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THE WHITE HOUSE
WASHINGTON

February 14, 1978

Bob Lipshutz
The Vice President
Stu Eizenstat

The attached was returned in
the President's outbox. It is
forwarded to you for appropriate
handling.

Rick Hutcheson

cc: Hamilton Jordan
Frank Moore
Jody Powell
Jack Watson
Jim McIntyre
Bunny Mitchell

RE: CIVIL RIGHTS REORGANIZATION

THE PRESIDENT HAS SEEN.
THE WHITE HOUSE
WASHINGTON

February 13, 1978

*ok
proceed
JC.*

MEMORANDUM FOR: THE PRESIDENT
FROM: THE VICE PRESIDENT
STU EIZENSTAT
SUBJECT: Civil Rights Reorganization

*afz
Stu*

Pursuant to your request, we have made a further evaluation of the political status of the civil rights reorganization plan. We now report to you our findings and resubmit the plan for your decision.

Presidential action on reorganization of the equal employment opportunity enforcement programs is extremely important to many of the major black organizations which see this as the Administration's major civil rights initiative. Civil rights groups generally support the OMB proposal and expect it to be the Administration's first reorganization plan of the year. A change in this agenda will evoke strong criticism from blacks and liberals for what they believe to be a commitment from you to send up plans for reorganization early this year.

Congressional Picture

We convened a meeting of some key Congressmen and Senators to discuss the Civil Rights Plan Thursday. Senators Williams, Ribicoff and Javits and Congressman Hawkins attended. Williams and Javits initially took the position that their Human Resources Committee should hold a hearing on the plan and then make recommendations to Ribicoff's Government Affairs Committee. We have convinced Ribicoff this would usurp his jurisdiction and establish a dangerous precedent for future reorganization plans. We believe Williams and Javits recognize this and will act accordingly.

Substantively, Ribicoff was non-committal, though certainly not hostile. His key staff aide generously supports the plan proposed.

Williams and Javits, who are not on the Government Affairs Committee, were largely positive but concerned about shifting Equal Pay Act enforcement from DOL to EEOC on the ground that it was well administered where it was and might impose an additional administrative burden on EEOC it cannot handle. Javits said we could "break the back of a willing horse" by putting too much in EEOC. They probably were both reflecting the AFL-CIO's opposition to this part of the plan.

Congressman Hawkins was most concerned about the possible future shifting over of contract compliance to EEOC. Our plan need make no commitment on this. Now it simply consolidates contract compliance in DOL -- a position the Senators and Hawkins all enthusiastically supported.

Congressman Parren Mitchell enthusiastically supports the plan. Congressman Brooks, Chairman of the House Government Operations Committee, has not committed himself but is not known to have substantial objections with the plan.

Over the past several weeks, the OMB reorganization has held extensive briefings with staff members of the House and Senate Government Operations Committees as well as with dozens of staff members having particular interest in civil rights initiatives.

These staff contacts suggest there is a great amount of sympathy for the concept of moving toward a single agency approach for equal employment enforcement and that there is broad support for the thrust of the proposal. In many instances there already is strong support. Some concerns have been expressed. A few felt that labor opposition would have some impact on their vote. Several felt it would be essential for us to be able to document internal reforms underway at the EEOC, while still others suggested that interest group support (i.e., women's groups, aging groups, etc.) would be important.

Interest Group Positions

Civil Rights Organizations: Major Black civil rights organizations support the plan, as was made clear at your December 14, 1977 meeting with Black leaders. Mexican-American and Puerto Rican organizations also have endorsed it.

Women's Groups: Most major women's organizations, including the Women's Political Caucus and NOW, support the plan. One exception is the Council of Labor Union Women, an organization with close ties to the AFL-CIO, which objects to the shift of Equal Pay enforcement to EEOC.

Age Groups: Most major organizations have endorsed the plan.

Organized Labor: Stu met personally with the AFL-CIO after your directive. The AFL-CIO supports all aspects of the plan except the proposal to transfer enforcement of the Equal Pay Act from Labor to the EEOC. They would also oppose any further commitment to shift the consolidated contract compliance we propose for DOL, to EEOC in 1981. We need not make this commitment in the plan -- and in our estimation should not. There is evidence of division within organized labor on this question from high ranking Black officials and from women's rights advocates. The Coalition of Black Trade Unionists, an organization of Black trade union officials, has endorsed the plan. Labor will not oppose the entire plan even if it includes the Equal Pay Act transfer. If they seek to have the Equal Pay Act transfer struck during the amendment period, they may not mount a major offensive, since they would be pitted against Blacks and women. Even if it becomes necessary for us to make such an amendment, it would not be fatal to the plan. The UAW supports the plan as is, as does the American Federation of Government Employees.

Business Groups: Groups such as the Business Roundtable and the Equal Employment Advisory Council have reservations about portions of the plan. They are encouraged by reforms at the EEOC, however, and generally regard the plan as moderate. Our soundings at the NAM indicate the possibility of a favorable reaction once the plan is announced. There is unlikely to be strong vocal business opposition to the plan since it goes a long way toward reducing some of the regulatory burdens about which business has complained in the contract compliance area, although they will not want to strengthen EEOC's hand, in general.

Agency Views: The federal agencies which oppose portions of the plan generally do so because they lose some of their jurisdiction, particularly in the contract compliance area. This concern is endemic to all reorganizations. The goal of consolidated equal employment enforcement necessitates these transfers. We will be glad to set up a meeting with certain Cabinet officers who have objections if you desire.

Summary

Support for the plan far outweighs opposition which appears centered only on the transfer of Equal Pay Act enforcement to EEOC. Additional support can be expected once you make a final decision. Already there has been a lead editorial in the New York Times supporting the plan (attached).

Announcement of the Plan

We would like to announce the plan on February 23 at a major ceremony attended by representatives of civil rights, women's business, and labor groups. The East Room is available for the ceremony and the event has been proposed for inclusion on your calendar. A major ceremony of this kind will provide an opportunity for you to emphasize your commitment to civil rights enforcement, to dramatize the fulfillment of your promise to reorganize the equal employment enforcement programs, and to launch the plan on its passage through Congress. OMB's reorganization will need about a week to put this ceremony together.

Attachment

cc: Hamilton Jordan
Frank Moore

THE NEW YORK TIMES, FRIDAY, FEBRUARY 3, 1978

The New York Times

Founded in 1851

ADOLPH S. OCHS, *Publisher 1896-1935*
 ARTHUR HAYS SULZBERGER, *Publisher 1935-1961*
 GEVIL E. DRYFOOS, *Publisher 1961-1963*

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Clearing the Job Rights Thicket

Even a few years ago, the thought would have sounded lunatic: too many Federal civil rights agencies working against job discrimination? It had taken advocates of equal employment opportunity decades to eke out an executive order here, part of a statute there. They took their gains the only way possible, piecemeal. But then civil rights gains accelerated; the inconceivable is now fact. There are some 40 separate Federal equal employment laws and regulations; they are administered by 18 different agencies. The result is fragmentation and frustration that burden employees and employers alike. Any day now, the Carter Administration is expected to propose a major reorganization remedy. It is a sensible plan and it is needed.

The present thicket of agencies does have rough, if dubious, logic. A case involving a private employer is handled by the Equal Employment Opportunity Commission. One involving a private employer serving as a Federal contractor is handled by the Labor Department's Office of Federal Contract Compliance. One involving the Federal Government as an employer is handled by the Civil Service Commission. And one involving state and local governments as employers is handled by the Department of Justice. The trouble with the logic is that the lines often blur.

The red tape for employers is typified by a classic case involving the seniority system in a lumber plant in Louisiana. The E.E.O.C. worked out a settlement. Dissatisfied, the Office of Federal Contract Compliance worked out a new one. Then the Justice Department, still dissatisfied, went to court, prompting an appellate judge to comment: "We cannot help sharing Crown-Zellerbach's bewilderment at the twists and turns indulged in by government agencies in this case."

The problem for employees can be illustrated with a hypothetical case. Assume that a middle-aged black woman, who works in a defense plant, feels she has

been repeatedly and unjustly passed over for promotion. Does she turn to the Defense Department's contract compliance office? Or to some state or local agency? If she thinks the problem primarily involves her age, the place to go is the Age Discrimination Division of the Labor Department. If she sees the cause in her race or sex, then the E.E.O.C. is the door to knock on. How much bureaucratic sophistication should be demanded of a citizen?

In theory, all these functions ought to be consolidated and the Equal Employment Opportunity Commission would be the obvious place. In practice, that has been impossible. The commission, poorly designed and managed, built up a backlog of 130,000 cases. Adding new responsibilities was unthinkable.

Now, however, the commission has an able and vigorous director, Eleanor Holmes Norton, the former head of New York City's Human Rights Commission. In just a few months, she has reshaped the agency, begun cutting down the mountainous backlog and has won the President's support. His new budget boosts the agency's funds by 43 percent. Consolidating the enforcement of all job rights in the commission has become thinkable after all.

The Administration's plan would build step by step toward that goal. Various enforcement powers are first to be gradually consolidated in the E.E.O.C. and the Contract Compliance Office. Then, after two years, depending on a further White House assessment, they would be merged in an enlarged E.E.O.C.

Such reorganization plans always excite opposition from agencies concerned for their turf. Beyond that, the plan requires reducing the size of (but not eliminating) civil rights offices in many Federal agencies. But these seem marginal problems. The Administration deserves credit for the care with which the plan has been devised. Congress should let it be tried.

THE WHITE HOUSE
WASHINGTON

2/6/78

Mr. President:

OMB requests immediate action on the attached, so that it may get to the Hill before Congress goes into recess, on February 10.

In addition to the agency and staff comments summarized by Eizenstat and Lipshutz, Congressional Liaison, Bunny Mitchell and Dick Pettigrew also concur with the reorganization recommendations.

Tabs A and B are to be found in the black notebook.

Rick

THE PRESIDENT HAS SEEN.

THE WHITE HOUSE
WASHINGTON

February 6, 1978

*Stu - This is a
terrible political
prospect. Get with
Ham & Fritz. Take
your time. Try to
work it out.*

J.C.

MEMORANDUM FOR: THE PRESIDENT
FROM: STU EIZENSTAT *Stu*
BOB LIPSHUTZ *BJ*
RE: OMB's Proposed EEO Reorganization Plan

In this memorandum we summarize recommendations submitted by OMB for reorganizing equal employment opportunity laws and programs, and agency comments on the recommendations. The recommendations themselves are elaborated in more detail in a report attached to Jim McIntyre's memorandum, attached at Tab A. Individual agency comments are compiled at Tab B.

We concur in each of OMB's recommendations, although, as noted below, we would qualify or supplement some of them in certain respects.

I. THE CURRENT STRUCTURE

Fifteen agencies today exercise important responsibilities under statutes, Executive Orders and regulations relating to equal employment opportunity:

EEOC

- The Equal Employment Opportunity Commission (EEOC) enforces Title VII of the Civil Rights Act of 1964, which bans employment discrimination based on race, national origin, sex or religion. EEOC acts on individual complaints and also initiates private sector cases involving a "pattern or practice" of discrimination.

DOL

- The Department of Labor and eleven other agencies enforce Executive Order 11246, which proscribes discrimination by government contractors and requires them to engage in affirmative action. Labor's role today is to coordinate the efforts of the eleven "compliance agencies."

Labor also enforces the Equal Pay Act of 1963, which prohibits employers from paying unequal wages based on sex, and the Age Discrimination in Employment Act of 1967, which forbids age discrimination against persons between the ages of 40 and 65.

AG

CSC

- . The Department of Justice litigates Title VII "pattern or practice" cases involving public sector employers -- state and local governments. Justice also represents the government where lawsuits are required against recalcitrant Federal contractors and grantees.
- . The Civil Service Commission (CSC) enforces Title VII and all other nondiscrimination and affirmative action requirements for Federal employment. CSC both rules on complaints filed by individuals and monitors affirmative action plans submitted by the other Federal agencies.
- . While not itself an agency, the Equal Employment Opportunity Coordinating Council -- comprised of representatives from EEOC, Labor, Justice, CSC and the Civil Rights Commission -- is charged with coordinating the Federal EEO enforcement effort, particularly avoiding overlap and inconsistent standards.
- . In addition to the agencies identified, others enforce various statutorily imposed EEO requirements applicable only to entities participating in specified agency programs; e.g., Treasury administers the anti-discrimination prohibitions applicable to recipients of revenue sharing funds.

II. OMB'S PROPOSAL

OMB recommends a series of consolidations and transfers with the goal of eventually giving EEOC primacy in the field of EEO enforcement (see chart at Tab C). The plan will result in reducing from fifteen to three -- EEOC, Labor and Justice -- the number of Federal agencies having major EEO responsibilities. Specifically, OMB proposes:

- . Consolidation of the contract compliance program -- now housed in Labor and eleven "compliance agencies" -- into Labor effective October 1, 1978. OMB further suggests that you commit to decide, no later than January 1981, whether to shift the consolidated Labor program to EEOC.

- . Shifting enforcement of EEO in the Federal government from CSC to EEOC effective October 1, 1978.
- . Shifting responsibility for enforcing both the Equal Pay Act and the Age Discrimination Act from Labor to EEOC effective July 1, 1979.
- . Abolition of the Equal Employment Opportunity Coordinating Council and transfer of its duties to EEOC on July 1, 1978. Among other things, EEOC would coordinate the statutory EEO efforts of grantmaking agencies such as Treasury (revenue sharing), but those agencies would retain their present responsibilities.
- . No change in Justice's role.

III. RECOMMENDATIONS ON MAJOR ELEMENTS OF PLAN

We generally concur with OMB's basic proposal and most of its details. Given EEOC's history, the decision to shift increasing amounts of responsibility to that agency is risky, but civil rights groups support this emphasis and EEOC itself -- under Eleanor Norton's leadership -- appears to be making progress. EEOC has established, and to date adhered to, an agenda for management improvement which promises to make the agency a far more effective performer. The agenda is set out at Tab D. OMB recognizes the problems and its idea of granting EEOC new responsibilities on a phased basis is sensible.

While EEOC is considered by GAO to be an independent, non-Executive agency, Justice and EEOC itself disagree. The message will contain a statement noting that EEOC is subject to Executive discipline. For that reason it is possible to transfer a number of Executive Branch functions to the Commission, and EEOC can properly assume the principal role for Executive Branch enforcement of EEO.

1. Consolidation of Contract Compliance Responsibility at Labor (pages 20-22 of OMB Memo). The Department of Labor now has responsibility but no real authority to coordinate the efforts of the eleven "compliance agencies" administering Executive Order 11246. OMB recommends consolidation of enforcement, as well as coordination, responsibility in Labor. Business (e.g., Equal Employment Advisory Council), labor (AFL-CIO), and most civil rights groups concur.

Agency Comments: EEOC and Justice support the consolidation. The compliance agencies which lose their responsibilities (particularly HEW, Treasury, Energy, HUD and Interior) are opposed, generally contending simply that they know "their" contractors and are better suited to deal with them. For example, Treasury feels that Labor is accustomed to regulating blue collar industries and will not be sensitive to the peculiar needs of financial institutions. The fact is, however, that many of the compliance agencies have not enforced the Executive Order effectively to date. HEW raises a narrower point, arguing that the peculiarities of its several statutory responsibilities mean that a transfer will result in more duplication in the field of higher education. HEW's point has some validity, but we believe that effective coordination under EEOC's guidance can resolve these difficulties (see pages 5-6 below).

We recommend that you approve the consolidation, as proposed by OMB, effective October 1, 1978.

Approve consolidation
(we, OMB recommend)

Disapprove

2. The Commitment to Decide by January 1981 Whether to Shift the Consolidated Contract Compliance Program from Labor to EEOC (pages 22-23 of OMB memo). OMB proposes that you commit to decide, no later than January 1981, whether to transfer the newly consolidated contract compliance program from Labor to EEOC. Such a statement could be interpreted as a presumption that such a shift will occur.

Business groups, particularly the Business Roundtable, oppose any commitment to shift contract compliance responsibility from Labor to EEOC. The AFL-CIO also opposes such a statement. Civil rights groups are split on the issue and tend to favor a commitment but generally do not see this as a major concern.

Agency Comments: EEOC concurs with OMB that there be a presumption in favor of a shift from Labor to EEOC in 1981. Labor and Justice disagree. Labor believes that EEOC should have the lead role in Federal EEO enforcement but feels it is premature to make a tentative judgment to exclude all other agencies. Justice argues that any sign of pre-judgment at this time would inevitably demoralize employees at Labor and hamper the agency's performance of its new responsibilities following consolidation.

We believe it is possible to make a neutral commitment to review all aspects of EEO enforcement by 1981 to determine whether further changes are desirable. Such a statement should emphasize that you will be reviewing Labor's performance as well as EEOC's so that good work by EEOC would not necessarily insure a transfer if Labor is also performing well. A neutral commitment, which we recommend, would avoid demoralizing Labor and should encourage both Labor and EEOC to improve performance. We strongly recommend against a statement now that would imply a transfer in 1981. This will stir up more opposition to the new Plan and will undercut the entire purpose of deferring a decision until 1981.

<input checked="" type="checkbox"/> Neutral commitment to review EEO enforcement by 1981 (We recommend)	<input type="checkbox"/> Commitment weighted toward transfer from Labor to EEOC (OMB recommends)	<input type="checkbox"/> No commitment
---	--	--

3. Transfer of Authority to Ensure Equal Employment Opportunity for Federal Employees from CSC to EEOC (pages 16-18 of OMB memo). OMB recommends that the reorganization plan transfer the responsibility to enforce equal employment opportunity vis-a-vis Federal employees from CSC to EEOC on October 1, 1978.

CSC's record in the EEO area is poor. Removing EEO responsibility from CSC is a critical issue among civil rights groups, though they acknowledge that the new commissioners you have appointed are genuinely committed to zealous EEO enforcement at CSC. OMB also contends that it is inappropriate for the Federal government to subject itself to a different EEO enforcement authority than private employers must face.

CSC opposes the transfer on the ground that an employee could challenge a disciplinary action on either performance grounds through CSC or on grounds of discrimination through EEOC, or both. Such dual jurisdiction will run counter to a prime goal of the civil service reform program -- to streamline the disciplinary process. The need to cope with two appellate systems could tend to discourage managers from disciplining employees, and the existence of the two systems could encourage employees to "forum shop" for the most favorable tribunal.

The problem raised by CSC is serious, but it can be resolved. CSC, EEOC, and OMB are already working to identify the areas in which the two sets of procedures should be made parallel or consolidated. The work completed to date has shown that:

- . The CSC (or its successor, the OPM) can require agencies to use their existing authority (several do not) to give immediate effect to a disciplinary decision like removal or demotion; this step will largely eliminate a disciplined employee's incentive to duplicate or to delay appeal proceedings.

- Deadlines for filing challenges to disciplinary actions under both the civil service and the civil rights systems can be made identical.
- Opportunities exist for consolidating investigative and adjudicative procedures under the two systems, but the precise extent and nature of such arrangements cannot be fixed until after the civil rights and civil service reorganization plans are approved, and until the exact nature of the disciplinary procedures to be created through the civil service reform legislation is established.

We recommend that in your message to Congress accompanying the plan, you underscore your commitment to assuring that this cooperative effort succeeds. After the EEO and civil service reorganization plans take effect, you should send a detailed directive to the concerned agencies, requiring that they consolidate their procedures to the maximum feasible extent.

If these steps are taken, the net result of both reorganizations can be a disciplinary system which not only satisfies the concerns of civil rights groups for EEOC authority, but is significantly more streamlined than the current process.

Agency comments: EEOC concurs with the proposed transfer, as do HUD, Agriculture, Labor, Commerce and EPA. It is opposed by CSC, Defense, Interior, State and VA.

We recommend that you approve transfer of Federal EEO responsibility from CSC to EEOC effective October 1, 1978, but that you also take the steps proposed above to minimize the possibility of conflict with civil service reorganization.

Approve with _____
directive to minimize conflict
(We recommend)

Approve with no _____
conditions

Disapprove _____

4. Transfer of Responsibility for Enforcing Equal Pay and Age Discrimination Acts from Labor to EEOC (pages 12-16 of OMB memo). OMB proposes that EEOC take over Labor's Equal Pay and Age Discrimination responsibilities on July 1, 1979. This proposal--particularly as it relates to Equal Pay--initially generated some controversy but has now been largely resolved.

It is generally agreed that Labor has done a good job in administering the Equal Pay Act, and many women's groups were skeptical about shifting responsibility to EEOC. Those groups have since met with Eleanor Norton, however, and are satisfied with her commitment to enforce Equal Pay.

In addition to most women's groups, the transfer is supported by civil rights organizations, the UAW and Justice. It is opposed by the AFL-CIO and the Coalition of Labor Union Women.

Agency Comments: EEOC and Justice support the Equal Pay transfer. Labor is opposed, citing its good enforcement record and noting an administrative problem: Equal Pay is part of a broader statute which will continue to be administered by Labor (Fair Labor Standards Act, i.e., minimum wage), so there could be problems of coordination. We do not believe these problems will be serious.

We believe that the Equal Pay transfer presents a close question. Because most women's groups now favor it--and because a failure to shift would impair the integrity of the Plan--we recommend that you approve OMB's proposal to shift Equal Pay responsibility to EEOC effective July 1, 1979. (Labor recommends that you defer a decision until that date. The problem with Labor's suggestion is that, unlike contract compliance responsibility--which could be shifted by Executive Order--the Equal Pay transfer must be made by Reorganization Plan, and only a finite number of plans can be presented to the Hill. Moreover, a deferral would simply postpone a decision with no real gain.)

<input checked="" type="checkbox"/>	<input type="checkbox"/>
Approve Equal Pay transfer effective July 1, 1979 (We, OMB recommend)	Defer decision (Labor recommends)

We also support the shift of Age Discrimination enforcement from Labor to EEOC. The transfer is backed by most groups representing the aging, as well as by most other civil rights groups, the UAW and Justice. Labor and the AFL-CIO are opposed.

<input checked="" type="checkbox"/>	<input type="checkbox"/>
Approve Age transfer effective July 1, 1979 (We, OMB recommend)	Disapprove

5. Abolition of Equal Employment Opportunity Coordinating Council and Its Replacement by EEOC (pages 18-20 of OMB memo). The Coordinating Council--comprised of representatives of EEOC, Labor, Justice, CSC and the Civil Rights Commission--was created by the 1972 amendments to Title VII. It has not effectively addressed most issues.

OMB proposes that the Council be abolished and its authority transferred to EEOC effective July 1, 1978. This shift is probably the most significant symbolic element of the Plan, as it signals EEOC's leadership in the area of EEO enforcement. For that symbolic reason, as well as the necessity of correcting the Council's shortcomings, this shift is supported by the principal civil rights and women's organizations. An organization of small businessmen also support the proposal, but major business organizations oppose it. The Business Roundtable, for example, is worried about EEOC's objectivity and wants its views balanced by other agencies.

Agency Comments: EEOC concurs with OMB's recommendation. The Attorney General agrees that the Council needs reform but is concerned about possible unilateral action by EEOC. Justice argues that many important policy issues in the EEO field are legal questions and does not want EEOC to assume the Attorney General's role as legal adviser to the government. Justice suggests that the Council be retained but that the Chair of EEOC be designated to chair the Council, that it operate by majority vote, and that a representative of OMB be added to the Council to provide EOP perspective.

We agree with OMB's recommendation, but we believe that three basic principles which would be embodied in an Executive Order should be made clear now: (1) a requirement that EEOC, as successor to the Coordinating Council, consult with other agencies and with OMB before taking action which would affect them; (2) a procedure for review of disputed issues, most logically by OMB; and (3) preservation of the Attorney General's role as legal adviser.

Approve
abolition
with above
principles to
be in E.O.
(We, OMB recommend)

Disapprove

[Handwritten signature]

6. Concurrent "Pattern or Practice" Authority for Justice in the Private Sector (pages 23-24 of OMB memo). From 1965 to 1972 Justice was the only Federal agency with authority to prosecute Title VII cases involving a "pattern or practice" of discrimination. From 1972 to 1974 EEOC and Justice shared this responsibility in the private sector. Since 1974 EEOC has had exclusive jurisdiction to bring "pattern or practice" cases in the private sector, while Justice has retained public sector "pattern or practice" authority (i.e., suits against state or local governments).

The Attorney General recommends that Justice once more be given authority, concurrent with EEOC, to litigate "pattern or practice" cases in the private sector. Such a grant of authority to Justice would not diminish EEOC's power; it would simply permit Justice's resources and expertise to be added to the enforcement effort in the private sector.

We believe that according concurrent private sector "pattern or practice" jurisdiction to Justice would be a plus for enforcement of Title VII--but only if Justice devotes sufficient resources to assure that the new authority did not diminish use of its existing authority in the public sector, an assurance which is uncertain. Most civil rights groups and black Congressmen oppose giving Justice concurrent authority for private sector "pattern or practice" enforcement, though with varying degree of emphasis. (Many of the groups took this position when Title VII was amended in 1972.) In part, they appear concerned about the possible diversion of resources from public sector enforcement, as well as the possibility of creating duplication in a plan assigned to streamline civil rights enforcement; in part they appear motivated by symbolic attachment to EEOC as an agency for which they are the predominant constituency.

The question is a close one. Because of the views of the major constituency favoring passage of the Plan and looking to it to secure better civil rights enforcement, and because concurrent jurisdiction might lead to more complex enforcement procedures than now exist, we recommend that the Attorney General should not be given authority, concurrent with EEOC, to prosecute Title VII "pattern or practice" cases in the private sector. Justice would retain its "pattern or practice" jurisdiction with respect to the public sector.

Disapprove granting Attorney General concurrent authority (We, OMB recommend) Approve



IV. OTHER

OMB has agreed that one minor item not in its present proposal should be included in the Plan: a provision supported by the Attorney General clarifying Justice's "pattern or practice" authority in the public sector. We recommend that this item be incorporated in the Plan.

Approve _____ Disapprove
(We, OMB recommend)

V. LEGISLATION (pages 25-26 of OMB memo)

OMB recommends that no new civil rights legislation be proposed at this time, but that your message forwarding the Reorganization Plan to the Hill announce that a comprehensive civil rights package is forthcoming (probably in about a year). OMB also suggests including in that commitment a list of items which will be considered as part of the legislative package, e.g., cease and desist authority for EEOC. In OMB's view, the need for additional equal employment legislation is high on the agenda of civil rights groups, and some mention of a future legislative initiative is expected.

We strongly do not believe that it makes sense to make any legislative commitment at this time. Many of the items mentioned by OMB would be controversial and would endanger passage of the Plan itself. Such an announcement would also create unrealistic expectations and subsequent pressure to produce a legislative package at an early date, with few compensating benefits. Work is quietly being done on such a substantive package. Now is not the time to surface this matter.

Do not make _____ Make announcement
legislative announcement (OMB recommends)
(We recommend)

VI. SIGNING CEREMONY

OMB recommends a signing ceremony--bringing together civil rights groups, business and labor--when you send the plan to Congress. We concur. We would emphasize, however, that the event should be cast not simply as an implementation of your civil rights commitment, but also of your commitment to streamline government, reduce duplication, and eliminate unnecessary regulatory burdens.

Approve signing _____ Disapprove
ceremony
(We, OMB recommend)

C

OMB'S PROPOSAL
RE EEO REORGANIZATION

Equal Employment Opportunity
Coordinating Council abolished;
replaced by EEOC (no positions
or funds shifted).

July 1, 1978

Responsibility for EEO in
Federal government transferred
from CSC to EEOC (100 positions;
\$6.5 million).

October 1, 1978

Responsibility for enforcing
provisions of Executive Order
11246 against Federal contractors
transferred from eleven compliance
agencies and consolidated at Labor
(157 positions; \$33.1 million).

October 1, 1978

Responsibility for enforcing
Equal Pay Act transferred from
Labor to EEOC (198 positions;
\$5.3 million). Responsibility
for enforcing Age Discrimination
in Employment Act transferred
from Labor to EEOC (119 positions;
\$3.5 million).

July 1, 1979

D

EEOC MANAGEMENT REFORM PLAN

	<u>TARGET DATE</u>	<u>REFORM GOAL</u>	<u>RESULT</u>
1.	4th Quarter - FY 1977	Design new management and field structure, and charge intake and processing procedures	Met
2.	4th Quarter - FY 1977	Implement new management structure; establish single line of communication with field structure	Met
3.	4th Quarter - FY 1977	Begin implementation of new field structure; establish 3 model offices - Baltimore, Chicago, and Dallas	Met
4.	4th Quarter - FY 1977	Implement new intake and charge processing procedures in model offices	Met
5.	1st Quarter - FY 1978	Expand new intake procedures nationwide	Met
6.	2nd Quarter - FY 1978	Establish new systemic units in model offices	To be completed
7.	2nd-3rd Quarters - FY 1978	Close Dallas and Chicago Regional and District Offices and make model offices permanent	To be completed
8.	2nd-3rd Quarters - FY 1978	Establish new District Offices in New York, Philadelphia, Memphis	To be completed
9.	4th Quarter - FY 1978	Complete establishment of new field structure	To be completed
10.	4th Quarter - FY 1978	Provide indepth training to all EEOC employees	As of January 1978, 759 employees completed one week overview course; remainder to be completed

<u>TARGET DATE</u>	<u>REFORM GOAL</u>	<u>RESULT</u>
11. 4th Quarter - FY 1978	Recruit and hire 732 new staff (if authorized by Congress)	To be completed
12. 1st Quarter - FY 1979	Implement Rapid Charge Processing System in all remaining new District offices	To be completed
13. 1st Quarter - FY 1979	Establish Automated Charge Inventory System	To be completed
14. 4th Quarter - FY 1979	Eliminate charge backlog in Chicago and Dallas model Offices	In first three months backlog reduced by more than 15% - remainder to be completed
15. 4th Quarter - FY 1980	Eliminate charge backlog in all but three area offices	To be completed
16. 4th Quarter - FY 1981	Eliminate backlog in last three area offices	To be completed

REORGANIZATION OF EQUAL EMPLOYMENT
OPPORTUNITY PROGRAMS

REORGANIZATION OF EQUAL EMPLOYMENT OPPORTUNITY PROGRAMS

I. INTRODUCTION

This report deals with programs designed to eliminate employment discrimination. It considers (1) the agencies and programs involved; (2) the deficiencies in the organization of present programs and laws; (3) the principal alternative courses of action; (4) steps that can be taken to reorganize the programs and laws pursuant to the reorganization authority or by Executive order; and (5) legislative options.

In considering the problems in this area, the Task Force reviewed existing studies, reports, and articles about civil rights enforcement. At our request, the Commission on Civil Rights updated its 1975 report, The Federal Civil Rights Enforcement Effort, To Eliminate Employment Discrimination. Option papers discussing all the major alternatives for reorganization of the equal employment opportunity agencies were circulated to hundreds of individuals and groups. Nearly 200 responses were received and analyzed. Personal interviews were held with over 100 individuals. Members of the Task Force consulted many interested groups, including representatives of the various Federal agencies with responsibilities in this field. A draft of this memorandum was sent to Cabinet members for comment. Their responses are reflected in this document.

The Agencies and Programs Involved*

The Federal Government has been involved directly in combatting employment discrimination since 1940, when President Roosevelt promulgated the first Executive order prohibiting discrimination by government agencies. But especially in the past 14 years, Congress and the Executive Branch have created a number of different agencies and programs to attack the problem of discrimination in employment. Four agencies administering eight statutes or Executive orders are of major importance.

* Appendix A provides a more detailed description of the duties and activities of these agencies.

1. The Equal Employment Opportunity Commission (EEOC) was established by Title VII of the Civil Rights Act of 1964 to enforce a broad statutory prohibition against discrimination in employment on the basis of race, color, religion, sex or national origin. The EEOC investigates charges of discrimination and attempts to resolve by conciliation those in which discrimination appears to have occurred. Where conciliation fails, the EEOC may bring suit against private employers or unions. The EEOC gained the authority to litigate in 1972; prior to that time its efforts were limited to entering into conciliation agreements. The agency was authorized 2,584 positions for fiscal year 1978.

2. The Department of Labor carries out major equal employment responsibilities through its Office of Federal Contract Compliance Programs (OFCCP) and the Wage and Hour Division of the Employment Standards Administration.

OFCCP has responsibility for enforcement of Executive Orders 11246 and 11375, which prohibit discrimination in employment and require affirmative action by government contractors on the basis of race, color, religion, national origin, or sex.

The contract program actually is administered by 11 other Cabinet departments and agencies, the so-called "compliance agencies." The compliance agencies monitor the equal employment compliance of government contractors in designated industrial classifications by conducting pre-award surveys, reviews of affirmative action plans, complaint and routine investigations, and administrative actions to ensure compliance. OFCCP prescribes the standards and procedures to be followed by compliance agencies and audits their performance. OFCCP also is responsible for enforcement of statutes requiring government contractors to take affirmative action to employ and advance qualified handicapped individuals, disabled veterans and veterans of the Vietnam era.

Contractors who fail to comply with any of these requirements may be debarred from bidding on future contracts. In the 13 years since the Executive order was issued, 16 contractors have been debarred.

In fiscal year 1978, OFCCP had 216 authorized positions and the contract compliance agencies had 1,571.

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II. THE PROBLEM

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Labor's Wage and Hour Division administers the Equal Pay Act of 1963 (EPA) and the Age Discrimination in Employment Act of 1967 (ADEA). The EPA prohibits employers subject to the Fair Labor Standards Act from paying unequal wages to men and women doing essentially the same work. The ADEA created a broad prohibition, similar to that in Title VII, against discrimination on the basis of age, but only protects those between the ages of 40 and 65. In fiscal year 1978, the Department of Labor invested some 317 person-years in the enforcement of these programs.

3. The Department of Justice is responsible for litigation against State and local governments under Title VII. The Department also represents the Secretary of Labor in lawsuits to enforce the prohibitions against discrimination by government contractors. The Attorney General, in addition, is authorized to file suit in "pattern or practice" cases under several other statutes prohibiting discrimination in Federal grant programs.

4. The Civil Service Commission (CSC) is responsible for enforcing all nondiscrimination and affirmative action requirements in Federal employment. The Commission has established a system for investigation, conciliation and formal hearings on complaints of discrimination. Each agency annually submits to the Civil Service Commission an affirmative action program.

In addition to these four major agencies at least 14 other agencies enforce over 30 nondiscrimination and/or affirmative action requirements which are applicable only to the employment practices of organizations and entities which participate in specific agency programs. The State and Local Fiscal Assistance Act of 1972 (Revenue Sharing), for example, prohibits discrimination on the basis of race, color, religion, sex, national origin, and handicap or age, and is enforced by the Department of the Treasury.

II. THE PROBLEM

A. Overlap and Duplication

Many of the statutes and Executive orders dealing with employment discrimination overlap each other, cover the same employers and protect the same individuals. Most government contractors, for example, are subject to the

jurisdiction of both the EEOC (under Title VII) and the Office of Contract Compliance Programs in Labor. In sex discrimination cases, they may be covered by the Wage and Hour Division in Labor as well. The Wage and Hour Division also would review the employers to determine the existence of age discrimination. Furthermore, if the employers are recipients of Federal assistance, they will be subject to the equal employment requirements of the funding agencies. This kind of overlap has created frustration and confusion. The classes the laws were designed to protect have difficulty deciding which agency to turn to with a particular complaint or what procedures to use to file a complaint. The employers regulated must deal with a large number of Federal agencies, some of which have different standards, rules, and procedures.

While several attempts to coordinate Federal equal employment programs have been made, they have had limited success. An Equal Employment Opportunity Coordinating Council, consisting of the Secretary of Labor, the Attorney General, and the Chairpersons of the EEOC, the Civil Service Commission and the Commission on Civil Rights was established to eliminate "conflict, competition, duplication and inconsistency," but has had little effect.

B. Accountability and Allocation of Resources

There presently is no single agency which is responsible for ensuring the consistency and effectiveness of the government's equal employment opportunity programs. As a result, there is no focal point for securing information about the various requirements imposed by government or for identifying problems which require corrective actions. There is, moreover, no central planning of investigative and enforcement efforts. This has led to instances in which government resources have been used in a nonproductive manner.

C. Conflicts of Interest

In some cases, agencies are expected to balance conflicting responsibilities. Forced to choose between not letting a contract because no bidder has an acceptable affirmative action program and letting it despite the equal employment deficiency, a contracting agency will generally choose the latter. The Civil Service Commission is expected to be lawmaker, prosecutor, judge and jury on employment discrimination in the Federal workforce. Organizational deficiencies like these inevitably lead toward less rigorous compliance.

D. Poor Management, Lack of Leadership, and Inadequate Resources

The lack of leadership and commitment by top officials has compounded these problems. It also has resulted in inadequate resources, poor management, rapid turnover of personnel, and many positions left unfilled for extended periods.

Not all of these problems can be solved by proposing a reorganization plan or modifying Executive orders. For some, statutory change would be required. The reorganization plan we suggest, however, would substantially improve the current situation while avoiding the delay and uncertainty inherent in the normal legislative process.

III. ALTERNATIVE COURSES OF ACTION

The time is propitious for change. The principal programs involved are now headed by outstanding appointees. They are committed to strong civil rights enforcement and will support well-designed reform. Significant steps already have been taken within some of the agencies. Most noteworthy are the wide ranging reforms of policies and procedures initiated at the EEOC under Chair Eleanor Holmes Norton. At the Department of Labor, Secretary Ray Marshall, Assistant Secretary Donald Elisburg, and OFCCP Director Weldon Rougeau are intensively studying deficiencies in the contract compliance program. Civil Service Commissioners Alan Campbell, Jule Sugarman and Erska Poston are charting ways to ensure that the Federal Government truly becomes an equal opportunity employer. The Civil Rights Division of the Department of Justice, under Assistant Attorney General Drew Days, has continued its capable administration of its responsibilities in the equal employment area.

But in spite of improvements in particular programs, major problems remain. The recommendations which follow attempt to resolve as many of them as now seems feasible.

A. Criteria

Before considering options for reorganizing the equal employment programs, we developed five criteria against which those options would be measured:

1. Efficiency. Will the option result in efficient use of resources and produce better administration and enforcement?

2. Reducing Burdens. Will the option reduce burdens on the regulated? Where compliance is unnecessarily burdensome, hostility, antagonism, and noncompliance result.

3. Uniformity. Will the option promote uniformity in standards of compliance, according individuals similarly situated the same rights, and comparable organizations the same responsibilities?

4. Consistency with Organizational Mission. Will the option avoid assigning to any organization responsibilities inconsistent with its basic values or skills? Responsibilities at odds with the dominant traditions and values of an organization are unlikely to be fully carried out.

5. Continued, Feasible Progress. Where a goal cannot be achieved immediately, does the option accomplish all that is feasible and provide a basis for further progress?

B. Principal Recommendations

There are two major issues concerning equal employment opportunity reorganization: (1) To what degree should enforcement functions be consolidated; and (2) Where should consolidated functions be placed?

1. Degree of Consolidation

Four main approaches to consolidation are possible: no reorganization; limited structural change; full consolidation; and incremental movement toward full consolidation. The potential of each approach for ameliorating the major problems in equal employment enforcement is analyzed below.

No Reorganization. That this alternative has some merit is evidenced by the reforms now being separately developed in the various equal employment enforcement agencies. But past experience has demonstrated that each agency views its own responsibilities as autonomous and will operate its programs in a manner it believes will maximize their success. No agency has the authority to require other agencies to take steps necessary to ensure the achievement of a government-wide goal, such as adopting uniform investigative procedures or reducing duplicative paperwork requirements.

Limited Structural Change. This alternative maintains the current diversified enforcement approach by making limited structural changes, e.g., consolidating the contract compliance program in Labor and transferring the authority to enforce equal employment opportunity for Federal employees to the EEOC. It is based on the view that competition among agencies is healthy even if some duplication results, and that extensive changes are risky and disruptive. It is favored by some who fear that fuller consolidation presents an easier target for efforts to restrict enforcement programs through budget cuts or curtailment of powers.

But partial consolidation cannot resolve a number of problems: the lack of central planning, uniform standards and sanctions, and standardized reporting requirements; the absence of a single point for complainants; and inefficient utilization of resources. Furthermore, equal employment enforcement in some cases would continue to have secondary priority in agencies responsible for it.

Full Consolidation. The merger of all equal employment enforcement activities into one agency, if effectively implemented, would reduce many of the serious deficiencies. It would promote better utilization of resources, more consistent standards for compliance, coordinated investigations, and faster resolutions. It would produce one agency accountable for results. Complainants would have one contact point.

An immediate move to full consolidation, however, would have its price. The movement of personnel and the incorporation of programs into a single agency most certainly would involve an extended period of inefficiency and confusion. Current management problems in the likely recipient agencies compound the problem. EEOC and OFCCP both now embody internal weaknesses whose correction will prove complex and time-consuming.

Incremental Movement Toward a Single Agency. This alternative has the advantages associated with full consolidation, but avoids the disadvantages by moving a piece at a time. Some moves are made almost immediately; some are deferred to times now specified; and still others are made contingent on future developments.

The major disadvantage of such a course is that uncertainties concerning future transfers may produce competition and conflict.

Recommendation Concerning Consolidation. The Task Force recommends incremental movement toward a single agency. This course promises realizable progress toward a strong and efficient equal employment enforcement program. By conditioning some of the proposed steps on improved agency performance, incentives to develop well-run and effective programs can be established for receiving agencies. In addition, OMB can play an important role in the implementation process by monitoring affected programs to ensure an orderly and effective transfer of functions.

2. Placement of Consolidated Functions

Assuming that the recommendation to effect incremental movement of equal employment enforcement to a single agency is adopted, the next major issue concerns the recipient of these functions. The four alternatives considered by the Task Force were the EEOC, the Department of Justice, the Department of Labor, and a new agency.

Consolidation into the EEOC. This choice would place equal employment enforcement into the only existing agency whose main mission is combatting employment discrimination. Its size, experience and scope of activities are all consistent with undertaking such a role.

The EEOC, however, because of past management problems and lack of support has been viewed as ineffective. Since 1965, the Commission has had seven chairpersons, nine executive directors and three acting executive directors. Complaints concerning poorly trained staff have been widespread. Despite a rapidly growing caseload, the EEOC's staffing has remained the same for the last three years, contributing to lengthy processing times and a large backlog of complaints.

Consolidation into Justice. The Department of Justice is the agency with the greatest litigation experience and success, and is viewed by the business community as competent and fair. The stature of the Attorney General as chief law enforcement officer would lend considerable prestige to equal employment enforcement. Justice, moreover, currently has authority for coordinating various service related equal opportunity provisions administered by the grant-making agencies. If equal employment matters also were housed in Justice, the Department would be able to relate discrimination in employment to discrimination in the delivery of Federal assistance.

On the other hand, Justice has limited experience in administering regulatory requirements and no capacity to administer a large complaints program. Consolidation in Justice would involve the Department in activities that have little to do with its traditional litigative role. Its record in coordinating Title VI, moreover, has been less impressive than its Title VII litigation record. The Department, in addition, has had the reputation among women and minorities of being too cautious and conservative in equal employment enforcement.

Consolidation into Labor. This alternative would place equal employment enforcement in a major Cabinet agency with experience in equal employment matters. The Secretary of Labor would have more contact with the President and other Cabinet officers than the head of a regulatory agency, and better opportunities to integrate equal employment considerations into major policy issues. In addition, Labor would be in a position to relate equal employment enforcement to the various training programs it administers.

Placement of equal employment enforcement in Labor, however, would be opposed by those who view the agency as too closely allied with organized labor. Furthermore, equal employment activities would be insignificant when compared to the many major programs presently administered by the Department and would be likely, therefore, to receive low priority. In addition, the Department's equal employment track record has been mixed. For example, although the Equal Pay Act program has been relatively successful, the administration of the contract compliance program has been seriously deficient.

Consolidation into a New Agency. A new agency would symbolize a renewed Federal commitment to equal employment opportunity. It would start with a fresh reputation, enabling it to attract well-qualified talent, and would have all the advantages of a single mission equal employment enforcement agency.

This approach, however, would incur the opposition of civil rights groups committed to preserving the EEOC. The magnitude of start-up problems for a new agency would have a prolonged and disruptive effect on enforcement operations. Finally, the new agency probably would inherit much of the staff of the existing agencies and

many of their problems, including complaint backlogs. The likely result would be the EEOC with a new name and a start-up period of diminished effectiveness.

Recommendation on Placement. We recommend that the EEOC become the ultimate locus of equal employment enforcement programs. Although the agency has suffered from image and management problems, such occurrences are not uncommon to a young agency administering a highly controversial and complex program. And, more important, the EEOC has initiated a major internal reform program which is likely to improve its performance quite sharply and already has generated substantial progress.

One of the agency's longstanding problems, for example, has been parallel and often conflicting lines of authority from headquarters to the field operations. A streamlined field structure consisting of 22 district and 46 area offices has now been developed which abolishes a non-productive layer of regional offices and merges litigation centers into the district offices.

To improve staff performance, a new training program has been inaugurated. As of January 20, 1978, 759 EEOC employees and 132 employees of State and local agencies have completed a one-week overview session. The entire training program will be completed by September, 1978.

A new charge intake process has been introduced to screen out frivolous and nonjurisdictional charges previously accepted by the agency. Pre-charge counseling sessions conducted by professional intake officers have replaced a system operated largely by clerical staff. This process accounted for a 30 percent reduction in the number of charges filed in three model offices established to test the new procedures. On December 1, 1977, it was implemented agency-wide.

In order to reduce lengthy processing times, a Rapid Charge Processing System is being tested in the model offices. This system utilizes early employee-employer, face-to-face fact-finding conferences to clarify issues and to seek prompt settlements. Negotiated settlements represented 31 percent of reported closures in the model offices compared to 9 percent in these same offices last year.

The EEOC plans to establish separate units in each of the new district offices to process approximately 100,000 charges that are now backlogged. Complaint files will be grouped by employer and those with the largest number of charges will be reviewed first. Employers will be encouraged to accept no-fault settlements. Backlog units already in operation have worked well.

The EEOC recognizes that the resolution of individual complaints will not eliminate patterns of discrimination. It, therefore, has established an Office of Systemic Programs in headquarters to address institutional practices and procedures that produce discriminatory results.

Many problems remain to be solved. For example, implementation of the new field reorganization will involve a major recruiting effort and the resolution of employee and union concerns resulting from these massive changes. To assure the movement toward reform continues, OMB's management staff will conduct an independent assessment of the agency and, where appropriate, offer suggestions for improvement. In addition, OMB will monitor implementation of the various EEOC reforms to ensure that timetables are adhered to and periodic evaluations of new systems and procedures are conducted. (Appendix B provides a more detailed description of some of the more significant problems faced by the agency and the reform measures implemented and proposed to date.) On the basis of progress so far and the plans for further reform, we believe the EEOC will be fully capable of discharging the additional responsibilities we propose to assign gradually to it.

A separate question about the EEOC is raised by disagreement among the General Accounting Office (GAO), and the Department of Justice and OMB concerning its status. GAO regards the EEOC as an independent regulatory agency. If the EEOC were so in fact, it is questionable whether it would be a suitable vehicle for the responsibilities we propose for it since the effect would be to remove equal employment enforcement policy from Executive direction. But Justice, OMB, and EEOC itself consider the EEOC an Executive Branch agency, and we are confident that, if tested, this position would prevail.

DECISION ON THE PRINCIPLES

_____ Approve Phased Consolidation into the EEOC

_____ Disapprove

IV. COMPONENTS OF THE EQUAL EMPLOYMENT REORGANIZATION PLAN

In order to support the movement to a single agency, each program was analyzed to determine the approximate timing for transfer. In some instances, it was necessary to leave the final decision open to allow you flexibility on timing and to provide an opportunity to gather more information on which to base your decision. The course of action we recommend to you involves two major aspects:

- Responsibility for enforcing the Equal Pay Act and the Age Discrimination in Employment Act, and the authority to ensure equal employment opportunity for Federal employees would be transferred to the EEOC. Responsibility to coordinate equal employment programs that reside in agencies other than the EEOC also would be assigned to the EEOC, and the Equal Employment Opportunity Coordinating Council would be disbanded.
- All contract compliance activities initially would be centralized in the Department of Labor.

A. Merger of Program Responsibilities into the EEOC

We propose to move four authorities into the EEOC from other agencies on specified future dates.

1. Transfer Equal Pay authority to the EEOC on July 1, 1979

The Equal Pay Act and Title VII are essentially duplicative. While Title VII covers a broader range of discriminatory employment practices based on sex, virtually any violation of the Equal Pay Act is also a violation of Title VII. Transfer of the enforcement of the Act to the EEOC, therefore, would minimize overlap, permit better allocation of resources in investigations and enforcement, and centralize Federal enforcement of the absolute statutory prohibitions against sex discrimination in employment. The EEOC, moreover, would be provided with important additional enforcement powers to strengthen its efforts against sex discrimination in employment. For example, it would be able to conduct self-initiated investigations without a Commissioner having to file a sworn charge against an employer, and to file suit in Federal court on equal pay matters without first being required to engage in prolonged negotiations.

Enforcing the Equal Pay Act would not impose an unmanageable burden on the EEOC. The EEOC has handled wage discrimination problems as part of its Title VII jurisdiction and has expertise in this area.

To ensure that there is no diminution of effort to end equal pay offenses the EEOC would administer the Equal Pay Act as a separate program and not commingle personnel assigned equal pay responsibilities with other EEOC employees. In addition, the EEOC would be able to augment the work of its Equal Pay personnel by identifying equal pay violations as part of other investigations it conducts under Title VII. And, as the EEOC's efforts to uncover patterns of systemic discrimination in key industries broaden in scope, Equal Pay Act matters could be made a part of that program. The proposed transfer, therefore, has the potential of strengthening overall sex discrimination enforcement.

Accordingly, we recommend that the enforcement of the Equal Pay Act be transferred from the Department of Labor to the EEOC effective July 1, 1979, accompanied by the transfer of 198 positions and \$5.3 million.

Opponents of this transfer point out that the Department of Labor's record in enforcing the Equal Pay Act is a good one and that EEOC staff has less expertise in wage rate matters. In addition, the ability of the EEOC to mount as extensive an effort as the Department of Labor to enforce the Act is questioned, since the Wage and Hour Division's 1,000 compliance officers all check for equal pay violations in the 60,000 establishments visited each year.

The Department of Labor believes that the transfer of the Equal Pay Act to EEOC violates the basic principles of reorganization since, in its view, the Equal Pay Act is closer in nature to the other wage standards of the Fair Labor Standards Act (of which the Equal Pay Act is a part) than it is to Title VII. The Department argues that it is a mistake to remove part of a statute from the agency which enforces and administers the statute as a whole and to transfer that one part to another agency. Alternatively, and without waiving its very strong objection to the transfer of the Equal Pay Act, the Department would, at the minimum, postpone the transfer decision until at least late 1980, as we recommend with regard to the transfer of the contract compliance program. In its view, this would guarantee that the transfer would not take place until the EEOC's internal reorganization had advanced sufficiently to enable it to undertake the enforcement of the Equal Pay Act with a minimum of disruption and delay. Under this alternative, the reorganization plan would

authorize the transfer of the Equal Pay Act to EEOC but would not cite a specific date. Transfer would be conditioned on a later determination by the President. The Department believes that this alternative would protect the Administration from a premature transfer and that this alternative is as politically viable as the transfer of the Equal Pay Act on a specified date.

But EPA enforcement is centralized, concerns provisions familiar to the EEOC, and involves the transfer of only a small number of personnel. Thus, there is every reason to believe that the EEOC could capably administer the program by 1979. In addition, there is an important pragmatic reason for not making the date of the EPA transfer indefinite. Since the contract compliance program was created by an Executive order, the President can reassign authority for it whenever he sees fit, whereas the EPA responsibility must be transferred as part of a reorganization plan. It is the opinion of Counsel to the Reorganization Project that the Reorganization Act does not permit this type of indefinite, conditional transfer,

[This recommendation has the support of the EEOC and the Department of Justice. A large number of civil rights and women's groups, including the Urban League, the Puerto Rican Legal Defense and Education Fund, the National Council of Negro Women, Women Employed, and the National Organization for Women support it. The UAW also supports it. As noted, the Department of Labor strongly opposes this recommendation. In addition, there is opposition from the AFL-CIO (which, however, would be likely to endorse Labor's proposal for a decision at a later date) and some women's groups such as the Coalition of Labor Union Women. Business groups, which generally oppose adding to the authority of the EEOC, also probably will not support the transfer.]

DECISION

_____ Approve transfer of Equal Pay Act to EEOC on
July 1, 1979

_____ Disapprove

2. Transfer Age Discrimination authority to the EEOC on July 1, 1979

There is virtually complete overlap in the coverage of employers, employment agencies, and labor organizations under Title VII and the ADEA. The ADEA, moreover, was modeled on Title VII, and the standards of the two Acts are

compatible. Many of the issues which relate to age cases are similar to those the EEOC has faced in the context of sex discrimination, e.g., participation in pension plans and requirements of specific types of jobs.

The ADEA program, moreover, is relatively small and the EEOC should be able to absorb it. The transfer of this program will require the EEOC to substantially improve its litigation capability over the next 18 months. Much of the discussion above concerning transfer of the Equal Pay Act is applicable equally here. In both instances, transfer of the programs would contribute to the development of a stronger and more uniform government effort to end employment discrimination.

We recommend that the ADEA enforcement authority be transferred from the Department of Labor to the EEOC effective July 1, 1979. This would involve the transfer of 119 positions and \$3.5 million.

The Department of Labor, while agreeing that the Age Discrimination in Employment Act ultimately should be transferred to the EEOC, suggests that the final decision concerning this transfer, like the decision concerning the transfer of the EPA, be made in late 1980 in conjunction with the decision involving the contract compliance program. The advantages and disadvantages of this approach have been noted above.

The Department of Labor also suggests that in order to avoid the difficulties which would result from two agencies interpreting and applying the enforcement provisions of the Fair Labor Standards Act, an effort be made to amend Title VII to include age. Although the Age Act is not part of the Fair Labor Standards Act (as is the Equal Pay Act), it presently incorporates the enforcement mechanisms of that Act which are different from those used in Title VII cases. The Task Force recommends instead that new equal employment legislation, including the possible amendment of Title VII to cover age discrimination, be considered in conjunction with other civil rights legislative reforms late in 1978. (See pages 25, 26)

[Most major groups representing the aging, e.g., the National Council of Senior Citizens, the American Association of Retired Persons, the National Council on the Aging, the National Caucus on the Black Aged, and the Grey Panthers, have endorsed the transfer. The EEOC, the Department of Justice, the UAW, and most civil rights groups

also support the transfer. The AFL-CIO opposes it. Business groups, generally reluctant to give the EEOC additional responsibilities, are not likely to support this transfer.]

DECISION

_____ Approve transfer of Age Discrimination enforcement authority to EEOC on July 1, 1979

_____ Disapprove

3. Transfer the authority to ensure equal employment opportunity for Federal employees to the EEOC on October 1, 1978

Both the Task Force on Civil Rights Reorganization and the President's Personnel Management Reorganization Project agree that equal employment opportunity and affirmative action have not been pursued vigorously or administered effectively in Federal departments and agencies. The Civil Service Commission has adopted weaker substantive (Title VII) standards than those imposed on private employers. Burdens imposed on job applicants and employees alleging individual acts of discrimination in the Federal sector are significantly greater than those imposed by the EEOC in the case of complaints filed against private employers and State and local governments. Only recently, and as a result of a court order, has the Civil Service Commission issued regulations allowing the filing of class action complaints, and these regulations are highly restrictive. The instructions that the Civil Service Commission provides to agencies on affirmative action, moreover, are substantially weaker than the requirements imposed on Federal contractors by the Department of Labor. As a result, the Federal Government's record of employment of minorities in higher paid jobs is substantially worse than that of private employers. The cause of this problem is a basic one, we believe. A personnel agency cannot both propose personnel policies and then have the final voice in determining whether these policies adhere to Title VII standards.

Since we believe that Federal employees should have the same rights and remedies as private employees and employees of State and local governments, that Federal agencies should be required to meet the same (if not higher) standards of equal employment opportunity as private employers and State and local governments, and that equal employment opportunity and affirmative action should be

administered separately from personnel management, we recommend that the authority the Civil Service Commission now exercises under Title VII, the Equal Pay Act, the Age Discrimination in Employment Act, and the Rehabilitation Act, be transferred to the EEOC on October 1, 1978. The personnel and budgetary effects would be to move approximately 100 positions and \$6.5 million (includes reimbursable authority) from the Civil Service Commission to the EEOC.

Even if the EEOC is given responsibility for Federal equal employment opportunity, the CSC still would have an important role to play -- the duty to ensure agency compliance with Title VII. Thus, the steps now being considered by the Commission to facilitate equal employment for women and minorities would continue to be appropriate matters for the CSC to initiate.

The CSC raises a number of objections to this proposal. It believes that some of the complaints about the present system are grounded in the CSC's limited legal authority to order corrective action and that this situation would not be changed by reorganization. The proposed transfer would result in government agencies dealing with two different agencies on personnel matters, the Civil Service Commission and the EEOC. Assigning the EEOC authority for equal employment opportunity in the Federal sector may be said to separate personnel policies related to equal employment opportunity from other personnel considerations and would transfer the authority to enforce equal opportunity in Federal employment from an agency with considerable expertise in Federal personnel practices to one with little such experience. Furthermore, there is concern over the EEOC's ability to implement this responsibility and over the possibility that conflict might arise between rules and policies promulgated by the EEOC and the Civil Service Commission and agency personnel practices. A final possibility is that separating personnel policies and equal employment opportunity will reduce attention to affirmative action on the part of personnel people and reduce opportunities for creative use of alternative employee selection methods.

The CSC, therefore, opposes our recommendation. Instead it proposes that the authority to investigate and decide charges of employment discrimination, as well as all other adverse personnel actions, be transferred to the Merit Systems Protection Board whose creation it is separately recommending to you. This would eliminate possible conflicts of interest in adjudicating complaints, and avoid, it believes, duplicate appeals to the EEOC and the Merit Systems Protection Board. In addition, the CSC proposes to give the EEOC the right to challenge CSC regulations and examinations and to issue proposed orders requiring change. If the CSC did not agree with any order, the matter would be resolved by the Equal Employment Opportunity Coordinating Council or the Department of Justice.

We find the CSC alternative inconsistent with the basic principles that Federal employees should have the same rights and remedies as other employees covered by Title VII; that the Federal Government should be held to equal employment standards at least as high as those of private employers and State and local governments; and that affirmative action should be administered separately from personnel management functions to avoid conflicts of interest. We believe that unless the EEOC is given the ultimate authority over equal employment efforts in the Federal sector, it is unlikely that significant improvements in that program will occur. Historically the EEOC and the CSC have not been able to agree on a large number of civil rights issues and the Equal Employment Opportunity Coordinating Council, which we recommend be abolished, has been almost totally ineffective in areas of disputes between agencies. We believe, moreover, that under the Title VII law, it is unlikely that the discrimination and grievance appeals systems can be merged, even if they are both housed in one agency. To the extent that the two systems can be made consistent, the EEOC and the CSC have committed themselves to attaining this goal.

[There is universal support from civil rights groups for transferring the Federal equal employment responsibilities to the EEOC and the proposal also is supported by several major handicapped groups. Unions representing Federal employees have indicated support for the proposal. Agencies favoring the Task Force's recommendation include the EEOC and the Departments of Agriculture, Commerce, Labor, and Housing and Urban Development. The Department of State doubts that one equal employment agency can serve adequately the needs of both the public and private sectors. The Justice Department questions whether the EEOC's ultimate authority includes the right to sue Federal agencies to ensure compliance with its orders and whether fair employment can be separated from the merit system. HEW believes that the EEOC should be assigned the authority to set standards for the CSC and to hear appeals from CSC decisions in employment discrimination cases.]

DECISION

___ Approve transfer of equal employment responsibility for Federal employees to EEOC on October 1, 1978

___ Disapprove

4. Abolish the Equal Employment Opportunity Coordinating Council and transfer its duties to the EEOC on July 1, 1978

The Equal Employment Opportunity Coordinating Council was created in 1972 to coordinate the Federal equal employment opportunity enforcement effort. For the most part, the Council has been a failure. The problems in equal employment enforcement coordination which prompted Congress to establish the Council have grown worse in the last five years.

We recommend that the Council be abolished and its authority transferred to the EEOC on July 1, 1978. This transfer would place coordinating responsibilities in the only agency presently completely dedicated to the mission of equal employment opportunity. The responsibilities which the EEOC would assume include the development of substantive equal employment opportunity standards applicable to the entire Federal Government, standardization of Federal data collection procedures, creation of joint training programs, establishment of requirements to ensure that information is shared among the enforcement agencies, and development of government-wide complaint and compliance review methodologies. This transfer would help further limit duplication and inconsistency among the equal employment programs. For example, the EEOC could facilitate arrangements with the Department of Labor under which EEOC would not investigate a pattern and practice of discrimination by an employer if that employer were found in compliance under Labor's contract compliance program. Similarly, the EEOC could ensure that the equal employment provisions applicable to recipients of Federal grants are applied uniformly so that a State or local government need not file different equal employment data with each grant agency or have the same complaint subject to investigation by more than one agency.

The Equal Employment Opportunity Coordinating Council has no staff of its own. Each member agency assigns staff on a part-time basis to work on Council activities. At the next budget review, it will be necessary to determine the number of new positions and appropriate resources the EEOC will require to carry out these additional responsibilities.

The disadvantages of this proposal relate to possible unilateral decision-making by the EEOC. In addition, to the extent that the EEOC establishes policy on equal employment issues, there may be an overlap with the legal positions adopted by the Department of Justice in other areas. The EEOC's authority to play the lead role in the government's equal employment program may be affected adversely by the agency's past management problems. There also is concern that if the EEOC receives cease and desist authority, it may become independent of Executive control. We believe each of these concerns can be met by an Executive order defining EEOC's role.

[The transfer has the support of a large number of the most important civil rights organizations. The Departments of Agriculture and HEW also concur with this recommendation. Organizations of small businessmen, such as the National Federation of Independent Businessmen, have endorsed the proposal. The Departments of Justice and Labor raise questions about this recommendation. They would prefer to keep the Council, with the head of the EEOC as its Chairperson. Major business organizations, such as the Business Roundtable, also oppose this recommendation. While they generally have endorsed the reforms initiated at the EEOC, they continue to question the EEOC's objectivity. They prefer, therefore, to maintain a council structure in which EEOC's views may be balanced by those of other agencies.]

DECISION

_____ Approve abolishing EEOCC and transferring responsibility to EEOC on July 1, 1978

_____ Disapprove

B. Consolidation of Contract Compliance Program

1. Terminate the authority of the 11 government agencies presently vested with the responsibility to ensure compliance by Federal contractors with Executive Order 11246; consolidate compliance authority in the Office of Federal Contract Compliance Programs, Department of Labor on October 1, 1978

The consolidation would establish accountability for the success or failure of the program and would promote consistent standards, procedures, and reporting requirements. It would relieve many contractors of the burden of being subject to multiple agencies. Thus, it removes the basis of a major complaint of business groups. As a result, cooperation with the intent and provisions of the contract compliance program should be achieved more readily.

This reform, moreover, would eliminate the current conflict of interest between the mission objectives and the equal employment objectives of line agencies which arises when agency officials find that civil rights enforcement may jeopardize or delay an otherwise desirable contract. Even in situations where top management has the best of intentions, civil rights concerns in conflict with procurement goals tend to be brushed aside. Many of the deficiencies in the contract compliance program stem from this conflict of interest.

The Department of Labor is the logical location in which to centralize the program. It has been responsible for the coordination and direction of the program since 1965 and has developed the extensive substantive and procedural regulations which govern the activities of the contractors and compliance agencies. Centralizing the program in the Department also increases the possibility that it will be coordinated effectively with the training programs administered by Labor's Employment and Training Administration.

Those opposed to consolidation generally fear diminished sensitivity to equal employment considerations in the contracting agencies. They also cite the expertise developed by agency personnel in the employment practices of the industries they review. In addition, they are concerned that the Department of Labor may not operate the program effectively.

Nonetheless, we believe the merits of this change far outweigh its defects, and that it should be accomplished by Executive order on October 1, 1978. The resources of the 11 compliance agencies--1,571 positions and a budget of \$33.1 million--would be transferred to the Department of Labor. We anticipate that the consolidation will result in a reduction in supervisory personnel and other administrative costs.

[This recommendation has the strong support of the Department of Labor. The Departments of Justice, Agriculture, and Transportation concur. There also is widespread support for this recommendation from civil rights, women's and business groups. The AFL-CIO supports this proposal so long as it does not result in any reduction of the number of personnel devoted to contract compliance. The Leadership Conference on Civil Rights traditionally has opposed removing civil rights responsibilities from line agencies but is unlikely to press that opposition in light of the Conference's favorable reaction to the overall reorganization proposal. The Department of Energy favors consolidation of the compliance agencies in the Department of Labor, but suggests that this merger be phased in over a three to five year period.]

Some compliance agencies oppose the consolidation. These include the Departments of Treasury, HEW, Defense, HUD, and Interior. Treasury stresses its unique and favorable relationship with the banking industry. HEW likewise emphasizes its in-depth knowledge of contractors and warns that consolidation would result in universities being visited by the Department of Labor under the contract compliance program and by HEW under other civil rights authorities. The Department of Defense, in addition, raises a concern about the ability of the Department of Labor to implement effectively a consolidated contract compliance program.

HEW suggests that the contract compliance agencies should continue in their present role but that the Department of Labor's supervisory authority should be transferred to the EEOC. The Task Force concludes that no matter which agency has supervisory responsibility for contract compliance, the program as presently structured cannot function effectively. It is essential that the program be administered centrally.]

DECISION

_____ Approve consolidating contract compliance
responsibility in Labor on October 1, 1978

_____ Disapprove

2. Announce that not later than January 1981, you will determine whether to transfer the consolidated contract compliance program to the EEOC

There are obvious advantages to a transfer of the contract compliance program into the EEOC. It would bring together the two biggest equal employment programs, promote better coordination, and permit more effective use of resources.

Nonetheless, because of the contract compliance program's size and past program deficiencies, its transfer to the EEOC now would create severe management difficulties and interfere with the implementation of other reforms by the EEOC. By the end of 1980, after there has been a sufficient opportunity for the consolidated contract compliance program to become operational and for the EEOC

reforms to have been fully implemented, you should undertake a review of the two programs to determine whether the time is then appropriate to transfer the contract compliance program, as well as the veterans and handicapped programs, to the EEOC.* Relevant to this decision will be the degree of excellence the contract compliance program has achieved in Labor, the competence demonstrated by the EEOC, and the outcome of court decisions which may affect the standard applied by the contract compliance program.

The EEOC and most civil rights groups, including the Leadership Conference on Civil Rights, the Urban League, and the Mexican American Legal Defense Education Fund support this proposal. Industry groups oppose a later transfer. The Departments of Justice and the Treasury question the proposal ultimately to merge the contract compliance program in the EEOC. Their concern appears partly grounded on the view that the EEOC's efforts are or should be directed solely toward handling individual complaints. In addition, the Department of Labor argues that there are compelling reasons for keeping the consolidated contract compliance program separate from the EEOC. However, if a decision is made to transfer the program to the EEOC, the Department urges that the transfer be accomplished as soon as possible. It believes that it will not be able to absorb the transfer of 1500 new positions and build an effective program if it is generally understood that the program is being housed in the Department only temporarily. The Department of Justice further suggests that there may not be sufficient time by the end of 1980 to judge the effectiveness of the consolidated contract compliance program and notes that the morale of the Labor Department staff may be affected adversely if the consolidation program is threatened with a transfer.]

DECISION

_____ Approve deferring decision whether to transfer contract compliance to the EEOC until not later than January 1981

_____ Disapprove

V. OTHER ISSUES

A. The Department of Justice should retain the authority to litigate Title VII pattern or practice cases against State and local governments as well as its other equal employment litigative authorities

* Although there are some differences between the Executive Order 11246 program and the veterans and handicapped programs, all are based upon the Federal Government's procurement powers and require compliance only by Federal contractors. Because of these important similarities, these programs can be enforced best within the same government agency. Therefore, the Task Force recommends that those programs remain in the Department of Labor as long as that agency has responsibility for the contract compliance program.

The Task Force considered and rejected transferring to the EEOC the Justice Department's authority to litigate equal employment matters against State and local governments. In view of the Department's expertise in litigating questions of State and local employment, it would not enhance civil rights enforcement to relieve the Department of its present authority at this time. While the EEOC is strengthening its ability to litigate against Title VII violations by private employers, the Department of Justice can help create new law in the difficult area of public employment. We also recommend that the Department retain its responsibility for enforcing the provisions of Executive Order 11246 and for filing pattern or practice suits authorized by several Federal grant statutes.

[The Department of Justice concurs, but suggests that it be given concurrent jurisdiction with the EEOC to bring pattern or practice suits against private employers and unions under Title VII. The Department believes that it could contribute substantially to the steady and effective enforcement of the law in the private sector. The advantage of concurrent jurisdiction is that the Justice Department's capable staff would supplement the efforts of the EEOC. There is also merit in keeping the government's lawyer, the Department of Justice, involved in the prosecution of all violations of Federal law.]

The authority to litigate pattern or practice cases against private employers was removed from the Department of Justice by a 1972 amendment to Title VII. Reopening that congressional decision is likely to engender great opposition. The EEOC's litigation effort, moreover, has been improving consistently. Thus, there does not appear to be a compelling need for splitting the litigative program in the private sector; it would lead to just the type of duplication and overlap we are trying to remedy.]

DECISION

_____ Approve retaining current Department of Justice authority to litigate Title VII matters

_____ Disapprove

B. Responsibility for enforcing grant-related equal employment provisions should remain with the agencies administering the grant programs

The Task Force evaluated the possibility of transferring to the EEOC the equal employment responsibilities of Federal grant-making agencies. Such a step could eliminate the

duplication of effort, inconsistency in standards and investigative findings, and excessive and unproductive reporting requirements that now hinder the effort to bring State and local governments into compliance. The consolidation of authority approach was rejected in favor of assigning to the EEOC a coordination and leadership role for the whole Federal equal employment program. Among the principal reasons for this decision is that the multiplicity of statutes involved, the diverse regulations and investigative procedures, and the large number of personnel would have caused management problems of major proportions. In some instances, moreover, it is difficult to separate an agency's responsibility to ensure equality in the provision of services from its responsibility to ensure equal employment opportunity.

DECISION

_____ Approve leaving grant-related enforcement as presently structured

_____ Disapprove

VI. LEGISLATIVE OPTIONS

Although the reforms we are recommending go a long way toward improving the present structure, it is not possible for all desirable changes in the Federal Government's equal employment opportunity authority to be accomplished through a reorganization plan or by Executive order. There are certain limitations in existing legislation which hamper effective enforcement. For example, the EEOC cannot issue substantive regulations; it does not have administrative power to enforce findings; and its coverage does not extend to protected classes like the aged and handicapped. Reforms like these have long been advocated by civil rights groups. We recommend, therefore, that at the time you present this equal employment reorganization plan, you should indicate that you intend at a later date to explore a comprehensive civil rights legislative package. This package would include proposed amendments in all areas of civil rights--employment, housing, education, etc.--and would be based upon subsequent recommendations of the Civil Rights Task Force as it proceeds with its studies. You should make clear in your initial comments regarding this legislation that you are aware of the need for legislation regarding equal employment enforcement. You should

point out, however, that in order to develop comprehensive civil rights legislation, it is important to see how the reorganization effort in the other equal opportunity areas progresses.

With regard to strengthening equal employment opportunity enforcement, we recommend that you provide examples of the legislative issues you will consider including:

1. Whether to grant authority to the EEOC to conduct administrative proceedings leading to cease and desist orders. (If such authority is granted, the enabling legislation would have to contain provisions which ensure that the agency remains a part of the Executive Branch.)
2. Whether to amend Title VII to include a prohibition against discrimination on account of age.
3. Whether to amend Title VII to include a prohibition against discrimination against the handicapped.
4. Whether to amend Title VII to remove procedural impediments to the EEOC's authority to bring pattern or practice suits.
5. Whether to amend Title VII to eliminate possible impediments to eradicating wage discrimination based on sex.
6. Whether to amend Title VI of the Civil Rights Act of 1964 to remove the present exclusion of employment from its coverage.

DECISION

_____ Approve announcing that legislative changes will
be explored later

_____ Disapprove

VII. ANNOUNCEMENT

If you approve the proposed reorganization plan, we recommend that its announcement be given prominence since it has great significance to the civil rights community. Hamilton Jordan agrees. We propose that you use the announce-

ment as an occasion to make a forceful statement of your views on civil rights enforcement and to pledge your continued support to ensure that the equal employment effort is effective. We are prepared to arrange a gathering at the White House of major government officials, members of Congress, and a cross-section of civil rights, business, and labor leaders who would be advised of your decisions immediately before their public release. We believe that an announcement in this context would have a wide impact and give strong impetus to the civil rights enforcement effort. The announcement ceremony can be arranged within a week after your decision.

DECISION

_____ Approve announcing the plan at a public ceremony

_____ Disapprove

VIII. CONCLUSION

The adoption of the recommendations of the Task Force would have far-reaching consequences. These recommendations are directed toward ultimately vesting all of the Federal Government's equal employment responsibilities in the EEOC and they begin movement in that direction. The structure proposed for the immediate future represents a distinct improvement over the status quo. (See attached chart for a comparison of responsibilities under the present and proposed system.) While legislation and Executive leadership also are necessary to achieve a strong unified program, this plan represents a major step in ending lack of accountability and inconsistency which have led to much of the frustration voiced by those the laws are intended to protect and the employers, who are required to comply with these laws.

CURRENT DISPERSED RESPONSIBILITY	EQUAL EMPLOYMENT AUTHORITIES			PROPOSED CONSOLIDATION	
AGENCY	PROGRAM	DISCRIMINATION COVERED	EMPLOYERS COVERED	AGENCY	TIMING
EEOC	TITLE VII	Race, Color, Religion, Sex, National Origin	Private and Public Non-Federal Employers, Unions	EEOC	
LABOR (Wage and Hour)	Equal Pay Act Age Discrimination in Employment	Sex Age	Private and Public Non-Federal Employers, Unions	EEOC	July 1979 July 1979
CIVIL SERVICE	Title VII, Executive Order 11478, Equal Pay Act, Age Discrimination in Employment, Rehabilitation Act	Race, Color, Religion, National Origin, Sex, Handicapped, Age	Federal Government	EEOC	October 1978
EEOCC*	Coordination of All Federal Equal Employment Programs	-----	-----	EEOC*	July 1978
LABOR (OFCCP) COMMERCE DEFENSE ENERGY EPA GSA HEW HUD INTERIOR SBA DOT TREASURY	Vietnam Veterans Readjustment Act Rehabilitation Act Exec. Orders 11246, 11375 Exec. Orders 11246, 11375	Veterans Handicapped Race, Color, Religion, National Origin, Sex Race, Color, Religion, National Origin, Sex	Federal Contractors Federal Contractors	LABOR (OFCCP)	October 1978
JUSTICE	TITLE VII Executive Order 11246 Selected Federal Grant Programs	Race, Color, Religion, Sex, National Origin Race, Color, Religion, Sex, National Origin Varied	Public Non-Federal Employers Federal Contractors Federal Grantees	JUSTICE	No Change

* A number of Federal grant statutes include a provision barring employment discrimination by recipients based on a variety of grounds including race, color, sex, and national origin. Under the reorganization plan, the activities of these agencies will be coordinated by EEOC.

B

THE WHITE HOUSE

WASHINGTON

February 1, 1978

MEMORANDUM FOR: THE PRESIDENT
FROM: RICHARD A. PETTIGREW *Dick*
SUBJECT: Civil Rights Reorganization

I am in full agreement with the recommendations of the Reorganization Project. Ultimately, we should have a single, strong equal employment enforcement agency behind which all constituencies discriminated against can unite. The incremental steps proposed by the reorganization team move toward that goal in a reasonable way, building on the demonstrably improved EEOC.

From a public standpoint, this proposal is relatively non-controversial, except for the equal pay issue. To supplement the convincing arguments for EPA transfer in the decision memorandum, I would add the following.

The Department of Labor (and the AFL-CIO) argues that its employment standards employees are now engaged in multiple responsibilities, including minimum wage, child labor and other wage standard enforcement activities. This same argument could be made about the contract compliance employees in the eleven separate agencies, who will be transferred to the Department of Labor under the recommendations. Most are engaged in multiple contract enforcement activities.

In order to increase the priority of equal employment enforcement, the Department of Labor concurs that the EEO contract compliance functions should be consolidated in its OFCCP. Just as transfer of contract compliance responsibility to OFCCP will increase the priority of EEO enforcement in that program, so should transfer of equal pay responsibilities lead to a higher priority for enforcement of that Act. The equal pay activities in two separate agencies constitute an outright duplication and should be consolidated as proposed.

I and my staff have consulted extensively with affected interest groups on this plan. The transfers to the EEOC come across as carefully packaged and politically balanced. The constituencies most directly affected, i.e., women, minorities, the aged and federal employees, with very limited exceptions, support these transfers. If the package is dismantled, however, (e.g., if Equal Pay Act responsibilities were not transferred to EEOC), individual constituencies might have second thoughts about the transfer most relevant to them. Understandably, some groups are apprehensive about their programs being transferred from Labor to EEOC; nevertheless, they are willing collectively to fall in line behind your demonstrated commitment to a strong and effective EEOC.

Black groups in particular will endorse the plan as proposed. Given the supportive statements about the PRP plan you made recently to Black leaders, the EEO reorganization is already listed in the "favorable" column in ratings by the Urban League and NAACP.

Thus, your announcement of this package will have important symbolic as well as substantive value. I suggest that in discussing this plan you emphasize the critical role of aggressive EEOC pattern and practice litigation in dealing with the disproportionately high unemployment levels of our minority populations.

THE WHITE HOUSE

WASHINGTON

February 1, 1978

MEMORANDUM FOR:

RICK HUTCHINSON

FROM:

BUNNY MITCHELL 

Plan reflects a well-reasoned and substantive set of recommendations. It will receive the broad support of Black America.

Although universal acceptance of the plan will not occur immediately, I believe it will gain favor as improvements in agency performance occur.

Overt hostility to the consolidation of functions within EEOC has precipitously declined over the past two months. The phased-in approach to transferal of functions reflects a responsible management approach and has tempered the fears of certain protected classes (women, senior citizens and business groups).

It is crucial that periodic reports of EEOC and OFCCP progress be distributed to Congressional skeptics, public interest & civil rights groups.

Rather than announcing that by January 1981, a final determination on the transfer of the contract compliance program to EEOC will be made (decision option; page 23), the President should announce he will review the programs and make a determination on transfer in 1981.-- after there has been sufficient time for the consolidated contract compliance program to become operational and for the EEOC reforms to have been fully implemented.

The Hill has traditionally not had confidence in the EEOC to perform its present functions. Our biggest task will be to show that the EEOC is capable of taking on additional responsibility envisioned by our reorganization proposal.

EEOC is very much aware of their present image and are working hard to change that image -- we should assist by setting up a series of goals for EEOC to meet that we can define as a victory and declare the agency competent. Without a clear sense of improvement in the operations, any and all expansion will face major obstacles and criticism -- from friends and foes alike. Any transfers or expansions should be after documentable improvement in the agency.

It should be noted that under this Administration's leadership and the effective work of Ms. Norton, there have been increasingly favorable comments regarding the agency.

SUBJECT: McIntyre Memo Dated 1/28/78 re Reorganization of Equal
Employment Opportunity Laws and Programs

U. S. DEPARTMENT OF LABOR

OFFICE OF THE SECRETARY

WASHINGTON

February 1, 1978

MEMORANDUM FOR: THE PRESIDENT

FROM: RAY MARSHALL *RM*
Secretary of Labor

SUBJECT: Reorganization of Equal Employment
Opportunity Laws and Programs

The Reorganization Task Force Report on Equal Employment Opportunity Laws and Programs has been presented to you for a decision. Although we have worked with the Task Force to ensure that the Report presents an objective assessment of the status of current programs, I must express my reservations with some of its conclusions.

Let me say first that I share the belief of the Task Force that there should be a focal point for the Administration's commitment to civil rights and that this focal point should be the EEOC. I also believe that the Administration's success in this area will in large part be measured by the success of that agency. My comments, therefore, are not in opposition to this premise nor an attempt to retain specific programs in the Department of Labor. I do believe, however, that the Task Force Report fails to adequately discuss at least two essential points.

The first is somewhat technical but one which should be made. The Report emphasizes the overlap of several statutes and executive orders dealing with civil rights. It fails to note, however, that these various statutes employ different approaches in both inspections and enforcement and provide different remedies. Thus, a company may be in compliance with the anti-discrimination provisions of Title VII and yet not be in compliance with the affirmative action requirements imposed on large government contractors by the Executive Order. Similarly,

an employee who has been discriminated against in terms of pay may have lost his or her claim under Title VII, but may still have a viable claim under the Equal Pay Act, which has a significantly longer statute of limitations. Moreover, the events which may trigger action by the Federal government are different under the various statutes and order (e.g., a charge under Title VII, but the proposed award of a contract under the Executive Order) so that there will continue to be a multiple exposure of employers to potential enforcement actions by the government.

The second point and the one which gives me great concern is the Report's failure to examine fully the desirability of a single mission civil rights agency. There are, of course, many advantages to such an organization. At the same time, however, there are significant disadvantages in focusing the government's civil rights efforts in terms of enforcement only. This is particularly so where the enforcement mechanisms can now be used in conjunction with Departmental programs designed to increase the employment and training opportunities of women and minorities, as for example, in the case of apprenticeship and outreach programs. The transfer of all civil rights functions to a single enforcement agency could impede the development of such programs. The initial reorganization steps proposed in the Report may not have this effect, but it is a concern that should be fully explored before any subsequent transfers are ordered.

I would also like to reiterate my personal concern over the proposed transfer of the Equal Pay Act from the Department of Labor to EEOC. The Equal Pay Act is not a separate statute but is part of the Fair Labor Standards Act. As such, it incorporates the same coverage and exemption provisions applicable to the minimum wage. The EEOC will thus have to interpret provisions of a statute that will continue to be administered by the Department. In addition to the problems of coordination that this will cause, the transfer will also limit the Department's ability to deal with wage issues.



EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
WASHINGTON, D. C. 20506

February 1, 1978

MEMORANDUM

OFFICE OF THE CHAIR

TO : Rick Hutcheson
Staff Secretary

FROM : Eleanor Holmes Norton *EHN*
Chair

RE : EEOC Comments on Reorganization of Equal Employment
Opportunity Laws and Programs

We concur in the recommendations.

We would have preferred a more extensive reorganization in line with the prevailing views of civil rights professionals and organizations and the Congressional Black Caucus. However, we recognize that the OMB Plan is a delicate compromise, taking into account not only our views but those of other agencies and an especially broad diversity of other parties as well.

On balance the OMB provides a responsible, systematic and manageable way to reach a goal which has been a priority for civil rights and women's groups for decades. Particularly considering that the OMB Plan has won overwhelming support from women and minorities who are protected under the statute, we believe the OMB Plan should be strongly supported.

Further, the extensive internal reforms underway at the EEOC are yielding results sooner than anticipated, thus putting the agency in a favorable condition to receive new functions. A ten-week study of the new systems being used in model offices showed significant results. For example, there was an average 30% drop in intake of complaints, a result of placing professionals rather than clericals at intake and offering careful counseling to people whose problems belong elsewhere. The rate of negotiated settlements (which do not require intensive investigation) increased from 6% in a 10-week period last year to 44% during the comparable period under the new systems. During this 10-week period the average dollar benefit was \$2,235 per person. And the model offices resolved one-third more cases than they received, indicating clearly that the Commission is on its way to eliminating its backlog.

. . . continued

The new systems are being carefully monitored and staff has been meticulously trained. The feed-back from large companies and from organizations representing employers who make extensive use of EEOC charge processing systems has been especially encouraging. At the same time charging party groups have been laudatory in their praise of the new systems.

Finally, it should be noted that EEOC staff which had worked under the tortuously complicated and inefficient systems now being replaced have been especially receptive to the reforms, despite the dislocation inherent in such an extensive reorganization.

EHN/clb



Office of the Attorney General
Washington, D. C.

December 20, 1977

MEMORANDUM FOR: THE PRESIDENT
FROM : Griffin B. Bell
SUBJECT : Reorganization of Equal Employment
Opportunity Laws and Programs

A proposal to reorganize the enforcement of equal employment opportunity has been developed by an OMB Task Force. While several of the reorganization steps appear sensible, I am troubled by some aspects of the task force report.

(1) EEOC "coordination" of the equal employment enforcement policy of all federal agencies. The most important questions of "policy" in the equal employment field are legal ones and I do not believe that EEOC should be substituted for the Attorney General as the chief legal adviser to the government in this area.

(2) Litigation authority in EEOC to enforce Title VII of the Civil Rights Act against private employers and labor unions. This trend toward decentralization of litigation authority away from the Department of Justice is harmful; to the extent feasible, litigation authority for executive branch agencies should be in the Department of Justice.

(3) Centralization of the Executive Order compliance program at the Department of Labor. I agree with this recommendation for consolidation. I do not believe, however, as the report urges, that two years after consolidation, (i.e., in October, 1980) you "should determine whether the time is appropriate" to transfer the program to the EEOC. I question whether it is desirable to centralize Executive Order and Title VII enforcement in one agency. In any event, I think it is important for you not to commit yourself in advance to a decision at that time; but to maintain as much flexibility as possible with respect to resolving this issue.

A more extensive discussion of my views is contained in a memorandum from Drew S. Days III, Assistant Attorney General for Civil Rights, to Stuart Eizenstat, a copy of which is attached.

Griffin B. Bell

cc: James T. McIntyre, Jr., with Attachment

Date: 30 January 1978

MEMORANDUM

FOR ACTION:

Secretary Vance
 Secretary Blumenthal
 Secretary Brown
 Attorney General Bell
 Secretary Andrus
 Secretary Bergland

FOR INFORMATION:

Secretary Kreps	Administrator
Secretary Marshall	Costle
Secretary Califano	Administrator
Secretary Harris	Solomon
Secretary Adams	Administrator
Secretary Schlesinger	Cleland
<u>Chairman Campbell</u>	Chair Norton
Chairman Flemming	

FROM: Rick Hutcheson, Staff Secretary

SUBJECT: McIntyre memo dated 1/28/78 re Reorganization of Equal Employment Opportunity Laws and Programs

NO EXTENSIONS

**YOUR RESPONSE MUST BE DELIVERED
 TO THE STAFF SECRETARY BY:**

TIME: 12:00 Noon

DAY: Wednesday

DATE: February 1, 1978

ACTION REQUESTED:

Your comments
 Other: _____



STAFF RESPONSE:

I concur. No comment.
 Please note other comments below:

These comments complement the points made in prior responses to OMB on the EEOC Reorganization Plan. The Civil Service Commission opposes the transfer of Title VII responsibility for Federal employees to EEOC. (1) We are not prepared to defend the Commission's record in prior years. We are prepared to defend the changes we have initiated. (2) We and the Justice Department do not believe the law permits CSC or EEOC to take the types of corrective actions envisioned by EEOC. (3) If discrimination complaints are handled by EEOC, most employees will file duplicate appeals with EEOC and the civil service appellate agency, permitting them to shop among appeal routes which is one of the major problems of the system today which we are trying to correct through civil service reform. (4) Agencies must work hand in glove with the central personnel agency on affirmative action plans, and only that agency can provide the kind of positive leadership necessary for the accomplishment of affirmative action goals. (5) We welcome EEOC authority to challenge our policies and examinations and are prepared to abide by lawful decisions on their part.

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately. (Telephone, 7052)



DEPARTMENT OF STATE

Washington, D.C. 20520

February 1, 1978

MEMORANDUM FOR MR. RICK HUTCHESON,
STAFF SECRETARY, THE WHITE HOUSE

Subject: Reorganization of Equal Employment
Opportunity Laws and Programs

This memorandum addresses the proposed reorganization of equal employment opportunity laws and programs, the subject of a memorandum to the President from Mr. McIntyre dated January 7, 1978.

The Department of State previously commented on this reorganization project. We are still concerned about whether one agency can serve the needs of both the public and the private sector in what is sure to be a deluge of adjudicatory actions in this broad area. Secondly, in considering whether to seek legislative action to amend Title VII to include a prohibition against discrimination toward the handicapped, we urge that an effort be made to clarify the issues that would be addressed in the handicapped program.

Joan M. Clark
Joan M. Clark
Director,
Management Operations



THE SECRETARY OF TRANSPORTATION
WASHINGTON, D.C. 20590

FEB 1 1978

The President
The White House
Washington, D.C. 20500

Dear Mr. President:

The Department of Transportation concurs with Mr. McIntyre's recommendation for Reorganization of Equal Employment Opportunity Laws and Programs. We believe, however, that the following comments are in order.

Structural shortcomings in the Federal civil rights compliance and enforcement apparatus are not the only obstacles or even the most serious obstacles to genuine accomplishment in this area. We cannot say strongly enough that problems in civil rights enforcement have resulted primarily from lack of adequate staff, funding and commitment. This Administration must pledge support for a newly reorganized civil rights capability with both sufficient human and financial resources and a strong and highly visible commitment to rigorous enforcement.

We support the Reorganization Project's judgment that consolidation of the program will provide for stronger, more coordinated and consistent enforcement. We are ready to cooperate in whatever way we can during the transition.

Respectfully,

A large, handwritten signature in black ink, reading 'Brock Adams', is centered below the text.

Brock Adams

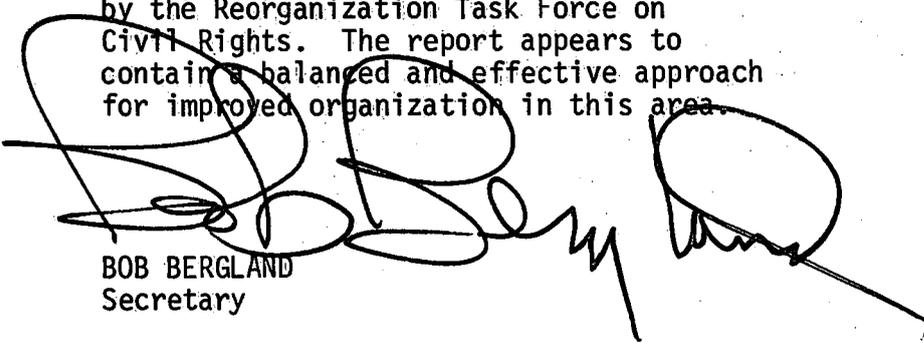


DEPARTMENT OF AGRICULTURE
OFFICE OF THE SECRETARY
WASHINGTON, D. C. 20250

February 1, 1978

MEMORANDUM FOR: The President

I concur in the attached report and recommendations on Federal equal employment laws and programs, submitted by the Reorganization Task Force on Civil Rights. The report appears to contain a balanced and effective approach for improved organization in this area.



BOB BERGLAND
Secretary

Attachment

UNITED STATES COMMISSION ON CIVIL RIGHTS

Washington, D. C. 20425

January 31, 1978

• Mr. Rick Hutcheson
Staff Secretary
The White House
Washington, D.C. 20500

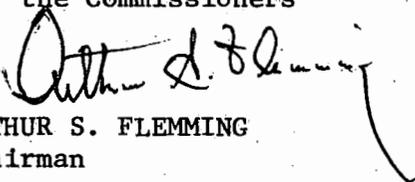
Dear Mr. Hutcheson:

Thank you for providing this Commission with the opportunity to comment on the proposal for Reorganization of Equal Employment Opportunity Laws and Programs. The basic elements of the proposal remain essentially unchanged since we reviewed it for Mr. Harrison Wellford last Fall.

On November 15, 1977, we wrote to Mr. Wellford to express our belief that if the recommendations in that report were implemented, they could substantially improve the Federal effort to enforce equal employment opportunity law. We continue to support the proposal.

Sincerely,

For the Commissioners


ARTHUR S. FLEMMING
Chairman

Attachment



THE SECRETARY OF HEALTH, EDUCATION, AND WELFARE
WASHINGTON, D. C. 20201

February 1, 1978

MEMORANDUM FOR THE PRESIDENT

FROM JOE CALIFANO *Joe Cal.*

I have reviewed the January 28, 1978, Report of the Office of Management and Budget on Reorganization of Equal Employment Opportunity Laws and Programs.

I am deeply concerned about the proposal to transfer contract compliance authority to the Department of Labor. I believe separating civil rights compliance from agency contracting authority will seriously hinder and weaken contract compliance. Civil rights must be an integral part of every agency's mission, and efforts to prevent discrimination must occur at every stage of their decisionmaking processes.

Equally important, the proposed transfer will result in unwarranted intrusion of the Federal Government into the affairs of private employers by increasing the probability of duplicative review and investigations by this Department and the Department of Labor. This is especially true in the education area, where HEW will continue to have heavy involvement with institutions of higher learning under Title VI of the Civil Rights Act of 1964 and Title IX of the Education Amendments of 1972. Our recommendation--that primary Executive Order 11246 authority should be retained in contracting and grant-making agencies--permits one agency to review an employer or institution once to determine compliance with all of the civil rights laws.



Department of Energy
Washington, D.C. 20585

1 February 1978

MEMORANDUM FOR: Rick Hutcheson

FROM: Roger Colloff *RC*
for James R. Schlesinger

SUBJECT: January 28, 1978, Memorandum Regarding
Reorganization of Equal Employment
Opportunity Laws and Programs

We are in agreement that more effective means of assuring equal employment opportunities in Federal and Government contractor organizations can be expected from actions proposed for approval in the report attached to the Jim McIntyre memorandum of January 28, 1978, to the President. However, the Department of Energy wishes to enter a reservation concerning the contract compliance program affecting contractor employees who construct and operate our technical facilities.

Previously the Department informed the Reorganization Task Force on Civil Rights that it favored consolidation of the work of the various Federal contractor compliance agencies in the Department of Labor with the suggestion that the merger be phased in over a three to five-year period. This, however, referenced only those industries assigned to the Department for contract compliance responsibility.

We also expressed concern regarding the equal opportunity compliance program for contractor employees working on-site in the construction and operation of Department of Energy technical facilities (about 100,000 employees at the present time in the Government-owned, contractor-operated facilities). This important program has been effectively operated for about 12 years as a part of this Department's industrial relations management program. During this time, the employment of minorities has doubled and the employment of women in responsible positions has increased substantially. These are contractor-operated facilities, and we believe this aspect of equal opportunity compliance should continue to be administered through our industrial relations program to preserve our present level of achievement, to continue

gains in this important area of affirmative action responsibility, and to ensure that we can effectively construct and operate our complex technical facilities.

With respect to the transfer of authority to the EEOC to ensure equal employment opportunity in Federal employment, it is clear that it would be beneficial for Federal managers and employees to be under similar requirements and remedies as the private sector and local governments. However, to accomplish the objectives in Mr. McIntyre's report will require that line managers at all levels continue to aggressively carry out the Government's equal employment opportunity programs.



THE SECRETARY OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, D. C. 20410

FEB 1 1978

Mr. Richard G. Hutcheson
Staff Secretary
The White House
Washington, D. C. 20500

Re: Reorganization of Equal Employment Opportunity
Laws and Programs

Dear Mr. Hutcheson:

You have requested the Department of Housing and Urban Development's views on the above referenced report. While we generally endorse and support the recommendations, we cannot support the recommendation to consolidate Executive Order 11246 activities into one department.

The following comments were provided to the Director of the Task Force on Civil Rights Reorganization in response to an earlier draft, but were not fully reflected in this final report.

In addition to our own contract compliance activities, HUD administers the Executive Order 11246 program for the Department of Health, Education and Welfare, the Veterans Administration, and the Economic Development Administration of the Department of Commerce where construction is involved. The recommendation of the Task Force on Civil Rights of the President's Reorganization Project is that the eleven agencies currently administering this responsibility have their programs transferred to the Office of Federal Contract Compliance Programs in the Department of Labor. We do not believe that this is a step in the right direction, since it removes a civil rights obligation from departments and agencies with program responsibility.

While this proposed action may result in clarifying areas where there are differing compliance standards, such a benefit is far outweighed by the cost in commitment and program effectiveness. When these responsibilities are separated, agencies are free to pursue individual program goals with no need to consider the little known program features that can be designed to achieve civil rights compliance by contractors. In this respect the contract compliance obligation is more akin to program than to employment responsibility and should be treated as such.

We believe there are measures other than consolidation which could be taken to improve OFCCP's administration of the program while still following the philosophy of having civil rights enforcement authority reside where there are program responsibilities.

With regard to the administration of Title VII for Federal Discrimination in Employment, we agree with the recommendations which are made. Putting the authority in the Equal Employment Opportunity Commission should result in more consistent application of EEO requirements in the public and private sectors.

Sincerely yours,

A handwritten signature in cursive script that reads "Patricia Roberts Harris". The signature is written in dark ink and is positioned above the typed name.

Patricia Roberts Harris



THE SECRETARY OF THE TREASURY

WASHINGTON 20220

FEB 1 - 1978

MEMORANDUM FOR THE PRESIDENT

Subject: Reorganization of Equal Employment
Opportunity Programs

I share Secretary Califano's concern that the consolidation of equal employment opportunity compliance programs in a single agency as proposed by the Reorganization Task Force on Civil Rights may result in loss of specialized treatment of the unique problems of particular industries. Equal employment opportunity problems vary substantially among industries and firms and require specialized treatment. A single agency may tend to generalize its treatment of these problems to the detriment of a successful compliance program and of business community support for the program.

For example, the Treasury is now charged with reviewing contract compliance by financial institutions. I am committed to performing that responsibility effectively. It is important in my view for the effort to remain under the supervision of officials with an understanding of the special problems of financial institutions. I am concerned that consolidating this program in the Labor Department which is accustomed to regulating blue collar industries may exacerbate compliance problems because of insensitivity to the unique nature of financial institutions.

We agree with HEW that responsibility for contract compliance should remain with the present agencies, but that general supervisory authority should be shifted to EEOC. We strongly oppose any temporary relocation of contract compliance to the Labor Department pending final decision on transfer to EEOC. If the agencies' responsibilities are to be transferred to a central location, they should be moved directly to EEOC without an intermediate period of doubt and confusion at Labor.

W. Michael Blumenthal



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

FEB 1 1978

OFFICE OF THE
ADMINISTRATOR

Mr. Rick Hutcheson
Staff Secretary
The White House
Washington, D.C. 20500

Dear Rick:

This responds to your request of January 30, 1978, for comments on James T. McIntyre, Jr.'s, memorandum of January 28, 1978, subject Reorganization of Equal Employment Opportunity Laws and Programs.

Following are our comments on the options listed in the order presented:

Page 11 -- Decisions on the Principles

Approve

Page 14 -- Transfer of Equal Pay Act to EEOC on July 1, 1979

Approve

Page 16 -- Transfer of Age Discrimination Enforcement Authority to EEOC on July 1, 1979

Approve

Page 18 -- Transfer of Equal Employment Responsibility to EEOC on October 1, 1978

Approve. (Enforcement procedures only. Affirmative Action and Special Emphasis Programs to remain with CSC.)

Page 20 -- Abolish EEOCC and Transfer Responsibility to EEOC on July 1, 1978

Approve

Page 22 -- Consolidating Contract Compliance Activities in Labor on October 1, 1978

Approve. (For direct contracting only as provided for by compliance agencies. Construction contracting under grants to be retained as part of grant-related enforcement option, page 24.)

Page 23 -- Defer Decision on Transfer of Contract Compliance to EEOC no Later than January 1981

Approve

Page 24 -- Retain Current DOJ Authority to Litigate Title VII Matters

Approve

Page 25 -- Leave Grant-Related Enforcement as Presently Structured

Approve

Page 26 -- Announce Legislative Proposals Later

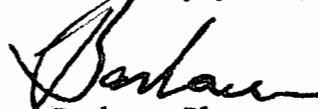
Approve

Page 27 -- Announce Plan at Public Ceremony

Approve

Thank you for the opportunity to comment on this important initiative.

Sincerely yours,



Barbara Blum
Deputy Administrator



VETERANS ADMINISTRATION
OFFICE OF THE ADMINISTRATOR OF VETERANS AFFAIRS
WASHINGTON, D.C. 20420

February 1, 1978

MEMORANDUM FOR:

Rich Hutcheson
Staff Secretary
The White House

We have reviewed the report, "Reorganization of Equal Employment Opportunity Laws and Programs" submitted by Mr. James T. McIntyre, Jr., on January 28, 1978, to the President. The following actions recommended in this report are concurred in by the Veterans Administration:

(1) That there be an incremental movement toward a single agency to consolidate equal employment enforcement functions;

(2) That the Equal Employment Opportunity Commission (EEOC) become the ultimate locus of equal employment enforcement programs;

(3) That the merger of program responsibilities will be made to the EEOC and will include:

(a) transfer of Equal Pay Authority; and

(b) transfer of Age Discrimination Authority;

(4) That the development of a comprehensive civil rights legislative package which would include proposed amendments in all areas of civil rights--employment, housing, education, etc.--be explored.

We are concerned with the transfer of equal employment opportunity enforcement authority for Federal employees to the EEOC. In view of the stated organizational deficiencies of the EEOC, and its present backlog of cases, we are

concerned that the tremendous additional program responsibilities will be too burdensome. Transfer of all these functions, at a time when the EEOC is desperately trying to reform itself administratively, might jeopardize already initiated reforms. It will take several years to judge the effectiveness of those reforms, yet before such scrutiny is possible, several large-scale programs will be added to EEOC's existing responsibility. The premature tasking of EEOC with these programs might be a disservice to it.

An alternative might be for the Civil Service Commission to retain Federal employee equal employment opportunity enforcement. The Commission has been sensitive to the criticisms of it, as summarized in the memorandum, and, in part, the proposed reorganization of the Commission was designed to correct those criticisms. Moreover, the major criticisms relate to burdensome procedures and overall time delays in the adjudicatory process. These criticisms can be corrected administratively by restructuring the existing Civil Service Commission procedure. This alternative permits the realization of the incremental movement toward a single agency by the transfer of some functions to the EEOC without overburdening it. Should the Civil Service Commission reforms not silence criticism, or EEOC demonstrate that it has overcome its internal problems, the Federal employee equal employment opportunity enforcement function could be transferred at a later date as part of the incremental movement. This alternative gives the EEOC some additional time to prepare itself for these additional responsibilities.


MAX CLELAND
Administrator



United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

February 2, 1978

Mr. James T. McIntyre, Jr.
Executive Office of the President
Office of Management and Budget
Washington, D. C. 20503

Dear Jim:

Thank you for providing an opportunity for the Department of the Interior to comment on the proposed "Reorganization of Equal Employment Opportunity Laws and Programs." We have reviewed the proposal and raise the following brief considerations.

Degree of Consolidation and Placement of Consolidation Functions

The Department expresses its support for major, if not total consolidation of the subject programs at the Equal Employment Opportunity Commission (EEOC). However, our hesitancy is with the prospects for a single agency becoming a political football in future years and having its budget become the target of those who may be less supportive of an aggressive equal employment and affirmative action effort. Also, as indicated below, we wish to question certain aspects of the consolidation.

Transfer of Program Responsibilities into the EEOC

The Interior Department endorses the transfer of programs and authorities for the Equal Pay Act of 1963, Age Discrimination in Employment Act of 1967, and the authorities under Title VII of the Civil Rights Act of 1964, to the EEOC, with one reservation. While we agree that it is valid to separate the responsibility for setting Federal personnel policies (CSC) from the assessment and enforcement of such policies (proposed for EEOC) in light of Title VII, we share some of the Civil Service Commission's hopes for the proposed Merit Systems Protection Board as the vehicle for ensuring equal employment opportunity.

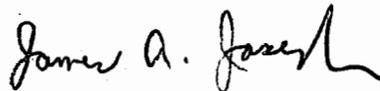
Mr. James T. McIntyre, Jr.
Page Two
February 2, 1978

Consolidation of Contract Compliance Programs in the
Office of Federal Contract Compliance Programs (OFCCP)

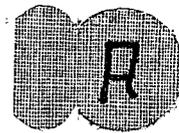
As noted in your proposal, the experience of the Department of the Interior as one of eleven government agencies responsible for monitoring contractor compliance with Executive Order 11246, would have us oppose complete consolidation. However, we wish to give a vote of confidence to the new leadership at OFCCP for the positive steps that the agency has taken thus far. We will continue to be concerned though, that (a) extensive administrative and organizational improvements be implemented, (b) adequate and well trained staff are available, and (c) if there is a decision to ultimately consolidate this responsibility at EEOC, a realistic but firm timetable be developed.

Finally, as pointed out in the document, certain aspects of the reorganization will require legislative initiatives. If these are to succeed, the resources of several Cabinet level departments should be employed, as we have done with other priority legislative issues. The Department of the Interior considers this a priority initiative, and looks forward to supporting such an effort.

Sincerely,



Acting SECRETARY



APPENDIX A
MAJOR AGENCIES

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THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

I. DUTIES

Title VII of the Civil Rights Act of 1964, as amended in 1972, prohibits employers from discharging or refusing to hire individuals on the basis of race, color, sex, religion or national origin. An employer may not discriminate against employees with respect to compensation, terms, conditions or privileges of employment or segregate or classify persons in a way which would tend to deprive them of employment opportunities or otherwise adversely affect their employment status. Similarly, labor organizations may not exclude or expel from their membership or otherwise discriminate against individuals on the basis of their race, color, religion, sex or national origin.

The Act created the Equal Employment Opportunity Commission (EEOC) as the agency responsible for the enforcement of this prohibition. The EEOC investigates written sworn charges of discrimination filed by individuals or members of the Commission. The EEOC is required to defer action on charges to State or local fair employment practices agencies whose statutes or ordinances prohibit the practices forbidden and provide the remedies granted by Title VII. The EEOC must attempt to resolve valid charges through conciliation and, as a result of the 1972 amendments to the Act, may file lawsuits against those respondents subject to its jurisdiction where conciliation efforts fail. The sole power to file suit against State and local governments, however, resides with the Attorney General.

II. ORGANIZATIONA. Structure

The Commission consists of five members appointed by the President, one of whom is designated by the President to be Chairperson. The Chairperson is the chief administrative officer of the Commission and is authorized to appoint most of the employees of the agency. The President also appoints an independent General Counsel. The Commission's extensive field structure consists of seven regional offices, 32 district offices and seven regional litigation centers.



B. Staff

Fiscal Year 1978: 2,487 Staff Years

C. Budget

Fiscal Year 1978: \$77 Million

III. WORKLOAD

It is estimated that the EEOC expends almost 90 percent of its resources in the processing of complaints, with the remainder of its staff concentrating on self-initiated attempts to uncover broad patterns of discrimination. In Fiscal Year 1976, the EEOC received 76,800 complaints and an estimated 85,500 complaints in Fiscal Year 1977. In 1976, the Commission settled 3,177 cases prior to a determination of the merits of the complaint. The EEOC's success rate in achieving conciliation after a determination on the merits is 31.5 percent. In 1976, the Commission filed 345 suits alleging discrimination.

IV. SIGNIFICANT PROBLEMS

See Appendix B.

V. PROPOSED REFORMS

See Appendix B.

THE DEPARTMENT OF LABOR

The Department of Labor's Employment Standards Administration is responsible for five major non-grant related equal employment opportunity programs which are administered by the Office of Federal Contract Compliance Programs and the Wage and Hour Division.

OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMSI. DUTIESA. Executive Order 11246

The provisions of the Executive order require supply and service contractors with a contract of \$10,000 or more in any 12 month period not to discriminate and to take affirmative action to ensure that applicants and employees are treated without regard to their race, color, religion, sex, or national origin. Contractors who employ 50 or more employees and hold a contract of \$50,000 or more are required to have written affirmative action programs for each of their facili-

ties. These programs must analyze the utilization of minorities and women by job groupings and classifications in light of the labor market availability of these groups. Where underutilization is identified by the contractors, they are required to establish reasonable and attainable numerical goals and timetables to eliminate that underutilization and to undertake good faith affirmative action efforts to ensure that those goals are met.

B. Section 503 of the Rehabilitation Act of 1973

All Federal contracts in excess of \$2,500 are required to include clauses in which the contractor agrees to take affirmative action to employ and advance in employment qualified handicapped individuals. Contractors that hold contracts or subcontracts of \$50,000 or more and have 50 or more employees are required to maintain at each establishment an affirmative action program which is to be reviewed and updated each year. Under these regulations, handicapped persons are to identify themselves as being handicapped in order to benefit from such affirmative action programs. Contractors are not required, however, to conduct a utilization analysis nor to establish goals and timetables.

C. Section 402 of the Vietnam Era Veterans Readjustment Assistance Act of 1974

Government contractors with a contract of \$10,000 or more are required to take affirmative action to employ and to advance in employment qualified Vietnam era and disabled veterans. In addition, contractors are required to file suitable job openings and quarterly hiring reports with appropriate local or State employment service offices.

Contractors holding a contract of \$50,000 or more and employing 50 or more persons are required to develop and maintain an affirmative action program for covered veterans. Such programs call for outreach efforts and review of job requirements to ensure that they are validated and do not exclude qualified veterans. These contractors also are required to develop on-the-job training opportunities for veterans and to recruit job ready veterans. Utilization analysis and goals and timetables are not required.

Contractors who fail to meet the affirmative action and nondiscrimination requirements of these three programs may have their contracts cancelled, terminated, or suspended or may be debarred from obtaining future contracts.



II. ORGANIZATION

A. Structure

Executive Order 11246 assigned the administration of its enforcement to the Secretary of Labor while leaving the actual enforcement responsibility in the contracting agencies. The Secretary has delegated responsibility for administering the program to the Office of Federal Contract Compliance Programs (OFCCP). The responsibility for actually securing compliance from those covered by the Executive order is vested in 11 contracting agencies. Only OFCCP, however, enforces Section 503 of the Rehabilitation Act of 1973 and Section 402 of the Vietnam Era Veterans Readjustment Assistance Act of 1974.

B. Staff

Fiscal Year 1978: OFCCP - 216 Staff Years
 Compliance Agencies (11) -
 1,571 Staff Years

C. Budget

Fiscal Year 1978: OFCCP - \$6.9 Million
 Compliance Agencies (11) -
 \$33.1 Million

III. WORKLOAD

During Fiscal Year 1976, the compliance agencies conducted 10,647 reviews representing 58.6 percent of the reviews which had been planned for that fiscal year. OFCCP conducts regular audits of the compliance agencies' enforcement activities and between July 1, 1975 and September 30, 1976, it conducted audits of 45 agency compliance offices. To ensure that the compliance agencies' reviews of contractors are adequate, OFCCP periodically conducts audits of the agency compliance review reports. During the period mentioned above, OFCCP conducted 647 such reviews. Enforcement of the Executive order in the construction industry has been implemented through special bid conditions and area-wide (hometown or imposed) plans in certain parts of the country. As of August 1977, there were only 42 hometown plans and seven imposed plans nationwide.

Between July 1975 and August 1977, five contractors were debarred under the contract compliance program. As of July 1977, another six contractors were awaiting administrative hearings to determine if they were in compliance.

In Fiscal Year 1976, about 40 percent of OFCCP's total staff (87 persons) were assigned to work on the enforcement of the veterans and handicapped programs. During Fiscal Year 1977, 2,089 complaints by veterans and 3,329 complaints from handicapped persons were received by OFCCP.

IV. SIGNIFICANT PROBLEMS

A. Some officers of corporations complain of inconsistency in the enforcement of the Executive order program. In general, they have facilities reviewed by more than one agency and they complain that the forms acceptable to one agency are not acceptable to another, making a corporate approach to affirmative action all but impossible.

B. Under the current structure of enforcement, OFCCP has had difficulty getting the compliance agencies to follow its directives.

C. The structure of the Executive order program also breeds conflict of interest between the compliance agencies' procurement objectives and the objectives of the contract compliance program. OFCCP, nevertheless, has never withdrawn the compliance authority from a recalcitrant compliance agency.

D. Contract compliance for the construction industry has been ineffective as evidenced by the limited number of plans developed and the cumbersome procedures for developing such plans.

E. The use of sanctions against contractors has been sparse.

V. PROPOSED REFORMS

A. A September 1977 OFCCP Task Force Report proposed that the enforcement responsibilities of the 11 compliance agencies be consolidated in OFCCP in order to eliminate inconsistent enforcement and to eradicate the conflict of interest in the present compliance program.

B. A formal, comprehensive regulatory framework, including basic standards and enforcement procedures, is proposed to be established to replace hometown plans and special bid conditions for the construction industry.

C. The Assistant Secretary for Employment Standards has called for the increased use of sanctions, including debarment, for those contractors out of compliance.

WAGE AND HOUR DIVISION

I. DUTIES

A. Equal Pay Act of 1963

The Equal Pay Act (EPA) amended the Fair Labor Standards Act of 1938. The EPA forbids wage discrimination on the basis of sex between employees who are performing work on jobs in the same establishment, the performance of which requires equal skill, effort and responsibility and is performed under similar working conditions.

B. Age Discrimination in Employment Act of 1967

The Age Discrimination in Employment Act (ADEA) prohibits job discrimination against workers between 40 and 65 years of age. Prohibitions and coverage generally parallel those under Title VII of the Civil Rights Act of 1964.

II. ORGANIZATION

A. Structure

The enforcement of EPA and ADEA is carried out through a system of 10 regional offices, 90 area offices and 260 field stations. Compliance officers also enforce other provisions of the Fair Labor Standards Act, the Davis-Bacon Act, the Service Contract Act and the Public Contract Act. Compliance reviews, investigation of individual complaints, and court proceedings are the primary methods of enforcement. Suits enforcing these statutes are filed by the Office of the Solicitor of Labor.

B. Staff

Fiscal Year 1978: Wage and Hour Division - 239

Solicitor - 78 Staff Years

C. Budget

Fiscal Year 1978: Wage and Hour Division - \$7.2 Million

Solicitor - \$1.6 Million

III. WORKLOAD

A. Under the EPA, the number of complaints filed in Fiscal Year 1976 totaled 2,311. In that year, over 5,000 complaints were filed on the basis of the Age Act. The backlog in Equal Pay enforcement is less than 2,000, while that under the Age Act is a little more than 2,000. During Fiscal Year 1976, the Wage and Hour Division undertook 6,678 compliance reviews. That same year, Wage and Hour found that a total of 24,610 employees had been underpaid and 164 civil actions were filed by the Solicitor of Labor to enforce the EPA.

IV. SIGNIFICANT PROBLEMS

A. Wage and Hour policy statements reflect major differences with the positions of the Equal Employment Opportunity Commission.

B. During Fiscal Years 1975 and 1976, DOL regional and area office staff appear to have decreased their emphasis on equal pay enforcement compared to earlier years.

V. PROPOSED REFORMS

The Assistant Secretary for Employment Standards has instructed the Wage and Hour Division to increase its efforts to enforce the EPA.

DEPARTMENT OF JUSTICE

I. DUTIES

The authority of the Department of Justice to enforce prohibitions against employment discrimination emanates from six statutes and an Executive order. The Attorney General, under Title VII of the Civil Rights Act of 1964, has authority to bring suits, after referral from the EEOC, against State and local governments. In addition, the Department of Justice has on its own initiative brought pattern and practice suits against public employers. The Attorney General also has authority to sue recipients of Federal grants pursuant to the following statutes:



- A. The State and Local Fiscal Assistance Act of 1972;
- B. The Omnibus Crime Control and Safe Streets Act of 1968;
- C. The Comprehensive Employment and Training Act of 1973;
- D. The Housing and Community Development Act of 1974; and
- E. Title VI of the Civil Rights Act of 1964.

II. ORGANIZATION

A. Structure

The Employment Section of the Civil Rights Division of the Department of Justice has handled most of the Department's employment discrimination litigation. The Federal Programs Section of the Civil Rights Division, however, has handled employment litigation relating to recipients of Federal financial assistance while the Education Section has handled litigation involving public educational institutions.

B. Staff

Fiscal Year 1978: Employment Section - 44 Staff Years

C. Budget

Fiscal Year 1978: Employment and other sections -
\$2.1 Million

III. WORKLOAD

Between March 1974 and June 1977, the Department of Justice brought 39 suits involving employment discrimination.

IV. SIGNIFICANT PROBLEMS

A. One of the failures of the Civil Rights Division has been its neglect of sex discrimination cases; prior to 1972, only two of the Employment Section's cases alleged discrimination based on sex.



B. The Civil Rights Division also has been charged with being too conservative.

C. The Employment Section's small size has adversely affected its ability to litigate a large percentage of the instances of noncompliance brought to its attention.

V. PROPOSED REFORMS

A. The Civil Rights Division has expressed its intention to improve its track record in sex discrimination cases.

B. The Division has suggested an internal reorganization which would involve the transfer to the Employment Section of all litigation involving employment in elementary and secondary schools.

C. The Department has undertaken a study to determine whether the U.S. Attorneys should be given responsibility to handle referrals from the EEOC of individual charges of discrimination made by State and local government employees.

CIVIL SERVICE COMMISSION

I. DUTIES

The Civil Service Commission (CSC) has authority under Executive Order 11478 and the 1972 amendments to Title VII of the Civil Rights Act of 1964 to enforce equal opportunity and affirmative action in the Federal service. The CSC is called upon to supervise and provide leadership and guidance to the equal employment opportunity programs within the Executive departments and agencies. In furtherance of that responsibility it can issue regulations, orders and instructions to the various departments and agencies. In addition, the CSC has the responsibility to review and approve annually national and regional equal employment opportunity plans submitted by each government department and agency. The Commission also enforces Section 501 of the Rehabilitation Act and the Equal Pay Act.

Federal employees do not have recourse to the EEOC but file complaints of discrimination with their own agencies. If they disagree with the determination of their respective agencies, they may appeal to the CSC.

II. ORGANIZATION

A. Structure

The CSC administers the equal employment opportunity program in the Federal Government through an office of Federal



Equal Employment Opportunity (FEEO) within the Office of the Commission's Executive Director. The Director of FEEO reports to the Assistant Executive Director of the Commission. The FEEO is responsible for reviewing affirmative action plans and overseeing the complaint system, as well as special emphasis programs such as the Federal Women's Program, the Spanish-Speaking Program, and the Upward Mobility Program. Other units of the CSC, such as the Appeals Review Board, also play a role in administering the equal employment program.

The various agencies and departments, on the other hand, have set up their own internal equal opportunity programs. These are normally headed by an Equal Employment Opportunity Officer who reports to the head of the agency or another senior agency official.

B. Staff

Fiscal Year 1978: CSC - 302 Staff Years
(100 to be transferred)

C. Budget (Includes Reimbursable Authority)

Fiscal Year 1978: CSC - \$8.5 Million
(\$6.5 Million to be transferred)

III. WORKLOAD

Approximately 7,000 formal discrimination complaints were filed by government employees in Fiscal Year 1976. During the same year, 1,760 agency decisions were appealed to the CSC's Appeals Review Board. Affirmative action plans are submitted annually to the CSC by all agencies with 500 or more employees. The Commission has reviewed only about 1,200 of the 4,000 plans submitted to it.

IV. SIGNIFICANT PROBLEMS

A. The Professional and Administrative Career Examination (PACE), which is administered by the Commission to screen applicants for more than 100 job titles, has not been properly validated.

B. Commission rules and procedures governing complaints are more burdensome to Federal employees than those issued by the EEOC for employees in the non-Federal sectors.

C. Despite a statutory limitation of 180 days for the processing of complaints by government employees, the government-wide average for the processing of complaints was 398 days in Fiscal Year 1976.

D. The CSC has been criticized because its guidelines on affirmative action are weaker than those governing the private sector.

E. While the CSC requires agencies to conduct their own internal equal employment evaluations, there is no specific guidance on what constitutes an acceptable evaluation.

V. PROPOSED REFORM

A. The present Commissioners have expressed great concern about improving the effectiveness of the Commission's equal employment efforts. In addition, they have supported the efforts of the joint CSC-PRP Personnel Management Task Force to explore the need for change in such important areas as the structure and location of the Federal Title VII program and such CSC ranking procedures as the veterans preference.

B. The Commission has developed new ideas for reforming the current system for reviewing agency affirmative action programs. These ideas include requiring on-the-scene monitoring of agency actions under their respective plans.

THE EQUAL EMPLOYMENT OPPORTUNITY COORDINATING COUNCIL

I. DUTIES

The Equal Employment Opportunity Coordinating Council was established by the 1972 amendments to Title VII of the Civil Rights Act of 1964. The Council is responsible for developing and implementing agreements, policies and practices designed to maximize enforcement efforts and promote efficiency. The Council also is responsible for eliminating conflict, competition, duplication and inconsistency among the various departments, agencies and branches of the Federal Government responsible for ensuring equal employment opportunity. The Act requires the Council to report annually to the President and to Congress on its activities and to make recommendations for legislative or administrative changes.



II. ORGANIZATION

A. Structure

The Equal Employment Opportunity Coordinating Council is composed of the Attorney General, the Secretary of Labor, the Chairpersons of the Equal Employment Opportunity Commission, the Civil Service Commission, and the Civil Rights Commission. Title VII gave the Council no specific enforcement authority. Implementation of policies or procedures developed by the Council is dependent on the acceptance of each of the members. In recognition of this limitation, the Council agreed in 1972 to make decisions by consensus rather than by majority vote.

B. Staff

Each member agency assigned, on a part-time basis, the number of staff-hours believed to be sufficient to carry out its respective Council responsibilities.

C. Budget

No budget has been appropriated.

III. WORKLOAD

From July 1975 through November 1976, the agency heads designated as Council representatives, were more active than previously in the Council's history. During this period, Council members met at least once a month on a regular basis. Since November 1976, however, the Council has been dormant. While active, most of the Council's time was consumed in an attempt to reach agreement on a set of common employee selection guidelines which would be applied to both the Federal and private sectors.

IV. SIGNIFICANT PROBLEMS

The Council has failed in its objective of reaching common agreement on any significant issue related to equal employment opportunity. With regard to the major issue which has faced the Council, namely Employee Selection Guidelines, the Council was unable to reach agreement.

V. PROPOSED REFORMS

The Council has failed to enunciate any reforms.



B

APPENDIX B
STATUS REPORT
ON THE
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

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STATUS REPORT
ON THE
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

The Equal Employment Opportunity Commission has encountered serious problems in the execution of its responsibilities. These problems have been enumerated by the Government Accounting Office, the United States Commission on Civil Rights, and the House Subcommittee on Equal Opportunities. They include poor management, lack of adequate staff training, an ineffective charge intake system, excessive delays in the processing of charges, and failure to address effectively systemic discrimination. Perhaps the most often cited problem facing the EEOC was the existence of a large backlog of unresolved charges. On June 6, 1977, Eleanor Holmes Norton was sworn in as Chair of the EEOC. She is the first person to direct that agency who has had years of experience in administering a similar program. She has brought with her many of the top managers from the New York City Commission on Human Rights. They have acknowledged the existence of serious deficiencies in agency practices and developed a comprehensive plan to make the agency more responsive.

ANALYSIS

The major problems facing the EEOC and the actions proposed by the Commission to address them are described below. Also discussed are the implementing steps taken thus far, the dates on which additional elements of Ms. Norton's plan will become operational, and problems which may hamper the effectiveness of the new reforms.

A. Management and Staffing Problems

1. Problem

Poor management practices have hampered the EEOC's efforts to carry out its mission. Identified deficiencies include:

- Uncertain division of authority between the Chair and the Executive Director led to poor administration.
- A cumbersome field structure composed of district offices, regional offices and regional litigation centers, each with different reporting lines of authority, inhibited effective management control and led to inconsistent practices.
- Effective work measurement standards were lacking and charge status reporting systems were poor with the result that accountability for success or failure was difficult to pinpoint.

Staffing and staff training also presented serious problems for the EEOC. High vacancy rates plagued the agency. As of January 31, 1976, for example, the EEOC's vacancy rate stood at 17 percent. The staff, moreover, was badly in need of training in such areas as the current status of equal employment opportunity law.

2. Reforms Instituted or Planned

On September 22, 1977, the agency's lines of authority and structure were reorganized. Included in this reorganization are:

- The delegation of authority for headquarters and field operations to the agency's Executive Director who, for the first time in the agency's history, has been designated as the EEOC's chief administrative officer.

- The establishment of a new field structure composed of 46 area offices attached to 22 district offices, and the abolition of the seven regional offices and the five litigation centers. At the end of September, model offices of this new structure were established in Dallas, Baltimore and Chicago. During the second and third quarters of Fiscal Year 1978, three additional district office complexes will be phased in. The phase-in of the remaining area offices and district offices will begin as soon as Congressional action is taken on the EEOC's Fiscal Year 1978 supplemental budget request. It is expected that the entire new structure will be in place by the end of the 4th quarter of Fiscal Year 1978.
- A system which holds managers of all functions at the Commission accountable for their performance was instituted in September of this year. This system includes a performance and resource plan with objectives and goals jointly developed by line managers and the Executive Director and a systematic way to identify and correct specific operational deficiencies with deadlines for accomplishment. In addition, in order to have an accurate and up-to-date system of monitoring the status of the complaint inventory, a Charge Inventory System (CIS) is being designed which will provide the agency with an automated information retrieval system agencywide by October 1978.

To improve the performance of the EEOC staff, training sessions have been conducted and additional sessions are being planned. The EEOC also has assumed the responsibility for providing training to State and local agency personnel in an effort to ensure that the new intake and charge processing procedures become standard nationwide.

During the period from August 1, 1977, to January 20, 1978, 759 EEOC and 132 State and local agency personnel were provided a week of training. Additional sessions are being planned for the second quarter of Fiscal Year 1978. New employees will receive training under this new program within one week of their date of hire. All EEOC staff will have participated in at least one overview session of training by January 30, 1978, and by September 30, 1978, all will have completed an in-depth training program.

Finally, the EEOC vacancy rate was reduced to seven percent as of December 1, 1977.

B. Charge Intake

1. Problem

In the past, there has been inadequate analysis of the problems of complainants at the time they sought the aid of the EEOC. Intake of charges generally was handled by clerical staff with the result that little or no screening of charges took place. Thus, numerous charges were accepted which were frivolous or which fell outside the Commission's jurisdiction. In addition, charges accepted by EEOC intake personnel often lacked complete information. For example, files provided to investigators sometimes included no indication of race, address, or work history. Such situations inevitably led to a waste of time on the part of Commission staff.

2. Reforms Instituted or Planned

A new intake process has been developed. The major change in the process is the institution of a pre-charge counseling session to ensure an in-depth analysis of the problems of complainants and a better determination as to whether such problems actually involve violations of Title VII. In cases where the subject matter of a complaint relates to the jurisdiction of another Federal, State or local agency, such as complaints based on handicap status or those alleging housing discrimination, the complainant will be referred to the proper agency. Before eliciting detailed information

for the charge, intake officers will proceed to explain the Commission's procedures and will stress the importance of defining the specific issues of the complaint. The purpose of this procedure is to narrow the scope of the charge and determine the type of relief which might be available. To ensure the effectiveness of the new process, the EEOC intends to upgrade the level of staff assigned to handle the intake function, and training in the application of the process will be provided to staff involved in the intake program.

The new charge intake process was installed in the three model offices in September. As a result, charge receipts were reduced in the model offices by 23 percent between September 23 and December 2, 1977. The process was extended agency wide on December 1, 1977.

C. Charge Processing

1. Problem

In Fiscal Year 1977, approximately 85,500 charges of discrimination were filed with the EEOC. The number of charges filed has grown each year since the agency opened its doors in 1965. The complaint load has exceeded the agency's capacity to address each complaint promptly. Complaints often are not investigated for as long as three years. Charge processing also has been retarded by attempts by EEOC staff to expand the scope of their investigations beyond that of the original charge. The delay in processing charges, in turn, has rendered the investigation phase more difficult and time consuming since witnesses are difficult to find, pertinent facts are forgotten, and data are hard to retrieve after the lapse of long periods of time.

Finally, the EEOC's charge processing system was further slowed by the rigid and formalistic procedures adhered to by the agency.

2. Reforms Instituted or Planned

On September 23, 1977, the Commission approved new Procedural Regulations. A major component of these Regulations is the new Rapid Charge Processing system.

Under this system, new charges no longer are placed in the backlog but rather are processed immediately. The system stresses informal action designed to bring about settlements prior to formal investigation. Specific provisions of the Rapid Charge Processing system include:

- determining minimum settlement terms acceptable to the complainant;
- attempting to reach no-fault settlements with employer;
- arranging early face-to-face fact-finding conferences attended by the charging party and the employer. The purpose of the conference is to clarify the issues and evidence and, where possible, to achieve a prompt resolution of the complaint.

There are preliminary indications that this system is proving to be effective in the three model offices. During the period from September 23 to December 2, 1977, 692 charges were received in these offices, of which 25 percent were closed within this ten week period. Of those closed, 38 percent were completed through negotiated settlement compared to nine percent during the same period last year in the same offices. In the Chicago office, which last year had 37 percent fewer case closures than complaint receipts, EEOC was able to eliminate all complaints filed during this period.

Finally, the EEOC has adopted a plan under which complaints against labor union locals will be forwarded to the national office of the union concerned to see if it can resolve the complaint before action by the EEOC. A similar plan for large corporations also is being considered.

D. Backlog

1. Problem

The number of charges in process, excluding deferrals to State and local agencies, stood at 104,750 as of September 30, 1977. Approximately 25 percent of the charges in this

inventory were more than two years old, as can be seen from the following chart.

Inventory of EEOC Cases (Not Including
Deferrals to State and Local Agencies) 9/30/77

<u>In Inventory</u>	<u>Total</u>	<u>% of Total</u>
1 yr. or less	41,005	39%
2 yrs. or less	37,957	36%
3 yrs. or less	15,384	14%
4 yrs. or less	7,233	7%
Over 4 yrs. old	3,179	4%

The need to relieve this backlog was noted during the Presidential campaign in the Platform Presentation of June 16, 1976.

2. Reforms Instituted or Planned

The EEOC has set up a Backlog Charge Processing system under which separate backlog units in the district offices will focus exclusively on the current backlog with the objective of eliminating it by Fiscal Year 1981. As an interim goal, the EEOC projects a 20 percent reduction in the backlog by the end of Fiscal Year 1979 if its Fiscal Year 1978 supplemental budget request is granted.

Under this new system, complaint files will be grouped by respondent and those with the largest number of charges will be reviewed first. Employers will be encouraged to engage in no-fault settlements.

Some reduction in the backlog in the model offices already has taken place. In Chicago, for example, 275 backlog cases were disposed of during the period from September 23 to December 2 of this year, while in the Dallas model office 373 backlog cases were closed.

E. Litigation

1. Problem

Inconsistent standards and lack of coordination between the EEOC lawyers and the EEOC investigators, each

housed in separate offices, often led to a disagreement over the determination of evidence of discrimination. As a result, a large number of poorly developed cases were rejected by the agency's litigation centers. For example, in Fiscal Year 1976, 86 percent of the reasonable cause determinations made by the EEOC district offices were rejected by agency attorneys because they were not deemed adequate for litigation.

2. Reforms Instituted or Planned

The agency's structural reorganization (described on p. 3) has brought agency investigators and lawyers together in the three model offices. A common standard of "reasonable cause" has been adopted, with the result that only those cases deemed suitable for litigation will be developed fully by the agency's investigators. The integration of the legal staff into the investigative process should result in upgrading of the quality of the investigative findings and thereby encourage employers to settle matters in which the EEOC has found cause to believe that they have discriminated.

F. Systemic Discrimination

1. Problem

The EEOC has been criticized repeatedly for failing effectively to address systemic discrimination. This form of discrimination is not readily apparent but rooted in institutional practices and procedures that produce a disparate impact on those protected by Title VII. For example, an employer may require a high school diploma as a condition for assignment to certain jobs without adequately analyzing the need to impose such a requirement. Since fewer Blacks than whites receive high school diplomas, this overtly neutral standard tends to exclude more Blacks than whites, irrespective of their ability to perform the jobs to which they seek assignment.

Since receiving authority to litigate employment discrimination cases in 1972, the EEOC has brought to court 895 cases, less than five percent of which have involved institutionalized discrimination. This fact is particularly

disturbing when the elimination of systemic discrimination is perhaps the most comprehensive method for eradicating violations of Title VII.

2. Reforms Instituted or Planned

The EEOC has established an Office of Systemic Programs in headquarters and its director has been selected. Standards of initial systemic target selection are being drafted and will be completed in early 1978. By January 1978, systemic units will begin to be established in the model offices and the entire structure should be in place by the end of September 1978.

G. Some Remaining Problems

The reorganization and reform efforts being implemented by Chair Norton have the potential of profoundly affecting every phase of the EEOC's activities. Nevertheless, problems still exist. They include staff size, recruitment, training, personnel matters, and data systems.

1. From its inception, the EEOC has been underfunded. The agency has not received a staff increase in the past three years. The EEOC submitted a supplemental budget request for 1,152 positions in Fiscal Year 1978 to meet the broad objectives it has set, and particularly to eliminate the current backlog by Fiscal Year 1981. OMB recommended and the President approved 732 new positions for Fiscal Years 1978 and 1979. We believe these to be adequate resources to permit backlog reduction and to institute a program to combat systemic discrimination. If, however, OMB's estimate of the EEOC's needs proves inadequate, a supplemental appropriation for Fiscal Year 1979 would be submitted.

2. If Congress approves the staff increase recommended for the EEOC, the agency will be faced with the difficult task of selecting a large number of competent personnel. The Commission's past recruiting and employment activities have met with mixed success. Vacancies went unfilled for months and the quality of the staff selected was not always of the highest calibre. Because of this, and the likelihood that sizeable staff increases will be

approved for the EEOC, it is essential that there be special emphasis on planning of recruiting strategies, effective and timely review of candidates, and an efficient selection process. Every effort must be made to hire top flight talent, untainted by the failures of the past. It is important that this opportunity not be missed.

3. EEOC must emphasize effective staff training. The new concepts being introduced at the EEOC such as pre-charge counseling and face-to-face fact-finding conferences make the provision of high quality training by skilled instructors absolutely essential. Without adequate training, internal reform at the EEOC would be jeopardized.

4. The EEOC's structural reorganization is of substantial dimensions. Regional offices and regional litigation centers will be abolished and staff from those offices transferred to headquarters or to district and area offices. The scope of this reorganization is certain to generate some opposition by affected staff.

Some may oppose the implementation of new procedures such as encouraging no-fault settlement and narrowing the scope of the charge because they interpret these policies as being unfavorable to charging parties. Others are likely to object to reallocations of responsibilities that lessen their own authority. A good number may resent the need to relocate. Opposition may result in the filing of grievances, EEO complaints or other forms of resistance to the assertion of authority by management. Some employees undoubtedly will take their grievances to the union, which may present the EEOC with burdensome labor-management problems.

The EEOC probably will need additional assistance from the Civil Service Commission and possibly OMB in order to facilitate an orderly transition to the proposed organizational structure.

5. The EEOC must have an adequate data system to provide management with accurate information on charge inventory and to facilitate processing of charges in the field.

Such a system, for example, would enable the agency to consolidate charges alleging similar issues against a given industry in a defined geographical area. While the agency has begun implementation of a manual data system which it proposed to automate by October 1981, problems exist in the use of the manual system. The Baltimore model office, for example, has experienced difficulty in reporting accurate information based on the manual system. There is a good possibility that the EEOC may require technical assistance from an agency with experience in developing and utilizing sophisticated data retrieval systems.

CONCLUSIONS

The Civil Rights Reorganization Task Force has studied carefully the EEOC's problems and the reforms now being implemented. While impressed with Chair Norton's accomplishments to date, as are most affected groups including business interests, we recognize that the task of making the EEOC an efficient agency is an enormous one.

It is too early to predict if the EEOC's new policies will be fully effective. We believe that they address the most profound problems of the agency. The target dates set by the Commissioners in July have been met thus far and the preliminary statistics from the three model offices are promising.

In order to ensure that this trend toward reform continues in a timely manner, OMB is prepared actively to assist the EEOC. OMB's management staff is conducting an independent assessment of the agency and, where appropriate, will offer suggestions for further reform, provide technical assistance, and identify the resources needed by the EEOC to perform most effectively. In addition, it will monitor the agency's activities to ensure that the timetables for organizational changes are adhered to and that the policies designed to eliminate the filing of frivolous charges, to reduce appreciably the length of time involved in processing charges, and to eliminate the backlog are evaluated objectively on a periodic basis.

We should expect that some of the new reforms will not be as successful as anticipated. As long as the agency's management, assisted by OMB, regularly analyzes the effectiveness of each aspect of its plan, failures will be identified promptly and new strategies can be developed.

PROBLEM	REFORMS PLANNED	REFORMS ACCOMPLISHED	INDICES OF SUCCESS
Parallel and conflicting lines of authority between headquarters and field	Establish single line of communication with new field structure	Responsibility for field operations assigned to Executive Director	Elimination of conflicting policy and procedural decisions
Ineffective layer of regional offices and separation of litigation and investigative activities	Eliminate regional offices and merge litigation and investigative activities into 22 new district offices	3 model district offices established in September 1977, in Dallas, Chicago, and Baltimore	Better utilization of field resources reflected through increased productivity
Lack of effective work measurement standards and poor charge status reporting system	Automated Charge Inventory System will be in place by October 1978	A new Management Accountability System has been installed	Improved management and workload data to support program requirements
Inadequate screening of frivolous and non-jurisdictional charges	Hire professional staff to manage charge intake function	New intake process installed in model offices and nationwide in December 1977	Model offices report 23% reduction in number of charges filed
Excessive charge processing times	Implement Rapid Charge Processing System nationwide by October 1978	Rapid Charge Processing System has been developed which will use face-to-face fact-finding conferences to achieve early resolutions. New system implemented in model offices October 1977	38% of closures in model offices resulted from negotiated settlements. This compares to 9% in the same offices last year
Large backlog of charges	Separate backlog units will be set up in each new district office	Backlog units which stress no fault settlements set up in three model offices	During period September 23 to December 2, 1977, Chicago and Dallas model offices reported backlog reductions of 275 and 373 respectively