

**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
FY14 APPROPRIATION FOR EEOC,
INCLUDING RESTORING FUNDING FOR EEOC TO AVOID FURLOUGHS AND
REDUCE 70,312 CASE BACKLOG AND 9 MONTH PROCESSING TIMES
AND OVERSIGHT FOR EFFICIENCIES SUCH AS FULL SERVICE INTAKE
March 21, 2013**

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 53 offices around the country. I want to thank you for the opportunity to share our views today on funding EEOC for FY14. The Council expresses our appreciation that, despite an immensely tight budget year, this Subcommittee recommended restoring EEOC's FY13 budget to \$367M, i.e., the same funding level as FY10/11 prior to a 2% across the board cut in FY12 that reduced the budget to \$360M. Unfortunately, the original FY13 continuing resolution (CR) carried over the FY12 cut for the first two quarters of FY13. Now with sequestration, EEOC must cut an additional \$18M or 5% in FY13. These cuts come on the heels of five years of record high EEOC charge filings. Prior to sequestration, EEOC had already lost 10% of its staff, leaving the agency with only 2,245 FTEs nationwide. Now, EEOC intends to furlough the entire staff, but not contractors, for 8.5 days, to absorb a shortfall that the agency stated it was unable to find from other expenses.¹ EEOC estimates sequestration cuts will cause the backlog to climb from 70,312 in FY12 to 98,000 by FY14. The current nine month processing delays will only get worse. Therefore, the Council urges this Subcommittee to stop sequestration or at least for FY13 support the Senate Appropriations Committee substitute CR, H.R. 933, which funds EEOC at \$370M,² a level that should avoid furloughs. The Council requests this Subcommittee's continued support to ensure that EEOC can effectively fulfill its vital mission to enforce workplace discrimination laws that help Americans get and keep jobs, by including bill and report language for FY14 which: (1) supports restoring EEOC's funding to at least \$367M, i.e., FY10/FY11 level as was recommended in H.R.112-463; (2) directs EEOC to avoid furloughing frontline staff by cutting unnecessary contracts, travel, training and conferences; (3) directs EEOC to use any authorized hiring to backfill frontline positions; (4) requires EEOC to implement efficiencies, like piloting the Cost Efficient Full Service Intake Plan and saving on space through voluntary expanded telework; (5) maintains oversight of headquarters and field restructuring, including the Office of Federal Operations; and (6) requires EEOC to finally pay its debt to employees for willfully violating overtime laws since 2006, pursuant to the Federal arbitrator's final decision of March 23, 2009.

¹ To reduce the number of furlough days, the agency should cut contracts, training conferences for the public, and management travel.

² The Council supports this full amount, notwithstanding that it is subject to a 1.877% across the board reduction.

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), Genetics Information Nondiscrimination Act (GINA) and the Lilly Ledbetter Fair Pay Act. In the last five year period, a record number of applicants and workers came to the EEOC for help getting a fair shot in the workplace. The good news is that for the second consecutive year, EEOC was actually able to modestly reduce its backlog of cases by 10%. The bad news is that EEOC still ended FY12 with a staggering 70,312 case backlog and dismal 9 month average processing times, which will only get worse due to shrinking staff and fewer available work days, resulting from furloughs. Delays caused by the backlog are bad for workers and employers. Also, constituent complaints to Congressional offices will increase. This Subcommittee can help by supporting additional funding for EEOC, in the amount of at least \$367M and providing report language directing EEOC to implement common sense efficiencies, like the full service intake plan.

Sequestration is Detrimental to EEOC's Ability to Carry Out its Civil Rights Mission:

Sequestration puts a particular strain on EEOC, because the agency is already so small (2,245 FTEs nationwide) and most of its budget goes to payroll and rent. Moreover, while some lawmakers have referenced a plan to hire one new employee for three departing employees, EEOC's hiring freeze has allowed almost no backfills. While some lawmakers have advocated for 10% staff reductions through attrition, EEOC has already met that reduction. Discrimination charge filings have gone up, with 999,412 filed in FY12, although EEOC staffing has declined.

EEOC's previously reduced budget of \$360M stands to be slashed to \$342M, below FY09 levels, by September 30, 2013. To absorb sequester cuts, EEOC intends to furlough its entire staff for 8.5 days from April 22 through September 6, 2013. This is a 10% reduction in staff available during this period. Fewer staff working fewer days and keeping intake open to accept discrimination charges, will cause complaints to stack up.

The negative impact of the 1995 government shutdown on EEOC is instructive of the harm that will be caused by sequestration. During the shutdown the backlog jumped to over 97,000, calls were not returned and victims of discrimination were fired in the interim. Charging Parties, who were dying of cancer and AIDS, saw their depositions delayed. Settlements fell through.

While furlough days under sequestration will be spread out, the entire agency staff will be taken away from their workload for 8.5 days. EEOC estimates that by FY14 the backlog will jump to 98,000. The Senate substitute CR, H.R. 933, funding EEOC for FY13 at \$370M, is a better alternative, because if EEOC properly prioritizes, then it should avoid damaging furloughs.

This Subcommittee should direct EEOC to avoid frontline staff furloughs by cutting unnecessary expenses. In particular, EEOC needs to reign in contracts for work or items that can be found in-house, e.g., evaluations of work practices, tracking service of EEOC related legislation, conference space, and mediations within 75 miles of offices. Additionally, while other agencies are canceling training events, EEOC's website is advertising for a Leadership Training Workshop in Chesapeake Bay. EEOC pays for managers to travel to meetings, for office visits, and to perform meet and

greet functions at EEOC's public training events. This travel wastes money, given that EEOC has equipped all offices with video conference capabilities, including new television monitors.

Support Restoring EEOC's Funding for FY14 to at least \$367M:

FY12 represents the EEOC's fifth year of historically high charge filings, even as EEOC has lost 10% of its staff since FY11. High charge filings will not drop anytime soon, due to EEOC's expanded enforcement authority over three new laws (ADAAA, GINA, and Ledbetter) since 2009 and the still struggling economy. The FY12 charges of discrimination totaled 99,412. Since 2009, there has been an 18% increase in disability filings, which are complex and time intensive. Record high retaliation charges may also be attributed to EEOC's processing delays.

The chart included with this testimony illustrates EEOC's troubling customer service trends. EEOC's backlog crisis was at its worst when it jumped 35% in FY07 and 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. In this context, 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 and FY13 budget/sequester cuts, EEOC is going to return to the days of exploding backlogs. EEOC's current staffing of 2,245 has already declined to close to FY08's rock-bottom levels. EEOC intends to reduce funds to state and local enforcement agencies, causing over 2,100 charges to come back to the EEOC and add to the backlog. Therefore, the Council respectfully requests that this Subcommittee support additional funding for EEOC to take charge of its backlog and allow for backfills of frontline positions.

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

For several years, the Council has shared with this Subcommittee common sense solutions that EEOC should implement to improve services. Unfortunately, the agency has continually failed to take action. Therefore, the Council respectfully requests report language to provide oversight.

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

For three years, EEOC has not acted on a Cost Efficient Full Service Intake Plan. On February 22, 2012, EEOC approved a new strategic plan, which completely fails to mention the plan.

This Subcommittee's FY13 Report Language emphasized, "The Committee expects the EEOC to continue to prioritize inventory reduction and to examine new ways to address the backlog and increase productivity." The Union's intake plan does exactly this by 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. The plan produces costs savings by not pushing the intake work to GS11-12 investigators. In turn, investigators can focus on investigating cases and reducing backlog and processing times.

The plan also 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. It is more critical than ever to transition away from the flawed in-house call center

model because staffing has plummeted from 64 to 23 IIRs answering 25,000 calls a month. This IIR shortage has caused wait times to average 28 minutes.

EEOC's Quality Control Strategic Planning Team rushed to have a meeting about the intake plan with Council 216 in February. The logical next step would be an intake plan pilot, but the agency has not agreed to any tangible next steps. Therefore, the Council respectfully requests that report language direct EEOC to finally implement a pilot of the Full Service Intake Plan.

(2) Make EEOC Flatten Supervisor to Employee Ratio to 1:10 to Increase Frontline Staffing:

EEOC's 2006 field restructuring promised to improve the ratio to 1:10. This has not happened. Any exceptions to the current hiring freeze should be used to hire frontline staff to serve the public, instead of more costly managers. The Council requests that FY12 conference language supporting the frontline be included again for FY14:

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 . . .

Reducing supervisor to employee ratios is also a budget neutral way for EEOC to increase frontline staff. EEOC should 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 to achieve major infrastructure cost savings." Management Advisory on the Potential for Real Estate Cost Savings Through Telework (OIG-2011-02-AEP). [footnote omitted]. Nevertheless, EEOC continues leasing the same or even greater space, not accounting for the reduction of needed space if employees voluntarily teleworked most days. Space/rental savings could then be shifted to backfilling frontline positions.

Bill Language Should Retain Oversight of EEOC Restructuring:

EEOC's 2006 field restructuring and the way it was carried out drew concerns from House and Senate CJS Subcommittees. The field restructuring added bureaucratic layers, but no frontline staff. EEOC has stated in the past that it plans to restructure its headquarters. 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 recently revised regulations to allow Federal agency complaint processing pilots. EEOC should only approve pilots that call for complete, timely, and impartial investigations. Requiring EEOC to report any approved pilots would provide valuable oversight.

EEOC's Strategic Plan calls for "[r]igorous implementation of a new case management system for federal sector hearings and appeals" by FY13. Arbitrary designations resulting from a new case management system have the potential to undermine regulatory authority granting Administrative Judges (AJs) independence and control over hearings/discovery. The system appears strikingly similar to its controversial predecessor, the "Fast Track" proposal. "Fast Track" would have adopted the agency's record, which would prevent victims of discrimination from developing an adequate record to support their claims. Subpoena authority for AJs is also needed to compel testimony of non-agency witnesses. Thus, Council 216 supports language similar to the FY10 Conference Committee report requiring oversight of Federal sector reform.

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 FY14 projects necessary funding for employee overtime payments for the current claims process phase of the arbitration decision.

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. Council 216 urges the Subcommittee to include bill and report language in the FY14 funding measure which: (1) supports restoring EEOC's funding to at least \$367M, i.e., FY10/FY11 level as was recommended in H.R.112-463; (2) directs EEOC to avoid furloughing frontline staff by cutting unnecessary contracts, travel, training, and conferences; (3) directs EEOC to use any authorized hiring to backfill frontline positions; (4) directs EEOC to implement efficiencies, like piloting the Cost Efficient Full Service Intake Plan and saving on space through voluntary expanded telework; (5) maintains oversight of headquarters and field restructuring, including the Office of Federal Operations; and (6) requires EEOC to finally pay its debt to employees for willfully violating overtime laws since 2006, pursuant to the Federal arbitrator's final decision of March 23, 2009.

CHART: EEOC'S TROUBLING CUSTOMER SERVICE TRENDS

	FY01	FY02	FY03	FY04	FY05	FY06	FY07	FY08	FY09	FY10	FY11	FY12
1 FTEs	2,924	2,787	2,617	2,462	2,349	2,250	2,137	2,174	2,192	2,385	2,454	2,346 ³
2 Investigators	846	829	785	730	711	653	650 est.	646	650	717	764	700 est.
3 Backlog	32,481	29,041	29,368	29,966	33,562	39,946	54,970	73,941	85,768	86,338	78,136	70,312
4 % Backlog increase	N/A	-10%	+1%	+2%	+12%	+19%	+38%	+34.5%	+16%	+7%	-10%	-10%
5 Charges Filed	80,840	84,442	81,293	79,432	75,428	75,768	82,792	95,402	93,277	99,922	99,947	99,412
6 Resolutions	90,106	95,222	87,755	85,259	77,352	74,308	72,442	81,081	85,980	104,999	112,499	111,139
7 Avg. Charge Processing	182	171	160	165	171	193	199	229	294	313	293	288

³ As of January 2013 the agency is down to 2,245 FTEs.