

**STATEMENT OF
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**BEFORE THE
SUBCOMMITTEE ON FEDERAL WORKFORCE,
POSTAL SERVICE AND DISTRICT OF COLUMBIA
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
U.S. HOUSE OF REPRESENTATIVES**

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Good morning Mr. Chairman and Members of the Subcommittee. I appreciate the opportunity to appear before you today on behalf of Naomi C. Earp, Chair of the U.S. Equal Employment Opportunity Commission (EEOC). I am Carlton M. Hadden, Director of EEOC's Office of Federal Operations.

EEOC Management Directive 715

When I last testified before this subcommittee in 2003 I was pleased to announce the roll out of EEOC's new guidance document for federal agencies, EEO-MD-715. This Directive provides more comprehensive guidance than earlier EEOC management directives. This Directive strongly emphasizes that equality of opportunity for all in the federal workplace is key to attracting, developing and retaining top-quality employees who can deliver results and ensure our nation's continued security, growth and prosperity. The Directive requires federal agencies systematically and regularly to examine their

employment policies and practices to identify and remove barriers to free and open workplace competition. Plans for addressing barriers must be developed by agencies and progress towards removing barriers is monitored by EEOC. The full text of EEO-MD-715 is available on EEOC's website at www.eeoc.gov.

Model EEO Program Elements

An important component of MD-715 is its "Essential Elements" for structuring model EEO programs at federal agencies. EEOC believes that attainment of a model EEO program at an agency will provide the infrastructure necessary for an agency to achieve the ultimate goal of a discrimination-free work environment. In brief, the six elements identified as necessary for a model EEO program are:

- Demonstrated commitment from agency leadership;
- Integration of EEO into the agency's strategic mission;
- Management and program accountability;
- Proactive prevention of unlawful discrimination;
- Efficiency; and,
- Responsiveness and legal compliance.

To achieve a model program, the Directive requires federal agencies to integrate access, inclusion and equality of opportunity into all aspects of their missions and align equal opportunity principles with strategic agency plans and objectives. The Directive also requires agencies to conduct periodic self-assessments of their Title VII and

Rehabilitation Act programs against the six model elements. EEOC provides feedback to agencies' action plans, that identify areas in which their programs need improvement.

EEOC Data on Federal Senior Pay Levels

Each year EEOC publishes an annual report with workforce information from federal agencies. EEOC obtains information for this report from OPM's Central Personnel Data File. In this report EEOC provides data for the category of Senior Pay Level positions, which is a broader category than SES positions in that it includes the SES, Executive Schedule Positions, Administrative Law Judges, Members of Boards of Contract Appeals, Senior Level Scientific or Professional Positions, and Senior Foreign Service Positions. Attached to my statement today are three charts: the first showing data for SES positions, a second showing data for pay levels comparable to the SES at the United States Postal Service, and a third showing data for federal agency Senior Pay Level positions. Each chart shows the respective positions broken out by race, national origin and gender for FY2004-2006.

GAO's 2003 report estimated that more than half of the career SES members employed on October 1, 2000 would leave service by October 1, 2007, and that, using SES appointment trends from fiscal years 1995 to 2000, the only significant changes in diversity would be an increase in the number of white women and an essentially equal decrease in white men. GAO reported that on October 1, 2000, White men constituted 67% of the SES, White women constituted 19%, and minority men and women

constituted about 14%. More recent SES data EEOC obtained from OPM show that for FY2006 white males held 62.2% of SES positions. White women held 22.3% of SES positions in FY2006. All other EEO groups held 15.5% of SES positions in FY2006, up from the figure of less than 14% cited in the GAO study in 2003. The increase in the participation rate for the other EEO Groups, though modest, probably reflects efforts to increase diversity in the SES ranks, but clearly additional efforts need to be made. Data on Senior Pay Level does not reflect significantly different proportions from SES data, but we note that the number of positions in the SPL category is increasing. EEOC would like to conduct more extensive analysis on this category and on other data on federal agency workforces through the new EEOC Fellows program, which I will describe further in a moment. It should also be noted that persons with targeted disabilities held only 0.43% of SES positions in 2006 and only 0.46% of Senior Pay Level positions. EEOC is addressing this issue through a special project called LEAD in coordination with OPM which I will discuss later in my testimony.

How MD-715 Can Help Change Past Trends

The crux of the issue raised by the GAO report is whether past appointment trends of selection into the SES will remain the constant. MD-715 is an important tool to assist agencies in changing past trends in order to promote greater diversity in the SES. Federal agencies must ensure that federal employees, including those at the senior level, are drawn from all segments of society after fair and open competition. Selection, advancement and all other employment decisions must be based solely on merit to ensure

that all receive equal opportunity and to maximize the probability of selecting those with the best skills to do the job. In addition, agencies must maintain an inclusive work environment in which the talents and energy of all individuals are valued, respected and fully utilized.

In its 2003 study, GAO found that the "vast majority of replacements" for departing SES members come from the ranks of federal employees at the GS-15 and 14 levels. Therefore, EEOC believes that it will be critical for agencies to pay special attention to potential barriers to entry into these successor pools of GS-15s and 14s, with a focus on those positions that typically lead to senior level management. In addition, potential barriers should be examined in training and other developmental opportunities that increase qualifications for future SES positions. Finally, as future SES positions may also be filled by candidates moving from private industry rather than from the federal ranks, potential barriers in areas like executive recruitment efforts also should be examined.

EEOC's Early Experience in Reviewing Agency MD-715 Submissions

Because instructions for the guidance were not yet ready when the Commission approved MD-715, EEOC staff provided agencies with additional time in FY2003 to submit workforce reports. The Commission used that time to prepare the instructions to accompany MD-715. These instructions were issued in 2004 and are available for review on EEOC's website. EEOC has provided extensive training to federal agencies on the

new instructions. Agencies submitted their first MD-715 reports covering FY2004 in January 2005 and their second-year reports covering FY2005 in January of FY2006. Reports covering FY2006 have been coming in over the last few months. In their annual submissions, agencies provide information about workforce data broken out by race, national origin, gender and other categories. Thus EEOC now has three years of data for many agencies from this new Directive.

In reviewing federal agency MD-715 submissions over the last three years EEOC has found that, particularly in FY2004 and 2005 submissions, most agencies were able to identify when certain EEO groups had participation rates below availability. Even in MD 715's infancy, however, EEOC has found it to be a helpful tool to analyze diversity in the SES ranks. EEOC's review of MD 715 submissions revealed that over the last three years, approximately one-third of the reporting agencies and components have examined their workforce environment for barriers facing minorities attempting to enter the GS-14 and GS-15 feeder groups.

The most commonly identified barriers to full participation were advanced degree requirements; geographic location/undesirability of facilities; limited opportunities for recruitment/hiring; lack of career ladder positions; and lack of career development programs. Despite some of those barriers, some agencies have reported an increase in the diversity of the GS-14/15 feeder groups: of those agencies that reported on that issue, approximately 57% reported increased diversity in GS-14 and/or 15 positions and approximately 43% reported no increased diversity in those groups.

Each year EEOC thoroughly reviews agencies' self-analyses of their workforces and offers critical comments and technical assistance to agencies to help them to identify barriers, including those in the SES. EEOC feedback and technical assistance on MD-715 has taken many forms. For example, since the beginning of fiscal year 2005, EEOC staff has made 206 in person technical assistance visits to various agencies and subcomponents, responded to telephone requests for technical assistance, and responded via email to agency questions on MD-715. Interestingly, EEOC staff analysts have noticed that the tenor of assistance requested and questions asked has changed over the last three years: As agencies have become more comfortable with the concept and practice of workforce self-analysis, inquiries have moved from simple counting/numbers questions to more sophisticated questions on statistical analysis and barrier removal. And as the questions have become more sophisticated, the answers to removing barriers have become more creative.

As noted above, in addition to providing training and technical assistance, EEOC reviews each reporting agency or subcomponent's yearly MD-715 submission and provides written feedback. Mindful of the GAO report on the Senior Executive Service and that MD-715 provides one avenue for the government to affect SES diversity, EEOC has reviewed and highlighted agencies' progress in that regard in a number of its feedback letters. Examples include the following:

- In its 2005 report, the Army submitted a plan to eliminate a barrier to the participation of White women, Blacks, Hispanics, and Pacific Islander women in

certain grades and career programs. EEOC recommended the Army also focus its examination on possible barriers to low participation rates of these groups in Senior and Executive pay plans.

- In its 2005 submission, the U.S. Postal Service (USPS) recognized the need to develop employees to replace those in more senior level positions who will be retiring over the next few years. USPS identified the lack of a self-nominating process as a barrier to equal access in training and development opportunities. USPS also identified inadequate feeder pools as a barrier. EEOC recommended to USPS that it conduct further analysis into the specific causes of the feeder pool inadequacies and develop plans to address them.

- In its 2005 report, the Social Security Administration (SSA) identified a barrier to the participation of Hispanic employees in grade levels GS-12 through SES. Upon investigation, SSA determined that most of the senior level positions were located in headquarters while the majority of Hispanic employees worked in field offices. The agency therefore undertook recruitment efforts better aimed at reaching qualified Hispanic applicants for positions in all grades and is testing the feasibility of expanding the area of consideration for headquarters vacancies to qualified employees in SSA field offices. EEOC noted that the availability of applicant flow data (the collection of which SSA is piloting in two regions) should prove to be a valuable tool to assess potential barriers and formulate plans to eliminate any such barriers.

- In the National Aeronautical and Space Administration's (NASA) FY 2005 report, the agency identified a barrier to the participation of all women as

well as Hispanic, Black, and Asian-American/Pacific Islander men in its senior level (GS 14, 15, and SES) positions. Upon investigation, NASA determined that it tended to fill those positions internally, from an applicant pool which also had a low participation rate for these EEO groups. Based on this finding, NASA took steps to increase the participation of these EEO groups from the talent pool. EEOC's analysis revealed slight increases in the number and rate of participation at the GS-14 level for Hispanic, White, Black, and Asian-American/Pacific Islander females as well as Black males; for Hispanic males along with White and Black females at grade level 15; and for White and Black females at the Senior Executive Level. As a result of its analysis, EEOC suggested that NASA also examine a possible barrier to the retention of White, Black, and American-Indian/Alaska Native (AI/AN) males as well as Hispanic and AI/AN females because the data reflected that these groups of employees separated from NASA's workforce at rates above their rates of participation in the agency's total workforce.

Federal agencies have a great tool in MD-715. The guidance offers a step-by-step approach by which agencies can conduct a self-analysis, but agencies must be willing to use it. Supreme Court decisions have ruled that agencies cannot simply "hire by numbers to increase participation rates of certain EEO groups." Instead, the use of self-analysis is an accepted and legal method to uncover and eliminate barriers to equal employment opportunity. We will not rest until agencies fully identify all these barriers in their

workplaces and eliminate them to create an inclusive work environment in which the talents and energy of all individuals are valued, respected and fully utilized.

Relationship Management Initiative

Along with the release of MD-715, OFO embraced organizational transformation to better deliver services to its federal sector customers. OFO changed from a reactive, process-oriented organization to one that emphasizes consultation with agencies to enable them to achieve a barrier-free workplace. This proactive stance enables OFO to assist agencies in focusing on the identification of problems before they escalate, as well as providing them recommendations and practices which will enable them to prevent discrimination.

A key strategy OFO employs to be more responsive to our federal sector customers is utilization of our recently created Relationship Management project. This project, modeled after the private sector's approach to customer service, brings OFO personnel together with EEO staff from agencies in non-adversarial partnerships to examine methods of helping these agencies foster an inclusive work culture and successfully implement the essential attributes of MD-715's Model EEO Program. The EEOC Relationship Management project has several goals. These include:

- ▶ Improving customer service and relationships between EEOC and agencies;

- ▶ Helping agencies achieve a model EEO program in the context of MD-715;
- ▶ Addressing specific agency needs; and
- ▶ Changing the way OFO staff interacts to provide technical assistance to agencies.

The application of the strategies and tools developed from these experiences places OFO in a better position to establish a customer-centered organization that can deliver relevant information and solutions to federal agencies.

Revolving Fund Training

In addition, through our Revolving Fund, EEOC develops and delivers training to federal agencies and other interested parties on a wide variety of federal sector non-discrimination issues. For example, since the summer of 2004, OFO has conducted 71 training sessions on MD-715 at numerous agencies and has provided workshops at a series of national training conferences, including the Federal Dispute Resolution Conference, Blacks in Government National Training Conference, Federally Employed Women National Training Conference, Federal Asian Pacific American Council National Training Conference, the National Image Conference, and EEOC's EXCEL Conference. The topics covered at these training and workshop sessions ranged from basic implementation of MD-715's reporting requirements to a more sophisticated two day course on barrier analysis. Additionally, EEOC currently is undergoing several reviews

of the complaint process itself to determine if it can be streamlined and made more responsive.

EEOC Fellows

EEOC is also taking steps to provide opportunities for Federal employees, university professors, and graduate students interested in equal opportunity, public administration, economics, employment law, statistics, and other relevant fields, to participate in research and projects related to discrimination and fair and inclusive workplaces in the federal government. Participants, who will be selected on a competitively basis, will share their knowledge as well as gain a broader understanding of, and contribute to, EEOC's vision and mission while strengthening partnerships in the Federal and educational community.

We will recruit three types of fellows: Distinguished Fellows, Meritorious Fellows, and Exchange Fellows. Distinguished Fellows are GS-14s and above or equivalents in the academic community interested in assignments of six months or more; Meritorious Fellows are GS-13s and below and equivalents in the academic community interested in assignments of less than six months; and Exchange fellows are EEOC employees and other Federal employees interested in exchanging jobs based on mutual agreement.

OFO plans to use these Fellows to enhance our analytical ability in the area of federal sector oversight activity. As an example, OFO plans to recruit Labor Economists as Fellows to provide more analysis of MD-715 work force data, such as discerning trends and other longitudinal studies. OFO believes this will assist EEOC in identifying trends and issues such as the SES issue we are discussing today and, hopefully will assist EEOC in taking a proactive role in preventing discrimination and increasing diversity.

Project LEAD

To address the declining number of employees with targeted disabilities in the federal workforce, EEOC has initiated project LEAD (Leadership for the Employment of Americans With Disabilities). Led by EEOC Commissioner Christine Griffin, the overarching goal for this initiative is to significantly increase the population of individuals with disabilities employed by the federal government. This national outreach and education campaign is designed to:

- increase the awareness of hiring officials about the declining numbers of people with disabilities in federal employment;
- reverse the trend of decreasing participation in federal employment ;
- educate federal hiring officials about how to use special hiring authorities to bring people with disabilities on board, particularly those with severe disabilities;
- educate applicants with severe disabilities about how to apply using the special hiring authorities available; and
- provide information to assist employers with reasonable accommodations.

The LEAD Initiative includes Educational Events and Seminars and Focus Group Sessions with federal managers, hiring officials and other interested parties to explore the issue of declining employment for individuals with severe disabilities, and come up with concrete solutions to address the problem.

Thank you. I will be glad to answer any questions you may have.