



089940

B-175042

9-28-73
RESTRICTED — Not to be released outside the General Accounting Office except on the basis of specific approval by the Office of Legislative Liaison, a record of which is kept by the Distribution Section, Publications Branch, O.G.S.

RELEASED

Review Of Selected Activities Of
The Equal Employment Opportunity
Commission District Office
In Memphis

B-175042

BY THE COMPTROLLER GENERAL
OF THE UNITED STATES

089940

913635

SEPT. 28, 1973



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON D.C. 20548

B-175042

The Honorable Dan H. Kuykendall
House of Representatives

Dear Mr. Kuykendall:

In accordance with your requests of August 28 and October 31, 1972, we have reviewed selected activities of the Equal Employment Opportunity Commission district office in Memphis.

Pursuant to agreements with your office, we provided a draft of this report to the Commission and considered its comments in preparing the report. As agreed, we will provide the Chairman of the Commission and Congressman Robin Beard with copies. We will not release this report further unless you agree or publicly announce its contents.

We trust this report will serve the purpose of your request.

Sincerely yours,

A handwritten signature in black ink, which appears to read "James B. Atchefs". The signature is written in a cursive style with a large, stylized initial "J".

Comptroller General
of the United States

C o n t e n t s

		<u>Page</u>
DIGEST		1
CHAPTER		
1	INTRODUCTION	3
	EEOC	3
	Scope of review	4
2	ADEQUACY OF INVESTIGATIONS	5
	Investigative process	5
	Duplication in gathering data	7
	Conclusion	8
	Recommendation to the Chairman, EEOC	8 ✓
	Agency comments	8
3	ACCURACY OF REPORTS	9
	CHRs	9
	Backlog of charges	10
	Personnel turnover	11
	District Director's comments on backlog	11
	Potential for reducing backlog by eliminating charges without merit	12
	Naming the claimant	13
	Conclusions	13
	Recommendations to the Chairman, EEOC	13 ✓
	Agency comments	13
	GAO evaluation	14
4	CONSOLIDATING INDIVIDUAL CHARGES INTO A SINGLE CASE	15
	EEOC consolidation policy	15
	Practice followed by Memphis office in consolidating charges	16
	Consolidation during investigation	16
	Consolidation during conciliation	17
	Conclusions	17

5	COOPERATION BETWEEN THE MEMPHIS OFFICE AND RESPONDENTS AND COMMUNITY ORGANIZATIONS	18
	Employer reactions	18
	Community organizations' reactions	20

APPENDIX

Letter dated July 19, 1973, from EEOC to GAO	21
---	----

ABBREVIATIONS

CDP	Commission Decision Precedent
CHR	Case Handling Report
EEOC	Equal Employment Opportunity Commission
GAO	General Accounting Office
OFCC	Office of Federal Contract Compliance

*COMPTROLLER GENERAL'S REPORT
TO THE HONORABLE DAN H. KUYKENDALL
HOUSE OF REPRESENTATIVES*

SELECTED ACTIVITIES OF THE
EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION DISTRICT OFFICE
IN MEMPHIS B-175042

D I G E S T

WHY THE REVIEW WAS MADE

Congressman Kuykendall requested GAO to review selected activities of the Equal Employment Opportunity Commission (EEOC) district office in Memphis.

EEOC's goal is to eliminate job discrimination because of race, color, religion, sex, or national origin through investigating and conciliating discrimination complaints and through programs to secure voluntary compliance with the Civil Rights Act of 1964 from employers and others covered by the act.

On the basis of data provided to the Congressman and GAO by certain individuals involved in or interested in EEOC activities in Memphis, GAO examined the adequacy of initial investigations, the accuracy of case-load data, the consolidation of cases against the same employer, and the cooperation between the Memphis office and community organizations and employers.

FINDINGS AND CONCLUSIONS

Few cases had been returned to the Memphis office by EEOC headquarters for reinvestigation. The initial investigations in most cases were reasonably adequate. However, assigning different investigators to review different charges against the same respondent could have resulted in respondents' being required to provide the same data more than once to EEOC. (See pp. 5 and 7.)

Periodic Memphis office reports, intended to provide EEOC headquarters with statistics on the status of charges and cases, were not always accurate. However, the errors generally were the type that corrected themselves in the next reporting period or involved an improper categorization of the status of charges and did not affect the number of charges shown as pending at the end of the reporting periods. (See p. 9.)

An increasing backlog of pending charges is an EEOC-wide problem. EEOC took some action but made little progress in reducing the backlog. At the Memphis office, pending charges have increased from about 1,300 at the end of November 1971 to about 2,300 at the end of March 1973. Factors contributing to the backlog include (1) the EEOC policy of broadening each charge to include all like and related issues when a charge is investigated and (2) the personnel turnover which adversely affects employee productivity. (See pp. 10 to 11.)

Because charges are not investigated promptly, the situation causing the charge to be filed may have changed and thereby rendered the charge obsolete. An internal EEOC task force which studied the backlog problem estimated that 15 percent of backlog charges were no longer valid.

Before January 1973 notices sent to respondents informing them that a charge had been filed did not show claimants' names. Although the

notices now include such information, EEOC does not plan to send revised notices to respondents who have not received claimants' names unless the respondents so request

The backlog could be reduced by eliminating charges without merit, but there is no system for ascertaining the viability of a long-pending charge, short of investigation. It seems that charges filed before a specified date could be verified, perhaps by a form letter. Similarly, with respect to EEOC's revised notice that a charge has been filed, identifying claimants to employers would enhance the possibility of learning, sometime before an investigation is undertaken, that circumstances which led to filing a charge no longer exist (See p 12)

The Memphis office generally consolidates charges against the same respondents. But because the controls to insure consolidation were not adequate, some charges which could have been consolidated were not. A compliance manual, issued in May 1973, contains procedures which, if followed, would result in greater assurance that charges are consolidated (See p 15)

Although employers complained about certain Memphis office activities, they told GAO they had cooperated and would continue to cooperate with EEOC so long as EEOC's requests were reasonable. They said they believed their only recourse was litigation when EEOC was unreasonable in its (1) requests for data, (2) determinations of "reasonable cause" to believe that discrimination existed, or (3) settlement demands

Local community organizations said they cooperate fully with EEOC and one looks upon it as the last resort to obtain fair employment treatment

for those they serve. They complained, however, about the excessive time EEOC requires to service a discrimination charge (See p 20.)

RECOMMENDATIONS TO THE CHAIRMAN, EEOC

The Chairman, EEOC should

- Require all field offices to review pending charge files and, for charges filed before a date to be specified by EEOC, request verification from the claimant that the claim is still valid. When the claimant acknowledges that the claim is no longer valid or when he cannot be located, the charges should be closed (See p 13)
- For remaining valid charges, direct all field offices to send revised notices to employers who have not received claimants' names (See p 13)

The Chairman should also direct the Memphis office to consider establishing for each respondent investigated a permanent file containing data needed for each investigation and thereby help eliminate the need for requesting the same data from the same respondent more than once (See p. 8)

AGENCY ACTIONS AND UNRESOLVED ISSUES

EEOC said corrective action was either in process or planned for two of the three recommendations. It advised that, though the recommendation to send revised notices to employers had merit, it believed the cost to implement the recommendation would outweigh the benefits.

GAO believes that, to the extent feasible, EEOC should send revised notices to employers who have not received claimants' names (See p 14)

CHAPTER 1

INTRODUCTION

In response to the requests of Congressman Dan H. Kuykendall, requested on August 28 and October 31, 1972, and as his office agreed on December 6, 1972, we reviewed selected activities of the Equal Employment Opportunity Commission (EEOC) district office in Memphis. We agreed to examine

- the adequacy of initial investigations of discrimination claims, using as a starting point cases returned by EEOC headquarters to the Memphis office for reinvestigation,
- claims that cases returned for reinvestigation were assigned new case numbers, which artificially inflated caseload figures,
- claims that the Memphis office was not consolidating, into a single case, individual charges against the same employer but was processing individual cases and thereby unnecessarily inflating its workload, and
- claims that there was a lack of cooperation between the Memphis office and local community organizations and employers

We also looked into certain related matters

EEOC

EEOC was established pursuant to title VII of the Civil Rights Act of 1964. EEOC's goal is to eliminate job discrimination because of race, color, religion, sex, or national origin through investigating and conciliating discrimination complaints and through programs to secure voluntary compliance with the act from employers and others covered by the act. EEOC is headquartered in Washington, D C , and has regional and district offices--such as the Memphis office. The Congress appropriated \$32 million for EEOC activities for fiscal year 1973, to be carried out by about 1,900 employees. An EEOC official said about 80 percent of EEOC's

manpower was used to investigate and process discrimination complaints. As of March 31, 1973, the Memphis office had a staff of 30.

SCOPE OF REVIEW

During our review we

- Examined records at EEOC headquarters and the Memphis office and discussed regulations, procedures, and operations with certain officials at these offices.
- Interviewed officials of business firms (hereinafter referred to as "respondents") and community organizations which had official business with the Memphis office, as well as certain other persons involved in or interested in EEOC activities in Memphis, including the individual who brought the matters in the report to light.
- Inquired into the problems concerning EEOC's backlog of charges and cases pending resolution.

CHAPTER 2

ADEQUACY OF INVESTIGATIONS

The data provided us indicated that EEOC headquarters was returning cases to the Memphis office for reinvestigation. There was concern that this situation may have existed because the initial investigations were not adequate. We reviewed the returned cases to ascertain whether this was true.

According to Memphis office records, 28 cases have been returned from January 1969 (when the Memphis office was established) to February 15, 1973. Memphis office reports show that during this period it had submitted 564 cases to headquarters for review. Thus, about 5 percent of the cases were returned. Analysis of the cases submitted in calendar years 1971 and 1972 shows the following

	<u>1971</u>	<u>1972</u>
Cases submitted	185	61
Cases returned for reinvestigation	18 (10%)	None
Cases pending decision and still having a potential of being re- turned	21	29

On the basis of these statistics, we believe the number of cases returned is not significant. Due to the small number of cases and the system for reviewing investigation reports, the initial investigations in most cases were reasonably adequate. We did inquire into the investigative process, however, and into other matters which have a bearing on the adequacy of investigations, as discussed below.

INVESTIGATIVE PROCESS

The initial formal action a district office takes on a charge is the preinvestigation analysis, intended to establish the acceptability of the charge. EEOC ascertains whether it has jurisdiction in the case, identifies additional data needed, identifies administrative alternatives (besides investigation) which may be available, consolidates the charge with existing cases when circumstances of the

instant charge are sufficiently similar to cases in process, and finally, assigns the charge to the investigative process

EEOC procedures require that, after a charge has been assigned for investigation, a preliminary investigation plan be prepared by the assigned investigator and approved by his supervisor before the investigator starts his inquiry. The plan lists the data that the investigator plans to request from the charged party and outlines the approach he intends to take. Each investigator has a master list prepared by the Memphis office which outlines the types of data he should request, depending on the basis (e g , race) and issue (e g , hiring) of the charge. In addition, a new compliance manual, issued in final form in May 1973, outlines types of questions to ask and data to obtain for different issues, in significantly more detail than that in the master list. A draft of the manual had been available for use in the district offices only since September 1972. The manual should assist the investigators when properly used.

Typically the investigation includes contacting the parties, gathering information on the charge, and recording the essential facts gathered. Charges may be closed at any time during the investigation, for reasons ranging from a lack of desire to proceed by the charging party to a satisfactory settlement.

For completed investigations the investigative file, including a memorandum written by the investigator and approved by his supervisor, is assigned to a technical analyst writer. A charge then becomes a case, a case file is established, and a case number is assigned.

Before September 1972, which was during the period covered by the allegations, a Finding of Fact was written by the technical analyst writer, reviewed by his supervisor, and approved by the District Director. This Finding of Fact was provided to the involved parties for review and as a possible predecision settlement. If no settlement was reached, the Finding of Fact (after any revisions, additions, etc , required as a result of the parties' review) was submitted to EEOC headquarters for review and for issuance as an EEOC decision on the case. It was during this aspect of the process that cases might be returned to a district office for reinvestigation.

Since September 1972, if predetermination settlement fails to materialize and the case issues are supportable by a Commission Decision Precedent (CDP) case, the technical analyst writer drafts a determination letter. This represents the District Director's decision on whether discrimination exists. The supervisor of the technical analyst writers reviews these letters before submitting them to the District Director for review and approval.

The District Director issues determination letters to the parties, without review by EEOC headquarters. These letters contain the District Director's decision on whether discrimination existed, and as appropriate, notifies the parties that conciliation will be attempted. Conciliators are assigned to negotiate conciliations.

If the field office review indicates that the case involves issues for which no precedent has been established, the field office contacts the headquarters Decisions Division to verify that it is not a CDP case. If the Division agrees it is a non-CDP case, the case file is submitted to headquarters for a decision. At this point the case may be returned to the district office for reinvestigation.

DUPLICATION IN GATHERING DATA

Some respondents complained they had to provide the same data to different investigators because the same investigator was not assigned to examine subsequent charges against the same respondent. One respondent said it had to provide EEOC and the Office of Federal Contract Compliance (OFCC) of the Department of Labor with similar information.

OFCC is responsible for seeing that Federal contractors abandon discrimination. To avoid duplication of compliance activities and to facilitate an exchange of information, OFCC and EEOC have executed a Memorandum of Understanding. The District Director advised that he has been in contact with OFCC, as well as other Government agencies, concerning available data on discrimination matters. But he did not believe that the data provided by OFCC was adequate for EEOC purposes because the OFCC data usually relates to an employer's plans and EEOC is concerned with the employer's ongoing practices. Therefore there will continue to be instances when both OFCC and EEOC will deal with the same respondent.

In response to the complaint that different investigators were assigned to review different charges against the same respondent, a Memphis office official stated that it is quite possible that different investigators were assigned to the same respondent. The official stated that this was due in part to a high personnel turnover but that, if this practice were not followed, investigators would not receive diversification of assignments to enhance their professional development.

Conclusion

The Memphis office could help eliminate the need for requesting the same data from the same respondent more than once by establishing for each respondent investigated a permanent file containing data needed for investigation. The District Director said this procedure appeared to have merit and he would study the feasibility of implementing it.

Recommendation to the Chairman, EEOC

We recommend that the Chairman, EEOC, direct the Memphis office to consider establishing for each respondent it investigates a permanent file containing data needed for investigation.

Agency comments

EEOC advised (see appendix) that it already requires that previous files on a respondent be reviewed before instituting an investigation and that the feasibility of establishing a permanent file on each respondent, the next logical step in refining this procedure, will be examined.

CHAPTER 3

ACCURACY OF REPORTS

Information provided to us indicated that the Memphis office might have been inflating its reported workload by assigning new case numbers to cases returned by headquarters. Such a procedure would result in a double counting of cases. According to our analysis, cases returned retain their original case numbers.

Because of the Congressman's concern on whether EEOC reports represent the existing workload of an EEOC office, we examined the "Case Handling Report" (CHR), the primary report prepared and submitted by the Memphis office. We also made some inquiries and observations concerning the backlog of charges at the Memphis office.

CHRs

The primary purpose of CHRs, prepared in the field offices every 28 days, is to provide EEOC with statistics covering the compliance action on charges and cases in each field office. Field offices use CHRs to check the action taken on charges and cases. CHRs also provide current compliance workload figures for preparing budget requests.

CHRs submitted by the Memphis office for fiscal years 1972 and 1973 were not always correct. However, the errors were the type that generally corrected themselves in the next reporting period or involved improper categorizations of the status of charges and did not affect the number of charges reported as pending at the end of the reporting period. The District Director agreed to consider the errors and correct them if needed.

In November 1972 EEOC headquarters and regional officials inventoried pending charges at the Memphis office. As of November 28, 1972, according to the inventory, 2,038 charges were pending. The CHR for the period ended November 25, 1972, showed 1,994 pending charges. At the completion of our fieldwork, the Memphis office had not reconciled the CHR with the inventory. On April 19, 1973, the Director advised that he would not attempt a reconciliation with the November inventory but would request headquarters to take another inventory and would reconcile the CHR to that inventory.

BACKLOG OF CHARGES

EEOC, other agencies, and congressional committees have recognized the backlog of pending charges as an EEOC-wide problem. EEOC took some action but made little progress in reducing the backlog. In fact, the backlog has increased. Under the Civil Rights Act, EEOC covered about 44 million persons. The Equal Employment Opportunity Act of 1972, enacted on March 24, 1972, covered an estimated 19 million additional persons. Thus, the backlog may further increase.

As pointed out in the previous section, at the Memphis office, about 2,000 charges were pending in November 1972. The CHR for December 1971 showed about 1,300 pending charges, the CHR for March 1973 showed about 2,300 pending. Thus, the trend toward an increasing backlog is clearly indicated.

According to data in the CHRs, the Memphis office completed investigations on 326 charges during fiscal year 1972. Although this rate may not be representative of performance over a longer period, the approximately 2,300 charges pending in March 1973, after eliminating 124 pending charges not in the investigation stage, represented a possible investigation workload of about 7 years.

The backlog at EEOC has been studied by an internal task force convened in 1971 to respond to an Office of Management and Budget request, the staff of a subcommittee of the House Committee on Appropriations in early 1972, and the United States Commission on Civil Rights as discussed in its January 1973 report.

The studies discussed the desirability of delegating to District Directors authority to issue determination letters under certain circumstances. EEOC adopted this policy effective September 1972.

The studies suggested that EEOC reevaluate its policy of broadening each charge to include all like and related issues when a charge is investigated. EEOC had not changed its policy, and in early 1973, EEOC officials said the comprehensive approach to investigations was the best way to get maximum coverage. Such investigations obviously consume more man-days than investigations of specific charges. Thus the number of charges that can be investigated by available

manpower is limited and the number of pending charges increases.

Personnel turnover

Personnel turnover is a factor which the District Director believes adversely affects employee productivity and the quality and timeliness of investigations.

The turnover experienced since January 1969, when the Memphis office was established, is shown below.

Calendar year	Staffing level and percent of turnover					
	Investigators		Writers		Conciliators	
	Total	Percent	Total	Percent	Total	Percent
1969	12	8.3	5	20.0	3	-
1970	17	29.4	7	28.6	7	42 8
1971	13	30.9	8	37 5	7	28 6
1972	12	25.0	5	40.0	5	40 0

When an experienced employee left the Memphis office, often to take a job at another EEOC office, he was usually replaced by a new employee without EEOC experience. Some learning period with its accompanying lack of productivity is involved, and assignments (charges or cases) for new employees must be handpicked to insure that the assignment does not involve matters beyond the employee's capacity.

The District Director stated that many employees have left to take higher paying jobs in other EEOC offices. He stated that promotion potential in the Memphis office is limited because the office has existed for some time and is not expanding as rapidly as it did initially, whereas, EEOC is still opening new offices in other locations, and promotion possibilities continue to become available within EEOC through transfer.

District Director's comments on backlog

The District Director, concerned about the mounting caseload, made the following comments regarding the potential for reducing it.

- Certain uninvestigated charges could be disposed of by identifying the claimants as members of a class in pending cases against the same respondent.
- Staff increases and greater employee productivity, though not the total answer, would help manage the caseload.
- Increased litigation would be an incentive to respondents to settle pending cases and charges faster.
- The delegation of authority to district directors to make predetermination settlements will prove valuable in disposing of cases.

Potential for reducing backlog by
eliminating charges without merit

Some of the charges pending no longer have merit and should be closed. In some instances, particularly when charges are not investigated promptly, the situations causing the charge to be filed have changed, thus rendering the charge no longer viable.

For example, in our work at the Memphis office, we noted that a claimant claimed he was not hired because of race. He was never informed that he would not be hired, rather the respondent indicated that the individual would be considered for the position. After the date the charge was filed, the claimant was hired. In another case, when the charge was filed in 1968, the charging party could not be located when the Memphis office tried to contact her in August and again in September 1970. However, both charges were carried as open charges in 1973.

As of January 20, 1973, the Memphis office reported 2,113 charges pending or being investigated. The Director of the Memphis office stated that possibly some of the charges were no longer current, as indicated by the two above, and should be closed. The EEOC task force which studied the backlog estimated that 15 percent of backlog charges were not valid. However, there is no procedure for ascertaining whether a charge is still valid until the charge is investigated.

Naming the claimant

One of the respondents' major complaints was that, when they received notice that a charge had been filed, the notice did not name the claimant. This placed the respondents in an unfavorable position. In January 1973 EEOC changed the notice form (EEOC Form 131) to include the claimant's name. The Memphis office began using the revised form for charges received after March 1, 1973. EEOC does not plan to issue new notices on pending charges showing the claimant's name unless the respondent requests them.

Conclusions

The backlog could be reduced by eliminating charges without merit, but there is no system for ascertaining the validity of a charge, short of investigation. Since one circumstance in invalid charges appears to be age, it seems that a cutoff date should be established and charges filed before then could be verified, perhaps by form letter. Similarly, with respect to EEOC's revised notice that a charge has been filed, identifying claimants to employers would enhance the possibility of learning, sometime before an investigation is undertaken, that circumstances which led to filing a charge no longer exist.

Recommendations to the Chairman, EEOC

We recommend that EEOC

1. Require all field offices to review pending charge files and, for charges filed before a cutoff date (to be specified by EEOC), request verification from the claimant that the claim is still valid. When the claimant acknowledges that the claim is no longer valid or when he cannot be located, the charges should be closed
2. For remaining valid charges, direct all field offices to send revised notices to employers who have not received claimants' names.

Agency comments

EEOC agreed that it is desirable to follow up periodically on old charges and advised that each region has been

directed to consider such a project as part of its charge resolution program

EEOC said that, though the recommendation to send revised notices to employers who had not received claimants' names had merit, it believed the cost to implement the recommendation would outweigh the benefits. It felt that, in view of the 45,000 to 50,000 charges involved, its present policy of providing the claimant's name upon request, coupled with a program to verify the claimant's desires, was the most efficient means of insuring that its resources are used on those charges requiring investigation

GAO evaluation

Implementing the program described by EEOC, coupled with identifying complainants upon request, will help reduce charges wherein employers have not received claimants' names. To the extent that pending charges are verified and the status of the charge updated, i.e., whether still valid, the backlog problem will be somewhat alleviated. There is no clear indication, however, of the extent to which older charges will be verified or the extent to which some employers will receive claimants' names while others will not. Respondents, therefore, will be unable to provide any information concerning the charge or, where appropriate, to take action to correct the circumstance which gave rise to the charge.

Therefore, to the extent feasible, EEOC should send revised notices to employers who have not been given names of charging parties.

CHAPTER 4

CONSOLIDATING INDIVIDUAL CHARGES INTO A SINGLE CASE

Data provided to us purported to show that the Memphis office was processing individual charges against the same respondent which could have been consolidated into a single case. Our review showed that the Memphis office generally consolidates charges against the same respondents but that, because the controls to insure consolidation were not adequate, some charges which could have been consolidated were not. We could not ascertain, without detailed examination of all cases in process, the number of charges which should have been consolidated. EEOC's new compliance manual contains procedures which, if followed, would result in greater assurance that charges are consolidated.

EEOC CONSOLIDATION POLICY

It is EEOC policy to consolidate individual charges against the same respondent when practical. In March 1968 a field order was issued emphasizing the importance, both from an efficiency and economy standpoint, of consolidating charges when possible.

The consolidation problem was included in the EEOC task group's review of the backlog problem. The group reported in March 1972 that not all the potential consolidation occurred at the three field offices it visited. (Memphis was not included.) Also the group concluded that there was no effective procedure to insure consolidation. We asked headquarters officials whether they plan to develop new consolidation procedures. They said that, since consolidation instructions are included in the new draft compliance manual, issued in September 1972, EEOC concluded that updating and revising the field order was unnecessary.

EEOC subsequently refined the procedures in the draft compliance manual and issued a revised manual in May 1973. The compliance manual specifies procedures for reviewing pertinent records before investigating a charge, after assigning a charge for investigation, and during a supervisor's postinvestigation review to insure consolidation.

PRACTICE FOLLOWED BY MEMPHIS OFFICE
IN CONSOLIDATING CHARGES

Consolidation can take place during several stages of the compliance process, that is, during the investigation, writing, decision, or conciliation stages. Preinvestigation analysis may identify incoming charges against a respondent currently under investigation, and this matter can be brought to the attention of the supervisor of investigators for possible consolidation. Also a charge could be consolidated with a case being adjudicated in court.

Consolidation during investigation

In our opinion the most critical stage for consolidation is during investigation. If charges against the same respondent are investigated simultaneously, the charges have a better chance of being consolidated during the subsequent stages of the compliance process.

The investigation supervisors stated that they assigned all pending charges against the same respondent to the same investigator so that such charges could be investigated simultaneously and consolidated if practical.

We noted some instances when charges assigned simultaneously for investigation were consolidated. In 13 such cases, from 2 to 29 charges were consolidated. There were also consolidations at other stages.

In other instances charges, and some cases involving more than one charge, were not consolidated. The District Director stated that some of these charges and cases were not consolidated because they were easier to settle individually. The District Director acknowledged, however, that some could have been consolidated and assigned the same case number. He promised to look into this.

The LEOC compliance manual, issued in May 1973, contains procedures to better insure that all charges against the same respondent are consolidated. Adherence to the manual should improve this aspect of the Memphis office's operations.

Consolidation during conciliation

The Conciliation Unit in the Memphis office implemented a procedure in February 1973 to enhance the chances of consolidation during conciliation. This procedure consists of notifying the office's Control Unit that a case against a certain respondent has been assigned for conciliation. The Control Unit prepares a list of all charges, pending or in the various stages of the compliance process, against the same respondent. The conciliator then reviews this list to ascertain whether it is possible to consolidate pending charges within the same settlement agreement. It is possible, however, that if the respondent does not want to consolidate pending charges with the case ready for conciliation, EEOC has no recourse.

Conclusions

Consolidation of charges in the Memphis office and EEOC-wide is receiving increased emphasis, and some procedures are being established to make sure consolidation is considered, when possible.

The revised compliance manual sets forth consolidation policies in general terms and establishes procedures which, if followed, should result in consolidation, to the extent possible, of all charges against the same respondent.

CHAPTER 5

COOPERATION BETWEEN THE MEMPHIS OFFICE AND RESPONDENTS AND COMMUNITY ORGANIZATIONS

We were advised that employers and community organizations would no longer cooperate with the EEOC Memphis office. Our review showed that although employers and community organizations complained about certain Memphis office activities, both were fully cooperating with EEOC. Details of our discussions with nine employers under the jurisdiction of the Memphis office and six community organizations primarily concerned with equal rights are summarized below.

EMPLOYER REACTIONS

All employers contacted stated that they had cooperated and would continue to cooperate with EEOC so long as EEOC's requests were reasonable. The employers voiced complaints which are summarized below. We made no attempt to verify the validity of the complaints although we considered some in our work under other segments of the review, others did not lend themselves to verification because they represented employers' feelings rather than documented facts about EEOC activities.

- Investigators were prejudging respondents "guilty" or finding "cause" before investigation was completed
- The broadening of an investigation beyond the initial charge constitutes a "witch hunt"
- The same EEOC investigator is not used to investigate subsequent charges of discrimination. Respondents feel that sending investigators familiar with operations would benefit both EEOC and the respondent.
- EEOC requests excessive amounts of data or repeatedly requests data already provided to EEOC
- The claimant's name was not provided until the investigation began. (The procedure has changed for charges received by the Memphis office after March 9, 1973.)

- EEOC takes too long to resolve a charge
- Investigators solicit charges when they visit a respondent to investigate a charge
- Preinvestigation does not weed out all unfounded charges
- Employers feel lack of communication with EEOC could be overcome if EEOC adopted a less formal investigative procedure

Employers advised us that, when they feel EEOC is being unreasonable in (1) requests for data, (2) its determination on "reasonable cause" to believe that discrimination existed, and (3) settlement demands, they believe their only recourse is litigation

Concerning these matters the District Director stated

- EEOC views charges as allegations only A determination of "reasonable cause" to believe that discrimination existed is not a prejudgment of finding of "guilty" but only an invitation to conciliate the case Conciliators would not in any way indicate that a respondent is guilty of anything, they begin each conciliation with a disclaimer of the respondent's having violated the law
- EEOC believes charges should not be regarded as static (that is, their range should not be determined solely by the wrong to the charging party) but should be viewed as public charges expanding with the range of investigation and conciliation Little is to be gained by the private-wrong approach except a flood of repetitious charges initiated by other claimants or EEOC
- Respondents have sometimes questioned relevancy of requested information In many instances the request is modified However, the Memphis office needs to secure the information deemed relevant for disposal of the issues Charges must be substantiated or rejected by physical evidence or testimony

- To the extent possible and consistent with staffing patterns, charges are assigned according to the expertise of the investigator with the industry or business concerned.
- What respondents categorize as unfounded charges are matters which cannot be resolved except by investigation. Most of the time, the Memphis office cannot determine solely from the face of a charge whether it has merit.
- The elapsed time from filing until a charge is disposed of receives his continued attention and concern. He is equally concerned that the business community understand EEOC's mission. The Memphis office is ready to go anywhere at anytime to improve communications. However, the size of the Memphis office staff seriously limits its ability to devote substantial time to public relations.

COMMUNITY ORGANIZATIONS' REACTIONS

The community organizations advised that they cooperate fully with EEOC. One community organization official stated that EEOC was the last resort to obtain fair employment treatment for the individuals served by the organizations.

The one major complaint concerning EEOC was what the organizations considered to be the excessive time EEOC requires to service a charge. Organization officials stated that, though EEOC has cooperated fully with their organizations and does not hesitate to accept a charge, it may take 60 to 180 days after acceptance of the charge before an investigation begins.

As pointed out earlier, the Memphis office has a substantial backlog of charges awaiting investigation. Delays in undertaking an investigation on a newly filed charge are to be expected, and no immediate improvement in this circumstance is expected unless the Memphis office takes some action to reduce its backlog.

The District Director agreed with the community organizations that the time required to service a charge is excessive. He stated that the limited manpower of the Memphis office was a major impediment to the performance of its mission.



EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
WASHINGTON D C 20506

JUL 19 1973

IN REPLY REFER TO

•
Mr. George D. Peck
Assistant Director
United States General
Accounting Office
441 G St., N.W.
Washington, D.C. 20548

Dear Mr. Peck:

Thank you for sending us advance copies of your proposed report to Congressman Dan Kuykendall on your review of selected activities of the Equal Employment Opportunity Commission's District Office in Memphis, Tennessee. We appreciate the opportunity to comment on your proposed findings and recommendations.

Overall, we find the report to be fair, thorough, and constructive. As discussed in our detailed response, which is attached, we are either in the process of or plan to implement most of your recommendations. We were also very much impressed with the thoroughness and professionalism exhibited by your staff during this review.

Please do not hesitate to contact me if we can be of further assistance in this or any other matter.

Sincerely yours,

W. H. Brown III

William H. Brown III
Chairman

APPENDIX

EEOC comments on GAO Review B-170542 "Review of selected activities of the EEOC District Office in Memphis, Tennessee."

I. General Comment

Overall, EEOC believes the proposed report is thorough, fair, and constructive. Our specific comments are listed below,

(See GAO note, p 24)

II. Specific Comments.

A. GAO Recommendation:

--Require all field offices to review pending charge files and for charges which were filed before a date to be specified by EEOC, request a representation from the claimant that the claim is still valid; where the claimant acknowledges that the claim is no longer valid, or where the claimant cannot be located, the charges should be administratively closed.

EEOC Comment: EEOC agrees with GAO that it is desirable to follow up periodically on "old" charges to determine if the charging party wishes us to pursue his or her complaint. Such reviews and contacts have been made in the past by several offices; and others are currently in process. During FY 1974, each region has been directed to consider such a project as part of its charge resolution program, and we anticipate that all district offices will devote resources to this activity.

In addition to periodic contact programs on old charges conducted by some offices, all EEOC district offices routinely make such contacts at the time a charge is scheduled for investigation. In many instances charges are administratively closed at this point if the charging party cannot be located or is not interested in pursuing the charge.

B. GAO Recommendation:

- Direct all field offices to send revised notices to employers who have not been advised of the identity of the individuals who have filed charges against the employer.

EEOC Comment: While this recommendation has some merit, EEOC believes that the cost would far outweigh the benefits that might result. There are approximately 45-50,000 charges pending investigation for which the name of the charging party has not yet been made available to the respondent. We believe that our present policy of providing the name upon request, coupled with a program as described above to verify the wish of charging party to proceed, is the most efficient means of assuring that our resources are expended on those charges requiring investigation.

C. GAO Recommendation:

- Consider establishing for each of the respondents investigated by the Memphis office a permanent file which would include basic data needed for each investigation thereby helping to eliminate the need for requesting the same data from the same respondent more than once.

EEOC Comment: EEOC already requires that previous files on a respondent be reviewed prior to the institution of a new investigation (See Compliance Procedures (May, 1973), Section 8.6). Where a new charge is substantially similar to an old charge, all that is usually required is an updating of the relevant information by the respondent. The establishment of a permanent file on each respondent is the next logical step in the refinement of this procedure, and its feasibility will be examined. It should be noted, however, that in most instances verification and/or updating of the information in the permanent file may still be required, in order that the respondent can have the opportunity to provide EEOC with the most current information on its employment practices.

APPENDIX

III. Suggested corrections

[See GAO note]

GAO note Material deleted from this letter concerns statements included in the report draft which are revised in the final report in accordance with data provided by EEOC