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SCHOOL OF LAW

September 20, 1991

The Honorable Joseph R. Biden
Chairman, Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, D.C. 20510
Attn.: Ron Klain, Chief Counsel

Dear Senator Biden:

I am writing for the expressed purpose of clarifying issues raised concerning the Equal Employment Opportunity Commission (EEOC)-issues that have dominated the confirmation hearings of Judge Clarence Thomas, United States Supreme Court nominee. The period at EEOC prior to Judge Thomas' tenure as Chairman, based on the agency's record, would appear to be in dire need of clarification.

Denigrating language has been used during the hearings to describe an agency in shambles when Chairman Thomas arrived. I submit, the agency was not in shambles. Far from it, EEOC was doing quite well, having fended off an unprecedented assault by persons who would have liked to have seen EEOC closed. The agency's budget had been targeted for severe reduction which caused the staff to have to fight to save the agency at the very door steps of the Office of Management and Budget. This action can be easily found in EEOC's records.

EEOC won its fight to have the budget restored, even during a time when it was without a quorum for 81 days, the first time in the agency's history when it had only two commissioners.

During the confirmation hearings of Judge Thomas, there have been several references to the Commission prior to Chairman Thomas' arrival, mostly negative. In fact, to my knowledge the record reveals no responses from the nominee or from former members of EEOC defending the Commission and its faithful and productive employees during some very trying times prior to Judge Thomas' confirmation as Chairman.

I was appointed to the Equal Employment Opportunity Commission as a Republican in 1977 by President Jimmy Carter and as acting chairman by President Ronald Reagan on March 3, 1981. I served as acting chairman until I resigned on March 3, 1982.

I was succeeded by Cathie A. Shattuck, also a Republican, who served for a short period as acting chair until Clarence Thomas was confirmed by the Senate. Clarence Thomas was nominated as a Commissioner and designated as Chairman by President Reagan the day after I tendered my resignation as acting chairman in order to start my transition out of government.

I feel compelled to provide two reports for the record that I issued on October 8, 1981 (Year-End (FY '81) Report on EEOC Activities) and on January 13, 1982 (Report To Field Directors). These reports reflect the state of the Commission immediately before Chairman Thomas was confirmed by the Senate.

As the reports are contemporaneous with Chairman Thomas' appointment by President Reagan, I will not editorialize on them beyond the text of the reports. I do, however, want to laud the faithful staff at the Commission in 1982 without whose assistance and guidance the agency may have been irreparably crippled by the Office of Management and Budget.

I respectfully request that these reports be entered into the record of the hearings of Judge Clarence Thomas for the United States Supreme Court. The purpose of this tender is to show that EEOC was operating at high standards when Judge Thomas assumed leadership of EEOC.

Sincerely,



J. Clay Smith, Jr.
Professor of Law

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Enclosures

DR. J. CLAY SMITH, JR.
ACTING CHAIRMAN, EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
REPORT TO THE CIVIL RIGHTS AND BUSINESS COMMUNITY

October 8, 1981

YEAR-END (FY '81) REPORT ON EEOC ACTIVITIES

Several prominent civil rights groups, members of the business community and the House Subcommittee on Employment Opportunities chaired by the Honorable Augustus Hawkins, have asked me in my capacity as head of the Equal Employment Opportunity Commission to report to them on those matters which might be of interest concerning the on-going activities of the agency.

The Equal Employment Opportunity Commission is alive and well at this time, but I kid you not when I say that we are in a desperate fight for survival. The President has stated on several occasions that he is firmly committed to equal job opportunity for all Americans. I have not been informed that he has wavered, changed or altered this view. Yet there is that underlying perception, fear and apprehension that things are not the same and that there will not be continued vigorous enforcement of civil rights laws.

To allay some of the existing pessimism, I thought it would be appropriate for me to issue a first time ever report to the civil rights and business communities on the current status of the Commission's activities. So what will follow here will be a chronological play-by-play of the various program areas in the agency, followed-up by an urgent concern which faces us today. This report covers the following subjects:

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Compliance Activity

Charge processing figures for the first three quarters of Fiscal Year 1981 show a continued climb in the area of production and benefits. During this period the Commission received for processing 40,293 charges. Our field offices have resolved 54,482 charges or 35% more charges than we have taken in. This represents a one-third increase in production over comparable figures for Fiscal Year 1980.

In the Title VII area, the Commission took in 31,751 charges and resolved 45,456 or almost 45% more than we have taken in. The Commission's Title VII backlog, which stood at almost 70,000 charges as of January 1979, is now below 24,000 charges.

More important, Commission processes continue to provide substantial relief. Despite the extraordinary number of resolutions, the Title VII rapid charge settlement rate is holding at 43%. The settlement rate for Age discrimination charges has risen to 25% and Equal Pay settlements have gone up to 27%.

Through nine months of 1981, approximately \$60 million in relief was obtained for 36,682 people. These figures exceed benefits attained for all of Fiscal 1980.

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LITIGATION

The Commission's litigation program continues on the upswing. During the fiscal year, the legal activity of the Commission is reflected as follows:

Staff Litigation Recommendations

	<u>FY '80</u>	<u>FY '81(9/25/81)</u>
Title (VII)	247	291
Age (ADEA)	53	93
Equal Pay (EPA)	<u>93</u>	<u>67</u>
	<u>393</u>	<u>451</u>

Approvals by the Commission

	<u>FY '80</u>	<u>FY '81(9/25/81)</u>
TITLE (VII)	195	199
Age (ADEA)	53	69
Equal Pay (EPA)	<u>74</u>	<u>55</u>
	<u>322</u>	<u>323</u>

Actual Cases Filed*

	<u>FY '80</u>	<u>FY '81(9/25/81)</u>
TITLE (VII)	200	208
Age (ADEA)	47	66
Equal Pay (EPA)	<u>79</u>	<u>46</u>
	<u>326</u>	<u>320</u>

*Cases filed include interventions and requests for temporary preliminary relief under Section 706(f)(2), and does not include subpoena enforcements.

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Litigation Costs/Monetary BenefitsA Comparison of Half-Year
Statistics

	<u>FY 80</u>	<u>FY 81</u>	<u>% Changed</u>
Obligated Litigation Costs	\$ 736,500	\$1,250,166	+70%
Monetary Benefits	2,064,250	3,897,705	+89%

Court and Administrative Hearings Handled this fiscal year through
9/15/81 243

Lawsuits Currently Pending	Federal EEO
EEOC (Employees)	21
19	Title VII
FOIA (Freedom of Information Action)	33
6	Other
	4

Cases against EEOC decided between June 30 and Sept. 15, 1981

<u>Won</u>	<u>Lost</u>	<u>Settled</u>
16	0	4

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This would make the cumulative figures

<u>Won</u>	<u>Lost</u>	<u>Settled</u>
34	2-1/2	9

Not included in the above is the fact that on September 11, 1981, EEOC reached an agreement with Nabisco, Incorporated, who agreed to establish a settlement fund for the benefit of a nationwide class of female bakery employees. The settlement, upon final approval by the District Court in Pittsburgh, Pennsylvania, will exceed \$5 million. Nabisco, Incorporated, agreed to the following significant provisions of the settlement:

- (1) assign all new production trainees to perform tasks in both traditionally male and traditionally female entry level jobs to afford exposure to the duties of both jobs;
- (2) conduct, semi-annually, a training program for the purpose of training female production employees to fill temporary openings in higher-paying job classifications;
- (3) allow female employees the opportunity to work overtime without imposing certain conditions that interfered with overtime opportunities in the past;
- (4) eliminate all differences in work rules between production departments;
- (5) implement a sex-sensitivity program for management personnel to be monitored by counsel for plaintiffs and counsel for the EEOC;
- (6) take steps necessary to discourage harassment of female employees--establish a procedure by which females' grievances of sexual harassment will be promptly resolved and take disciplinary action against any employee who engages in such harassment;
- (7) post openings for all production jobs bakery-wide rather than departmentally;
- (8) include in all job postings a description of the job, a statement that the successful bidder will be trained, and a statement that the successful bidder has a right to return to her former classification without loss of seniority;

- (9) engage in good faith efforts to recruit women to fill at least 60 percent of the vacancies that occur in the assistant foreperson position and at least 60 percent of the vacancies that occur in the foreperson position at each bakery;
- (10) immediately promote certain long-term female supervisory personnel to higher level positions;
- (11) post in all bakeries, for a period of six months, a notice, to be approved by counsel for plaintiffs and counsel for EEOC, highlighting the affirmative relief provisions;
- (12) provide the EEOC with reports which will be used to monitor compliance with the terms of the agreement;
- (13) evaluate management employees and use as a criterion for promotion their performance in securing and enforcing equal employment opportunities for female employees;
- (14) abolish the practice of allowing employees in male-dominated jobs to have first choice in bidding on most desirable shifts before the jobs are posted for bid bakery-wide;
- (15) have no rules prohibiting the carry over of seniority between departments or classifications.

The agreement resolved a lengthy and complex litigation matter which arose out of a complaint filed in 1975 by two employees at the Nabisco Bakery in Pittsburgh.

The EEOC intervened in the lawsuit in 1977, following an investigation of the numerous charges of sex discrimination filed by the Pittsburgh bakery women on behalf of themselves and all other female employees working in the production departments of the bakery.

The settlement, one of the most far-reaching in EEOC history, may impact as many as 8,000 women. The settlement fund will be distributed to all female employees working in production departments at the 11 bakeries any time on or after January 21, 1978.

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Nabisco will bear the cost of notifying all eligible claimants and distributing awards.

We also signed a settlement agreement with Sears, Roebuck and Co., that resolved four EEOC employment discrimination suits against this nation's largest retailer. The terms of the agreement were directed at insuring that Sears would implement procedures to monitor its own hiring practices in ways that should assure compliance with the law. We believe then and now that the agreement will enhance minority opportunities at Sears, and we hope to observe signs that will justify that belief in the near future.

The suits, filed in October 1979, alleged that Sears used discriminatory hiring practices involving race and national origin at seven facilities in Atlanta, Memphis, Montgomery and New York. This suit largely involved procedural issues. A few days prior to the settlement the U.S. Court of Appeals in New York affirmed a lower court's dismissal of the New York suit. It ruled that the Commission had not adequately negotiated the practices of the facilities named in that suit.

The settlement agreement called for Sears to modify its personnel practices at every facility throughout the nation. While the agreement recognizes Sears' voluntary affirmative action efforts, it required amendment of Sears' affirmative action program.

According to the agreement, Sears will have to give greater attention to the minority composition of applicants and establish procedures to monitor, at several levels, the comparison of a minority group's composition of applicants and the group's composition of hires in order to insure there is no discrimination at any stage of the hiring process.

The agreement has a duration of five years during which, if Sears complies with the agreement, the EEOC will not sue to seek class-wide relief for hiring discrimination, although the EEOC may seek relief for individuals alleged to be victims of hiring discrimination. The agreement does not affect the rights of private parties to seek individual or class-wide relief for allegations of hiring discrimination.

The settlement agreement does not affect the EEOC's nationwide sex discrimination suit against Sears which was also brought in October 1979. A Federal judge recently ordered the parties to be ready for trial in that case by June 1982.

Office of Systemic Programs

The Office of Systemic Programs has made significant progress during the latter half of FY '81. A number of new charges were issued, and charges which had been previously issued began moving through the administrative process at a much more rapid pace. The program is now fully staffed and operating at its projected workload. The Office anticipates continued progress leading to a significant number of settlements and the initiation of as many as 15 lawsuits in the coming year, depending on budgetary constraints.

During the latter half of FY '81, OSP issued 23 Commissioner Charges, bringing its total to date to 130. Included in the last group of new charges was the first charge ever issued by the Headquarters Unit. This is especially significant since it reflects substantial progress in the processing of the large number of backlogged pattern and practice charges inherited by that unit at its inception.

The process of issuing charges was more firmly structured with the completion of OSP's targeting model which compares the employment profiles of similar employers within a given area. This system permits OSP units to concentrate their limited resources on specific targets. The targeting model will be updated this year as soon as the most current EEO-1's are placed on computer, and will be expanded to permit the review of the employment membership practices of unions and joint apprenticeship programs. We believe that this expansion will represent a major advance in the area of efficient resource allocation.

Of the 104 charges issued prior to FY '81, 20% have now been fully investigated, most of these in the past six months. During the 4th quarter of FY '81, the Commission issued its first 7 decisions based on systemic charges and achieved settlement of one additional charge. The 7 decided charges are now in conciliation, and will either result in settlement or be referred for litigation early next fiscal year. An additional 8 charges have been fully investigated, with decisions drafted, but are being held pending settlement discussions and 4 other decisions are presently undergoing headquarters review. Moreover, a number of charges pending in the investigative phase are the subject of ongoing settlement discussions. We project that more than 50% of the present charge load (i.e., that which has not yet reached the decision stage) will either reach decision or settle prior to decision during the next fiscal year.

OSP's Technical Services Division has continued in its role as expert advisor to field and headquarters investigative and legal units. The Technical Services Division has assumed a particularly important role with respect to the Uniform Guidelines on Employee Selection Procedures. During the 4th Quarter, the Division compiled its first comprehensive data on review of test validation studies and found that approximately 75% of such studies have been approved either in whole or in part. This information has been published in a number of EEO newsletters in order to allay employers' concerns that the UGESP standards are exceedingly difficult to meet. Additionally, in keeping with EEOC's position that the UGESP should

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be consistent with current professional standards on test validation, TSD staff members have been active participants in the American Psychological Association's current review of its standards.

In the area of litigation, the Office has achieved several major resolutions this fiscal year. Early in 1981, we entered into a \$1.1 million settlement with the Commonwealth Oil Refining Company. The Commission's suit against CORCO had alleged pervasive sex and national origin discrimination by the Puerto Rican refinery. Two other settlements were tendered to district courts within the past six months, but final decrees have not been entered. An Office of Systemic Programs lawsuit against the Alabama Power Co. and IBEW was settled for approximately \$2.2 million and included increased job opportunities for minorities and women, company-wide. Most recently, the Office settled a major portion of its protracted litigation against the Operating Engineers unions in New York City. Total monetary relief in that case was \$81,500. More importantly, in the light of current ongoing discussions relating to a changing policy pertaining to affirmative action requirements, the settlement provided for preferential work referrals for identified victims of past discrimination. These referrals are especially significant as the funding of the West Side Highway project in New York insures the availability of jobs and the opportunity to acquire necessary skills.

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The Litigation Enforcement Division filed four new actions during 4th Quarter FY '81 and these, along with its existing docket, will proceed in FY '82. The major focus of the Division's resources over the next several months, however, will be the nationwide sex discrimination action against Sears, Roebuck & Co., which is scheduled for trial in June 1982. Preparation for this trial has been a major activity during the past six months. Such activity, coupled with the ongoing and intensive settlement negotiations with another major corporation and union, makes it extremely likely that FY '82 will see all of the backlogged SICD charges resolved.

Office of Policy Implementation

One of the issues that has increasingly attracted the interest of both the public and private sector is the need for regulatory reform. Depending upon one's political or economic perspective, the term "regulatory reform" may have many different meanings. Regardless of the philosophical perspective of who is addressing this issue, almost everyone will agree that the issue of regulatory reform is one that needs to be addressed in a very systematic and intelligent manner, with an eye to developing a less burdensome regulatory framework without dismantling the underlying rationale which initially dictated the need for such government interest. I will attempt to bring you up to date on the past and present efforts on the part of the Commission to reduce the burdensomeness of government regulations and to clarify some common misconceptions that currently exist about Commission regulatory activity.

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It seems in order at this time to make a general comment about the terminology often used by individuals when discussing this general area of governmental regulations. This misuse of terminology alone can often lead to unnecessary misunderstandings when discussing regulatory reform. First of all, when Congress passed the Civil Rights Act of 1964, it specifically rejected proposals authorizing EEOC to issue substantive regulations. Congress only authorized the Commission to issue procedural regulations to carry out the provisions of Title VII,^{1/} and in addition, gave us power to provide technical assistance to persons subject to Title VII.^{2/} Accordingly, the Commission has historically chosen the vehicle of interpretative guidelines to provide such technical assistance. This distinction is not a minor one and needs to be kept in mind, at least by our critics, when discussing the issue of regulatory reform. Guidelines, unlike regulations, create no legal rights or obligations, have no binding effect, and do not in and of themselves have the force of law. Guidelines instead play the important role of educating and advising employers about the day-to-day application of a complex statute that can have far-reaching consequences for employers. The guidelines are based primarily upon court rulings regarding the application of the statute to the specific issue discussed in the guidelines, or if there is little, if any, legal precedent on the issue, what Courts have held in the application of general Title VII principles.

^{1/} The Civil Rights Act of 1964, as amended, 42 U.S.C. §2000e - 8(c).

^{2/} Id., 42 U.S.C. §2000e - 4(g).

Even though guidelines create no substantive legal obligations on the part of employers, the Commission is keenly aware of the fact that the guidelines are regarded very seriously by the Commission, employers and the courts, because they articulate EEOC's enforcement position in regard to employers' practices and policies. Because of this, proposed guidelines are always published in the Federal Register with an invitation to the public to submit written comments on the proposed guidelines. The comments are then reviewed by Commission staff, and often addressed in the preamble to any guidelines the Commission might issue or used as the basis of revisions to the proposed guidelines. Sometimes the Commission may also schedule a public hearing on the subject matter of proposed guidelines. A recent example is the Guidelines on Discrimination Because of Religion where the Commission held public hearings in April and May of 1978 in New York City, Los Angeles and Milwaukee.

As pointed out above, the guidelines create no substantive legal obligations on the part of the employer. However, the guidelines themselves are sensitive to the fact that very rigid criteria would often be particularly burdensome for employers, especially

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those who may wish to voluntarily pattern their employment practices after those suggested in the Commission guidelines for purposes of creating equal job opportunities for all workers and for protecting themselves from possible Title VII liability. For example, the Uniform Guidelines on Employee Selection Procedures (UGESP) include a less stringent recordkeeping requirement for employers with less than 100 employees. UGESP also adopted the "bottom line" approach, meaning that even if certain components of the employer's total selection process might have an adverse impact on a class protected by Title VII, the Commission would look only at the final result, i.e., did the selection process as a whole have an adverse impact. Alternative methods of test validating are also permitted by the UGESP so that an employer is free to choose whatever method of validation it prefers. Like other Commission guidelines, the UGESP advises employers by what criteria their employee selection procedures will be evaluated should they be charged with a violation of Title VII.

Executive Order 12291 requires that each federal executive agency publish in April and October of each year a semi-annual agenda of proposed regulations that the agency has issued or expects to issue, and currently effective rules that are under agency review pursuant to the Executive Order.

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In August of 1981 the Vice President's Task Force on Regulatory Relief announced a list of government regulations that would be subjected to review under Executive Order 12291. This list contains two of the Commission's guidelines, namely, the Guidelines on Sexual Harassment and the Uniform Guidelines on Employee Selection Procedures. The Vice President has identified the Sexual Harassment Guidelines because of public comments criticizing them for failing to provide adequate guidance to employers on such questions as to what constitutes unwelcome sexual advances or prohibited verbal sexual conduct under the statute. As to the Uniform Guidelines on Employee Selection Procedures, the burdensomeness and the utility of the record-keeping requirements are the subject of review. The Task Force requested that we submit workplans for the review of these guidelines by September 15, 1981. After meeting with the Task Force representatives and under my direction, our proposed workplans were delivered to the Task Force on September 9, 1981. We expect to begin working on these reviews in the near future.

The semi-annual agenda that has been approved by the Commission for publication in the Federal Register during the month of October describes current Commission regulatory activity. Although the Commission is of the opinion that none of its proposed guidelines or procedural regulations fall within the Executive Order's definition of a "major rule," the Commission, nevertheless, chose to include all of the items that appear in the October semi-annual regulatory agenda because of its desire to keep all interested parties fully informed of Commission activities and to provide parties an early opportunity

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to comment on proposed Commission policy statements, regulations or guidelines, as early as possible.

The first category of guidelines appearing on the October semi-annual agenda lists the current Guidelines on Sexual Harassment and the Uniform Guidelines on Employee Selection Procedures, both of which have been targeted for review by the Vice President's Task Force, as discussed above.

The second category of Commission regulatory activity included on the semi-annual agenda as required by E.O. 12291 contains an itemized list of proposed regulations and guidelines that are currently pending before the Commission. Each of the items has been published in proposed form at least once in the Federal Register for the purpose of soliciting written comments from interested parties. Most of the items are procedural regulations governing the processing of Title VII charges or areas of EEOC's enforcement responsibility, such as the Equal Pay Act and the Age Discrimination in Employment Act, which were transferred to the Commission under the President's Reorganization Plan of 1978 (43 FR 19807). Five of the items are procedural regulations to expedite the processing of federal sector complaints of discrimination. Included are:

1. Employment Discrimination; Procedure for Handling Complaints

The EEOC and the Department of Justice jointly issued proposed rules (published on April 17, 1981, in 46 FR 22395) setting forth procedures for the handling of complaints of employment discrimination which are

filed with Federal fund granting agencies under Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972 and other provisions of Federal law which prohibit discrimination on the grounds of race, color, religion, age, sex or national origin in programs or activities receiving Federal financial assistance. The regulations allow the fund granting agency to refer complaints to the Equal Employment Opportunity Commission (EEOC). For complaints covered both by Title VII of the Civil Rights Act of 1964, as amended, or other statutes within EEOC's jurisdiction and by Title VI of the Civil Rights Act or Title IX, the regulations contemplate that most complaints of individual acts of discrimination will be referred to EEOC for investigation and conciliation, while most complaints of systemic discrimination will be retained by the fund granting agency. Employment discrimination complaints which are not covered by Title VI or Title IX will be transferred to EEOC. 46 FR 22395 (April 17, 1981). The period for submitting written comments ended on June 16, 1981.

2. Non-Discrimination on the Basis of Handicap Federally Assisted Programs

These proposed regulations (published on November 29, 1979, at 44 FR 68482) set forth procedures and policies to assure non-discrimination on the basis of handicap. The regulations define and forbid acts of discrimination against qualified handicapped individuals in employment and in the operation of programs and activities receiving assistance from the Equal Employment Opportunity Commission. These proposed regulations implement Section 504 of the Rehabilitation Act of 1973, as amended, in compliance with Executive Order 11914, April 29, 1976. The proposed regulations have been approved in final form by the Commission and are now in inter-agency coordination pursuant to E.O. 12067.

3. Equal Employment Opportunity in the Federal Government; Complaints of Handicap Discrimination

The Equal Employment Opportunity Commission (pursuant to notice published in 45 FR 24130 on April 9, 1980) proposes to amend its regulations concerning complaints

of handicap discrimination in order to authorize awards of back pay to applicants for Federal employment. The proposed regulations also make clear that a complainant has the right to file suit in Federal court if dissatisfied with final agency action, or failure to act, on a complaint of handicap discrimination. These changes are necessary in order to conform to the 1978 amendments to the Rehabilitation Act of 1973. Final regulations have been approved by the Commission and are currently in the clearance process under E.O. 12291.

4. Equal Opportunity in the Federal Government; Remedial Relief Under Section 717

Interim regulations, effective April 11, 1980, were published in 45 FR 24130 on April 9, 1980, revising EEOC's regulations on equal opportunity in the Federal government (29 CFR 1613) to provide that an agency or the Commission may award a complainant reasonable attorney's fees and costs and backpay when a complaint of discrimination under Section 717 of Title VII of the Civil Rights Act of 1964, as amended, is resolved in favor of the complainant.

5. Procedures; Age Discrimination in Employment

On January 30, 1981, in 46 FR 9970, the Commission published for comment proposed procedural regulations (29 CFR 1626) advising the public as to those proposals to follow in processing charges and issuing interpretations and opinions under the Age Discrimination in Employment Act. These regulations will complement the Commission's existing procedural regulations under Title VII of the Civil Rights Act of 1964, as amended. The Commission hopes to schedule a vote on final regulations before the end of 1981.

6. 706 State and Local Agencies

On July 21, 1981, in 46 FR 37523, the Commission published notice of its proposal to revise its procedural regulations by the addition of §§1601.75, 1601.77, 1601.78, 1601.79 and 1601.80 to 29 CFR Part 1601. These sections set forth procedures whereby the Commission and certain State and local fair employment practices agencies (706 agencies) are relieved of the present Commission individual, case-by-case review of cases processed by these agencies under contract with the

Commission, as provided in Section 709(b) of Title VII of the Civil Rights Act of 1964, as amended. These sections set forth the procedures by which the Commission may certify certain 706 State and local agencies which meet prescribed criteria. These regulations are expected to become final in October 1981.

Four of the items on the semi-annual regulatory agenda required by E.O. 12291 discuss recordkeeping requirements proposed by the Commission.

1. Recordkeeping Regulations

Pursuant to notice of proposed rulemaking published in 43 FR 32280 on July 25, 1978, the Commission proposes to revise its recordkeeping regulations to require certain employers and labor unions to retain lists of applications for employment for 2 years. This action is taken because the Commission has found itself in a position of being unable to secure specific relief for the victims of discriminatory hiring or referral practices. The Commission believes that a recordkeeping requirement would assure more adequate redress for the victims of discrimination. The period for recordkeeping of other documents is proposed to be extended. In addition, the definition of "employee" for reporting purposes is proposed to be modified. 3/

2. Collection of Applicant Data for Affirmative Action Purposes

This interim regulation was published in 46 FR 11285 on February 6, 1981, effective immediately. This amendment will permit agencies to collect handicap information from applicants in order to implement and evaluate

3/ The Regulatory Flexibility Act of 1980 also requires that executive agencies publish a semi-annual agenda listing proposed regulations that will have an impact on small entities as defined in the Act. The only item appearing on EEOC's October semi-annual as required by the Regulatory Flexibility Act of 1980 is the proposed recordkeeping regulations.

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special recruitment programs undertaken for affirmative action purposes. Specifically, agencies will be allowed to invite applicants, on a voluntary basis, to identify themselves as handicapped and specify the nature of their disabilities. Agencies will be permitted to use this information only for purposes related to affirmative action and equal employment opportunity.

3. Privacy Act of 1974; Proposed Privacy Act System of Records

On April 14, 1981, in 46 FR 21819, the Commission published notice of its proposal to establish a system of records subject to the Privacy Act of 1974, 5 U.S.C. 552a. The proposed system, EEOC-1, Age and Equal Pay Act Discrimination Case Files, will contain information on individuals who file charges or complaints of discrimination under the Age Discrimination in Employment Act or the Equal Pay Act. 4/

4. Privacy Act Regulations

On April 14, 1981, in 46 FR 21784, the Commission published notice of its proposal that pursuant to subsection (k)(2) of the Privacy Act, the Commission is exempting System EEOC-1, Age and Equal Pay Act Discrimination Case Files, from certain provisions of the Act. The Commission is concerned that the lack of this exemption would impede law enforcement activities of the Commission.

The Reorganization Plan of 1978 (43 FR 19807) transferred to EEOC the responsibility of enforcing the Equal Pay Act and Age Discrimination in Employment Act. Currently pending before the the Commission are proposed interpretations of these two acts.

4/ The proposed Privacy Act System of Records and the Privacy Act Regulations each require separate Commission action but are related matters.

1. The Equal Pay Act; Interpretations -

On September 1, 1981, in 46 FR 43848, the Commission published its proposed interpretations with respect to the enforcement of the Equal Pay Act. These interpretations would replace those issued by the Department of Labor at 29 CFR Part 800. Comments on the proposed regulations must be received on or before November 2, 1981. The Commission proposes to consider the submissions for a period of at least ten days thereafter before adopting any final regulations.

2. Proposed Interpretations of the Age Discrimination in Employment Act

On July 1, 1979, pursuant to Reorganization Plan No. 1 of 1978, 43 FR 19807 (May 9, 1978) responsibility and authority for enforcement of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. 621, 623, 625, 626-633 and 634 (ADEA) was transferred from the Department of Labor to the Equal Employment Opportunity Commission. The Commission assumed enforcement of the ADEA on that date. Prior to the assumption of jurisdiction, the Commission commenced an in-depth review of all existing interpretations of the ADEA which were promulgated by the Department of Labor. See 44 FR 37974 (June 29, 1979). On November 30, 1979, the Commission published in the Federal Register its proposed interpretations of the ADEA. See 44 FR 68858 (November 30, 1979). On September 29, 1980 in 45 FR 64212, the Commission rescinded its earlier proposed interpretation. In August of 1981 the Commission approved the interpretation originally proposed in November of 1979 which will rescind the interpretations issued by the Department of Labor. Final interpretations are expected to be published by October of 1981.

Pursuant to a request of the Office of Management and Budget (OMB) under the authority of the Federal Reports Act, as amended by the Paperwork Reduction Act of 1980, EEOC is seeking OMB approval of the recordkeeping requirements contained in the Uniform Guidelines on Employee Selection Procedures (UGESP). EEOC's completion of this survey has been made a condition for OMB clearance. As defined by OMB, this Survey will focus on the practical utility of the UGESP recordkeeping requirements.

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In September 1977, EEOC entered into an agreement with NAS pursuant to which NAS's Committee on Occupational Classification and Analysis was to thoroughly examine the question of what methods can be developed to assess the validity of principles used to establish and apply compensation systems.

Subsidiary questions that were to be explored by the Committee included: what systems are currently available or could be envisioned that would objectively measure the comparability of jobs; to what extent are systems of job analysis and classification currently in use biased by traditional stereotypes and by other factors; and in what ways have other nations developed approaches to deal with the structural bias in compensation systems.

On September 1, 1981, the National Academy of Sciences (NAS) presented to the Commission its final report on the subject of job segregation and wage discrimination.

The report was prepared by NAS's Committee on Occupational Classification and Analysis and is entitled, "Women, Work and Wages: Equal Pay for Jobs of Equal Value." The report represents an important milestone in the EEOC's continuing review of the complex issue of whether wages for historically segregated jobs have been

discriminatorily depressed because those jobs are held predominantly by minorities and women. This issue is one of the largest and most complex left unresolved under Title VII today." The final report of NAS is only one part of the Commission's comprehensive and systematic review of this issue.

Public hearings were held before the Commission on this issue in Washington, D. C., on April 28, 29 and 30, 1980; and NAS submitted an interim report on this subject entitled, "Job Evaluation: An Analytic Review" to the Commission in February 1979.

Although the report was prepared by NAS under a contract with EEOC, the report does not necessarily reflect the official opinion or policy of EEOC. The National Academy of Sciences is solely responsible for the contents of the report which was written by a distinguished and balanced group chosen by NAS, and will be carefully studied by the Commission.

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Office of Interagency Coordination

The Commission's coordination role, under Section 715 of the Civil Rights Act of 1964 and Executive Order 12067, has been extremely active during my tenure.

On July 1, 1981, we responded to OFCCP's request for pre-publication consultation pursuant to Executive Order 12067 on OFCCP's proposed withdrawal of its regulations dealing with payment by contractors of membership fees to private clubs which discriminate in their membership policies.

On previous occasions the Commission had stated its position that such payments constitute a violation of Title VII of the Civil Rights Act. We noted, however, the Department of Labor's acknowledgment in the proposed preamble that it had authority to address instances of employment discrimination which may arise from contractors' use of private clubs in the absence of a specific rule such as Section 60-1.11.

The Commission did not object to the withdrawal of the rule, provided that the following sentence was added to the preamble to the withdrawal:

Accordingly, the Department will act upon complaints alleging that the payment by contractors of fees to private clubs which discriminate in membership has resulted in employment discrimination against an employee or applicant for employment (individual complaints received by OFCCP normally are forwarded for handling to the EEOC pursuant to a Memorandum of Understanding between the two agencies), and the Department will include an analysis of contractors' private club policies and practices as part of compliance reviews where appropriate.

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The purpose of our recommended addition was to affirm that OFCCP and EEOC will investigate these matters in response to complaints.

In the crucial area of review of agency regulatory issuances, the Commission met and was able to issue a timely response to OFCCP's Notice of Proposed Rulemaking dealing with its affirmative action regulations for Federal contractors. While I strongly endorsed the need for regulatory reform and paperwork reduction, I expressed concern and a willingness to negotiate a few of the substantive changes proposed by OFCCP.

In July I wrote OMB concerning my desire to ensure that coordination of Federal equal employment programs remain as effective as possible.

Shortly thereafter, in August, based on OMB's response, EEOC and OMB entered into an agreement governing the sequence of reviews of agency regulatory issuances concerning equal employment opportunity. The agreement, which strengthens the effectiveness of Executive Order 12067, requires that EEOC complete its analysis of agency NPRMs (Notice of Proposed Rulemaking), final rules and information collection instruments under Executive Order 12067 prior to their submittal to OMB for review under Executive Order 12291 and the Paperwork Reduction Act. On August 26, I sent a memorandum outlining the new procedures to the Heads of All Federal Agencies. Submissions recently reviewed by OIC staff include proposals from the Department of Education, the Legal Services Corporation, the Office of Personnel Management, Office of Revenue Sharing, and the Environmental Protection Agency.

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Progress was also made in another important area. EEOC and the Department of Justice have completed review of public comments on and are moving ahead with a proposed regulation which requires funding agencies to forward individual complaints of employment discrimination to EEOC for processing. This regulation, which I personally support, will eliminate duplication in the handling of complaints and provide faster service to employers and complainants.

In order to assist those covered by equal employment laws, the Commission recently issued a bibliography of Federal agency publications on that subject. The Commission also has approved for publication a report covering the last two years' activities of its Office of Interagency Coordination. That report also contains the results of the Commission's survey of agency equal employment programs and its questionnaire survey of a representative sample of private and public sector employers. In addition, the report describes present Commission activities designed to resolve the problems of inefficiency, inconsistency and duplication identified in the two surveys.

Office of Government Employment

During January 1981, EEOC issued advanced instructions to all Federal agencies for the implementation of the multi-year affirmative action plans through our Management Directive (M.D. 707). This plan will cover the period from FY '82 to FY '86.

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After the issuance of M.D. 707, several factors came to light which forced us to consider alternative immediate action to effect the Federal Affirmative Action Program. Prominent among these was the denial of clearance for our reporting requirements by the National Archives and Records Services (NARS). NARS concluded that the data to be developed by Federal agencies under M.D. 707 essentially duplicated the data which is reported to and retrievable from the Central Personnel Data File (CPDF), maintained by the Office of Personnel Management (OPM). However, the retrieval capability of CPDF, as it presently exists, is too limited to provide appropriate breakouts of data for affirmative action purposes. The Equal Employment Opportunity Commission cannot fully utilize the CPDF until the system has been redesigned. However, OPM's Director, Donald J. Devine, notified us that his agency lacks the necessary resources to permit the immediate redesigning and use of the CPDF for affirmative action purposes.

This complex situation required from us immediate action to provide guidance to all agencies to continue the development of their plan. Our Office of Government Employment conferred with representatives of some thirty agencies to explain the situation and to seek recommendations for a solution of the problem. Based on these recommendations, on June 15, 1981, I wrote to all Federal agencies spelling out a more flexible framework in which they could continue the development of their plans and reluctantly

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postponed the date for the initial submission of affirmative action plans.

After several meetings with NARS and OPM personnel, NARS recognized the impossibility of using the CPDF and granted clearance for our M.D.-707, as amended by a June 15 memorandum. On August 12, 1981, I once again wrote to all Federal agencies requesting them to complete their planning at the first possible moment to meet the operative date of October 1, 1981.

To obtain NARS clearance and because for the last two years EEOC has acknowledged the benefits of the CPDF, we made a commitment to find a solution for the better use of CPDF for affirmative action purposes. We have therefore continued our conversations and meetings with OPM personnel in an effort to find ways to support program needs. However, our efforts have just reached a critical point based on budgetary considerations. For on September 21, 1981, Mr. Devine wrote to me advising that while they are prepared from a management point of view to provide CPDF data support service to the Commission, the FY '82 budget reductions directed by OMB have caused OPM to reduce the level of resources allocated to the CPDF. He therefore requested that EEOC make whatever arrangements are necessary to allocate to OPM the necessary fund and ceiling required to support our program. We are presently preparing a response to Mr. Devine for the purpose of advising him of our lack of resources to provide these funds and of our ongoing efforts to obtain the necessary amount from the Office of

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Management and Budget. OMB, however, has been conducting a study of the CPDF on its own and cannot make any money immediately available to the project at this time.

Another recent activity of our Federal Affirmative Action (FAA) division has been the development of our Management Directive (M.D.)-710 with instructions to Federal agencies on their affirmative action accomplishment report for minorities and women for FY '81. These will be the last instructions concerning the two years' transition period which allowed agencies to "learn" the new planning process as we moved away from the annual planning concept to the multi-year approach (M.D.-707). M.D.-710 has just been properly cleared for presentation to the Commission for approval.

Handicapped Individuals Program

The week of October 5, 1981, is National Employ the Handicapped Week, thus in this, the International Year of Disabled Persons, we should also take this opportunity to reflect on problems of the handicapped in all spheres of the republic.

There are approximately 35 million disabled persons in the United States, or about 15% of the total population. The Department of Labor reports that there are 7.2 million severely disabled persons of working age, or about 6% of the national work force.

OPM's Central Personnel Data File (CPDF) indicates that in 1979 there were 134,026 disabled Federal employees, who comprised 6.4% of the total Federal non-postal work force.

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For the EEOC, this is not just a week to listen to speeches and then return to business as usual. We have substantive responsibility for government-wide handicapped efforts. The EEOC in July 1979, under the Civil Rights Reorganization Plan No. 1 of 1978, became the Federal agency responsible for federal sector affirmative action planning. The EEOC is also responsible for hearings, the oversight of the processing of EEO complaints and appeals of agency decisions on EEO complaints, including handicap issues.

Our Office of Government Employment recently issued a Management Directive (M.D.)-708 transmitting instructions for reporting the accomplishments of FY 1980 affirmative action programs and for preparing affirmative action program plans for the last half of FY 1981. A proposed management directive, M.D.-709, has also been drafted, and the document, although not a multi-year, moves to a longer period of planning. It covers the accomplishment reports for FY 1981, the affirmative action program plans for FY 1982 and the accomplishment report covering the same period. M.D.-709 has already been cleared by SCIP and NARS. We expect to obtain the Commission's approval next week.

During the development of M.D.-709, an issue was raised concerning our authority to handle the Disabled Veterans Program (Section 403 of the Vietnam Era Veterans' Readjustment Assistance Act of 1974) together with the Handicapped Individuals Program (Section 501 of the Rehabilitation Act of 1973). The President's Reorganization Plan No. 1 of 1978 transferred to EEOC the responsibility for administering

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several affirmative action programs, but no mention was made of Section 403 of the Veterans Assistance Act. Later, when Congress amended this same Act, it did not substitute EEOC for the Civil Service Commission as the agency with authority to handle the program. However, there has been a generally implied understanding of all the parties concerned that EEOC was to also handle this program. The situation is complicated by the fact that the Act requires each agency to include in its affirmative action plan for the hiring, placement, and advancement of handicapped individuals (Section 501), a separate specification of plans for the disabled veterans. Once the issue was raised, the Office of Government Employment met with OPM staff to discuss the problem while the legal offices of both agencies developed opinions. OPM staff gave us to understand that they wanted EEOC to continue with the program; however, Mr. Devine publicly announced that OPM was going to take charge of the program. Meanwhile, our proposed M.D.-709 has instructions for the disabled veterans affirmative action program. Within the last few days we have reached an agreement with OPM by which EEOC will continue with this program during FY '82 but advising agencies through our M.D.-709 that thereafter OPM will assume responsibility for the program. We are currently developing modifications to M.D.-709 concerning this matter.

The Office of Government Employment has been in general conducting other activities such as the development of a staff guide for our programs and a conference held during September in Dallas with our Federal Affirmative Action Field Managers, several District Directors and Headquarters personnel.

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BUDGET

Last, but by no stretch of the imagination least, is the critical status of our current and future year budget. The fiscal health of this Commission can be summarized in a few words, uncertain and desperate. The changes in the federal budget with the resulting changes in the Commission's budget point to a return of the mid-seventies without any corresponding reduction in EEOC's obligation to provide relief/services under its governing status for Title VII, Age, Equal Pay, Federal Sector Complaints and the State & Local Grants Program.

I was scheduled to attend the meeting at OMB on September 22, 1981, to present and defend the Commission's 1983 budget request, at a time when the base of fiscal year '82 funds have not yet been postponed for a second time. I was informed that the meeting was cancelled by OMB principally because they (OMB) had not formally presented to us their "new" reduced 1982 Budget for Congressional approval.

I have reason to believe, based on my staff discussion with the OMB Examiner, that OMB plans to reduce EEOC's FY '82 budget by 17 million, from \$140 million to approximately \$123 million. The reduction in positions has not been determined. However, we cannot adequately support the existing staff and/or even the authorized FY '82 staff years with a \$123 million budget. I am praying and hoping that what appears to be the worst scenario ever will not prevail and that someone in a position of authority will come to our aid.

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Unfortunately, I cannot announce to you or speculate as to what our 1982 operating budgets will be until the Executive and Congressional Branches have approved an interim or final FY '82 budget for EEOC. However, as of now we have been told that a minimum 12% will be formalized and presented to us. Thus, if this severe reduction remains firm, it appears fairly evident that if we are required to operate at the \$123,542,000 level instead of the \$140,389,000 as planned, it will result in the immediate following effect:

- .Staff year (SY) will be reduced from 3,376 to 2,971
a reduction of 405 staff years equalling positions;
- .State & local grant funds will most likely be
reduced from \$19,000,000 to \$16,720,000; and,
- .A reduction in the Salary & Expense funds from
\$121,389,000 to \$106,822,000.

We have just been notified that our employment targets for FY '82, FY '83, and FY '84 are those set forth below, and under certain circumstances may be even lower.

	<u>Full-time Equivalent</u>		
	<u>FY 1982</u>	<u>FY 1983</u>	<u>FY 1984</u>
Total employment, excluding disadvantaged youth and personnel participating in the Worker-Trainee Opportunity Program (WTOP)	3,000	3,040	2,970
Full-time permanent employment, excluding personnel participating in WTOP	2,955	2,994	2,924

A reduction of the foregoing magnitude occurring right after a recently completed agency-wide reduction-in-force of 287 positions and an absorption of increases in operating support costs, would seriously weaken the Commission's ability to meet its statutory and programmatic responsibilities and commitments.

Of the previously approved level of \$140 million, \$96 million would have been expended for personnel compensation, \$18 million for Fair Employment Practices Agency grants, \$16 million for fixed operational support expenses, and \$10 million for critical program-related expenses. Having reviewed a number of comprehensive alternatives modifying this set of assumptions, the Commission would be left with limited flexibility. In the area of staff, for example, our analysis reveals that the \$6.8 million severance and unemployment compensation costs associated with a reduction-in-force would minimize any net savings. Fair Employment Practice Agencies program funds are earmarked and, therefore, cannot be used for other purposes. Operational support costs such as space, telephone and postage are controlled by the General Services Administration. Thus, the Commission will be forced to absorb the bulk of its \$17 million reduction through sizable decreases in critical program-related costs such as case processing, essential travel, litigation support and data processing services.

The collective impact on operations will be: (1) an inability to process the Title VII, Age Discrimination in Employment Act (ADEA), and Equal Pay Act (EPA) complaint inventories within a reasonable

timeframe; (2) a dramatic reduction in the number of cases filed for litigation; and (3) reduced efficiency in the critical staff functions of policy direction, program guidance, coordination, and monitoring and evaluation of the Commission's charge processing and litigation programs.

Our major concern is that the Commission's inventory of Title VII complaints will grow by 65 percent, from 37,000 complaints, or 8-1/2 months of workload, to 62,200 complaints, or 12 months of workload during FY '82. Similarly, the Fair Employment Practices Agency inventory will rise from 36,000 complaints to 48,000 complaints. Moreover, without adequate resources, the Commission will not be able to eliminate the pre-1979 Title VII backlog by the end of 1983 as planned. In addition, ADEA complaints will rise by over 50 percent to 10,000 complaints, or a 13-month inventory by the end of FY '82; EPA complaints will rise by 40-45 percent to 2700 complaints, or a 15-month inventory by the end of FY '82.

In the past, the Commission has been heavily criticized by Congress and the private and public sectors for not eliminating its Title VII backlog and thus, stretching out the charge processing timeframes. To address this issue, the Commission has already restructured its organization and has overhauled its charge processing procedures. As a result, charges are now settled on the average within 115 days. The negotiated settlements success rate is nearly 45 percent nationwide. Individual remedies amounted to over \$59 million during the first nine months of FY '81.

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This rapid charge approach has been applauded and supported by business and protected classes because swift processing lessens the burden on employers and provides reasonable remedies to charging parties. The system has worked so well that other government agencies which have similar responsibilities have adopted these procedures. In recognition of the development and implementation of these workload management and processing systems and procedures, OMB praised EEOC's overall managerial effectiveness in its management publication. Further, in its January 1981 report, the Government Accounting Office (GAO) noted a high level of employer satisfaction with the Commission's expedited charge processing procedures. Seventy-three percent of the employers were satisfied with the procedures used by the Commission to investigate charges; 72 percent overall were satisfied with the way complaints were resolved.

While these dramatic improvements have benefited all of the parties concerned, the Commission would be hard-pressed to effectively deliver its essential services at the proposed reduced level. Under these constraints, it will take the Commission a year to address a charge, as contrasted with the present six month figure. Every analysis the Commission has conducted shows that without speedy resolution, there is little likelihood of settlement. Moreover, the Commission, under law, must investigate a case if it does not settle; thus, delaying final resolution even further.

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Another concern is that the Commission may have to abolish a large number of field offices across the country. Many are located within major cities and, therefore, serve a large segment of the American people. Such a cutback would further hinder the Commission's ability to process charges in a timely manner and will probably result in more independent court suits being filed by charging parties. This workload will become an additional burden to an already overloaded court docket thereby shifting the costs from this agency to the courts which are not prepared to accept this burden.

With respect to the Commission's litigation program, additional cuts will force the Commission to release legal staff and dramatically reduce litigation support funds. From an original projected need of \$3.4 million to fund current cases pending in federal courts, and a modest docket of new cases, the current projection would amount to \$2.2 million, or 1/3 less funds for litigation support and a corresponding reduction in staff. Nearly 1/2 if these funds are needed immediately to pay for pending litigation support contracts generated by some of our largest and most complex cases. At the reduction budget level, the number of cases the Commission could file would be reduced by 40-45 percent from FY '81.

Currently, EEOC has more than 800 cases in litigation. They represent enforcement actions under Title VII, Age Discrimination in Employment Act and Equal Pay Act. Approximately 1/3 of these cases are class-action suits. The development of most of these cases will

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be seriously underfunded, affecting the relief for those who are protected by these statutes.

In conclusion, a budget reduced by the amount being contemplated for EEOC would significantly impair the Commission's charge processing and litigation programs and as such, would have an adverse impact on the business community and on minorities and women who have filed charges. Employers would have to retain records and maintain active case files for a prolonged period of time at great expense. Relief for those charging parties whose charges have merit would be irreparably delayed and jeopardized. The court system would become intolerably backlogged with cases which would otherwise be settled at the administrative level. State agencies would also be burdened with a huge backlog. If the case and complaint processing system and enforcement mechanisms are adversely affected, the ability to obtain voluntary compliance would be seriously impaired.

We at EEOC are prepared to assume our fair share of the economic burden. However, anything that goes beyond a 5% reduction will be too severe for us to sustain. In the family of agencies, EEOC is a small unit of the republic. Its mission is to enforce the law in cases where various forms of discrimination exist in the workplace. The proposed reduction in the Commission's budget will send a signal to the American people that EEOC will be unable to enforce the law whenever the business community violates the prohibitions against discrimination. We do not believe that this signal should be sent - however unintentional.

REPORT TO FIELD DIRECTORS
BY ACTING CHAIRMAN, DR. J. CLAY SMITH, JR.
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Washington, D.C.

January 13, 1982

As all of you are aware, I report to you not because it is required by law or Commission procedure, but because I look upon this agency as one big family in which you not only work for me and the Commission, but I work for you, and the many beneficiaries of the various laws and statutes which we are charged with enforcing. Thus, if we are to achieve our assigned tasks in a meaningful manner we must continue to work together as a unit in effectuating the goals and true spirit and purpose of Title VII of the Civil Rights Act of 1964, the Equal Pay Act, the Age Discrimination in Employment Act the Rehabilitation Act, and Executive Order 12067. The only way I can see this being done is through periodically informing you as to the things I do and must do in order to provide the support you need to productively carry out your assignments and responsibilities. When I or anyone else holding this position cannot communicate with you in an open and above board fashion as I seek to do, you may have cause to worry. We may not always agree on the procedure and techniques utilized, but we should forever have a commonality of purpose. That commonality of purpose is not only to uphold the laws of the United States but it includes carrying out our official duties and the fair enforcement of the established laws. Employers, public and private, companies and unions mind you, expect no less. If we are to be understood, we must speak clearly and not with forked tongue or act with multi-conflicting goals or purposes.

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One thing I learned early in life is that you cannot serve two masters and expect to go to heaven. No matter what, you must be true to yourself and whatever cause you serve. Most of you through your unwavering dedication, proven loyalties and sustained productivity reflect the high level professionalism that do me great honor as I attempt in turn to represent yours and the President's best interest in carrying forth with the mission of this great agency.

There is much on a positive note to report since you were here last. I will briefly touch on some but not necessarily in the chronological order of their importance.

The first thing I want to say is that the Commission now has three members, thanks to the President -- Cathie A. Shattuck, was sworn in by me as a member of the Equal Employment Opportunity Commission on December 21, 1981 after being given a recess appointment by President Ronald Reagan. He had made known on December 7th his intention to nominate her for the term expiring July 1, 1985, that had been previously held by Ethel Bent Walsh.

Ms. Shattuck, who received a BA degree in 1967 and her J.D. in 1970 from the University of Nebraska at Lincoln, was in the private practice of law in Boulder where she represented both employees and employers in labor law and on other matters. She had several years ago served as a trial attorney for the EEOC in Denver.

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Ms. Shattuck was also a special hearing officer for the Colorado State Personnel Board. She was a lecturer and instructor in employment and employee relations and taught Continuing Legal Education in Colorado. She was formerly a legislative aide to the speaker of the Nebraska Unicameral, and assistant law librarian at the Nebraska University College of Law and a law clerk in the Office of the Attorney General of the State of Nebraska. Ms. Shattuck is a native of Salt Lake City, Utah.

With the swearing in of Ms. Shattuck, the Commission now has three members on board which terminated the delegation of authority given to me on October 1, 1981. Thus, the Commission on yesterday held its first meeting in 107 days at which time we were able to get into policy issues, approved 30 cases for litigation, and on motion of Commissioner Rodriguez they adopted the attached resolution crediting me with certain achievements during the 81 days the EEOC was without a quorum. Whatever accomplishments were made during these critical days at EEOC, you are equally responsible for any of my accomplishments.

On November 2, 1981, the U.S. Senate unanimously confirmed the nomination of Michael J. Connolly, a former corporate labor counsel with General Motors Corporation in Detroit, to become general counsel of the U.S. Equal Employment Opportunity Commission (EEOC). Connolly was nominated for the four-year term position

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by President Ronald Reagan on July 7, 1981.

At his confirmation hearing, Connolly promised committee members that, if confirmed, he would "continue the momentum that has been built by previous general counsels," and that "no stone will be left unturned in the battle to eradicate employment discrimination."

Connolly, is the seventh and, at 32, the youngest General Counsel ever to serve the Commission.

Now turning our heads to the programmatic side of the agency:

COMPLIANCE ACTIVITY

Charge processing figures for Fiscal Year 1981 show a continued climb in the area of production and benefits. In 1981, the Commission field offices resolved 71,690 cases. This represents a 25% increase over last year's figure of 57,327. The ratio of charges resolved to charges taken is 134%.

Just looking at Title VII alone, the Commission took in 42,372 charges and resolved almost 62,000 charges. Frontend inventory is now down to about 20,000 charges. More importantly, Commission processes continue to provide substantial relief. Despite the extraordinary number of resolutions, the Title VII rapid charge settlement rate is holding at 43%. The settlement rate for Age Discrimination charges has risen to 25%. These figures far exceed benefits obtained through the compliance process in any prior year.

REPORT TO FIELD DIRECTORS - 5

while our Age and Pay programs are on the upswing, we still have a few problems in some offices. Specifically, these offices have been slow to integrate Age and Equal Pay into our management apparatus. This must be corrected immediately and the Director of Field Services will be working with you on this problem.

On October 31, 1981, in 46 FR 50366, the Commission published notice of final rulemaking of its revisions to procedural regulations by the addition of §§1601.75, 1601.77, 1601.78, 1601.79 and 1601.80 to 29 CFR Part 1601. These sections set forth procedures whereby the Commission and certain State and local fair employment practices agencies (706 agencies) are relieved of the present Commission individual, case-by-case review of cases processed by these agencies under contract with the Commission, as provided in Section 709(b) of Title VII of the Civil Rights Act of 1964, as amended. These sections set forth the procedures by which the Commission may certify certain 706 State and local agencies which meet prescribed criteria. These regulations became final last year and 48 agencies have now been certified.

With respect to ADEA charges jurisdictional under state law, on May 26, 1981, the Commission adopted standards for the processing and funding of charges by FEP agencies filed under the Age Discrimination in Employment Act and under comparable state laws. The procedures call for dual filing and worksharing, much like

REPORT TO THE FIELD DIRECTORS - 6

our Title VII procedures. State agencies are funded on the basis of charges produced. Contracts were approved for fiscal 1981 committing the state agencies to 2,235 resolutions.

LITIGATION ACTIVITY

The following summary provides comparison statistics of our direct litigation activities excluding systemic and the monetary benefits obtained through its enforcement program for fiscal years (FY) 1980 and 1981.

For the purpose of this report, areas of comparison include: litigation recommendations, approvals by the Commission, number of cases filed, settlements and monetary benefits.

During FY 81, the Commission's district offices recommended 469 litigation actions to the Office of General Counsel. This represents a 19 percent increase in the number of recommended cases over the prior year's statistic of 393.

Of the total number of recommended actions, the Commission approved 364 cases. This was a 13 percent increase over the prior year of 322 cases. The most significant percent change occurred under the Age Discrimination in Employment Act, with an 89 percent increase in the number of recommended suits and a 68 percent increase in the number of approvals. More Age Act cases were filed in FY 81 than in any previous 12-month period of federally initiated litigation under the Act.

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RECOMMENDATIONS TO THE GENERAL COUNSEL

	FY 80	FY 81	%Changed
Title VII	247	307	+24%
ADEA	53	100	+89%
EPA	93	62	-33%
TOTAL	393	469	+19%

APPROVAL OF SUITS BY THE COMMISSION

	FY 80	FY 81	%Changed
Title VII	195	218	+12%
ADEA	53	89	+68%
EPA	74	57	-23%
TOTAL	322	364	+13%

There was a 13 percent increase in the total number of lawsuits filed during FY 81 compared with the prior year. In the Title VII area, statistics show an increase from 200 to 229 lawsuits or an overall increase of 15 percent. The number of age suits significantly increased in FY 81 to 89, which is an 89 percent increase over the prior year's total of 47.

CASES FILED

	FY 80	FY 81	%Changed
TITLE VII	200	229	+15%
ADEA	47	89	+89%
EPA	79	50	-37%
TOTAL	326	368	+13%

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The number of settlements also increased during this past fiscal year to 237 from 192, for an overall increase of 23 percent.

SETTLEMENTS

	FY 80	FY 81	%Changed
TITLE VII	141	172	+22%
ADEA	42	22	-48%
EPA	9	43	+378%
TOTAL	192	237	+23%

Monetary benefits obtained for the victims of employment discrimination, principally backpay awards, declined by 23 percent from almost \$21 million in FY 80 to slightly more than \$16 million in FY 81. This decline is only superficial since the \$5 million difference is because of substantial FY 80 recovery in the Motorola case. Other than backpay, additional remedies the Commission secured included training programs, apprenticeship funds and affirmative action programs.

MONETARY BENEFITS

	FY 80	FY 81	%Changed
TITLE VII	\$18,674,901	\$13,145,403	-30%
ADEA/EPA	2,261,126	3,071,357	+36%
TOTAL	20,936,027	16,216,760	-23%

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Cases Recommended for Litigation	Cases Authorized for Litigation	Cases filed: -Direct Sales -Other Sales -S 206(F)(1)(2) -S 201 -Other	Settlements -Won -Lost -Pending	Settlements	Settlements	Settlements w/Goals & Timeables	Monetary Benefits	11A	
								FA-51	
16	9	12	1	1	9	3	\$198,168	ATLANTA	
9	15	12	1	1	17	2	\$1,055,014	BALTIMORE	
22	14	12	0	0	8	7	\$125,049	BIRMINGHAM	
16	16	12	0	0	11	0	\$66,192	CHARLOTTE	
14	16	17	1	1	12	0	\$1,541,700	CHICAGO	
24	16	14	0	0	17	2	\$430,139	CLEVELAND	
37	19	20	2	1	20	0	\$569,092	DALLAS	
17	13	16	0	0	9	0	\$97,700	DENVER	
30	25	19	4	1	6	0	\$528,600	DETROIT	
26	20	18	1	0	15	2	\$465,662	HOUSTON	
17	15	15	0	0	3	3	\$29,208	INDIANAPOLIS	
36	20	20	1	0	16	0	\$231,914	LOS ANGELES	
17	13	11	6	1	16	7	\$413,710	MEMPHIS	
11	8	9	1	0	6	0	\$38,900	MIAMI	
15	12	12	2	0	6	3	\$108,750	MILWAUKEE	
17	13	9	1	1	9	2	\$124,406	NEW ORLEANS	
14	14	11	2	1	9	1	\$489,400	NEW YORK	
35	29	21	0	0	25	7	\$819,081	PHILADELPHIA	
21	15	20	0	0	8	1	\$624,900	PHOENIX	
27	23	22	0	0	13	9	\$2,237,537	SAN FRANCISCO	
18	12	8	0	0	6	0	\$123,511	SEATTLE	
29	26	24	0	0	12	0	\$363,127	ST. LOUIS	
3	3	0	0	0	6	0	\$5,535,000	HQ./LSB	
469	364	390	24	0	291	49	\$16,216,760	TOTAL	

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OFFICE OF SYSTEMIC PROGRAMS

During the first quarter of FY 82, OSP continued its progress in processing Commissioner charges. Two more decisions were circulated to the Commissioners, a number of pre-decision settlements initiated and several cases moved into the conciliation process. To assist in this process, guidance on conciliation matters has been finally prepared for distribution.

Two major charge settlements were accomplished during the quarter. One settlement was achieved by the Headquarters unit on a backlogged multi-facility charge. The settlement provides goals, back pay and preferential job offers at three large manufacturing facilities. OSP's second field PDS resulted in affirmative relief plus approximately \$250,000 in back pay.

The technical Services Division continued its revision of the targetting selection model and prepared its position paper on Determination of Underutilization. Technical Services Division continued to provide assistance in a number of cases, and provided expert witness testimony both in Jurgens v. EEOC and in the Denver District Office's successful trial in EEOC v. Trailways. TSD staff were also extremely active in developing position papers in support of EEOC's position on Uniform Guidelines on Employee Selection Procedure.

In the area of litigation OSP concluded negotiation of settlements in two major cases. On December 22, 1981, the Commission and private plaintiffs obtained preliminary approval of a settlement with the United States Fidelity and Guaranty Company. The

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settlement, which resolves two private lawsuits in which the EEOC intervened as well as a nation-wide Commissioner Charge, provides for payment of \$3.5 million in back pay and other relief valued at several million dollars; it will benefit in excess of 25,000 minority and female employees and rejected applicants nationwide.

Other aspects of the settlement include:

1. the establishment of goals for minorities and women in professional positions and for minorities in clerical positions;
2. development of a job posting system for professional and clerical positions;
3. development of a career counseling program;
4. development of a supervisory training program including EEO counseling;
5. development of a new performance appraisal system; and
6. implementation of a compliance monitoring system including annual review by the Special Master.

The second major resolution involved the Commission's charge and a private lawsuit against Dean, Witter, Reynolds, Inc.

On December 17, 1981, the EEOC reached agreement in principle on all substantive issues with Dean, Witter, Reynolds, Inc. The agreement was memorialized in a Memorandum of Understanding signed that date, a courtesy copy of which was submitted to the Court on December 22, 1981. The agreement provides for back pay of

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\$1.8 million to be distributed to female, Black and Hispanic applicants and present and former employees in sales, professional or managerial positions between January 1, 1976 and December 31, 1981. As the fund was transferred to an interest bearing escrow account on December 18, 1981, the amount actually available for distribution will most likely be in excess of \$2 million.

The agreement also sets forth specific five year hiring goals for females, Blacks and Hispanics in the Account Executive position, which accounts for one-third of Dean Witter's approximately 10,000 person workforce. Additionally, the ultimate goal to be achieved before the expiration of the decree were set for most of the approximately 900 other positions at Dean Witter.

In addition to the funds transferred for back pay, Dean Witter has committed to expend at least \$2.88 million for the implementation of other affirmative action efforts, including:

1. Advertising and recruitment directed at females, blacks and Hispanics;
2. Establishment of a Vice President level EEO official;
3. EEO training for all managers and supervisors, as well as any other employee who is involved in the selection/promotion process;
4. Implementation of an employees' skills inventory, designed to identify females, blacks, and Hispanics with promotion potential;
5. Implementation of a method to evaluate supervisors' and managers' contribution to EEO efforts;

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6. Implementation of a job evaluation and salary wage program to ensure uniform requirements and salary structure throughout the company's 250 branch offices;
7. Implementation of posting job vacancies throughout the company and establishment of mechanism for employees to apply for promotions;
8. Establishment and implementation of policy that persons discharging female, black or Hispanic Account Executives will have to set forth the reason for such discharge in writing.

OFFICE OF POLICY IMPLEMENTATION

Executive Order 12291 requires that each Federal executive agency publish in April and October of each year a semi-annual agenda of proposed regulations that the agency has issued or expects to issue, and current effective rules that are under agency review pursuant to the Executive Order.

Under Executive Order 12291, all notices of proposed and final rulemaking, interpretive guidelines, and general statements of policy must be cleared by the Office of Management and Budget prior to publication. OPI has been assigned the responsibility of obtaining OMB clearances under Executive Order 12291. During 1981, OPI submitted eight such documents for clearance to OMB, all of which were cleared by OMB for publication in the Federal Register.

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As I mentioned before, in August of 1981 the Vice President's Task Force on Regulatory Relief announced a list of government regulations that would be subjected to review under Executive Order 12291. This list contained two of the Commission's guidelines, namely, the Guidelines on Sexual Harassment and the Uniform Guidelines on Employee Selection Procedures. As to the Uniform Guidelines on Employee Selection Procedures, the alleged burdensomeness and the utility of the recordkeeping requirements are the subject of review. The Task Force requested that we submit workplans for the review of these guidelines by September 15, 1981. After meeting with the Task Force representatives and under my direction, our proposed workplans were delivered to the Task Force on September 9, 1981.

As a part of the Uniform Guidelines on Employee Selection Procedures review process, OPI has prepared six different survey questionnaires which are planned to be sent to employers, unions, attorneys, psychologists and public interest groups. These questionnaires have recently been submitted to the Vice President's Task Force on Regulatory Relief, the Office of Management and Budget, the Government Accounting Office, the Census Bureau and the Federal agencies who co-signed the Uniform Guidelines. Final approval of the survey questionnaires is expected in early 1982. After final approval is obtained, OPI will send the survey questionnaires to approximately 4,000 survey respondents. Also, as a part of this review, the Office of Interagency Coordination is conducting a survey of all Federal EEO Regulations to determine

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the feasibility of initiating uniform EEO recordkeeping requirement throughout the Federal government. If it were feasible, the adoption of such uniform requirements would further alleviate burdens on employers and others.

The task force of the Vice President identified the Sexual Harassment Guidelines because of public comments criticizing them for failing to provide adequate guidance to employers on such questions as to what constitutes unwelcomed sexual advances or prohibited verbal sexual conduct under the Guidelines, implementing Title VII. With respect to our review of the Sexual Harassment Guidelines, OPI has prepared a proposed Federal Register notice inviting comments on the Guidelines. In October 1981, informal interagency coordination under E.O. 12067 was completed on the proposed notice. Because of the lack of a Commission quorum in the latter part of 1981, the notice has not yet been approved by the Commission for publication in the Federal Register.

As noted in my earlier report to you, on September 1, 1981, in 46 FR 43848, the Commission published its proposed interpretations with respect to the enforcement of the Equal Pay Act. These interpretations would replace those issued by the Department of Labor at 29 CFR Part 800. Comments on the proposed regulations were to be received by November 2, 1981. The Office of Policy Implementation and the General Counsel's Office are reviewing the public comments for the purposes of finalizing these interpretations.

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On July 1, 1979, pursuant to Reorganization Plan No. 1 of 1978, 43 FR 19807 (May 9, 1978) the Commission assumed enforcement of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. 621, 623, 625, 626-633 and 634 (ADEA). Prior to the assumption of jurisdiction, the Commission commenced an in-depth review of all existing interpretations of the ADEA which were promulgated by the Department of Labor. See 44 FR 37974 (June 29, 1979). On November 30, 1979, the Commission published in the Federal Register its proposed interpretations of the ADEA. See 44 FR 68858 (November 30, 1979). On September 29, 1980 in 45 FR 64212, the Commission rescinded its earlier proposed interpretation. In August of 1981 the Commission approved the interpretation originally proposed in November of 1979 which will rescind the interpretations issued by the Department of Labor. Final interpretations were published in the Federal Register on September 29, 1981, (46 FR 47724).

The transcript of the oral testimony and written testimony submitted at the Commission's hearings on job segregation and wage discrimination held in Washington, D.C., in April of 1980, and the interim report of the National Academy of Sciences entitled "Job Evaluation: An Analytic Review," have been placed on microfiche and microfilm. These materials are available in the Commission library for public reading and Commission use. Copies of the microfiche and microfilm have also been distributed to all Commission District and Area Offices.

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In further review of this issue, the Commission prepared an interpretative memorandum, issued in the form of a ninety-day notice, specifically addressing the recent Supreme Court decision in County of Washington v. Gunther, 101 S. Ct. 2242 (1981). This notice, N915, dated September 30, 1981, which has been continued in effect, provides interim guidance in processing Title VII and Equal Pay Act claims of sex-based wage discrimination, including those raising the issue of comparable worth.

In October 1981, I testified before the House Subcommittee on Employment Opportunities, the Committee on Education and Labor. Under my direction, OPI prepared an extensive report on the subject of affirmative action which was submitted by me to the Subcommittee. The report deals with and clarifies certain misconceptions that surround this issue, and also offers some estimates of costs and benefits relating to affirmative action.

Since July 1965, the Commission has issued almost 10,000 Commission Decisions under Title VII (outside the decisions issued by the Office of Review and Appeals in the federal sector). Other than a few hundred of these Decisions that have been published in the commercial publications, most of these Decisions have been inaccessible to both the public and the Commission staff. OPI undertook the mammoth task of collecting, verifying and chronologically arranging all these Decisions. In early 1981, all Commission Decisions through fiscal year 1979 had been placed on microfiche. However, because these Decisions have not been indexed by subject matter as yet, OPI proposed that these Decisions be placed on

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a computerized data base which would enable the Commission to have efficient access to this large volume of materials. I placed a very high priority on this project. Therefore, I approved the proposal to load approximately 10,000 Commission decisions into the JURIS computerized data base, to produce a decisional index, and sanitize these decisions. Over a quarter of these materials have been delivered to the contractor for this purpose. Copies of the JURIS-produced decisional index, when completed, will be distributed to each District and Area Office to enable it to have access to all Commission decisions. When the system is fully operational, the Commission will have direct access to the JURIS data base via a terminal located in OPI. This will enable the Commission and OPI to respond promptly to Freedom of Information Act and other such requests for Commission decisions. The existence of these materials in the JURIS data base will also enable the Commission staff to do sophisticated research in Commission decision precedents in evolving areas of the law.

The Office of Policy Implementation issued 29 decisions during FY 81. Some of these decisions reiterated prior EEOC policy; however, most of them set forth new policies in such areas as seniority, sexual harassment, affirmative action, religious accommodation, tenure, and speak English-only rules. Further, OPI returned to field offices 652 charges which originally had been called into headquarters for a review of non-CDP issues. OPI received 487 charges containing non-CDP issues in FY 81, more than one-half of which involved the issue of sexual harassment.

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The Office of Policy Implementation began a project to computerize all of the charges it receives. This project should be completed in the second quarter of FY 82 and will allow OPI to give the field offices status reports on the charges they have pending in that office.

As you know, the Commission's success in investigating and resolving charges of discrimination depends in large part on the effectiveness of the EEOC Compliance Manual in providing up-to-date guidance on charge processing and on Commission policy. As presently published, Volume I (procedural) and Volume II (interpretative) of the Compliance Manual deal only with Title VII matters. However, both Volumes are being revised not only to update Title VII material but, also importantly, to include guidance on the Equal Pay Act of 1963 (EPA) and the Age Discrimination in Employment Act of 1967, as amended (ADEA).

The Office of Policy Implementation is currently drafting, reviewing, and/or editing amendments to the existing Title VII part of Volume I on an as-needed basis. It is also reviewing, editing, and finalizing proposed EPA and ADEA sections for Volume I. Of these, the Commission has already approved revised §15 on Title VII, §§101 through 184 on EPA, and §§201 through 284 on ADEA.

In addition, OPI is preparing a completely revised Volume II which will cover all three statutes. Sections dealing with Title VII which have been approved by the Commission include: §601, Introduction; §603, Identifying and Processing Charges which Raise Issues Not Covered by a Commission Decision Precedent;

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§604, Theories of Discrimination; §607, Affirmative Action; §615, Harassment; §619, Grooming Standards; and §622, Citizenship, Residency Requirements, Aliens, and Undocumented Workers.

OFFICE OF GOVERNMENT EMPLOYMENT

During my earlier report it was noted that in January 1981, EEOC issued advance instructions to all Federal agencies for the implementation of the Multi-Year Affirmative Action Plans through our Management Directive (M.D. 707). This plan covers the period from FY 82 to FY 86. Some problems arose with respect to the issuance of M.D. 707 but after several meetings with National Achieves Record Services and OPM personnel, the matter was temporarily resolved and clearance for our M.D. 707, as amended by the June 15 Memorandum was finally granted. On August 12, 1981, I once again wrote to all Federal agencies requesting them to complete their planning at the first possible moment to meet the operative date of October 1, 1981.

Another activity of our Office of Government Employment was the issuance of our Management Directive (M.D. 710) with Federal Affirmative Action (FAA) instructions to Federal agencies on their affirmative action accomplishment report for minorities and women for FY '81. These will be the last instructions concerning the two years' transition period which allowed agencies to "learn" the new planning process, as we moved away from the annual planning concept to the multi-year approach (M.D. 707). Handicapped Week, thus in this, the International Year of Disabled

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Persons, we took the opportunity to reflect on problems of the handicapped in all spheres of the republic.

The Department of Labor reports that there are 7.2 million severely disabled persons of working age, or about 6% of the national work force.

OPM's Central Personnel Data File (CPDF) indicates that in 1978 only 0.76% of the total Federal non-postal work force were severely disabled persons. There is gross under-representation of severely disabled persons throughout the Federal government, in all occupations and at all levels.

The Office of Government Employment has also issued Management Directives (M.D. 708 and 709) dealing with the handicapped. The former transmitted instructions for reporting the accomplishments of FY 80 affirmative action programs and for the program plans for the last half of FY 81.

The latter, although not a multi-year plan, moves to a longer period of planning. It covers the accomplishment reports for FY 81, the affirmative action program plans for FY 82 and the accomplishment report covering the same period.

During the development of M.D. 709, an issue was raised concerning our authority to handle the Disabled Veterans Program (Section 403 of the Vietnam Era Veterans' Readjustment Assistance Act of 1974) together with the Handicapped Individuals Program (Section 501 of the Rehabilitation Act of 1973). The President's Reorganization Plan No. 1 of 1978 transferred to EEOC the

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responsibility for administering several affirmative action programs, but no mention was made of Section 403 of the Veterans Assistance Act. Later, when Congress amended this same Act, it did not substitute EEOC for the Civil Service Commission as the agency with authority to handle the program. However, there has been a generally implied understanding of all the parties concerned that EEOC was to also handle this program. The situation was complicated by the fact that the Act requires each agency to include in its affirmative action plan for the hiring, placement, and advancement of handicapped individuals (Section 501), a separate specification of plans for the disabled veterans. Once the issue was raised, the Office of Government Employment met with OPM staff to discuss the problem while the legal offices of both agencies developed opinions. OPM staff gave us to understand that they wanted EEOC to continue with the program; however, the Director of OPM announced that OPM was going to take charge of the program. Meanwhile, our proposed M.D. 709 contains instructions for the disabled veterans affirmative action program. We finally reached an agreement with OPM by which EEOC will continue with this program during FY '82 but advising agencies through our M.D. 709 that thereafter OPM will assume responsibility for the program.

The Office of Government Employment has been conducting other activities such as the development of a staff, a system for the review of agency plans, Headquarters-Field coordination, desk-officer responsibilities for our programs, and a consultation in

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September in Dallas with our Federal Affirmative Action Field Managers, the District Directors of the ten Federal Regions and Headquarters personnel. In the fourth quarter, we initiated on-site program reviews for the 501 (handicapped) effort. This will be expanded in 1982 to cover the sex and minority program.

OFFICE OF INTERAGENCY COORDINATION

The Commission's coordination role, under Section 715 of the Civil Rights Act of 1964 and Executive Order 12067, has been extremely active during 1981.

In the crucial area of review of agency regulatory issuances, the Commission met and was able to issue a timely response both to OFCCP's Advance Notice and Notice of Proposed Rulemaking dealing with the affirmative action regulations for Federal contractors. I strongly endorsed the need for regulatory reform and paperwork reduction, and expressed a desire to negotiate a few of the substantive changes proposed by OFCCP. OFCCP expects to coordinate its preliminary proposals on the subject with the Commission in late January.

In July 1981, the Commission agreed with a significant stipulation to OFCCP's proposed withdrawal of its broad regulation dealing with payment by contractors of membership fees to private clubs which discriminate in their membership policies. The Commission recommended that OFCCP amend its withdrawal statement to include a commitment to investigate instances in which payment of club dues results in illegal discrimination. OFCCP

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has yet to submit to the Commission a proposed final decision on this issue. While the Commission has successfully negotiated a joint equal employment opportunity poster with OFCCP and DOJ it has been unable to move forward with the implementation of the EEOC/OFCCP Memorandum of Understanding because of OFCCP's heavy program of regulatory reform. I recently wrote to the Secretary of Labor urging him to accelerate his agencies progress in designing procedures to fulfill the promise of the Memorandum of Understanding.

Regulatory proposals also were received from a large number of other agencies, including the Department of Education, the Office of Revenue Sharing, the General Services Administration, the Environmental Protection Agency, and the Office of Management and Budget. Several issuances were submitted by the Office of Personnel Management, the most consequential of which was a complete revision of its regulations governing the operation of state merit system programs. In addition, I have written to the Secretary of Health & Human Services concerning the failure of that agency to include appropriate equal employment provisions in the proposed regulations it published to govern its new block grant programs. In order to further cooperate among agencies in the design of equal employment regulatory policy, the Commission will issue a quarterly bulletin of agency issuances under development.

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As a result of a dialogue I initiated with OMB, an agreement was reached in August which strengthens the effectiveness of Executive Order 12067 by requiring that EEOC complete its analysis of agency Notices of Proposed Rulemaking, final rules and information collection instruments under Executive Order 12067 prior to their submittal to OMB for review under Executive Order 12291 and the Paperwork Reduction Act. Shortly thereafter, I sent a memorandum outlining the new procedures to the heads of all federal agencies. The Commission is now prepared to publish final changes to its coordination regulations to conform them to the provisions of the agreement. The Commission worked closely with the Office of Management and Budget on two other matters. It has reviewed the relevant portions of agency budget estimates and supporting data to ensure that they are complete and appear factual, and is in the process of conducting a detailed assessment of the estimates and data provided by three major cabinet departments. In conjunction with OMB, the Commission has investigated charges of duplication of compliance activity by EEOC, the Office of Revenue Sharing and the Department of Housing and Urban Development. As a result of this analysis, HUD is revising its data collection instruments.

Important activities now underway include a study of methods for improving the relationship between state human right agencies and Federal equal employment activities. In addition, an options paper outlining various approaches to the need for training of Federal equal employment officials was circulated to the agencies

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for comment. Commission staff also are reviewing the possibility of revising the equal employment provisions of the regulations dealing with treatment of the handicapped. This analysis is being conducted in conjunction with the Department of Justice's revision of the government wide regulations prohibiting discrimination against the handicapped in the provision of Federal and federally financed services.

BUDGET

When you were here before we were confronted with the gloomy prospect of having to operate with the agency on a substantially reduced budget of \$123,542,000 which would have caused major RIF's and furloughs, and devastating program overhaul. Now things are much better and I am indeed moderately optimistic. The changes in the federal budget with the resulting changes in the Commission's budget emphasize the need for planning, establishing options and alternatives within our priorities and a total awareness of cost vs charge resolution for Title VII, Age, Equal Pay, Federal Sector Complaints and the State and Local Grants Program.

During the 1st quarter of FY 82, I attended several meetings at OMB to present and defend the Commission's 1982 and 1983 budget requests. As a result of these meetings, I have reason to be optimistic and to a large extent pleased, although not completely satisfied with the end results.

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I have discussed these concerns with you before and at this time I am awaiting the President's pronouncement in his budget to the U.S. Congress sometime this month or in February.

OFFICE OF REVIEW AND APPEALS

Fiscal 1981 was the second full year of operations for the Office of Review and Appeals. The principal activity during FY 81 was to process as many cases as possible within the severe professional and clerical constraints of the hiring freeze. The office continued to apply private sector precedent to federal sector decisions towards the end of FY 81 the Commission was planning to add ORA decisions to the JURIS system and to begin a compliance program. Our budgetary posture, however, may temporarily affect resources for those two areas.

Appeals pending on 9/30/80	1907
Appeals docketed during FY 81	3175
Decisions written during FY 81	2611
Appeals pending on 8/30/81	2471

OFFICE OF EQUAL EMPLOYMENT OPPORTUNITY

Our responsibility to uphold the principles of equal employment opportunity and to aggressively enforce the anti-discrimination jurisdictions with which we are charged must begin at home. We cannot expect the employer community to hold stock in the Commission's activities if our own employees are left wanting or their rights not fully protected.

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In our agency that task is particularly exacting since most of our professional employees could be considered experts in the jurisdictions which we enforce. A difficult task indeed, yet one which, as the lead civil rights enforcement agency, we must meet and lead the way for all employers.

In Fiscal year 1981 the Office of EEO complaints of discrimination for processing increased. That fact, coupled with an ever shrinking EEO staff, has led that office to seek alternative methods in processing its caseload. In close consultation with various headquarters offices, the District Directors EEO Subcommittee and the union, the Office of EEO has developed a pilot program for processing complaints using rapid charge processing techniques. The cornerstone of the pilot program will be a more intensified effort to settle or resolve complaints at the earliest possible stage. Once underway, the pilot will be tested on a trial basis in a limited number of offices. If successful, this program could have a far reaching impact throughout the Federal community.

Recently, that office has issued an Agency Directive on the prevention and elimination of sexual harassment in the workplace. Although less than 3% of all complaints filed with the Office of EEO in FY 81 alleged sexual harassment, it is nonetheless a subject which we as managers must be fully prepared to deal with should the need arise.

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It should be noted that in several more days we will mark the anniversary of the late Dr. Martin Luther King's birth, January 15, 1929, with appropriate observances. Also, next month the Federal community will commemorate National Black History Month. You will be receiving appropriate materials shortly to assist you in planning meaningful observances.

Finally, the Office of EEO has recently issued instructions to all field and headquarters offices for the development and implementation of the agency's multi-year affirmative action plan which will cover a period from FY 81 thru FY 86. I think we all realize that, given our present fiscal posture and staff limitations, new hiring will be extremely limited during this period. However, affirmative action planning during such times can present an ideal opportunity for utilizing existing staff through job enrichment programs, development of bridge positions, implementing the Commission's upward mobility program and taking full advantage of the part-time employment program.

OFFICE OF PUBLIC AFFAIRS

This office has been one of the busiest in the agency since September. We have issued 10 publications and several news releases. On January 28th and 29th, the Office of Public Affairs is coordinating a symposium for the elderly in Los Angeles at the Convention Center. We expect an attendance of 1500. In addition the 15th Annual Report is at the press, the 16th Annual Report is being prepared for the first draft. This is signi-

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ficant when you take in the fact that since May 1981 four annual reports have been issued and with the production of the 16th Annual Report EEOC will be current in its annual reports to Congress. The Office of Public Affairs during this three month period has produced five training films in addition to EEOC Highlights which have been distributed to various offices. I am glad to report that we are current on our in-house publication MISSION, the staff is currently working on the next edition to be published on March 1st. The Office of Public Affairs is responding to mail inquiries within a five day time frame work while in May there was a 2,000 backlog in the response to mail inquiries.

LITTLE KNOWN OR RECOGNIZED FACTS

The Commission has one of the largest constituency groups of any agency in government. Specific data derived from the Bureau of Labor Statistics publication "Employment and Earnings, January, 1981", reflect the following:

Civilian Labor Force (age 16 and above)

Total CLF	104,719,000
Total Female	44,574,000
Black --	10,597,000
Hispanic --	5,484,000
Other Non-White --	<u>1,950,000</u>
Total Minority	18,031,000

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Black Female --	5,098,000 (est.)
Hispanic Female --	2,123,000 (est.)
Other Non-White Female --	<u>931,000 (est.)</u>
Minority Female	8,152,000 (est.)
Non-Minority Female	36,422,000 (est.)
Minority Male	9,879,000 (est.)
Female, age 40-69 --	16,247,000
Male, age 40-69 --	<u>23,492,000</u>
Total, Age 40-69	39,739,000
Total CLF	104,719,000
Non-Minority males age 16-39 & 70 +	<u>30,406,000 (est.)</u>
Total Women, Minorities & Persons Age 40-69	74,313,000 (est.)

Based on the above, the total civilian labor force averaged almost 105 million during 1980. Women, minorities and persons age 40 to 69 represented more than 74 million of this total. In particular, there were approximately 45 million women, 18 million minorities, and 40 million workers age 40 to 69 in the nation's civilian labor force in 1980.

A conservative estimate suggests approximately 70% of the total CLF is employed at employers, both public and private, covered by Title VII. This factor could therefore be applied to the above figures to obtain estimates of employment at Title

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Distribution of Title VII Charge Receipts By Bases
FY 76 - FY 80

<u>Year</u>	<u>Race</u>	<u>Religion</u>	<u>Sex</u>	<u>National Origin</u>	<u>Color</u>
1976	53.9%	2.4%	31.1%	10.5%	2.0%
1977	55.2%	2.3%	30.1%	10.9%	1.5%
1978	55.7%	2.1%	30.0%	11.2%	1.0%
1979	52.0%	6.2%	30.1%	10.6%	1.1%
1980	52.6%	2.2%	33.4%	10.2%	1.6%

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VII-covered employers -- e.g., for women it would be 31.2 million and for minorities 12.6 million.

Unfortunately, recent generalized references to the Commission by political, civil rights and business community voices tend to suggest that critics only view us in a white male vs black male context. However, it is clear that statistics support our position that under Title VII of the Civil Rights Act of 1964, the Equal Pay Act, the Age Discrimination in Employment Act the Rehabilitation Act, and Executive Order 12067 we touch on the lives of 100,000,000 voting Americans.

A MATTER OF PRIORITY

One of the top priorities of this Commission for FY 82 and FY 83 has to be improvement in our financial management. Early in my tenure as Acting Chairman, I began to suspect that the agency had serious problems in financial management and procurement activities. These suspicions were verified by both reviews and audits by our internal audit staff and by GAO staff which had been requested to review our financial and accounting operations. The Acting Executive Director, Ms. Issie Jenkins and I have spent an unusual amount of management time in the financial and budget area. There is no doubt that this agency has problems, and all of us have contributed to them by not following proper procedures and paying enough attention to the administration of this responsibility in each of our offices. These problems cannot and must not continue. We are being looked

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at by oversight committees, by GAO, and others, and will continue to be looked at until we have corrected our deficiencies.

The Acting Executive Director has set in motion a number of corrective actions and controls to correct our problems. She has my full support. No longer can we tolerate failure to follow prescribed procurement procedures, failure to properly document expenditures of funds, failure to timely initiate payments for vendors, failure to promptly cuff expenditures, and failure to timely reconcile records. Nor will we tolerate failure by headquarters operations to provide timely feedback to office directors on errors and inadequate documentation. We will provide as much guidance as possible, and training to help you and your office meet these demands; we will also, however, take appropriate disciplinary action where procedures are not followed, or where they are circumvented. Office Directors are directly responsible for supervision of staff carrying out these responsibilities, and Office Directors will be held personally accountable. It can be no other way. As we attempt to make our financial management and accountability sound, I will count on your cooperation. You and your staff have shown what you can do in the compliance and litigation area. It is time to show our efficiency in the financial management area.

CONCLUSION

In conclusion, I wish to thank the District Directors and the Regional Attorneys for your continued support and the dedication you continue to give to EEOC. Political appointees such as

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me come -- hopefully to do their job without selling out for fame or gain -- and then we leave the government to the professional managers, such as yourselves. You, the professionals of government remain. You are the government, regardless of your political persuasion. You are the best friends that the public have -- regardless of what people or politicians say about you. You keep the light of freedom burning so that the people can elect the leadership of a freedom loving society. On behalf of the Administration, I want to thank you for the job that you are doing.

I am but a person like you. But, I respect each one of you for your dedication to principle and your loyalty to the mission of EEOC. If you ever lose your commitment to EEOC, I trust that you will have the courage to leave the agency rather than to sell out at the expense of millions of restless hearts and wounded souls for whom the people, through the Congress enacted, Title VII, and allied statutes.

Finally, I want to thank Commissioner Armando Rodriguez for his counsel and support. He is a man of integrity and dependability. Commissioner Rodriguez must be given as much credit as anyone for his cooperation during the period that EEOC was quorumless. His daily inquiries and his wit have been exceedingly important to me.

J. Clay Smith, Jr.

J. Clay Smith, Jr.

COMMISSION RESOLUTION

From October 1, 1981, to December 21, 1981, the Equal Employment Opportunity Commission was without a quorum, as set forth in the statute, and it became the responsibility, under a delegation of authority granted September 25, 1981, of Acting Chairman J. Clay Smith, Jr., in consultation with Commissioner Armando M. Rodriguez, to act upon those matters which would normally have been acted upon by the Commission as a collegial body. To the credit of Acting Chairman Smith, during this period of absence of a quorum, the first time in the Commission's history, the Equal Employment Opportunity Commission continued to operate smoothly and carry out its compliance and enforcement responsibilities under Title VII of the Civil Rights Act of 1964, the Equal Pay Act, the Age Discrimination in Employment Act, the Rehabilitation Act, and Executive Order 12067.

Notable among the accomplishments of the Acting Chairman during this period are:

- (1) The successful closure of Fiscal Year 1981 in which Commission productivity was at an all-time high. Benefits to charging parties were increased, service to charging parties, employers, and other entities was improved by reducing the time for processing complaints: all of which furthered the public interest in eliminating employment discrimination.

Specific accomplishments for Fiscal Year 1981 included the securing of relief for 38,000 persons: a 60% increase in benefits obtained over the previous year; a 25% increase in closure of charges, from 57,000 to 72,000 charges closed: a 4% increase in charge receipts from Fiscal Year 1980, up from 56,000 to 59,000 charges, filing of 368 cases in federal court, up from 326 in Fiscal Year 1980; and a 23% increase in litigation settlements.

- (2) The successful defense of the Commission's budget request for Fiscal Year 1982. Through his untiring and relentless efforts at OMB, the White House, and before Congressional Committees, he effectively and repeatedly presented the Commission's need for both budget and staff to adequately carry out its mandate to eliminate employment discrimination. As a direct result of his personal involvement and direction of the preparation of numerous written justification documents, the Commission's budgetary mark was increased from an original OMB mark of \$123,000,000 and 3000 staff years, to \$140,000,000 and 3376 staff years, alleviating the present need for severe reductions in force and enforcement program cuts.

In addition, at his direction, cost reductions in administrative and support costs have been mandated in an effort to save resources for program operations and to save staff necessary to carry out those programs.

- (3) The effective representation of the Commission's views on policy matters before Congressional Oversight Committees and in interagency coordination matters. On October 1, 1981, Acting Chairman Smith submitted a written statement to the Subcommittee on Civil Service of the House Committee on Post Office and Civil Service, providing the Commission's views on Equal Employment Opportunity in the Federal Sector; and on October 7, 1981, the Acting Chairman testified before the Subcommittee on Employment Opportunities of the House Committee on Education and Labor, on Commission Policy with respect to Affirmative Action.

During this period he has also forcefully presented the Commission's position in issues raised by the Office of Federal Contract Compliance Program's proposed Regulations and on issues regarding sexual harassment and the Uniform Selection Procedures Guidelines.

- (4) The careful and close attention to Commission financial operations to address deficiencies identified by requested audits and reviews. As a result, closer supervision, accountability, and necessary staff training are being implemented.
- (5) The expeditious consideration of those matters involving statutory deadlines, or involving time frames the lapse of which could have been viewed as unreasonable should the Commission have failed to act. As a result of his swift and prudent actions, he therefore, preserved the rights of charging parties and complainants, and lessened the build-up of potential monetary liability of employers.

For the efforts and actions described herein, and for all of the activities necessary to keep the Commission not only operational, but effectively carrying out its mandate, be it resolved that Acting Chairman J. Clay Smith, Jr., be commended for his unprecedented effort on behalf of equal employment opportunity.

Be it also resolved that his fellow Commissioners and staff of the agency are appreciative of the selfless manner in which he has conducted the affairs of the agency during a period of uncertainty regarding resources and leadership; seeking always to bring assurances of stability and positive direction. At a time when circumstances could have led to a decline in morale, and a virtual standstill in operations and programs, under his leadership there has been no decline in the Commission's efforts to address the problems of employment discrimination.

Signed: This 12th day of January, 1982

Armando M. Rodriguez, Commissioner

Cathie A. Shattuck, Commissioner