

**STATEMENT OF GABRIELLE MARTIN, NATIONAL PRESIDENT
NATIONAL COUNCIL OF EEOC LOCALS, NO. 216, AFGE/AFL-CIO
TO
THE SENATE APPROPRIATIONS SUBCOMMITTEE ON
COMMERCE, JUSTICE, SCIENCE AND RELATED AGENCIES
ON
FY11 APPROPRIATION FOR EEOC,
INCLUDING SUPPORTING THE FY11 BUDGET INCREASE FOR EEOC, WHICH
SHOULD BE TARGETED AT REPLENISHING FRONTLINE STAFFING
IN ORDER TO REDUCE THE BACKLOG
April 2, 2010**

Chairman Mollohan, Ranking Member Wolf, and members of the Subcommittee, my name is Gabrielle Martin and I am the President of the National Council of EEOC Locals, No. 216, AFGE/AFL-CIO. The Council is the exclusive representative of the bargaining unit employees at the Equal Employment Opportunity Commission (EEOC), including investigators, attorneys, administrative judges, mediators, paralegals, and support staff located in offices in 53 cities around the country. I want to thank you for the opportunity to express our views today to the Subcommittee on the proposed FY11 budget for the EEOC. Our number one "ask" is that this Subcommittee support the FY11 budget request to increase EEOC's funding from \$367 million to \$385 million. We understand that you will hear today from many well deserving programs. Nevertheless, the Council can confirm from the perspective of EEOC's frontline workers that the increase is absolutely necessary and justified. Moreover, the budget request should be considered a restoration of funds after several years of frozen budgets. The loss of 25% of EEOC's frontline staff since FY01 still impacts services today, primarily with regard to a backlog anticipated to reach almost 100,000 cases and average processing times of 9 months. The Council thanks this Subcommittee for acknowledging these issues and increasing EEOC's FY09 and FY10 budgets. However, to ensure that EEOC can effectively enforce workplace discrimination laws that help Americans get and keep jobs, the Council urges the inclusion of bill and report language in the FY11 funding measure which: (1) adopts the FY11 budget request for EEOC, increasing funding to \$385 million; (2) raises the staffing to 3,000 FTE's, i.e., the same level as 1994, the last time that EEOC's charge receipts were close to the record high levels of recent years; (3) maintains oversight of headquarters and field restructuring, including the Office of Federal Operations; and (4) directs EEOC to implement the Full-Service Intake Plan to provide real help to the public and reduce the backlog.

Introduction:

The EEOC was created by the Civil Rights Act of 1964. The EEOC's mission is to enforce this nation's laws, which protect against discrimination in employment based on race, color, religion, sex, national origin, age, and disability. As of 2009, EEOC is also responsible for enforcing the Americans with Disabilities Act Amendments Act (ADAAA), the Genetics Information Nondiscrimination Act (GINA), and the Lilly Ledbetter Act. Unfortunately, discrimination still costs jobs and disrupts families' livelihoods. EEOC's budget justification confirms that record high discrimination charge filings will continue and even exceed 100,000 in FY10, mirrored by a similarly high backlog. The FY11 budget request is needed so that EEOC's dedicated employees have the resources to keep discrimination out of the workplace so Americans can stay on the job.

Thank You to This Subcommittee for the FY10 Report, Conference and Bill Language:

The Council wishes to thank this Subcommittee for listening and responding to the concerns of our members this past year. Most significantly, this Subcommittee supported the FY10 budget request increasing EEOC's funding to \$367 million, which was severely needed after the five years of level funding FY04-FY08 and following the record high filings of discrimination charges the last two years. Moreover, last year this Subcommittee forcefully expressed its disappointment that "the budget request does not contain more resources for staffing," in order to see "substantive backlog reduction." Also, the FY10 Omnibus conference report language called for oversight of agency staffing and Federal sector changes. It also directed EEOC that its workload projections account for a Federal Arbitrator's decision regarding the agency's illegal overtime practices.¹ Finally, the Omnibus Act Bill language retained oversight, which prevents EEOC from taking any action to restructure without first coming to the Subcommittee. The Subcommittee's strong statement was heard by the administration, which in a difficult budget year has requested an FY11 increase for EEOC to \$385 million.

Adopt the FY11 Budget Request to Increase EEOC's budget from \$367M to \$385M:

While this Subcommittee has increased EEOC's budget, EEOC is still playing catch-up from five years of level funding. EEOC's workload has never been higher, even as staffing levels remain inadequate. In FY09, EEOC received 93,277 charges of discrimination, just shy of FY08's highest recorded number of charge receipts in EEOC's history. The slumping economy and enforcement of three new laws, including GINA and the ADAAA, account for these increases, which are not anticipated to drop off any time soon. EEOC anticipates charge filing records to be broken again and predicts 101,653 charges in FY10 and 110,212 charges in FY11.

The chart included with this testimony illustrates EEOC's troubling customer service trends from FY01 through FY10. If EEOC is to break these trends, so that it more effectively can enforce the laws on the books, it needs to be funded at no less than the FY11 budget request. Now that the administration has heard your call for more resources, the Council respectfully requests that this Subcommittee adopt the increase to \$385 million.

More Frontline Staff is Needed to Offer Timely Assistance and Tackle a Giant Backlog:

In last year's report language, this Subcommittee accurately anticipated the result of inadequate resources for staffing, "At the requested level, EEOC will only be able to fill existing 'hollow' FTE rather than increase staffing above the current FTE ceiling." After losing 25% of its staff since FY01, EEOC took steps to "rebuild" in FY09, but the gains barely kept pace with attrition.² The EEOC ended FY09 with 2,192 FTE's, a minimal increase from FY08's 2,174 FTE's.

Notably, only a portion of this small number represents frontline positions that directly handle EEOC's swelling workload of newly filed and backlogged charges. The inevitable result when

¹ On March 23, 2009, an arbitrator ruled that EEOC willfully violated the Fair Labor Standards Act by engaging in a nationwide pattern that results in suffered and permitted overtime for its own employees. The damages phase of the case remains ongoing unless a settlement can be reached.

² "EEOC will have 42 percent of its employees eligible for retirement between fiscal years 2007 and 2012, which includes 46 percent of its investigators and 24 percent of its attorneys." OIG Semiannual Report, 10/30/07. Additional attrition has occurred in the ranks of the hearing officers (administrative judges), who are often selected for higher paid administrative law judges at Social Security, where they have the subpoena power and support staff that they are lacking at EEOC. According to the GAO, the EEOC has 13% fewer administrative judges than it did in FY05.

EEOC's slashed workforce cannot keep up with the increased workload is that the backlog goes from bad to worse. According to EEOC's budget justification, the backlog is anticipated to rise to 96,865 cases in FY10 and 105,203 cases in FY11.³ Thus, roughly an entire year's incoming inventory is getting shelved in order to process the previous year's complaints. Moreover, since FY06, charge filings at EEOC have exceeded resolutions, with the trend expected to continue at least through FY13. (*See* chart and EEOC Budget Justification).

EEOC's investigators have seen their case inventories climb to as high as 250 cases as the work of retiring employees is redistributed to the remaining staff. These unreasonably high caseloads do not allow investigators to do an effective and timely job of interviewing witness, reviewing documents, attempting conciliation, etc. Quick resolutions could mean saving the jobs of the applicants and workers who file these charges. But, landing in EEOC's backlog puts off assistance for 294 days, i.e., over 9 months. Justice delayed is justice denied for these workers.

In order to effectively enforce its mission and reduce the backlog, the Council requests that Congress raise EEOC's staffing to 3,000 FTE's, i.e., the same level as 1994, the last time that EEOC's charge receipts were close to the current record high numbers. The Council supports maintaining report language directing EEOC to submit "quarterly reports on projected and actual agency staffing levels so that the Committee can better monitor EEOC's personnel resources." However, to ensure hiring keeps up with attrition, it is suggested that the report language also include benchmarks for where actual frontline staffing should be at the end of each quarter.⁴ Finally, report language should be maintained directing that workload projections account for a Federal Arbitrator's decision regarding the agency's willful and illegal overtime practices, because unreasonably high investigator caseloads demonstrate EEOC has not hired enough staff.

For the Current Fiscal Year FY10, Oversight Is Needed to Ensure Hiring is Prioritized:

EEOC should prioritize replenishing lost staff and maintaining existing employees, in order to reduce the backlog. Historically, EEOC ends each year with "hollow FTE's," i.e., about 200 positions below the authorized ceiling. The ceiling had been raised from 2,381 in FY08 to 2,556 in FY09, presumably to get more employees on board. However, EEOC still ended FY09 well below the ceiling with only 2,192 employees. Therefore, for the current FY10, the Council urges this subcommittee to exercise its oversight, including monitoring the quarterly staffing submissions, to ensure that EEOC does in fact hire up to the 2,556 FTE's authorized. If this year's staffing is not achieved, then FY11's projections for staffing, resolutions, and backlog will all be undermined. Most importantly, the public needs frontline EEOC employees immediately available to help them get jobs and keep jobs.

Bill Language Should Retain Oversight of EEOC Restructuring:

On January 1, 2006, as part of a nationwide field restructuring, EEOC downsized a dozen offices. The restructuring added bureaucratic layers, but no frontline staff. EEOC should now

³ The White House FY11 budget request projected that the backlog would grow even higher, i.e., 104,450 in FY10 and 122,452 in FY11. The EEOC FY11 budget justification that followed contained these slightly lower figures.

⁴ The Council understands that as of FY11, agency budget projections are to concentrate on actual staffing, rather than ceilings. This makes oversight even more critical so that EEOC ends FY11 with no less than the 2,577 FTE actual staffing reflected in the FY11 justification.

revisit the restructuring to fix its worst inefficiencies, such as states that were split between two districts. The EEOC should also keep its promise to reduce top-heavy offices to a 1:10 supervisor to employee ratio. Redeployed supervisors can help the frontline without added cost.

The final phase of EEOC's repositioning is the delayed restructuring of headquarters, which has been promised for three years. Also, recent internal plans to reorganize the EEOC's Office of Federal Operations (OFO) have proposed adding additional layers of high levels of management at the expense of frontline administrative judges. The intent of HQ and OFO restructuring should be to maximize aid to the frontline work in the field offices while reducing redundancies and layers of management. The Council urges the Subcommittee to retain bill language regarding oversight of this restructuring. Additionally, Congress should assure a transparent process for public and internal stakeholders to have an opportunity to provide feedback of a draft plan.

Direct EEOC To Implement the Full-Service Intake Plan To Provide the Public Real Help and Reduce the Backlog:

EEOC's current backlogs and poor customer service can be attributed to its stubborn insistence on continuing to use a failed call center model. Though the House and Senate CJS subcommittees in FY08 defunded an outsourced call center, EEOC currently uses an in-house center mirroring that failed model. Specifically, in-house staff are: hired in inadequate numbers; at the lowest grades; receive minimal training; required to read from mandatory scripts; and authorized only to direct callers to download questionnaires and mail them to overwhelmed investigative staff. While expanding access through technology is generally a good thing, here the public is left frustrated because there is not enough staff on the other end of the computer to process these new cases.

Council 216 submitted a comprehensive plan for a national Full-Service Intake Plan six months ago, which EEOC's leadership is reviewing at a snail's pace. The plan calls for staffing each field office with a compliment of positions and grades able to advance the intake process from pre-charge counseling through charge filing, handling the flood of downloadable intake questionnaires and responding to over 5,000 unanswered e-mails.⁵ The plan contains sufficient career levels of work to help EEOC avoid the high rates of turnover. The plan satisfies the interest of Congress to "provide more substantive assistance to callers and resolve a greater number of calls at the first point of contact." (H.R. 110-919). The plan also produces cost savings by not pushing the intake work to GS-12 investigators. It also implements part of EEOC's backlog reduction plan, which according to EEOC's OIG should include a renewed emphasis on pre-charge counseling. In turn, investigative staff, who would be relieved from many of these intake responsibilities, could focus on investigating cases to reduce the backlog.

The Council supports maintaining report language directing EEOC "to develop and implement a multiyear plan to increase EEOC staffing to the levels necessary to achieve backlog reduction in a timely manner." The Council would respectfully request that the language be expanded to include a direction that the Full Service Intake Plan be incorporated into the backlog reduction plan. Both staffing efficiencies and working smarter need to be part of an effective plan to reduce backlog.

⁵ The units would be comprised of some new staff and current staff, including converting in-house call center operators to investigator supporter assistants.

“Fast Track” for Feds Requires Stakeholder Input and Oversight Before Implementation:

For several years, EEOC has been internally debating controversial changes to the hearing process, called “fast track,” which would direct Administrative Judges (AJs) to cut off discovery and deny hearings for many Federal employees who claim discrimination in certain employment actions. In these fast-tracked cases, the EEOC AJ is forced to accept the investigative record submitted by the Federal agency alleged to have committed discrimination. EEOC couches fast-tracking as beneficial by providing Federal employees a simpler and speedier route to a hearing. However, a speedier hearing should not come at the expense of barring the complainant from the opportunity to obtain evidence needed to prevail. A more straightforward way to reduce Federal backlog and processing times is to replenish AJs, down 13% since FY05, and provide them support staff.

EEOC's FY11 Budget confirmed that the plan to track Federal employee cases is imminent. “A Workgroup of Supervisory Administrative Judges is currently refining the proposal, based on comments received from the Office of Legal Counsel, the Office of Federal Operations, and Administrative Judges.” The Council represents these AJs, whose comments reflect that they are opposed to mandatory tracking, because it re-writes the regulations to remove judicial independence to manage individual cases and interferes with fair hearings. Before such radical changes are undertaken, outside stakeholders must also be given an opportunity to weigh in on the current plan. Therefore, the Council supports maintaining current report language requiring oversight before implementation.

Conclusion:

In closing, I want to again thank the Chairman, Ranking Member and the Subcommittee for inviting me to testify. I hope my statement will give you insight into the difficult challenges facing EEOC. I urge the Subcommittee to include bill and report language in the FY11 funding measure which: (1) adopts the FY11 budget request to increase EEOC funding to \$385 million; (2) raises the staffing to 3,000 FTE’s, i.e., the same level as 1994, the last time that EEOC’s charge receipts were close to current record high levels; (3) maintains ongoing oversight of restructuring; and (4) directs EEOC to implement the Full-Service Intake Plan to provide real help to the public.

CHART: EEOC’S TROUBLING CUSTOMER SERVICE TRENDS⁶

	FY01	FY02	FY03	FY04	FY05	FY06	FY07	FY08	FY09	FY10
Full Time Employees	2,924	2,787	2,617	2,462	2,349	2,250	2,137	2,174	2,192	2,470
Backlog	32,481	29,041	29,368	29,966	33,562	39,946	54,970	73,941	85,768	96,685
Charge Receipts Filed	80,840	84,442	81,293	79,432	75,428	75,768	82,792	95,402	93,277	101,653
Resolutions	90,106	95,222	87,755	85,259	77,352	74,308	72,442	81,081	85,980	93,284
Avg. Charge Processing	182	171	160	165	171	193	199	229	294	Not available

⁶ National Academy of Public Administration report, 2/2/03; EEOC Budget Requests; www.eeoc.gov.

