

**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
FY13 APPROPRIATION FOR EEOC,
INCLUDING SUPPORTING ADDITIONAL FUNDING FOR EEOC
TO REDUCE 78,136 CASE BACKLOG AND 9 MONTH PROCESSING TIMES
AND OVERSIGHT FOR EFFICIENCIES SUCH AS FULL SERVICE INTAKE
March 22, 2012**

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 share our views today on the proposed FY13 budget for the EEOC. The Council expresses our appreciation that, despite an immensely tight budget year, this Subcommittee recommended against cutting EEOC's FY12 budget. Unfortunately, EEOC did not escape a 2% across-the-board cut in conference that reduced EEOC's budget from \$367M in FY10 and FY11 to \$360M for FY12. This \$7M cut comes on the heels of four consecutive years of record high EEOC charge filings. Therefore, our number one "ask" is that this Subcommittee support additional funding for EEOC, in the amount of \$374 million. We understand that this year may be an even more challenging budget year than last year. Nevertheless, the Council can confirm from the perspective of EEOC's frontline workers that restoring EEOC's budget is absolutely necessary and justified, in order to efficiently address record high workloads. 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. The Council requests that you include bill and report language in the FY13 funding measure which: (1) supports additional funding for EEOC in the amount of \$374M; (2) directs EEOC to backfill frontline positions lost since the current hiring freeze went into effect in January 2011; (3) directs EEOC to implement efficiencies, like the Cost Efficient Full Service Intake Plan; (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 jobs focused 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, Congress added to EEOC's enforcement responsibilities, three new laws, i.e., the Americans with Disabilities Act Amendments Act (ADAAA), and Genetics Information Nondiscrimination Act (GINA) and the Lilly Ledbetter Fair Pay Act. More applicants and workers came to the EEOC for help getting a fair shot in the workplace in FY11, than in any previous year in the agency's history. The good news is that for the first time in ten years, EEOC was actually able to modestly reduce its

backlog of cases. This achievement was the result of backfilling frontline positions in FY09 and FY10, to account for the loss of 25% of EEOC's workforce earlier in the decade. The bad news is that EEOC still ended FY11 with a staggering 78,136 backlog and dismal 9 month average processing times. Delays caused by the backlog are bad for workers and employers. Also, constituent complaints to Congressional offices will increase. Unfortunately, the current hiring freeze at EEOC, which prevents even frontline backfills, will reverse progress on the backlog. This Subcommittee can help by supporting additional funding for EEOC, in the amount of \$374M and providing report language directing EEOC to implement common sense efficiencies, like the full service intake plan.

Support Additional Funding for EEOC in the Amount of \$374M:

EEOC's workload has never been higher, even though staffing levels remain inadequate. The FY11 record high 99,947 charges of discrimination include a 17% increase in disability filings over FY09. Record high retaliation charges may be attributed to EEOC's slow processing. FY11 represents the EEOC's fourth straight year of historically high charge filings. High charge filings will not drop anytime soon, due to EEOC's expanded enforcement authority over three new laws and related unemployment numbers.

The chart included with this testimony illustrates EEOC's troubling customer service trends. EEOC's backlog crisis was at its worst when it jumped approximately 35% in FY07 and then again in FY08. The runaway backlog was caused by increased charge filings, a 25% reduction in staffing levels due to a multiyear hiring freeze, and several years of flat-funding. Undisputedly, EEOC did not have the resources to serve the public by 2008. It was in this context that President Bush requested a budget and staffing increase for EEOC for FY09, as did President Obama the next year. Congress enacted both requests. With this support, EEOC has been able to modestly reduce the backlog. But now, with the FY12 budget cut, EEOC is going to reverse progress. Once again, EEOC has implemented a strict hiring freeze with no backfills. EEOC's failure to hire within authorized limits, despite a wave of retirements, is crippling the agency. The FY13 budget represents a critical turning point that can stop a temporary setback from becoming a trend. Therefore, the Council respectfully requests that this Subcommittee support additional funding and resources for EEOC.

EEOC Should Implement Efficiencies To Save Money and Improve Service to the Public:

For several years, the Council has shared with the House and Senate CJS Subcommittees common sense solutions that EEOC should implement to improve services. Of course, the Council shared these plans with the agency. Unfortunately, the agency has continually failed to take action. Therefore, the Council respectfully requests report language to provide oversight.

(1) Direct EEOC To Finally Implement The Cost-Saving Intake Plan To Help the Public:

For two years, EEOC has not acted on a Cost Efficient Full Service Intake Plan. On February 22, 2012, EEOC voted on a new five year strategic plan, which completely fails to mention the Council 216's suggested Cost Efficient Full Service Intake Plan. This despite the FY12 report language from the Senate CJS Subcommittee, which was not contradicted in Conference:

Full Service Intake- EEOC is currently reviewing and considering the adoption of a National Full Service Intake Model, which would create dedicated charge intake units in each field office to handle the intake process from pre-charge counseling through charge

filing. The EEOC is directed to submit a report detailing its views on this model to the Committee within 120 days of the enactment of this act.

Council 216 submitted its comprehensive plan for a national Full-Service Intake Plan over two years 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; handle the backlogged flood of downloadable intake questionnaires; and respond to the approximately 1,200 e-mails received daily.

The intake plan is intended to reduce EEOC's current backlogs and poor customer service, which starts with a bottleneck at the charge intake phase. Currently, mostly senior investigators (GS11 through 12) 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 downloadable intake questionnaires. These questionnaires are returned, not to in-house call-center staff, but to overwhelmed investigators to conduct intake interviews and draft charges.

The plan integrates the in-house call-center staff, i.e., Intake Information Representatives (IIRs), who already are classified as Investigator Support Assistants (ISAs), but perform only phone answering duties, into dedicated intake units where they would perform the full range of ISA duties. So, in the 15 offices where IIR staff are currently located, EEOC could implement the dedicated intake units with little to no need to hire additional staff. The IIRs would be trained to perform the full range of ISA duties and integrated with existing ISAs and clericals to create dedicated units that handle intake duties from charge inquiries, through filing, and disposition of "C" cases.

The plan contains sufficient career levels of work to help EEOC avoid high rates of turnover. The plan also produces costs savings by not pushing the intake work to GS11-12 investigators. It implements part of EEOC's efforts to reduce the backlog by renewing emphasis on pre-charge counseling. In turn, investigators would be relieved from many of these intake responsibilities and could focus on investigating cases and reducing both the backlog and processing times.

Both staffing efficiencies and working smarter, as described *supra*, need to be part of an effective plan to reduce backlog. Therefore, the Council respectfully requests that report language direct EEOC to finally implement the Full Service Intake Plan.

(2) Make EEOC Flatten Supervisor to Employee Ratio to 1:10 to Increase Frontline Staffing: More frontline staff is needed to actually reduce the backlog. The Chart at the end of the testimony demonstrates that EEOC's backlog correlates with staffing levels. For instance, in FY08 EEOC investigator ranks shrunk to 646 nationwide, well below the high of 917 last seen in FY00. Meanwhile, the backlog jumped 35% in one year. Conversely, in FY11 with 764 investigators, EEOC trimmed the backlog by 10%, which was the first time the backlog had decreased in 10 years. EEOC's FY13 budget justification estimates that investigator staffing will fall to 713 investigators in FY12. These losses will reverse last year's minor progress on the backlog.

In the event EEOC's budget is restored, it remains critical for EEOC to increase efficiencies that shift resources to the frontline to serve the public. EEOC's FY13 budget estimates that if the requested funding level was authorized, investigator staffing would still remain low at 726.

Any exceptions to the current hiring freeze should be used to hire frontline staff, who serve the public, rather than backfilling or re-employing annuitants in more costly management positions. The Council requests that FY12 language supporting the frontline be included again for FY13:

In order to advance EEOC's backlog reduction goals, the conferees expect the EEOC to prioritize efforts both to address the inventory of private sector charges, such as through hiring or backfilling positions of frontline mission critical staff . . .

In addition to hiring or backfilling, a budget neutral way for EEOC to increase frontline staff is to reduce supervisor to employee ratio. The EEOC is notoriously top-heavy, a point stressed by Republican leadership who pushed for a 2006 field restructuring plan. EEOC's plan promised to improve the staffing ratio to one supervisor for ten employees. While the restructuring, which drew concerns from House and Senate CJS Subcommittees, went forward, improving the staffing ratio of frontline employees remains a broken promise. EEOC should immediately provide this Subcommittee a roster with job titles and numbers for each office and a plan to redeploy supervisors who exceed the 1:10 ratio to the frontline.

(3) Require That EEOC Reduce Rental Costs By Using Voluntary Telework:

EEOC should belatedly heed the Administration's call for efficiency and cost savings, per the Telework Enhancement Act of 2010, by using expanded telework to reduce rental costs. The Council is also aware telework is well supported by the leadership of this Subcommittee. EEOC's Office of Inspector General supports the premise, "we believe the EEOC is in an ideal position to use [frequent] telework [footnote: OIG defines frequent telework as telework scheduled to be performed a minimum of two or more days per week.] to achieve major infrastructure cost savings." Management Advisory on the Potential for Real Estate Cost Savings Through Telework (OIG-2011-02-AEP). In addition, prompted by the President's Telework Initiative, EEOC paid Deloitte Consulting LLP, to examine the benefits and savings using telework. The report notes that use of telework provides direct space savings and reflects on components important for today's workforce – innovation and flexibility. Nevertheless, EEOC continues leasing the same or even greater space, not accounting for the reduction of needed space if employees voluntarily teleworked most days. Missed opportunities for space/rental savings could be shifted to support frontline resources.

Bill Language Should Retain Oversight of EEOC Restructuring:

EEOC's 2006 field 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. EEOC has stated in the past that it plans to restructure its headquarters. The intent of HQ and Office of Federal Operation 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, because this remains a topical concern. Additionally, Congress should ensure 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: EEOC's new strategic plan resurrects a controversial proposal from FY10 to change the Federal hearing process, which would cut off discovery and deny hearings for many Federal employees who claim discrimination in certain employment actions. In these "fast-tracked" cases, the EEOC Administrative Judge (AJ) is forced to accept the investigative record submitted by the agency alleged to have committed discrimination. The Council represents these AJs, who oppose mandatory tracking, because it re-writes the regulations to remove judicial independence and interferes with fair hearings. While the strategic plan now uses the term Federal case categorization system instead of track system, entry fields for "tracks" already appear in the EEOC's IMS data system. In addition, EEOC has resurrected a plan to allow Federal agencies variances from EEO regulations. The Council urges that such pilots provide for complete, timely, impartial investigations, and opt-out rights. Also, outside stakeholders must be given an opportunity to weigh in. Thus, the Council supports including language similar to the FY10 Conference 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. EEOC should ensure that its operating plan for FY13 projects necessary funding for employee overtime payments for the claims process phase of the arbitration decision that will conclude with the issuance of payment to employees, where appropriate, by the first quarter of FY13.

Conclusion:

In closing, I want to again thank the Chairman, Ranking Member and the Subcommittee for inviting me to testify. I hope my statement provides insight into EEOC's difficult challenges. I urge the Subcommittee to include bill and report language in the FY13 funding measure which: (1) supports additional funding for EEOC, in the amount of \$374M; (2) directs EEOC to backfill frontline staff positions which have been lost and not replaced during the current hiring freeze, which began in January 2011; (3) directs EEOC to implement efficiencies, such as 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	FY11
1 Full Time Employees	2,924	2,787	2,617	2,462	2,349	2,250	2,137	2,174	2,192	2,385	2,454
2 Investigators	846	829	785	730	711	653	650 est.	646	650	717	764
3 Backlog	32,481	29,041	29,368	29,966	33,562	39,946	54,970	73,941	85,768	86,338	78,136
4 % Backlog increase	N/A	-10%	+1%	+2%	+12%	+19%	+38%	+34.5%	+16%	+7%	-10%
5 Charge Receipts Filed	80,840	84,442	81,293	79,432	75,428	75,768	82,792	95,402	93,277	99,922	99,947
6 Resolutions	90,106	95,222	87,755	85,259	77,352	74,308	72,442	81,081	85,980	104,999	112,499
7 Avg. Charge Processing	182	171	160	165	171	193	199	229	294	313	293