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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. list	Re: EEOC Participants (partial, DOB, SSN) (1 page)	05/26/1998	b(6)

COLLECTION:

Clinton Presidential Records
Domestic Policy Council
Irene Bueno
OA/Box Number: 17176

FOLDER TITLE:

EEOC [Equal Employment Opportunity Commission]: FY99 Budget [2]

2017-1120-S
ry2229

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

P1 National Security Classified Information [(a)(1) of the PRA]
P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
P3 Release would violate a Federal statute [(a)(3) of the PRA]
P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [a)(5) of the PRA]
P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.
PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).
RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

b(1) National security classified information [(b)(1) of the FOIA]
b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

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.

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Dixon

18.5 million 37 million

$8 ADR

$6

$3.5 Invest
staff
e&t

$ .5 FEPA

$ .5 EEOC
attnys

→ CJS folder

1 page from Susan

Obey thinks language is fine.

Call Dixon's
walk through 6 things
repeat language

Dixon's

Paul Cunningham 225-7084

Chris

Goes to print tonight

Lang. on backlog

Report language last year (supported by Dixon)

Relatively innocuous

charge process as first priority

system of identify ~~how resource~~ the level of resources btn

lit

seemed like last year.

What jumped out was earmarking

Chunk not funded b/c some bad accounting.

intervention in ongoing lawsuit

priority to cases where no indep. counsel

as opposed to

nothing on Comm. Charges

Senate w/no earmarks

David Reich (~~[illegible]~~) (Obey / Mollahan)
no shall or shall not

news from subcommittee
no hot

Executive Office of the President
Office of Management and Budget

Housing, Treasury, and Finance Division

Facsimile Cover Sheet

Date: July 7, 1998

To: Martha Foley
6-2271

From: Susan Carr

Subject: EEOC FY 1999 Budget Components

Pages to follow: 0

Comments:

EEOC - Summary of budget components:

FY 1998 current enacted level: $242 million

Add:

Cost of continuing operations:	$8 million	6
Cost of add'l 162 staff	$6 million	3.5 .5 = 4 ?
Cost of mediation	$13 million	7
Cost of technology	$10 million	0
Total 1999 budget:	**$279 million**	

FROM:

Susan M. Carr
Policy Analyst
Office of Management and Budget
NEOB 9201
725 17th Street, NW
Washington, D.C. 20503

phone: (202) 395-7881
fax: (202) 395-6889

To: Julie F
Fr: Martha F

Equal Employment Opportunity Commission

76) Page 144 — Equal Employment Opportunity Commission, after the 3rd paragraph insert the following paragraph:

"The Committee is concerned about the priorities and litigation practices of the EEOC and recommends that the EEOC allocate more of its limited public resources to investigating and resolving actual claims of discrimination filed by employees and applicants. The Committee directs the EEOC to report to Congress on or before March 1, 1999, on the Commission's allocation and expenditure of funds provided in this Act."

07/06/98 MON 22:29 FAX 001

THE WALL STREET JOURNAL. WEDNESDAY, JULY 1, 1998

BUSINESS & RACE

By Leon E. Wynter

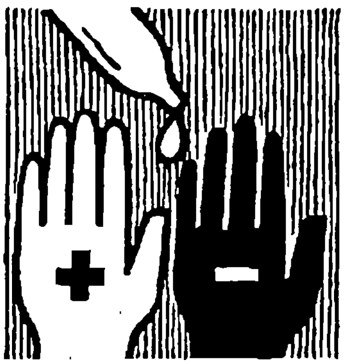
Testing for Discrimination Gains Wider Acceptance

FEDERAL AGENCIES, spurred on by nonprofit groups, are increasingly embracing the use of undercover investigators to identify discrimination in the marketplace.

The federal Equal Employment Opportunity Commission now has launched a pilot project using so-called matched-pair testers—investigators of differing skin colors who pose as consumers to compare how they are treated—to monitor hiring in Chicago and Washington D.C. The effort follows a similar move last year by the Office of Federal Contract Compliance Programs.

The embrace of such testing by federal agencies could have a big impact on businesses. Unlike abstract statistical arguments, evidence from direct testing has compelling "six o'clock news" credibility, says William Milani, an attorney with Epstein Becker & Green, New York. It can look convincing to a jury in a discrimination lawsuit, he adds.

Testing has long been used to fight housing discrimination, but its



Luba Lukova

legal status in employment cases has been doubtful, until recently. A 1994 district-court ruling in Washington, D.C., coupled with the 1991 amendments to the Civil Rights Act, allows testers to give evidence about their treatment in lawsuits seeking damages, says Avis Buchanan, a lawyer representing the Fair Employment Council of Washington, D.C. The nonprofit group has been a pioneer of testing for hiring discrimination.

Critics say that setting up fake encounters, rather than looking at statistical data, to test fairness is tantamount to entrapment. "In many ways, testing is a more intrusive approach in that you have people going into the workplace, initiating the process, without any intention of working for you," says Mr. Milani. "That's what many employers find troublesome."

But the EEOC says it is counting on the cooperation of most businesses. "We're hopeful that a responsible testing program will support the companies that do what they can to avoid discrimination and help us find those who are not," says acting EEOC Chairman Paul Igasaki.

In fact, more companies are seeking to test their own employees before they are tested by watchdog groups. The Fair Housing Council of Greater Washington, a private, nonprofit group, last year used testers to show disparate treatment of minority shoppers by a department store for a report by the ABC-TV news magazine "20/20."

Since the report aired, several retail and service businesses, as well as employer-liability insurers, have asked about the group's testing programs, says David Berenbaum, executive director of the Fair Housing Council of Greater Washington.

The FHC, in response, set up a separate, nonprofit consulting service called Fair Housing Partnership to work with the private sector. It offers model tests as well as testers for various consumer transactions in the marketplace.

"We're beginning to see the privatization of the civil rights movement," says Mr. Berenbaum. He says the group is working with eight corporations now and is in negotiations with six more.

"Wouldn't you want to make sure that your products are marketed consistently and professionally using a consistent service model?" asks Mr. Berenbaum. "That's what's winning over the CEOs."

FAX TRANSMITTAL

Date: 7·1·98

To: Julie Fernandez

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 Ch[illegible]

Subject:

Julie,
Copy of WSJ article.

Bill

Pages not including this page: 1

6-5571

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 ~~are those in which~~ 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.

(to employ)

(1) other 5

(2) money

(3)

1) ~~And~~ In employment tester programs ~~matched~~ pairs ~~of such~~ testers are sent to apply for

Employment testers

damages (?) different fund

ther directs the EEOC that before any criteria are adopted, the EEOC shall submit such criteria, no later than February 2, 1998, to both the House Appropriations Committee and the House Education and Workforce Committee for review.

The bill also includes language included in previous appropriations acts allowing: (1) non-monetary awards to private citizens; (2) up to $27,500,000 for payments to State and local agencies; and (3) up to $2,500 for official reception and representation expenses.

FEDERAL COMMUNICATIONS COMMISSION

SALARIES AND EXPENSES

The Committee recommends total budget authority of $187,079,000 for the Salaries and Expenses of the Federal Communications Commission (FCC) for fiscal year 1998, of which $152,523,000 is to be derived from offsetting fee collections. This will result in a direct appropriation of $34,556,000, a decrease of $22,000,000 below the request, and $1,000,000 below the current year appropriation. The recommendation provides the full request for the operations of the FCC due to correction of an error contained in the original FCC budget submission which overestimated inflationary increases by $2,000,000.

The Committee has not provided the requested increase related to the cost of relocating the FCC headquarters into consolidated new space. The fiscal year 1998 request included $30,000,000 for the costs associated with the relocation, and the FCC anticipates that an additional $10,000,000 will be required in fiscal year 1999. The Committee remains concerned that, despite the admonitions of the Committee for the past three years, the FCC and the General Services Administration (GSA) have made no progress in reducing the costs of this relocation. Further, the Committee is concerned about recent actions by GSA and FCC to expand the total space in the facility. The Committee expects the FCC to continue to work to find lower cost alternatives to provide for the relocation, and to submit a reprogramming of funds under Section 605 of the bill to cover such costs FCC will incur from the move.

The Committee is concerned that the FCC has not taken sufficient actions to streamline and reduce its operations in response to passage of the landmark Telecommunications Act of 1996 (P.L.104-104). While the Committee understands that the Commission has experienced a short-term increase in workload in some areas, the Committee believes that further opportunities exist to streamline and downsize the Commission as a result of the de-regulation of the industry. Therefore, the Committee encourages the FCC to re-evaluate all of its functions, and to eliminate those unnecessary regulatory functions which have been reduced or eliminated by this Act. Such actions will enable the Commission to achieve budgetary savings while promoting greater competition in the industry, and at the same time assist the FCC is identifying the necessary resources to provide for other agency requirements.

The Committee is aware that concerns and questions have been raised regarding the authority and competence of FCC with respect to regulation of advertising. The Committee notes that Congress has granted the Federal Trade Commission (FTC) the authority to old $

from tests, comm changes
we have less @ stake in 2000

neutral reference to letter

Frank will suggest an informal understanding on criteria!

No comm w/Gregg's staff
Ringler talks to Sen.
Issue both houses same
Jeffords wants resolved amicably.

other 5 (?)
Ringler hasn't shared anything w/ ~~D~~ David F.
He ~~?~~ is back next week
We can call Ringler

We have to see the other five before we have a deal.

Frank has had comm. w/approp. + Leadership

feel we've done better than most

supposedly $9 million from computer (in report lang.)

~~talked to~~
Speaker to call Livingston on more $ issue.

Full Committee: July 14th (?)
Complete deal by next Friday
Faxing to Speaker & Approp. Talk on Monday

Susan M. Carr

02/02/98 02:26:27 PM

Record Type: Record

To: Julie A. Fernandes/OPD/EOP, Thomas L. Freedman/OPD/EOP

cc: See the distribution list at the bottom of this message
Subject: Breakout of EEOC's incremental funding request

In summary, the President's Budget recommends $279 million for EEOC, a $37 million or 15 percent increase over the FY 1998 level of $242 million.

The Budget proposes to spend the $37 million increase as follows:

- $8 million for base programs (continuing current operations);

- $6 million to increase staff by 162, from a 1998 estimate of 2,586 to a 1999 proposed level of 2,748. This includes an additional 110 investigative staff to reduce the number of cases each investigator has to handle from 81 cases annually (FY 1997 actual figure) to 55 cases annually, per investigator. The fewer the number of cases each investigator has, the faster they can process the charges.

- $13 million for an enhanced adr program (part of a $40 million, 3-year initiative). EEOC would double the number of complaints sent to mediation, from an estimated 8,000 complaints sent to mediation in FY 1998 to 16,000 complaints sent to mediation in FY 1999 (EEOC would successfully resolve 50 percent of these cases). This is also highlighted as a performance goal in the President's Government-wide Performance Plan.

- $10 million for information technology upgrades (part of a $25 million, 3-year, initiative). It's difficult to quantify the impact of better technology on case processing time; suffice it to say, if the staff had e-mail, they may do a faster job. Also, if investigators could pull up information on how a case was handled in a different regional office, the investigator may spend less time "reinventing the wheel" in case development, and this could also lead faster resolution and to more consistency among the way cases are handled.

Message Copied To:

Michael Deich/OMB/EOP
Theodore Wartell/OMB/EOP
Patricia E. Romani/OMB/EOP
Alan B. Rhinesmith/OMB/EOP
Francis S. Redburn/OMB/EOP

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

SALARIES AND EXPENSES

The Committee recommends $239,740,000 for the Salaries and xpenses of the Equal Employment Opportunity Commission for scal year 1998. This amount is a decrease of $6,260,000 below the equest, and is the same amount provided in the current year apropriation.

In Fiscal Year 1997, the Committee supported additional reources for EEOC in order to address the charge caseload and its rowing backlog. The Committee expected that the additional reources and implementation of new charge handling procedures ould have an impact on reducing the overall caseload of the EOC and would improve response time for new complaints. EOC's workload information included with its 1998 budget jusfication reflects a reduction of 32,000 cases, a 30 percent reducon, in the backlog. The Committee is concerned however, that this ase reduction was a one-time occurrence instead of a sustained efrt. For FY 1998, EEOC estimates it will complete 16% fewer ases than they expect to complete in 1997. Furthermore, EEOC rojects that by 1999, its backlog of cases will grow to levels simir to 1995 when the new procedures for backlog reduction were rst implemented. The Committee is concerned that the additional esources provided in fiscal year 1997, in addition to other EEOC esources, are being diverted from case processing to increase other ctivities, such as litigation. The Committee understands that the EOC currently does not track staffing or resources expended on articular EEOC activities. As a result, neither the EEOC nor the ommittee can determine the level of resources actually being ent on case processing, how this level compares to previous ears, whether resources need to be reallocated among activities or stricts, and the productivity of case processing of various offices.

The Committee expects the processing of charges filed with the EOC, including the reduction of the backlog of such charges, will main the EEOC's first priority and directs the EEOC to implement a system of identifying the level of resources dedicated to this tivity and other EEOC activities, such as litigation. The Committe further directs the EEOC to provide by February 2, 1998, a rert identifying the level of resources being used to support charge ocessing and the level of resources being used to support litigan activities.

The Committee is also concerned that the EEOC does not have ecific criteria by which EEOC determines whether to intervene an ongoing lawsuit, or to initiate a lawsuit alleging a similar aim or claims as alleged in any other lawsuit filed against the me defendant. The Committee directs EEOC to set forth specific iteria for adoption by the Commission, that delineate how EEOC ill (a) intervene in an on-going lawsuit, including how such interntion is in the general public interest, or (b) initiate a lawsuit ainst a defendant alleging a similar claim or claims of legal viotions or facts as alleged in any other lawsuit filed against the me defendant. The Committee expects that these criteria should aximize the responsiveness of the EEOC to complainants not adeiately represented by counsel in other fora. The Committee fur-

Dear xxx,

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Commission on Security and Cooperation in Europe

SALARIES AND EXPENSES

Appropriations, 1998	$1,090,000
Budget estimate, 1999	1,090,000
Committee recommendation	1,159,000

The Committee recommends an increase in funding for the Commission on Security and Cooperation in Europe (Helsinki Commission) to provide for salary adjustments made in fiscal year 1998. The fiscal year 1999 amount is $69,000 above the President's request and the fiscal year 1998 funding level. The Committee understands that the Commission will realize $87,500 in carryover funds.

The Helsinki Commission was established in 1976 to monitor compliance with the final act of the Conference on Security and Cooperation in Europe with particular regard to provisions dealing with humanitarian affairs.

Equal Employment Opportunity Commission

SALARIES AND EXPENSES

Appropriations, 1998	$242,000,000
Budget estimate, 1999	279,000,000
Committee recommendation	253,580,000

The Committee recommends $253,580,000 for the Equal Employment Opportunity Commission in fiscal year 1999. This amount is $25,420,000 less than the request and $11,580,000 above the fiscal year 1998 appropriation.

The Committee expects the EEOC to use some of the increase to expand its use of alternative dispute resolution techniques. The Committee also includes an increase of $1,580,000 which will permit the agency to fund fair employment practices agencies [FEPA's] at a level of $29,080,000. This should permit funding a total of 50,573 charge resolutions at a rate of $575. The State and local agencies have experienced an increase in the number of cases, and funding for these agencies has not increased significantly for several years. The Committee expects the agency to use its anticipated fiscal year 1998 carryover funds and the remainder not used for the above purposes to modernize its computer systems.

The Committee is aware of several high profile cases involving the EEOC which have been the subject of media stories. The Committee is aware that some stories have not accurately described the facts of these cases. The EEOC cannot, by law, publicly discuss cases which are unresolved.

There is concern about two pilot projects, each costing $100,000, being run by two private sector groups. These pilot projects are addressing the issue of employment discrimination and the possibility of using testers in such cases. Testers are individuals who go into companies or agencies and apply for jobs. These individuals try to determine whether a pattern of discrimination or harassment exists in these instances. The EEOC says that the agency has only a few tester cases pending. The EEOC is directed to provide the Committee with a report on the completion and the findings of the two pilot projects. The Committee directs the EEOC not to pursue any policy which would use testers as a standard practice.

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CONGRESSIONAL MEETING
EEOC'S FISCAL YEAR 1999 BUDGET REQUEST
APRIL 17, 1998

<u>Attendees</u>: David Frank, Committee on Education and the Workforce/Subcommittee on Employer-Employee Relations

Mike Ringler, Subcommittee on Commerce, Justice, State and the Judiciary

Ellen Vargyas, Office of Legal Counsel
Ken Morse, Office of the Chairman
Susan Oxford, Office of General Counsel
Bill White, Office of Communications and Legislative Affairs

<u>Purpose</u>: To discuss the six criteria upon which Speaker Gingrich, Rep. Goodling, and Rep. Fawell would support the 15% increase ($37 million) for the EEOC in fiscal year 1999. These criteria were outlined in a memorandum sent by Reps. Gingrich, Goodling, and Fawell to Rep. Livingston (Chairman, Committee on Appropriations, Justice, State, and the Judiciary) and Rep. Rogers (Chairman, Subcommittee on Commerce, Justice, State, and the Judiciary) on March 23, 1998.

<u>Criteria</u>:

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.***

<u>Congressional Concerns</u>

The first two criteria were combined for discussion. This was done because Mr. Frank viewed the second criteria as how you quantify improvements made under the first criteria.

David Frank reiterated the concern of Congress that further improvements be made by EEOC in the investigative and intake processes to reduce the inventory of charges and to reduce the length of time for case processing. Mr. Frank indicated that he is receiving complaints from EEOC investigators that speak to problems which impede case processing progress. Specifically, he is hearing the following:

- investigators are not able to consult with attorneys and that there is a separation between field administrative enforcement and legal units despite HQ intentions to improve attorney-investigator collaborations;

- case processing decisions by investigators are being held by supervisors for long periods of time, calling into question the quality of EEOC's supervisors; and

- workload and resource inequities between the administrative enforcement and legal units facilitate lesser quality investigations (to be discussed under third criteria).

Mr. Frank indicated that it was likely that language which quantified inventory and case processing reductions and which institutionalized attorney supervision in case processing would be written in the Committee Report.

EEOC Response

It was pointed out that charge inventory reduction goals were already contained in EEOC's budget justification and that these goals had been coordinated with and approved by OMB. It, therefore, was unclear why additional report language would be needed in this area. Also, this approach appeared not to fully recognize the significant progress already made by EEOC in reducing its charge inventory (Note: Mike Ringler still expressed concern that EEOC's budget justification did not directly provide goals for average charge processing time reductions. Instead, it only spoke to reducing the months of pending inventory).

In the area of attorney-investigator collaboration, EEOC staff indicated that enhanced cooperative efforts were underway and that we were unaware of investigators being unable to consult with attorneys in the field. Mr. Frank indicated that the preponderance of the complaints he was hearing was coming from EEOC offices in Texas, Oklahoma, Louisiana, and Arkansas. He was also receiving input from union representatives. Moreover, he was concerned that the message from HQ regarding attorney-investigator cooperation was not filtering down to all levels in the field. It was explained that this was a priority area for the Commission and that the formal policies he is seeking will be memorialized by individual offices through their Local Enforcement Plans. It was also explained that <u>supervision</u> of the process by lawyers would be problematic in that lawyers would need competitive status in order to supervise staff (as opposed to the Schedule A status they currently hold), in addition to problems presented by relative scarcity and cost of lawyers. It was suggested that the terms collaboration, cooperation, or involvement be substituted for supervision.

Perceived Outcomes

It appears that some sort of language will be written into the Committee Report, but David Frank suggested it could simply reflect the OMB goals. We are hopeful, moreover, that such language will recognize EEOC's efforts to reduce its charge inventory and case processing times. This will provide a positive context from which Congress can underscore the importance for further improvements to the charge processing system. It also appears that the Committee's language concerning "supervision" by attorneys of the charge process will be modified to require "enhanced cooperation" (Mr. Frank was most persuaded by the civil service problems). Mr. Frank also indicated that the recent issuance of the Charge Processing/Litigation Task Force Report suggests the EEOC is on the right track, and possible Committee language might state that the Committee expects the Commission to continue with its reforms reflected in the Task Force Report.

We are hopeful that the outstanding issues under these two criteria can be resolved.

3. ***A more appropriate allocation of resources to charge processing vis-á-vis litigation.***

Congressional Concerns

David Frank indicated that this is a hold-over issue from last year and remains important. Mike Ringler also expressed the continuing concern the Appropriations Committee has regarding EEOC's in-ability to track and report on how money and time is spent on both administrative enforcement and litigation activities. Both staffers indicated that there is a perception, right or wrong, among Members that litigation/intervention activities are being pursued at the expense of charge processing activities when there is still a tremendous backlog of charges.

EEOC Response

EEOC staff pointed out that current staffing ratios clearly show far more resources being devoted to administrative enforcement efforts. Moreover, less than five percent of the staffing increase requested in the fiscal year 1999 budget will be for attorneys (these attorneys are needed to assist in supporting all the new investigators to be hired). The pilot study to determine the amount of time spent by attorneys on non-litigation activities was also discussed. Congressional staffers are extremely interested in seeing the results of the pilot.

Perceived Outcomes

This continues to be a sensitive area. Congressional staff recognize that it's not wise to develop litigation or administrative enforcement programs driven by numbers, but do believe the Commission must be able to track and report on resource allocations for each activity. This should be a component of EEOC's long-term technology plans. They did express interest in seeing any preliminary numbers we might have on time spent by attorneys on non-litigation activities. Mr. Frank also stated that attorneys need to receive positive reinforcement for their non-litigation work. It is unclear whether language regarding this point will be written into the Committee Report.

4. ***Expanded use of alternative dispute resolution.***

Congressional Concerns

Again, David Frank spoke to perceptual issues regarding an expanded EEOC ADR program. Congress is particularly concerned with the low employer acceptance rate and attributes this to employers being distrustful of EEOC staff who mediate cases. He seemed to suggest a direction that would limit (perhaps severely) the use of EEOC employees as mediators in favor of outside mediators. He also made clear that Congress wanted no restrictions on the cases that could go to mediation; all cases should be able to be mediated, including A1 cases. He has heard that some District Directors have been chastised for mediating A1 cases, inferring that legal staff want to keep these for litigation.

EEOC Response

EEOC staff made clear that they were well aware of and concerned with these issues. Staff stressed, however, the importance of not having restrictive Congressional language for a program in its formative stage. It was suggested that Congressional language depicting any kind of problem or issue with the use of internal EEOC mediators might prevent increased public acceptance of ADR. Furthermore, EEOC needs the flexibility to adjust for programmatic inconsistencies that will arise (*i.e.,* availability of external mediators, quality of contract mediations, etc.). We suggested that while it might be appropriate to track resolutions by EEOC and non EEOC mediators, it would be counter-productive to mandate a particular mix.

We also discussed how difficult it would be to follow language which requires that all cases be considered for mediation. Points raised included the following: would this include C cases, and how would we ensure EEOC's ability to serve the larger public interest in charges that implicate a policy or practice that affects a number of employees in addition to the charging party or parties? We explained, also, that most A1 cases are different since, by definition, these are cases that EEOC has a substantive, institutional interest in. As a result, it would be inappropriate for EEOC simply to accept whatever the parties agree to in every A1 case.

It was suggested that the EEOC could provide Congress with progress reports on ADR activities.

<u>*Perceived Outcomes*</u>

Congressional staff understood the problems associated with trying to craft language for a program yet to be fully implemented. It appears that they will be willing to give the Commission the flexibility it needs to implement a program, but will want periodic reports (Note: Mike Ringler specifically requested that EEOC track data and report on success rates for both internal and external mediators). Mr. Frank also seemed to understand why all A1 cases should not simply be automatically put in the mix with the B cases. However, this whole area will likely be the subject of further discussion.

5. ***Clarification of the criteria for litigation by the EEOC.***

<u>*Congressional Concerns*</u>

David Frank indicated that this was also a hold-over issue from last year. Mike Ringler indicated that Congress needed a clearer understanding of why and when the Commission litigates, intervenes in lawsuits, and files parallel lawsuits. This is a particular concern given the fact that the Commission has delegated much legal authority to the field.

<u>*EEOC Response*</u>

Discussed the criteria already in place for interventions and parallel lawsuits (a copy of which was already provided to both Mr. Frank and Mr. Ringler). Also discussed the consistency built into the process by the NEP/LEPs, and agreed to provide a statement explaining NEP/LEP standards for deciding to litigate a case.

Perceived Outcomes

Agreed that this issue could be handled informally.

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

Congressional Concerns

The Speaker must have this agreement to gain support among the majority for EEOC's increased budget.

EEOC Response

EEOC staff indicated that the Commission must complete the fiscal year 1998 testers study. Staff also clarified that in fiscal year 1999, the Commission would be analyzing results and that there might be a need to pursue cases identified through the study. We explained that this issue needed to be resolved with the input of Administration officials.

Perceived Outcomes

The possibility exists for an agreement to be made outside of the Appropriations process. A letter, for example, from the Commission to Congress agreeing not to use fiscal year 1999 funds on testers might be acceptable, although no one was committing to what an acceptable resolution might actually look like. This is something to discuss among all relevant parties.

CONGRESSIONAL MEETING
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APRIL 17, 1998

Attendees: David Frank, Committee on Education and the Workforce/Subcommittee on Employer-Employee Relations

Mike Ringler, Subcommittee on Commerce, Justice, State and the Judiciary

Ellen Vargyas, Office of Legal Counsel
Ken Morse, Office of the Chairman
Susan Oxford, Office of General Counsel
Bill White, Office of Communications and Legislative Affairs

Purpose: To discuss the six criteria upon which Speaker Gingrich, Rep. Goodling, and Rep. Fawell would support the 15% increase ($37 million) for the EEOC in fiscal year 1999. These criteria were outlined in a memorandum sent by Reps. Gingrich, Goodling, and Fawell to Rep. Livingston (Chairman, Committee on Appropriations, Justice, State, and the Judiciary) and Rep. Rogers (Chairman, Subcommittee on Commerce, Justice, State, and the Judiciary) on March 23, 1998.

Criteria:

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Congressional Concerns

The first two criteria were combined for discussion. This was done because Mr. Frank viewed the second criteria as how you quantify improvements made under the first criteria.

David Frank reiterated the concern of Congress that further improvements be made by EEOC in the investigative and intake processes to reduce the inventory of charges and to reduce the length of time for case processing. Mr. Frank indicated that he is receiving complaints from EEOC investigators that speak to problems which impede case processing progress. Specifically, he is hearing the following:

- investigators are not able to consult with attorneys and that there is a separation between field administrative enforcement and legal units despite HQ intentions to improve attorney-investigator collaborations;

- case processing decisions by investigators are being held by supervisors for long periods of time, calling into question the quality of EEOC's supervisors; and

- workload and resource inequities between the administrative enforcement and legal units facilitate lesser quality investigations (to be discussed under third criteria).

Mr. Frank indicated that it was likely that language which quantified inventory and case processing reductions and which institutionalized attorney supervision in case processing would be written in the Committee Report.

EEOC Response

It was pointed out that charge inventory reduction goals were already contained in EEOC's budget justification and that these goals had been coordinated with and approved by OMB. It, therefore, was unclear why additional report language would be needed in this area. Also, this approach appeared not to fully recognize the significant progress already made by EEOC in reducing its charge inventory (Note: Mike Ringler still expressed concern that EEOC's budget justification did not directly provide goals for average charge processing time reductions. Instead, it only spoke to reducing the months of pending inventory).

In the area of attorney-investigator collaboration, EEOC staff indicated that enhanced cooperative efforts were underway and that we were unaware of investigators being unable to consult with attorneys in the field. Mr. Frank indicated that the preponderance of the complaints he was hearing was coming from EEOC offices in Texas, Oklahoma, Louisiana, and Arkansas. He was also receiving input from union representatives. Moreover, he was concerned that the message from HQ regarding attorney-investigator cooperation was not filtering down to all levels in the field. It was explained that this was a priority area for the Commission and that the formal policies he is seeking will be memorialized by individual offices through their Local Enforcement Plans. It was also explained that supervision of the process by lawyers would be problematic in that lawyers would need competitive status in order to supervise staff (as opposed to the Schedule A status they currently hold), in addition to problems presented by relative scarcity and cost of lawyers. It was suggested that the terms collaboration, cooperation, or involvement be substituted for supervision.

3. ***A more appropriate allocation of resources to charge processing vis-á-vis litigation.***

Congressional Concerns

David Frank indicated that this is a hold-over issue from last year and remains important. Mike Ringler also expressed the continuing concern the Appropriations Committee has regarding EEOC's in-ability to track and report on how money and time is spent on both administrative enforcement and litigation activities. Both staffers indicated that there is a perception, right or wrong, among Members that litigation/intervention activities are being pursued at the expense of charge processing activities when there is still a tremendous backlog of charges.

EEOC Response

EEOC staff pointed out that current staffing ratios clearly show far more resources being devoted to administrative enforcement efforts. Moreover, less than five percent of the staffing increase requested in the fiscal year 1999 budget will be for attorneys (these attorneys are needed to assist in supporting all the new investigators to be hired). The pilot study to determine the amount of time spent by attorneys on non-litigation activities was also discussed. Congressional staffers are extremely interested in seeing the results of the pilot.

4. ***Expanded use of alternative dispute resolution.***

Congressional Concerns

Again, David Frank spoke to perceptual issues regarding an expanded EEOC ADR program. Congress is particularly concerned with the low employer acceptance rate and attributes this to employers being distrustful of EEOC staff who mediate cases. He seemed to suggest a direction that would limit (perhaps severely) the use of EEOC employees as mediators in favor of outside mediators. He also made clear that Congress wanted no restrictions on the cases that could go to mediation; all cases should be able to be mediated, including A1 cases. He has heard that some District Directors have been chastised for mediating A1 cases, inferring that legal staff want to keep these for litigation.

EEOC Response

EEOC staff made clear that they were well aware of and concerned with these issues. Staff stressed, however, the importance of not having restrictive

Congressional language for a program in its formative stage. It was suggested that Congressional language depicting any kind of problem or issue with the use of internal EEOC mediators might prevent increased public acceptance of ADR. Furthermore, EEOC needs the flexibility to adjust for programmatic inconsistencies that will arise (*i.e.,* availability of external mediators, quality of contract mediations, etc.). We suggested that while it might be appropriate to track resolutions by EEOC and non EEOC mediators, it would be counter-productive to mandate a particular mix.

We also discussed how difficult it would be to follow language which requires that all cases be considered for mediation. Points raised included the following: would this include C cases, and how would we ensure EEOC's ability to serve the larger public interest in charges that implicate a policy or practice that affects a number of employees in addition to the charging party or parties? We explained, also, that most A1 cases are different since, by definition, these are cases that EEOC has a substantive, institutional interest in. As a result, it would be inappropriate for EEOC simply to accept whatever the parties agree to in every A1 case.

It was suggested that the EEOC could provide Congress with progress reports on ADR activities.

5. *Clarification of the criteria for litigation by the EEOC.*

<u>Congressional Concerns</u>

David Frank indicated that this was also a hold-over issue from last year. Mike Ringler indicated that Congress needed a clearer understanding of why and when the Commission litigates, intervenes in lawsuits, and files parallel lawsuits. This is a particular concern given the fact that the Commission has delegated much legal authority to the field.

<u>EEOC Response</u>

Discussed the criteria already in place for interventions and parallel lawsuits (a copy of which was already provided to both Mr. Frank and Mr. Ringler). Also discussed the consistency built into the process by the NEP/LEPs, and agreed to provide a statement explaining NEP/LEP standards for deciding to litigate a case.

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

Congressional Concerns

The Speaker must have this agreement to gain support among the majority for EEOC's increased budget.

EEOC Response

EEOC staff indicated that the Commission must complete the fiscal year 1998 testers study. Staff also clarified that in fiscal year 1999, the Commission would be analyzing results and that there might be a need to pursue cases identified through the study. We explained that this issue needed to be resolved with the input of Administration officials.

EEOC
6/23/98

[redacted]

Subcommittee mark-up (?)

Payne is drafting a letter re: where the caucus is.
They reject any deal that would trade off authority of EEOC for $.

→ Might be able to stave this off (w/info)

Dixon doesn't think that they will give any increase @ all.

Avoiding a rider.

Conversations w/David Frank

Frank: No objection to use FY99 $ to analyze pilot.

He did not say that he needs language prior to Wed.

Does CBC want to fight even if we're not giving anything up (?)

Where are we in the Senate (?)

1st ¶ : You have asked us whether

we understand Q occurs in context of Gingrich's recent remarks that if EEOC didn't use __ he would support an approp.
agrees to 6 [redacted] ...

2nd ¶ : We commit not to using

Approp. guy has to do the first draft of report language on the 1st five.

|| on hold until we see a draft.

We must talk to Frank about combining this one w/the other 5.

Draft subcommittee report

Martha going to Deier for this.

We need to see draft report language on first five.

Can't make a deal on #6 until we know about other five.

Wait to put funding on the table until we get the other 5.

MF: Deier

EV: tell Frank
Martha talking w/
need to know about other 5

MF: we need info on the five

BJ: to CBC — where we are
we don't know

Tomorrow:

Wade Henderson: phone call w/member @ 4:30pm

ME to talk to Wade re: where we are

Igasaki to call Wade

WH interest in resolving this issue.

Wed.

silence through Wed. is optimal

Fri. 6/19/98
Phone call

EEOC

Broderick

touch base w/ Dixon first to make sure this is o.k. w/ him.

⓪ 20 min. w/ EEOC.
① Rep. staff mtg.
(what do they want)
② Brief CBC/CHC staff (+ auth./approp.)
③ Brief members @ end of day
Caucuses

CBC members
Dixon, Scott, Payne, Waters
Consensus: would oppose a prohibition on testers as a condition on $.

they are doing a letter on Monday

Unclear how much they know about

Dixon: not w/ Norton on this
Deal would not get us full amt.

CHC: not nearly as worked up on this.
not as informed

Eleanor did her own letter to EEOC
lays out her view (to appropriators) on how they should use the $.

"Don't cave" mode.

EK talked to Jack Lew
we should definitely go up to make a deal.
Get rid of it if we can (w/out getting clobbered)

We need to do factfinding.
Staff briefing (CBC/CHC) to walk through the facts.
Mtg. w/ members @ the end of the day.
Push from consensus.

EEOC
- our plan
set up mtg.
& pre-mtg.
(+ approp.)

~~XXXX~~
11:30 am

12 noon

3pm staff
5:00 members

We don't know exactly what Reps. want and what give up.
Could not bring a draft to the Hill w/out an explosion.

What is their offer?
* not all $ (but a significant increase)
* but no rider

Might want to put language in the conference report

Wed. — nothing in the bill; but some $
(is this the end game $ or the "on the road" $)

Reps. probably know what there end game is.

No member seems to be aware that this is going on.

If we operate in good faith, nothing in the leg. language.

We ~~cannot~~ have not laid any predicate for this (letter) w/ Dems.

Both in the room

Martha:

Have never, ever had such an experience.

* Livingston: Martha to check with.
* Dixon: potential hold
can we hold fire / do briefing
so that we have 99 facts

Martha to call Deier: is this true?
Livingston's COS
Monday am

+ Brod Martha
to stave off

Briefing on negotiations on Monday 12 noon
w/Ellen Vargyas.

M to call
subcomm. chief clerk
Deier (Livingston) to enforce this arrangement
Dixon (is freeze o.k.)

Educ.

Martha spoke w/Deier.
He was unfamiliar w/any EEOC deal except That Speaker wants more $ for agency.
(Told him That Frank represents himself as speak for subcomm; app.; leadership — suspicious look)
Martha told him That she wants to see drafts of the report language for the other five.
He will look into it.
Martha told him That we are trying to avoid a fight.
Martha had a very brief conversation w/Dixon re: other five pieces.

Broderick Johnson
06/22/98 07:58:47 PM

Record Type: Record

To: Julie A. Fernandes/OPD/EOP
cc:
bcc:
Subject: Re: EEOC update

they agreed that CBC letter should not go out until the

I spoke with Rep. Payne's staff and Leader Gephardt's staff regarding the possible CBC letter, and we all concurred that a final version of any such letter should not be released until the Administration has the opportunity (1) to clarify what the Republicans are asking for, and (2) to brief Payne, Dixon and other key Democrats concerning the Republican position and the Adminstration's view of that position. Payne is the point Member for developing such a letter. Also, apparently there was a meeting earlier this afternoon among representatives of the civil rights community; their reaction will likely impact the potential CBC letter. Has anyone gotten any feedback on that meeting?
Julie A. Fernandes

Julie A. Fernandes
06/22/98 07:29:11 PM

Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: EEOC update

All:
Ellen Vargyas had a conversation with David Frank this afternoon. He told her that according to Mike Rengler, there has not yet been a committee report drafted for the subcommittee. On the $ front, he told her that the appropriators had not settled on a figure. One of the big issues is the part of the increase ($9 million) that is slated to improve technology at the agency. According to Frank, some on the subcommittee indicated that they were interested in having the EEOC fund its technology improvements (computers; e-mail; legal data bases) using discretionary dollars in the Treasury-Postal legislation ($ intended to be used to address the the Y2K problem). Frank further indicated that the agency should get "a big chunk" of the rest
($28 million).

Ellen told Frank that we want to make sure that we have resolution on the other five conditions as soon as possible. Frank told Ellen that he would try to get Rengler to focus on drafting ~~conference~~ draft report language on this. Given this delay, he indicated that they could push back the date by which he would want to know whether we had a deal on testers (they had originally talked about a July 1st deadline).

Julie

Message Sent To:

Martha Foley/WHO/EOP
Broderick Johnson/WHO/EOP
Elena Kagan/OPD/EOP
Maria Echaveste/WHO/EOP
Edward W. Correia/WHO/EOP

Maria Echaveste 06/23/98 09:17:17 AM

Record Type: Record

To: See the distribution list at the bottom of this message
cc: Minyon Moore/WHO/EOP, Marjorie Tarmey/WHO/EOP
bcc:
Subject: Re: EEOC update

I spoke with Nancy Zirkin last night who was on the phone call with the civil rights groups in the afternoon--1)they don't understand why EEOC went down the path it did other than the abused child syndrome (sort of like INS--they are always being kicked, so they move very cautiously hoping to avoid getting kicked again); 2) they (LCCR) are planning to send a letter to the committee outlining their concerns with Gingrich's objections (not all of them--testers is the most impt, but they are also worried about the directive that more resources be dedicated to charging processes and less to litigation); 3) they know we are not settled on the other issues 4) she indicated that it certainly was a good strategy to try to avoid a rider but they are still really upset with EEOC and want to know who at the White House was minding the store and what does the white house do when an agency takes steps that perhaps (they hope in this case) the White House is not in favor of -- she thought doing a small meeting with folks later in the week so they could tell us their views would be helpful-- so what do you all think? And where are we?
Julie A. Fernandes

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Message Sent To:

Julie A. Fernandes/OPD/EOP
Elena Kagan/OPD/EOP
Edward W. Correia/WHO/EOP
Broderick Johnson/WHO/EOP
Martha Foley/WHO/EOP

(1) Martha is trying to confirm that we have agreement on report language on the first five Gingrich conditions.
EEOC tells us that ~~they have staff~~ the only one that could be problematic is that which ~~def~~ attempts to guide the balance of litigation v. charge processing.
Until we have seen a draft of report lang. on these five, we can't move forward on #6

Broderick Johnson
06/23/98 09:59:24 AM

Record Type: Record

To: Maria Echaveste/WHO/EOP
cc: See the distribution list at the bottom of this message
bcc:
Subject: Re: EEOC update

I certainly think such a meeting would be helpful, although given the fact that there apparently are more issues at play than just testers, I think we need a clearer sense of what the EEOC and the Republicans think they have worked out on the other five Gingrich conditions. Martha Foley is talking with Livingston's lead approps. staffer to try to get specific language on those other ssues. I guess what I'm suggesting is that we convene the small group meeting suggested by Nancy Z. later in the week after we have a clearer idea of the status of all the issues. As long as the Commerce-Justice subcommittee mark won't contain any riders on EEOC (and we have good indications that it won't) we should use this opportunity to fully vet all of this with the EEOC, the Hill and the civil rights groups. I strongly suggest that we discourage any imminent letters from the groups or from the Black or Hispanic Caucuses that might entice the Republicans to include a rider now.
Maria Echaveste

(2) We have been told that as long as Fawell's staff believes that the EEOC is ~~operating~~ talking to them in good faith, they will not put a rider on the approp bill during the Wed. subcomm. markup.

Maria Echaveste 06/23/98 09:17:17 AM

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Julie A. Fernandes

and to better understand what the R's want.

We have spoken w/ Payne's staff and Gephardt's staff. They have agreed to hold off until they have a chance to speak w/ Admin.

(3) Leg Affairs (Brod/Martha) ~~are~~ have spoken w/ CBC. They intended to write ~~us~~ a letter (to us?) re: opposed to any deal on testers.

Julie A. Fernandes
06/22/98 07:29:11 PM

Record Type: Record

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cc:
Subject: EEOC update

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Message Sent To:

Julie A. Fernandes/OPD/EOP
Elena Kagan/OPD/EOP
Edward W. Correia/WHO/EOP
Broderick Johnson/WHO/EOP
Martha Foley/WHO/EOP

Message Copied To:

Julie A. Fernandes/OPD/EOP
Elena Kagan/OPD/EOP
Edward W. Correia/WHO/EOP
Martha Foley/WHO/EOP
Minyon Moore/WHO/EOP
Marjorie Tarmey/WHO/EOP

Pursuant to discussions with Committee Members and Staff, the Equal Employment Opportunity Commission confirms that it 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, 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. Existing contractual obligations will be fulfilled. The Commission may expend FY 1999 appropriated funds to analyze the results, including reports, of such contracts.

Where from here?

* Won't do it in FY99 (instead of not use 99 funds)
* litigation restriction
  - from pilots
  - otherwise

Julie A. Fernandes
03/04/98 11:57:11 AM

Record Type: Record

To: Elena Kagan/OPD/EOP

cc: Laura Emmett/WHO/EOP
Subject: EEOC hearing

Elena,
At the EEOC hearing yesterday, Gingrich made a very strong statement opposing class actions, pattern or practice cases and testing. Gingrich's rhetorical push was toward using enforcement money to handle cases of "actual victims" of discrimination, rather than "creating cases" (testing) or class actions. He did seem to concede, however, that testing could be warranted where there were strong indications (unclear what the threshold would be) that the employer might be unlawfully discriminating.
Igasaki (acting EEOC chair) made clear that though the agency was in the middle of a small pilot program to determine how best to use testing in the employment context, their FY99 budget request did not include any money for testers.

jf

Julie A. Fernandes
03/04/98 06:02:47 PM

Record Type: Record

To: Elena Kagan/OPD/EOP

cc: Laura Emmett/WHO/EOP
Subject: EEOC

Elena,
As a result of yesterday's hearing, EEOC believes that there is an opening to work with Gingrich's staff to secure their budget request. They want to get our leg. person working with them to direct the effort. Who would that be?

Also, there is the knotty question of testing. According to Fawell (in a conversation with Igasaki (Acting EEOC Chair) after the hearing) the Republicans want the agency not to spend any money on testing in FY99. As you know, the EEOC has a testing pilot program that is supposed to be completed by the end of this fiscal year. They had no plans to do any more with this program during FY99, and there is nothing in the President's FY99 budget for testing programs for the EEOC. However, the agency had anticipated spending some time after the pilot is finished analyzing the results and doing long term planning for next steps, if any. So, in addition to leg. help, they want some guidance about the general parameters of our view of making some kind of deal on this.

Until they complete this year's pilot, the EEOC won't even know if they can run an effective employment testing program. It does not, therefore, seem a big concession to agree that the EEOC will not spend money on testing during FY99, as long as we do not in any way signal that testing is not a legitimate tool for effective civil rights enforcement. Of course, the attack on testing at the EEOC could be the prelude to a similar attack at HUD. HUD does have $10 million in the FY99 budget to develop and implement a nation-wide housing rental and sales testing program. I have not heard anything about a strategy to go after this.

julie

Julie A. Fernandes
04/15/98 11:45:38 AM

Record Type: Record

To: Elena Kagan/OPD/EOP

cc: Laura Emmett/WHO/EOP
Subject: EEOC

Elena,

FYI. Yesterday, I met with folks from the EEOC and WH Leg. Affairs (Tracey Thornton and Martha Foley) to discuss our legislative strategy for obtaining passage of the President's proposed increase in funding for the EEOC. According to both the EEOC and the Leg. folks some of his strings could prove contentious -- depending on the particulars of the language or commitments the Republicans want. Martha expressed concern that the Republicans might want to include limitations on the ability of the agency to bring certain kinds of cases, etc. EEOC staff is meeting with Rogers and Fawell's staff (and possibly some Dems) on Friday to better determine where they are headed. After that meeting, we should know more.

Julie

Julie A. Fernandes
05/07/98 11:03:21 AM

Record Type: Record

To: Martha Foley/WHO/EOP

cc:
Subject: EEOC legislative effort

Martha,
I spoke this morning with Pat Crawford from Congressman Payne's office. The Congressman is very concerned about Gingrich's "tester" condition re: EEOC funding. Payne is both concerned that the Reps. may want to define what are acceptable enforcement tools for the agency and that this may be a way for them to set a precedent that would impact other agencies (like HUD and OFCCP at Labor). According to Pat, Congressman Payne has had conversations with Gephardt and Obey about this (to make them aware of the concern).

As you know, EEOC is trying to figure out the specifics of Gingrich's condition re: testers. As far as I know, they do not know more than they did when we last met. However, it still may be worth it for us to talk with Dem. staff to get them engaged in the issue. This wouldn't be an attempt to escalate; rather, to ready other members in case Gingrich presents us with an option (like a statutory prohibition) that would likely be unacceptable. I think that we should try to manage this legislative effort, rather than leave it to EEOC. Pat has suggested that we talk to: Gephardt, Obey, John Lewis, Julian Dixon, DeLauro and Sabo. I'm not at all sure that this is the right list, though the first three seem key.

Please let me know whether this sounds like a good plan. Thanks.

Julie

Julie A. Fernandes
05/21/98 03:44:31 PM

Record Type: Record

To: Elena Kagan/OPD/EOP

cc: Laura Emmett/WHO/EOP
Subject: EEOC leg. strategy

Elena,
FYI. According to the EEOC, Republicans in the House continue to assert that support for the proposed increase in the EEOC budget is contingent upon the EEOC's agreement not to fund the use of employment testers. They were told by Fawell's staff that for Gingrich this is still a "line in the sand." To date, EEOC has not gotten more specific information about the conditions requested by Gingrich.
Next Thursday at 2:00pm in Room 476, I plan to convene a meeting with WH Leg. Affairs (Martha Foley, Tracey Thornton, and Broderick Johnson) and EEOC legal and legislative staff to develop an effective legislative strategy. Eddie Correria from WH Counsel's office will also participate.

Julie

Julie A. Fernandes
06/17/98 04:02:17 PM

Record Type: Record

To: Elena Kagan/OPD/EOP

cc: Laura Emmett/WHO/EOP
Subject: EEOC

Elena,
FYI. After a meeting today between civil rights enforcement agencies and the CBC, Eleanor Holmes Norton asked Bill White (leg. affairs from EEOC) why the EEOC had not made a deal with the Republicans on testers. Bill let her know that this was a WH issue. Rep. Norton then indicated that she may want to contact someone here to discuss.
As you know, the EEOC has worked out agreements with the Reps. on the other five points that Gingrich outlined in his testimony at the oversight hearing. Also, we (EEOC and us -- including Counsel's office and Leg. Affairs) have discussed offering a letter from EEOC to Fawell indicating that the agency would not use FY99 appropriated funds to employ testers. Ellen Vargyas (legal counsel EEOC) has had very preliminary discussions with Fawell's staff about this possibility. Also, Martha Foley and Broderick Johnson have been talking the Dems. over the past couple of days to better determine our strength on this issue.
Tomorrow morning (Thurs.) at 10am, Broderick, Martha, Eddie Correia, Susan Carr (OMB) and I are having a conference call to finalize where we are with the Dems. and Reps.

Julie

Julie A. Fernandes
06/17/98 05:00:19 PM

Record Type: Record

To: Martha Foley/WHO/EOP, Broderick Johnson/WHO/EOP, Edward W. Correia/WHO/EOP

cc:
Subject: EEOC

FYI. Eleanor Holmes Norton just called me. Her understanding (she says from Igasaki) was that we (the WH) were preventing the EEOC from sending a letter to Fawell re: testers. I tried to explain to her that it was not clear to us that a letter from EEOC stating that they would not use FY99 money to employ testers would suffice to get the Republicans' support (without a rider or report language). I also let her know that though we were certainly considering a letter, we were trying to be careful not to in any way indicate a lack of support for testers. Also, I strongly reinforced to her that we share her goal of getting the $37 million. She was having none of it. Norton is convinced that if the issue of testers comes to the floor, we will loose and that we should make whatever compromise is necessary to get the money.

Julie A. Fernandes
06/18/98 01:15:33 PM

Record Type: Record

To: Elena Kagan/OPD/EOP

cc: Laura Emmett/WHO/EOP
Subject: EEOC -- update and question

Elena,
Ellen Vargyas (EEOC legal counsel) had a conversation with Fawell's staffer (David Frank) this morning. The CJS appropriations subcommittee folks + the Speaker's folks have authorized him to begin discussions with EEOC about a letter as compromise. As long as they are assured that EEOC is trying to work with them on this in good faith, they will not include any "no tester" legislative language at the subcommittee mark-up (next Tuesday). Frank indicated that: (1) the letter should not indicate why a compromise is being made; and (2) there may also want report language that the issue of testers was resolved with a letter from EEOC.

Frank would like resolution on the letter issue by July 1st. The full committee mark-up could be as early as July 14th. Ellen is going to begin to work on a draft letter; however, Frank was still not clear on whether they would be satisfied with a committment to not employ testers with FY99 money or whether they would also want to preclude the agency either from using FY99 money (staff time, really) to analyze their pilot OR from bringing cases that are based on tester evidence. It is also not clear what precisely the "quo" would be on this deal -- an agreement that Gingrich (and others) would support the full appropriation? plus an agreement of no rider and no language?

According to Don Payne's staffer (ranking member on the authorizing subcommittee), Payne has had conversations with Dixon, Stokes, Clay , Lewis and Gephardt to inform them of the issue and that he is engaged. Payne's general position is: (1) we can defeat a "no tester" rider in the House; and (2) Congress should not dictate to agencies how best to enforce the law. Payne's staffer's gut is that he would be opposed to any compromise on testers. Rep. Norton has strongly indicated that she does not want a floor fight on testers. Her position is that we would lose, so we should (as quickly as possible) have EEOC send a letter to Fawell assuring no use of testers.

Martha and Broderick want to spend a little more time today figuring out whether Payne or Norton has a better read on our strength in the House (including a better read on the CBC folks) and on what the Dem. rxn. would be to a compromise. They are still of the view that we will either end up with a letter that does not signal a lack of faith in the testing enterprise OR with a rider on the appropriations bill that we fight on the floor.

Martha and Broderick would like us (DPC) to call a meeting tomorrow to finalize the Administration's view on the balance between getting the money and the issue of testers (in the context of the broader CJS appropriations bill, the PIR, etc.). They recommend that this meeting include: DPC (us) , Leg. Affairs (Martha & Broderick); COS (Maria?); Counsel (Eddie and/or Chuck?); and PIR (Judy). Should I ask Laura to set this up? Are there others that should be included? Thanks.

Julie

Republicans who opposed anti - [illegible] on [illegible]

FACSIMILE TRANSMITTAL

Pages to Follow 3

Date 6/13/98

TO: Julie [illegible]

FAX No [illegible] 5581

FROM Pat Crawford

Congressman Bill Clay
Committee on Education and the Workforce
Cannon House Office Building
Room 112
Washington, DC 20515-6100

Phone: 202-226-1881

Fax: 202-226-1882

Message Julie -
Here are my best guesses in terms of appropriations [illegible]. J C Watts would be an [illegible]

FINAL VOTE RESULTS FOR ROLL CALL 133

(Republicans in roman; Democrats in *italic*; Independents underlined)

H R 6 RECORDED VOTE 6-MAY-1998
AUTHOR(S): Riggs of California amendment
QUESTION: On Agreeing to the Amendment

	AYES	NOES	PRES	NV
REPUBLICAN	166	55		6
DEMOCRATIC	5	193		7
INDEPENDENT		1		
TOTALS	171	249		13

--- AYES 171 ---

Aderholt	Frelinghuysen	Nethercutt
Archer	Gallegly	Northup
Armey	Ganske	Norwood
Bachus	Gekas	Oxley
Baesler	Gillmor	Packard
Baker	Gingrich	Pappas
Ballenger	Goodlatte	Parker
Barr	Goodling	Paul
Bartlett	Goss	Paxon
Barton	Graham	Pease
Bass	Granger	Peterson (PA)
Bereuter	Greenwood	Petri
Bilbray	Gutknecht	Pickering
Bilirakis	*Hall (TX)*	Pitts
Bliley	Hansen	Pombo
Blunt	Hastert	Porter
Boehner	Hastings (WA)	Portman
Bono	Hayworth	Ramstad
Brady	Hefley	Riggs
Bryant	Herger	Riley
Bunning	Hill	Rogan
Burton	Hilleary	Rogers
Callahan	Hoekstra	Rohrabacher
Calvert	Horn	Roukema
Camp	Hostettler	Royce
Campbell	Hulshof	Ryun
Canady	Hunter	Salmon
Cannon	Hutchinson	Scarborough

Chabot	Hyde	Schaffer, Bob
Chambliss	Inglis	Sensenbrenner
Chenoweth	Istook	Sessions
Coble	Jenkins	Shadegg
Coburn	Johnson, Sam	Shaw
Collins	Jones	Shimkus
Combest	Kasich	Smith (NJ)
Cook	Kim	Smith (OR)
Cooksey	Kingston	Smith (TX)
Cox	Knollenberg	Smith, Linda
Crane	Kolbe	Solomon
Crapo	Latham	Spence
Cubin	Lewis (KY)	Stearns
Cunningham	Linder	Stump
Deal	*Lipinski*	Sununu
DeLay	Livingston	Talent
Doolittle	LoBiondo	Tauzin
Dreier	Lucas	*Taylor (MS)*
Duncan	Manzullo	Taylor (NC)
Dunn	*Matsui*	Thomas
Ehrlich	McCollum	Thornberry
Emerson	McCrery	Thune
Everett	McHugh	Tiahrt
Ewing	McInnis	Wamp
Fawell	McIntosh	Weldon (FL)
Foley	McKeon	Weller
Fossella	Metcalf	Whitfield
Fowler	Mica	Wicker
Franks (NJ)	Miller (FL)	Young (FL)

--- NOES 249 ---

Abercrombie	*Hall (OH)*	*Olver*
Ackerman	*Hamilton*	*Ortiz*
Allen	*Harman*	*Owens*
Andrews	*Hefner*	*Pallone*
Baldacci	*Hilliard*	*Pascrell*
Barcia	*Hinchey*	*Pastor*
Barrett (NE)	*Hinojosa*	*Payne*
Barrett (WI)	Hobson	*Pelosi*
Becerra	*Holden*	*Peterson (MN)*
Bentsen	*Hooley*	*Pickett*

Berman	Houghton ✓	Pomeroy
Berry	Hoyer	Poshard
Bishop	Jackson (IL)	Price (NC)
Blagojevich	Jackson-Lee (TX)	Pryce (OH)
Blumenauer	Jefferson	Quinn ✓
Boehlert	John	Rahall
Bonilla	Johnson (CT) ✓	Rangel
Bonior	Johnson (WI)	Redmond
Borski	Johnson, E. B.	Regula
Boswell	Kanjorski	Reyes
Boucher	Kaptur	Rivers
Boyd	Kelly	Rodriguez
Brown (CA)	Kennedy (MA)	Roemer
Brown (FL)	Kennedy (RI)	Ros-Lehtinen
Brown (OH)	Kennelly	Rothman
Burr	Kildee	Roybal-Allard
Buyer	Kilpatrick	Rush
Capps	Kind (WI)	Sabo
Cardin	King (NY) ✓	Sanchez
Castle ✓	Kleczka	Sanders
Clay	Klink	Sandlin
Clayton	Klug	Sanford
Clement	Kucinich	Sawyer
Clyburn	LaFalce	Saxton
Condit	LaHood	Schumer
Conyers	Lampson	Scott
Costello	Lantos	Serrano
Coyne	Largent	Shays ✓
Cramer	LaTourette	Sherman
Cummings	Lazio	Sisisky
Danner	Leach ✓	Skeen
Davis (FL)	Lee	Skelton
Davis (IL)	Levin	Slaughter
Davis (VA) ✓?	Lewis (CA)	Smith (MI)
DeFazio	Lewis (GA)	Smith, Adam
DeGette	Lofgren	Snowbarger
Delahunt	Lowey	Snyder
DeLauro	Luther	Souder ✓
Deutsch	Maloney (CT)	Spratt
Diaz-Balart	Maloney (NY)	Stabenow
Dickey	Manton	Stark

Dicks	Markey	Stenholm
Dingell	Martinez	Stokes
Dixon	Mascara	Strickland
Doggett	McCarthy (MO)	Stupak
Dooley	McCarthy (NY)	Tanner
Edwards	McDade	Tauscher
Ehlers	McDermott	Thompson
Engel	McGovern	Thurman
English	McHale	Tierney
Ensign	McIntyre	Torres
Eshoo	McKinney	Towns
Etheridge	Meehan	Traficant
Evans	Meek (FL)	Turner
Farr	Meeks (NY)	Upton
Fattah	Menendez	Velazquez
Fazio	Millender-McDonald	Vento
Filner	Miller (CA)	Visclosky
Forbes ✓?	Minge	Walsh
Ford	Mink	Waters
Fox ✓	Moakley	Watkins
Frank (MA)	Mollohan	Watt (NC)
Frost	Moran (KS)	Watts (OK) ✓
Furse	Moran (VA)	Waxman
Gejdenson	Morella ✓	Weldon (PA)
Gephardt	Murtha	Wexler
Gibbons	Myrick	Weygand
Gilchrest	Nadler	White
Gilman ✓	Neal	Wise
Goode	Ney ✓	Wolf ✓
Gordon	Nussle	Woolsey
Green	Oberstar	Wynn
Gutierrez	Obey	Young (AK)

--- NOT VOTING 13 ---

Bateman	Hastings (FL)	Shuster
Carson	McNulty	Skaggs
Christensen	Neumann	Yates
Doyle	Radanovich	
Gonzalez	Schaefer, Dan	

AA

FINAL VOTE RESULTS FOR ROLL CALL 133

(Republicans in roman; Democrats in *italic*; Independents underlined)

H R 6 RECORDED VOTE 6-MAY-1998
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--- AYES 171 ---

Aderholt	Frelinghuysen	Nethercutt
Archer	Gallegly	Northup
Armey	Ganske	Norwood
Bachus	Gekas	Oxley
Baesler	Gillmor	Packard
Baker	Gingrich	Pappas
Ballenger	Goodlatte	Parker
Barr	Goodling	Paul
Bartlett	Goss	Paxon
Barton	Graham	Pease
Bass	Granger	Peterson (PA)
Bereuter	Greenwood	Petri
Bilbray	Gutknecht	Pickering
Bilirakis	*Hall (TX)*	Pitts
Bliley	Hansen	Pombo
Blunt	Hastert	Porter
Boehner	Hastings (WA)	Portman
Bono	Hayworth	Ramstad
Brady	Hefley	Riggs
Bryant	Herger	Riley
Bunning	Hill	Rogan
Burton	Hilleary	Rogers
Callahan	Hoekstra	Rohrabacher
Calvert	Horn	Roukema
Camp	Hostettler	Royce
Campbell	Hulshof	Ryun
Canady	Hunter	Salmon
Cannon	Hutchinson	Scarborough

Chabot	Hyde	Schaffer, Bob
Chambliss	Inglis	Sensenbrenner
Chenoweth	Istook	Sessions
Coble	Jenkins	Shadegg
Coburn	Johnson, Sam	Shaw
Collins	Jones	Shimkus
Combest	Kasich	Smith (NJ)
Cook	Kim	Smith (OR)
Cooksey	Kingston	Smith (TX)
Cox	Knollenberg	Smith, Linda
Crane	Kolbe	Solomon
Crapo	Latham	Spence
Cubin	Lewis (KY)	Stearns
Cunningham	Linder	Stump
Deal	*Lipinski*	Sununu
DeLay	Livingston	Talent
Doolittle	LoBiondo	Tauzin
Dreier	Lucas	*Taylor (MS)*
Duncan	Manzullo	Taylor (NC)
Dunn	*Matsui*	Thomas
Ehrlich	McCollum	Thornberry
Emerson	McCrery	Thune
Everett	McHugh	Tiahrt
Ewing	McInnis	Wamp
Fawell	McIntosh	Weldon (FL)
Foley	McKeon	Weller
Fossella	Metcalf	Whitfield
Fowler	Mica	Wicker
Franks (NJ)	Miller (FL)	Young (FL)

--- NOES 249 ---

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Barcia	*Hinchey*	*Pastor*
Barrett (NE)	*Hinojosa*	*Payne*
Barrett (WI)	Hobson	*Pelosi*
Becerra	*Holden*	*Peterson (MN)*
Bentsen	*Hooley*	*Pickett*

Berman	Houghton ✓	Pomeroy
Berry	Hoyer	Poshard
Bishop	Jackson (IL)	Price (NC)
Blagojevich	Jackson-Lee (TX)	Pryce (OH)
Blumenauer	Jefferson	Quinn ✓
Boehlert	John	Rahall
Bonilla	Johnson (CT) ✓	Rangel
Bonior	Johnson (WI)	Redmond
Borski	Johnson, E. B.	Regula
Boswell	Kanjorski	Reyes
Boucher	Kaptur	Rivers
Boyd	Kelly	Rodriguez
Brown (CA)	Kennedy (MA)	Roemer
Brown (FL)	Kennedy (RI)	Ros-Lehtinen
Brown (OH)	Kennelly	Rothman
Burr	Kildee	Roybal-Allard
Buyer	Kilpatrick	Rush
Capps	Kind (WI)	Sabo
Cardin	King (NY) ✓	Sanchez
Castle ✓	Kleczka	Sanders
Clay	Klink	Sandlin
Clayton	Klug	Sanford
Clement	Kucinich	Sawyer
Clyburn	LaFalce	Saxton
Condit	LaHood	Schumer
Conyers	Lampson	Scott
Costello	Lantos	Serrano
Coyne	Largent	Shays ✓
Cramer	LaTourette	Sherman
Cummings	Lazio	Sisisky
Danner	Leach ✓	Skeen
Davis (FL)	Lee	Skelton
Davis (IL)	Levin	Slaughter
Davis (VA) ✓ ?	Lewis (CA)	Smith (MI)
DeFazio	Lewis (GA)	Smith, Adam
DeGette	Lofgren	Snowbarger
Delahunt	Lowey	Snyder
DeLauro	Luther	Souder ✓
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Ehlers	McDermott	Thompson
Engel	McGovern	Thurman
English	McHale	Tierney
Ensign	McIntyre	Torres
Eshoo	McKinney	Towns
Etheridge	Meehan	Traficant
Evans	Meek (FL)	Turner
Farr	Meeks (NY)	Upton
Fattah	Menendez	Velazquez
Fazio	Millender-McDonald	Vento
Filner	Miller (CA)	Visclosky
Forbes ?	Minge	Walsh
Ford	Mink	Waters
Fox	Moakley	Watkins
Frank (MA)	Mollohan	Watt (NC)
Frost	Moran (KS)	Watts (OK)
Furse	Moran (VA)	Waxman
Gejdenson	Morella	Weldon (PA)
Gephardt	Murtha	Wexler
Gibbons	Myrick	Weygand
Gilchrest	Nadler	White
Gilman	Neal	Wise
Goode	Ney	Wolf ?
Gordon	Nussle	Woolsey
Green	Oberstar	Wynn
Gutierrez	Obey	Young (AK)

--- NOT VOTING 13 ---

Bateman	Hastings (FL)	Shuster
Carson	McNulty	Skaggs
Christensen	Neumann	Yates
Doyle	Radanovich	
Gonzalez	Schaefer, Dan	

6/16/98 Congressional Record

POM-462. A resolution adopted by the Senate of the Legislature of the State of Michigan; to the Committee on Appropriations.

SENATE RESOLUTION NO. 172

Whereas, our country is strongly committed to equality of opportunity. An important government body working to put this commitment into action is the Equal Employment Opportunity Commission (EEOC), the nation's leading civil rights enforcement agency; and

Whereas, the EEOC currently has a backlog of 65,000 cases of discrimination to investigate to pursue justice for individual citizens victimized by unfair and illegal practices. The EEOC needs to direct its resources to these individuals, rather than to the pursuit of trying to find new instances of possible problems. It is much more prudent to handle specific cases of discrimination than to direct energies to test employers by using decoy job applicants to look for discriminatory behavior; and

Whereas, the administration's recommendation of increased spending for the EEOC is appropriate if the increased funds are targeted to address the backlog of discrimination cases that need to be investigated. The men and women victimized by discrimination deserve the protection of the EEOC and should not be made to wait longer while resources are directed to less

Whereas, the administration's recommendation of increased spending for the EEOC is appropriate if the increased funds are targeted to address the backlog of discrimination cases that need to be investigated. The men and women victimized by discrimination deserve the protection of the EEOC and should not be made to wait longer while resources are directed to less productive activities; now, therefore, be it

Resolved by the Senate, that we memorialize the Congress of the United States to increase funding to the Equal Employment Opportunity Commission to handle the backlog of individual cases; and be it further

Resolved, that copies of this resolution be transmitted to the President of the United States Senate, the Speaker of the United States House of Representatives, and the members of the Michigan congressional delegation.

FAX TRANSMITTAL

Date: 6-17-98

To: Julie Fernandez

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:

Pages not including this page: 1

FAX TRANSMITTAL

Date: 5·26·98

To: Julie Fernandez

Fax #: 456-5581

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

Fax #: (202) 663-4912

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

Subject:
Participants for Thursday's mtg.

Pages not including this page: 1

Withdrawal/Redaction Marker
Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. list	Re: EEOC Participants (partial, DOB, SSN) (1 page)	05/26/1998	b(6)

COLLECTION:
Clinton Presidential Records
Domestic Policy Council
Irene Bueno
OA/Box Number: 17176

FOLDER TITLE:
EEOC [Equal Employment Opportunity Commission]: FY99 Budget [2]

2017-1120-S
ry2229

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

P1 National Security Classified Information [(a)(1) of the PRA]
P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
P3 Release would violate a Federal statute [(a)(3) of the PRA]
P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [a)(5) of the PRA]
P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.
PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).
RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

b(1) National security classified information [(b)(1) of the FOIA]
b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

WHITE HOUSE/EEOC MEETING
THURSDAY, MAY 28 , 1998
2:00 P.M.

EEOC Participants	**Date of Birth**	**Social Security Number**
Ellen Vargyas, Legal Counsel Office of Legal Counsel	[redacted] (b)(6)	
Kenneth Morse, Executive Assistant Office of the Chairman		
Susan Oxford, Attorney Advisor Office of General Counsel		
William White, Acting Director Office of Communications and Legislative Affairs		

[001]

Thurs.
2pm
Rm 476

[redacted]

EEOC leg. 5/28/98

Language on testers in appropriations if no informal deals.

Met w/ oversight & approp. on the Hill
members impressed w/ reforms
want them to set the $

Who
What lang.

Testers is the remaining issue. — no spending FY 99 funds on testers
Majority line in

language in appropriations

Litigate cases w/ tester evidence.

Met w/ David Frank this morning.

Where are the Dems on this issue? (testers)
Strong Dem. hand

(1) Side understanding (Letter) (weak) w/ no rider — set the $

CJS approps

(2) $ + rider (narrow)
fight on the floor w/ a veto threat

Do we have Dems? Check our strength
Are we comfortable w/ a fight (?)

Party-line vote in Subcomm & full Comm.

Check w/ HUD $ — does HUD hire testers (?)

YES

Other 5 – language in committee reports.

Mary Smith

VP announcement @ Equal Pay Day event

OFCCP — EEOC

MOU

when complaint goes to OFCCP they are agent for EEOC

Dems (approp/auth) have been quiet on this.

Obey Mollahan   Payne's staff

Fair Employment Practice Agency (FEPA)

line item in EEOC budget   lobbying for $10.5 million

Hollings likes FEPAs.

Eddie is for the fight.

Dem staff

Martha → Have no approp. guidance generally

Allocations for CJS are way below request.

$ out of State/Commerce (Justice is fully funded)

Bill in general is a candidate for veto threat.

Will mess w/ ATP
COPS
Census sampling

Likely fight on sampling this Fall.

Our fight could be part of "Democratic Unity" movement w/ sampling this Fall.

This likely 1 or last 5 bills (in Fall).

Get comfort w/ Mollahan & Obey

Liz White

1st step: judging our Dem. strength
(we have strong votes on affirmative action)

Copy of April 17th document

Drafting report language on other 5.

WH is thinking about tester issue.

Admin. has not made a clear statement.
Do we want to do this (?)
High visibility (?)

Acting Chair Recon Vice - Igasaki
Paul Miller expires June 30 (holds for 60 days)
2 vacancies - Ida Castro (~~has~~ intent to nominate)
- Danny Covington (no intent to nominate)
Reg Jones (~~R~~) - there now

Senate ?

need to try to get through Sen. under the radar screen.

Senate likely will happen before the House.

9 bill in each house

Sen subcomm may mark-up CJS by end of June

Sen Comm by end of June

Chair likes amendments on floor

House : (?)

Defense only next week (SubComm)

3 or 4 fo

CJS not cued up yet

... FAWELL, ILLINOIS,
Chairman

JIM TALENT, MISSOURI
JOSEPH K. KNOLLENBERG, MICHIGAN
Vice Chairman
THOMAS E. PETRI, WISCONSIN
MARGE ROUKEMA, NEW JERSEY
CASS BALLENGER, NORTH CAROLINA
WILLIAM F. GOODLING, PENNSYLVANIA

MINORITY MEMBERS

DONALD M. PAYNE, NEW JERSEY
Ranking Member

CHAKA FATTAH, PENNSYLVANIA
RUBEN HINOJOSA, TEXAS
CAROLYN McCARTHY, NEW YORK
JOHN TIERNEY, MASSACHUSETTS

MAJORITY—(202) 225-7101
(TTY)—(202) 226-3372
MINORITY—(202) 225-3725
(TTY)—(202) 226-3116

SUBCOMMITTEE ON EMPLOYER-EMPLOYEE RELATIONS
COMMITTEE ON EDUCATION AND THE WORKFORCE
U.S. HOUSE OF REPRESENTATIVES
B346 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6100

May 11, 1998

Copy to: Ellen
Jason
Mark
Leslie
Bill M.
Spencer

The Honorable Paul Igasaki
Chairman
U.S. Equal Employment Opportunity Commission
1801 L Street, N.W.
Washington, D.C. 20507

Dear Chairman Igasaki:

I write to you today about a matter that has only recently come to my attention but is of significant potential concern. It has recently been reported that the EEOC and the Department of Labor's OFCCP are working on a Memo of Understanding (MOU) that would give OFCCP the authority to seek damages under Title VII and the Equal Pay Act, a power OFCCP currently lacks. Apparently, the MOU would permit the OFCCP to serve as the "agent" of EEOC when it finds cases of "egregious discrimination" and wants to seek damages (where currently it would refer the case to EEOC). It is my understanding that under the 1991 Civil Rights Act, the EEOC can seek compensatory and punitive damages, but the OFCCP has no such authority under Executive Order 11246 (under which it operates).

I am concerned with whether the EEOC may lawfully delegate its enforcement authority to another agency through a mere Memorandum of Understanding. This change represents a significant expansion of OFCCP's enforcement function, which should be reviewed by Congress before being implemented. I am also troubled that such a change in the civil rights enforcement scheme to create overlapping jurisdiction may not be conducive to the most effective and efficient administration of the law. This new scheme lends itself to the mixing of the mission of the two agencies, something Congress did not intend.

My staff has contacted the Commission and been informed that no draft or outline of the MOU is available at this time. Please provide me with a detailed explanation of how this MOU would operate, what powers would be delegated to the OFCCP, and under what authority this delegation would be made.

Finally, I am troubled that this plan has been interpreted by some to be an attempt to institute the highly controversial concept of comparable worth. I look for your assurance that

RECEIVED 5/11

such a significant change in interpretation of the law would not be made unilaterally, without Congressional review and approval.

If you have any questions about this request, please call me or contact David Frank of the Committee staff at 225-7101. Thank you for your assistance and for your continuing efforts to work cooperatively with this Committee to make the EEOC a more effective guardian of civil rights.

Sincerely,

Harris W. Fawell

Harris W. Fawell
Chairman