

**EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
(EEOC) TRANSITION WHITE PAPER:**

**RESTORING THE ABILITY OF THIS SMALL CIVIL
RIGHTS AGENCY TO EFFECTIVELY ENFORCE OUR
NATION'S WORKPLACE DISCRIMINATION LAWS**

**PREPARED BY:
THE NATIONAL COUNCIL OF EEOC LOCALS, NO. 216,
AFGE/AFL-CIO
DECEMBER 9, 2008**

EEOC TRANSITION PAPER

I. Introduction

A. Challenges to EEOC's Mission

The Equal Employment Opportunity Commission (EEOC) is the law enforcement agency charged with enforcing this nation's laws banning discrimination in the workplace based on race, religion, color, national origin, sex, pregnancy, age, and disability. Ensuring an equal playing field in the workplace makes a difference in whether many employees are able to sustain their livelihoods and support their families.

Historically EEOC has been a relatively small and modestly funded agency. However, during the tenure of the outgoing administration, the EEOC's enforcement ability has been seriously weakened by severe budget constraints and a multi-year hiring freeze, which resulted in the loss of 25% of the agency's workforce. Short staffing has caused a mushrooming backlog of cases (exacerbated by FY08's record high charge receipts). In addition, EEOC has been plagued by its poor operational decisions including: a failed attempt to outsource calls from the public to a contract call center and a field restructuring which resulted in the downsizing of one third of the agency's full service offices, many of which are located in cities with high-minority populations. Additionally, a back-door restructuring of the Federal sector arm of the EEOC seeks to unnecessarily add managerial staff at inflated grades at the expense of hiring front-line staff.

Policies and budget decisions put in place by the outgoing administration may require a vote of the Commission to change. The current composition of two Democrats and two Republicans will prevent any changes requiring a vote, unless there is a break from party lines. Given that the current body has not typically voted across lines, the new administration will be hamstrung by the Commission's current composition.

B. Solutions to Restore the Agency's Ability to Carry Out Its Mission

Restoring the agency will require resources and fixes to misguided operational changes, so that EEOC gets back in the business of serving the public and enforcing the civil rights laws for which it is responsible. For FY09, the first challenge is to secure the funding level of \$350,424,000 million. The House recommended this figure, which is \$8.5 million above the administration's request approved by the Senate. Specifically, the increase is intended to address EEOC's crippling backlog of 73,951 cases. This can be accomplished by backfilling many of front-line positions lost during the multi-year hiring freeze. To this end, it is critical that EEOC hire up to its approved ceiling of 2,556 FTEs and not leave positions on the table. This unfortunate trend has resulted in EEOC ending each fiscal year with approximately 200 fewer FTE's than the approved staff ceiling. These positions are more desperately needed now than ever before, in light of the record high level of charges received in FY08.

For FY10 a greater budget increase is warranted to repair the damage from years of level funding, as well as to account for EEOC's expanded authority over the newly passed ADA Amendments Act and the Genetic Information Nondiscrimination Act. The FY10 budget should also support increasing FTE's to between 2,655 FTE's (the FY09 approved FTE ceiling plus the additional employees the EEOC identified to House appropriators as necessary to reduce the backlog) and 2,832 FTE's (the staffing level in 1994 when charge receipts were close to FY08's record high).

In regard to operational fixes, EEOC leadership needs to overhaul the in-house call center by adding higher credentialed and trained employees, who can complete initial processing of the calls at the first point of contact by drafting charges, rather than just sending callers to an on-line questionnaire that gets passed on to overwhelmed investigative staff. EEOC leadership should also review and correct the worst changes to the field restructuring, by adding resources and streamlining decision-making authority to downgraded offices, especially those that have heavy charge receipts. A freeze on hiring new SES and GS-15 positions should be implemented until Federal Sector reorganization plans are vetted, put to a Commission vote, and approved by the agency's Congressional appropriations committees. Finally, public trust and confidence in the agency and its mission cannot be restored until a new Chair is appointed and a full complement of Commissioners is on board. Likewise, actions taken by a newly configured Commission must be transparent and inclusive of stakeholders, including the Union.

II. Budget and Budget Management

While EEOC's staffing is at its lowest level since at least 1980, it is facing the agency's record highest number of charge receipts, i.e., 95,402 incoming charges. Therefore, EEOC has a significant need to see that the \$8.5 million increase recommended by the House is adopted in conference for FY09 and for a greater increase in the administration's FY10 budget request.

A. FY09 Budget

- **The House funding level of \$350,424,000 should be adopted in conference**

EEOC's FY08 budget was \$329,300,000. This figure has remained nearly static for five fiscal years. (Appendix A). However, for FY09, the critical staffing and backlog problems finally led EEOC to request a budget increase to \$341,925,000. Unfortunately, this is only a 4% increase after five previous years of level funding.¹ The House instead has recommended funding EEOC at \$350,424,000 million for FY09. This amount is \$8.5 million above the administration's request passed by the Senate. If used properly, the increase would provide needed resources to prevent EEOC's backlog from getting

¹ EEOC budget low-points: During FY03, EEOC had to request emergency supplemental funding to avoid an agency-wide furlough. *EEOC threatens employee furloughs over budget shortfalls*, *GovExec* 3/6/08. In FY07, despite its growing backlog and shrinking staff, EEOC actually asked Congress to cut its by budget approximately \$4M. Thanks to an advertising and web campaign by AFGE, a bipartisan letter spearheaded by Rep. Tubbs-Jones (D-OH) and Rep. McCotter (R-OH) opposing the EEOC budget cuts, which garnered 113 Co-sponsors, and Senate report language, the funding was restored. However, this still meant another year of level funding.

any worse. In addition, this increase will help address ADA Amendment charges, which the EEOC will begin enforcing on January 1, 2009. As part of its budget management, EEOC's new leadership should ensure that staffing increases from its current 2,166 FTE's to no less than the approved ceiling for FY09 of 2,556 FTE's.

EEOC has work sharing agreements with many of the State Fair Employment Practice Agencies (FEPA's). These FEPA's conduct some investigations for EEOC where the state law and the federal laws overlap. For FY08, EEOC cut the budgets of the FEPA's. Another reduction to FEPA budgets was included in the FY09 White House request. The resulting decline in cases processed by the FEPA's and the shortage of EEOC staff means EEOC provides less service to the public. The House version maintains the FEPA funding at a level comparable with FY08.

B. FY10 Budget

- **A meaningful budget increase for EEOC, which includes an authorized staff ceiling between 2,655 and 2,832, is needed for FY10**

A meaningful budget increase for EEOC will be necessary for FY10, in order to succeed in reducing the backlog and improving the average time required to process and investigate charges of discrimination. The upcoming FY10 request should also take into account the need to devote staff to EEOC's expanded enforcement authority of the new Genetic Information Nondiscrimination Act (GINA) and the ADA Amendments Act, five years of frozen budgets, and the mounting backlog, now at 73,951 cases. Appendix A. The FY10 budget should include specific funding to support EEOC's renewed focus on systemic (class) cases, which is now an underfunded program.²

The FY10 budget should authorize no less than 2,655 FTE's, the number that EEOC has identified as necessary to cut the backlog in half by 2012, according to the agency's recent responses to Congressional questions for the record. *House CJS Hearing Record, April 10, 2008, Questions for the Record ("QFR"), p. 664, no. 1.* However, the backlog and staffing projections made to the House Subcommittee were based on level charge receipts in FY08, when in fact the receipts rose 15% in FY07 to a record high for the EEOC of 95,402. This reality further justifies the increase to prevent the backlog from getting any worse. The last time that charge receipts were near this level was 1994 when charge receipts were 91,189 and staffing was 2,832 FTE's. Appendix B. This latter staffing level of 2,832 FTE's, with hires focused on the front-line, would best enable EEOC to decrease its backlog and improve case processing time.

² Despite the resource intensive nature of investigating and litigating systemic cases, EEOC did not back up its 2006 decision to focus on these cases with enhanced funding to support the program. Instead EEOC claimed it would rely on a "national law firm" approach wherein pairs of understaffed offices would work together. In a similar vein, a handful of investigators and paralegals were tapped across the country, rather than in each field office, to assist with these cases. New EEOC leadership should evaluate whether restraints on travel funds and other logistical issues make it practical to share staff in this manner, as opposed to adequately staffing each field office.

C. Personnel

i. Hiring Freeze

- **EEOC needs to replenish front-line positions**

During a multi-year hiring freeze, EEOC has lost 25% of its staff, mostly front-line positions. Former EEOC Chair Cari Dominguez declared a full fledged hiring freeze upon her arrival in 2001. In more recent years, the limited hiring has not been able to keep pace with natural attrition. EEOC still suffers from its decision in 2006 to speed up the natural attrition by offering early-outs and buy-outs to certain employees, including, much needed front-line staff, such as investigators. Now, the need for frontline staff has reached a critical point. According to the EEOC's own Office of Inspector General:

Further, the Agency is faced with an aging workforce that is increasingly retirement eligible. 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 to Congress, 4/1/07-9/30/07.

Additional resources needed for the private sector enforcement program include investigators, support staff such as Investigative Support Assistants or ISAs and Office Automation Assistants or OAAs. Additional ISAs (GS-7/9), a paraprofessional position, would allow EEOC to better handle telephone traffic and the mail, both postal and Internet mail. Rather than just refer calls to others, ISAs could draft charges after talking to the public and/or reading the mail inquiries. Additional mediators could more quickly resolve cases where participants seek early resolution and the Commission approves mediation. The mediators handle both federal and private sector caseloads, but mostly focus on private sector cases. EEOC currently uses contract mediators who are paid \$800 per case. Rather than pay contractors, especially when EEOC mediators are located within driving distance, this work should be brought back to federal employees.

In the federal sector, EEOC needs Administrative Judges (AJs), paralegals and paraprofessional staff to address the caseloads and improve oversight and compliance with regulations regarding time frames for conducting hearings. Additional support staff will help ensure that the hearing requests are timely addressed and that post hearing decisions can be issued in a more timely fashion.

EEOC's litigation program needs more trial attorneys, as well as additional paralegals, to help manage the case loads. Clerical support also is necessary to assist in managing the litigation workload.

EEOC receives thousands of Freedom of Information Act (FOIA) requests each year. In October of 2007, EEOC won a privatization bid to process FOIA requests in-house. The program was officially implemented as of October 1, 2008. However, EEOC's FY08 and FY09 budgets inexplicably failed to include an item for hiring the newly created information records disclosure positions. Several of these positions have been left vacant pending receipt of FY09 funding. As with many of its programs, the lack of staff to support this program is another example of EEOC's diminished service to the public.

ii. EEOC Consistently Fails to Fill 200 Authorized Slots a Year

- **Budget management is necessary so EEOC prioritizes its available funding to allow hiring to the staff ceiling**

Making matters worse, EEOC consistently fails to fill approximately 200 authorized positions. Appendix A. The root cause of this problem is that EEOC has low-balled its budget requests to Congress. The agency then makes ends meet with the use of “separation savings,” rather than staffing up to the ceiling. The EEOC has misprioritized the funding it does have available on such things as the contract call center boondoggle, the costly move, build out, and lease of the new Headquarters office space, field restructuring, employee buyouts, etc. New leadership as well as oversight language and improved budget management are necessary, to ensure that EEOC prioritizes its funding to hire up to its authorized staff ceiling.

iii. EEOC Needs to Flatten Its Field Organization

- **Improving supervisor to employee ratio is a budget neutral solution to increasing front-line staff**

EEOC does not need additional layers of management, but rather it needs employees who can address the private sector backlog of charges filed by the public as well as the length of time it takes to process and conduct federal sector hearings. Prosecution of litigation cases often lags due to staff shortages. The EEOC Union proposed staffing patterns for all of its offices when EEOC was proposing its 2006 field restructuring. *EEOC People First Plan, Submitted by Council 216, September 2005*. The Union’s plan, ignored by EEOC, sought to hold the agency to its unfulfilled goal of a 10 to 1 employee to supervisor ratio, as well as make sure that resources were directed to the front-line, rather than adding layers of management.³ The excess and redundant layers of supervision could be redeployed to front-line positions which directly serve the public. The Union’s proposed minimum office structure would require at least one clerical support person and two paraprofessional employees (Investigative Support Assistants or paralegals) for up to every ten investigators, mediators, AJs or attorneys. These groupings would be lead by team leaders, who would absorb frontline duties if the teams were smaller. Attached Appendix C provides a recommended field unit staffing plan.

Instead of streamlining operations, a recently proposed Federal sector reorganization would add additional layers of management. The reorganization plan was to create a new federal sector structure by hiring an SES level Chief Administrative Judge, located in Headquarters, and five GS-15 Regional Administrative judges, as well as administrative staff for each. The new upper management positions would be paid for by not filling frontline vacancies. A June 2, 2008 Commission meeting was canceled when it was apparent that the reorganization lacked the necessary votes.⁴ However, instead of

³ According to EEOC Repositioning – Field Offices Questions and Answers May 2005: “Currently, there is one supervisor for every seven to eight employees, with some offices having a ratio of one supervisor for every three to four workers. Under the Chair's plan, there will generally be one first-line supervisor for every 10 employees.” Based on hiring patterns the ratio is probably similar today, but new leadership should request information on the current supervisor to employee ratio.

⁴ Following the vote, House and Senate Appropriations Committees would have needed to approve the reorganization.

scrapping the plan, the EEOC has since posted an announcement for the SES Chief Administrative Judge position, which references the future hire of the GS-15's. The incoming administration should rectify this situation by placing a moratorium on any the hiring of new SES candidates or GS-15 positions.⁵

iv. Technology and Equipment Needs

- **Improving technology would save staff time**

Technology is necessary to assist the employees at EEOC - fax machines, high speed scanners and printers, as well as copiers would assist employees as they struggle to timely serve the public. While EEOC has improved in this area, many of its programs require duplicate data to be entered into systems that cannot communicate with one another. The result is an increase in data entry which consumes time that could be spent on investigating charges and processing inquiries into discriminatory work policies and practices.

The EEOC's technology needs to be specific to the work. Rather than impose one system on the entire agency, EEOC must be able to provide its attorneys with systems and programs required by the courts, administrative judges with the tools to enable its efforts to handle its hearings work electronically, and investigators the systems they need to investigate, search charge filing data (IMS), and obtain advice and coordination from the legal units.

Improvements are needed to the in-house call center telecommunications technology so that appropriate calls can be routed/transferred to the call center staff by field offices. Basic improvements are also needed to correct the customer service experience of callers who make complaints that the system: "just hangs up then says to callback," "when holding you get disconnected and have to keep calling back," "it hangs up on you says it is updating," "[needs] a better way to get in touch with them instead of going through so many prompts," "if you had a 0 to get to a live person it would have been better," "maybe you could get it to default back to a person, so when you press 0 you get contacted to an actual person to help you. The system just puts you into a back hole and says, 'Thanks;bye,'" "we couldn't hear each other," and "I don't think they should make it so hard to get help." *Appendix D to Equal Employment Opportunity Commission Customer Satisfaction Survey, September 2008.*

Technology upgrades should also be made to the online "EAS" inquiry system to provide confirmation of receipt to the submitter. This is a concern that many survey respondents raised in their comments: "No one has contacted me back about the status of my claim," "there's no acknowledgement of the completion or receipt of the initial questionnaire," and "they could at least send out letters to people that they got the complaint and that they are working on it." *Id.* Because there is no such confirmation, many more calls ensue to learn the status of the inquiry. The EAS system should also be improved so that

⁵ Earlier drafts of the Federal Sector reorganization included changes to the process which would have cut off discovery and hearings for many Federal employees who claim discrimination in certain employment actions. These proposed changes did not make it to the final draft. However, if the proposals are revived, EEOC needs to comply with the regulatory process, including posting a notice in the *Federal Register* before proceeding with reforms to the Federal Sector EEOC process.

it has the capability to batch duplicate or serial inquiries. Efforts should also be made to create a seamless process between the EAS system and the charge filing data system (IMS) to reduce time spent retyping information from one system to the next.

If left unchanged, the deficiencies in this technology will continue to create additional work for the limited staff.

v. EEOC's Headquarters move: Cost overruns and inadequate space at new location

- **Additional space should be secured at the new location to make the cost of the move an investment that will pay off**

EEOC's current administration made a decision to reduce agency office space across the country in order to lock in staff losses, even if the cost of the move and new space were not at a savings. The worst example of this has been the relocation of EEOC's Headquarters, which is currently underway. It is now conceded that the rent and the build out of the new space exceed the cost of the current lease. *QFR p. 719, no. 9*. For years in advance of the move, the agency was holding back money to pay for the move. The agency also admits now that “[t]o fund the headquarters relocation in FY 2007 and FY 2008, we deferred hiring additional staff . . .” *QFR p. 719, no. 10*. More significantly, EEOC is squeezing ten floors of offices, files, records and people into two and a half floors in its new building, which it will share with other tenants. While the new space is a different configuration with more square footage per floor, it is still an overly ambitious consolidation. There is unofficial talk that the Washington Field Office, which recently was moved from separate space into Headquarters, could be moved out again to make more room. A more sensible solution is to research acquiring available space on the second floor, while it is still available. Additional space for break rooms and eating facilities should also be secured as it is several blocks to the nearest eating facility. While the relocation and the consequent overruns prove the move was not the best conceived idea, it is too late to undo. The focus should be on making the move an investment in the future by ensuring adequate space for Headquarters and Washington Field Office staff to carry out their duties.

D. Legislative Issues

- **EEOC must repair relations with Congressional Appropriations and Authorizing Committees**

The agency will also need to repair relations with its Congressional overseers that currently are detrimental to obtaining needed support. In January 2006, EEOC unilaterally implemented a field restructuring angering Senate appropriators: “The EEOC's decision to move forward with its repositioning plan despite congressional concern with the plan calls into question the judgment of leadership at the EEOC. Given the lack of respect shown for congressional priorities and the inability of the EEOC to submit detailed budget plans, the Committee has little choice but to make specific office appropriations for the EEOC.” Senate Report 109-280. In a 2007 oversight hearing, a standoff occurred between the EEOC Chair and the Subcommittee Chair: “The EEOC chair declined to respond to Mollohan's query regarding the amount of funding that commission officials had initially asked the Office of Management and Budget to

incorporate in its budget request, observing that she thought the information was confidential.” *Daily Labor Report*, March 21, 2007. Most recently, EEOC has shown a lack of transparency by producing obviously faulty work projections in an apparent effort to undermine Congressional offers of help: “The Committee questions the accuracy of the EEOC’s future workload projections because the assumptions underlying those projections appear overly optimistic.” *The Report accompanying the House Committee print, related to House Appropriations for FY09*. EEOC further strained relationships with Congressional friends and foes when it offered at best a weak, muted, and delayed response when its enforcement of “English Only” policies, a well settled area of national origin discrimination, came under attack. Under new leadership, EEOC should strive to be a cooperative partner with its Congressional overseers.

D. Impact of Union Issues

- **A potentially costly overtime arbitration between the agency and the union is currently pending**

EEOC is in the middle of a second overtime dispute that will cost the agency a fair amount of money. In 1995, the Union grieved the EEOC’s requirement that its employees work overtime without compensation. Following the Union’s grievance and an arbitration process, the agency decided to settle the case in June of 1995 for terms including approximately \$3 million in monetary relief. The settlement agreement contained an appendix that listed employees covered by the FLSA. Included among those covered by that agreement are the agency’s Investigators. Mediators did not exist at EEOC in June of 1995. In January of 2002, the EEOC entered into an agreement with the Union designating the Mediators at the GS-21/13 levels, as covered by the FLSA.

In early 2004, EEOC decided to commission a study by an outside contractor on its FLSA designations. The study examined whether Investigators GS-12 level and Mediators GS-13 level were covered by the Fair Labor Standards Act. Despite EEOC consulting with the Department of Labor and the Office Personnel Management, EEOC was determined to change the designation and relied on the study it commissioned from an outside contractor. EEOC made the changes despite the fact that nothing in the position descriptions upon which it relied had changed.

EEOC is severely understaffed, as noted. By not having to pay overtime compensation to its journeymen level positions, EEOC is attempting to “save” money on the backs of its employees. As a result of the change in FLSA status, on April 7, 2006, the Union filed a grievance, which has proceeded through arbitration. The decision on liability issued by the arbitrator, Mr. Stephen Wolf, determined that EEOC had improperly designated the Investigator GS-12 and Mediator GS-13. Although the arbitrator requested that the parties meet to resolve the issue, the agency declined to do so and the employees continue to be designated improperly.

As a result of the arbitrator’s decision on liability, hearings were conducted to determine the amount of damages. A decision on damages is pending, and likely will be substantial. The hard-working employees of EEOC should not have to bear the burden of EEOC’s poor decision making. This improper designation should be corrected immediately and

the incoming administration should meet with the union to determine the monetary relief owed to employees as a result of the improper designation.

- **Labor Management Relations Must Improve**

The Collective Bargaining Agreement between the parties has expired. For the first time in many years, the assistance of a third party was necessary to reach agreement on a start date. Negotiations are scheduled to begin January 26, 2009. A short delay in the start date will not impact the agency's mission or ability to serve the public.

The incoming administration has signaled its intent to change the way unions are viewed and their role. New leadership should have the opportunity to provide guidance and direction to the agency's negotiations team. Immediately following the elections in November, the Union contacted the agency and requested that the start date of negotiations be deferred. In a recent letter dated November 19, 2008, the agency declined to defer the start date. The current contract provisions remain in full force and effect until a new contract is negotiated and approved. As has occurred in the past, negotiations should be delayed until the new leadership is in place and can pick a negotiations team and provide it direction for labor relations issues.

II. Program Evaluations

a. Staffing Shortages Have Adversely Impacted Customer Service – Increased Case Backlogs and Case Processing Times Further Victimize the Public

- **EEOC should restore its emphasis on serving the public by enforcing the law**

Loss of EEOC frontline staff has resulted in increased backlogs and processing times, which mean that the public waits longer for resolution of their charges of discrimination. The EEOC ended FY08 with a backlog of 73,951 cases. The FY08 figure is worse than the anticipated backlog of 66,976, contained in EEOC's FY09 budget request, and 35% higher than the previous year. The agency's private sector backlog has climbed steeply in recent years from: 29,966 in FY04 to 33,562 in FY05, to 39,946 in FY06, to 54,970 in FY07, to the current 75,000. Appendix A. The Federal sector hearings backlog is also on the rise.

Average case processing times have also increased. While the agency's goal is to process cases within 180 days, for FY08 average processing time climbed to 229 days. As a basis of comparison, this figure has climbed significantly from FY03's average processing time of 160 days.⁶ Appendix A.

⁶ On July 28, 2008, by a 3-2 vote along party lines, the EEOC approved a "Strategic Plan" that sets unrealistic case processing quotas that cannot be met by the short staffed agency. The House Appropriations Report for FY08 noted its concerns with the accuracy of EEOC's workload projections. The strategic plan should be revised to provide realistic goals based on the agency's reduced front-line staffing. In the meantime, the strategic plan is currently rolling down to front-line staff in the form of unrealistic case processing performance standards.

Receipts of new charges of discrimination rose by 12,000 for FY08 to 95,402, a 15% rise from FY07, making it even more difficult to take successful steps to reduce the backlog. This is a record high for charge receipts. Given the current economy, it is anticipated that employee job loss will contribute to a continued increase in charge receipts. Appendix A provides more information on EEOC's troubling customer service trends.

In the 1990's, EEOC would publish its year end data with accompanying press releases describing the success of its efforts to reduce its backlog and processing times. Similar information was included in budget highlights to Congress. Historical information on the agency's backlog used to be posted on its public website along with charge statistics. That category has now been removed. In essence, EEOC has attempted to ignore the problem. New leadership must address the growing backlog, which undermines the agency's ability to provide effective assistance to the public.

EEOC's outreach program which provides training to employers should also be evaluated, as it diverts resource from frontline responsibilities.

b. In House Call Center Transition

- **EEOC should comply with House appropriators' demand to explore improving the substantive assistance provided by the agency's new in-house call center**

Between 2005 and 2007, EEOC spent millions of dollars on its failed experiment to outsource calls from the public to a contract call center. For the previous 40 years calls from the public were handled by agency staff. The contract call center was a cynical ploy to shift funds away from addressing staffing gaps at the EEOC to a private contractor. The call center was severely understaffed and the contract operators were severely under trained and had to rely on scripts. Given those shortcomings, the contract operators merely passed on messages received on EEOC's 1-800 number to the short staffed EEOC field offices. Fortunately, House and Senate "Dear Colleague" letters, poor report cards from the GAO, and a House amendment offered by the late Stephanie Tubbs-Jones all served to keep the spotlight on the wasteful experiment until it was finally defunded by Congress in 2007. A vote of the EEOC Commission finalized the decision to end the contract and return the calls to the agency by way of an in-house call center implemented in 2008.

Unfortunately, EEOC has replicated the failed call center by having calls answered by a limited number of lower graded employees with limited training placed at limited locations. These employees answer calls to a 1-800 number using a script and take messages, which they forward to EEOC's field offices for response. Given EEOC's extensive hiring freeze and its failure to adequately staff frontline positions, EEOC's Investigators and Investigative Support Assistants (ISA's) cannot keep up with the volume of forwarded messages, in addition to their responsibilities investigating pending charges of discrimination. The result is the same as the result from the failed call center – too many members of the public unduly await a response from EEOC's overworked and understaffed offices.

EEOC has just issued an evaluation of its in-house call center, which contains some revealing results that if acted upon could lead to important improvements. Significantly, the survey did find that an overall satisfaction rate with the in-house call center of 72%, which is the same as last year's result for the contract call center. It is a tribute to the new EEOC employees who have staffed the call center for less than a year, that they scored the same as the contract center, which had a three year run.

However, the survey recommends decreasing wait times to speak with an EEOC representative as an important area of improvement. *Equal Employment Opportunity Commission Customer Satisfaction Survey, September 2008, p. 6 (hereinafter EEOC Survey)*. This theme comes up repeatedly in the comments of survey participants who tried calling the EEOC's in-house call center. These comments are just a few examples: "I started trying to get through at 8:30 a.m. and finally got through around 12:30 p.m.," "Get more operators to answer the phone properly. It took a couple of days before anyone answered," "I literally tried for days to get a hold of them," "I waited 3 hours on the phone," and "I had to call 3 or 4 times and just had to hold each time waiting for someone." *Id. at Appendix D to EEOC Survey*. The survey findings and comments demonstrate that the in-house call center, like the rest of the agency is short-staffed, which results in diminished customer service for the public.

The documented need to hire more staff for the in-house call center presents an opportunity to add higher credentialed staff, who could provide more substantive assistance to callers. This is a win-win for callers and for EEOC enforcement staff who will be freed up from responding to these intake calls on the second round. The Satisfaction Survey corroborates the need to improve in this same area: "[R]esolving callers' issues in one call is also critical to customer satisfaction. Twenty percent of those who contacted EEOC did not have their questions satisfactorily answered in one call. Reducing this percentage will improve customer satisfaction among callers." *EEOC Survey at p. 6*. Once again, the comments of survey respondents illustrate the problem: "Have someone that can explain the situation. How to go about different things besides the Internet", "I just got bounced around a little," "I just think the whole process needs to be explained a little better," "a higher degree of understanding," and "I felt the advice needed to be more specific to my case not just a generic answer when I call to find the status of my case." *Id. at Appendix D to EEOC Survey*.⁷

The Report accompanying the House Committee Print, related to House appropriations for FY09, called on EEOC to conduct a "cost benefit analysis of hiring higher credentialed employees for the call intake function, which might provide more substantive assistance to callers and resolve a greater number of calls at the first point of

⁷ Survey respondents were even more frustrated with the lack of specific responses they received when they e-mailed rather than called the in-house call center: "got the standard canned action," "auto response is silly," and "it is my suggestion that you attempt to be more personable by addressing people on an individual basis rather by standard procedures." *Id.* Timeliness was also raised by the survey as an area of improvement for e-mail responses. *Id. at p. 6*. Eliminating layers of review that require in-house call center staff to e-mail their proposed responses to Kansas City EEOC call center managers before forwarding final emails to the public would serve to speed up e-mail responses. It is also interesting that the additional level of managerial review causes customer satisfaction to suffer in the e-mail category over the telephone inquiry category.

contact.” Unfortunately, EEOC’s responses to House Appropriators Questions for the Record, states “EEOC has not conducted a cost benefit analysis.” *QFR p. 673, no. 3*. The agency’s response goes on to rationalize that the grade level of the in-house staff was determined by evaluating the assigned work of the staff at the contract call center and comparing that to OPM classification standards. The EEOC has failed to explain why it did not broaden the assigned work for the new position to include more substantive duties beyond that of the in-house call center operators, who just took messages or pointed people to the website for assistance. This lost opportunity to fully utilize the in-house call center negatively impacts the agency’s ability to provide service to the public or free up investigators to conduct investigations and contribute by addressing the backlogs.

In addition, the agency could hire additional Investigative Support Assistants (ISAs)⁸ trained to the journeyman GS-7 level, who could provide substantive assistance as referenced by Congress. These ISAs could focus on substantive intake responsibilities, such as perfecting confusing or incomplete intake questionnaires through interviews of potential charging parties, drafting charges of discrimination and sending out initial requests for information. Callers seeking answers to more substantive questions beyond general filing information could be advanced to these ISAs, who could resolve inquiries at the first point of contact. Investigators would then be freed up to investigate cases in the system and reduce the backlog.

c. Online intake questionnaires are flooding understaffed offices
• Additional staff are needed to absorb the additional inquiries

In 2008, EEOC adopted another system which allows the public to send electronic inquiries (EAS) to EEOC’s offices. One of the primary functions of the internal call center employees answering the phone is to direct callers to the EAS form on the agency’s web site. However, as discussed *supra*, the in-house call center staff does not do anything to assist in processing these forms. The same limited staff who investigate pending charges in field offices, respond to the phone messages and the postal service mail, also must now respond to the EAS inquiries. The EAS inquiries are flooding EEOC’s field offices, but there is no new staff to absorb the new function.

Comments from the customer satisfaction survey regarding the call center show that the public is aware and frustrated that the ongoing investigation of their claims is delayed by inadequate enforcement staffing: “I have not gotten any answers because they are backlogged,” “Do more hiring to accommodate the volume of calls,” “Give them a smaller caseload so they can call back their charging parties. Larger staff,” “I know they’re busy,” “they need more staff to get these things done faster, it’s been 10 months,” “I do not feel that they are acting on it and I am being harassed at work,” “Increase your work staff, that’s it. I feel they’re overwhelmed doing the workload,” “My suggestion would be the EEOC needs more workers,” and “They could hire more employees to help out around this place.” *Id at Appendix D to EEOC Survey*.

⁸ Another advantage is that an ISA is a paraprofessional bridge position to investigator. These ISAs could be a feeder position to fill the many front-line investigator vacancies.

- d. EEOC should keep its promise to revisit the 2006 field restructuring**
- **Fixes should be made to enhance authority and resources to downgraded offices with charge activity similar to full service offices**

In January of 2006, without necessary approval from the Senate Appropriations Committee, EEOC unilaterally restructured its field offices, downgrading one third of its full service “District” offices. Increased backlog and processing times are evidence that the field restructuring did not result in claimed efficiencies. Instead, certain district offices saw their geographical jurisdictions grow, but did not gain staff as a result. For the downgraded offices the restructuring has meant reductions in staff and loss of direct access to resources such as computer staff, supplies, and postage. Ultimately, the downgraded offices are in the position of having to request permission from the District Offices for most resources. Many of the downgraded offices were in areas which have high minority populations. EEOC has not adequately funded the larger districts for travel, resulting in backlogs of cases needing on-site investigations, federal sector hearings and mediations. EEOC made vague promises to revisit the field restructuring and possibly make changes after six months. This never happened. New leadership at the EEOC should review the field restructuring to rectify the loss of full service offices in areas of high minority populations, especially those which receive the greatest charge receipts.

Moreover, EEOC projected that it would see \$4.8 million in savings by the year 2014 realized from its field reorganization. Thus far, EEOC has not accounted for any savings. Providing new leadership, additional funding and oversight, all of which play key roles in increasing staffing levels, can rectify the damages to EEOC stemming from the dysfunctional reorganization in 2006.

III. The Commission

The Commission's current composition means that Commission business is deadlocked unless one Commissioner of any party votes against the grain. The poor decisions which have resulted in the dismantling of EEOC's enforcement activities need to be changed. Moving forward and ensuring that there is a full complement of commissioners, who are committed to civil rights enforcement, will allow EEOC to resume its mission related duties and to pursue policies which serve the public. Towards that end, transparent processes and practices will further restore public faith in and commitment to the goals of the agency.

IV. Conclusion

The promises envisioned with the passage of Title VII of the Civil Rights Act of 1964, have been lost at EEOC, the agency created by the Act. EEOC is in a crisis. Rising caseloads and processing times, huge backlogs and charge receipts, and an inability to manage the work have derailed the agency from its mission. Additional funding, greater oversight and new leadership that has a commitment to restoring civil rights enforcement are necessary. The public deserves no less.

Appendix A

CHART: EEOC'S TROUBLING CUSTOMER SERVICE TRENDS⁹

	FY01	FY02	FY03	FY04	FY05	FY06	FY07	FY08
1 Full Time Employees	2,924	2,787	2,617	2,462	2,349	2,250	2,157	2,166
2 Approved Staff Ceiling	3,055	3,055	2,800	2,765	2,640	2,381	2,381	2,381
3 Backlog	32,481	29,041	29,368	29,966	33,562	39,946	54,970	73,951
4 Charge Receipts Filed	80,840	84,442	81,293	79,432	75,428	75,768	82,792	95,401
5 Resolutions	90,106	95,222	87,755	85,259	77,352	74,308	72,442	81,081
6 Avg. Charge Processing	182	171	160	165	171	193	199	229

⁹ National Academy of Public Administration report, 2/2/03; EEOC Budget Requests; www.eeoc.gov; FY08 figures are based on preliminary information and subject to change.

Appendix B

The U.S. Equal Employment Opportunity Commission

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION BUDGET AND STAFFING HISTORY 1980 TO PRESENT

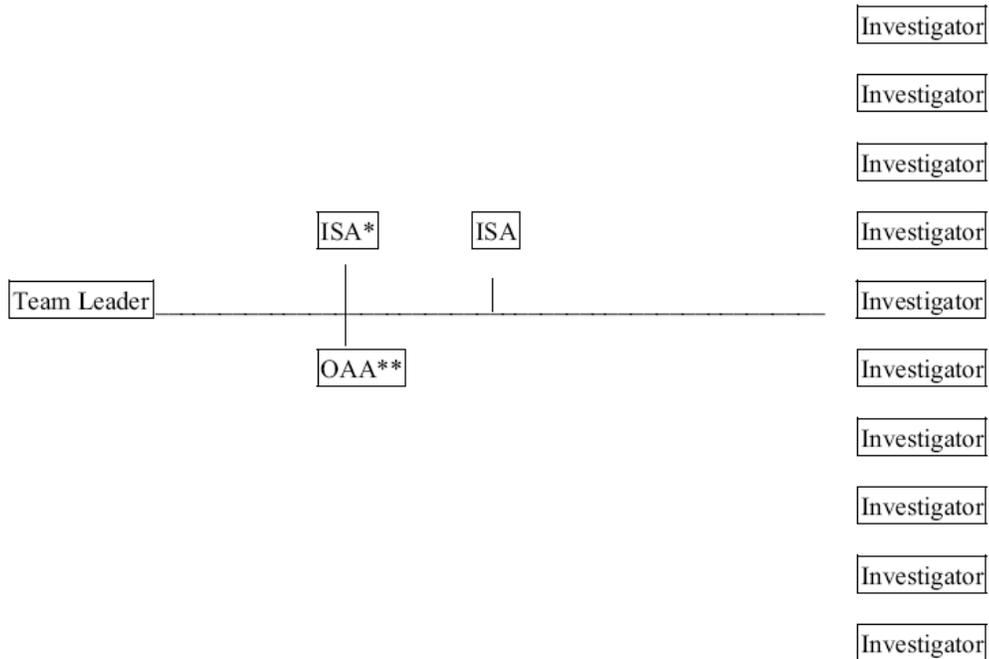
Funding (\$000) IN MILLIONS			Staffing (FTE)	
Fiscal Year	President's Request	Enacted	Approved Ceiling	Actual End of Fiscal Year
1980	\$130,622	\$124,562	3,527	3,390
1981	\$147,647	\$144,610	3,696	3,358
1982	\$145,239	\$144,739	3,740	3,166
1983	\$149,598	\$147,421	3,327	3,084
1984	\$157,940	\$154,039	3,125	3,044
1985	\$164,055	\$163,655	3,125	3,097
1986	\$158,825	\$165,000	2,976	3,017
1987	\$172,220	\$169,529	3,125	2,941
1988	\$193,457	\$179,812	3,198	3,168
1989	\$194,624	\$180,712	3,198	2,970
1990	\$188,700	\$184,926	3,050	2,853
1991	\$195,867	\$201,930	3,050	2,796
1992	\$211,271	\$211,271	2,871	2,791
1993	\$245,341	\$222,000	3,071	2,831
1994	\$234,845	\$230,000	3,000	2,832
1995	\$244,562	\$233,000	3,020	2,813

1996	\$268,000	\$233,000	3,219	2,676
1997	\$268,000	\$239,740	3,022	2,586
1998	\$246,000	\$242,000	2,680	2,544
1999	\$279,000	\$279,000	2,839	2,593
2000	\$312,000	280,928	2,946	2,852
2001	\$322,000	\$303,195	3,055	2,704
2002	\$310,406	\$310,406	3,055	2,783
2003	\$323,516	\$321,815	2,800	2,617
2004	\$334,754	\$324,944	2,765	2,462
2005	\$350,754	\$326,804	2,640	2,441
2006	\$332,228	\$326,883	2,381	2,246
2007	\$322,807	\$328,745	2,381	2,158
2008	\$327,748	\$329,300	2,381	2,174
2009	\$341,900		2,556	

This page was last modified on November 25, 2008.

Appendix C

INVESTIGATIVE UNIT STAFFING MODEL



- ▶ No EEOC office should have less than one full investigative team.
- ▶ District offices should have at least 3 trial attorneys to 10 investigators in order to adequately assist in-house and carry out effective litigation programs in court.
- ▶ In offices with more than at least one full team, to the extent any additional team has less than 10 professional staff, the team leader will absorb those front line functions.

* Investigative Support Assistant ** Office Automation Assistant