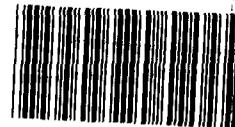


September 1992

AGE EMPLOYMENT DISCRIMINATION

EEOC's Investigation of Charges Under 1967 Law



147542

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Human Resources Division

B-242929

September 4, 1992

**The Honorable Edward R. Roybal
Chairman, Select Committee on Aging
House of Representatives****The Honorable William D. Ford
Chairman, Committee on Education and Labor
House of Representatives****The Honorable Carl C. Perkins
Chairman, Subcommittee on Employment Opportunities
Committee on Education and Labor
House of Representatives****The Honorable Matthew G. Martinez
House of Representatives**

This report responds to your questions about investigation of employment discrimination charges under the Age Discrimination in Employment Act of 1967 (ADEA) (29 U.S.C. 621). You were concerned primarily with the lapse of charging parties' rights to file suits in federal court before completion of ADEA investigations. (Your questions and our detailed responses appear in app. I.) In preparing our response, we interviewed officials and reviewed records at the Washington headquarters of the Equal Employment Opportunity Commission (EEOC), three EEOC field offices, and three fair employment practice agencies (FEPAs) in 1991.

Results in Brief

People who believe they have experienced age employment discrimination may file a charge with the Equal Employment Opportunity Commission. If they work in a jurisdiction having an agreement with EEOC for investigating ADEA charges, they file with a state or local fair employment practice agency and EEOC. Charging parties may sue in federal court 60 days after filing an ADEA discrimination charge, even if EEOC or a FEPA is still investigating their charge.

Before November 21, 1991, ADEA provided that federal court suits generally must be filed within 2 years of the alleged violation dates.¹ During the 1980s, the rights of thousands of charging parties to file federal suits lapsed. Investigations of these charges—completion of which is not

¹A 3-year rule applied for willful violations. For the purposes of this report, we have assumed that the cases examined did not involve willful violations and thus were subject to the 2-year statute of limitations.

required by law for charging parties to file suits in federal court—had not been completed even though 2 years passed after the alleged violation dates.

In 1987 and 1988, the lapse problem was the subject of congressional hearings, and in 1988 and 1990, legislation restored the lapsed suit rights of many charging parties. Also, EEOC initiated several actions to ensure prompt and full investigation or resolution of ADEA charges. One of these actions was a July 1990 initiative to assume jurisdiction of ADEA charges from FEPAs when 16 months had passed from the dates of alleged violations.

From April 1988 to September 1988, an average of 133 ADEA charges lapsed each month. By fiscal year 1991, the number of lapsed ADEA charges had significantly decreased. From May 2, 1991, through January 29, 1992, an average of one charge lapsed each month. However, two of the three EEOC field offices that we reviewed routinely attempted to conciliate most assumed charges and if unsuccessful, dismissed the charges without completing the investigations. EEOC officials said this practice was consistent with the law because ADEA requires conciliation, conference, and persuasion but not full investigation of charges.

The Civil Rights Act of 1991 (P.L. 102-166) amended ADEA to delete the 2-year limitation. ADEA now provides that charging parties' rights to file private lawsuits will expire 90 days after receiving notice that EEOC has completed action on the charge. Much of the information we developed relates to the 2-year limitation provision, which EEOC treats as the applicable period for ADEA violations alleged to have occurred prior to November 21, 1991. As of February 4, 1992, 21,867 of such charges had been filed, which may lapse under the 2-year rule. As of June 17, 1992, 17,235 of such charges were pending.

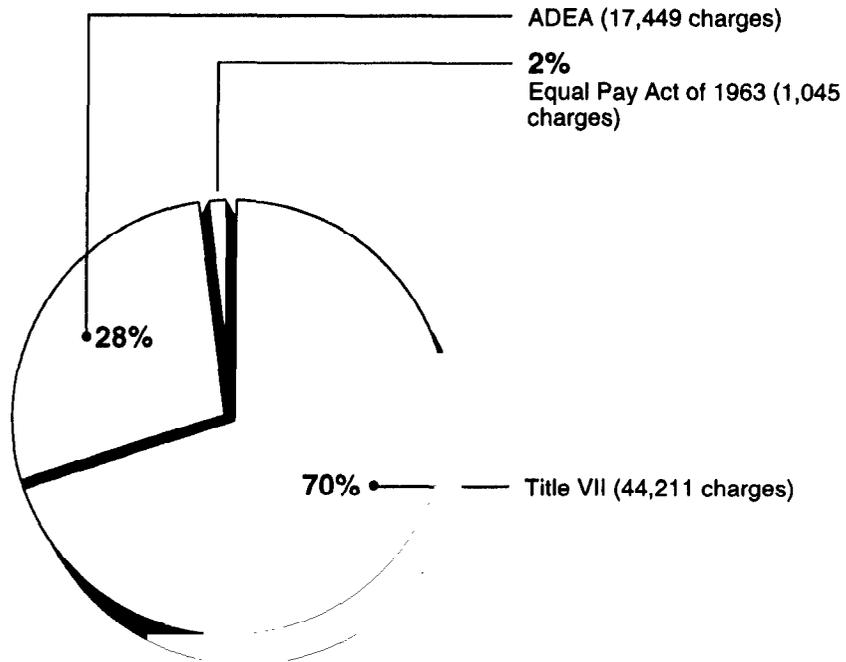
Background

Pursuant to title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e), EEOC investigates employment discrimination charges involving race, color, religion, sex, or national origin. EEOC also has responsibility for processing and resolving employment discrimination charges filed under

- ADEA, which prohibits employment discrimination against workers age 40 and above, and
- the Equal Pay Act of 1963, which prohibits payment of different wages to men and women doing the same work.

Figure 1 shows the major types of charges EEOC received for processing in 1991.

Figure 1: Discrimination Charges Received by EEOC (Fiscal Year 1991)



EEOC enforces equal employment opportunity through a field structure composed of 50 offices that receive, investigate, and resolve employment discrimination charges. EEOC's policy is to fully investigate charges by verifying relevant evidence to decide if unlawful discrimination occurred. Such evidence may include data on discharge, payroll records, and employers' policies. EEOC also interviews relevant witnesses to resolve discrepancies and to confirm the accuracy and completeness of employer records.

In states and localities that have established FEPAS to investigate charges of employment discrimination, individuals may file charges with either EEOC or FEPAS. EEOC, viewing the charges received by it and FEPAS as a common workload, attempts to avoid duplication of effort by sharing investigative responsibilities with the FEPAS. It does so by entering into work-sharing agreements with FEPAS that prescribe whether EEOC or the FEPAS will

investigate charges and define other coordination activities. Under these agreements, EEOC reimburses FEPAS \$450 for each charge investigated.

EEOC reviews the FEPAS' investigation findings and, if the work meets EEOC standards, accepts such findings for resolving the charges. If EEOC identifies substandard investigations, it withholds payment until its standards are met. In fiscal year 1991, EEOC examined and accepted FEPA investigations of 6,918 ADEA charges. How ADEA charges are investigated, the lapse of charging parties' rights to file suits, and study objectives, scope, and methodology are discussed in appendix I.

Agency Comments

EEOC provided technical comments on a draft of this report to further explain or clarify ADEA charge processing and its responsibilities under the law. We revised sections of our report, as appropriate, to reflect these comments.

As agreed with your offices, unless you publicly announce its contents earlier, we plan no further distribution of this report until 7 days from its issue date. At that time, we will send copies to the Chairman of EEOC and other interested parties, and will make copies available to others upon request. If you have any questions or wish to discuss the information provided, please call me on (202) 512-7014. Appendix III lists major contributors to this report.



Linda G. Morra
Director, Education and
Employment Issues

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Abbreviations

ADCAA I	Age Discrimination Claims Assistance Act of 1988
ADCAA II	Age Discrimination Claims Assistance Amendments of 1990
ADEA	Age Discrimination in Employment Act of 1967
CDS	charge data system
EEOC	Equal Employment Opportunity Commission
FEPA	fair employment practice agency

Investigation of ADEA Charges by EEOC and FEPAs

Until 1983, EEOC and the FEPAs attempted to mediate and conciliate age discrimination charges and not fully investigate them, because the ADEA legislation does not require charges to be fully investigated. The law requires EEOC to attempt to eliminate any illegal practices promptly through informal methods of conciliation, conference, and persuasion. Under EEOC policy then in effect, EEOC and the FEPAs routinely attempted conciliation after gathering minimal evidence.

In 1983, EEOC revised its policy and began to require full investigations of ADEA charges by its district offices and FEPAs if conciliation was unsuccessful. This policy was not consistently followed, and district offices and FEPAs with large caseloads of ADEA charges often routinely dismissed charges without completing required investigations. Our prior reports commented on the lack of full investigations.¹

In its comments on this report, EEOC (1) disagreed with our statement that the 1983 policy required full investigation of ADEA discrimination charges and (2) stated that, when appropriate, its field directors have always had the discretion to administratively close ADEA charges.

We recognize that the discretion to administratively close charges was never taken from EEOC field directors. Nevertheless, EEOC officials told us during our review, and the Chairman of EEOC in September 1991 testified before the House Select Committee on Aging, that in December 1983 the Commission had adopted policies requiring full investigation for all individuals who allegedly had experienced discrimination, including those filing charges under ADEA.

Lapse of Charging Parties' Rights to File Suits

During the 1980s, the rights of thousands of charging parties to file federal suits lapsed under the 2-year limitation period in ADEA. Investigations of these charges were incomplete even though 2 years passed after the alleged violation dates. In 1987 and 1988, the lapse problem was the subject of congressional hearings. Later, EEOC initiated several actions to ensure full investigation or resolution of ADEA charges within 2 years of the alleged violation dates to protect charging parties' rights to file suits.

When we initiated our review, ADEA required that charging parties must file court suits within 2 years of alleged discriminatory acts (3 years in cases of willful discrimination). On November 21, 1991, Congress enacted the

¹EEOC Birmingham Office Closed Discrimination Charges Without Full Investigation (GAO/HRD-87-81, July 15, 1987), and EEOC and State Agencies Did Not Fully Investigate Discrimination Charges (GAO/HRD-89-11, Oct. 11, 1988).

Civil Rights Act of 1991, which repealed the 2-year statute of limitations. ADEA now provides that charging parties' rights to file private lawsuits expire 90 days after receiving notice (which the law requires EEOC to provide) that EEOC has completed action on the charges. The ADEA requirement for filing federal suit is now similar to the requirement under title VII of the Civil Rights Act of 1964.

The new limitation period clearly applies to all alleged ADEA violations that occur on or after November 21, 1991, the effective date of the repeal of the 2-year limitation period. It is not clear, however, whether it also applies to alleged violations that occurred before then. EEOC's Office of Program Operations has issued interim guidance that treats the 1991 repeal as not applying to alleged violations that preceded it and directs field offices and FEPAs to complete ADEA charge processing within 2 years of the alleged violations for alleged violations that occurred before November 21, 1991.

EEOC officials expect that eventually the courts will decide the period within which charging parties must file federal suits under ADEA for alleged violations that occurred before November 21, 1991. To protect private suit rights for these ADEA charges, EEOC required its field offices and FEPAs to remind the charging parties that federal suits must be filed within 2 years of the alleged discrimination or within 90 days of receiving an EEOC closure letter, whichever is earlier. As of February 4, 1992, EEOC and the FEPAs had received 21,867 open ADEA charges alleging violations before November 21, 1991.

Objectives, Scope, and Methodology

In a letter of June 26, 1990, the Chairmen of the House Select Committee on Aging, the House Committee on Education and Labor, and its Subcommittee on Employment Opportunities, asked us to conduct two studies of EEOC's administration of ADEA. The first was to analyze statistical data on EEOC's processing of charges within the 2-year statute of limitations for filing federal lawsuits under ADEA. On October 5, 1990, we furnished information to fulfill that request.²

The second study was to review EEOC's administration of ADEA. After consultation with the requesters, we agreed to focus the second study on the following questions:

²Correspondence to the Chairmen of the Select Committee on Aging, Committee on Education and Labor, and Subcommittee on Employment Opportunities (B-241497).

**Appendix I
Investigation of ADEA Charges by EEOC
and FEPAs**

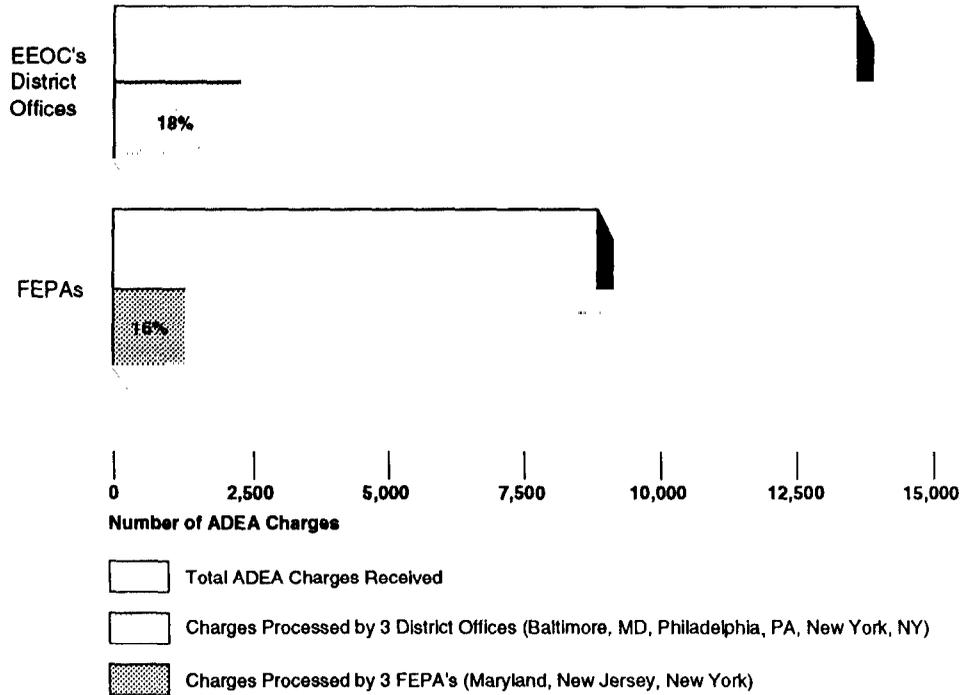
1. How has EEOC carried out mandates of the Age Discrimination Claims Assistance Act of 1988 (ADCAA I) (P.L. 100-283) and the Age Discrimination Claims Assistance Amendments of 1990 (ADCAA II) (P.L. 101-504)? Specifically, how has EEOC identified and notified persons whose rights to sue were restored by these acts?
2. How does EEOC monitor ADEA complaints, including those filed with state and local fair employment practice agencies? How does EEOC prevent complaints from lapsing, and how does it handle complaints that are about to lapse or have lapsed?
3. How does EEOC monitor and supervise the activities of FEPAs? Is information readily available showing if EEOC's \$450 payment compensates FEPAs for the costs of investigating ADEA charges?
4. How does EEOC assign its resources between investigating age discrimination and other types of discrimination complaints?
5. What differences exist in how EEOC processes and investigates age discrimination charges and other types of discrimination charges?

Appendix II discusses the information we developed relating to these questions and summarizes and updates our briefing on October 24, 1991, to your staffs.

We performed our work for this report at EEOC headquarters in Washington, D.C., in 3 of EEOC's 23 district offices (Baltimore, Philadelphia, and New York City) and 3 of the 45 FEPAs (Maryland, New Jersey, and New York) having work-sharing agreements covering ADEA charges. We selected these offices and FEPAs because they received many ADEA charges for processing, as shown in figure I.1.

**Appendix I
Investigation of ADEA Charges by EEOC
and FEPA's**

Figure I.1: Total ADEA Charges and Those Received in Offices Covered by GAO's Review (Fiscal Year 1991)



At EEOC's Washington headquarters, we obtained national data on charges and discussed issues related to the requesters' questions. At the EEOC district offices, we examined ADEA investigative files and other records and held discussions with district officials on EEOC's policy for processing and monitoring ADEA charges. During the visits to the FEPA headquarters offices, we reviewed documents and discussed FEPA investigations of ADEA charges and relationships with EEOC. We conducted our work between February and December 1991 in accordance with generally accepted government auditing standards.

Questions and Responses About EEOC Administration of ADEA Charges

This appendix presents information we developed in response to the questions posed by the requesters.

Question 1

How has EEOC carried out the mandates of the Age Discrimination Claims Assistance Act of 1988 and the Age Discrimination Claims Assistance Amendments of 1990? Specifically, how has EEOC identified and notified persons whose rights to file suit in federal court were restored by these acts?

Response

Because EEOC's data bases did not accurately show the status of ADEA charges, EEOC could not precisely identify those persons whose rights to sue in federal court were restored by ADCAA I. Thus in sending notices required by the act, EEOC mailed letters to all persons possibly affected by it, recognizing that many were not covered by the act's provisions. Before mailing notices required by ADCAA II, EEOC verified the data in its charge data system (CDS) and more accurately identified those affected by the act.

Discussion

ADCAA I restored ADEA suit rights for charges lapsing before April 7, 1988, and ADCAA II restored ADEA suit rights for charges lapsing between April 7, 1988, and May 1, 1991, as figure II.1 shows.

**Appendix II
Questions and Responses About EEOC
Administration of ADEA Charges**

Figure II.1: Effects of ADCAA I and ADCAA II on Persons Filing Charges Under ADEA

	1986	1987	1988	1989	1990	1991	1992
ADCAA I			Enacted ▼ 4/7/88				
	Rights Restored: • Charges Filed After 12/31/83 • Rights to File Suit Lapsed Before 4/7/88						
			Extended Period to File Suit in Federal Court From 4/7/88 to 9/28/89				
ADCAA II					Enacted ▼ 11/3/90		
	Rights Restored: • Charges Filed After 4/6/85 • Rights to File Suit Lapsed Between 4/7/88 and 5/1/91						
					Extended Period to File Suit in Federal Court From 11/3/90 to 1/26/92		

**Appendix II
Questions and Responses About EEOC
Administration of ADEA Charges**

ADCAA I

- restored the rights of persons to sue under ADEA for charges filed after December 31, 1983, if the statute of limitations lapsed before April 7, 1988, and the charge met other conditions;
- extended charging parties' rights to sue in federal court 540 days, from April 7, 1988, to September 28, 1989;¹ and
- required EEOC to send written notices to covered persons within 60 days of enactment and to report periodically to the Congress on progress in dealing with lapsed charges.

EEOC officials told us that precisely identifying within 60 days only those who lost suit rights was impossible because EEOC's data system was incomplete and unreliable. In implementing ADCAA I, EEOC's primary objective was to ensure that all persons possibly covered by it received notices. To identify such persons, EEOC headquarters extracted data on ADEA charges from its CDS, its previous data system (the complaint statistical reporting system), and manual charge records. To the persons thus identified, EEOC headquarters sent out notices between May 23 and 27, 1988. Also, EEOC instructed its field offices to send ADCAA I notices to all persons they could identify as possibly covered.

As a result of this policy, notices were sent to many charging parties not affected by ADCAA I. Originally EEOC sent about 9,500 notices to charging parties. After a comprehensive verification project to identify and correct errors in CDS, EEOC in May 1989 determined that only 4,377 persons had their federal court suit rights restored by ADCAA I. The others had not lost their right to go to federal court.

ADCAA II, enacted November 3, 1990, amended ADCAA I to extend the restoration of lapsed suit rights to charging parties not covered by ADCAA I. For individuals who filed charges on a timely basis after April 6, 1985, whose rights to sue lapsed between April 7, 1988, and May 1, 1991, and who met other conditions, ADCAA II extended their rights to sue from November 3, 1990, until January 26, 1992. ADCAA II also required EEOC to identify and notify all affected charging parties by January 2, 1991, if their rights to sue expired before November 3, 1990, and by June 30, 1991, if such rights expired between November 3, 1990, and May 1, 1991. As with

¹ADCAA II amended this portion of ADCAA I, apparently narrowing the extension to sue from 540 days to 450 days, that is, through June 30, 1989. According to EEOC's Legal Counsel, this is almost certainly a clerical error, and EEOC considers it a moot change for administrative purposes. Nevertheless, it is possible that ADEA suits could be challenged on the grounds that a lawsuit that was timely filed between July 1, 1989, and September 28, 1989, under ADCAA I is no longer timely because of the 450-day change made by the ADCAA II amendments.

ADCAA I, ADCAA II required EEOC to report periodically to the Congress on its progress in dealing with lapsed charges.

In carrying out ADCAA II, EEOC improved its accuracy in identifying covered charging parties. EEOC headquarters organized a task force to compile data from the CDS to identify covered charging parties. EEOC headquarters sent the data to EEOC's district offices and the FEPAS for corrections, updating, and verification. EEOC headquarters then mailed notices to charging parties thus identified. Between November 3, 1990, and September 27, 1991, EEOC mailed ADCAA II notices to 4,301 persons. After subsequent and continuing refinement in the CDS, EEOC determined as of September 27, 1991, that 3,049 charging parties were possibly affected by this act. EEOC lacked data showing if it missed any charging parties.

We found no information on the number of charging parties affected by ADCAA I and ADCAA II who sued. EEOC and FEPA representatives told us they did not collect this information. Furthermore, charging parties are not obligated to inform EEOC and FEPAS of their intention to sue.

Question 2

How does EEOC monitor ADEA charges, including those filed with state and local fair employment practice agencies? How does EEOC prevent complaints from lapsing, and how does it handle complaints that are about to lapse or have lapsed?

Response

EEOC uses its charge data system to monitor ADEA charges processed by EEOC district offices and FEPAS. EEOC considers the CDS satisfactory for charges processed by its district offices. But because the CDS has not proven to be accurate or reliable for FEPA-processed charges, EEOC relies primarily on manual records to monitor FEPAS' processing activities.

Until November 1991, EEOC policy required full investigation and resolution within 2 years of the alleged violation. To prevent ADEA charges from lapsing, EEOC required that processing priority be given to ADEA charges over most other types of discrimination charges. In July 1990, EEOC also required its field offices to assume jurisdiction of FEPA-processed charges 16 months after the dates of violations. Exceptions could be made if FEPAS said that they would complete processing within 18 months. Two of the three EEOC field offices we visited routinely attempted to mediate and conciliate most assumed charges; when unsuccessful, they dismissed the charges without completing the investigations.

**Appendix II
Questions and Responses About EEOC
Administration of ADEA Charges**

ADCAAS I and II covered the ADEA charges that lapsed through May 1, 1991. As discussed in the response to question 1, EEOC notified the charging parties of the restoration of their federal suit rights.

In September 1991 testimony before the House Select Committee on Aging, the EEOC Chairman discussed EEOC's actions to speed ADEA charge processing. He expressed doubt, however, that adequate resources and staff would be provided for EEOC and FEPAS to comply fully with its full investigation policy and process all charges within the ADEA 2-year statute of limitations. The Civil Rights Act of 1991 repealed the 2-year statute of limitations for initiating litigation.

Discussion

EEOC's charge data system, which includes detailed information on all open federal discrimination charges, produces data and periodic reports on charges under investigation by EEOC and the FEPAS. The EEOC field offices we visited also maintained manual records to supplement the CDS.

Because of inaccurate and untimely data entered by the FEPAS, EEOC has been unable to rely on the CDS to monitor charges investigated by FEPAS. While EEOC has acted to improve the accuracy of FEPA data in recent years, problems persist in some states. The EEOC field offices we visited relied primarily on manual records to monitor the status of FEPA investigations.²

Prior to November 21, 1991, EEOC took several initiatives to expedite ADEA charge processing and required its investigators to give priority to ADEA charges over most other types of discrimination charges. EEOC district office representatives confirmed that they gave priority processing to ADEA charges while the 2-year statute of limitations was in effect.

In July 1990, EEOC announced an initiative to assume jurisdiction of ADEA charges from FEPAS when 16 months had passed from the date of the alleged violation. Exceptions could be made if the FEPA said that it would complete charge processing within 18 months. EEOC revised its fiscal year 1991 work-sharing agreements with FEPAS to include this change. For fiscal year 1992, EEOC began assuming jurisdiction of ADEA charges 14 months after the date of alleged violation.

²In its comments on this report, EEOC stated that recent improvements in the CDS and the conduct of hard inventories of FEPA data during recent years had made the CDS a more valuable monitoring and decision-making tool. Nevertheless, the field offices we visited continue to use manual records to monitor FEPA investigations because the automated data system does not yet contain accurate data at those offices.

**Appendix II
Questions and Responses About EEOC
Administration of ADEA Charges**

From July 1990 until December 31, 1991, EEOC field offices assumed jurisdiction of 3,101 ADEA charges from FEPAS. The three district offices we visited did so as required by EEOC policy. But two of the offices routinely attempted to conciliate most assumed charges and when unsuccessful, dismissed the charges without completing the required investigations. (EEOC classifies these charges as "administrative closures," which means the investigators did not make decisions on whether discrimination occurred.)

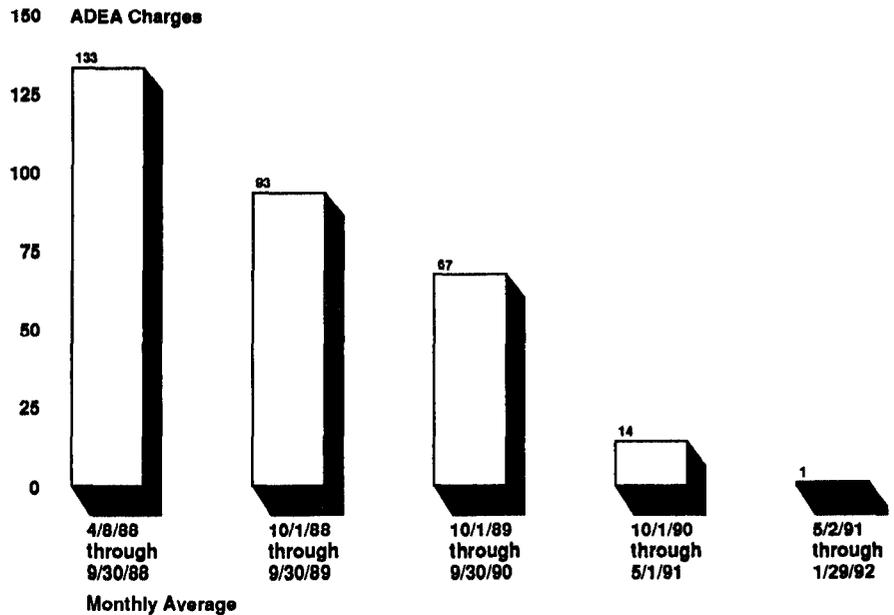
EEOC officials in the Philadelphia District Office said they could not complete investigations of the many assumed ADEA charges without disrupting their ongoing investigations and workloads. EEOC New York District Office officials said they assumed jurisdiction of many charges and if there was enough time, reviewed the FEPAS' files and obtained any additional evidence needed. Sometimes, they said they did additional investigative work, but usually they did not. The EEOC headquarters officials also confirmed that EEOC often administratively dismisses charges without completing full investigations to prevent the charges from lapsing. Thus, charging parties retained their right to sue in federal court.

EEOC and FEPA officials said that EEOC's assumption of jurisdiction of charges under federal law did not interrupt or otherwise adversely affect the FEPAS' investigations and resolution actions under state laws. An EEOC headquarters official said EEOC wanted to avoid doing anything that would adversely affect charging parties' prospects for favorable findings by the FEPAS. In addition, EEOC and FEPA officials pointed out that charging parties who originally filed their charges with FEPAS expected that the FEPAS would investigate their charges.

During the 1980s, EEOC's policy and initiatives for investigating ADEA charges within 2 years were not consistently carried out and thousands of charging parties lost their rights to sue. By fiscal year 1991, however, the number of lapsed charges had significantly decreased, as shown in figure II.2.

**Appendix II
Questions and Responses About EEOC
Administration of ADEA Charges**

**Figure II.2: Decrease in Average
Monthly Lapsed Charges**



Question 3

How does EEOC monitor and supervise the activities of FEPAS? Is information readily available showing if EEOC's \$450 payment compensates FEPAS for the costs of investigating ADEA charges?

Response

Through assessments called "substantial weight reviews," EEOC monitors and oversees FEPAS' investigations of ADEA charges claimed for reimbursement. EEOC examines all FEPA investigation files or reports on ADEA charges to decide the adequacy of the investigations/resolutions and compliance with EEOC standards. In addition, EEOC examines a sample of other types of FEPA charge investigations (primarily title VII charges). All examinations occur before EEOC pays the \$450 contract amount. If EEOC identifies substandard investigations, it withholds payment until its standards are met.

During our visits to three district offices, we confirmed that they made substantial weight reviews. EEOC district office staff generally review FEPA investigative files during visits to FEPA offices. By assessing the evidence obtained, they decide whether the investigation met EEOC standards.

But EEOC has limited authority over FEPAS. State or local governments established the FEPAS. FEPAS, which are responsible to state or local governments, are independent of EEOC's direct supervision and control. Nevertheless, EEOC depends on FEPAS to investigate and resolve many federal discrimination charges filed each year. During fiscal year 1991, FEPAS received 53,961 discrimination charges for processing; of these, 11,259 were ADEA charges. If FEPAS were to transfer many ADEA charges to EEOC, EEOC officials said its staff would be unable to promptly investigate and process the charges.

EEOC payments to FEPAS for resolving federal discrimination charges represent an important portion of FEPAS' total funding. In fiscal year 1991, EEOC entered into 126 contracts with state and local government FEPAS totaling \$20.2 million. Of these, 45 contracts totaling \$2.4 million were for resolving ADEA charges.

The \$450 payment to FEPAS for each resolved charge is not based on actual costs to investigate a charge. EEOC officials and FEPA representatives we visited said that, while they had not developed data on FEPA investigative costs, they believed that the average costs would exceed \$450.

Question 4

How does EEOC assign its resources between investigating age discrimination and other types of discrimination complaints?

Response

EEOC does not assign its investigative staff to work on only one type of charge, that is, ADEA or title VII charges. However, as discussed earlier, during the period covered by our review, EEOC gave priority to investigating and resolving ADEA charges. According to an EEOC official, EEOC does not plan to change its ADEA prioritization policy. However, he said that removal of the 2-year limitation provision in 1991 makes it likely that EEOC district offices and FEPAS will begin to give ADEA charges the same priority as other charges.

Question 5

What differences exist in how EEOC processes and investigates age discrimination charges and other types of discrimination charges?

Response

While the evidence EEOC obtains when it investigates ADEA charges is similar as that for other discrimination charges (mainly title VII), it

processes the ADEA charges differently in several ways. This is largely because title VII requires investigation of discrimination charges, but ADEA requires only attempted conciliation, not investigation, of charges. Since 1983, however, EEOC policy has required attempts of full investigation of ADEA charges by both EEOC and FEPA investigators.

Discussion

ADEA charges often involve issues about known and undisputed facts, such as an employee's early retirement offer or pension issues, EEOC officials said. These issues require careful analysis to decide if known conditions or actions are violations. In contrast, title VII charges are more likely to involve disputes about the facts, and EEOC tailors its investigations to gather evidence to resolve these disputes.

Because of EEOC policies and differences in the laws and regulations governing ADEA and title VII charges, however, different administrative processes apply. These processes concern such matters as (1) full investigation requirements, (2) earliest that federal suits may be filed, (3) latest that federal suits may be filed, (4) timeliness of charges, (5) deferral to FEPAs of charges filed with EEOC, and (6) minimum number of employees for employers to be covered. (See fig. II.3.)

**Appendix II
Questions and Responses About EEOC
Administration of ADEA Charges**

Figure II.3: Differences in Administrative Procedures Required by ADEA and Title VII

Issue	ADEA	Title VII
Requirement for full investigation of all charges	No	Yes
Earliest that federal suits may be filed by individuals	60 days after filing charges	181 days after filing charges or earlier if EEOC resolves or dismisses charges
Latest that federal suits may be filed by individuals	Within 90 days after notice of charge resolution or dismissal if violations occurred on or after November 21, 1991; within 2 years of violation dates if violations occurred before November 21, 1991.	Within 90 days after notice of charge resolution or dismissal
Timeliness of charges	EEOC accepts and processes charges up to 3 years after the alleged violations. ^a	Charges filed with EEOC must be filed within 180 days of alleged violation; those filed with FEPAs must be filed within 300 days
Giving FEPAs option to process charges (deferral)	EEOC charges are not deferred to FEPAs. ^b	Charges must be deferred to FEPAs for 60 days when state has jurisdiction
Minimum number of employees required for coverage	Covers employers with 20 or more employees	Covers employers with 15 or more employees

^aTime limits for filing charges under ADEA are the same as for title VII, 180 or 300 days. However, EEOC responded in its comments that it has used its discretion under ADEA to assume jurisdiction over any violation occurring within the 2-year (3-year for willful violations) statute of limitations.

^bUnder ADEA, to avoid duplication of effort EEOC may refer charges to state FEPAs, in states where an age discrimination law is in effect.

As previously discussed, the Civil Rights Act of 1991 repealed the 2-year statute of limitations for initiating litigation but did not affect the other differences in administrative procedures in the above figure.

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