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UNITED STATES GENERAL ACCOUNTING OFFICE  
WASHINGTON, D.C. 20548

FEDERAL PERSONNEL AND  
COMPENSATION DIVISION

20107

NOVEMBER 20, 1981

B-205303

The Honorable Claude Pepper  
Chairman, Select Committee  
on Aging  
House of Representatives

Dear Mr. Chairman:

Subject: Age Discrimination and Other Equal  
Employment Opportunity Issues in the  
Federal Work Force (FPCD-82-6)

This report responds to your March 17, 1981, request that we determine whether Federal employees are being treated in a manner free of age discrimination. You asked us to identify the key issues relating to the Government's treatment of its older workers. During our discussion with the Committee staff, we agreed to concentrate on the following four issues:

- The system for processing discrimination complaints.
- How age complaints are processed in relation to complaints dealing with race, sex, national origin, or other discrimination issues.
- The severity of age discrimination in the Federal work force.
- Occupational exemptions from the Age Discrimination in Employment Act.

We reviewed all the files of 35 discrimination cases that the Equal Employment Opportunity Commission (EEOC) recently completed, and we analyzed selected data in those files. We also analyzed other documents maintained by EEOC and the Office of Personnel Management (OPM), such as case file logs,

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internal studies, and statistical data. Further, we interviewed numerous EEOC and agency personnel, union officials, members of groups representing the aged, and EEO advisory council representatives in several agencies. (See enc. I.)

PROBLEMS IN DISCRIMINATION  
COMPLAINT PROCESSING

In a 1977 study, we reported that formal EEO complaints were rarely processed within the established 180 calendar-day standard. <sup>1/</sup> (See enc. II for a description of how the complaint processing system is supposed to operate.) During our current work, we found that processing delays continue to be a significant problem which affects age as well as other categories of discrimination complaints.

In October 1980, EEOC issued a staff report on its investigation of discrimination complaint processing in the Federal sector. The report stated:

"Extensive delay has been the rule, rather than the exception, and serious questions have been raised as to the levels and adequacy of relief obtained for complainants."

This observation is supported by data EEOC accumulated on agency case completions during fiscal year 1980. According to that data, which was for all types of discrimination complaints, the average time it took to process a case was 757 calendar days for an agency processing 115 cases; 665 days for an agency processing 166 cases; and 528 calendar days for an agency processing 563 cases. Even when complaints were rejected, some agencies significantly exceeded the 180-day standard. The average time it took to reject a case was 316 days at an agency that rejected 49 complaints, 265 days at an agency that rejected 32 complaints, and 210 days at an agency that rejected 24 complaints. (See enc. III.) Our review of the files of 35 recently completed cases showed similar times for complaint processing in the agencies.

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<sup>1/</sup>System for Processing Individual Equal Employment Opportunity Complaints: Improvements Needed (FPCD-76-77, Apr. 8, 1977).

These time frames do not include the time EEOC spent to process appeals complainants filed after receiving agencies' final decisions. Our analysis of EEOC records indicates, that on the average, it took another 297 calendar days to process appeals as follows:

	Average calendar days (note a)
Appeal was filed and the case file was requested from the agency	80
File was requested from the agency and file was received at EEOC (note b)	66
File was received at EEOC and EEOC attorney reached a decision	95
EEOC attorney reached a decision and decision was issued	<u>56</u>
Total	<u>297</u>

a/These times include actual processing time and time awaiting processing.

b/This item is based on entries in EEOC logs covering a period of about 2-1/4 years ended July 1981. Other entries in this table cover activities occurring during calendar years 1980 and 1981.

The Director of EEOC's Office of Review and Appeals told us that he does not have enough staff to process appeals faster. He said the number of appeals is increasing while the size of his staff is not; thus, he did not expect his office's processing time to improve.

Agencies do not meet time standards while complainants are held to theirs

If complainants do not comply with the following EEOC requirements, agencies can refuse to accept complaints or can discontinue processing them.

--A complainant must contact an equal employment opportunity counselor within 30 days of the date the alleged discriminatory incident occurred or within 30 days of the effective date of a personnel action in which discrimination is alleged.

--The complainant has 15 days to file a formal complaint after he/she has the final interview with the equal employment opportunity counselor.

--If the agency accepts the complaint, the complainant has 15 days, after the agency informs him/her of the proposed agency disposition, to request a hearing or a final agency decision.

--After receiving the agency's final decision, the complainant has 20 days to file an appeal with EEOC.

During our review of the 35 case files, we found several instances where allegations were rejected because complainants did not file on time or failed to proceed with the case. At the same time, EEOC records showed that agencies often exceeded by a wide margin the 180-day standard for processing cases. (See p. 2 and enc. III.) Moreover, EEOC averaged nearly 300 days to process appeals. (See p. 3.)

A senior EEOC official informed us that EEOC is developing new regulations that may address complaint processing time and simplify procedural requirements. However, these regulations are in the early stages of preparation and, according to the EEOC official, are not likely to be issued before early in fiscal year 1983.

Agency compliance with EEOC's Office of Review and Appeals decisions is uncertain

According to the compliance officer at EEOC's Office of Review and Appeals, agencies generally attempt to comply with appeal decisions, and she believes that about 90 percent of them do. However, EEOC has no procedure to independently determine whether actions were taken on its decisions. The compliance officer said EEOC relies on complainants' notification that agencies have not implemented an EEOC decision. The compliance officer also told us that agencies are required to submit a compliance report within 30 days after the formal EEOC decision, but that agencies are not meeting this requirement.

The Office of Review and Appeals has made internal recommendations to address compliance problems. These recommendations include:

--Developing a general letter of compliance instructions to be sent to the agencies.

- Setting up a "tickler" system to automatically advise agencies if they are late in sending action reports on their compliance plans.
- Sending an information letter to appellants telling them about their rights and where to get assistance.
- Conducting more training and providing more literature to Federal employees advising them of their rights.
- Publishing compliance regulations which specify time limits, EEOC enforcement procedures, sanctions, etc.
- Budgeting funds for more equipment and people to track cases and the status of compliance actions.

At the time of our study, EEOC had not taken action on these recommendations. Thus, it still has no way of verifying how many agencies actually comply with its decisions.

#### AGE CASES APPEAR TO RECEIVE SAME PRIORITY AS OTHER DISCRIMINATION COMPLAINTS

Our analysis of 35 selected cases indicated that all discrimination complaints are processed in the same manner at both the agency and EEOC levels. According to the Code of Federal Regulations (29 CFR 1613.511), age complaints are to be processed according to the same procedures that apply to other discrimination complaints, such as race and sex. The notable exception is that an employee alleging discrimination because of age may, after giving EEOC a 30-day notice of intent, enter into a civil action. Employees with other discrimination complaints must exhaust the administrative process, or the agency processing time must exceed the 180-day standard before they can take civil action.

Many of the cases we analyzed included allegations of discrimination based on more than one category--for example, race and sex. Most of the age cases we reviewed included at least one other discrimination category. Therefore, it would be difficult for an agency or EEOC to assign a lower processing priority to any single category of discrimination without affecting other categories.

#### SEVERITY OF AGE DISCRIMINATION IN FEDERAL WORK FORCE IS NOT CLEAR

We discussed the issue of age discrimination in the Federal Government with representatives of unions, groups

representing the aged, and EEO advisory councils at several agencies. We also reviewed available statistical information.

Most of the union representatives we interviewed and representatives of the National Caucus Center on the Black Aged believed that age discrimination is a growing problem in the Federal Government. However, none of these groups had statistics to support this belief or to show the extent of age discrimination.

Agency EEO advisory council and EEO officials with whom we spoke did not believe that age discrimination was a serious problem. They pointed out that the number of age cases being processed by their agencies was small in relation to the total number of discrimination complaints. For example, an EEO official at the U.S. Postal Service said that only 5 to 6 percent of about 3,000 discrimination complaints filed at that agency during fiscal year 1980 involved age.

An EEOC report showed that agencies reported 10,409 formal complaints during fiscal year 1980. Some of these complaints alleged discrimination based on multiple categories. The total number of formal complaints reported by discrimination category was 13,129. Of this number, 8,705, or 66 percent, were attributed to race/color and sex while 1,551, less than 12 percent, were attributed to age.

The other groups we talked with said their primary concerns were with retirement issues. Most of these groups' efforts are concentrated in the nonwork environment, and they have little or no knowledge about age discrimination in the active Federal work force.

CERTAIN OCCUPATIONS ARE EXEMPT  
FROM THE PROVISIONS OF THE AGE  
DISCRIMINATION IN EMPLOYMENT ACT

The Age Discrimination in Employment Act provides that agencies, with OPM approval, may establish exemptions to the act's provisions when age is determined to be a bona fide occupational qualification necessary to perform the duties of a position. Among the agencies which have exempt occupations are the Federal Bureau of Investigation, the Bureau of Prisons, the Drug Enforcement Agency, the Postal Service, the Department of Interior, and the Department of Transportation.

Except for the Department of Transportation's air traffic controllers, exempt occupations usually involve protective services, such as law enforcement. 1/

Exemptions from the Age Discrimination in Employment Act have been the subject of court action. On March 26, 1979, two job applicants took court action under the Age Discrimination in Employment Act to challenge the Bureau of Prisons' refusal to hire them for clerical positions in a correctional facility because they were over 35 years of age. The case was remanded to the U.S. Civil Service Commission (now OPM) to determine (1) which positions in the Bureau of Prisons qualify as "law enforcement officer" positions within the meaning of 5 U.S.C. § 8331(20) for the purpose of the age discrimination statutes and (2) the minimum and maximum limits of age within which an original appointment may be made to such position pursuant to 5 U.S.C. § 3307(d). OPM concluded that, even in clerical positions, the employees would have daily contact with inmates and that all Bureau of Prisons' employees working within the institutions qualify as law enforcement officers.

In December 1979, the applicants reopened the case on renewed motions. The court found that the Bureau and OPM had acted in accordance with statutes in determining that the occupations were exempt from age discrimination laws. Thus, the court ordered the case dismissed.

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We discussed the information in this report with EEOC management officials. However, at the request of Committee staff, we did not obtain official comments from EEOC. Unless you publicly announce its contents earlier, we will not distribute this report further until 15 days after it

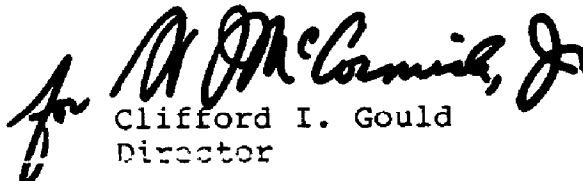
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1/For information on a GAO study on the need for age restrictions in protective service occupations, see GAO report entitled "Special Retirement Policy for Federal Law Enforcement and Firefighter Personnel Needs Reevaluation" (FPCD-76-97, Feb. 24, 1977).

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is issued. At that time, we will send copies to interested persons and make copies available to others upon request.

Sincerely yours,

  
Clifford I. Gould  
Director

Enclosures - 3



LISTING OF ORGANIZATIONS CONTACTED

Agencies

Equal Employment Opportunity Commission  
Office of Personnel Management  
Department of the Army  
Department of Agriculture  
Department of the Interior  
Veterans Administration  
U.S. Postal Service

Unions

American Federation of Government Employees  
Metal Trades Council  
National Association of Government Employees  
National Federation of Federal Employees

Groups representing the aged

National Council for Senior Citizens  
National Caucus Center on the Black Aged  
National Council on Aging  
National Association of Retired Persons  
National Association of Retired Federal Employees

EEO Advisory Council representatives

Forest Service  
Department of Agriculture  
Farmers Home Administration  
Soil Conservation  
Postal Service

SUMMARY OF DISCRIMINATION COMPLAINT  
PROCESSING SYSTEM

An employee or applicant for employment may seek redress administratively through the EEO complaint processing system or through the courts by civil action against any perceived act of discrimination. The EEO complaint processing system covers individual complaints based on race, color, religion, sex, national origin, age, or physical or mental handicap. Complainants may have a representative of their choice at any stage of the process.

The required steps for processing an individual complaint are:

1. An employee or applicant contacts an EEO counselor within 30 calendar days after the alleged discriminatory act or within 30 days of the effective date of a personnel action in which discrimination is alleged.
2. The EEO counselor attempts to informally resolve the complaint within 21 calendar days. If the counselor cannot resolve the complaint, he/she notifies the complainant how and where to file a formal discrimination complaint.
3. The complainant or his/her representative must file a formal discrimination complaint, which specifically identifies the alleged act of discrimination, within 15 calendar days after his/her final interview with the EEO counselor.
4. The agency accepts or rejects the complaint. The agency may reject a complaint that is not timely filed or where the complainant fails to proceed with the case. The agency must reject allegations which (a) are not based on race, color, religion, sex, national origin, age, or physical or mental handicap or (b) set forth identical matters contained in previous complaints filed by the same complainant. If rejected, the complainant may appeal to EEOC within 20 calendar days.
5. If the agency accepts the complaint, an investigation is held. The complainant is provided a copy of the investigator's report.

6. Agency officials and the complainant meet to informally resolve the complaint. If the complaint is not resolved, the agency issues a proposed disposition and informs the complainant of hearing rights.
7. Within 15 days after receiving the proposed disposition, the complainant may (a) request a hearing conducted by a complaints examiner and a subsequent decision by the head of the agency or his/her designee, (b) request the head of the agency or his/her designee to render a final decision without a hearing, or (c) do nothing, in which case the agency will adopt the proposed disposition as final.
8. After receiving the final decision, the complainant may appeal to EEOC within 20 days.

A complainant filing on the basis of age discrimination may choose not to follow the administrative procedures and file a civil action after giving EEOC a 30-day notice of intent. People filing on any basis other than age must exhaust the administrative process or the agency processing time must exceed the 180-day standard before a complainant can take civil action.

EEOC REPORT ON AGENCIES' CASE COMPLETIONS  
DURING FY 1980

AGENCY	TOTAL CLOSURE	REJECTIONS			WITHDRAWALS			SETTLEMENTS PRIOR TO DECISIONS			DECISIONS ON MERITS		
		NUMBER	% OF TOTAL CLOSURE	AVERAGE TIME TO CLOSURE	NUMBER	% OF TOTAL CLOSURE	AVERAGE TIME TO CLOSURE	NUMBER	% OF TOTAL CLOSURE	AVERAGE TIME TO CLOSURE	NUMBER	% OF TOTAL CLOSURE	AVERAGE TIME TO CLOSURE
ACTION	10	0	0%	-	4	40%	*	3	30%	*	3	30%	*
Agency for International Development	8	0	0%	-	3	38%	885	0	0%	-	5	62%	1233
Agriculture	64	7	11%	824	26	41%	3135	9	14%	1736	22	34%	4397
Bureau of Engraving and Printing	0	0	-	-	0	-	-	0	-	-	0	-	-
Central Intelligence Agency	11	2	18%	120	3	27%	*	1	9%	240	5	45%	540
Civil Aeronautics Board	47	0	0%	-	45	96%	58	1	2%	80	1	2%	180
Commission on Civil Rights, U S.	4	0	0%	-	2	50%	421	1	25%	595	1	25%	713
Commerce	71	32	45%	265	15	21%	333	0	0%	-	24	34%	993
Commodity Futures Trading Commission	1	0	0%	-	0	0%	-	0	0%	-	1	100%	470
Community Services Administration	10	5	50%	73	2	20%	180	1	10%	365	2	20%	182
Consumer Product Safety Commission	1	1	100%	60	0	0%	-	0	0%	-	0	0%	-
Defense	1124	199	18%	77	298	26%	224	91	8%	114	536	48%	528
Education	10	5	50%	*	0	0%	-	5	50%	*	0	0%	-
Energy	23	8	35%	144	4	17%	382	2	9%	517	9	39%	769
Environmental Protection Agency	73	49	67%	316	7	10%	575	3	4%	514	14	19%	872
Equal Employment Opportunity Comm.	56	14	25%	58	9	16%	146	6	11%	228	27	48%	476
Export-Import Bank of the U.S.	0	0	-	-	0	-	-	0	-	-	0	-	-
Federal Communications Commission	4	1	25%	39	2	50%	213	1	25%	282	0	0%	-
Federal Labor Relations Authority	4	1	25%	0	3	75%	91	0	0%	-	0	0%	-

AGENCY	TOTAL CLOSURE	REJECTIONS			WITHDRAWALS			SETTLEMENTS PRIOR TO DECISIONS			DECISIONS ON MERITS		
		NUMBER	% OF TOTAL CLOSURE	AVERAGE TIME TO CLOSURE	NUMBER	% OF TOTAL CLOSURE	AVERAGE TIME TO CLOSURE	NUMBER	% OF TOTAL CLOSURE	AVERAGE TIME TO CLOSURE	NUMBER	% OF TOTAL CLOSURE	AVERAGE TIME TO CLOSURE
Federal Trade Commission	8	1	12%	9	2	25%	118	5	63%	246	0	0%	-
Federal Maritime Commission	0	0	0%	-	0	0%	-	0	0%	-	0	0%	-
Government Printing Office, U.S.	23	5	22%	24	2	9%	92	6	26%	230	10	4%	598
General Services Administration	109	9	8%	38	36	33%	199	34	31%	234	30	29%	428
Health and Human Services	506	91	18%	123	110	22%	64	52	10%	395	253	50%	469
Housing and Urban Development	74	24	33%	142	4	5%	163	23	31%	392	23	31%	535
Interior	135	21	15%	107	39	29%	339	36	27%	601	39	29%	497
Interstate Commerce Commission	5	0	0%	-	1	20%	350	3	60%	*	1	20%	95
International Communication Agency	9	2	22%	32	3	33%	184	0	0%	-	4	45%	203
Justice	117	24	21%	210	20	17%	182	11	9%	340	62	53%	743
Labor	78	11	14%	30	23	30%	105	25	37%	195	19	24%	685
National Aeronautics & Space Administration	20	3	15%	106	9	45%	350	1	5%	315	7	35%	508
National Labor Relations Board	8	2	25%	140	0	0%	-	2	25%	480	4	50%	337
National Science Foundation	0	0	0%	-	0	0%	-	0	0%	-	0	0%	-
National Endowment for the Humanities	4	2	50%	*	1	25%	*	0	0%	-	1	25%	*
National Transportation Safety Board	0	0	0%	-	0	0%	-	0	0%	-	0	0%	-
Nuclear Regulatory Commission	4	1	25%	15	1	25%	58	2	50%	332	0	0%	-
Occupational Safety & Health Review Comm.	0	0	0%	-	0	0%	-	0	0%	-	0	0%	-
Office of Personnel Management	26	9	35%	43	3	11%	112	1	4%	127	13	50%	503

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ENCLOSURE III

ENCLOSURE III

AGENCY	TOTAL CLOSURE	REJECTIONS			WITHDRAWALS			SETTLEMENTS PRIOR TO DECISIONS			DECISIONS ON MERITS		
		NUMBER	% OF TOTAL CLOSURE	AVERAGE TIME TO CLOSURE	NUMBER	% OF TOTAL CLOSURE	AVERAGE TIME TO CLOSURE	NUMBER	% OF TOTAL CLOSURE	AVERAGE TIME TO CLOSURE	NUMBER	% OF TOTAL CLOSURE	AVERAGE TIME TO CLOSURE
Pension Benefit Guaranty Corporation	8	1	12%	5	5	63%	61	0	0%	-	2	25%	15
Postal Service, United States	4311	948	22%	*	1957	45%	*	235	6%	*	1171	27%	*
Railroad Retirement Board, United States	6	2	33%	7	1	17%	30	1	17%	60	2	33%	405
Securities and Exchange Commission, U.S.	0	0	-	-	0	-	-	0	-	-	0	-	-
Small Business Administration	24	9	38%	50	7	29%	73	2	8%	213	6	25%	453
Smithsonian Institution	12	0	0%	-	0	0%	-	4	33%	375	8	67%	396
State, Department of	9	2	22%	235	0	0%	-	0	0%	-	7	88%	1130
Tennessee Valley Authority	100	10	10%	32	48	48%	187	11	11%	105	31	31%	479
Transportation	7	3	42%	*	0	0%	-	2	29%	30	2	29%	*
Treasury	324	39	12%	220	170	52%	*	0	0%	-	115	36%	757
Veterans' Administration	366	87	24%	413	113	31%	356	0	0%	-	166	45%	665