

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
FY12 APPROPRIATION FOR EEOC,
INCLUDING SUPPORTING THE FY12 BUDGET FOR EEOC,
IN ORDER TO PREVENT JOB DESTROYING DISCRIMINATION AND REDUCE
THE EEOC'S 86,338 CASE BACKLOG
March 11, 2011

Chairman Wolf, Ranking Member Fattah, 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 FY12 budget for the EEOC. Our number one "ask" is that this Subcommittee support the FY12 budget request of \$385 million for EEOC, which is the same as the FY11 budget request. FY10 funding was \$367 million. We understand that this is an immensely challenging budget year. Nevertheless, the Council can confirm from the perspective of EEOC's frontline workers that the modest increase is absolutely necessary and justified. The Council requests this Subcommittee's continued support to ensure that EEOC can effectively enforce workplace discrimination laws that help Americans get and keep jobs, by including bill and report language in the FY12 funding measure which: (1) adopts the FY12 budget request for EEOC at \$385 million, but in no event cuts civil rights funding; (2) directs EEOC to focus available hiring, up to the staff ceiling, on frontline staff to prevent job-destroying discrimination; (3) directs EEOC to implement the Cost-Efficient Intake Plan to provide real help to the public; (4) maintains oversight of headquarters and field restructuring, including the Office of Federal Operations; and (5) requires EEOC to finally pay its debt to employees for willfully violating overtime laws since 2006, pursuant to a Federal arbitrator's final decision dated March 23, 2009.

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 three new laws, including the Americans with Disabilities Act Amendments Act (ADAAA) and Genetics Information Nondiscrimination Act (GINA), which were both passed with wide bipartisan support. Unfortunately, discrimination still costs jobs and disrupts families' livelihoods. In FY10, EEOC received a record 999,992 charges of discrimination due to the struggling economy and enforcement of the new laws. Still impacted by six years of level funding and the loss of 25% of its workforce, EEOC ended FY10 with an 86,338 case backlog and an average case processing delay of 10 months. Significantly, in 2008, President Bush requested a much-needed

increase to EEOC's budget and staffing for FY09. The Council thanks this Subcommittee for increasing EEOC's FY09 and FY10 budgets and adopting the FY11 budget request of \$385M. EEOC's budget justification confirms that record high discrimination charge filings will continue and even exceed 100,000 in FY12, mirrored by a similarly high backlog. The FY12 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.

Adopt the FY12 Budget Request to Fund EEOC at \$385M:

EEOC's workload has never been higher, even though staffing levels remain inadequate. The FY10 record high 99,992 charges of discrimination include a record high number of retaliation charges, as well as a 17% increase in disability charge filings. FY10 represents the EEOC's third straight year of historically high charge filings. Record charge filings will not drop anytime soon. EEOC predicts 105,917 charges in FY11 and 108,036 charges in FY12.

The chart included with this testimony illustrates EEOC's troubling customer service trends from FY01 through FY10. If EEOC is to break these trends it needs to be funded at no less than the FY12 budget request. Therefore, the Council respectfully requests that this Subcommittee adopt the request of \$385 million.

Do Not Slash EEOC to FY08 Level When Workload is Up and Discrimination Costs Jobs:

The Council, which is aware of intentions to enact across the board cuts to FY08 levels, wishes to address the specific concerns this raises with regard to the EEOC. The EEOC is in a unique position that makes it inappropriate to cut its funding to FY08 levels.

EEOC's workload is up since FY08. Since 2008, EEOC has three new laws to enforce. The struggling economy also has impacted charge filing. Whereas unemployment was at 5.8% in 2008, in December 2010 it had climbed to 9.4%. EEOC projects that charge filings will continue to exceed FY08 levels.

Given that FY08 was the sixth year of level funding for EEOC, it would be extremely difficult to address EEOC's current problems with that level of funding. A hiring freeze dating back to 2001, along with attrition, had caused the loss of over 25% of EEOC's workforce. In FY08, the staffing crisis resulted in EEOC's backlog mushrooming 35% in one year.

A 2008 survey of public callers to the EEOC garnered the following illustrative comments: "I have not gotten any answers because they are backlogged;" "Give them a smaller caseload so they can call back their charging parties." "[T]hey 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;" "My suggestion would be the EEOC needs more workers;" and "They could hire more employees to help out around this place."

Undisputedly, EEOC did not have the resources to serve the public in 2008. It was in this context, that President Bush requested a budget and staffing increase for EEOC for FY09.

To go backwards now and cut EEOC will prevent the agency from helping Americans get and keep jobs. Discrimination costs jobs, e.g., racial harassment/nooses displayed at the workplace,

“young and energetic” want- ads, failure to accommodate a diabetic needing insulin breaks, and refusal to hire an applicant who has the breast cancer gene. Delays at EEOC resulting from cuts also will increase constituent complaints to Congressional offices seeking assistance.

EEOC Should Shift Resources to the Frontline to Tackle Backlogs and Help Workers:

EEOC must manage an anticipated net hiring freeze by creating a presumption in favor of filling frontline slots. The Bush and Obama administrations, Congress, and EEOC have agreed that more frontline staff is needed to tackle an 86,338 case backlog and reduce dismal 10 month case processing delays. Delayed resolution of discrimination complaints costs jobs and causes employer uncertainty.

More frontline staff is needed to actually reduce the backlog. According to EEOC’s FY12 Budget Justification, “hiring frontline investigators is crucial to bring the backlog down to an acceptable level.” Recent limited frontline hiring helped EEOC hold the backlog to only a .7% increase in FY10, which can be compared to the 35% increase in FY08. Specifically, in FY08 EEOC employed only 646 investigators nationwide. In FY10, the number had increased slightly to approximately 800 investigators.¹

Unfortunately, EEOC’s FY12 budget justification anticipates that under the FY11 continuing resolution there will be a projected loss of investigators and mediator positions. “This sharp decline in front-line staff will impede our ability to address the growing inventory, particularly in light of the projected increase in receipts.”

EEOC’s FY12 budget request calls for the minimal addition of 30 frontline investigators, as well as other frontline staff. However, the justification recognizes that:

Under our projections, even with the additional 30 FTE frontline investigators provided in the 2012 Budget, **the pending inventory is expected to reach nearly 100,834 charges at the end of fiscal year 2012 and rise to 144,217 charges at the end of fiscal year 2016.** Our charge data projections also show that in 2012 our investigators will carry an average caseload of 128. This caseload will lead to an average resolution time far exceeding a 180 day average – affecting all parties to the investigation.

These depressing projections demonstrate how critical it is to at least get frontline staff on board. Of course, cutting EEOC’s budget would make these projections exponentially worse.

There are also budget neutral ways to add frontline staff. EEOC must manage an anticipated net hiring freeze by creating a presumption in favor of filling frontline slots, e.g., when two middle managers retire, frontline staff could be added at a savings. Likewise, EEOC should keep its promise that the 2006 field restructuring would reduce supervisor to employee ratio to 1:10. Redeploying redundant layers of management and supervisors to the frontline is a budget neutral means to increase resources that directly serve the public.

¹ Investigator staffing, even with recent modest additions, is still below FY00’s high of 917 investigators.

Direct EEOC To Implement Cost-Saving Intake Plan To Help Public and Reduce Backlog:

EEOC's current backlogs and poor customer service starts with a bottleneck at the charge intake phase. Currently, mostly senior GS-12 investigators are pulled away from investigating their cases, as much as 30 to 50% of the time, to conduct intake on a rotational basis. An in-house call center directs the public to a downloadable intake questionnaire. These questionnaires are returned not to call center staff, but to overwhelmed investigators to conduct intake interviews and draft charges.

Council 216 submitted a comprehensive plan for a national Full-Service Intake Plan over a year ago, which is languishing with EEOC's leadership. The cost-saving plan calls for staffing each field office with a compliment of positions and grades (GS-5 through GS-9) able to advance the intake process from pre-charge counseling through charge filing, handling the backlogged flood of downloadable intake questionnaires and calls and responding to over 5,000 backlogged e-mails.² The plan contains sufficient career levels of work to help EEOC avoid the high rates of turnover. The plan also produces costs savings by not pushing the intake work to GS-12 investigators. It implements part of EEOC's backlog reduction plan, which includes a renewed emphasis on pre-charge counseling, as well. In turn, Investigators would be relieved from many of these intake responsibilities and could focus on investigating cases and reducing the backlog.

The Council respectfully requests that report language direct EEOC to implement the Full Service Intake Plan. Both staffing efficiencies and working smarter need to be part of an effective plan to reduce backlog.

Bill Language Should Retain Oversight of EEOC Restructuring:

On January 1, 2006, EEOC unilaterally implemented a controversial field restructuring. The restructuring added bureaucratic layers, but no frontline staff. EEOC should revisit the restructuring to fix its worst inefficiencies, such as states that were split between two districts. The final phase of EEOC's repositioning is the delayed restructuring of headquarters. Also, there have been proposals to reorganize the EEOC's Office of Federal Operations (OFO), which would have added 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 restructuring, since this remains a topical concern. Additionally, Congress should assure a transparent process for public and internal stakeholders to have an opportunity to provide feedback to a draft plan.

Federal Employees Must Have Rights to Discovery and Full and Fair Hearings before AJs:

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. The Council represents these AJs, who oppose to mandatory tracking because it re-writes the regulations to remove judicial independence and interferes with fair hearings. In addition, pilot programs

² The units would be comprised of some new staff and current staff, including training and converting in-house call staff to investigator supporter assistants.

allowing variances to Federal agencies from EEO regulations must provide for complete, timely, impartial investigations, and opt-out rights. Before such radical changes are undertaken, outside stakeholders must also be given an opportunity to weigh in. Therefore, the Council supports maintaining FY09 House Appropriations Committee report language requiring oversight before implementation.

Require EEOC to Compensate Its Workers for Willful Overtime Violations:

A Federal Arbitrator determined that between 2006 and 2009, EEOC willfully violated overtime laws and that the remedy was liquidated damages for employees who worked overtime. The time for appeal passed without action by EEOC. EEOC should be directed to pay its employees. Payment of the debt and addressing its inefficiencies is the right thing to do.

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 FY12 funding measure which: (1) adopts the FY12 budget request to increase EEOC funding to \$385 million, but in no event cuts civil rights funding; (2) directs EEOC to focus available hiring, up to the staff ceiling, on frontline staff to prevent job-destroying discrimination; (3) directs EEOC to implement the Cost-Efficient Intake Plan to provide real help to the public; (4) maintains oversight of headquarters and field restructuring, including the Office of Federal Operations; and (5) requires EEOC to finally pay its debt to employees for willfully violating overtime laws since 2006, pursuant to a Federal arbitrator’s final decision dated March 23, 2009.

CHART: EEOC’S TROUBLING CUSTOMER SERVICE TRENDS

		FY01	FY02	FY03	FY04	FY05	FY06	FY07	FY08	FY09	FY10
1	Full Time Employees	2,924	2,787	2,617	2,462	2,349	2,250	2,137	2,174	2,192	2,385
2	Backlog	32,481	29,041	29,368	29,966	33,562	39,946	54,970	73,941	85,768	86,338
	% Backlog increase	N/A	-10%	1%	2%	12%	19%	38%	34.5%	16%	.7%
3	Charges	80,840	84,442	81,293	79,432	75,428	75,768	82,792	95,402	93,277	99,922
4	Resolutions	90,106	95,222	87,755	85,259	77,352	74,308	72,442	81,081	85,980	104,999
5	Avg. Charge Processing	182	171	160	165	171	193	199	229	294	313