NLWJC - Kagan

DPC - Box 042 - Folder 002

Race-Race Initiative Policy - Civil Rights Enforcement [5]

Race Initiative Policy –
Civil Rights Enforcement

EK –
Memo I
mentioned in
e-mail.

Deich
Haas
Anderson
Lew
Gotbaum

ONE AMERICA IN THE 21ST CENTURY

The President's Initiative on Race

The New Executive Office Building
Washington, DC 20503
202/395-1010

TO: Franklin Raines
Director, Office of Management and Budget

FROM: Judith A. Winston
Executive Director, President's Initiative on Race

SUBJECT: Civil Rights Enforcement Budget Cross-Cut

DATE: November 18, 1997

Thank you again for inviting me to the OMB budget cross-cut briefing on civil rights enforcement. I appreciate having the opportunity to provide input to the development of the President's FY99 Budget proposal. I regret that I will not be able to attend part 2 of this budget briefing on Thursday, November 20 because I will be in Santa Fe, New Mexico to attend a meeting of the National Congress of American Indians.

Tomorrow, the President's Race Advisory Board will have its third all-day meeting at the University of Maryland. You may be interested in knowing that the Advisory Board members will have a short discussion during this meeting about the continuing problems of discrimination in various sectors such as employment, housing, and education. The Board is likely to make a general recommendation to the President for increased funding as well as better data collection in civil rights enforcement programs to more effectively and creatively tackle these problems.

As you know, the Initiative staff has participated with the Domestic Policy Council and OMB staff in a series of meeting with civil rights enforcement agencies in the past month to identify funding initiatives. There is clear agreement from both Federal agencies and civil rights advocacy groups that additional funding of civil rights programs is much needed. We concur with many of the funding increases that OMB staff has recommended, especially in the areas of housing and EEOC increases. I hope however to provide through this memo some of the Initiative's other funding priority suggestions for your consideration.

PIR RECOMMENDATIONS

- **Funds for Department of Justice Coordination**: There were requests by most of the other civil rights agencies to have Justice play a more assertive coordinating role on civil rights issues. One example of the need for Justice leadership was a request for them to better coordinate targets of litigation activity so that there is no duplication of effort. While Justice did not submit a written request in this area, the consensus view of the other agencies was, however, that additional Justice staffing (17 currently) would benefit civil rights policy making in both Title VI and VII enforcement.

- **Funds for Administration of Justice/Police "Brutality"**: There have been strong arguments made that police/civilian tensions are another major "root case" of racial tensions that, in the word's of Hugh Price (Urban League), "the President's Initiative must address". While there does not seem to be a comprehensive vision at Justice as to how to address this issue, Justice could be asked to formulate a more aggressive, proactive strategy for using current and prospective funds to attack the issue.

- **Funds for the Community Relations Service (CRS)**: Although not a formal part of the civil rights enforcement system, CRS represents a key example of the use of federal funds to help prevent and reduce acts of racial hostility. Additional funding for CRS above the FY98 level would reverse the budget hits taken by CRS in the last few years and exemplify the President's desire to focus on positive prevention activities.

- **Restore OMB's Civil Rights Budget Analysis**: Up through the mid-1980's, OMB issued a special civil rights budget analysis (Analysis J) that provided cross-agency information on staffing and budget levels. This information report should be restored as it facilitates a careful assessment of the relative level of complaint and compliance activity of the various agencies as well as an indication of general funding trends.

We provide these broad suggestions with the knowledge that OMB has to make numerous decisions about specific funding levels. We hope that these programs receive your serious consideration.

Race initiative policy — civil rights enforcement

U.S. Department of Justice
Community Relations Service

Office of the Director *Washington, D.C. 20530*

ONE AMERICA IN THE 21st CENTURY:
SUSTAINING THE PRESIDENT'S INITIATIVE ON RACE

A Proposal Submitted by
the Department of Justice, Community Relations Service

President Clinton in his inaugural address called for an end to racial divides. The President's Initiative on Race articulates his vision for an "One America in the 21st Century." Americans all over the country have responded to his call by beginning to have honest conversations about race. The President of the United States has used the bully pulpit of his office to elevate the discussion of race and engage the American people.

In Fiscal Year 1998, when the President's Initiative on Race (PIR) completes its work, the little ripples that the President has prompted need to be sustained to turn into a wave of positive change in race relations and racial understanding.

President Clinton has declared his interest in sustaining the race dialogues and other efforts to heal the racial divide, beyond the life of PIR. This proposal outlines a comprehensive strategy to bring about racial reconciliation throughout America, building on the momentum, interest and community actions initiated by the President's Initiative.

The proposal envisions an integrated interdependent approach which includes: identifying, testing and replicating promising practices; conducting constructive race dialogues - a problem-solving method to identify and resolve issues that cause racial divides towards bridging racial polarization; and, enhancing community mediation for racial disputes and conflicts to move our country to a stronger, more just and unified America.

TOTAL COSTS: **$7,200,000**

I. Identifying and Testing Promising Practices in Racial Reconciliation **$2,000,000**

In fiscal year 1998, CRS proposes to initiate a comprehensive program to test promising practices in twenty jurisdictions across the country. Preliminarily, an identification, screening and selection process will be designed an implemented to determine promising practices for model sites and replication program.

Under the Promising Practice Program (PPP), cities or counties faced with high racial tensions and hate crimes rates, will be selected to test and implement one or more of the promising practices as identified by PIR.

Jurisdictions will be selected for the Promising Practices Program through a limited competition. CRS will invite up to 20 jurisdictions in participate in the planning process which will result in a comprehensive strategy for addressing race relations. Selection of the planning sites will be made on the basis of the jurisdiction's race relations issues, willingness to participate in the planning process, and history of implementing new and innovative programs.

The strategy must include the following:

* An analysis of the race relations issues, with special attention to acts of hate crimes, housing discrimination, and school violence, in each area of the jurisdiction.
* An description of current efforts regarding community race relations.
  * An inventory of all community resources which are or could be directed toward addressing race relations.
  * A description of coordination and cooperation efforts within the local and state government agencies.
  * A description of the specific strategies and innovations that will be employed to respond to the problems identified.
  * An implementation plan.
  * A plan for assessing how well the strategy was implemented and the extent to which it impacted the identified problems.

II. Conducting One American Dialogues - The First Step Towards Resolution $ 1,025,000

President Clinton has called upon the American people to have an honest and frank discussion about race. He is providing the leadership for the country. The President knows that talking is a first step towards action. Race relations experts also agree that constructive dialogue is widely accepted as one of the most effective "promising practices" in addressing race relations.

A "How to Dialogue Kit," supplemented by training and technical assistance to groups conducting dialogues can be implemented with this proposal, including "train the trainer" sessions. By this program, an infrastructure to coordinate and sustain community race dialogues can be institutionalized. By training trainers and building local community capacities, the President's voice will be amplified throughout the country at the grassroots level.

III. Expanding Community Racial Conflict Resolution Capacities $1,025,000

Violence and tensions arise when communities lose faith in government institutions, elected representatives, and the criminal justice system. Alternative dispute resolution can and should be used to resolve and prevent civil rights and racial disputes which arise at the community level. This program would develop and provide model dispute resolution and community mediation models to specifically address race disputes and conflicts. Technical assistance also will be provided to local

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governments and other entities in resolving racially motivated disputes and community conflicts.

IV. Promising Practices Replication: Technical Assistance, Field Training and Technology Transfer **$2,150,000**

Independent of the model sites, CRS will survey and disseminate on-site training and materials to community representatives on promising practices. Whether from urban, suburban or rural communities, planning teams will be provided on-site training at field sites in communities where innovative programs in race relations have improved race relations and the quality of life. After visiting model communities, these teams would return to their own community and be provided hands-on training and technical assistance by selected trainers from the model communities. This program will address the diverse needs of different communities across the country, based on differences in demographics, size, and problems.

V. Sharing and Promoting Promising Practices: Information Dissemination **$1,000,000**

State-of-the-art information will be developed and made available through Internet, the print media, video tapes, and other media. There is presently no national archive available to address the different facets of race relations. It would be considered a national library of reference materials addressing race relations and different avenues of promoting racial harmony. Information would be sent through Internet, print, and other media. As appropriate, satellite conferences would be offered as an economical and expedient manner of communications.

###

One America - In the 21st Century
Comprehensive Strategy to Institutionalize the President's Initiative on Race

Proposed Budget — $7,200,000

I. America One Dialogue - Bridging the Gap — 1,025,000

Dialogue facilitator training conferences 3 Day training for 200 attendees including travel, per diem & conference costs	200,000
Dialogue training materials Facilitator Training manual "How to" manual	25,000
Local/Community Dialogues Facilitator, travel & costs 400 Sessions	500,000
Personnel Costs Staff, Office, Travel	300,000

II. Promising Practices Model Sites — 2,000,000

Planning Conference Two Day Conference - 80 participants Staff, training, materials, facilities	175,000
Site Project Coordinators 20 sites @ $50,000 20 contracts @ $25,000 per year	1,000,000
Implementation/ Follow-up Conference Problem-solving, technical assistance and training Two Day Conference: 80 participants Staff, training, materials, facilities	175,000
Post-Program Appraisals & Dissemination Program Materials Printing & Distribution	50,000
Personnel Costs staff, contractors, office, travel etc.	600,000

III. Community Conflict Resolution and Mediation 1,025,000

Mediation training conference 3 Day training for 200 attendees including travel, per diem & conference costs	200,000
Mediation training materials	25,000
Local Mediation/Conflict Resolution Training	500,000
Personnel Costs Staff, Office, Travel	300,000

IV. Technical Assistance Transfer and Training 2,150,000

Technical Assistance and Training Staff	150,000
Technical Assistance & Training Travel and training at model sites, with follow-up training at community sites	2,000,000

V. Information Dissemination 1,000,000

Archive of printed and multi-media information
Multi-media and hard print distribution
Satellite conferencing and Internet distribution
Will consider utilizing existing DOJ contracts where feasible.

Race initiative policy – civil rights enforcement

RACE INITIATIVE/CIVIL RIGHTS
CIVIL RIGHTS CROSSCUT
(budget authority, in millions of dollars)

	FY 1998	FY 1999	FY 2000	FY 2001	FY 2002	FY 2003
FY 1998 Budget.....	494	472	467	466	467	N/A
FY 1998 Enacted.....	470	N/A	N/A	N/A	N/A	N/A
FY 1998 Passback.....	N/A	529	534	545	555	566

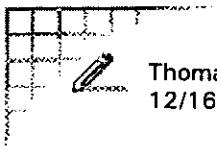
- Background Funding for five of the six major civil rights enforcement agencies and the U.S. Commission on Civil Rights was reviewed to help assure that the FY 1999 Budget is supportive of the heightened emphasis the President has placed on racial and civil rights issues. For FY 1999, DPC and OMB staff believe increased resources are necessary to implement many of the proposals for civil rights enforcement agencies to: improve compliance; implement greater use of alternative dispute resolution techniques; invest in information system upgrades; and develop better data collection capabilities for research and enforcement.

- OMB Recommendation OMB recommends $529 million for these agencies, $35 million or 7 percent greater than the President's FY 1998 request and $59 million or 13 percent greater than the FY 1998 enacted level, as shown below:

Presidential Civil Rights Enforcement Initiative (Budget Authority, in millions of dollars)			
Agency	FY 1998 Enacted	FY 1999 OMB Recomm	Presidential Initiative
EEOC	242	270	+28
HUD	30	44	+14
DOJ	65	70	+5
Labor - OFCCP	62	69	+7
Education	62	65	+3
Civil Rights Cmsn	9	11	+2
Total:	470	529	+59

In its passback to the agencies, OMB recommends specific policy guidance that states agency funding increases are provided for:
- EEOC to reduce its private sector charge inventory to 6 months by FY 2001;
- HUD to develop and implement an audit-based enforcement initiative;
- Justice to increase resources for coordination efforts;
- Labor - OFCCP to continue its compliance initiative;
- Education to fund ongoing civil rights enforcement programs; and
- Civil Rights Commission to monitor and report on ongoing civil rights issues.

Race initiative policy –
civil rights enforcement



Thomas L. Freedman
12/16/97 11:16:14 AM

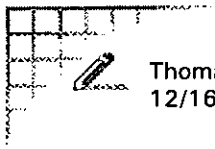
Record Type: Record

To: Elena Kagan/OPD/EOP

cc: Laura Emmett/WHO/EOP, Mary L. Smith/OPD/EOP
Subject: EEOC vetting

Maria spoke with Wade H. She said he sounded fine, although he would like to see where the $'s are allocated and is interested in non-monetary problems like EEOC structure. She still thinks sitting down early next year and confidentially sharing our plans makes sense.

Race initiative policy -
civil rights enforcement



Thomas L. Freedman
12/16/97 10:12:50 AM

Record Type: Record

To: Elena Kagan/OPD/EOP

cc: Laura Emmett/WHO/EOP, Mary L. Smith/OPD/EOP
Subject: Re: EEOC process reforms

I've talked to Danny Werfel and Susan Carr who are handling this at OMB to suggest this may need to be on a fast track for mid-January. Danny says that is achievable. EEOC voted to approve sending over the regs Monday, Ellen Vargyas says they will be sent over this week. EEOC will be coming in to brief OMB the beginning of January. Agencies are sending in their criticisms already. Dan Chenok, a more senior person who ordinarily might handle this at OMB, was injured in an accident. Ellen suggests that Sally Katzen will be the ultimate person to deal with on this. I'll call her unless you want to.

Race Suit Policy - Civ Rts Enf

➜ PROPOSED ADR MODEL

The Commission has determined that mediation is an effective method of ADR that can be used in its enforcement efforts. While volunteers have been helpful in initiating our District Office programs, we anticipate that this pool will diminish as these individuals acquire experience and seek compensation for such services in the future. We have also been using EEOC investigators, who have been trained to conduct mediations, but our ability to divert significant investigative resources to mediating cases is limited because of our large pending workload. In light of the agency's limited resources and the uncertainty concerning the availability of pro bono mediators, the Commission believes that the most viable option for providing mediators is through contracts. Using contractors would also encourage employer participation by removing perceived neutrality concerns that exist if EEOC staff mediate claims.

➜ MEDIATION CONTRACT ESTIMATED COST

The Commission anticipates mediating 10% (8000) of the expected 80,000 newly filed charges in FY 98. Assuming a cost of $500 per mediation, it is estimated that an additional $4,000,000 (8,000 x $500) would be required to meet this goal.

➜ FY 1999 BUDGET REQUEST

In the FY 99 budget EEOC has requested $640,000 specifically for mediation related activities. Of those funds, $15,000 has been allocated for travel to ensure effective national coordination. The remaining $625,000 would be used to contract for mediators. Assuming a cost of $500 per mediation, it is estimated that 1250 charges could be mediated with these funds ($625,000 ÷ $500).

EK - EEOC materials
(1) ADR Model
(2) Inventory reductions: cost estimates
(3) Various summaries of mixed utility.

TOM

This sheet displays the #'s to get us to a six month inventory in a year & a half.

TOTAL compensation for 165: $6,036,166

C ENFORCEMENT
:CTED ACTIVITY
: INVENTORY TO 6 MONTHS BY FY 2000)

NCE ACTIVITY								
2001 imate	FY 2002 Estimate	FY 2003 Estimate	FY 2004 Estimate	FY 2005 Estimate	FY 2006 Estimate	FY 2007 Estimate	FY 2008 Estimate
50,515	38,175	38,175	38,175	38,175	38,175	38,175	38,175
79,999	79,999	79,999	79,999	79,999	79,999	79,999	79,999
9,003	9,003	9,003	9,003	9,003	9,003	9,003	9,003
39,516	127,177	127,177	127,177	127,177	127,177	127,177	127,177
921.3	921.3	921.3	921.3	921.3	921.3	921.3	921.3
958.1	958.1	958.1	958.1	958.1	958.1	958.1	958.1

Charges/Complaints Resolved	100,431	88,331	94,836	101,341	101,341	89,001	89,001	89,001	89,001	89,001	89,001	89,001
Charges/Complaints Forwarded	68,019	68,689	62,854	50,515	38,175	38,175	38,175	38,175	38,175	38,175	38,175	38,175
Charge/Complaint Inventory (Months)	8.1	9.3	8.0	6.0	4.5	4.5	4.5	4.5	4.5	4.5	4.5	4.5
Caseload per Available Investigator	84.7	85.5	72.9	54.8	41.4	41.4	41.4	41.4	41.4	41.4	41.4	41.4

* Pending beginning adjusted to reflect refinements in charge process reports.

Notes:

(1) FY 1997 figures are projected from 3rd Quarter data.

(2) Charge resolution activity for FY 1997 is the actual value as of 3rd Quarter FY 1997, 125.1. Resolution activity for FY 1998 - FY 2001 is assumed to be 110.0 Charge resolution activity for the following years is projected to decline to 101.5.

(3) EEOC receipts and net FEPA transfers/deferrals are projected to remain level through FY 2008.

(4) Workload totals above include charges originally received by EEOC and charges transferred into EEOC's workload from FEPAs. Workload totals do not include charges received and maintained for processing by FEPAs.

(5) The above table reflects a total staff increase of 165 in fiscal year 1999, broken down as follows:
(investigators productive for 1/2 year in FY-99 to allow for hiring and training)

Investigators	123
Clericals	24
Supervisors	18

Table may not add due to rounding.

10/17/97

Source: ORIP

PRIVATE SECTOR EEOC ENFORCEMENT
COMPLIANCE PROJECTED ACTIVITY
(WITH ADDDITIONAL STAFF TO REDUCE THE INVENTORY TO 6 MONTHS BY FY 2000)

COMPLIANCE ACTIVITY												
Workload/ Workflow	FY 1997 Estimate	FY 1998 Estimate	FY 1999 Estimate	FY 2000 Estimate	FY 2001 Estimate	FY 2002 Estimate	FY 2003 Estimate	FY 2004 Estimate	FY 2005 Estimate	FY 2006 Estimate	FY 2007 Estimate	FY 2008 Estimate
Total Pending Charge/Complaints	79,448	68,019	68,689	62,854	50,515	38,175	38,175	38,175	38,175	38,175	38,175	38,175
Total Receipts	79,999	79,999	79,999	79,999	79,999	79,999	79,999	79,999	79,999	79,999	79,999	79,999
Net FEPA Transfers/Deferrals	9,003	9,003	9,003	9,003	9,003	9,003	9,003	9,003	9,003	9,003	9,003	9,003
Total Work Load	168,449	157,020	157,690	151,856	139,516	127,177	127,177	127,177	127,177	127,177	127,177	127,177
Investigators Available	803.0	803.0	862.1	921.3	921.3	921.3	921.3	921.3	921.3	921.3	921.3	921.3
Investigators Assigned	835.1	835.1	958.1	958.1	958.1	958.1	958.1	958.1	958.1	958.1	958.1	958.1
Charges/Complaints Resolved	100,431	88,331	94,836	101,341	101,341	89,001	89,001	89,001	89,001	89,001	89,001	89,001
Charges/Complaints Forwarded	68,019	68,689	62,854	50,515	38,175	38,175	38,175	38,175	38,175	38,175	38,175	38,175
Charge/Complaint Inventory (Months)	8.1	9.3	8.0	6.0	4.5	4.5	4.5	4.5	4.5	4.5	4.5	4.5
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* Pending beginning adjusted to reflect refinements in charge process reports.

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(investigators productive for 1/2 year in FY-99 to allow for hiring and training)

Investigators	123
Clericals	24
Supervisors	18

Table may not add due to rounding.

10/17/97

Source: ORIP

PRIVATE SECTOR EEOC ENFORCEMENT COMPLIANCE PROJECTED INVENTORY (WITH ADDITIONAL STAFF)

PRIVATE SECTOR EEOC ENFORCEMENT COMPLIANCE ACTIVITY												
WORKLOAD/ WORKFLOW	FY 1997 Estimate	FY 1998 Estimate	FY 1999 Estimate	FY 2000 Estimate	FY 2001 Estimate	FY 2002 Estimate	FY 2003 Estimate	FY 2004 Estimate	FY 2005 Estimate	FY 2006 Estimate	FY 2007 Estimate	FY 2008 Estimate
Total Pending Charge/Complaints	79,448	68,019	68,689	63,236	55,742	48,248	48,248	48,248	48,248	48,248	48,248	48,248
Total Receipts	79,999	79,999	79,999	79,999	79,999	79,999	79,999	79,999	79,999	79,999	79,999	79,999
Net FEPA Transfers/Deferrals	9,003	9,003	9,003	9,003	9,003	9,003	9,003	9,003	9,003	9,003	9,003	9,003
Total Workload	**168,449**	**157,020**	**157,690**	**152,237**	**144,743**	**137,249**	**137,249**	**137,249**	**137,249**	**137,249**	**137,249**	**137,249**
Charges/Complaints Resolved	100,431	88,331	94,454	96,495	96,495	89,001	89,001	89,001	89,001	89,001	89,001	89,001
Charges/Complaints Forwarded	68,019	68,689	63,236	55,742	48,248	48,248	48,248	48,248	48,248	48,248	48,248	48,248
Charge/Complaint Inventory (Months)	**8.1**	**9.3**	**8.0**	**6.9**	**6.0**	**6.0**	**6.0**	**6.0**	**6.0**	**6.0**	**6.0**	**6.0**

(1) Fiscal year 1997 figures are projected from third quarter data.

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(3) EEOC receipts and net FEPA transfers/deferrals are projected to remain level through fiscal year 2008.

(4) Above workload totals include charges originally received by EEOC and charges transferred into EEOC's workload from FEPAs. Workload totals do not include charges received and maintained for processing by FEPAs.

(5) The above table reflects a total staff increase of 103 in fiscal year 1999, broken down as follows:

Total Staff Increase:	103
Investigators:	77
Support Staff:	15
Supervisors:	11

Table may not add due to rounding.

The workload projections are based on a formula that computes total incoming work (pending charges, new charge receipts, and net gain in charges transferred between EEOC and state and local Fair Employment Practices Agencies), minus total charges resolved, to arrive at the number of total charges "forwarded" (remaining in the workload at the end of the fiscal year).

"Months of pending inventory" is the total work remaining (pending) divided by the monthly resolution rate, assuming no more incoming work. It is computed as follows:

> FY 1997 projected total resolutions = 100,431 divided by 12 months = 8369.25 average resolutions per month. This number is then divided into the pending inventory (68,019 divided by 8369.25) = 8.1 months of pending inventory.

These materials come from our 1999 budget request to OMB. The chart on the third page displays the staffing needed to bring our investigations to a timely conclusion within a 3 year period.

on

	FY 1998 ESTIMATED	FY 1999 REQUESTED INCREASE	FY 1999 ESTIMATED
FTE	2,680	216	2,896
COMPENSATION AND BENEFITS:			
1. FY 1998 Annualization		2,150	
2. FY 1999 Compensation and Benefit Increases		3,887	
3. Position Utilization Increase	175,098	11,242	192,377
Standard Level User Charges (SLUC) & Security	22,720	1,300	24,020
Information Resource Management	1,556	9,590	11,146
Alternative Dispute Resolution	0	640	640
Litigation Support	2,246	425	2,671
Systemic Support	93	431	524
Education, Outreach, and Technical Assistance	250	237	487
Training	1,798	1,378	3,176
State and Local	26,500	8,000	34,500
Other Operating Costs & Inflation	15,739	1,939	17,678
TOTAL	**246,000**	**41,219**	**287,219**

FISCAL YEAR 1999 BUDGET REQUEST DETAILED ANALYSIS OF CHANGE (Funds in Thousands of Dollars)			
	FY 1998 ESTIMATED	**FY 1999 REQUESTED INCREASE**	**FY 1999 ESTIMATED**
FTE	2,680	216	2,896
COMPENSATION AND BENEFITS:			
1. FY 1998 Annualization		2,150	
2. FY 1999 Compensation and Benefit Increases		3,887	
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Standard Level User Charges (SLUC) & Security	22,720	1,300	24,020
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Other Operating Costs & Inflation	15,739	1,939	17,678
TOTAL	**246,000**	**41,219**	**287,219**

FISCAL Year 1999 Request ANALYSIS OF CHANGE (Funds in Thousands of Dollars)			
Summary of Adjustments to Base and Built-In Changes		**FTE**	**AMOUNT**
FY 1998 Appropriation **(BASE)**		2,680	246,000
SALARIES AND EXPENSES			
Increase to Base:			
Compensation and Benefits			
1.	FY 1998 Annualization Costs:		2,150
2.	FY 1999 Compensation and Benefit Increases: - FY 1999 Pay Raise		3,887
3.	FY 1999 Position Increase	216	11,242
	TOTAL COMPENSATION AND BENEFITS		17,279
Non-Salary			
1.	Additional amount required by GSA for Standard Level User Charges (SLUC)		1,300
2.	Information Resource Management		9,590
3.	Alternative Dispute Resolution		640
4.	Litigation Support		425
5.	Systemic Support		431
6.	Education, Outreach, and Technical Assistance		237
7.	Training		1,378
8.	State and Local		8,000
9.	Adjustments to Other Operating Costs and Inflations		1,939
	TOTAL INCREASE TO BASE		41,219
	TOTAL FY 1999 AGENCY REQUEST	2,896	287,219

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

FY 1997 Third Quarter Report on Charge Activity under EEOC's National Enforcement Plan and the Priority Charge Handling Procedures

Inventory Control

- One of the most remarkable and dramatic trends EEOC has experienced under the Priority Charge Handling Procedures is the reduction in pending charge inventory. Since implementation of new procedures in June 1995, the inventory has dropped by more than 40,000 charges--an overall decrease of 36% in two years. By the end of the third quarter, the inventory was at 72,630, compared to 111,451 at the end of June 1995. The inventory continues to decrease, and at the current pace, EEOC projects the inventory will drop well below 70,000 by year-end.

- The single most significant factor in reducing the charge inventory has been the agency's purposeful prioritization of charges into the three major categories established as part of its new change handling procedures:

  -- Category A - potential merit charges

  -- Category B - charges needing further investigation to determine potential merit, and

  -- Category C - charges clearly without merit that can be immediately dismissed.

  Prioritizing the charge inventory into these three categories permits the agency to strategically focus its resources.

- Employing the Priority Charge Handling Procedures, which were adopted by the Commission in 1995, along with the Commission's National Enforcement Plan, has reaped many benefits for the public EEOC serves and for the overburdened staff in the agency's field offices. Implementation of these changes required tremendous leveraging of resources and efforts on the part of the entire agency.

  - The agency has focused its efforts on culling the non-meritorious charges (category C charges) from its system. At the end of September 1995 (the

first full quarter of Priority Charge Handling Procedures implementation), field offices had identified 26,025 open charges as category C. At the end of the June 1997, this number had dropped to 4,611--a net decrease of 21,414 charges (82.3%). Preliminary figures for August 31, 1997, show an even smaller number--3,615--5.1% of the open inventory.

- Thus, during the course of only two years EEOC has quickly reduced its inventory by more than 40,000 charges. About half of these (more than 20,000) were category C, (non-meritorious charges that were moved quickly) leaving a new mix of pending charges:

  . approximately 15,000 category A charges (21% of total)
  . approximately 50,000 category B charges (70% of total)
  . approximately 3,600 category C charges (05% of total)

Following are other specific examples of EEOC's administrative charge resolution efforts under its new procedures.

Charge Receipts

- From FY 1991 through FY 1994, annual charge receipts skyrocketed due to implementation of the ADA and the Civil Rights Act of 1991. During these years, receipts increased by 43%--from 63,898 to 91,189 with no appropriation of resources to fund these new responsibilities.

- With implementation of the new procedures, the agency began to reverse this growth trend. Between the third quarter FY 1995 and third quarter FY 1997, charge receipt growth was not only curbed, receipts have now actually decreased--by 9.5%. Greater in-depth counseling at the charge intake stage has been a significant factor in this trend. EEOC projects annual charge receipts will be just slightly over 80,000* at year-end.

Average Caseload Per Investigator

- The average caseload per investigator assigned is now down to 87.0, compared to the end of FY 1995 when it had reached 122.7.

Charge Resolutions - Focused Administrative Enforcement

- The charge resolution rate per investigator was 125.1 at the end of the third quarter. This

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*Receipts for FY 1996 were slightly lower--77,990--due to the impact of the government wide furloughs during the 1st-2nd quarters of FY 1996.

rate is considerably higher than other federal agencies engaged in similar investigative work.

- Crucial to EEOC's ability to manage the charge inventory has been the added implementation of procedures that permit flexibility for focused and prioritized administrative resolution of charges. Charge resolutions through the third quarter FY 1997 totaled 75,752--an increase of 34% from the same period two years ago (just prior to implementation of the new procedures). The agency projects charge resolutions will exceed 100,000 by year-end.

- From FY 1991 through FY 1994, EEOC resolved an average of 68,897 charges per year. Charge resolutions rates began to increase with the implementation of the new procedures in late FY 1995, when the agency resolved a record 91,896 charges. Operating a full year under the new procedures, EEOC topped that record in FY 1996 with 103,467 resolutions and expects fourth quarter data to show about that same number for FY 1997.

Alternative Dispute Resolution - Benefits for Victims of Discrimination

- Along with the significant increase in charge resolutions and the downward trend in receipts, many other factors point to the success of more focused and strategic administrative enforcement of the laws.

  - For example, monetary benefits obtained through mediations, settlements, conciliations and withdrawals with benefits exceeded $127,000,000 through the third quarter FY 1997, compared to approximately $102,000,000 at the end of FY 1995's third quarter (just prior to implementation of the new procedures). We project monetary benefits to exceed $170,000,000 by year-end.

We believe these trends signal maximization of existing resources and better management of enforcement activities for which the agency is responsible. EEOC has struggled to keep its workload to the lowest possible level, without sacrificing its enforcement responsibilities and the mission of the agency. With no new resources, maintaining this balance will become increasingly more difficult.

EEOC AND RESOURCES

- Overall, adequate funding and staffing are critical for EEOC. Despite significant increases in enforcement responsibilities, agency resources have dwindled. EEOC's staffing at the beginning of FY 1997 was 2,680 FTE -- the lowest level in 20 years.

- The President has requested $246 million for EEOC for FY 1998. This represents an increase of roughly $6,000,000, or 2.5%, over the amount appropriated for FY 1997. The proposed increase is essentially an adjustment for inflation and would effectively leave the EEOC at level funding (i.e., the amount needed to keep the EEOC operating at current levels).

- During the past two years Chairman Gilbert F. Casellas has fundamentally changed the way the EEOC operates in an effort to maximize its limited resources while still carrying out the agency's mission. These reforms have resulted in many improvements in the agency and its performance, including a 30% decrease in the agency's pending inventory.

- Despite these successes, several years of level funding have forced EEOC to make many difficult choices. Because 90% of the EEOC's costs are fixed (salaries, rent, and overhead), the agency has enacted severe cuts and cost saving measures on the remaining 10% of the budget that funds other critical services such as public education efforts, technology, and litigation. While the latter funds are not fixed, they are also not discretionary. The agency cannot sustain further cuts to this portion of the budget if it is to continue basic enforcement operations.

- As a direct result of several years at level funding, funds allocated/spent by EEOC for litigation activities have decreased not increased.

- In EEOC's field offices there are about 810 investigators and 200 attorneys for legal units. The majority of staff resources in the field are devoted to the administrative enforcement process, not litigation.

- Chronic underfunding over the last several years has also left EEOC with antiquated and overburdened information systems. Several years of level funding have forced the agency to delay plans to modernize its management information systems. Since 1992, the EEOC has requested increases in funding to support its information technology initiatives. Without this additional funding, EEOC has struggled to balance technology concerns with other mission requirements.

- The result is that EEOC, in fact, cannot provide information that adequately maps the Commission's financial and personnel data with its mission activity. For example, although EEOC maintains a tightly controlled and monitored fiscal resource system, the current Commission accounting system is an obsolete batch processing system that was developed in 1979. This system clearly does not support the ability to track and measure resources by specific program activities.

EEOC AND INTERVENTION

- The EEOC does have specific criteria governing intervention decisions, and these same criteria are applied in determining whether to file suit on claims similar to those raised in pending private litigation against the same defendant. These Standards, set forth in the EEOC Regional Attorney's Deskbook, incorporate the statutory requirement under Title VII and the Americans with Disabilities Act that intervention be premised on a "certification that the case is of general public importance."

- EEOC considers a case to be of general public importance when it seeks relief for a class of aggrieved individuals, involves a discriminatory policy or practice requiring injunctive relief, or addresses significant legal issues. Even when the general public importance requirement is met, EEOC considers a number of other factors in determining whether intervention is appropriate. These include the importance of the Commission's participation to the success of the litigation; the timeliness of a motion to intervene; private counsel's abilities; and whether there is agreement with private counsel on matters such as the role of Commission attorneys in the litigation, litigation strategy, relief, and the Commission's nonconfidentiality policy.

- During the past five fiscal years EEOC intervened in an average of five cases per year: three cases during FY 1993, eight cases during FY 1994, six cases during FY 1995, four cases during FY 1996, and six cases in FY 1997. Out of approximately 350 EEOC cases currently in litigation, seven are interventions. Thus, interventions represent only a very small part of the EEOC's litigation caseload.

- The EEOC recognizes the critical role that private litigants play in enforcement of federal employment discrimination laws. The EEOC does not seek to duplicate these efforts, nor could it do so even if it wanted to. Each year, however, the Commission determines, in a small handful of those private lawsuits, that the EEOC has an important contribution to make on behalf of the larger public interest.

- Last spring the EEOC moved to intervene in an ongoing case against Home Depot alleging that Home Depot failed to provide equal employment opportunities to female employees in stores throughout the eastern part of the United States. A similar class action was already proceeding against Home Depot with respect to the stores in the eight states of the chain's west coast division. On September 19, 1997, the parties to the west coast litigation settled the case for $87.5 million. Press reports concerning this settlement also indicate that Home Depot has agreed in principle to resolve the east coast litigation. Home Depot has announced that it is making changes nationwide in its hiring, training and promotional practices to address the kinds of issues that prompted EEOC's involvement in this case.

Language in the report to accompany H.R. 2267, Commerce, Justice, State FY 1998 Appropriations (HRpt. 105-207) cites the Committee's expectation that the processing of charges and the reduction of the charge backlog remain EEOC's first priority. The Committee expressed concern that: 1) EEOC's success in reducing its pending inventory of charges was a "...one-time occurrence instead of a sustained effort." 2) additional resources provided to EEOC in FY 1997 "... are being diverted from case processing to increase other activities, such as litigation." 3) "EEOC currently does not track staffing or resources expended on particular EEOC activities." The Committee also cited concern that the "...EEOC does not have specific criteria by which EEOC determines whether to intervene in an ongoing lawsuit..."

Overall, adequate funding and staffing are critical for EEOC. Despite significant increases in enforcement responsibilities, agency resources have dwindled. In FY 1980 EEOC was staffed at 3,390 FTE. At the beginning of FY 1997, staffing had fallen to 2,680 -- a decrease of 710 FTE.

EEOC PRIORITIES

- Managing and reducing the pending inventory of private sector charges has been and continues to be of highest priority for EEOC. Both the **National Enforcement Plan,** adopted in February 1996, and the **Priority Charge Handling Procedures,** implemented in July 1995, respond to the agency's efforts to maximize and leverage its investigative resources.

- EEOC has dramatically reduced its pending inventory of private sector charges by 30% since 1995. The agency achieved this reduction by weeding out non-meritorious charges. This permitted EEOC to focus its limited resources on those charges needing further investigation to determine potential merit and those charges where the evidence already shows potential violations.

- The extremely high resolution rates during FY 1996 and most of FY 1997 have been largely the result of culling non-meritorious charges from the inventory. Even with the implemented reforms that focus the agency's resources on those charges truly warranting investigation, the caseload per investigator is exorbitantly high (about **85 charges per investigator** at the end of the third quarter of FY 1997). Without adequate resources, further reductions in workload are not likely to be achieved.

EEOC'S ABILITY TO TRACK AND MONITOR RESOURCES

- Chronic underfunding over the last several years has also left EEOC with antiquated and overburdened information systems. Several years of level funding have forced the agency to delay plans to modernize its management information systems. Since 1992, the EEOC has requested increases in funding to support its information technology initiatives. Without this additional funding, EEOC has struggled to balance technology concerns with other mission requirements.

- The result is that EEOC, in fact, cannot provide information that adequately maps the Commission's financial and personnel data with its mission activity. For example, although EEOC maintains a tightly controlled and monitored fiscal resource system, the current Commission accounting system is an obsolete batch processing system that was developed in 1979. This system clearly does not support the ability to track and measure resources by specific program activities.

EEOC'S INTERVENTION CRITERIA

- The EEOC does have specific criteria governing intervention decisions, and these same criteria are applied in determining whether to file suit on claims similar to those raised in pending private litigation against the same defendant. These Standards, set forth in the EEOC Regional Attorney's Deskbook, incorporate the statutory requirement under Title VII and the Americans with Disabilities Act that intervention be premised on a "certification that the case is of general public importance."

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- During the past five fiscal years EEOC intervened in an average of five cases per year: three cases during FY 1993, eight cases during FY 1994, six cases during FY 1995, four cases during FY 1996, and six cases thus far in FY 1997. Out of approximately 350 EEOC cases currently in litigation, seven are interventions. Thus, interventions represent only a very small part of the EEOC's litigation caseload.

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litigation settled the case for $87.5 million. Press reports concerning this settlement also indicate that Home Depot has agreed in principle to resolve the east coast litigation. Home Depot has announced that it is making changes nationwide in its hiring, training and promotional practices to address the kinds of issues that prompted EEOC's involvement in this case.

MANAGING PRIVATE SECTOR CHARGE INVENTORY -- OF HIGHEST PRIORITY

Since assuming leadership of EEOC in 1995, Chairman Gilbert Casellas has and continues to give the highest priority to more efficiently managing the agency's private sector workload. Both the **National Enforcement Plan**, adopted in February 1996, and the **Priority Charge Handling Procedures**, implemented in July 1995, respond to the critical need for more timely and effective resolution of the agency's pending inventory of charges. The agency instituted these charge processing reforms precisely to maximize and leverage its investigative resources.

EEOC has dramatically reduced its workload since 1995 -- from more than 111,000 charges at the implementation of new charge processing procedures to the current level of approximately 72,000 charges. The agency achieved this reduction in workload by weeding out non-meritorious charges from the system. This effort permitted EEOC to focus its limited resources on those charges needing further investigation to determine their potential merit and those charges where the evidence already shows potential violations.

As the agency now turns its attention to charges showing potential violations, and charges alleging large class or pattern and practice violations, EEOC expects the charge resolution rate to level off. The extremely high resolution rates during FY 1996 and most of FY 1997 have been largely the result of culling non-meritorious charges from the inventory. Even with the implemented reforms that focus the agency's resources on those charges truly warranting investigation, the caseload per investigator is exorbitantly high (about **85 charges per investigator** at the end of the third quarter of FY 1997). While the Commission continues its efforts to maximize existing resources, without additional funds for more staff, there is a limit to how much the agency can do.

The EEOC has struggled to keep its workload to the lowest possible level, without sacrificing its enforcement responsibilities and the mission of the agency. With no new resources, the agency will be forced to make even harder choices than in the past. EEOC will be forced to continue to focus on controlling inventory at the expense of having the resources to devote to fully developing potential violation cases that, in the public interest, need to be addressed.

ABIILITY TO TRACK AND MONITOR RESOURCES: THE STATE OF EEOC INFORMATION AND RESOURCE MANAGEMENT SYSTEMS

Chronic underfunding over the last several years has left EEOC with antiquated and overburdened information systems. Several years of level funding have forced the agency year after year to delay plans to modernize its management information systems. Since 1992, the EEOC has requested increases in funding to support its information technology initiatives. Without this additional funding, EEOC has struggled to balance technology concerns with other mission requirements. The result is the frustration experienced by both EEOC and its constituents that the agency cannot provide information that adequately maps the Commission's financial and personnel data with its mission activity. For example, although EEOC maintains a

tightly controlled and monitored fiscal resource system, the current Commission accounting system is an obsolete batch processing system that was developed in 1979. This system clearly does not support the ability to track and measure resources by specific program activities.

The EEOC has been aggressively working since 1992 to develop integrated information systems and to update aging legacy systems. This effort includes the acquisition of a new Integrated Financial Management System, the upgrade of the agency Personnel Information Resources System and the development of a new Integrated Mission System to track allegations of employment discrimination from the point of intake through investigation and litigation. Current EEOC information systems are stand-alone systems based on aging technologies that do not allow for integration or sharing of data.

Despite funding constraints, EEOC recognizes the importance of automating its processes and is moving forward with the acquisition of a new financial management system and the development of a new integrated mission system. The new financial management system will enhance the agency's ability to track and measure staffing and resources for specific activities.

EEOC'S INTERVENTION CRITERIA

The EEOC does have specific criteria governing intervention decisions, and these same criteria are applied in determining whether to file suit on claims similar to those raised in pending private litigation against the same defendant. These Standards, set forth in the EEOC Regional Attorney's Deskbook, incorporate the statutory requirement under Title VII of the Civil Rights Act of 1964 (Title VII) and the Americans with Disabilities ACT (ADA) that intervention be premised on a "certification that the case is of general public importance." See 42 U.S.C. sec. 2000e-5(f)(1); 42 U.S.C. sec. 12117(a). Moreover, although there is no similar formal "certification" requirement under the Age Discrimination in Employment Act (ADEA) or Equal Pay Act (EPA), the Standards apply the same considerations of "public importance" under these statutes, as well.

The Commission considers a case to be of general public importance when it seeks relief for a class of aggrieved individuals, involves a discriminatory policy or practice requiring injunctive relief, or addresses significant legal issues. Even when the general public importance requirement is met, the Commission considers a number of other factors in determining whether intervention is appropriate. These include the importance of the Commission's participation to the success of the litigation; the timeliness of a motion to intervene; private counsel's abilities; and whether there is agreement with private counsel on matters such as the role of Commission attorneys in the litigation, litigation strategy, relief, and the Commission's nonconfidentiality policy.

Significantly, although the Regional Attorneys in the twenty-three district offices have been delegated authority to file suit in most categories of individual and small-class cases, because of the importance the Commission attaches to the proper exercise of its intervention

authority, all proposed interventions must be submitted to headquarters for review and approval, even if the case otherwise meets the criteria for Regional Attorney approval.

During the past five fiscal years the Commission intervened in an average of five cases per year: three cases during FY 1993, eight cases during FY 1994, six cases during FY 1995, four cases during FY 1996, and six cases thus far in FY 1997. Out of approximately 350 EEOC cases currently in litigation, seven are interventions. Thus, interventions represent only a very small part of the EEOC's litigation caseload.

The same general standards exist for so-called "parallel" lawsuits as apply to interventions. Parallel suits are ones in which the EEOC files an independent action on a claim or claims raised in a private pending lawsuit against the same defendant. A review of the EEOC cases currently in litigation indicates that fewer than five would be considered parallel suits. Two types of cases are the most common circumstances in which the Commission files such actions.

First, the EEOC may file a lawsuit arising out of the same charges of discrimination that form the basis for a private action brought by an individual or group of named plaintiffs seeking individual relief where the investigation revealed additional persons affected by the discriminatory action or policy. Examples of this type of "parallel" lawsuit are the age discrimination/reduction-in-force (RIF) cases the EEOC filed against Westinghouse in the spring of 1993 and against Martin Marietta in May of 1994. Although the private actions in both of these cases were brought on behalf of approximately one hundred employees, the EEOC's actions sought relief for all of the employees in the protected group who had been laid off, numbering in the thousands. In the Martin Marietta case, EEOC recently achieved a favorable settlement, independent of the private action, that provided $13 million in relief for otherwise unrepresented affected employees, as well as a commitment by the company to hire 450 employees who had been discriminatorily RIF-ed.

Second, in some cases where an individual is seeking personal damages and individual relief from a discriminatory employment policy, the EEOC may file an action that parallels the private lawsuit to ensure that the discriminatory policy is eliminated. The existence of the private lawsuit does not necessarily ensure this result, because it is quite common for an employer in such a situation to settle the case by offering relief to the single litigant, *without changing or eliminating the discriminatory practice overall.* Moreover, such private settlements are normally confidential, making it difficult or impossible for future employees who are similarly-situated, or the general public, to know whether the discrimination was adequately remedied. The EEOC files a separate action in these cases in order to protect the civil rights of future employees and other current employees of whom we may be unaware. Examples of this type of "parallel" lawsuit are cases the EEOC has filed in recent years challenging employee health plans that discriminate against persons with AIDS or persons who are HIV-positive. These cases often involve novel legal questions, and the Commission's participation not only serves to ensure a discriminatory policy is eliminated, but also helps to ensure the proper

development of the law. Further, because it is Commission policy that all of its settlements be made a matter of public record, litigating these cases helps to provide important clarification of the law to other employers even where no court decision results.

Thus, the Commission's relatively small number of interventions and parallel lawsuits do not duplicate private efforts, but rather add a critical component to each of these lawsuits: full vindication of the public interest. One of the predominate results from the EEOC's efforts to vindicate the public interest is the ability to secure appropriate injunctive relief that ensures broad changes in the workplace, the type of relief that individual litigants are often not concerned with, or are unable to secure.

In sum, the EEOC recognizes the critical role that private litigants play in enforcement of federal employment discrimination laws. The EEOC does not seek to duplicate these efforts, nor could it do so even if it wanted to. Each year, however, the Commission determines, in a small handful of those private lawsuits, that the EEOC has an important contribution to make on behalf of the larger public interest.

Findings and Recommendations: A Summary of EEOC-sponsored Mediations of Private Sector Cases

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Findings and Recommendations: A Summary of EEOC-Sponsored Mediations of Private Sector Cases August 1996 through July 1997

EXECUTIVE SUMMARY

In August 1996, the Washington Field Office (WFO) of the Equal Employment Opportunity Commission (EEOC) awarded *ADA Vantage, Inc.* a contract to mediate fifty-five case referrals. During the contract, *ADA Vantage, Inc.* provided an opportunity for EEOC staff to co-mediate with professional mediators and tracked the results of the mediation project. Between August 1996 and May 31, 1997, the Washington Field Office referred seventy-four cases to *ADA Vantage, Inc.* for mediation. As of May 31, 1997, thirty-nine of these have been mediated and twenty-two were referred back to the WFO due to a request by a party or request of the mediator. This summary highlights some of the preliminary findings and key recommendations of the final report, recognizing that these findings and recommendations are based on a limited sample size.

Findings

- Most cases referred to mediation involved termination of employment or proposed termination.
- The largest category of employers of those cases referred to mediation involved employers with fewer than one hundred employees.
- Among cases referred in this limited sample, cases involving religious discrimination or disputes involving sex discrimination had higher settlement rates.
- Disputes involving two or more types of discrimination were less likely to settle during mediation. No case involving more than two types of discrimination settled during mediation.
- Of the cases that settled, those than involved a monetary settlement included only nominal sums. Preliminary information about cases settled after May 31, 1997 indicate that two cases involved settlements of more than $100,000 each.
- Subjective factors may play a more important role than objective factors in the likelihood of settlement. For example, parties having a positive attitude or parties with reasonable expectations were more likely to settle. Mediations where the key parties were present or where key answers were provided to either side also were more likely to settle.
- It appears that a lawyer could play a valuable role as a reality check for his/her client, but a lawyer unfamiliar with the facts of his/her client case and EEO law were generally a distraction to the mediation process.

- Professional mediators spent two to five times as much time outside of the mediation process setting up and managing the case as they did during the mediation. The professional mediators agreed to participate in this project on a pro bono basis, since this was viewed as a pilot project to initiate the use of "outside" skilled mediators in WFO's operation. These professional mediators like most in the DC area wish to be compensated for their mediation services in the future.
- As of May 31, 1997, the project had a 30% settlement rate.

Recommendations

- Provide more information about mediation to interested parties before they agree to mediate, perhaps in a question and answer format. Use plain English. For example, instead of stating "mediators will not be assessing evidence," rephrase the statement to read "mediators will not determine who is right and who is wrong."
- Continue to review why certain cases are more likely to settle and what objective factors can be used as indicators of settlement potential.
- Continue offering some flexibility to those in serious settlement negotiations both prior to and after mediations. Of course, this should require an assessment by the mediator.
- Because small employers constituted the largest population of cases referred, develop and provide information targeted to small employers and their attorneys about the costs of proceeding through the investigative process and possible outcomes achieved through mediation.
- Continue to allow mediators to mediate all matters of dispute between the parties with the understanding that the parties may have to memorialize their agreement in two parts: (1) an agreement covering matters related to Title VII of the Civil Rights Act of 1964, as amended, the Age Discrimination Act of 1967, as amended, and/or the Americans with Disabilities Act of 1990, as amended, for review by the WFO; and (2) a separate agreement covering matters unrelated to Title VII of the Civil Rights Act of 1964, as amended, the Age Discrimination Act of 1967, as amended, and/or the Americans with Disabilities Act of 1990, as amended, that will not be signed by WFO staff.
- Minimize the effect of subjective factors, strategic behavior and bad faith negotiating by providing parties prior to mediation clear guidelines that the mediator can refer to when a problem arises. For example, spell out WFO's expectations concerning the active participation by the appropriate decision-maker for the parties.
- Since the presence of lawyers could add or detract from the process, develop materials targeted to lawyers and send them to each party's lawyer prior to mediation. A clear set of rules spelling out the role of an attorney during the stages of mediation would be useful to mediators, lawyers, and the parties.
- Continue to survey participants on the process but use a different survey tool.

Findings and Recommendations:
A Summary of EEOC-Sponsored Mediations
of Private Sector Cases
August 1996 through May 1997

INTRODUCTION

The mediation contract between the Washington Field Office (WFO) of the Equal Employment Opportunity Commission (EEOC) and *ADA Vantage, Inc.* began in August 1996 and has continued through July 1997. The project is nearing its completion as the final cases selected for mediation make their way through the process. Terms of the contract included fifty-five case referrals for mediation and opportunities for EEOC staff to co-mediate.

Throughout the project, *ADA Vantage* received consistent enthusiastic feedback from the professional mediators regarding their experience working with EEOC co-mediators, and from EEOC staff that their experiences have been positive. As of May 31, 1997, each of nine EEOC employees received three to five co-mediation experiences[1] and all EEOC staff participating in the project have received at least one. EEOC staff who participated as co-mediators in the project include: Maria Borrero, Elizabeth Thorton, Paul Richard, Donna Swanson, Vicky Rovira, Geri Grigsby, Ted Henry, John Schmelzer, Tracey Therit, Ralph Soto, Robbie Dix, Raj Gupta, Linda Lawson, and Frank Fritts (now New Orleans Field Office). Also, Sue Reilly participated before leaving her position as Director of the Washington Field Office. Steve Ichniowski served as Project Director for the Washington Field Office.

[1] Three EEOC staff members received less than three experiences due to work conflicts with scheduled mediations.

Professional mediators included: Dianne Lipsey, Co-president, *ADA Vantage, Inc.*, Kathryn Shane McCarty, Co-president, *ADA Vantage, Inc.*, Paul Berry, Kathleen Blank, Donna Daley, Margot de Ferranti, David Drachsler, John Lange, Kristi Bleyer Johnson, Regina Olchowski, Jim Pope, Joe Schilling, John Settle, Susan Shearouse, Ellen Sudow, Jeannette Twomey, and Mark Zweig. Margaret Rice served both as a mediator and as Project Director for *ADA Vantage, Inc.*

The WFO offered mediation to parties in cases it had prescreened. In order for a case to be referred to *ADA Vantage, Inc.*, both parties had to agree, either orally or in writing, to participate in the mediation and to keep all matters discussed confidential. All parties participated voluntarily. Upon receipt of both parties' agreement, the WFO referred the case to *ADA Vantage* for assignment to a mediator and for scheduling. The Project Director, Margaret Rice, selected appropriate professional mediators and paired them with an EEOC staff co-mediator. The Project Director tracked cases through the mediation process, answered questions generated from the planning and mediation process and provided updates to the WFO on status. *ADA Vantage, Inc.* provided monthly reports to the WFO on the project's progress.

The expertise that the professional mediators provided during the mediations was extremely important to the success of the project. Such expertise is essential in employment disputes which are highly complex because they involve civil rights, and often other statutory, contract or tort issues, as well as being very emotional.

Handling complex cases such as these has required our professional mediators to spend two to five times as much time on the case outside of the mediation as they spent actually mediating the case: e.g. scheduling the mediation, building rapport with the

parties, and managing the case post-mediation. Along with the expertise provided during the actual mediation session, this "behind the scenes" work also contributed to the general lack of complaints and the thirty percent settlement rate for the project. EEOC staff members were responsible for reserving space and managing logistics on the day of the mediation.

Although these professional mediators have donated their time to prepare for and conduct the mediations in this pilot project, it is extremely unlikely that most of these mediators will continue to volunteer their time to handle WFO referred mediations unless they are compensated for their services in the future. This is consistent with the trend among professional mediators practicing in the employment area to reduce or eliminate their volunteer commitment to mediate cases without compensation.

Without the continued participation of professional mediators, it is unlikely that the success rate achieved in the pilot program can be maintained. Professional mediators have brought extraordinary time commitments, mediation expertise, and knowledge of EEO statutes to this project. A combination of these skills and attributes may be difficult to replicate among the private bar or law school students.

METHODOLOGY

This methodology section sets forth the structure of this report. In this report, we analyze the results of the WFO's mediation project as of May 31, 1997. Part I reviews all cases that the WFO referred to *ADA Vantage, Inc.* to identify which, if any, objective factors which may have contributed to positive resolution of the dispute. The review begins by looking at those disputes that were returned to the field office without

mediation having been completed. It then evaluates those disputes in which a mediation session occurred. Recommendations based on objective factors follow the objective analysis.

In addition, Part II of this report analyzes the results of surveys completed by the professional mediators and EEOC staff about the mediations to identify any subjective criteria contributing to the successful resolution of the dispute. Also, the results of surveys completed by participants in the process were reviewed to determine satisfaction with the mediation option. Recommendations based on the subjective data follow the subjective analysis.

PART I. OBJECTIVE FACTOR ANALYSIS

This part analyzes cases that were referred by the WFO to *ADA Vantage, Inc.* during the course of the contract. It does so in two sections. Section A looks at cases that the WFO referred for mediation but that were returned by *ADA Vantage, Inc.* for a variety of reasons. Section B looks at cases that the WFO referred for mediation that proceeded through the scheduling and mediation process. For each section, *ADA Vantage* reviews characteristics of the population and characteristics of the cases that settled. Recommendations based on these objective characteristics appear after the conclusion of Section B.

In total, as of May 31, 1997, seventy-four cases have been sent by the WFO to *ADA Vantage, Inc.*

Section A: Objective Analysis of Cases Referred back to EEOC

Twenty-two out of the total of seventy-four cases referred were returned to the WFO for a variety of reasons including:

(1) settlement prior to mediation (seven cases);

(2) a decision by one or more of the parties to exercise their right to withdraw (usually on the basis that during mediation, fact finding would not occur), or

(3) a concern expressed by the mediator that the case was not suitable for mediation. For example, one party demanded that it could come to the mediation with an attorney but that the other party could not bring one.

Of interest in this population is:

(1) At least half of these cases involved termination or proposed termination.

(2) At least half of these cases involved employers with less than one hundred employees.[2]

(3) In 17/22 cases, only one of the parties returned to the WFO a consent form. In the 5/22 cases where both parties submitted forms, four of these settled before mediation.

Except for the apparent relation of getting a signature form from both parties, there does not seem to be any distinguishing objective characteristic for why certain cases settled prior to scheduled mediation. Cases that settled prior to mediation involved employers of different sizes, with employees who have varying years of history with the companies, for a range of issues from promotion, disparate treatment, harassment, or termination, and for a variety of discriminatory charges.

[2] Some Charges failed to list the number of employees or indicated Category U: unknown.

Section B: Objective Analysis of Cases where Mediation was Attempted or Completed

Of the fifty-two cases that remained in the referral stream, as of May 31, 1997, forty-four have had at least one mediation session; and a significant amount have had multiple sessions. Two cases proceeded to mediation only to have the charging party fail to attend. [3]

Cases by Type of Discrimination Alleged:

Disputes involving more than one charge:	19
Disputes involving race discrimination	18(6)[4]
Disputes involving sex discrimination	15(7)
Disputes involving disability discrimination	10(7)
Disputes involving age discrimination	10(7)
Disputes involving religious discrimination	2(2)
Disputes involving national origin	8(1)
Disputes involving retaliation	12(2)

In some cases, additional bases for EEOC's jurisdiction were raised for the first time during the mediation session. For example, in a case involving an age discrimination charge, the Charging Party's attorney mentioned the possibility of adding a claim of disability discrimination during the mediation. In addition to listed charges, Charging Parties or Responding Parties may want to discuss other concerns about the employment relationship that may or may not directly relate to the charge. For example, in a dispute about an employer's alleged failure to provide a reasonable accommodation, the employer also indicated in a pre-mediation discussion that he wanted to discuss a complaint filed by the Charging Party in D.C. Court regarding the employer's response to the alleged use of pepper spray by the Charging Party on her supervisor.

[3] Although these cases have been referred back to investigation, they are included here since the mediator, co-mediator, and responding party arrived up for the scheduled mediation.

Of these fifty-two cases:

(1) The majority, 29 out of 52 (56%) involved individuals who had already been terminated, discharged or who alleged constructive discharge. For these disputes, the parties no longer had an ongoing relationship.

(2) Nine out of 52 (17%) involved promotion issues.

(3) The remainder involved harassment, performance problems, terms and conditions of employment (including reasonable accommodation), and retaliation for having made a complaint.

These disputes were evenly distributed among employees with work records of varying length.

Years with Employer:

Less than three years of employment:	18
Three to ten years of experience:	19
Eleven or more years of experience	15

These disputes which stayed in the mediation process were also evenly distributed among employers of different sizes.

Number of Employees:

Employers with 15-100 employees:	12
Employers with 101-200 employees:	9
Employers with 201-500 employees:	10
Employers with 500+ employees:	11

Of these cases, more than half of the Charging Parties submitted a signed agreement to mediate form.

Submission of Agreement to Mediate Forms:

Charging Party Signature Page:	31
Responding Party Signature Page:	26
Both Parties Signature Page:	22

[4] The number in parenthesis refers to charges filed solely on the basis of the alleged discriminatory intent.

In the first 15 cases that went to mediation, only three disputes had signed agreement to mediate forms from both parties; in the next 15, six disputes had signed agreement to mediate forms from both parties, next 15, seven disputes; and out of the final seven, six disputes had signed agreement to mediate forms from both parties.

To date, fourteen disputes have settled. *ADA Vantage, Inc.* has reviewed copies of the mediated settlement agreements.[5] The following represents the objective data we have observed relating to this limited sample of settled cases:

(1) In five out of the fourteen cases, the charging party alleged sex discrimination. In 4/5 of these cases, the charging party alleged sex discrimination only;

(2) The only two cases based on religious accommodation settled;

(3) Three settled cases alleged age discrimination;

(4) To date, no disability case has settled;

(5) Only three cases involving multiple charges settled and no case settled that had more than two charges;

(6) Ten cases involved either termination or constructive discharge. There was only one case on each involving the following: promotion, harassment/ disparate treatment, and promotion.

(7) Pre-submission of Agreement to Mediate forms from the parties may or may not have played a role in settlement although they seemed to have an affect on the willingness to mediate in the first place. Five cases settled that had signature pages from both parties, four settled that had a signature page from the Charging Party and four settled with no signature pages on file from either party.

(8) A delay by the Charging Party in filing a charge of discrimination did not appear to affect the settlement of the case. Some cases that settled were filed within the same month as the alleged discriminatory incident. Others that

[5] For one of the cases that settled due to mediation, no formal agreement was submitted to the WFO. According to the mediator, the parties followed the agreement worked out in the mediation session, but chose not to submit it to the WFO. The Charging Party withdrew his charge as part of this agreement. In another case settled before May 31, 1997, the parties' attorneys are still reviewing the language of the agreement.

settled were filed several months after the alleged discriminatory incident but within the statutory limit; and,

(9) Several cases referred for mediation involved continuing actions – the discriminatory behavior stretched from several months to several years prior to the filing of the charge. Of the cases that settled, two were continuing actions.

(10) On the whole, the financial range of settlements is relatively small. Eleven cases settled for less than $6,000. Two of these cases settled with no money being exchanged. For example, in one dispute, the Charging Party merely wanted the company policy in writing. In the other, the case settled when the Responding Party agreed to drop its challenge to the unemployment compensation hearing.

(11) In agreements where the amount was specified[6] (including the two agreements where no money was exchanged), the median nominal settlement received by the Charging Party was between $1,100 - $1,300. In addition, typical terms for a Charging Party who no longer worked for the Responding Party included either a neutral or positive employment reference and a deletion of negative information from the Charging Party's personnel file. For a Charging Party that still worked for the Responding Party, terms might include training or advanced notice of company's intent to modify some working conditions.

(12) Preliminary information for cases mediated after May 31, 1997 indicate that several may involve large settlements. Although the agreements have not been signed, one case appears to have settled for more than $100,000 and another for $10,000. In another case, the mediators helped the parties work out an agreement for more than $150,000. The parties chose to write a separate agreement involving EEO and non-EEO matters arising from the same set of facts.

Recommendations Based on Objective Analysis in Part I, Sections A and B

While we recognize the sample size is small, the following recommendations are based on our observations:

(1) Because small employers constituted the largest population in the total 74 cases referred to date, provide information targeted to small employers regarding cost, length of time of investigation, and amount of work for employers involved in an investigation. This might encourage more small employers to stay in the process or attempt settlement before mediation.

[6] One settlement agreement provided money based on several weeks of the employee's salary which was not specified.

(2) Actively pursue agreement to mediate forms from both parties prior to referral for mediation. Preliminary results indicate that this may lead to increased rate of participation in mediation and may increase likelihood of settlements.

(3) Provide additional time for those in settlement negotiations both prior to and after mediations. WFO's flexibility delaying investigative procedures contributed to positive atmosphere and conclusion for settlement negotiations.

(4) Continue to encourage religious discrimination cases into mediation process.

(5) Evaluate the factors in cases involving disability discrimination which may encourage an improved settlement rate.

(6) Continue to monitor sex and age discrimination cases for settlement patterns.

(7) Continue to allow mediators to mediate all matters of dispute between the parties with the understanding that the parties may have to memorialize their agreement in two parts: (1) an agreement covering matters related to Title VII of the Civil Rights Act of 1964, as amended, the Age Discrimination Act of 1967, as amended, and/or the Americans with Disabilities Act of 1990, as amended, for review by the WFO; and (2) a separate agreement covering matters unrelated to Title VII of the Civil Rights Act of 1964, as amended, the Age Discrimination Act of 1967, as amended, and/or the Americans with Disabilities Act of 1990, as amended, that will not be signed by the WFO.

(8) Reconsider whether or not to send complaints involving disputes with more than two charges to mediation.

(9) Given the high percentage of termination cases in this program, and likely continuing pattern, evaluate factors that might impact on settlement. For example, is a termination case more or less likely to settle if the charging party wants reinstatement?

(10) Reconsider sending cases involving a state or local government. These cases tended to present factors such as institutional inability to commit to a decision, which may have influenced settlement outcome.

PART II. SUBJECTIVE FACTOR ANALYSIS

Subjective factors play an important role in understanding when mediation is likely to be successful. Part II of the report describes reviews the effects of subjective criteria in three sections. Section A analyzes materials submitted by the professional

mediators and EEOC staff on various subjective factors influencing the mediation process, Section B discusses the effect of legal representation on the process, and Section C reviews how satisfied participants were with the process. Recommendations regarding the effect of subjective factors appears at the end of Part II.

Section A: Subjective Analysis based upon Surveys from Professional Mediators and EEOC Staff

Based on the survey information provided by the professional mediators and by EEOC staff, *ADA Vantage* has developed this chart outlining factors contributing to a positive mediation experience for participants versus factors that contribute to a negative mediation experience for participants. It appears that during a positive mediation experience, the parties were able to clarify issues and personal interests and with their added knowledge make their own assessment.

Factors why mediation progressed or settled	Factors why mediation was not a positive experience or settlement was not reached
1. Willingness of the parties to work hard -- parties had positive attitude	1. Parties unwillingness to look for solutions or become involved.
2. Reasonable parties	2. Parties had unrealistic expectations; Responding Party being surprised by the amount of money asked for by one side; Charging Party wanting the Responding Party punished; Request for large damages at outset; Responding Party unwilling to put money on table.
3. Key parties were present.	3. Failure to get Responding Party representative with full settlement authority at table; or failure to get someone with personal stake at table for Responding Party.
4. Content of case: Parties have continuing relationship; termination with no request for reinstatement; Religious cases particularly suited to mediation. Other cases with affirmative obligation.	4. Case more appropriate for investigation; Issues additional to civil rights dispute; Question about jurisdiction; case too old; Emotional level extremely high – sexual harassment.
5. Key answers were presented to Charging Party or Responding Party; i.e., lack of discrimination became apparent through mediation when person received explanation. Parties willing to listen to other's story.	5. Total difference of opinion, i.e. one side convinced the other is lying; or additional information needed in order for case to settle that cannot be provided during mediation. Parties who cannot be budged from positioned bargaining, i.e. I did not do anything wrong.
6. Timing of mediation was at an appropriate point. Process helped to clarify issues for parties including that parties would not be satisfied with options provided in mediation.	6. Too early in the process; w/o discovery attorney for charging party didn't feel secure recommending settlement; or too late in the process: lawyers had convinced parties to litigate.

Section B: Assessing the Lawyer Factor in Mediation

(1) When a case involved a Charging Party without an attorney and a Responding Party with an attorney, serious concerns were expressed by the mediators about fairness and keeping the process balanced. Mediators were concerned that mediation became an inexpensive discovery process for the Responding Party. For example, the project had one case where the attorney for the Responding Party did not allow his client to talk at the table and brought a young associate from his firm to take notes of what the Charging Party said.

(2) Mediators agreed that attorneys could play a valuable role as a reality check for their clients. However, lawyers unfamiliar with the facts of the case and EEO law were a distraction to the mediation process. Some mediators expressed the opinion that certain cases would have settled if the Charging Party had had an attorney who knew EEO law who could have provided a reality check for the client.

(3) Lawyers for the Responding Party were generally praised for helping to focus their clients on possible terms of settlement. In addition, lawyers for the Responding Party were generally more familiar with their client's story and with EEO law.

(4) Lawyers and their clients did not necessarily communicate. One attorney expressed his frustration that his client had filed with EEOC instead of D.C. Human Rights Commission and that his client had agreed to mediation.

(5) While some mediators successfully employed EEOC recommendations restricting the attorneys' roles in mediation, other mediators found that if they did this, the lawyer would sabotage the process.

Section C: Subjective Analysis of the Satisfaction of the Parties

As of May 31, 1997, the project received eight surveys from charging parties and seventeen from responding parties. Seven out of the eight charging parties, and 15 out of 17 responding parties believed that mediation was appropriate for the dispute.

Summary of Participants' Responses to Satisfaction Survey:[7]

	CP	RP
1. How well did the mediator explain the process?	4.25	4.47
2. Were you able to fully present your case?	4.13	3.93[8]
3. How well did the mediator listen?	4.63	4.41
4. Did the mediator help generate realistic options?	4.25	3.60[9]
5. Did the mediator treat all parties equally?	4.63	4.53
6. Did the mediator understand the legal and factual issues?	4.29	4.18
7. How well did the mediator clarify key issues?	4.0	3.69[10]
8. How satisfied were you with the process?	4.17	3.47
9. How satisfied were you with the outcome?	2.75[11]	2.13
10. How satisfied were you with the mediators?	4.43	4.12

Participants were generally pleased with the process of mediation although they were somewhat dissatisfied with the results. Responding Parties' scores reflect less satisfaction with the process than the Charging Parties' scores. As one of the parties stated: Mediation worked when "parties did not bear harsh feelings." Not surprisingly, even when parties reached agreement, they expressed greater satisfaction with the process than with the solution. When reaching agreement, neither party is likely to achieve all of its goals or meet all of its needs.

Positive comments from the participants about the mediation process include: "My best mediation experience;" "[Mediation] helped bring out issues that were unknown to the parties." "The mediators were excellent. Without them, there would have

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[7] Participants were asked to score these questions on the basis of 1-5, with 5 being the top score. Some participants used words to describe the process instead of this scoring system. *ADA Vantage* has translated the following terms into the following scores. 1=poor [dissatisfied, not pleased, not satisfied], 2=fair, 3=good [well, fairly satisfied], 4=very good [yes, very satisfied, very pleased, very, very well] 5=excellent.

[8] The responding party gave a low score because the charging party refused to follow ground rules, interrupted the responding party when the Responding Party tried to speak and did not let the Responding Party finish a sentence.

[9] One responding party gave a low score because he wanted the mediator to evaluate the merits of the case.

[10] One responding party gave a low score because he wanted the mediator to evaluate the merits of the case. Another gave a mixed score: 5 for the relay about the other sides' case during separate session; 1 for the relay for their case in separate session based on assumption of what was transmitted.

[11] Scores ranged from 3 to 5 for cases that settled and from 1 to 4 for cases that did not.

been no settlement. They were objective, even-tempered, competent and caring." "Mediators input and suggestions were helpful." Mediation provided an "opportunity for reflection and review of both [sides of the] issues." Mediation allowed parties to "explore a variety of issues." Another party expressed appreciation for the "mediators' even-handedness." In one negative comment about the process, the party expressed dissatisfaction with the role of the mediators: "mediators need to grapple with merits of case."

Comments from the participants on the co-mediation model were generally positive. Co-mediation provided "more ears; more points of view." Co-mediation "increased the odds that all options were explored and ensured that there was no bias." Co-mediation "kept the parties focused on the issues." Negative comments about co-mediators occurred when an EEOC mediator failed to take an active role – "appeared to be a learning exercise for one of the mediators" -- or was perceived as being institutionally biased – "EEOC person's bias makes [him/her] a poor choice for mediator."

Participants identified several key instances when mediation would not work. First, when one party disrupted the mediation because they were unwilling to follow the mediator's ground rules, i.e. not interrupting the other party when it is the other party's turn to speak. Second, mediation would not work if the Responding Party was completely surprised by the Charging Party's demands, i.e. the amount of money. Third, if one party felt like other party was failing to mediate in good faith, then the mediation process would not progress, i.e. the mediation was being used as a discovery tool.

Recommendations about improving the process

(1) Provide more information about mediation to parties **prior** to the mediation. This not only benefits the parties but the WFO as well. In order to minimize the risk of one of the parties complaining about the mediation process, providing easily understood materials (written on the seventh grade reading level) prior to mediation will offer WFO additional protection against potential complaints from emotional parties.

- Clarify WFO's expectations for the parties and for the process of mediation. Because these expectations are fundamentally different than expectations of WFO during investigation, clarification might set the stage for more creative option building and settlement.

- Some parties continued to expect an evaluation of the strengths and weaknesses of their case. For example, provide more counseling to Charging Party about expectations. This may increase settlement rates. As one mediator put it, "The Charging Party should have some kind of counsel or advice before mediation, probably from the EEOC. The 'reality' of the situation would be clearer to [the Charging Party] then." Moreover, it would help "balance the mediation, as employers always show up with a legal and/or human resources advisors."

- Employers, especially if target audience is lots of smaller employers, need to anticipate the nuisance of investigation. Provide employers with written examples of solutions reached in mediation. Get employers thinking in terms of resolution.

(2) If the mediation lasts multiple sessions, mediators recommended controlling the communication between the parties during the continuance phase. This could include allowing direct contact between the parties or their attorneys provided that that course of action was made known and agreed to in front of the mediator.

(3) Before investigation begins, if the case has gone through mediation, raise settlement possibility again. As one mediator stated: "In one cases where no settlement was secured, the parties were very close however. Perhaps, one more nudge may result in a settlement."

(4) Determine the actual willingness of parties to mediate. This is a case by case determination. As one mediator stated, "I believe that in a few instances, the responding party had no intention to offer 'anything' but came for discovery purposes. I also felt that a few charging parties were unwilling to settle on anything less than full relief or 'obtaining' justice." Some mediators found

that mediation offered a safe place to be heard for those in an ongoing working relationship.

(5) Assess whether the timing is appropriate. This also appears to be a case by case determination. Some mediators' experience indicated that the earlier the mediation was scheduled the better as it would occur before parties incurred costs; others' experience indicated that some discovery would have been very effective. "It might help to allow the parties to do a little investigation first, as they don't always believe the other's word."

(6) Consider having WFO set up the mediation schedule in certain instances. Some organizations like law firms are extremely hierarchical. In a hierarchical situation, mediators need to look like they are in a position of authority. A mediator's scheduling the mediation with a hierarchical employer created a negative impact on the credibility of the mediator.

(7) Provide clear rules about what level of decision-maker with appropriate settlement authority must attend from the Responding Party.

Recommendations on the role of attorneys

(1) Based on the potential positive effect of lawyers to provide a reality check to their clients, educate the bar often and actively about any WFO alternative dispute resolution process.

(2) Provide clear rules about the role of attorneys during the entire mediation session.

(3) Provide materials regarding mediation and the role of attorneys directly to the identified attorney representing each party.

Recommendations regarding participant surveys

(1) Continue to offer free postage to participants to encourage return of survey but use a neutral location for return of surveys. Survey participation appears to have dropped off when parties were given free EEOC return envelopes rather than envelopes that returned surveys to *ADA Vantage, Inc.* Project Director.

(2) Try different methods for increasing return of surveys from both parties but especially Charging Parties whose rate of return is much lower than Responding Parties'.

(3) Continue co-mediation model but emphasize that EEOC co-mediator will be "Chinese-walled" from the investigative process.

(4) Educate participants early and often that mediation will not be an evaluative process. If parties want case evaluation, suggest to them that mediation may not be an appropriate process for them.

(5) Develop WFO options for dealing with parties that act in bad faith.

(6) Contact Responding parties for more information about ideas about how to improve their satisfaction with the process. For example, ask them whether they would use the process again. If not, why not?

(7) Redesign the evaluation form to gain more pertinent information about the usefulness of the mediation process. *ADA Vantage, Inc.* has submitted a proposed evaluation to WFO that is currently under review.

IRM Program and Benefits

One of the primary goals of the EEOC's Information Resources Management (IRM) Program is to provide our employees with enabling technology tools to more effectively achieve the Agency's mission. These tools will include state-of-art desktop computers, electronic communication capabilities, and computer systems used for receiving, processing, tracking, managing, and reporting all information related to charge processing and case litigation. The deployment of these tools and a comprehensive system will not only eliminate many problems in our current "stovepipe" systems (such as redundant data entry and storage, duplicated processes and efforts, inconsistent data, and inaccessible information) but also will deliver many new functionalities and capabilities which are not available in the current systems. Among the benefits which will be realized are: increased productivity; improved service delivery and program management; and more efficient handling of charge and case loads.

The EEOC's IRM Program, with an estimated budget need of $25 million, consists of several initiatives which will result in the establishment of a communications infrastructure and the deployment of integrated information systems throughout the Agency. Each initiative of our long-range IRM program and the potential benefits are described in detail as follows:

1) Provide connectivity and data communications within each field office through local area networks (LANs), and provide enterprise access through wide area network (WAN) communications. Currently, the Agency does not have a communication infrastructure to allow the exchange or sharing of information electronically between field offices or between the field and headquarters. In addition, the majority of our field offices do not have a LAN to allow electronic communications within the office. LANs provide Agency staff with capabilities such as electronic mail, group scheduling and calendars, document management, file transfer and network faxing. They enhance typical office automation features including word-processing, spreadsheets, and electronic forms. In addition, LANs allow for more efficient utilization of computing resources through the shared use of printers, CD-ROM drives, and software applications. WAN communications are essential to our goal of increasing the level of teamwork between field offices, and between headquarters and the field, through the sharing of information, resources and expertise. In addition, WAN communications are required for employee access to our integrated information systems which are currently under development.

2) Develop an "Integrated Mission System" (IMS) to consolidate all mission data into a single, shared repository. The IMS will allow centralized tracking, consolidation, and management oversight of all data related to charges of employment discrimination, investigative activities and resolutions, federal charge processing, state and local agency charge contract monitoring, litigation recommendations, commission vote activity, litigation activities and findings, and systemic research. Because of the integration between data (mission data, EEO survey data, census data) and automated software tools (such as word-processing and spreadsheets), the system will reduce the time and effort needed to prepare documents and correspondence as well as increase the accuracy and

integrity of data. It will additionally allow field and headquarters staff to review and report on nationwide data; increasing our ability to consolidate charges, identify class and systemic activity, and share critical mission information. The ability to filter and extract data into spreadsheets and other analytical tools more efficiently will reduce the time needed to analyze and study charge or case trends.

3) Acquire new financial management and human resources management systems. The "Integrated Financial Management System" (IFMS) will replace nine current antiquated accounting systems and will integrate the accounting, budget, procurement, and property management functions. It will allow field staff to directly enter and access accounting data, utilizing electronic form routing and will allow financial data to be integrated with and compared against mission (charge and case) data. The upgrade of our personnel system to an open architecture human resources management system will additionally allow the integration of mission and administrative data. These enhancements to our administrative systems will reduce redundant and unnecessary paperwork and procedures, hence allowing employees to focus more time on mission-related matters. The integration capabilities will additionally allow the Agency to track mission activity against administrative resources.

4) Provide document management and collaborative tools to Agency employees. A document management and retrieval system will permit searchable access to investigative reports, briefs, motions, and pleadings that are currently located throughout our field and headquarters offices. It will additionally provide desktop access to current Agency policies and decision documents, district court and appellate decisions, guidance memoranda, and enforcement plans. This will provide employees with efficient systems to locate and retrieve both corporate knowledge as well as external reference material, and will allow offices to work together on cases, while minimizing travel expenses. In addition, the Agency will enhance service to our customers by providing external access to public Agency information via the Internet. This will reduce time spent by Commission staff in responding to public information requests and will allow our constituents direct access to Agency information.

5) Maintain and regularly upgrade our existing technology infrastructure. The Agency's IRM program assumes a four-year life cycle for PCs and printers and requires an upgrade to a 32-bit desktop operating system. This initiative is necessary to ensure that employees have access to current software tools and technology enhancements.

6) Address state and local government Fair Employment Practices Agencies (FEPA) information technology requirements. FEPA charge investigations account for 50 percent of our nationwide inventory. Currently EEOC provides database servers and software to 72 FEPA offices. The Agency is currently working with FEPA representatives to identify and address future FEPA information technology requirements, to ensure that their needs are integrated into our overall IRM program and to strengthen the cooperation and coordination between state and federal charge processing.

These initiatives will enhance intra- and inter-office communication, eliminate redundant data entry procedures and administrative burdens, allow sharing of information and expertise, provide increased operational efficiency, improve our research capabilities, and augment our reporting and case management capabilities. These productivity gains should speed charge investigations, improve our ability to manage our inventory, and allow for more focused case evaluation and development.

Our FY 1999 IRM budget submission of $9,590,000 will provide EEOC with a basic communication infrastructure and will allow us to complete the development and procurement of several new information systems and upgrades. Specifically, we will be able to complete the deployment of LANs to all field offices, provide additional WAN connectivity between field offices and headquarters, complete the development and partial deployment of the IMS, complete the installation of the IFMS, initiate procurement of the human resources management system upgrade, migrate the Agency to a 32-bit desktop, replace one-quarter of our existing PC and printer inventory, and continue our Year-2000 conversion projects. It is estimated that our overall IRM program will require $25 million, spread across three fiscal years. These funds should be earmarked for the IRM program as "no year" money to allow for effective program planning and modular acquisition over a period of three years. In addition, recurring annual telecommunication costs, estimated at $3 million per year (for WAN access charge) and additional funds to enhance FEPA communication capabilities will be required on an annual basis. EEOC is confident that these new and enhanced desktop computing capabilities combined with increased data connectivity will improve the processes of researching, investigating, developing and coordinating charge and case workloads and will improve the productivity of the Agency's workforce and the quality of its work products.

MEMORANDUM

To: Democratic Members and Staff,
Committee on Education and the Workforce

From: Patricia Crawford, Democratic Committee Staff

Date: October 17, 1997

Re: Hearing, Review of the Equal Employment Opportunity Commission (EEOC)

Logistics: Tuesday, October 21, 1997 in 2175 Rayburn at 2:00 p.m.

On Tuesday, October 21, the Committee on Education and the Workforce will hold an oversight hearing on the Equal Employment Opportunity Commission (EEOC). Republican staff characterize the purpose of the hearing as to examine the agency in fulfilling its mission. They expect to raise issues regarding the agency's backlog and how complaints are processed as evidence that the agency is not moving in the direction it should be. The expectation is that this hearing will provide a fairly critical look at the agency and its case handling priorities, as well as the systemic infrastructure that establishes priority.

BACKGROUND

When Chairman Gilbert Casellas took the helm of the EEOC in October 1994, the agency had an inventory of pending private sector charges of 111,000 charges of discrimination, an increase of approximately 25,000 from the year before and twice the backlog of 1990. With the enactment and implementation of the Americans with Disabilities Act, the EEOC saw a fifty percent increase in the Commission's workload over this four-year period. During this same time frame, the number of charges per investigator grew from 51 in 1990 to 122 in 1994.

The increased backlog may be attributed to a number of sources, including:

- delays in making appointments to the Commission;
- increased workloads as a result of enactment of the Americans with Disabilities Act and the Civil Rights Act of 1991 (ADA now accounts for approximately 20% of the agency's workload); and
- decreased agency resources (in FY 1980, the agency had a staff complement of 3,400, now it has 2,800).

Shortly after Mr. Casellas became Chairman of the Commission, he appointed three task forces to consider charge processing, alternative dispute resolutions, and the inter-

relationship with state fair employment practices agencies. Recommendations of the charge processing task force were adopted by the Commission on April 19, 1995. Recommendations of the alternative dispute resolution task force were adopted on April 25, 1995.

CHARGE PROCESSING REFORMS

The purpose of the charge processing reforms is to adopt a case prioritization system which will permit EEOC to expeditiously, but fairly, resolve "weaker" cases, and focus on the most serious instances of employment discrimination.

The new charge handling procedures anticipate the prioritizing and categorizing of charges into three types:

- high priority charges falling within national or local enforcement plans in which it appears more likely than not that discrimination has occurred;
- charges initially appearing to have merit, but requiring additional investigation; and
- charges appropriate for immediate resolution (charges that do not contain reasonable cause to think that a violation occurred). A charging party may, upon dismissal of a charge by EEOC, seek to file suit in Federal court.

As part of the charge processing reforms, the Commission rescinded three enforcement and administrative and litigation policies:

- the "full investigation" policy which required the agency to full investigate each charge it received in the order in which it is received;
- the "full remedies" policy which required the agency to seek resolutions including "full remedies" for all meritorious cases; and
- the "statement of enforcement" policy which provided that all "cause" cases (charges that the agency believes to be meritorious after investigation) in which conciliation failed would be recommended for litigation.

Since then, the backlog of cases has been reduced by more than 30 percent, to 75,000. Last year, the agency resolved more cases than in any time in its thirty-two year history. The rate of finding reasonable cause during Fiscal Year 1997 is well ahead of what it was in Fiscal Year 1996.

ALTERNATIVE DISPUTE RESOLUTION REFORM

The Commission has initiated a system for the mediation of charges based on informed and voluntary participation, confidential deliberations, and neutral facilitators. District offices will develop rosters of mediators for their areas. Based on the availability of mediators, cases will be randomly chosen to be referred to mediation. The charging

party will be asked first whether he or she is willing to participate in mediation. If so, the respondent will be asked whether they are willing to submit the dispute to mediation.

In addition to providing for the development of a mediation program within the charge processing system, the Commission went on record in support of efforts by employers to develop voluntary internal ADR programs, while emphasizing the Commission's opposition to programs that make agreement to binding arbitration of employment discrimination disputes a pre-condition of employment or continued employment.

Since the implementation of these reforms in the ADR programs, the agency has collected more than $425 million for victims of discrimination in the past two and one-half years. Eighty percent of that amount came from administrative enforcement activities, thereby keeping these cases out of an already over-burdened court system. Moreover, in the first six months of Fiscal Year 1997 – the very beginning of EEOC's mediation program – the agency used mediation to resolve over 300 charges and collect benefits of about $4 million for victims of discrimination.

THE POLITICAL PICTURE

The EEOC does not receive a large budget for the critical civil rights functions mandated. For example, in FY 1997, the EEOC was allocated $240 million, of which $27,5 million is provided to state and local agencies to help them process charges which overlap Federal, state and local authority, and to certain tribal employment rights organizations for charge intake.

Under past EEOC Chairman, Clarence Thomas, the agency relinquished its congressional mandate to attack broad institutional patterns and practices of discrimination through systemic litigation. The prior two administration abdicated their responsibility of ensuring the vigorous enforcement of the laws providing equal employment opportunity for all Americans. In the area of systemic discrimination, the agency had chosen to almost exclusively litigate individual complaints at the expense of class actions. The direction taken by the agency under the aegis of Chairman Thomas reflects the ideology of the administration in power at the time.

It is expected that this hearing will focus on criticisms that the resources of the agency should be directed to helping as many people as it can reach by investigating each and every charge that comes before it. However, this approach makes every line person connected with the agency a pawn of the agency's hierarchy. Moreover, the millions of Americans who expect to be protected by policies and programs established and enforced under the Equal Employment Opportunity Act will be vulnerable to the easy camouflage of abuses and the disregard of due process by the old-boy networks.

The EEOC is a labor intensive agency and, even with level funding, cannot maintain the same level of activity from year to year under circumstances where the rising costs of assistance and the increase in workload erodes the ability of the agency to function. In order to adapt to changes in the political and economic environment with the regard to the role of government in society and fewer resources, the agency has had to make some difficult choices about how to remain an effective arm in the efforts to enforce civil rights law and promote equality of opportunity in the workplace. The EEOC had to establish a system to prioritize the processing of these charges to ensure that their decisions have far-reaching impact and applications. The new procedures and triage approach to case processing have significantly reduced the case backlog. In so doing, the agency has acted to prevent the continuance of illegal discriminatory activity in the worksite, thereby preserving the civil rights of the aggrieved parties.

The agency can serve as a powerful tool in deterring discriminatory practices. Given the increased selectivity of litigation, in FY 1996, the EEOC filed half the number of cases filed in FY 1995, but collected twice the monetary benefits. Therein lies the problem. There is more deleterious machination at work in this instance, and that is to undermine the effectiveness of the agency and its mission.

WITNESSES

The Republicans will have 4-5 witnesses. The EEOC will not testify at this hearing. Although the names are unknown at this point, they expect to invite 1-2 small businesses, a witness to provide an overview, and a civil rights attorney. Democrats have two witnesses.

HIGHLIGHTS OF EEOC'S LITIGATION SUCCESSES
for Fiscal Year 1997

1. Estwing Manufacturing Co. (N.D. Ill., Dec. 18, 1996) EEOC's lawsuit claimed that this manufacturing company failed to hire African American workers because of their race and failed to assign women to certain positions because of their sex. The case was settled for $3 million and job offers to approximately 150 workers denied positions.

2. KMP Peat Marwick (S.D.Tex., Dec. 1996) EEOC alleged that this accounting firm failed to hire individuals age 40 and over for entry-level accounting positions. The settlement provided $600,000 for 24 individuals and jobs for three individuals.

3. Wal-Mart (Otero) (D.N.M., Feb. 24, 1997) The Commission alleged in this case that Wal-Mart asked illegal disability-based questions during the interview and then failed to hire an applicant with an amputated arm. After trial, the jury awarded the job applicant $157,500.

4. Indiana Bell d/b/a Ameritech (S.D.Ind., jury verdict rendered Sept.25, entered on Oct. 2, 1997) The EEOC's lawsuit alleged that a company supervisor sexually harassed more than a dozen women over a 19 year period. After trial, the jury awarded damages of over $1 million for three female workers who had been harassed during the statutory limitations period.

5. Complete Auto Transit (E.D.Mich., Jan. 6, 1997) The EEOC filed suit claiming that this company failed to accommodate an employee's epilepsy. Following trial, the jury awarded over $5 million dollars in monetary relief (because of the caps on damages under the 1991 Civil Rights Act, the court reduced the total recovery to $491,931).

6. Management Recruiters International, Inc. (D. Minn., April 9, 1997) The EEOC alleged that this company failed to prevent one of its managers from sexually harassing a number of female employees over an extended period of time. The lawsuit further claimed that the company retaliated against female employees who complained of the harassment or provided information concerning the harassment. The case was settled for $1.3 million in compensatory damages for 18 female employees, along with an individual letter of apology from defendant's president to each of the women and a promise not to rehire the manager responsible for the harassing conduct.

7. Hanna Resin Distribution Co. (N.D. Tex., Dec. 20, 1996) The EEOC alleged that this company required a job applicant to undergo a physical examination before receiving a job offer (something expressly prohibited under the Americans with Disabilities Act) and then failed to hire the individual because of his disability, cystic fibrosis. The case was settled for $167,000 in monetary relief to the individual employee.

8. Smith Limousine Co. (S.D.N.Y., Oct. 31, 1996) The EEOC alleged that this limousine company failed to recruit African Americans and failed to hire both African Americans and females as chauffeurs because of their race and sex. The suit was resolved by consent decree providing for $300,000 in monetary relief to 12 individuals and an agreement to offer them jobs as positions became available.

9. Randalls Food & Drugs, Inc. (S.D.Tex., June 6, 1997) The EEOC alleged that this major supermarket chain denied employment to African Americans, Hispanics, and women because of their race, national origin and sex. The case was resolved through a consent decree providing $2.5 million in backpay to African American, Hispanic, and female job applicants, and job offers for over 5,000 entry level and 34 management trainee positions.

10. Boston Edison Co. (D. Mass., March 26, 1997) The EEOC alleged that defendant laid off a number of management employees because of their age. This case was settled through a consent decree providing $2.25 million for 34 individuals.

11. Ilona's of Hungary (7th Cir., March 6, 1997) The EEOC alleged that this beauty salon failed to accommodate the religious beliefs of two Jewish employees by refusing their requests for time off to observe Yom Kippur. In affirming the trial court's decision on liability, the court of appeals agreed with the Commission that the employer's refusal was unjustified, and compensated the individuals for the damages they incurred.

12. Publix Super Markets (M.D. Fla., May 23, 1997) This lawsuit alleged that defendant discriminated against women as a class in job assignments and promotions at defendant's grocery stores in Florida, South Carolina, Georgia, and Alabama. The case, which the Commission litigated jointly with private counsel, was resolved for $63.5 million in monetary relief to current and former female employees and extensive future promotional opportunities for women.

13. Foster Wheeler Construction, Inc. (N.D. Ill.) This action for preliminary injunctive relief alleged that the construction company failed and refused to take appropriate and effective action to remove and prevent the recurrence of racial graffiti on the premises of its construction site. The court ordered the company to take effective remedial steps, including hand-delivering a copy of the court's order to each employee as they left the construction site the day of the court's ruling.

14. EEOC v. Martin Marietta Corp. (D.Colo., April 14, 1997) This lawsuit alleged that during a series of layoffs, defendant discharged nonbargaining unit employees age 40 and over because of their ages. The case was settled for $13 million in monetary relief to approximately 2,000 claimants and an agreement to hire 450 claimants and provide two years of outplacement services and up to eight classes at defendant's Evening Institute to interested claimants.

EEOC INTERVENTIONS

Fiscal Year 1993

Svedala Industries, Inc., No. 93-C-1095 (E.D.WI, 6/2/93) ADEA
Taco Bell Corporation, No. 3-92-384 (DMN, 2/22/93) Title VII
SER Las Cruces Jobs for Progress, Inc., No. CIV 92-0989 HB (DNM,8/24/93) Title VII & ADEA

Fiscal Year 1994

Broadway Cafeteria, No. 3:93CV505 (E.D.VA, 11/5/93) Title VII
Industry Services Company, Inc. et al, No. CV93-P-2249-S (N.D.AL,2/11/94) Title VII
Shield Technology, Inc., No. CV94-P-1559-S (N.D.AL, 6/28/94) Title VII
IBEW Local 110, No. 3-93-159 (DMN, 12/21/93) ADA
Minnesota State Retirement System, No. 4-93-989 (DMN, 10/21/93) ADEA
Commonwealth of Massachusetts (Gately), No. 92-13018MA (DMA, 10/22/93) ADEA
Kohn, Nast & Graf, P.C. and Steven A., No. 93-CV-4510 (E.D.PA, 3/7/94) ADA
City of Hannibal, A Municipal Corporation, No. 2:93CV00123 (E.D.MO, 4/25/94) ADEA

Fiscal Year 1995

K-Mart Corporation, No. 1:92-CV-2564-MHS (N.D.GA, 3/27/95) ADEA
K-Mart Corporation, Inc., No. 92-105-CIV-3-BR (E.D.GA, 8/28/95) ADEA
Shelby Steel Fabricators, Inc., No. CV-93-B-2679-S (N.D.AL, 12/1/94) ADA
Hyatt Corporation, No. 94-902-CIV-ORL-22 (M.D.FL, 3/14/95) ADEA
Bozeman/Hill Corp., No. A-92-CA-323JN (W.D.TX, 10/17/94) Title VII
Monsanto Company and Chevron Chemical Co, No. 4:94CV1152GPG (E.D.MO, 5/3/95) Title VII, ADEA & ADA

Fiscal Year 1996

Mitsubishi Motor Manufacturing of America, No. 94-1545 (C.D.IL, 9/27/96) Title VII
Sce.Corp. And Southern California Edison, No. 94-6353 JMI (C.D.CA, 5/8/96) Title VII
PUBLIX Super Markets, Inc., No. 95-1162-CIV-T-17E (M.D.FL, 11/28/95) Title VII
Automotive Wholesaler's Association of New England, No. C-92-592-L (DNH, 2/20/96) ADA

Fiscal Year 1997

Selkirk Metalbestos, Inc., No. 95-0287-S-BLW (D. Idaho, 10/1/96) Title VII

Lennox Industries, Inc., No. 97-1540 ADM/AJB (DMN, 6/30/97)ADEA

Home Depot, Inc., No. 95-0181-K (E.D.LA, 3/24/97)Tile VII

Texaco, Inc., No. 94-2015,(S.D.NY, 11/20/96) Title VII

United Parcel Service of America, Inc., No. 4:94 CV 1184 (E.D.MO, 5/29/97) Title VII

St. Denis School and Catholic Archdiocese of Philadelphia, No. 97 CV 1776 (E.D.Pa.4/22/97)ADA

Israel Discount Bank and Metropolitan Insurance Co., No. 95 CV 6964 (S.D.N.Y. 5/15/97)ADA

Small Business Information

The **U.S. Equal Employment Opportunity Commission (EEOC)** enforces the federal laws that prohibit employment discrimination on the basis of an individual's **race, color, religion, sex, national origin, age, or disability.**

This page provides small employers with basic information about EEOC-enforced laws and processes. It highlights select issues of particular interest to small businesses.

Employers Covered by EEOC-Enforced Laws

- Title VII of the Civil Rights Act of 1964 (Title VII) prohibits race, color, religion, sex, and national origin discrimination. Title VII applies to:
  - employers with fifteen (15) or more employees
- Age Discrimination in Employment Act of 1967 (ADEA) prohibits age discrimination against individuals who are forty (40) years of age or older. The ADEA applies to:
  - employers with twenty (20) or more employees
- Title I of the Americans with Disabilities Act of 1990 (ADA) prohibits employment discrimination against qualified individuals with disabilities. The ADA applies to:
  - employers with fifteen (15) or more employees
- Equal Pay Act of 1963 (EPA) prohibits wage discrimination between men and women in substantially equal jobs within the same establishment. The EPA applies to:
  - most employers

How Employees Are Counted

All employees, including part-time and temporary workers, are counted for purposes of determining whether an employer has a sufficient number of employees.

An employee is:

- someone with whom the employer has an employment relationship.
- The existence of an employment relationship is most readily (but not exclusively) shown by a person's appearance on the employer's payroll.

Independent contractors are not counted as employees. This is because the work they perform is based on an independent contractual relationship, not an employment relationship.

For more information on how employees are counted, see "Enforcement Guidance on EEOC & Walters v. Metropolitan Educational Enterprises, Inc."

Recordkeeping Requirements

In general, employers must keep all personnel or employment records for one year. If an employee is involuntarily terminated, his/her personnel records must be retained for one year from the date of termination. If a claim of discrimination is filed, all relevant personnel records must be retained until final disposition of the matter.

Under ADEA recordkeeping requirements, employers must also keep all payroll records for three years. Additionally, employers must keep on file any employee benefit plan (such as pension and insurance plans) and any written seniority or merit system for the full period the plan or system is in effect and for at least one year after its termination.

Under Fair Labor Standards Act (FLSA) recordkeeping requirements applicable to the EPA, employers must keep payroll records for at least three years. In addition, employers must keep for at least two years all records (including wage rates, job evaluations, seniority and merit systems, and collective bargaining agreements) that explain the basis for paying different wages to employees of opposite sexes in the same establishment.

Reporting Requirements

The EEOC requires larger employers to file an EEO-1 report each year, which provides a breakdown of the employer's work force by race, sex, and national origin. However, employers with fewer than 100 employees and federal contractors with fewer than 50 employees and contracts under $50,000 are exempt from this requirement.

Charge Processing Procedures

The EEOC has 50 field offices all across the country. An employee or applicant for employment who believes that he or she has been discriminated against can file a charge of discrimination in any EEOC field office.

- EEOC will send a copy of the charge to the employer.

- EEOC will immediately dismiss charges that raise no legal claim under EEOC-enforced laws.

- Otherwise, EEOC will investigate the charge to determine whether there is reasonable cause to believe discrimination occurred.

    - EEOC will request the employer to provide information on the matters raised in the charge.

- If the evidence shows there is no reasonable cause to believe discrimination occurred, EEOC will notify both the charging party and the employer, and the charging party will be given a notice of right to sue in court.

- If the evidence shows there is reasonable cause to believe discrimination occurred, EEOC will seek to conciliate the charge by working with the employer to achieve a voluntary resolution. In conciliation, EEOC will require the employer to provide the appropriate remedy(ies) for the discrimination.

- If conciliation fails, the case may be litigated by EEOC or the charging party.

For additional information on charge filing, see the agency's information sheet on Filing a Charge.

Mediation

The Commission has implemented a mediation program that is now available in most EEOC field offices across the country. Mediation is an alternative to the sometimes lengthy investigative process. Participation in the mediation process is voluntary and provides the employer and the charging party the opportunity to discuss the charge before a neutral mediator and resolve it to the mutual satisfaction of all parties.

- mediation is quick, easy, informal, and confidential

- mediation agreements are not an admission by the employer of any violation of the laws enforced by EEOC

- mediation agreements result in the closure of cases with EEOC

Substantive Issues of Concern to Small Businesses

For a general overview of issues under Title VII, the ADEA, and the ADA, see EEOC's Facts About Employment Discrimination. See also EEOC's separate information fact sheets on sexual harassment, race/color discrimination, age discrimination, national origin discrimination, pregnancy discrimination, religious discrimination, and the Americans with Disabilities Act.

A number of issues under the Title VII, the ADEA, and the ADA are of particular concern to small businesses. These include the following:

Title VII

- Title VII prohibits employers from discriminating against workers because of race, color, religion, sex, or national origin.

- Sexual harassment --

  - Sexual harassment is a form of unlawful sex discrimination.

  - Sexual harassment includes unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature that are made a condition of employment, that unreasonably interfere with work performance, or that create an intimidating, hostile, or offensive work environment.

  - Employers are responsible for maintaining a workplace free of sexual harassment, and they may be liable for the unlawful conduct of their agents, supervisory employees, employees, and, in certain circumstances, even non-employees who sexually harass employees at work.

  - For more information about sexual harassment, see the EEOC's fact sheet on sexual harassment.

- Racial and ethnic harassment --

  - Harassment on the basis of an individual's race or national origin violates Title VII.

  - Racial or ethnic slurs, jokes, offensive or derogatory comments, or other verbal or physical conduct based on race or nationality are unlawful if the conduct creates an intimidating, hostile, or offensive work environment, or if it unreasonably interferes with an employee's work performance.

- Employers are responsible for maintaining a workplace free of racial and ethnic harassment, and they may be liable for unlawful conduct by their agents, superisory employees, employees, and, in certain circumstances, non-employees who harass employees at work.

- For more information on racial and ethnic harassment, see EEOC's fact sheets on race/color discrimination and national origin discrimination.

- Pregnancy discrimination --

  - Under Title VII, discrimination on the basis of pregnancy, childbirth, or related medical conditions is unlawful sex discrimination.

  - Title VII's prohibition against pregnancy discrimination applies to all terms and conditions of employment, including hiring, firing, promotion, leave, and benefits.

  - For more information on employers' responsibilities with respect to pregnancy, see EEOC's fact sheet on pregnancy discrimination.

- Religious accommodation --

  - An employer is required to provide an accommodation for employees' sincerely held religious observances or practices unless the accommodation would impose an undue hardship on the employer's business.

  - Undue hardship can be claimed if an accommodation imposes more than "de minimis" cost, generally meaning more than ordinary administrative costs.

  - Undue hardship can also be claimed if an accommodation requires violating the terms of a seniority system (for example, by denying another employee's job or shift preference).

  - For more information, see EEOC fact sheet on religious discrimination and EEOC Guidelines on Discrimination Because of Religion (pertaining to religious accommodation), 29 C.F.R. Part 1605.

    [NOTE: In the near future, EEOC regulations/guidelines, contained in the Code of Federal Regulations (C.F.R.), will be accessible on the Internet through GPO Access.]

- Immigration Reform and Control Act (IRCA) and national origin discrimination--

  - The Immigration Reform and Control Act of 1986 (IRCA) makes it unlawful for an employer to hire any person who is not legally authorized to work in the United States, and it requires employers to verify the employment eligibility of all new employees.

  - IRCA also prohibits discrimination in hiring and discharge based on national origin (as does Title VII) and on citizenship status.

  - IRCA's anti-discrimination provisions are intended to prevent employers from attempting to comply with the Act's work authorization requirements by discriminating against foreign-looking or foreign-sounding job applicants.

  - IRCA's anti-discrimination provisions apply to smaller employers than those covered by EEOC-enforced laws.

    - IRCA's national origin discrimination provisions apply to employers with between 4 and 14 employees (who would not be covered by Title VII).

    - IRCA's citizenship discrimination provisions apply to all employers with at least 4 employees.

  - IRCA is enforced by the U.S. Department of Justice. For information on IRCA's anti-discrimination provisions, contact:

    United States Department of Justice
    Office of Special Counsel for Immigration-Related
    Unfair Employment Practices
    (800) 255-8155 (employer hotline/voice)
    (800) 237-2515 (TDD)

    http://www.usdoj.gov/crt/osc

ADEA

- The ADEA prohibits age discrimination against older workers (persons 40 or older) in all aspects of employment, including hiring and benefits.

- Stereotypical assumptions based on age --

  - To avoid violating the ADEA, employers should carefully avoid basing employment actions -- particularly hiring, firing, and promotion decisions -- on stereotypical assumptions based on age. Such beliefs include notions that older workers are inflexible, set in their ways, unable to learn new procedures, unable to perform certain jobs safely, unable to work for younger supervisors, and likely to retire.

  - Employment decisions regarding older workers -- just as those regarding younger workers -- should be based on their individual skills, abilities, and merit.

- Job advertisements --

  - To avoid unlawfully deterring older job seekers from applying for advertised jobs, help-wanted notices and job advertisements should not include terms or phrases such as "young," "recent graduate," "boy," "girl," or "age 25 to 35."

- Cost exception --

  - An employer is not required to provide equal health insurance, life insurance, or disability benefits to older workers if it costs more to do so.

  - An employer may provide older employees with lower health, life, and/or disability benefits as long as it spends the same amount on both older and younger workers.

  - Because of the ADEA's cost exception, small employers can hire older workers without concern about additional or undue expenses for such employee benefits.

  - For more information, see ADEA Section 4(f)(2). See also EEOC ADEA Interpretations, 29 C.F.R. § 1625.10 (costs and benefits under employee benefit plans).

    [NOTE: In the near future, EEOC regulations/guidelines, contained in the Code of Federal Regulations (C.F.R.), will be accessible on the Internet through GPO Access.]

ADA

- For information on the ADA in addition to the discussion below, see "Your Responsibilities as an Employer" and "Questions and Answers."

- The ADA prohibits employers from discriminating against qualified individuals with disabilities. An individual with a disability is someone who:

  - has a physical or mental impairment that substantially limits one or more major life activities, or

  - has a record of such an impairment, or

  - is regarded as having such an impairment.

- Determining whether an individual is disabled --

  - It is seldom costly for a business to determine whether an individual has a disability for ADA purposes.

  - In many cases, the nature and extent of a disability and the need for accommodation will be apparent.

  - If the need for accommodation is not obvious, an employer may lawfully require an applicant or employee who requests an accommodation to provide documentation -- for example, from the individual's doctor or rehabilitation counselor -- regarding his/her disability and functional limitations.

  - The documentation, particularly a doctor's statement, will generally contain the necessary information on which to base a determination of whether the individual has a disability, including: what the condition/ impairment is; how the impairment limits the individual; what treatment has been provided and for how long (unless the diagnosis is recent).

- Reasonable accommodation --

  - The ADA requires an employer to provide a reasonable accommodation for the known disability of a qualified applicant or employee unless it would impose undue hardship on the employer's business.

  - Generally, an applicant or employee must request an accommodation.

- Studies show that most accommodations involve low cost and are relatively easy to provide.

- Small employers can often get assistance with funding accommodations from state vocational rehabilitation agencies.

  - For information, contact:

    State Vocational Rehabilitation Services Program
    Rehabilitation Services Administration
    Office of Special Education and Rehabilitative Services
    U.S. Department of Education
    (202) 205-8719 (voice)
    (800) 877-8339 (TDD)

    http://www.ed.gov/offices/OSERS/RSA/rsa.html

- The Job Accommodation Network (JAN), a free national consultant service, can provide asssistance in determining appropriate and effective accommodations.

  - For **confidential** information, contact:
    (800) 526-7234 (voice/TDD)

    http://janweb.icdi.wvu.edu

- Undue hardship --

  - If an accommodation imposes an undue hardship on a business, the employer does not have to provide the accommodation.

  - Undue hardship, which is defined as an action requiring "significant difficulty or expense," is determined in light of the employer's size, financial resources, and the nature and operation of its business.

  - Thus, it is easier for a small business to show that an accommodation would create an undue hardship. For example, a small employer may not be able to provide extended leave or to transfer an employee without incurring undue hardship.

- Tax incentives --

  - A number of tax incentives are available to eligible small businesses to help offset the cost of making accommodations and otherwise complying with the ADA.

    - Disabled Access Tax Credit (Internal Revenue Code, Section 44) -- a tax credit in the amount of 50 percent of "eligible access expenditures" that exceed $250 but do not exceed $10,250 for a taxable year is available to "eligible small businesses" (those with either 30 or fewer full-time employees or $1 million or less in gross receipts for the preceding tax year).

    - Tax Deduction for Architectural and Transportation Barrier Removal (Internal Revenue Code, Section 190) -- any business may take a full tax deduction, up to $15,000 per year, for expenses of removing specified architectural or transportation barriers.

    Eligible small businesses may take both the tax credit and the tax deduction.

    - Work Opportunity Tax Credit (Internal Revenue Code, Section 51) -- the Work Opportunity Tax Credit (WOTC) provides a tax credit for employers who hire individuals who are "vocational rehabilitation referrals." Local employment agencies will certify that a person meets this definition.

  - For IRS information, call: (800) 829-1040 (voice)
    (800) 829-4059 (TDD)

  - For WOTC information through the Internet, access:

    - http://www.doleta.gov (Department of Labor, ETA)
    - http://www.irs.ustreas.gov (Internal Revenue Service)

- Public accommodations --

  - The U.S. Department of Justice (DOJ), not the EEOC, enforces Title III of the ADA, pertaining to public accommodations.

  - Unlike Title I of the ADA, Title III applies to all employers, regardless of the number of employees.

- DOJ's Title III regulations contain an appendix providing the standards for accessible design of newly constructed facilities. See 28 C.F.R. Part 36, Appendix A.

  [NOTE: In the near future, DOJ's regulations, contained in the Code of Federal Regulations (C.F.R.), will be accessible on the Internet through GPO Access.]

- DOJ also publishes an ADA Guide for Small Businesses, presenting an informal overview of basic ADA requirements for small businesses that provide goods or services to the public.
- DOJ's ADA Information Line is available weekdays to provide technical assistance. It also provides a 24-hour automated service for ordering ADA materials, including DOJ's Title III regulations and the ADA Guide for Small Businesses.

  The ADA Information Line's telephone number is:

  (800) 514-0301 (voice)
  (800) 514-0383 (TDD)

  http://www.usdoj.gov/crt/ada/adahom1.htm

Remedies

- Under EEOC-enforced laws, principal remedies for unlawful employment discrimination include reinstatement or hiring, court orders to eliminate discriminatory practices, restoration of lost wages, damages, and attorney's fees.

- An employer is responsible for the full amount of lost wages and attorney's fees. Lost wages are not considered damages.

- The size of the employer determines the "cap" on damages available to a complaining party:

  - $50,000 maximum for employers with 15-100 employees
  - $100,000 maximum for employers with 101-200 employees
  - $200,000 maximum for employers with 201-500 employees
  - $300,000 maximum for employers with more that 500 employees

Technical Assistance

- The EEOC's Technical Assistance Program Seminars (TAPS) are designed to educate employers and provide the technical assistance necessary to comply with the federal laws prohibiting employment discrimination.

- TAPS programs are offered across the country, on a fee-for-service basis.

- To find out where/when TAPS programs are given, check the TAPS information on EEOC's Home Page or contact the nearest EEOC field office.

  - To locate the nearest EEOC field office, call (800) 669-4000.

Informal Guidance

- Employers who have questions about the laws enforced by EEOC or about compliance with those laws in specific workplace situations may write to EEOC's Office of Legal Counsel and seek informal guidance.

- Written inquiries should be addressed to:

  Office of Legal Counsel
  U.S. Equal Employment Opportunity Commission
  1801 L Street, N.W.
  Washington, D.C. 20507

Publications

- EEOC publications (including the texts of the laws enforced by the EEOC, facts about employment discrimination, and enforcement guidances and related documents) are available free of charge from:

  U.S. Equal Employment Opportunity Commission
  Publications Information Center
  P.O. Box 12549
  Cincinnati, Ohio 45212-0549

  (800) 669-3362 (voice)
  (800) 800-3302 (TDD)
  (513) 791-2954 (FAX)

The U.S. Equal Employment Opportunity Commission

What is the EEOC?

The U.S. Equal Employment Opportunity Commission was created by Congress and enforces Title VII of the Civil Rights Act of 1964, which prohibits employment discrimination based on race, color, religion, sex, or national origin.

Since 1979, the EEOC also has enforced: the Age Discrimination in Employment Act of 1967, which protects employees 40 years of age or older; the Equal Pay Act of 1963, which protects men and women who perform substantially equal work in the same establishment from sex-based wage discrimination; and Section 501 of the Rehabilitation Act of 1973, which prohibits federal sector discrimination against persons with disabilities.

On July 26, 1992, EEOC began enforcing the Americans with Disabilities Act, which prohibits discrimination against individuals in the private sector, and in state and local governments based on disability. EEOC is also responsible for enforcing any subsequent changes to the above statutes.

EEOC provides oversight and coordination of all federal regulations, practices and policies affecting equal employment opportunity.

Work of the Commission

EEOC staff receives and investigates employment discrimination charges against private employers and state and local governments. If the investigation shows reasonable cause to believe that discrimination occurred, the Commission will begin conciliation efforts. If conciliation fails, the charge will be considered for litigation. The Commission's policy is to seek relief for victims of employment discrimination, whether sought in court or in conciliation agreements before litigation, and to provide remedies designed to correct the discrimination and prevent its recurrence. The Justice Department is the only federal agency that may sue a state or local government for a violation of Title VII or the ADA. EEOC may sue a state or local government for violations of the ADEA or EPA. If the Commission decides not to litigate a charge, a notice of the right to file a private suit in federal district court will be given to the charging party. At the charging party's request, a notice of right to sue also will be issued at any time after the expiration of 180 days from the date the charge was filed.

EEOC's Mission

The mission of the Commission is to ensure equality of opportunity by vigorously enforcing federal laws prohibiting employment discrimination through investigation, conciliation, litigation, coordination, education and technical assistance.

This page was last modified on June 10, 1997.

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The U.S. Equal Employment Opportunity Commission

Filing a Charge

Federal Employees: Please see our fact sheet on Federal Sector Equal Employment Opportunity Complaint Processing.

If you believe you have been discriminated against by an employer, labor union or employment agency when applying for a job or while on the job because of your **race, color, sex, religion, national origin, age,** or **disability,** or believe that you have been discriminated against because of opposing a prohibited practice or participating in an equal employment opportunity matter, you may file a charge of discrimination with the U.S. Equal Employment Opportunity Commission (EEOC).

Charges may be filed in person, by mail or by telephone by contacting the nearest EEOC office. If there is not an EEOC office in the immediate area, call toll free 800-669-4000 or 800-669-6820 (TDD) for more information. To avoid delay, call or write beforehand if you need special assistance, such as an interpreter, to file a charge.

There are strict time frames in which charges of employment discrimination must be filed. To preserve the ability of EEOC to act on your behalf and to protect your right to file a private lawsuit, should you ultimately need to, adhere to the following guidelines when filing a charge.

Title VII of the Civil Rights Act (Title VII) charges must be filed with EEOC within 180 days of the alleged discriminatory act. However, in states or localities where there is an antidiscrimination law and an agency authorized to grant or seek relief, a charge must be presented to that state or local agency. Furthermore, in such jurisdictions, you may file charges with EEOC within 300 days of the discriminatory act, or 30 days after receiving notice that the state or local agency has terminated its processing of the charge, whichever is earlier. It is best to contact EEOC promptly when discrimination is suspected. When charges or complaints are filed beyond these time frames, you may not be able to obtain any remedy.

Americans with Disabilities Act (ADA) - The time requirements for filing a charge are the same as those for Title VII charges.

Age Discrimination in Employment Act (ADEA) - The time requirements for filing a charge are the same as those for Title VII and the ADA.

Equal Pay Act (EPA) - Individuals are not required to file an EPA charge with EEOC before filing a private lawsuit. However, charges may be filed with EEOC and some cases of wage discrimination also may be violations of Title VII. If an EPA charge is filed with EEOC, the procedure for filing is the same as for charges brought under Title VII. However, the time limits for filing in court are different under the EPA, thus, it is advisable to file a charge as soon as you become aware the EPA may have been violated.

For more detailed information, please contact the EEOC office nearest to you.

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Facts About Federal Sector Equal Employment Opportunity Complaint Processing Regulations (29 CFR Part 1614)

Part 1614 of the federal sector equal employment opportunity complaint processing regulations replaces part 1613, with the objective of promoting greater administrative fairness in the investigation and consideration of federal sector EEO complaints by creating a process that is quicker and more efficient.

STATUTES COVERED BY 1614 REGULATIONS

Title VII of the Civil Rights Act of 1964 makes it illegal to discriminate in employment based on race, color, religion, sex or national origin.

Section 501 of the Rehabilitation Act of 1973 makes it illegal to discriminate against federal employees and applicants for employment based on disability. Federal agencies are required to make reasonable accommodations to the known physical and mental limitations of qualified employees or applicants with disabilities. Section 501 also requires affirmative action for hiring, placement and promotion of qualified individuals with disabilities.

The Equal Pay Act prohibits employers from discriminating on the basis of sex in the payment of wages where substantially equal work is performed under similar working conditions.

The Age Discrimination in Employment Act protects people 40 years of age and older by prohibiting age discrimination in hiring, discharge, pay, promotions and other terms and conditions of employment.

RETALIATION/REPRISAL

A person who files a complaint or charge, participates in an investigation or charge, or opposes an employment practice made illegal by any of the above statutes is protected from retaliation.

FILING A COMPLAINT WITH A FEDERAL AGENCY

The first step for an employee or applicant who feels he or she has been discriminated against by a federal agency is to contact an equal employment opportunity counselor at the agency where the alleged discrimination took place within 45 days of the discriminatory action. Ordinarily, counseling must be completed within 30 days. The aggrieved individual may then file a complaint with that agency.

The agency must acknowledge or reject the complaint and if it does not dismiss it, the agency must, within 180 days, conduct a complete and fair investigation.

If the complaint is one that does not contain issues that are appealable to the Merit Systems Protection Board (MSPB), at the conclusion of the investigation, the complainant may request either a hearing by an Equal Employment Opportunity Commission (EEOC) administrative judge (AJ) or an immediate final decision by the employing agency.

The AJ must process the request for a hearing, issue findings of fact and conclusions of law, and order an appropriate remedy within 180 days.

After the final decision of the agency, the complainant may appeal to the Commission within 30 days or may file in U.S. District Court within 90 days. Either party may request reconsideration by the Commission. The complainant may seek judicial review.

FILING AN APPEAL WITH THE EEOC

If the agency dismisses all or part of a complaint, a dissatisfied complainant may file an expedited appeal, within 30 days of notice of the dismissal, with the EEOC. The EEOC may determine that the dismissal was improper, reverse the dismissal, and remand the matter back to the agency for completion of the investigation.

A complainant may also appeal a final agency decision to the EEOC within 30 days of notice of the decision. The EEOC will examine the record and issue decisions.

If the complaint is on a matter that is appealable to the Merit Systems Protection Board (e.g., a mixed case such as a termination of a career employee), the complainant may appeal the final agency decision to the MSPB within 20 days of receipt or go to U.S. District Court within 30 days. The complainant may petition the EEOC for review of the MSPB decision concerning the claim of discrimination.

REMEDIES

The EEOC's policy is to seek full and effective relief for each and every victim of discrimination. These remedies may include:

- posting a notice to all employees advising them of their rights under the laws EEOC enforces and their right to be free from retaliation;
- corrective or preventive actions taken to cure or correct the source of the identified discrimination;
- nondiscriminatory placement in the position the victim would have occupied if the discrimination had not occurred;
- compensatory damages;
- back pay (with interest where applicable), lost benefits;
- stopping the specific discriminatory practices involved; and
- recovery of reasonable attorney's fees and costs.

Information on all EEOC-enforced laws may be obtained by calling toll free on 800-669-EEOC. EEOC's toll free TDD number is 800-800-3302. This fact sheet is also available in alternate formats, upon request.

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EEOC-FS/E-7

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Facts About Sexual Harassment

Sexual harassment is a form of sex discrimination that violates Title VII of the Civil Rights Act of 1964.

Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitutes sexual harassment when submission to or rejection of this conduct explicitly or implicitly affects an individual's employment, unreasonably interferes with an individual's work performance or creates an intimidating, hostile or offensive work environment.

Sexual harassment can occur in a variety of circumstances, including but not limited to the following:

- The victim as well as the harasser may be a woman or a man. The victim does not have to be of the opposite sex.
- The harasser can be the victim's supervisor, an agent of the employer, a supervisor in another area, a co-worker, or a non-employee.
- The victim does not have to be the person harassed but could be anyone affected by the offensive conduct.
- Unlawful sexual harassment may occur without economic injury to or discharge of the victim.
- The harasser's conduct must be unwelcome.

It is helpful for the victim to directly inform the harasser that the conduct is unwelcome and must stop. The victim should use any employer complaint mechanism or grievance system available.

When investigating allegations of sexual harassment, EEOC looks at the whole record: the circumstances, such as the nature of the sexual advances, and the context in which the alleged incidents occurred. A determination on the allegations is made from the facts on a case-by-case basis.

Prevention is the best tool to eliminate sexual harassment in the workplace. Employers are encouraged to take steps necessary to prevent sexual harassment from occurring. They should clearly communicate to employees that sexual harassment will not be tolerated. They can do so by establishing an effective complaint or grievance process and taking immediate and appropriate action when an employee complains.

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Facts About Race/Color Discrimination

Title VII of the Civil Rights Act of 1964 protects individuals against employment discrimination on the basis of race and color as well as national origin, sex, or religion.

It is unlawful to discriminate against any employee or applicant for employment because of his/her race or color in regard to hiring, termination, promotion, compensation, job training, or any other term, condition, or privilege of employment. Title VII also prohibits employment decisions based on stereotypes and assumptions about abilities, traits, or the performance of individuals of certain racial groups. Title VII prohibits both intentional discrimination and neutral job policies that disproportionately exclude minorities and that are not job related.

Equal employment opportunity cannot be denied because of marriage to or association with an individual of a different race; membership in or association with ethnic based organizations or groups; or attendance or participation in schools or places of worship generally associated with certain minority groups.

Race-Related Characteristics and Conditions

Discrimination on the basis of an immutable characteristic associated with race, such as skin color, hair texture, or certain facial features violates Title VII, even though not all members of the race share the same characteristic.

Title VII also prohibits discrimination on the basis of a condition which predominantly affects one race unless the practice is job related and consistent with business necessity. For example, since sickle cell anemia predominantly occurs in African-Americans, a policy which excludes individuals with sickle cell anemia must be job related and consistent with business necessity. Similarly, a "no-beard" employment policy may discriminate against African-American men who have a predisposition to pseudofolliculitis barbae (severe shaving bumps) unless the policy is job related and consistent with business necessity.

Harassment

Harassment on the basis of race and/or color violates Title VII. Ethnic slurs, racial "jokes," offensive or derogatory comments, or other verbal or physical conduct based on an individual's race/color constitutes unlawful harassment if the conduct creates an intimidating, hostile, or offensive working environment, or interferes with the individual's work performance.

Segregation and Classification of Employees

Title VII is violated where minority employees are segregated by physically isolating them from other employees or from customer contact. Title VII also prohibits assigning primarily minorities to predominantly minority establishments or geographic areas. It is also illegal to exclude minorities from certain positions or to group or categorize employees or jobs so that certain jobs are generally held by minorities. Coding applications/resumes to designate an applicant's race, by either an employer or employment agency, constitutes evidence of discrimination where minorities are excluded from employment or from certain positions.

Pre-Employment Inquiries

Requesting pre-employment information which discloses or tends to disclose an applicant's race

suggests that race will be unlawfully used as a basis for hiring. Solicitation of such pre-employment information is presumed to be used as a basis for making selection decisions. Therefore, if members of minority groups are excluded from employment, the request for such pre-employment information would likely constitute evidence of discrimination.

However, employers may legitimately need information about their employees' or applicants' race for affirmative action purposes and/or to track applicant flow. One way to obtain racial information and simultaneously guard against discriminatory selection is for employers to use "tear-off sheets" for the identification of an applicant's race. After the applicant completes the application and the tear-off portion, the employer separates the tear-off sheet from the application and does not use it in the selection process.

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Facts About Age Discrimination

The Age Discrimination in Employment Act of 1967 (ADEA) protects individuals who are 40 years of age or older from employment discrimination based on age. The ADEA's protections apply to both employees and job applicants. Under the ADEA, it is unlawful to discriminate against a person because of his/her age with respect to any term, condition, or privilege of employment -- including, but not limited to, hiring, firing, promotion, layoff, compensation, benefits, job assignments, and training.

It is also unlawful to retaliate against an individual for opposing employment practices that discriminate based on age or for filing an age discrimination charge, testifying, or participating in any way in an investigation, proceeding, or litigation under the ADEA.

The ADEA applies to employers with 20 or more employees, including state and local governments. It also applies to employment agencies and to labor organizations, as well as to the federal government.

APPRENTICESHIP PROGRAMS

It is generally unlawful for apprenticeship programs, including joint labor-management apprenticeship programs, to discriminate on the basis of an individual's age. Age limitations in apprenticeship programs are valid only if they fall within certain specific exceptions under the ADEA or if the EEOC grants a specific exemption.

JOB NOTICES AND ADVERTISEMENTS

The ADEA makes it unlawful to include age preferences, limitations, or specifications in job notices or advertisements. As a narrow exception to that general rule, a job notice or advertisement may specify an age limit in the rare circumstances where age is shown to be a "bona fide occupational qualification" (BFOQ) reasonably necessary to the essence of the business.

PRE-EMPLOYMENT INQUIRIES

The ADEA does not specifically prohibit an employer from asking an applicant's age or date of birth. However, because such inquiries may deter older workers from applying for employment or may otherwise indicate possible intent to discriminate based on age, requests for age information will be closely scrutinized to make sure that the inquiry was made for a lawful purpose, rather than for a purpose prohibited by the ADEA.

BENEFITS

The Older Workers Benefit Protection Act of 1990 (OWBPA) amended the ADEA to specifically prohibit employers from denying benefits to older employees. An employer may reduce benefits based on age only if the cost of providing the reduced benefits to older workers is the same as the cost of providing benefits to younger workers.

WAIVERS OF ADEA RIGHTS

At an employer's request, an individual may agree to waive his/her rights or claims under the ADEA. However, the ADEA, as amended by OWBPA, sets out specific minimum standards that must be met in order for a waiver to be considered knowing and voluntary and, therefore, valid. Among other

requirements, a valid ADEA waiver: (1) must be in writing and be understandable; (2) must specifically refer to ADEA rights or claims; (3) may not waive rights or claims that may arise in the future; (4) must be in exchange for valuable consideration; (5) must advise the individual in writing to consult an attorney before signing the waiver; and (6) must provide the individual at least 21 days to consider the agreement and at least 7 days to revoke the agreement after signing it. In addition, if an employer requests an ADEA waiver in connection with an exit incentive program or other employment termination program, the minimum requirements for a valid waiver are more extensive.

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Facts About National Origin Discrimination

Title VII of the Civil Rights Act of 1964 protects individuals against employment discrimination on the basis of national origin as well as race, color, religion and sex.

It is unlawful to discriminate against any employee or applicant because of the individual's national origin. No one can be denied equal employment opportunity because of birthplace, ancestry, culture, or linguistic characteristics common to a specific ethnic group. Equal employment opportunity cannot be denied because of marriage or association with persons of a national origin group; membership or association with specific ethnic promotion groups; attendance or participation in schools, churches, temples or mosques generally associated with a national origin group; or a surname associated with a national origin group.

SPEAK-ENGLISH-ONLY RULE

A rule requiring employees to speak only English at all times on the job may violate Title VII, unless an employer shows it is necessary for conducting business. If an employer believes the English-only rule is critical for business purposes, employees have to be told when they must speak English and the consequences for violating the rule. Any negative employment decision based on breaking the English-only rule will be considered evidence of discrimination if the employer did not tell employees of the rule.

ACCENT

An employer must show a legitimate nondiscriminatory reason for the denial of employment opportunity because of an individual's accent or manner of speaking. Investigations will focus on the qualifications of the person and whether his or her accent or manner of speaking had a detrimental effect on job performance. Requiring employees or applicants to be fluent in English may violate Title VII if the rule is adopted to exclude individuals of a particular national origin and is not related to job performance.

HARASSMENT

Harassment on the basis of national origin is a violation of Title VII. An ethnic slur or other verbal or physical conduct because of an individual's nationality constitute harassment if they create an intimidating, hostile or offensive working environment, unreasonably interfere with work performance or negatively affect an individual's employment opportunities.

Employers have a responsibility to maintain a workplace free of national origin harassment. Employers may be responsible for any on-the-job harassment by their agents and supervisory employees, regardless of whether the acts were authorized or specifically forbidden by the employer. Under certain circumstances, an employer may be responsible for the acts of non-employees who harass their employees at work.

IMMIGRATION-RELATED PRACTICES WHICH MAY BE DISCRIMINATORY

The Immigration Reform and Control Act of 1986 (IRCA) requires employers to prove all employees hired after November 6, 1986, are legally authorized to work in the United States. IRCA also prohibits discrimination based on national origin or citizenship. An employer who singles out

individuals of a particular national origin or individuals who appear to be foreign to provide employment verification may have violated both IRCA and Title VII. Employers who impose citizenship requirements or give preference to U.S. citizens in hiring or employment opportunities may have violated IRCA, unless these are legal or contractual requirements for particular jobs. Employers also may have violated Title VII if a requirement or preference has the purpose or effect of discriminating against individuals of a particular national origin.

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Facts About Pregnancy Discrimination

The Pregnancy Discrimination Act is an amendment to Title VII of the Civil Rights Act of 1964. Discrimination on the basis of pregnancy, childbirth or related medical conditions constitutes unlawful sex discrimination under Title VII. Women affected by pregnancy or related conditions must be treated in the same manner as other applicants or employees with similar abilities or limitations.

HIRING

An employer cannot refuse to hire a woman because of her pregnancy related condition as long as she is able to perform the major functions of her job. An employer cannot refuse to hire her because of its prejudices against pregnant workers or the prejudices of co-workers, clients or customers.

PREGNANCY AND MATERNITY LEAVE

An employer may not single out pregnancy related conditions for special procedures to determine an employee's ability to work. However, an employer may use any procedure used to screen other employees' ability to work. For example, if an employer requires its employees to submit a doctor's statement concerning their inability to work before granting leave or paying sick benefits, the employer may require employees affected by pregnancy related conditions to submit such statements.

If an employee is temporarily unable to perform her job due to pregnancy, the employer must treat her the same as any other temporarily disabled employee; for example, by providing modified tasks, alternative assignments, disability leave or leave without pay.

Pregnant employees must be permitted to work as long as they are able to perform their jobs. If an employee has been absent from work as a result of a pregnancy related condition and recovers, her employer may not require her to remain on leave until the baby's birth. An employer may not have a rule which prohibits an employee from returning to work for a predetermined length of time after childbirth.

Employers must hold open a job for a pregnancy related absence the same length of time jobs are held open for employees on sick or disability leave.

HEALTH INSURANCE

Any health insurance provided by an employer must cover expenses for pregnancy related conditions on the same basis as costs for other medical conditions. Health insurance for expenses arising from abortion is not required, except where the life of the mother is endangered.

Pregnancy related expenses should be reimbursed exactly as those incurred for other medical conditions, whether payment is on a fixed basis or a percentage of reasonable and customary charge basis.

The amounts payable by the insurance provider can be limited only to the same extent as costs for other conditions. No additional, increased or larger deductible can be imposed.

If a health insurance plan excludes benefit payments for pre-existing conditions when the insured's coverage becomes effective, benefits can be denied for medical costs arising from an existing

pregnancy.

Employers must provide the same level of health benefits for spouses of male employees as they do for spouses of female employees.

FRINGE BENEFITS

Pregnancy related benefits cannot be limited to married employees. In an all-female workforce or job classification, benefits must be provided for pregnancy related conditions if benefits are provided for other medical conditions.

If an employer provides any benefits to workers on leave, the employer must provide the same benefits for those on leave for pregnancy related conditions.

Employees with pregnancy related disabilities must be treated the same as other temporarily disabled employees for accrual and crediting of seniority, vacation calculation, pay increases and temporary disability benefits.

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Facts About Religious Discrimination

Title VII of the Civil Rights Act of 1964 prohibits employers from discriminating against individuals because of their religion in hiring, firing, and other terms and conditions of employment. The Act also requires employers to reasonably accommodate the religious practices of an employee or prospective employee, unless to do so would create an undue hardship upon the employer (see also 29 CFR 1605). Flexible scheduling, voluntary substitutions or swaps, job reassignments and lateral transfers are examples of accommodating an employee's religious beliefs.

Employers cannot schedule examinations or other selection activities in conflict with a current or prospective employee's religious needs, inquire about an applicant's future availability at certain times, maintain a restrictive dress code, or refuse to allow observance of a Sabbath or religious holiday, unless the employer can prove that not doing so would cause an undue hardship.

An employer can claim undue hardship when accommodating an employee's religious practices if allowing such practices requires more than ordinary administrative costs. Undue hardship also may be shown if changing a bona fide seniority system to accommodate one employee's religious practices denies another employee the job or shift preference guaranteed by the seniority system.

An employee whose religious practices prohibit payment of union dues to a labor organization cannot be required to pay the dues, but may pay an equal sum to a charitable organization.

Mandatory "new age" training programs, designed to improve employee motivation, cooperation or productivity through meditation, yoga, biofeedback or other practices, may conflict with the non-discriminatory provisions of Title VII. Employers must accommodate any employee who gives notice that these programs are inconsistent with the employee's religious beliefs, whether or not the employer believes there is a religious basis for the employee's objection.

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Facts About the Americans with Disabilities Act

Title I of the Americans with Disabilities Act of 1990, which took effect July 26, 1992, prohibits private employers, state and local governments, employment agencies and labor unions from discriminating against qualified individuals with disabilities in job application procedures, hiring, firing, advancement, compensation, job training, and other terms, conditions and privileges of employment. An individual with a disability is a person who:

- Has a physical or mental impairment that substantially limits one or more major life activities;
- Has a record of such an impairment; or
- Is regarded as having such an impairment.

A qualified employee or applicant with a disability is an individual who, with or without reasonable accommodation, can perform the essential functions of the job in question. Reasonable accommodation may include, but is not limited to:

- Making existing facilities used by employees readily accessible to and usable by persons with disabilities.
- Job restructuring, modifying work schedules, reassignment to a vacant position;
- Acquiring or modifying equipment or devices, adjusting modifying examinations, training materials, or policies, and providing qualified readers or interpreters.

An employer is required to make an accommodation to the known disability of a qualified applicant or employee if it would not impose an "undue hardship" on the operation of the employer's business. Undue hardship is defined as an action requiring significant difficulty or expense when considered in light of factors such as an employer's size, financial resources and the nature and structure of its operation.

An employer is not required to lower quality or production standards to make an accommodation, nor is an employer obligated to provide personal use items such as glasses or hearing aids.

MEDICAL EXAMINATIONS AND INQUIRIES

Employers may not ask job applicants about the existence, nature or severity of a disability. Applicants may be asked about their ability to perform specific job functions. A job offer may be conditioned on the results of a medical examination, but only if the examination is required for all entering employees in similar jobs. Medical examinations of employees must be job related and consistent with the employer's business needs.

DRUG AND ALCOHOL ABUSE

Employees and applicants currently engaging in the illegal use of drugs are not covered by the ADA, when an employer acts on the basis of such use. Tests for illegal drugs are not subject to the ADA's restrictions on medical examinations. Employers may hold illegal drug users and alcoholics to the same performance standards as other employees.

EEOC ENFORCEMENT OF THE ADA

The U.S. Equal Employment Opportunity Commission issued regulations to enforce the provisions of Title I of the ADA on July 26, 1991. The provisions originally took effect on July 26, 1992, and covered employers with 25 or more employees. On July 26, 1994, the threshold dropped to include employers with 15 or more employees.

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U.S. Equal Employment Opportunity Commission National Enforcement Plan

I. Introduction

In a motion unanimously adopted on April 19, 1995, the Commission directed the development, for its approval, of a National Enforcement Plan identifying priority issues and setting out a plan for administrative enforcement and litigation of the laws within its jurisdiction: Title VII of the Civil Rights Act of 1964 (Title VII), the Age Discrimination in Employment Act (ADEA), the Equal Pay Act (EPA), and the Americans With Disabilities Act (ADA). Also on April 19, 1995, the Chairman directed District Directors and Regional Attorneys in each field office to develop Local Enforcement Plans that will be consistent with the National Plan and that will tailor their priorities to the specific needs of the many different communities served by the Commission.

This motion was adopted at a special meeting convened on April 19, 1995, to consider recommended reforms to enforcement policies that had been established by the Commission over a decade ago. The recommendations had been developed by the Task Force on Charge Processing (Task Force) created by Chairman Gilbert F. Casellas and led by Vice Chairman Paul M. Igasaki which was charged with reviewing and analyzing the private sector charge processing system. More recently, partially as the result of the Commission's increased statutory responsibilities, the number of persons filing charges annually with the EEOC has risen from less than 64,000 in fiscal year 1991 to more than 95,000 in fiscal year 1995, a 49% increase. More funding to support additional staffing and other resources necessary to meet these new challenges has not been forthcoming.

The Task Force recognized that the Commission's effectiveness as a law enforcement agency had been reduced by the overwhelming increase in its inventory of individual charges of discrimination, by the lack of financial resources needed to address the increased workload, and by a failure to strategically utilize its resources to pursue its mission through vigorous investigation, conciliation, and litigation. In the 1980's, a number of enforcement processing and litigation policies based on principles of "full investigation and enforcement" were implemented.

The Task Force concluded that the policies and practices now prevented the agency from using its limited resources strategically to pursue its mission of eradicating workplace discrimination. To address this problem, it recommended the adoption of policies that would permit the agency to make the most prudent use of its resources to accomplish its mission. One of these recommendations was that the Commission develop National and Local Enforcement Plans that prioritize issues of discrimination for Commission action.

Given the comprehensive scope of the National Enforcement Plan, the Commission consulted with a broad range of external and internal stakeholders. Through this process, the Commission sought and received recommendations from dozens of representatives of the employer, employee, labor, and civil rights communities at both the national and local levels. In addition, the then-Acting General Counsel and then-Acting Director of the Office of Program Operations consulted with several District Directors and Regional Attorneys and asked all Regional Attorneys and District Directors to solicit suggestions from a wide range of EEOC staff, including union representatives.

Based upon this extensive consultative process and after its own careful consideration of the issues, the Commission adopts the following National Enforcement Plan (NEP) which will form the cornerstone of the Commission's efforts to achieve its statutory mission of eradicating discrimination

from the workplace. The NEP recognizes that the Commission must use its limited resources more strategically to deter workplace discrimination, guide the development of the law, resolve disputes, and promote a work environment in which employment decisions are made on the basis of abilities, not on the basis of prejudice, stereotype and bigotry. The Commission also recognizes that regardless of resource issues, the development of this Plan is consistent with good management and reinventing government.

With this Plan, the Commission articulates the general principles governing the Commission's enforcement efforts, establishes national enforcement priorities, sets general parameters for the development of the Local Enforcement Plans, and delegates significant litigation authority to the Office of General Counsel so that the Commission can most effectively and efficiently accomplish its enforcement objectives.

II. Governing Principles

The National Enforcement Plan incorporates the following principles, which have guided its development and will govern its implementation.

A. The Commission is committed to an enforcement plan that encompasses a three-pronged approach to eliminate discrimination in the workplace: (1) prevention through education and outreach; (2) the voluntary resolution of disputes; and (3) where voluntary resolution fails, strong and fair enforcement.

First, the Commission recognizes that achieving its fundamental mission -- the eradication of employment discrimination -- requires not only enforcement of the law, but also prevention of the problem through public outreach and education. Therefore, within current resource limitations, the National Enforcement Plan encourages that public education, outreach, and technical assistance be conducted at both the national and local level to support and enhance the enforcement activities directed by the NEP.

Second, the Commission is committed to the voluntary resolution of disputes where appropriate and feasible. The Commission recognizes that negotiated agreements that resolve claims of discrimination can directly advance the Commission's enforcement objectives, in addition to benefiting the parties to a particular dispute. The Commission believes that the use of Alternative Dispute Resolution (ADR) significantly furthers the Commission's mission as a law enforcement agency. Accordingly, the Commission strongly encourages its use as an integral part of our enforcement process.

Finally, the Commission is fully committed to firm and fair enforcement, including litigation, where voluntary efforts to achieve compliance fail. The Commission recognizes that an effective litigation program is critical to the furtherance of the Commission's enforcement agenda by enjoining current violations, deterring future violations, and providing remedies to victims of employment discrimination.

B. The Commission recognizes that given budget constraints under which it operates, it cannot be all things to all of its various constituencies. Moreover, the Commission must be candid with the public regarding the decisions that it makes. The adoption of this National Enforcement Plan and the subsequent adoption of Local Enforcement Plans will take critically important steps in this direction.

C. The combination of limited resources and increasing demands on the Commission requires a carefully prioritized and coordinated enforcement strategy. Strategic enforcement will assure the most effective use of the Commission's resources by assuring that available funds are devoted to efforts which have the potential to yield the greatest dividends in achieving equal employment opportunity. As part of this strategic enforcement strategy, the Commission is committed to the strategic and proactive use of its limited enforcement resources through, among other things,

systemic investigations and litigation.

D. The Enforcement Plan must assure fair, aggressive and credible enforcement of all of the statutes enforced by the Commission regardless of the basis of discrimination or the issue.

E. Determination of whether a case should be pursued under the National Enforcement Plan will be based both on the issue raised and an assessment that the strength of the case supports the decision to proceed.

F. The Commission's enforcement activities will not be limited exclusively to the enumerated priority areas. With regard to charge processing, the Commission will issue cause findings in all cases in which it determines that it is more likely than not that discrimination has occurred and will proceed to conciliation in such cases. With regard to litigation, the Commission may pursue certain cases in which it has found cause, even though those cases do not fall clearly within an enumerated enforcement priority. At the same time, the Commission will not pursue litigation on every charge which falls within the NEP or LEPs. The Commission recognizes that it will be required to forgo litigating some good cases in order to devote adequate resources to other cases. At every stage of the process, the Commission will assess the available facts to determine whether the strength of the case and the nature of the issue supports the decision to proceed.

G. Enforcement efforts must be directed to the resolution of the Commission's pending inventory, in addition to the approximately 100,000 new cases which are projected to be filed over the next year. The Commission's recently implemented charge prioritization policies have already significantly reduced the Commission's current inventory, and it is anticipated that this trend will continue barring unforeseen circumstances. Both the National and Local Enforcement Plans must provide immediate strategies for continuing to reduce the existing inventory of cases. Such strategies should not ignore each office's need also to provide the resources necessary to support priority cases and address new filings. The backlog of cases is unfair to charging parties and respondents alike, diminishes EEOC's credibility as a law enforcement agency, and consumes valuable resources.

While the charge prioritization policies reflected in the NEP will permit the Commission to dedicate significant resources towards the Commission's goal of achieving a manageable inventory, the Commission recognizes that without a significant increase in resources, this goal will remain elusive.

III. Enforcement Priorities

Based on the above principles, the Commission has identified three major categories of priorities, which include a series of subcategories, that will provide the foundation of the National Enforcement Plan. These priority categories will apply, as appropriate, to investigation, conciliation, and litigation, including both trial and appellate practice, as well as the EEOC's amicus curiae and intervention representation.

The Commission sets forth the following areas as priorities under the National Enforcement Plan. These priorities will apply to each of the statutes enforced by the Commission and to all persons protected by these statutes.

A. Cases involving violations of established anti-discrimination principles, whether on an individual or systemic basis, including Commissioner charge cases raising issues under the NEP, which by their nature could have a potential significant impact beyond the parties to the particular dispute.

1. Cases involving repeated and/or egregious discrimination, including harassment, or facially discriminatory policies.

2. Challenges to broad-based employment practices affecting many employees or applicants for employment, such as cases alleging patterns of discrimination in hiring, lay-offs, job mobility,

including "glass-ceiling" cases, and/or pay, including claims under the Equal Pay Act.

B. Cases having the potential of promoting the development of law supporting the antidiscrimination purposes of the statutes enforced by the Commission.

1. Claims presenting unresolved issues of statutory interpretation under one or more of the statutes enforced by the Commission, as follows:

   a. Claims presenting unresolved questions regarding the allocation of burdens in disparate treatment cases as set forth in St. Mary's Honor Center v. Hicks.

   b. Claims presenting questions regarding the scope of liability under the statutes enforced by the Commission, including issues of employer liability in harassment cases and individual liability.

   c. Claims of national origin discrimination involving language issues, including accent discrimination and restrictive language policies or practices.

   d. Claims clarifying the Title VII duty to reasonably accommodate religious practices.

   e. Claims raising unresolved questions under the Americans with Disabilities Act regarding the meaning of "reasonable accommodation" and the term "qualified individual with a disability," as well as the defenses of "undue hardship" and "direct threat."

   f. Claims presenting questions regarding the interpretation of the prohibition of disparate impact discrimination under the Civil Rights Act of 1991, the Age Discrimination in Employment Act, and the Americans With Disabilities Act.

   g. Claims based on the intersection of two or more prohibited bases of discrimination (e.g., discrimination against women of color, older women, or minority persons with disabilities).

   h. Claims addressing the legality of agreements that mandate binding arbitration of employment discrimination disputes imposed as a condition of initial or continued employment.

   i. Claims presenting unresolved issues regarding the provision of employee benefits, including claims arising under Title I of the Older Workers Benefits Protection Act, and the Americans With Disabilities Act.

   j. Claims of comparable significance identified and approved in the Local Enforcement Plans.

2. Cases involving legal issues where there is a conflict in the federal circuit courts on a Plan priority or in which the Commission is seeking Supreme Court resolution of such issue.

C. Cases involving the integrity or effectiveness of the Commission's enforcement process, particularly the investigation and conciliation of charges.

1. Cases involving allegations of retaliation against persons for participating in Commission proceedings or opposing unlawful employment discrimination, particularly cases where the scope of the statutory protection against retaliation is at issue.

2. Cases presenting challenges to Commission policy declarations, such as guidelines, regulations or policy guidance.

3. Cases protecting Commission access to information, including subpoena enforcement

proceedings and proceedings to preserve or prevent the loss or destruction of evidence, except as set forth in paragraph 5 below.

4. Cases involving allegations of a material breach of an agreement to which the Commission was a party settling an earlier proceeding.

5. Cases involving alleged violations of the Commission's recordkeeping and reporting requirements where there is reason to believe that there may be another violation of statutes enforced by the Commission.

With the adoption of these priorities, and pursuant to a Motion unanimously adopted by the Commission on April 19, 1995, the Commission hereby withdraws all Priority Issues Lists that have previously set out priority issues for Commission consideration.

IV. Local Enforcement Plans

Each District Director and Regional Attorney shall develop a Local Enforcement Plan (LEP) and a supporting document detailing its plan to implement the LEP. These documents shall be submitted concurrently to the Commission, the General Counsel and Director of the Office of Program Operations, no later than forty-five (45) days from the date of the adoption of the National Enforcement Plan. In turn, the General Counsel and Director of Office of Program Operations shall review the LEPs and submit their recommendations to the Chairman no later than twenty-one (21) days from the date that the LEPs are submitted by the District Offices. The Commissioners may also submit their comments to the Chairman on the LEPs and the implementation documents, as well as on the recommendations submitted by OGC and OPO, no later than thirty-five (35) days from the date that the LEPs are submitted by the District Offices. Then, the Chairman shall have thirty (30) days to determine whether to approve the LEPs. LEPs are to be consistent with the National Enforcement Plan, but their specific goals and objectives should be tailored to reflect legal and factual issues specific to the communities served by each office, as well as each office's resources. In particular, LEPs shall include the following critical components:

A. An evaluation and strategy to address the provision of Commission services to underserved populations and geographic regions, as well as employment practices of particular importance in the region served by each district office.

B. A description and identification of the local issues which are on the NEP.

C. A description of each office's plan to resolve the pending cases in the office's inventory, including the long-term plans of the district office to use ADR techniques as part of its charge processing activities.

D. In addition, each district office shall develop an implementation document supporting the LEP. This document shall describe the district office's strategy for utilizing its resources and give Headquarters information critical for planning, staffing, and the allocation of resources in the field. This document shall:

1. Prioritize and justify the issues identified in the LEPs as to severity and need for local impact, taking into account industries, constituencies, and geographic areas involved;

2. Identify pending charges/suits or proposed charges/suits which fall within the local priority list and indicating those which would have the greatest impact;

3. Identify which of those current charges/suits can be pursued with available resources, as well as those others that could be pursued if additional resources were available; and

4. Describe how the plan results will be achieved, including time lines. Given that disclosure of the implementation documents would seriously circumvent the Commission's pending and proposed enforcement efforts, each implementation document will be treated by the Commission as confidential.

V. Delegation of Authority to General Counsel

The Commission, by resolution of April 19, 1995, delegated litigation authority in certain cases to the General Counsel until such time as the Commission adopts the National Enforcement Plan. With the goals of increasing strategic enforcement for the General Counsel and field attorneys, freeing the Commission to focus on policy issues, and increasing the efficiency and effectiveness of our litigation program, the Commission now provides such delegation as follows:

First, the Commission delegates to the General Counsel the decision to commence or intervene in litigation in all cases except the following:

A. Cases involving a major expenditure of resources, e.g. cases involving extensive discovery or numerous expert witnesses and many pattern-or-practice or Commissioner's charge cases;

B. Cases which present issues in a developing area of law where the Commission has not adopted a position through regulation, policy guidance, Commission decision, or compliance manuals;

C. Cases which, because of their likelihood for public controversy or otherwise, the General Counsel reasonably believes to be appropriate for submission for Commission consideration; and

D. All recommendations in favor of Commission participation as *amicus curiae* which shall continue to be submitted to the Commission for review and approval.

Second, the Commission ratifies its decision to give the General Counsel the authority to redelegate to regional attorneys the authority to commence litigation. The Commission encourages such redelegation of litigation authority as appropriate.

Finally, the Commission restates and ratifies its April 19, 1995 delegation to the General Counsel of the authority to refer public sector Title VII and ADA cases which fail conciliation to the Department of Justice, as well as the authority to redelegate this authority to Regional Attorneys. Regional Attorneys are encouraged to consult informally with designated "point of contact" attorneys at the Department of Justice regarding significant legal issues that arise in processing state and local government charges that appear to have litigation potential.

The General Counsel will report to the Commission quarterly on each new case filed pursuant to the delegated authority procedure set out above. The report will briefly describe the issue, basis, and scope of the case, and indicate whether authority to file it had been delegated to the Regional Attorney by the General Counsel. The General Counsel's report shall include an assessment of how the delegation authority has been exercised and whether the Commission's stated goals have been better achieved as a result of the delegation. Such reports shall be presented for discussion at the first regularly scheduled Commission meeting after the Report is prepared. The General Counsel will establish procedures for monitoring the performance of Regional Attorneys and will report to the Commission on such effectiveness once each year.

VI. Settlement and Alternative Dispute Resolution

The Commission's Policy Statement on Alternative Dispute Resolution (ADR), adopted on July 17, 1995, as well as the Commission's policy regarding settlements adopted on April 19, 1995, will apply to the implementation of the National and Local Enforcement Plans.

In the ADR Policy Statement, the Commission confirmed its strong commitment to using voluntary alternative methods for resolving disputes in all of its activities, including all aspects of the enforcement process, where appropriate and feasible. ADR is fully consistent with EEOC's mission as a law enforcement agency and is squarely grounded in the statutes enforced by the Commission. Used properly and in appropriate circumstances, ADR can provide less expensive, less contentious, and faster results in eliminating workplace discrimination.

ADR must be viewed as an integral component of its comprehensive enforcement program. ADR will complement current charge processing systems by facilitating early resolution of disputes where agreement is possible, thereby freeing up resources for identifying, investigating, settling, conciliating or litigating other matters. Improvements in the Commission's enforcement efforts should enhance the Commission's credibility as a law enforcement agency.

The Commission recognizes that negotiated agreements that resolve claims of discrimination can benefit the parties to a dispute as well as directly advance the Commission's enforcement objectives. While encouraging the use of ADR, the Commission recognizes that it must remain vigilant in assuring that ADR, as used by the Commission, does not conflict with or undermine our enforcement objectives.

Within these limitations, and in conjunction with ADR programs which it may itself implement, the Commission reemphasizes the important role of settlement and conciliation as an integral component of its comprehensive enforcement program.

VII. Enforcement Partnership With State and Local Fair Employment Agencies

On May 22, 1995, the Commission resolved to establish a new partnership with the state and local fair employment practices agencies (FEPAs), recognizing our common mission to eliminate and prevent employment discrimination and to provide timely and effective redress for individuals who have been discriminated against. The Commission adopted the EEOC/FEPA Task Force's recommendation that the Chairman should take actions to forge this partnership by eliminating duplication of effort that might exist with respect to the processing of the charges. As part of this process, the Chairman requested the Director of OPO to consult with field offices and FEPAs to explore the feasibility of joint investigative and enforcement activities.

The FEPA's enforcement efforts must be viewed as an integral component of the Commission's enforcement efforts. To enhance the roles of the FEPAs in the Commission's enforcement efforts, the Chairman suggested that the Director of OPO, in consultation with the FEPAs, review and discuss the recommendations of the Task Forces on Charge Processing and Alternative Dispute Resolution, exploring ways in which the principles and recommendations, particularly those concerning priority charge handling and the measurement of results, may be used to further our joint mission of eradicating and preventing discrimination. Therefore, the District Offices are encouraged to solicit suggestions from the FEPAs in developing and implementing their LEPs in an effort to minimize the duplication of efforts.

VIII. Implementation

While this plan does not, and is not intended to, define the operational implementation of the enforcement priorities, the following considerations should guide implementation steps:

A. The top priority for charge processing (Category A), includes Enforcement Plan cases and, within resource constraints, other cases in which it appears more likely than not that discrimination has occurred.