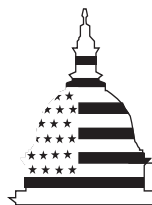


August 1999

EQUAL EMPLOYMENT OPPORTUNITY

Complaint Caseloads Rising, With Effects of New Regulations on Future Trends Unclear



G A O

Accountability * Integrity * Reliability

B-283327

August 16, 1999

The Honorable Elijah E. Cummings
Ranking Minority Member
Subcommittee on Civil Service
Committee on Government Reform
House of Representatives

The Honorable Albert R. Wynn
House of Representatives

In July 1998, we reported that from fiscal year 1991 to fiscal year 1997, the inventory of unresolved equal employment opportunity (EEO) complaints at federal agencies and the U. S. Equal Employment Opportunity Commission (EEOC) and the time taken to process them had increased because agencies and EEOC had not been able to keep up with the influx of new cases.¹ This report responds to your request that we update the analyses presented in our July 1998 report of (1) trends in the size of inventories and the age of cases in inventory at various stages of the EEO complaint process, (2) trends in the number of complaints filed by federal employees and the time taken by agencies and EEOC to process them, and (3) implications of these trends and how future caseloads may be affected by EEOC's regulatory changes to the complaint process.²

Results in Brief

Inventories of unresolved federal sector discrimination cases at agencies and EEOC have continued to grow. Overall, from fiscal year 1991 to fiscal year 1998, complaint inventories at federal agencies rose by about 114 percent, to 36,333. At EEOC, during the same period, the hearings inventory rose by 280 percent, to 11,967, while the appeals inventory went up by 648 percent, to 10,966. As inventories grew, the average age of cases in agencies' inventories (446 days) and EEOC's hearings (320 days) and appeals (293 days) inventories also reached new levels.

¹Equal Employment Opportunity: Rising Trends in EEO Complaint Caseloads in the Federal Sector (GAO/GGD-98-157BR, July 24, 1998).

²In Equal Employment Opportunity: Data Shortcomings Hinder Assessment of Conflicts in the Federal Workplace (GAO/GGD-99-75, May 4, 1999), we reported on faults in the EEO complaint caseload data. Several of those shortcomings relate to the lack of data needed to answer certain fundamental questions about workplace conflicts and are not necessarily related to total caseloads. These are, however, shortcomings that could affect total caseload measurements. On balance, total caseload data currently available, while needing further quality assurance checks, do present useful information on the volume of complaints actually being processed in the federal EEO complaint system.

The size of the inventories and the age of cases in them continued their upward trend during fiscal year 1998 as neither the agencies nor EEOC kept up with the influx of new cases. Agencies' inventories grew by 6 percent in fiscal year 1998 despite a 2.8 percent decline in the number of new complaints. The growth in EEOC's inventory of hearing requests during this period—19.5 percent—was greater than the increase in the number of new hearing requests, which rose by 9.2 percent. At the same time, EEOC's appeals inventory increased by 9.9 percent, even though the number of new appeals filed remained almost unchanged.

The average time to process a complaint at agencies showed a small decline in fiscal year 1998, from 391 to 384 days, but there were sharp increases in the average time EEOC took to process hearing requests (rising from 277 to 320 days) and appeals (rising from 375 to 473 days). A case traveling the entire complaint process—from complaint filing at the agency through hearing and appeal—could be expected to take 1,186 days (about 38 months) to process, based on fiscal year 1998 data. This was 91 days (3 months) longer than in fiscal year 1997.

The logjams at EEOC and agencies are likely to persist, at least in the short run, as long as agencies and EEOC receive more new cases than they process and close. The long-term outlook, however, is unclear. Substantive revisions to complaint program regulations and procedures are to be implemented beginning in November 1999. These revisions are intended to reduce the volume of cases flowing through the complaint process. The revisions include a requirement that agencies offer alternative dispute resolution (ADR), as well as other rules to reduce the opportunities for multiple complaints by the same complainant. However, EEOC has not yet developed estimates of how the revisions to program regulations will affect caseload trends and resource needs, nor has the agency completed development of measures and indicators to track the effects of these revisions once they are implemented. We recommend that EEOC develop such estimates and complete development of measures and indicators to track and assess the impact of these revisions on caseload trends.

Background

Federal employees, including postal workers, are protected by a variety of laws against discrimination based on race, color, sex, religion, national origin, age, or disability.³ In addition, federal employees are protected from

³We refer to the U. S. Postal Service as a federal agency, even though it is an independent governmental establishment, because it is bound by most of the same discrimination complaint processes that apply to most federal agencies.

retaliation for filing a complaint, participating in an investigation of a complaint, or opposing a prohibited personnel practice.⁴

Federal employee EEO complaints are to be processed in accordance with regulations (29 C.F.R. part 1614) promulgated by EEOC. These regulations also establish processing time requirements for each stage of the complaint process. Under these regulations, federal agencies decide whether to dismiss or accept complaints employees file with them and investigate accepted complaints. After the investigation, a complainant can request a hearing before an EEOC administrative judge who may issue a recommended decision that the agency is to consider in making its final decision. An employee who is dissatisfied with a final agency decision or its decision to dismiss a complaint may file an appeal with EEOC.⁵ Generally, federal employees must exhaust the administrative process before pursuing their complaints in court.⁶

EEOC will be implementing changes to the complaint process beginning in November 1999. One of the most significant changes involves decisions issued by administrative judges. Under the regulations, these decisions would no longer be recommendations that agencies could modify. Rather, as its final action (as final decisions will be called), an agency would issue a final order indicating whether or not it would fully implement the administrative judge's decision. If the agency chooses not to fully implement the decision, it will be required to file an appeal of the decision with EEOC. Complainants would retain their right to appeal an agency's final order. For a further discussion of the complaint process and upcoming changes, see app. II.

In July 1998, we reported on our analysis of inventories of unresolved EEO complaints at federal agencies and EEOC and how trends in the number of

⁴Applicants for federal employment may file complaints with a federal agency that they believe engaged in discriminatory conduct.

⁵Postal workers who are covered under collective bargaining agreements and who allege discrimination have more redress opportunities than other federal workers covered under collective bargaining agreements. These postal workers can take two courses of action concurrently: (1) file a discrimination complaint under the federal employee discrimination complaint process and also (2) file a grievance through procedures under the collective bargaining agreement. Other federal workers who are employed by agencies subject to the provisions of title 5 of the U.S. Code and covered under collective bargaining agreements must choose between these two redress paths.

⁶An individual may file suit in federal district court under certain circumstances. For example, (1) after 180 days from the date of filing a complaint, if there has been no final agency decision and no appeal has been filed or (2) after 180 days from the filing of an appeal if there has been no final decision by EEOC.

complaints filed and the time taken to process them had contributed to inventory levels.⁷ We found that

- agencies' complaint inventories, and even more so, EEOC's hearings and appeals inventories, had increased since fiscal year 1991;
- as the size of inventories grew, so did the average length of time that cases had been in inventory as well as the proportion of cases remaining in inventory longer than allowed by regulations;
- the size of the inventories and the age of cases in them increased as agencies and EEOC did not keep up with the influx of new cases;
- with the increased caseloads, EEOC and, to some extent, agencies, took longer on average to process complaints, contributing to the size and age of inventories; and
- the implications of these trends were that inventories of cases pending would grow even larger in the future, particularly at EEOC, and that cases would take even longer to process.

Scope and Methodology

In updating our analysis, we used preliminary data for fiscal year 1998 provided by EEOC and reviewed the agency's budget request for fiscal year 2000 and its Annual Performance Plans for fiscal years 1999 and 2000. We also examined EEOC's planned changes to the complaint process. In addition, because postal workers have accounted for about half of the complaints filed in recent years, we separately analyzed data reported by the U.S. Postal Service in order to compare statistics for the postal workforce with the nonpostal workforce (see app. III). Appendix I contains details about our scope and methodology.

We requested comments on a draft of this report from the Chairwoman, EEOC, and the Postmaster General. Their comments are discussed near the end of this letter. We performed our work from March through May 1999 in accordance with generally accepted government auditing standards.

Complaint Inventories Continued to Rise

Since we last reported in July 1998, agencies' complaint inventories and, even more so, EEOC's hearings and appeals inventories were, once again, higher. Table 1 shows the trends in the inventories of complaints at agencies and of hearing requests and appeals at EEOC for fiscal years 1991 to 1998.

⁷GAO/GGD-98-157BR.

Table 1: Inventories of Complaints at Agencies and Hearing Requests and Appeals at EEOC for Fiscal Years 1991-1998

	Number of cases								Percent increase
	1991	1992	1993	1994	1995	1996	1997	1998	
Complaints	16,964	18,668	22,258	27,044	30,605	31,195	34,286	36,333	114.2
Hearing requests	3,147	3,977	3,991	5,177	6,367	8,275	10,016	11,967	280.3
Appeals	1,466	2,029	2,900	4,363	6,498	8,376	9,980	10,966	648.0

Source: GAO analysis of EEOC data.

At agencies, the inventory of unresolved complaints had risen from 16,964 at the end of fiscal year 1991 to 34,286 by the end of fiscal year 1997. One year later, agencies' inventories of unresolved complaints had increased by an additional 6 percent, to 36,333.⁸ Inventory levels increased at the Postal Service and nonpostal agencies in fiscal year 1998, but growth was more rapid in the nonpostal agencies. Compared with fiscal year 1997, the Postal Service inventory increased by 3.3 percent, from 13,549 to 13,996 (see app. III, table III.1), while the inventories at nonpostal agencies rose by 7.7 percent, from 20,737 to 22,337. Overall, from fiscal year 1991 to fiscal year 1998, complaint inventories at federal agencies rose by about 114 percent.

The increase in agencies' inventories was accounted for mainly by the growing number of the agencies' cases pending a hearing before an EEOC administrative judge. An agency's inventory of unresolved complaints is affected by EEOC's handling of hearing requests because EEOC must resolve a hearing request before an agency can make a final decision on the complaint. Of the 36,333 cases in agencies' inventories at the end of fiscal year 1998, 13,357 (about 37 percent) were awaiting a hearing before an EEOC administrative judge. The 13,357 cases awaiting a hearing before an EEOC administrative judge represented a 3,755 case (39 percent) increase over the fiscal year 1997 level of 9,602. The increase in the number of cases in the hearing stage more than offset reductions in the number of cases in agencies' inventories at the initial acceptance/dismissal and final agency decision stages of the complaint process.

At EEOC, the inventory of hearing requests, which had increased from 3,147 at the end of fiscal year 1991 to 10,016 at the end of fiscal year 1997, increased by an additional 19.5 percent, to 11,967, by the end of fiscal year 1998. Overall, from fiscal year 1991 to fiscal year 1998, EEOC's hearing request inventory rose by about 280 percent. EEOC's inventory of appeals, which had increased from 1,466 to 9,980 during fiscal years 1991 to 1997, increased by an additional 9.9 percent, to 10,966, by the end of fiscal year

⁸The figure for fiscal year 1997 is revised from the preliminary figure reported in GAO/GGD-98-157BR.

1998. Overall, from fiscal year 1991 to fiscal year 1998, EEOC's appeals inventory rose by 648 percent. (See app. IV, figure IV.2).

Age of Complaints in Inventories Continued to Grow

As the size of the inventories continued to grow, so did the average length of time that cases, and the conflict underlying these complaints, remained unresolved. Table 2 shows the trends in the average age of complaints in agencies' inventories and of hearing requests and appeals in EEOC's inventories for fiscal years 1991 to 1998.

Table 2: Average Age of Complaints in Agencies' Inventories and Hearing Requests and Appeals in EEOC's Inventories for Fiscal Years 1991-1998

	Average age of cases (days)							
	1991	1992	1993	1994	1995	1996	1997	1998
Complaints	379	377	368	289	367	397	438	446
Hearing requests	128	171	105	125	162	205	243	320
Appeals	^a	87	99	127	179	241	285	293

^aNot reported.

Source: GAO analysis of EEOC data.

The Situation at Agencies

The overall average age of unresolved complaints in agencies' inventories, after declining through fiscal year 1994, reached a new level of 446 days at the end of fiscal year 1998. The age of cases varied by the stage of the complaint process. Table 3 shows the average age of complaints in inventory, from the time a complaint was filed, at various stages of the complaint process, both overall and at the Postal Service and nonpostal agencies at the end of fiscal year 1998. (Also see app. IV, figure IV.3 for trends in the average age of complaints in inventory at the various stages of the complaint process for fiscal years 1991 to 1998.)

Table 3: Average Age of Cases in Inventory at the Postal Service and Nonpostal Agencies by Stage of the Complaint Process for Fiscal Year 1998

	Stage of complaint process				
	Acceptance/dismissal	Investigation	Hearing	Agency decision	All cases
Postal Service	212	300	675	285	450
Nonpostal agencies	267	309	621	589	446
All federal agencies	258	305	645	477	446

Note: Numbers represent days.

Source: GAO analysis of EEOC data.

As table 3 shows, the complaints that were in agencies' inventories the longest at the end of fiscal year 1998 were those awaiting a hearing before an EEOC administrative judge. The average age of cases awaiting a hearing had a significant impact on the overall average age of unresolved complaints in inventory, particularly at the Postal Service.

Because cases remained in inventory for lengthy periods, agencies frequently did not meet the regulatory requirement that they dismiss or accept a complaint, investigate an accepted complaint, and report the investigation results to the complainant within 180 days from the filing of a complaint (see app. IV, figure IV.4).⁹ The proportion of cases pending the initial acceptance or dismissal decision more for than 180 days stood at 32.5 percent in fiscal year 1998. At the Postal Service, 65.5 percent of cases in the acceptance/dismissal stage had been in inventory more than 180 days at the end of fiscal year 1998 (see app. III, table III.3); the figure for nonpostal agencies was 26.2 percent. Of the complaints pending investigation, 48.3 percent had been in inventory more than 180 days. At the Postal Service, 36.5 percent of cases in the investigation stage had been in inventory more than 180 days at the end of fiscal year 1998 (see app. III, table III.3); the figure for nonpostal agencies was 52 percent.

The Situation at EEOC

At EEOC, the average age of cases in both the agency's inventory of hearing requests and its inventory of appeals was higher in fiscal year 1998 than in fiscal year 1997 (see table 2). The average age of hearing requests in inventory increased sharply, from 243 days in fiscal year 1997 to 320 days in fiscal year 1998. The figure for fiscal year 1998 is about 3 times what it was in fiscal year 1993, when the average age of a hearing request in inventory had reached a low of 105 days.

As a result of the rising age of hearing requests in inventory, a greater proportion of these cases did not meet the requirement in EEOC's regulations that administrative judges issue a recommended decision within 180 days of a request for a hearing. In fiscal year 1998, 56.2 percent of the hearing requests had been in inventory longer than the 180-day time limit, up from 50.3 percent the previous year. EEOC has had increasing difficulty meeting the 180-day requirement since fiscal year 1993, when 13.3 percent of hearing requests had been in inventory longer than the 180 days. (See app. IV, figure IV.6.) The increasing age of EEOC's hearing request inventory has been a major factor in the size and age of cases in agencies' inventories awaiting a hearing before an administrative judge.

In contrast to hearing requests, table 2 shows a smaller increase in the average age of appeals in EEOC's inventory, from 285 days in fiscal year 1997 to 293 days in fiscal year 1998 (see app. IV, figure IV.5). Nonetheless, the figure for fiscal year 1998 is more than 3 times what it was in fiscal year 1992, when the average age of appeals in inventory was 87 days.

⁹By agreement with the complainant, agencies can extend this period for an additional 90 days.

Although EEOC regulations prescribe time limits for processing hearing requests, they do not prescribe time limits for processing appeals. However, one indicator of the time it takes EEOC to process appeals is the percentage of cases remaining in inventory more than 200 days.¹⁰ EEOC's data show that in fiscal year 1998, 58.5 percent of the appeals cases remained in inventory longer than 200 days, a slight increase from fiscal year 1997, when this figure was 58 percent. However, the figures for fiscal years 1997 and 1998 represent a substantial increase compared with fiscal year 1991, when only about 3 percent of appeals had been in inventory longer than 200 days. (See app. IV, figure IV.7.)

Agencies and EEOC Unable to Keep Up With Influx of New Cases

The size of the inventories and the age of the cases in them continued their upward trend as agencies and EEOC did not keep up with the influx of new cases. As discussed later in this report, the increase in the number of complaints did not necessarily signify an equivalent increase in the actual number of individuals filing complaints. Table 4 shows the trends in the number of complaints filed with agencies and the number of hearing requests and appeals filed with EEOC for fiscal years 1991 through 1998.

Table 4: Number of Complaints Filed With Agencies and Hearing Requests and Appeals Filed With EEOC for Fiscal Years 1991-1998

	Number of cases								Percent increase
	1991	1992	1993	1994	1995	1996	1997	1998	
Complaints	17,696	19,106	22,327	24,592	27,472	26,410	28,947	28,147	59.1
Hearing requests	5,773	6,907	8,882	10,712	10,515	10,677	11,198	12,218	111.6
Appeals	5,266	5,997	6,361	7,141	8,152	8,001	8,453	8,480	61.0

Source: GAO analysis of EEOC data.

At agencies, the overall number of complaints, which had increased from 17,696 in fiscal year 1991 to 28,947 in fiscal year 1997, declined by 2.8 percent, to 28,147 in fiscal year 1998.¹¹ At the nonpostal agencies, the number of new cases declined, from 14,621 in fiscal year 1997 to 13,750 in fiscal year 1998. During this period, however, the number of new complaints at the Postal Service increased slightly, from 14,326 to 14,397 (see app. III, table III.5). Overall, the number of complaints filed with federal agencies in fiscal year 1998 was 59.1 percent higher than in fiscal year 1991.

¹⁰EEOC reports the age of cases in the appeals inventory along four time strata—1 to 100 days, 101 to 200 days, 201 to 365 days, and over 365 days.

¹¹The figure for fiscal year 1997 is revised from the preliminary figure reported in GAO/GGD-98-157BR.

At EEOC, requests for hearings, which increased from 5,773 to 11,198 during fiscal years 1991 to 1997, rose again, by 9.1 percent, to 12,218, in fiscal year 1998. Appeals to EEOC of agency decisions, however, which increased from 5,266 to 8,453 during fiscal years 1991 to 1997, increased only slightly, by three-tenths of 1 percent, to 8,480, in fiscal year 1998. Historically, the rate of growth in the number of hearing requests filed has outpaced that of appeals. Compared with fiscal year 1991, the number of hearing requests filed in 1998 was 111.6 percent higher; the comparable figure for appeals was 61 percent. More recently, since fiscal year 1995, the number of hearing requests filed increased by about 16 percent, while the number of appeals filed increased by about 4 percent.

Postal workers continue to account for a large and disproportionate share of complaints, hearing requests, and appeals. In fiscal year 1998, postal workers represented about 32 percent of the federal workforce and accounted for about 51 percent of complaints, about 47 percent of hearing requests, and about 47 percent of appeals.¹² (See app. III, tables III.4 and III.5.)

Processing Times Rose With the Influx of New Cases

With increasing caseloads since fiscal year 1991, agencies and EEOC have been taking longer on average to process complaints, contributing to the size and age of the inventories. Table 5 shows the average processing time for complaints at agencies and for hearing requests and appeals at EEOC for fiscal years 1991 to 1998.

Table 5: Average Processing Time for Complaints at Agencies and Hearing Requests and Appeals at EEOC for Fiscal Years 1991-1998

	Average processing time (days)							
	1991	1992	1993	1994	1995	1996	1997	1998
Complaints	341	349	366	356	305	379	391	384
Hearing requests	173	192	183	154	187	234	277	320
Appeals	109	120	148	185	229	323	375	473

Source: GAO analysis of EEOC data.

The Situation at Agencies

The overall average number of days agencies took to close a case, which had reached a low of 305 days in fiscal year 1995, was 384 days in fiscal year 1998. This represented a slight improvement over fiscal year 1997's 391-day average.

¹²In GAO/GGD-98-157BR, we reported that the Postal Service Manager, EEO Compliance and Appeals, identified two reasons for postal workers' higher propensity to file complaints. First, postal workers can simultaneously file an EEO complaint under the administrative process for federal employees and an EEO grievance under their collective bargaining agreement. About 40 percent of postal workers who have filed a complaint under the federal employee EEO complaint process have filed a grievance about the same matter. Second, about 85 percent of postal workers are blue-collar workers covered under collective bargaining agreements. This group of employees, according to the Postal Service official, tends to file complaints more often than white-collar workers.

Average closure time varied according to the type of closure action. In addition to closing cases by dismissing them or by issuing final decisions on their merits (with and without a hearing before an EEOC administrative judge), an agency may settle a case with a complainant or a complainant may withdraw his or her complaint. Table 6 shows average closure time for each type of closure overall and at the Postal Service and nonpostal agencies in fiscal year 1998 (see app. IV, figure IV.10 for average closure time by type of case closure for all agencies for fiscal years 1991 to 1998).

Table 6: Average Complaint Closure Time by Type of Case Closure at the Postal Service and Nonpostal Agencies in Fiscal Year 1998

	Type of case closure					
	Dismissed	Withdrawn	Settled	Decision without hearing	Decision with hearing	All cases
Postal Service	141	261	355	477	749	322
Nonpostal agencies	313	352	435	569	676	453
All federal agencies	203	302	404	524	713	384

Note: Numbers represent days.

Source: GAO analysis of EEOC data.

Table 6 shows that, in general, the Postal Service processed cases more quickly than nonpostal agencies in fiscal year 1998. One factor may have been that the Postal Service investigated complaints more quickly compared with nonpostal agencies. In fiscal year 1998, a complaint investigation at the Postal Service took an average of 174 days from the time a case was assigned to an investigator to when the investigation was completed. The comparable figure at nonpostal agencies was 283 days.

Table 6 also shows that complaints with final agency decisions involving a hearing took the longest to close. This figure is affected by EEOC's performance because a hearing precedes an agency's final decision; the longer EEOC takes to process a hearing request, the longer it will take an agency to make its final decision. As will be discussed below, EEOC has been taking longer to process hearing requests.

The Situation at EEOC

The increases in the amount of time to process cases were most apparent at EEOC. The average amount of time EEOC took to process a hearing request, which had increased from 173 days in fiscal year 1991 to 277 days in fiscal year 1997, increased further, to 320 days, in fiscal year 1998, well in excess of the 180-day requirement in regulations. Also, the time EEOC took to adjudicate an appeal, which had increased from 109 days in fiscal year 1991 to 375 days in fiscal year 1997, rose substantially in fiscal year 1998 to 473 days—or by 26 percent.

Because of the length of time taken by agencies and EEOC to process cases, parties to a case traveling the entire complaint process—from complaint filing through hearing and appeal—could expect the case to take 1,186 days, based on fiscal year 1998 data. In fiscal year 1997, this figure was 1,095.

Implications of the Trends in Inventories, New Cases, and Processing Times

The implications of these trends, at least in the short run, are that inventories of unresolved cases may grow even larger, particularly at EEOC, and that cases, as well as the conflicts underlying these cases, may take even longer to resolve than they currently do. The long-term outlook is uncertain. Only when EEOC and agencies are able to process and close more cases than they receive will progress be made toward reducing backlogs. The size of the caseloads will be influenced by the effect of revisions to the complaint process regulations and procedures, while agencies' and EEOC's capacity to process cases will be affected by available resources. EEOC projects that the number of new cases will continue to rise and exceed its capacity to process them, resulting in yet higher inventories and case processing times. EEOC's projections, however, do not take into account how complaint process revisions may affect caseload trends and resource needs.

Factors Affecting the Size of the Complaint Caseload

In our July 1998 report about rising trends in EEO complaint caseloads, we reported that the increase in the number of discrimination complaints could be attributed to several factors, according to EEOC, dispute resolution experts, and officials of federal and private-sector organizations. One factor that experts and officials cited for the increase in complaints was downsizing, which resulted in appeals of job losses and reassignments. A second factor was the Civil Rights Act of 1991, which motivated some employees to file complaints by allowing compensatory damage awards of up to \$300,000 in cases involving unlawful, intentional discrimination. A third factor was the Americans With Disabilities Act of 1990, which expanded discrimination protection.¹³ EEOC and Postal Service officials also said that the current regulations governing the EEO complaint process, implemented in October 1992, were a factor because they provided improved access to the complaint process.

In a report we issued in May 1999, however, we said that there were several factors indicating that an increase in the number of complaints did not necessarily signify an equivalent increase in the actual number of

¹³While federal workers were protected under the Rehabilitation Act of 1973, the publicity surrounding the Americans With Disabilities Act made federal workers more aware of their protections under the Rehabilitation Act, according to EEOC and Postal Service officials.

individuals filing complaints.¹⁴ First, an undetermined number of federal employees have filed multiple complaints.¹⁵ EEOC officials and representatives of the Council of Federal EEO and Civil Rights Executives said that, while they could not readily provide figures, it has been their experience that a small number of employees—often referred to as “repeat filers”—account for a disproportionate share of complaints. A Postal Service official said that between 60 and 70 employees account for every 100 complaints filed. Additionally, an EEOC workgroup that reviewed the federal employee discrimination complaint process reported that the number of cases in the system was “swollen” by employees filing “spin-off” complaints—new complaints challenging the processing of existing complaints. Further, the work group found that the number of complaints was “unnecessarily multiplied” by agencies fragmenting some claims involving a number of different allegations by the same employee into separate complaints, rather than consolidating these claims into one complaint. In addition, there has been an increase in the number of complaints alleging reprisal, which, for the most part, involve claims of retaliation by employees who have previously participated in the complaint process.

Further, in past reports and testimonies, we noted, among other things, that the discrimination complaint process was burdened by a number of cases that were not legitimate discrimination complaints; some were frivolous complaints or attempts by employees to get a third party’s assistance in resolving workplace disputes unrelated to discrimination.¹⁶ Similarly, EEOC reported in its 1996 study that a “sizable” number of complaints might not involve discrimination issues but instead reflect basic communications problems in the workplace. EEOC said that such issues may be brought into the EEO process because of a perception that there is no other forum to air general workplace concerns.¹⁷ The agency

¹⁴Equal Employment Opportunity: Data Shortcomings Hinder Assessment of Conflicts in the Federal Workplace (GAO/GGD-99-75, May 4, 1999).

¹⁵EEOC does not collect data on the number of employees who file complaints, nor on how often individual employees complain.

¹⁶Federal Employee Redress: An Opportunity for Reform (GAO/T-GGD-96-42, Nov. 29, 1995); Federal Employee Redress: A System in Need of Reform (GAO/T-GGD-96-110, Apr. 23, 1996); and Civil Service Reform: Redress System Implications of the Omnibus Civil Service Reform Act of 1996 (GAO/T-GGD-96-160, July 16, 1996).

¹⁷Only a small proportion of agency and EEOC decisions contains a finding of discrimination. In fiscal year 1998, for example, discrimination was found in 1.4 percent of the cases agencies decided on the merits without a hearing, 7.2 percent of the cases EEOC administrative judges decided, and in 3.4 percent of appeals EEOC decided.

also said that there is little question that these types of issues would be especially conducive to resolution through ADR processes.¹⁸

EEOC will be implementing regulatory and procedural changes beginning in November 1999 to deal with some of the factors contributing to the volume of complaints flowing through the process. One change will allow agencies and administrative judges to dismiss spin-off complaints. Another change will allow agencies and administrative judges to dismiss complaints in which employees are abusing the process. The revised regulations and EEOC's policies will deal with the problem of fragmented complaints. In addition, EEOC will require agencies to make ADR processes available to complainants.¹⁹

EEOC's Capacity to Process Cases

Among the factors that can affect inventory levels and case processing times is the relationship between the influx of cases and the capacity of staff to process them. Data that EEOC reports in the Federal Sector Report on EEO Complaints Processing and Appeals does not allow a precise comparison of the number of staff at agencies to caseloads at various stages of the complaint process.²⁰ However, the data enable a comparison of EEOC's hearing and appeal caseloads to the number of nonsupervisory administrative judges and attorneys available to process these cases.

These data show that as the overall number of hearing requests received each year increased by 111.6 percent, from 5,773 in fiscal year 1991 to 12,218 in fiscal year 1998 (see table 4, p. 8), the number of administrative judges available for hearings increased at a lower rate (41.5 percent) during this period, from 53 to 75. These data also show that as the number of appeals increased by 61 percent, from 5,266 in fiscal year 1991 to 8,480

¹⁸ ADR Study, U.S. Equal Employment Opportunity Commission, Office of Federal Operations, Oct. 1996.

¹⁹ In Alternative Dispute Resolution: Employers' Experiences With ADR in the Workplace (GAO/GGD-97-157, Aug. 12, 1997), we reported that 43 (49 percent) of 87 agencies responding to a 1996 EEOC survey made ADR processes available. We also said that ADR availability was not pervasive or widespread within federal agencies reporting some ADR capability. More recently, an EEOC official told us that 57 (52 percent) of 109 agencies responding to a 1998 survey made ADR available.

²⁰ EEOC limits its reporting of agency staffing to the number of counselors, counselor/investigators, and investigators. These numbers do not include agency staff making decisions about the merits of complaints. EEOC reported that the number of full-time, part-time, and collateral-duty staff declined from 16,169 in fiscal year 1992 (fiscal year 1991 data were not reported) to 12,352 in fiscal year 1997, the latest year for which staffing data were available. The reductions were mainly among part-time and collateral-duty staff whose levels decreased from 15,418 to 10,794. At the same time, the number of full-time counselors, counselor/investigators, and investigators was higher in fiscal year 1997 than in fiscal year 1992—1,558 versus 751. Some agencies also use contract investigators. In fiscal year 1992, contract investigators performed 2,381 investigations; the figure for fiscal year 1997 was 4,783. The number of contract investigations increased to 5,192 in fiscal year 1998.

New Cases Surpass Closures Despite Productivity Gains

in fiscal year 1998 (see table 4, p. 8), the number of attorneys processing appeals actually declined, from 40 in fiscal year 1991 to 39 during fiscal years 1992 to 1998. Although EEOC officials recognized the need for additional staff to process hearings and appeals, they said that requested funds for the needed positions were not appropriated.

At EEOC, the hearings and appeals inventories rose because the average caseload for each administrative judge and attorney outpaced increases in their productivity. The number of hearing requests received each year per administrative judge rose, from 109 in fiscal year 1991 to 163 by fiscal year 1998. The hearings inventory grew larger because although the average number of cases processed and closed each year per administrative judge increased, this figure was, except for fiscal year 1993, always less than the average number of requests received. In fiscal year 1991, administrative judges processed and closed 95 hearing requests, a figure that increased to 135 by fiscal year 1998.

The situation for appeals was similar. The number of appeals received each year per attorney increased, from 133 in fiscal year 1991 to 217 by fiscal year 1998. The appeals inventory grew because the average number of cases processed and closed each year per attorney, was, except for fiscal year 1991, always less than the average number of appeals received. In fiscal year 1991, attorneys processed and closed an average of 133 cases, a figure that increased to 192 by fiscal year 1998.

To deal with the imbalance between new cases and closures, EEOC's fiscal year 1999 budget provided for an increase in its administrative judge and appeals attorney corps. Under the fiscal year 1999 budget, the authorized number of administrative judges increased by 19, from 75 to 94, while the authorized number of appeals attorneys increased by 14, from 39 to 53.²¹

Additional Inventory Growth Expected

Even with these added resources, the hearings and appeals inventories may continue to rise unless the flow of new cases is reduced. EEOC estimates that with the full complement of administrative judges on board in fiscal year 2000, it will be able to process and close 11,280 hearing requests, or 120 cases per judge, each year. This figure is 938 cases less than the 12,218 hearing requests EEOC received in fiscal year 1998. If, for example, the number of hearing requests received in fiscal year 2000 remained at fiscal year 1998 levels, EEOC's hearings inventory would increase by 938 cases during the year, while the average time EEOC takes

²¹As of June 2, 1999, there were 95 full-time and 5 part-time administrative judges and, as of June 25, 1999, 50 appeals attorneys available to process hearing requests and appeals.

to process a hearing request would grow by about 30 days. Over 5 years, with no change in the number of new cases received each year or resources to process them, EEOC's hearings inventory could increase by 4,690 cases, while adding 150 days to the average processing time.

Similarly, when the full complement of appeals attorneys is on board by fiscal year 2000, EEOC estimates it will be able to process and close 7,685 appeals, or 145 cases per attorney, each year. This figure, however, is 795 cases less than the 8,480 appeals filed in fiscal year 1998. If, for example, the number of appeals filed in fiscal year 2000 remained at fiscal year 1998 levels, EEOC's appeals inventory would increase by 795 cases during that year, while the average processing time would increase by about 37 days. Over 5 years, with no change in the number of new cases filed each year or resources to process them, EEOC's appeals inventory could increase by 3,975, while adding about 186 days to the average processing time.

While our analysis assumed no increase in the number of new cases, EEOC's fiscal year 2000 budget request projects that incoming hearing requests and appeals would rise at an annual rate of 3 percent, and exceed the number of cases it can close. As a result, according to the agency, hearings and appeals inventories and processing times will continue to climb, further affecting the agencies' inventories and case processing times. To deal with this situation, EEOC's fiscal year 2000 budget proposal requests funding for 19 additional administrative judges to process hearing requests and 13 additional attorneys to process appeals.²² The agency projects that with these additional resources, the hearings and appeals inventories and processing times would initially decline in fiscal year 2000, only to begin rising again in fiscal year 2004.

Effects of Revisions to Complaint Process Not Known

Neither our analysis nor EEOC's projections and requested funding increase take into account, however, the possible effects of changes to program regulations and procedures intended to reduce the number of cases flowing into and through the complaint process. Since EEOC's workload is dependent on the number of cases in the pipeline at agencies, it is important to understand how the program changes are likely to affect caseloads at agencies. The requirement that agencies offer ADR processes to employees, including in the counseling phase before a formal complaint is filed, should resolve some workplace disputes without a complaint being

²²EEOC is also requesting funding for eight other positions to support the hearing and appeals processes.

filed and resolve other disputes in the early complaint stages.²³ Other changes allowing dismissal of spin-off complaints and other complaints in which an employee is believed to be abusing the process should halt the processing of these cases early in the process and possibly discourage the filing of such complaints. In addition, policies to prevent agencies from fragmenting cases should also reduce the number of new complaints.

However, although EEOC designed its changes to program regulations and procedures to reduce the flow of new cases, it has not estimated the likely effect of these changes on the volume of complaints. EEOC officials explained that they had been deferring developing estimates until the regulations had been approved because of how the details of the final regulations could affect caseload estimates. They also said that although one goal of the regulations is to reduce caseloads, another goal is to improve the fairness of the process. The EEOC officials said that one measure to improve fairness is to remove agencies' ability to reject or modify administrative judges' decisions in arriving at final decisions. The officials said that complainants could view this change as giving the administrative judges more authority, and they speculated that more complainants might seek a hearing.

Estimates of the expected changes in complaint levels are important because a decrease in new complaints would affect how quickly EEOC might be able to reduce its inventories, and thus how many, if any, additional staff would be needed and for how long. EEOC's Compliance and Control Division Director said that it would be appropriate to consider the effects of these changes when the agency prepares its fiscal year 2001 budget request. Because the changes could begin affecting complaint levels in fiscal year 2000 and because any new staff, if not hired on a temporary basis, could be with EEOC a long time, estimates of likely changes in complaint levels also could be important to congressional consideration of EEOC's future budget requests.

EEOC also has not completed the development of the measures and indicators that it will use in the future to gauge the actual effect of the

²³In *Alternative Dispute Resolution: Employers' Experiences With ADR in the Workplace* (GAO/GGD-97-157, Aug. 12, 1997), we reported that data from two federal agencies we studied indicated that ADR processes, by resolving discrimination complaints in their early stages, had reduced the number of formal complaints filed as well as the time required for seeing them through to resolution. More recent data from the Postal Service showed that during the first 10 months of fiscal year 1999, a formal complaint was filed in only 1,081 (about 17 percent) of the 6,252 cases mediated in the counseling or precomplaint phase under its REDRESS program. In contrast, about 72 percent of the 8,314 cases not mediated resulted in a formal complaint being filed. Overall, the data show that the number of complaints filed by postal workers during the first 10 months of fiscal year 1999 is about 17 percent below the same period in fiscal year 1998 (7,050 versus 8,522).

changes. In its fiscal year 1999 annual performance plan, EEOC said that it would develop measures and indicators for assessing the effectiveness of these revisions, which, according to the agency's fiscal year 2000 Annual Performance Plan, would be implemented in fiscal year 2000.²⁴

Conclusions

Rising inventory levels of unresolved EEO complaints and lengthy case processing times to resolve these workplace disputes remain stubborn problems for agencies and EEOC. The struggle of nonpostal agencies was especially evident in that their inventories rose by almost 8 percent in fiscal year 1998 despite a 6 percent decline in new complaints. Similarly, despite increases in its productivity, EEOC's appeals inventory increased by almost 10 percent in fiscal year 1998, even though the number of appeals filed remained almost unchanged. At the same time, EEOC's inventory of hearing requests rose by almost 20 percent, about twice the rate of increase in new hearing requests that the agency received.

How long present conditions will continue, and whether they will improve or deteriorate further, depends on the ability of agencies and EEOC to process cases currently in the complaint pipeline as well as on the volume of new complaints entering the pipeline in the future. Future trends and, therefore, agencies' and EEOC's resource needs, are likely to be affected by the revisions to the complaint process. However, EEOC has not developed estimates of the extent to which revisions to complaint process regulations and procedures may affect the flow of cases into and through the process. Among the changes, the requirement that agencies offer ADR to complainants could reduce the number of new cases filed, or resolve disputes in the early stages. In addition, other changes to be implemented dealing with fragmenting of complaints, spin-off complaints, and abuse of process could reduce the number of new complaints or short-circuit them early in the process.

EEOC's request for additional funding for attorneys and judges and the implementation of changes to program regulations and procedures in November 1999 lend urgency to gaining an understanding of the likely effects of the proposed changes on the complaint process and complaint inventories. In addition, until the measures and indicators promised in EEOC's fiscal year 1999 Annual Performance Plan are developed and implemented, the actual effect of the revisions on the EEOC complaint process will be difficult to track. Estimates of the effect of the changes combined with anticipated productivity levels could be used to further estimate the resources needed to reduce EEOC's inventory of hearing

²⁴The annual performance plans are required by the Government Performance and Results Act.

requests to levels that would allow the average case to be processed within the 180-day requirement in regulations.

In addition, current regulations do not prescribe a processing time standard for appeals, which could be used to establish and develop estimates of the resources needed to reduce the average appeal processing time to an acceptable level of timeliness. In the case of both hearing and appeal processing, the estimates could be useful in determining how many, if any, additional staff are needed to reduce the backlogs and whether the staff should be a permanent or temporary addition to EEOC's workforce. Given the size of the backlogs, estimates for reducing them to acceptable levels over different time frames could allow EEOC and Congress to weigh the trade-offs between additional cost and the rapidity with which the inventory of cases is resolved. Measures and indicators to assess the actual effect of changes in program regulations should be adopted before the changes are implemented to ensure that consistent data are collected from the start and to ensure that systems are in place to generate valid and reliable data.

Recommendations

To provide Congress with a clear picture of future caseload trends and the resources that are needed to deal with current backlogs, as well as the volume of cases expected in the future, we recommend that the EEOC Chairwoman take steps to (1) develop estimates of the effects of the forthcoming changes in program regulations and procedures on agencies' and EEOC's caseloads and (2) complete development of measures and indicators to track and assess the impact of these revisions on caseload trends. We also recommend that the Chairwoman use these data to develop estimates, under various time frames, of the resources needed to reduce its average hearings processing time to meet the 180-day requirement in regulations. We further recommend that the Chairwoman establish a policy of an acceptable level of timeliness for processing appeals and develop estimates, under various time frames, of the resources needed to reduce its average appeals processing time to meet this standard.

Agency Comments and Our Evaluation

We received comments on a draft of this report from EEOC and the Postal Service. The EEOC Chairwoman said in her written comments (see app. V) that she shared our concerns that complaint inventories are too high and that federal employees wait far too long for their complaints to be processed by their agencies and EEOC. She said that analyses of the kind in our 1998 report on rising EEO complaint caseloads in the federal sector had persuaded her that bold steps were necessary to bring about

improvements.²⁵ She said that, in addition to the changes in regulations, EEOC is implementing a comprehensive, strategic approach to link the hearings and appeals programs with strong oversight, technical assistance, and educational initiatives. These efforts are to include on-site reviews, which EEOC believes are one of the most important vehicles with which to focus on and correct root causes of persistent problems. Also, the Chairwoman said that with additional resources, EEOC would increase its efforts on conflict prevention and early intervention, since these are the most cost-effective ways to reduce inventories. Further, the Chairwoman pointed out that EEOC, with the National Partnership for Reinventing Government (NPR), is cosponsoring the Interagency Federal EEO Task Force that will look into ways to enhance the fairness, efficiency, and effectiveness of the federal employee EEO complaint process.

EEOC also responded to the first three of our four recommendations that it (1) develop estimates of the effects of changes in regulations on caseloads, (2) complete development of measures and indicators to track and assess the impact of these revisions, and (3) develop estimates of the resources needed under various time frames to reduce hearings and appeals processing times. EEOC said that right now it would be premature and highly speculative for the agency to venture guesses on what the actual experiences under the revised regulations might be. In addition, EEOC said that it was not possible to develop measures and indicators for assessing the effectiveness of the revisions to the federal sector EEO complaint process before the draft regulations were approved. However, with the publication of the final rules in the Federal Register on July 12, 1999, EEOC said that it expects to complete development of the measures and indicators by the end of fiscal year 1999. The Chairwoman added, however, that other complex issues must be resolved, including how baseline data will be collected and what data collection method will be used. Consequently, she said that the first year for which data will be collected on experiences under the revised regulations will be fiscal year 2001. She said that when these data are available at the end of calendar year 2001, it would be possible to estimate resource requirements under various time frames. The Chairwoman further said that these data would be used to prepare EEOC's fiscal year 2004 budget request, which would be submitted to the Office of Management and Budget in September 2002 and to Congress in early 2003.

We continue to believe that in order for Congress to carry out its oversight and appropriation responsibilities and make informed budget decisions, it

²⁵GAO/GGD-98-157BR.

needs timely estimates from EEOC of how changes in the complaint process may affect caseloads and resource requirements. Further, we believe congressional decisionmaking would benefit from EEOC's best estimate of the resources needed under various time frames to reduce hearings and appeals processing times to acceptable levels. With such estimates, Congress could consider options to deal with this serious situation.

We recognize that early estimates may be inexact. However, without any estimate of the effect the new regulations may have on caseloads and of information on how quickly, if at all, additional staff might be able to reduce the current case backlogs, Congress has no basis to judge whether requested resources to increase staffing are reasonable. Although initial estimates of necessity involve considerable judgment, we believe it would be better to offer estimates than to provide no perspective on the regulations' anticipated effect. Estimation is an iterative process, and EEOC can improve the precision of its estimates as more and better data become available. The Chairwoman said that EEOC will explore alternative means for obtaining feedback on the kinds of changes that may flow from the revised regulations. In addition to EEOC examining its own caseloads, such alternatives, we believe, could include obtaining data during on-site visits, through the NPR/EEOC Interagency Federal EEO Task Force, or through informal surveys of agencies. As EEOC and agencies scrutinize inventories to see how the new provisions apply to existing cases, such data-gathering initiatives could yield increasingly reliable and timely information on the effects of the new provisions.

In response to our fourth recommendation that an acceptable level of timeliness be established for the processing of appeals, the Chairwoman said that 180 days is an appropriate goal. She did not say how this goal might be operationalized. We believe that such a goal would carry more significance and accountability if it were articulated in writing as a policy, such as by inclusion in EEOC's annual performance plan.

In oral comments on a draft of this report made on July 7, 1999, the Postal Service Manager, EEO Compliance and Appeals, concurred with our observations. He added that the Postal Service will be in compliance with the new EEOC regulation requiring that ADR be available to complainants because of its REDRESS (Resolve Employment Disputes, Reach Equitable Solutions Swiftly) program.

In a separate discussion, the Postal Service's National REDRESS Program Manager said that the program, which uses outside mediators in the

precomplaint stage, was fully implemented as of July 1999. She provided statistics showing that during the first 10 months of fiscal year 1999—a period during which the program was still being rolled out—there were about 17 percent fewer formal EEO complaints, compared with the same period in fiscal year 1998 (7,050 versus 8,522). She and the EEO Compliance and Appeals Manager said this decline was in “large measure” due to the REDRESS program. The EEO Compliance and Appeals Manager also said that the Postal Service was expanding ADR to complaints awaiting a hearing before an EEOC administrative judge. He said that pilot programs have shown promise in reducing the inventory of complaints at this stage, with about one-third of the cases reviewed found to be candidates for settlement and another one-third found to be candidates for mediation. The remaining one-third, he said, will probably go to hearing. The official said that agencies have a responsibility to address these cases and can play an important role in reducing not only their own caseloads, but EEOC’s as well.

The implications of the Postal Service’s experience with ADR, if the reported results are sustained, are significant for several reasons. First, they show that an agencywide ADR program to resolve disputes at an early stage can reduce the number of formal complaints. Second, because postal workers account for about half of the EEO complaints filed by federal employees, a substantial reduction in the number of formal complaints by postal workers could mean a reduction in the number of cases entering EEOC’s hearings and appeals pipeline. Third, the Postal Service’s limited experience, under its pilot programs, of applying ADR to cases awaiting a hearing show that some portion of this inventory can be resolved without using EEOC hearing resources.

Although the Postal Service has not had broad experience with applying ADR to cases awaiting a hearing, the experiences of the Merit Systems Protection Board (MSPB) may be instructive to agencies and EEOC in establishing dispute resolution strategies and allocating resources. MSPB has had a long-established policy of trying to settle cases it does not dismiss on jurisdictional or timeliness grounds. Over the past 10 years, MSPB has avoided hearings by settling about half of employee appeals of personnel actions.

We are sending copies of this report to Senators Daniel K. Akaka, Thad Cochran, Joseph I. Lieberman, and Fred Thompson; and Representatives Robert E. Andrews, John A. Boehner, Dan Burton, William L. Clay, Chaka Fattah, William F. Goodling, Steny H. Hoyer, Jim Kolbe, John M. McHugh, David Obey, Harold Rogers, Joe Scarborough, Jose E. Serrano, Henry A.

Waxman, and C. W. Bill Young in their capacities as Chair or Ranking Minority Members of Senate and House Committees and Subcommittees. We will also send copies to the Honorable Ida L. Castro, Chairwoman, EEOC; the Honorable William J. Henderson, Postmaster General; the Honorable Janice R. Lachance, Director, Office of Personnel Management; the Honorable Jacob Lew, Director, Office of Management and Budget; and other interested parties. We will make copies of this report available to others on request.

If you or your staff have any questions concerning this report, please contact me or Assistant Director Stephen Altman on (202) 512-8676. Other major contributors to this report were Anthony P. Lofaro, Gary V. Lawson, and Sharon T. Hogan.

A handwritten signature in black ink that reads "Michael Brostek". The signature is written in a cursive style with a large, stylized "M" and "B".

Michael Brostek
Associate Director, Federal Management
and Workforce Issues

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Abbreviations

ADR	alternative dispute resolution
EEO	equal employment opportunity
EEOC	Equal Employment Opportunity Commission

Scope and Methodology

As with our previous report¹ about complaint caseloads, we developed information on complaints falling within the jurisdiction of the Equal Employment Opportunity Commission (EEOC), and not the Merit Systems Protection Board (MSPB),² because (1) the vast majority of discrimination complaints fall within EEOC's jurisdiction and (2) concerns about case inventories and processing times raised in hearings before the House Subcommittee on Civil Service focused on complaints within EEOC's jurisdiction.

We updated (1) trends in the size of inventories and the age of cases in inventory at the various stages of the equal employment opportunity (EEO) complaint process and (2) trends in the number of complaints filed by federal employees and the time taken by agencies and EEOC to process them to include fiscal years 1991 through 1998. Agencies' complaint data for fiscal year 1998, which EEOC provided and which we used in our analysis, were preliminary. We selected 1991 as a base year because it preceded intensive government downsizing, the implementation of new laws expanding civil rights protections and remedies, and the implementation of new regulations governing the federal employee EEO complaint process. Because postal workers accounted for about half the complaints filed since fiscal year 1995, we separately analyzed data reported by the Postal Service in order to compare statistics for the postal workforce with the nonpostal workforce.

To update and analyze information about (1) the trends in the size and age of complaint inventories and (2) the number of complaints filed by federal employees and the amount of time taken by federal agencies and EEOC to process them, we obtained data reported (1) to EEOC by the Postal Service and other agencies and (2) by EEOC in its annual Federal Sector Report on EEO Complaints Processing and Appeals. We did not verify the data in EEOC's reports or data provided by the Postal Service. To make observations about the implications of the trends, we drew upon our analysis of the trend data, our past work, and discussions with EEOC officials. In addition, we reviewed EEOC's budget request for fiscal year 2000 and its annual performance plans for fiscal years 1999 and 2000.³ We

¹Equal Employment Opportunity: Rising Trends in EEO Complaint Caseloads in the Federal Sector (GAO/GGD-98-157BR, July 1998) page 6.

²MSPB adjudicates, among other things, employee appeals of firings or suspensions of more than 14 days, including cases in which an appellant alleges that the firing or suspension occurred because of unlawful employment discrimination. These are known as "mixed cases." MSPB's decisions in mixed cases may be reviewed by EEOC.

³The annual performance plans are required by the Government Performance and Results Act.

also reviewed changes to the regulations governing the federal employee complaint process (29 C.F.R. part 1614) that are to be implemented beginning in November 1999.

We have previously noted limitations to the data presented in our reports because of concerns about the quality of data available for analysis.⁴ Although we have no reason to question EEOC's statistics about its own hearings and appeals activities, we had identified errors and inconsistencies in the data on agencies' inventory levels and on the age of cases in inventory. Because EEOC had not verified the data it received from agencies, it is possible that other data problems may have existed. EEOC corrected the errors we identified and, in response to a recommendation we made, said that it would take action to address our concerns about data consistency, completeness, and accuracy. Before providing the fiscal year 1998 agency data to us, EEOC reviewed agencies' hard-copy submissions of complaint statistics and compared these data to statistics the agencies provided in an automated format. EEOC also tested the accuracy of its computer program to aggregate the data submitted by agencies. In response to our recommendation in an earlier report, before it publishes the complaint statistics in the fiscal year 1998 Federal Sector Report on EEO Complaints Processing and Appeals, EEOC said it would visit selected agencies to assess the reliability of the reported data. On balance, total caseload data currently available, while needing further quality assurance checks, present useful information on the volume of complaints actually being processed in the federal EEO complaint system.

We performed our work in Washington, D.C., from March through May 1999 in accordance with generally accepted government auditing standards.

⁴Equal Employment Opportunity: Data Shortcomings Hinder Assessment of Conflicts in the Federal Workplace (GAO/GGD-99-75, May 4, 1999); GAO/GGD-98-157BR; Equal Employment Opportunity: Administrative Judges' Recommended Decisions and Agencies' Actions (GAO/GGD-98-122R, June 10, 1998).

Processing Federal Employee EEO Complaints

Agencies and EEOC process federal employees' EEO complaints under regulations¹ promulgated by EEOC, which also establish processing time standards. Employees unable to resolve their concerns through counseling can file a complaint with their agency, which either dismisses or accepts it (the first stage) and, if the complaint is accepted, conducts an investigation (the second stage). Agencies are to decide whether to accept a complaint, investigate it, and report investigation results within 180 days from the complaint's filing.

After receiving the investigation results, an employee who pursues a complaint has two choices: (1) request a hearing before an EEOC administrative judge (the third stage) who issues a recommended decision, which the agency can accept, reject, or modify in making its final decision or (2) forgo a hearing and ask for a final agency decision (the fourth stage). An employee has 30 days to make this decision. When a hearing is requested, the administrative judge is to issue a recommended decision within 180 days of the request. An agency is to issue its final decision within 60 days of receiving an administrative judge's recommendation or a request for a final decision. Up to this point, EEOC standards have allowed complaint processing to take up to 270 days without a hearing, 450 days with one.

An employee dissatisfied with a final agency decision or its decision to dismiss a complaint may appeal to EEOC, which is to conduct a *de novo*² review (the fifth stage). The employee has 30 days to file an appeal, but regulations do not establish time standards for EEOC's review. The final (sixth) stage within the administrative process is that the complainant or agency may request EEOC to reconsider its decision from the appeal within 30 days of receiving the decision. However, regulations do not establish time standards for the EEOC's reconsideration.

EEOC will be implementing revisions to the regulations, including changes to hearing and appeal procedures, beginning in November 1999. Under the new rules, administrative judges will continue to issue decisions on complaints referred to them for hearings. However, agencies will no longer be able to modify these decisions. Instead, as its final action (as final decisions will be called), an agency will issue a final order indicating whether or not it will fully implement the administrative judge's decision. If the agency does not fully implement the decision, it will be required to

¹29 C.F.R. part 1614.

²A complete review of all evidence from the beginning of a case.

file an appeal of the decision with EEOC. Employees will retain the right to appeal an agency's final action to EEOC. In addition, the decision on an appeal from an agency's final action will be based on a de novo review, except that the review of the factual findings in a decision by an administrative judge will be based on a substantial evidence standard of review.³

³Substantial evidence is the degree of relevant evidence that a reasonable person might accept as adequate to support a conclusion.

Selected Complaint Data on U.S. Postal Service

Table III.1: Total and Postal Service Inventories of Compliants, Hearing Requests, and Appeals and Postal Service as a Percentage of the Totals for Fiscal Years 1991-1998

	1991	1992	1993	1994	1995	1996	1997	1998
Complaints								
Total	16,964	18,668	22,258	27,044	30,605	31,195	34,286	36,333
Postal workers	3,963	4,626	5,026	6,893	10,105	11,357	13,549	13,996
Percent	23.4%	24.8%	22.6%	25.5%	33.0%	36.4%	39.5%	38.5%
Hearing requests								
Total	3,147	3,977	3,991	5,177	6,367	8,275	10,016	11,967
Postal workers	1,440	1,837	1,094	1,827	2,567	3,327	4,594	5,474
Percent	45.8%	46.2%	27.4%	35.3%	40.3%	40.2%	45.9%	45.7%
Appeals								
Total	1,466	2,029	2,900	4,363	6,498	8,376	9,980	10,966
Postal workers	^a	837	940	1,470	2,563	3,558	4,317	4,961
Percent	^a	41.3%	32.4%	33.7%	39.4%	42.5%	43.3%	45.2%

^aNot available.

Source: GAO analysis of EEOC and Postal Service data.

Table III.2: Average Age (Days) of Complaints in the Postal Service's Inventory Since Complaint Filed, by Stage of the Complaint Process for Fiscal Years 1991-1998

Stage of process	1991	1992	1993	1994	1995	1996	1997	1998
Dismiss/accept	^a	27	146	182	540	582	320	212
Investigation	207	217	183	212	145	163	405	300
Investigation Disposition ^b	267	237	^c	^c	^c	^c	^c	^c
Hearing	494	502	180	284	307	322	887	675
Agency decision	^a	^a	179	210	239	251	302	285
Overall	399	356	176	212	287	315	494	450

^aNo cases reported.

^bWhen the agency notified the complainant in writing of its proposed disposition of the complaint and of the right to a final decision with or without an EEOC hearing.

^cDiscontinued as a reporting category.

Source: GAO analysis of EEOC and Postal Service data.

Appendix III
Selected Complaint Data on U.S. Postal Service

Table III.3: Percentage of Postal Workers' Complaints Pending Dismissal/Acceptance and Investigation More Than 180 Days for Fiscal Years 1991-1998

Stage of process	1991	1992	1993	1994	1995	1996	1997	1998
Dismissal/acceptance	^a	0	62.2	40.0	53.7	61.9	26.2	65.5
Investigation	50.4	48.2	71.8	55.8	40.4	58.6	48.6	36.5

^aNo cases reported.

Source: GAO analysis of EEOC and Postal Service data.

Table III.4: Postal Workers as a Percentage of the Federal Workforce for Fiscal Years 1991-1998

Fiscal year	1991	1992	1993	1994	1995	1996	1997	1998
Percent of workforce	23.9	23.2	23.5	27.2	28.6	31.2	31.8	32.2

Source: GAO analysis of EEOC data.

Table III.5: Total and Postal Workers' Complaints, Hearing Requests, and Appeals and Postal Workers as a Percentage of Total Complaints, Hearing Requests, and Appeals for Fiscal Years 1991-1998

	1991	1992	1993	1994	1995	1996	1997	1998
Complaints								
Total	17,696	19,106	22,237	24,592	27,472	26,410	28,947	28,147
Postal workers	7,772	8,469	8,858	10,221	13,322	13,252	14,326	14,397
Percent	43.9%	44.3%	39.8%	41.6%	48.5%	50.2%	49.5%	51.1%
Hearing requests								
Total	5,773	6,907	8,882	10,712	10,515	10,677	11,198	12,218
Postal workers	2,605	3,337	2,933	3,934	4,451	4,583	5,275	5,795
Percent	45.1%	48.3%	33.0%	36.7%	42.3%	42.9%	47.1%	47.4%
Appeals								
Total	5,266	5,997	6,361	7,141	8,152	8,001	8,453	8,480
Postal workers	2,250	2,649	2,227	2,450	3,436	3,534	3,734	3,958
Percent	42.7%	44.2%	35.0%	34.3%	42.1%	44.2%	44.2%	46.7%

Source: GAO analysis of EEOC and Postal Service data.

Appendix III
Selected Complaint Data on U.S. Postal Service

Table III.6: Postal Service Complaint Processing Time in Days by Closure Category

Closure category	1991	1992	1993	1994	1995	1996	1997	1998
Dismissed	134	150	154	135	116	208	197	141
Withdrawn	256	256	266	213	218	296	300	261
Settled	217	211	307	279	280	341	401	355
Decision without hearing	^a	^a	227	520	393	512	439	477
Decision with hearing	^a	^a	734	721	510	527	689	749
Overall	230	233	296	315	247	330	353	322

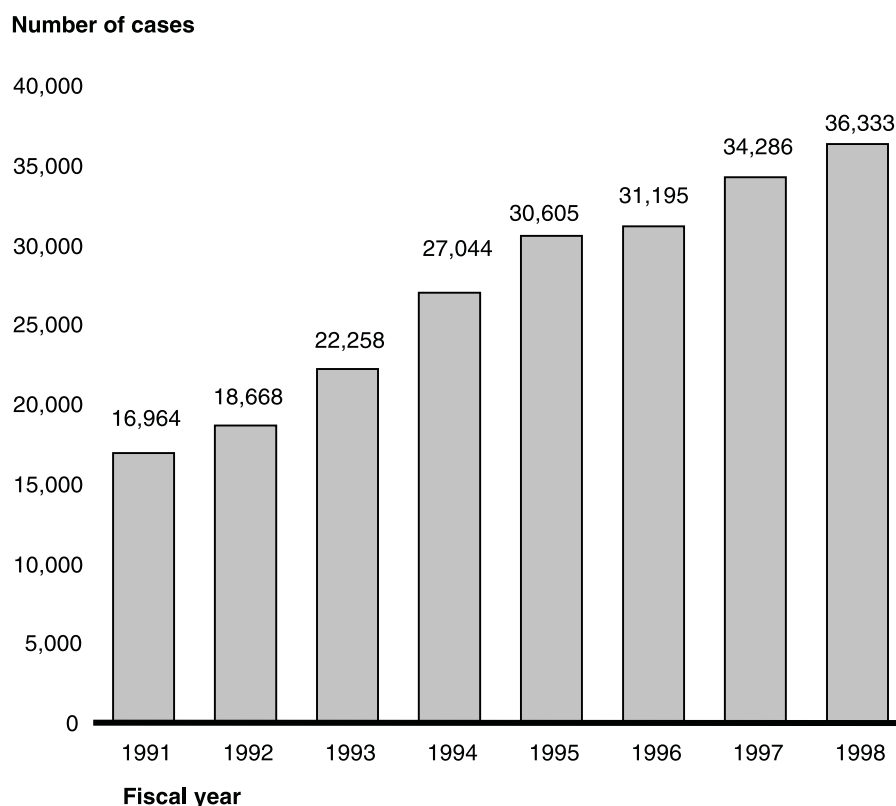
^aSeparate data not reported for closures with and without hearings.

Source: GAO analysis of EEOC and Postal Service data.

Selected Federal Sector EEO Complaint Data for Fiscal Years 1991 to 1998

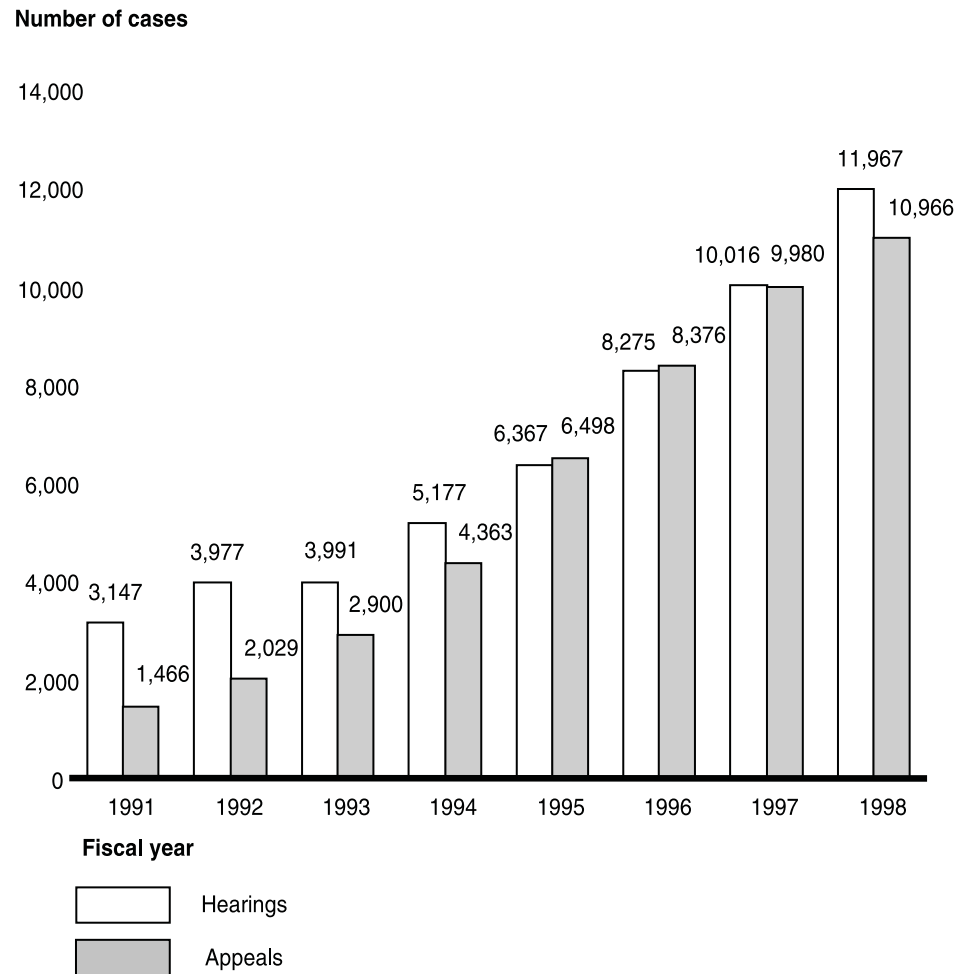
The following figures show the trends in (1) inventories of unresolved equal employment opportunity (EEO) complaints at federal agencies and the Equal Employment Opportunity Commission (EEOC); (2) the age of cases in the inventories; (3) the number of complaints, hearing requests, and appeals filed; and (4) processing times for complaints, hearings, and appeals.

Figure IV.1: Agencies' Complaint Inventories Continue to Grow



Source: GAO analysis of EEOC data.

Figure IV.2: EEOC's Hearings and Appeals Inventories Continue to Increase



Source: GAO analysis of EEOC data.

Appendix IV
Selected Federal Sector EEO Complaint Data for Fiscal Years 1991 to 1998

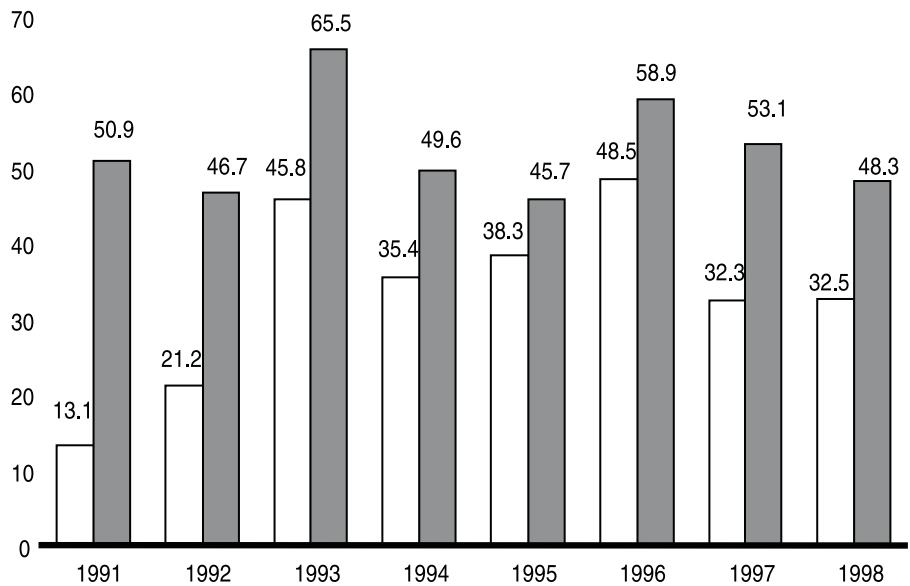
Figure IV.3: Average Age of the Complaint Inventory at Agencies FYs 1991 - 1998

Stage of process	Number of days in inventory since complaint filed							
	1991	1992	1993	1994	1995	1996	1997	1998
Dismiss/ accept	120	154	313	196	376	425	262	258
Investigation	260	279	305	257	249	281	347	305
Hearing	532	547	484	377	467	487	735	645
Agency decision	653	599	438	366	504	510	491	477
Overall average age	379	376	368	289	367	397	438	446

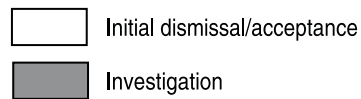
Source: GAO analysis of EEOC data.

Figure IV.4: Frequently, Agencies Did Not Dismiss/Accept and Investigate Complaints Within 180 days

Percentage of cases pending more than 180 days

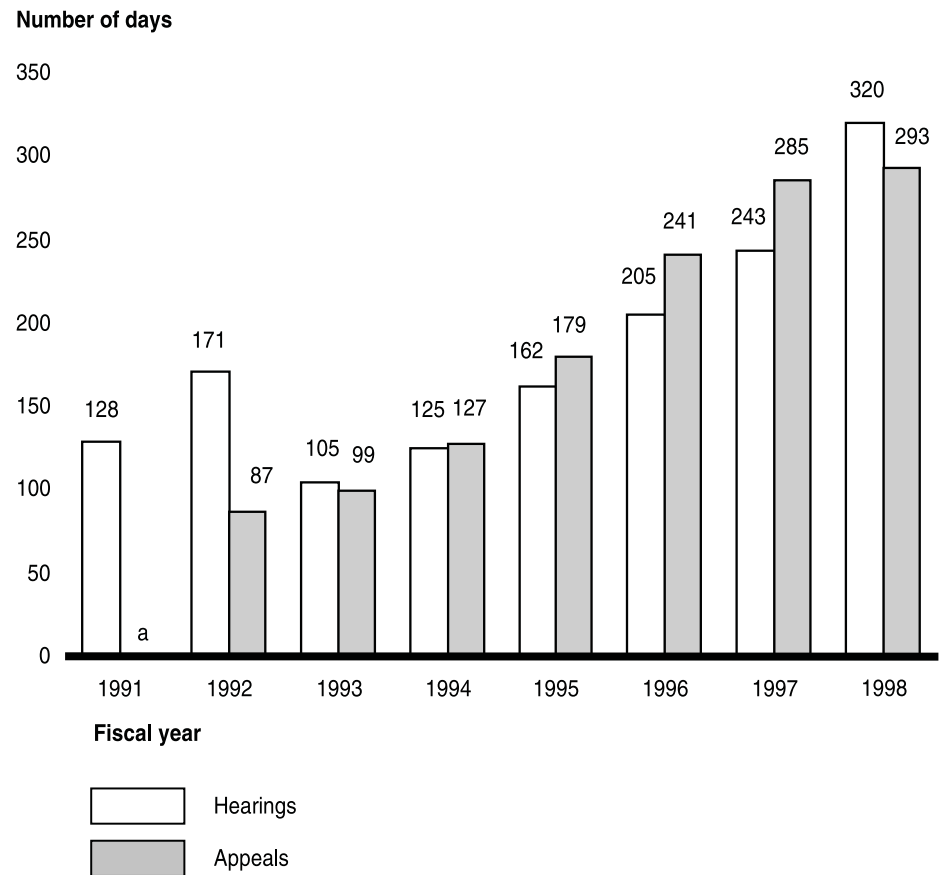


Stages of the process



Source: GAO analysis of EEOC data.

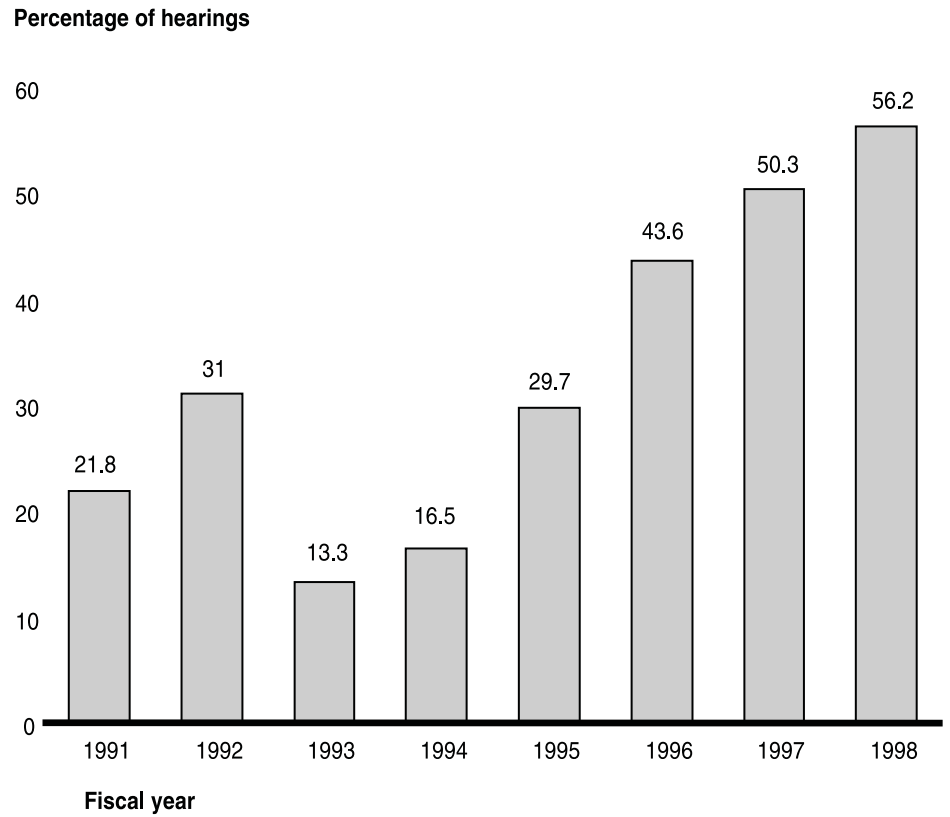
Figure IV.5: Average Age of EEOC's Hearings and Appeals Inventories Has Increased



^aNot reported.

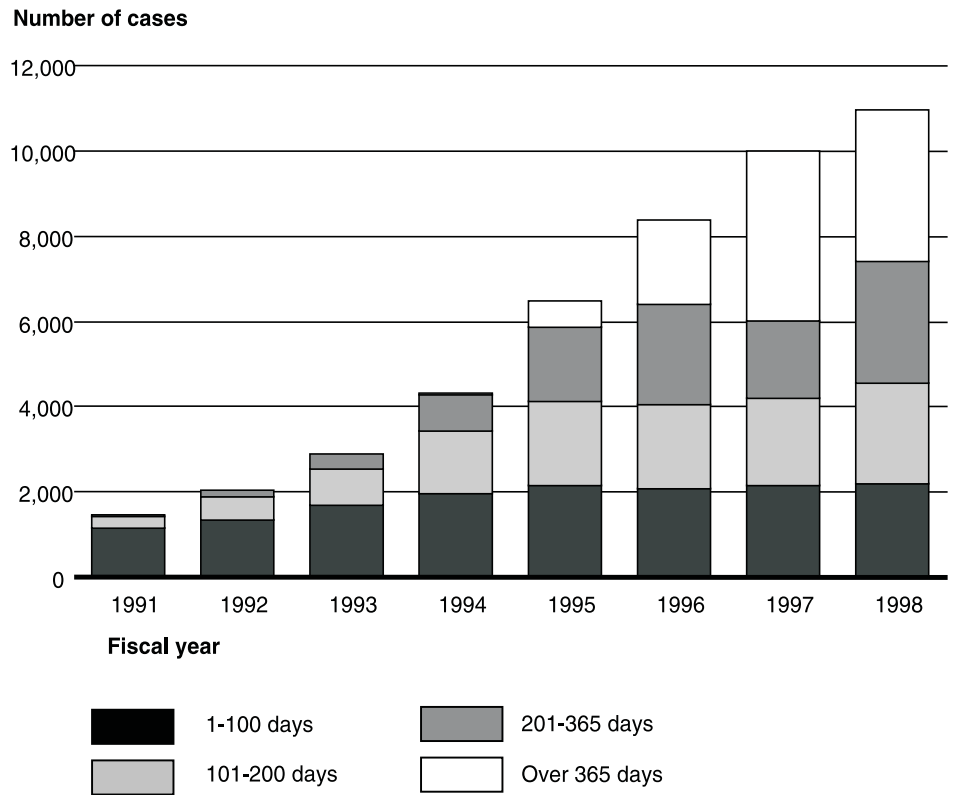
Source: GAO analysis of EEOC data.

**Figure IV.6: Proportion of EEOC's
Hearings Inventory Older Than 180 Days
Has Risen**



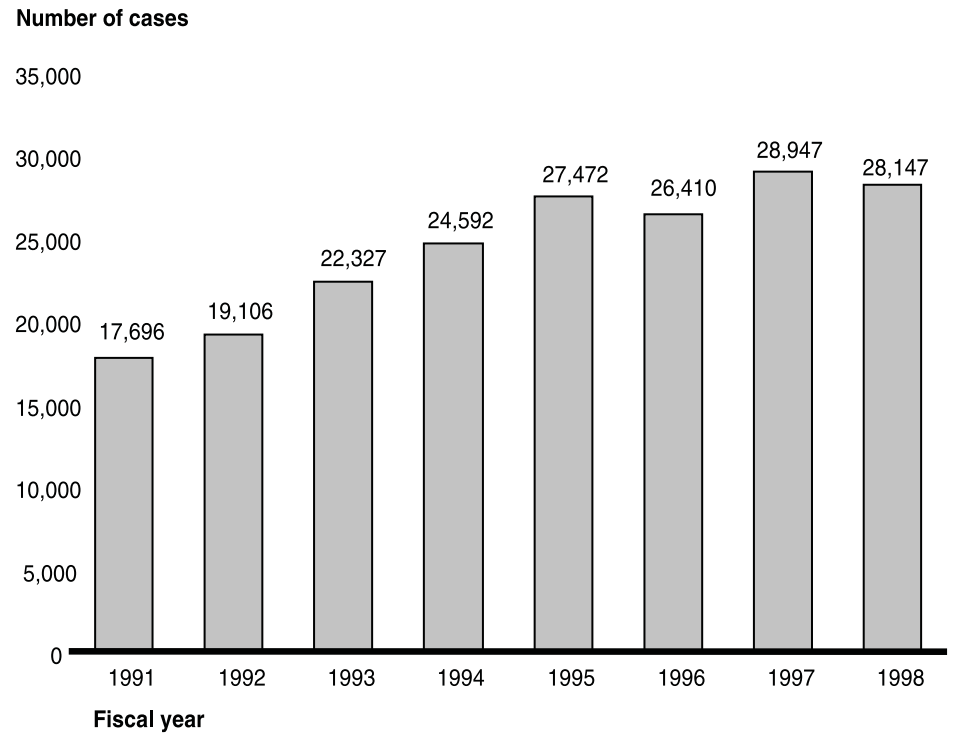
Source: GAO analysis of EEOC data.

Figure IV.7: More Appeals Have Been in Inventory For Longer Periods of Time at EEOC



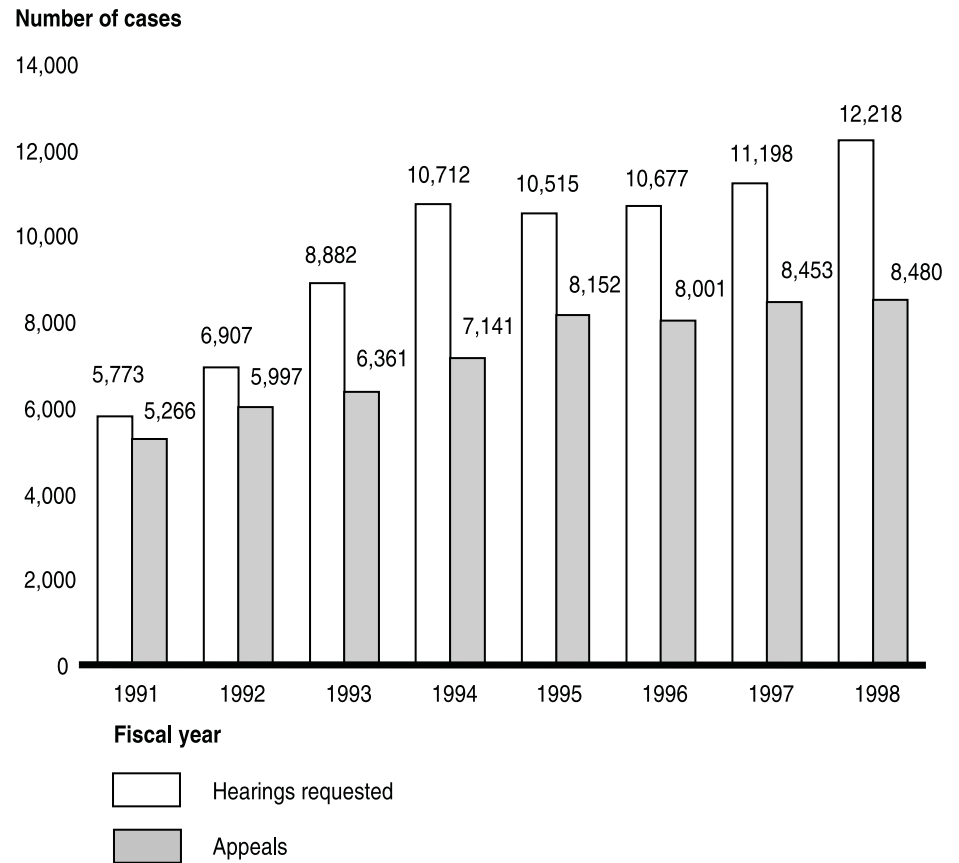
Source: GAO analysis of EEOC data.

Figure IV.8: The Number of Complaints Filed With Agencies Has Generally Increased



Source: GAO analysis of EEOC data.

Figure IV.9: Hearings Requested and Appeals Filed Have Increased at EEOC



Source: GAO analysis of EEOC data.

Appendix IV
Selected Federal Sector EEO Complaint Data for Fiscal Years 1991 to 1998

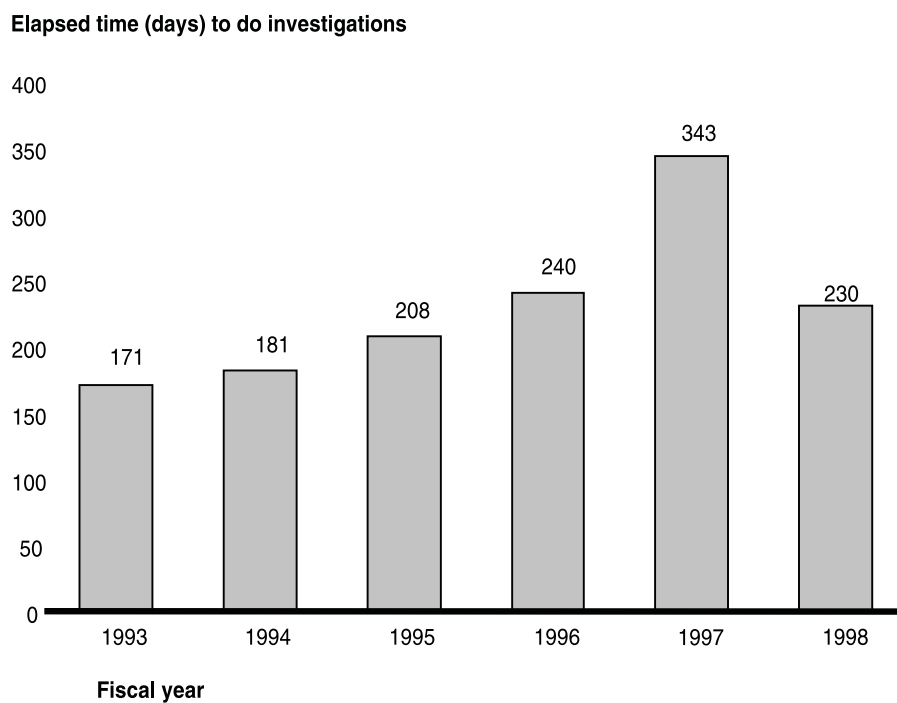
Figure IV.10: Complaint Processing Time at Agencies FYs 1991-1998

Type of Closure	Number of days from date complaint filed to date closed							
	1991	1992	1993	1994	1995	1996	1997	1998
Dismissals	207	215	217	174	155	228	226	203
Withdrawals	304	270	280	217	237	318	293	302
Settlements	310	328	367	312	300	370	371	404
Decisions without hearings	a	a	312	546	453	558	529	524
Decisions with hearings	a	a	791	640	572	613	720	713
Overall average processing time	341	349	366	356	305	379	391	384

^aSeparate data not reported for closures with and without hearings.

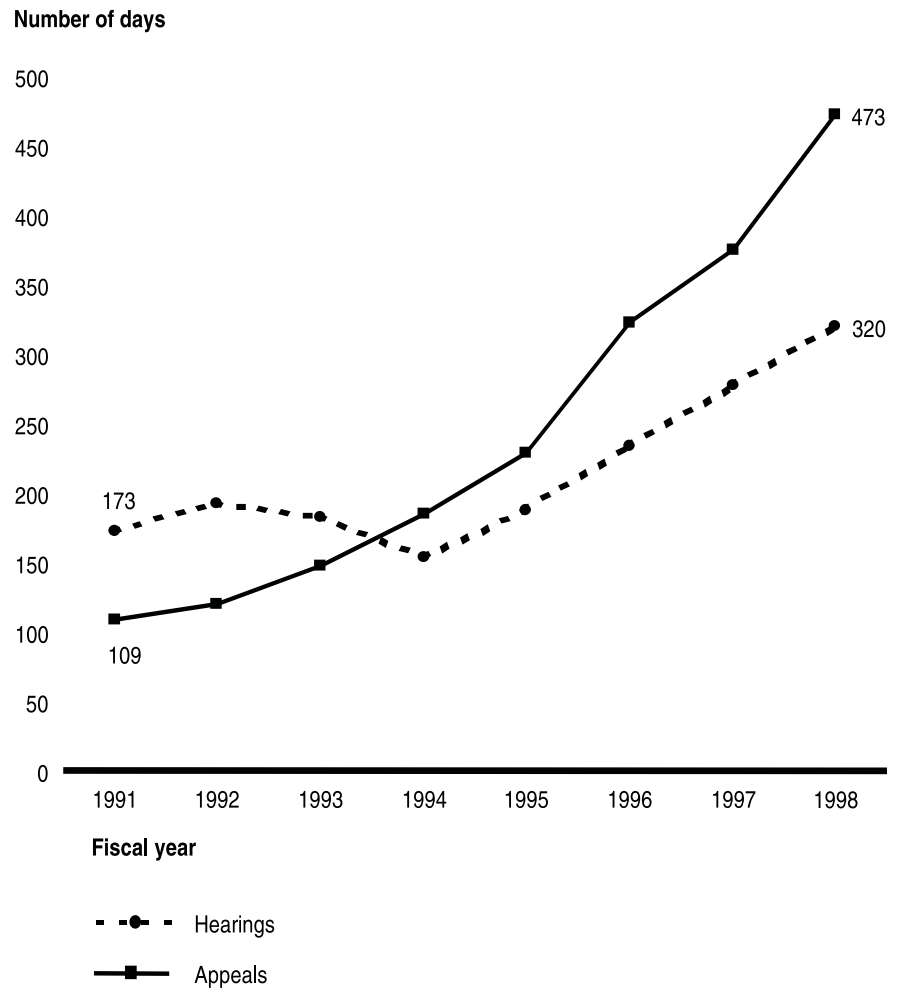
Source: GAO analysis of EEOC data

**Figure IV.11: Average Time For
Agencies' Complaint Investigations**



Source: GAO analysis of EEOC data.

Figure IV.12: EEOC Processing Times For Hearings and Appeals Continue to Increase



Source: GAO analysis of EEOC data.

Comments From the U.S. Equal Employment Opportunity Commission



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Washington, DC 20507

July 14, 1999

Office of
the Chairwoman

Mr. Michael Brostek
Associate Director, Federal Management and Workplace Issues
General Accounting Office
Washington, D.C.

Dear Mr. Brostek:

Thank you for the opportunity to review the General Accounting Office's draft report on trends in EEO charges filed with federal agencies, requests for hearings and appeals at the Equal Employment Opportunity Commission, and the resulting age of workload inventories. The report, an update on GAO's July, 1998 report, Equal Employment Opportunity: Rising Trends in EEO Complaint Caseloads in the Federal Sector, reviews year-over-year changes between fiscal years 1997 and 1998. The report points out that, between fiscal years 1997 and 1998, EEOC's inventory of hearing requests increased by close to 20 percent, while the appeals inventory increased by nearly 10 percent, resulting in increases in the age of both inventories, and that these increases are likely to persist as long as more cases are received than can be closed.

It was precisely this kind of analysis that persuaded me, when I assumed the leadership of the EEOC in October, 1998, that a combination of bold steps, including additional resources and reform of the federal sector process, were needed. I share your concern that inventories are too high and that federal employees wait far too long for their complaints to be processed at every level—both within the agency where they work and at EEOC. That is why I took immediate steps to allocate to the federal sector program a portion of the additional resources provided to the EEOC in the FY 1999 budget and requested \$4 million in additional resources for the federal sector program for fiscal year 2000. As our fiscal year 2000 budget demonstrates, even conservatively projecting hearings and appeals requests to increase by 3 percent a year—substantially less than the increase of 9.2 percent between fiscal years 1997 and 1998 noted by GAO—would require additional resources to reduce months of inventory from 14 months in FY 1998. Inventories in hearings and appeals have grown despite all-time highs in cases resolved per attorney in FY 1998—135 for hearings and 192 for appeals.

While we are optimistic about the long-term potential of the revised regulation to have a positive impact on the fairness and efficiency of the federal sector process, both within the agencies where complaints are raised and at the hearings and appeals stages at EEOC, in the short-term we anticipate that the regulation will increase workloads at the agencies and EEOC. When the revised regulation goes into effect on November 9, agencies and EEOC will be required to apply them to the entire active inventory of pending cases, not just to new cases brought to us. New provisions to eliminate agency practices such as "fragmentation"—the splitting of one complaint into numerous separate complaints—and to permit dismissal of complaints by individuals who are clearly misusing and abusing the EEO process will require agencies and EEOC to carefully scrutinize their current workloads, which will have the short-term effect of reducing productivity levels. These considerations, along with the conservative nature of EEOC's projection of workload increases used in formulating our fiscal year 2000 budget, underscore the urgency of EEOC's need for the additional positions requested in the \$4 million increase we are seeking for the next fiscal year.

Page 1 of 4

My initiatives to reform the federal sector process, as well as considerations in addition to the short-term effects discussed above that cast doubt on the reliability of any speculative projections of the likely impact of the revised regulation at this time, are addressed in further detail below.

Initiatives to Reform the Federal Sector Process

As part of the Administration's on-going commitment that the federal government be a model employer, a regulation incorporating significant reforms to 29 CFR Part 1614, "Federal Sector Equal Employment Opportunity," was published in the Federal Register on Monday, July 12, and will be implemented in 120 days—on November 9, 1999. This regulation, some two years in the making, received priority attention since I assumed the leadership of the EEOC. I intend to launch a comprehensive, government-wide program of outreach and technical assistance to agencies and stakeholders to ensure that accurate information on the new regulation is disseminated widely. I will discuss the major elements of this regulation, and their potential impact on the number of EEO charges filed with agencies as well as appeals and hearings requests to EEOC, in a subsequent section of this letter. But first, I would like to address other significant steps I have taken to reform the federal sector process.

In addition to expediting the release of the proposed regulation, I am implementing a comprehensive, strategic approach to link the hearings and appeals programs with strong oversight, technical assistance and educational initiatives. This summer I am bringing together federal sector staff from across the nation for the first time to ensure that all of our staff are working in common purpose to deliver high quality service to federal employees and employers. Issues to be addressed include how knowledge about the kinds of persistent issues reflected in hearings and appeals brought to EEOC from the various federal agencies can be utilized in developing technical assistance and training tools, as well as in conducting on-site reviews, which we believe is one of the most important vehicles to focus on and correct the root causes of persistent problems.

EEOC recognizes that prevention of discrimination in the first place is a cornerstone in enforcing anti-discrimination laws. Accordingly, with additional resources requested for FY 2000, the Commission will increase its efforts to ensure that federal employees understand their rights and responsibilities and increase and improve technical assistance to federal agency employers, employee groups and representatives and other practitioners. Additional resources will also enable the Commission to expand our efforts to assist agencies in developing and improving their alternative dispute resolution (ADR) programs, which now will be available throughout the process, including early in the informal stage to resolve problems before charges are filed. Effective prevention and early intervention are the most cost-effective means to reduce future inventories of complaints, hearings and appeals.

In addition to reforms of the regulation governing the federal sector EEO process and internal program reforms, I am co-sponsoring, with the National Partnership for Reinventing Government, a task force representing stakeholders in the federal sector EEO process to foster innovations that will enhance the fairness, efficiency and effectiveness of the federal sector process as agencies adapt to the new regulation. The NPR/EEOC Interagency Federal EEO Task Force will bring together a cross-section of federal agency officials in several teams that will address ways to improve federal sector data, identify best practices, and test pilots in areas such as prevention of workplace disputes; early dispute resolution, and computerized methods for tracking and monitoring cases.

Page 2 of 4

Impact of Revisions to the Federal Sector Regulation

While I am committed to working with my federal colleagues to effectively implement the new regulation on the federal sector EEO process through the many initiatives outlined above, ultimately success in reducing inventories and the length of time federal employees must wait for their concerns to be resolved will be determined by forces outside EEOC's control. Action on my fiscal year 2000 budget request, which includes increases essential to EEOC's federal sector program, rests with the Congress; and how federal agencies respond to the opportunity for change rests with agency leadership and employees at all levels.

Nonetheless, I am committed to the goals in our fiscal year 1999 Annual Performance Plan (APP) under the Government Performance and Results Act (GPRA) related to the reduction of EEOC's hearings and appeals inventories, as well as the development of indicators for assessing the effectiveness of the revisions to the federal sector EEO process. Obviously, it was not possible to develop measures until numerous issues regarding the draft regulation were resolved over the last six months. Now that the major changes are clear, we are proceeding to consider alternative measures, and expect to complete them by the end of this fiscal year, consistent with our APP for this year. I will provide them to your office as soon as they are available. Numerous complex issues must be resolved, including how baseline data will be collected, so that changes occurring after implementation of the revised regulation can be detected, and what data collection method will be used. As you are no doubt aware, any data collection request, whether it applies to the private or federal sector, must undergo a clearance and review process to minimize the burden on those who must supply the data. Furthermore, the effective date for the regulation is November 9, 1999.

Because of the lead time required for collecting data on the impact of the new regulation--8 months to issue the changes and an additional 12 months for reporting under the new instructions--the first year for which data will be collected on experience under the revised regulation will be fiscal year 2001. This will also be the first full year of experience under the revised regulation. As noted in the introductory paragraphs of this letter, the requirement that the regulation be applied to pending cases will require additional staff time to scrutinize existing inventories in fiscal year 2000, so that any data on results for next fiscal year would not be a reliable indicator of performance under the new regulation. Therefore, data expected to be available in the last few months of 2001 will be the first reliable data for building new models to project resource requirements under various scenarios, for example, how many resources would be required to bring down and maintain hearing and appeals inventories at a level permitting requests to be addressed within 180 days, as is required in the regulations for hearings. In terms of impact on an EEOC budget request, however, the first year to which the new model could be applied would be fiscal year 2004, which would be submitted to the Office of Management and Budget in September, 2002, and submitted to the Congress early in 2003.

In the meantime, EEOC will continue to use the best available information for developing its budget requests, and we certainly agree that 180 days for addressing hearings and appeals requests is an appropriate goal, inasmuch as that is EEOC's goal for resolving most private sector complaints. I have a strong commitment to fair and efficient service to all employees who bring to the agency concerns covered by our statutory mandates. In addition, we will also explore alternative means for obtaining some feedback on the kinds of changes that may flow from the revised regulation.


At this point in time it is premature and would be highly speculative for us to venture guesses on what the actual experience may be. Attempts to anticipate "bottom line" results are also thwarted by the possibility that the direction of the changes likely to occur could offset one another unless highly

Appendix V
Comments From the U.S. Equal Employment Opportunity Commission

sensitive measures are employed to measure improvements in the fairness and efficiency of the process. For example, the feature in the revised regulation that eliminates the agency's discretion to reverse or rewrite decisions by EEOC Administrative Judges may invigorate confidence in the fairness and equity of the process, prompting individuals to come forward with EEO concerns they might not have raised otherwise. On the other hand, the requirement to implement ADR programs, if adopted in a manner that engenders widespread acceptance, could result in a high rate of resolutions of concerns before formal charges are filed, as well as drastically reducing the time it takes to resolve federal employees' job-related concerns. But it may be equally likely that the results of new and expanded ADR programs would be ambiguous, based on information on the program results for fiscal year 1998, which showed that, while 2.4 percent fewer individuals began the EEO process in the counseling stage, more of those who completed the counseling filed formal complaints—45 percent, as compared to 44 percent in fiscal year 1997.. Counseling, like ADR, is a voluntary, non-adversarial method to resolve disputes, but invoking the process does not necessarily lead to a successful resolution.

Other key improvements in the revised regulation that have the potential for positive results in reducing case inventories are (1) elimination of agency use of its processes to split one charge in numerous charges; (2) dismissal of "spin-off" complaints alleging discrimination in the manner in which the agency processed the complaint; and (3) dismissal of complaints by individuals who are clearly misusing and abusing the EEO process.

Sincerely,



Ida L. Castro
Chairwoman

Page 4 of 4

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