[Seal of U.S. Equal Employment Opportunity Commission]

U.S. EQUAL EMPLOYMENT OPPURTUNITY COMMISSION

Washington, D.C. 20507

September 24, 1992

Ms. Maureen P. West

Office of Senator Dole

141 Hart Senate Building

Washington, D.C. 20510-1601

Dear Mo:

As you know, Chairman Kemp convened an emergency meeting of the Commission on September 21. The purpose of the session was to discuss the severe budgetary constraints that the EEOC faces in the coming fiscal year. I thought you would be interested in reviewing the Chairman's remarks.

The President requested $245 million for the EEOC for FY 1993. The House appropriations bill contains $218 million and the Senate measure provides only $212 -- far short of the projected needs for the agency for the next fiscal year. When you consider that the mission of the EEOC has been broadly expanded by the enactment of the Civil Rights Act of 1991 and the Americans with Disabilities Act, it is imperative that the agency receives its full budgetary request.

I have enclosed the Chairman's prepared remarks and additional background materials, including a concise summary of the agency's situation published by the Washington Post, for your information. Please contact me if you have any questions.

Sincerely,

[Signature of Ann Colgrove]

Ann Colgrove

Director of Communications and Legislative Affairs

Enclosures

[Seal of U.S. Equal Employment Opportunity Commission]

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Washington, DC 20507

EMERGENCY COMMISSION MEETING

September 21, 1992

Office of the Chairman

CHAIRMAN’ S INTRODUCTION

I have called this emergency commission meeting to discuss a situation of grave importance to the future of the U.S. Equal Employment Opportunity Commission.

The EEOC -- the agency whose only mandate is to enforce our nation’s anti-employment discrimination laws -- is on the brink of peril. If we were a business, we’d be out of business. If Congress gets its way, our financial situation will force a Chapter II-type reorganization, jeopardizing the very product we deliver.

Congress has given EEOC two new and complicated laws to enforce - the Americans with Disabilities Act and the Civil Rights Act of 1991. President Bush -- following through on his commitment to vigorous enforcement of civil rights laws -- requested $245 million, including 300 additional staff positions, for the EEOC in FY 1993. This is a $35 million increase over this year’s budget. But the House and Senate rejected the request, approving only $218 million and $212 million respectively.

Even the House Appropriations Committee stated upon issuing its budget recommendations: "The Committee recognizes that this amount may not be sufficient to allow the EEOC to carry out the provisions of the ADA ... adequately and continue its ongoing workload under existing statutes."

I know there’s a lot of talk about the taxpayer arid his or her rights to a workplace free of discrimination. But I’m wondering if this isn’t just lip-service. I must question this Congress’ commitment to civil rights in light of years and years of a slashed budget, and the current funding recommendations for EEOC.

The House and Senate allocations are but a sliver of an increase over our FY 1992 budget of $210 million. They will not even begin to cover costs for mandatory pay raises, let alone inflation. This will stretch an already overloaded investigative staff, making it impossible to enforce civil rights laws in the manner Congress intended.

Congress has cut the White House request for EEOC ten out of the last 12 years. This means, among other things, that we are operating with almost 600 fewer employees than we had in 1980 -- or about a 20 percent decrease in staff.

Despite this -- and largely due to the excellent management procedures initiated by former Chairman Clarence Thomas -- our productivity has increased. Each EEOC investigator resolved an average of 88.5 cases in FY 91. This compares to 33 cases per investigator at the Department of Housing and Urban Development, the next closest federal agency with similar responsibilities.

Indulge me while I take off the budget hat, and put on the management hat. I believe that there needs to be a more equitable distribution of the civil rights dollar. The EEOC’s only mandate is to enforce civil rights laws, yet a disproportionate amount of money is allocated to larger agencies to carry out their civil rights responsibilities.

Congress passed the Civil Rights Act of 1991 and the Americans with Disabilities Act without providing any real funds for enforcement. Because the ADA is so new, it is likely to require more work per case, at least in the initial stages of enforcement. Further, we are expecting a sizable increase in charges due to the new laws.

On top of this, the intense spotlight on sexual harassment over the past year has doubled the number of those charges filed with the agency. And to make matters worse, Congress now is considering a bill that would give the EEOC responsibility for complaints filed in the federal sector.

EEOC investigators already are stretched to the limit. They will break under these conditions. We are losing good staffers because of low morale. After all, who would want to stay at a job that required such a demanding workload when another agency was offering better pay for one-third of the work?

We’re already seeing the toll on staff. But the human fallout from the funding recommendations will be grave. Those who turn to the EEOC for relief will be forced to wait nearly three years before the agency can resolve their charges. A woman who files a charge of pregnancy discrimination, for example, will not see her case resolved until her child is in pre-school.

The practical implications of such a delay are horrendous. They are horrendous not only for the charging party who feels his or her rights have been violated, but for the business charged with the alleged violation. An employer would be faced with the administrative nightmare of producing information to justify actions of three or four years earlier.

I am sympathetic to the tough budget decisions Congress must make this year. But the EEOC is in a unique position. While other agencies can handle budget cuts by reducing or even eliminating programs and grants, EEOC has no choice but to vigorously enforce the laws under our jurisdiction.

If Congress approves the budget as currently proposed, EEOC will be forced to make some painful choices. No one will be happy: not the aggrieved worker who comes to us for relief; not the employer accused of discrimination; not the oversight committees in Congress that review our work.

Our dedicated employees do not want the EEOC to become another paper-shuffling federal agency. We are proud of our long history of vigorous enforcement of anti-employment discrimination laws. If Congress is going to continue passing laws -- good laws -- to protect the American worker, it had better follow through and provide the funding to enforce those laws. Otherwise, Congress is wasting taxpayers time and money.

Now I would like to introduce Ann Colgrove, Director of Communications and Legislative Affairs, who will give us a brief overview of congressional activities.

[Large seal of U.S. Equal Employment Opportunity Commission]

OUTLINE OF FY 1993 FUNDING STATUS

\* Historical Context: 1980’s to Present

\* FY 1993 Unprecedented Requirements/Funding Reality

\* FY 1993 Potential Funding Status

President’s Request

House/Senate Marks

\* Reality Impact of Potential FY 1993 Congressional Funding

Funding/Staffing

Workload

\* Bottom-Line Prognosis

HISTORICAL CONTEXT: 1980’S TO PRESENT

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| HISTORICAL CONTEXT: 1980’S TO PRESENT | | | | |
| Funding ($000) | | | Staffing (FTE) | |
| FY | Requested | Enacted | Requested | Actual |
| 1980 | $130,622 | $124,562 | 3,527 | 3,390 |
| 1991 | $147,647 | $144,610 | 3,696 | 3,358 |
| 1982 | $145,239 | $144,739 | 3,740 | 3,166 |
| 1983 | $149,598 | $147,421 | 3,327 | 3,084 |
| 1984 | $157,940 | $154,039 | 3,125 | 3,044 |
| 1985 | $164,055 | $153,655 | 3,125 | 3,097 |
| 1986 | $158,825 | $165,000 | 2,976 | 3,017 |
| 1987 | $172,220 | $169,529 | 3,125 | 2,941 |
| 1988 | $193,457 | $179,812 | 3,198 | 3,168 |
| 1989 | $194,624 | $180,712 | 3,198 | 2,970 |
| 1990 | $188,700 | $184,926 | 3,050 | 2,853 |
| 1991 | $195,867 | $201,930 | 3,050 | \*2,796 |
| 1992\*\* | $210,271 | $210,271 | 2,821 | 2,790  (EST) |
| 1993\*\*\* | $245,342 |  | 3,071 |  |

\*From FY 1980 to FY 1981, FTE was reduced by 594.

\*\*Excludes Proposed Supplemental of $1,000,000 and 50 additional FTE.

\*\*\*Includes Proposed Amendment of $2,496,000.

FY 1993 UNPRECENTED REQUIREMENTS/FUNDING REALITY

FY 1993 UNPRESENDERED REQUIREMENTS/FUNDING REALITY

FY1993 MARKS THE FIRST FULL YEAR OF IMPLEMENTATION OF:

CRA

ADA

1614

FUNDING REALITY:

\* CRA- no resources were provided (i.e., signed into law 11.21.91 after passage of FY 1992 appropriation)

\* ADA- only $4 million dollars increase was provided in FY 1992 for ADA implementation

\* 1614- limited additional resources ($1.5 million) are included in President’s FY 1993 Budget Request

FY 1993 POTENTIAL FUNDING STATUS

\* PRESIDENT’S REQUEST

\* HOUSE/SENATE MARKS

|  |  |
| --- | --- |
| FY 1993 POTENTIAL FUNDING STATUS | |
| $ INCREASE |  |
| FY 1993 President’s Request | $245,341,000 |
| FY 1992 Appropriation Increase | 210,271,000 |
| Increase | +$35,070,000 |
|  |  |
| Staff Increase |  |
| FY 1993 President’s Request | 3,071 |
| FY 1992 Appropriation | 2,821 |
|  | +250 |

|  |  |  |
| --- | --- | --- |
| FY 1993 POTENTIAL FUNDING STATUS HOUSE/SENATE MARKS | | |
|  | House Mark | +/- |
|  | +$8,411,000 | -$26,659,000 |
|  | ($218,682,000) |  |
| President’s Request |  |  |
| +$35,070,000 |  |  |
| ($245,342,000) |  |  |
|  | Senate Mark | +/- |
|  | +$2,711,000 | -$32,359,000 |
|  | ($212,982,000) |  |

REALITY IMPACT OF POTENTIAL FY 1993 CONGRESSIONAL FUNDING

* Funding/Staffing
* Workload

FUNDING/STAFFING

REALITY IMPACT OF POTENTIAL FY 1993 CONGRESSIONAL FUNDING

KEY FACTS: EEOC is a small agency/single appropriation… As such, no ability to reprogram, from other areas/accounts

EEOC is labor intensive. . . Approximately 76% of its appropriation pays for staff salaries

In FY 1993, EEOC will have to pay the fixed, noncontrollable cost increases for:

|  |  |
| --- | --- |
| Fixed Costs | ’93 Increase |
| Salaries & Benefits (Pay raise, WIGS, promotions, PMRS increase) | +9,932,000 |
| Rent, Communications, Utilities | +2,046,000 |
| Total | +$11,978,000 |
| Inflation Estimate | +$714,714 |
| Total | +$12,692,714 |

|  |  |
| --- | --- |
| FUNDING REALITY IMPACT Scenario #1 | |
| Current Staff (2,821 FTE) | |
| Assumptions  \* Assume EEOC maintains the FY 1992 staff level of 2,821 FYE  \* Assume no inflation for all operational costs; hold at the FY 1993 funding levels, including State and Local | |
| Salaries and Benefits | $149,356,000 |
| Fixed Costs | 27,810,000 |
| All Operational Costs (e.g., litigation, travel, training, equipment, supplies, printing, etc.) | 21,658,000 |
| State and Local | 25,000,000 |
|  | $223,824,000 |

|  |  |  |  |
| --- | --- | --- | --- |
| OPERATIONAL COSTS OVERVIEW | | | |
|  | FY 1992 Level | FY 1993 Request | +/- |
| Travel | $2,845 | $3,147 | +$302 |
| Transportation of HHG, etc. | 136 | 136 | 0 |
| Other Services | 9,961 | 12,463 | +2,502 |
| Litigation Support | 3,171 | 4,321 | +1,150 |
| Supplies, Books, etc. | 2,615 | 2,806 | +191 |
| Building Alterations | 811 | 811 | 0 |
| Training | 300 | 2,100 | +1,800 |
| Equipment | 881 | 1,588 | +707 |
| TOTAL | $21,658 | $29,825 | +$8,167 |

|  |  |
| --- | --- |
| FUNDING REALITY IMPACT Scenario #2 | |
| Senate Mark ($212,982,000) | |
| Assumptions   * Assume no inflation for all operational costs; hold at the FY 1992 funding levels, including State and Local * Assume Avg. Salary/Benefits ($52,169) | |
| Funding | |
| Salaries and Benefits | $138,514,000 |
| Fixed Costs | 27,810,000 |
| All Operational Costs | 21,658,000 |
| State and Local | $212,982,000 |
| Staffing | |
| EEOC could only afford 2,655 FTE… a reduction of 166 from FY 1992 and 416 from FY 1993 Request | |
| Reduction: | |
| ’92 Level | ’93 Request |
| 2,821 | 3,071 |
| -2,655 | -2,655 |
| -166 | -416 |

STAFFING REALITY IMPACT

* Cut staff 416 FTE (13.5%) from the FY 1993 requested level of 3,071
* Cut requesting FY 1993 level of 250 FTE (all dedicated to field operations)
* Cut remaining staff of 166 FTE from headquarters and field operations
* Chairman’s Priority:

Continue downsizing headquarters; minimize cuts to the field.

STAFFING REALITY IMPACT

* Chairman’s priority- optimal staffing for field offices
* Current FY 1992 Goal

|  |  |
| --- | --- |
| Field | 2200 |
| HQ | 621 |
|  | 2,821 |

* To achieve Chairman’s priority- need to consider/review all options for cost savings

OPTIONS FOR CONSIDERATION/REVIEW:

Cost Savings Examples (Assume FY 1992 funding; no inflation)

* Furlough (e.g., all non-essential personnel)
* Close select EEOC offices (virtually no immediate cost savings)
* Reduce/eliminate Training (e.g., jeopardize implementation of new legislation)(Only $300,000 in FY 1992 President’s Budget… $106 avg/per staff)
* Reduce Travel (e.g., jeopardize quality investigations)(Only $2,845,000 in FY 1992 President’s Budget… $35 avg/per investigation)
* Reduce Litigation Support (Only $3,171,000 in FY 1992 President’s Budget… $2,377 avg/per case)
* Reduce Equipment (e.g., jeopardize efficiency)(Only $881,000 in FY 1992 President’s Budget… $312 avg/per staff)

WORKLOAD

* PRODUCTIVITY SUCCESSES
* IMPACT in FY 1993 (Examples)

PRODUCTIVITY SUCCESSES FY 1989-FY 1991 (PRIVATE SECTOR)

[Top left Bar graph: RESOLUTIONS PER INVESTIGATOR OF FY 1989,1990, 1991. In FY 1989, it reached 79. FY 1990 is at 88.4, and FY 1991 is 88.5.]

[Top right Bar graph: PENDING INVENTORY. FY 1989 is 46,071; FY 1990 is 41,987; and FY 1991 is 45,717]

[Bottom left Pie graph: 270 DAY OLD CASES AS A PERCENT OF INVENTORY.

FY 1989 shows 65% at less than 270 Days Old and 35% at more than 270 Days Old.

FY 1991 has 79% at less than 270 Days Old and 21% at more than 270 Days Old.]

[Bottom right Bar Graph: AVERAGE CHARGE PROCESSING TIME. FY 1989 has reached 310 days. FY 1990 is 233 days, and FY 191 is 216 days.]

[Top Bar graph: HEARINGS

RESOLUTIONS PER INVESTIGATOR. FY 1989 is 82; FY 1990 is 90; and FY 1991 is 95.]

[Bottom Line graph: PRODUCTIVITY SUCCESSES FY 1989-FY 1991 (FEDERAL SECTOR) PENDING INVENTORY. FY 1989 is 2,205; FY 1990 2,423; FY 1991 is 3,145.]

LITIGATION SUPPORT PROGRAM

[Top left Bar graph: MONETAY RELIEF (MILLIONS). Fiscal year vs. millions of dollars ($ millions (Actual dollars)). 1987 is at $24.8; 1988 is $55.6; 1989 is $35.4; 1990 is $19.3; and 1991 is $96.4]

[Top right Line graph: FIELD LEGAL UNIT STAFFING. The X-axis shows the fiscal year. 1987 is 382, 1988 is 418, 1989 is 346, 1990 is 336, and 1991 is 328.]

|  |  |  |  |
| --- | --- | --- | --- |
| FY 1991 Workload\* | | FY 1991 Funding | |
| Cases Entering FY | 682 | Actual | $2,900,000 |
| Cases Filed | 495 | 40 Cases (3% of Caseload) | -1,600,000 |
| Total Workload | 1177 | Remaining | $1,300,000 |

KEY POINT: Only $1,300,000 remaining for 1,137 cases

Only $1,143 avg/per case

\*Final FY 1991 Reconciled Data

WORKLOAD IMPACT IN FY 1993

WORKLOAD DATA

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| PRIVATE SECTOR EEOC ENFORCEMENT (COMPLIANCE ACTIVITY) | | | | | |
| WORKLOAD/WORKFLOW | FY 1991 ACTUAL | FY 1992 ESTIMATE | FY1993 ESTIMATE | FY 1994 ESTIMATE | FY 1995 ESTIMATE |
| TOTAL PENDING CHARGE/ COMPLAINTS | 42,480 | 45,717 | 60,470 | 100,970 | 141,469 |
| TOTAL RECEIPTS TO PROCESS | 62,848 | 70,771 | 82,181 | 82,181 | 82,181 |
| NET TRANSFERS AND DEFERRALS | 4,731 | 4,826 | 4,826 | 4,826 | 4,826 |
| TOTAL WORKLOAD | 110,059 | 121,314 | 147,477 | 187,977 | 228,476 |
| CHARGES.COMPLAINTS RESOLVED | 45,717 | 60,470 | 100,970 | 141,469 | 181,968 |
| CHARGES. COMPLAINTS INVENTORY (MONTHS) | 10.8 | 14.4 | 26.2 | 36.7 | 47.2 |
| PERSONAL RESOURCES |  |  |  |  |  |
| PRODUCTIVE STAFF-YEARS ASSIGNED | 779.4 | 779.4 | 714.4 | 714.4 | 714.4 |
| PRODUCTIVE STAFF- YEARS AVAILABLE | 727.1 | 724.8 | 664.4 | 664.4 | 664.4 |
| AVERAGE CLOSURES PER PRODUCTIVE STAFF- YEAR | 88.5 | 83.9 | 70.0 | 70.0 | 70.0 |

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| FEDERAL SECTOR | | | | | |
| HEARINGS | | | | | |
| Workload | 1991 | 1992 Estimate | 1993 Estimate | 1994 Estimate | 1995 Estimate |
| Complaints Pending | 2,423 | 3,145 | 3,824 | 7,604 | 12,184 |
| Complaints Received | 5,773 | 6,500 | 7,300 | 8,100 | 8500 |
| Total Workload | 8,196 | 9,645 | 11,124 | 15,704 | 20,684 |
| Complaints Resolved | 3,145 | 3,824 | 7,604 | 12,184 | 17,164 |
| Months of Inventory | 7.4 | 7.8 | 25.9 | 41.5 | 58.5 |

BOTTOM-LINE PROGNOSIS

BOTTOM-LINE PROGNOSIS

* EEOC faces new unprecedented statutory requirements in FY 1993 (CRA, ADA, 1614, etc.)
* Yet… EEOC faces actual and significant cuts to current staffing/operations.
* EEOC is facing unprecedented trouble in doing its job.
* EEOC will seriously REGRESS in the current Congressional climate.

Trouble in the Workplace at EEOC

As Enforcement Demands Increase, Agency Feels the Squeeze

By Liz Spayd

Washington Post Staff Writer [9-22 written with pen]

The federal agency charged with investigating discrimination in the workplace claims it is so overworked and understaffed that without a sizable budget increase, its chief function could soon dissolve from government enforcement to bureaucratic paper-pushing.

In an emergency meeting of the Equal Employment Opportunity Commission yesterday, managers there warned that the agency could be forced to lay off more than 100 people, furlough others and possibly close field offices if Congress adopts its proposed budget.

Details of such pending cutbacks come as EEOC Chairman Evan J. Kemp Jr, is waging an intensive door-to-door lobbying effort to convince legislators on Capitol Hill that he needs more funding because conditions are so perilous that two tough new civil rights laws will have little effect unless he has the manpower to enforce them.

“If we were in business, we’d be out of business,” he said. “If Congress gets its way, our financial situation will force a Chapter 11-type reorganization, jeopardizing the very product we deliver,”

Owing largely to the Civil Rights Act of 1991 and the Americans with Disabilities Act, the agency estimates that discrimination claims will climb by 30 percent next year. In the first one-month period of the Americans with Disabilities Act after its employment provisions went into effect in late July, 248 complaints were generated. And in the nine months since the Civil Rights Act of 1991 became law, claims have jumped by 11 percent.

The question now is whether the agency will be given a funding increase to match its climbing caseload. So far, the answer from Congress seems to be no.

Although President Bush submitted a request that would bolster the EEOC’s budget by $35 million to $245 million for fiscal 1993, the House is looking at an increase of just $8 million and the Senate is proposing a less generous increase of $2 million.

Those kinds of numbers, according to Kemp and his top aides, won’t even cover inflation and ultimately could force the agency to “ration justice” among women, minorities, and the disabled.

Black as things appear, Rep. Neal Smith (D-Iowa), who heads the House Appropriations subcommittee on commerce, warns there is simply not enough money to grant the funding that Bush requested.

“They need the money, but they’re not the only ones,” Smith said. “Most agencies are being hit far worse than they are.”

The budget battles come when morale at the agency is down, in part because of unwanted attention following the hearings last year on the nomination of Clarence Thomas to the Supreme Court, but more recently because of increased workloads that are causing late nights and long weekends at the office.

Computers often are shared among large groups of staffers, equipment breakdowns have become commonplace in many offices and, increasingly, the EEOC is losing investigators to other government agencies where the pay is higher and the hours shorter.

Although the agency insists it is doing complete investigations of the 45,000 complaints that came into its office this year, some who deal with the agency aren’t so sure.

“As a practical matter, I don’t see the EEOC as anything but a place where you’re required to file a complaint,” said Robert Fitzpatrick, a Washington lawyer who handles discrimination cases. “In terms of doing anything meaningful for my clients, they can’t because they simply don’t have the staff.”

For a complaint filed at the agency now, an investigation will not get underway for 10 months. At the current rate of increase in complaints, and with no additional staff, the average case will not be reviewed for more than two years.

Such backups are bad not only for those filing suits but also for those getting sued, because an employer could be forced to justify a layoff or other employment decision from three years back.

Richard Seymour, who handles employment discrimination cases for the Lawyers Committee for Civil Rights Under Law, said the agency already is weak in investigating discrimination cases. And as the EEOC takes on the rights of the disabled, it inherits a formidable task.

“It’s terribly important to get the enforcement of this law off to a roaring start,” Seymour said. “This is the time when the landmark cases are going to be filed, and how the EEOC takes on the responsibility is critical.”