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Fact Sheet for the Chairman,
Committee on Education and Labor,
House of Representatives

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EQUAL OPPORTUNITY

Information on the Atlanta and Seattle EEOC District Offices

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

HUMAN RESOURCES
DIVISION

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B-222003

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

Dear Mr. Chairman:

As part of the preliminary work on our comprehensive study of the Equal Employment Opportunity Commission (EEOC) jointly requested by you and Chairmen Matthew Martinez, Barney Frank, Lowell Weicker, and Gerry Sikorski; Senators Edward Kennedy and Alan Cranston; and Representative Pat Williams, we recently visited EEOC's Atlanta and Seattle district offices. The purpose of our visits was to obtain the views of district office officials on how recent changes in EEOC's enforcement policies had affected district office operations, including how each office (1) processed, investigated, and resolved charges of employment discrimination, and identified and prepared cases for EEOC to consider litigating; (2) conducted systemic investigations to identify patterns and practices of employment discrimination; and (3) monitored and evaluated the performance of state and local fair employment practices agencies that EEOC pays for processing discrimination charges. At the request of your office, we are providing a fact sheet summarizing the views we obtained.

This fact sheet is based primarily on oral comments by officials at EEOC headquarters and the two district offices involved in individual and systemic charge processing and litigation. We did not verify these comments or the EEOC statistics we were provided. Because many of the district office staff we interviewed were not selected scientifically and do not constitute a majority of the staff in either office, their comments may not represent the majority or consensus view of district office staff.

In general, we learned that:

--Both offices substantially increased the number of cases submitted to EEOC to consider for litigation in fiscal year 1985.

--Atlanta staff did not believe the new policies had significantly affected the quantity or quality of their work, but some believed it may be difficult to conduct full investigations on each charge without increasing case processing time.

--Seattle staff believed the new policies had contributed to a sharp increase in the pending inventory of charges, a decline in negotiated settlements, and an increase in no-cause findings.

--Staff in both offices did not believe the remedies policy had substantially changed the relief obtained for charging parties, because it provided them flexibility in applying the policy's five elements to the circumstances of each case.

--Staff in both offices believed that recent changes in EEOC's systemic program would improve efforts to identify patterns and practices of employment discrimination; however, both offices have had cases returned by EEOC headquarters for additional work to identify victims of systemic discrimination.

--Staff in both offices believed state and local fair employment practices agencies had performed satisfactorily; however, EEOC has not yet decided whether the agencies should comply with its new policies.

We did not obtain written comments on this fact sheet from EEOC officials. However, EEOC's acting general counsel, director of program operations, and Atlanta and Seattle district directors have reviewed a draft of this fact sheet, and their oral comments have been incorporated where appropriate.

As arranged with your office, unless its contents are announced earlier, we plan no further distribution of this fact sheet until 30 days from its issue date. At that time we will send copies to EEOC and other interested parties and make copies available to others on request.

As agreed with your office, we are continuing our study of EEOC. Should you need additional information on the contents of this document, please call me on 275-5451.

Sincerely yours,

Franklin A. Curtis

Franklin A. Curtis
Associate Director

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ABBREVIATIONS

EEOC	Equal Employment Opportunity Commission
EOS	equal opportunity specialist
FEPA	fair employment practices agency
GAO	General Accounting Office

INFORMATION ON EEOC'S

ATLANTA AND SEATTLE

DISTRICT OFFICES

As part of the work on our comprehensive study of the Equal Employment Opportunity Commission (EEOC), in December 1985 we visited EEOC's Atlanta and Seattle district offices. The purpose of our visits was to obtain the views of district office management and staff on the effect of new EEOC policies on (1) the investigation of discrimination charges, (2) enforcement of antidiscrimination laws, (3) remedies to be sought for victims of discrimination, and (4) procedures for conducting systemic investigations to identify patterns and practices of employment discrimination. We also obtained views on how district offices monitored the performance of state and local fair employment practices agencies who assist EEOC in investigating and resolving discrimination charges.

As agreed with the office of the Chairman, House Committee on Education and Labor, we are providing the following summary of the views we obtained.

BACKGROUND

EEOC was created by Title VII of the Civil Rights Act of 1964 (as amended by the Equal Employment Opportunity Act of 1972) to enforce federal laws that prohibit discrimination in employment based on race, color, religion, sex, or national origin. EEOC also enforces the Age Discrimination in Employment Act of 1967; the Equal Pay Act of 1963; and in the federal sector, prohibitions against discrimination because of handicap under section 501 of the Rehabilitation Act of 1973.

EEOC enforces equal employment opportunity through a field structure composed of 23 district offices, 16 area offices, and 9 local offices that receive, investigate, and resolve employment discrimination charges. Generally, individual or small class charges of discrimination are processed by the district office's rapid-charge processing units. In fiscal year 1985, these units processed about 79 percent of EEOC's charges. Extended-charge processing units process (1) charges with a strong potential for litigation, (2) charges affecting a number of individuals or class claims, (3) charges involving multiple types of discrimination (race and sex) or multiple issues (hiring, promotion, and discharge), and (4) equal pay charges. In fiscal year 1985, these units processed about 21 percent of EEOC's charges.

District offices also process charges covering patterns and practices of employment discrimination, commonly called systemic

discrimination. EEOC defines systemic charges as those covering unlawful employment practices or sets of practices existing in a particular business facility that adversely impact members of a class or classes. Systemic charges address patterns and practices of discrimination that result from a business's policies or procedures.

In accordance with section 706 of Title VII, EEOC district offices maintain worksharing agreements with state and local fair employment practices agencies (FEPAs) to process discrimination charges. Section 709 provides that EEOC may pay FEPAs to investigate and process discrimination charges at a fixed price per charge. EEOC regulations and policies require district offices to monitor the performance of FEPAs in their area to insure compliance with the worksharing agreements and EEOC policies and procedures. The extent of a district office's monitoring depends on whether the FEPA has obtained EEOC certification for 4 years of satisfactory performance. The district office accepts a certified FEPA's findings and resolutions without an individual case-by-case review, but must review each case processed by uncertified FEPAs.

In 1979, EEOC implemented a rapid charge processing system to resolve newly received individual discrimination charges and a backlog of charges through negotiations between the charging party (the individual person, union, or organizational entity filing a charge of employment discrimination) and the respondent (the employer, union, or employment agency against which an employment discrimination charge had been filed). This action was in response to a 1976 GAO report[1] which found that EEOC was not resolving charges in a timely manner.

The rapid charge process emphasized the use of fact-finding conferences or face-to-face meetings between the charging party and respondent with EEOC acting as a moderator/advisor to achieve a negotiated, quick, "no-fault" settlement agreement. A negotiated, or no-fault, settlement is an agreement between the charging party and the employer that resolves the discrimination charge before EEOC has fully investigated the charge and determined whether there is reasonable cause to believe it is true. EEOC calls charges where there is reasonable cause "cause" determinations, and charges where there is no reasonable cause "no-cause" determinations.

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[1] The Equal Employment Opportunity Commission Has Made Limited Progress in Eliminating Employment Discrimination (HRD-76-147, Sept. 28, 1976).

A 1981 GAO report[2] noted that although the rapid charge processing system had improved the processing and resolution of individual charges, EEOC's overemphasis on obtaining negotiated settlements had resulted in settlements of some charges that there was no reasonable cause to believe were true.

In October 1983, EEOC's then general counsel, in testimony before the Subcommittee on Employment Opportunities, House Committee on Education and Labor, said that the rapid-charge processing system had been applied to virtually all discrimination charges without due regard to their merits or litigation potential. He advocated eliminating aspects of the rapid-charge processing system that tended to promote premature or arbitrary charge closures at the possible expense of quality investigations and EEOC law enforcement responsibilities, while continuing to ensure that the Commission meets its obligation to process charges promptly.

EEOC was concerned that relying on the rapid-charge processing system eliminated many cases that if fully investigated, would more directly fulfill its primary law enforcement mission. As a result, in 1983, EEOC began several initiatives that it believed would improve the quality and effectiveness of its enforcement program.

In December 1983, EEOC adopted an investigations policy that deemphasized pursuing negotiated settlements before completing a full investigation and determining the merits of a charge in favor of completing full investigations and making decisions based on the merits of the charge. According to EEOC, full investigations provide a more accurate basis for determining the merits of a charge and, for charges in which cause is determined, better evidence to consider litigation should conciliation fail.

In September 1984, EEOC issued a statement of enforcement policy, which was intended to insure the certainty and predictability of enforcement in situations where it had reason to believe that a law it enforces had been violated. The policy declared that every case in which EEOC's district director finds that one or more of the discrimination statutes has been violated should be submitted to the commissioners for litigation consideration if attempts to conciliate a settlement fail. In the past, district offices decided which discrimination cases should be submitted for litigation consideration rather than submitting every case. EEOC believed, however, that it should not attempt to determine which cases were worthy of consideration for further expenditures of governmental resources, but

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[2]Further Improvements Needed in EEOC Enforcement Activities (HRD-81-29, Apr. 9, 1981).

should consider all cases where discrimination occurred. EEOC's office of general counsel also established agency-wide performance standards[3] that required each district office to submit 24 cases to the commissioners for litigation consideration during fiscal year 1985.

In February 1985, EEOC issued a policy statement on remedies and relief containing five elements that the commissioners believed were necessary to ensure that discrimination victims received full, corrective, and preventive relief from the violation. According to the policy, all remedies and relief should contain the following elements, in appropriate circumstances:

--All employees in the affected facility should be notified of their right to be free of unlawful discrimination and be assured that the types of discrimination found or conciliated will not recur.

--Corrective, curative, or preventive action should be taken, or measures adopted, to ensure that similar violations of the law will not recur.

--Each identified victim of discrimination should be unconditionally offered placement in the position the person would have occupied had the discrimination not occurred.

--Each identified victim should be made whole for any loss of earnings suffered as a result of the discrimination.

--The affected facility should stop engaging in the specific unlawful employment practice.

In addition to the policy changes, in August 1985, EEOC approved a reorganization plan that transferred the systemic litigation functions to the office of general counsel and consolidated systemic compliance functions under the office of program operations. In December 1985, the office of program operations provided district offices more discretion to identify and investigate systemic discrimination.

OBJECTIVES, SCOPE, AND METHODOLOGY

The objective of this portion of our comprehensive study of EEOC was to obtain the views of officials at EEOC's Atlanta and Seattle district offices on (1) the effect of new EEOC policies on the investigation of discrimination charges, enforcement of

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[3]During our discussions with district office staff, however, they referred to these performance standards as litigation goals or quotas.

antidiscrimination laws, remedies for victims of discrimination, and procedures for conducting systemic investigations, and (2) the monitoring of state and local FEPAs.

To accomplish this objective we obtained copies of applicable EEOC policies and interviewed the director of EEOC's office of program operations and members of his staff who oversee district office individual and systemic charge processing and EEOC's acting general counsel, who is responsible for litigation.

At each district office we interviewed the district director and his deputy, regional attorney, compliance managers, union representatives, systemic supervisors, state and local coordinators, and sample of rapid and extended charge unit supervisors, equal opportunity specialists, and trial attorneys. Because of time constraints we did not verify the comments or statistics we were provided. Many of the district office staff we interviewed were not selected scientifically and do not constitute a majority of the staff in either office; as a result, their comments may not present the majority or consensus view of district office staff.

ATLANTA DISTRICT OFFICE

EEOC's Atlanta district office, which employed 112 people as of November 1985, administers EEOC's enforcement program for Georgia. The office receives, investigates, and provides legal consultation on charges of employment discrimination. The office had contractual worksharing agreements with two FEPAs.

EEOC statistics indicate that in fiscal year 1985, the Atlanta district office received 3,194 charges of discrimination, 94 more than in the previous year. In addition, the state and local FEPAs received 324 Title VII and age discrimination charges. The Atlanta office reported closing 3,704 cases during the year and submitted 44 litigation recommendations to the commissioners.

Views on the Effect of the New Investigations, Enforcement, and Remedies Policies

The Atlanta district office management and staff we interviewed indicated that the new policies had affected office operations in various ways.

The district director and regional attorney told us that EEOC's litigation goals resulted in a substantial increase in the number of cases submitted to the commissioners for litigation consideration, but it was too soon to assess the enforcement policy's impact on overall case processing. In fiscal year

1985, the Atlanta district office submitted 44 cases to the commissioners for litigation consideration (42 with recommendations to litigate, 2 with recommendations not to proceed). At the end of fiscal year 1985, 18 of the 44 had been approved by the commissioners for litigation, 8 were not approved, and decisions on the other 18 were pending. In fiscal year 1984, the Atlanta office submitted 10 cases for litigation consideration.

Atlanta's district director believed it was too soon to identify the effect of the new enforcement and investigation policies on the office's operations during fiscal year 1985 because other changes had also affected operations. The director said he initiated several organizational and procedural changes that increased productivity and improved staff morale. According to the director, before his appointment in late 1984, the Atlanta office had experienced personnel problems that resulted in low productivity. By reorganizing the office's operations and personnel and establishing an "open door" policy, the director believes staff morale and productivity have improved. EEOC statistics show that the Atlanta office more than doubled case closures, from 1,786 in fiscal year 1984 to 3,704 a year later. In the same period Atlanta's pending inventory of charges also declined by about 26 percent, from 2,231 to 1,650. The office's union representatives agreed that staff morale had improved in the last year.

Generally, the equal opportunity specialists (EOSs) interviewed in the rapid and extended charge units did not believe the investigations and enforcement policies had significantly affected the quantity or quality of their work. They indicated, however, that it may be difficult to complete full investigations on each charge without increasing case processing time. They said that under the new investigations and enforcement policies, the office has stressed full field investigations, including making on-site visits and obtaining affidavits from the parties involved, rather than using fact-finding conferences and telephone interviews. Atlanta's district director said that the number of fact-finding conferences had declined, but believed the conferences were useful tools for obtaining settlements in appropriate circumstances.

The EOSs said that although full investigations result in better information on which to decide the merits of a case and whether litigation should be considered, they take longer than fact-finding conferences. EOSs believe they must carefully balance the time they spend conducting a full investigation with their ability to meet their performance standards, which include time frames for case processing, targets for closing cases, and limits on the number of aged cases open for more than 300 days. Although the EOSs in extended-charge units believed their caseloads were manageable, the rapid-charge EOSs were concerned that

their caseloads may be too large, limiting their ability to conduct full investigations without increasing case processing time.

Atlanta's regional attorney said he had not observed any change in the workload of the legal unit's attorneys as a result of the enforcement policy or litigation goals. However, he expects the attorneys' workload to increase as the office becomes more involved in litigation. Once employers realize that EEOC intends to pursue litigation in cases with cause findings, he expects conciliated settlements to increase.

Attorneys in Atlanta's legal unit said that the enforcement policy and litigation goal increased the amount of time they spent on litigation and decreased the time spent on working with EOSs during investigations. The attorneys did not, however, believe their workloads were unmanageable. Two of the three attorneys interviewed said they were no longer assigned to specific charge processing units to provide advice on cases. The other attorney was still assigned to a compliance unit. The district director said, however, that at least one attorney is still assigned to each charge processing unit. While the three attorneys said their involvement in advising EOSs on case development was generally limited to cases identified as litigation possibilities, they believed EOSs could obtain legal advice on any case through the person assigned as the "attorney of the day" to respond to such inquiries. The EOSs we interviewed said they were able to obtain legal advice when necessary.

Two of the three attorneys said that continued pressure to submit cases for litigation consideration could result in submitting some cases which may not be litigation worthy because the investigative work is incomplete. Atlanta's regional attorney said, however, that the 10 attorneys in his unit told him they had not submitted cases that were not litigation worthy. The regional attorney said it would be unethical for an attorney to submit a case that was not litigation worthy. EEOC's acting general counsel and director of program operations said they believed there were sufficient levels of review in the district offices to insure that all cases submitted for consideration were litigation worthy.

Atlanta's district director and regional attorney believed that the remedies policy, while emphasizing obtaining full relief, provided sufficient flexibility to determine appropriate relief based on the circumstances of each case. They believed this was similar to the remedies being negotiated before the policy was implemented. The district director believed that in certain cases it was not necessary to meet all five elements of the remedies policy to obtain full relief depending on the circumstances of the case. For example, he may not hold up a

settlement that lacked a notice to be posted by the employer if the charging party had received full back pay and reinstatement in a job.

The other Atlanta officials agreed that because the remedies policy provides flexibility it had not substantially changed the relief obtained for charging parties. In fiscal year 1985, the Atlanta office had 211 negotiated settlements, compared to 221 in fiscal year 1984. However, the district director believed more time was necessary to determine how the emphasis on litigation would affect the relief obtained through the courts.

Changes to Systemic Program Viewed as Improving Efficiency

Atlanta's district director and compliance manager for systemic programs believe recent organizational and policy changes at both EEOC headquarters and the district office will result in a more effective, efficient systemic program. These changes include reorganizations of both the headquarters and Atlanta systemic programs, headquarters-initiated policy changes giving district offices greater discretion in administering their systemic programs, and a policy change regarding the identification of victims of systemic discrimination.

Atlanta's district director believed that the reorganization of EEOC headquarters' systemic program would give him more discretion to conduct and complete systemic investigations more efficiently. He said that before the reorganization, EEOC headquarters was extensively involved in monitoring each systemic case. This approach resulted in lengthy reviews and detailed oversight, which made timely completion of systemic cases difficult. The district director believed with the increased discretion given district offices and the implementation of new headquarters review techniques, such as teleconferences, the systemic program would be more efficient and case work could be completed more rapidly.

The Atlanta district office has also developed a new method of assigning systemic staff to cases, which is intended to make its systemic program more productive. According to Atlanta's deputy director, in early 1986, the office will change how systemic staff are assigned to cases. As old cases are closed, new cases will be assigned on a staggered basis to one of the five systemic staff members who will have principal responsibility for one case and participate as a subordinate on other cases. Previously, staff members were involved in only one case at a time and experienced substantial down time while awaiting information from targeted employers or witnesses. The new staff assignment system will allow staff members awaiting information on their principal case to assist on another case or work on

targeting or identifying new employers for investigations. Atlanta's systemic compliance manager believes this new approach will improve the unit's productivity.

Atlanta's district director said that the office's systemic program previously had been hindered by EEOC's overly restrictive selection criteria, which limited the number of employers that could be investigated for systemic discrimination. Specifically, EEOC's previous guidance required that employers targeted for systemic investigation had to employ 500 or more people and that the systemic charges had to be based on a combination of race, sex, and age discrimination, rather than a single form of discrimination. According to the director, few employers in the district's area meet these criteria, and those that do have already been investigated or have initiated affirmative action programs addressing discrimination in recruiting and hiring.

The district director believes a December 10, 1985, memorandum from EEOC's director of systemic programs in the office of program operations revises the procedures for targeting employers for systemic investigation in a manner that will alleviate the problems. According to the memorandum, the revised procedures, which were to be implemented by January 2, 1986, are intended to provide greater flexibility by permitting each district office to develop its own guidelines for targeting employers. The memorandum specifically states that systemic cases may now be as narrow as one issue or one basis and according to the director of systemic programs, it also implies that employers with fewer than 500 employees may be targeted.

According to the compliance manager, the commissioner's recent emphasis on identifying victims of discrimination in systemic cases should expedite resolution of systemic cases. He said that district offices were provided guidance on the identification of victims in an October 15, 1984, memorandum from the director of systemic programs and director of program operations at EEOC headquarters. The memorandum states that

> "Commissioners have re-emphasized the importance of including and discussing witness and other direct evidence to support all systemic submissions. Systemic charge proposals, investigations, and settlements must highlight evidence of harm victims of discriminatory practices suffer, as well as, all testimony which addresses the alleged discriminatory practices. Every effort should be made to identify actual victims of the discrimination claimed."

The compliance manager said that in the past, victims were usually identified as part of a negotiated settlement with an employer, and that generally the employer shared the burden of

identifying victims. Because systemic cases take years to resolve, victim identification after settlement was often difficult. He believed that earlier identification of victims would reduce the time it takes to identify them later in the systemic process.

The director of program operations told us that while identification of individual victims at any stage in the systemic process is helpful, it is not necessary that they be identified until EEOC is negotiating a settlement with an employer or considering litigation against an employer.

Atlanta's systemic supervisor told us, however, that in December 1985, EEOC's office of systemic programs did not approve a request for a charge of systemic discrimination because the district office had not identified victims of discrimination.

Monitoring of State and Local FEPAs

The Atlanta district office has contractual worksharing agreements with two FEPAs, the Georgia Office of Fair Employment Practices and the Richmond County Human Relations Commission, neither of which is certified by EEOC. Under these agreements, the Georgia and Richmond FEPAs assist the Atlanta district office by investigating Title VII and age discrimination charges filed against public employers and Richmond county business facilities, respectively. In fiscal year 1985, the two FEPAs received $114,056 to process and close 268 charges. EEOC paid the Richmond County FEPA $412 and the Georgia FEPA $432 for each charge investigated and closed.

The Atlanta office's state and local coordinator is responsible for monitoring the FEPAs' performance and compliance with the worksharing agreement. The coordinator said he monitors the FEPAs by

- --maintaining weekly contact with the FEPA administrators to provide information and technical assistance and to answer any questions,
- --reviewing monthly reports of each FEPA's enforcement activities to ensure that they are processing the number of charges stipulated in the contract, and
- --reviewing all FEPA cases processed for EEOC to ensure that charges have been fully investigated and victims have been provided full relief.

EEOC guidance on maintaining worksharing agreements with the FEPAs requires the district offices to ensure that state and

local enforcement activities are comparable to those of the Commission. According to the state and local coordinator, the district office has informed the FEPAs of EEOC's new enforcement policies, but EEOC has not required the FEPAs to comply with those policies. The director of program operations at EEOC headquarters told us that as of January 1986, EEOC had not yet decided whether FEPAs would be required to comply with EEOC's new investigations, enforcement, and remedies policies.

Atlanta's state and local coordinator did not believe EEOC's new policies would significantly affect the way in which FEPAs process discrimination cases or the case outcomes, because the district office has emphasized full investigations and the need to obtain full relief in its worksharing agreements with the FEPAs.

SEATTLE DISTRICT OFFICE

The Seattle district office, with a staff of 69 as of December 1985, administers EEOC's policies and programs in Washington, Oregon, Idaho, and Alaska. In fiscal year 1985, the office received 2,627 charges of discrimination as well as 410 charges that were transferred from the Los Angeles district office to alleviate a heavy workload at that office.

For fiscal years 1981 through 1985, the Seattle district office recommended that EEOC file 11 systemic discrimination charges, of which 6 were approved by the Commission. As of the end of fiscal year 1985, one of the six cases was settled.

The Seattle district office contracts with the following seven FEPAs to process discrimination charges:

--Alaska State Commission for Human Rights.

--Anchorage Equal Rights Commission.

--Idaho Human Rights Commission.

--Oregon Bureau of Labor and Industries.

--Seattle Human Rights Department.

--Tacoma Human Relations Commission.

--Washington State Human Rights Commission.

Six of the seven FEPAs (all except the Anchorage Commission) are certified; thus, with some exceptions, EEOC will accept without an individual case-by-case review their findings and resolutions concerning cases processed under the contract.

The number of charges processed by FEPAs under the contract with EEOC increased about 41 percent from fiscal year 1981 through fiscal year 1985. In fiscal year 1981, six FEPAs were paid $724,389 for processing 1,830 charges. (The Anchorage Commission did not contract with EEOC until fiscal year 1984.) In fiscal year 1985, seven FEPAs were paid $1,084,684 for processing 2,579 charges. In that year, the FEPAs were paid between $397 and $421 for each charge processed and approved by EEOC.

Views on the Effect of the New Investigations, Enforcement, and Remedies Policies

Seattle's district director and regional attorney believe the new policies' emphasis on full investigations, litigation, and full relief will enhance EEOC's ability to enforce anti-discrimination laws. EEOC statistics show a significant increase in the number of cases the Seattle office submitted for litigation consideration from fiscal years 1984 to 1985. However, Seattle also experienced a sharp increase in its pending inventory of charges and a reduction in the number of case closures and negotiated settlements. Seattle's district director said that the increased emphasis on full investigations and deciding cases based on their merits has contributed to these changes. Seattle's regional attorney and two legal unit attorneys said they were operating at or near capacity and that without additional staff, they may be unable to continue to meet litigation quotas.

Since the new enforcement policy, cases submitted for litigation consideration by the Seattle office increased from 12 in fiscal year 1984 to 32 a year later. According to Seattle's regional attorney, EEOC's establishment of the same litigation goal for all its district offices has put more pressure on small offices, such as Seattle, than on larger offices that handle more charges, have larger staffs, and are located in areas with larger minority populations and more employers.

The regional attorney and two legal unit attorneys said that increased litigation under the new enforcement policy has put the legal unit's workload at or near capacity. According to the regional attorney, a "massive effort" by Seattle's legal unit was necessary to submit 32 cases for litigation consideration during fiscal year 1985. He said that his attorneys now spend significantly less time assisting in investigations than they did 2 or 3 years ago because they are spending more time on litigation. The regional attorney said that unless additional attorneys are hired, Seattle may eventually be unable to litigate all cases where conciliation fails. The district director said, however, that the legal unit can meet the demands of increased litigation by improving efficiency. For example, he believes the unit's productivity will increase as a result of decreasing the amount of time attorneys spend on administrative

matters, increasing training for junior attorneys, and increasing supervision. EEOC's acting general counsel and director of program operations said that district offices can obtain a waiver from the litigation performance standard if circumstances make it difficult for them to meet. Generally, they did not believe district office attorneys had excessive workloads that would prevent them from achieving the standard.

Two legal unit attorneys said that cases were being litigated under the new enforcement policy that would not have been litigated in the past. According to the attorneys, the legal unit is litigating more cases where discrimination is difficult to prove. The regional attorney agreed that the unit is now litigating (1) cases with small potential remedies and (2) cases that require substantial resources to prepare for court because discrimination is difficult to prove.

Seattle's district director said that EEOC's emphasis on full investigations has contributed to an increase in Seattle's pending inventory of charges. EEOC statistics show that during fiscal year 1985 Seattle's pending inventory rose 125 percent--from 914 to 2,060 charges. The district director attributed this increase to several factors.

First, the shift in emphasis from fact-finding conferences and negotiated no-fault settlements to full investigations and decisions based on merit contributed to the increase because full investigations take more time to complete than negotiated settlements. For example, full investigations require on-site reviews and travel time to develop the evidence necessary to make a decision on the merits of a charge. EEOC statistics show that from fiscal year 1984 to fiscal year 1985, Seattle's negotiated settlements declined 36 percent--from 442 to 283. Seattle's case closures also declined by 37 percent--from 2,740 to 1,716. Seattle's compliance manager said that the emphasis on full investigations had contributed to the decline in case closures.

Second, part of the increase resulted from a 26.7-percent increase in the number of charges Seattle received (from 2,074 to 2,627) and the transfer of 410 charges from the Los Angeles district office.

Third, a portion of the increase resulted from an increase in the number of directed and complaint investigations the Seattle office initiated against potential violations of the age and equal pay statutes. According to EEOC statistics, the number of these investigations increased from 141 in fiscal year 1984 to 358 a year later. The director said that because these investigations are self-initiated rather than based on charges

by an individual, the number of investigations can be controlled. He said that the number of self-initiated investigations in Seattle will be greatly reduced in fiscal year 1986. He expects the Seattle office's pending inventory to be reduced to about 1,000 charges by the end of fiscal year 1986.

Seattle's district director and regional attorney did not believe EEOC's new remedies policy had significantly changed the kind of relief obtained for victims of discrimination although they do not in every case obtain all five elements of full relief as defined in the policy. For example, the regional attorney said that while they have in some cases sought to have an employer place a victim in the position he or she would have obtained were it not for discrimination, as stipulated in EEOC's remedies policy, they may trade off placement in exchange for obtaining "front pay" for the victim, which means that the employer would compensate the victim as though he or she were in the position denied. The regional attorney said, however, the office is less likely to settle cases for less than full back pay, and they are seeking to post notices at the employer's facility as part of case settlements.

Seattle's regional attorney indicated that the decline in no-fault settlements may have contributed to an increase in the number of cases in which no cause is found. He explained that many cases that were previously settled during fact-finding conferences without a determination of whether there was a reasonable cause that discrimination had occurred are now more likely to be closed as no-cause findings because the facts of the case make discrimination difficult to prove. Seattle's district director and regional attorney believe fact-finding conferences and no-fault settlements can be useful tools in resolving discrimination charges in certain circumstances.

Changes in Systemic Program Viewed as Improving Efficiency

Seattle's district director and compliance manager, who is also the acting systemic unit supervisor, believed recent policy changes at EEOC headquarters will alleviate past problems that hindered the office's systemic program. Specifically, they believed that giving district offices greater discretion in targeting employers for systemic investigations and reducing the length of time headquarters takes to review systemic cases will improve their ability to identify patterns and practices of systemic discrimination. Seattle's compliance manager also indicated that a new EEOC requirement to identify victims in systemic cases should strengthen evidence of systemic discrimination.

Seattle's district director, compliance manager, and a systemic EOS said that before December 1985, Seattle's program

had been hindered by an EEOC requirement that employers targeted for systemic investigations employ 500 or more people. According to the compliance manager, this requirement limited the office's investigations to a small target population in the district office's area, perhaps as few as three or four employers, who met the criteria. However, a December 10, 1985, memorandum from EEOC's office of program operations informed district directors that they now had discretion to develop their own methods for targeting employers for systemic investigations. As a result, the compliance manager believes it will be able to increase its systemic efforts.

The compliance manager believed that EEOC headquarters reorganization of systemic programs had reduced the excessive delays the Seattle office had experienced when it submitted systemic cases for review. An EOS in Seattle's systemic unit identified two of the district's systemic cases that remained at EEOC headquarters awaiting a response for about 11 and 16 months when their average response time was 4 or 5 months. Seattle's compliance manager said that since the reorganization of the systemic program at EEOC headquarters, the district office has been able to obtain more timely review and assistance on systemic cases.

Seattle's compliance manager and a systemic EOS said that EEOC's new emphasis on identifying victims of discrimination in systemic cases should strengthen evidence of patterns and practices of employment discrimination. The compliance manager said that an October 15, 1984, memorandum from EEOC's offices of program operations and systemic programs to all district offices emphasized the need to identify victims of discrimination in systemic cases (see p. 12). According to a systemic EOS, in the past, the victims of systemic discrimination were generally identified after a settlement had been reached, and the employer shared the burden of victim identification. Seattle's compliance manager said that EEOC headquarters had recently returned three of Seattle's systemic cases for additional investigative work because the individual victims of discriminatory employment practices were not identified. The compliance manager and a systemic EOS added that it may be difficult to identify victims of systemic discrimination while insuring that employers are not aware that they are the target of an investigation. Although the compliance manager said it is difficult to identify victims in the early stages of a systemic case, he identified several ways in which it can be done. For example, victims of systemic discrimination can be identified by interviewing individuals who have previously filed charges against a targeted employer, or from evidence gathered during one of the office's directed investigations.

Monitoring of State and Local FEPAs

Seattle's district director, compliance manager, and state and local coordinator believe that the seven FEPAs with whom the district has worksharing agreements generally do a good job of processing charges under their contracts. The district director believes that the FEPAs' performance is good enough that the district office could reduce its oversight. Although EEOC has informed the FEPAs of EEOC's new enforcement and remedies policies, EEOC has not required them to comply with the policies. The acting director of one FEPA said that his agency might have to change its conciliation procedures if it was required to comply with EEOC's remedies policy.

Seattle's compliance manager and state and local coordinator are responsible for monitoring the quantity and quality of charges processed by the FEPAs. They review monthly and quarterly reports submitted by each FEPA to determine whether the number of charges being processed meets the FEPA's contract commitments. If a FEPA is not processing the number of charges for which it contracted, the district office notifies it that if they do not increase production, they will not meet their contract, and the number of charges to be processed under the contract may be reduced. The compliance manager said that modifications to FEPA contracts must be approved by the commissioners, and that the changes could be increases as well as decreases in the number of cases the FEPA must process. According to the compliance manager, during fiscal year 1985, the Seattle district office reduced the number of charges in its contract with the Seattle Human Rights Department because it believed the FEPA's loss of personnel and performance indicated that it would not meet its contract commitment.

Seattle's compliance manager and state and local coordinator also evaluate the quality of the charges FEPAs process and submit to EEOC for contract credit. Because six of the seven FEPAs have been certified by EEOC, the coordinator reviews only a sample of the FEPA cases. She also reviews all cases in which conciliation failed, the charging party failed to accept full relief, or the charging party requested an EEOC review, and all age discrimination cases. The coordinator said she selects other cases judgmentally, focusing on cases with no-cause findings. For the cases in the sample, the coordinator requests from the FEPA information or case files, which she reviews for completeness, accuracy, and sufficiency of evidence to support the FEPA's decision. The coordinator said she uses an EEOC quality assurance manual to guide her review.

Seattle's compliance manager and state and local coordinator said they also monitor FEPA performance by conducting on-site visits to the FEPAs at least every 3 years. They said

that although they had not visited the Alaska State Commission for Human Rights from fiscal year 1981 through fiscal year 1984 because of insufficient travel funds, they did conduct an on-site visit during fiscal year 1985. The compliance manager said that in addition to these visits, Seattle staff have visited FEPAs to provide training and review cases for litigation potential. During fiscal years 1983 through 1985, Seattle staff made 22 such visits. He added that they also maintain constant contact with FEPAs to help resolve problems in specific cases.

Seattle's district director, compliance manager, and state and local coordinator told us that (1) the FEPAs generally do a good job of investigating and resolving charges and (2) less than 5 percent of all the FEPA charges submitted yearly have been rejected by the district office. The coordinator said that no FEPA cases were rejected during fiscal year 1985. The coordinator explained that the low rejection rate was a result of her working closely with FEPAs to ensure the quality of their resolutions. Seattle's district director believes the low rejection rate for FEPA decisions indicates that EEOC could reduce the extent of oversight of FEPAs to cases in which the charging party contests the decision.

If funding were available, the district's director, compliance manager, and state and local coordinator would like to make more use of FEPAs to ease EEOC's charge processing workload. The coordinator said that the Oregon and Washington State FEPAs could increase the number of charges they process without increasing their staff.

According to Seattle's compliance manager, although the FEPAs have been informed of EEOC's new enforcement and remedies policies and provided copies of the policies, EEOC has not required them to implement the policies.[4] The compliance manager did not believe that EEOC's enforcement policy if applied to the FEPAs would significantly affect the FEPAs' work because the district office already monitors the thoroughness of FEPA investigations through the case review process. However, the compliance manager was unsure what effect the remedies policy would have on the relief FEPAs obtain for charging parties. The acting director of the one FEPA, the Seattle Human Rights Department, said that EEOC's remedies policy could require him to change his agency's methods of conciliating charges because they do not seek to obtain all five elements of EEOC's remedies policy. Specifically, they do not seek to post notices or obtain full back pay.

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[4]As discussed on page 14, EEOC, as of January 1986, had not yet decided whether FEPAs would be required to comply with EEOC's new policies.

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