

**STATEMENT OF
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U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
BEFORE THE
SUBCOMMITTEE ON WORKFORCE PROTECTIONS
COMMITTEE ON EDUCATION AND THE WORKFORCE
U.S. HOUSE OF REPRESENTATIVES**

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INTRODUCTION

Good afternoon Mr. Chairman, Mr. Ranking Member, and Members of the Subcommittee. Thank you for inviting me to testify today on behalf of the Equal Employment Opportunity Commission (EEOC). The EEOC is a five-member bipartisan commission responsible for the enforcement of federal employment anti-discrimination laws. I have served as Chair of the EEOC since April 2010 with Commissioners Constance Barker, Chai Feldblum, and Victoria Lipnic. I'm pleased to let you know that, just last week, Commissioner Jenny Yang was sworn in as our newest member, so we are now operating with a full complement of Commissioners.

I appreciate the opportunity to appear before you to discuss the plans, challenges, and needs of the EEOC. It has been a privilege to serve as Chair of the EEOC for the past three years, and it is an honor to represent the agency today and in the many meetings with individual members of Congress I have attended over the past few years. Thank you for your past support of the EEOC, and I look forward to continuing to work with the members of this subcommittee and all members of Congress to advance the mission of the EEOC in the future.

FISCAL REALITIES

Mr. Chairman, before I discuss the agency's plans and accomplishments in greater detail, I would like to provide some context about the current state of the EEOC. I have always considered the careful and thoughtful stewardship of the agency's resources to be one of my chief responsibilities, but that responsibility has become more important given the significant reductions to the EEOC's budget in fiscal years 2012 and 2013.

Our agency, like all federal agencies today, faces many challenges. We are, first and foremost, an enforcement agency with limited resources. We must operate strategically to fulfill our enforcement responsibilities, engage in extensive outreach efforts to promote voluntary compliance, educate the public about the laws that we enforce, and work diligently to serve the public in the most efficient and effective manner possible. I am pleased to report that over the past two fiscal years we have been able to resolve more charges than we have received each year,

which has led to a nearly 20 percent reduction in our pending inventory. We have also reduced the average processing time for Federal sector resolutions.

Approximately 80 percent of the EEOC's budget consists of fixed expenses of primarily payroll and rent. An additional 9-10 percent is dedicated to our partners and your constituents in state and local Fair Employment Practices Agencies, also known as FEPAs. Therefore, our fixed costs of approximately 90 percent of the agency's budget leaves us with little discretion to shift additional resources to meet the increasing demands presented by the historically high number of private sector charges and federal sector complaints of discrimination.

Like the rest of the Federal Government, the EEOC is also dealing with the across-the-board cuts required under sequestration. To meet the demands of sequestration, total programs and projects were reduced by 5 percent from the FY 2013 appropriated level, which have required reductions in our programs, as well as employee furloughs of up to eight days. In an effort to reduce the impact on agency operations and staff, we plan to evaluate our budget situation after the first five days of furloughs to determine if the remaining three days are necessary.

Throughout this process we are closely monitoring our operating plan for additional cost savings. There can be no doubt, however, that sequestration has made it more difficult to deliver the services Congress requires and the American people expect of the EEOC. The men and women of our agency have risen to the occasion, but there is no doubt that morale has been impacted. To this end, I have instructed all agency leaders to keep their staff well informed of the sequestration process and do what they can to mitigate the impact of the sequester on our employees and the people we serve. I also want to say here, publically, thank you to all of my colleagues at the agency, especially those on the front-lines in the field, for their great service to this nation.

STRATEGIC VISION

A little more than a year ago, the EEOC adopted a new Strategic Plan, which outlines three strategies to advance our mission of stopping and remedying unlawful employment discrimination. Our strategic objectives are:

1. Combating employment discrimination through strategic law enforcement;
2. Preventing employment discrimination through education and outreach; and
3. Delivering excellent and consistent service through a skilled and diverse workforce and effective systems.

EEOC's Strategic Plan communicates to our staff, our stakeholders and to the general public that we are committed to making the most strategic use of our resources, intensifying and enhancing our efforts to prevent unlawful discrimination in the workplace, and ensuring that we serve the public well. It is through a strategic approach that we are striving to build "ONE EEOC" – an agency that operates in a coordinated and seamless manner so that we are responsive to those who need our services and that our efforts have a tangible impact on the workplace.

A strategic approach will also help the agency manage our charge and complaint inventory in the private, public and Federal sectors. Like my predecessor, Chair Gilbert

Casellas, who led the Commission in adopting the Priority Charge Handling Procedures in 1995, and Chair Cari Dominguez, who led the Commission in adopting the recommendations of the Systemic Task Force, I have worked together with my Commission colleagues, the General Counsel and agency staff to ensure that we make the best use of available resources. The Strategic Plan furthers those efforts.

The plan was developed with unprecedented opportunities for a wide range of stakeholders, EEOC staff, and interested members of the public to provide input. We have continued to engage the public as we have entered strategic plan implementation, including during last year's development of the Strategic Enforcement Plan and currently the Quality Control Plan for Investigations and Conciliations.

Although the EEOC is in the early stages of implementing the new Strategic Plan, as detailed in our Fiscal Year 2012 Performance and Accountability Report, we have already begun to make meaningful progress toward more strategic and focused use of our resources.

STRATEGIC ENFORCEMENT

A key example of our progress is the Commission's adoption of the Strategic Enforcement Plan. Informed by staff and public input and in keeping with our belief that we will execute our mission more efficiently and effectively by targeting specific issues of discrimination where federal enforcement is needed most and will have the greatest impact, the Commission identified six enforcement priorities:

1. Eliminating barriers in recruitment and hiring;
2. Protecting immigrant, migrant and other vulnerable workers;
3. Addressing emerging and developing issues;
4. Enforcing equal pay laws;
5. Preserving access to the legal system; and
6. Preventing harassment through systemic enforcement and targeted outreach.

These priorities were reflected most recently in the EEOC's successful litigation against Henry's Turkey Service. Our agency secured a historic \$240 million jury award for a group of 32 men with intellectual disabilities who were subjected to severe abuse, segregated housing, and other forms of harassment and discrimination over the course of more than two decades. This is the largest award in the EEOC's history and is the second largest award ever in an employment discrimination case. It took years for our staff to investigate and successfully litigate this case, but because of that tenacity, we were able to restore the dignity of the workers in this case and send a strong message to all that the unlawful conduct in this case will not be tolerated in the United States. We were able to vindicate the right to work free from unlawful discrimination for all.

The EEOC is also working collaboratively with other Federal agencies, including the Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) and the Department of Justice's Civil Rights Division. EEOC has strengthened its longstanding Memorandum of Understanding with OFCCP to promote greater efficiency and coordination in

support of the agencies' shared mission of ensuring equal employment opportunity under Title VII of the Civil Rights Act of 1964 and Executive Order 11246. EEOC is also partnering with DOJ to more effectively investigate violations of federal equal employment laws by state and local employers.

MAXIMIZING IMPACT

At many points in the EEOC's history, the agency has prioritized directing agency resources to prevent and remedy practices that adversely impact many workers and job seekers. With the adoption of the Systemic Task Force's recommendations in 2006, the EEOC renewed its emphasis on systemic enforcement - those cases that involve policies or practices that affect multiple employees, an entire industry, an occupation, a profession, or an entire geographic area. While systemic cases are highly complex and resource-intensive, they typically affect a large number of employees or job-seekers directly. By increasing public awareness and changing company policies and industry standards, these cases also have indirect effects on untold numbers of others.

To this end, both the Strategic Plan and Strategic Enforcement Plan reiterate the importance of systemic enforcement of priority issues. In FY 2012, the EEOC resolved 240 systemic investigations, securing monetary benefits of \$36.2 million for 3,813 individuals.

Examples of systemic resolutions achieved through the conciliation process include a \$5.4 million settlement for a class of women in Texas, Louisiana, Mississippi, Alabama, and Florida who sought, but were denied employment as temporary workers for the oil spill response in the Gulf during 2010. Another successful conciliation involved Pepsi Beverages (Pepsi), in which the company agreed to pay \$3.13 million and provide job offers and training to resolve a charge of race discrimination. Based on the investigation, the EEOC found reasonable cause to believe that the criminal background check policy formerly used by Pepsi discriminated against African-Americans in violation of Title VII. Pepsi agreed to modify its background check policy and to report to the EEOC concerning implementation of its new policy.

The agency has also seen continued success in its systemic litigation program. In the last fiscal year, the EEOC resolved 21 systemic cases, four of which included at least 50 victims of discrimination. Just last month, the EEOC settled a systemic hiring discrimination case against Presrite Corporation for \$700,000 and job offers for over 40 women. The lawsuit alleged that Presrite, a Federal contractor, consistently passed-over female applicants in favor of less-qualified males for entry-level positions at three Ohio plants.

The largest litigation monetary recovery of FY 2012 was in *EEOC v. Yellow Freight*, where the EEOC secured an \$11 million settlement for 300 victims of a racially hostile work environment at the Chicago trucking firm. Numerous employees complained to the company about hangmen's nooses being displayed, racially offensive graffiti in the workplace, and other forms of race-based discrimination. Nevertheless, the company failed to correct these problems. In addition to obtaining monetary recovery, the settlement requires the company to retain consultants to examine its discipline and work assignment procedures and recommend changes to prevent unlawful discrimination in the future.

In addition to prioritizing systemic enforcement, the Strategic Plan also sets forth a measure to ensure that more of our conciliations, consent decrees, and legal resolutions benefit not only the charging party but also current and future employees and job applicants by including equitable relief designed to end and prevent the recurrence of discrimination.

PREVENTION THROUGH EDUCATION AND OUTREACH

In addition to traditional forms of administrative and legal enforcement, strategic law enforcement also requires consistent and innovative education and outreach efforts aimed at raising awareness amongst employers, employees, and job seekers about their rights and responsibilities under the laws the EEOC enforces. These efforts encourage voluntary compliance and are another cost-effective way to have the greatest impact on the workplace. To this end, prevention of unlawful discrimination through education and outreach is now clearly identified as a top priority for the agency in the Strategic Plan and Strategic Enforcement Plan.

The agency is currently targeting outreach to vulnerable workers and underserved communities and to small and new businesses. The agency is also working quickly to update our guidance and other documents on the requirements of employment antidiscrimination law and make those materials more accessible and user-friendly to non-legal audiences and the general public.

Again, though we are in the early stages of Strategic Plan implementation, we have already made significant progress in enhancing our outreach efforts. For example, even before the new plan took effect, I asked Commissioner Constance Barker to lead a Small Business Task Force. Already, the task force has identified mechanisms to improve our outreach to small businesses.

Moreover, in the Federal sector, the EEOC issued two significant reports on the barriers facing African Americans and Asian American and Pacific Islanders in Federal employment to educate employees and managers about particular issues for these communities.

Finally, the members of the Commission, the General Counsel, and many employees of the EEOC participate in events across the country in a continuing effort to inform the public about the laws that we enforce. In Fiscal Year 2012 alone, agency staff reached more than 350,000 people in thousands of no-cost and fee-based events held across the country; Commissioners Chai Feldblum and Vitoria Lipnic made joint presentations on the *Americans with Disabilities Act* to audiences in Seattle, Miami, Boston and Los Angeles; and all Commissioners and the General Counsel addressed bar associations, continuing legal education programs, and other events throughout the nation. Agency leadership also presented at EEOC-sponsored training programs.

SERVING THE PUBLIC MORE EFFICIENTLY

The third objective of the Strategic Plan is providing excellent service through a diverse and skilled workforce and effective systems. In this objective, we recognize the importance of ensuring that agency staff are equipped and prepared to deliver excellent service. This objective

recognizes that the EEOC should strive for continued improvements in the timeliness and quality of enforcement activities in the private, state and local government, and Federal sectors.

One of the agency's greatest challenges has been, and continues to be, resolving discrimination charges filed by private and Federal sector employees and job seekers promptly, while at the same time ensuring that the rights of the charging parties and respondents receive appropriate attention and respect. Moreover, one of the overriding concerns among stakeholders has been improving the quality and efficiency of EEOC investigations. To address this concern, the EEOC's Strategic Plan calls for the creation of a Quality Control Plan for investigations and conciliations. The agency is currently developing this plan, and we have again solicited public input concerning improvements in the quality of service provided by the agency and engaged a diverse group of employees in advising the Commission. We expect a plan to be approved by the Commission this year.

Effectively managing and ultimately reducing the inventory of unresolved charges remains an important goal for the EEOC. As noted earlier, since 2010, with the benefit of renewed investment in the staffing, training and technological needs of the EEOC, we have achieved a nearly 20 percent reduction in our inventory of unresolved charges. Moreover, the agency is no longer addressing this issue as a short term or episodic problem and is, instead, working to enhance and reinvigorate existing systems to address this challenge on a sustained basis. The adoption of our Strategic Enforcement Plan will also assist agency leaders and staff in the expeditious management and resolution of private sector discrimination charges by streamlining the number of priorities. While furloughs necessitated by sequestration will impact the Commission's continued ability to slow the growth of our charge inventory in the short-term, setting clear priorities provides guidance to staff, helping them focus and expedite investigations, which will more effectively manage our charge inventory over the long-term.

Finally, with respect to improving customer service, the EEOC's Strategic Plan requires the Commission to make use of technology to improve communication by allowing the public to submit and receive more information electronically. As we have heard from employees and employers, streamlining the private sector charge filing system and making information about the status of pending charges accessible electronically will serve the interests of workers, employers, and the EEOC as we seek to make the best possible use of scarce resources.

The EEOC continued its focus on expanding the use of technology to make the Federal hearings and appeals process faster and more effective. We have implemented an electronic file system, which is designed to allow Federal agencies the ability to securely submit electronic reports of investigation, complaint files, and other documents to the EEOC in support of the Federal hearings and appellate processes. This system is now available to all Federal agencies for their use in transmitting documents electronically to the EEOC. Currently, there are 21 parent agencies and 47 sub-agencies utilizing this technology for electronic document submission and receipt.

MOVING FORWARD

Despite these accomplishments, our rebuilding efforts are incomplete and the progress is fragile. Given the agency's varied enforcement responsibilities, we are constantly challenged to meet the growing public demand for the services we provide. We are mindful of the need to identify ways to reduce spending and have worked diligently to cut costs that will not compromise or undermine our ability to fulfill our mission. EEOC employees have worked to improve operations, provide better service to the public and more effectively and efficiently enforce the Federal laws prohibiting employment discrimination.

The EEOC requested a budget of \$372.9 million for FY 2014, an increase of \$12.9 million from the FY 2012 appropriations. These resources are vital to maintaining the progress made in rebuilding the EEOC's enforcement capacity. Our FY 2014 request will allow us to make continued progress on the charge inventory and in carrying out the agency's critical work and priorities, including serving the public more efficiently and effectively and seeking to prevent discrimination through enhanced education and outreach.

The EEOC is moving forward despite the fiscal challenges and demands we face. The agency is on track in implementing the goals of its Strategic Plan and making meaningful progress towards becoming "One EEOC."

Thank you for this opportunity to highlight some of our recent accomplishments, all of which are helping us to achieve our mission to stop and remedy unlawful employment discrimination. I look forward to working with you in the future and will be happy to answer any questions that you may have.