

**EQUAL EMPLOYMENT OPPORTUNITY COMMISSION:  
*A PEOPLE FIRST PLAN FOR THE FUTURE***

- ▶ Protecting the civil rights of workers in the private and Federal sectors.
- ▶ Eliminating waste.
- ▶ Ending backlogs.
- ▶ Streamlining management structure.
- ▶ Redirecting resources to the frontlines.
- ▶ Improving customer service.

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## **THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION: A *PEOPLE FIRST* PLAN FOR THE FUTURE**

The Equal Employment Opportunity Commission (EEOC) is increasingly unable to adequately carry out its important civil rights enforcement mission because it is suffering from a severe staffing crisis. By pulling the plug on its wasteful spending, cutting unnecessary bureaucratic layers, and increasing the employee to supervisor ratio the agency could redirect over **\$145 million** to replenishing frontline resources. *This* plan would put more EEOC employees on the frontline to help the tens of thousands of people who seek assistance from the agency each year. This plan leaves offices and long established jurisdictional boundaries in tact. This plan ends EEOC's case backlogs in four years.

In contrast, EEOC Chair Cari Dominguez has offered a plan that neither makes EEOC more effective, more customer service oriented, nor produces concrete savings. EEOC's plan:

- Downgrades a total of 12 EEOC offices, including one third of its District offices.
- Burdens offices by expanding coverage without adding staff;
- Does not address EEOC's backlogs;
- Diminishes EEOC legal units in areas with high minority populations; and
- Exports responsibility for many states's civil rights enforcement to offices out-of-state, frustrating the operations of EEOC's state partners, Fair Employment Practice Agencies.

EEOC claims its plan to reduce the number of district offices is based on the conclusion of its restructuring workgroup. However, the report actually concluded, "The representatives from the field on the Repositioning Workgroup (Workgroup) do not believe that a business case been made for reducing offices, and, therefore do not recommend that the current number of district offices be reduced." The agency also cannot substantiate its claims that the plan reduces the number of managers and administrators or that it increases front-line staff. In fact, pursuant to its restructuring plan and recent vacancy announcements, EEOC intends to fill a host of management positions.<sup>1</sup> The reality of the Chair's Plan is that additional frontline staff will not be forthcoming. "Customer Service" will ring hollow as EEOC's effectiveness declines. This will be especially so for those Americans who need help in their workplaces now, but whose cases are languishing in EEOC's backlog ("pending inventory").

### **I. INTRODUCTION**

The EEOC is the nation's primary enforcement agency charged with fighting illegal discrimination in the workplace. The EEOC was created by the Civil Rights Act in 1964, which, for the first time, made it illegal to fire an employee solely because he was African-American, or to refuse to hire an employee because she is Muslim, or to pay an employee less simply because she is a woman. The Civil Rights Act recognized that employees depend on fair treatment in the

workplace in order to maintain their livelihoods and work with dignity. In 1967, the Age Discrimination in Employment Act (ADEA) made it illegal for employers to discriminate against older workers, and in 1990, Congress enacted the Americans with Disabilities Act (ADA), giving similar rights to disabled workers. The EEOC is responsible for enforcing all of these workplace protections by investigating and resolving discrimination claims.

Approximately 80,000 victims of discrimination turn to the EEOC for help each year when they have been discriminated against at work. A worker who believes that her civil rights have been violated at work has the right to visit a local EEOC office and speak with staff that can help them file a formal charge of discrimination. The EEOC is empowered to investigate these charges, attempt to settle these claims, and bring cases before a federal court. The EEOC also has a mediation program that works with employers and employees to resolve matters before a charge is investigated and without going to court.

Despite these legislative and administrative protections, workplace discrimination remains a pervasive problem in this country. And despite its important mission, the EEOC has been chronically underfunded. Historically, Congress provides EEOC at best with inflationary increases. As a result, EEOC almost always has had a lean workforce. In 2003, the budget situation was so bleak that the agency was considering furloughing all of its employees, until it received additional funds as part of the supplemental war spending bill. Each year, EEOC is unable to process in excess of 30,000 cases, carrying over this backlog to the next year.

In recent years EEOC has suffered a net loss of over 500 employees or fifteen percent of its workforce. With a fifty percent of EEOC's staff eligible for retirement, these employees have been lost to attrition in every office and department of the agency. As a result of these departures, EEOC's offices around the country lack any uniformity in staffing and the ability to meet customers needs. Individuals are working out of their job descriptions. Professionals are performing clerical functions. Cases are transferred around the country to offices with slightly more remaining staff. EEOC's FY '06 budget request to Congress anticipates a skyrocketing backlog. Other indicators also demonstrate that EEOC's customer service is suffering.

EEOC needs people in order to help people. EEOC must establish and implement a sound staffing structure. Just as the army relies on companies and battalions to carry out its mission, EEOC should rely on teams of employees with the appropriate ratio of investigators, clericals, investigative support assistants, supervisors or "team leaders," attorneys, etc. This bottom-up restructuring of the EEOC would ensure that mission related functions are carried out effectively and efficiently, thus best serving the needs of the public.

EEOC can pay to reformat its staffing structure by redirecting wasted resources. EEOC has in recent years misprioritized its funding, by directing precious dollars away from frontline staffing to non-mission related activities, redundant services, excessive layers of supervisors, and wasteful spending. This frontline approach would eliminate EEOC's backlog in four years. By

reprioritizing its spending towards a “people first” team structure, EEOC will best be prepared to deal with the challenges of the future.

## **II. GUIDING PRINCIPLES**

- Victims of discrimination must have access to local EEOC offices.
- Victims of discrimination must have the benefit of receiving counsel and assistance from knowledgeable EEOC staff.
- Charges of discrimination should be properly investigated, including on-site investigations where appropriate.
- Charges of discrimination must be processed in the jurisdiction in which they are filed, not handled by distant offices.
- Technology, including telephone systems, computers, and programs should be improved.
- Victims of discrimination must not be subjected to additional bureaucratic layers before they are able to speak with knowledgeable EEOC staff.
- Victims of discrimination must have their claims resolved in a timely manner, without languishing in backlogs.
- Federal employees must maintain their right to discovery and a hearing.
- Enforcement of this nations laws protecting workers against employment discrimination must remain the EEOC’s mission and the focus of the employees.

## **III. SUMMARY OF CURRENT PROBLEMS AND RECOMMENDATIONS**

The EEOC serves a crucial purpose in protecting the public from employment discrimination. That purpose is made more imposing by the historically insufficient funding granted to it by Congress. Given that reality, EEOC must seek a means to best accomplish its mission. Under Chair Cari Dominguez, that has not happened. The path chosen by this Chair moves EEOC in a direction opposite from where it should be going. Downgrading EEOC offices makes EEOC less effective. Instituting a four year hiring freeze makes EEOC offices less effective. Allowing for continuing backlogs makes EEOC less effective. Hiring temporary and term employees makes EEOC less effective. Short circuiting the ability of federal employees to

have their claims addressed makes EEOC less effective. Allowing amateurs to be the gatekeepers for workers's civil rights makes EEOC less effective. Short-staffed offices make EEOC less effective.

**A. EEOC's customer service is suffering due to a staffing crisis, which could be alleviated by redirecting resources to the frontline.**

The EEOC simply cannot do its job without an adequate number of front-line employees, such as investigators, lawyers, mediators and hearing officers. Despite its critical staffing needs, the EEOC has lost almost 500 employees—more than 15 percent of its total staff—during the a four year hiring freeze. *See Table, Row 1.* Staffing levels are at an historic low at a time when fifty-percent of the EEOC workforce is eligible to retire. This has resulted in declining customer service, such as backlogs, fewer onsite investigations, and transfers of cases. Since the hiring freeze began in 2001, the number of cases EEOC resolves each year has decreased. *See Table, Row 3.* The EEOC anticipates that this backlog will escalate dramatically over the next two years. *See EEOC FY 2006 Budget Request, Chart 1.* The number of on-site investigations is down, *Table, Row 8.* The number of cases the EEOC found cause to believe discrimination had occurred has been cut in half since 2001. *See Table, Row 5.* Discrimination claims continue to be transferred away from local offices. *Table, Row 9.* The Agency should cut wasteful and ineffective spending, *See Table: Misprioritized Spending, Section IV,* and redirect these resources to the frontline, including replenishing staff and upgrading technology. EEOC could conquer its backlog of tens of thousands of charges in the next four years by implementing this plan to redeploy resources to the frontlines.

**B. EEOC must improve its staffing structure to redeploy underutilized managers to the frontlines.**

EEOC's staffing structure should consist primarily of frontline employees. However, EEOC offices around the country employ an unnecessarily high ratio of managers to frontline staff. There is also an excess of middle managers. To make matters worse, at the end of fiscal year '05, EEOC is hiring even more supervisors and managers.<sup>2</sup> By cutting redundant management ranks and increasing the employee to supervisor ratio, EEOC could increase frontline staff through redeployments. Frontline resources translate to better customer service, including ending EEOC's backlog of cases in four years.

Employees should be organized into teams, which are the building blocks of the agency structure. The teams should have no less than a 10 to 1 employee to supervisor ratio.<sup>3</sup> Each team of 10 investigators, attorneys, mediators or hearings examiners should have no less than 1 clerical. Investigator teams should also have 2 investigator support assistants (ISA's). Attorney teams should have at least 2 paralegals. Hearings Examiners and Mediator teams should have at least one additional support staff to assist in scheduling and other needs. Each team will have a "team leader." To the extent the team has less than 10 professional staff, the team leader will absorb those front line functions. No office should have less than one full investigative team.

**C. Terminating EEOC's National Call Center pilot would improve customer service and save \$20 million.**

Instead of investing in critically needed in-house staffing, the EEOC is spending \$4.9 million—almost all of their FY 2005 increase—to pilot a privatized national call center. If the pilot is made permanent, the call center will cost the agency \$20 million over the next eight years. Despite the expensive price-tag, the call center is only staffed with a maximum of 36 operators, each of whom receive only one week of substantive training. In contrast to these poorly trained call center operators, permanent EEOC staff provide advice based on at least a year of training and often decades of experience enforcing civil rights laws. Call center operators simply take a bare-bones message, which is transferred back to a local EEOC office, adding work to an already understaffed local office. The greatest concern is that individuals will lose their civil rights, due to misinformation or frustration with the call center process. Since the call center began its pilot, EEOC has experienced an unusual drop off of charge filings.<sup>4</sup> Civil rights organizations, employee advocacy groups, labor unions and many members of Congress opposed replacing field office staff with a national call center.

**D. EEOC's Pilot Programs Undermine the Rights of Federal Workers And Should Be Terminated.**

EEOC is allowing its Washington Field Office to triage Federal EEO cases, thus denying discovery and the right to a hearing to many Federal employees. EEOC's San Antonio office insists on telephonic hearings, in lieu of in person hearings, even when all parties are local. Federal sector reform should maintain a Federal employee's right to discovery and an in-person hearing. For any reforms the EEOC seeks to implement, the agency must be made to comply with the regulatory process, which includes publishing a public notice in the Federal Register.

**IV. HOW THE EEOC IS WASTING PRECIOUS RESOURCES THAT COULD BE REDIRECTED TO FRONT LINE STAFFING AND TECHNOLOGY.**

**The following table demonstrates that EEOC will misprioritize over \$140 million, if it stays on its current path over the next 8 years.<sup>5</sup>** This figure could be higher, but does not include certain expenses discussed in the table, for which EEOC has refused to provide the Union with the necessary information. By correcting these practices, EEOC could redirect the funds to putting people back on the front lines with improved technologies to help the public.

<b>EEOC'S MISPRIORITIZED SPENDING</b>	<b>COST OVER 8 YEARS</b>
<p><b>EEOC's Call Center Pilot.</b> The pilot costs 4.9 million for two years and 12.6 million over 5 years.<sup>6</sup> That breaks down to 2.4 million a year. EEOC must also pay a third-party contractor to review the pilot. EEOC also has SES and other Headquarter staff who monitor, track and assist the call center.</p>	<p><b>\$20,160,000</b> <i>plus price of third party contractor to review pilot and EEOC personnel salaries.</i></p>
<p><b>Underutilization of staff, who could be shifted to the frontline.</b> Instituting a standard 10 to 1 supervisor to employee ratio would mean 96 supervisory investigators could be redeployed as investigators and 25 supervisory trial attorneys could be redeployed as attorneys.<sup>7</sup> At the midrange of the GS 13 scale supervisory investigators make \$73,074 annually. At the midrange of the GS 14 scale supervisory trial attorneys make \$86,353. These salary savings could be used to fill frontline positions.<sup>8</sup></p>	<p>\$56,120,832 Super. Inv. <u>\$17,270,600 Super. Atty.</u>  <b>\$73,391,432 Total</b></p>
<p><b>Wasted layers of management.</b> Investigators are supervised by Supervisory Investigators (GS 13) who report to Enforcement Managers (GS 14)(at least one per District office)(midrange make \$86,353), who report to Deputy Directors (GS 15)(one per District office)(midrange make \$101,577), who report to Directors (SES). Savings from cutting out the Enforcement Manager and Deputy Director layers could be used to fill frontline positions.</p>	<p>\$15,888,952 Enf. Mgr. <u>\$18,690,168 Dep. Dir.</u> <b>\$34,579,120 Total</b></p>
<p><b>The EEOC wastes critical funding by using expensive contract mediators, even when in-house mediators are available and have a better record of settling claims.</b><sup>9</sup> EEOC pays contract mediators an \$800 flat fee, no matter the length of the mediation. In fiscal year 2003, the EEOC spent \$1,249,600 on 1,562 contract mediations that took place within a 100 miles of an EEOC office.<sup>10</sup> EEOC mediators could have covered these cases.</p>	<p><b>\$10,000,000</b></p>
<p><b>Recruiting revolving door staff.</b> When EEOC has in recent years hired frontline staff, it has focused on short term appointments and temporary staff. EEOC's Investigator General has estimated that it costs about \$7,000 to recruit employees.<sup>11</sup> There is also the expense of training these revolving door staff.</p>	<p>Estimating 100 hires per year multiplied by \$7,000 this would amount to <b>\$5,600,000</b> <i>Plus training expenses</i></p>

<p><b>Outside contract consultants.</b> EEOC contracts with outside consultants to review classification of employees, etc., even though EEOC has its own personnel department. Staff time is also wasted developing these contracts and “training” the outside consultants.</p>	<p><b>EEOC HAS REFUSED TO PROVIDE INFORMATION ON THESE COSTS TO THE UNION.</b></p>
<p><b>Opening unstaffed offices.</b> EEOC’s restructuring plan contemplates opening offices in Mobile and Las Vegas. EEOC plans to staff each offices with only a bare complement of five employees, none of whom will be attorneys, transferred from other offices.<sup>12</sup> For the foreseeable future, the offices will have only a “virtual office contact.”<sup>13</sup> While EEOC should find money to open offices, until EEOC makes a serious commitment to sufficient staffing, it would be more cost effective to serve these areas within the current infrastructure.</p>	<p>Each office space will cost \$125,000 in the first year, and \$55,000 thereafter, for a total of <b>\$1,130,000</b></p>
<p><b>District Director/ Regional Attorney travel and meeting to tour the National Call Center.</b> In February, 2005, EEOC spent over \$100,000 on travel and lodging for District Directors and Regional Attorneys to meet and tour the national call center facility in Lawrence, Kansas.<sup>14</sup> Managers could save money by conducting meetings by telephone, or video conferencing.</p>	<p><b>\$800,000</b> <i>Plus lost staff time</i></p>
<p><b>All employee meeting.</b> EEOC holds “all employee” meetings in the tony Mayflower hotel. The reality is that only employees based in Washington, D.C. are able to attend and communication of the meetings to the field has not been successful. The meeting costs approximately \$30,000.<sup>15</sup></p>	<p><b>\$240,000</b> <i>Plus lost staff time</i></p>
<p><b>TOTAL ESTIMATED MISPRIORITIZED SPENDING:</b></p>	<p><b>\$145,000,000</b></p>

**V. THE EEOC IS FAILING TO SERVE THE PUBLIC EFFECTIVELY**  
*The Current Crisis and Proposed Solutions*

**A. EEOC's customer service is suffering due to a staffing crisis, which could be alleviated by redirecting resources to the frontline.**

**Recommendation:** *Congress should authorize adequate funding, and the EEOC should appropriately apply the funding, so that each EEOC office has necessary frontline resources, including permanent staff and technology. Offices with adequate frontline resources can tackle the agency's backlog; process cases locally; and meaningfully investigate cases. By redirecting the misprioritized resources to the frontline, EEOC would improve its ability to provide effective customer service to the public, including ending EEOC's backlog of cases in four years.*

When Chair Dominguez came to the EEOC in 2001, the agency had 2,924 employees; in 2004 it was down to 2,462 employees. *Table, Row 1.* EEOC's estimates that staff will be down to 2,441 by the end of fiscal year 2005.<sup>16</sup> Rather than pursue funds to restore staffing levels, EEOC's budget request for Congress for fiscal year 06 requests even more staff decreases. Diminishing levels of staff have resulted in backlogs, haphazard transfer of cases, employees working out of their job descriptions, and incidents where field offices have had to close their doors to the public. Moreover, when EEOC has hired a limited number of frontline staff, it has brought on short term, rather than permanent, hires. This does not solve EEOC's staffing crisis, because by the time these employees acquire sufficient training to serve the public, then they leave the agency. This is a waste of recruiting and training funds and the time of the permanent staff who have mentored them.

**1. Cutting EEOC frontline staffing has created a backlog of discrimination claims.**

The public continues to lose confidence in the EEOC because it cannot get its work done. Brave employees who file a charge of discrimination, while continuing their employment are at constant risk of retaliation. These individuals rely on the EEOC to quickly address their cases. Moreover, the investigation of a charge of discrimination suffers when it sits in the system so long that witnesses have moved on to new jobs and cannot be located for interviews.

Nevertheless, the EEOC cannot resolve all of the cases that come through the door each year because it cannot keep up with its backlog. While the EEOC was making strides in eliminating its backlog through the "priority charge handling system" adopted in the late 1990's, that backlog once again is beginning to climb. In fiscal year 2002, EEOC had a pending inventory of 29,041 claims. By 2004 that number increased to 29,966. *See Table, Row 2.* The EEOC's 2006 budget request acknowledges that its hiring freeze has been detrimental to the public and that it anticipates a sharp rise in the pending inventory over the next two years. The EEOC estimates that its caseload will be grow to as many as 51,572 cases per year. *See EEOC's FY '06 Budget Request, Chart 1.* Likewise, the EEOC reported a declining number of cases resolved over the past two years, as well as a slight uptick in the time it takes for a case to be

resolved. *See Table, Row 3 and Row 10.* This backlog and delay is the inevitable result of staffing shortages.

By redeploying 96 supervisory investigators (the number identified in *Section IV*), EEOC could eliminate its 2005 estimated backlog of 37,332 cases in than four years. This figure is based on each supervisor resolving between 92 and 102 cases per year, as a redeployed investigator. *FY '06 District Director Performance Expectations, annual productivity expectations per investigator.* To prevent the backlog from returning, EEOC will need to redirect misprioritized spending into maintaining a stable workforce, i.e., filling the positions of retiring frontline staff.

## **2. EEOC field offices fail to serve their communities when they transfer cases to offices outside their jurisdictions.**

The EEOC regularly transfers local cases to other jurisdictions in a haphazard attempt to alleviate the staffing crisis. Transferring cases to offices that lack any geographic or historical connection to the claims compromises the effectiveness of the investigations. The offices on the receiving end of transfers are known as “the killing fields,” because these offices quickly close out the charge rather than conduct a distant investigation. More than three thousand charges of discrimination were transferred in 2004 from the EEOC office where they were originally filed. *See Table, Row 9.*

This system undercuts the mission of the EEOC. Take, for example, the case of a woman denied a position as a salesperson by a Chicago car dealership, despite her lengthy experience selling cars. When she does not get the job, she walks around the dealership and realizes that the dealership does not employ a single female sales employee. She files a charge of discrimination at her local EEOC office. When she calls to inquire about the status of her claim, she is told that her case has been transferred to the St. Louis office. Shortly thereafter, she receives a letter from St. Louis that the EEOC is dismissing her claim. Most probably, the St. Louis office was too overwhelmed to investigate her case or visit the dealership in Chicago. Without the experience of investigating Chicago businesses, the St. Louis office may not know that this dealership has had many charges of sex discrimination filed against it.

As another example, workers in San Francisco who have filed charges must endure long waits before EEOC staff can investigate their claims, because the intake work from San Jose, Fresno and Honolulu has been transferred to the San Francisco office. The San Francisco investigators cannot effectively or efficiently finish their work and the work of other offices.

## **3. The investigation and resolution of discrimination claims are compromised by a decrease in onsite investigations.**

The EEOC’s self-imposed inability to conduct on-site visits impairs the investigation process. Available data indicates that the number of EEOC onsite investigations has plummeted

since 2001. *See Table, Row 8.* This is a natural result of funding and staffing restraints. Also, when cases are transferred away from local offices, distant EEOC office staff are often unable to conduct workplace investigations because of the increased time and cost of travel. When the EEOC fails to conduct on-site investigations in appropriate cases, workers can be denied an adequate review of their claims. Moreover, judges and juries are suspect of testimony by an EEOC investigator who did not visit the workplace before making a finding of discrimination.

On site investigations should be the preferred way to elicit necessary information in complex cases, where credibility is at issue, when viewing the work-site is intrinsic to understanding the facts of the case, or when litigation is being contemplated by EEOC's legal unit. Ideally, in such cases, EEOC investigators visit the work site and interview relevant witnesses, review documents, and tour the facilities to fully understand the context of the allegations. For example, by visiting a workplace, an EEOC investigator can walk around and determine from the office layout who might have been able to hear a manager making racial slurs and reveal potential witnesses. An investigator would gain better understanding of how a warehouse functions in order to evaluate whether an employer could have reasonably accommodated a disabled employee, who could not lift an occasional heavy delivery, by providing him with a forklift. Further, on site visits put the customer first by demonstrating a commitment to the mission and providing a "halo" effect in the workplace. Onsite investigations can also provide an outreach opportunity to underserved areas.<sup>17</sup>

#### **4. The EEOC is conducting less meaningful investigations, resulting in fewer findings of discrimination**

When Chair Dominguez arrived at the EEOC in 2001, the agency found reasonable cause to believe that discrimination occurred in 9.9% of the cases processed. Today, that figure has been cut in half, to only 4.9%. *See Table, Row 5.* With less staff available to address a ballooning inventory, the agency does not have the time or resources to thoroughly investigate meritorious claims. A decrease in workplace investigations, decreasing production standards and other pressures on staff to provide only superficial review all contribute to the decrease in findings of discrimination. These statistics indicate the EEOC's flagging ability to ferret out discrimination and penalize employers who violate the law.

"We feel that when local field office staffs are pushed to get the inventory down, the easiest way to do this is to administratively close files at the end of the fiscal year by issuing 'no cause' findings or no findings at all but giving the complainants right to sue letters." *National Employment Lawyers Association (NELA) Remarks at EEOC Commission Meeting, 9/8/03.*

Individuals suffer when their valid claims of discrimination are overlooked or ignored by an under-equipped EEOC. Without the deterrent effect of meaningful enforcement, employers are under no pressure to draft policies, train employees, create complaint processes and whatever else is necessary to ensure a discrimination-free workplace.

**5. Some EEOC offices are so short-staffed they cannot always provide the most basic customer service.**

The public is seriously harmed by these staffing shortages. For example, an African American worker wishing to complain about frequent racial epithets at work might seek help at his local EEOC office, in Greensboro. But when he arrives, he could find the office closed since, the Greensboro office has lost over half its staff since 2001. With only three permanent staff, the Greensboro office has, for safety reasons, been forced to lock its doors when there are less than two employees present. Frustrated and confused, the worker will leave understandably angry messages for the EEOC staff, who wish they could do more. This type of situation would be prevented by instituting this plan's recommendation that no EEOC office have less than one full investigative unit.

**6. The public is poorly served by short term employees.**

EEOC recent trend of replacing permanent employees with short term hires and temporary staff results in greater turnover, a less experienced and knowledgeable staff, higher training expenses, decreased customer service and an unstable future workforce. With 50 percent of its employees eligible for retirement, the EEOC needs to replenish its ranks with career employees, who will provide stability and expertise instead of two-year term employees and temporary staff.

Revolving door employees will not only increase the costs to the agency for training, but also for recruitment. According to EEOC's own Inspector General," it costs about \$7,000 to recruit an employee." *EEOC Office of Inspector General: "Reducing Infrastructure Costs Through Increased Use of Telework,"* 9/30/02, p. 24. The EEOC will find it difficult to recruit outstanding scholars, attorneys, and other qualified staff if it continues to offer temporary positions instead of career jobs. For those who do sign on, morale suffers when temporary employees work side by side with career employees, doing identical work.

Short term staff also strain EEOC's limited training programs. Although it takes approximately two years to train fully, a new investigator, *National Academy of Public Administration report, 2/2/03, p. 97*, the EEOC has not funded any structured training programs since 2002. "*Ten Year Check-Up: Have Federal Agencies Responded to Civil Rights Recommendations?*" *U.S. Commission on Civil Rights, September 2004, p. 66*. Therefore, the fleeting staff will either not get formal training before they leave or those fortunate enough to receive training will take that experience out the door with them.

Recruiting, training and preserving the highest caliber of EEOC staff is critical to fulfilling the agency's mission and serving the public they are charged to protect. Seasoned EEOC employees can answer questions without the delay of passing the call to another employee or supervisor. Experienced investigators can spot jurisdictional issues and understand what further evidence must be obtained. Veteran EEOC staff form bonds with the employer

community that make it easier to provide outreach, training and swift resolution of discrimination claims. By focusing its limited hiring on short term and temporary employees, the EEOC perpetuates an inexperienced workforce that is unable to effectively serve the public.

**B. EEOC MUST IMPROVE IS STAFFING STRUCTURE TO REDEPLOY UNDERUTILIZED MANAGERS TO THE FRONT LINES.**

**Recommendation:** *EEOC must adopt a workable staffing structure and redeploy excessive and underutilized managers to the front lines to streamline operations and provide additional resources to directly serve the public.*

**1. EEOC needs an organized staffing model.**

The EEOC lacks an organized staffing model for field offices. EEOC's staffing structure should consist primarily of frontline employees. These employees should be organized into teams, which are the building blocks of the agency structure. The teams should have no less than a 10 to 1 supervisor to employee ratio. Each team of 10 investigators, attorneys, mediators or hearings examiners should have no less than 1 clerical. Investigator teams should also have 2 investigator support assistants (ISA's). ISA's can assist in charge receipt and in investigating multiple party and complex cases. The ISAs, which was created to be a bridge position, can use their on-the-job training to qualify for investigator positions when openings arise. Attorney teams should have at least 2 paralegals. Hearings Examiners and Mediator teams should have at least one additional support staff to assist in scheduling and other needs. Each team will have a "team leader."

No EEOC office should have less than one full investigative team, i.e., team leader, 10 investigators, two ISA's, and a clerical. In offices with more than at least one full team, to the extent any additional team has less than 10 professional staff, the team leader will absorb those frontline functions. District offices should have at least 3 attorneys to 10 investigators in order to adequately assist in-house and carry out effective litigation programs in court. *Refer to Investigative Unit Staffing Model, Chart 2.*

After applying a 10 to 1 employee to supervisor ratio in the offices, surplus supervisors should be redeployed to the frontline. Because legal units in field offices are relatively small, Regional Attorneys should directly supervise up to 10 trial attorneys, with surplus supervisory trial attorneys redeployed to trial attorney positions. EEOC should eliminate unnecessary levels of management, such as Enforcement Managers and District Directors and redeploy these resources to the front line.

EEOC Headquarters staff whose work is field-related should be redeployed, as appropriate, to the Washington Field Office.

## **2. EEOC's current structure is top heavy, leaving gaps at the frontlines.**

A combination of factors led to EEOC field offices currently resembling Swiss cheese. The staff lost to attrition during EEOC's hiring freeze has been at all levels in all offices. Therefore, one office may not have a receptionist (New York), another office might have lost almost half its investigatory staff (Dallas), or another the majority of its legal staff (Atlanta). This means that the remaining staff are often working outside their job descriptions, absorbing the work of lost co-workers (possibly resulting in illegal overtime), or the work is not getting done, i.e., EEOC's growing back log. While some offices may have lost investigators, they might not have lost supervisors. As a result, there are offices, such as Boston with 9 investigators and 3 supervisory investigators or Charlotte with 16 investigators and 5 supervisory investigators or Cincinnati with 6 investigators and 3 supervisory investigators, etc. Likewise, the Dallas Office has 5 trial attorneys and 2 supervisory trial attorneys or Memphis with 6 trial attorneys and 2 supervisory trial attorneys, etc. Such cumbersome supervision is not required, especially considering that most of EEOC employees have years of experience. An excessive ratio of supervisors to employees results in micromanagement and less persons that could be serving the public. Redeploying these supervisors will cut the EEOC's backlog in four years.

Incredibly, EEOC has found funds at the end of fiscal year '05 for hiring even more supervisors. For instance, Minneapolis with 7 investigators and 2 supervisory investigators and San Francisco with 14 investigators and 2 supervisors, are each hiring yet another supervisor.<sup>18</sup>

There are also offices where a great many more attorneys have left than investigators. Attorneys work with investigators to assist in the investigative process and case development. Attorneys also litigate cases of civil rights violations in Federal Court. Offices, such as Atlanta, which has only 2 attorneys, do not have the necessary tools to interact with investigators and enforce violations in Court. This at a time when "there are growing concerns about the low numbers of race discrimination cases being litigated in the Deep South, even though these jurisdictions reportedly have some of the highest rates of discrimination charge filings in the country." *Letter from Leadership Conference on Civil Rights to Chair Dominguez, 5/13/05.* This plan assures a basic ratio of attorneys to investigators, which would restore confidence that EEOC is vigilantly enforcing its mission in all areas of the country. Adequate attorney staffing is also crucial to developing and litigating cases of systemic discrimination.

There are also too many bureaucratic layers and EEOC offices are top heavy with too many layers of management supervising a dwindling front line staff. In offices in the field, on the enforcement side investigators report to supervisory investigators, who report to enforcement managers, who report to deputy directors, who report to directors. Attorneys report to supervisory trial attorneys, who report to Regional Attorneys. Cutting layers and redeploying staff will provide more frontline to directly serve the customers. Redeploying supervisors has the added benefit of creating frontline personnel with the necessary experience to hit the ground running.

### C. TERMINATING EEOC'S NATIONAL CALL CENTER PILOT WOULD IMPROVE CUSTOMER SERVICE AND SAVE \$20 MILLION.

**Recommendation:** *Congress should terminate or require EEOC to terminate the call center at the end of its pilot in 2006. The EEOC should redirect the funds to replenish front line staffing and improve technology to better serve the public.*

If renewed, EEOC's privatized call center pilot will cost taxpayers \$20 million over the next eight years. This is an immense amount of overhead for the 36 or fewer contract operators employed. At best, these minimally trained individuals act as a glorified answering service. At worst, victims of discrimination lose their rights, due to misinformation or frustration they receive at the hands of this extra layer or bureaucracy.

For over forty years, the EEOC's experienced staff has responded to civil rights inquiries from the public. However, in February 2005, following its hiring freeze that made it extremely difficult for offices to provide customer service, the EEOC launched its call center "pilot" in three field offices, before expanding it nationwide one month later. Though the two year call center contract costs \$4.9 million, that amount only buys "up to" 36 low-paid operators. These operators, who are the new voice of the EEOC, receive just seven days of training on civil rights law and use scripts to answer questions. This is in contrast to the years of experience the EEOC investigators who used to take calls possess. Generally, it has been accepted that it takes approximately a year of full time training for EEOC personnel to be able to do intake properly. *National Employment Lawyers Association (NELA) Remarks at EEOC Commission Meeting, 9/8/03.* Most investigators, who previously took these calls, had decades of experience.

Preliminary information on the impact of the call center operations demonstrates that it is causing an extra layer of work and wasted time for the public and EEOC staff. Call center staff spend merely six minutes with the caller.<sup>19</sup> The call center then transmits to local EEOC offices a form (referred to as an EAS Questionnaire), which contains contact information and the barest information on the nature of the concern. As a result of the scant information forwarded to the EEOC field offices, investigators must call back the potential charging party and reinterview the person. In some instances, the call center does not even collect a phone number and the investigator must write to charging parties to have them call the office. Other examples of poor message service provided by the call center include, call center forms received by investigators which have not contained a date of birth for cases of age discrimination, date of violation, type of disability, identification of race, or the statute(s) under which a person is claiming retaliation.

Another problem is that the public has lost its toll free access to local offices. The 1-800 number that used to connect people to the closes office now routes the call to Lawrence, Kansas. An additional ramification is that persons with active cases who call the 1-800 number, as they have done in the past, are unknowingly sent to Kansas. A message then must be forwarded to the local office, creating a game of telephone tag, which frustrates staff and the public.

In its attempt to justify that the call center is helping to minimize calls into the offices, the EEOC is performing a sleight of hand. The EAS forms the call center bounces to the field offices are considered mail, not calls, even though investigators must turn around and return the calls. In other words, telephone calls are converted into mail for tracking purposes, but do not result in a smaller workload for investigators. At the same time, the public must now talk to the call center and then again to the field office before getting needed assistance.

Further, rather than improving the ability of an office to provide customer service, the call center is creating more paperwork to cope with for field office staff. For example, numerous forms are forwarded to the wrong office, which must then correct the call center's errors. Because the call center has read-only access to EEOC's data, it must even forward messages with requests for a change of address. In each case, the EEOC field office must report back within 48 hours how it resolved the "incident," i.e., changed address.

Another example of how the call center is not providing customer service is that EEOC has recently reported an unusual drop-off in filings of charges of discrimination.<sup>20</sup> The time frame for the drop-off corresponds with the time the call center has been operating. The greatest concern is that members of the public are losing their statutory right to file a charge of discrimination due to receiving misinformation, from poorly-trained call center operators. Callers may also be intimidated by the call center protocol of monitoring calls or frustrated by the call center process. For instance, a waitress in Cleveland might use the 1-800 to call her local EEOC office and unknowingly end up speaking with a call center operator in Kansas. She may tell the operator that the restaurant manager gropes her behind and her breasts and calls her crude sexist names on a daily basis. The call center will ask her if the restaurant has more than 15 employees, which is required for Title VII to apply. Counting her co-workers, she might say, "No." The call center operator may then discourage her from filing a charge, whereas an experienced EEOC employee would have known to follow up with further questions or a workplace investigation to determine whether the employer was in fact covered by the law. An EEOC employee in Cleveland might be familiar with the restaurant, and know that it is part of a local chain that employs more than 15 workers, while an operator in Kansas would be less likely to know this information.

In the future the EEOC will add a way for the public to access the Call Center by computer and self-file on the internet. The internet component was originally scheduled to roll out in May 2005. The EEOC does not plan on increasing staff or upgrading technology to handle the increased caseload that is anticipated.

#### **D. EEOC'S PILOT PROGRAMS UNDERMINE THE RIGHTS OF FEDERAL WORKERS TO BRING EMPLOYMENT DISCRIMINATION CLAIMS AND SHOULD BE TERMINATED.**

**Recommendation:** *Any reforms to the Federal Sector EEO process must go through the regulatory process, including publishing a public notice in the Federal Register. In all events, Federal employees must maintain their right to discovery and an in-person hearing.*

EEOC has allowed offices to pilot programs which undermine the rights of Federal employees to discovery and an in-person hearing. The EEOC is responsible for ensuring equal opportunity in private workplaces, and also in the federal government. EEOC administrative law judges are responsible for resolving the discrimination claims that federal employees bring against their agencies. In 2000, federal regulatory reforms created an alternative dispute resolution process. As a result, the EEOC has experienced a sharp decline in its federal sector hearings' backlog, from 11,659 unresolved charges of federal employee discrimination in 2001, to 5,975 charges in 2004. *See Table, Row 11.*

Despite this proven success, the EEOC is moving forward with changes to the Federal Sector EEO process that undercut the ability of federal employees to appropriately resolve their claims. For example, in 2004 EEOC's Washington Field Office launched a new program that limits federal employees' rights to discovery and a hearing regarding their discrimination complaint. Under this system, a manager makes a cursory determination of the merit of a federal EEO case by assigning color codes of red, yellow, and green. The red and yellow files may be dismissed without allowing the employee to conduct discovery. Under this system, a female employee at a U.S. agency who alleges she was passed over for promotion in favor of a male employee with less experience would unlikely be able to prove her claim if she is given a yellow flag and prevented from obtaining the male employee's personnel record. Without this evidence, her case is dismissed.

Another EEOC initiative that compromises the hearing rights of federal employees is underway at the San Antonio EEOC office, where EEO hearings are conducted over the telephone, making it difficult to cross-examine witnesses and determine credibility. Federal employees deserve an opportunity to have their claims addressed in person.

These changes do not comply with the relevant federal regulation, 29 CFR 1614. The EEOC should rely on the 2000 reforms to decrease EEO inventory, without implementing drastic changes that undermine the rights of federal employees. For other reform proposals, the EEOC "should consider the views of seasoned EEO practitioners and other stakeholders to prevent careless and costly mistakes." *Rep. Chris Van Hollen, letter to Chair Dominguez, 1/27/04.* Moreover, any reforms must go through the regulatory process, including publishing a public notice in the Federal Register.

## **VI. CONCLUSION**

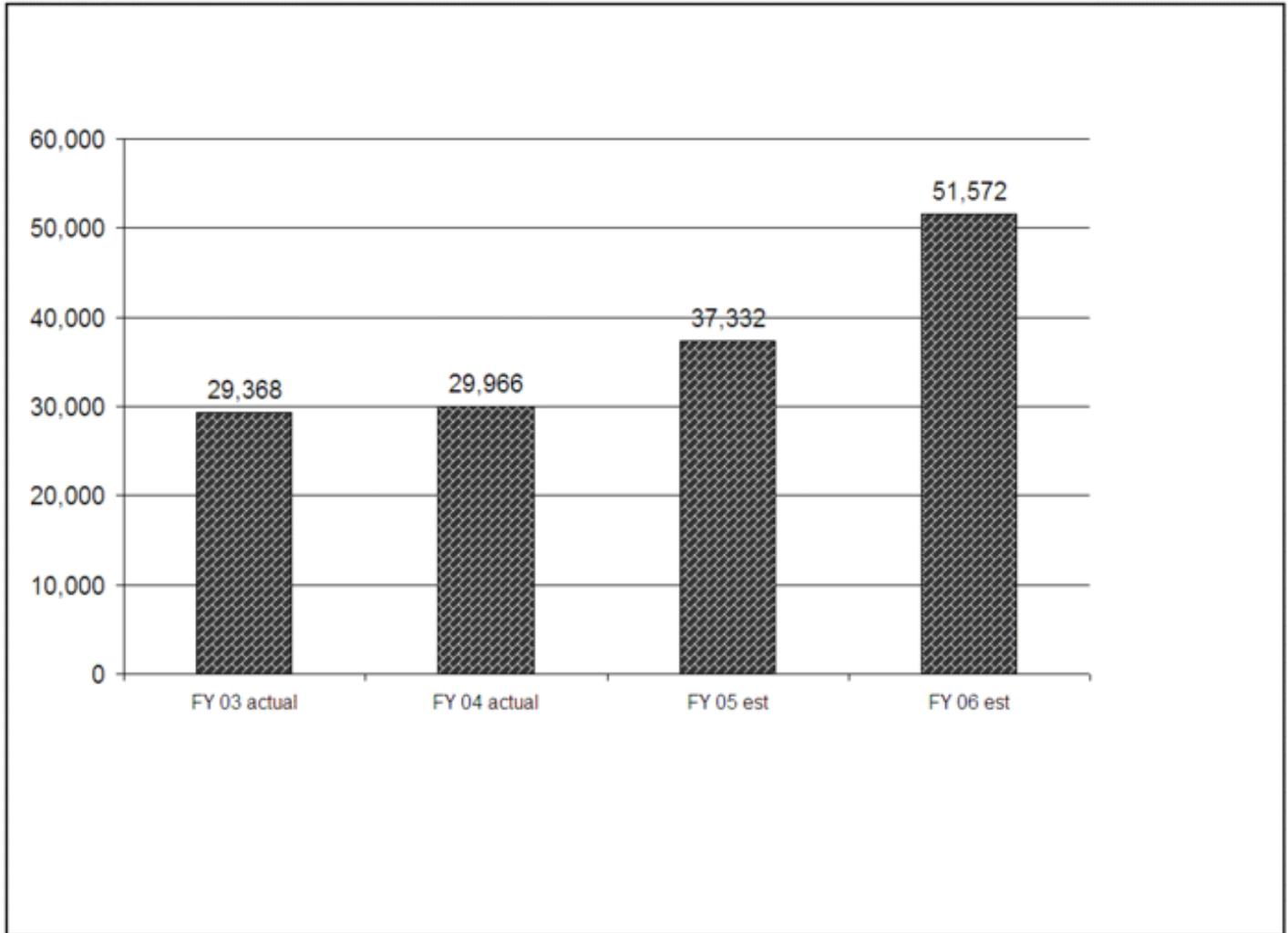
This plan puts the emphasis where it should be - on the public. It calls for a change in the present direction of EEOC. The plan redirects the focus and spending priority for EEOC's precious budget dollars, in order to put people first. EEOC must be compelled to prioritize its spending to support its front-line staff, instead of diverting over \$145 million in funds: to a risky call center pilot; redundant mediation services; and unnecessary programs to reform its Federal Sector program, which was recently reformed and is continuing to show improved services. With sufficient funding and wise management of priorities, the EEOC will have the necessary tools and focus to best serve the public and carry out its mission, including eliminating its backlog of cases in four years.

**TABLE: EEOC'S TROUBLING CUSTOMER SERVICE TRENDS**

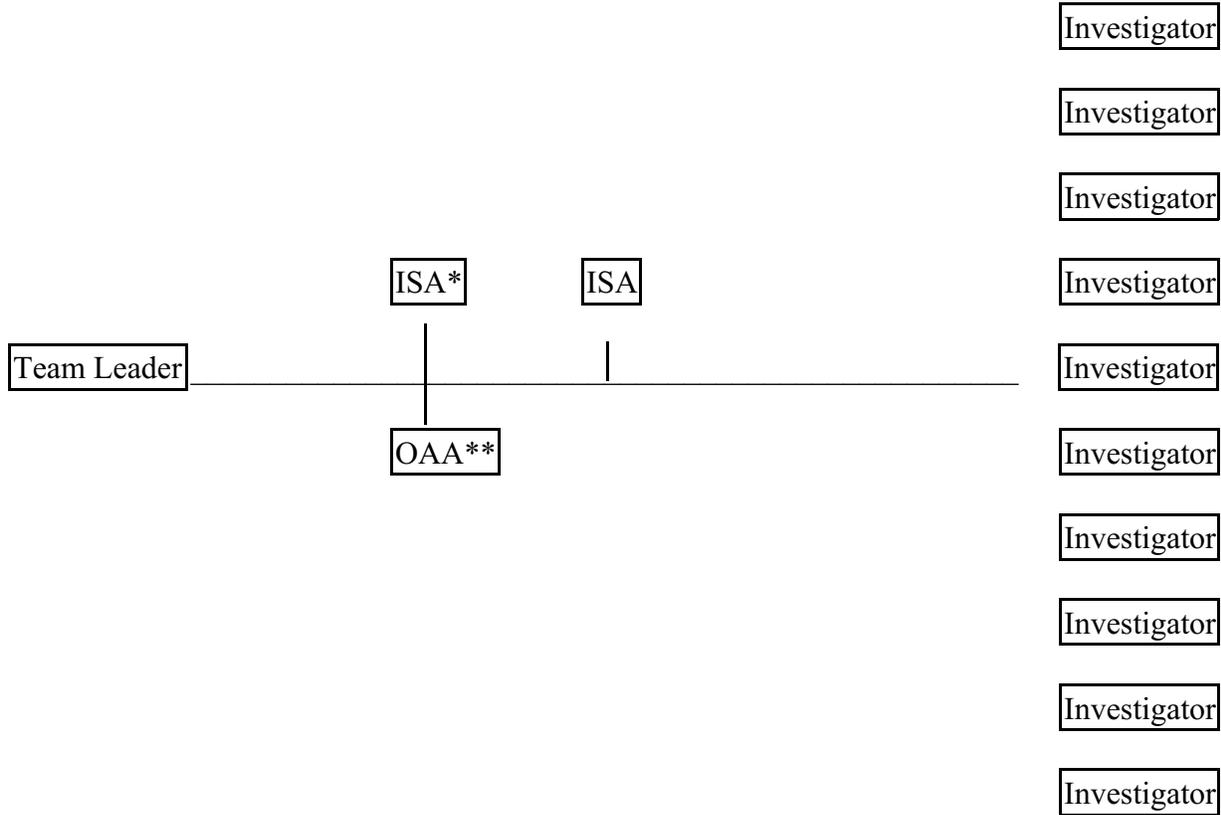
		FY 2001	FY 2002	FY 2003	FY 2004
1	Full Time Employees <sup>21</sup>	2,924	2,787	2,617	2,462
2	Backlog <sup>22</sup>	32,481	29,041	29,368	29,966
3	Resolutions <sup>23</sup>	90,106	95,222	87,755	85,259
4	Charge Receipts Filed <sup>24</sup>	80,840	84,442	81,293	79,432
5	Reasonable Cause <sup>25</sup>	8,924 9.9%	6,878 7.2%	5,033 5.7%	4,169 4.9%
6	No Reasonable Cause <sup>26</sup>	51,562 57.2%	56,514 59.3%	55,359 63.1%	53,182 62.4%
7	Merit Resolutions <sup>27</sup>	19,908 22%	19,075 20%	17,134 19.5%	16,661 19.5%
8	On-Site investigations <sup>28</sup>	6,048	5,361	4,065	Unavailable
9	Cases Transferred Out of Local Offices <sup>29</sup>	Unavailable	2,700	2,850	3,135
10	Average Charge Processing (Days)	182 <sup>30</sup>	171 <sup>31</sup>	160 <sup>32</sup>	165 <sup>33</sup>
11	Federal Sector Hearings Inventory <sup>34</sup>	11,659	10,072	8,467	5,975

EEOC's FY 2006 Budget Request

Chart 1: Private Sector Charges Pending Inventory For Fiscal Years 2003 through 2006



*Chart 2*  
**INVESTIGATIVE UNIT STAFFING MODEL**



- ▶ **No EEOC office should have less than one full investigative team.**
- ▶ **District offices should have at least 3 trial attorneys to 10 investigators in order to adequately assist in-house and carry out effective litigation programs in court.**
- ▶ **In offices with more than at least one full team, to the extent any additional team has less than 10 professional staff, the team leader will absorb those front line functions.**

\* Investigative Support Assistant    \*\* Office Automation Assistant

### Endnotes:

1. Pursuant to its restructuring plan, EEOC intends to fill: 5 Senior Executive Service (SES) positions in the field; 2 SES positions in the office of General Counsel; 5 Field Office Director slots; 15 Office Managers and 9 Admin technicians. *EEOC Website and Draft Repositioning Implementation Proposal, June 14-15, 2005*; Vacancy Announcements: 8/1/05, Supervisory Investigator Greensboro; 8/22/05, Supervisory Investigator, Savannah; 8/19/05, Supervisory Investigator, Fresno; 8/19/95 Supervisory Investigator San Jose; 8/25/05 Program Manager, Houston, Birmingham, and Memphis; 8/26/05, Supervisory Investigator, San Francisco; 8/29/05, Supervisory Investigator, Atlanta, 8/29/05, 8/29/05, Supervisory Investigator, Minneapolis; 9/8/05, Supervisory Investigator, Birmingham. [www.usajobs.gov](http://www.usajobs.gov).
2. *See endnote 1.*
3. EEOC has claimed to embrace this 10 to 1 ratio, as opposed to its current situation where offices average 3 to 7 employees per supervisor. *EEOC Field Repositioning- Field Offices Questions and Answers, May 2005*. However, its implementation plans and vacancy announcements, *see endnote 1*, demonstrate that they have no serious intention of flattening the organization.
4. *Daily Labor Report*, “Nine Month Report Shows Significant Drop in Charges,” 9/1/05.
5. The Agency has put forward a plan which measures alleged savings over an 8 year period, with much of the savings back-ended. This plan demonstrates that over the same period greater savings can take place sooner, while focusing on providing improved customer service.
6. *Federal Times*, “EEOC call center to answer questions faster Contractors will provide inferior service, union says,” 3/28/05.
7. Chart 2, “EEOC Staffing By Office and Title, May 13, 2005.”
8. 2005 General Schedule (Base) Table (does not include locality pay), [www.opm.gov](http://www.opm.gov).
9. EEOC Mediation Statistics, 1999-6/2005.
10. EEOC’s Answers to Questions for the Record, Submitted by Congressman Serrano, p. 26.
11. EEOC Office of Inspector General: “Reducing Infrastructure Costs Through Increased Use of Telework,” 9/30/02, p. 24.
12. *Las Vegas Review Journal*, State says federal office not needed, 7/26/05.
13. Draft Repositioning Implementation Proposal, June 14-15, 2005.
14. Statement of Commissioner Ishimaru at “All Employee Meeting,” March 2005.

15. *Washington Post*, “All in the Family, 3/25/05.
16. The 2005 decrease in EEOC staffing is in contravention of the 2005 Omnibus Appropriations Bill, which requires the EEOC at a minimum to maintain 2004 staffing levels.
17. EEOC could also reach out to underserved areas and populations, by developing posters for display on buses and trains, libraries, unemployment offices and other locations trafficked by working people. In addition, the feasibility of utilizing Public Service announcements should be explored, as well as other means of increasing access to the EEOC through education about workers rights.
18. *See endnote 1.*
19. *Daily Labor Report*, Commission’s New Call Center, 8/24/05.
20. *See endnote 4.*
21. National Academy of Public Administration report, 2/2/03, Table 5-2 “Staffing Levels,” p. 92 (2001-2002); EEOC Budget Request fiscal year 2005 (2003); President’s EEOC FY ‘06 Budget Request (2005).
22. EEOC Budget Request, Fiscal Year 2005 (2001-2003); *Daily Labor Report*, 12/20/04, E-1 (2004).
23. <http://www.eeoc.gov/stats/all.html> (2001-2003); *Daily Labor Report*, 12/20/04, E-1 (2004).
24. <http://www.eeoc.gov/stats/all.html> (2001-2003); *Daily Labor Report*, 12/20/04, E-1 .
25. EEOC's determination of reasonable cause to believe that discrimination occurred based upon evidence obtained in investigation. Reasonable cause determinations are generally followed by efforts to conciliate the discriminatory issues that gave rise to the initial charge. <http://www.eeoc.gov/stats/all.html> (2001-2003); Report on FY 2004 Administrative Enforcement Activities (2004).
26. EEOC's determination of no reasonable cause to believe that discrimination occurred based upon evidence obtained in investigation. <http://www.eeoc.gov/stats/all.html> (2001-2003).
27. Charges with outcomes favorable to charging parties and/or charges with meritorious allegations. These include negotiated settlements, withdrawals with benefits, successful conciliations, and unsuccessful conciliations. <http://www.eeoc.gov/stats/all.html> (2001-2003); *Daily Labor Report*, 12/20/04, E-1 (2004).
28. “Ten Year Check-Up: Have Federal Agencies Responded to Civil Rights Recommendations?” U.S. Commission on Civil Rights, September 2004, Figure 3.3, p. 59.
29. EEOC memoranda, dated 1/28/02, 12/6/02, 10/25/04.

30. National Academy of Public Administration, 2/2/03, p. 14.
31. "Ten Year Check-Up: Have Federal Agencies Responded to Civil Rights Recommendations?" U.S. Commission on Civil Rights, September 2004, Figure 3.3, p. 59.
32. [http://www.eeoc.gov/abouteeoc/plan/par/2004/mda\\_objective1.html](http://www.eeoc.gov/abouteeoc/plan/par/2004/mda_objective1.html)
33. Daily Labor Report, 12/20/04, E-1.
34. <http://www.eeoc.gov/federal/fsp2003/sectionc.html#sectionc1> (2001-2003); Daily Labor Report, 12/20/04, E-1 (2004).