Equal Employment Opportunity Commission

PRIVATE SECTOR EEOC ENFORCEMENT
COMPLIANCE PROJECTED INVENTORY
(WITHOUT ADDITIONAL STAFF)

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	69,359	70,029	70,700	78,230	85,760	93,290	100,821	108,351	115,881
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	158,360	159,031	159,701	167,231	174,761	182,292	189,822	197,352	204,882
Charges/Complaints Resolved	125.1 100,431	110 88,331	110 88,331	110 88,331	110 88,331	101.5 81,471	101.5 81,471	1 81,471	81,471	81,471	81,471	81,471
Charges/Complaints Forwarded	68,019	68,689	69,359	70,029	70,700	78,230	85,760	93,290	100,821	108,351	115,881	123,411
Charge/Complaint Inventory (Months)	8.1	9.3	9.4	9.5	9.6	10.6	11.7	12.7	13.7	14.7	15.7	16.8

35% * Pending beginning adjusted to reflect refinements in charge process reports.

why does it decline

(1) Fiscal year 1997 figures are projected from third quarter data.
(2) Charge resolution activity for fiscal year 1997 is the actual value as of third quarter fiscal year 1997, 125.1. Resolution activity for fiscal year 1998 through fiscal year 2001 is assumed to be 110. 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 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.

Table may not add due to rounding.

investigators = 803 ?

$1 288 - 2000
$ 254 2000

PRIVATE SECTOR EEOC ENFORCEMENT
COMPLIANCE PROJECTED ACTIVITY
(WITH ADDDITIONAL STAFF TO REDUCE THE INVENTORY TO 6 MONTHS BY FY 2000)
(50% ADR SUCCESS RATE)

COMPLIANCE ACTIVITY

Workload/ Workflow	FY 1997 Actual*	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	80,890	64,090	65,018	58,716	48,072	44,524	43,341	43,341	43,341	43,341	43,341	43,341
Total Receipts	80,665	80,665	80,665	80,665	80,665	80,665	80,665	80,665	80,665	80,665	80,665	80,665
Net FEPA Transfers/Deferrals	8,835	8,835	8,835	8,836	8,836	8,835	8,636	8,835	8,635	8,835	8,635	8,635
Total Work Load	170,390	153,590	154,518	148,216	137,572	134,024	132,841	132,841	132,841	132,841	132,841	131,841
Staffing												
Investigators Available	795.1	795.1	834.6	874.0	874.0	874.0	874.0	874.0	874.0	874.0	874.0	874.0
Investigators Assigned	828.0	828.0	910.2	910.2	910.2	910.2	910.2	910.2	910.2	910.2	910.2	910.2
Resolutions												
Successful Mediations	823	1,111	4,000	4,000	4,000	4,000	4,000	4,000	4,000	4,000	1,000	4,000
Administrative Enforcement Resolutions	105,477	87,461	91,802	96,144	89,048	89,048	89,048	89,048	89,048	89,048	89,048	89,048
Total Resolutions	106,300	88,572	95,802	100,144	93,048	93,048	93,048	93,048	93,048	93,048	93,048	93,048
Charges/Complaints Forwarded	64,090	65,018	58 [illegible],116	48 [illegible],072	44,524	43,341	43,341	43,341	43,341	43,341	43,341	43,341
Charge/Complaint Inventory (Months)	7.3	[illegible]	7.7	6.0	6.0	6.0	6.0	6.0	6.0	6.0	6.0	6.0
Caseload per Available Investigator	80.8	61.8	70.4	55.0	50.9	49.6	49.6	49.6	49.6	49.6	49.6	49.6

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

4.3 ~~49,209~~ ~~39,325~~

Quickel

Notes:

(1) FY 1997 figures are taken from unreconciled 4th Quarter data

(2) The workload calculations assume $4M annually for contract ADR work, at $500 per case, beginning in FY 1999. The ADR success rate is assumed to be 50%.

(3) Charge resolution activity for FY 1997 is the actual value, 132.7. Resolution activity for FY 1998 - FY 2000 is assumed to be 110.0. Charge resolution activity for the following years, 101.9, is calculated to keep inventory constant at six months.

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

(5) 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.

(6) The above table reflects a total staff increase of 110 in fiscal year 1999, broken down as follows (investigators productive for 1/2 year in FY-99 to allow for hiring and training)

Investigators	82
Clericals	16
Supervisors	12

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2

Kennedy
'97
65,000 - 44,000

11/04/97

Source: ORIP

$275,159,000

ID: JAN 18'98 1:01 No.001 P.12

Congress of the United States
House of Representatives
Washington, DC 20515

March 23, 1998

Rep. Bob Livingston
Chairman
Committee on Appropriations
Justice, State,
U.S. Capitol H-218
Washington, DC 20515

Rep. Harold Rogers
Chairman
Subcommittee on Commerce,
and Judiciary
U.S. Capitol H-309
Washington, DC 20515

Dear Mr. Chairmen:

We are writing to you concerning the budget of the Equal Employment Opportunities Commission (EEOC). The Administration has sought a 15% increase ($37 million) for the EEOC in FY 1999. It is vital that the EEOC, as the nation's leading civil rights enforcement agency, function in a fair, efficient, and effective manner. In order to ensure that the Commission is able to fulfill its mission in such a manner, we support giving it the full amount of money requested provided it institutes reforms that ensure the money is targeted to helping actual victims of discrimination.

We support the Speaker's recent testimony given before the Education and Workforce Committee's Subcommittee on Employer-Employee Relations regarding the future direction of the EEOC. This testimony set out six reforms that, if made by the Commission, would justify its receiving the full 15% increase. The criteria are:

1. Improvements to the investigative and intake processes (including greater supervision of the process by lawyers);

2. A significant reduction to the backlog of cases and the length of time for case processing;

3. A more appropriate allocation of resources to charge processing vis-à-vis litigation;

4. Expanded use of alternative dispute resolution;

5. Clarification of the criteria for litigation by the EEOC; and

6. An agreement by the EEOC not to use its scarce resources for employment testers.

We ask you to approve the $37 million increase for the EEOC with these conditions. Please contact the authorizing committee to develop in a timely fashion appropriate accompanying language to ensure that the Commission implements the above reforms as a condition of receiving the money.

Thank you for your continuing service in the important appropriations process.

Sincerely,

Newt Gingrich

Bill Goodling

Harris Fawell

1/8.

Selected Testimony on Future of EEOC to the House Committee on Education and the Workforce Subcommittee on Employer-Employee Relations

Testimony on House Speaker Newt Gingrich before the House Subcommittee on Employer-Employee Relations on "The Future Direction of the Equal Employment Opportunity Commission" March 13, 1998

In addition to demeaning the human condition, discrimination is profoundly un-American. It is contrary to the principle first inscribed in the Declaration of Independence — "All men are created equal, endowed by their Creator with the inalienable rights of Life, Liberty and the Pursuit of Happiness." These are the words that precede the founding of the United States. Thus, to treat someone else differently due to race, color or gender is an offense against, not merely the individual, not merely the state, but in fact our Creator.

And, yes, it took America to completely live up to those first principles. We are human, yet fortunate to be blessed with the best continuing experiment in self-government the world has ever seen, we have progressed and continue to do so. Yet, we must work to guarantee that discrimination can never be tolerated.

It is vital that the EEOC, the nation's leading civil rights enforcement agency, function in a fair, efficient, and professional manner. If the Commission can demonstrate that it can do this, we will support additional funding for it.

Support for increased funding would be contingent on its being properly targeted to helping actual victims of discrimination, and not to litigating cases that seek to break new legal ground. The typical case of discrimination may seem mundane to EEOC lawyers, but it is vitally important to the individual victim. Until the 65,000 case backlog is reduced, and those real Americans receive justice, the EEOC should not be out trying to create new cases (through initiatives such as testers).

Unfortunately, this Committee heard testimony last October from individual victims of discrimination, civil rights lawyers, and small businessmen that the EEOC gives the investigation of individual charges of discrimination low priority in terms of staffing and resources, while litigation — especially high profile cases — has more than ample staffing and funding. This is a shocking situation.

While every office should be allowed certain latitude in assessing its mission priorities, continually putting individuals on the back-burner sends a horrific signal: Indeed, it could be said that the EEOC is in fact discriminating against individuals who happens to "only" be a single victim. That attitude, intentional or not, cannot be justified. For the individual awaiting resolution, justice delayed is justice denied. It must change if the EEOC is to be entrusted with a budget increase.

The average number of cases investigated and completed per investigator is 28.2 and the average caseload of pending cases is 70.0 cases per investigator. By sharp contrast, the average litigation caseload per attorney in the district offices is 1.4 cases — a "workload" which calls into question the very meaning of the word. This allocation of resources leads to questions about the EEOC's priorities. Lawyers must become more involved in the supervision of the intake and investigation process (and less focused on litigation).

Thus, any new money for EEOC must go to addressing the 65,000 case backlog, through such avenues as improvements in the investigative process and increased alternative dispute resolution. It should *not* go to initiatives that create new cases where no individual has alleged discrimination (such as employment testers or commissioner's charges). While the backlog is down from the record 1995 level of 103,000 cases, justice delayed is still unacceptable.

At the same time, we must insure that any backlog reduction by the EEOC does not result in a sacrificing of fairness — there should be no case dumping.

Should these concerns be addressed, we will give serious consideration to the President's increased funding request (15%, $37 million) for the Commission.

Is every commissioners' charge frivolous and unworthy of support? Of course not, but again, there are many obvious individuals out there who have suffered apparent discrimination. Why do out seeking discrimination haphazardly when it can be said that it is sitting on your doorstep?

Increased funding should be given in return for reforms such as:

1) improvements to the investigative and intake processes (including greater supervision of the process);

2) a significant reduction to the backlog of cases and the length of time of case processing;

3) appropriate allocation of resources between intake/investigation and litigation;

4) clarification of the criteria for litigation by the EEOC;

5) expanded use of alternative dispute resolution;

6) and an agreement by the EEOC not to use its scarce resources for employment testers.

The use of employment testers, frankly, undermines the credibility of the EEOC. The government should not sanction applicants' misrepresentation of their credentials to prospecitive employers. The use of testes not only causes innocent businesses to waste resources (interviewing candidates not interested in actual employment), but also puts a government agency in the business of entrapment. It assumes guilt where there has been no indication of discriminatory behavior.

In addition, there are serious concerns of fairness: for example, whether using testers would be a fair test, since not even identical twins are exactly alike (and testers may be overly motivated to find discrimination). Finally, the courts are also divided as to whether the whole concept of employment testers is even lawful (the D.C. Circuit Court of Appeals ruled that employment testers lack standing to bring claims of discrimination).

For these reasons, the use of testers must be seriously reviewed.

I am committed to working with you to ensure the EEOC is a fair, efficient, and effective enforcer of the nation's civil rights laws. We want to make sure that it has adequate funds to carry out its mission. We will support additional funding this year, provided the resources go to ensuring that actual victims of discrimina-tion
receive more timely justice and

the reforms outlined here are

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Washington, DC 20507

July 15, 1998

Office of
the Chairman

The Honorable Bob Livingston
Chairman
Committee on Appropriations

The Honorable William F. Goodling
Chairman
Committee on Education and the Workforce

The Honorable Harold Rogers
Chairman
Subcommittee on Commerce, Justice, State and Related Agencies

The Honorable Harris W. Fawell
Chairman
Subcommittee on Employer- Employee Relations
U.S. House of Representatives
Washington, D.C. 20510

Dear Mssrs. Chairmen,

You have asked whether the Equal Employment Opportunity Commission (EEOC) intends to use Fiscal Year 1999 appropriated funds for employment testers. We understand this question arises in the context of the March 23, 1998, letter from Speaker Gingrich and Chairmen Fawell and Goodling to Chairmen Livingston and Rogers.

Employment testers are individuals who are matched in job relevant respects but differ by the characteristic being tested -- e.g., race, age, gender, disability or ethnicity. In employment tester programs, matched pairs of such testers are sent to apply for job openings. The Fiscal Year 1999 budget request for the EEOC does not provide for the use of Fiscal Year 1999 appropriated funds for employment testers, nor will the EEOC use Fiscal Year 1999 appropriated funds for this purpose.

Sincerely,

Paul M. Igasaki
Chairman

cc: The Honorable David R. Obey
The Honorable William L. Clay
The Honorable Alan B. Mollohan
The Honorable Donald M. Payne

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

SALARIES AND EXPENSES

The Committee recommends $260,500,000 for the Salaries and Expenses of the Equal Employment Opportunity Commission (EEOC) for fiscal year 1999. This amount is $18,500,000 below the request, and $18,500,000 above the amount provided in the current year appropriation.

Additional resources are provided to support improvements to the investigation and resolution of actual individual charges of discrimination. The Committee expects that these additional resources will allow the EEOC to continue to reduce the backlog of pending charges, and to significantly expand the use of alternative dispute resolution (ADR) techniques, including mediation. The Committee notes that concerns about the EEOC's use of employment testers in fiscal year 1999 are being addressed in the form of a letter from the EEOC Chairman to the Congressional Committees of jurisdiction.

The increase of $18,500,000 is provided for the following purposes: $6,000,000 for adjustments to base, $8,000,000 for the development of the EEOC's ADR program, $3,500,000 for EEOC investigative staffing enhancements, $500,000 for additional EEOC attorneys, and $500,000 for additional reimbursement to State and local Fair Employment Practice Agencies. The Committee recommendation does not include the requested increase for automation, for reasons described below. Also the recommendation does not include the full amounts requested for personnel increases, as the requested amounts were based on full-year costs of added positions. The Committee expects the EEOC to submit a spending plan to the Committee in accordance with section 605 of this Act prior to the expenditure of funds for the program increases included in the Committee recommendation. The spending plan shall be supplemented by a report, submitted to the Committee on Appropriations and the Committee on Education and the Workforce detailing specific plans for the implementation of an ADR initiative.

ADR.—In addition to a detailed expenditure plan, the ADR implementation plan shall address the structure of the ADR program. The Committee urges the EEOC to submit a plan that will make ADR options available in most cases. The Committee expects that once an acceptable ADR plan has been approved, such a plan will be implemented in every EEOC field office within fiscal year 1999. The Committee further expects the EEOC to develop systematic data collection and monitoring of the Commission's ADR activities, to determine the impact on backlog, and to refine and improve future efforts.

Investigation.—The Committee provides additional resources in this area in recognition of the fact that the most of the charges in

202 225 1808

the current backlog are "category B" and "category A" charges that require further investigation to determine merit. Additional resources for investigative staff will address the need to develop and resolve these cases.

Attorneys.—The Committee supports the hiring of additional attorneys specifically to encourage early and substantive involvement of attorneys in the "strategic" enforcement process, in which attorneys consult with investigators in screening charges to ensure the best use of resources. Also, the Committee encourages the EEOC to adopt other "no-cost" measures that might improve performance in this area, such as reorganizing work flows, assigning attorneys to investigative units, or changing attorney job requirements.

State and local Fair Employment Practice Agencies.—The Committee notes that the State and local FEPA's resolve approximately 42% of the national caseload, and that many FEPA's have a proven track record of effectively using ADR methods. The Committee expects that the EEOC will work with the FEPA's to achieve a fair and effective distribution of the additional resources provided, via the reimbursement of a set amount per charge resolution.

Automation requirements.—The Committee notes that the Agency's 1999 budget request included increases of $9,590,000 related to automation requirements. These increases are not included in the Committee recommendation. The Committee assumes that the EEOC will be able to request funding for automation needs from amounts that may be made available separately for Year 2000 compliance.

In fiscal year 1998, the Committee provided a modest increase to address the charge caseload and its growing backlog. Recent estimates indicate that by the end of fiscal year 1998, the backlog will total over 57,000 charges. The Committee notes that the additional resources provided for fiscal year 1999 are all specifically targeted toward reducing the backlog of private sector charges. The Committee therefore expects that the additional resources will support the level of charge resolutions projected in the budget request. The Committee expects the EEOC to keep the Committee informed regarding the Commission's progress toward the backlog reduction targets included in the request: 41,500 at the end of fiscal year 1999, and 28,500 by the end of fiscal year 2000. The EEOC may be able to achieve even greater backlog reductions depending on the intake rate for new charges and the extent to which ADR methods are adopted.

The Committee continues to be concerned about the allocation of resources to charge processing and to litigation. The Committee expects the EEOC to continue to develop the ability to track staffing and resources expended on particular EEOC activities, and expects the EEOC to be able to report to the Committee on the level of resources actually being spent on charge processing, how this level compares to previous years, whether resources need to be reallocated among activities or districts, and the productivity of charge processing by office. The Committee expects the processing of charges filed with the EEOC, including the reduction of the backlog of such charges, will remain the EEOC's first priority and directs the EEOC to implement a system of identifying the level of resources dedicated to this activity and other EEOC activities, such as litigation. The Committee understands that the EEOC is currently working on a project to track the use of EEOC attorneys' time that will provide greater clarity regarding the allocation of resources by activity.

The Committee is also concerned about EEOC interventions in ongoing lawsuits, and the initiation of lawsuits alleging a similar claim or claims as alleged in another lawsuit filed against the same defendant. The Committee expects that the EEOC will give priority to litigation on behalf of complainants not represented by counsel in other forums as opposed to duplicating independent litigation efforts.

The bill also includes language similar to that included in previous appropriations acts allowing: (1) non-monetary awards to private citizens; (2) up to $28,000,000 for payments to State and local agencies, an increase of $500,000 over fiscal year 1998; and (3) up to $2,500 for official reception and representation expenses.

FAX TRANSMITTAL

Date: 7.14.98

To: Julie Fernandes

Fax #: 456 - 5581

From: U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Office of Communications and Legislative Affairs

Fax #: (202) 663-4912

Phone #: (202) 663-~~4900~~ 4911
(202) 663-4494 (TDD)

Bill White

Subject:

Draft final. Please review before I send to David Frank - call me!

Pages not including this page: 2

Congress of the United States
House of Representatives
Washington, DC 20515

March 23, 1998

Rep. Bob Livingston
Chairman
Committee on Appropriations
Justice, State,
U.S. Capitol H-218
Washington, DC 20515

Rep. Harold Rogers
Chairman
Subcommittee on Commerce,
and Judiciary
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March 23, 1998
Page 2

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Newt Gingrich

Newt Gingrich

Bill Goodling

Bill Goodling

Harris W. Fawell

Harris Fawell

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  DLR 0418-2693/98/$0+$1.00

the reforms outlined here are

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Washington, DC 20507

Office of
the Chairman

July 15, 1998

The Honorable Bob Livingston
Chairman
Committee on Appropriations

The Honorable William F.Goodling
Chairman
Committee on Education and the Workforce

The Honorable Harold Rogers
Chairman
Subcommittee on Commerce, Justice, State and Related Agencies

The Honorable Harris W. Fawell
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U.S. House of Representatives
Washington, D.C. 20510

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Sincerely,

Paul M. Igasaki
Chairman

cc: The Honorable David R. Obey
The Honorable William L. Clay
The Honorable Alan B. Mollohan
The Honorable Donald M. Payne

Equal Employment Opportunity Commission

SALARIES AND EXPENSES

The Committee recommends $260,500,000 for the Salaries and Expenses of the Equal Employment Opportunity Commission (EEOC) for fiscal year 1999. This amount is $18,500,000 below the request, and $18,500,000 above the amount provided in the current year appropriation.

Additional resources are provided to support improvements to the investigation and resolution of actual individual charges of discrimination. The Committee expects that these additional resources will allow the EEOC to continue to reduce the backlog of pending charges, and to significantly expand the use of alternative dispute resolution (ADR) techniques, including mediation. The Committee notes that concerns about the EEOC's use of employment testers in fiscal year 1999 are being addressed in the form of a letter from the EEOC Chairman to the Congressional Committees of jurisdiction.

The increase of $18,500,000 is provided for the following purposes: $6,000,000 for adjustments to base, $8,000,000 for the development of the EEOC's ADR program, $3,500,000 for EEOC investigative staffing enhancements, $500,000 for additional EEOC attorneys, and $500,000 for additional reimbursement to State and local Fair Employment Practice Agencies. The Committee recommendation does not include the requested increase for automation, for reasons described below. Also the recommendation does not include the full amounts requested for personnel increases, as the requested amounts were based on full-year costs of added positions. The Committee expects the EEOC to submit a spending plan to the Committee in accordance with section 605 of this Act prior to the expenditure of funds for the program increases included in the Committee recommendation. The spending plan shall be supplemented by a report, submitted to the Committee on Appropriations and the Committee on Education and the Workforce detailing specific plans for the implementation of an ADR initiative.

ADR.—In addition to a detailed expenditure plan, the ADR implementation plan shall address the structure of the ADR program. The Committee urges the EEOC to submit a plan that will make ADR options available in most cases. The Committee expects that once an acceptable ADR plan has been approved, such a plan will be implemented in every EEOC field office within fiscal year 1999. The Committee further expects the EEOC to develop systematic data collection and monitoring of the Commission's ADR activities, to determine the impact on backlog, and to refine and improve future efforts.

Investigation.—The Committee provides additional resources in this area in recognition of the fact that the most of the charges in

the current backlog are "category B" and "category A" charges that require further investigation to determine merit. Additional resources for investigative staff will address the need to develop and resolve these cases.

Attorneys.—The Committee supports the hiring of additional attorneys specifically to encourage early and substantive involvement of attorneys in the "strategic" enforcement process, in which attorneys consult with investigators in screening charges to ensure the best use of resources. Also, the Committee encourages the EEOC to adopt other "no-cost" measures that might improve performance in this area, such as reorganizing work flows, assigning attorneys to investigative units, or changing attorney job requirements.

State and local Fair Employment Practice Agencies.—The Committee notes that the State and local FEPA's resolve approximately 42% of the national caseload, and that many FEPA's have a proven track record of effectively using ADR methods. The Committee expects that the EEOC will work with the FEPA's to achieve a fair and effective distribution of the additional resources provided, via the reimbursement of a set amount per charge resolution.

Automation requirements.—The Committee notes that the Agency's 1999 budget request included increases of $9,590,000 related to automation requirements. These increases are not included in the Committee recommendation. The Committee assumes that the EEOC will be able to request funding for automation needs from amounts that may be made available separately for Year 2000 compliance.

In fiscal year 1998, the Committee provided a modest increase to address the charge caseload and its growing backlog. Recent esti-[illegible] indicate that by the end of fiscal year 1998, the backlog will total over 57,000 charges. The Committee notes that the additional resources provided for fiscal year 1999 are all specifically targeted toward reducing the backlog of private sector charges. The Committee therefore expects that the additional resources will support the level of charge resolutions projected in the budget request. The Committee expects the EEOC to keep the Committee informed regarding the Commission's progress toward the backlog reduction targets included in the request: 41,500 at the end of fiscal year 1999, and 28,500 by the end of fiscal year 2000. The EEOC may be able to achieve even greater backlog reductions depending on the intake rate for new charges and the extent to which ADR methods are adopted.

The Committee continues to be concerned about the allocation of resources to charge processing and to litigation. The Committee expects the EEOC to continue to develop the ability to track staffing and resources expended on particular EEOC activities, and expects the EEOC to be able to report to the Committee on the level of resources actually being spent on charge processing, how this level compares to previous years, whether resources need to be reallocated among activities or districts, and the productivity of charge processing by office. The Committee expects the processing of char[illegible] filed with the EEOC, including the reduction of the backlog of such charges, will remain the EEOC's first priority and directs the EEOC to implement a system of identifying the level of resources dedicated to this activity and other EEOC activities, such as litigation. The C[illegible]nittee understands that the EEOC is currently working on a project to track the use of EEOC attorneys' time that will provide greater clarity regarding the allocation of resources by activity.

The Committee is also concerned about EEOC interventions in ongoing lawsuits, and the initiation of lawsuits alleging a similar claim or claims as alleged in another lawsuit filed against the same defendant. The Committee expects that the EEOC will give priority to litigation on behalf of complainants not represented by counsel in other forums as opposed to duplicating independent litigation efforts.

The bill also includes language similar to that included in previous appropriations acts allowing: (1) non-monetary awards to private citizens; (2) up to $28,000,000 for payments to State and local agencies, an increase of $500,000 over fiscal year 1998; and (3) up to $2,500 for official reception and representation expenses.

To: Ellen Vargyas

Dear xxx,

You have asked whether the Equal Employment Opportunity Commission (EEOC) intends to use Fiscal Year 1999 appropriated funds for employment testers. We understand this question arises in the context of the March 23, 1998 letter from Speaker Gingrich and Chairmen Fawell and Goodling to Chairmen Livingston and Rogers.

The FY99 budget request for the EEOC does not provide for the use of FY99 appropriated funds for employment testers, nor will the EEOC use FY99 appropriated funds for this purpose. Keep(?) Testers are individuals who are matched in job relevant respects but differ by the characteristic being tested -- e.g., race, age, gender, disability or ethnicity. Employment tester programs are those in which matched pairs of testers are sent to apply for job openings.

* other 5 — when to see?
* money

Martha to call Dixon's staff
Report to him afterwards

* 3rd party lit.

If send

Dear xxx,

arises

You have asked whether the Equal Employment Opportunity Commission (EEOC) intends to use Fiscal Year 1999 appropriated funds for employment testers. We understand this question ~~occurs~~ in the context of the March 23, 1998 letter from Speaker Gingrich and Chairmen Fawell and Goodling to Chairmen Livingston and Rogers.

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commitments made in the

nor will ~~does~~ the EEOC use FY99 appropriated ~~[illegible]~~

funds for this purpose.

PHOTOCOPY
MISC. HANDWRITING

not o "use resources for employment testers."

Dear [ ]:

You have asked whether the Equal Employment Opportunity Commission (EEOC) intends to use Fiscal Year 1999 appropriated funds to ~~support~~ operate employment tester programs. We understand that this question occurs in the context of Speaker Gingrich's ~~statement of~~ letter March 23, 1998 ~~that he would support the Administration's budget request for the EEOC upon an agreement by EEOC not to use its resources for employment testers~~. We further understand that your request also occurs in the context of Speaker Gingrich's and Chairmen Goodling's and Fawell's letter of March 23, 1998 to Chairmen Livingston and Rogers to the same effect.

operate ?

~~With this letter,~~ ~~I~~ EEOC has confirm that EEOC will not use FY 1999 appropriated funds to operate employment tester programs. Testers are individuals who are matched in job relevant respects but differ by the characteristic being tested, e.g., race, age, gender, disability or ethnicity. Employment tester programs are those in which testers are sent to apply for job openings and the information generated is reviewed to determine whether employment discrimination may have occurred. ~~However, existing contractual obligations will be fulfilled and the Commission may expend FY 1999 appropriated funds to complete its work in connection with the contracts.~~

EEOC's FY99 budget request does not contemplate the use

Is not (or has not been) agency's intention

* Broderick not comfortable w/ the tone.
* EEOC needs to be explicit about the goal of strengthening the agency.

strongest point for us to push

Common appreciation for need to enforce the law.

3rd & 4th

(Struck him that a little bare)

* Need further conversations w/ EEOC and appropriations.

The FY99 budget request for EEOC does not provide for the use of ~~employment~~ FY99 funds to operate employment tester programs.

EEOC's FY99 budget request does not —— the employment

We can confirm that the FY99 budget request does not provide for the employment of

~~A~~ Who do we send w/Ellen when she presents the letter to Reps ?

EK ?

OR

just Ellen do it.

Ellen

EK

Hill
Call Staff

Ellen: quick mtg. w/ David Frank

- EEOC to clear
- Read it to Dems.
- Read it to Wade ?
- Ellen to have a quick mtg. w/David Frank.

Include letter in Report Lang.
= record of what was actually said

who go up with her ?

EK ?
Martha/Brad ?

Ellen does want to leave w/out employer tester programs.

emp. tester program could include evaluating pilots or follow-up from pilots.

Julie A. Fernandes
06/29/98 03:38:33 PM

Record Type: Record

To: Martha Foley/WHO/EOP, Broderick Johnson/WHO/EOP

cc:

Subject: EEOC letter

Here is the revised version, per Ellen's insert. Let's discuss.

Julie

Dear xxx,

for employment testers

You have asked whether the Equal Employment Opportunity Commission (EEOC) intends to use Fiscal Year 1999 appropriated funds ~~to operate~~ **employment tester programs.*** We understand this question occurs in the context of Speaker Gingrich's March 23, 1998 letter. to Chairman Livingston & Rogers.

The FY99 budget request for the EEOC does not provide for the use of FY99 appropriated funds ~~to operate employment tester programs~~. Employment tester programs are those in which individuals who are matched in job relevant respects but differ by the characteristic being tested ("testers") are sent to apply for job openings.

*or "**for employment testers**"

Testers are individuals who are matched in job relevant respects but differ by the characteristic being tested (e.g., race, age, gender, disability or ethnicity).
In employment tester programs, testers are sent to apply for job openings.

Dear [ ]:

You have asked whether the Equal Employment Opportunity Commission (EEOC) intends to use
operate ? Fiscal Year 1999 appropriated funds to support employment tester programs. We understand that this question occurs in the context of Speaker Gingrich's statement of March 13, 1998, that he would support the Administration's budget request for the EEOC upon an agreement by EEOC not to use its resources for employment testers. We further understand that your request also occurs in the context of Speaker Gingrich's and Chairmen Goodling's and Fawell's letter of March 23, 1998 to Chairmen Livingston and Rogers to the same effect.

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FAX TRANSMISSION

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
1801 L STREET, N.W.
WASHINGTON, D.C. 20507
(202) 663-4637
FAX: (202) 663-4639

To: Julie Fernandez

Fax #: 456-5581

From: Ellen J. Vargyas

Subject: Testers

Date: May 29, 1998

Pages: 10, including this cover sheet.

COMMENTS:

I've attached two pieces we've done on testing. One is a Q and A while the other is a description of some actual situations which have arisen. Please let me know if there's anything else at all that we can do to be of help. Thanks again for yesterday's meeting -- it was very helpful.

TESTERS – QUESTIONS AND ANSWERS

Q1 Why did the EEOC decide to expend resources on a tester program?

A1 This pilot tester program is designed to help the Commission determine whether employment testing is a cost effective enforcement tool. The key to equal employment opportunity is for people to be able to get through the door. Yet hiring discrimination is extremely difficult to detect. The EEOC's enforcement process is primarily complaint driven. It is built on the premise that the individual victim will recognize the discrimination and complain about it. That premise is simply wrong in the case of hiring discrimination. Those who are subject to hiring discrimination have no way of knowing that discrimination has occurred. They do not know which individual was selected for the job and how the selectee's credentials compared with her own.

A well-managed employment testing program can be an exceptionally accurate and useful tool for exposing discriminatory hiring practices. By sending out pairs of testers who differ in their protected class status but who are matched in all job-relevant traits, the EEOC can evaluate employers' hiring decisions. For example, discrimination is evidenced if carefully matched Anglo and Hispanic testers are sent to a workplace and the Hispanics are told that there are no openings or that "we'll get back to you" and the white testers are offered jobs. Combating hiring discrimination is a critical aspect of the EEOC's enforcement program and testing is sometimes the only way to detect that discrimination. As the lead enforcement agency in combating hiring discrimination, we would be remiss if we did not use all tools at our disposal.

Q2 Why is a tester program needed now, when the EEOC has enforced the anti-discrimination laws without one for more than the last 30 years?

A2 There are two reasons that a tester program is a particularly useful adjunct to the EEOC's enforcement efforts at this particular point in time.

We all agree that everybody should have equal access to employment regardless of race, national origin, gender, age or disability and that nondiscriminatory hiring is the key to opportunity. Yet hiring discrimination is notoriously difficult to detect. We need more strategies to protect people from any discrimination that exists in the hiring process. The EEOC needs to determine whether employment testing can enhance its ability to detect hiring discrimination and do so in a cost effective way.

In addition, there are now organizations that have the expertise and the background to teach us how to do it right. It is very important that testing be done under conditions that ensure everyone -- employers, employees, EEOC, and the U.S. Congress -- that its results are credible and have been fairly obtained. The organizations selected for the pilot program both have extensive experience conducting testing. They know how to match testers to ensure that their credentials are comparable. They know how to screen testers to ensure that they have no grievance against any employer being tested. They have developed testing methodologies that ensure accurate and objective data, including training the testers to record facts but not perceptions and establishing a second level of review to assess whether the test suggests that discrimination is in fact at work. The availability of this expertise is an important reason to proceed with a tester pilot now.

Q3 Are there any safeguards against abuse of the testing process?

A3 The pilot program has been carefully designed to ensure that the results are credible and are fairly obtained. The organizations conducting the pilot have had extensive experience in running testing programs. They will screen all testers to ensure that they have no grievance against any employer being tested. They will require that all testers participate in extensive training. The training will stress that the testers must act as neutral observers and recorders of events. The testers will be taught how to hone their observation skills. They will also be taught how to record meticulously and objectively the details of their contacts with employers. The testers will be trained to record facts -- what the employer said and did -- and not what the testers <u>think</u> about what the employer said and did. The testers will be instructed not to compare notes with other testers. Finally, the testers will be paid hourly rates for their work; they will reap no financial benefit from the outcomes of the tests.

Moreover, the EEOC will not simply be acting on the basis of the testers' reports. Under the pilot, after a test, a third party will review the testers' reports to determine whether the test suggests discrimination. If so, another pair or pairs of testers might be sent in. A charge will not be filed unless there is specific, credible evidence that a job has been denied on a prohibited basis.

Q4 Isn't this entrapment for employers? Doesn't testing waste the time of law-abiding employers who interview, evaluate, check references, and compile records on bogus job applicants -- and all because they are being forced to prove that they are in fact law-abiding?

A4 This is not entrapment. First of all, testers do not invite or induce employers to discriminate. They simply apply for employment and are specifically trained and instructed not to suggest, influence, or encourage the employer to discriminate. To the contrary, minority testers actually provide every opportunity for an employer <u>not</u> to discriminate because they are directed to make every effort to obtain an offer of employment, and typically are provided with qualifications superior to those of the non-minority tester.

More globally, moreover, testing will often be used to serve educational -- and not punitive -- purposes. The EEOC is certainly not engaged in a witch hunt to create, and then penalize, discrimination. While there may be a few "bad apples" out there -- that is, employers who intentionally discriminate based on bias against a particular group -- the hiring discrimination that does exist may in many cases be the product of employer efforts simply to hire people whose backgrounds and credentials seem familiar to them.

Because such decisions may reflect unconscious bias, testing can alert the employers that their processes may be having unintended consequences and can enable them to institute procedures that would avoid those consequences in the future. The remedies sought in such cases would, moreover, reflect the realities of the situation.

The testing organizations that were awarded the contracts for the EEOC's pilot program adhere to certain guidelines in an effort to minimize inconvenience to employers. For example, they instruct testers to reject job offers promptly, and they stop testing an employer immediately when the tests indicate an absence of discriminatory behavior.

The testing process may actually save time for both the Commission and employers. Currently, if a claim of hiring discrimination is brought, the investigation often requires the employer to submit extensive documentary and testimonial evidence about its hiring practices and procedures. This is time consuming and costly for both the employer and the Commission. If the Commission had an available pool of trained testers, in a case alleging hiring discrimination, the Commission could send in tester pairs and corroborate or refute the allegation. If the evidence tends to refute the allegations in the charge, that investigation could be halted. If it corroborates the allegation, much less additional evidence may be needed to confirm that discrimination occurred.

Q5 Isn't it distasteful, to say the least, for the EEOC to be condoning deception?

A5 If testers were to admit that they were testers, it would, of course, undermine the very purpose of the enterprise. There are, moreover, numerous examples from other contexts in which it is necessary to shield a person's identity. To choose an example we're all familiar with, dining critics do not announce themselves to restaurant management when they arrive to review the operation's cuisine and service; they instead assume the role of a private, anonymous consumer. To do otherwise would severely compromise their ability to evaluate the merits of the restaurant's operation.

Similarly, Congress has authorized agencies, such as the Department of Housing and Urban Development, to be involved in testing. It has thus recognized the efficacy of -- and approved the use of -- this investigative technique.

The EEOC takes its responsibility to ensure fair enforcement of the antidiscrimination laws very seriously. Thus, while the EEOC will condone representations that are necessary to protect the integrity of the testing program, it will not permit any unnecessary deception.

Q6 Doesn't the tester pilot itself violate Title VII because it involves race, gender or ethnic based hiring?

A6 No. Undercover enforcement work often requires that the investigator look like a member of the particular race, national origin, gender or other basis being tested. Title VII specifically recognizes that gender, national origin or religion may be a bona fide occupational qualification for particular positions. While the statute docs not specifically recognize a BFOQ for race, courts have recognized that there are circumstances in which taking race into account is not only permissible but necessary. In 1980, in *Miller v. Texas State Board of Bar Examiners*, 615 F.2d 650 (5th Cir.) *cert. denied, 449 U.S. 891,* the Fifth Circuit recognized that it may be necessary to take race into account in assigning an undercover agent to investigate barber shops in African-American neighborhoods. Similarly, in upholding the promotion of a black correction officer to "lietenant" at a "boot camp" prison, Judge Posner recently observed that while any use of race as a criteria for job selection is subject to very close scrutiny, it is not illegal per se and is permissible where employers are "motivated by a truly powerful and worthy concern and that the racial measure that they have adopted is a plainly apt response to that concern." *Wittmer v. Peters,* 87 F.3d 916,(7th Cir. 1996), *cert denied,* 117 S.Ct. 949 (1997).

Q7. Isn't it true that the fact that other kinds of testing have been so remarkably successful in ferreting out discrimination is irrelevant because the employement process involves controlling for more variables.

A7. Not really. Employment testing is not inherently more complex. The Commission is currently considering testing only entry level jobs for which there are minimal qualifications. Testing of the housing sales market and the credit industry involve use of far more variables. Similarly, testing of race discrimination in nursing homes has been done which requires controlling for the testers' medical condition. Finally, testing often detects the kind of discrimination that is far from subtle. Where Hispanic testers are told there are no openings while Anglo testers are offered jobs, the discrimination is evident.

Many federal agencies use testing as a tool to detect discrimination: HUD, DOJ, the FTC, even the military. DOD uses "verifiers" to check for discrimination against enlisted personnel in housing.

Charges received and processed by the EEOC involving employment testers have arisen from a wide variety of factual situations.

For instance, one EEOC district office received a charge from a woman who had applied and was rejected for a line job with an airplane servicing company. She had applied for the job because a friend, who was a vendor with the company, told her there were vacancies for which she was qualified (according to the company, the position required little or no experience). After she was rejected for the position, the friend called the company and asked the facility manager/general manager who was responsible for hiring why the woman was not hired. The manager said the company didn't hire women for "line" positions, only for office work, because women working in line positions tended to distract the men who were working the line jobs.

After the woman filed a charge with the EEOC, she contacted a private organization that conducts employment testing and explained what had happened. To help evaluate the accuracy of the vendor/friend's understanding of the manager's statement, the organization sent several testers to apply for line positions. Like the charging party, the female testers were rejected for the position.

The testers in that case helped confirm that the company did have a policy against hiring women for "line" positions. Absent the tester evidence the vendor/friend's account of the conversation with the manager responsible for hiring might well have been rejected as biased. The tester evidence also eliminated any argument that women did not hold the line positions because they were not interested in them.

Another district office received two charges that arose out of employment testing conducted by a private organization against several temporary employment agencies. The private organization had heard that employees in the area were experiencing a variety of problems when they applied for work through temporary employment agencies. In order to learn more about the nature of such problems, the organization spent a week talking with several "temp" workers who described problems relating to discrimination based on race, sex, disability, and other alleged statutory violations. At the end of this week-long briefing, the organization decided to investigate further two specific issues: pre-employment medical inquiries in violation of the Americans with Disabilities Act (ADA), and employer failure to satisfy a requirement under state law that they provide the worker with a written statement of salary before the employment begins.

In conducting its testing program, the organization used persons who were actually looking for work and who agreed to take the job if offered a position. The organization "tested" ten different temporary employment agencies, and several testers then filed charges against two of the temp agencies for making unlawful pre-employment medical inquiries.

In this instance, the private organization used employment testing as a means of determining whether a "problem" that employees claimed existed was, in fact, a problem. In the organization's opinion, the results demonstrated the existence of a violation of the ADA in at least two agencies (no charges resulted from several other agencies that were tested by the organization). The EEOC can now investigate the validity of those discrimination claims and issue a "cause" finding, if appropriate.

In another situation, several testers filed employment discrimination charges with a district office alleging they were not considered for a receptionist position with a health provider. Two pairs of testers with similar credentials (each pair consisting of one African American and one Caucasian job applicant) were sent to apply for the receptionist position by a private organization that conducts employment testing. The organization became interested in this particular employer after the organization received suspicious responses to written applications it submitted to the employer in response to an advertisement for the position. Another private organization in the area had also indicated some concerns about the employer's hiring practices, and had referred a job applicant who was actually interested in a clerical position to the organization that was planning to conduct the test. This job applicant became one of the testers who went to the company to apply for the job.

Notwithstanding the close similarity in education, experience and relevant skills, the four "testers" received starkly different treatment. The two African American applicants were asked why they had come in person when the ad said to mail in a resume, and were further told there was no one they could speak to at the moment, and they would be called for an interview later. The two Caucasian applicants, who went to the company on the same days as the African American testers and who spoke to the same manager, were immediately escorted to another building to meet other managers involved in the hiring process, and one of them was offered a job on the spot.

It is always possible that a manager making a hiring decision could end up feeling more comfortable with one job applicant over another after an interview. That does not account for what the testers reported happened here: the two African American applicants were both told that delivering their resumes in person was a mistake, and that there was no one present they could talk to about the job and no opportunity for an interview that day. The two Caucasian job applicants who were also delivering their resumes in person were welcomed warmly, were immediately interviewed, and one was offered the position on the spot. During the course of the investigation of the charges filed by the two African American testers, at least one other African American applicant was identified who was determined by the EEOC to have been a victim of race discrimination. Without the evidence of the contrasting testers' experiences, however, it would have been much more difficult for the Commission (or a court) to assess whether the rejection of the non-tester applicant amounted to discrimination based on race.

These are just a few examples of situations in which testers have been used to help determine whether a violation of federal employment discrimination law exists. They demonstrate some of the instances where the absence of documentary evidence might make the Commission's investigation much more difficult if it were not for the statements of the testers describing their experiences with the employer.

There are many other kinds of situations where testing could be similarly profitable, such as when minority and/or female job applicants report that they were denied the opportunity to even apply for a position they understood to be vacant, and suspect that the denial was based on their race, ethnicity, skin color or sex. Or when a job applicant indicates that she was inappropriately touched and/or propositioned when she applied for a job, and was led to believe that the job was available only if she agreed to submit to further sexual advances. In these situations, determining what occurred will often be one person's word against the other's unless there is an opportunity to recreate the scenario, using paired testers, and observe whether the same pattern recurs.

The Fair Employment Council of Greater Washington, Inc. (FEC) learned of a situation in 1990 in which a job applicant alleged that she had been sexually harassed at the time she applied for a job. The job applicant said, specifically, that the owner of the job referral company told her that his referral services cost between $300 and $1500, but that this amount could be waived if she would just "give a little bit part of [her] life," or, in other words, that "through sex, that's a way of taking care of the financial problem." See Molovinsky v. Fair Employment Council, 72 FEP Cases [BNA] 79, 80 (D.C. Ct. Of App., Oct. 3, 1996). FEC determined that Ms. Henderson's allegations warranted further investigation, so it sent four testers to the job site (two men and two women) to be interviewed by the same individual and report back their experiences.

The two female testers experienced the same general sexual propositioning that the first job applicant had reported. The two men had very different experiences: when they said they couldn't afford the agency's fees, the owner told them to get a job earn some money and come back later. 72 FEP Cases at 80. The case was tried before a jury in the District of Columbia, and the agency owner denied ever propositioning either the female testers or the original applicant, Ms. Henderson. 72 FEP Cases at 81.

In the face of such a "he said, she said" situation, the existence of the testers' testimony to corroborate the experience of Ms. Henderson was tremendously helpful in securing a court judgment that the employer was liable for a violation of the District of Columbia Human Rights Act.[1] As with the other

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[1] Ms. Henderson and the two female testers all testified that the owner's "eye contact and sexually suggestive hand gestures had made them uncomfortable, that they had felt humiliated, and that they had lasting negative impressions of their encounter with him." 72 FEP Cases at 80. In upholding the jury's award of $15,000 in compensatory and punitive damages to the two testers (as compared to $27,000 compensatory and punitive damages to the original job applicant), the court found that all three individuals had a statutory right not to be sexually harassed. Moreover, quoting the Supreme Court decision of Havens Realty Corp. V. Coleman, 455 U.S. 363, 373 (1982), the court held that the testers' right to be free of sexual harassment under the D.C. Human Rights Act existed notwithstanding the tester's

situations described above, where charges were filed with the EEOC, this case represents an additional factual context where the availability of testers provided a critically important tool to help establish whether discrimination was occurring at this referral agency. Moreover, since it is unlikely the referral agency would continue this harassing behavior and risk additional monetary "fines," the FEC's utilization of testers in its enforcement efforts was able to help eliminate this discriminatory activity in at least this one employment context.

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intentions in initiating the encounters with the owner of the referral agency. 72 FEP Cases at 81.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

SALARIES AND EXPENSES

The Committee recommends $260,500,000 for the Salaries and Expenses of the Equal Employment Opportunity Commission (EEOC) for fiscal year 1999. This amount is $18,500,000 below the request, and $18,500,000 above the amount provided in the current year appropriation.

Additional resources are provided to support improvements to the investigation and resolution of actual individual charges of discrimination. The Committee expects that these additional resources will allow the EEOC to continue to reduce the backlog of pending charges, and to significantly expand the use of alternative dispute resolution (ADR) techniques, including mediation. The Committee notes that concerns about the EEOC's use of employment testers in fiscal year 1999 are being addressed in the form of a letter from the EEOC Chairman to the Congressional Committees of jurisdiction.

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202 225 1808

Roger or Farrell

* Ellen to call Wade

Ellen should talk to Ringler re: this

Groups

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State and local Fair Employment Practice Agencies.—The Committee notes that the State and local FEPA's resolve approximately 42% of the national caseload, and that many FEPA's have a proven track record of effectively using ADR methods. The Committee expects that the EEOC will work with the FEPA's to achieve a fair and effective distribution of the additional resources provided, via the reimbursement of a set amount per charge resolution.

Automation requirements.—The Committee notes that the Agency's 1999 budget request included increases of $9,590,000 related to automation requirements. These increases are not included in the Committee recommendation. The Committee assumes that the EEOC will be able to request funding for automation needs from amounts that may be made available separately for Year 2000 compliance.

In fiscal year 1998, the Committee provided a modest increase to address the charge caseload and its growing backlog. Recent estimates indicate that by the end of fiscal year 1998, the backlog will total over 57,000 charges. The Committee notes that the additional resources provided for fiscal year 1999 are all specifically targeted toward reducing the backlog of private sector charges. The Commit therefore expects that the additional resources will support the level of charge resolutions projected in the budget request. The Committee expects the EEOC to keep the Committee informed regarding the Commission's progress toward the backlog reduction targets included in the request: 41,500 at the end of fiscal year 1999, and 28,500 by the end of fiscal year 2000. The EEOC may be able to achieve even greater backlog reductions depending on the intake rate for new charges and the extent to which ADR methods are adopted.

The Committee continues to be concerned about the allocation of resources to charge processing and to litigation. The Committee expects the EEOC to continue to develop the ability to track staffing and resources expended on particular EEOC activities, and expects the EEOC to be able to report to the Committee on the level of resources actually being spent on charge processing, how this level compares to previous years, whether resources need to be reallocated among activities or districts, and the productivity of charge processing by office. The Committee expects the processing of charges filed with the EEOC, including the reduction of the backlog of such charges, will remain the EEOC's first priority and directs the EEOC to implement a sys of identifying the level of resources dedicated to this activity and other EEOC activities, such as litigation. The Committee understands that the EEOC is currently working on a project to track the use of EEOC attorneys' time that will provide greater clarity regarding the allocation of resources by activity.

The Committee is also concerned about EEOC interventions in ongoing lawsuits, and the initiation of lawsuits alleging a similar claim or claims as alleged in another lawsuit filed against the same defendant. The Committee expects that the EEOC will give priority to litigation on behalf of complainants not represented by counsel in other forums as opposed to duplicating independent litigation efforts.

The bill also includes language similar to that included in previous appropriations acts allowing: (1) non-monetary awards to private citizens; (2) up to $28,000,000 for payments to State and local agencies, an increase of $500,000 over fiscal year 1998; and (3) up to $2,500 for official reception and representation expenses.

Dear xxx,

You have asked whether the Equal Employment Opportunity Commission (EEOC) intends to use Fiscal Year 1999 appropriated funds for employment testers. We understand this question arises in the context of the March 23, 1998 letter from Speaker Gingrich and Chairmen Fawell and Goodling to Chairmen Livingston and Rogers.

Employment testers are individuals who are matched in job relevant respects but differ by the characteristic being tested -- e.g., race, age, gender, disability or ethnicity. In employment tester programs, matched pairs of such testers are sent to apply for job openings. The FY99 budget request for the EEOC does not provide for the use of FY99 appropriated funds for employment testers, nor will the EEOC use FY99 appropriated funds for this purpose.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

SALARIES AND EXPENSES

The Committee recommends $260,500,000 for the Salaries and Expenses of the Equal Employment Opportunity Commission (EEOC) for fiscal year 1999. This amount is $18,500,000 below the request, and $18,500,000 above the amount provided in the current year appropriation.

Additional resources are provided to support improvements to the investigation and resolution of actual individual charges of discrimination. The Committee expects that these additional resources will allow the EEOC to continue to reduce the backlog of pending charges, and to significantly expand the use of alternative dispute resolution (ADR) techniques, including mediation. The Committee notes that concerns about the EEOC's use of employment testers in fiscal year 1999 are being addressed in the form of a letter from the EEOC Chairman to the Congressional Committees of jurisdiction.

The increase of $18,500,000 is provided for the following purposes: $6,000,000 for adjustments to base, $8,000,000 for the development of the EEOC's ADR program, $3,500,000 for EEOC investigative staffing enhancements, $500,000 for additional EEOC attorneys, and $500,000 for additional reimbursement to State and local Fair Employment Practice Agencies. The Committee recommendation does not include the requested increase for automation, for reasons described below. Also the recommendation does not include the full amounts requested for personnel increases, as the requested amounts were based on full-year costs of added positions. The Committee expects the EEOC to submit a spending plan to the Committee in accordance with section 605 of this Act prior to the expenditure of funds for the program increases included in the Committee recommendation. The spending plan shall be supplemented by a report, submitted to the Committee on Appropriations and the Committee on Education and the Workforce detailing specific plans for the implementation of an ADR initiative.

ADR.—In addition to a detailed expenditure plan, the ADR implementation plan shall address the structure of the ADR program. The Committee urges the EEOC to submit a plan that will make ADR options available in most cases. The Committee expects that once an acceptable ADR plan has been approved, such a plan will be implemented in every EEOC field office within fiscal year 1999. The Committee further expects the EEOC to develop systematic data collection and monitoring of the Commission's ADR activities, to determine the impact on backlog, and to refine and improve future efforts.

Investigation.—The Committee provides additional resources in this area in recognition of the fact that the most of the charges in

the current backlog are "category B" and "category A" charges that require further investigation to determine merit. Additional resources for investigative staff will address the need to develop and resolve these cases.

Attorneys.—The Committee supports the hiring of additional attorneys specifically to encourage early and substantive involvement of attorneys in the "strategic" enforcement process, in which attorneys consult with investigators in screening charges to ensure the best use of resources. Also, the Committee encourages the EEOC to adopt other "no-cost" measures that might improve performance in this area, such as reorganizing work flows, assigning attorneys to investigative units, or changing attorney job requirements.

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