# Of 'ce o ' the Cha'rwoman

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Equal Pay

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Smith

December 2, 1998

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
APPEAL TO OMB MARK FOR FY 2000

The OMB passback of Nov. 25, 1998 cut the Chairwoman's Revised FY 2000 Budget Request of Nov. 4 from an increase of $76.4 million to $9 million--an 88 % reduction. The Chairwoman's revisions of Nov. 4 were the result of a thorough assessment of the Commission's requirements to achieve its legislative mandates, the President's Civil Rights Enforcement Initiative--a significant implementation goal of the President's Race Commission; Administration Reinvention Policies to improve service to the public; and effective implementation of the Government Performance and Results Act (GPRA). The OMB passback amount jeopardizes the Commission's ability to carry out its legislative mandates and could weaken the Administration's credibility. Our request for reconsideration focuses on those elements we consider to have the highest priority and articulates the results to be achieved for each element appealed.

We are grateful for your support for the $279 million base, which represents EEOC's first increase in staff above the 2500 level since 1980, when the agency's staffing stood at about 3500. The 15% increase approved for FY 1999 acknowledges the agency's need for additional resources to build on accomplishments in managing the inventory of private sector charges as the composition of our workload becomes more complex, both as a result of the reduction of non-meritorious cases and the increasing complexity of discrimination in the workplace under the variety of statutes enforced by EEOC. We are also appreciative of your support for the Chairwoman's Comprehensive Enforcement Model and inclusion of the additional $1.5 million appropriated by Congress for FY 1999 for FEPAs. However, we wish to point out that the Chairwoman supported a net increase of $5.5 million for the FEPAs in her Nov. 4 revisions to EEOC's FY 2000 budget.

The $9 million increase provided in the OMB passback (total passback is $288 million) falls short in the following areas:

- **Does not permit full fiscal and managerial flexibility.** Furthermore, in order to permit the Chairwoman to exercise leadership in balancing all the elements of the Comprehensive Employment Model, flexibility in funding levels among the various elements is essential. We therefore request that the apparent earmarking of $13 million for ADR activity be removed and this amount be carried in the agency's enforcement program base after FY 1999. The Commission remains committed to the goal of 8,000 resolutions through mediation for FY 2000. In future years, greater productivity and quality may be achieved through program improvements growing out of evaluation and oversight activities.

- **Does not cover all fixed costs.** As a result of adjustments to incorporate factors not included in the initial Computation of Base Adjustments, an additional $5.198 million is the minimum amount required to sustain FY 1999 staffing levels, including annualization, pay raise, and inflation in support costs (discussed below). Therefore, a total of $14.198 is needed for adjustments to the base.

- **Does not provide for funding of technology needs.** We request that $4 million subtracted from EEOC's technology program be restored. The full $9.6 million approved for technology in FY 1999 is required in FY 2000 to continue technology upgrades necessary to launch an EEOC-wide LAN/WAN system, and continue the design and implementation of new management information systems (more detail on this initiative is described below).

**Summary of Appeal**

EEOC is requesting a total of $39.6 million above the $288 mark, for a total of $327.6, which represents an increase of 17% over the FY 1999 level. The elements of this appeal are summarized below and described in further detail in subsequent sections of the appeal:

- In addition to the $9 million increase in the mark, the EEOC needs $5.198 to cover its base adjustments for FY 1999 staffing levels.

- EEOC needs to have the $4.0 million for technology restored to build essential financial management, program management, and personnel management data bases and continue the implementation of LAN/WAN and other upgrades necessary to utilize more sophisticated management information systems.

- An additional $6.0 million is accepted for the Comprehensive Enforcement Model, consistent with the passback language.

- An additional $7.1 million is necessary to avoid embarrassment to the Administration by restoring credibility to the federal EEO program, through reduction of excessive waiting times for hearings and appeals which violate the agency's regulations and have been identified as a serious problem by GAO, and through implementation of revised regulations.

- An additional $17.3 is requested for the Administration's Wage Discrimination Initiative, to raise the visibility of this issue among workers and employers, provide sophisticated tools, training, and technical assistance on identification of wage discrimination, and enhance enforcement.

**Discussion of Elements Appealed**

Because the Comprehensive Enforcement Model is an approach spanning and linking all of the Chairwoman's proposed initiatives for FY 2000, adequate funding for each element will determine the strength of each link in the model, as well as its overall effectiveness. In view of the criticality of each step in the Comprehensive Enforcement Model, we respectfully request that serious reconsideration be given to the elements of EEOC's appeal to the Nov. 25 passback, discussed below.

1. **Mandatory Costs**

A $9 million increase over the $279 million base for FY 1999 is insufficient even to maintain FY 1999 staffing levels required to address Administration and Congressional goals or the Chairwoman's Comprehensive Enforcement Model goals and would erode the foundation upon which the CEM is built, leading to ad hoc shifts of resources to "rob Peter to pay Paul." The Commission had to absorb the $1.5 million increase to FEPAs, leaving it short in many accounts; and support requirements for new staff (space set-up, furniture, equipment, travel, and training) were not included for new staff for FY 1999 in either the FY 1999 or FY 2000 request. In addition we shifted the composition of types of staff hired, including the funding of an ADR coordinator for every district office to focus on achieving Administration and Congressional program goals. Accordingly, this results in higher annualization and pay raise increases. Moreover, the previous amount for base adjustments ($7.190 million) included only a 3% pay raise, rather than the 3.6% increase approved, and omitted inflationary increases for support costs.

2. **Technology**

Effective implementation of the CEM requires LAN/WAN connectivity among headquarters offices and the field to ensure the quality and consistency in the Commission's work. For example, investigations of similar complaints against the same employer in various locations should be addressed in a consistent manner, and legal staff need the tools to prepare effective cases against employers represented by experienced and well-funded law firms. Without continuing commitment in this area, the following cannot be accomplished:

- Planned upgrades of one-fourth of the agency's computer and printer inventory, necessary to ensure capacity for nationwide LAN/WAN connectivity and use of new management information systems, and to ensure that agency systems continue to meet Y2K requirements. Replacing 350 obsolete PCs, replacing old laptops and printers, and bringing "non-mission" critical systems into Y2K compliance will cost an estimated $2.0 million.

- Cabling for offices that are moving due to lease expirations or expansions with new field staff, LAN server replacements in one-third of the District Offices, contractor support to PC and LAN upgrades for field offices, paying recurring WAN costs, and extending INTERNET to headquarters offices by increasing line capacity for communicating with the field -- estimated at $1.6 million.

- Building new management information systems essential for managing the Commission's resources effectively and reporting to Congress. Three major systems design and implementation efforts require additional funds in FY 2000: (1) the financial management system, now in the early stages of Phase I implementation; (2) an Integrated Mission System that will track private sector transactions from the time they come to EEOC through resolution; and (3) a new Personnel Information System that will report hours paid in various functions such as investigations, mediation, and so forth.

  The Chairwoman's Office is cognizant of the need to design these systems so that information can be integrated to determine productivity in various functions and field offices, and to enable program managers to build and monitor operating budgets. The estimated cost of the design/implementation stages for FY 2000 is $2.8 million, which also includes Oracle licenses for one-half of the field access licenses needed for IMS implementation (the other half would be purchased in FY 2001), contractor support for systems installation, travel and CD ROM training.

- Until the new IMS is implemented, contractor support for the current system, data conversion into the IMS, use of NIH systems for analysis, accessibility to handicapped users, hardware/server maintenance, software maintenance and technical support are estimated at $2.5 million.

- Upgrading e-mail for half of the field offices and extending WAN to half of the area and local offices would cost $700,000. The Commission has 25 District Offices (including the Washington Field Office), 17 Area Offices and 8 Local Offices.

**The above requirements, totaling $9.6 million, do not include** increases EEOC requested in its FY 2000 budget to upgrade e-mail and extend WAN nation-wide, purchase Oracle licenses for all field offices, design and implement an information system for federal employee hearings, appeals, and other activity, or purchase equipment for any new staff (these would require an additional $3 million). Therefore, it is apparent that an on-going commitment to technology will be needed, as EEOC pursues a phased approach continuing into future fiscal years.

### 3. Comprehensive Enforcement Model -- Private Sector Enforcement

With an additional $6.0 million[1] for the CEM, the EEOC can hire an additional 129 investigative staff for three-year term appointments (which represents a reduction of half the supervisors and over 40% of the support staff originally costed for this option). This increase would:

- Enable the Commission to resolve within 180 days most charges[2] filed after July 1, 2000, and resolve most charges over 180 days old by the end of FY 2001. At the end of FY 1998, nearly half of the inventory was over 180 days old.

- A July target would lend credibility to the Administration's Civil Rights Enforcement and Race Commission objectives, the Vice President's Reinvention/Customer Service initiatives, and GPRA timeliness and quality objectives.

- **Without these additional staff, the inventory will grow to 62,400 by 2008, rather than declining to 29,600 had the additional staff been provided.** This is because the level of productivity achieved in the last few years was, to a great degree, a function of the agency's primary focus on closing "B" and "C" category charges to reduce the inventory, rather than on developing meritorious "A" cases; and because supervisors accounted for 14% of the productivity. From FY 1996 through FY 1998 over 80.0 percent of resolutions were in categories "B"and "C."

- Productivity is expected to decline in order to move beyond the focus on "outputs"-- through closures of non-meritorious charges quickly -- to outcomes and results, consistent with GPRA, as a result of the Chairwoman's implementation of the Comprehensive Enforcement Model, which requires initiatives to improve quality and customer service. The following factors will reduce average investigator productivity from 114 in FY 1998 to around 100 in future years (this still exceeds productivity levels prior to implementation of the Priority Charge Handling Procedures, when each charge was investigated):

  1) More substantive investigations of an inventory that consists of a higher percentage of potentially meritorious charges. At the end of FY 1998, 93.3 percent of the inventory consisted of "A" or "B" cases.

  2) Substantially more training to equip new and existing staff with the skills required to address a workload of greater complexity--little formal training of investigative staff has

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[1] $6.0 million includes salaries and compensation, space, furniture, computer and other equipment, telephones and supplies.

[2] Exceptions to the 180-day resolution time include charges that have been included in cases litigated, such as class and systemic cases.

occurred in the last seven years, leaving many investigators without comprehensive training on court precedents and the complexities of laws enforced by EEOC.

3) Increased time investigators must spend consulting with legal staff to strengthen legal analysis at the intake and investigation stages.

4) Increased time on outreach activities to promote greater worker and employer awareness and thus decrease the likelihood of filing of non-meritorious charges and promote voluntary compliance;

5) Conduct on-site investigations, which are necessary to enhance the quality of investigations and deliver substantive relief. On-site investigations have declined dramatically over the last five years, in response to dwindling resources and heavy workloads.

**4. Improving the Credibility of the Federal EEO Program**

How the federal government addresses discrimination problems within its own ranks communicates its commitment and resolve regarding enforcement in the private sector. At the present time, EEOC is in the process of revising current regulations governing the EEO process in the federal sector, with the objective of restoring credibility by streamlining the present cumbersome process and increasing EEOC's ability to enforce its decisions. However, adding to the credibility problem is EEOC's inability to address requests for hearings and appeals in a timely manner, as pointed out in a hard-hitting GAO report issued in the summer of 1998.

**At the present time, EEOC is in serious violation of its own regulations, which require that individuals requesting a hearing obtain one in 180 days.** EEOC is proposing to restore credibility to the Federal EEO program in a fall-back to the Nov. 4 request–91 staff–for $7.1 million (includes compensation plus support costs).

- The additional staff requested for hearings will enable the Commission to begin a steady "glide path" that will reduce the number of months for hearings from 17 in FY 1999 to 10 months in FY 2000; 8 months in FY 2001; and reach 6 months in FY 2002, maintaining the waiting time at 5 months or less thereafter through FY 2009.

- The additional staff for appeals included in this request would enable the Commission to reduce the waiting time from 23 months in FY 1999 to 13 months in FY 2000; to 10 months in FY 2001; to 8 months in FY 2002; 7 months in FY 2003, and maintain the wait at 5 months or less thereafter.

- Without the additional resources requested, the hearings backlog will grow, producing a waiting time of 19 months in FY 2001 and snowball to 53 months by FY 2009.

- Without additional appeals staff, the waiting time will increase to 25 months in FY 2001 and rise to 61 months by FY 2009

- Eleven additional staff for federal agency oversight and technical assistance are required to implement the new regulations, focus attention on agencies that have persistent high levels of complaints and poor EEO profiles, and to assist agencies that wish to adopt or expand the use of alternative dispute resolution methods and other innovative techniques.

**5. Wage Discrimination Initiative** 12m

Without an additional 54 staff and $17.3 million (includes space, equipment, other support costs) for staff, research and outreach initiatives, EEOC cannot carry out its proposed Wage Discrimination Initiatives, which would:

- Reach over 10 million workers through public service announcements and other efforts in major media markets to inform workers of their rights and facts on wage discrimination, an issue in thousands of charges related to entry-level pay and promotion.

- Reach over 3,000 small, medium and large employers to provide technical assistance and education affecting over a million employees.

- Provide 20,000 advocates and union members and tens of thousands they can reach nationwide, with information on wage discrimination and employee rights to foster voluntary solutions in the workplace with informed workers and employers working together.

- Develop assessment tools to enable employers to evaluate and improve their compensation systems voluntarily, benefitting millions of employees and increasing retention rates of talented employees needed to boost business expansion.

- Train EEOC staff to identify at intake and properly analyze and investigate complex pay discrimination issues, thus improving enforcement of the law and substantive relief to aggrieved parties.

- Develop the analytical framework for measuring the impact of efforts to reduce pay discrimination, as a first step to addressing agency impact in other areas – a key element of the Government Performance and Results Act -- which is integral to implementation of the Chairwoman's Comprehensive Enforcement Model.

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## INITIATIVES TO ENHANCE EEOC ENFORCEMENT EFFORTS IN SUPPORT OF PAY EQUITY

With an additional 54 staff and $13.6 million for technical and legal staff, technical assistance, enhanced enforcement, and outreach initiatives, EEOC will carry out its proposed Wage Discrimination Initiative. This Initiative will:

- Reach over 10 million workers through public service announcements and other efforts in major media markets to inform workers of their rights and facts on wage discrimination, an issue in thousands of charges related to entry-level pay and promotion.
- Reach over 3,000 small, medium and large employers to provide technical assistance and education affecting over a million employees.
- Provide 20,000 advocates and union members and tens of thousands they can reach nationwide, with information on wage discrimination and employee rights to foster voluntary solutions in the workplace with informed workers and employers working together.
- Develop assessment tools to enable employers to evaluate and improve their compensation systems voluntarily, benefitting millions of employees and increasing retention rates of talented employees needed to boost business expansion.
- Train EEOC staff to identify at intake and properly analyze and investigate complex pay discrimination issues, thus improving enforcement of the law and substantive relief to aggrieved parties.

### DISCUSSION OF INITIATIVES

- **Enhanced support for EEOC enforcement activities**
  - Training for EEOC professional staff is an essential element of a program to support enforcement of the equal pay laws. It will facilitate the effective analysis of charges and the targeting of resources, thereby contributing to EEOC's ability to effectively manage its workload. We propose to provide training for all EEOC professional staff on the investigation and analysis of compensation discrimination. The professional staff consists of 850 investigators, 250 litigation attorneys and 150 supervisors and managers. Because of resource limitations EEOC is only rarely able to conduct a Commission wide training of this sort, even though it is of enormous value.

The last such training was a Commission wide training on the Americans With Disabilities Act which was conducted in 1992.

- In order to analyze potential cases of compensation discrimination in a timely and effective manner, EEOC also needs additional staff that is skilled in economic and social science analysis as well as appropriate technology to support that staff. This will include:
    - A FTE Social Science Analyst or Pay Equity Specialist in each District Office and the Washington Field Office.
    - Six attorneys to work in teams to support and assist field offices in the analysis and development of litigation.
    - Appropriate software to conduct pay analyses, available in all field offices and headquarters. A PC-based system for accessing EEO-1, EEO-3, EEO-4 and EEO-5 data should be developed to enable investigators and attorneys to retrieve forms, relevant comparable aggregate data, and to run statistical tests comparisons.

- **As a result of this enhanced support for enforcement, EEOC will:**
    - Identify compensation discrimination issues in substantially more charges and bring more cases than it does at present. It will accomplish this by:
        - Better analyzing charges in the administrative process, with an emphasis on both intake and investigation; and
        - Particularly focusing on charges alleging discriminatory assignment and promotion to determine if compensation discrimination issues are also present.
    - EEOC will also conduct better quality investigations on claims of compensation discrimination.

- **Outreach and Technical Assistance**
    - The best way to address discrimination is to prevent it from happening in the first place and the best way to achieve this result is to reach out to the affected communities so that they understand their rights and

responsibilities. We propose the following outreach and education initiatives on compensation discrimination matters:

- EEOC will develop training programs on compensation issues for constituent communities; *i.e.*, employers, employees, unions, advocacy groups. This element will include programs specifically targeted at small businesses.

- To assure that this outreach and technical assistance program is effective will require adding one FTE Program Analyst in each district office and the Washington field office.

- EEOC will develop assessment tools to enable employers to evaluate and improve their compensation systems voluntarily, benefitting millions of employees and increasing retention rates of talented employees needed to boost business expansion

- We also propose implementing a program of Public Service Announcements in order to educate the public on the importance of this issue as well as their rights and responsibilities. As part of this initiative, we will:

- Hire a public relations firm to research, develop core messages and concepts, identify target audiences, produce the spot (in several languages), conduct focus groups to test its effectiveness, and distribute it.

- To reach all of the targeted audiences would require four to five PSAs.

- Such announcements should also contain an action step (asking the audience to respond in some way or take action i.e., an 800 telephone number), which requires developing supporting materials, such as pamphlets and brochures, to assure that the message is effective. Development, production and distribution of the supporting materials require an FTE.

- **As a result of increased outreach and technical assistance on compensation discrimination issues, EEOC will:**

  - Conduct 288 new events a year addressing compensation discrimination (each program analyst in each of the 24 district offices will be responsible for conducting at least one event a month). These events will provide information and assistance on compensation discrimination to employees, unions, businesses and advocacy groups. We project that we will reach approximately 20,000 persons a year in this fashion.

- Each District Office will include programs on compensation discrimination in their Technical Assistance Program Seminars (TAPS) which provide information and assistance to the business community. Based on experience with TAPS programs, we project that these programs will reach approximately 3000 businesses.

- EEOC's Public Service Announcement campaign will be targeted at major markets (including New York, Los Angeles, Chicago, Washington, Miami, Atlanta, and Dallas), as well as secondary markets (including, for example, Denver, St. Louis, Seattle, Detroit, Houston, and Philadelphia). A concerted effort to place PSA's in these markets has the potential of reaching tens of millions of television viewers.

- With additional information and technical assistance:

    - Charging parties will be better able to understand their own employment situation and better present their cases to EEOC, thus adding to EEOC's ability to achieve the goal of identifying substantially more compensation discrimination issues in charges and better investigating such claims.

    - Businesses will better understand their legal obligations with the result that voluntary compliance with the law will be enhanced.