

Washington, DC 20507



April 28, 2004

Office of  
the Chair

MEMORANDUM


TO: Naomi C. Earp  
Vice Chair

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Commissioner

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Commissioner

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FROM: Leonora L. Guarraia   
Chief Operating Officer

SUBJ: Follow-up to Appropriation Hearing

As a follow-up to the Chair's testimony on March 25, 2004 before the House Subcommittee on Commerce, Justice, State and the Judiciary, concerning the EEOC's budget appropriation for FY 2005, written questions were submitted by Chairman Wolf and Representative Serrano. Responses to those questions were provided to the Subcommittee yesterday. Since I know that this is a subject of interest to you, please find attached a copy of the questions and the responses.

Please note that the Chair's March 25<sup>th</sup> written statement to the Subcommittee is posted on InSite.

cc: Chair Dominguez

## QUESTIONS FOR THE RECORD SUBMITTED BY CHAIRMAN WOLF

### Workforce Restructuring

*Introductory Note:* For clarity and consistency in our responses, the EEOC would like to provide this introductory note on terminology used in answering questions regarding repositioning, workforce restructuring, and reorganization.

In order to fulfill the President's Management Agenda to make the agency more customer-centered and results-oriented, the EEOC seeks to:

- provide fast, responsive, and high quality services by maintaining appropriate staffing and enhancing employee professionalism;
- increase the efficiency and effectiveness of our operations by streamlining functional responsibilities, broadening the spans of control, reducing layers of management, and redeploying resources to our front-line, mission-related functions; and
- enhance our delivery of services to better serve the public with a series of program initiatives.

In the following answers, the EEOC will use the term "repositioning" as it is used in the FY 2005 performance budget request and Chair Cari M. Dominguez's March 25 Statement to the Subcommittee, to refer broadly to a range of EEOC efforts to allow the agency to become more customer-centered and responsive to the needs of the public. "Repositioning the Agency to Better Serve the Public" is the second of the three funding themes set forth above. Repositioning is thus the umbrella term by which we refer to several efforts described in the budget request at pages 3 and 60-61. As noted in the Analysis of Change table, Subsections IID and IIE (pages 11 and 14), repositioning includes but is not limited to the implementation of a National Contact Center for handling public inquiries to EEOC more efficiently. This effort and others noted such as office relocations within metropolitan areas to lower rental costs do not involve changes to the agency's organizational structure.

In contrast, we use the term "workforce restructuring" to refer more specifically to one component of our repositioning efforts. Workforce restructuring (or "reorganization") is the process of examining the agency's service delivery infrastructure, including office locations, organizational structure, and staffing configurations, in both field and headquarters. The purpose of this effort is to realign agency resources and staff skills to meet workload demands more efficiently and effectively. We are currently preparing the EEOC's workforce restructuring plan in accordance with OMB Bulletin No. 01-07, "Workforce Planning and Restructuring," which directs federal agencies to develop five-year restructuring plans to streamline agency operations, deploy resources to direct service delivery positions that interact with customers, and flatten the federal hierarchy, reducing the time it takes to make decisions and the numbers of layers in

government. This will enable us to achieve long-term improvements in our cost structure and service to the public.

- 1. In February 2003, the EEOC received the National Academy of Public Administration's report containing an assessment of its structure and workforce issues. It is the Committee's understanding that the report recommended that EEOC establish a National Contact Center at one or more low-cost locations to reduce costs and streamline how charges are handled. For fiscal year 2005, EEOC is requesting \$1 million to continue the implementation of the NCC. What is the status of the NCC, and if funding were provided as requested, would it be operational in fiscal year 2005?**

The NAPA Panel made a series of recommendations for improving EEOC's operational efficiencies and program effectiveness. The most urgent of their recommendations involved the establishment of a national contact center as a way to improve the quality, timeliness, access and consistency of services to EEOC's customers. Consistent with that recommendation, we formed an internal work group of field and headquarters staff to explore the cost benefits of establishing such a center. The work group found that the EEOC currently receives an estimated 1 million or more unsolicited calls annually from the public. It also found that of these calls, approximately 61 percent are general inquiries and are not about filing a charge. Rather, the calls seek general information about EEOC and the laws enforced by the EEOC or other federal agencies. The work group concluded that a contact center would allow the EEOC to realize tremendous improvement in our service capacity and effectiveness. The work group recommended that the contact center *not* handle actual charge filing. Rather, a contact center would free up EEOC staff to focus on charge intake and investigation, counseling of potential charging parties, and outreach to employers and employees.

On August 15, 2003, we provided the Subcommittee the executive summary of the work group's four-month study and recommendations. The key recommendation of the work group was to initiate a solicitation for a contractor to conduct a two-year pilot of a national contact center, which would achieve significant improvements in the agency's ability to respond to public inquiries. The Commission also discussed the work group recommendation at a public meeting on September 8, 2003, and received extensive input from employees and stakeholder groups. As stated in our November 20, 2003, letter to the Subcommittee, the Commissioners unanimously voted on November 6, 2003, to approve the report of the work group that recommended the establishment of a national contact center on a two-year pilot basis.

On March 8, 2004, the EEOC issued a solicitation notice via FedBizOps seeking technical and cost proposals for establishing a National Contact Center (NCC) for the EEOC. Proposals were due on April 12, 2004. An EEOC Technical Evaluation Panel has been

established and the Panel anticipates completing its proposal review process and submitting a recommendation to the full Commission for approval by August 2004. Meanwhile, EEOC staff are also developing and updating informational scripts, Frequently Asked Questions (FAQs), and referral databases for the National Contact Center to use to respond to inquiries from the public. These materials will also be used by EEOC staff in responding to inquiries and training EEOC employees. If funding is provided as requested, the NCC is expected to be operational by the middle of fiscal year 2005.

**2. Also, what are the projected costs of operating and maintaining the NCC in FY 2006 and beyond?**

The costs of operation and maintenance of the NCC are directly linked to call volume. Therefore, the EEOC hopes to start operations with a pilot phase, under a two-year contract, to allow for the collection of refined baseline data on service demands, performance metrics and costs during the first half of the pilot, and an assessment of vendor performance during the second half. Cost proposals from potential vendors have not yet been analyzed. We anticipate projected costs of approximately \$2 to \$3 million for fiscal year 2006. A similar amount is projected for future years should the pilot program prove to be successful. This compares with an estimate of approximately \$12 million, for infrastructure alone, to establish an in-house contact center.

Furthermore, we note that our analysis of telephone calls from the public indicated that the majority of calls currently received are handled by GS-12 level employees, because of staff shortages. We do not think it is cost effective to have senior federal investigators, attorneys or mediators handling routine information inquiries. Rather, these employees will be most effectively utilized performing their investigative, outreach, and enforcement duties.

**3. The NAPA report recommended that EEOC streamline its field structure and reduce the number of full-service locations. The NAPA panel further recommended that reducing EEOC locations should be attained based on work-load levels and the establishment of mobile teams. Do you plan to begin restructuring changes in fiscal year 2004?**

We plan to complete a comprehensive workforce restructuring plan that will be subject to Commission vote and, if approved, will be phased in over a five-year period. We will share the restructuring plan with the Subcommittee and all appropriate Congressional committees as soon as it is approved by the Commission. The Agency has already obligated funds in fiscal year 2004 for certain restructuring actions such as permanent change of station funds and relocation of the Washington Field Office to Headquarters.

We would like to emphasize, again, that there will be no employee job loss in our restructuring plan. Further, restructuring will improve, not diminish our service to the public.

- 4. For fiscal year 2005, you are requesting \$2 million for office relocation costs, furniture/equipment purchases, and employee development. What is the current status of EEOC's workforce repositioning? What steps will EEOC take in fiscal year 2005 to support staffing adjustments based on workload and resources? When will EEOC have a finalized repositioning plan?**

With respect to the requested \$2 million for office relocation costs, furniture/equipment purchases, and employee development, those funds would be used to support office relocations within metropolitan areas in our continuing effort to achieve efficiencies, reduce rental costs, and redeploy resources to meet workload needs. When office leases expire, we are taking steps to "right-size" our office space by relocating locally in space that is more appropriate, achieving long-term rent savings. For example, we have begun to plan the move of the 36 employees in the Washington Field Office into our headquarters building, where excess space. This move will save EEOC approximately \$500,000 a year in rent. We expect the move to take place in late summer. Similarly, our relocation of the San Francisco District Office resulted in a 12% reduction in rentable square feet. We will continue to inform the Subcommittee of any office relocation, as we did with respect to the Washington Field Office. The employee development component of the requested funding includes funds for permanent change of stations, management and skills training, and workforce planning.

With respect to the question regarding a "finalized repositioning plan," as explained in our introductory note, we are in the process of completing a workforce restructuring plan. The restructuring plan, if approved, will be phased in over a five-year period. We will share the restructuring plan with the Subcommittee and all appropriate Congressional committees as soon as it is approved by the Commission.

#### **Mediation/Alternative Dispute Resolution**

- 1. EEOC has increased its use of mediators to resolve charges before they reach the litigation stage. EEOC is requesting approximately \$23 million for mediation in fiscal year 2005 to conduct over 8,000 mediations. Can you speak briefly on the future of mediation as a tool to reduce charge time and overall costs, and reduce the inventory of overall private sector charges.**

Mediation is the centerpiece of the Commission's Five-Point Plan and will continue to play an essential role in EEOC's efforts to resolve employment discrimination disputes expeditiously and in a manner that is fair to employees and employers. The EEOC's mediation program – which is the largest program of its kind in the nation – has been a tremendous success

and has contributed to our ability over the past few years to reduce our inventory and resolve more charges within 180 days or less. The average time it took in FY 2003 to resolve a charge in mediation was 85 days. The average processing time of all charges is 160 days. The EEOC successfully resolved 68.9% of all cases going to mediation last fiscal year. Cases resolved through mediation save employers and employees the time and cost associated with going through an EEOC investigation. Mediation also permits the parties to avoid costly litigation.

The Commission has been aggressively pursuing agreements to mediate with members of the employer community and seeking every public opportunity to encourage the use of mediation in the first instance. To promote greater employer participation in EEOC's program, the Commission held a public meeting in December 2003, where representatives of corporate America, the private bar, and professionals in dispute resolution and human resources all described the many workplace benefits of mediation. They cited increased productivity, enhanced communications, positive employee relations, cost reductions, faster settlements of disputes, and avoidance of future disputes and claims. Calling EEOC's mediation program "exceptionally worthwhile" and "highly recommended," Donna M. Gwin, Director of Human Resources for Safeway Inc., stated that, "As a result of mediation, we are able to keep our pending EEOC claims to a minimum and avoid the time and money it takes to investigate and respond to a claim." Linda I. Workman, Vice President for Workforce Effectiveness for ConAgra Foods, Inc., which has entered into a national universal agreement to mediate with EEOC, described the program as "a valuable tool and a sound approach for addressing the resolution of administrative charges in the workplace." The full record of this meeting, which details the mediation program's perceived benefits, can be found at <http://www.eeoc.gov/abouteeoc/meetings/12-2-03/index.html>.

The EEOC will continue to build upon and strengthen the mediation program in the future. The EEOC has stepped up the use of universal agreements with employers. These are agreements reached between our district offices and employers at both the local and national level, to mediate any charge filed with EEOC. We now have approximately 500 local agreements, and, nationwide, 29 large corporations have signed national agreements. In addition, in FY 2003, we introduced the "Referral Back" Initiative. When charges are filed against the participating employer, the EEOC will suspend its charge processing for 60 days so that the parties can voluntarily participate in the employer's dispute resolution program.

We believe that the benefits of the EEOC's mediation program far outweigh its costs.

- 2. What are the costs of a contract mediator in comparison to an EEOC staff mediator? Could it be argued that the more contract mediators EEOC uses, the less amount of governmental personnel would be needed to perform this function? This would essentially free up EEOC staff time from mediation to perform other essential duties and contribute to future repositioning efforts?**

EEOC's mediation program involves both staff mediators and contract mediators, as well as some pro bono mediators. We believe that this mix contributes to its success. Where parties seeking mediation are in geographic areas far from EEOC offices, the use of an external mediator may be the most cost-effective way of holding that mediation. In some instances, employers who are new to our mediation program may initially feel more comfortable with external mediators. Once these companies gain some experience with our mediation program and get to know our staff, the initial reluctance to use internal mediators is usually overcome. In fact, as our program matures, more employers specifically request the assignment of their case to an EEOC mediator. Therefore, we believe that a strong and successful mediation program requires both EEOC and contract mediators.

The EEOC pays \$800 per mediation to contract mediators. The true cost of an external mediation is higher than the \$800 paid per mediation given that the EEOC absorbs administrative costs of the contract mediation program.

3. **It is my understanding that individuals are given the choice between an EEOC or contract mediator when filing. However, this is not a legal requirement. Given the funding constraints we are experiencing and the need to reposition the EEOC workforce, would it be possible to increase the number of contract mediators handling charges?**

Field offices have discretion in assigning mediators to cases. The decision whether the dispute will be mediated by an EEOC staff mediator or a contract mediator is guided by a number of factors, to include availability of mediators, the geographic location of the parties, conflict-of-interest issues, the existence of related cases, and a desire of EEOC staff to ensure the mediator assignment would be a good match for the parties involved. However, where parties seeking mediation are in geographic areas far from EEOC offices, the use of external mediators may be the most cost-effective way of conducting that mediation. Based on EEOC's experience and the feedback of employer and employee participants in the program, we think it is important to maintain a mediation program with a mix of contract and EEOC staff mediators.

We would like to increase the number of contract mediators handling charges and, for that purpose, have requested a 45% increase in our budget for contract mediators. This increase would provide funds to meet the projected rise in the participation rate of employers in mediation. This in turn will increase the number of cases mediated, contributing to our ability to reduce inventory and utilize our workforce more effectively.

4. **How is EEOC involving State and Local Fair Employment Practices Agencies (FEPAs) in meditations? Is the agency shifting some of the mediation workload to the state and local agencies, where such agencies already have the capacity to conduct mediation?**

In early 2003, EEOC launched a pilot mediation program with the State and Local Fair Employment Practice Agencies (FEPAs). EEOC invited all interested FEPAs which we contract with to submit a proposal describing their mediation program. A total of 26 FEPAs submitted applications to be considered for the pilot.

In April 2003, EEOC began pilot mediation programs with 9 FEPAs. Under the pilot, EEOC evaluated whether FEPAs can effectively mediate private sector charges filed with EEOC on a contract basis. We compared the FEPAs' performance to private sector contract mediators' performance. Our findings determined that those FEPAs that meet EEOC's criteria (listed below) will be given opportunities to mediate charges. We will be happy to assist other FEPAs in meeting the necessary qualifications in order to participate. Through this program, EEOC will integrate qualified FEPA mediation providers within a rotation of mediators, utilizing them when the need for and location of such service are warranted.

5. **What percentage of state and local FEPAs are capable of doing mediation? Are there formal requirements or qualifications that mediators must meet?**

We are not able to ascertain at this point the percentage of all FEPAs that would be capable of providing the type of mediation service that EEOC requires. However, it should be noted that EEOC selected the following nine FEPAs out of the 26 that submitted materials for consideration for participation in the Pilot :

1. The Alaska Commission for Human Rights
2. The City of New York Commission on Human Rights
3. The Florida Commission on Human Rights
4. The Indiana Civil Rights Commission
5. The Iowa Civil Rights Commission
6. The Kansas City Human Relations Department
7. The Ohio Civil Rights Commission
8. The New Mexico Department of Labor
9. The South Carolina Human Affairs Commission



In order to qualify for participation in the Pilot, each FEPA had to meet the following criteria:

1. Have a current charge resolution contract with EEOC;
2. Demonstrate that it has a current facilitative mediation program;
3. Demonstrate that mediation staff have been trained in the principles and strategies of facilitative mediation;
4. Demonstrate that the FEPA has and will maintain a "firewall" between enforcement and mediation staff during the term of the pilot; and
5. Certify that mediator staff will comply with reporting requirements.

Additionally, prospective FEPA participants were required to demonstrate in their submitted materials that internal mediation staff possessed the following specific background and abilities:

1. Five years experience relating to the use of mediating techniques such as facilitation, negotiation, and developing resolution options between opposing parties;
2. As part of the five years experience, internal FEPA mediation staff must have experience in mediating EEO matters. As part of this EEO mediation experience, the internal FEPA staff mediator(s) must have served as the lead mediator(s) in these matters and the underlying mediation must have been related to Title VII, the Age Discrimination in Employment Act, the Americans with Disabilities Act, the Equal Pay Act, the Civil Rights Act of 1991, or a comparable state or local EEO law.
3. Comply with the EEOC's private sector mediation guidelines ensuring that a referred case for mediation is completed within 45 days of assignment to the FEPA staff mediator.

#### Private Sector Charges

1. **Your budget shows an increase in private sector charge workload from approximately 118,000 cases in fiscal year 2004, to 126,000 cases in fiscal year 2005. The backlog in the same period of time will grow from 29,000 cases to 37,000 cases. Since you are requesting to fill 104 existing vacancies and hire an additional 100 enforcement staff in fiscal year 2005, why is it that the backlog will continue to increase?**

The projections for FY 2005 showing a growth in the pending inventory reflect, in part, the cumulative effect of the hiring freeze for the past two and a half years. Also, our staffing assumptions recognize that with more than 50 percent of our current workforce eligible for

retirement now or within the next five years, we will continue to lose critical employees to retirement and other forms of attrition. Even with the new hires requested and the ability to fill existing vacancies in FY 2005, other assumptions had to be factored in. These assumptions included that the hires would not occur until mid-year FY 2005. Since staff require training and on-the-job experience, they will not immediately be as fully productive as staff that are currently on-board.

We have developed these estimates based on historical experience. From FY 2001 to FY 2002, charge resolutions were significantly higher than the incoming workload (new receipts and transfers from state and local agencies), resulting in notable declines in the pending inventory. However, between FY 2002 to FY 2003 inventory reduction was marginal because, despite exceptional investigator productivity, there was a substantial decrease in charge resolutions – from 95,222 in FY 2002 to 87,755 in FY 2003. In FY 2004, as the number of investigator, mediator, and support staff continues to decrease, we will not be able to maintain the current level of inventory.

If no additional resources are provided, the serious ramifications extend beyond the growing inventory projection. The Commission's ability to investigate class and systemic cases could be diminished. Furthermore, a continuing decline in supervisory and support staff levels would adversely affect investigator productivity because investigators might have to fill the gap by performing supervisory and clerical duties, in addition to their regular duties. It is for these reasons that it is so critical that the agency be given the resources to permit the level of hiring we have requested in FY 2005.

**2. What, in addition to mediation, is EEOC doing to reduce the number of private sector charges?**

The Commission has intensified its proactive prevention program. We are now seeing fewer charges coming out of large companies, but an ever-increasing volume of charges coming from mid- and smaller-size employers. This segment of our employer community lacks the resources and infrastructure that exist in large companies to address employment disputes. EEOC must do more in terms of education and outreach for this community of employers, as well as other areas such as underserved communities and high tech regions, since these have become the fastest growing segments of our charge activity.

Therefore we are engaging in more targeted proactive efforts in response to charge-filing trends. We believe that if we can educate employers, particularly those in employment sectors giving rise to more of our charges, then we can do more to prevent discrimination and the need to resort to EEOC's processes in the first place. A more knowledgeable employer understands its responsibilities and therefore there should be fewer situations prompting employees to file a charge. Through our education, training and technical assistance efforts, we reached nearly

325,000 people in FY 2003. Visits to our web site continued to increase, reaching more than 350,000 per month by the end of the fiscal year. A monthly cyberchat series with the Society for Human Resource Management (SHRM) serves as an interactive forum through which human resource professionals interact with EEOC commissioners and senior staff to discuss a variety of EEO topics. To date, we have held 18 chats with a combined 2,404 real time participants. Transcripts subsequently posted on SHRM's members-only web site continue to reach thousands of additional HR experts. Through our Freedom to Compete Initiative, which seeks to build partnerships and strategic alliances with groups and organizations not traditionally engaged with the agency, we have hosted a series of 18 roundtable discussions with corporate CEO's throughout the country, with the goal of promoting equal employment opportunity and removing workplace barriers.

### Revolving Fund

- 1. The Education, Technical Assistance, and Training Revolving Fund permits EEOC to charge a fee for the costs associated with the delivery of programs that augment agency activities provided to the public free of charge. Your FY 2005 budget shows approximately \$2.5 million of carryover each fiscal year for the revolving fund, while total budget authority is approximately \$7 million. Can you explain to the Committee why there is such a large carryover amount, as indicated in your budget?**

Currently, our carryover balance is about \$3 million. We need to maintain a sufficient carryover balance to allow the Revolving Fund to cover all of its expenses (which are cyclical in nature) and to have money available for new services and product development. A sufficient carryover balance also allows the Revolving Fund to maintain its schedule of regular updates of products and services and to continue development of new products and services. However, we plan to reduce the carryover significantly by the end of FY 2005.

The principal Revolving Fund products and services are: Technical Assistance Program Seminars (TAPS); Customer Specific Training (CST); and other products such as books, videos, and CD's. During FY 2003, the EEOC conducted 50 TAPS programs, reaching 7,388 attendees; presented 329 CST programs, to 12,441 trainees; and trained 24,630 federal agency employees through federal sector national training programs.

The spreadsheet in answer 2 shows the net difference (by month and FY) between beginning Balance and Ending Balance. The net difference by month ranges from a net reduction of \$849,000 in April, 2003, to a net increase of \$350,000 in August 2003.

Several major factors affect funds flow. All of our revenue is derived from the products and services we provide to our customers. Our three major expenditures are national contracts (registration system, mail-house operations and printing); the quarterly reimbursement to the agency; and the funding of TAPS/CST events. The national contracts vary in terms of payment method. The registration contract is funded up-front (the initial funding was in July 2003 and the FY 2004 contract was funded in November 2003). The cost of the mail house and printing contracts are funded when services are rendered and they vary throughout the year. We normally have higher costs at the beginning of the calendar year for printing and distribution of TAPS CDs and the TAPS and Federal Sector National brochures.

The quarterly reimbursement to the agency's salaries and expenses account also has a major impact on expenditures in a given month, reflected in the higher expenses shown for April 2003 and August 2003. The largest expenditure for TAPS/CST training is the hotel contracts for TAPS. We fund field offices' local costs up-front so that they can secure hotels, plan travel, and order printed materials. These funds are allocated to the field offices prior to receiving any revenue for the planned technical assistance event.

2. **Please provide, for the record, a breakout of the Revolving Fund for FY 2003, by month.**

See attached chart.

EEOC Reverting Fund Monthly Analysis  
 FY 2003 and 2004  
 (dollars in thousands)

Prepared: April 15, 2004  
 P 013/045  
 T-437  
 As of  
 Oct 01, 2002  
 As of  
 Oct 01, 2003  
 As of  
 Sept 30, 2003

	Oct 2002	Nov 2002	Dec 2002	Jan 2003	Feb 2003	Mar 2003	Apr 2003	May 2003	Jun 2003	Jul 2003	Aug 2003	Sep 2003	As of Sept 30, 2003
Beginning Balance	\$3,392												
Collections	\$378	\$160	\$107	\$76	\$102	\$96	\$269	\$393	\$340	\$569	\$509	\$473	
Recoveries	\$29	\$11	\$61	\$11	\$52	\$1	\$22	\$22	\$17	\$10	\$0	\$0	
Expenditures	(\$112)	(\$128)	(\$352)	(\$398)	(\$24)	(\$50)	(\$1,140)	(\$187)	(\$192)	(\$802)	(\$159)	(\$263)	
Ending Balance	\$3,687	\$3,730	\$3,546	\$3,035	\$3,115	\$3,162	\$2,313	\$2,541	\$2,706	\$2,483	\$2,833	\$3,043	\$3,043
Net Change Month	\$295	\$43	(\$184)	(\$511)	\$80	\$47	(\$849)	\$228	\$165	(\$223)	\$350	\$210	
Carryover	\$3,043												
Beginning Balance	\$3,043	\$3,082	\$2,897	\$3,055	\$2,303	\$2,505							
Collections	\$135	\$319	\$31	\$45	\$211	\$202							
Recoveries	\$0	\$0	\$0	\$0	\$0	\$0							
Expenditures	(\$16)	(\$504)	\$127	(\$797)	(\$9)	(\$62)							
Ending Balance	\$3,182	\$2,897	\$3,055	\$2,303	\$2,505	\$2,645							
Net Change Month	\$19	(\$185)	\$158	(\$752)	\$202	\$140							

## Telecommuting

1. **How many EEOC employees nationwide are eligible for telecommuting? Of that amount, have 100 percent been given the option to telecommute? And finally, what percentage of employees actually do telecommute?**

We actively support telecommuting. In FY 2003, 75% of our employees, or 1,933 employees nationwide, were eligible for telecommuting and 40% of those eligible employees participated. Telecommuting opportunities depend on eligibility of the job position; management assessment of employee ability to self-direct and perform independently; employee interest; suitability of the employee's home office arrangements; and agency resources to equip a home office.

The EEOC's Office of the Inspector General conducted a review of our infrastructure, including space utilization, to determine if the expanded use of telecommuting could help EEOC achieve cost savings and other benefits. The IG's report, issued in January, 2003, concluded that it could, and that much of the work done in EEOC's field offices is well-suited for frequent telecommuting.

Furthermore, our Office of Information Technology is expanding the use of technology for telecommuting, including the provision of virtual private network (VPN) solutions for teleworkers to remotely access EEOC's internal information systems. We appreciate the reference provided to us on telework during the March 25 hearing. Our IT staff have spoken with the President of the Telework Consortium and plan to follow up to obtain additional information.

## Technology Improvements

1. **The budget requests approximately \$18 million for technology, to include expanding the information technology infrastructure, document management, and continued migration to the Microsoft Office Suite. Please provide a status of your IT infrastructure efforts.**

Our IT infrastructure expansion will assist the agency in "getting to green" under the President's Management Agenda and is important to supporting our work in every area. During FY 2004, EEOC is upgrading all desktop computers to the Windows XP Operating System and

replacing all PCs in our field offices to provide the additional computing power required for our desktop applications and new information systems. We are expanding the bandwidth of our computer network to increase the speed of data transmission. We are also enhancing the current infrastructure to increase the capacity for storing electronic information. All of these efforts will be completed during this fiscal year and, thus, prepare the agency for the implementation of additional document management projects and migration to the Microsoft Office Suite.

2. **Developing an online infrastructure for the public to submit complaints, and for EEOC to manage those submissions, would certainly reduce the costs of charge processing and handling. How much of the requested funding for technology will be used to develop an online system for the public to submit complaints to EEOC?**

The EEOC currently provides several ways for members of the public to submit information relating to potential charges or complaints of discrimination. These include telephone and walk-in inquiries, appointments for intake interviews, and mail-in questionnaires. These inquiries may result in the filing of a formal, signed and verified charge of discrimination. The EEOC is not developing an online system for electronic filing of charges of discrimination at this time. We did conduct research on e-filing, but determined that electronic filing of the formal charge was not practical, at this time, due to the required investigator and complainant interaction in developing the charge. Electronic charge filing is a concept that may be considered again in the future. For now, instead, we are developing an option for electronic, paperless submission of the pre-charge intake questionnaire, which will assist the charge process.

The President's Management Agenda Initiative for Expanded Electronic Government aims to increase customer service by providing on-line options for transmitting and receiving information. During FY 2004, EEOC is developing an on-line software application to assist with the receipt of intake questionnaires. This tool will allow the public to electronically submit an intake questionnaire, which outlines the alleged employment discrimination, to the EEOC for processing. This tool will augment, not replace, our current mechanisms for collecting complaint information -- such as mail-in questionnaires and phone-in and walk-in inquiries. Upon receipt of the electronic questionnaire, an EEOC staff person will contact the potential charging party to provide one-on-one counseling, as in our current intake processes. In the FY 2005 budget request, \$200,000 is included to support and expand the functionality of this application. Currently a prototype of this tool is being presented within EEOC for comment. We anticipate it will be ready for pilot to a small audience by the end of this fiscal year. We would be pleased to demonstrate the pilot system to Members of Congress and their staffs.

### The President's New Freedom Initiative

1. **The budget requests \$500,000 for the President's New Freedom Initiative. Which states are currently participating in this program with EEOC? How many more states will be reviewed with the additional \$500,000?**

EEOC's efforts under the President's New Freedom Initiative involve several activities, including the State Best Practices Project, for which the Budget includes \$500,000. To date, four states—Florida, Maryland, Washington, and Vermont—have partnered with the EEOC to promote the hiring of people with disabilities in state government jobs. We will work with governors, state government officials and their staff, as well as state disability commissions and boards, to review each participating state's practices with respect to hiring, retention, advancement, and reasonable accommodation. We hope that at least ten additional states will participate in the project by the end of 2005.

EEOC also will continue to develop new, innovative strategies to further fulfill the President's goal of promoting equal employment opportunities for individuals with disabilities, including: 1) issuing technical assistance documents on how the Americans with Disabilities Act (ADA) applies to specific disabilities, such as epilepsy and intellectual disabilities; 2) expanding our practical training, outreach, and education on the employment of qualified individuals with disabilities to a broader cross-section of employers of all sizes and types; 3) working with disability advocacy groups, the Centers for Independent Living, and other organizations that provide employment-related services to people with disabilities to educate individuals, who either have never worked before or are seeking to return to work, about their ADA rights; and, 4) promoting mediation and voluntary resolution of disability discrimination disputes when and if they do arise in the workplace.

### "Bridge" Health Insurance for Early Retirees

1. **EEOC enforces the Age Discrimination in Employment Act of 1967. The ADEA protects workers age 40 and older from discrimination in hiring, discharge, pay, promotions, fringe benefits, and other aspects of employment. A federal appeals court held that "bridge" health insurance coverage for early retirees violates the ADEA if it is reduced when the early retiree becomes eligible for Medicare at age 65. In July 2003, the EEOC issued a proposed regulation that would effectively overturn this ruling. The concern is that the court ruling has deterred employers from offering this pre-Medicare coverage for early retirees.**



**Furthermore, the additional financial burden of providing health insurance at the same rate to employees regardless of age could cause many employers to reduce their coverage for all employees, or even eliminate health insurance coverage altogether.**

**Please explain EEOC's position on this issue, and tell us when you expect a regulation to be finalized .**

In the year 2000, the Commission issued guidance adopting the federal appeals court decision in Erie County Retirees Association v. County of Erie, 220 F.3d 193 (3d Cir. 2000), stating that retiree health plans that reduce or eliminate benefits on the basis of age or Medicare eligibility violate the Age Discrimination in Employment Act (ADEA). Thereafter, employer groups and labor unions voiced compelling concerns about the impact this interpretation would have on the ability of employers to continue to provide retiree health benefits. The Commission was presented with strong evidence that continuing to enforce the policy in the 2000 guidance would have a deleterious effect on employer-provided retiree health coverage. Concerns were expressed that the easiest way to comply with the Commission's policy was to drop retiree health coverage altogether, or reduce coverage for those retirees not yet eligible for Medicare, because these benefits are voluntarily provided by employers. These concerns arise because it is costly for employers to provide lifetime health benefits, and it is extremely difficult if not impossible for employers to determine when benefits provided to pre- and post- Medicare eligible retirees are, in fact, equal.

Consequently, responding to the concerns raised by a broad spectrum of stakeholders, the Commission voted in August 2001 to rescind the 2000 policy. During 2002 and 2003, we met with human resource consultants, actuaries, benefit consultants, state and local government representatives, unions, employers, and stakeholder groups to revisit this issue. After carefully studying the problem, the EEOC determined that the best way to achieve the important public goal of providing affordable health care coverage for older Americans is to give maximum flexibility to labor organizations and employers so they can design retiree health plans that best meet the needs of the retirees. This required a different approach.

The Age Discrimination in Employment Act (ADEA) authorizes the EEOC to establish "reasonable exemptions" to its provisions as the Commission may find "necessary and proper in the public interest." In July 2003, the Commission published in the Federal Register a proposed rule for notice and comment, which would exempt from the ADEA the practice of coordinating

employer-provided retiree health coverage with eligibility for Medicare or a state-sponsored retiree health benefits program. Specifically, the rule would permit employers to provide health care coverage to retirees until they are eligible for Medicare at age 65 and to alter or eliminate that coverage when the retiree becomes eligible for Medicare or a state-sponsored equivalent.

This proposed exemption is intended to ensure that the Commission does not inadvertently create a disincentive for employers to provide retiree health care. Under the new rule, employers and labor organizations would have flexibility in offering retirees a range of health benefits.

On April 22, 2004, in an open meeting, the Equal Employment Opportunity Commission voted 3-1 to approve a final rule that would exempt from the Age Discrimination in Employment Act (ADEA) the practice of coordinating retiree health benefits with Medicare. The action will now be reviewed by other federal agencies and at the Office of Management and Budget before it takes effect. After interagency and OMB review, a final rule would be published in the Federal Register.

## QUESTIONS FOR THE RECORD SUBMITTED BY CONGRESSMAN SERRANO

*Introductory Note:* For clarity and consistency in our responses, the EEOC would like to provide this introductory note on terminology used in answering questions regarding repositioning, workforce restructuring, and reorganization.

In order to fulfill the President's Management Agenda to make the agency more customer-centered and results-oriented, the EEOC seeks to:

- provide fast, responsive, and high quality services by maintaining appropriate staffing and enhancing employee professionalism;
- increase the efficiency and effectiveness of our operations by streamlining functional responsibilities, broadening the spans of control, reducing layers of management, and redeploying resources to our front-line, mission-related functions; and
- enhance our delivery of services to better serve the public with a series of program initiatives.

In the following answers, the EEOC will use the term "repositioning" as it is used in the FY 2005 performance budget request and Chair Cari M. Dominguez's March 25 Statement to the Subcommittee, to refer broadly to a range of EEOC efforts to allow the agency to become more customer-centered and responsive to the needs of the public. "Repositioning the Agency to Better Serve the Public" is the second of the three funding themes set forth above. Repositioning is thus the umbrella term by which we refer to several efforts described in the budget request at pages 3 and 60-61. As noted in the Analysis of Change table, Subsections IID and IIE (pages 11 and 14), repositioning includes but is not limited to the implementation of a National Contact Center for handling public inquiries to EEOC more efficiently. This effort and others noted such as office relocations within metropolitan areas to lower rental costs do not involve changes to the agency's organizational structure.

In contrast, we use the term "workforce restructuring" to refer more specifically to one component of our repositioning efforts. Workforce restructuring (or "reorganization") is the process of examining the agency's service delivery infrastructure, including office locations, organizational structure, and staffing configurations, in both field and headquarters. The purpose of this effort is to realign agency resources and staff skills to meet workload demands more efficiently and effectively. We are currently preparing the EEOC's workforce restructuring plan in accordance with OMB Bulletin No. 01-07, "Workforce Planning and Restructuring," which directs federal agencies to develop five-year restructuring plans to streamline agency operations, deploy resources to direct service delivery positions that interact with customers, and flatten the federal hierarchy, reducing the time it takes to make decisions and the numbers of layers in government. This will enable us to achieve long-term improvements in our cost structure and service to the public.

## EEOC RESTRUCTURING AND CLOSURE OF OFFICES

Madam Chairwoman, a number of serious questions have been raised about the possible restructuring and closure of EEOC offices. As you know, many of these concerns stem, in part, from a series of recommendations contained in a report that you commissioned from the National Academy of Public Administration (NAPA) last year. There seems to be considerable confusion and consternation - both within and outside the Commission - about what reorganization ideas are under consideration and the scope of any possible office closures. In the Conference Report on the FY 2004 Consolidated Appropriations Act, the Subcommittee very clearly asked you to report back to us on this issue before moving forward precisely to avoid the confusion that now seems to be present. It is crucial that you set forward a clear and understandable plan that explains the process you expect to use to make decisions about the Commission's structure and organization.

1. The Subcommittee is concerned that, as of March 25, 2004, the EEOC has failed to submit the reorganization plan, although you appear to be proceeding with implementing portions of it. When do you intend to forward the reorganization plan to the Subcommittee?

While the EEOC has a repositioning plan (see *Introductory Note*), which includes the concept of a National Contact Center and other similar initiatives to streamline agency operations, become more customer-centered, and operate more efficiently, the EEOC has not completed a reorganization plan. We are in the process of completing a comprehensive workforce restructuring plan that will be subject to Commission vote and, if approved, phased in over a five-year period if funding is provided as requested. We will share the restructuring plan with the Subcommittee and all appropriate Congressional committees as soon as it is approved by the Commission.

Apart from restructuring, we have moved ahead with administrative changes that can be effected quickly and easily and will facilitate the agency's future plans for restructuring. For example, we have taken a number of administrative actions to streamline and consolidate management responsibilities without the elimination of any office. To address critical vacancies occurring as a result of recent retirements in key district office leadership positions, the agency has expanded the spans of management responsibility, by asking high producing directors in neighboring offices to assume the additional duties of a vacant district office on a temporary basis. These actions do not involve organizational changes.

2. Some public reports have suggested that you are interested in reducing the current structure of 51 offices to a much smaller number of offices, similar to recommendations found in the NAPA report? Is it your goal to cut the current number of offices, and if so, by how many?

These public reports are incorrect, as we have stated repeatedly. The concerns that we have heard expressed about the possible reduction of EEOC field offices to a much smaller number of offices may have arisen from inferences drawn from one of the NAPA recommendations calling for ten EEOC "lead" offices. But the NAPA recommendation does not translate into 41 office closures out of the current 51 field offices. To the contrary, the NAPA report discusses an array of field and area offices, mobile units and voluntary telework arrangements to enhance the Commission's presence nationally. While it is possible that some offices may be consolidated due to their proximity, it is equally conceivable that new offices and a stronger presence will be established in areas of high, diverse population growth.

A review of workload and demographic data will help the Commission to determine the most prudent use of resources throughout the country. We discuss these criteria in the answer to the next question, below.

**3. What criteria will you use to decide whether or not to close an office, or to change the current structure of a particular office?**

As we complete our restructuring plan, the Commission will consider a number of factors in determining the structure of a particular office, including but not limited to: (a) the size of the workload, both federal and private sector; (b) the presence or absence of state and local Fair Employment Practice Agencies (FEPAs) within the jurisdiction; (c) the size and diversity of the jurisdiction's population and workforce; and (d) the proximity of other EEOC offices. In addition to these core criteria, there will be other variables. When office leases expire we are taking steps to "right-size" our office space by relocating to space that is more appropriate, achieving long-term rent savings. For example, we have begun to plan the move of the 36 employees in the Washington Field Office into our headquarters building. This move will save EEOC approximately \$500,000 a year in rent. We expect the move to take place in late summer. Similarly, our relocation of the San Francisco District Office resulted in a 12% reduction in rentable square feet.

**4. To what extent have you taken steps to assess the unique needs of local communities before contemplating any restructuring of local offices? Do you have any plans for undertaking such assessments before making any structural changes to offices? If so, will you be preparing a report with your conclusions?**

As stated above, we anticipate that any proposed restructuring of offices will be designed to obtain operational efficiencies and improve our service. The managers of our field offices have identified unique needs of the areas that they serve and in addition, we have asked our district directors to recommend how EEOC could do a better job of serving our many stakeholders. We continue to scan demographic data, including population growth, civilian job growth, minority population, and immigration patterns and to work closely with our field personnel to ensure that we meet local needs. For example, according to 2000 Census data, North Carolina has the fastest growing Hispanic population (394% from 1990 to 2000) and our

North Carolina offices must be staffed with bilingual investigators to serve this growing population. Our comprehensive workforce restructuring plan will consider all of these factors, will be subject to Commission vote, and will be guided by the principle of making EEOC more effective and more accessible to the public.

5. **To what extent have you made any efforts to reach out to those who would be affected by changes to office locations/structures in local communities to determine how best to meet their needs? If so, what have been the results? Was this type of outreach done prior to the release of the NAPA recommendations suggesting that offices be closed?**

The Commission has made extensive efforts to seek the input of all those who might be affected by changes to the field structure. This outreach was done prior to the release of the NAPA report, as well as after. When the NAPA project team began its study in the summer of 2002, all EEOC employees were given the opportunity to provide suggestions to NAPA. The NAPA project team conducted structured interviews with 60 individuals or groups in both headquarters and field offices and visited a sample of district, area, and local offices. The NAPA team also interviewed representatives of a number of stakeholder organizations as well as community representatives.

After the NAPA report was issued on February 25, 2003, we made the NAPA report available to all of our stakeholders and staff for review and solicited their comments. Additionally, discussions have been held with various stakeholder groups including the Leadership Conference on Civil Rights, a coalition of 180 national civil rights groups. The Leadership Conference submitted extensive comments. We also discussed restructuring with both the plaintiffs' and management bar at a meeting of labor and EEO lawyers sponsored by the American Bar Association. To obtain further input into the repositioning process, all EEOC employees were asked to comment on the NAPA report and to make their recommendations for improving the efficiency of the agency. More than 200 individual employees and groups of employees did so.

On September 8, 2003, the Commission held a public meeting that enabled us to gather more input from government reform experts, stakeholder organizations, and EEOC union and management leaders. In early 2004, EEOC Vice Chair Naomi Churchill Earp and Commissioner Paul Steven Miller led a work group of field and headquarters employees to provide further input and consultation, on issues including criteria to be considered in determining field office structure.

The input we have received is being carefully evaluated as we complete our plan.

**6. Have you developed a plan for how any changes in local offices organization will be communicated to local communities?**

Communication will be a key component of the reorganization plan. While we will continue to keep our employees, stakeholders, and Members of Congress informed of our efforts, any customized communications and roll-out plan would have to follow Commission approval of a reorganization plan and be tailored to the plan as approved. We envision that there will be a multi-tiered communications effort involving the field and headquarters. The Commission will use its traditional means of communication such as national and local media outreach, interviews, press releases, and postings on our public web site. Local efforts will include meetings and communications with constituent groups and community leaders to explain that there will be no diminishment of services to the communities in which our offices are located. The designation of a particular office as district, area or local office will not impact upon our accessibility to the public or the way we process claims of discrimination. Again, our efforts to reposition the agency are informed by our desire to make EEOC more effective and more accessible to our stakeholders.

**7. Many have noted that as much as 25% of the EEOC's staff is located at the main headquarters in Washington, in a building located in a very expensive area of the city. Do you have plans to restructure the staffing and/or location of your headquarters?**

The restructuring plan will encompass both field and headquarters. The headquarters office lease expires in July 2008. We plan to work with GSA to evaluate all our options. We also note that the Office of Federal Operations is headquarters' largest office. This Office is an operations office, not a support office, and it performs the appellate function for federal sector complaints. The Office has a staff of 119 or 21% of the total headquarters staff. Appellate and systemic litigation attorneys are also operations staff located in headquarters. If this operational staff is removed from the headquarters count, the headquarters staff accounts for less than 20% of total agency staff.

**8. Will you commit to a public comment process before any changes are finalized?**

Before any changes are finalized, the public continues to be invited to comment. As indicated in response to question number 5, we have already undertaken an extensive and prolonged public comment period. Furthermore, the comprehensive workforce restructuring plan will be subject to Commission vote and submitted to Congress.

9. **Do you plan to pilot your restructuring program before making a complete change? If "yes," how? If "no," what are your plans and timeframe?**

Our workforce restructuring plan will be a five-year plan and it will be phased in. Therefore there will be opportunities for any necessary adjustments over this time period.

One component of our repositioning effort that will be conducted on a pilot basis is the establishment of a National Contact Center. It will be operated on a two year pilot basis. We anticipate the Contact Center will start up in the middle of FY 2005.

10. **Do you think having broad staff "buy-in" is essential to a successful restructuring and do you think you currently have "buy-in" from EEOC staff? In other words, do you believe there is internal support for closing and/or restructuring EEOC offices, and do you believe such support is necessary before moving forward?**

All EEOC staff have been invited to participate in the repositioning initiative. The NAPA report was made available to all staff and their comments were sought. More than 200 EEOC employees sent in suggestions as to how EEOC could be made more effective. Additionally, many district directors and field staff participated in work groups on repositioning. We have actively engaged our employees in an effort to secure their input and "buy-in". While we strive to obtain as broad a consensus as possible, our mandate is to insure that we do what is best for the programs that are our responsibility and the public whom we serve.



11. EEOC's FY 05 Budget Estimates indicate that almost \$2 million is already being spent this year, FY 04, on "workforce repositioning." What specifically is this money being spent on? Could you please describe a project by project breakdown of what EEOC is spending this \$1,979,000 repositioning money on in FY 04?

This fiscal year, the Commission budgeted two million dollars for repositioning the Agency, minus a 1% rescission making the actual budget \$1,979,000. The chart below indicates funds that have been spent and further funds that we anticipate spending in FY 2004.

	<u>Spent/Obligated</u>	<u>Available</u>
National Contact Center, evaluation, development and procurement	\$30,000	\$959,000
Permanent Change of Station Vice-Chair Repositioning Workgroup	\$110,000 \$31,000	\$59,000
Relocation of Washington Field Office to HQ	\$300,000	
Human Capital Assessments	\$132,000	\$358,000
TOTAL	\$603,000	\$1,376,000

12. For FY 2005 EEOC is requesting \$5 million for "*Workforce Repositioning (including a National Contact Center)*." What is the estimated cost of the proposed National Contact Center for FY 2005 and for each successive year?

If funding is provided as requested, the National Contact Center is expected to be operational in the middle of fiscal year 2005. The costs of operation and maintenance of the National Contact Center are directly linked to call volume. Therefore, the EEOC intends to start operations with a pilot phase, to allow for the collection of refined baseline data on service demands, performance metrics and costs during the first half of the pilot, and an assessment of performance during the second half. Cost proposals from potential vendors have not yet been analyzed, however, EEOC budget projections include at least \$1 million in FY 2005 and we would estimate \$2 to \$3 million annually for FY 2006 and future years. This compares with an estimate of approximately \$12 million, for infrastructure alone, to establish an in-house contact center.

13. **What progress has the Agency made in knowing how much this endeavor will cost? What are the hidden costs, like EEOC staff time to prepare scripts, train staff, and talk down frustrated callers who have been subjected to an extra layer of transfers and potentially incorrect information when speaking to a contract operator?**

Scripts and training manuals developed and updated for contact center use will serve a dual purpose. These materials will be sent to field staff for use in training new staff and fielding routine inquiries. We have already developed training on all the laws enforced by EEOC, the private sector charge process, the federal sector EEO complaint process, and issues involving egregious incidents of harassment. Additionally, we have developed referral directories for state, local and federal agencies and related private organizations. All Customer Service Representatives (CSRs) will also have at their disposal a state of the art knowledge management data base that will provide the CSRs with immediate access to answers to the most frequently asked questions. CSRs will not engage in intake counseling, nor will they provide legal interpretations. CSRs will transfer to appropriate EEOC staff only those calls which require counseling, advice or legal interpretation. According to EEOC's March 2003 survey, only 39 percent of the calls related to potential charges; the remaining 61 percent comprised topics that could be answered promptly and accurately by trained CSRs.

14. **How much does requiring this more specialized background for contact center agents drive up the price tag?**

The EEOC solicitation for bids on the National Contact Center does not require hiring of customer service representatives with specialized EEO experience. Therefore, there is no added expense. The EEOC has encouraged vendors to consider recruiting representatives (agents) with relevant backgrounds; however, we believe that training potential staff will be key to the success of the representatives. These individuals will be able to respond to questions if properly trained. Because call centers schedule their staff according to peak volume times, many of these jobs will be part-time and perhaps more attractive to EEOC retirees or EEO personnel looking to supplement their incomes. Hiring more experienced employees may have the added benefit of reducing the attrition rate.

15. **If the idea would be to have trained EEO staff answering the telephones, would it not make more sense to use EEOC's own staff and invest in improved technology and hiring additional employees?**

The EEOC internal work group considered a number of options in its report on call center feasibility. These options included: a fully outsourced center; interagency service agreements with other government agencies; outsourced technology with in-house staff; and in-house technology with outsourced staff. In its research, the work group discovered that the investment in technology and telecommunications upgrades required to establish an in-house contact center for a volume of only one million calls per year would be cost-prohibitive. The work group learned that EEOC can provide more and better service to our customers by contracting out a

customer contact center which provides general information. More specifically, it would cost an estimated \$12 million, for infrastructure alone, to establish an in-house contact center. There would be substantial additional costs for maintaining the telecommunications and technology infrastructure and updating it annually, and for staffing and space rental for in-house employees.

The internal work group conducted an informal market survey with vendors from the call center industry during the spring of 2003. Over the course of a series of briefings and visits to several private and government call center facilities, the group learned that because private vendors usually host several clients, they can spread out the cost of software, hardware, updates and maintenance. Clients benefit from these economies of scale. For government agencies such as the Social Security Administration, which receives a million calls a day, investment in the required technology makes sense. However, for a small agency such as EEOC, the investment would not be cost-effective. We note that in a contact center hosting several clients, EEOC would still have contractor personnel dedicated to EEOC contacts.

**16. Is it correct that the proposed National Contact Center will receive calls presently being handled by EEOC employees?**

The creation of a National Contact Center would provide EEOC with a capacity that is not currently contemplated, such as after hours operations, multiple-language capacity and logging and tracking data to identify workplace trends. These functions represent new functions for the EEOC, not new ways of performing existing work.

**17. Does the EEOC intend to conduct a competition which includes consideration of in-house performance? If not, why not? Has the EEOC obtained an A-76 Waiver from OMB? Why is the EEOC privatizing this work without any formal consideration of in-house performance, in violation of A-76's prohibition against direct conversions absent OMB approval? Isn't a direct conversion absent OMB approval a violation of the A-76 circular? If the EEOC moves forward with its workforce repositioning plans, EEOC employees, who presently handle public inquiries, may lose their jobs when offices are closed, relocated or downsized. Doesn't failing to consider in-house performance deny tax payers the benefits of real competition and deprive EEOC employees the opportunity to compete in defense of their work?**

The EEOC does not currently have a national contact center. In order to improve its service to the public, the Commission has decided to pilot a national contact center that will handle general information inquiries with appropriate technological assistance to insure consistent, quick and accurate responses and eliminate the likelihood that callers will abandon their efforts due to frustration. It will be staffed with persons dedicated to a full-time public information function. The Commission has issued a solicitation for a contractor to conduct a pilot national contact center to see if a centralized contact point for general information requests will best serve the public's needs consistent with the Commission's resources. The Commission

has arrived at this point after extensive consideration of alternatives, a study by NAPA, outreach to various stakeholders (including EEOC's employees and the union that represents them) and a recommendation and report from a dedicated work group of EEOC staff. The work group carefully considered various options including whether to staff such a center with EEOC employees or contractor personnel, and whether to purchase or contract for the supporting technology. The work group recommended that the Commission contract for this service on a pilot basis to determine the precise metrics involved (i.e., to develop detailed measures on call volumes and handling as well as the cost associated with these types of general information inquiries) and whether such a centralized center can meet the public's and the agency's needs within our resources.

The EEOC has not sought a waiver from OMB because the Circular does not require that the Commission conduct a competition for this effort. The EEOC believes that the work to be performed by the National Contact Center represents new work, or alternatively, a segregable expansion of work. The creation of a National Contact Center would provide the EEOC with capacity that is not currently contemplated, such as after hours operations, multi-lingual capacity, and tracking and logging of data to identify workplace trends. Although a competition was not required by the Circular, we have, nevertheless, carefully considered the costs of performing this function by EEOC employees versus contractor personnel. Based on available data, we calculated and anticipate that the taxpayers will best be served by exploring the economies that can be achieved by a contractor-operated contact center with contractor-owned technology. A more precise comparison can and will be made once the pilot establishes reliable metrics for both performance and cost.

**18. Isn't it true that the NAPA report, which recommended the establishment of a national customer service center, did not call for a *privatized* center?**

The National Academy of Public Administration (NAPA) report did not recommend whether the National Contact Center should be in-house or privatized. NAPA did suggest, however, that EEOC explore the experiences of other government agencies in establishing call centers. In doing so, we found that many of the federal, state, and local government call centers are operated by private contractors. The EEOC internal work group's report presents a lengthy list of such agencies. Additionally, the Perdue Government Call Centers Performance Benchmark Report noted that nearly half of the one hundred federal call centers benchmarked were operated by private contractors.

**19. Is it the EEOC's intent to privatize the call center work driven by a determination to adhere to a self-imposed arbitrary personnel ceiling that automatically prevents the agency from ever investing in its own workforce?**

No. We believe a bold vision is necessary to bring about dramatic improvements in EEOC's service to our customers. It hardly matters what information or services we have to

offer, if people cannot consistently and quickly reach us. Our vision is an agency that offers premier customer service, providing a model for the rest of government. We want to fully implement the President's Management Agenda which calls for improved human capital management, expanded e-government, and increased focus on meeting the needs of our customers. Following the philosophy of our successful Priority Charge Handling Procedures, we believe we need a process where every call or contact receives an appropriate level of service. For example, certain routine inquiries could be handled by an electronic interactive voice response system, while others inquiries would be routed to a call center representative or an EEOC expert, depending on complexity. We want to fully utilize available state of the art technology to improve capacity, consistency, quality assurance and accountability in handling our large volume of calls. We want to be quickly accessible and responsive to the public. We want to expand language capacity in call handling and we want to expand service hours. Finally, we want to be able to capture and analyze information from inquiries to identify emerging trends and issues and to better inform policy development.

20. **Perdue's Government Call Centers Performance Benchmark Report conducted a year-long study, which, found that the quality of service provided by 100 government centers was better than service provided by industry centers. Customer satisfaction scores for government call centers were 10 percent higher than those for business-to-business call centers, and 30 percent higher than scores for business-to-consumer centers. Are you familiar with this report?**

Yes, the EEOC is familiar with the Perdue report. The EEOC internal work group studied the report and referenced it in the full report to the Commission. The high performance of the government call centers in the area of customer satisfaction was certainly a factor the work group considered, as well as the fact that nearly 50 percent of the federal government call centers were operated by private contractors.

21. **In an *American Immigration Lawyers Association* survey released in late August, 79 percent of the 515 lawyers, representatives of community organizations and members of the general public who responded said they were unhappy with their experience with the call center. More than 60 percent gave the toll-free number an overall rating of 1 on a scale of 1 to 5, where 5 indicates the highest level of satisfaction. Survey respondents were particularly dissatisfied with the lack of "meaningful assistance" provided by call center employees. More than 60 percent said that a call to the toll-free number had not resulted in any useful information." Are you familiar with this survey?**

Yes, the EEOC is familiar with this informal survey by the American Immigration Lawyers Association which reported on customer satisfaction with the Department of Homeland Security, Bureau of Citizenship and Immigration Services (BCIS) call center. From our review of the report, it was immediately apparent that the BCIS call center has several design features

which would not apply to EEOC. At the time it implemented its call center, the BCIS cut off access to regular BCIS service centers. This will not happen with the EEOC contact center because our intent is to add access and capacity to our field offices. The parties to charges and their representatives will still be able to telephone field offices directly to make inquiries. The BCIS call center also did not provide its customer service representatives with access to case information—callers were told to write a letter to the regional center to get information on case status. This will not happen with EEOC. We will provide customer service agents with access to charge status information and the ability to transfer nonroutine inquiries directly to EEOC experts. Additionally, continuous quality assurance monitoring of calls and “mystery shopping” calls will be conducted so as to ensure that EEOC’s contact center agents are performing to expectations.

22. **According to the testimony at the EEOC’s public hearing on September 8, 2003, even with the current hiring freeze, “three-fourths of District Directors believe—continue to believe that calls from the public are being quite adequately handled with the current staff.” Did you take this into consideration before proceeding with the Pre-Solicitation Notice?**

See answer to question 23.

23. **Similarly, in their follow up remarks to the meeting, the Regional Attorneys urged that, “more effort should be made to put resources into the systems that we know work, like fully staffed offices, rather than investing millions into unproven schemes.” Was this taken into consideration?**

Yes, the comments of the District Directors’ representative and those of the Regional Attorneys’ representative were reviewed and taken into account during Commission deliberations prior to approving the recommendation to move forward with the solicitation process. In addition to the comments of the District Directors and the Regional Attorneys, the Commission considered the findings of the internal EEOC work group contained in a comprehensive report issued in September 2003. The work group consisted of field and headquarters representatives including two District Directors, the Director of the Office of Information Technology, a Deputy District Director, a Regional Attorney, an Enforcement Manager and Intake Supervisor, an Administrative Judge, and representatives from the Offices of Federal Operations and Field Programs. Technical advisors to the group were provided by the Offices of General Counsel, Legal Counsel, Information Technology, Chief Financial Officer and Administrative Services, and Human Resources.

The findings of the work group indicated that some calls from the public were not being handled efficiently because, in order to meet demand, many professional and management staff are deployed to answer routine calls from the public, leaving them with less time to devote to outreach, investigations, and litigation activities. Thus “current staff” means using many employees at high grade levels to perform what is essentially lower-graded work. To meet

demand, managers, supervisors, investigators, attorneys and clerks are deployed to answer phones, retrieve messages, and return calls. Offices reported taking from one to five days to return calls. The work group found that the 51 field locations have various procedures in place for responding to contacts, and various types of telephone systems and equipment, all resulting in a wide range of capacity and performance. Many procedures are unchanged from more than 30 years ago, having not kept up with advancements in technology or the opportunities for more efficient use of human capital. Complaints about poor customer service and inaccessibility are received regularly by field and headquarters office directors as well as the Office of the Chair and by other Commission offices.

In considering the Regional Attorneys' suggestion that we "fully staff" offices as a way of addressing the customer service needs, we found that investing in staff alone without the concomitant technological investment required to make us more responsive to the public will not improve our situation. The technology alone required to set up an in-house contact center is estimated at \$12 million. There would be substantial additional costs for maintaining the telecommunications and technology infrastructure and updating it annually, and for staffing and space rental for in-house employees.

**24. In view of these studies and the concerns of the District Directors and Regional Attorneys, how can the EEOC justify that an outside contractor can respond to public inquiries better than experienced and knowledgeable EEOC staff.**

We have said that with proper training and appropriate oversight, Contact Center employees could do a good job of responding accurately to inquiries from the public and in fact could do it more efficiently than what is currently being done. Most of the public's questions (approximately 60 percent) are not about filing a charge, but are related to other matters. Questions involving interpretation of law or agency procedures would be referred to EEOC specialists. That expertise would be available, but only when needed. Additionally, a National Contact Center would make EEOC available to the public after the close of the normal business day. The agency would be more accessible to the public if individuals could call us in the evenings and outside of their normal working hours to get basic information and become more informed about their rights. More importantly, the National Contact Center would free our staff to do what they do best. We need our investigators to spend the majority of their time investigating cases rather than answering phone calls. We need our attorneys to litigate and be relieved of routine calls.

**25. According to "Analysis of Telephone Calls from the Public," dated June 4, 2003, the majority of EEOC calls are currently handled by GS-12's, i.e., senior Federal investigators. The Executive Summary assessing a National Contact Center states that Agents will go live after only 3-4 weeks of training. How will customer service be improved by having calls from the public answered by private contract operators with short term training, rather than experienced EEOC personnel? Isn't it fair to**

**expect that more experienced personnel are more likely to be able to resolve a caller's issue without transfer?**

Most calls received by the EEOC are not of a complex nature. According to EEOC's March 2003 survey, 61 percent of the calls cover topics other than potential charge filing. These calls do not require the attention of GS-12 employees. Instead, these employees will be most effectively utilized performing investigative and outreach duties. We believe that with EEOC-developed training and scripts, Contact Center agents can respond effectively and accurately to most inquires from the public. Calls of a complex nature or requiring any type of a legal interpretation will be forwarded to appropriate EEOC staff.

- 26. Isn't the area of employment discrimination fraught with complex issues that might not be readily discerned as such? For example, will a contract operator, with three weeks training, be able to apply the Agency's policy guidance (EEOC Compliance Manual, "Threshold Issues," No. 915.003) explaining Supreme Court caselaw, to understand the court's definition of an employee?**

The EEOC has never planned to have contact center employees answer questions relating to complex issues of employment discrimination law. The EEOC's National Contact Center will be capable of answering the most frequently asked questions posed to the EEOC. The Customer Service Representatives (CSRs) will not provide legal interpretations of case law or provide advice to callers based on the EEOC's manuals. The operators will use a searchable database and an EEOC-developed assessment instrument to assist in referring callers. Callers with potential charge inquiries or legal and complex questions will be referred to the appropriate EEOC staff.

- 27. Will a contractor understand to ask about integrated employers, joint employers, successor employers?**

Customer Service Representatives (CSRs) will be trained to recognize more complex factual inquiries and refer those seeking an interpretation of the law or a set of facts to our field offices. CSRs will describe the laws EEOC enforces; serve as a clearinghouse for information on employee rights and employer responsibilities; provide information on how the investigative process and mediation work; give the location and telephone numbers of our field offices and the hours of operation; provide case status information and file disclosure information; provide referral information for other agencies; and provide responses to requests for training and education. Most calls to EEOC cover these subjects. However, if a caller wants to discuss a potential charge of discrimination, the caller will be transferred to appropriate EEOC field staff. Contact Center employees will be trained to recognize and refer to EEOC field staff questions regarding jurisdiction over a particular employer, including whether the employer meets the jurisdictional threshold. They will *not* make jurisdictional determinations or turn away potential charging parties.



28. **If a potential charging party does not file a charge within a certain time frame, s/he will lose this statutory right, correct? While Title VII provides 180 days, doesn't it expand to 300 days if there is a work-share agreement? Aren't there overlapping state and county protections that provide a full year to file a charge? What if a contract operator provides incorrect information regarding filing times on the waning days of his or her right to file a charge?**

The Commission is sensitive to protecting the rights of all potential charging parties. Customer Service Representatives at the National Contact Center will be trained to inform all callers to immediately contact the appropriate EEOC office to confirm the correct filing deadline if the timing of filing a charge appears to be an issue. Thus, for those individuals who are close to the statutory deadline, they will be referred directly to appropriate EEOC staff. Furthermore, CSRs will utilize an EEOC-developed web-based assessment tool. This tool will allow CSRs to administer a questionnaire and electronically route the questionnaire to the appropriate EEOC field office. An appropriate EEOC staff person will promptly contact the potential charging party directly. This system will protect those contacting the EEOC within the statutory time frame and permit them to file a charge within the statutory deadlines. Furthermore, to ensure the accuracy, consistency, and professionalism of the CSRs, the EEOC will insist on quality control monitoring. Monitoring will be conducted by listening-in on calls and critiquing responses. EEOC will also survey the callers and receive feedback concerning their experience. This information will be utilized to continuously improve the National Contact Center operations. Situations where the Contact Center staff may have provided incorrect information to a potential charging party are no different than situations in which EEOC staff currently provide wrong advice on a filing period. In these cases, the agency steps forward and informs the court that the charging party's failure to timely file was the agency's error and the charging party should not be penalized for relying on incorrect advice. Finally, the NCC will be designated as EEOC's agent for charge receipt purposes to protect against loss of rights, i.e., receipt by the NCC of a minimally sufficient charge can constitute receipt by EEOC to fulfill timeliness requirements.

29. **Aren't you concerned that it will frustrate and deter callers if they do not receive a meaningful answer from the Contact Center and have to be routed back to the Agency, thus adding a layer to the inquiry process?**

EEOC wants to provide the best possible customer service to our stakeholders. The public has now had significant experiences with call centers, including those of other federal agencies. We expect that most routine inquiries can be answered accurately and completely in one call. We believe that the vast majority of the public will understand that sometimes customer service representatives cannot answer a question and the caller has to be referred to another staffer. When provided appropriate explanations, most callers do not become frustrated when such referrals occur.

30. **How much does the EEOC intend to spend on office relocation costs? Which offices, if any, does EEOC plan to relocate in FY 05? Is any of this money going to be used to close any EEOC office? Which offices? Milwaukee, Oakland, Newark? Is the money intended to be used to downsize offices? Which ones?**

We are requesting \$2 million for office relocation costs, furniture/equipment purchases, and employee development. These funds would be used to support office relocations within metropolitan areas in our continuing effort to achieve efficiencies, reduce rental costs, and redeploy resources to meet workload needs. When office leases expire, we are taking steps to "right-size" our office space by relocating locally in space that is more appropriate, achieving long-term rent savings. For example, we have begun to plan the move of the 36 employees in the Washington Field Office into our headquarters building, where excess space. This move will save EEOC approximately \$500,000 a year in rent. We expect the move to take place in late summer. Similarly, our relocation of the San Francisco District Office resulted in a 12% reduction in rentable square feet. The employee development component of the requested funding includes funds for permanent change of stations, management and skills training, and workforce planning.

We have not identified any specific office for relocation in FY 2005. Likewise, no decisions have been made regarding a change to the structure of any office in FY 2005. While it is possible that some offices may be consolidated due to their proximity, it is equally conceivable that new offices and a stronger presence will be established in areas of high, diverse population growth. These decisions will be made based on the factors discussed above. We will continue to inform the Subcommittee of any office relocation, as we did with respect to the Washington Field Office, as well as to the change in the status of any office.

31. **Does the Agency intend a reduction in force (RIF) in FY 05 to eliminate staff in downsized offices? Which positions?**

No, the EEOC does not intend to have a reduction in force in FY 2005.

32. **As you know, this year we will mark the 40th anniversary of the Civil Rights Act of 1964. Can you identify for us the specific enforcement issues that you will be focusing on this year to ensure vigorous Title VII enforcement? How will the funds that you are requesting be used to accomplish these goals? In short, what results should we expect with the funds that you are requesting?**

As we mark the 40th anniversary of the Civil Rights Act of 1964 this year, the Commission will continue to work to ensure vigorous enforcement of Title VII and the other laws we enforce. The funds we are requesting are essential for EEOC to achieve this goal. With these funds we expect to achieve successful results and measurable progress in improving workplace policies, practices, and procedures; improving working conditions in a broad array of workplaces; and maximizing the impact of our enforcement program. We expect to ensure

timeliness, quality, and public confidence in our private sector charge resolutions and in our federal sector program, as well as to maintain a high level of confidence in our mediation program. The Commission's new Strategic Plan details these performance metrics, and the proposed measures for FY 2005 are set forth at pages 31 to 41 and 49 of the performance budget.

Specifically, the requested funds will enable us to maintain a manageable charge inventory and an effective litigation program as well as to expand the use of mediation to resolve private sector charges and continue our outreach programs to educate employers and employees on their rights and responsibilities. The Priority Charge Handling Procedures and the charge prioritization policies reflected in the National Enforcement Plan (NEP) have allowed the Commission to reach a manageable inventory level while allowing us to increase our efforts in the areas of mediation and outreach. Although we have succeeded in reducing our inventory of private sector charges and federal sector complaints over the past several years, we foresee a rising inventory of charges in the private sector in FY 2005 and an inventory rising even higher in FY 2006. Without additional resources, the gains made in reducing the backlog of private sector charges and case processing time cannot be sustained. We project that, without the request, the inventory could grow by more than 58 percent in FY 2005 alone, from approximately 29,368 charges at the end of FY 2003 to approximately 46,640 charges by the end of FY 2005, leading to delays in serving charging parties and employers.

The requested funds will support 100 new staff hires and 104 replacement hires, primarily in enforcement-related positions including investigators, mediators, and attorneys. Without this replenishment of our resources the Commission's ability to investigate class and systemic cases would be diminished. A continuing decline in supervisory and support staff levels will adversely affect investigator productivity because investigators will have to fill the gap by performing supervisory and clerical duties, in addition to their regular duties. Our ability to respond to outreach needs would be reduced. It is for these reasons that it is so critical that the agency be given the resources to permit the level of hiring we have requested in FY 2005.

Maintaining a high level of success in litigation also depends on adequately funding each case. The cost of achieving this level of success increases commensurately with an increase in the costs of litigation (including court transcripts, depositions, witness fees, process service, mediation and expert services, and travel expenses). We are requesting increased funds to support our litigation program, to offset increased litigation costs and fund high impact cases. We focus on high impact cases that we expect will have a ripple effect of remedying and deterring employment discrimination beyond the parties to the dispute – within a community, an industry, or nationwide. The high impact cases will include, for example, challenges to policies or practices that may affect a large number of people, cases with potential to develop the law, and cases involving emerging trends in the workplace.

In addition to the results we intend to achieve under the Strategic Plan, we have established a Strategic Enforcement and Litigation group to ensure continued coordination of our administrative and litigation enforcement efforts and identify enforcement issues.

Some of the particular enforcement issues we will be focusing on this year and in the future are described in the answer to the next question.

- 33. Forty years after the passage of the Civil Rights Act, the majority of the charges received by the Commission still allege race discrimination, followed by sex discrimination. Are there specific steps that you plan to pursue this year to tackle race-based and/or gender-based discriminatory practices in particular industries or job categories?**

The Commission believes that the continued high volume of charges alleging race and sex discrimination reflects persisting problems of discrimination that must be addressed and remedied. Our National Enforcement Plan, adopted in 1995, acknowledged problems of race and sex discrimination, and pursuant to that plan, we will continue to focus the Commission's resources on cases involving repeated or egregious discrimination and broad-based patterns of discrimination, including racial and sexual discrimination. More recently, our Strategic Enforcement and Litigation group has noted the prevalence of sex and race harassment in particular industries, especially in the fast-food, construction, retail and agricultural industries. We have also noted that as employers increasingly rely on contingent workers to serve short term needs, the potential for race and sex discrimination among employment agencies has increased. Among other trends, we are also seeing racial harassment cases involving nooses, a trend toward sexual harassment of teenagers working at fast food establishments, and backlash discrimination against members of certain ethnic and religious groups in reaction to world events. There is still a glass ceiling for women and people of color.

The Commission intends to continue rooting out these unlawful employment practices through administrative resolutions and litigation. In addition, the Commission has looked beyond our charge intake to assess today's workplace trends regarding race or sex-based discriminatory practices -- such as exploitation of low wage earners, color bias, and restrictive language policies -- to determine how best to address these trends.

- 34. Are you focusing on quantity or quality? The number of cases filed in court annually remains steady but are they managed so that they are filed fairly evenly in each month or quarter?**

The Commission files only cases that it believes are of high quality. EEOC receives approximately 80,000 charges a year and files 300 to 350 suits, representing less than one half of one percent of these charges. Three hundred and fifty is not an arbitrary figure. The number is a result of the agency's field legal units' evaluation of the merits and significance of charges on which reasonable cause has been found and conciliation efforts have failed. Out of the thousands of conciliation failures each year (which recently have been in the 5000 to 6000 range), 300 to 400 charges meet the agency's litigation criteria of strong evidence of discriminatory conduct and important public interest implications.

The EEOC attempts to space its suit filings fairly evenly over the fiscal year so that resource intensive activities (e.g., summary judgment proceedings, trials) do not occur at the same time in a number of different cases. Commission offices have had varying degrees of success in this effort, and in some years a significant proportion of the agency's suits have been filed in the latter part of the fiscal year.

**35. About one-third of your cases are class action suits. How many persons must be affected in order for the case to be classified as a "class?"**

The EEOC defines a class case as one that challenges a policy that applies to a group of similarly situated individuals or a practice that affects a group of similarly situated individuals. Thus, it is the nature of the policy or practice at issue that determines whether the case is designated as class, rather than the number of identified victims. Many of the agency's "class" cases involve only a few identified victims, but all such cases address a policy (e.g., denial of disability retirement benefits to older workers, strictly applied maximum medical leaves that fail to reasonably accommodate disabled employees) or practice (e.g., racial or sexual harassment, segregated job classifications) that by its nature will affect most or all of the members of a particular protected group.

**36. Do you have a plan for pursuing systemic litigation say in a particular industry or job group, or geographic area, e.g., where workers are vulnerable such as a high immigrant population or entry-level workers?**

The Commission has an issues-oriented unit in headquarters, Systemic Litigation Services (SLS) in the Office of General Counsel, that is working to identify and investigate employment practices that constitute barriers to equal opportunities for particular groups of applicants and/or employees. SLS utilizes contacts with civil rights and other advocacy groups and pursues cases through various mechanisms, including Commissioner Charges, "on behalf of" charges filed by organizations, and charges filed by individuals. SLS is currently examining the wage and reasonable accommodation practices of sheltered workshops that provide employment to visually and other severely disabled persons.

Commission field offices have been coordinating with other federal agencies and with advocacy groups to protect the employment rights of immigrants and low-wage workers. For example, the Dallas District Office is involved in a partnership with the Department of Labor, the Mexican Consulate, and other organizations in the Justice, Equality, and Safety in the Workplace Initiative, which is intended to facilitate referrals by consulates to federal agencies and departments that can provide assistance with workplace issues such as safety, pay, and discrimination. The Los Angeles District Office is working with a number of community based organizations to develop litigation on behalf of employees in the agricultural and garment industries, as well as other low-wage workers at risk of exploitation. The New York District Office has focused outreach on the Chinese community in New York City. In addition, Commission attorneys have been participating in the Worker Exploitation Taskforce led by the

Department of Justice's Civil Rights Division, Criminal Section. The Commission also has litigated a number of high-profile suits to protect the rights of migrant and other immigrant workers.

37. **One of the main workplace problems voiced by many women deals with equal pay for equal work. Too many women believe that they are not being paid fairly for the work that they do, particularly when compared to their male counterparts. This is not simply a women's issue but a family issue - in today's economy, many families depend on the earnings of both women and men to make ends meet. For many years, the Commission has filed only a minimal number of Equal Pay Act cases each year. Do you have plans to pursue more Equal Pay Act cases in this upcoming fiscal year?**

The EEOC has long recognized that discriminatory compensation is a significant problem affecting women and their families. Thus, the EEOC has long regarded the vigorous enforcement of equal compensation provisions as a priority, and will continue to take proactive steps to provide relief to affected workers and prevent violations from occurring in the first place.

The EEOC receives a relatively small number of charges each year under the Equal Pay Act (EPA), only a little more than 1,000 charges out of a total of about 80,000 charges, or a little more than one percent. However, focusing only on the number of Equal Pay Act claims does not tell the whole story of the EEOC's actions to redress wage discrimination. That is because the EPA only covers sex-based wage discrimination between men and women performing substantially similar work in the same establishment. Title VII also prohibits sex-based wage discrimination and, unlike the EPA, allows the EEOC to challenge not only wage discrimination, but also discrimination in assignments, promotions, and other terms and conditions of employment that may contribute to wage disparities. Except in rare circumstances, such as where an employer has fewer than 15 employees or is a state or local government entity, the EEOC can, and routinely does, seek redress of EPA claims through Title VII as well as the EPA.

Of course, in addition to wage discrimination against female workers, wage discrimination continues to be a significant burden to African-Americans, ethnic minorities, and other vulnerable groups. Title VII also prohibits wage discrimination based on race, color, national origin, and religion, and the Age Discrimination in Employment Act and the Americans with Disabilities Act prohibit wage discrimination based on age and disability, respectively. The Commission receives several thousand charges each year alleging discriminatory wages, benefits, or other compensation under Title VII, the Age Discrimination in Employment Act, or the Americans with Disabilities Act.

The Equal Pay Act suits represent only a small fraction of the lawsuits filed by the EEOC each year challenging compensation discrimination. Almost all Equal Pay Act suits are also filed concurrently under Title VII. Currently, the EEOC has 32 active compensation lawsuits, 13 of which include allegations of Equal Pay Act violations.

Resolutions of compensation lawsuits in recent years have resulted in millions of dollars of relief to underpaid workers. The following are some examples of recent EEOC litigation successes in compensation cases.

- In September 2001, in a Title VII and EPA suit against a national restaurant chain, the jury awarded a female employee \$2.2 million in damages (later reduced by the judge to comply with statutory caps) because she was discriminatorily paid less than her male counterpart, subjected to different terms and conditions of employment based on her sex, and terminated in retaliation for complaining about the discriminatory treatment.
- In October 2002, the EEOC settled Title VII lawsuits against several major telecommunications companies that had denied benefits related to maternity leave. The settlement provided up to 12,500 current and former female workers with benefits worth millions of dollars.
- In July 2001, the EEOC settled a suit with a machine company alleging discrimination against African-American workers in hiring, pay, promotion, and other terms and conditions of employment and against women in pay. The employer agreed to provide \$1.8 million in monetary relief and to a wide range of injunctive measures, such as changes in job posting procedures, publication of salary ranges and job grades, recruitment of diverse applicants, and equal employment opportunity training.
- In January 2003, the Commission announced a historic settlement in an ADEA case, providing approximately 250 million dollars in immediate and future relief to 1,700 retired public safety officers who received discriminatory disability retirement benefits.

In addition to litigation, EEOC's accomplishments in recent years have included many other activities promoting equal compensation. For example, in the past few years, the EEOC issued several significant policy documents addressing compensation discrimination. These documents are useful for employers, workers, and human resources officials alike in understanding rights and responsibilities under the EEO laws. The EEOC has also used its Web site to provide educational materials about compensation discrimination and other EEO issues. The EEOC recently posted a Web page devoted to equal pay issues.

In June 2003, to call renewed attention to the Equal Pay Act on the occasion of the 40th anniversary of its enactment, the Commission held a public observance and staff training event and updated its Web site to include a special section highlighting the history and enforcement of the Equal Pay Act.

38. EEOC recently issued a report about the Glass Ceiling and the status of women in management in the private sector (based on the categories in the EEO-1 reporting form.) It shows that while women represent an average of almost 50 percent of total employment of the job groups reported on, they only represent a little over one-third of the officials and managers category. If you look at higher wage jobs, and data on women of color, the percentage of women in these higher-level jobs is even smaller. What strategies are you pursuing to ensure that women are treated fairly when seeking these high level jobs? What strategies are you pursuing to remove discriminatory barriers that may be hindering the progress of women in obtaining these upper management jobs?

The "glass ceiling" refers to artificial, invisible barriers, which are based solely on attitudinal or organizational bias, that prevent qualified individuals from advancing into management level positions. The issue persists as a problem in the workplace and is a priority for the EEOC. The EEOC is pursuing a range of strategies to address glass ceiling issues: conducting outreach and providing education to help employers to identify and remove barriers; collecting data to provide accurate information about workplace trends; and, when necessary, conducting litigation.

In 2001, EEOC launched its Freedom to Compete Initiative. Through that Initiative, the EEOC works to ensure that all Americans have the opportunity to compete in the workplace on a fair and level playing field, without regard to race, color, religion, national origin, sex, age, or disability. The Initiative focuses on developing partnerships between the nation's employers and the EEOC to identify and eliminate organizational and attitudinal barriers that may obstruct open competition in the workplace and to develop proactive, innovative solutions to eliminate those barriers.

Complaints of sex discrimination are still the second largest category of charge receipts at the Commission; race discrimination is the largest. While the number of charges of sex discrimination has remained relatively constant (24,000 to 25,000 a year), discrimination in promotion is infrequently alleged. We suspect that the women and people of color who are climbing - or hoping to climb - the corporate ranks fear that filing a charge will eliminate any chance of upward mobility. Therefore, outreach strategies are critically important in removing barriers to equal opportunity in promotion and advancement to higher-level jobs.

The Glass Ceiling Report to which you refer to in your question is a new EEOC study, "Glass Ceilings: The Status of Women as Officials and Managers in the Private Sector." It seeks to assist employers to make full use of America's labor markets by understanding more about the characteristics of those markets. Highlights of the Glass Ceiling Report include:

- The percent of women officials and managers in the private sector has increased from 29 percent in 1990 to 36.4 percent in 2002.



- Women represent 48 percent of all EEO-1 employment, but represent 36.4 percent of officials and managers. Women make up 80.3 percent of office and clerical workers.

We also conducted a related research study on "Diversity In Law Firms." We found that the same glass ceiling issues that pervade corporate America also apply to law firms.

- While more women, African Americans, Hispanics, and Asians are earning law degrees, women and people of color experience lower odds of making partner than do their counterparts. Controlling for seniority and a wide range of other potentially relevant variables, women's odds of working as law-firm partners are less than one-third of men's odds. Because firm partners command the most money and prestige in the profession, women occupy a distinctly unequal position among lawyers.

One of the ways in which we are attempting to make the Commission more effective is to collect and evaluate data to anticipate trends and shifts in the workplace, share that information with public, and use the data in our enforcement efforts. We recognize that we must use all research tools available to us, and deploy agency resources strategically, if we are to have a meaningful impact on discrimination in today's workplaces. We are examining emerging workplace trends and issues to make reasoned and calculated decisions about what issues merit our attention and how we can better integrate our policy, guidance, investigative, litigation and federal coordination functions.

**39. EEOC is requesting 100 new FTE and 104 FTE employees to backfill vacancies. Can you tell me about the types of positions these staff will fill?**

We would use most of our hiring authority to fill enforcement-related positions, including investigators, mediators, and attorneys. These are the positions most critical to the agency being able to provide the level of service to the public to ensure that charges are timely processed, that appropriate enforcement actions are taken, and that the agency's workload inventory is maintained at a manageable level. These are our core functions and would receive priority. We also believe that we must continue with forward-looking strategies to aid in the fight toward discrimination-free workplaces, as articulated in the Five-Point Plan component of Proactive Prevention. This includes outreach, education and technical assistance functions. The value of these programs dictates that our augmented staff be multi-functional, permitting us to respond to the expanding needs of the public to be informed. Proactive Prevention complements our administrative and enforcement strategies and may preempt the need to resort to those measures.

40. **I have heard you may be considering hiring some of these people as term employees or on a contract basis, could you tell me what the logic would be for hiring in this way? It seems to me because of the growing workload you have and the specialized training and knowledge your employees gain over time would discourage you from hiring people temporarily. Please share your thoughts on this subject and your plans.**

EEOC has explored a variety of options to augment its staffing needs, including permanent hires, temporary contracts for service, and temporary and term appointments. One approach used during this year to address clerical shortages in certain offices has been to utilize the hiring of staff under a temporary hiring authority, with these appointments not to exceed two years. This was identified as a more cost-effective approach than the use of contract clerical services. It is anticipated that, if the agency has the option in future years with the provision of additional resources, those temporary employees who have demonstrated quality performance might be considered for hiring under job postings for permanent career positions. If we secure additional resources in FY 2005, we anticipate that we will explore all the staffing opportunities available to provide the greatest flexibility to our managers in addressing the human capital needs in their offices. One of the factors in this consideration is the recognition that the private sector workplaces we interact with present an ever-changing dynamic, which requires us to have the ability to devote staffing resources to the geographic areas where the demand is the greatest, based on charge receipts, private sector job growth, shifting demographics, increases in underserved populations and other factors. One of the options available includes the hiring of professional staff under term employment provisions. Individuals in these positions are accorded the salary and benefits of their careerist counterparts and may be retained in these positions for up to four years, pending availability of funds. This option allows managers a longer period of time to assess the skills, capacity and individual performance levels of these new staff. With the agency's long-term aim of retaining staff who have proven to have the knowledge, skills and abilities, term staff would be eligible to apply for and be selected for competitively announced permanent positions. Additionally, with this option, the agency retains the flexibility to redirect positions rather than people, without paying additional relocation costs, to other geographical locations where staffing demands may be increasing due to workload and other market changes.

41. **Presently, the EEOC has posted on USAJobs several investigator positions, which are listed as "term appt.- NTE 2 yrs," which differs from the status of the agency's current investigators, who are permanent career investigators. In light of the attrition which has taken place over a three year hiring freeze and the EEOC's representation that "50 percent of our current workforce [is] retirement eligible," and the one year of training that it is understood to be needed before a new investigator can independently handle intake responsibilities, what is the justification for limiting the term of new hires? Will the EEOC's FY 2005, request "to fill 104 existing vacancies help the agency to maintain workload balances at acceptable levels? Will those vacancies be filled with permanent, full time, bargaining unit employees or more "term" employees?**

We currently have a limited number of staff positions posted as term appointments not to exceed two years with the option to renew for another two years. That option was chosen after consulting EEOC field directors in order to provide more flexibility to EEOC in making sure that we have people where our greatest needs are.

Currently there are a number of offices that have substantially more work than their current staff can handle. In order to prevent inventories from growing in those offices, EEOC managers have moved cases from those offices to other field offices. Moving charges is necessary, but not ideal.

By having a limited number of term appointments in each office, EEOC believes that we will better be able to serve those employers and employees whose charges come before EEOC. We will have the flexibility of moving a term slot from one office to another that clearly has a greater need.

We would anticipate that some or all of the 104 existing vacancies would be filled by term appointments. It is our hope that the addition of this staff will, in two or three years, result in a manageable workload. Given our rate of retirement eligibility, if we experience a significant number of retirements in one office, but do not have the budget capacity to replace those employees at that time, we will need the flexibility of being able to move term slots from one office to another. As vacancies occur in permanent full-time positions, we would hope that those talented employees on term appointments who would want to remain with the Commission for a longer period of time would apply for a permanent position.

42. **For FY 2003 and FY 2004, please provide the number of contract mediations taking place within 100 miles of an EEOC field office.**

During FY 2003, 1,562 contract mediations took place within 100 miles of an EEOC office and for FY 2004 (through March), 562 contract mediations have taken place within 100 miles of an EEOC office.  
See Table below.

**Contract Mediations within 100 miles of a field office**

<b>Office</b>	<b>FY03 - Mediations w/in 100 miles</b>	<b>FY04 (1st and 2nd Quarters) Mediations w/in 100 miles</b>
<b>Albuquerque</b>	70	7
<b>Atlanta</b>	46	31
<b>Baltimore</b>	63	38
<b>Birmingham</b>	42	25
<b>Charlotte</b>	96	28
<b>Chicago</b>	12	18
<b>Cleveland</b>	44	14
<b>Dallas</b>	134	26
<b>Denver</b>	68	26
<b>Detroit</b>	30	3
<b>Houston</b>	152	41
<b>Indianapolis</b>	23	4
<b>Los Angeles</b>	52	0
<b>Memphis</b>	19	12
<b>Miami</b>	86	46
<b>Milwaukee</b>	95	39
<b>New Orleans</b>	45	23
<b>New York</b>	9	6
<b>Philadelphia</b>	136	62
<b>Phoenix</b>	39	10
<b>San Antonio</b>	75	33
<b>San Francisco</b>	156	35
<b>Seattle</b>	11	15
<b>St. Louis</b>	50	15
<b>Washington</b>	6	1
<b>Totals</b>	<b>1562</b>	<b>562</b>

43. **Has the EEOC conducted any research on an E-filing program? What is the time frame and nature of any pilot programs which are ongoing or anticipated? Please provide copies of the research findings.**

EEOC has conducted research on e-filing as part of the efforts of an internal work group. Initially, this work group was formed to research and make recommendations related to the electronic filing of charge data. Since the work group's efforts are on going, no formal summary documentation has been prepared to date. The work group conducted research on web sites offering similar functionality such as [www.govbenefits.gov](http://www.govbenefits.gov), the U.S. Department of Housing and Urban Development's (HUD) online housing discrimination complaint form, <http://www.hud.gov/complaints/housediscrim.cfm>, and HUD kiosk systems. It also contacted HUD to discuss HUD's experiences and best practices in this area.

As a result, the work group determined that electronic filing of the formal charge of employment discrimination was not practical at this time due to the required investigator and complainant interaction in developing the charge. Electronic charge filing is a concept that may be considered again in the future. For now, instead, the work group recommended the development of an on-line software application that would provide the public with the opportunity to submit the pre-charge intake questionnaire electronically. This will assist the charge process and expand EEOC's electronic government efforts. This application will include the development of (1) an e-Assessment tool, which would assist the public in determining if their complaint is within EEOC's jurisdiction, and if not, list other agencies that could potentially assist them; and (2) an e-Questionnaire, which would allow the public to submit an electronic version of the Intake Questionnaire to EEOC for processing. This application will augment, not replace, our current mechanisms for collecting complaint information, such as mail-in questionnaires and phone-in and walk-in inquiries. Upon receipt of the electronic questionnaire, an EEOC staff person will contact the potential charging party to provide one-on-one counseling and development of the formal charge, as in our current intake processes.

Currently, a prototype of this system is being presented within EEOC for comment. EEOC anticipates that it will be ready for pilot to a small audience by the end of this fiscal year. We would be pleased to demonstrate the pilot system to Members of Congress and their staffs.