEOC has enforced equal employment opportunity laws largely by investigating individual discrimination charges. Charge by charge, EEOC attempted to obtain remedies for victims of employment discrimination. In light of that traditional approach, we commend EEOC's recent actions in attempting to reduce case processing times and charge inventories and to improve its operations. At the same time, however, the extent to which these new approaches will improve EEOC's operations will not be known for some time--and we doubt that they will provide a lasting solution.

Even with its new approaches, EEOC may no longer possess the wherewithal to operate primarily as a charge processor. It may be time for EEOC to consider focusing its limited resources less on responding to the individual charges of discrimination and more on efforts to prevent these charges from occurring in the first place.

That concludes my prepared statement. I will be happy to answer any questions you may have.

For more information, please call Linda G. Morra, Education and Employment Issue Area Director, on (202) 512-7014. Other contributors are Larry Horinko, Ted Shepherd, Patricia Bundy, Susan Poling, Ann McDermott, and Andrea Thomas.

RELATED GAO PRODUCTS

Discrimination Complaints: Monetary Awards in Federal EEO Cases (GAO/GGD-95-28FS, Jan. 1, 1995).

Equal Employment Opportunity: Displacement Rates, Unemployment Spells, and Reemployment Rates by Race (GAO/HEHS-94-229FS, Sept. 16, 1994).

Workplace Regulation: Information on Selected Employer and Union Experiences (GAO/HEHS-94-138, June 30, 1994).

Employment Discrimination: How Registered Representatives Fare in Discrimination Disputes (GAO/HEHS-94-17, Mar. 30, 1994).

EEOC's Expanding Workload: Increases in Age Discrimination and Other Charges Call for New Approach (GAO/HEHS-94-32, Feb. 9, 1994).

EEOC: Federal Affirmative Planning Responsibilities (GAO/T-GGD-94-20, Oct. 13, 1993).

EEOC: An Overview (GAO/T-HRD-93-30, July 27, 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).

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

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