United States General Accounting Office

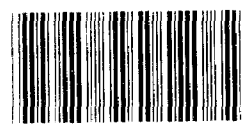
GAO

Report to Congressional Requesters

October 1988

EQUAL EMPLOYMENT OPPORTUNITY

EEOC and State Agencies Did Not Fully Investigate Discrimination Charges



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GAO
United States
General Accounting Office
Washington, D.C. 20548

Human Resources Division

B-201792

October 11, 1988

Congressional Requesters:

In response to your request, this report presents the results of our review of efforts by the Equal Employment Opportunity Commission (EEOC) and five state agencies to fully investigate discrimination charges. It also discusses EEOC's monitoring of the state agencies' investigative work.

As arranged with your offices, we are sending copies of this report to the Chairman, Equal Employment Opportunity Commission; the Director, Office of Management and Budget; heads of the five state agencies we reviewed; other congressional committees; and interested parties.

Lawrence H. Thompson
Assistant Comptroller General

List of Requesters

The Honorable Augustus F. Hawkins
Chairman, Committee on Education
and Labor
House of Representatives

The Honorable Matthew G. Martinez
Chairman, Subcommittee on Employment
Opportunities
Committee on Education and Labor
House of Representatives

The Honorable Alan Cranston
Assistant Majority Leader
United States Senate

The Honorable Lawton Chiles
Chairman, Subcommittee on Labor,
Health and Human Services, and
Education
Committee on Appropriations
United States Senate

The Honorable Edward M. Kennedy
Chairman, Committee on Labor and
Human Resources
United States Senate

The Honorable William D. Ford
Chairman, Subcommittee on Investigations
Committee on Post Office and
Civil Service
House of Representatives

The Honorable Tom Lantos
Chairman, Subcommittee on
Employment Opportunities
Committee on Government Operations
House of Representatives

The Honorable Pat Williams
Chairman, Subcommittee on Postsecondary
Education
Committee on Education and Labor
House of Representatives

Executive Summary

Purpose

The Equal Employment Opportunity Commission (EEOC) and state and local agencies share responsibility for investigating charges filed that allege violations of federal, state, and local antiemployment discrimination laws. Since 1983, the stated policy of EEOC has been to "fully investigate" charges. This has proven to be a formidable task, however, since more than 100,000 employment discrimination charges are filed annually. In April 1987, the Chairman of the House Committee on Education and Labor and several other congressional requesters asked GAO to assess whether EEOC and the state agencies were fulfilling their commitment to fully investigate charges. GAO also was asked to review whether EEOC adequately monitored the state agencies' investigative work.

Background

Of the approximately 115,000 employment discrimination charges filed under federal statutes in fiscal year 1987, EEOC will process about 62,000, and state and local agencies will process the other 53,000. Over the last 12 years, EEOC has tried to deal with an increasing volume of charges filed by adopting expedited approaches for resolving charges (see pp. 14 to 17). But these approaches, while providing more timely resolution, resulted in charges being closed with minimal investigative work and, in some cases, may have produced inequitable results.

In 1983, the EEOC Chairman decided that closing charges after incomplete investigative work was inappropriate and adopted a full-investigations policy. Since then, EEOC's backlog of charges has nearly doubled.

EEOC's Compliance Manual provides detailed guidance on how to conduct a full investigation and what kinds of evidence are needed to reach an accurate decision on the merits of a charge. EEOC also expects state and local agencies to adhere to these investigative requirements.

Of primary importance in an investigation, according to EEOC, are (1) obtaining evidence to determine whether an employer treated the charging party differently from other employees, (2) interviewing relevant witnesses, and (3) verifying the accuracy and completeness of critical evidence used. These steps are to be performed at a minimum for virtually every charge investigation in which a determination is made.

In fiscal year 1987, EEOC ruled that there was cause to believe discrimination had occurred in fewer than 3 percent of the charges closed. In an additional 12.5 percent of closed charges, EEOC obtained a settlement from the employer in which some relief was provided for the charging

party without determining whether there was cause to believe discrimination had occurred.

Results in Brief

GAO reviewed investigations of charges closed with no-cause determinations (no evidence of discrimination found) by six EEOC district offices and five state agencies from January through March 1987 and found that

- 41 to 82 percent of the charges closed by the district offices were not fully investigated and
- 40 to 87 percent of charges closed by the state agencies were not fully investigated.

Factors that may have contributed to less than full investigations included (1) a perception by investigative staff that EEOC was more interested in reducing the large inventory of charges than in performing full investigations, (2) disagreement on EEOC's full-investigation requirements, and (3) inadequate EEOC monitoring of state agencies' charge investigations.

Several former EEOC chairpersons and commissioners told GAO that substantial changes may be needed to resolve EEOC's difficulty in making determinations on a large workload. There was no consensus, however, on the most appropriate strategy to be adopted. The current EEOC Chairman generally did not agree with the suggested changes.

Principal Findings

Of the charges closed with no-cause determinations by the 11 EEOC district offices and state agencies from January to March 1987,

- critical evidence was not verified in 40 to 87 percent of charge investigations,
- relevant witnesses were not interviewed in at least 20 percent of charge investigations in 7 of the 11 offices, and
- charging parties were not compared with similarly situated employees in at least 20 percent of charge investigations in 5 of the 11 offices.

EEOC accepted all of the charge investigations that GAO reviewed, but GAO identified many cases with serious deficiencies, ranging from 40 percent in one state to 87 percent in another. EEOC officials told GAO that EEOC did not have enough staff to monitor the agencies effectively.

Under the current investigative approach, charges filed were not fully investigated; yet the size of the backlog nearly doubled between 1983 and 1987. At the end of fiscal year 1987, more than 118,000 charges filed were awaiting an investigation by either EEOC or the state agencies.

The various approaches EEOC has tried over the years have not been successful in balancing the timely resolution of a large volume of charges with the performance of high-quality investigations. According to several former EEOC officials, major changes should be considered in the methods used to investigate employment discrimination charges. The changes proposed included (1) reemphasizing the use of some form of negotiated settlement, (2) establishing an administrative adjudication system, and (3) reallocating the categories of investigative work between EEOC and the state and local agencies.

However, GAO found little agreement among former EEOC officials about the best strategy for dealing efficiently and effectively with the volume of charges being received by EEOC. Each approach suggested has potential advantages and drawbacks.

The current EEOC Chairman disagreed that major changes are needed. With a $20 million increase in EEOC's $180 million appropriation, the Chairman believes EEOC can fully investigate charges and properly monitor the state agencies' investigative work. However, there is no reliable workload information available to support the Chairman's views.

Given EEOC's large workload, large backlog of charges and longstanding history of investigative problems, GAO believes that it is time for a congressional review of the strategy being used to enforce employment discrimination laws.

Recommendation to Congressional Committees

GAO recommends that the Chairmen of the House Committee on Education and Labor and Senate Committee on Labor and Human Resources and other appropriate congressional committees jointly establish a panel of experts to consider the strategy being used to enforce employment discrimination laws.

Recommendations to the EEOC Chairman

As long as the current full-investigations policy is maintained, GAO recommends that the EEOC Chairman

- clarify and enforce EEOC's policies and standards for investigating discrimination charges, including the need to obtain and verify all relevant evidence;
- direct EEOC's district offices to monitor the investigative work of the state agencies more closely and not accept charge determinations based on less than full investigations; and
- establish an independent group to periodically conduct investigations of a sample of charges filed and compare its administrative closure, settlement, cause, and no-cause rates on charges with those of EEOC district offices and state and local agencies.

To provide baseline information necessary for evaluating the resources EEOC needs, GAO further recommends that the EEOC Chairman conduct a study to determine the charge caseload an individual investigator should be expected to carry if full investigations are to be performed and, based on this study, determine the resources EEOC would need to fully investigate charges.

Agency Comments

EEOC and four of the five state agencies reviewed generally disagreed with GAO's findings. Common concerns included (1) the criteria GAO used in reviewing the charge investigations, (2) how GAO applied the criteria, and (3) how GAO selected the samples of charge investigations to review. EEOC also commented that GAO's analysis disregarded many program improvements since the review period (January through March 1987). GAO believes that it selected and evaluated investigations appropriately and improvements to the program are still needed. A summary of the comments by EEOC and the state agencies, along with GAO's responses to these, are presented in chapter 4. The full EEOC and state agency comments are presented in appendixes V-X.

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Abbreviations

ADEA	Age Discrimination in Employment Act
EEOC	Equal Employment Opportunity Commission
EPA	Equal Pay Act
FEPA	Fair Employment Practices Agency
GAO	General Accounting Office

Introduction

Equal employment opportunity is a right of every American. To ensure that all people are afforded an equal opportunity to pursue the work of their choice, a broad range of laws and executive orders have been enacted, including the Civil Rights Act of 1964, as amended. Created by title VII of this act, the Equal Employment Opportunity Commission (EEOC) is the federal agency primarily responsible for investigating charges alleging employment discrimination on the basis of race, color, religion, sex, or national origin.

EEOC also investigates charges filed under

- the Equal Pay Act of 1963, which prohibits employers from paying different wages to men and women doing substantially equal work;
- the Age Discrimination in Employment Act of 1967, which protects workers age 40 and above from discrimination by employers with 20 or more employees; and
- section 501 of the Rehabilitation Act of 1973, which prohibits employment discrimination by federal agencies against handicapped individuals.

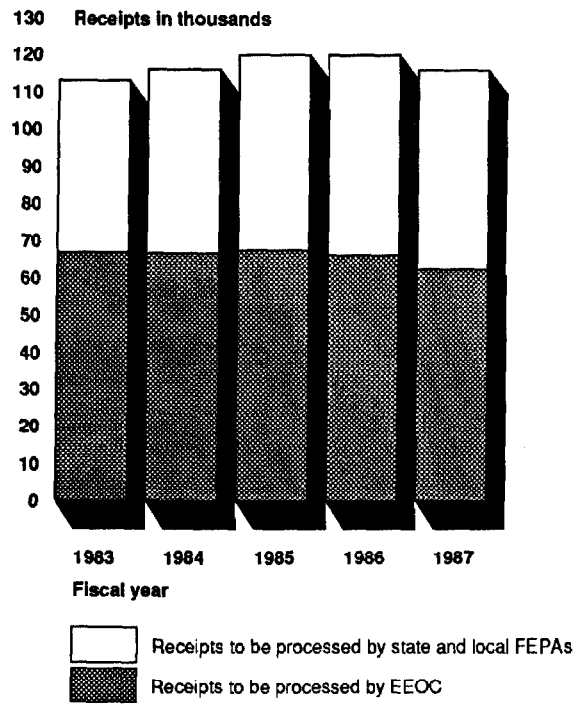
To help carry out its investigative responsibilities, EEOC maintains agreements with state and local fair employment practices agencies (FEPAs). More than 115,500 charges were filed with EEOC and the FEPAs during fiscal year 1987. EEOC will process about 54 percent of these charges and the FEPAs about 46 percent. The total number of charges EEOC and the FEPAs were responsible for processing during fiscal years 1983-87 is shown in figure 1.1.

EEOC and FEPA Charge Processing

EEOC is headed by a Chairman and four other commissioners appointed to 5-year terms by the President with the advice and consent of the Senate. The Chairman is responsible, among other things, for EEOC policy implementation and administration, and enforcement of legislation under EEOC's jurisdiction.

EEOC enforces equal employment opportunity through a field structure composed of 48 offices: 23 district, 16 area, and 9 local offices. Under the direction of EEOC's Office of Program Operations, these offices receive, investigate, and resolve employment discrimination charges. At the end of fiscal year 1987, 1,357 (about 41 percent) of EEOC's total staff of 3,278 were investigators and supervisors involved with investigations of employment discrimination charges. EEOC's fiscal year 1988 appropriation was about $180 million.

Figure 1.1: Total Charges Received by EEOC and State and Local FEPAs (Fiscal Years 1983-87)



Source: EEOC, Office of Program Operations Annual Report, Fiscal Year 1987.

Some states and localities established FEPAs to investigate charges of employment discrimination before the passage of the Civil Rights Act of 1964. Under title VII of this act, EEOC must send charges it receives to the appropriate state or local FEPA for initial processing if (1) the jurisdiction that the FEPA serves has a law prohibiting employment discrimination on bases covered by title VII and (2) the FEPA can enforce that law.

EEOC has designated 108 FEPAs, located in 46 states, the District of Columbia, Puerto Rico, and the Virgin Islands, as meeting these conditions. In these areas, charging parties may bring complaints to either EEOC or the FEPAs. In Alabama, Arkansas, Louisiana, and Mississippi, where no state or local FEPA has been designated as meeting these conditions, charges may be filed with EEOC.

EEOC views the charges received by it and FEPAs as a common workload and attempts to avoid duplication of effort by sharing investigative responsibilities with the FEPAs. This objective is implemented through agreements, authorized by title VII, between EEOC and the FEPAs. Under these agreements, the FEPAs contract to process a minimum number of charges at a fixed price per charge. As a part of these agreements, EEOC and the FEPAs establish the types and number of charges each agency will process. In fiscal year 1987, EEOC had such work-sharing agreements with 81 state and local FEPAs and paid them a total of about $20 million (about $400 per charge processed). EEOC is responsible for overseeing the work performed by the FEPAs. According to EEOC policies and procedures, this oversight responsibility includes ensuring that FEPA investigations meet EEOC's standards.

The Civil Rights Act requires EEOC to investigate individual charges filed alleging employment discrimination in order to decide whether there is reasonable cause to believe the charge is true. According to EEOC's Compliance Manual, a decision of "reasonable cause" means that the charge has sufficient merit to warrant litigation if the matter is not resolved. In addition to investigations of individual charges, EEOC is authorized to conduct more broadly based investigations of patterns and practices of employment discrimination. In fiscal year 1987, EEOC closed 210 such investigations. Our review focused on individual charges.

According to EEOC, to file an individual charge, a charging party needs only to allege that some injury has occurred. Even if the initial investigator believes that EEOC does not have jurisdiction over the charge, EEOC may not reject it if the individual insists on filing it. The FEPA requirements for filing a charge are similar to EEOC's.

To investigate a charge, EEOC requires only that the charging party provide enough evidence to infer that the allegations are true. This includes identifying

- the alleged discriminating employer;
- the fundamental reason (or basis) for the discrimination, such as age, race, or sex; and
- the consequence of the discrimination (or issue), such as discharge.

According to EEOC, the investigator, not the charging party, is responsible for obtaining sufficient evidence to prove or disprove the charge.

If, after the investigation of an individual charge, EEOC concludes that there is no reasonable cause to believe it is true, EEOC issues a no-cause determination. It notifies the charging party that, even though a no-cause finding was made, the individual has the right to file a lawsuit in federal district court. If the charge is found to have merit under EEOC's reasonable cause standard, EEOC issues a cause determination and attempts to remedy the alleged unlawful employment practice through conference, conciliation, and persuasion. Such remedies include corrective action by employers to ensure that similar violations will not occur and restitution of any lost earnings a person may have suffered as a result of the discrimination. If these methods are unsuccessful, EEOC may bring suit against the employer in federal district court.

In other instances, charges may be closed on the basis of a settlement agreement between the charging party and the employer that resolves the charge before EEOC has completed its investigation and determined the merits of the charge. Also, charges may be closed administratively without a determination for such reasons as: (1) EEOC lacks jurisdiction or (2) the charging party is unwilling to cooperate or cannot be located. Similar procedures are used in closing charges investigated by the FEPAs.

Frequency of Findings of Possible Discrimination

EEOC closes most individual charges with no-cause determinations. In fiscal year 1987, EEOC closed 29,578 charges (55.3 percent of its total closures) with no-cause determinations and 1,412 charges (2.6 percent of total closures) with cause determinations. In an additional 12.5 percent of these charges, EEOC obtained a settlement from the employer in which some relief was provided for the charging party without a determination being made on whether discrimination had occurred. The remaining 29.5 percent were closed administratively. EEOC no-cause determinations during the 5-year period, fiscal years 1983-87, ranged from about 41 to 59.5 percent of the total closures (see fig. 1.2). During that same period, the rate of cause determinations ranged from 2.6 to 3.9 percent. Similar information on FEPA closures was not available at the time we completed our review.

Type of Discrimination Alleged

Many of the charges filed with EEOC have been based on disparate treatment. Under the Civil Rights Act of 1964, this type of discrimination occurs when an employer treats some individuals less favorably than others in similar work situations because of their race, color, religion, sex, or national origin. According to EEOC, an example of disparate treatment would be when an employer establishes a rule that any employee

charged with theft is automatically discharged. If a black employee is charged with theft and discharged, the discharge is consistent with the rule. However, to determine whether there was disparate treatment, there needs to be a comparison of whether white employees charged with the same offense were also discharged. If they were merely suspended, disparate treatment has occurred. The key in determining whether discrimination has occurred under this example is, according to EEOC, whether an employer applies the same policy for discharge to all employees accused of the same infraction.

A Historical Perspective on Charge Investigations

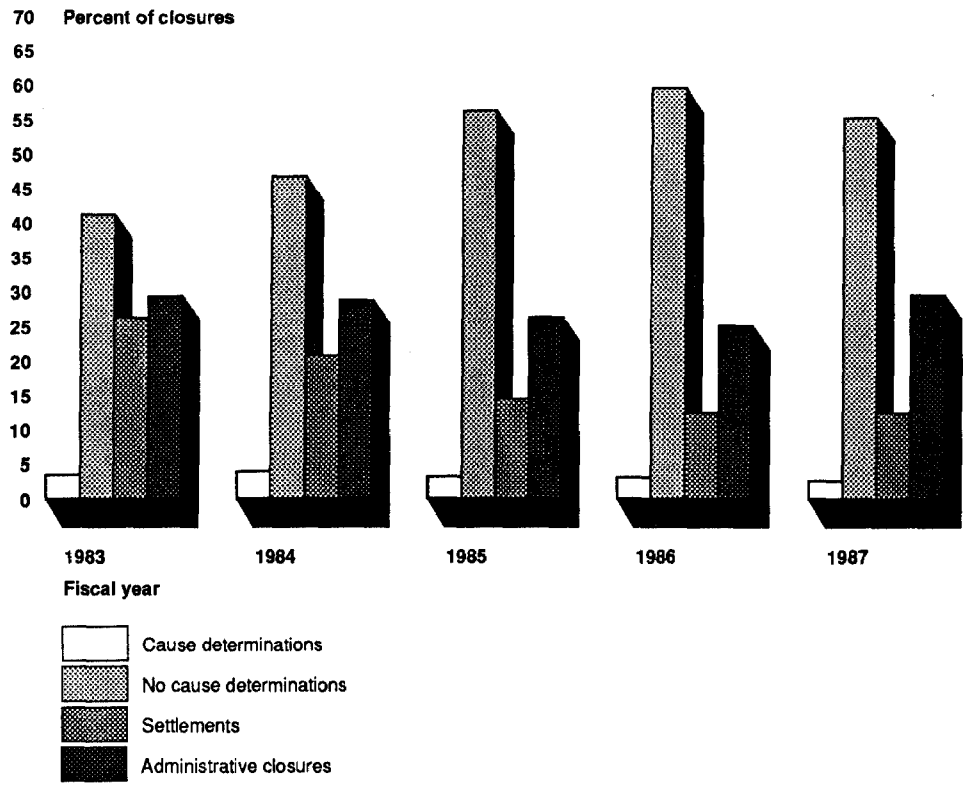
While the Civil Rights Act requires EEOC to investigate charges, it does not define what types of investigations are needed. Historically, EEOC has been confronted with a large backlog of charges awaiting investigation and has tried to reduce this backlog by adopting expedited approaches for resolving charges.

Since 1976, GAO and the House Committee on Education and Labor have been issuing reports discussing various problems that hindered EEOC's effectiveness in enforcing employment discrimination laws.[1] In a 1976 report, we pointed out that although EEOC had some success in obtaining relief for discrimination victims, it did not appear to have achieved enough to make a real difference. Among other things, we reported that charges had not been resolved in a timely manner and that as of June 30, 1975, EEOC's backlog of charge investigations totaled more than 126,000.

To reduce the backlog, according to a 1976 House Committee on Education and Labor report, EEOC implemented an expedited charge processing procedure known as the "Thirty Day Turn-Around Project." Under the project, the backlog was reduced by streamlining the investigative process, eliminating on-site investigations, and rendering determinations on "minimally adequate evidence." EEOC discontinued the project after numerous complaints from various sources that the expedited procedures violated the rights of charging parties, according to the report.

[1]GAO has issued the following reports on EEOC's enforcement activities: (1) The Equal Employment Opportunity Commission Has Made Limited Progress in Eliminating Employment Discrimination (GAO/HRD-76-147, Sept. 1976); (2) Further Improvements Needed in EEOC Enforcement Activities (GAO/HRD-81-29, Apr. 1981); (3) Information on the Atlanta and Seattle EEOC District Offices (GAO/HRD-86-63FS, Feb. 1986); and (4) EEOC Birmingham Office Closed Discrimination Charges Without Full Investigations (GAO/HRD-87-81, July 1987).

Figure 1.2: EEOC Charge Closures by Type (Fiscal Years 1983-87)



Source: EEOC, Office of Program Operations Annual Report, Fiscal Year 1987.

In January 1979, EEOC adopted a "rapid charge process" for resolving backlogged charges. The rapid-charge processing system was designed to offer the involved parties an early opportunity to resolve the charge by negotiating a no-fault settlement with minimal investigation. In 1981, we reported that by using this procedure, EEOC had been more timely in resolving charges and that the 1975 backlog of about 126,000 charges had been reduced to about 55,000 by September 30, 1979. While the process did provide more timely relief to charging parties, we noted, it overemphasized negotiating charges that were of little merit. We recommended that EEOC discontinue negotiating charges that were without reasonable cause, as such settlements undermined its enforcement activities.

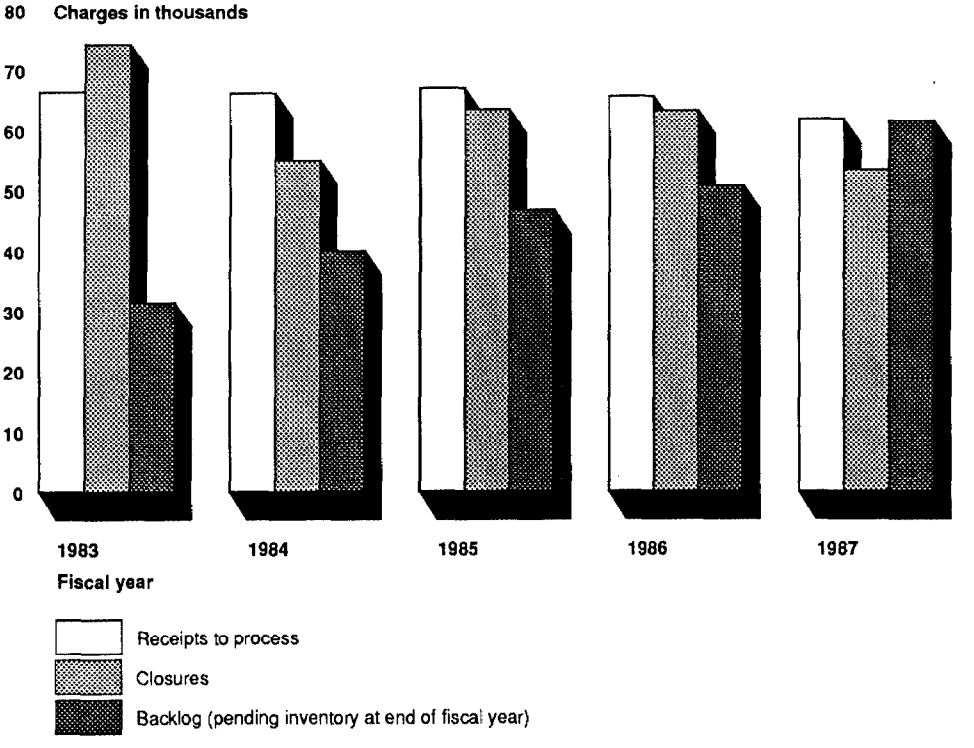
By the end of fiscal year 1983, EEOC's rapid-charge process reduced the backlog of charges to about 31,500. However, EEOC noted that under the rapid charge process, EEOC had become primarily a "facilitator" or "claims adjuster" and was resolving charges based on minimal investigative work. In December 1983, EEOC determined that it wanted to conduct more complete, accurate investigations by shifting more of its resources from the rapid charge processing system to one that allowed fuller investigations. According to EEOC, full investigations more directly fulfill the agency's mission, provide a more accurate basis for determining the merits of charges, and provide better evidence should litigation become necessary.

In 1985, staff from the House Committee on Education and Labor reviewed the manner in which EEOC was enforcing the civil rights laws. Included in its study was an assessment of whether EEOC was performing high-quality investigative work. In 1986, the Committee staff reported that EEOC was performing poor-quality investigations and was not properly monitoring the FEPAs' investigative work. Specifically, EEOC was still placing greater emphasis on rapidly closing charges than on performing high-quality investigations, the staff noted. EEOC supervisors were required to process a certain number of charges within rigid time frames, the staff found. Also, investigators could receive low performance ratings if they missed a deadline imposed by their supervisors. Investigators in EEOC's Birmingham district office, the Committee staff said, alleged that charges had been closed prematurely at the end of fiscal year 1985 in order to "pad" workload statistics.

At the Committee's request, we reviewed the allegations that EEOC's Birmingham district office had improperly closed charges in September 1985 without completing full investigations. In July 1987, we reported that as a result of pressure on investigators to meet production goals, the district office had closed 29 percent of the charges in September 1985 without full investigations.

Since adopting the full-investigations policy in December 1983, EEOC's backlog of charges awaiting investigation has increased significantly (see fig. 1.3). Increases or decreases in the backlog may be attributable to other factors besides the full investigations policy, such as staffing levels and the nature and complexity of the charges. However, in general, it takes longer to fully investigate a charge than it does to close a charge with minimal investigative work.

Figure 1.3: EEOC Charge Receipts to Process, Closures, and Backlog (Fiscal Years 1983-87)



Source: EEOC, Office of Program Operations Annual Report, Fiscal Year 1987.

Note: The receipts-to-process figure for each fiscal year includes charge receipts that EEOC assumed responsibility for processing under worksharing agreements with the FEPAs.

According to EEOC, at the end of fiscal year 1983, the backlog amounted to about 31,500 charges. At the end of fiscal year 1984, when EEOC's full-investigations policy was in place, EEOC's backlog had increased to nearly 40,000 charges, although the number of charges received had remained virtually constant. By the end of fiscal year 1987, EEOC's backlog had increased to about 62,000 charges. According to EEOC, at the end of fiscal year 1987, the FEPAs had a backlog of about 56,000 charges that they were responsible for processing under EEOC work-sharing agreements. Information on FEPA backlogs for prior years was not available.

Objectives, Scope, and Methodology

In April 1987, the Chairmen of the House Committee on Education and Labor, its Subcommittee on Employment Opportunities, and several other congressional requesters asked us to assess whether EEOC and the FEPAs were fully investigating employment discrimination charges filed by individuals. They also asked that we assess how well EEOC monitors investigations conducted by the FEPAs. Our criteria for making these

assessments were contained in EEOC's Compliance Manual, which provides detailed guidance on conducting full investigations, and EEOC's Order 916, which outlines requirements for accepting the FEPAs' findings. We confirmed the essential criteria with EEOC's Director of Program Operations.

A full investigation consists of obtaining sufficient evidence to make a determination on a charge, the Director said. According to the Director's comments, as well as EEOC's Compliance Manual and procedures governing the review of FEPA investigations, this requires the following steps to be taken at a minimum:

1. Obtain critical evidence necessary to

- address all the statutes, bases of discrimination, and issues under which the charge was filed,
- determine the employer's practice or policy relating to the adverse employment decision,
- compare the charging party to others in a similar work situation, and
- reconcile differing versions of the facts presented by the employer and charging party;

2. Interview relevant witnesses; and

3. Verify the critical evidence obtained.

These standards apply to charges investigated by both EEOC and the FEPAs, according to the Director.

We limited our investigation to six EEOC district offices and five state FEPAs. The six district offices were Atlanta, Dallas, Detroit, Memphis, New York, and Philadelphia. The five state FEPAs were the Georgia Office of Fair Employment Practices, the Michigan Department of Civil Rights, the Tennessee Human Rights Commission, the New York State Division of Human Rights, and the California Department of Fair Employment and Housing for Northern California. We selected these offices on the basis of several factors, including congressional interest, the number of fiscal year 1986 charge closures, and geographic location. We also included some offices that EEOC had designated to be among the best in their charge processing activities. Appendix I provides more detailed information on each of these factors for the offices selected.

From each office, we obtained a list of charges closed between January and March 1987. This was the most recent period for which EEOC had data at the time we began our work. Charges closed during this period were, for the most part, filed in fiscal years 1985 and 1986. From the lists provided by EEOC for each office, we selected for review a random sample of individual charges closed with no-cause determinations. Appendix II shows, for each office, the total number of charges closed with no-cause determinations during this period and the number we reviewed.

We also selected for review those charges closed with cause determinations and those closed for administrative reasons. We later decided to focus our work on charges closed with no-cause determinations because, in our initial reviews, we found few investigative deficiencies with the other closure types.

For no-cause determinations, we reviewed the investigation for each sampled charge as documented by the evidence contained in the charge file. To assure consistency in these reviews, we developed a structured instrument to guide our review of the charge files. We analyzed the data collected in the completed instruments to determine whether the charge had met the minimum requirements for a full investigation in accordance with EEOC's criteria.

Each charge ultimately found to be not fully investigated was reviewed three times by GAO staff. After the initial review by our field staff, a supervisory field staff member rereviewed the charge file and the GAO staff member's analysis. Any disagreements were resolved through an additional review by another staff member. After this, supervisory staff from GAO headquarters visited each field location and rereviewed charges tentatively determined to be not fully investigated.

We discussed the results of our reviews with investigative staff and supervisors at the district offices and state FEPAs and considered their explanations in reaching tentative conclusions on whether charges were not fully investigated. We then gave each EEOC district director and state FEPA head a list of charges that we considered to be not fully investigated and considered their comments in making our final determinations. The extent to which the EEOC and FEPA offices chose to comment on the charge investigations we found deficient varied.

Our findings are projectable only to charges closed as no-cause determinations from January through March 1987 in the offices that we

reviewed. The percentages of charges that we determined were not fully investigated are accurate within 10 percentage points, at a 95-percent confidence level. Appendix III provides further information regarding the sampling errors associated with our findings.

We performed our work at EEOC headquarters and the 11 EEOC and state FEPA offices covered by our review. We interviewed headquarters, district office, and state agency officials concerning investigative policies, our reviews of charge files, and problems affecting their efforts to investigate charges.

Our work, done between April 1987 and July 1988, was conducted in accordance with generally accepted government auditing standards.

Charges Closed Without Completing Full Investigations

Although EEOC's policy is to fully investigate discrimination charges, the six EEOC district offices that we reviewed closed a substantial portion of their charges without full investigations. The district offices did not fully investigate an estimated 41 to 82 percent of the charges they closed as no-cause determinations between January and March 1987.

EEOC district offices also are required to review the quality of investigations performed by state and local FEPAs. However, from January through March 1987, an estimated 40 to 87 percent of the charges closed with no-cause determinations by the five state FEPAs that we reviewed were not fully investigated. In those five FEPAs, EEOC reviewed 105 of the 307 charge investigations included in our samples and accepted the FEPAs' no-cause determinations on all 105. Our review showed that 55 of these investigations were deficient.

The most common deficiencies we identified in the EEOC and FEPA investigations were that

- information critical to the investigation was not independently verified,
- evidence critical in determining whether a charging party was treated differently from other employees in similar work situations was not obtained, and
- witnesses to the alleged discrimination were not interviewed.

Some investigations also did not (1) address the specific allegations of a charge; (2) obtain other types of critical evidence, such as company practices or policies; or (3) reconcile differing versions of factual information from employers and employees. However, we found these deficiencies to a much lesser extent. Appendix IV shows the estimated percentages of charge investigations for which, in our opinion, each standard for a full investigation was not met.

Criteria and Procedures for Investigating Charges

EEOC's Compliance Manual provides detailed guidance for implementing EEOC's full-investigations policy and requires that the burden of proving or disproving a charge rests with the investigator, not the charging party. According to EEOC's Director of the Office of Program Operations, the extent to which the manual should be followed in an investigation to prove or disprove a charge depends on the nature and complexity of a charge and the experience of the investigator. However, the Director acknowledged that virtually every investigation done by either EEOC or the FEPAs should consist, at a minimum, of the following:

- Obtaining relevant evidence: EEOC or a FEPA should obtain enough evidence to determine whether reasonable cause exists to conclude whether an individual was subjected to an adverse employment practice prohibited by statute. To reach this determination, an investigator must obtain sufficient evidence to corroborate or refute the charging party's and employer's positions on the allegations of discrimination. Depending on the nature of the charge, this evidence may include such data as discharge and payroll records and employers' policies.
- Interviewing relevant witnesses: Witness testimony frequently can serve to resolve conflicting accounts regarding alleged discrimination from the employee and employer and to test the accuracy and completeness of employer records. In certain charges, such as those alleging sexual harassment, witness testimony may be the only evidence available to charging parties.
- Verifying evidence obtained: Verifying the accuracy and completeness of evidence obtained is basic to all charge investigations. Using inaccurate or incomplete evidence to resolve a charge could result in a faulty determination. Documentary evidence can be verified through witness testimony, and the accuracy of witness statements can be substantiated through other data.

These three criteria are an integral part of the investigative process.

EEOC's and the FEPAs' investigative processes are generally similar. The investigation of an individual's allegations begins when an employee files a charge against an employer, specifying the basis for the charge and the consequences of the discrimination, such as discharge, lost promotion, or sexual harassment. During this initial stage, relevant information is solicited from the employee, such as the employee's treatment in comparison to others performing similar work and the identity of any witnesses to the alleged discriminatory act. After the employer has been notified of the charge, the investigator attempts to gather, analyze, and verify additional evidence. The investigator asks the employer to give its position on the allegations and supply certain documentary evidence relevant to the charge.

According to EEOC's Compliance Manual, after comparing the employer's and employee's evidence, the investigator may need to obtain additional information by interviewing witnesses to the alleged discrimination, requesting further evidence from the employer or employee, or visiting the employer's facility. Before recommending a no-cause determination, the investigator is to offer the employee and employer the opportunity to provide any new, relevant evidence. The investigator then forwards

the charge file with a recommended determination on the charge and an analysis of the evidence obtained during the investigation for review by a supervisor, the Office Director, and, in some cases, legal staff.

Charges Not Fully Investigated

Large percentages of the charges closed by each of the EEOC district offices and state FEPAs with no-cause determinations were not fully investigated. Many of the investigations in each office had two or more deficiencies.

The estimated percentage of charges that each district office and FEPA did not fully investigate are shown in table 2.1. It also shows the estimated percentage distribution of charges by the number of investigative deficiencies.

Table 2.1: Estimated Distribution of Charges by Number of Investigative Deficiencies and Total Not Fully Investigated

Figures in percents[a]

EEOC district office	Number of deficiencies 0	1	2 or more	Total not fully investigated[b]
Detroit	18	11	70	82
Atlanta	32	36	33	68
Memphis	36	32	33	64
Dallas	53	12	35	47
New York	56	24	21	44
Philadelphia	59	9	32	41
State FEPA				
New York	13	13	73	87
Michigan	35	19	46	65
Tennessee	47	42	11	53
Northern California	48	20	32	52
Georgia	60	13	27	40

[a]All percentages apply to investigations of charges closed with no-cause determinations from January through March 1987. Appendix IV provides more detailed information on the deficiencies we noted at each office.

[b]Percentage of charges with one or more investigative deficiencies. Due to rounding, the sum of the percentages of charges with one and with two or more deficiencies may not equal this total.

Critical Evidence Not Verified

The most common investigative deficiency we noted in each office reviewed was that critical evidence was not verified for accuracy and completeness. Such evidence may include (1) employer-provided documents or statistical data compiled from such documents to show

employee rates in hiring, promotion, and discharge and (2) testimony from the employee, employer, and/or witnesses.

Critical evidence was not verified in all 11 of the offices in at least 40 percent of the charge investigations. For each office, table 2.2 shows the estimated percentage of the charge investigations lacking evidence verification.

Table 2.2: Estimated Percentages of Charge Investigations in Which Critical Evidence Was Not Verified

EEOC district office	Critical evidence not verified
Detroit	77
Atlanta	68
Memphis	64
Dallas	47
New York	44
Philadelphia	41
State FEPA	
New York	87
Michigan	62
Tennessee	53
Northern California	52
Georgia	40

Verification of evidence can be particularly important in investigating a disparate treatment charge. In such investigations, employers are typically requested to provide documents showing the treatment of similarly situated employees, such as disciplinary actions taken against employees who violated the same or similar company policy. In responding to such charges, employers often defend their position that they treat all employees similarly by providing a list of employees accused of similar offenses as the charging party (such as theft) and the treatment they received (such as discharge). According to EEOC's Director of Program Operations, the verification of evidence is particularly important to determine whether an employer has omitted certain information that might adversely affect its position on the charge.

Investigators frequently accepted employer-provided data without verifying its validity. In one case, for example, a black employee alleged that she was discharged from her cashier position because of her race. The employer denied the allegation and contended that she was discharged

for tardiness and poor job performance. Critical evidence was not verified in this case to help determine whether the employer treated the employee differently from white employees who performed similar work. For example, the employer submitted a list of employees whom the employer claimed were discharged for similar reasons as the charging party. This list was not verified for accuracy or completeness. The Office Director who reviewed this case agreed that this step should have been performed and stated that the list was insufficient evidence. To support the list, the Director said, actual attendance and job performance records should have been obtained to appropriately compare the charging party with other similarly situated employees. Had this verification step been performed, along with obtaining additional comparative evidence, the no-cause determination might have changed, according to the Director.

In another case, a black employee alleged that he was forced to resign from his job as a truck driver because of his race. He stated that he had been passed over a number of times by the company's dispatcher, who he claimed gave better paying assignments to the company's white truck drivers. The employer denied the allegation and provided pay records to show that the employee was paid more total wages than many white drivers. The employee responded that this was not the point of his charge and that he had to work many more hours to make the same income as his white counterparts. Even though he explained how this information could be verified through review of written logs kept by all drivers, as well as other company records, the investigator did not follow up. In commenting on this case with us, the Office Director speculated that the drivers' logs and the other records would not have made a difference in the investigation because, in part, the employer did not retain assignment records. However, the employee still maintained that the other records he identified would verify his allegations. The charge was closed without an attempt to obtain these records.

EEOC has also noted problems in relying on unverified evidence in charge investigations, particularly with employer-provided lists of similarly situated employees used to investigate disparate treatment charges. In a 1986 report resulting from a routine review by staff from the Office of Program Operations of the charge investigation activities of one of the district offices we examined, the reviewers cited a problem with relying on unverified employer lists. The report stated:

"Obtaining a list of persons alleged to have been treated the same way under alleged similar circumstances, fails to provide an effective test of respondent's explanation

of its actions. This practice permits respondent to be selective, gives respondent the responsibility of determining who is similarly situated, and ignores any inquiry into whether there are similarly situated persons who received more favorable treatment.

"...a list of terminations is not the same as copies of all disciplinary records, since the former is unreliable and fails to address the issue of whether there are similarly situated persons who received more favorable treatment."

Witnesses Not Interviewed

The second most common deficiency involved not interviewing relevant witnesses. EEOC's Office of Program Operations Director said that, while all identified witnesses may not have to be interviewed, all relevant witnesses should be. According to the Director, an investigator should note in the charge file why a witness was not interviewed.

In all 11 of the EEOC and FEPA offices we reviewed, we found charges that were closed although investigators had not interviewed relevant witnesses who had been identified by the charging party, employer, or investigator.[1] Relevant witnesses were not interviewed in at least 20 percent of the charge investigations completed by 7 of the 11 offices. The estimated percentages of investigations deficient in this area for each office are shown in table 2.3.

Table 2.3: Estimated Percentages of Charge Investigations in Which Identified Relevant Witnesses Were Not Interviewed

EEOC district office	Relevant witnesses not interviewed
Detroit	52
Philadelphia	27
Memphis	25
Dallas	24
New York	18
Atlanta	11
State FEPA	
New York	62
Michigan	29
Northern California	22
Georgia	17
Tennessee	4

[1]We considered as relevant witnesses those who were identified in the charge file by the charging party, employer, or investigator. We excluded as witnesses the charging party, employer, employer's representative, or any others associated with the discriminatory act. We also considered explanations or evidence in the file that may have negated the need for witness testimony in resolving the charge.

In some cases, investigators interviewed only some of the relevant witnesses who had been identified. In other cases, none of the identified relevant witnesses were interviewed. In neither of these instances did the charge files contain explanations of why these witnesses were not interviewed.

For example, in one case, a Hispanic employee alleged that she was harassed and forced to resign from her job as a health program assistant because of her race and sex. The employer denied the allegations, contending that she was an unsatisfactory performer who was reprimanded for several policy violations. The investigator interviewed only three of seven identified relevant witnesses, and two of them supported the employee's allegations and confirmed that the employer treated Hispanic employees differently from other similarly situated employees. The other four witnesses may have been able to provide information to confirm or deny the employee's allegations. The investigator for this case told us that she recommended a cause determination to her supervisor, but that her supervisor disagreed. In a separate interview with us, the supervisor said that the case deserved a no-cause determination primarily because the charging party could not prove her allegations. As stated earlier, EEOC's procedures call for the investigator, not the charging party, to prove or disprove the charge. The Office Director did not comment on this case.

In another case, a black employee alleged that he was discharged from his shipping clerk job because of his race. The employee believed that his employer discharged him to restrict his promotion to other available positions in the company. Denying the allegations, the employer contended not only that the employee was discharged for poor job performance but that there were no positions open for which he was qualified. Although the employee and employer identified five witnesses to the alleged discrimination who might have been able to resolve the conflict between the employee's and employer's accounts, none of these witnesses were interviewed. Agency supervisors who reviewed this case with us agreed that the witnesses should have been interviewed. The Office Director did not comment on this case.

As stated earlier, in some cases witness testimony provides the only evidence that might support the charging party's allegations of discrimination. According to EEOC, employers possess most of the relevant employment data and records, have immediate access to employees to obtain witness statements, and consequently are in a better position to develop a cohesive and comprehensive response to the charge.

In 9 of the 11 offices that we reviewed, we estimated that the percentage of investigations in which charging party witnesses were not interviewed was higher than the percentage in which employer witnesses were not interviewed. In 4 of these 9 offices, the difference between these two percentages was statistically significant. In one office, the percentage of investigations in which employer witnesses were not interviewed was higher than the percentage in which charging party witnesses were not interviewed, and this difference was statistically significant. Table 2.4 shows these percentages for each office.

Table 2.4: Estimated Percentages of Charge Investigations in Which Charging Party and Employer Witnesses Were Not Interviewed

EEOC district office	Witnesses identified by charging party not interviewed	Witnesses identified by employer not interviewed
Atlanta	8	8
Dallas	19	18
Detroit[a]	46	18
Memphis[a]	19	6
New York	15	8
Philadelphia	24	21
State FEPA		
Georgia[a]	17	0
Michigan	22	11
New York[a]	33	53
Northern California[a]	22	8
Tennessee	4	0

[a]Difference between these two percentages is significant at the .05 level of significance. Therefore, the probability that the true percentages are different is at least 95 percent.

Evidence Not Obtained on Similarly Situated Employees

Another common deficiency involved not obtaining information on similarly situated employees that was critical to investigate charges alleging disparate treatment. Virtually all of the charge investigations we reviewed were based on this allegation. As explained in EEOC's Compliance Manual, the disparate treatment theory holds that discrimination occurs when an employer excludes individuals from an employment opportunity afforded similarly situated individuals on the basis of race, color, religion, sex, or national origin.

In many of the disparate treatment charges we reviewed, the employees claimed they were discharged or otherwise disciplined on a discriminatory basis. In such cases, according to EEOC, a comparison needs to be

made of the employer's treatment of other similarly situated individuals, including all those found guilty of identical or similar misconduct. In this type of charge, the employee's guilt or innocence is not usually at issue and, according to the Compliance Manual, should not be the focus of the investigation.

In a disparate treatment charge, the Compliance Manual emphasizes, and the Program Operations Director reiterated, obtaining evidence to compare the treatment of similarly situated individuals is necessary to determine the merits of a charge. The manual provides that as many similarly situated individuals as possible should be compared with the charging party. For purposes of our review, we considered the universe of similarly situated individuals as those identified in the charge file.

In 5 of the 11 EEOC and FEPA offices we reviewed, we estimate that at least 20 percent of the disparate treatment charge investigations did not compare the charging party with any similarly situated employees or with all of those who were identified as similarly situated. This deficiency was noted to a lesser degree in the other six EEOC and FEPA offices we reviewed. For each office, table 2.5 shows the estimated percentages of the disparate treatment charge investigations with this deficiency.

Table 2.5: Estimated Percentages of Charge Investigations in Which Charging Party Was Not Compared to Similarly Situated Employees[a]

EEOC district office	No comparison to any or all identified similarly situated employees
Detroit	57
Dallas	22
Atlanta	20
Memphis	16
Philadelphia	15
New York	8
State FEPA	
New York	53
Michigan	25
Georgia	13
Northern California	14
Tennessee	11

[a]In 8 of the 11 offices, all of the charges alleged disparate treatment. In the other three offices, such charges represented 97 to 99 percent of the charges filed.

Most of the deficiencies we noted resulted from investigators not obtaining information on all similarly situated employees who had been

identified. To illustrate, in one case a black employee alleged that she was discharged from her housekeeping position because she filed a discrimination charge against her employer. The employee observed that none of the other housekeepers were discharged and that she performed better than they did. While the employer submitted an unverified list of those discharged, other critical information was not obtained to determine if the employer treated the employee differently from other similarly situated employees. Specifically, evidence was not obtained on the employer's treatment of a white coworker, identified by the charging party as having committed the same infraction as she but not disciplined for it. Neither was information obtained to compare the employee's job performance with that of other housekeepers. Agency supervisors who reviewed this case with us agreed that this information should have been obtained. The Office Director did not comment on this case.

To a lesser extent, we found charges alleging disparate treatment that were closed with no information obtained on similarly situated employees. In one such case, a charge was closed with a no-cause determination without the comparative evidence that was required to determine whether the employee was treated differently from other employees whose performance was similar. In this case, a Puerto Rican employee alleged that he was harassed and later discharged from his job as a machine operator because of his national origin. He stated that, to his knowledge, no worker of non-Puerto Rican origin was treated in the same manner. The employer denied the allegations, contending that the employee was discharged for poor job performance. In commenting on this case, the investigator and supervisor said that comparative evidence on the treatment of other employees was not needed, in part because the employee had difficulty understanding English, and as a result, his job performance was probably deficient. The Office Director also believed that such evidence was not necessary because the employer said that (1) the charging party's performance was poor, and (2) other Hispanic individuals were employed. Closing a charge based solely on performance without obtaining evidence to compare the charging party's treatment with others who perform at similar levels is contrary to EEOC's requirements for a full investigation in disparate treatment cases.

Explanations Given for Not Fully Investigating Charges

After completing our charge file reviews, we discussed the charges we determined were not fully investigated (ranging from about 26 to nearly 100 percent) with the investigators and supervisors responsible for the charge investigations. Because we did not interview every investigator

and supervisor in each office, the comments provided may not be representative of all investigators' and supervisors' views. We also gave the head of each EEOC and FEPA office an opportunity to (1) comment on the charges we determined to be not fully investigated and (2) offer their views on the problems affecting the ability to conduct full investigations.

Investigators, supervisors, and the heads of the EEOC and FEPA offices gave varying explanations for the investigative deficiencies we noted, most often that (1) investigators were pressured to meet charge-processing goals, (2) employer-provided data were not verified because they could be trusted to be complete and accurate, and (3) investigation of the charges provided enough information on which to base a decision.

Investigators Perceived Pressure to Meet Production Goals

In the past, EEOC imposed quantitative production goals on its investigators. EEOC headquarters officials maintain that such goals are no longer imposed. However, investigative staff in four of the six district offices we reviewed said they were still required to meet headquarters-established production goals, or face some adverse action such as a low performance rating. In one EEOC district office, some supervisors commented that they frequently placed more emphasis on meeting their quantitative goals than adhering to the Compliance Manual requirements for investigations.

In one instance, an investigator was instructed to close 27 charges based on information obtained in only 1 charge, she said, because the supervisor believed the issues were similar and the charges were against the same employer.[2] The investigator did not close the charges, and the 27 charges were transferred to a second investigator, whose supervisor told her that the charges were over 300 days old and should be closed within 3 months. These 27 charges were not specifically related to one another, the investigator said, and additional information, such as comparative evidence, was needed for each charge. A quality review was impossible within the prescribed time period, according to the investigator. She did not complete the charges within the time period allowed and later received a lower performance appraisal. Obviously, she said, the agency's emphasis is on production.

The District Directors and Acting Director in the four offices also said that production goals continue to be imposed by headquarters. The goals

[2]These 27 charges were not a part of our sample.

were designed to reduce the charge inventory, some Directors said, but result in pressure on investigators to close cases, often to the detriment of the quality of investigations. Staff who did not meet their goals, some of the Directors also acknowledged, could receive an unacceptable performance appraisal or possibly be terminated.

In one district office, the Acting Director commented that the agency had emphasized closing a large number of charges for so long that investigators have deemphasized performing high-quality investigations. The Director who replaced the Acting Director reiterated that there was emphasis in each office to close a certain number of charges each year.

Similar comments on pressure to meet production goals were made by investigative staff at two of the FEPAs. However, because FEPAs also investigate discrimination charges filed under state statutes and federal fair housing laws, it is unclear to what extent the EEOC workload contributes to this pressure.

Investigators Accepted Employers' Evidence Without Verification

In three EEOC offices and two FEPAs, investigators and supervisors said they rely on the employer to provide accurate information and do not consider verification of critical evidence to be necessary. Employers would not deliberately attempt to submit inaccurate or misleading information, several investigative staff contended. Other FEPA investigative staff said that they do not verify employer-provided evidence because the burden of proof is on the charging party. They discuss the employer's information with the charging party, they said, and if he or she does not disagree with the information, it is considered to be verified. Placing the burden of proof on the charging party is contrary to EEOC's Compliance Manual.

The EEOC District Directors and FEPA heads generally believed that they used appropriate verification strategies. Employers could be trusted to provide accurate information, some commented, because of possible criminal penalties for providing false or misleading information. One District Director was aware of two or three instances in which employers had submitted inaccurate data in response to an EEOC investigation. However, when the investigator questions the veracity of information, more extensive verification is done, the Director added.

Investigations Considered to Be Sufficient Lack Critical Evidence

At three EEOC offices and three FEPAs, investigators and supervisors acknowledged that they did not perform certain investigative processes

(such as interviewing identified witnesses) because, in their judgment, sufficient evidence had already been obtained. Judging from the evidence obtained to that point, supervisors advised them whether to continue or conclude an investigation, some investigators said. The supervisors stated that they base their decision to continue the investigation on whether additional information will make a difference in the final determination. Investigators use discretion in deciding how extensively charges should be investigated, some District Directors and FEPA heads indicated. Some believed that investigative staff were obtaining sufficient evidence to make informed decisions on charges.

Some discretion is involved in deciding how far to pursue an investigation. However, the cases that we found to be not fully investigated were closed without obtaining the minimum information that EEOC considers to be critical in addressing the allegations in a charge. In some cases, relevant witnesses, particularly those identified by the charging party, were not interviewed. In other cases, no information was obtained to compare how the employer treated the charging party with similarly situated employees. In the absence of critical evidence, there is no assurance that the no-cause determinations made were correct.

EEOC Has Not Adequately Monitored FEPA Investigations

EEOC requires its district offices to monitor the performance of FEPAs in their area to ensure compliance with EEOC investigative policies and procedures. The extent of a district office's monitoring depends on whether the FEPA has obtained EEOC certification for satisfactory investigative work. A certified FEPA is one in which EEOC has found that at least 95 percent of the charges it closed in the year before certification were properly investigated and decided. Investigations done by certified FEPAs are subject to much less EEOC scrutiny than are those done by noncertified FEPAs. Three of the five FEPAs we reviewed were certified by EEOC at the time our sample charges were closed.

For the three certified FEPAs, EEOC reviewed a total of 20 charge investigations that were included in our samples and accepted all of them. We found deficiencies in 14 of them. In the two noncertified FEPAs, EEOC reviewed all 55 investigations in one of the samples and all 30 in the other. EEOC accepted all of these charge investigations; our review showed deficiencies in 29 of the 55 investigations and in 12 of the 30. For fiscal year 1987, EEOC accepted all of the no-cause determinations that it reviewed from three of these offices and rejected 1 percent and 6 percent from the other two offices. Yet our review showed that at least 40 percent of the charges closed as no-cause determinations by each of

these FEPAs in the first quarter of 1987 were not fully investigated. Thus, we believe that the results of EEOC district offices' reviews do not accurately reflect the performance of the five FEPAs.

We discussed the results of our examination of the investigations with EEOC District Directors responsible for four of the five FEPAs.[3] These District Directors gave the following reasons for the deficiencies we found in EEOC's monitoring of FEPA investigations:

- Insufficient staff to monitor the quality of investigations. In fiscal year 1987, EEOC paid the five FEPAs to process about 12,000 charges. This workload has remained relatively constant since fiscal year 1983. The District Directors in two offices indicated that they did not have enough staff to properly monitor the FEPAs' work.
- Differing views on investigative requirements. Two of the District Directors cited interpretations as to what was required of the FEPAs to fully investigate a charge that, in our opinion, conflict with EEOC's policies and procedures. Further, these officials stated that the FEPAs' practice of not always verifying employer-provided evidence was acceptable to them.
- Little motive for EEOC to reject FEPA charges. If a certified FEPA does not meet EEOC's investigative requirements, EEOC could terminate the FEPA's certification status. This could greatly increase the number of charge investigations that EEOC would have to review. Two District Directors said that this acted as a disincentive for EEOC to reject FEPA charge investigations.

The EEOC Chairman stated that EEOC lacks enough staff to be able to monitor the quality of the FEPAs' work properly.

EEOC's inadequate monitoring of the FEPAs' investigative work is demonstrated clearly in comments on our draft report from Michigan's Director of the Department of Civil Rights. Michigan was never informed of EEOC's full-investigation policy, the Director said. In the past, EEOC "strongly encouraged all fair employment practices agencies to adopt rapid-charge procedures in an effort to control and minimize increasing caseloads," the Director stated. Rapid-charge processing was not intended to yield high-quality investigations, he added, and the limitations of rapid-charge processing were the reason for some of our findings. EEOC was aware that FEPAs were still using rapid-charge processing,

[3]The other District Director was unavailable to meet with us at the time we completed our fieldwork or before we prepared our draft report.

he indicated, and let the process continue "because it was the only way some agencies could produce more with much smaller staffs."

EEOC Has a Difficult Mission in Resolving the Large Volume of Charges Filed

EEOC's mission to determine the merits of the large volume of discrimination charges filed is a difficult one. Annually, EEOC directly processes and is responsible for monitoring under agreements with FEPAs about 115,000 charges.

Since 1976, as discussed previously, GAO and the House Committee on Education and Labor have issued several reports on EEOC's difficulties in attempting to resolve the large number of charges filed and an increasing backlog. EEOC has tried various approaches to deal with its workload. Under the rapid-charge process, for example, the backlog of charges pending investigation was reduced, but minimal investigative work was performed for many charges. As presented in this report, although EEOC has implemented a full-investigations policy to improve the quality of its work, the backlog has increased and full investigations are not being performed.

To identify potential strategies for resolving EEOC's dilemma of performing timely yet high-quality investigations on a large workload, we interviewed five former EEOC chairpersons and commissioners, as well as the current EEOC Chairman. They indicated that EEOC's investigations are not uncovering the actual rate of discrimination in the charges filed. The officials did not know what the actual rate might be. All believed, however, that the current 2.6-percent rate of cause findings was too low. Four of the five former officials believed that other investigative strategies need to be adopted, but there was no consensus among them on what was an appropriate strategy. The fifth official said that, by increasing investigative training and strengthening administrative support for investigators, the process could be improved. This official also believed that EEOC should increase its investigative training for FEPA staff. According to the official, this is necessary to (1) promote understanding and consistency between EEOC and FEPAs regarding standards for investigating charges and (2) communicate criteria and procedures EEOC uses in its review of FEPA investigations.

The current EEOC Chairman also called the rate of employment discrimination being detected by EEOC too low, but disagreed that major changes were needed in the approach EEOC uses to investigate charges. Over a 2- to 3-year period, with a budget increase of about 11 percent, the Chairman said, EEOC could maintain its authorized staffing level of about 3,200. This would allow it to both reduce the backlog and fully investigate charges.

Some of the former EEOC officials also commented that the number of EEOC's investigative staff was insufficient to adequately deal with its workload. However, they differed widely in their views as to how many more staff EEOC should have or whether EEOC's existing staff should be reallocated rather than increased.

Former EEOC Officials Offered Mixed Views on Investigative Approaches

The options offered by the former EEOC officials may not be exhaustive, and some may require changes in the enforcement framework established by the Civil Rights Act. Most of the former EEOC officials suggested strategies on how EEOC could better handle its large workload. The suggestions included (1) reemphasizing the use of some form of negotiated settlement to resolve charges more quickly; (2) establishing an administrative adjudication system, using hearing examiners to promptly decide the outcome of charges; and (3) reallocating the categories of investigative work between EEOC and the state and local FEPAs.

Reemphasizing Negotiated Settlements

One option considered viable by two former EEOC Chairpersons would be for EEOC to reemphasize the settlement of charges through negotiations mediated in fact-finding conferences with charging parties and employers. They favored a fact-finding conference shortly after a charge was filed and the charging party and employer had provided basic information needed to address the allegations. The fact-finding conference brings the charging party and employer together in a face-to-face meeting to discuss the facts in the charge and attempt to resolve the conflict. The conference emphasizes the parties' achieving a negotiated settlement agreement, with no determination made on the charge. The Chairpersons believed that this approach would reduce EEOC's charge backlog. Such an approach is similar to EEOC's earlier efforts to rapidly process charges. We criticized this process because charges with little merit were being settled. EEOC deemphasized this approach to investigating charges because it believed such an approach did not fulfill the agency's law enforcement mission.

While favoring a form of negotiated settlement, the other former officials believed that settlement negotiations should only be undertaken after EEOC (1) conducts thorough investigative work, (2) analyzes the evidence, and (3) has an indication that in all likelihood reasonable cause would be found that discrimination had occurred. Under this approach, settlements still would be attempted without any determination rendered by EEOC. Some of the former officials said that, under any

form of negotiated settlement process, EEOC should not support settlement of charges lacking merit. One official added that EEOC also should not support settlement of meritorious charges unless the charging parties receive appropriate relief.

The current EEOC Chairman was opposed to entering into negotiations on a large-scale basis without substantial investigative work. According to the Chairman, settling charges without a full investigation is an abdication of EEOC's statutory responsibility to investigate charges. However, the Chairman said he would not be opposed to employing a negotiated settlement process as long as sufficient investigative work had been performed to determine that a charge had merit.

Establishing an Administrative Adjudication Process

One of the former EEOC chairpersons suggested that EEOC's workload problems may be resolved by establishing some form of an administrative adjudication system. Under this approach, some basic evidence to address the allegations of a charge would be assembled in a relatively short period and provided to a hearing examiner, who would render a decision on the charge. According to the former Chairman, most charge investigations are not overly complex; therefore, a hearing examiner could successfully render determinations for most charges after some basic gathering of evidence. The former Chairman believed that this approach would yield quicker resolutions of charges because (1) the critical evidence needed to render decisions would be gathered more quickly through a hearing than through EEOC's current investigative process and (2) review of decisions would be limited to the Court of Appeals level. This would obviate the need for either EEOC or charging parties to initiate lawsuits, which can delay charge resolutions, according to the former Chairman.

Under an approach suggested by another former EEOC official, EEOC would continue its current process of fully investigating charges and rendering determinations. An administrative law judge would be assigned to resolve charges when EEOC issues a cause determination but the employer refuses to provide relief to the charging party. Under the current approach, the only recourse would be for EEOC or a charging party to file a lawsuit. If an administrative law judge concept was employed, the former EEOC official said, charging parties would have a more timely and less expensive means of obtaining relief for discriminatory acts, since lawsuits would not have to be filed. However, it is unclear how this process would help EEOC better handle the large volume of charges it has to investigate.

Reallocating Investigations Between EEOC and the FEPAs

Two former EEOC officials believe that a reallocation of responsibilities between EEOC and the FEPAs should be considered. Under an approach suggested by one official, the FEPAs would be given responsibility to investigate all individual charges, with EEOC then concentrating more of its efforts on more broadly based investigations. Four of the five former EEOC officials recognized that broader investigations were an effective means to attack employment discrimination. Some of them commented that EEOC should place more of a priority on conducting such investigations.

Under the reallocation approach considered by another former EEOC official, EEOC would relinquish to the FEPAs all responsibility for investigating both individual and more broadly based charges and would instead serve as a federal overseer of the FEPAs' performance. This approach could be funded, the official said, by reallocating much of EEOC's budget among the states to perform the investigative work. EEOC's role would be to assure that the states adhered to proper standards in investigating charges. He said that this increased funding would give the states an incentive to adhere to the standards. Both of the former officials believed that, regardless of the approach taken, EEOC would have to substantially improve its monitoring of the FEPAs' efforts.

In four states, there are no state or local FEPAs designated by EEOC to investigate discrimination charges, and the quality of the investigative work done by some of the FEPAs is deficient. Thus, before a transfer of investigatory responsibilities could be effectively implemented, provisions would have to be made to investigate employment discrimination charges in those states. Further, as shown in this report, FEPAs would have to improve their investigations of discrimination charges.

The current EEOC Chairman was opposed to the idea of giving the FEPAs additional responsibility for investigating discrimination charges. As the FEPAs are state entities, operating under various state laws and procedures, he stated, EEOC has difficulty in ensuring that they adhere to EEOC's investigative policies.

EEOC Chairman Contends Investigative Problems Stem From Insufficient Staff

The EEOC Chairman told us that, unless EEOC receives additional funding and an increase in authorized staff, it will be unable to fully investigate employment discrimination charges and progress toward being an effective enforcement agency. EEOC does not employ enough investigative staff, he stated, to eliminate the charge backlog and stay current with investigating new charges received. The Chairman made similar remarks

in recent congressional testimony on excessive delays in the processing of age discrimination complaints.

With an annual appropriation of about $200 million, an increase of about $20 million, the Chairman believes EEOC would be able to retain its authorized staffing level of about 3,200. If this level of appropriations remained constant over a 2- to 3-year period, EEOC could fully investigate all charges and reduce the backlog, he contended. Given the current appropriation level, the Chairman said, EEOC's full-time equivalent staffing level would have to be reduced to 2,800. With 3,200 staff, each investigator would have to complete about 100 charge investigations a year to reduce the backlog and keep EEOC's workload current. However, two EEOC District Directors indicated that investigators in their offices would be able to fully investigate only about 35 to 50 charges a year. Neither the Chairman's views on productivity nor those of the District Directors are supported by any productivity studies or workload analyses.

In commenting on a draft of this report, the EEOC Chairman emphasized that EEOC needed additional resources to deal with the large charge workload. EEOC has repeatedly asked for additional resources from the Congress, the Chairman said, but none have been provided. Implying that EEOC monitoring of the FEPAs is inadequate because of insufficient resources, the Chairman stated:

"Similarly, GAO's recommendation that I direct field offices to monitor the investigations performed by the FEPAs and not accept FEPA determinations that are based on less than full investigations, is equally simplistic. The directives GAO suggests are in place, however, as we have repeatedly emphasized, the resources Congress has appropriated are not commensurate with the magnitude of the task. GAO's recommendation ignores the complexities of the problem, particularly in view of our scarce resources."

The Chairman contends that EEOC already has developed the workload information that we believe is needed. He stated, "We know how many cases proficient EEOC investigators have processed." This is not, however, the type of research-based, reliable information we believe both EEOC and the Congress needs. The fact that the EEOC Chairman and some District Directors have vast differences regarding the number of charges that investigative staff can effectively handle reinforces the need for reliable workload information. While additional resources ultimately may be needed, in the absence of such workload information there is little basis for the Chairman's views.

Conclusions, Recommendations, and Agency Comments and Our Evaluation

For over a decade, EEOC has tried to cope with the large volume of charges that are filed annually and the backlog of charges pending investigation. The various approaches EEOC has tried over the years have not been successful in balancing the timely resolution of a large volume of charges with the performance of high-quality investigations. Under EEOC's current investigative policy, the size of the backlog is increasing, and many charges have been closed without being fully investigated.

The current EEOC Chairman and several former EEOC chairpersons and commissioners raised doubts as to whether EEOC can perform effectively without changes in the manner in which it conducts its work and/or an increase in its resources. However, there was no (1) consensus as to what would be an appropriate strategy for EEOC to adopt or (2) research-based data on the amount of resources that may be needed to enable EEOC to investigate all charges filed and properly monitor the FEPAs. Some of the options mentioned, such as the rapid-charge process, were tried earlier with limited success; they reduced the backlog, but settled charges without full investigations. Whether procedures could be implemented to prevent the recurrence of such problems is uncertain. The crux of the issue is defining the requirements of a "sufficient," "adequate," or "minimal" investigation that would distinguish it from the requirements of a full investigation, but still safeguard the rights of both the employee and the employer.

The proposal to establish an administrative adjudication process following an investigation also presents the problem of defining what constitutes a "sufficient" investigation. While the process may provide for an expedited decision, it is again not clear how much preliminary investigative work would be needed to render a fair decision.

The proposal to assign more charge investigations to the states is questionable in that some states were not fully investigating charges, and four others did not have approved programs for investigating discrimination charges. Thus, the strategies mentioned by the EEOC officials have potential drawbacks as well as advantages, and their feasibility needs study. In addition to the strategies identified by these officials, there may be others available. Given this situation, we conclude that an independent panel of experts should be convened to systematically review EEOC's activities and determine whether the present strategy can be sufficiently improved or if another strategy would be more effective in enforcing federal equal employment opportunity laws.

Notwithstanding any changes in the current enforcement strategy, EEOC can make several changes that, in our opinion, would significantly improve its charge investigation process. EEOC should dispel the continued belief by its staff that it places more importance on closing large numbers of charges than on conducting full investigations. EEOC has sent "mixed signals" to its staff regarding which is most important.

There was a conflict between EEOC's procedures for a full investigation—specifically, the requirements for obtaining and verifying evidence—and the approaches EEOC and FEPA staff used to investigate charges. Determinations based on incomplete or inaccurate evidence could affect the outcomes of investigations. Since charges have been allowed to be closed with deficiencies in the investigative work, staff may perceive that they are complying with the policy. Accordingly, EEOC needs to clarify and enforce its policy.

In view of the problems we noted with FEPA investigations, EEOC should more closely monitor the quality of the FEPA investigative work. EEOC should consider ways of improving its monitoring procedures and practices. We recognize the difficulty in attempting to have the FEPAs conform to EEOC investigative standards, as they operate under varying state laws and procedures. However, EEOC relies on them to process nearly half of the charges filed annually and expects them to comply with EEOC's investigative policies. Therefore, FEPAs should be required to perform full investigations, to better assure EEOC of the validity of their charge determinations.

Recommendation to Congressional Committees

We recommend that the Chairmen of the House Committee on Education and Labor and Senate Committee on Labor and Human Resources, and the chairmen of other appropriate congressional committees having responsibility for EEOC, jointly establish a panel of experts to consider the strategy being used to enforce employment discrimination laws. In considering options, the panel should determine (1) the appropriate roles for EEOC and the FEPAs in investigating charges and (2) the resources needed to carry out the roles assigned to each entity.

Recommendations to the EEOC Chairman

As long as the current full-investigations policy is maintained, we recommend that the EEOC Chairman clarify and enforce EEOC's policies and standards for investigating discrimination charges before making a determination. In this regard, the Chairman should emphasize the need

to obtain all relevant documentary and testimonial evidence and to verify such evidence before reaching a decision on the merits of a charge. When such evidence is not obtained, the charge file should clearly contain reasons for the omissions.

We also recommend that the Chairman conduct a study to determine (1) the charge caseload an individual investigator should be expected to carry annually and fully investigate and (2) the resources EEOC would need to fully investigate charges filed. This would provide a better basis for developing a budget for carrying out EEOC's investigative work and for establishing realistic goals and expectations for its district offices and their staffs.

We further recommend that the Chairman direct EEOC's district offices to monitor the investigations performed by the FEPAs more closely and not accept FEPA determinations that are based on less than full investigations.

We also recommend that the EEOC Chairman establish an independent group to periodically conduct investigations of a sample of charges filed with EEOC district offices and FEPAs and subject them to full investigations. The results of this work should be compared with the overall administrative closure, settlement, cause, and no-cause rates obtained from investigations done by the district offices and FEPAs. This would provide a more accurate basis for the Chairman to determine whether EEOC and the FEPAs are complying with the full-investigations policy and whether any changes are needed in EEOC's investigative process.

Agency Comments and Our Evaluation

EEOC and four of the five state FEPAs generally disagreed with our findings in their written comments on the draft of this report. Common concerns included (1) the criteria we used in reviewing the charge investigations, (2) how we applied the criteria, and (3) how we selected the samples of charge investigations to review. EEOC also commented that our analysis disregarded many program improvements since our review period (January through March 1987). We believe that we selected and evaluated investigations appropriately and improvements to the program are still needed.

A summary of EEOC's and the state FEPAs' comments, along with our responses to these, are presented in more detail below. The full EEOC and state FEPAs' comments on our report are presented in appendixes V-X.

Criteria for Investigating Charges

The Chairman and representatives for three of the five FEPAs indicated that we did not understand the essential criteria to determine whether a case was appropriately investigated. The Chairman commented that we ignored EEOC's attempts to define or clarify standards used by EEOC to determine whether discrimination occurred in a case. Comments received from three FEPAs emphasized that the criteria we used were too stringent, especially on the procedures for investigating charges. Two FEPAs also stated that the criteria we used required that all EEOC procedures be strictly followed.

Establishing the Criteria

We are aware that a full investigation does not require performing every investigative procedure described in EEOC's Compliance Manual. As indicated in the report, we agree with EEOC's Director of Program Operations that the extent to which EEOC's Compliance Manual should be followed depends on the nature and complexity of a charge and the experience of the investigator. It is because of these variables that, at the beginning of our study, we worked with this Director to determine the minimum investigative steps essential to the full investigation of virtually any charge resulting in a no-cause determination. We discussed these steps with EEOC officials in every office we reviewed, and they confirmed that these steps, which are stated in EEOC's Compliance Manual, were the minimum necessary. We did not ignore EEOC attempts to explain or clarify EEOC standards for investigating charges. Rather, we held numerous discussions with EEOC officials regarding the criteria we used.

Using the Criteria to Evaluate State FEPAs

The minimum criteria we used to evaluate EEOC investigations were also applied to the FEPA investigations in our review. We recognize that FEPAs resolve discrimination charges in accordance with many of their own state laws, local ordinances, and procedures and that, because of this autonomy, are required by EEOC only to have investigative procedures that are compatible with EEOC's. We are also aware that EEOC has not required FEPAs to adopt its full-investigations policy. However, according to both EEOC's Director of Program Operations and Director of the Program Development and Coordination Division, EEOC expects FEPA investigations it monitors to include the same basic steps that we used to determine the adequacy of EEOC investigations. These are the basic steps that EEOC checks for in its monitoring of FEPA investigations.

Specific guidance for EEOC's review of FEPA investigations has been provided in EEOC's Order 916. Regarding the review of investigations associated with no-cause determinations, Order 916 provides the same criteria

we used in reviewing FEPA investigations. For example, the order requires that EEOC closely review whether all relevant witnesses were interviewed, and whether in disparate treatment cases the investigation considered the comparative treatment of coworkers similarly situated to the charging party. Further, the order instructs the EEOC reviewer to determine whether all issues of personal harm raised in the charge were fully investigated. Considering the statements we received from EEOC officials and Order 916's guidance, we believe that the criteria we used to review FEPA investigations were reasonable.

Application of EEOC's Full-Investigations Criteria in Reviewing Charge Investigations

The EEOC Chairman stated that, although we had accepted EEOC's definition of the essential criteria necessary to reach findings of cause and no cause, we had not appropriately applied the criteria. The Chairman said that "GAO's analysis has been applied so mechanistically as to trivialize investigative complexities inherent in civil rights enforcement. . ." and that GAO lacked a fundamental understanding of certain investigatory and judicial principles inherent in civil rights enforcement. The Chairman cited two cases as instances in which he believed we did not appropriately apply the essential elements of a full investigation. Some of the state FEPAs made similar comments regarding our application of EEOC's criteria, and two also provided case examples. As discussed later, the Chairman and officials of one of the state FEPAs could not identify the cited cases. (See p. 48.)

Contrary to the Chairman's views, we did not use a mechanical process of completing a checklist and citing deficiencies in each instance where a witness was not interviewed or a piece of requested evidence was not obtained or verified. We considered circumstances that could result in deviations from the original planned approach for investigating a charge, and we allowed for these in our reviews. We were more lenient in applying EEOC's procedures than the EEOC Compliance Manual and Order 916 specify.

GAO Expertise

The EEOC Chairman and two FEPA heads also commented that we were not cognizant of relevant legal theories, case precedents, or burdens-of-proof inherent in civil rights enforcement. We were aware of the legal theories and court rulings relating to the various types of charges filed. Such rulings and case precedents were embodied in EEOC's Compliance Manual, and we took into account any state laws cited by FEPA staff or contained in case files that were relevant. Further, our legal staff were closely involved throughout the course of our work.

In any case, we did not question the employment discrimination investigator's ultimate decision on a charge or whether the correct analysis of the facts of a case was made. We focused on only the minimum steps essential to a full investigation in our reviews. GAO routinely, as in this review, identifies standards and compares performance to the standards. In this review, GAO staff were fully able to sort through the facts of a charge and determine whether charges were meeting the minimal requirements for a full investigation. We noted, as did a former EEOC Chairman we interviewed, that many of the charges are not complex and involve only the gathering and verification of certain basic types of evidence, such as information on similarly situated employees, in order to investigate the charge.

Using the Approach Developed by EEOC and FEPA Investigators for Each Case

In reviewing charges at the 11 EEOC and state offices, we began with the approach adopted by the investigative staff for the investigation. We then compared the planned approach to the approach followed, allowing for circumstances that could have resulted in deviations. For example, we started with witnesses that had been identified by the charging party, employer, and/or investigator as necessary to interview. We did not determine the universe of potential witnesses.

We did not cite an investigative deficiency if there was any follow-up effort on the part of the investigator to obtain certain missing evidence. We also considered all of the evidence gathered during the course of an investigation before citing a deficiency in any one area. In disparate treatment charges, we assessed the extent to which information on similarly situated individuals was obtained from the universe identified by the investigator. We did not impose our own views as to what the universe should have been.

Also, if the charge file contained any information that an identified witness was not relevant to the charge or requested information was not critical, we did not challenge such a determination and cited no investigative deficiency. We recognized that not every witness, or in some cases any witnesses, who had been identified by the investigator had to be interviewed. We recognized that other forms of evidence could supplant the need for witness testimony. Similarly, we did not cite a deficiency if requested evidence from an employer was not obtained, if witness testimony provided the necessary information.

Verifying Evidence

The need to verify certain evidence obtained in an investigation was the most frequent deficiency we found and the deficiency most contested by the state FEPAs in their comments. We recognized that not every piece of evidence can or should be verified, nor have we suggested the need to do so. We also recognized that one form of evidence, such as witness testimony, can be used to verify the validity of other statements and evidence. However, EEOC has said in its reviews of its district offices that it is inappropriate to rely on unverified employer information in investigating charges. We often found that charges were closed with no-cause determinations based upon unverified information submitted by employers. Some FEPAs maintained that (1) state laws imposing sanctions against the provision of false information were a sufficient deterrent for employers and that no further verification was necessary, or (2) their "track record" with certain employers was such that verification was not necessary. We believe that both arguments are speculative and do not justify an incomplete investigation when a charge has been made.

Providing Multiple GAO Reviews

The EEOC Chairman noted in his comments that GAO staff were not in unanimous agreement on the disposition of each case. As we indicate in the report, each charge that was ultimately found to be not fully investigated underwent several GAO reviews.

In some cases, GAO headquarters staff did change the initial decision on whether a charge was not fully investigated. This occurred in instances where it was a "close call" as to whether a charge had not been fully investigated, or where, given all the evidence collected, certain pieces of evidence originally considered necessary by the investigator might no longer have been needed.

However, in those instances, our staff did not change any cases that our field staff had concluded met the minimum requirements of a full investigation. We concentrated on cases that had been tentatively identified as being not fully investigated. Thus, the results of headquarters' staff reviews decreased the not-fully-investigated rates. In no cases did we increase the rate.

After completing our charge file reviews, we discussed many cases that we had tentatively identified as deficient with the responsible investigative staff. We considered their comments and explanations regarding why certain investigative steps were not performed and changed our determination where we felt that these explanations were adequate. We then provided each EEOC district office and state agency office head with

a list of charges that still appeared to be not fully investigated, considered their comments, and again made any adjustments we felt were appropriate. When a reasonable explanation was given as to why a key part of the investigation was not done (e.g., the information had been collected on another investigation, and that information was provided), we did not cite the investigation as deficient. However, we did not accept comments that, in the opinion of the EEOC or FEPA staff, additional investigative work was not necessary, and/or would not likely have changed the decision on the charge, unless additional evidence was provided. Without completing the minimal investigative steps, such views are speculative. We also did not accept arguments that the investigative work was done, but merely not documented in the files.

Specific Cases Used as Examples

The EEOC Chairman cited two cases as examples of our inappropriately applying the full-investigations criteria. We asked EEOC to identify the cases for us so that we could address his comments. EEOC was unable, however, to identify them. Thus, we are not able to respond to the comments or to determine that these two cases were included in our samples.

The Director of the Michigan Department of Civil Rights also cited two cases where, in his opinion, we had been too stringent in our reviews. (See app. VIII.) We contacted the Director and asked him to identify the two cases he questioned. Department officials responding for him subsequently told us that they were unable to identify the cases cited. They further said that the cases cited in the Director's comments on our draft report may have been a composite of several different cases, rather than deficiencies we cited on any one case.

While the Director's comments may not relate to any cases we actually reviewed or cited as deficient, the methodology we used would not have cited a deficiency for failing to interview only 1 of 10 witnesses, unless the witnesses were divided in their views. Further, we have never said that attempts should be made to contact a large number of individuals cited by an employer as evidence in a case. However, critical evidence, such as a list of individuals provided by an employer, should be verified, at least on a sample basis, for accuracy and completeness. This is in accordance with EEOC established criteria.

The Deputy Administrator of the Georgia Office of Fair Employment Practices cited two case examples to demonstrate how, in his opinion,

we misapplied the criteria in our review. The Administrator noted certain deficiencies, which he said were our basis for determining that the cases were not fully investigated. However, our conclusions were not based upon the deficiencies cited by the Administrator, but made for other reasons. An EEOC district office official concurred that these two cases were not fully investigated.

In the first example, a black employee alleged that the employer discriminated against him because of his race and retaliation due to a previous discrimination charge (not in our sample) he filed against the employer. The issues included (1) whether the employee was subjected to different terms and conditions of employment than others, and (2) whether he and other blacks were unjustifiably hired into lower paid positions. The investigator did not interview witnesses that the employee indicated could support his contention that the employer treated him differently than other similarly situated employees. No adequate reason was given for not interviewing the witnesses. Also, critical information related to similarly situated employees was not verified. This included (1) whether the charging party's supervisor kept him busier than other employees, and (2) the accuracy and completeness of a list of employees that contained hiring and job position information.

In the second example, the same employee who filed the first charge cited by the Deputy Administrator alleged that the employer failed to promote him because of his race and in retaliation for his filing another charge. Critical evidence was not verified to help determine whether the employer treated the employee differently than others who performed similar work and were promoted. The employer contended that the employee was not promoted because of poor performance, attitude, and attendance, and that other employees were more qualified. However, information was not obtained on the performance of several of those eligible for promotion to verify that the charging party was not treated discriminatorily.

Methodology for Selecting Charge Investigations for Review

The EEOC Chairman and two state FEPAs commented on our sampling of charge investigations for review. The Chairman said that we reviewed a very limited number of investigations closed by EEOC in the first 3 months of 1987 and that we focused only on charge investigations that resulted in no-cause determinations. One FEPA disagreed with the focus on no-cause determinations and the number of no-cause determinations we reviewed. Another expressed concern with one of the criteria we

used to select the offices in our review, specifically the EEOC's designation of "best offices," and with our reviewing of a sample of no-cause determinations as opposed to reviewing all no-cause determinations.

Selecting Offices for Review

As indicated in the report, we based our selection of offices for review on several factors. While we agree that EEOC's designation may have been subjective, EEOC's assessment of the quality of offices' investigations was important and, in combination with the other factors, helped to ensure that we selected a good cross section of offices.

Sampling No-Cause Cases

The number of investigations we reviewed which resulted in no-cause determinations was based on generally accepted sampling methodology. As explained in the report, EEOC provided us with a list of charges closed during January through March 1987 for each office we reviewed. We first verified that there was consistency between the dates EEOC and the FEPAs used to denote closures. For FEPA cases, we used the date that most closely represented the end of FEPA's involvement with the charging party or employer. (One FEPA objected to our using this closure date and preferred a date that included administrative processing. As a result, it identified more no-cause determinations than was consistent with our methodology.)

We then selected a random sample of no-cause determinations from each office. We used this sampling procedure in all offices but one, where the universe of no-cause determinations for the calendar quarter was small and we reviewed them all. For the other offices, sampling enabled us to project statistically the percentage of no-cause cases that were not fully investigated for each office over the 3-month period.

Our focus on charges that received no-cause determinations was also based on several factors. Initially in the review, as noted on page 19 of our report, we found few deficiencies in the investigation of charges that resulted in cause determinations or administrative closures. We focused on no-cause determinations because our initial review showed that these cases might be subject to more deficiencies and because no-cause determinations comprise the majority of EEOC closures.

GAO Has Not Recognized EEOC's Success in Civil Rights Enforcement or Recent Improvements in the Investigative Process

The EEOC Chairman stated that our draft report ignored EEOC's accomplishments in civil rights enforcement and recent program improvements. The Chairman cited as examples of EEOC's accomplishments the number of cases investigated, lawsuits filed, and monetary benefits secured by EEOC for charging parties. The Chairman also cited as an accomplishment the fact that the pending charge inventory has been significantly reduced. According to the fiscal year 1987 annual report of EEOC's Office of Program Operations and as we stated on page 17 of this report, the pending charge inventory increased every year from fiscal year 1983 to fiscal year 1987. The 1987 annual report was the latest available.

Our objectives were to determine whether EEOC district offices and the FEPAs were fully investigating charges and whether EEOC was adequately monitoring the work of the FEPAs. We did not design this review to be an evaluation of EEOC's overall effectiveness as a civil rights enforcement agency.

The EEOC Chairman stated that our findings were erroneous because we did not accurately reflect certain program improvements most of which, according to the Chairman, were implemented after the charges we reviewed had been closed. He highlighted the implementation of the Determinations Review Program in August 1987. The Chairman said that, in spite of repeated requests, we refused to examine charges that had been reviewed under this program.

The Determinations Review Program allows charging parties who have received a no-cause determination to request a headquarters' review of their cases. EEOC's information shows that only a relatively small number of no-cause determinations have received a review under this program. From August 1987 to May 31, 1988, EEOC reported that 2,023 no-cause determinations had been reviewed, while in fiscal year 1987 EEOC made about 30,000 no-cause determinations.

Most importantly, the group of charges reviewed under the Determinations Review Program is not a random sample of no-cause determination cases. It may be that the case investigations of those claimants who "appeal" their cases differ systematically from the case investigations of those who do not appeal. For us to focus our work on such charges would not have yielded information which would have been representative of the overall manner in which EEOC offices had investigated charges.

In addition, the Chairman said that our recommendations will not improve the quality of EEOC's enforcement efforts because they focus on actions that have already been implemented. The EEOC Chairman said the establishment of the Determinations Review Program, agency-wide staff training, and other actions satisfy the intent of our recommendation to clarify and enforce EEOC's investigative policies and evidentiary standards. The EEOC Chairman also said that the Determinations Review Program and EEOC's analyses of closed cases during field visits negated the need for our recommendation to establish an independent group to periodically investigate samples of charges.

As stated previously, the Determinations Review Program does not involve a statistically representative sample of the charges investigated. Thus, the reviews under this program do not indicate whether investigations as a whole were properly done.

The EEOC Chairman indicated that many program improvements have been or are in the process of being implemented, such as intensified staff recruitment, investigator and supervisor training, modifications in managerial and employee performance standards, and improved liaison between headquarters and field offices. While these efforts may somewhat improve the quality of charge investigations, we believe our report's message and recommendations are still highly relevant. Our report stresses the decade-long history of EEOC's struggle with its charge volume, the number of times GAO or congressional committees have issued reports critical of EEOC, the corrective actions that have been tried, and the views of several former EEOC officials (which we share) that, unless there are structural changes in how EEOC defines and fulfills its mission, corrective actions are likely to be, in effect, tinkering at the margins of the problem.

Factors GAO Considered in Selecting EEOC District Offices and State FEPAs for Review

EEOC district office	Charges closed in FY 1986[a]	EEOC regionb (I/II/III)	Designated by EEOC as among the best?
Atlanta	3,907	I	Yes
Dallas	2,981	III	No
Detroit	1,469	II	No
Memphis	1,614	II	Yes
New York	1,404	I	No
Philadelphia	1,495	I	Yes
State FEPA			
Georgia	188	I	No
Michigan	3,294	II	No
New York	3,089	I	No
Northern California	4,299	III	Yes
Tennessee	763	II	Yes

[a]The figures for the state FEPAs represent the numbers of charge closures for which they received payment from EEOC under work-sharing agreements.

[b]In fiscal year 1986, EEOC's district offices were divided into three regions. Regions I, II, and III consisted, respectively, of offices located in the eastern, midwestern, and western parts of the United States.

Number of Charges Closed With No-Cause Determinations and Number Reviewed

EEOC district office	Charges closed with no-cause determinations[a]	Charges reviewed
Atlanta	346	92
Dallas	250	74
Detroit	116	44
Memphis	117	73
New York	126	72
Philadelphia	141	81
State FEPA		
Georgia	30	30
Michigan	231	72
New York	582	45
Northern California	226	105
Tennessee	91	55

[a]From January through March 1987.

Sampling Errors Associated With Findings on Charge Investigations

Because our results are based on samples, each estimate presented in this report has a sampling error associated with it. The sampling errors for the percentages of charges that the district offices and state FEPAs did not fully investigate do not exceed plus or minus 10 percentage points, at a confidence level of 95 percent. Each one of these ranges, or confidence intervals, has a 95-percent chance of containing the true percentage. Table III.1 displays the specific sampling error and confidence interval for each estimate of the percentage of charges that were not fully investigated. The sampling errors associated with the percentages of the charge investigations with particular deficiencies and the percentages with 0, 1, and 2 or more deficiencies do not exceed plus or minus 14 percentage points.

Table III.1: Confidence Intervals for Percentages of Charges Not Fully Investigated

EEOC district office	Percent not fully investigated	Sampling error (percent)	Confidence interval (95 percent)	
			Lower limit	Upper limit
Detroit	82	9	73	91
Atlanta	68	8	60	76
Memphis	64	7	57	71
Dallas	47	10	37	57
New York	44	8	36	52
Philadelphia	41	7	34	48
State FEPA				
New York	87	9	78	96
Michigan	65	9	56	74
Tennessee	53	8	45	61
Northern California	52	7	45	59
Georgia	40	0	[a]	[a]

[a]The percentage of charges that the Georgia FEPA did not fully investigate is based on a review of all of the files of charges closed with no-cause determinations from January through March 1987. Therefore, this percentage has no sampling error and no confidence interval associated with it.

Estimated Percentages of Charge Investigations in Which Standards for a Full Investigation Were Not Met

	Evidence not obtained			
EEOC district office	**To address statutes, bases, or issues**	**On employer's practices or policies**	**On similarly situated employees[a]**	**To reconcile differing versions of facts**
Atlanta	1	3	20	6
Dallas	1	0	22	0
Detroit	9	14	57	0
Memphis	0	3	16	0
New York	0	0	8	1
Philadelphia	1	1	15	2
State FEPA				
Georgia	0	3	13	0
Michigan	3	8	25	0
New York	2	7	53	22
Northern California	0	0	14	10
Tennessee	0	0	11	4

EEOC district office	**Witnesses not interviewed**	**Evidence not verified**
Atlanta	11	68
Dallas	24	47
Detroit	52	77
Memphis	25	64
New York	18	44
Philadelphia	27	41
State FEPA		
Georgia	17	40
Michigan	29	62
New York	62	87
Northern California	22	52
Tennessee	4	53

[a]Percentages apply only to investigations of disparate treatment charges.

Comments From the Equal Employment Opportunity Commission

OFFICE OF
THE CHAIRMAN

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
WASHINGTON, D.C. 20507

September 27, 1988

Mr. Lawrence H. Thompson
Assistant Comptroller General
Human Resources Division
U.S. General Accounting Office
Washington, D.C. 20507

Dear Mr. Thompson:

I have carefully reviewed GAO's draft report on the extent to which the Equal Employment Opportunity Commission and state fair employment practices agencies (FEPAs) are fully investigating employment discrimination charges.

The draft report trivializes civil rights enforcement to a level commensurate with widget making. It is highly misleading and deficient in several major regards:

- It fails to note EEOC's many program improvements and unprecedented success in civil rights enforcement;
- It does not accurately reflect EEOC's current investigative performance;
- The limited, overly mechanistic study ignores the complexities inherent in civil rights enforcement; and
- GAO's recommendations present no original suggestions for improvement and disregard initiatives implemented by EEOC.

GAO'S DRAFT REPORT FAILS TO NOTE EEOC'S CURRENT INVESTIGATIVE PERFORMANCE AND UNPRECEDENTED SUCCESS IN CIVIL RIGHTS ENFORCEMENT

Between 1982 and 1988, EEOC surpassed the agency's previous enforcement records. We have investigated more cases, and have filed and prevailed in more lawsuits than ever before. We have obtained more tangible benefits, both monetary and non-monetary, for victims of unlawful discrimination than were

obtained by any previous Commission. A total of $86.6 million in monetary benefits was secured by EEOC between October 1, 1987, and June 30, 1988, alone. Recently, our pending charge inventory has been significantly reduced. Clearly, our programs are working.

Regrettably, the draft report ignores our current investigative performance and our unprecedented accomplishments in civil rights enforcement. The erroneous findings are exacerbated by GAO's refusal to accurately depict our program improvements and enforcement achievements in the context of EEOC's past record. Recent improvements include:

- intensified staff recruitment and investigator and supervisor training;
- modifications in managerial and employee performance standards to emphasize our full investigation policy;
- implementation of a Determinations Review Program which provides charging parties opportunity to obtain headquarters review of field office findings;
- increased audits of investigative files, utilizing proven methods and increased post-audit review;
- improved liaison between headquarters and field offices;
- enhanced case tracking and management systems;
- significant reductions in our pending charge inventory;
- increased filings of and success in lawsuits on behalf of victims of discrimination;
- record monetary settlements for victims of discrimination; and
- increased financial accountability.

GAO's study does not provide an accurate, qualitative measure of our current investigative abilities because it ignores the current process and focuses upon a small number of cases which were investigated and closed prior to the implementation of systems and initiatives now in place. It is important to emphasize that the few cases closed in early 1987

which GAO reviewed for its study were not affected by several of these and other improvements implemented after those cases were closed. Although some of the initiatives were in place at the time GAO commenced its study, most have been implemented and fully operational only within the last eighteen to twenty months.

We have implemented these improvements with the idea that quantity and quality are not mutually exclusive, but rather, are interdependent and equally conducive to successful civil rights enforcement. Consistent with this philosophy, but ignored in GAO's report, in August 1987 we fully implemented a procedure for charging parties to request headquarters review of cases in which EEOC field offices had determined that no reasonable cause existed to believe that employment discrimination had occurred. This Determinations Review Program (DRP) assures charging parties that charge determinations are based on thorough and impartial investigations. DRP impacts more than the cases actually submitted to the program for review; DRP serves as a daily reinforcement of EEOC's policy requiring full investigation, and of the importance of accurate and complete case files. Despite our repeated, emphatic requests throughout the study, GAO refused to examine even a single no-cause case closed since implementation of the Determinations Review Program, or to visit DRP offices--just a few city blocks from GAO headquarters--to observe DRP's application of this program. Further, GAO has declined to even mention in the draft report that EEOC implemented such quality control procedures.

We have developed superior training programs. In June 1987, we conducted intensive, week-long training in investigative techniques and file documentation for all investigators, supervisors and enforcement managers. The comprehensive training involved role-playing, practical exercises and critique. More recently, EEOC has developed and tested case management and development training for our field supervisors and managers. This training presents management techniques for improved performance, including case development and monitoring, time management and quality assurance. Other federal law enforcement agencies have expressed interest in implementing these excellent training programs developed by EEOC.

Additionally, we have improved upon the quantity and quality of guidance afforded by headquarters to field offices, and have initiated routine consultations between headquarters and field managers to emphasize quality standards. Our Office of Program Operations has commenced a practice of regular field office visits to monitor the quality of program implementation,

including the quality of investigations, and to identify needs for changes in policies and procedures.

We recruit better qualified employees. Our employee performance system has been revised to increase accountability at all levels for the success of our full investigation policy.

These initiatives and modifications have resulted in measurable gains in the quality and efficiency of our service. Indeed, this year we were commended by the U.S. Office of Management and Budget for the significant improvements in quality and productivity facilitated by our quality assurance program. OMB concluded that EEOC has demonstrated an extraordinary commitment to quality improvement, and that we have established high standards of quality, timeliness and efficiency. OMB emphasized that EEOC has successfully applied quality assurance strategies to case investigations.

EEOC's difficult mission of enforcing equal employment opportunity laws and principles has been aggressively pursued, even in the face of ever-dwindling resources and often unwarranted criticisms from misinformed sources. GAO refused to examine and report upon the effects of our program improvements and initiatives. Consequently, the misleading conclusions in the draft report simply do not accurately portray our accomplishments in civil rights enforcement, and do not reflect our current enforcement performance. Moreover, the report fails to assess our enforcement activities in the context of where we have been, where we are now, and the direction in which we are headed.

THE LIMITED, OVERLY MECHANISTIC STUDY IGNORES THE COMPLEXITIES INHERENT IN CIVIL RIGHTS ENFORCEMENT INVESTIGATIONS

For its audit, GAO looked only at a very limited number of investigations closed by EEOC in early 1987 in which EEOC found no cause to conclude that employment discrimination had occurred. GAO reviewed 3.28% of the total cases closed by EEOC in the three month review period, excluding cases processed by FEPAs. Further, the study methodology was mechanistically applied and assumed that quantity and quality are mutually exclusive elements in employment discrimination investigation.

Omitted from GAO's study were cases for which EEOC found cause that discrimination had occurred, and those which we closed

administratively. GAO has acknowledged that the quality of these administrative closure and cause cases was acceptable and commensurate with their disposition, but those conclusions receive only quiet mention in the draft report. Moreover, the report ignores that the same full investigation standards are applied to both no cause and cause cases.

EEOC is complying with its full investigation policy. Full investigation is that amount of investigation required to make a sound determination on the merits of a charge. It is nothing more, and it is nothing less. It does not involve the squandering of resources to go beyond what is necessary to reach the proper decision.

Although we are cognizant of GAO's considerable audit experience in a diversity of subject areas, it is apparent that the methodology applied in this study of our enforcement activities evidences a fundamental lack of understanding of the investigatory and judicial principles of witness credibility, evidence and burdens of proof inherent in civil rights enforcement.

In meetings with EEOC officials, GAO representatives have acknowledged their lack of expertise in evaluating evidence to determine whether discrimination has occurred. Yet throughout the study, GAO refused to seek clarification of the evaluation standards used by EEOC, and ignored our attempts to define the standards.

The draft report touts with certainty findings of investigative deficiencies for significant numbers of cases. However, even GAO staff members involved in the audit have not unanimously concurred with GAO's disposition of each case ultimately characterized by GAO as deficient. Although GAO has accepted EEOC's definitions of the essential criteria necessary to reach findings of cause and no cause, GAO's application and evaluation of the criteria is confused and misplaced. GAO's analysis has been applied so mechanistically as to trivialize investigative complexities inherent in civil rights enforcement; it ignores EEOC's expertise in enforcing equal employment opportunity laws and principles.

A prime example of GAO's approach is a case in which the charging party had resigned his employment in lieu of discharge to avoid prosecution for theft. The charge alleged age discrimination. GAO has cited EEOC's investigation of the case

as deficient. The facts, however, clearly support a conclusion that full investigation was accomplished.

EEOC's investigation revealed that the respondent in the case, a luxury hotel, had experienced a rash of burglaries in guest rooms. The respondent installed a surveillance monitoring system in a guest room, and later observed the charging party remove marked cash from a wallet that had been in a pants pocket in the room. The charging party, confronted by the respondent with eyewitness evidence of the theft, offered no plausible explanation for his misconduct and resigned in the presence of his union representative. Our investigation further disclosed that the charging party had been a member of the protected age group at the time he was hired several years earlier. Moreover, after the discharge he was replaced with a member of the same protected class. The charging party offered no theory or evidence to support his allegation of employment discrimination. EEOC's field office staff reasonably concluded that additional investigation was unwarranted, and issued a no cause letter of determination.

In another case GAO criticized, EEOC's investigation disclosed that the charging party had filed with EEOC hundreds of unsubstantiated age discrimination charges against as many employers. The charging party had also initiated in excess of fifteen lawsuits in unsuccessful attempts to force settlements from employers. His modus operandi was to apply for a management trainee position by submitting an unsolicited, slipshod resume. When he was not hired, the charging party filed a charge alleging multiple bases of discrimination.

In the case GAO found deficient, the respondent hired the charging party, but discharged him within one week after observing his slovenly work habits and learning that he had grossly falsified his job application. Our investigation, including information adduced in prior cases involving this charging party, supported a no cause finding.

As we explained to GAO, this charging party was cited for contempt and abuse of process by several courts. The courts determined that the charging party filed suits which were "...without merit and designed solely for the purpose of extracting and possibly extorting a settlement from the employer...." and that the charging party had a "... history of bringing spurious age discrimination actions...." A federal court has enjoined the charging party from bringing any

discrimination action in federal court, absent conditions prescribed by the court.

Clearly, in these and many other cases, GAO has failed to recognize the parameters of EEOC's full investigation policy. We are conducting appropriately thorough investigations.

GAO'S RECOMMENDATIONS PRESENT NO ORIGINAL SUGGESTIONS FOR IMPROVEMENT AND IGNORE INITIATIVES ALREADY IMPLEMENTED BY EEOC

GAO's report recommendations provide scant basis for improving the quality of equal employment opportunity enforcement, particularly because the recommendations prescribe actions which GAO knows have been undertaken, but which GAO has refused to examine and describe in this report. The recommendations contain a paucity of insight and merit relative to the substantial resources expended by both GAO and EEOC in the course of this audit.

For example, GAO's draft report proposes that I clarify and reinforce EEOC's policies and standards for investigating discrimination, and that I emphasize the need to obtain and verify all relevant documentary and testimonial evidence before reaching a decision on the merits of a charge. Our implementation of the Determinations Review Program constitutes just one example of such emphasis. Additionally, EEOC has undertaken ongoing, agency-wide staff training in the areas of investigation and file documentation. In fact, during our June 1987 training conference in Dallas, Texas, investigators were intensively instructed in these areas through the use of lectures, practical exercises and role-playing. The Determinations Review Program, increased audits of investigative files, performance appraisal system modifications and training, among the other initiatives I have described, all serve to reinforce EEOC's policies and investigative standards which are implemented with constant guidance and monitoring by our Office of Program Operations.

GAO further recommends that I conduct a study to determine the charge caseload an individual investigator should be able to carry and fully investigate annually so that the appropriate level of resources EEOC would need to fully investigate all charges filed can be determined. Your report asserts that no reliable workload information is available. This is simply untrue. We know how many cases proficient EEOC investigators have processed. We know, also, the workload capabilities of other investigative agencies. We have made no secret of the

numbers of charges received and closed each year with our limited resources. Similarly, our staffing levels are well publicized.

EEOC's need for additional resources has been repeatedly placed before the Congress, but no relief has been forthcoming. No reasonable person can aver that insufficient funding for our mission is the result of misunderstandings about our workload and investigative capabilities. In view of GAO's numerous undertakings into EEOC's casehandling procedures, it is hypocrisy to recommend that EEOC make additional staffing, workload and funding projections utilizing data already available to GAO, but which GAO has declined to analyze and report.

Similarly, GAO's recommendation that I direct field offices to monitor the investigations performed by the FEPAs and not accept FEPA determinations that are based on less than full investigations, is equally simplistic. The directives GAO suggests are in place, however, as we have repeatedly emphasized, the resources Congress has appropriated are not commensurate with the magnitude of the task. GAO's recommendation ignores the complexities of the problem, particularly in view of our scarce resources.

GAO also recommends that I establish an independent group to periodically investigate a sampling of charges to evaluate compliance with our full investigation policy. Our Determinations Review Program constitutes just one example of such emphasis. Additionally, in our routine field visits, hundreds of closed cases are dissected and evaluated by trained program analysts, in a process more appropriate to the complexities of civil rights enforcement than the process which GAO applied during its audit. The draft report fails to even mention this initiative. Instead, GAO has seized upon our initiative and, without meaningful modification, included it in the draft report as an original idea and then offered it to us as a recommended action. Again, such an approach provides scant justification for the substantial resources expended in the course of this audit.

EEOC has come a long way toward becoming a respected law enforcement agency. This is not to imply that EEOC has no shortcomings, or that we should be immune from responsible criticisms. Surely, though, misguided and erroneous criticisms which ignore EEOC's significant progress in civil rights

enforcement should not impede our mission of eliminating employment discrimination.

We have given prudent regard to criticisms and advice from other entities, including GAO, as well as from our staff and the public we serve. We have acknowledged where improvement was needed and undertaken to eliminate the deficiencies. We will continue to make improvements. Still, it is important to recognize the strides we have made, particularly in view of the limited resources available to us. Unfortunately, GAO's report fails to note our many program improvements, or to present its findings in the context of EEOC's past and present performance in civil rights enforcement.

GAO's draft report unfairly impugns the reputations of many good career civil servants who have worked diligently and proudly to achieve EEOC's mission. More tragically, however, the report's inaccurate and misleading findings will do much to undermine the progress we have made in civil rights enforcement and will make attainment of our mission even more difficult.

Sincerely,

Clarence Thomas
Chairman

Comments From the State of California Department of Fair Employment and Housing

STATE OF CALIFORNIA–STATE AND CONSUMER SERVICES AGENCY GEORGE DEUKMEJIAN, *Governor*
DEPARTMENT OF FAIR EMPLOYMENT & HOUSING
1201 I STREET, SUITE 211, SACRAMENTO, CA 95814-2919
TDD (916) 323-6980

September 22, 1988

Lawrence H. Thompson
Assistant Comptroller General
United States General Accounting Office
Washington, D.C. 20548

Dear Mr. Thompson:

Thank you for the opportunity to comment on your draft of a report to the Chairman of the House Committee on Education and Labor and other Congressional requesters regarding the investigation of discrimination complaints by EEOC and by State Fair Employment Practices Agencies.

The Department of Fair Employment and Housing is gratified to learn that California's performance was superior to that of all other states but one and, in fact, exceeded several of the EEOC offices reviewed. These findings support our contention that California has done an excellent job in handling Title VII cases.

I concur with your conclusion that the pivotal issue is defining the requirements of a "sufficient," "adequate" or "minimal" investigative effort where there is not a full investigation; and that all such investigations should "safeguard the rights of both the employee and employer." Once defined, these requirements should be communicated to and effectively implemented by all compliance agencies.

The GAO audit was conducted to determine compliance with the provisions of EEOC's compliance manual, according to how GAO staff stated those provisions were met. It is misleading to conclude that state agencies or at least the California Department of Fair Employment and Housing (DFEH) did not fully investigate discrimination charges.

The audit report generated by your staff members in California, while taking exception with 52% of 105 DFEH case files, also indicated that in all but four cases the investigators working for our agency had plausible reasons for the deficiencies identified. This scarcely supports a conclusion that the cases were not fully investigated.

The criticism that files failed to reflect why identified witnesses were not interviewed is fair. However, the contention that accepting a complaining party's verification of evidence offered by the employer is "placing the burden of proof on the charging party" (page 55) is neither logical nor supportable. A complaining party's verification of facts alleged in the employer's defense is just as valid as that of any other witness, and even more credible considering their stake in the outcome.

The report recommends that EEOC develop caseload standards. However, the report should clearly reflect that these standards are intended for EEOC application only. To apply such standards to the diverse statutes and procedures of state agencies would be improper.

Finally, I would respectfully request an acknowledgement that no member of the DFEH staff attributed the alleged case processing deficiencies to caseload pressures. On a more basic level, I am fully in favor of (and welcome) more well defined documentation requirements from EEOC and more regular monitoring. We are very proud of our enforcement efforts in California and, given our strengths look forward to any reasonable changes to assure that the high quality of DFEH investigations conducted for EEOC are properly reflected in our case files.

Sincerely,

Earl E. Sullaway
Deputy Director
Enforcement Division

EES:km

P.S. Lest there be some concern that DFEH has failed to follow our own established standards, the October 1986 report of the Auditor General of California should also be noted. This report, compiled by one of the most respected review agencies in the United States, concludes that, "In a sample of 1,200 cases, we found that the Department's policies and procedures for processing complaints of discrimination are consistently applied," and that, "The system... for accepting, processing and resolving complaints of discrimination complies with state law and has controls to ensure impartiality." A copy of that report has been provided your auditors.

Comments From the State of Georgia Office of Fair Employment Practices

Office of Fair Employment Practices
156 Trinity Avenue, S.W.
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Atlanta, Georgia 30303
(404) 656-1736

September 26, 1988

Mr. Lawrence H. Thompson
Assistant Comptroller General
United States General Accounting Office
Human Resources Division
Washington, D.C. 20548

Dear Mr. Thompson:

It is the position of the Office of Fair Employment Practices (OFEP) that the conclusion of the U.S. General Accounting Office that a number of cases processed by this office have been less than fully investigated is unfounded and untrue. GAO's basic premise that all Equal Employment Opportunity Commission (EEOC) procedures must be strictly adhered to in order that a case be "fully investigated" is faulty, and is one that is not supported by law. All OFEP investigations are completed in full compliance with the provisions of the Fair Employment Practices Act of 1978, as amended, and no determination is issued by this office before sufficient evidence is obtained to resolve the relevant issues involved.

The observations and criticisms communicated during the investigation by the General Accounting Office (GAO) raise important questions about the standards being applied in this investigation. The use of the phrase "not fully investigated" to describe case files about which the GAO reviewers have minor questions, implies that the evidence compiled is insufficient to support the findings of this office. In fact, in none of the cases cited would the information deemed "missing" by the GAO investigators have altered the findings in any of the cases.

Your report also compared OFEP, an agency with 18 employees, with other much larger agencies. The differences in agency size and jurisdiction were never discussed in the draft report. Unlike other agencies which have jurisdiction over all employers within their respective states, OFEP processes complaints filed against

state agencies, only. This accounts for the lower number of charges processed by OFEP. However, it should be noted that OFEP conducts on-site investigations in virtually every charge filed with this office. Few other agencies conduct similar investigations.

The statistical analysis presented in the draft report of the U.S. General Accounting Office indicates that thirty (30) case files were reviewed by the GAO auditors. Our records reveal that the auditors initially reviewed more than twice that number of case files. They subsequently narrowed their attention to 38 files.

The draft report indicates that 100% of the "no cause" closures in the period of January through March 1987 were considered. However, records submitted by our office to the auditors reveal that 48 "no cause" closures were completed during that period. During that same period, a total of 61 cases, including findings of reasonable cause, settlements and, Administrative Closures, were completed.

At the conclusion of the audit during conversations with the lead auditor and her supervisor, we were advised that only 12, not 15 cases were viewed as not "fully investigated." That number indicates that 25% of the "no cause" cases and 20% of all cases completed were found to have been not "fully investigated."

It is, therefore, curious that the draft report indicates that 50% of OFEP's cases were not "fully investigated." Even assuming that the conclusion in the draft report is true --- that is, that 15 cases were inadequately investigated --- the percentage not "fully investigated" is 31% of the 48 "no cause" cases completed, rather than the 50% cited in the draft report.

The report indicates that the national average for EEOC charges found to have reasonable cause to believe discrimination occurred was between 2% and 4%. OFEP found reasonable cause in 16% of its cases between July 1987 and July 1988. An additional 9% were resolved through settlements. In other words, approximately one fourth of the persons who filed charges with OFEP received a favorable outcome.

Numerous statistical measures could have been applied to analyze the cases under consideration. The draft report apparently has selected an arbritrary set of figures which presents the worst possible interpretation. This interpretation is, in fact, misleading and inaccurate.

However, our concern is much more profound than gross percentages. We are concerned that those numerous other cases which were initially reviewed by the auditors were not considered in the final statistics. Evidently, those cases were found to be satisfactorily investigated. This selective, rather than random,

approach to determining the statistical sample renders the conclusions unreliable. Additionally, by reducing the size of the sample, the intent appears to be to increase the percentage of cases found not to be "fully investigated."

There appears to be an inherent bias in the audit criteria utilized. Only No Reasonable Cause cases were reviewed. This approach was rationalized by GAO with the explanation that there is no need to waste resources investigating non-problematic areas. This approach implies that most cases should be resolved in favor of the Charging Party if "fully investigated." The existence of possible bias by an FEP agency against a Respondent was completely ignored. Other types of closures such as negotiated settlements, administrative closures and withdrawals were also not considered in this audit.

Perhaps the most disturbing factor in the GAO audit was the arbitrary and legally questionable criteria utilized to evaluate case files. The standards applied by the auditors appear to conflict with EEOC regulations, established legal theory and the general trend of recent court precedent in discrimination law. There was clearly a lack of understanding by the auditors of the burdens of proof and the legal theories relevant to discrimination cases. Auditors assigned to Georgia admitted that they had no previous knowledge of EEO law and that they had read no court decisions relating to employment discrimination.

The auditors appeared to place a high value on rigid uniformity in investigative procedures. Given the vast diversity in the issues, bases and circumstances from case to case, strict uniformity is not feasible. In fact, such uniformity would prove detrimental to the uncovering of discriminatory practices. Inves-tigative methods must be flexible and adaptable to the facts and circumstances in each case.

In addition to these general problems with the audit criteria, the auditors committed numerous specific errors in their review of the case files. One case was found to be "not fully investigated," in part, because OFEP had failed to interview a named state legislator who was believed by the GAO auditors to be a similarly situated co-worker of the Charging Party. That legislator was a friend of the Charging Party and had never been employed by the Respondent. In another case, we were criticized for failing to obtain a copy of the employer's promotion policy when the Charging Party had never applied for promotion to the position in question. Obviously, the "deficiencies" cited in these cases were irrelevant to those issues involved in the investigations.

There are numerous other examples of this type of imprecision in the reviews conducted by the auditors. In each case, our office spent an inordinate amount of time attempting to explain the

appropriate standards to the auditors. This effort was obviously futile.

We can appreciate the purported goals of this audit of EEOC and the FEP agencies. An adequate evaluation of the current status of FEP enforcement is vital to improving that effort. Unfortunately, the audit just completed falls far short of that goal.

We are not at all confident that an accurate evaluation can be presented, given the methods used and the data obtained up to this point.

It is our hope that any future actions taken relevant to this study will be more balanced and objective in nature. We will be more than willing to cooperate in any such endeavors.

Sincerely,

Wayne G. Early
Deputy Administrator

WGE/gb

Comments From the State of Michigan Department of Civil Rights

STATE OF MICHIGAN

JAMES J. BLANCHARD, Governor

DEPARTMENT OF CIVIL RIGHTS

JOHN ROY CASTILLO
Director

September 15, 1988

Mr. Lawrence H. Thompson
Assistant Comptroller General
United States General Accounting Office
Human Resources Division
Washington, D. C. 20548

Dear Mr. Thompson:

This is in response to your September 7th correspondence in which you provided us with copies of a proposed report to the Chairpersons of the House Committee on Education and Labor and its Subcommittee on Employment Opportunities. Thank you for inviting us to comment on the draft report regarding GAO's audit of the Equal Employment Opportunity Commission and state fair employment practices agencies.

After carefully reviewing the proposed report, it is apparent that there has been a lack of communication between EEOC and the fair employment practices agencies. According to the draft report, one of the primary purposes of the audit was to determine whether all charges were being "fully investigated" in accord with EEOC's 1983 stated policy. We have never been informed of such a policy or requirement. We can appreciate the value of comprehensive and thorough investigations, however it is totally unrealistic for any civil rights agency to fully investigate every charge because of a significant limitation of funding at all levels. For example, 6,435 new charges were filed with the Michigan Department of Civil Rights during the 1987 fiscal year as compared to 3,285 in 1973 when we had a larger investigative staff. In spite of constantly streamlining procedures and implementing many innovative techniques, quality unfortunately cannot be maintained or enhanced when the workload has doubled and staff has been reduced. Most civil rights agencies are under-funded and can only dream with respect to being able to fully investigate every charge. In addition to state and local funding problems, the EEOC $400.00 per case funding rate represents another reduction from the maximum $440.00 rate of approximately five years ago, although there have been significant increases in the cost of investigating charges.

For years prior to 1983, EEOC strongly encouraged all fair employment practices agencies to adopt rapid charge procedures in an effort to control and minimize increasing caseloads. It was understood that the implementation of rapid charge processing would result in more superficial investigations, however it could expedite settlements and increase production. A few years ago, we learned that EEOC had quietly discontinued rapid charge processing but was aware of the fact that FEPAs were still using the procedure because it was the only way some agencies could produce more with much smaller staffs. It is our opinion that the advantages of rapid charge processing out-weigh the disadvantages, however it was never intended to result in top quality investigations. Frankly, limitations of rapid charge processing were reflected in some of the GAO findings.

We take exception to any policy which requires that all charges be fully investigated because of the aforementioned reasons in addition to the fact there are some situations that do not require full investigations. The following are some typical examples:

1. Failure of the charging party to cooperate in regard to the investigation.

2. Voluntary full equity settlements in lieu of conducting complete investigations.

3. Inability to locate charging parties.

4. Voluntary withdrawals for valid reasons.

5. Bankruptcy on the part of respondents who are no longer in business.

We believe the EEOC stated policy to "fully investigate" every charge was perhaps an error, misstatement or a misunderstanding. Additionally, there are no provisions in our EEOC contracts for such a requirement.

We are keenly aware of the importance of interviewing pertinent witnesses as a part of the investigative process. This was one of the audit findings which we do not concur with in certain situations. As an example, we interviewed nine of a total of ten witnesses in one particular case and all nine agreed in their statements and testimony. If we had interviewed the tenth witness and his testimony differed from that of the other nine witnesses, it would not have made a difference in the disposition of the charge. We attempted to explain this to the auditors, however they apparently could not understand our rationale.

One of our most serious concerns is in regard to the recommendation that we verify evidence submitted by the respondent. The finding which precipitated this recommendation was involved in most of the cases cited. As an example, a respondent verbally informed us that there had been 100 layoffs within the last year. As verification of the respondent's verbal statement and defense, we requested the layoff list which contained 100 names. The auditors advised us that we should have verified the names on the list by contacting all the persons whose names appeared. We can agree that this may be an ideal approach, however it is not practical in this era of limited resources. This kind of exhaustive and time-consuming investigative effort required in verifying every piece of evidence would drastically reduce production and would not yield sufficient benefits.

We are quite concerned regarding GAO's method of selection of those agencies and cases which were reviewed. Appendix I indicates that EEOC designated certain agencies as being "among the best" and others were not. We believe there are no objective or valid bases for such ratings, particularly with respect to the Michigan Department of Civil Rights which is one of the most reputable agencies in the country and has successfully undergone several other audits within the last year. At the beginning of the audit, we were requested to provide 300 cases as designated by GAO. After the review and screening of the 300 cases, we were informed that 72 of the cases were "randomly selected" for a more comprehensive study. At the conclusion of the audit, we were notified that 47 of the 72 cases contained deficiencies. It should be noted that 46 of the 47 cases involved the "verification of evidence" concern to which we take exception. Additionally, we observed the review of 300 cases which should constitute the base instead of 72. Limiting the base to 72 cases tends to result in a distorted statistic.

Unfortunately, much of the audit was based on verbal statements and interpretations attributed to Mr. James Troy of EEOC. There is considerable disagreement with respect to statements he reportedly made relative to investigative approaches and procedures. The Michigan Department of Civil Rights, like the other fair employment practices agencies, has its own laws, rules and procedures which it must follow. Contracts with EEOC require either compatible or substantially equivalent laws and procedures which rightfully allow for flexibility. We disagree with GAO's approach that all EEOC procedures must be strictly followed. Compatible was apparently both misinterpreted and misunderstood which significantly flawed the audit findings. In accord with EEOC contracts, FEPAs are required to obtain sufficient evidence to make a determination. Therefore, it is sometimes possible to satisfy this requirement by stopping short of what some would consider a "full investigation." This term can mean different things to different civil rights professionals. Some agencies, such as Michigan, must

meet the test of determining whether the investigation was adequate. This, of course, is significantly different from determining whether the investigation was an exhaustive and ideal one. Auditors assigned to Michigan acknowledged knowing nothing about civil rights and appeared to have minimal knowledge of auditing techniques. We had no problem with the audit team interviewing our investigative staff, however some of our staff members informed us that there were persistent efforts on the part of the audit team to elicit only negative information. There were also inquiries into areas which exceeded the scope of the review.

After reviewing GAO's proposed recommendations, we believe it is appropriate for us to make a few brief comments in this regard. We have a problem with the recommendation that an outside panel of experts should determine the appropriate roles for EEOC and the FEPAs in investigating charges and the level of resources needed to carry out the roles assigned to each. Unfortunately, political considerations could determine the make-up of the panel which, in turn, may not be in the best interest of civil rights. Secondly, it can be extremely risky for a panel of outsiders to dictate or determine the operational needs of EEOC. This would clearly undermine the authority of EEOC and its Chairman. Additionally, such congressional interference could constitute a conflict between the Executive and Legislative Branches of government, thereby, violating the separation of powers doctrine.

We strongly urge reconsideration of the proposed recommendation to direct EEOC district offices "not accept FEPA determinations that are based on less than full investigations" for the reasons referred to previously. We reiterate that the $400.00 per case funding rate does not begin to cover the cost of a full investigation. If FEPAs are forced to give up the inadequate federal funding for doing EEOC's work, it is clear that it would cost the federal government (EEOC) more than several times $400.00 to fully investigate each charge. FEPAs have their own laws, rules, procedures and responsibilities, therefore they cannot allow EEOC to totally dictate the manner in which they operate. In 1987, EEOC received approximately $137,532,000 for processing 62,000 charges while FEPAs received $20,000,000 in federal funds for processing nearly the same number of charges.

In the final analysis, we are convinced that EEOC as well as MDCR have a sincere interest in effectively enforcing civil rights laws. Unfortunately, resources for both agencies have been limited, therefore we have had the challenge of attempting to fulfill our respective missions with the resources available to us. MDCR welcomes audits which can be beneficial if they are conducted in a competent, fair and objective manner. Although we have expressed some serious concerns relative to the GAO audit, we do acknowledge that there were a few helpful points brought to our attention during the

audit. For example, it would enhance our performance for staff to routinely include, in investigation reports, the rationale for certain action or inaction so that anyone who reads our reports can clearly understand them. If a witness, as an example, is not interviewed because he or she has no first-hand knowledge of an event and cannot offer useful testimony, investigators should routinely include this in the report. We can assure you that we are sincerely interested in maximizing our effectiveness and will continue to explore meaningful but practical approaches.

Again, we appreciate the opportunity to respond to your draft report. We hope our comments will be accepted in a constructive manner as we intended. Please feel free to contact us if you have any questions regarding this response or if you should need any additional information.

Sincerely,

John Roy Castillo
Director

Comments From the State of New York Division of Human Rights

DOUGLAS H. WHITE
COMMISSIONER

STATE OF NEW YORK
EXECUTIVE DEPARTMENT
DIVISION OF HUMAN RIGHTS
55 WEST 125 STREET
NEW YORK, NY 10027

September 27, 1988

Lawrence H. Thompson
Assistant Comptroller General
United States
General Accounting Office
Washington, D.C. 20548

Dear Mr. Thompson:

Thank you for the opportunity to review and comment on the draft of the proposed report on the Equal Employment Opportunity Commission.

To provide a context in which the data regarding the FEPA's can be better analyzed and interpreted, we believe that it would be helpful to include a description of the New York State Division of Human Rights, as well as the other agencies included in the study.

For this purpose, we offer the following information:

The New York State Division of Human Rights investigatory branch is comprised of eleven regional offices state-wide. In the last fiscal year, approximately 70% all new complaints taken and 80% of complaints on file were concentrated in the Downstate (Metropolitan New York) area. As of August 1988, there were 11,687 complaints on file pending investigative outcomes. With a total investigatory staff of 51 statewide, the average caseload per investigator (including supervisors) is 229.

Because of the pressures created by this volume of cases, all supervisors are required to carry full caseloads in addition to their supervisory responsibilities, and all Regional Directors (regional office managers) have responsibility for reviewing and approving every case submitted for closing, which in the larger offices frequently number more than 70 cases per month.

The Division of Human Rights takes an average of 7,000 new complaints per year, and its areas of jurisdiction extend beyond those of the EEOC to include housing, public accommodation, extension of credit, non-profit educational institutions, etc. Additionally, the Division of Human Rights accepts complaints on bases not covered by Title VII or ADEA such as disability, marital status, arrest and conviction records.

In addition to investigating and resolving complaints, staff investigators are responsible for the intake of all new complaints, and also participate in community and educational outreach efforts.

We note from the report that EEOC District Offices and State FEPAs have been receiving and responding to mixed signals about "the dilemma of performing timely yet high-quality investigations on a large workload" and that the six present and former EEOC officials interviewed could not agree on a solution to this problem.

In regard to the findings of the study, we are in agreement with the criteria for the full investigation of complaints, although there may be technical differences of definition and methodology. In light of these mutal concerns, Division of Human Rights has undertaken a series of initiatives over the past year (after the time period under study by the GAO), some of which have already been implemented, while others are in development. A list of these intiatives was communicated to the GAO study team, and we reiterate them here for inclusion in the record, and to demonstrate the seriousness of our intent to improve performance.

1. Regional Directors are now required to review each new complaint assigned to the office prior to its assignment to a Human Rights Specialist.

2. Re-emphasis/stress on Division of Human Rights requirements for verification of information, interviewing of witnesses, obtaining information, and comparison of similarly situated individuals.

3. We are reviewing and will revise, as necessary, the "initial request for information" forms currently in use.

4. A written investigative plan is required for each complaint, its form to be determined by the supervising Human Rights Specialist, based on need.

5. We have developed an investigating Human Rights Specialist and supervising Human Rights Specialist checklist, requiring the initials of the Human Rights Specialist confirming that necessary steps were taken and of the supervisor verifying same.

6. We have reaffirmed procedures for closing cases for Administrative Convenience rather than No Probable Cause in situations where the complainant is not available or has abandoned the complaint.

7. We have developed procedures for recommending appropriate cases for public hearing under an adverse inference policy when the Respondent is recalcitrant or refuses to cooperate.

8. We are updating our Policy and Procedure Manual.

9. We have developed time targets for completing investigative work on complaints within 180 days (90 days in housing cases and as soon as possible in life threatening cases).

10. We have hired additional staff for the two regional offices in Manhattan and are in the process of replacing staff in other regional offices - Buffalo, Syracuse, Brooklyn, Hempstead and Hauppauge.

11. We are attempting to procure space to establish a central intake office for New York City.

12. We have programmed new computer reports that indicate the date of violation in ADEA cases and the age of housing cases.

13. We have developed an OJT Manual for new trainees.

14. Conciliation training was held for investigative staff during June and July 1988.

15. We now require an Intake Supplemental Memorandum to accompany all new complaints which provides specific information from the complainant, including the names of relevant witnesses.

16. We have developed computerized regional office caseload status reports for review and montoring of cases.

We are also mindful of the importance of adequate training for both new and current staff, and hope to increase our internal initiatives in this area, as well as to explore securing EEOC funding and/or assistance.

Once again, we appreciate the opportunity to review the GAO findings, and hope that our comments will be included in their entirety in the final report as submitted.

Sincerely yours,

Douglas H. White
Commissioner
New York State Division
of Human Rights

cc: Margarita Rosa, Executive Deputy Commissioner
Barbara Riley Shaw, Deputy Commissioner for Regional Affairs
Lynne Weikart, Assistant Commissioner for Administration

Comments From the State of Tennessee Human Rights Commission

STATE OF TENNESSEE
HUMAN RIGHTS COMMISSION
CENTRAL OFFICE
CAPITOL BOULEVARD BUILDING, SUITE 602
226 CAPITOL BOULEVARD
NASHVILLE, TENNESSEE 37219-5095
(615) 741-5825

September 26, 1988

Mr. Lawrence H. Thompson
Assistant Comptroller General
U.S. General Accounting Office
Room 6733
441 G Street, N.W.
Washington, D.C. 20548

Dear Mr. Thompson:

Thank you for the opportunity to comment on the GAO draft report on the extent that the EEOC and state FEPAs were fully investigating employment discrimination complaints. The report's statistics, as they relate to THRC, are an overly harsh and critical statement on the quality of our case investigations.

On May 26, 1988, I made a written response to Mr. James D. Martin, GAO Regional Manager, about these cases where THRC was cited as being deficient. I am enclosing a copy of that response for your consideration as my comments to the report.

Please do not hesitate to contact me, should my comments need explanation.

Sincerely,

Warren N Moore by ss

Warren N. Moore, Ph.D.
Executive Director

WNM/pn

Enc.

STATE OF TENNESSEE
HUMAN RIGHTS COMMISSION
CENTRAL OFFICE
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May 26, 1988

Mr. James D. Martin
Regional Manager
United States General Accounting Office
101 Marietta Tower, Suite 2000
Atlanta, GA 30323

Dear Mr. Martin:

As you requested, I am writing to comment on the 29 THRC complaints which GAO believes were not fully investigated.

THRC has a complaint investigative process which is consistent with case law, serves the rights of individual complainants and accomplishes the most good for the most people. Years of professional experience have taught us that many times the merits of cases can be adequately evaluated by an investigation which is not "full" by GAO criteria but which is fair to all concerned.

The typical THRC investigation includes:

1. Counselling with the complainant at the complaint intake stage to identify comparative, similarly situated individuals, witnesses and relevant documents; to inform the Complainant about the administrative process and the burden of proof.
2. Drafting a request for information from the respondent which is specifically designed to see if there is merit to the allegations in the complaint.
3. Reviewing the respondent's position statement and analyzing documents, on-site and in the office, provided by the respondent.
4. Drafting questions for witnesses designed to see if there is merit to the allegations and then interviewing witnesses and analyzing other documents.
5. Summation of the accumulated evidence, with either the complainant or respondent depending on whether or not there is reasonable cause to believe that discrimination has occurred. The investigation will continue if warranted by this pre-determination interview.

The GAO evaluators divided the 29 cases into two groups, the 23 that had only verification of evidence deficiencies and the 6 that had multiple deficiencies. THRC did not re-review for these comments all 23 verification only cases. THRC does not believe the verification of all evidence for completeness and accuracy is necessary. However, if during an investigation it seems as though material information is bogus or misleading then that information will be verified. A heavy emphasis is placed on whether or not the respondents' reply to the allegations articulates a legitimate non -discriminatory reason for their action and makes common sense, and whether or not the witnesses' statements and/or any documentation are consistent with the position of either party.

Tennessee law makes it a crime to interfere with the investigation of a complaint, so there is some deterrent for anyone to deliberately give incorrect information. The investigative case file is open to the parties so there is easy access to all information. It has been THRC's experience that most complainants are well informed about the work situation in question or have some inside contact with the respondent that can give an opinion on the situation. Complainants are advised of the burden of proof concept and informed of the necessity of their cooperation with the investigation. Complainants are assertive enough to have filed a complaint, therefore it is assumed that they would be assertive enough to point out that something is incorrect during an investigation. The no cause determination letter also notifies complainants that they can request a reconsideration of their case, hence another opportunity to challenge the adequacy of an investigation. Respondents risk having to undertake a defense as well as loss of reputation if they interfere with an investigation.

Case number deleted for reasons of confidentiality.

THRC randomly selected 1 of the 23 verification only cases to review, case [ ]. All of the evidence was not verified in that case, and it would not have changed the outcome if it had been. In this case, the complainant alleged she was not hired because of her race, black. She named a comparative white who was hired. The respondent articulated a believable, common sense, non-discriminatory reason for not hiring her in the job sought, and said that the white person was not similarly situated. The respondent sent documentation to show that they had hired blacks in the job the complainant sought before she filed her complaint at a rate proportionate to their representation in the population, and to show that the white employee was not similarly situated.

It was not likely that the respondent had sent us incorrect information. It was open to the public, the jobs were highly visible and unionized. The complainant had a knowledgable contact at the respondent of the same race, and she knew the named white. The complainant's abrupt attitude during the job interview was the reason given for her not being hired. The investigator

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Case number deleted for reasons of confidentiality.

also observed and noted this demeanor on the complainant's part from her contact with her during the investigation. The case file noted that another race discrimination complaint filed by the complainant was being resolved at the same time. It is also in this group of 23, [ ]. It is against another unrelated, highly visible respondent, and that respondent articulated that the complainant's poor attitude was the reason for her discharge. Based on professional judgment, verification of even the relevant evidence in these complaints would have been a waste of time.

As to the 6 cases with multiple deficiencies, all 6 were cited as deficient under the verification criteria. Since I have already commented on this issue, I will not cover it again in regard to these cases. Of these 6 cases, 4 were cases where EEOC had performed the intake function, and THRC never received the intake notes, which contained the names of comparable, similarly situated employees or witnesses. Please see attachments A thru F for my specific comments on the 6 cases along with the GAO evaluators' case descriptions.

Disgruntled persons and out of work employees can have many motives for filing a complaint other than a true belief of unlawful discrimination. The belief might be true, but based on a distorted perception of discrimination. When complaint fact situations are weak as to suggesting unlawful discrimination, and they are believably rebutted; or it becomes apparent the complaint was filed for the wrong motive or was based on faulty perception, then the investigative staff must use its professional judgment as to when to terminate an investigation on these cases so as not to waste our very limited resources on an inherently nonmeritorious case, saving time to spend on those cases that are very suggestive of merit. With fewer and fewer personnel as the years go by and a larger case load, THRC does struggle to maintain quality of investigations.

As previously noted, THRC finds complainants to be fairly sophisticated, and relies on this during pre-determination interviews, making assumptions from their reactions to evidence. As a safeguard to the system, THRC has an extensive review process, and complainants generally know this. It is not unusual for them to speak out to THRC management when they feel a proper investigation is not being done, and, of course their case will be closely scrutinized.

I do not believe these 29 cases are truly deficient. EEOC reviewed and approved them all. The GAO evaluators have tried to determine relevancy, but, because they are auditors and not professional civil rights workers, there are still overtones of applying an auditor's checklist to a situation where a professional judgment call has been made. THRC professionals had the actual

contact with complainants and respondents. I believe the best assurances of quality in an investigation are proper interviewing to determine issues and good investigative planning, including, a request for information tailor made to the complaint to try and secure comparative data and relevant identification and questioning of witnesses.

If I can be of further assistance, please do not hesitate to contact me.

Sincerely,

Warren N. Moore by JL

Warren N. Moore, Ph.D.
Executive Director

Attachments A thru F

Attachments A-F are not included because they had been provided to us previously during the course of our work, and we have considered them in drawing our final conclusions on charge investigations.

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