

**STATEMENT OF GABRIELLE MARTIN, NATIONAL PRESIDENT
NATIONAL COUNCIL OF EEOC LOCALS, NO. 216, AFGE/AFL-CIO
TO
THE HOUSE APPROPRIATIONS SUBCOMMITTEE ON
COMMERCE, JUSTICE, SCIENCE AND RELATED AGENCIES
ON
FY 2010 APPROPRIATION FOR EEOC,
INCLUDING INCREASING FUNDING AND REPLENISHING STAFFING
April 2, 2009**

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 to the Subcommittee on the proposed FY10 budget for the EEOC from the perspective of EEOC's frontline workers. The bottom-line concern for the Council is that staffing is woefully inadequate to handle: the record high 95,402 charges of discrimination that were filed in FY08; the additional enforcement responsibilities of two new laws; and the mushrooming backlog of 73,941 cases. This backlog most directly affects the public, e.g., when investigations suffer because witnesses have moved or a harassed worker hangs on waiting indefinitely for EEOC's help. As the nation struggles towards an economic recovery it will be critical for a revitalized EEOC to ensure a level playing field for employees and job applicants. The Council thanks this Subcommittee for acknowledging these issues and increasing EEOC's FY09 budget. However, to revitalize the agency after the damage caused by five years of frozen budgets, more is needed for FY10. Specifically, the Council urges the inclusion of bill and report language in the FY10 funding measure which: (1) increases funding to \$378,000,000, i.e., the amount originally called for in FY08 Senate CJS Appropriations Bill (Senate Report 110-124); (2) raises the staff ceiling to 3,000 FTE's, i.e., the same level as 1994, the last time that EEOC's charge receipts were close to FY08's record high; (3) maintains oversight of headquarters and field restructuring; and (4) requires EEOC to hire and train "higher credentialed" employees for the call intake function.

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) and the Genetics Information Nondiscrimination Act (GINA). From its earliest days, EEOC has had dedicated employees, excited about the opportunity to change things, to make our nation a better place, to make sure that discrimination no longer is a barrier to people getting and keeping jobs. As our economy has stumbled, the employees of EEOC have been pressed to keep up with the increasing workloads. Record high charge filings will continue due to higher unemployment and enforcement of two new laws. Action must be taken to revitalize EEOC in order to build a better future for working Americans.

The Council Thanks This Subcommittee for the FY09 Report and Omnibus Act Language:

The Council first wishes to thank this Subcommittee for listening and responding to the concerns of our members this past year. Most significantly, for FY09 this Subcommittee broke the five year cycle of frozen budgets and finally increased EEOC's funding by \$15 million. This Subcommittee's Report Language had even tried to increase it by \$20 million. Both the funding level in the Report Language and that contained in the final Omnibus Act exceeded the former administration's request, which demonstrate that this Subcommittee was receptive to the Council's concerns and took action. Also, the FY09 Omnibus conference report language called for hiring permanent frontline field staff to reduce the agency's swelling backlog, including addressing the large number of unfilled existing frontline staff positions. Additionally the Omnibus Act Bill language retained oversight, which prevents EEOC from taking any action to restructure without first coming to the Subcommittee.

EEOC Must Hire Staff to Process Record High Charge Receipts and Reduce the Backlog:

EEOC's asymmetrical problem of diminished staff dealing with a growing workload reached a crisis in FY08. Specifically, since 2001, EEOC has lost over one quarter of its employees, with most of the losses being to the ranks of frontline staff. The EEOC ended FY08 with only 2,174 employees on board nationwide. Only a portion of this figure represents frontline positions that deal directly with the public. For instance, EEOC has only about 600 available investigators. In 2008, this remaining skeleton crew received 95,402 new charges of discrimination, the highest number ever received in agency history. In addition, for the second year in a row the backlog of cases jumped 35% to a deplorable 73,941. The workers who file these charges, which become part of the backlog, are left stranded.

EEOC's investigators have seen their inventories of cases 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 job of interviewing witness, reviewing documents, attempting conciliation, etc.¹ Fewer attorneys have meant a drop-off in case filings.

As work increases and staff decreases the inevitable result is that cases are bottlenecked. EEOC's backlog has grown from 39,000 in FY06 to 54,000 in FY07 and to 73,941 in FY08. In its FY09 budget submission, the EEOC anticipated that at the end of FY08 the backlog would be 66,976 and would grow to 75,000 in FY09. Instead, FY08's backlog leapfrogged to the worse statistic forecasted for FY09. Imagine all of these cases stacked in an enormous pile. This pile represents people who believe they were discriminated against on the job, still waiting for help. In a September 8, 2008, EEOC Customer Satisfaction Survey, one worker responding stated, "they need more staff to get these things done faster, it's been 10 months." Another survey respondent conveys the adverse impact of having to wait for EEOC, "I do not feel that they are acting on it and I am being harassed at work." More troubling is that once an EEOC investigator can get to these cases, witnesses have probably moved on and memories have grown stale.

¹ Additionally, 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 decision demonstrates that the agency has tried to balance its budget and staffing shortfalls on the backs of its employees, by refusing overtime to employees who management knows are compelled to work extra hours to keep up with their high caseloads.

Another clear marker of inadequate staffing is that the amount of time it takes to process a case has increased to 229 days. In one year, the wait for help faced by victims of discrimination has worsened from almost 7 months to almost 8 months. Things are so dire that in the summer of 2008, EEOC scrapped its requirement that 72% of its charges be processed within 180 days. The requirement is now that only 48% of charges be processed within 180 days. For the public, that means that more than one-half of the people who file charges will wait the 8 month average.

Now at a time when EEOC obviously cannot handle its current workload, it is taking on new demands, but without additional resources. In 2007, EEOC began a renewed focus on systemic (class cases). This year, EEOC begins enforcement of two new laws, the Genetic Information Non Discrimination Act (GINA) and the Americans with Disabilities Amendments Act. Moreover, while additional staff have not been hired to assist with the new work, existing staff have not been trained on the complexities of the new laws.

In order to effectively enforce its mission and reduce the backlog, the Council requests that Congress raise EEOC's staff ceiling to 3,000 FTE's, i.e., the same level as 1994, the last time that EEOC's charge receipts were close to FY08's record high. To ensure hiring keeps up with attrition, the Council suggests including report language requiring hiring throughout the year to achieve a net increase of at least 500 FTE's (in addition to the 2,554 which should be on board in FY09) and a total of no less than the requested 3,000 FTE's. It should also be specified that these slots are intended to be used for permanent frontline field positions, including support staff to free up its professional staff to do their work.

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

EEOC should prioritize replenishing lost staff and maintaining existing employees, in order to reduce the backlog. Instead, the former two EEOC Chairs intentionally kept staffing levels as low as possible, and then locked in those staffing losses by reducing office space. "Separation savings" were used in a manner inconsistent with mission priorities, such as wasting millions on the former outsourced call center failure.

As a result of its misdirected spending, in recent years EEOC had consistently refused to fill authorized positions. For instance in both FY07 and FY08, the agency ended the year over 200 employees short of the authorized 2,381 FTE's. Now for FY09, EEOC requested 2,554 FTE's. Congress funded EEOC \$2 million above the level it requested to support that number of employees. Moreover, in its responses to this Subcommittee's questions for the record (QFR), EEOC claimed that it expected to be able to fund the FTE published in the President's FY09 budget. (*QFR, No. 4, p. 671*). However, well into the second quarter of FY09, EEOC's total staffing still remains at 2,195, well below the FY09 authorized level.² Therefore, for the current fiscal year 2009, the Council urges this subcommittee to exercise oversight to ensure that EEOC does in fact hire to its staff ceiling of 2,554 FTE's.

Congress Should Raise EEOC's Budget to \$378M, To Revitalize the Damaged Agency:

If EEOC is to be revitalized, it needs more funding. Five years of frozen budgets and questionable management decisions have left the agency too resource starved to effectively

² The small net gain of twenty employees this fiscal year, through February 2009, has been concentrated in Washington, instead of field offices around the country.

manage its growing workload. The chart included with this testimony illustrates EEOC's troubling customer service trends from FY01 through FY08.

This Subcommittee demonstrated its understanding of EEOC's critical situation by supporting the Omnibus Appropriations Act, which finally provided EEOC a \$15 million increase, and including an even greater amount in the Report Language. This increase is a desperately needed down payment towards fully revitalizing the EEOC. Unfortunately, EEOC's FY09 budget request did not account for the 15% increase in charge receipts, the greater than anticipated growth to the backlog, or the resources necessary to enforce the passage of the GINA and ADAAA legislation. Therefore, the Council respectfully requests that this Subcommittee adopt the increase to \$378 million, the amount originally called for by the Senate's FY08 CJS Appropriations Bill. This funding is needed now more than ever for backlog reduction, increased charge receipts, and to support the enforcement of new legislation.

Subcommittee Should Retain Bill Language Regarding 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 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. Only 16% of EEOC employees responding to a Union survey indicated that their offices met the agency's alleged 1:10 goal. 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. The intent of the headquarters restructuring should be to reduce redundancies and layers of management. These resources should be utilized to aid the frontline work in the field offices. 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.

Oversight of EEOC's Call Center Will Avoid Replication of the Failed Contract Center:

Recently, the former Chair, Naomi Earp, bragged to the *Daily Labor Report* about making EEOC's new in-house call center "a complete mirror of what we had at the outsourced center," despite Congress shutting down that failure in 2007. In fact, EEOC did replicate the worst problems of the contract center by not hiring staff, who with proper training could provide substantive help to the public and to EEOC investigators. Instead, EEOC limits what these employees can do to answering the phones and directing callers to the EEOC's website to fill out newly available online questionnaires. However, the general benefit of expanding access is negated, because there are not adequate staff to process these new cases. The call center staff in no way completes any of the substantive work that continues to pile up in offices. Employees are overwhelmed and cannot keep up with the calls, the investigations or the incoming online questionnaires. Each piece of paper that piles up and each phone call that is not handled represent a real person who deserves better. Without increased skill levels and additional staff, the call center will continue to inundate offices with online questionnaires. Overall, case processing times will continue to grow and the backlogs will continue exploding.

The Report accompanying House Committee Print, HR No. 110 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 contact.” The Council supports this plan. Better trained and higher credentialed staff could not only resolve more calls, but could assist in processing the intake questionnaires that they send the public to submit.³ In turn, investigative staff, who would be relieved from some of these intake responsibilities, could focus on processing cases already in the system. EEOC could then work to reduce the backlog.

EEOC Must Comply With the Regulatory Process On Federal Sector Reform:

Finally, I would like to bring to your attention that a recent Federal sector reorganization proposal would add additional layers of management at the cost of frontline positions. Growing Federal sector backlog and longer average case processing times instead should lead to proposals that increase frontline staff. Other controversial proposed changes would affect the rights to discovery and a hearing for Federal employees claiming discrimination in certain employment actions. The Council asks this Subcommittee to ensure that EEOC comply with the regulatory process, including posting a notice in the Federal Register, before proceeding with any changes to Federal Sector EEO process. Any Federal sector reorganization should be vetted through an EEOC vote and the House and Senate CJS Appropriations Subcommittees.

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 language in the FY10 funding measure which: (1) increases funding to \$378,000,000, i.e., the amount originally called for in FY08 Senate CJS Appropriations Bill (Senate Report 110-124); (2) raises the staff ceiling to 3,000 FTE’s, i.e., the same level as 1994, the last time that EEOC’s charge receipts were close to FY08’s record high; (3) maintains ongoing oversight of headquarters and field restructuring; and (4) requires EEOC to hire and train “higher credentialed” employees for the call intake function.

CHART: EEOC’S TROUBLING CUSTOMER SERVICE TRENDS⁴

	FY01	FY02	FY03	FY04	FY05	FY06	FY07	FY08
1 Full Time Employees	2,924	2,787	2,617	2,462	2,349	2,250	2,137	2,174
2 Backlog	32,481	29,041	29,368	29,966	33,562	39,946	54,970	73,941
3 Charge Receipts Filed	80,840	84,442	81,293	79,432	75,428	75,768	82,792	95,402
4 Resolutions	90,106	95,222	87,755	85,259	77,352	74,308	72,442	81,081
5 Avg. Charge Processing	182	171	160	165	171	193	199	229

³ The higher credentialed intake staff would also be an excellent feeder position to fill investigator vacancies.

⁴ National Academy of Public Administration report, 2/2/03; EEOC Budget Requests; www.eeoc.gov.