

**NCLR**  
NATIONAL COUNCIL OF LA RAZA

The  
**EMPTY PROMISE**

The EEOC and Hispanics



# **The National Council of La Raza (NCLR)**

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The National Council of La Raza (NCLR), the largest constituency-based national Hispanic organization, exists to improve life opportunities for the more than 22 million Americans of Hispanic descent. In addition to its Washington, D.C. headquarters, NCLR maintains field offices in Los Angeles, California; Phoenix, Arizona; McAllen, Texas; and Chicago, Illinois. NCLR has four missions: applied research, policy analysis, and advocacy on behalf of the entire Hispanic community; capacity-building assistance to support and strengthen Hispanic community-based organizations; public information activities designed to provide accurate information and positive images of Hispanics; and special innovative, catalytic, and international projects. NCLR acts as an umbrella for over 165 affiliates — Hispanic community-based organizations which together serve 37 states, Puerto Rico, and the District of Columbia, and reach more than two million Hispanics annually.

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# **The EMPTY PROMISE: The EEOC and Hispanics**

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# Executive Summary

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With the passage of Title VII of the Civil Rights Act of 1964, the promise of an equal opportunity to obtain employment — based on merit and without regard for national origin, race, color, religion, or gender — became a fundamental civil right for all members of American society. Title VII provides Hispanics statutory protections from employment discrimination based on their national origin and related characteristics (e.g., language, speech accent, physical and cultural characteristics). Unfortunately, the system through which the EEOC enforces these protections has never served Latinos adequately, despite the persistently high levels of employment discrimination experienced by the Latino community. This report from the National Council of La Raza (NCLR) addresses the Equal Employment Opportunity Commission (EEOC), the federal agency with principal responsibility for Title VII enforcement, and its record of service to Hispanics. Historically denied the effective enforcement needed to ensure the right of equal employment opportunity, Hispanics have found Title VII to be an empty promise.

## Hispanics and Employment Discrimination

Hispanics have historically suffered high levels of employment discrimination due largely to ingrained prejudice against and harmful stereotypes about them. These biased attitudes were and continue to be reinforced by negative stereotypes or portrayals of Hispanics disseminated through the mass media. Recent studies indicate that these negative attitudes toward Latinos continue to exist and are widespread. In a 1990 National Opinion Research Center study that examined public perceptions of six major American cultural groups — Whites, Jews, Blacks, Asian Americans, Hispanic Americans, and Southern Whites, Hispanics were rated last or next to last on the six characteristics measured (wealth, work ethic, violence, intelligence, dependency, and patriotism). An increasing amount of evidence indicates that these negative perceptions are often translated into discriminatory employment practices that negatively affect large numbers of Hispanics.

A growing body of social science research consistently shows that employment discrimination *alone* is responsible for 10%-18% of the Hispanic male-Anglo male income gap and 30%-40% of the Hispanic female-Anglo male income gap. Based on these calculations, NCLR estimates that employment discrimination costs the Hispanic community at least \$11.7 billion annually in lost income. These findings indicate that, although Hispanics have made economic progress, inequality due to discrimination in the labor market remains a significant obstacle to economic prosperity for many Hispanics.

## Historical Context: The 1983 Hispanic Charge Study

The EEOC's historically poor record of service to Hispanics was first documented in the EEOC's own 1983 report, *Equal Employment Opportunity Commission and Hispanics: An Analysis of the Equal Employment Opportunity Commission's Services to Hispanics in the United States* (the Hispanic Charge Study). In that report, a task force appointed by the EEOC concluded that the Commission was not providing equal service to all the groups it is charged with serving, particularly not Hispanics.

The Hispanic Charge Study's external investigation found that the EEOC had little if any presence in the Hispanic community. The study determined that most Hispanics were either unaware of or did not trust the EEOC and that the Commission had done little if anything to remedy the problem. It found further that those few Latinos who were familiar with the Commission were particularly skeptical of it because of its notoriously poor record of recruiting, employing, and promoting Hispanics.

The task force's internal study, which included a statistical analysis of the EEOC's enforcement data and a review of its employment practices, documented the Commission's differential treatment of Hispanic cases. This differential treatment was manifested in the Commission's routinely inadequate investigations and disproportionately high summary dismissals of Hispanic charges, as well as its almost total lack of attention to Hispanic-focused litigation. The study also found that the EEOC had not allocated sufficient resources to serve the Hispanic community fairly and effectively. Furthermore, the study determined that the Commission had not hired or promoted Hispanics to policy-making or executive positions, but rather concentrated its Hispanic employees primarily in field offices located in areas with large Hispanic populations.

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The Hispanic Charge Study concluded that the EEOC did not provide equivalent service to all protected groups and that Hispanics, as well as Asian/Pacific Americans and American Indians, were particularly underserved.

## **NCLR's Findings: EEOC Fails to Serve Hispanics Equitably**

NCLR conducted its own analysis of the EEOC's service to Hispanics since the Hispanic Charge Study and determined that the situation has not improved. NCLR's study of the EEOC's recent enforcement record found that Hispanics are still poorly served at all levels of the administrative process, with some areas becoming worse than they were at the time of the Hispanic Charge Study. Based upon its analysis of EEOC enforcement data, NCLR found that:

- ❖ For the six-year period of Fiscal Year (FY) 1985 through FY 1990, Hispanic charges alleging discrimination based on national origin accounted for only 4.2% of the EEOC's combined charge caseload, while charges alleging discrimination based on race (Black), gender (female), and age, respectively, made up 31.6%, 21.5%, and 17.9% of the total charge caseload.
- ❖ In FY 1985, 45% of all Hispanic charges closed by the EEOC included no remedy for the charging party. By FY 1990, that percentage had climbed to 73% of all Hispanic charge closures. While non-Hispanic no-remedy closures also increased significantly, they were always lower than Hispanic no-remedy closures.
- ❖ For the six-year period of FY 1985 through FY 1990, lawsuits *including* a charge of national origin (Hispanic) discrimination were only 2% of the total number of lawsuits *by basis* filed by the EEOC. Lawsuits including charges of discrimination based on gender (female), age, and race (Black) made up 29%, 23%, and 17%, respectively, of the total EEOC lawsuits filed, by basis.
- ❖ Hispanics routinely receive significantly smaller average monetary awards in the few lawsuits litigated by the EEOC on their behalf. In FY 1990, in lawsuits reported by the EEOC's Office of General Counsel (OGC) as having a single beneficiary, the *four* suits based solely on national origin (Hispanic) discrimination claims received an average of \$5,796, compared to average awards of \$29,228 for the 64 suits alleging age discrimination, \$10,674 for 55 suits based on racial (Black) discrimination, and \$11,251 for 82 suits involving gender (female) discrimination.
- ❖ From FY 1987 through FY 1990, the OGC reported the resolution of 48 major class cases (cases with 25 or more beneficiaries of monetary relief) — 21 on behalf of victims of gender (female) discrimination, 18 on behalf of age discrimination victims, and nine on behalf of Black victims of racial discrimination. *No* major class actions were brought on behalf of solely Hispanic victims of national origin discrimination.

The Hispanic Charge Study documented the critical relationship between the proportion of Hispanics at every level of the EEOC workforce and the quality of the Commission's service to Hispanics. NCLR analyzed the EEOC's employment statistics for the period FY 1982 through FY 1990 and found that Hispanics were still disproportionately underrepresented at every level. The breakdown for the nine-year period was an average of 49% Black, 60% women (including Hispanic and Black women), and 10% Hispanic for the overall workforce, and an average of 32% Black, 44% women (including Hispanic and Black women), and 9% Hispanic for the Professional status workforce.

In analyzing the Commission's funding for the ten-year period from FY 1981 through FY 1991, NCLR found that the EEOC has been asked to perform a greatly expanded mission with a decreasing amount of resources. Based on the EEOC's FY 1981 appropriation, NCLR calculates that the Commission's FY 1991 appropriation represents a 5.7% *reduction* after adjusting for inflation.

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## Analysis and Conclusions

NCLR's analysis confirms that the EEOC has failed to improve its record of inequitable service to Hispanics since the 1983 Hispanic Charge Study. Measured by even the most liberal standards, the EEOC fails to serve Hispanics equitably. At every stage of the enforcement process, Hispanic charges compose a much smaller portion of the Commission's total caseload than the percentage of Latinos in *either* the overall U.S. population or the civilian workforce. It is clear that the low level of service does not accurately reflect the real need of the Hispanic community because the high levels of employment discrimination experienced by Latinos are now well documented.

NCLR's analysis reveals that Hispanics file a disproportionately low number of charges with the EEOC, and of that low number a disproportionately high number are closed by the Commission without remedy to the charging party. NCLR also found that the EEOC has an extremely poor record for pursuing lawsuits involving national origin (Hispanic) discrimination, particularly when compared to its litigation record for gender (female) and age cases. These patterns indicate the EEOC's disregard for Hispanic matters because it is both failing to provide access to Hispanics with valid claims and treating the Hispanic charges it does receive differently than other charges.

Finally, NCLR found no evidence of any effort by the EEOC to increase the representation of Hispanics throughout its workforce, despite a decade of notice that proportionate representation is a key element of any plan to remedy its inequitable service to Hispanics.

Given the amount of time that the Commission has had to remedy the problem and its failure to do so, it appears that, at a minimum, the EEOC is both consciously ignoring the documented needs of the Hispanic community and giving tacit approval to the differential treatment which Hispanics receive from the Commission.

To understand fully the problem of underservice, it is important to note that a charge-driven system like the one used by the EEOC places most of the burden for effective enforcement on the victim of discrimination. To obtain relief, victims must possess an exceptional amount of knowledge about both their rights and the way the enforcement process operates; they must also have the special skill and extra resources needed to make the system work. Unfortunately, certain characteristics common to many Hispanics (e.g., disproportionately low educational attainment with corresponding high levels of illiteracy and limited English proficiency, high unemployment rates, and low incomes) make it especially difficult for many Latinos to use the EEOC's charge-driven enforcement process effectively.

The historic failure of the EEOC to conduct outreach and education programs targeted to Hispanics has resulted in a severe lack of knowledge in the Hispanic community about employment rights and the Commission's duty to enforce those rights. The Serrano Amendment to the Civil Rights Act of 1991, which mandates an EEOC outreach and education program targeted to historically underserved groups, was intended to address this problem. The program called for in the Serrano Amendment remains yet another unfulfilled promise, however, because the EEOC has not yet made a good faith effort to design and implement the badly needed program and Congress has not provided the additional funding needed to make it a reality.

## Principal Recommendations

Widespread employment discrimination against Hispanics coupled with the EEOC's continuing failure to serve Hispanics equitably present a critical civil rights problem for one of the country's fastest growing, and soon to be largest, minority communities. Action to remedy this situation is long overdue and, given the rapid and continuing growth of the U.S. Latino population, it is imperative that the matter be addressed immediately if Hispanics are to assume a fully productive place in American society.

NCLR cautions that to fashion an effective solution for the problem of inequitable service to Hispanics, the special needs of the Latino community must be considered. The need for culturally sensitive solutions is perhaps nowhere more critical than in the way in which the EEOC chooses to educate the Hispanic community about rights to equal employment opportunity and the method for obtaining relief if those rights are violated.

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NCLR believes, however, that the EEOC is not solely responsible for the problem and, therefore, cannot be expected to remedy the problem on its own. Other critical entities, including policy makers, the media, legal services providers, and the national civil rights community, must also accept responsibility for both the problem of chronic underservice to Latinos by the EEOC and its ultimate solution. All the entities must do their appropriate parts to ensure better understanding of and attention to the needs of Hispanics in the area of civil rights enforcement.

Finally, NCLR believes that the EEOC's inequitable service to the Hispanic community is so severe that to address it effectively will require a comprehensive plan of action involving all the institutions that are responsible, either directly or indirectly, for the problem. Such a plan should include the following:

- ❖ The **EEOC** should initiate both internal and external programs targeted to the Hispanic community.
- ❖ **Congress and the Administration** should increase oversight of the EEOC and authorize and fund new enforcement programs.
- ❖ **The United States Commission on Civil Rights (USCCR)** should resume its role as the independent monitor of federal civil rights enforcement efforts, with special emphasis on the EEOC.
- ❖ **Hispanic and other civil rights organizations** should focus on obtaining more effective civil rights enforcement.
- ❖ **The media, the education community, and philanthropic organizations** should devote more attention and resources to Hispanic concerns to promote better understanding of Hispanic issues.

NCLR proposes the following specific recommendations for each of the institutions or entities that should play a role in solving the problem.

**The EEOC should:**

- ❖ State publicly its institutional commitment to serving everyone fairly and equitably without preference for certain types of cases or complaints, and to resolving longstanding problems in its service to certain groups.
- ❖ Make the development and implementation of the education and outreach program mandated by the Serrano Amendment a top priority.
- ❖ Improve its internal procedures for processing, investigating, and approving charges to address the extraordinarily high administrative closure rate of Hispanic charges.
- ❖ Develop and pursue litigation on behalf of Hispanics as vigorously as it pursues the claims of other protected groups.
- ❖ Actively exercise its affirmative enforcement powers to increase Commission-initiated investigations and litigation on behalf of Hispanics and other underserved groups, particularly focusing on businesses/industries in which there is either a history of or a strong likelihood of discrimination against these groups or in certain areas of the country in which such discriminatory employment practices are likely to occur (e.g., the Southwest border region).
- ❖ Form an advisory committee composed of representatives of the underserved communities to assist it in developing strategies to improve service.
- ❖ Improve its method of data collection to better enable it to measure its service to previously underserved groups.
- ❖ Initiate an aggressive program for the recruitment and promotion of Hispanic employees.

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**Congress and the Administration should:**

- ❖ Appropriate and approve an increased level of resources to the EEOC and other civil rights enforcement agencies sufficient to perform new outreach, education, and enforcement activities, as well as their current efforts.
- ❖ Require the EEOC to submit to Congressional oversight committees annual updates on its service to all protected groups.
- ❖ Authorize and fund the development and implementation of new fair employment “hiring audit” programs to complement the EEOC’s current enforcement efforts.
- ❖ Assist in the development and maintenance of a grassroots infrastructure that links victims of discrimination to enforcement authorities.
- ❖ Require strict monitoring of the EEOC’s performance by the U.S. Commission on Civil Rights.

**The U.S. Commission on Civil Rights should** resume its role as monitor of federal civil rights enforcement efforts, with special attention to the EEOC.

**The Hispanic community, especially our elected officials and organizational leadership, should** become more active in the civil rights arena. Hispanic leadership has a responsibility to:

- ❖ Better inform the Hispanic community about its civil rights and the remedies available when those rights have been violated;
- ❖ Incorporate civil rights activity into all aspects of programmatic activity; and
- ❖ Insist on being part of any negotiation or decision-making process in which civil rights matters are addressed.

**The civil rights community should** be more inclusive by facilitating the participation of all affected minorities in developing a shared agenda, which should include basic enforcement issues as a priority.

**The media should** assume their responsibility for heightening the public’s awareness and understanding of Hispanic civil rights issues and act more inclusively in covering civil rights issues, to provide a more accurate and complete perspective.

**Philanthropic entities should** devote greater resources to civil rights enforcement issues — including Hispanic-specific issues — in their grant-making activities.

**The education community should** take responsibility for educating the public about the contributions made and problems faced by Hispanics in American society, including the history of the Hispanic civil rights movement.



# I. Introduction

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This report of the National Council of La Raza (NCLR) focuses on the Equal Employment Opportunity Commission (EEOC), the largest of the federal civil rights enforcement agencies, and its efforts to address employment discrimination against Hispanics. To provide an accurate understanding of this issue, the report presents evidence of the scope and degree of employment discrimination against Hispanic Americans, outlines the federal equal employment opportunity administrative process for employment discrimination in the private sector, and describes and analyzes current EEOC enforcement efforts on behalf of the Hispanic community. The report concludes with a series of recommendations to the EEOC, policy makers, the private sector, the media, and the Hispanic community.

Many respected academics, policy makers, and philanthropists now suggest that strategies for improving the social and economic conditions of racial and ethnic minorities should de-emphasize civil rights-based approaches.<sup>1</sup> They argue that civil rights enforcement has “worked” to the extent possible; therefore, eliminating continuing disparities between Anglos<sup>2</sup> and minorities should focus exclusively or primarily on human capital improvements, e.g., education and training, or economic development approaches.

With regard to Hispanics, the data presented in this report suggest otherwise. This report documents that, at least in the area of employment discrimination, a civil rights enforcement strategy has never “worked” for Hispanics. Indeed, the EEOC, the federal agency with principal enforcement authority, has never served Latinos equitably. NCLR readily acknowledges the need for improved education, training, and economic development programs and policies, and it is committed to working vigorously to secure such programs and policies. This report, however, clearly demonstrates the urgent need for a vigorous civil rights enforcement strategy to better prevent employment discrimination against Hispanic Americans and to provide real relief for Hispanics who experience such discrimination.

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• The term *Anglo* is used in this report to refer to non-Hispanics of European descent; occasionally, the term *White* is also used to refer to the same group when the research or data cited uses that term. Additionally, the terms *Hispanic* and *Latino* are used interchangeably in this report, as are the terms *African American* and *Black*.

# Endnotes

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1. See, for example, Wilson, William Julius, *The Truly Disadvantaged: The Inner City, the Underclass, and Public Policy*. Chicago, Illinois: University of Chicago Press, 1987.



# II. Scope of the Problem

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## A. Legacy of Discrimination: The Hispanic Experience

Whether they came to what is now the United States by conquest or by choice, Hispanic Americans have faced severe discrimination. In 1848, after the signing of the Treaty of Guadalupe Hidalgo, which ended the Mexican War, thousands of Mexican Americans in the American Southwest were murdered, executed without trial, or lynched. According to one scholar, more Mexican Americans in the Southwest were lynched from 1850 to 1930 than were African Americans in the South during the same period. During that period and since, Mexican Americans have been subject to enormous discrimination in education, employment, housing, and the administration of justice. In addition, in the 1930s and again in the 1950s, millions of persons of Mexican descent — including many U.S. citizens and legal residents — were “repatriated” to Mexico without benefit of due process.<sup>1</sup>

Puerto Ricans became U.S. citizens by conquest in 1898, and, like Mexican Americans, have suffered the consequences of being a conquered minority group. Coming to the mainland in large numbers primarily since World War I, first as agricultural laborers and later as industrial workers, Puerto Ricans have faced high levels of social and economic discrimination in education, housing, and employment.<sup>2</sup> Other Hispanics, including Cubans and Central Americans, although entering the United States in large numbers during and after the civil rights movement of the 1950s and 1960s, have also been subjected to serious discrimination.<sup>3</sup>

Every Hispanic subgroup, in varying degrees, has encountered discrimination on the basis of physical characteristics (e.g., skin color) and on the basis of cultural characteristics (e.g., language, speech accent, and surname). The literature is replete with derogatory references, including many from alleged “scientists,” to Hispanics as “mongrels,” “lazy,” “ignorant, illiterate and non-moral,” “miserable, wretched,... petty, thieving, [and] gambling,” “greasers,” “idle,” “thrifless,” “sneaky,” “do-nothing,” “sloppy,” and “undependable.”<sup>4</sup> In various combinations, these references have formed the basis for a stereotype of Hispanics as being inferior, primitive, and docile; such stereotypes themselves often lead, directly or indirectly, consciously or unconsciously, to discrimination.<sup>5</sup>

## B. Persistence of Prejudice in American Society

### 1. Public Opinion Surveys

While many people would prefer to believe that prejudice and bigotry are all but extinct in present American society, recent studies indicate otherwise; for example:

- ❖ A December 1990 study by the National Opinion Research Center (NORC) examined public opinions and perceptions of six major American cultural groups — Whites, Jews, Blacks, Asian Americans, Hispanic Americans, and Southern Whites. Of six characteristics measured (wealth, work ethic, violence, intelligence, dependency, and patriotism), Hispanics were rated last on three and next to last on three. Over 80% of those surveyed rated Hispanics, together with Blacks, lower than Whites on one or more of the six characteristics.<sup>6</sup>
- ❖ In a 1989 NORC survey focusing on the perceived social standing of 58 ethnic groups, Hispanic groups including Mexicans, Guatemalans, Nicaraguans, Puerto Ricans, and Cubans ranked forty-ninth or lower.<sup>7</sup>

Mounting evidence indicates that these negative attitudes translate directly into behavior by employers that is discriminatory. A 1989 study conducted by the Urban Poverty and Family Structure Project at the University of Chicago analyzed the manner in which employers’ perceptions of ethnicity and race affect hiring decisions. The study, based on interviews with 185 Chicago-area employers, found that 70% of those surveyed made distinctions among employees or potential employees based on ethnicity and race. According to the employers, being Hispanic and/or Black was perceived as being “lower class” and being White meant “middle class.” The study confirmed the tendency of employers to generalize about the meaning of ethnicity and race with regard to the quality of the work force and to rely on these generalizations in their hiring practices.<sup>8</sup>

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These studies indicate that the most powerful motivations for employment discrimination — personal prejudice, intolerance of diversity, reliance on negative stereotypes — continue to permeate American society and affect critical employment practices.

## 2. Negative Media Images

Negative perceptions of and attitudes toward Hispanics have long been perpetuated by the media. The little media attention given Hispanics has always tended to be negative, with thoughtless over-reliance on unfounded and offensive stereotypes in standard portrayals of Hispanic characters. These negative portrayals are particularly harmful because, given the significant influence of the media on public opinion, they tend to reinforce negative attitudes toward and foster discrimination against the subject of the stereotypes. In the context of the way in which Hispanics are regarded in the workplace, the common Latino stereotypes are particularly damaging since they typically involve the Hispanic worker's ability and desire to do the job.

In the most accessible and arguably the most influential form of media — television — Hispanics have been either largely ignored or portrayed negatively. One recent content analysis study found that from 1955 to 1986 Hispanics represented less than 2% of television characters and those portrayals were largely negative, with only 10% of Hispanic characters representing executives or professionals and the overwhelming majority depicting criminals or victims of violence. The study concluded that Hispanics are the most negatively portrayed group on television.<sup>9</sup>

In both print and television advertising, portrayals of Hispanics have been particularly offensive. Negative advertising images have included the now infamous "Frito Bandito," as well as lesser known — but no less damaging — caricatures such as Liggett & Myers' Paco, who never "feenishes" anything, and Arid Deodorant's "bandido" ("If it works for him, it will work for you").<sup>10</sup>

As advertisers have become more sensitive to the growing Hispanic market and the damaging effects of negative representations, many have left these offensive images behind. Unfortunately, such understanding is not universal, and several recent marketing campaigns continue to rely on stereotypical Latino images. One such example is the currently popular *Newman's Own Bandito Salsa*, a brand created by the well-known actor Paul Newman. To create a link between the product and its Mexican origins, the hackneyed image of the Mexican bandit is employed both in the name and by having the actor's face on the label with a long, thin moustache, the kind commonly associated with the stereotypical outlaw character. This marketing device is apparently meant to conjure up a sense of "wildness" that the consumer will associate with the product's spicy flavor; its use, however, indicates a lack of regard for the negative effects of such a stereotype.

The negative portrayals of Hispanics by the media, both in programming and in advertising, are commonplace. They continue to pose a very real threat to the ability of all Hispanics to be viewed objectively by the non-Hispanic public because they influence the way in which Latinos are perceived. As the public opinion surveys indicate, the potentially damaging consequences for Hispanics in the workplace are very real and should not be underestimated.

## 3. Social Science Documentation of Discrimination

Labor market research provides substantial evidence that, throughout the 1980s, Hispanics continued to experience high levels of employment discrimination. At least five independent studies have found that, even after controlling for factors known to affect employment and earnings, such as age, occupation, and educational attainment, a significant proportion of the "earnings gap" between Hispanics and Anglos appears to be attributable to employment discrimination.

A 1982 National Council of La Raza study, *The Effects of Discrimination on the Earnings of Hispanic Workers: Findings and Policy Implications*, using data from the U.S. Bureau of the Census' March 1981 Current Population Survey, found that 14% of the earnings gap between White males and Hispanic males and 29% of the gap between White males and Hispanic females were due to ethnicity alone, suggesting serious levels of employment discrimination.<sup>11</sup>

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A 1982 U.S. Commission on Civil Rights report, *Unemployment and Underemployment Among Blacks, Hispanics and Women*, using data from the March 1980 Current Population Survey, found that, while disparities in unemployment and underemployment between Hispanics and Anglos could be explained to some extent as reflections of differences in education, training, and age, substantial disparities remained even after controlling for these factors. The Commission concluded that sufficient evidence exists to suggest that discrimination continues to be a significant, if not a precisely quantifiable, factor in employment disparities between Whites and Hispanics.<sup>12</sup>

A 1985 University of Colorado study, using Census data to analyze the causes of the disparity in earnings among Hispanic, Anglo, and Black males, found that in 1980 discrimination and labor market segmentation accounted for 18% of the difference between Hispanic male and Anglo male earnings.<sup>13</sup>

A 1990 study sponsored by the Inter-University Program for Latino Research (IUP), using data from the 1940, 1950, 1960, 1970, and 1980 Censuses, and the 1983, 1986, and 1988 Current Population Surveys, analyzed and compared Latino and White incomes from 1939 to 1987. After controlling for demographic, occupational, and human capital differences between Hispanics and Whites, the researchers estimated that employment discrimination accounted for:

- ❖ Approximately 10-16% of the gap between Latino male and White male incomes from 1973 through 1987; and
- ❖ Approximately 30-40% of the Latino female-White male income gap over the same period.

The study concluded that, although significant progress was made in the 1960s, inequality due to discrimination in the labor market has not declined, and for many Hispanics has actually increased, over the past 20 years.<sup>14</sup> According to the IUP study:

Discrimination has actually increased for Latino women compared to white women, for Mexican native-born males compared to white males and for Mexican immigrants given similar patterns of industrial employment compared to white men. This persistence and/or renewal of discrimination coincides with the end of major initiatives and some reversals in the area of affirmative action.<sup>15</sup>

Finally, a study reported in 1991 by Edwin Melendez of the Massachusetts Institute of Technology compared the hourly wages of Hispanics and non-Hispanics in New York City. The study, which used 1980 Census Public Use Microdata Sample for New York City, found that while labor market location was responsible for a substantial proportion of the Hispanic/non-Hispanic wage differential, discrimination was still a very significant factor. The study concludes that discrimination in employment accounted for:

- ❖ One-third of the wage gap for Mexican, Puerto Rican, and Cuban men and one-half of the wage gap for Other Hispanic men in the New York City labor market; and
- ❖ Between one-fifth and one-half of the wage gap for all Hispanic women in New York City.<sup>16</sup>

Taken together, the results of these studies provide compelling evidence of persistent, severe employment discrimination against Hispanics. Despite the fact that the studies relied on a number of different data bases and used somewhat different methodologies,<sup>17</sup> the research findings are remarkably consistent:

- ❖ The percentage of the Hispanic male-Anglo male income gap attributable to employment discrimination falls within a 10%-18% range;
- ❖ The percentage of the Hispanic female-Anglo male income gap attributable to employment discrimination falls within a 30%-40% range.<sup>18</sup>

Using the mid-point of these ranges, the cost to the Hispanic community attributable to employment discrimination could be conservatively estimated at \$11.7 billion in lost income annually.<sup>19</sup> Considered another way, of all Hispanic families with a full-time, full-year worker, one-fourth (26.5%) would rise above the poverty level in their family income if employment discrimination were eliminated.<sup>20</sup>

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The findings of these more traditional studies are supported by recent studies using a new research technique known as a "hiring audit," which provides powerful, empirical evidence of continuing employment discrimination against Hispanics. A hiring audit tests for differential treatment in hiring by having pairs of closely matched testers, one from the majority group and one from a minority group, inquire about or apply for the same job. The pairs are matched on all attributes that could affect the hiring decision. The experiences and results of the testers are compared and analyzed to determine whether or not differential treatment occurred. Since the methodology controls for all the objective "human capital" characteristics of the testers (e.g., age, education, work experience), significant differences in treatment can clearly be identified as discrimination.

A 1989 Urban Institute study, based on 360 "hiring audits" conducted in San Diego and Chicago, found that:

- ❖ Anglo applicants received 33% more interviews and 52% more job offers than the Hispanic applicants; and
- ❖ 31% of the Hispanic applicants encountered unfavorable treatment in the hiring process, compared to only 11% of the Anglo applicants.

The study concluded that, because the hiring audit technique carefully controlled for factors that might legitimately affect the hiring process, the adverse treatment experienced by Hispanic auditors was caused by national origin discrimination.<sup>21</sup>

Similar results were found in a 1992 hiring audit conducted in the Washington, D.C. metropolitan area by the Fair Employment Council of Greater Washington (FEC). In its study, the FEC also used closely matched pairs of Hispanic and Anglo testers to inquire about and apply for advertised job openings by both telephone and mail. The study found that Hispanic testers encountered discrimination due to their national origin in *more than one job application in five*, or 22.4% of the time.<sup>22</sup>

Finally, survey research by the General Accounting Office (GAO), the investigative arm of the Congress, documented additional evidence of national origin discrimination against Hispanics. In a March 1990 report on the Immigration Reform and Control Act of 1986 (IRCA), the GAO reported the results of a survey of 4,362 employers concerning the effects of IRCA's employer sanctions provisions on their hiring practices.\* The GAO found that:

- ❖ An estimated 10% of the employers surveyed reported discriminating against employees or job applicants solely on the basis of national origin characteristics;
- ❖ An estimated 5% began a practice of refusing to hire persons based on "foreign" appearance or speech accent; and
- ❖ An estimated 8% required only "foreign-looking" and "foreign-sounding" persons to comply with the IRCA's employment verification requirements, rather than requiring *all* job applicants to comply as mandated by IRCA.<sup>23</sup>

Considered as a whole, the combination of studies cited above demonstrates persuasively that Hispanics suffer from high levels of discrimination in the labor market. Survey research shows that Hispanics continue to be perceived in a negative, stereotypical fashion by much of the American public. The research also confirms that negative perceptions of Hispanics are translated by employers into discriminatory hiring practices.

Furthermore, statistical research that isolates the effect of ethnicity on earnings consistently finds that, if other factors are held constant, simply being Hispanic means one is less likely to be employed, and if employed, will earn lower wages than otherwise expected. Moreover, at least one such study suggests that labor market discrimination against Hispanics may be on the rise.

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\* IRCA imposes civil and criminal penalties on employers who knowingly hire or continue to employ individuals who are not legally authorized to work in the United States.

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Finally, the “real world,” empirical data drawn from hiring audits shows conclusively that Hispanics receive fewer interviews and job offers than *equally qualified* Anglo job applicants and that ethnicity alone accounts for this differential treatment.

The progress that Hispanics and other minorities have made in participating more fully in American society since the passage of landmark civil rights legislation in the 1960s must be acknowledged. There is, however, significant evidence to support what is generally understood by the Hispanic community — that true equal employment opportunity for Latinos remains an unfulfilled goal.

# Endnotes

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6. Smith, Tom W., *Ethnic Images*, General Social Survey Topical Report No. 19, National Opinion Research Center. Chicago, Illinois: University of Chicago, December 1990.
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  15. *Ibid.*, pp. 18-19.
  16. Melendez, Edwin, "Labor Market Structure and Wage Differences in New York City: A Comparative Analysis of Hispanics and Non-Hispanic Blacks and Whites," in Edwin Melendez, Clara Rodriguez, and Janis Barry Figueroa, eds., *Hispanics in the Labor Force: Issues and Policies*. New York, New York: Plenum Press, 1991, pp. 101-118.
  17. For example, some of the studies control for region; others do not. Some control for a single broad measure of educational attainment; others use multiple variables. Some studies control for occupation by using an industry breakdown (e.g., agriculture, mining, retail trade), while another cites occupational categories (e.g., white collar, blue collar). One study controls for marital status, while the others do not. This diversity of variables with consistent results strongly suggests that the findings of discrimination cannot be attributed to statistical quirks or methodological flaws.
  18. *Latinos in a Changing U.S. Economy, op. cit.*
  19. NCLR calculations, based on Current Population Survey data for 1988 and 1990. For example, multiplying the estimated percentage of the total wage gap attributable to discrimination (approximately 20%, combined male and female) by the total White-Hispanic wage gap in 1988 (\$12,146) produces an estimated income loss due to discrimination of approximately \$11.7 billion.
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See also, The City of New York Commission on Human Rights, *Tarnishing the Golden Door: A Report on the Widespread Discrimination Against Immigrants and Persons Perceived as Immigrants Which Has Resulted from the Immigration Reform and Control Act of 1986*. New York, New York: August 1989, pages 29-31, which reports the results of telephone hiring audit testing for disparate treatment of job applicants by prospective employers based on foreign accent.
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# III. Current Enforcement Efforts

## A. Overview of Federal Equal Employment Opportunity Protections

Title VII is the principal federal equal employment opportunity statute; it prohibits covered entities<sup>1</sup> from discriminating in employment and in employment-related activities based upon race, color, religion, sex, or national origin. The Equal Employment Opportunity Commission was created by Title VII to administer and enforce the title's mandates. Since its creation, the Commission has been entrusted with primary enforcement responsibility for other equal employment opportunity statutes including the Equal Pay Act of 1963 (EPA), the Age Discrimination in Employment Act of 1967 (ADEA), Sections 501 and 505 of the Rehabilitation Act of 1973 (Sections 501 and 505), and the Americans with Disabilities Act of 1990 (ADA). Among federal agencies, the EEOC has exclusive enforcement authority for employment discrimination matters in the private sector. Because of the scope of both the EEOC's jurisdiction and its mission, the Commission is usually the first point of contact for victims of employment discrimination in the private sector who are seeking relief or remedy.

Other agencies with enforcement authority in the area of employment include:

- ❖ **Civil Rights Division of the Department of Justice**, which is responsible for enforcing claims under Title VII involving state and local governments and governmental agencies;
- ❖ **Office of Federal Contract Compliance Programs (OFCCP)**, in the Employment Standards Administration of the Department of Labor, which has primary enforcement responsibility for EO 11246; and
- ❖ **Qualified state and local Fair Employment Practice Agencies (FEPAs)**, which may share Title VII enforcement authority with the EEOC.

## B. EEOC's Title VII Enforcement Process

### 1. EEOC's Processing of Individual Title VII Charges

The EEOC was established under Title VII to implement and enforce the statute's provisions. In performing its Title VII mandate, the Commission's primary responsibilities include the prevention or elimination of unlawful employment practices in the private sector. The principal method of accomplishing this goal is the processing and resolution of "charges" or complaints of alleged unlawful employment practices. Charges may be filed with the EEOC by or on behalf of the person claiming to have been discriminated against, or by a member of the EEOC.<sup>2</sup> Cur-

### The Federal Equal Employment Opportunity Statutory Scheme

The principal federal statutes and executive orders intended to secure equal employment opportunity for all Americans through the prohibition of various forms of employment discrimination include:

- ◆ **Title VII of the Civil Rights Act of 1964 (Title VII)**, which generally prohibits and provides the basis for relief for discrimination in public and private employment based on race, color, religion, sex, or national origin;
- ◆ **Executive Order 11246, as amended by Executive Order 11375 (EO 11246)**, which prohibits federal contractors and subcontractors from discriminating in employment based on race, color, religion, sex, or national origin;
- ◆ **Age Discrimination in Employment Act of 1967, as amended (ADEA)**, which prohibits employment discrimination on the basis of age;
- ◆ **Equal Pay Act of 1963 (EPA)**, which prohibits discrimination on the basis of sex in the payment of wages;
- ◆ **Sections 501 and 505 of the Rehabilitation Act of 1973, as amended (Sections 501 and 505)**, which prohibit employment discrimination in the federal sector because of disability;
- ◆ **Americans with Disabilities Act of 1990 (ADA)**, which, among other things, generally prohibits discrimination in public and private employment because of mental or physical disability; and
- ◆ **42 U.S.C. Section 1981 (Section 1981)**, a Reconstruction-era statute which prohibits discrimination based on race or ethnicity in the making and performance of contracts, including employment contracts.



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rently, the EEOC has 23 district offices, 17 area offices, nine local offices, and one full-service field office in Washington, D.C., all of which are authorized to receive and investigate charges.<sup>3</sup>

Charges must be in writing, signed, and verified,<sup>4</sup> and must contain information about, among other things, the charging party, the party against whom the charge is made (the “respondent”), and the facts constituting the alleged unlawful practice(s).<sup>5</sup> Charges and the information therein are kept confidential throughout the administrative process.<sup>6</sup>

In certain circumstances, charges are deferred to authorized FEPAs that share subject matter jurisdiction with the EEOC. These state and local agencies are first given an opportunity to resolve the charge before the EEOC initiates its own proceedings.<sup>7</sup>

By law, a charge must be filed with the EEOC within 180 days after the alleged violation occurs. For charges initially filed with a qualified FEPA, the charge must be filed with the EEOC within 300 days after the alleged unlawful employment practice occurred or within 30 days of receipt of notice that the FEPA has concluded its proceedings, whichever is earlier.<sup>8</sup> Notice of the charge must be given to the person against whom the charge is made (the respondent) within ten days of the filing of the charge.<sup>9</sup>

After the initial processing requirements are completed, the EEOC begins an investigation of the case to determine if reasonable cause exists to believe that the charge is true. According to the statute, a determination regarding reasonable cause must be made “as promptly as possible and, so far as practicable, not later than one hundred and twenty days from the filing of the charge.”<sup>10</sup> In rare instances in which the preliminary investigation of a charge reveals that immediate action is necessary to effectuate the purposes of Title VII, the EEOC is authorized to seek preliminary or temporary relief through “prompt judicial action.”<sup>11</sup> Prior to a determination on reasonable cause, the EEOC may facilitate settlement of the charge between the parties. Such a negotiated settlement may include withdrawal of the charge.<sup>12</sup>

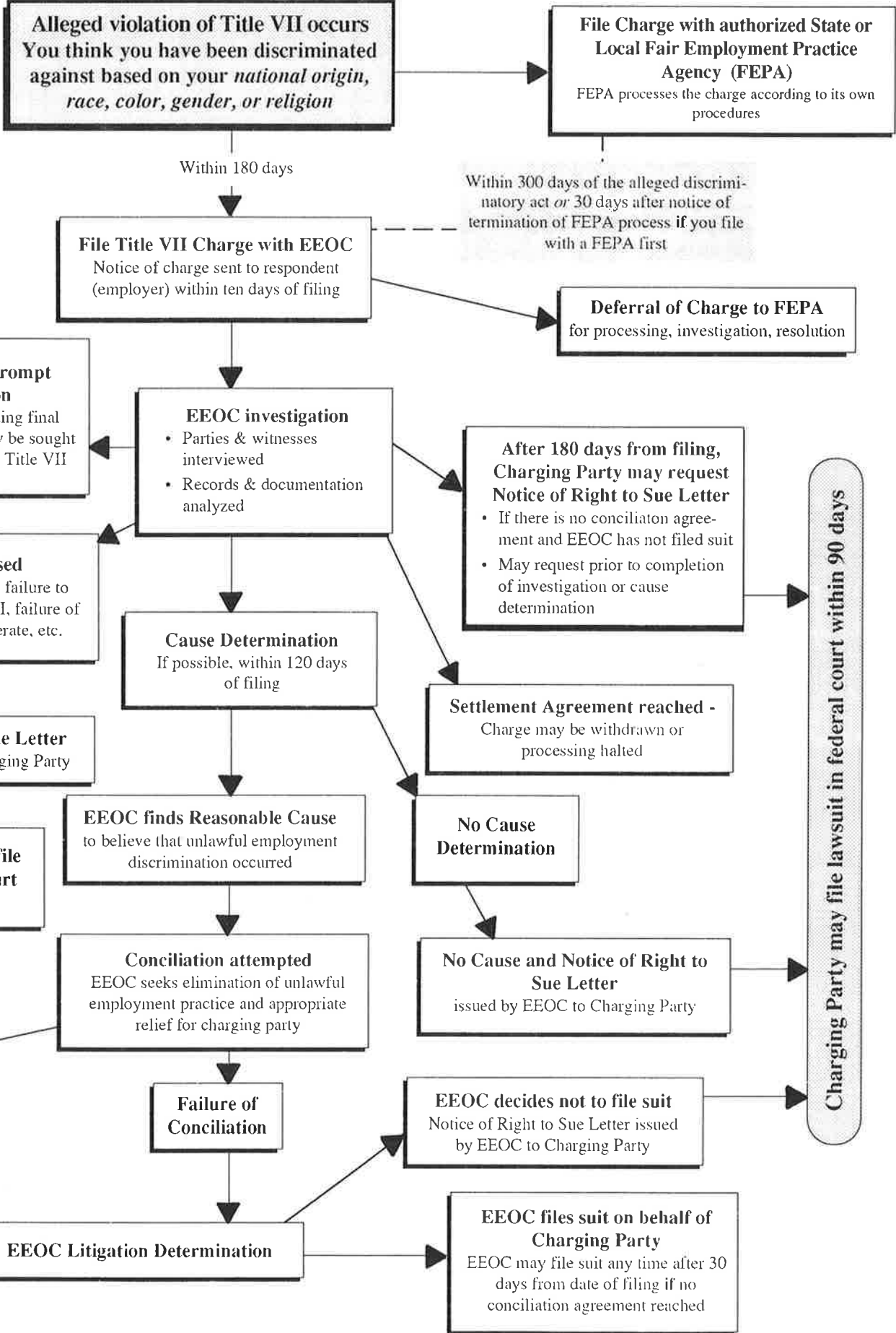
If the Commission determines that no reasonable cause exists, a notice of “no cause determination” is sent to all parties to the charge.<sup>13</sup> A no cause letter is considered a final determination by the Commission and, therefore, should also include a notice that the charging party has the right to sue on the claim within 90 days of the issuance of the EEOC’s final determination. Unless the Commission opts to reconsider the no cause final determination, no further action will be taken by the EEOC on the charge.

If reasonable cause is found, the EEOC must first try to eliminate and/or remedy the unlawful employment practice through informal conciliation.<sup>14</sup> All aspects of the conciliation process are kept confidential and cannot be used in subsequent litigation without the consent of the parties.<sup>15</sup> If no acceptable conciliation agreement is reached, the EEOC may bring a civil action against the respondent.<sup>16</sup> The Commission may file suit any time after 30 days from the date the charge was filed.<sup>17</sup> The decision of whether or not to bring a civil action based on a charge is made largely at the discretion of the agency with jurisdiction, rather than by adherence to statutory standards or formal guidelines.

If reasonable cause is found, but the EEOC decides not to bring a civil suit against the respondent, the EEOC must issue a “notice of right to sue” to the charging party.<sup>18</sup> A notice of right to sue letter must include authorization for the charging party to bring a civil action within 90 days from receipt of the notice, appropriate advice regarding the initiation of such a civil action, a copy of the charge, and the Commission’s final resolution of the charge (e.g., cause or no cause determination, dismissal, etc.).<sup>19</sup>

A notice of right to sue is evidence that all necessary administrative requirements have been met by the charging party, and it is required before a charging party may bring a private civil suit under Title VII based on the charge. The issuance of a notice of right to sue terminates all proceedings on a charge, unless the charge was filed by an EEOC Commissioner.<sup>20</sup> A private suit must be filed within 90 days of the charging party’s receipt of the notice of right to sue.<sup>21</sup> Under certain circumstances, the charging party may request a notice of right to sue from the EEOC before the agency has completed its investigation and conciliation efforts, usually at any time after 180 days from the date the charge was filed.

# Enforcement Process for Individual Title VII Charge Against Private Employer



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Remedies available under Title VII, either through conciliation or litigation, generally involve equitable relief which includes, but is not limited to, termination of the subject discriminatory practice(s), back pay, front pay, hiring, promotion, reinstatement, and benefit restoration.<sup>23</sup> With the enactment of the Civil Rights Act of 1991, limited monetary damages (i.e., compensatory and punitive damages) are now available under Title VII for certain kinds of *intentional* discrimination.<sup>24</sup>

The EEOC may dismiss a charge if: it is not filed in a timely manner; it fails to state a claim under Title VII; the charging party fails to provide certain requested information, fails or refuses to appear or be available as necessary for the EEOC to perform its investigation, or otherwise refuses to cooperate so that the Commission is unable to resolve the charge; the charging party cannot, after a reasonable effort has been made, be located; or the respondent's written settlement offer providing a complete remedy for the charging party has not been accepted by the charging party within 30 days after actual notice of the offer.<sup>25</sup> A charge may also be withdrawn as part of an acceptable negotiated settlement between the parties prior to the issuance of a reasonable cause determination by the EEOC. Any sort of resolution of a charge — dismissal, withdrawal, termination of proceedings, final judgment in a lawsuit — is considered to be a "charge disposition" by the EEOC.

## 2. Additional EEOC Enforcement Powers

In performing its enforcement duties under Title VII, the EEOC is not limited solely to acting on individual charges. Title VII also provides the EEOC with specific affirmative authority to bring a civil suit whenever it has reasonable cause to believe that a "pattern or practice" of unlawful employment discrimination exists.<sup>26</sup> Pattern or practice cases (known as "707 cases" within the Commission) address systemic discrimination against a protected group and focus on discriminatory employment systems or processes, rather than individual actions. In the past, the EEOC has not used its Section 707 authority with any regularity to address large-scale or widespread discriminatory practices.

The Commission does, however, actively pursue complex cases involving numerous charging parties, as well as large employers or major industries. These cases are referred to internally by the Commission as "class cases," defined as involving more than one "aggrieved" person. Class cases are developed and investigated through the EEOC's systemic units in its headquarters and each district office. District office systemic units are responsible for investigations in areas served by area and field offices.

The systemic units develop large cases that can be *either* regular Section 706 "class cases" or Section 707 "pattern or practice" cases. To initiate a class case, a systemic unit may proceed on its own by targeting for investigation large employers or certain industries that are believed to be engaging in discriminatory employment practices, rely on individual complaints that allege that a number of people have been hurt by discriminatory actions, or respond to a Commissioner charge alleging a similar discriminatory situation. If the EEOC decides to file suit in a class case, it is not required to comply with the federal rule of civil procedure regarding class actions (FRCP Rule 23), although individuals filing a typical "class action" under Title VII do have to meet Rule 23 criteria. This procedural exemption is important because it provides the Commission with the flexibility it needs to aggressively pursue complex cases with potentially high visibility and widescale impact.

## C. Historical Perspectives: The Hispanic Charge Study

Hispanics have long argued that their community does not benefit equitably from federal civil rights enforcement efforts. The EEOC, in particular, has historically done an extremely poor job of serving the Hispanic community. In the EEOC's own 1983 report, *Equal Employment Opportunity Commission and Hispanics: An Analysis of the Equal Employment Opportunity Commission's Services to Hispanics in the United States* (the Hispanic Charge Study), an EEOC-appointed task force unanimously found that the EEOC was not providing equivalent service to all protected groups, particularly Hispanics. The Hispanic Charge Study was largely the result of the efforts of two Hispanic EEOC Commissioners, Commissioner Tony E. Gallegos and former Commissioner Armando Rodriguez, and the interest of then-Chairman of the Senate Labor and Human Resources Committee, Senator Orrin G. Hatch (R-UT).

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The Hispanic Charge Study included both an external and an internal investigation of the Commission's service to Hispanics. The external study was based on the testimony of 120 representatives of the Hispanic community presented at public hearings in six EEOC districts.<sup>27</sup> From the testimony provided at these hearings, the study found that Hispanics were either unaware of the EEOC's enforcement authority or had a negative perception of, or general lack of trust for, the Commission and its service to Hispanics.<sup>28</sup> Moreover, the task force found that the EEOC's record of hiring Hispanics was very poor, particularly in policy positions, and that the EEOC had made little effort to improve its presence or reputation in the Hispanic community.

Some of the most commonly expressed concerns of the Hispanic community regarding the EEOC and its services were the following:

- ❖ Many Hispanics did not know what constitutes legally prohibited employment discrimination and were similarly unaware of the EEOC and the services it provides to remedy such discrimination.<sup>29</sup>
- ❖ The EEOC had little or no presence in the Hispanic community. The Hispanic community was generally unaware of any EEOC education or outreach programs for Hispanics or of any EEOC litigation pursued on behalf of Hispanics.<sup>30</sup>
- ❖ Those Hispanics who knew of the EEOC generally distrusted it primarily because they believed that the same kind of discriminatory behavior that Hispanics commonly encounter in other federal, state, and local governmental agencies also existed at the EEOC. One reason cited for Hispanics' distrust of the Commission was its poor record of recruiting, hiring, and promoting Hispanics. Hispanics considered this evidence that the EEOC could not be trusted to enforce equal employment opportunity laws on their behalf because it failed in its own right to provide equal employment opportunities to Hispanics.<sup>31</sup>
- ❖ Lack of Hispanic representation within the EEOC was perceived to mean that Hispanic issues would not be given the same sort of attention as the concerns of other better represented groups. The lack of Hispanic and bilingual staff was also cited as a cause for the hesitancy of many Hispanics, not just those who were limited-English-proficient, to turn to the Commission for assistance.<sup>32</sup>
- ❖ Hispanics were discouraged from filing complaints because the Commission took too long to resolve charges and its investigations were inadequate. These two factors seemed to exacerbate the already discouraging fear of retaliation because the EEOC did not appear likely to act quickly or effectively enough to protect Hispanic charging parties.<sup>33</sup>

The internal portion of the study was based on a statistical analysis of the EEOC's enforcement data (specifically its charge processing and litigation activities), an evaluation of the Commission's allocation of certain resources, and a review of the Commission's employment practices. Much of what was expressed during the hearings was supported by the findings of the internal investigation. The task force reached the following general conclusions based on its findings in the internal study. The EEOC:

- ❖ Had not hired or promoted Hispanics to policy-making or executive positions;
- ❖ Had pursued little Hispanic-focused litigation;
- ❖ Had little presence in the Hispanic community, caused in part by a lack of communication with community-based organizations serving Hispanics;
- ❖ Consistently failed to perform quality investigations on behalf of Hispanic charging parties; and
- ❖ Had allocated inadequate resources to the job of serving the Hispanic community.<sup>34</sup>

To support its finding that the EEOC had an historically poor record of recruiting, hiring, and promoting Hispanics, the study cited the relative underrepresentation of Hispanics in both the Commission's overall workforce and its headquarters staff. In 1975, Hispanics made up 11.3% of the total EEOC workforce and 6.0% of headquarters staff; seven years later in 1982, those percentages had changed only slightly to 11.9% and 5.9%, respectively. By way of comparison, Black employees continued to be overrepresented in the EEOC's

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workforce.<sup>35</sup> In 1975, Blacks composed 50.7% of all EEOC employees and 61.2% of headquarters staff; in 1982, the only change was a slight increase to 51.0% of the total EEOC workforce. The study noted that protected group representation in EEOC headquarters staff is extremely important because that staff is responsible for formulating and implementing agency policy and procedures.<sup>36</sup>

The study also found that Hispanic employees were still concentrated or “clustered” primarily in field offices located in EEOC districts with large Hispanic populations. This practice continued despite five years of notice to the Commission of the problem.<sup>37</sup>

The task force also reviewed the EEOC's allocation of resources, specifically focusing on the placement of its field offices in relation to the size of protected group populations each was meant to serve. It analyzed civilian labor force data to determine if individual field offices could reasonably be expected to adequately serve the protected group populations in their jurisdiction. The task force found evidence that field office placement appeared to be closely linked to areas with high concentrations of Blacks in the surrounding civilian labor force, without regard to Hispanic labor force representation.<sup>38</sup> While the task force failed to reach a definite conclusion regarding the effect of placement of field offices, it did indicate that the lack of a field office in areas with high percentage of Hispanics in the labor force was a significant impediment to adequate EEOC enforcement and litigation on behalf of Hispanics.<sup>39</sup>

In analyzing the EEOC's internal administrative procedures, the task force focused on: (1) the proportion of the Commission's caseload of charges that involved Hispanics, (2) the disposition of Hispanic charges, and (3) the Commission's litigation efforts on behalf of Hispanics. The analysis revealed that the EEOC persistently failed to devote adequate attention to Hispanic matters in almost every stage of its administrative process — from initial charge processing and investigation to the filing of pattern or practice lawsuits involving national origin discrimination.

The charge caseload data compiled by the task force showed that from the mid-1970s to the early 1980s, at a time when the proportion of Hispanics increased from less than 3% of the labor force to nearly 6%, and the overall EEOC charge caseload increased by more than 76%, the proportion of caseload involving Hispanics *dropped* from an average of almost 8% for the 1974-1980 period to less than 5% in 1982.<sup>40</sup>

In addition, once charges alleging national origin (Hispanic) discrimination were filed, they were more likely to be closed administratively without remedy to the charging party than were charges from other groups.<sup>41</sup> For example, the task force found that in both 1980 and 1982, the EEOC was nine times more likely to recover back pay for Black charging parties than for Hispanic charging parties.<sup>42</sup> During this period, between 80% and 84% of the charges brought by Hispanics were closed without any remedy to the charging party.<sup>43</sup> The task force considered the general lack of attention paid to Hispanic charges, demonstrated by routinely inadequate investigations and summary dismissals, as evidence of disparate treatment of Hispanic cases.<sup>44</sup>

With respect to the Commission's litigation record, the 1983 study found that for fiscal years (FY) 1980 through 1982, lawsuits alleging discrimination based upon national origin (Hispanic) were only 2.8% of the EEOC's total litigation caseload (27 of 935 cases).<sup>45</sup> From 1972 through 1982, the EEOC's Annual Report for each year listed *no* cases as “significant litigation” in which national origin (Hispanic) discrimination was the sole or primary issue or in which Hispanics were the primary class represented. Moreover, during this period there were no “pattern or practice” cases reported in which Hispanics were the only individuals being represented.<sup>46</sup>

Based on these findings, the Hispanic Charge Study concluded that the EEOC did not provide equivalent service to all protected groups and that Hispanics, Asian Americans, and American Indians were particularly underserved.<sup>47</sup> It specifically found that the EEOC targeted race-based charges to the detriment of other minority groups, and that this seemed to be a result, at least in part, of the lack of Hispanics, Asian Americans, and American Indians in upper management positions that could influence the policies of the Commission.<sup>48</sup>

To address these problems, the Hispanic Charge Study made a number of recommendations, which included the following: the use of the most recent Census data (then 1980) to guide the EEOC in the allocation of its resources, including the placement of field offices; the redesign of the charge processing and investigation procedures to address the problem of inadequate investigations and premature dismissals; an agency-wide

directive to serve all protected classes fairly and equally; an affirmative equal employment opportunity hiring and promotion program within the EEOC at all levels; the vigorous pursuit of national origin/Hispanic litigation — individual, class, and pattern or practice actions — by the Commission; and required periodic reporting by the EEOC to an independent monitor regarding its progress in serving previously underserved groups.<sup>49</sup>

Finally, regarding the problem of the Hispanic community's lack of knowledge and/or trust of the EEOC, the study recommended "vigorous outreach to the Hispanic community through the use of community based organizations" and noted that "[c]ommunication with the Hispanic community must be direct and widespread."<sup>50</sup>

## D. EEOC's Recent Enforcement Record

NCLR conducted its own statistical analysis of EEOC data on charges, dispositions, and litigation since the issuance of the 1983 Hispanic Charge Study.<sup>51</sup> Overall, this analysis indicates that little or no improvement has been made by the EEOC since 1983. In fact, given the enormous growth of the Hispanic population during the last decade — and the concomitant increase in the Hispanic proportion of the labor force — NCLR's analysis shows a relative decrease in the EEOC's service to the Hispanic community over the last decade. According to the 1990 Census, for example, Hispanics constitute 9% of the total U.S. population, as compared to 6.4% in 1980. Hispanics constituted nearly 8% of the civilian labor force as of March 1990, as compared to less than 6% in 1980.<sup>52</sup>

Despite more than eight years of "notice" since the Hispanic Charge Study, the EEOC still does not equitably serve Hispanics in the enforcement of equal employment opportunity laws. NCLR's study of the EEOC's recent enforcement record found that Hispanics are still poorly served at all levels of the administrative process, with some areas becoming worse than they were at the time of the Hispanic Charge Study. NCLR has also found that the EEOC continues to have problems with the employment and promotion of Hispanics.

### 1. Charges by Basis of Discrimination

NCLR's analysis shows that, from 1985 through 1990, charges alleging discrimination based on Hispanic national origin have continued to constitute a disproportionately small percentage of the EEOC's total charge receipts. National origin based charges from Hispanics during this period constituted only 4.2% of the EEOC's total charge caseload (See Figure 1).

By comparison, charges from Blacks alleging discrimination on the basis of race constituted more than 31% of the EEOC caseload. Charges based on allegations of sex and age discrimination constituted more than 21% and nearly 18%, respectively, of the Commission's total charge receipts over this period. Even the number of charges from Whites alleging "reverse discrimination" was nearly as high as the number from Hispanics alleging national origin discrimination.

Figure 1

#### EEOC Charge Caseload by Basis\* of Discrimination for FY 1985 - FY 1990

BASIS	NO. OF CHARGES	% OF TOTAL
Black	261,123	31.6
Gender/Female**	177,294	21.5
Age	148,063	17.9
Hispanic	34,386	4.2
White	20,377	2.5
Religion	13,009	1.6
Other***	<u>170,957</u>	<u>20.7</u>
TOTAL	825,209	100%

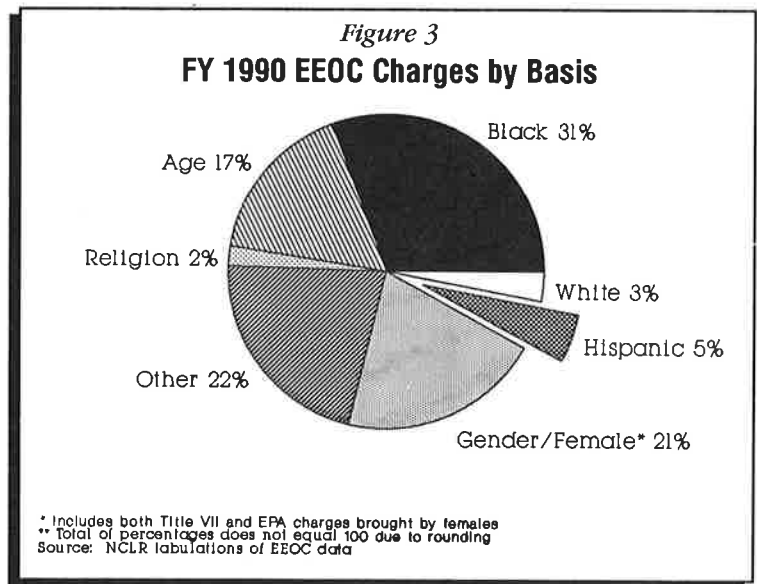
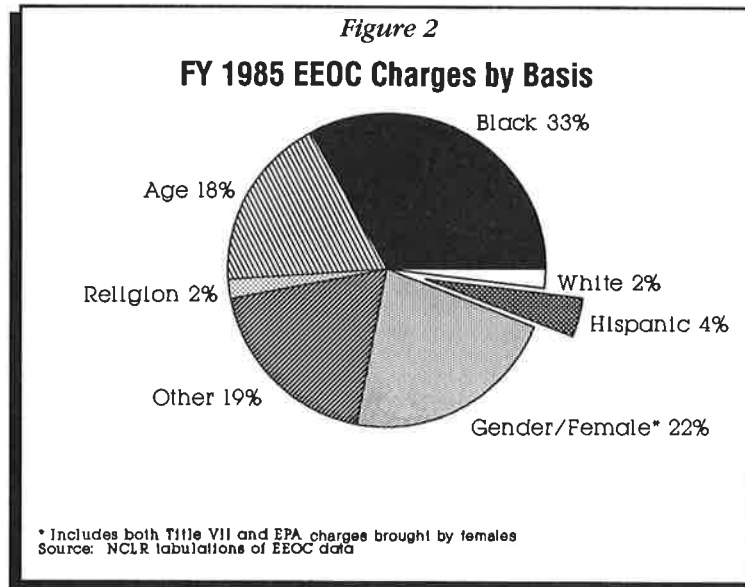
\* Charging parties may allege more than one basis of discrimination, e.g., gender and race.

\*\* Includes charges filed under both Title VII and EPA by females

\*\*\* Includes, among other charge bases, Asian Pacific, American Indian, Alaskan Native, disability, and "retaliation" bases

Source: NCLR tabulations of EEOC data

A comparison of the bookend years of FY 1985 and FY 1990 shows that the proportionate breakdown of charges by basis of discrimination remained virtually unchanged during the six-year period — this despite the EEOC's notice of its underservice to Hispanics and the rapid growth of that community during this period (See Figures 2 and 3).



Viewed another way, for every charge alleging discrimination based on Hispanic national origin during this period, there were nearly eight charges alleging racial discrimination against Blacks, more than five charges alleging sex discrimination, and more than four charges alleging age discrimination (See Figures 4 and 5).

Figure 4

**EEOC Charges by Selected Bases  
Annually for FY 1985 - FY 1990  
(Percent and Number of Charges)**

FISCAL YEAR	BLACK		GENDER/FEMALE*		AGE		HISPANIC	
	%	NO.	%	NO.	%	NO.	%	NO.
1985	33	43,730	22	29,518	18	24,017	4	5106
1986	33	43,269	21	27,469	19	24,643	4	5108
1987	32	44,555	22	30,524	19	26,038	4	5587
1988	32	45,611	21	30,524	18	25,932	4	5994
1989	31	41,322	22	29,542	18	24,109	4	5900
1990	31	42,636	21	29,717	17	23,324	5	6691

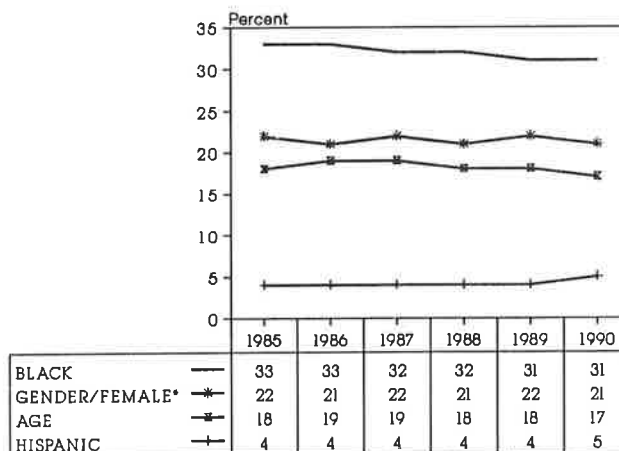
\* Includes both Title VII and EPA charges brought by females

Source: NCLR tabulations of EEOC data

Moreover, these data may tend to overstate the proportion of charges filed by Hispanics. The EEOC's administrative process during the periods examined did not include a method for national origin or racial self-identification by the charging party. The EEOC records for this period, therefore, cannot provide charge caseload information tied to the charging parties beyond those data related to specific self-identifying charge bases such as national origin (Hispanic) and race (Black). Because Hispanic charge filings for the most common basis — national origin discrimination — are so disproportionately low, it is likely that charges filed by Hispanics on other grounds (e.g., gender, age) may also be very low.<sup>53</sup>

Figure 5

**Annual EEOC Charges by Selected  
Bases for FY 1985 - 1990**



\* Includes both Title VII and EPA charges brought by females  
Source: NCLR tabulations of EEOC data



## 2. Administrative Charge Closures

While the proportion of Hispanic national origin charges in the total EEOC caseload has held at about the same low rate since 1985, the proportion of charges from Hispanics that are administratively closed by the EEOC without remedy to the charging party has *increased* dramatically during the same period. In 1985, 45% of all Hispanic charge closures were administrative closures with no remedy to the charging party; by 1990 that figure had increased to 73% (See Figure 6).

Figure 6

### Hispanic Charge Closures Annually for FY 1985 - FY 1990

FISCAL YEAR	TOTAL HISPANIC CHARGE CLOSURES	NO REMEDY HISPANIC CHARGE CLOSURES	
		%	NO.
1985	4752	45	2156
1986	4800	58	2763
1987	5481	64	3481
1988	5906	70	4128
1989	5884	72	4219
1990	5980	73	4343

Source: NCLR tabulations of EEOC data

Additionally, for five of the six years during the 1985-90 period, Hispanic charges were closed without remedy at a rate higher than or equal to all other groups combined. During this period, only in 1985 was the Hispanic "no remedy" closure rate (45%) *less than* the non-Hispanic no remedy closure rate (47%). By 1990, the non-Hispanic rate had grown significantly to 71%, but it was *less than* the Hispanic rate of 73%.<sup>54</sup>

EEOC records break down charge closures into 27 categories. Of those 27 categories, nine are identified as situations in which the charging party receives no benefit or remedy. The nine administrative charge closure categories with no remedy to the charging party are: no cause finding, unsuccessful conciliation, administrative decision, failure to locate charging party, failure of charging party to respond, failure of charging party to cooperate, refusal of charging party to accept full relief, withdrawal of charge by charging party, and no jurisdiction.

The majority of Hispanic no remedy charges were closed on the basis of no cause findings (i.e., because the EEOC found insufficient evidence that discrimination had occurred). The no cause category of charge closure without benefit to the charging party is the one category for which the EEOC bears most if not all of the responsibility because the decision is completely within the Commission's discretion. A charge is closed due to a no cause finding when the EEOC determines that the evidence obtained in its investigation does not show reasonable cause to believe that discrimination occurred. A no cause finding is the final determination of the Commission and it may be reconsidered *solely* at the discretion of the Commission.<sup>55</sup> After such a finding, the charging party's only option is to file a private suit based on the alleged discrimination.

In 1985, the percentage of total Hispanic closures due to no cause findings was a full ten percentage points higher than the overall no cause closure rate. While both the Hispanic and the overall rate of no cause closure rates have increased dramatically in the six-year period from 1985 to 1990, the Hispanic rates have consistently been higher than the overall no cause closure rates (See Figure 7).

Figure 7

**Hispanic No Cause Closures Annually for FY 1985 - FY 1990**

<b>FISCAL YEAR</b>	<b>HISPANIC NO CAUSE AS PERCENT OF TOTAL HISPANIC CLOSURES</b>	<b>TOTAL NO CAUSE AS PERCENT OF TOTAL CLOSURES</b>
1985	31.8	21.9
1986	42.2	32.7
1987	46.6	44.5
1988	49.3	48.3
1989	53.5	49.8
1990	54.1	52.0

Source: U.S. EEOC Office of Communications and Legislative Affairs

The EEOC came under considerable criticism in the late 1970s and 1980s for administratively closing cases with little or no substantive investigation.<sup>56</sup> When insufficient time and attention is given to the investigation of a charge, it is much more likely that a no cause determination will be made because the information necessary to establish cause is not as likely to be discovered. The increase in no cause closure rates indicates that inadequate investigations leading to summary and improper dismissals, which were revealed as a major problem in the Hispanic Charge Study, may continue to be a real factor today. Although the EEOC contends that the no cause closures should not be included in the general category of no-relief closures because a "full, thorough investigation" has been made in such cases,<sup>57</sup> there are no data to indicate that the quality of investigations has been improved since the Hispanic Charge Study.

The general shortcomings of the EEOC charge processing system, however, cannot sufficiently explain the extremely high percentage of overall Hispanic charge closures that result in no benefit to the charging party. One possible explanation is that the Commission simply treats Hispanic complaints differently than other types of charges; Hispanic complaints seem to be taken less seriously and given less priority and attention.<sup>58</sup>

One example of possible differential treatment of Hispanic charges cited in the Hispanic Charge Study involved a case filed in 1976 by an Hispanic against the State of California Department of Corrections alleging national origin discrimination. After six years with no action, the case was transferred from the EEOC's Los Angeles office to its Phoenix office. The charging party was advised by the EEOC and state officials that a settlement of the case was pending. A year later, the charging party received a notice that the charge had been dismissed based on a no cause finding. The charging party subsequently stated that he was informed that the "EEOC needed to close 'old' cases to improve their status with auditors and the Administration."<sup>59</sup>

### **3. EEOC Litigation Activity**

#### **a. EEOC-Initiated Lawsuits**

NCLR examined the EEOC's litigation activity since the 1983 Hispanic Charge Study. Lawsuits brought by the EEOC may and often do include more than one basis of discrimination (e.g., national origin *and* sex). To gauge properly the attention accorded various types of employment discrimination in the EEOC's litigation efforts, the number of bases of discrimination, rather than simply the number of lawsuits, must be analyzed. The analysis

revealed a continuing low level of service to Hispanics with a sharp decrease in the last two years. Figure 8 illustrates the sharp decline in the already small number of EEOC lawsuits that include national origin (Hispanic) as at least one basis of alleged discrimination.

Figure 8

**Annual EEOC Litigation Activity  
All Bases and Including National Origin (Hispanic)  
FY 1985 - FY 1990**

FISCAL YEAR	TOTAL NO. SUITS FILED	TOTAL NO. BASES	TOTAL NO. SUITS THAT INCLUDE NATIONAL ORIGIN (HISPANIC*) BASIS
1985	286	328	8
1986	427	458	6
1987	430	508	18
1988	438	542	18
1989	571	614	11
1990	524	670	6

\* Includes EEOC basis category known as "Mexican"

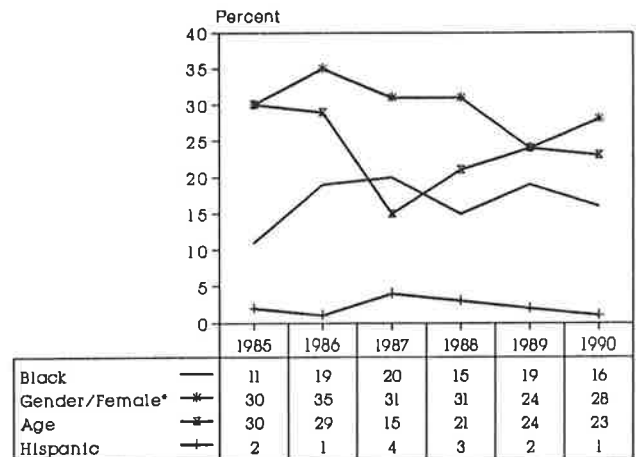
Source: NCLR tabulations of EEOC data

To better understand the degree to which Hispanics are underserved in the area of litigation, NCLR analyzed EEOC litigation activity on behalf of other major bases, specifically gender/female, age, and race (Black) for the same time period. By far, the largest number of lawsuits brought by the EEOC were based on gender discrimination against females (including both Title VII and EPA claims). No data were available from the EEOC breaking down the gender/female lawsuits by the national origin or race of the female(s) bringing the charge. Figure 9 illustrates the comparison of the annual percentages of EEOC litigation caseload for discrimination claims based on gender/female, age, race (Black), and national origin (Hispanic).<sup>60</sup>

For the six-year period from 1985 through 1990, lawsuits filed by the EEOC on behalf of Hispanic plaintiffs claiming national origin discrimination constituted a cumulative average of only 2.2% of the EEOC's total litigation caseload (See Figure 10).

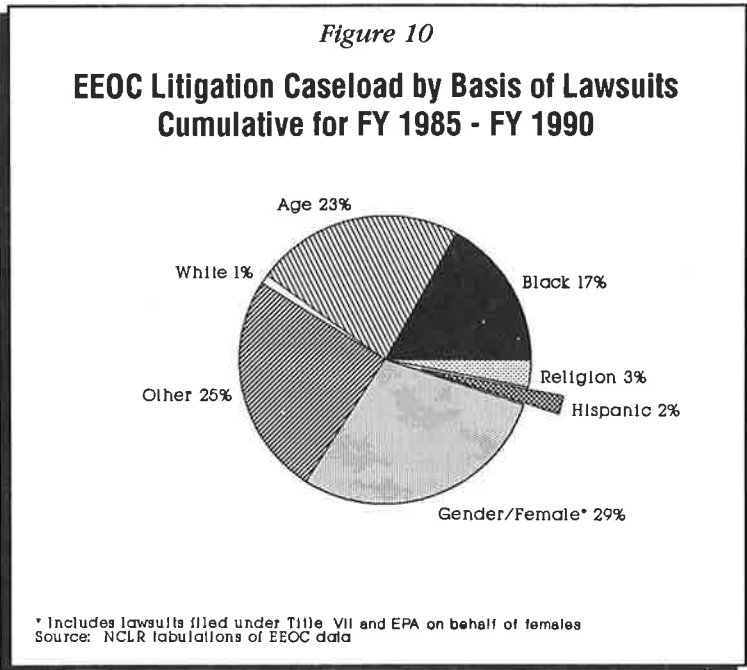
Figure 9

**EEOC Lawsuits by Basis  
FY 1985 - FY 1990**



\* Includes lawsuits filed under Title VII and EPA on behalf of females  
Source: NCLR tabulations of EEOC data

A comparison of the by-basis breakdowns of the EEOC's charge and litigation caseloads revealed that the average percentages for both Hispanic and race (Black) lawsuits for the 1985-1990 period are barely more than half of the corresponding percentages for these two bases in the overall charge caseload for the same six-year period. During 1985 through 1990, national origin based charges filed by Hispanics constituted an average of 4% of the EEOC's overall charge caseload, while lawsuits that included charges of discrimination based on Hispanic national origin composed only an average of 2% of the EEOC's overall litigation caseload. For the same period, the corresponding averages for race-based charges brought by Blacks and lawsuits including allegations of racial discrimination against African Americans were 32% and 17%, respectively.



Conversely, the average percentages for both gender/female and age discrimination lawsuits are significantly *higher than* the corresponding charge caseload percentages for that period. Gender/female charges made up 22% of the EEOC charge caseload for the 1985 - 1990 period, and lawsuits alleging gender discrimination against females made up 29% of the EEOC's litigation caseload; age charges were an average of 18% of the EEOC charge caseload, and age discrimination suits were 23% of the EEOC's litigation docket. With one exception (1987, when age cases composed 15% of the EEOC's litigation caseload), the patterns for both gender/female and age charges and lawsuits are the same when considered on an individual year basis for the 1985-1990 period.

Analysis of charge and litigation caseload by basis reveals a clear and striking pattern — the EEOC has chosen to initiate and litigate certain types of cases (gender/female and age) at a far greater rate than other cases such as race and national origin. Because a case brought under Title VII based on one kind of discrimination should not be any more difficult to bring and prove than a case in which another basis of discrimination is alleged, it should be expected that, over time, the proportionate breakdown of the EEOC litigation caseload by bases of discrimination alleged in each lawsuit would be roughly the same as the corresponding proportionate breakdown of the EEOC charge caseload by basis. That, however, is not the case.

Given the data, it is not unreasonable to infer that this pattern is the result of actions taken by the EEOC, either intentionally or unintentionally, for which it is ultimately responsible.<sup>61</sup> The record shows that the Commission has an established, affirmative preference for certain types of cases over others. This is particularly troubling because its litigation docket is the one area in which the EEOC exercises the most discretion and control. At a minimum, the EEOC should have used its discretionary powers in the litigation phase of the enforcement process to address known inequities in its service, not to mention the caseload created by Commission-initiated litigation. The extent to which it has failed to do this suggests a conscious disregard for the importance of both national origin- and race-based litigation.

With respect to cases perceived as being of particular significance, the Commission's 1985, 1986, 1987, and 1988 summaries of "noteworthy resolutions secured by the EEOC" for each of the four fiscal years shows that:

- ❖ In 1985, 2.4% included claims of national origin (Hispanic), while only 0.8% were based *solely* on Hispanic charges.<sup>62</sup>
- ❖ In 1986, 4.8% included Hispanic claims and 3.2% were based solely on a claim of national origin (Hispanic) discrimination.

- ❖ In 1987, 1.6% included Hispanic claims and 0.9% were based solely on Hispanic claims.
- ❖ In 1988, 1.9% included Hispanic claims and 1.6% were based solely on such claims.<sup>63</sup>

Finally, a number of major class action lawsuits (defined here as those with 25 or more beneficiaries of monetary relief) were resolved by the EEOC during the period between 1987 and 1990. Such lawsuits are believed to have a major deterrent effect in that they are often accompanied by substantial publicity leading to heightened awareness of the potential for litigation to remedy discriminatory employment practices.

During the four-year period of FY 1987 through FY 1990, the EEOC's Office of General Counsel reported that 48 such lawsuits were resolved. Of those 48 lawsuits, 21 were on behalf of victims of gender (female) discrimination, 18 were on behalf of age discrimination victims, and nine on behalf of Black victims of racial discrimination. No major class actions were brought on behalf of solely Hispanic victims of national origin discrimination.

### **b. Monetary Awards Obtained by EEOC Litigation**

Even when the EEOC litigates on behalf of Hispanics, it appears that Hispanics receive smaller average monetary awards than other groups. The monetary awards to victims of employment discrimination in lawsuits brought by the Commission, as presented in the annual report of the EEOC's Office of General Counsel (OGC), were analyzed for the four-year period from 1987 through 1990. Monetary awards for single beneficiaries and multiple beneficiaries were analyzed separately because single-beneficiary lawsuits appear to recover larger monetary awards per person than suits with two or more beneficiaries.<sup>64</sup> For every year analyzed, the results for Hispanic victims were considerably lower than the other major categories. (Figures 11 and 12).<sup>65</sup>

*Figure 11*

#### **Average Monetary Awards by Basis in Lawsuits with Single Beneficiary\* Annually for FY 1987 - FY 1990**

<b>FISCAL YEAR</b>	<b>SEX (FEMALE)</b>	<b>AGE</b>	<b>RACE (BLACK)</b>	<b>RELIGION</b>	<b>NATIONAL ORIGIN (HISPANIC)</b>
1987	\$10,158	\$35,332	\$11,661	\$ 9,194	\$9,000
1988	12,004	39,282	10,078	9,270	6,867
1989	15,601	18,409	13,502	15,185	4,750
1990	11,251	29,228	10,674	10,643	5,796

\* Cases in which *only* one person is identified as receiving monetary relief

Source: NCLR tabulations of EEOC data

Figure 12

**Average Monetary Awards by Basis  
in Lawsuits with Multiple Beneficiaries\*  
Annually for FY 1987 - FY 1990**

FISCAL YEAR	SEX (FEMALE)	AGE	RACE (BLACK)	RELIGION	NATIONAL ORIGIN (HISPANIC)
1987	\$32,944	\$277,181	\$310,695	0	0
1988	5,332	9,340	8,971	\$4,116	\$2,439
1989	1,648	19,830	3,959	5,601	5,000
1990	68,554	99,370	37,628	7,500	0

\* Cases in which *more than* one person is identified as receiving monetary relief

Source: NCLR tabulations of EEOC data

For some categories, a high number of cases (with both single and multiple beneficiaries) was resolved each year with monetary relief going to the victim(s) of discrimination, while the number of national origin (Hispanic) cases resolved with monetary relief was very low for all four years. For example, in 1987 the total number of sex (female) cases included in the analysis was 92; in 1990, that number was 118. By contrast, the number of national origin (Hispanic) cases that could be considered for 1987 was two and in 1990 the number had risen to a mere four cases (See Figures 13 and 14).

Figure 13

**Number of Cases per Basis  
with Monetary Relief  
FY 1987**

BASIS	INDIVIDUAL BENEFICIARIES	MULTIPLE BENEFICIARIES	TOTAL
Sex (Female)	55	37	92
Age	26	32	58
Race (Black)	29	14	43
Religion	5	no cases	5
National Origin (Hispanic)	2	no cases	2

Source: NCLR tabulations of EEOC data

Figure 14

**Number of Cases Per Basis  
with Monetary Relief  
FY 1990**

<b>BASIS</b>	<b>INDIVIDUAL BENEFICIARIES</b>	<b>MULTIPLE BENEFICIARIES</b>	<b>TOTAL</b>
Sex (Female)	82	36	118
Age	64	20	84
Race (Black)	55	12	67
Religion	13	1	14
National Origin (Hispanic)	4	no cases	4

Source: NCLR tabulations of EEOC data

## **E. EEOC's Employment Record**

A principal finding of the Hispanic Charge Study was that one of the main reasons that Hispanics distrusted the EEOC was its extremely poor employment record with regard to Hispanics. To determine whether the Commission made any significant gains in the recruiting, hiring, and promoting of Hispanics, NCLR analyzed the EEOC's employment statistics for the period FY 1982 through FY 1990. The statistics include the five "white collar" employment status categories of Professional, Administrative, Technical, Clerical, and Other, as well as the "blue collar" category.

For the nine-year period analyzed, the EEOC's overall workforce was composed of an average of 49% Blacks, 60% women (including Hispanic and Black women), and 10% Hispanics. Similarly, the Commission's Professional status workforce for the same period was composed of an average of 32% Blacks, 44% women (including Hispanic and Black women), and 9% Hispanics. (See Figures 15 and 16 for the yearly breakdowns for each of the three identified groups.)

Figure 15

**Overall EEOC Workforce  
(PATCO\* + Blue Collar)  
Annually for FY 1982 - FY 1990**

FISCAL YEAR	TOTAL	BLACK		WOMEN**		HISPANIC	
		%	NO.	%	NO.	%	NO.
1982	2934	49	1444	56	1652	11	318
1983	2927	48	1391	57	1659	10	300
1984	2777	47	1291	57	1595	11	292
1985	3076	46	1421	60	1852	10	297
1986	2945	49	1439	60	1766	10	306
1987	2781	52	1441	61	1699	11	294
1988	3059	51	1562	64	1946	10	309
1989	2942	51	1496	63	1866	10	290
1990	2934	51	1499	65	1900	10	291

\* PATCO includes the five "white collar" employment status categories: Professional, Administrative, Technical, Clerical, and Other.

\*\* Includes Hispanic and Black women

Source: NCLR tabulations of EEOC data

Figure 16

**EEOC Professional Status Workforce  
Annually for FY 1982 - FY 1990**

FISCAL YEAR	TOTAL	BLACK		WOMEN*		HISPANIC	
		%	NO.	%	NO.	%	NO.
1982	464	35	162	38	176	10	46
1983	447	34	150	39	173	9	41
1984	399	32	126	39	155	10	40
1985	488	31	151	42	206	8	39
1986	467	33	152	42	195	9	42
1987	459	32	147	46	213	9	39
1988	527	31	162	50	261	8	43
1989	497	30	148	48	239	7	36
1990	505	30	149	50	252	7	36

\* Includes Hispanic and Black women

Source: NCLR tabulations of EEOC data



The data indicate that the EEOC has generally been successful in employing women. Upon analyzing the three major subcategories of women employees for both the overall workforce (PATCO and Blue Collar) and solely the Professional status workforce, NCLR discovered that Hispanic women do not benefit equitably from this trend. While Black and White women composed averages of 33% and 22% respectively of the EEOC's overall workforce (including men) during the period from FY 1982 through FY 1990, Hispanic women accounted for only an average of 5% of the general workforce. For the Commission's Professional status workforce (both men and women) during the same period, White women made up an average of 26% and Black women accounted for an average of 14%, while Hispanic women composed only an average of 3%.

The disparity is even more striking when the comparison is made among the proportion of Hispanic, White, and Black women in the EEOC *female* workforce. In the total female workforce (PATCO and Blue Collar), Black women account for the largest portion at an average of 54% for the 1982-1990 period; White women follow with an average of 36%. In marked contrast, Hispanic women make up only an average of 8% of the EEOC's total female workforce (See Figure 17).

Figure 17

**Overall EEOC Female Workforce  
(PATCO\* + Blue Collar)  
Annually for FY 1982 - FY 1990**

FISCAL YEAR	TOTAL FEMALE	WHITE		BLACK		HISPANIC	
		%	NO.	%	NO.	%	NO.
1982	1652	37	615	53	875	8	138
1983	1659	40	668	51	844	8	128
1984	1595	41	655	50	794	8	129
1985	1852	42	781	49	913	7	136
1986	1766	37	650	54	946	8	143
1987	1699	32	538	58	986	9	147
1988	1946	32	630	57	1105	6	116
1989	1866	32	604	57	1059	8	156
1990	1900	32	603	57	1084	9	162

\* PATCO includes the five "white collar" employment status categories: Professional, Administrative, Technical, Clerical, and Other.

Source: EEOC tabulations of EEOC data

In the Professional status category, Hispanic women continue to be severely underrepresented at an average of 7% for the FY 1982 - FY 1990 period. The percentage breakdown among women in the Professional category presents an interesting change from that in the total female workforce; in the Professional category White women compose an average of 60% and Black women make up an average of only 32% (See Figure 18).

Figure 18

**EEOC Professional Status Female Workforce  
Annually FY 1982 - FY 1990**

FISCAL YEAR	TOTAL FEMALE	WHITE		BLACK		HISPANIC	
		%	NO.	%	NO.	%	NO.
1982	176	55	97	33	58	9	16
1983	173	60	103	30	52	8	14
1984	155	64	99	27	41	9	14
1985	206	63	129	28	58	7	15
1986	195	59	114	32	62	8	15
1987	213	58	123	35	74	7	15
1988	261	59	154	33	85	7	18
1989	239	61	146	33	78	5	12
1990	252	61	154	33	82	6	14

Source: NCLR tabulations of EEOC data

These findings are particularly troubling given that the EEOC has the statutory responsibility for assisting federal agencies with the development and implementation of their affirmative employment programs and for approving agencies' plans for such programs. In testimony presented in October 1991 to the Senate Committee on Governmental Affairs regarding the status of the federal affirmative employment program, the GAO reported that Hispanic men and women continued to be, by far, the most underrepresented groups in the 1990 federal workforce compared to the 1990 civilian labor force. In its review, the GAO also found that the groups most often underrepresented in "key jobs" (nonclerical agency jobs held by 100 or more employees with advancement potential to senior-level positions), when compared to their representation in the civilian labor force for the same jobs, were Hispanic men and women, together with White women and Asian men.<sup>67</sup> Rather than setting an example in its minority employment, the EEOC's employment record regarding Hispanics appears to follow the unacceptable pattern of the federal government, as reported by the GAO.

Moreover, the data indicate that the EEOC has made no affirmative effort to correct what the Hispanic Charge Study found to be one of its principal problems in serving Hispanics — its poor record for recruiting, hiring, and promoting Hispanics. The Hispanic Charge Study found that Hispanics considered the obvious lack, at every level, of Latino employees at the Commission to be a reflection of the institution's lack of commitment to enforcing the law on their behalf. The study found further that a visible Hispanic presence at the EEOC is a prerequisite for the development of a positive, trusting relationship between the Commission and the Hispanic community, which is the necessary foundation for effective enforcement. Yet despite the strong evidence of the need to employ more Hispanics at every level, the EEOC continues to fail to take any coordinated, affirmative measures to remedy the problem of underrepresentation of Latinos within the Commission.

## F. EEOC Budget Considerations

NCLR recognizes that a significant factor in EEOC's inability to serve Hispanics may be the persistent lack of adequate funding. The problems caused by insufficient funding have been further exacerbated by the rapid growth of large portions of the Commission's constituency. Specifically, Hispanics, along with African Americans, Asian/Pacific Americans, and the elderly, have grown at a much faster rate than the overall population since 1980.

For more than a decade, the EEOC has been asked, with what is in effect a dwindling budget, to take on additional enforcement responsibilities and to serve new protected classes. While its funding has slowly increased, the funding growth is simply not commensurate with the increase in the Commission's enforcement duties (See Figure 19). For example, passage of the Americans with Disabilities Act of 1990, which covers an estimated 43 million Americans with mental and/or physical disabilities, greatly expanded the EEOC's enforcement responsibilities. The Civil Rights Act of 1991 (CRA '91) also increased the Commission's enforcement portfolio. In its FY 1993 Budget Request, the EEOC estimated increases of 20% and 10% in its charge caseload due to the ADA and CRA '91, respectively.<sup>68</sup>

*Figure 19*

### EEOC Budget Requests and Appropriations Annually for FY 1981 - FY 1991

FISCAL YEAR	BUDGET REQUEST	APPROPRIATION
1981	\$143,037,000	\$140,000,000
1982	140,389,000	139,889,000
1983	144,937,000	142,771,000
1984	155,300,000	151,399,000
1985	161,155,000	160,755,000
1986	158,825,000	165,000,000
1987	167,691,000	165,000,000
1988	193,457,000	179,812,000
1989	194,624,000	180,712,000
1990	188,700,000	184,926,000
1991	195,867,000	198,300,000

\* Source: U.S. EEOC Office of Communications and Legislative Affairs

Despite the significant increases in the EEOC's enforcement duties, NCLR calculates that, based on the FY 1981 appropriation of \$140 million, the FY 1991 appropriation of \$198.3 million represents a *reduction* of 5.7% after adjusting for inflation (See Figure 20).

Figure 20

**Analysis of Change over Time  
of EEOC Budget**

FISCAL YEAR	ACTUAL APPROPRIATION	CONSTANT DOLLARS (1981)	PERCENT CHANGE*
1981	\$140,000,000	\$140,000,000	
1985	160,755,000	165,200,000	-2.9%
1991	198,300,000	210,000,000	-5.7%

\* After adjusting for inflation

Source: NCLR tabulations of EEOC data

## G. EEOC's Response

NCLR presented the preliminary principal findings of this study in a summary report in the summer of 1991. The report, which reopened the issues last publicly discussed almost a decade earlier in the Hispanic Charge Study, received widespread attention from not only Latinos, but also the media and the civil rights community. NCLR's findings gained additional visibility because they were released in the midst of the heated public debate over the Civil Rights Act of 1991 and the controversial Supreme Court confirmation hearings for Clarence Thomas, who had served as EEOC Chairman during much of the period covered by the report.

In the wake of the publication of NCLR's summary report, the EEOC was called upon a number of times by the media and policy makers to respond to NCLR's criticisms of its performance. In its defense, the Commission most often cited its Voluntary Assistance and Expanded Presence programs as ongoing outreach efforts to enhance community awareness of the EEOC and its mission.<sup>69</sup> Since the mid-1980s, however, both programs have been virtually defunct, with no allocation of resources and no centralized direction. Moreover, the Voluntary Assistance Program was created in the early 1980s to provide education and technical assistance to small and mid-size employers and unions on equal employment opportunity issues. While it may have an indirect effect on employment discrimination against Hispanics, it was never intended to increase Hispanic awareness of and confidence in the EEOC.

The Expanded Presence Program, also created in the early 1980s, was originally intended to provide outreach to communities that were unaware of or had restricted access to the EEOC and its services. The history and current status of the Expanded Presence Program is somewhat unclear. The Hispanic Charge Study notes that the three official pilot offices for the program were in areas with significant Black populations and very small Hispanic communities. The Hispanic Charge Study states that Expanded Presence Program pilot offices were located in Carbondale, Illinois; Hannibal, Missouri; and Sedalia, Missouri.<sup>70</sup> On the other hand, the EEOC's 18th Annual Report for 1983 mentions that the first Expanded Presence office was located in the largely Hispanic East Los Angeles area. That office has not been open for some time, and there is no indication that any additional offices were opened elsewhere in the country.

In response to NCLR's repeated requests for information about the Expanded Presence program, the EEOC has stated that no specific funds have been allocated to the program and that it is left to the discretion of the field offices to implement any program they deem appropriate under this title. The EEOC's transfer of Expanded Presence Program responsibilities to its field offices is indicated in the EEOC's FY 1992 Budget Request. In describing the enforcement duties and activities of its field offices, the Budget Request states "[d]istrict offices

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also inform the public as to its rights under the laws enforced by EEOC, and provide access to individuals who are geographically distant from EEOC field offices or whose primary language is other than English."<sup>71</sup> No mention is made, however, of funds earmarked to carry out those activities.

In its FY 1993 Budget Request, the EEOC admits that its outreach programs were "curtailed or suspended in the past due to budget constraints."<sup>72</sup> NCLR's informal telephone survey of a number of EEOC district offices in areas with large Hispanic populations found that, while varying levels of outreach are occurring and some offices have recently become quite active with regard to the Hispanic community, there is still no coordinated national effort, no funds or resources have been specifically allocated, and efforts are rarely initiated by the EEOC, but rather respond to requests from the community.

Finally, the EEOC made public statements about the problem of underservice to Hispanics as documented by both the Hispanic Charge Study and NCLR's analysis. In a February 7, 1992, article in *USA Today* concerning NCLR's findings of inequitable service, an EEOC spokesperson is quoted as saying that while the Commission is conducting Spanish-language seminars to encourage Hispanics to file complaints, "Hispanics first must walk through our doors."<sup>73</sup> To say that Hispanics must first find their way to the EEOC before they can be served ignores one of the fundamental problems revealed in the Hispanic Charge Study — that Hispanics either do not know about or do not trust the EEOC. Given the Commission's mandate, it is reasonable to expect the EEOC to act *affirmatively* to reach out to the Hispanic community, as well as other underserved groups, and to educate them about its role in combatting employment discrimination.

Furthermore, using the EEOC's own enforcement standards as the model, it is safe to assume that the Commission would not permit an employer found guilty of similar differential treatment in the workplace to respond in such a passive manner to a known problem. When measured against its own policies, the EEOC has consistently failed to take the steps necessary to remedy the problem of underservice to Hispanics.

## **H. Title VII Enforcement Record of the Department of Justice**

Pursuant to Title VII, the Attorney General shares limited enforcement authority with the EEOC. Under the statute, the Attorney General is authorized to bring suit against state and local government employers in individual charges of employment discrimination referred to it by the EEOC. Under Section 706 of Title VII, individual charges of discrimination alleged to have been committed by a state or local government employer are first filed with and investigated by the EEOC. If the Commission finds reasonable cause to believe the allegation and no acceptable conciliation agreement is reached, the EEOC may then refer the case to the Attorney General. The Employment Litigation Section in the Civil Rights Division of the Department of Justice (DOJ), on behalf of the Attorney General, investigates the cases further, if warranted, and determines whether or not to recommend to the Attorney General that the charge should be litigated.

As with cases litigated by the EEOC on behalf of individual charging parties, there are many points of discretion in the DOJ's process to determine whether Section 706 state or local government charges should be pursued to trial. Unlike charges of discrimination involving private employers, charges against state or local governments are essentially subject to two separate investigation and review processes. An individual charging party with a complaint against a state or local government employer must, therefore, contend with an additional set of administrative obstacles before a civil action can be commenced on his/her behalf.

The Attorney General has less restrictive enforcement authority under the pattern or practice provisions of Section 707 of Title VII, although this authority is still limited to charges against state and local governments. Section 707 authorizes the Attorney General to bring a civil action whenever there is reasonable cause to believe that a pattern or practice of prohibited employment discrimination exists. No initial action by the EEOC is required as a condition for the Attorney General to proceed in pattern or practice cases.

The DOJ's Title VII enforcement responsibilities are performed by the Department's Employment Litigation Section of the Civil Rights Division. A summary of the Section's Title VII enforcement activities for the Fiscal Years 1985 through 1990, set forth in Figure 21, indicate that little has been done on behalf of Hispanics in either

Section 706 or Section 707 cases.<sup>74</sup> Of a total of 101 cases filed by DOJ under Title VII during the six-year period, only seven or 6.9% were solely or primarily on behalf of Hispanics or based upon national origin (Hispanic) discrimination.

*Figure 21*

**Department of Justice Title VII Enforcement Activities  
Annually for FY 1985 - FY 1990**

<b>FISCAL YEAR</b>	<b>TOTAL SUITS (TITLE VII)</b>	<b>§707</b>	<b>§707 HISPANIC</b>	<b>§706</b>	<b>§706 HISPANIC</b>
1985	10	7	2	3	1
1986	23	13	0	10	0
1987	29	20	0	9	0
1988	9	1	0	8	0
1989	10	4	2	6	0
1990	20	6	1	14	1
<b>TOTAL</b>	<b>101</b>	<b>51</b>	<b>5</b>	<b>50</b>	<b>2</b>

Source: Employment Litigation Section, Civil Rights Division, U.S. Department of Justice

Of the 51 pattern or practice cases filed by the DOJ, 30 involved challenges to durational residency requirements for public employment in predominantly White Detroit and Chicago suburbs. These residency requirements have effectively kept non-resident minorities, including Hispanics, from applying for jobs. The Department admits that these cases were primarily brought on the basis of race and that Hispanics were not the originally intended beneficiary of these suits. Hispanic non-resident applicants for jobs with the municipal employers in the defendant communities will, however, benefit if the residency requirements are struck down. The DOJ also reported that most of its Title VII enforcement activities have involved identifying and addressing employment discrimination in state and local public safety agencies (fire and police departments), many of which involve national origin discrimination against Hispanics, among other things.<sup>75</sup>

In a January 1992 response to the Congressional Hispanic Caucus concerning the Department's Title VII enforcement activities on behalf of Hispanics, the DOJ reported that:

- ❖ Five pattern or practice investigations that involve employment discrimination against Hispanics were then being conducted; and
- ❖ Seven individual cases of national origin (Hispanic) discrimination, referred to DOJ by the EEOC, were being investigated.

At that time, the Department also reported that two cases in active litigation involving individual employment discrimination complaints filed by Hispanics, which had been referred to it by the EEOC.<sup>76</sup>

While the DOJ has recently become more aware of the need for Hispanic-focused enforcement initiatives, it shares with the EEOC a history of neglect with regard to Hispanic matters. The data reveal that, while Hispanics may eventually benefit from the Department's broad enforcement efforts (i.e., pattern or practice suits), national origin employment discrimination against Hispanics is rarely the initial target of investigations. The DOJ's

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reports of its enforcement efforts on behalf of Hispanics are qualified and cautious and most often include the phrase “involving Hispanics, among others.”

The Attorney General through the DOJ has sole responsibility for enforcing Title VII in state and local government employment, and it appears that it, too, has failed to aggressively enforce the statute on behalf of Hispanics. This is particularly troubling given the serious underrepresentation of Hispanics in state- and local-level government jobs. While most research indicates that Blacks and women are overrepresented in local or municipal government employment, Hispanics clearly are not. Of all employed Blacks, 13% hold local government jobs compared to less than 7% percent of all employed Hispanics. At the state level, approximately 6% of all employed Blacks work in state government, compared to about 3% of all employed Hispanics.

## **I. Recent Developments: The Civil Rights Act of 1991**

To address the EEOC’s continuing lack of service to Hispanics and other protected minority groups, Representative Jose Serrano (D-NY) sponsored an amendment to the Civil Rights Act of 1991 mandating an EEOC education and outreach program targeted to both historically underserved groups and newly covered groups (i.e., people with disabilities). The Serrano Amendment was accepted without opposition as part of the final version of the Civil Rights Act of 1991 and the provision eventually became Section 111 of the bill as enacted. The EEOC is now required by statute to develop and to implement the education and outreach program authorized by the Serrano Amendment.

Considering the severe budget constraints under which the EEOC must perform, it is obvious that the aggressive education and outreach program intended by the Serrano Amendment requires special funding if it is ever to be developed and implemented in any significant way. Unfortunately, since the enactment of the Serrano Amendment, the commitment necessary to secure the necessary funding has not been forthcoming from either Congress or the Executive Branch.

The Clinton Administration has, however, recently indicated a clear intention of requesting additional funding for EEOC enforcement activities. In February 1993, the President’s economic stimulus package, presented in *A Vision of Change for America*, included \$9 million for additional EEOC staff to enforce the Americans with Disabilities Act and the Civil Rights Act. The proposal also included additional outlays totaling \$63 million for the four-year period from FY 1994 through FY 1997 to provide for additional EEOC enforcement staff.<sup>78</sup> While the proposal is a positive sign, the additional funds must still be appropriated by Congress, and it remains unclear what if any of the funds might be specifically targeted for use in implementation of the Serrano Amendment education and outreach program.

The inclusion of the Serrano Amendment in the Civil Rights Act of 1991 was only the first step in the government’s acknowledgment of the historic problem of underservice of Hispanics and other language minorities by the EEOC. The true test of the government’s commitment to address the problem will be whether or not the funds needed to resolve the problem effectively are provided. Thus far, there has been no indication that such funds will be specially appropriated.

# Endnotes

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1. Title VII generally applies to private employers, state and local governments, and labor organizations with 15 or more employees or members; employment agencies; and joint labor-management committees that control apprenticeship and training programs. Title VII also covers the federal government, although the EEOC does not have primary enforcement responsibility in that area. The administrative enforcement process for charges by federal employees begins with the employing agency.
2. In accordance with Section 705 of Title VII, the Commission is composed of five members who are appointed by the President and confirmed by the Senate. The commissioners serve staggered five-year terms and no more than three may be affiliated with the same political party.
3. According to current EEOC literature, district offices provide all the services offered by the agency, including charge receipt, processing, and investigation; development of systemic cases; and litigation of unresolved charges. Area offices receive and investigate charges and develop possible litigation, and local offices only receive and investigate charges. The Washington, D.C., field office is a full service unit much like a district office.

The EEOC's headquarters is located in Washington, D.C. District offices and the Washington, D.C., field office report directly to EEOC headquarters; area and local offices operate under the supervision of the district office for their region.

## **DISTRICT EEOC OFFICES:**

Atlanta, GA	Memphis, TN
Baltimore, MD	Miami, FL
Birmingham, AL	Milwaukee, WI
Charlotte, NC	New Orleans, LA
Chicago, IL	New York, NY
Cleveland, OH	Philadelphia, PA
Dallas, TX	Phoenix, AZ
Denver, CO	San Antonio, TX
Detroit, MI	San Francisco, CA
Houston, TX	Seattle, WA
Indianapolis, IN	St. Louis, MO
Los Angeles, CA	

## **AREA EEOC OFFICES:**

Albuquerque, NM	Newark, NJ
Boston, MA	Norfolk, VA
Cincinnati, OH	Oklahoma City, OK
El Paso, TX	Pittsburgh, PA
Jackson, MS	Raleigh, NC
Kansas City, MO	Richmond, VA
Little Rock, AR	San Diego, CA
Louisville, KY	Tampa, FL
Nashville, TN	

## **LOCAL EEOC OFFICES:**

Buffalo, NY	Minneapolis, MN
Fresno, CA	Oakland, CA
Greensboro, NC	San Jose, CA
Greenville, SC	Savanna, GA
Honolulu, HI	

4. Section 706(b) of Title VII and 29 CFR § 1601.9.
5. 29 CFR § 1601.12.
6. Section 706(b) of Title VII and 29 CFR § 1601.22.



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7. Pursuant to Section 706(c) of Title VII, in cases in which the alleged unlawful employment practice occurred in a state or political subdivision thereof that (i) has an applicable law prohibiting such unlawful employment practice *and* (ii) has a state or local agency with the authority to grant or seek relief from such practice or to institute criminal proceedings with respect to the practice (a FEPA), Title VII requires that the EEOC defer to the FEPA for a period of at least 60 days, during which the state or local agency has the exclusive right to process the charge. Unless a FEPA waives this right, the EEOC may not commence its proceedings until the 60-day period has expired. 29 CFR § 1601.13(a)(3).

In instances in which there is a FEPA that qualifies under Section 706(c), a charge may first be filed and processed by the EEOC and then deferred to the FEPA. FEPAs designated by the EEOC as meeting the statutory criteria of Section 706(c) are listed at 29 CFR § 1601.74.

8. Section 706(e) of Title VII and 29 CFR § 1601.13.
9. Section 706(b) and (e) of Title VII and 29 CFR § 1601.14.
10. Section 706(b) of Title VII.
11. Section 706(f)(2) of Title VII and 29 CFR §§ 1601.13(d) and 1601.23.
12. 29 CFR § 1601.20.
13. Section 706(b) of Title VII and 29 CFR § 1601.19(a).
14. Section 706(b) of Title VII and 29 CFR § 1601.24(a).
15. Section 706(b) of Title VII and 29 CFR § 1601.26.
16. Section 706(f)(1) of Title VII and 29 CFR § 1601.27.
17. In cases in which the respondent employer is a state or local government and the EEOC has been unable to reach an acceptable conciliation agreement, Section 706(f)(1) of Title VII requires the EEOC to refer the charge to the Department of Justice, which has statutory responsibility for bringing civil actions against such respondents.
18. 29 CFR § 1601.28(b)(1).
19. 29 CFR § 1601.28(e).
20. 29 CFR § 1601.28(a)(3).
21. Section 706(f)(1) of Title VII and 29 CFR §§ 1601.19(a) and 1601.28(e).
22. Section 706(f)(1) of Title VII and 29 CFR § 1601.28(a).
23. Section 706(g) of Title VII.
24. Section 102 of the Civil Rights Act of 1992 (42 USC 1981a).
25. 29 CFR § 1601.18.
26. Section 707(a) of Title VII of the Civil Rights Act of 1964.
27. U.S. Equal Employment Opportunity Commission's Task Force, *Equal Employment Opportunity Commission and Hispanics: An Analysis of the Equal Employment Opportunity Commission's Services to Hispanics in the United States*. Washington, D.C.: December 2, 1983, p. 6. The one-day hearings were conducted in Chicago, Illinois; Los Angeles, California; New York, New York; Miami, Florida; San Antonio, Texas; and Denver, Colorado, between June 9 and June 27, 1983.
28. *Ibid.*, pp. 7-8.
29. *Ibid.*, p. 13.
30. *Ibid.*, p. 8, pp. 13-14. From testimony presented at the hearings, the Hispanic Charge Study concluded that "the Hispanic community views communication to be more than a one on one dialogue" and that "communication has the connotation of group or community wide interaction through such efforts as educational programs or contract [sic] with local organizations." *Ibid.*, p. 22.

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31. *Ibid.*, pp. 8-11, p. 14.
  32. *Ibid.*, p. 8 and p. 12. Pete Mirelez, Executive Director for the Latin American Research and Service Agency (LARASA) of Denver, Colorado, testified that findings made in a survey of registered Hispanic voters in the Denver area revealed that Hispanics who feel that they have been discriminated against are much more likely to trust and, therefore, confide in Hispanic, rather than Anglo, investigators. *Ibid.*, p. 12.
  33. *Ibid.*, p. 8, pp. 24-25.
  34. *Ibid.*, p. 15.
  35. *Ibid.*
  36. *Ibid.*, p. 17.
  37. *Ibid.*
  38. *Ibid.*, pp. 30-32.
  39. *Ibid.*, pp. 32-33.
  40. *Ibid.*, p. 37-38
  41. *Ibid.*, p. 28.
  42. *Ibid.*, p. 39.
  43. *Ibid.*, p. 27.
  44. *Ibid.*, p. 28.
  45. *Ibid.*, p. 18.
  46. *Ibid.*, p. 19.
  47. *Ibid.*, p. 41.
  48. *Ibid.*, p. 40.
  49. *Ibid.*, pp. 42-43.
  50. *Ibid.*, p. 42.

51. To gauge properly the EEOC's service to Hispanics, NCLR analyzed the agency's complete performance record for all areas of its enforcement responsibility. NCLR's analysis includes data on both Title VII charges and lawsuits, as well as non-Title VII charges and complaints brought under statutes such as the Age Discrimination in Employment Act of 1967, as amended, (ADEA) and the Equal Pay Act of 1963 (EPA). The statistical data presented in this section are not, therefore, limited to bases of discrimination covered solely by Title VII.

Additionally, NCLR's statistical analysis was performed on data from time periods prior to the effective date of the Americans with Disabilities Act of 1990 (ADA), which was July 26, 1992. Prior to the enactment of the ADA, the EEOC had enforcement responsibility for employment discrimination based on disability in the *federal* sector under Section 501 of the Rehabilitation Act of 1973, as amended; this statute has not, however, generated a significant number of complaints. There is, therefore, little or no data on disability charge caseloads in NCLR's analysis.

52. U.S. Department of Commerce, Bureau of the Census, *The Hispanic Population in the United States: March 1991*, Series P-20, No. 455. Washington, D.C.: U.S. Government Printing Office, October 1991.

Adjusting the 1990 Census data to reflect the officially estimated Hispanic undercount of 1.2 million, the actual percentage of Hispanics in the general population and the civilian labor force is at least 10% and 8%, respectively. See, Brischetto, Robert, "Marking a Milestone," *Hispanic Business*, October 1993, pp. 6-10.

53. As with any ethnic or racial group, Latinos may be discriminated against in the workplace on grounds other than their national origin. For example, Latinos may also encounter discrimination based on age, gender, or disability. An Hispanic victim may file a claim based on these other types of discrimination without identifying himself/herself as an Hispanic charging party and thus EEOC records would not identify the charge as one brought by

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an Hispanic. Since Hispanic filings for the most commonly shared and, therefore, likely basis (national origin discrimination) are so disproportionately low, it follows that the non-national origin based charges filed by Hispanics may also be extremely low.

A specific example of this problem can be found in the "Other" category. A significant proportion of the charges listed under "Other" were filed on the basis of "retaliation" by employers against persons who had previously filed a charge of discrimination. EEOC records do not breakdown the category to identify the basis of the original complaint or the national origin or race of the charging party who has been retaliated against. Because Hispanic complaints constitute such a small proportion of the EEOC caseload overall, it is reasonable to believe that the number of Hispanics filing retaliation-based charges is likely to be very low. Thus, the actual percentage of the Commission's total charge receipts filed by Hispanics for the period from 1985 through 1990 is almost certainly lower than the cited 4.2% figure.

54. For the six-year period from FY 1985 through FY 1990, the annual rates for Hispanic no remedy charge closures were 45%, 58%, 64%, 70%, 72%, and 73%, respectively. The annual rates for non-Hispanic no remedy charge closures for the same period were 47%, 55%, 64%, 70%, 69%, 71%, respectively.
55. Within the last two years, the EEOC revised its regulations to delete the right of the charging party to request a review of a no cause determination by the Commission within 14 days of the issuance of the decision. If the charging party did not timely file a request for review, the no cause letter would become the Commission's final determination on the 15th day of issuance. Under the current regulations, the Commission's no cause letter is considered a final determination immediately upon its issuance; only the Commission "on its own initiative" may reconsider such a final determination. Compare 29 CFR § 1601.19 (7-1-90 edition) and (7-1-91 edition).
56. *Equal Employment Opportunity Commission and Hispanics, op. cit.*, pp. 25-26.
57. EEOC response to NCLR 1991 Summary Report issued by the EEOC without attribution.
58. *Equal Employment Opportunity Commission and Hispanics, op. cit.*, p. 28.
59. *Ibid.*, pp. 25-26, Exhibit 4A.
60. Calculations are based on the total number of bases of discrimination found in all lawsuits filed by the EEOC in the given year. Suits identified as being based solely on charges of retaliation were not included in the calculation.
61. The consistency of the data suggests that there is an established and statistically significant pattern that is not attributable to any variations or aberrations.
62. U.S. Equal Employment Opportunity Commission, *20th Annual Report for FY 1985*. Washington, D.C.
63. U.S. Equal Employment Opportunity Commission, *Combined Annual Report Fiscal Years 1986, 1987, 1988*. Washington, D.C.: 1990.
64. The calculations cited in this section were based upon case resolution data found in the EEOC's Office of General Counsel's (OGC) annual report for the cited fiscal year. The monetary awards data were set forth in those sections of the OGC reports that describe all case resolutions, including settlements, judgments, and dismissals, for the referenced years. To calculate the average monetary awards, only cases meeting the following criteria were included in the analysis:
  - Cases brought on a single basis of discrimination, *except* that cases with a charge basis of retaliation were included if it was clear that the retaliation charge was specifically linked to another single basis that was identified, i.e., a lawsuit was based on a charge of retaliation and national origin discrimination (cases listing solely a charge of retaliation were not included);
  - Only sex discrimination based cases (brought under either or both Title VII and EPA) in which the gender of the charging party/beneficiary was expressly identified as female; and
  - The monetary awards received and the beneficiaries thereof, including their number, were clearly identified.

Additionally, only monetary awards in immediately identifiable amounts and which were clearly intended as direct relief to the victim(s), including back pay, front pay, medical expenses, and those defined as "other monetary awards," were included in the calculations. Relief that was excluded from consideration includes

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attorney's fees, court costs, costs to the EEOC, and prospective relief (e.g., anticipated salary increases), as well as the estimated value of certain relief such as promotions and reinstatement.

The analysis and calculations do not include cases in which the employer/defendant was in bankruptcy proceedings and/or the employee's claim was characterized as unsecured. Such cases were excluded because the chances of actual recovery are unknown and likely to be very small. Finally, cases in which different beneficiaries receive different types and/or amounts of monetary relief were considered as multiple beneficiary cases for these calculations.

65. These data should be interpreted with great caution. First, they tend to fluctuate significantly from year to year, reflecting the small number of suits resolved annually. Second, the size of the awards is based on factors such as the wages and the amount of work lost by the discrimination victim, which tend to vary greatly from case to case. Similarly, because the averages represent arithmetic means, a few unusually high or low awards can significantly skew the group averages.
66. The calculations for Fiscal Years 1982 through 1988 were based on data presented in the *Annual Report on the Employment of Minorities, Women, and People with Disabilities in the Federal Government Fiscal Year 1988*. Washington, D.C.: U.S. Commission on Equal Employment Opportunity, September 30, 1988. Calculations for Fiscal Years 1989 and 1990 were based upon data received from the EEOC's Office of Communications and Legislative Affairs based on the agency's Personnel Information Resource System.
67. *Federal Affirmative Employment: Status of Women and Minority Representation in the Federal Workforce*, presented by Bernard L. Ungar, Director, Federal Human Resource Management Issues, General Government Division, U.S. General Accounting Office, before the Committee on Governmental Affairs, United States Senate, October 23, 1991.  
  
See also U.S. General Accounting Office, Briefing Report to the Chairman, Subcommittee on the Civil Service, Committee on Post Office and Civil Service, United States House of Representatives, *Federal Workforce: Continuing Need for Federal Affirmative Employment*, Washington, D.C., November 1991.
68. U.S. Equal Employment Opportunity Commission, *Making Rights Realities - FY 1993 Budget Request*. Washington, D.C.: February 1992, p. 7.
69. The Voluntary Assistance Program and the Expanded Presence Program were also cited in the Hispanic Charge Study as efforts to remedy the EEOC's lack of presence in the Hispanic community. *Equal Employment Opportunity Commission and Hispanics, op. cit.*, p. 23.
70. *Ibid.*
71. U.S. Equal Employment Opportunity Commission, *Making a Right a Reality - FY 1992 Budget Request*. Washington, D.C.: February 1991, p. 28.
72. *Making Rights Realities - FY 1993 Budget Request, op. cit.*, p. 16.
73. "Group want more attention paid to Hispanics," *USA Today*, February 7, 1992.
74. Letter from John R. Dunne, Assistant Attorney General, Civil Rights Division, Department of Justice, by James S. Angus, Chief, Employment Litigation Section, Civil Rights Division, Department of Justice, to Claire Gonzales, Senior Civil Rights Policy Analyst, National Council of La Raza, September 6, 1991.
75. Paper by Employment Litigation Section, Civil Rights Division, U.S. Department of Justice, *Status of Title VII Enforcement*, provided by John R. Dunne, Assistant Attorney General, Civil Rights Division, Department of Justice, in response to the Congressional Hispanic Caucus, January 28, 1992, Washington, D.C.
76. *Ibid.*
77. Reimers, Cordelia, and Howard Chernick, "Hispanic Employment in Municipal Government," Inter-University Program for Latino Research, Working Paper No. 8. Austin, Texas: University of Texas at Austin, Center for Mexican American Studies, 1990.
78. Clinton Administration, *A Vision of Change for America*. Washington, D.C.: The White House, February 17, 1993.

# IV. Conclusions and Implications

## A. Conclusion: The EEOC Provides Inequitable Service to Hispanics

### 1. Profile of the EEOC's Service to Hispanics

NCLR's statistical analysis of the EEOC's caseload and employment data reveals a consistently poor record of service to Hispanics. Some of NCLR's major findings are as follows:

- ❖ From FY 1985 through FY 1990, national origin (Hispanic) charges made up a disproportionately small percentage (4.2%) of the EEOC's overall charge receipts for that period.
- ❖ From FY 1985 to FY 1990, the percentage of Hispanic charges administratively closed without remedy to the charging party increased from 45% to 73%.
- ❖ For the period from FY 1985 and FY 1990, lawsuits filed by the EEOC on behalf of Hispanics charging national origin discrimination composed an average of only 2.2% of the EEOC's total litigation caseload, with only lawsuits filed on behalf of Whites claiming reverse discrimination constituting a smaller average percentage.
- ❖ During the FY 1987-FY 1990 period, the EEOC brought *no* major class cases primarily on behalf of Hispanic charging parties.
- ❖ During the FY 1987-FY 1990 period, average monetary awards in suits litigated by EEOC for Hispanic charging parties were far less than those recovered for other groups;
- ❖ From FY 1982 through FY 1990, Hispanics continued to be severely underrepresented in both the EEOC overall and professional workforce.

To summarize, NCLR found that Latinos constitute a disproportionately low percentage of the EEOC's caseload compared to other protected groups, despite growing evidence of high levels of employment discrimination against them. Even those Hispanics who manage to file EEOC charges are more likely than other groups to have those complaints closed without the charging party receiving any remedy. Those who are lucky enough *not* to have their cases closed prior to the receipt of some remedy are still not likely to receive equitable and effective service. For the disproportionately low number of Hispanic charges for which the EEOC makes a finding of reasonable cause and no conciliation is reached, the EEOC selects an extremely small number to pursue through litigation. The average monetary awards received in the very few cases litigated by the EEOC on behalf of Hispanics are likely to be significantly smaller than those received by other groups. Thus, at every stage of the enforcement process, Hispanic cases are given inadequate attention and inequitable service.

NCLR's findings indicate that the EEOC has done little or nothing to improve its inadequate service to Hispanics since the problem was first documented in the 1983 Hispanic Charge Study.

### 2. Context for Analysis

Measured against every reasonable standard, Hispanics are severely underserved by the Commission. NCLR's evaluation of the EEOC's service to Hispanics necessarily proceeds from two factual and fundamental premises. First, Hispanics are the second largest minority group in both the general population of the United States (9%) and the civilian labor force (nearly 8%).<sup>1</sup> Second, Hispanics experience high levels of discrimination in every aspect of employment, with many studies indicating that such discrimination is increasing.

When the EEOC's recent performance is considered in light of both of these premises, it is clear that the Commission fails to serve Latinos equitably. To use the proportion of Hispanics in either the general population or the civilian labor force as a measure with which to evaluate the EEOC's service to Hispanics is perhaps the simplest form of analysis. This measure, however, fails to take into account the many relevant factors that would support the argument that Hispanics should reasonably expect a much larger proportionate share of the Commission's resources and attention. Chief among these is that the EEOC, by its statutory mandate, is not

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intended to serve directly either the entire population or civilian labor force. The EEOC is meant to provide services only to those individuals who have or may have been discriminated against in a manner prohibited by one of the statutes for which the Commission has enforcement authority. The universe of people intended to be served by the EEOC is, therefore, significantly smaller than either the entire population or the whole civilian labor force, and within that universe Hispanics constitute a larger percentage because they are one of the largest protected groups.

Using either Hispanics' percentage of total population or percentage of civilian labor force as the gross measure against which the EEOC's performance is judged would work *in favor* of the Commission because both are significantly lower than the measure that should be used. Even using these generous standards to evaluate the Commission's performance, the EEOC's service to Latinos is clearly inequitable. At every stage in the EEOC's administrative process, Hispanics constitute a significantly *smaller* portion of the Commission's total caseload than either the percentage of Hispanics in the population or the proportion of Hispanics in the workforce.

The second basic premise addresses the relationship of the level of the EEOC's service to Latinos with the real need of that population for the service of the EEOC. Stated another way, a fundamental issue in analyzing the EEOC's record of service is whether or not the EEOC's low level of service to Hispanics is simply a reflection of a low level of employment discrimination experienced by Hispanics. The available research, discussed earlier in greater detail, rebuts any argument that Hispanic complaint levels reflect low levels of discrimination experienced by Hispanics relative to other groups.

The 1990 IUP study cited earlier, for example, shows that discrimination against Hispanics compared to other groups has increased in recent years.<sup>2</sup> Macro-economic indicators, including a relative decline in the wage gap between males and females, for example, suggest that the levels of charges alleging sex discrimination against females should have decreased relative to Hispanic complaints in the 1980s; instead the reverse was true.<sup>3</sup> Finally, hiring audits of Blacks and Hispanics — in both the same and different markets — showed that Hispanics faced either higher or essentially equivalent levels of discrimination as Blacks at the hiring stage.<sup>4</sup> If levels of discrimination were the primary determinant of charge caseloads, it would follow that the relative proportion of Hispanic complaints would have *increased* in the 1980s. As this report shows, the opposite occurred.

Considering both fundamental premises — the size of the Latino population and the high levels of employment discrimination suffered by Latinos — it follows that more, not less, Latinos are likely to have valid charges of national origin discrimination that could potentially be filed with the EEOC. It follows further that a larger portion of the EEOC's overall caseload — from charges received to cases litigated — should be composed of national origin (Hispanic) charges or cases and that those portions would be steadily increasing. Considering that the average Hispanic proportion of the EEOC caseload from FY 1985 through FY 1990 (8%) was *lower* than the same average for the period FY 1974 through FY 1980, it appears that the already poor level of service may be getting worse.<sup>5</sup>

### **3. Conclusions Regarding the EEOC's Record of Service to Hispanics**

At no point in the administrative process are there performance data to support the proposition that Hispanic cases are treated equitably. It is, therefore, difficult to avoid the conclusion that the EEOC is engaging in disparate treatment of Hispanics in its charge receipt and disposition system. On the one hand, if the Hispanic charges received by the EEOC are without merit, it means that the EEOC is failing to provide effective access to Hispanic victims with valid claims or to otherwise identify and seek relief for the thousands of legitimate Hispanic victims of employment discrimination. If, on the other hand, the relatively low number of Hispanic charges in the EEOC caseload represent *bona fide* cases of discrimination, then the high administrative closure rate of Hispanic claims reflects a pattern of negative, differential treatment of Hispanic complaints.

It might be argued that the high closure rate of Hispanic charges may simply indicate that Hispanics are more likely to file frivolous or unsubstantiated discrimination claims. This reasoning can be successfully rebutted on two grounds. First, it fails to explain why the administrative closure rate of Hispanic charges would have

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increased from 45% in 1985 to 73% in 1990. Second, given the compelling evidence of high levels of employment discrimination against Hispanics cited earlier, if Hispanics tended to file many unsubstantiated charges, one would expect that total Hispanic charges would constitute a disproportionately high percentage of the total EEOC caseload; in fact, the opposite is true. The historical reality is that a disproportionately low number of Hispanic charges are filed and, of those very few, a disproportionately high number are closed without remedy to the charging party.

Even if the low level of EEOC litigation on behalf of Hispanics is in part a reflection of the low rate of Hispanic charges, it also is a reflection of the EEOC's failure to seek out and press valid Hispanic claims on its own initiative. NCLR found a distinct pattern in the kinds of cases that the EEOC chose to pursue: the Commission clearly chose to litigate cases involving gender (female) and age based discrimination at a much higher rate than, and to the apparent detriment of, national origin (Hispanic) and race cases.

Finally, the Commission's failure to aggressively and affirmatively recruit, hire, and promote Latinos is perhaps the most telling symbol of the Commission's indifference to Hispanics and their issues. The EEOC continues to ignore one of the major findings of the Hispanic Charge Study — the need for equitable representation of Latinos at all levels of the EEOC workforce. The Commission's employment record does not suggest any effort to keep up with the substantial growth of the Hispanic population. Within the EEOC's workforce, Hispanics are disproportionately underrepresented, particularly when compared with African Americans. Equitable Hispanic representation in the EEOC's workforce is critical because it is widely recognized that an increase in the number of Hispanic employees would likely improve the Commission's attitude toward and understanding of Hispanic issues.

Thus, in 1993, a decade after the issuance and acceptance by the EEOC of the Hispanic Charge Study findings, it is clear that the Commission's service to Hispanics remains extremely poor. Furthermore, while NCLR's research and analysis focused on Hispanic issues, NCLR is convinced that other smaller protected groups, specifically Asian Americans and Native Americans, are similarly underserved by the Commission, as noted in the Hispanic Charge Study. In its FY 1993 Budget Request, the EEOC acknowledges the disproportionately low rate of charges from Hispanics and Asian Americans, as well as the reluctance of Native Americans to use the EEOC despite record levels of unemployment.<sup>6</sup>

It is unclear from the record if the EEOC's differential treatment of Hispanic and other language-minority victims of employment discrimination is intentional. The sustained level of egregious neglect, despite several highly publicized reports calling attention to the problem, supports the notion of a conscious, Commission-wide decision to simply ignore large portions of the minority community that it is intended to serve. Whatever the case, the EEOC's persistent failure to perform its statutory responsibilities on behalf of Hispanics, as well as Asian/Pacific Americans and Native Americans, is unacceptable and can no longer be denied or tolerated.

## **B. Systemic Barriers to Effective Civil Rights Enforcement for Hispanics**

### **1. The Charge-Driven Enforcement Process**

The prevailing model for civil rights enforcement systems, and the EEOC charge processing system in particular, places heavy burdens on victims of discrimination in seeking and obtaining redress. To successfully negotiate the EEOC's enforcement process, employment discrimination victims must have the knowledge, skills, and resources to:

- ❖ Know and understand what constitutes unlawful employment discrimination;
- ❖ Know how and where to file a formal complaint or obtain legal representation;
- ❖ Collect evidence to support the allegation of discrimination;
- ❖ Follow through on the complaint by appearing at one or more interviews with investigators and attorneys, formal hearings, and conciliation meetings;

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- ❖ Withstand possible intimidation and threats of retaliation by their employer;
  - ❖ Bear substantial economic opportunity costs (e.g., time lost while pursuing the claim or looking for work in cases involving refusals to hire or unlawful firings); and
  - ❖ Pay substantial direct costs, such as attorney's fees, transportation, and child care.

It is a system that can be used effectively by only the most knowledgeable, aggressive, persistent, and resourceful members of the population.

Unfortunately, too many Hispanics, and particularly those most likely to be subject to employment discrimination, are ill-equipped to use this civil rights enforcement system to their benefit. Hispanics constitute a disproportionate share of the most economically disadvantaged Americans with disproportionately low levels of education, high unemployment rates, and low incomes.<sup>7</sup> Given these severe hardships, the obstacles encountered in a complaint-driven civil rights enforcement system like the one established by Title VII are especially difficult for many Hispanics to overcome. Based on its research and the anecdotal data it regularly receives from the Hispanic community, NCLR believes that the inability of many Hispanics to use the enforcement mechanisms now available results in the direct denial of a fundamental civil right — equal employment opportunity — to a large portion of the Hispanic community in the United States.

## **2. Institutional Neglect of Hispanics and Their Concerns**

The documented failure of Hispanics to benefit equitably from the federal equal employment opportunity enforcement system cannot, however, be attributed solely to characteristics of the community; rather, many interrelated factors account for it. Some of these factors are unique to the Hispanic community and may require special, targeted efforts by the EEOC. Other factors are directly related to the manner in which the EEOC, as well as other civil rights enforcement agencies, chooses to serve Hispanics.

Quite simply, Hispanics and issues related to national origin discrimination have never been a priority for the EEOC. The continuing failure of the EEOC to implement effective outreach and education for the Hispanic community has resulted in Hispanics generally having little knowledge about their employment rights and what constitutes illegal employment discrimination. Lack of outreach and education has also resulted in Latinos having little or no knowledge of how to access the services provided by the EEOC and other federal civil rights enforcement agencies.

If an outreach and public education program is to be effective for the Hispanic community, the special needs of many Hispanics must first be addressed. Language and literacy are particular concerns for the Hispanic community. About one in four Hispanics in the United States has limited proficiency in English.<sup>8</sup> Even among those fluent in English, educational disparities mean high levels of illiteracy within the Latino community — by one estimate, more than half of all Hispanic adults are functionally illiterate.<sup>9</sup>

Moreover, Hispanics who are aware of their rights and know where and how to file a complaint may be deterred from doing so because of the EEOC's poor record regarding Hispanics' interests. Hearings before the 1983 EEOC Task Force revealed a profound level of mistrust of the EEOC within the Hispanic community.<sup>10</sup> NCLR's analysis of EEOC's performance since the 1983 Hispanic Charge Study demonstrates that this lack of trust is well founded, with little or nothing having been done by the Commission to remedy the situation in the intervening period. Despite the passage of the Serrano Amendment, the provision in the Civil Rights Act of 1991 mandating that the EEOC carry out an education and outreach program targeted to underserved language-minority communities (Hispanics, Asian Americans, and Native Americans), the EEOC persists in its disregard for the needs of Hispanics.

Unless Hispanics can be assured that their rights to equal employment opportunity will be fully protected through effective and aggressive enforcement, a large portion of the national Hispanic community will continue to be precluded from participating fully and productively in American society. The effect of discrimination on Hispanic earnings is substantial — it is estimated that discrimination prevents as many as one-fourth of Hispanic



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families from rising out of poverty.<sup>11</sup> The broader negative impact that such harmful bias has on all Latinos living and working in the United States cannot be precisely measured, but it is no less real and counterproductive.

## **C. Societal Factors Inhibiting Effective Enforcement**

### **1. Policy Makers and the Media**

Not all of the disparity in Hispanics' treatment by the civil rights enforcement system, however, is solely attributable to government programs and policies. Policy makers and the media are also guilty of ignoring or neglecting Hispanics in the context of civil rights. For example, during the Senate floor debate on the Civil Rights Act of 1990, there was no mention of Hispanics by the major sponsor of the legislation.<sup>12</sup>

Similarly, an NCLR study analyzed 626 articles in the *New York Times* and *Washington Post* from January 1989 through November 1990 to examine the manner in which the media covers Hispanics on civil rights issues. The study revealed that only 50, or 7.9%, of such articles even mentioned Hispanics as a group in their coverage of general civil rights matters, including the pending Civil Rights Act of 1990.<sup>13</sup>

To the extent that policy makers and the media both ignore Hispanics in civil rights debates and coverage, enforcement agencies are less likely to focus time, energy, and resources on addressing discrimination against Hispanics because they are likely to believe that no problem exists or that policy makers wish their focus to be on other populations. Similarly, the general public is unlikely to take or to urge action because it will remain unaware of or unsympathetic to the problems facing Hispanics.

### **2. Legal Services Providers**

Hispanics are further hampered in their efforts to obtain relief or remedy for employment discrimination by the lack of access to legal services. If a Latino victim of employment discrimination is persistent and tenacious enough to make it to and through the EEOC process, but is still left with no remedy for a valid claim, it is extremely difficult to find an attorney able to pursue the claim in a private lawsuit. In general, much of the private civil rights enforcement support network, including public interest law firms and legal service organizations, suffers from problems similar to those affecting government agencies: their time, attention, and resources are focused elsewhere.

The public interest law community's civil rights efforts contribute to the problem in several ways. First, public interest legal organizations tend to emphasize "impact litigation," usually to the exclusion of more fundamental, "garden variety" individual civil rights enforcement issues, which include the vast majority of discrimination claims. A result is that little attention or visibility is given to the virtual absence of an effective public and private infrastructure to handle the great majority of discrimination claims.

Second, the high visibility advocacy and public education efforts of these groups frequently focus on expanding civil rights coverage to include new classes or new remedies or deal with very technical, often arcane, legal issues. This lack of attention to the basic elements of civil rights enforcement tends to encourage the widely-held misperception that the "basic" civil rights problems have been solved. This allows public debate and discussion to shift to the most extreme and controversial issues, such as "quotas," and undermines political and public support for the less controversial notion of improving the existing civil rights enforcement systems.

### **3. Hispanic Civil Rights Organizations**

Finally, Hispanic organizations at both the local and national levels have not focused sufficient attention on improving the civil rights enforcement system. Community-based organizations, which are generally advocacy and social service groups, are the primary institutions in and serving the Hispanic community; these organizations usually lack the capacity or the expertise to guide discrimination victims through the legal process. Given the large and growing body of evidence of widespread employment discrimination against Latinos, Hispanic community-based organizations need to focus more of their time and resources on this issue because the successful resolution of the problem requires the direct involvement of the Latino community.

# Endnotes

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1. U.S. Department of Commerce, Bureau of the Census, *The Hispanic Population in the United States: March 1991*, Series P-20, No. 455. Washington, D.C.: U.S. Government Printing Office, October 1991.  
  
Adjusting the 1990 Census data to reflect the officially estimated Hispanic undercount of 1.2 million, the actual percentages of Hispanics in the general population and the civilian labor force are at least 10% and 8%, respectively. See Brischetto, Robert, "Marking a Milestone," *Hispanic Business*, Vol. 15, No. 10, October 1993, pp. 6-10.
2. Carnoy, Martin, Hugh Daley, and Raúl Hinojosa Ojeda, *Latinos in a Changing U.S. Economy: Comparative Perspectives on the Labor Market Since 1939*, Inter-University Program for Latino Research. New York, New York: Research Foundation of the City University of New York, 1990, Chapter 3.
3. See Miranda, Leticia, and Julia Teresa Quiroz, *The Decade of the Hispanic: An Economic Retrospective*. Washington, D.C.: National Council of La Raza, March 1990, pp. 16-19.
4. See Turner, Margery Austin, Michael Fix, and Raymond J. Struyk, *Opportunities Denied, Opportunities Diminished: Racial Discrimination in Hiring*, Urban Institute Report 91-9. Washington, D.C.: The Urban Institute Press, 1991, pp. 56-57. The Urban Institute studies found that Hispanic applicants encountered unfavorable treatment in the hiring process in 31% of the hiring audits, compared to 20% for the Black applicants.  
  
See also Bendick, Jr., Marc, Charles W. Jackson, and Victor A. Reinoso, *Measuring Employment Discrimination Through Controlled Experiments*. Washington, D.C.: Fair Employment Council of Greater Washington, Inc., January 1993. The Fair Employment Council (FEC) conducted two separate audits in the metropolitan Washington, D.C. area. One used matched pairs of Anglo and Latino testers; the other used Black and Non-Hispanic White testers. The results of the two audits show that, in the same market, Black job applicants encountered discrimination 24% of the time and Latino job applicants encountered discrimination 22% of the time.
5. The caseload percentages from the 1983 Hispanic Charge Study and as calculated by NCLR are not strictly comparable because of different categorization procedures.
6. U.S. Equal Employment Opportunity Commission, *Making Rights Realities - FY 1993 Budget Request*. Washington, D.C.: February 1992, p. 16.
7. De La Rosa, Denise, and Carlyle E. Maw, Ph.D., *Hispanic Education: A Statistical Portrait 1990*. Washington, D.C.: National Council of La Raza, October 1990, Chapter 6; *The Decade of the Hispanic*, *op. cit.*
8. Vargas, Arturo, *Literacy in the Hispanic Community*. Washington, D.C.: National Council of La Raza, July 1988.
9. *Ibid.*, pp. 7-9.
10. U.S. Commission on Civil Rights, *Unemployment and Underemployment among Blacks, Hispanics, and Women*. Washington, D.C.: November 1982, pp. 9-12, p.22.
11. Pérez, Sonia M., and Deirdre Martínez, *State of Hispanic America 1993: Toward a Latino Anti-Poverty Agenda*. Washington, D.C.: National Council of La Raza, July 1993, pp. 34-35.
12. Letter from EEOC Commissioner Tony Gallegos to Raúl Yzaguirre, President, National Council of La Raza, July 1990.
13. Internal study conducted by National Council of La Raza, December 1990.

# V. Policy Recommendations

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For Hispanics, the current federal equal employment opportunity enforcement system remains an empty promise. Making the system work effectively for Latinos will require the coordinated and committed efforts of all parties who are responsible for, interested in, or affected by civil rights. NCLR believes that any comprehensive plan to address the problem should at a minimum include these basic elements:

- ❖ The EEOC should initiate both internal and external programs targeted to Hispanics, including measures to increase Hispanic participation at all levels of its workforce.
- ❖ Congress and the Administration should increase the level of oversight of the EEOC, authorize new programs designed to combat employment discrimination and to facilitate more effective enforcement, and appropriate sufficient resources to carry out such programs (specifically including the Serrano Amendment).
- ❖ The United States Commission on Civil Rights should resume its former position as independent monitor of federal civil rights enforcement efforts, with special emphasis on the EEOC and its service to underserved groups.
- ❖ Hispanic and other civil rights organizations should broaden their agendas and redirect their energies to assure that the basic elements of civil rights protections are preserved and made more effective.
- ❖ Other interested parties, such as the media, the education community, and philanthropic organizations, should devote more attention to Hispanic concerns to promote much-needed understanding of Hispanic issues.

Based upon this plan, NCLR makes the following recommendations for the many entities that play important roles in the equal employment opportunity enforcement system.

## A. The EEOC

In preparing its recommendations to the EEOC for improving its service to Hispanics, NCLR began with the recommendations made in the 1983 Hispanic Charge Study. With some refinement, NCLR believes that these suggestions remain appropriate in 1993, particularly because few, if any, were ever implemented by the EEOC. The following recommendations include updated versions of the earlier recommendations together with new suggestions that address the agency's current circumstances.

1. **The EEOC should state publicly its institutional commitment to serving everyone fairly and equitably without preference for certain types of cases or complaints, and to resolving longstanding problems in its service to certain groups.**

To gain the trust of the Hispanic community, NCLR believes that it is critical to have the EEOC, through its Chairman and the Commissioners, go on record as being fully committed to serving those communities, Hispanics and others, that it has failed to serve in the past. It must be understood, however, that unless the EEOC can demonstrate — through deeds as well as words — that it will equitably serve Hispanics who do come forward with discrimination complaints, then no amount of outreach will improve the Commission's image and credibility in the Hispanic community, and complaint levels will remain unacceptably low.

Furthermore, these public statements of institutional commitment should be disseminated to all EEOC employees. Commission-wide directives should also be issued making it clear that all groups must be served fairly and equitably and that remedying these historical inequities is a top priority for the entire Commission.

2. **The EEOC should make the development and implementation of the education and outreach program mandated by the Serrano Amendment a top priority.** A primary goal of the program, which targets underserved groups including Hispanics, Asian/Pacific Americans, and Native

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Americans, should be helping members of these communities understand their rights regarding equal employment opportunity and encouraging those who encounter illegal discrimination to seek assistance from the Commission.

The EEOC must be held accountable for carrying out the duties required by the Serrano Amendment. In measuring its performance, the Commission should be expected to show the same level of commitment exhibited with the Americans with Disabilities Act of 1990. A Commission-wide coordinated effort should be required and be backed up by full institutional commitment. Additionally, NCLR concurs with the Hispanic Charge Study's suggestion that the most effective means of outreach to the Hispanic community is through the use of Hispanic community-based organizations, and that such an effort must be vigorous, direct, and widespread.

3. **The EEOC should improve — by redesign if necessary — its internal procedures for processing, investigating, and approving charges to address the extraordinarily high administrative closure rate of Hispanic charges.**
4. **The EEOC should commit itself to developing and to pursuing litigation on behalf of Hispanics as vigorously as it pursues the claims of other protected groups.** The Commission should actively encourage the development of cases involving national origin-based discrimination for all types of litigation — individual, class cases/actions, and pattern or practice.
5. **The EEOC should actively exercise its affirmative enforcement powers to increase agency-initiated investigations and litigation on behalf of Hispanics and other underserved groups, particularly focusing on businesses/industries (a) in which there is either a history of or a strong likelihood of discrimination against these groups or (b) in certain areas of the country in which such discriminatory employment practices are likely to occur (e.g., the Southwest border region).**
6. **The EEOC should form an advisory committee composed of representatives of the underserved communities to assist the Commission in developing strategies to improve service to those groups.** The advisory committee could include representatives of both local and national groups, selected either solely by the full Commission or in conjunction with Congress and the Administration.
7. **The EEOC should improve its method of data collection to better measure its service to previously underserved groups.** NCLR recommends a change in the Commission's charge processing and recordkeeping procedures to allow charging parties to identify their own race or national origin. This would permit better in-depth analysis of the EEOC's service not only to Hispanics, but also to all other protected groups.
8. **The EEOC should initiate an aggressive program for the recruitment and promotion of Hispanic employees.** Ten years after the Hispanic Charge Study, the EEOC's workforce is still seriously out of balance and Hispanics continue to be grossly underrepresented. This situation has resulted in two major obstacles to improving the agency's service to Hispanics. First, the EEOC's credibility regarding the fair enforcement of equal employment opportunity law is undermined because it appears that the Commission is unable to keep its own house in order. Second, the virtual absence of Hispanics in key positions within the agency makes it unlikely that Hispanic issues will be fully understood or addressed.

NCLR agrees with the Hispanic Charge Study's recommendation that the EEOC must institute its own non-discriminatory policy for hiring and promotion so that *all* people are allowed to compete fairly for positions throughout the agency. The persistent severe underrepresentation of Hispanics in the EEOC workforce coupled with the agency's continuing underservice to Hispanics, however, also requires the immediate initiation of an aggressive, affirmative effort to recruit, hire, and promote Hispanics.

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Additionally, the EEOC should recruit and hire an adequate number of bilingual staff, sufficient to serve language-minority communities and hired specifically for positions that require bilingual capabilities.

EEOC should also provide language and cultural sensitivity training to its existing staff, with participation in such in-house training programs being linked to promotion criteria.

## **B. Congress and the Administration**

Both Congress and the Administration should demonstrate their commitment to the civil rights of Hispanics by allocating both the attention and the resources needed to insure that the EEOC's service to Hispanics is improved. NCLR makes the following recommendations for action by Congress and the Administration to address the EEOC's underservice of Hispanics:

- 1. Congress should appropriate and the Administration should approve an increased level of resources to the EEOC and other civil rights enforcement agencies sufficient to perform the recommended outreach, education, and enforcement activities, as well as their current efforts.**

Appropriations for civil rights enforcement activities should be at least equal to inflation-adjusted FY 1980 levels, with additional funds to cover newly protected classes like persons with disabilities.

- 2. The Congressional committees with oversight authority for the EEOC should require the agency to submit annual updates on its service to all protected groups.** This recommendation echoes that made in the Hispanic Charge Study calling for stricter Congressional oversight of the EEOC, with periodic reporting required on its progress in rectifying its service to Hispanics, Asian/Pacific Americans, and Native Americans.

The recommended annual reports would serve as benchmarks to measure the Commission's performance. The updates should focus on the steps taken to address, among other things, the problems of inequitable service to certain protected groups and of underrepresentation of certain protected groups in the EEOC workforce.

If the EEOC's performance has not improved substantially after two years of such oversight with regard to the persistently underserved communities, NCLR recommends that a study of the Commission's internal policies and procedures be conducted by the Inspector General, with the results being submitted to the oversight committees for review.

- 3. Congress and the Administration should authorize and fund the development and implementation of new fair employment "hiring audit" programs to complement the EEOC's current enforcement efforts.**

Creating and/or funding Hispanic community-based organizations to carry out fair employment auditing programs would be the most effective method of identifying and combatting employment discrimination against Hispanics.

- 4. Additionally, Congress and the Administration should assist in the development and maintenance of a grassroots infrastructure that links victims of discrimination to enforcement authorities.**

Particularly with underserved groups such as Hispanics, a grassroots network to assist victims in finding and using civil rights enforcement mechanisms is currently almost non-existent. In addition to hiring audits, community-based groups should receive assistance to enable them to provide outreach and public information programs, victim assistance, and other activities that will bring federal enforcement efforts to the community level.

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5. **The Administration, with the support of Congress, should require strict monitoring of the EEOC's performance by an independent agency, specifically the U.S. Commission on Civil Rights.**

## C. The U.S. Commission on Civil Rights

The USCCR should resume its role as monitor of federal civil rights enforcement efforts, with special attention to the EEOC. The 1983 Hispanic Charge Study recommended that the EEOC be subject to oversight by an independent agency with authority to monitor and evaluate its enforcement efforts. This description parallels the original statutory mandate of the USCCR. Although the agency has strayed from that mandate in the last decade, under its recent leadership the USCCR has made significant progress in regaining its former stature. The USCCR should return immediately to its historic role of civil rights "watchdog."

The USCCR should once again issue annual reports evaluating the performance of federal civil rights enforcement agencies, analyzing their funding levels and allocation of resources, and suggesting improvements. Because the EEOC is the one federal agency with the sole function of enforcing civil rights, it needs and deserves particular attention.

## D. The Hispanic Community and Other Interested Parties

The Hispanic community must play a more aggressive leadership role in developing and implementing an effective civil rights enforcement system, and in demanding equal attention to the special needs and concerns of Latinos in this area from policy makers at all levels. All other entities concerned with civil rights — among them the media, philanthropic organizations, and the education community — should become knowledgeable about the concerns of the Hispanic community. For far too long, Hispanics have been either ignored or presumed to have similar, but lesser, problems compared to other minorities.

1. **The Hispanic community, especially our elected officials and organizational leadership, should become more active in the civil rights arena.** Hispanic leadership has a responsibility to:
  - ❖ Better inform the Hispanic community about its civil rights and the remedies available when those rights have been violated;
  - ❖ Incorporate civil rights activity into all aspects of programmatic activity; and
  - ❖ Insist on being part of any negotiation or decision-making process in which civil rights matters are addressed.
2. **The civil rights community should expand its shared agenda to include basic enforcement issues as a priority.** The established civil rights community should be most "inclusive" in its approach; it should invite all minorities to participate in the dialogue in which the general civil rights agenda is set so that all fundamental civil rights concerns are equitably addressed.
3. **The media should also take a more "inclusive" approach to coverage of civil rights issues to provide a more accurate and complete perspective.** With the explosive growth of Hispanics and Asian Americans, the media should soon realize that civil rights issues are no longer simply Black and White. Hispanic views on "mainstream" stories, as well as special and feature stories on issues unique to the Hispanic community, should be standard elements of media coverage. The media should acknowledge and assume its responsibility to heighten the public's awareness and understanding of Hispanic civil rights issues. Inaccurate and demeaning stereotypes and portrayals of Hispanics should be eliminated in advertising, news, and entertainment programming.
4. **Philanthropic entities, such as foundations and corporations, should devote greater resources to civil rights enforcement issues — including Hispanic-specific issues — in their grant-making activities.** For example, the development of a grassroots network to assist victims of employment discrimination in obtaining effective remedies should be a funding priority.

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5. **The education community at every level should take responsibility for educating the public about the contributions made and problems faced by Hispanics in American society.** Issues such as the Hispanic civil rights movement and the Hispanic struggle to take their place in mainstream American society should be standard in curriculum at all levels.

To fulfill the promise of equal employment opportunity for Hispanics, the performance of the EEOC must improve dramatically and public attitudes toward and images of Hispanics must change. This requires simultaneous awareness, attention, and action by a number of different groups and entities, all of which must begin immediately.









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