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OVERSIGHT OF THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION: EXAMINING EEOC'S ENFORCEMENT AND LITIGATION PROGRAMS

HEARING

OF THE

COMMITTEE ON HEALTH, EDUCATION, LABOR, AND PENSIONS

UNITED STATES SENATE

ONE HUNDRED FOURTEENTH CONGRESS

FIRST SESSION

ON

EXAMINING THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, FOCUSING ON EXAMINING EEOC'S ENFORCEMENT AND LITIGATION PROGRAMS

MAY 19, 2015

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C O N T E N T S

STATEMENTS

TUESDAY, MAY 19, 2015

OVERSIGHT OF THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION: EXAMINING EEOC'S ENFORCEMENT AND LITIGATION PROGRAMS

TUESDAY, MAY 19, 2015

U.S. SENATE,
COMMITTEE ON HEALTH, EDUCATION, LABOR, AND PENSIONS,
Washington, DC.

The committee met, pursuant to notice, at 10 a.m., in room SD–430, Dirksen Senate Office Building, Hon. Lamar Alexander, chairman of the committee, presiding.

Present: Senators Alexander, Roberts, Scott, Murray, Franken, Murphy, and Warren.

OPENING STATEMENT OF SENATOR ALEXANDER

The CHAIRMAN. The Senate Committee on Health, Education, Labor, and Pensions will please come to order. This morning, we're holding a hearing on Oversight of the Equal Employment Opportunity Commission: Examining EEOC's Enforcement and Litigation Programs. Senator Murray and I will each have an opening statement. We'll introduce our panel. After our witnesses' testimony, Senators will have 5 minutes of questions.

I will say to Senator Murray that I hope she will indulge me. My statement is a little long. I'm going to abbreviate it and I'll try not to abuse the privilege of the chair by taking too long.

Exactly 6 months ago, I sat in the ranking member's chair and I voted against Mr. Lopez's nomination as the EEOC General Counsel. I said then that I believed he had placed too much emphasis on litigating high-profile lawsuits at a time when there were more than 70,000 complaints of workplace discrimination that had not been investigated.

Since then, the lawsuits have continued, the agency has suffered embarrassing rebukes from the courts, and the backlog has grown. We're here today to find out why such an important agency with such a critical task has gotten so far afield of its mission.

I know our country's history. I stood on the Mall in 1963 when Martin Luther King, Jr. delivered his "I Have a Dream" speech. My friend, George Haley, died last week. He was admitted to the University of Arkansas Law School in the 1950s and had to sit in a room by himself because he was an African-American.

I've tried in my public and private life to support equal rights. But what's going on in the EEOC, in my view, is not consistent with the noble actions that I just described.

My four chief concerns—and I'll hit them briefly—No. 1, the commission is pursuing investigations that may not involve a complaint, while the backlog of complaints has grown to over 75,000. No. 2, the commission is losing lawsuits and receiving embarrassing rebukes from the courts, wasting taxpayer dollars.

No. 3, instead of following the law, the EEOC is focused on, "developing the law," and creating regulatory guidance without any notice or comment.

And No. 4, there's not much about the Affordable Care Act that this committee and the President agree on. But one thing was employee wellness programs, and the EEOC created a conflict with the committee, with the President, with three departments of the Obama administration and their regulations, and now has offered a rule to try to solve the problem that exceeds the EEOC's authority, in my judgment, and doesn't solve the problem at all.

First, investigations without a complaint. In my view, the EEOC is spending too much time initiating lawsuits from investigations which began without an individual filing a complaint and with a clear intention by the agency to achieve a maximum amount of publicity. For example, EEOC is investigating at least three accounting firms, none of which was there a complaint, but rather where partners have voluntarily adopted a mandatory retirement age; or the Texas Roadhouse restaurant chain, where you're investigating age discrimination because the hosts, bartenders, and servers seem too young.

There were apparently no complaints when it started. To make sure you have complaints, the agency is apparently advertising on Craigslist to churn up more complaints. At the same time, the number of backlogged—the number of complaints of people actually aggrieved and have filed with your agency has increased to 75,658.

Court rebukes. Six months ago at our hearing, I read some embarrassing words from a unanimous three-judge panel on the 6th Circuit Court of Appeals, which said of an EEOC case,

> "EEOC brought this case on the basis of a homemade methodology, crafted by a witness with no particular expertise to craft it, administered by persons with no particular expertise to administer it, tested by no one, and accepted only by the witness himself."

The commission continued to appeal another case using the same faulty witness and lost that case too, causing a unanimous three-judge panel on the 4th Circuit to say that there were an alarming number of errors. In a concurring opinion, one of the judges said, "The commission's conduct in this case suggests that its exercise of vigilance has been lacking."

Since 2011, EEOC has been ordered to pay attorney's fees in 11 different cases, the most recent one being in Washington State where a judge in a Federal district court ruled that the EEOC had demanded more than $25 million from two defendants, and the court found it had no valid basis for doing so. This is what the court said:

> "The EEOC failed to conduct an adequate investigation, pursued a frivolous theory of joint-employer liability, sought frivo-

lous remedies, and disregarded the need to have a factual basis to assert a plausible basis for relief under title VII."

And there are other examples.

Respect for the rule of law. On top of all this, I am concerned that the commission and Mr. Lopez seem to be inventing ways to avoid following the law, taking an, "entrepreneurial approach," to litigation and talking about novel issues. Then there's the matter of guidance. In the past 2½ years, twice the commission has set a national workplace discrimination policy through guidance, and then filed lawsuits based on the guidance as if they, the commission, could make the law.

And, finally, the employee wellness proposed rule. This committee, Congress, and the President specifically authorized employers to reward employees for making healthy lifestyle choices. Three departments of the Obama administration issued regulations consistent with the law. Yet, in 2014, EEOC decided to sue employers for following the law and following those regulations and offering those plans. Even the White House press secretary expressed some concern about this. Our committee expressed concern about this.

In April, EEOC offered a proposed rule on employer wellness programs. But the rule ignores the law and the administration's regulations. We can talk more about that.

So this is not the first time these issues have come up. I issued a report last fall detailing many of these problems. We held a bipartisan hearing earlier this year. The White House press secretary, as I said, has expressed some concern. But no one seems to be listening. Here we are still about to discuss the fact that EEOC is still spending its time looking for investigations where there are no complaints, while a backlog of complaints grows to over 75,000; still receiving embarrassing rebukes from the court; still experimenting with developing the law and guidance free from public comment; and still ignoring the intentions of Congress and the President in writing into Federal law a system for encouraging businesses to offer employee wellness programs.

All of these issues are of concern to me, and I look forward to hearing from the EEOC's General Counsel and chair regarding how they are addressing them.

The CHAIRMAN. Senator Murray.

OPENING STATEMENT OF SENATOR MURRAY

Senator MURRAY. Thank you very much, Mr. Chairman. I want to thank our witnesses, Chair Jenny Yang and General Counsel David Lopez, for taking the time to be here today.

The Equal Employment Opportunity Commission does important work to protect workers and to prevent discrimination in the workplace. I appreciate the hard work and dedication the agency and the Commission bring to that cause. This hearing gives us an opportunity to remember the critically important role the EEOC plays in eliminating discrimination in workplaces across the country.

As you have heard me say, I believe that real, long-term economic growth is built from the middle out, not the top down. And our government, economy, and workplaces should work for all fami-

lies, not just the wealthiest few. But we can't truly achieve those goals if some individuals in our country face discrimination in the workplace or aren't considered for jobs because of who they are.

Race, ethnicity, national origin, religion, gender, sexual orientation, and disability have nothing to do with a person'sability and potential in the workplace. But we can't back up that basic belief and put it into practice without the EEOC, which is charged with enforcing anti-discrimination laws.

The EEOC will celebrate its 50th anniversary this year. Before 1965, it was legally permissible for a business to fire someone for their religious beliefs. Employers could harass employees based on the color of their skin. Job applicants could be disqualified in the application process because of where they came from.

In 1964, Congress passed the Civil Rights Act, and just a year later, the EEOC opened its doors to help ensure workers had the right to equality and opportunity. For five decades, the Commission has made great strides in creating a more fair and more just society.

12In fact, the EEOC's success rate in litigating discrimination cases has consistently topped 90 percent, including more than 93 percent in this past fiscal year. That success comes despite years of budget cuts and belt tightening that has whittled the agency's workforce by more than 700 full-time employees since 1995. And it's one more reason why we have got to build on the bipartisan budget deal to roll back the automatic cuts so we can restore investments that expand opportunities for all families.

I believe it is time for Congress to step up and give the EEOC the resources it needs to fight discrimination in our Nation's workplaces. That would help the EEOC reduce its severe backlog.

EEOC demonstrated in 2011 and 2012 that with just a small increase in resources, they could make steady reductions in the backlog. But sequestration and shutdowns have made that work more difficult. That is truly concerning. In too many cases, justice delayed is justice denied. So I look forward to hearing from our witnesses today on what the agency is doing to reduce its backlog of claims.

This year, by the way, we are also celebrating the 25th anniversary of the Americans with Disabilities Act. The ADA and the amendments that followed prohibited discrimination on the basis of disability. But we still need to make progress to promote equality of opportunity in the workplace for individuals with disabilities. And we need to ensure that all employers recognize these important protections, for example, in workplace wellness programs.

Congress also needs to update our anti-discrimination laws to protect people from discrimination based on their sexual orientation or gender identity. We need stronger LGBT anti-discrimination laws in employment, education, housing, credit, and in public places. On that note, I hope that this committee can continue its bipartisan efforts to address these critical issues.

Freedom from discrimination is a requirement for making sure all Americans have the opportunity to work hard and succeed. I want to commend the EEOC on the important work it does to make sure our government, economy, and workplaces are free from discrimination.

Thank you, and I look forward to your testimony.

The CHAIRMAN. Thank you, Senator Murray.

I'd like to welcome our two witnesses today. Jenny Yang serves as Chair of the Equal Employment Opportunity Commission. Prior to joining the EEOC in April 2013, she was a partner in a law firm. She previously worked at the Department of Justice in the Employment Litigation Section of the Civil Rights Division.

David Lopez currently serves as General Counsel of the EEOC. Prior to becoming general counsel in 2010, Mr. Lopez served in various roles in the EEOC, including senior trial attorney, and also special assistant to then-EEOC Chair Gilbert Casellas.

We look forward to the conversation today and ask that each of you summarize your testimony in 5 minutes.

Ms. Yang, welcome.

STATEMENT OF JENNY R. YANG, CHAIR, EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, WASHINGTON, DC

Ms. YANG. Good morning, Chairman Alexander, Ranking Member Murray, and distinguished members of the committee. Thank you for inviting me to testify today with our General Counsel, David Lopez.

As chair of the EEOC, it has been a privilege to work with over 2,000 dedicated colleagues across the country to fulfill our singular mission to stop and remedy discrimination in the workplace. As Senator Murray noted, this July marks two historic milestones, our 50th anniversary as an agency and the 25th anniversary of the ADA.

We are assessing where we are today as well as charting our path forward to make the promise of our civil rights laws a reality for all. Over the past 50 years, our Nation has made great strides toward building more inclusive workplaces. Yet across the country, we continue to see discrimination in many forms, and I will highlight just a few.

Just last month, the Commission held a meeting in Miami where we heard testimony on the persistent challenge of race and ethnicity discrimination in the 21st century workplace. Also last month, we settled claims that a drilling company subjected African-Americans, Latinos, Native Americans, and Asian Americans to racial and ethnic slurs, physical harassment, and exclusion from higher paying jobs. We obtained $14.5 million for over 1,000 workers, as well as important changes to the employment practices going forward.

We have represented many women who are paid less than men even when they are doing the same job and are equally if not more qualified. In addition, in 70 percent of the pregnancy charges that are filed with our agency, women say that they were fired because they are pregnant.

For example, we recently resolved a case on behalf of a woman who had a miscarriage. She requested 5 days off to obtain medical treatment, and she was fired for taking that time.

We continue to see harassment in many forms, including sexual harassment and assault, which is particularly endemic for farm worker women. Often, EEOC has been the last hope as criminal prosecutions are rare. And despite a generation of young people

who have grown up with the ADA, many qualified people still today can't find a job or advance. So we know that our work is not done.

Our agency is helping employers to build stronger and more productive workplaces through a commitment to equality. I truly believe that most employers want to comply with the law. Providing clear guidance and investing in outreach and education are the best ways to prevent discrimination.

We appreciate the need to ensure coordination of our policy guidance and our enforcement efforts to provide a clear and consistent agency position. On April 20th, as Senator Alexander noted, we published a Notice of Proposed Rulemaking that addresses the ADA's application to employer wellness programs to provide more certainty on the interaction of our Federal laws. We understand the importance of issuing an NPRM on GINA and wellness programs, which we are targeting for July.

It is a top priority of mine to better serve the public, including by more effectively managing the pending inventory of charges. In particular, we are investing in two areas: hiring and training of frontline staff to rebuild capacity after years of hiring freezes and efficient case management systems. We are also strongly committed to early resolution of charges. The overwhelming majority of our work is accomplished through voluntary resolutions, through mediation, settlement, and conciliation.

Litigation is truly a last resort. For every lawsuit we file, we voluntarily resolve over 100 charges without filing suit. Our litigation program has been highly effective with a successful resolution rate consistently over 90 percent. Where we have faced losses, we have implemented lessons learned throughout the agency.

The Supreme Court's recent decision in *Mach Mining* is a positive step forward for all parties. The decision provides needed clarity on the standards for judicial review of our conciliation efforts.

The agency has taken our responsibility to conciliate seriously, and we will continue to do so. Over the past 3 years, our success in resolving charges through conciliation has averaged nearly 40 percent. To continue this progress, we will be providing additional training to our investigators to ensure they have the highest conciliation skills.

Ultimately, our goal is to open doors to opportunity for all. To address some of our most stubborn workplace challenges, we are building active partnerships to develop innovative solutions. One example is our recently launched Select Task Force on Harassment led by Commissioners Lipnic and Feldblum, where we're working with our stakeholders to identify underlying problems to workplace harassment.

Thank you very much, and I look forward to your questions.

[The prepared statement of Ms. Yang follows:]

PREPARED STATEMENT OF JENNY R. YANG

Good afternoon Chairman Alexander, Ranking Member Murray, and distinguished members of the committee. Thank you for inviting me to testify today on behalf of the Equal Employment Opportunity Commission ("the Commission" or "EEOC").

I appreciate the opportunity to appear before you to discuss the work and strategic priorities of the agency. It has been a privilege to serve as chair of the EEOC

since September 2014 and as a member of the Commission since May 2013. As you know, the EEOC is a five-member bi-partisan commission responsible for enforcing our Nation's laws against workplace discrimination. As of January, we have had a full complement of commissioners: Commissioners Constance S. Barker, Chai R. Feldblum, Victoria A. Lipnic, and Charlotte A. Burrows. The agency's General Counsel, P. David Lopez, has authority over the conduct of the agency's litigation, and I am pleased to be here with him providing testimony today.

I thank the members of this committee for your support for the agency. Since joining the Commission, and particularly in my role as Chair, I have seen the value of open lines of communication between EEOC and Congress. A steady, two-way flow of information keeps you abreast of the agency's efforts and objectives, while keeping us aware of matters on the minds of your constituents and ours. Today's discussion adds to that helpful exchange of information. I look forward to our continued work with this committee and others in Congress over the course of my tenure.

Over the years, EEOC has made critical progress in advancing equal opportunity for workers, yet we have also faced challenges. The Commission, our General Counsel, and the agency's more than 2,000 dedicated employees take very seriously our duty to responsibly and efficiently discharge the work Congress has entrusted to us. As such, we are continually developing ways to improve our service to the public. I look forward to highlighting some of those initiatives today.

HISTORIC MILESTONES

This July marks two historic milestones for EEOC. On July 2, we will celebrate EEOC's 50th anniversary, and on July 26, we will commemorate the 25th anniversary of the Americans with Disabilities Act (ADA). For our agency, these occasions present a time for reflection and recommitment to expanding opportunity in the American workplace.

Title VII of the Civil Rights Act of 1964 (title VII) created EEOC to enforce protections against employment discrimination on the basis of race, color, national origin, religion, and sex. We opened our doors on July 2, 1965, a year to the day after the Civil Rights Act was signed. It was projected in our first year that EEOC would receive approximately 2,000 charges of discrimination. In reality, EEOC received nearly 9,000 charges.

In the 50 years since, the agency's responsibilities and workload have expanded exponentially. Today, we receive nearly 10 times as many charges a year as we did in 1965. In addition, Congress has vested EEOC with responsibility to enforce the Equal Pay Act of 1963 (EPA), the Age Discrimination in Employment Act of 1967 (ADEA), Section 501 of the Rehabilitation Act of 1973, Titles I and V of the Americans with Disabilities Act of 1990 (ADA), and Title II of the Genetic Information Nondiscrimination Act of 2008 (GINA).

ENSURING EQUAL OPPORTUNITY IN THE 21ST CENTURY WORKFORCE

The Nation has made great strides toward equal employment opportunity for all. Never before in our Nation's history has the American workplace been more inclusive than it is today. EEOC has been a critical part of that progress, creating real and meaningful opportunities for people of all backgrounds. Through 53 field offices around the country, we help employees and employers in understanding our civil rights laws. We initiate early and informal resolution of employment disputes and work with employers to improve their policies to prevent discrimination from recurring. We use litigation as a last resort to ensure accountability when violations do occur, and we have done so effectively. EEOC has obtained favorable results in 93 percent of the cases resolved during fiscal year 2014, and over the past 5 years we have achieved, on average, favorable results in 91 percent of our case resolutions.

Yet, despite significant progress, EEOC's work is unfinished. Notwithstanding the diligent efforts of many employers and the work of EEOC, across the country we continue to see discrimination—in both overt and subtle forms—based on race, national origin, sex, religion, age, disability, and genetic information. What's more, individuals who come forward to raise concerns of unequal treatment frequently face retaliation.

Highlighted below are some examples of the ways in which we see discrimination manifest itself today, and the strategies that EEOC is employing to prevent, stop, and remedy discrimination. The ongoing challenge of combating employment discrimination in all its forms is what makes EEOC's work as critical today as it was in 1965.

Fulfilling the Promise of the ADA for People With Disabilities

As we approach the 25th Anniversary of the ADA, today's young people with disabilities, sometimes known as—the "ADA generation"—have increased access to education, employment, and full participation in American society. However, even with notable advancements to make our communities more accessible, much remains to be done to fulfill the promise of the ADA in the workplace. Over the past 4 years, approximately 35 percent of the suits that EEOC filed on the merits included allegations of discrimination under the ADA. In the last fiscal year alone, 30 percent of all charges of discrimination filed with the EEOC alleged disability discrimination. During that period, EEOC staff worked with more than 4,800 employers to reach voluntary resolutions of ADA charges through settlements and conciliation agreements, obtaining more than $95 million for workers with disabilities while helping to establish workplace practices that enable people with disabilities to succeed at work.

EEOC's litigation on behalf of people with disabilities has involved workers in all segments and sectors of the workforce experiencing discrimination ranging from failure to provide reasonable accommodations and asking prohibited disability-related questions of applicants and employees, to refusing to hire qualified applicants based on stereotypes, to discharging qualified workers on the basis of disability. In one striking example from September 2014, the U.S. Court of Appeals for the Fifth Circuit upheld a jury's liability verdict in *EEOC* v. *Hill Country Farms, Inc., d/b/a Henry's Turkey's Servs*, a lawsuit filed on behalf of 32 workers with intellectual disabilities. EEOC presented evidence that for years the employer subjected the workers to abusive verbal and physical harassment, restricted their freedom of movement, required them to live in sub-standard conditions, and failed to provide adequate medical care when needed. The agency won the largest verdict in its history on behalf of these workers at $240 million, although this was later reduced to conform to statutory caps.

In February 2015, the U.S. District Court for the Eastern District of Michigan, in *EEOC* v. *P.A.M. Transp., Inc.*, entered a judgment against the employer. EEOC alleged that the employer's medical clearance policy violated the ADA by requiring all drivers to notify the company of any contact with a medical professional, including for a routine physical, and then the company terminated employees based on the overly broad medical inquiries. The judgment required the employer to pay nearly half a million dollars to 12 former truck drivers and a separate judgment entered against the employer required the company to change its medical clearance policy to make medical inquiries of drivers only when they are job-related and consistent with business necessity.

Persistent Race and Ethnicity Discrimination

As we see across the country, discrimination based on race and ethnicity persists in our Nation's workplaces. In fiscal year 2014, race discrimination remained the most frequent ground for discrimination alleged under title VII, comprising 35 percent of charges filed with the EEOC under all the statutes we enforce. Across the country, the agency has resolved race and national origin discrimination charges alleging barriers to equal opportunity, such as hiring discrimination and harassment on the job. During fiscal year 2014, EEOC staff recovered more than $106 million in administrative resolutions of race and national origin charges—without litigation. In one notable resolution from fiscal year 2013, EEOC reached a conciliation agreement with an employer that stemmed from a systemic investigation launched after 78 charges were filed with the EEOC. The conciliation agreement provided $21.3 million to African-American workers whom the EEOC found were subjected to racial discrimination.

When litigation has been necessary, we have succeeded in obtaining compensation for victims as well as vital changes to discriminatory practices at issue. For example, just last month, in *EEOC* v. *Patterson-UTI Drilling Company LLC*, EEOC settled claims of race and national origin discrimination affecting more than 1,000 employees. EEOC alleged that since at least 2006, the employer engaged in a nationwide pattern or practice of discrimination on its drilling rigs, including by assigning African-Americans, Native Americans, Hispanics or Latinos, Asian-Americans, and biracial individuals to the lowest level jobs, failing to train and promote them, disproportionately disciplining and demoting them, and subjecting them to pervasive racial and ethnic slurs, and engaging in retaliation. The employer agreed to pay $14.5 million, which includes a settlement fund plus benefits obtained in separate conciliation agreements on related charges of discrimination, as well as significant changes to its practices. In September 2014, in *EEOC* v. *McCormick & Schmick*, EEOC settled a case in which it alleged that a nationwide seafood restaurant refused to hire any African-Americans into positions in which they would interact

with the public, known as "front-of-the-house" positions, at its Baltimore restaurants. The consent decree in the case provides approximately $1.3 million to approximately 200 individuals and requires significant changes in recruitment, hiring, and work assignments to ensure the restaurant's hiring practices do not discriminate in the future.

Barriers to Equal Employment Opportunity for Women

Women continue to confront multiple barriers in the workplace. Although women now comprise nearly half the workforce, they continue to be over represented in low wage jobs. The EEOC has challenged discriminatory hiring practices against women in traditionally male fields such as trucking, mining, construction, and warehouse work. For example, in *EEOC and Clouse* v. *New Prime, Inc.*, the court ruled that one of the Nation's largest trucking companies engaged in a deliberate pattern or practice of discrimination against female applicants for jobs as drivers by requiring that they be trained *only* by female trainers. Given the very few female trainers, this practice resulted in female trainees waiting extended periods of time—sometimes as long as 18 months—for a female driver trainer to become available. As a result most female drivers were denied employment.

Many women also experience a persistent pay gap, even when they work in the same jobs and are equally qualified as men. To assist employers in ensuring equal pay for equal work, last year alone, the EEOC conducted educational and outreach events on equal pay issues that reached nearly 40,000 attendees across the country. Still today, when women become pregnant, they continue to face harassment, demotions, decreased hours, forced leave, and even job loss. In fact, approximately 70 percent of the thousands of pregnancy discrimination charges EEOC receives each year allege women were fired as a result of their pregnancy.

NATIONAL STRATEGIC PRIORITIES AND COMMISSION OVERSIGHT

As we serve the American public and enforce our civil rights laws, EEOC is committed to operating as effectively and strategically as possible. To that end, in February 2012, the Commission approved a strategic plan for fiscal years 2012–16, designed to coordinate the EEOC's programs to create sustainable reductions in discriminatory workplace practices. In December 2012, the Commission adopted a strategic enforcement plan, which established the following six national priorities:

1. Eliminating Barriers in Recruitment and Hiring;
2. Protecting Immigrant, Migrant and Other Vulnerable Workers;
3. Addressing Emerging and Developing Issues;
4. Enforcing Equal Pay Laws;
5. Preserving Access to the Legal System; and
6. Preventing Harassment Through Systemic Enforcement and Targeted Outreach.

Across the agency, we are deploying our resources more strategically to achieve broad and sustained compliance with our anti-discrimination laws. We are further integrating all segments of agency operations and emphasizing effectiveness, efficiency and consistency. We are instituting improved channels of communication across the agency for greater coordination and consistency in private, public, and Federal sector enforcement.

Throughout EEOC's history, the agency's success has hinged on carefully balancing national priorities, coordination, and oversight with local awareness, responsiveness, and discretion. With the goal of increasing the efficiency and effectiveness of its enforcement programs, a unanimous Commission delegated litigation authority to the General Counsel in the 1996 National Enforcement Plan. This action freed the Commission to focus on broad policy issues. In the 2012 Strategic Enforcement Plan, on a bi-partisan basis, the Commission reaffirmed that delegation of authority and established quarterly reports and meetings to continually assess the success of delegated authority.

Currently, the Commission must approve decisions to commence or intervene in litigation in significant cases that: (1) require a major expenditure of resources; (2) address a developing area of law; or (3) raise issues of public controversy. In addition, the Commission must review and approve all recommendations for EEOC to participate as *amicus curiae*. The 2012 Strategic Enforcement Plan also directs that a minimum of one litigation recommendation from each EEOC District Office must be presented for Commission consideration each fiscal year, including litigation recommendations based on the above criteria.

IDENTIFYING COLLABORATIVE SOLUTIONS TO STRENGTHEN AMERICA'S WORKPLACES

For EEOC, this 50th anniversary year offers a vital opportunity to engage all who share the goal of promoting equal employment opportunity in a broader effort to build stronger workplaces that fully utilize the talents and potential of all workers. EEOC is actively partnering with employers and employees alike to identify strategies for widening the doors to equal opportunity for all in the workplace.

We have redoubled our efforts to develop solutions to our most complex problems. With 30 percent of the charges filed in a fiscal year alleging workplace harassment, combating harassment is a high priority. Race is cited most frequently as the basis for harassment allegations followed by disability and gender. In January, the Commission convened a public meeting to hear from experts on *preventing and addressing workplace harassment*. To develop a comprehensive strategy to address this issue, I asked EEOC Commissioners Victoria A. Lipnic and Chai R. Feldblum to co-chair a Select Task Force on the Study of Harassment in the Workplace. They have invited employers, workers' advocates, academics, and others experienced with harassment issues and will be holding public meetings to identify underlying problems leading to harassment claims and effective strategies for preventing and remedying workplace harassment.

The agency continues to explore solutions to address and overcome entrenched workplace barriers based on race and ethnicity. Last month, the EEOC convened a Commission meeting in Miami, FL, entitled "*EEOC at 50: Confronting Racial and Ethnic Discrimination in the 21st Century Workplace*." A broad range of national and local stakeholders shared their perspectives on ongoing challenges and promising solutions. Witnesses emphasized that despite significant progress in the past 50 years, discrimination against racial and ethnic minorities remains a too-frequent reality in 21st century America. Other witnesses described today's new barriers to employment and encouraged the EEOC to address those barriers through creative partnerships with employers.

Next month, the Commission will host a public Commission meeting on retaliation in the workplace. Retaliation remains the most frequently alleged basis of discrimination under all the statutes we enforce, comprising 42.8 percent of all charges filed with the agency in fiscal year 2014. The Commission meeting will address the root causes of retaliation in the workplace and explore strategies for prevention to ensure that individuals are not chilled from reporting violations of the law. As necessary, the agency will continue to challenge retaliatory practices. The agency did so effectively, just last month, when the U.S. Court of Appeals for the Sixth Circuit upheld a jury verdict in *EEOC* v. *New Breed Logistics*, finding the employer liable for a supervisor's sexual harassment of three female employees and retaliation against them by firing them shortly after they complained about the harassment, and retaliation against a male employee who supported the women's claims. In its ruling, the court provided important clarification on the scope of retaliation protected under title VII when it found that an employee's oral complaints to a supervisor to cease harassing conduct constitute protected activity.

In addition, as the Nation's largest employer, the Federal Government continues to strive to be a model employer. The EEOC strategically partners with other Federal agencies to promote workplace policies and practices that remove barriers to equal employment opportunity and foster an inclusive work environment. I am pleased to serve on the Steering Committee for the newly created government-wide Diversity and Inclusion Council. Along with the Office of Personnel Management, the Department of Labor, the Office of Management and Budget, and the White House, this effort promotes collaboration among Federal agencies to develop approaches that achieve model EEO programs and broad inclusion throughout the Federal Government.

PROVIDING GUIDANCE TO PROMOTE COMPLIANCE

One of the most crucial tools at the Commission's disposal is providing guidance to help employers and employees, alike, better understand and comply with our anti-discrimination laws.

Notice of Proposed Rulemaking on Wellness Programs

On April 20, 2015, EEOC published in the Federal Register a Notice of Proposed Rulemaking (NPRM) that addresses the ADA's application to employer wellness programs. As part of this process, we coordinated with the Federal agencies that have responsibility for enforcing and implementing the provisions of HIPAA and the ACA related to wellness programs, including the Departments of Labor, Health and Human Services, and Treasury. The public comment period on the NPRM closes on

June 19th, and the Commission looks forward to reviewing these comments as it shapes the final regulation.

The Commission understands the critical need for EEOC guidance concerning employer wellness programs and the interaction of the ADA with the Health Insurance Portability and Accountability Act (HIPAA) and the Affordable Care Act (ACA). We recognize that many employers wish to implement wellness programs in an effort to improve their employees' health and reduce health care costs. We are also mindful that wellness programs must adhere to the ADA's requirement that disability-related inquiries (such as questions on a health risk assessment) or medical examinations (such as blood tests for cholesterol levels) that are part of employee health programs must be "voluntary."

In addition, we anticipate that in the near future, the Commission will also issue amendments to EEOC's regulations implementing Title II of GINA to address employer wellness programs. Our goal is to propose rules that harmonize ADA and GINA requirements with HIPAA and the ACA, as well as to provide certainty to employers about their obligations.

Guidance on Pregnancy Discrimination

In July 2014, the Commission issued a comprehensive update to the agency's pregnancy guidance that covers a range of issues, including the Pregnancy Discrimination Act's (PDA) application to current, past, and potential pregnancy; the application of the PDA to nursing mothers; the prohibition of forced leave policies; and the application of the ADA to pregnancy-related impairments. This was the first update of our pregnancy guidance in over 30 years. The Commission initiated the process of updating the guidance with a Commission meeting in 2012 focused on pregnancy discrimination. Stakeholders at the meeting urged the Commission to update its guidance to reflect developments in the law, including the passage of the ADA Amendments Act in 2008, which expanded protections for those with temporary impairments.

The Supreme Court's recent decision in *Young* v. *UPS* addresses the PDA and recognizes that the ADA, as amended, provides important protections for employees with pregnancy-related conditions. As a result of this decision, many pregnant women who were previously denied accommodations will now be entitled to receive them. The Commission will be updating its guidance on pregnancy accommodation issues in accordance with the Court's decision.

Guidance on Consideration of Arrest and Conviction Records in Employment Decisions

The EEOC's Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions is another example of guidance that is promoting compliance. The Commission approved this updated guidance by a bipartisan vote to clarify how employers can use background checks as part of their selection process. Consistent with longstanding court decisions, the guidance provides that when conducting criminal background checks, employers should not categorically exclude everyone with a criminal record. Rather, they should target criminal background screens to reflect the nature of the crimes, the time elapsed, and the nature of the job and then allow those who are identified as failing the screen an opportunity to correct errors in the criminal records and submit supplemental information for individualized consideration. A *Wall Street Journal* article reported that 77.7 million individuals, or nearly one out of every three American adults, have a file in the FBI's master criminal data base. *See http://www.wsj.com/articles/decadeslong-arrest-wave-vexes-employers-1418438092* (Dec. 12, 2014). EEOC's guidance seeks to ensure that individuals have a chance to be considered where they are qualified to do the job.

An increasing number of businesses have explicitly adopted the principles laid out in the guidance. According to a 2014 survey by screening company EmployeeScreenIQ, 88 percent of the nearly 600 respondents said they had adopted the principles contained in EEOC guidance. Finally, many employers and jurisdictions have adopted what are known as "ban-the-box" policies that delay the consideration of criminal records until later in the employment process—a policy the EEOC guidance recommends. Indeed, at least 16 States have approved ban-the-box legislation, including Vermont (2015), Virginia (2015), Georgia (2015), Delaware (2014), Nebraska (2014), Illinois (2014 and 2013), New Jersey (2014), California (2013), Maryland (2013), Minnesota (2013), Rhode Island (2013), Colorado (2012), Connecticut (2010), Massachusetts (2010), New Mexico (2010), and Hawaii (1998).

EFFICIENT AND EFFECTIVE ENFORCEMENT TO PROMOTE BROAD COMPLIANCE

The EEOC is ensuring efficient and effective enforcement by using integrated strategies that encourage prompt and voluntary resolution of charges and improve employment policies and practices so that employers can prevent discrimination from occurring. The agency is also investing its resources strategically to address recurring and persistent problems in the workplace in order to remove barriers to opportunity and improve working conditions for a significant number of workers.

Voluntary compliance remains the preferred means of preventing and remedying employment discrimination. Our mediation, settlement and conciliation efforts serve as prime examples of our investment in strategies to resolve workplace disputes early, efficiently, and with lasting impact. In fiscal year 2014, these informal settlement methods secured more than $296 million in benefits for individuals, without resort to litigation. EEOC's private sector national mediation program serves an integral role in the agency's work. Mediation is a voluntary process where a neutral mediator assists the employer and employee in reaching an early and confidential resolution of the employment dispute raised in a charge of discrimination. This program has consistently achieved outstanding results for participants. In fiscal year 2014, EEOC's mediation program successfully helped employers and employees voluntarily resolve 7,846 (77 percent) of the 10,221 mediations it conducted. Through these mediations, EEOC obtained $144.6 million in relief for individuals. Moreover, participants nearly uniformly view the mediation program favorably, with over 96 percent reporting confidence in the program this past year.

EEOC's conciliation efforts are another vital means to promote voluntary compliance. Conciliation efforts occur after the agency has completed its investigation of a charge and notified the parties of its determination of reasonable cause to believe that discrimination has occurred. Conciliation is an informal method of resolving a charge of discrimination where the agency endeavors to eliminate unlawful employment practices by working with an employer to reach a mutually satisfactory resolution before any litigation is filed. EEOC's record demonstrates its commitment to, and success in, resolving charges through conciliation. Over the past 3 years, EEOC has worked with employers to conciliate and voluntarily resolve a greater percentage of cases than at any time in recent history—with successful conciliations rising from 27 percent in fiscal year 2010 to 38 percent in fiscal year 2014. The success rate for conciliation of systemic charges is even higher—at 47 percent, which is particularly significant as these charges are more complex and have the potential to improve practices for a significant number of workers.

The Supreme Court's decision in *Mach Mining LLC* v. *EEOC*__*U.S.*__, 2015 WL 1913911 (2015), provides needed clarity across the courts concerning standards for judicial review of EEOC's conciliation efforts. The standard set forth by the Supreme Court will effectuate the purpose of conciliation, by encouraging all parties to focus on informally resolving the charge. The Commission takes its obligation to conciliate seriously, and we will ensure that additional guidance and training for EEOC staff further advances the agency's effectiveness in our conciliation efforts. The Court's decision will promote a more efficient use of agency, employer, and judicial resources by ensuring the focus of the case is on resolving the merits of the claims of discrimination.

EEOC has a strong incentive to successfully resolve charges through conciliation. Successful conciliations ensure that unlawful employment practices are remedied more quickly, thus conserving agency resources. These conciliation agreements can also help to improve workplace policies and prevent discrimination from occurring in the first instance. Indeed, employers agreed to include changes to workplace policies in nearly 850 conciliation agreements over the last 3 years.

Through its administrative and legal resolutions, the agency has increased the percentage of agreements with targeted equitable relief to improve workplace practices from 64 percent in fiscal year 2013 to 73 percent in fiscal year 2014. This is especially significant, as it surpassed the goals set out in EEOC's Strategic Plan for targeted equitable relief for fiscal year 2014 (63–67 percent), fiscal year 2015 (64–68 percent), and fiscal year 2016 (65–70 percent). Indeed, EEOC has worked with employers to secure policy changes in 1,724 agreements through all administrative resolutions, including mediations, conciliations, and settlements, and has obtained nonmonetary benefits for nearly 92,000 workers in cases over the past 3 years. Examples of these changes include adoption of anti-harassment policies, objective promotion policies, and reasonable accommodation policies—policies that will help prevent discrimination from recurring.

Systemic investigations and cases—those where the practice or policy has a broad effect on an industry, occupation, or geographic area—are another critical strategy for leveraging the EEOC's resources to most effectively promote compliance and

remedy discrimination. In 2005, EEOC established a Systemic Task Force under the leadership of former Commissioner Leslie E. Silverman. Former Chair Cari M. Dominguez charged the Task Force with responsibility for examining the Commission's systemic program and recommending new strategies for combating systemic discrimination. In 2006, a unanimous Commission adopted the *recommendations* of the Systemic Task Force and established a nationwide systemic program as a top priority of the Commission.

In 2012, the Commission reaffirmed the importance of systemic enforcement in its Strategic Plan and Strategic Enforcement Plan. The Commission has worked to create a structure and strategy to coordinate systemic cases across the country, provide increased headquarters support for the systemic work of the field offices, enhance systemic skills, and provide technology to support the development of systemic cases. We have hired social scientists and labor economists who are located in EEOC's field offices to directly support systemic investigations and analyze workforce data and employment practices. Through these actions and others, EEOC is strengthening its systemic infrastructure to enhance the agency's ability to identify and remedy persistent patterns of discrimination across the workforce.

As a result of these efforts, at the end of fiscal year 2014, 57 out of 228, or 25 percent of the cases on EEOC's litigation docket were systemic. This is the largest proportion of systemic lawsuits on EEOC's docket since tracking began in fiscal year 2016. In fiscal year 2014, the agency continued to achieve a high level of results in its systemic investigations and secured $13 million in monetary relief. Also, in 2014, EEOC's success rate for conciliation of systemic charges of discrimination was 47 percent. Examples of systemic matters successfully resolved in fiscal year 2014 prior to litigation include:

• The EEOC reached a negotiated settlement agreement with a company to pay $650,000 to African-American and Hispanic individuals the company is alleged to have failed to hire because of their race or national origin. The company also agreed to hire additional workers, bringing the combined value of this relief to over $4.6 million;

• After finding reasonable cause to believe that a company had a practice of not hiring women for driving positions because of their sex, the EEOC reached a successful conciliation agreement with the employer. The company agreed to pay $530,000 to women who EEOC alleged were denied hire and also to provide significant targeted equitable relief including the adoption of an effective EEO policy prohibiting discrimination based on sex. The agreement also calls for anti-discrimination training for all human resources employees focused on preventing sex discrimination.

• The EEOC successfully conciliated four systemic ADEA investigations alleging that the employers stopped allowing volunteer firefighters to accrue points for performing certain duties when they reached age 55 or 60. Total monetary benefits of over $1.4 million were agreed to for these firefighters through the conciliation agreements. The employers also changed their policies to bring them into compliance with the ADEA.

When the EEOC makes a finding that there is reasonable cause to believe that the company has engaged in a pattern or practice of systemic discrimination and efforts to secure voluntary compliance are not successful, the agency may choose to file suit to enforce the law. In fiscal year 2014, the Commission filed 17 systemic lawsuits. These suits challenge a range of alleged systemic barriers, including:

• Refusing to place African-American applicants into front-of the-house restaurant positions;

• Refusing to hire applicants over age 40 for front-of-the-house restaurant positions;

• Inflexible leave and fitness for duty policies that deny reasonable accommodations to employees with disabilities; and

• Widespread harassment based on race, sex and national origin.

Our General Counsel, P. David Lopez will discuss our litigation program in greater detail during his testimony. Briefly, I would like to highlight that when the Commission files suit, our litigation program has been highly successful. EEOC favorably resolved 93 percent of the cases resolved last fiscal year. As a Federal agency, we hold ourselves to a high standard. We carefully select the cases that we decide to litigate, and we strive to ensure all our work is pursued with excellence. Where we receive adverse decisions, we communicate lessons learned from significant cases across the agency to ensure that we continually improve our effectiveness and our service to the public.

INVESTING IN OUR INFRASTRUCTURE TO BETTER SERVE THE PUBLIC

One of the agency's greatest responsibilities is to provide timely and responsive service to both employees and employers involved in discrimination disputes. Through investments in staffing, training, and technology we are improving the quality of our customer service.

The EEOC continually strives to ensure that employees and employers resolve discrimination charges as promptly as possible. To do so, the agency must have the staff and resources to deliver a high level of service. Increases in the EEOC's budget in fiscal year 2009 and fiscal year 2010 enabled the agency to hire 164 new investigators and mediators. Together with the training of these new staff and diligent charge management, these efforts generated nearly a 20 percent reduction in the charge workload in fiscal year 2011 and fiscal year 2012—the first decreases in nearly 10 years.

These gains could not be sustained in fiscal year 2013 due in part to attrition of front-line staff coupled with a hiring freeze and the effects of governmental sequestration when the EEOC had to furlough its entire workforce for 5 days. The government shutdown in the first quarter of fiscal year 2014 also slowed the replacement of departing staff.

The fiscal year 2014 appropriations, which included a $20 million increase for EEOC from the sequestration-impacted level fiscal year 2013 budget, allowed the agency to launch a critical mid-year hiring effort in order to rebuild our workforce, particularly those who provide direct services to the public in the 53 field offices and who investigate, mediate, conciliate, and litigate pending discrimination claims. During the third and fourth quarters of fiscal year 2014, EEOC hired approximately 116 investigators and 12 mediators, helping to restore much-needed capacity to the front-line staffing levels and rebuild the enforcement capability of the field offices. As these new hires are trained and come on board, we expect to see the benefits of this hiring beginning in the third quarter of fiscal year 2015. In addition, we are working to increase the speed in which we hire front-line staff this year and have approved 105 replacement hires since the beginning of the year. Our office of the Chief Human Capital Officer is working with hiring managers to make full use of the hiring authorities and flexibilities available to streamline recruitment and selection procedures. We are also devoting additional resources to enable expedited job postings and applicant screenings.

In addition to hiring in fiscal year 2015 and fiscal year 2016, we will continue our focus on identifying creative approaches to addressing the pending workload and utilizing priority charge handling procedures to produce further reductions in the timeframe for completing investigations of charges. In doing so, we will balance our efforts to address the pending workload while maintaining the highest levels of quality in our investigations and conciliations.

EEOC is also investing in systems to better serve the public, by using technology to increase responsiveness to employees and employers and to streamline and automate services to the public. For our private sector enforcement program, EEOC is developing systems that will allow charging parties and employers to check the status of their charge online, to transform the current paper system into a digital charge system, and to provide individuals with online-scheduling options for intake appointments. Earlier this month, we announced that 11 of our offices will begin a pilot program called *ACT Digital* to digitally transmit documents between the EEOC and employers regarding discrimination charges. This pilot program is an important first step in the EEOC's move toward an online charge system that will streamline the submission of documents and communications for employees and employers. These efforts will improve our responsiveness to the public and efficiently utilize our resources by allowing investigators to spend more time investigating and resolving charges.

In fiscal year 2013, EEOC deployed a Federal Sector equal employment opportunity portal to all Federal agencies, to provide electronic submission and collection of Federal Agency Program Reporting workforce data. In fiscal year 2015, EEOC will integrate the Federal Sector hearings and appeals data into the Federal portal, which will be combined with complaint data, workforce data, and barrier analysis to build a more complete picture of how agencies are progressing in the development of model EEO programs. These efforts will enable us to provide additional education and guidance focused on pressing issues to assist Federal agencies in implementing preventive measures to address workplace conflict. The end result of these efforts will be better customer service and a strengthened and more efficient agency.

MOVING FORWARD

The Commission is working hard every day to fulfill the promise of equal employment opportunity. EEOC requested a budget of $373.1 million for fiscal year 2016, an increase of $8.6 million above the fiscal year 2015 enacted level of $364.5 million. The majority of this requested increase—$6.2 million is necessary to maintain our current staffing levels, and the remaining $2.4 million would allow investments in needed technology and fund increased rent and office relocations. These resources will allow EEOC to continue restoring our capacity in mission critical areas, repairing the adverse effects of recent budget cuts, addressing workload concerns, and continuing to implement our Strategic Plan to better serve the public.

Our commitment to fostering a more level playing field in the workplace is unwavering; yet, we know that we cannot do this alone. We are building active, engaged partnerships with employers and employees as well as across the Federal Government to develop creative solutions to the workplace challenges facing many employers and employees today. I appreciate the opportunity to share with the committee the efforts and vision of the EEOC. I look forward to working with you to make this vision a reality, and I thank you again for your continued support.

I look forward to responding to any questions or comments you may have.

The CHAIRMAN. Thank you, Ms. Yang.

Mr. Lopez.

STATEMENT OF P. DAVID LOPEZ, GENERAL COUNSEL, EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, ARLINGTON, VA

Mr. LOPEZ. Good afternoon, Chairman Alexander, Ranking Member Murray, members of the committee. Thank you for inviting me and Chair Yang to testify today.

As General Counsel of the EEOC, I am in charge of the Commission's litigation program, overseeing the Commission's 15 regional attorneys and 325 outstanding staff members who conduct or support Commission litigation throughout the Nation and are motivated by the highest ideals of public service. This year, we celebrate the 50th anniversary of the EEOC, which was created by the landmark Civil Rights Act of 1964.

The Civil Rights Act, which grew out of the freedom struggle aimed at throwing off an odious racial caste system, has inspired each generation of Americans to expand opportunity for women, religious minorities, older workers, individuals with disabilities, and the LGBT community. This anniversary is an opportunity to reflect on how the statutes we enforce have transformed this Nation by enabling countless individuals to unleash their individual potential and productivity.

So where are we today? As the agency's chief prosecutor, I believe there is bad news and good news. The bad news is that discrimination remains a problem in this country.

For example, in a recent case from North Carolina, two African-American truck drivers were repeatedly subjected to derogatory slurs, including the "N" word, nooses, and threats of lynching. However, the good news is that it took a Winston-Salem jury less than an hour to come back and find the employer liable. The court issued broad injunctive relief, and the appellate court affirmed.

Plainly, there is work to do. The EEOC's goal to eradicate discrimination appropriately begins with prevention. The EEOC issues policy guidance to convey the agency's views to the public of the statutes it enforces and devotes enormous attention and resources to public outreach and education.

When, following investigation of a charge, we find discrimination, we try to resolve it informally. When informal resolution is not possible, the statute gives us authority to file suit in Federal court.

Most of our cases settle. That is a good outcome, because it means that the employer is willing to come to the table and work to remedy the violation. Last year, our office was able to favorably resolve 93 percent of the cases. When we have had to go to trial, I am pleased to say that we have won two-thirds of our jury trials from fiscal year 2013 to the present. This public record shows a successful program in ensuring fairness for victims of unlawful discrimination and deterring future misconduct.

My written testimony sets forth many examples of our litigation efforts. We have successfully prosecuted cases involving employers who have failed to hire any women in certain positions in the 21st century, who admit to firing a woman because she is pregnant, who have impeded economic independence for workers with disabilities.

We have also successfully litigated cases challenging age and religious discrimination. As you know, the Supreme Court recently heard our religious discrimination case against Abercrombie and Fitch, a case defending the quintessentially American principles of religious freedom and tolerance. Such a broad range of religious and other organizations filed *amicus briefs* in support of the EEOC's position that one article commented that we had united the world's religions.

We, however, do not win all of our cases. I understand your concern about some high profile losses and fee awards against the Commission. Here is what we have done. Where we are not successful, I have stressed a culture of examining lessons learned in order to carry out our public law enforcement mission more effectively.

This means my personal review of these cases; discussions with the attorneys involved; immediate adjustment of any internal practices, if appropriate, to ensure we don't repeat our mistakes, as well as to ensure we have fresh perspectives on these very complex cases; and a review of the issues with management, as well as in training programs.

To close, despite these setbacks, we make a positive difference in the quality of opportunity for working families. At a recent Commission meeting, we highlighted the resolution of a race and national origin harassment case filed against an oil well service business in Wyoming. A charging party from this case recounted how he was shocked that his supervisor called him and other Latino employees dumb Mexicans, worthless Mexicans. As is almost always the case, our resolution included significant non-monetary relief.

Our courageous charging party was grateful, testifying,

> "Now that it's all over, I am proud that we stood up for ourselves, and I'm glad the EEOC was able to help get things like training and surveys as part of the settlement. All I ever wanted was to change how people were being treated, and, hopefully, I helped to do that."

Thank you for your attention, and I'm pleased to answer any questions.

[The prepared statement of Mr. Lopez follows:]

PREPARED STATEMENT OF P. DAVID LOPEZ

Good afternoon, Chairman Alexander, Ranking Member Murray, members of the committee. Thank you for inviting me to testify today. I am pleased to be here with my colleague, Chair Jenny Yang.

My name is David Lopez and I am the General Counsel of the U.S. Equal Employment Opportunity Commission (EEOC). Congress in 1972 gave EEOC litigation authority to "ensure more effective enforcement of title VII," *General Telephone Company of the Northwest* v. *EEOC*, 446 U.S. 318, 325 (1980). As General Counsel, I am in charge of the Commission's litigation program, overseeing the Agency's 15 Regional Attorneys and a staff of more than 325 lawyers and legal professionals who conduct or support Commission litigation in district and appellate courts throughout the Nation.

When President Obama first nominated me in 2009 to be the EEOC's General Counsel, I had served as an attorney and civil servant under both Republican and Democratic administrations. Throughout my tenure I have observed firsthand that civil rights are not a partisan issue, but an American promise. Last year, we celebrated the *50th anniversary of the Civil Rights Act of 1964*—one of the most transformative pieces of legislation in the country's history. Along with subsequent legislation targeting discrimination based on other traits such as age and disability, it has enabled countless individuals to unleash their potential and productivity, which in turn drives our Nation's economic engine. This year, we celebrate the 50th Anniversary of the EEOC, an agency created by the 1964 Act.

As we all know, the Civil Rights Act grew out of the freedom struggle aimed at throwing off an odious racial caste system. This struggle triggered an enduring conversation in our country about the meaning of freedom and our understanding of opportunity. Title VII included protections against race discrimination along with protections against discrimination on the basis of sex, national origin, religion, and color. Each generation has advanced this discussion, and the freedom struggle, illustrated by the children's crusade in Birmingham, has inspired each generation to expand opportunity for women, religious minorities, older workers, individuals with disabilities and, in this moment, the LGBT community. Even though we may disagree on the specifics or the finer points of law, as I travel the country I have no doubt that there is a broad national consensus for the value of equal opportunity and its vital importance to individual productivity and potential.

I am proud to have devoted most of my career to this agency, created 50 years ago to further these values, and to have worked with many dedicated colleagues who believe in the value of public service to their country and communities and who doubtless could pursue more lucrative career options. This includes Robert Canino, the regional attorney in Dallas, who won a $240 million verdict on behalf of 32 workers with intellectual disabilities. These workers had been brought to Iowa to work at a turkey evisceration plant. During their employment, they were housed in an old schoolhouse where they were deprived of access to medical care, and subjected to verbal and sometimes physical abuse. In a top of the fold article in the *New York Times*, Robert was deemed the men's "last, best hope for justice." In my mind, this description speaks for the large majority of my EEOC colleagues.

Indeed, the EEOC is a small agency with a big mission—to stop and remedy unlawful employment discrimination. To that end, the Agency has carried out its mission consistently and dutifully, decade after decade and we can see its impact in every corner of American society.

The EEOC's goal to prevent, stop, and remedy discrimination begins with prevention. The Commission issues policy guidance designed to explain employer responsibilities and employee rights under the laws we enforce and devotes enormous attention and resources to public outreach and education across the country. As Chair Yang mentioned, we receive and investigate nearly 100,000 private-sector charges per year and resolve the vast majority of them informally, in mediation or conciliation. Before we litigate, we look at the conciliation efforts to ensure that informal resolution was not possible. When these tools do not work, the statute authorizes the Commission to file suit to enforce the Nation's employment anti-discrimination laws in Federal court.

FIFTY YEARS AFTER CIVIL RIGHTS ACT: WHERE ARE WE?

Where are we? From my vantage point as the EEOC's chief prosecutor, this is an important question. Given the origins of the Act and recent events in our Nation, there is bad news and good news. The bad news is that discrimination is still a real problem in this country. For example, we recently had a case in North Carolina involving racial harassment. Two African-American truck drivers were repeatedly subjected to derogatory racial comments and slurs that included the "N" word and the

displaying of a noose. The fact that this is still happening in the 21st century underscores that there is more work to be done to eradicate race discrimination in the workplace. However, I would note that the good news is that it took the *jury in Winston-Salem, NC* less than an hour to find the employer liable and assess damages, and the Fourth Circuit less than a month to affirm the decision and the district court's order of broad injunctive relief to make sure the conduct did not recur.

Similarly, we settled two major systemic race discrimination cases for eight figure monetary settlements and broad non-monetary relief. The first case, *EEOC, et al.* v. *Local 28 of the Sheet Metal Workers' Int'l Ass'n, et al.*, was filed nearly 40 years ago by the Department of Justice against Local 28 of the Sheet Metal Workers' International Association, and the EEOC's New York District Office took the case over when litigation authority was transferred to the EEOC in 1972. In this case, the union has agreed to pay $12.7 million over 5 years in settlement of allegations of *discrimination against black and Hispanic journey persons* on the basis of race.

The second case, *EEOC* v. *Patterson-UTI Drilling Company, LLC*, is a nationwide race and national origin discrimination case filed against a drilling company that alleged race and national origin discrimination, harassment and retaliation. We were able to settle this case early without the need for discovery or lengthy proceedings. The employer agreed to a multi-million dollar settlement fund for a class of victims of the discrimination and strong injunctive relief provisions that will foster a work environment that is free from discrimination. These are major successes for the systemic litigation program.

BROAD-BASED SUPPORT TO COMBAT CONTINUING DISCRIMINATION

From what I hear from the public as I travel across the country, while we have had significant successes, there is more work to do.

Sex discrimination remains a problem. There are some employers, 50 years after the passage of the Civil Rights Act, who have hired few, if any women, in certain positions. For example, not too long ago, we secured a victory in a systemic pattern or practice *case involving a trucking company* in Missouri that had a policy of assigning trainees based on sex. The court ruled, as a matter of law, that this constituted a pattern or practice violation of title VII's prohibition against sex discrimination. There are numerous other case examples of the good work we have done in this area.

Unfortunately, one of the most overt forms of discrimination we continue to see is pregnancy discrimination. I hear ongoing frustration from women and their families across the country that some employers still don't understand this is discrimination like any other form of discrimination. I am pleased to report, however, we have had many successes in this area. (see *Pregnancy Litigation Fact Sheet*). One example of our success is *Young* v. *UPS*, the pregnancy discrimination case recently decided by the Supreme Court addressing the circumstances when an employer has an obligation to provide leave under the Pregnancy Discrimination Act. The Commission joined the government's brief in support of Ms. Young, and Ms. Young was also supported by organizations from across the political spectrum.

We have been very successful in litigating *cases on behalf of individuals with disabilities*. For example, recently we prevailed at a trial in Miami in a case involving a licensed security guard with only one arm who was removed from his post because a customer complained about his disability.

We have also vigorously litigated *cases based on religious discrimination*. The Supreme Court recently heard our case against *Abercrombie and Fitch*. In this case, the Court examined title VII's requirement that companies reasonably accommodate workers' religious beliefs and practices. This case involves Samantha Elauf, a 17-year-old Muslim woman born and raised in Tulsa, OK whom we allege was denied hire by the company because she wore a hijab in observance of her religion. A broad range of religious groups filed *amicus briefs* in support of the EEOC's position and the principle of religious freedom, including the Beckett Fund, Orthodox Jewish groups, Seventh Day Adventists groups, and Islamic groups. Other groups supported the EEOC's position as well, including Lambda Legal Defense and Education Fund.

This case illustrates the EEOC's commitment to protecting the religious exercise of all Americans and underscores the singular important role that the EEOC's litigation can play in helping to clarify the law, and thus, in ultimately bringing greater certainty about legal obligations and rights for employers and employees alike. Regardless of the outcome, the fact that the EEOC was there to take this young woman's religious discrimination claim all the way to the Supreme Court of the United States in that Romanesque building around the corner with the words "Equal Justice Under Law" over the entrance should make us all proud.

We are also working to end workplace discrimination in other areas, such as discrimination against *transgender individuals* and the discrimination that continues against *immigrant and vulnerable workers* who work on the margins and are often most susceptible to abuse and exploitation.

Indeed, we have enjoyed numerous litigation successes that include: *EEOC* v. *Presrite* (N.D. Ohio 2013) ($700,000 settlement, plus priority consideration to at least 40 female job applicants as well as new measures designed to prevent future discrimination); *EEOC* v. *Interstate Distributor* (D. Colo. 2012) ($4.85 million settlement, along with revised ADA policy), *EEOC* v. *Yellow/YRC* (N.D. Ill. 2012) ($11 million settlement in title VII race harassment case); *EEOC* v. *Pitre* (D. N.M. 2012) ($2 million settlement, plus new policies and practices to provide a work environment free of sexual harassment and retaliation, evaluation of managers on compliance with anti-discrimination laws, and a compliance monitor); *EEOC* v. *Verizon* (D. MD. 2011) ($20 million settlement, representing EEOC's largest ADA settlement, plus requirement for revised attendance plans, policies and ADA policy to include reasonable accommodations); *EEOC* v. *ABM* (E.D. Cal. 2010) ($5.8 million settlement, along with outside EEO monitor, training for investigators of harassment complaints, tracking future discrimination complaints, employee training in English and Spanish, internal compliance audits, and periodic annual reports to the EEOC); and *EEOC* v. *Republic Services* (D. Nev. 2010) ($3 million settlement, plus hiring of EEO compliance officer, internal audit policies and procedures, training and reports to EEOC, tracking of future discrimination complaints).

Most of our cases settle—and that is a good outcome because it means that the employer was willing to come to the table and work with us on an appropriate remedy. In the event that a case is not settled, however, the Commission has had an enormously successful trial program. We have won 16 of our last 24 jury trials from fiscal year 2013 to the present. These trial victories include not only the *Henry's Turkey* case that I previously mentioned, but also cases involving the denial of promotion based on sex, disability discrimination, age discrimination, racial harassment, sexual harassment, and retaliation. The law enforcement and public education value of these cases in underscoring our government's commitment to eliminating illegal workplace discrimination in local communities and across the Nation cannot be underestimated.

We also have obtained landmark victories in the appellate courts. For example, in *EEOC* v. *Houston Funding*, a panel of the Fifth Circuit issued a landmark—but common-sense—ruling recognizing that discrimination against a woman because she is lactating is discrimination "because of sex" in violation of Title VII and the Pregnancy Discrimination Act. This case is one success among many in the courts of appeals, which also include such recent cases as *EEOC* v. *Baltimore County*, 747 F.3d 267 (4th Cir. 2014) (agreeing with EEOC's contention that pension system treated older new-hires less favorably because of their age by requiring them to make larger contributions than younger new-hires); *EEOC* v. *United Airlines*, 693 F.3d 760 (7th Cir. 2012) (transfer accommodation of qualified individuals is mandatory absent undue hardship), cert petition denied; *EEOC* v. *Cintas Corp.*, 699 F.3d 884 (6th Cir. 2012) (pattern-or-practice hiring claim may be pursued under section 706), cert petition denied.

Last year, the Office of General Counsel was able to favorably resolve 93 percent of its cases. By any measure, this is outstanding. I believe we can learn from all of our cases—both the wins and the losses—and have stressed extensively during my tenure a culture of examining "lessons learned" in order to carry out our law enforcement mission more effectively and efficiently. This includes a personal review of cases where we have been subject to fees; discussions with the attorneys involved; a discussion of the cases during our regular regional attorney calls, including lessons for the program; an immediate adjustment of any internal practices, if appropriate, to ensure we improve our law enforcement performance and don't repeat our mistakes; and a broader discussion of the issues in formal training sessions. And, of course, significant adverse decisions are circulated to all attorneys.

LITIGATION AS A TOOL OF LAST RESORT

While it's my job as General Counsel to be the Agency's chief litigator, let me be clear: I believe litigation should be the enforcement tool of last resort. I do *not* believe in suing first, and asking questions later—and our statutory authority does not contemplate or permit this. In fiscal year 2014, for instance, we litigated on the merits only *.15 percent* of all *charges filed*. That is about one-and-a-half lawsuits for every 1,000 charges filed. During my tenure as GC, I have focused on developing and filing critical cases, particularly those that further the public interest. We carefully and deliberately vet our potential litigation vehicles to ensure effective enforce-

ment nationwide and across the statutes. And we seek approval from the Agency's Commissioners—by law, a bipartisan group—consistent with the guidelines the Commission itself has adopted to govern the delegation of litigation authority.

As General Counsel, I, along with those under my direction, actively and enthusiastically support the Agency's non-litigation enforcement efforts. Voluntary compliance is an important component of those efforts and I have proudly defended our agency's record on this front. Indeed, on April 29, 2015, in *Mach Mining* v. *EEOC*, the Supreme Court held in a unanimous opinion that "a court may review whether the EEOC satisfied its statutory obligation to attempt conciliation before suit[, but] the scope of that review is narrow." In particular, judicial review is limited to whether the EEOC has "inform[ed] the employer about the specific allegation" and whether the EEOC has "tr[ied] to engage the employer in some form of discussion." In issuing its decision, the court noted that title VII is about substantive outcomes. The Supreme Court's decision ends confusion in the lower courts about the standard of review and is a step forward for victims of discrimination because we can now focus our attention on the merits of the discrimination allegations in our litigation and ensuring workplace fairness.

As I noted at my recent re-confirmation hearing, during my tenure as General Counsel, I believe we have engaged in unprecedented levels of outreach to various stakeholder groups across the country, including to bar and management groups. Indeed, the day following my confirmation hearing, I addressed and took questions from the U.S. Chamber of Commerce. While often their positions, such as in *Young* v. *UPS* and *EEOC* v. *Abercrombie and Fitch*, express different views than ours, we appreciate and learn from the dialog we're able to have. Further, although I believe we have a great story to tell in just about any area, we always welcome feedback and constructive criticism as an opportunity to improve our enforcement efforts. This is the only way we will become stronger and more effective.

EFFICIENT USE OF RESOURCES

Last year, I was honored to be named by the National Law Journal as one of America's 50 Outstanding General Counsels, but that award really belongs to my dedicated colleagues at the EEOC who inspire me every day. I have seen up close and personal the unparalleled dedication and skill of these amazing civil servants. This award reflects the tremendous work of the program during an extremely challenging period when we endured a hiring freeze, significant attrition, and furloughs. Still, despite these particularly difficult times, we were able to continue to conduct a successful litigation program.

I will share with you how we are working to ensure that we are putting public resources to good use in the challenging budget climate. More than 4 years ago, I talked about fostering a "culture of collaboration." True to my pledge, I have cultivated "One National Law Enforcement Agency," encouraging our litigators nationwide to operate more collaboratively and cohesively with each other and our internal partners. This collaboration is designed to address two problems often confronted by large, geographically dispersed organizations: (1) what I call "the left hand, right hand" problem, that is, coordination between the districts, and (2) "the reinvention of the wheel" problem, which is the result of not preserving institutional knowledge.

I believe we have made great strides toward addressing these problems. The National Law Enforcement Agency approach is characterized by sharing ideas, best practices and lessons across districts, partnering between district offices to build synergy and provide sufficient human resources to cases, and leveraging technology to help us share ideas, work smarter and work more efficiently. We aim to operate as an integrated community. It is this integrated community approach that furthers the efficient use of resources, allows for innovation, and has contributed to many of the successes mentioned above.

CLOSING COMMENTS

In our 50th Anniversary year, I am going to close my testimony with a story illustrating the difference our work makes in the lives of American families. Recently, the Commission held an educational meeting to examine the ongoing problem of harassment in the workplace. The Commission highlighted our recent resolution of a race and national origin harassment case filed against an oil and gas well service business in Wyoming. A Charging Party from this case, who appeared as a witness at the meeting, recounted the following about what he experienced on the job:

> I started working at J&R as a mechanic in November 2007. My first day on the job the Truck Pusher, who was second in command in Edgerton, introduced me as "uncle beaner" . . . I was shocked that he would say that to me. Having lived in Albuquerque, NM for 40 years and Denver, CO for 10 years before com-

> ing to Wyoming, I never experienced anything like that. For this guy it was like nothing though. I was "uncle beaner." Mike was just "beaner or half a beaner" because he is only half-Hispanic. We were both "stupid Mexicans" or "dumb Mexicans" or "worthless Mexicans." Sometimes he would switch up and call us "spics" too. He told me at least once that he didn't like "spics" and that Mexicans were the reason we have swine flu. . . . He'd also just say stupid stuff like "hey you got any pesos."

We resolved the case for significant monetary relief—but just as importantly, for injunctive relief, including training and policy changes. The Charging Party suffered depression, but the experience was transformative for him and we believe the industry.

He expressed,

> "Now that it's all over, I am proud that we stood up for ourselves, and I'm glad EEOC was able to help get things like the training and the surveys as part of the settlement. And I want to thank the Commission for letting me come out here to Washington to tell my story. It means a lot to me. All I ever wanted was to change how people were being treated, and hopefully my coming here will help do that."

Thank you for your attention and I would be pleased to answer any questions.

The CHAIRMAN. Thank you, Mr. Lopez. Now we'll begin a round of questions.

Mr. Lopez, I have a Craigslist ad here. It's posted by the Equal Employment Opportunity Commission in its lawsuit against Texas Roadhouse. It says,

> "If you believe you may have been denied a front of the house position such as server, hostess, et cetera, because of your age, or if you have information, please contact the EEOC."

Why are you going out looking for plaintiffs and a lawsuit when you've got charges by 75,000 people filed with your agency who believe they have been discriminated against and they are unresolved? Wouldn't it be a better use of your 800 investigators and 400 attorneys to focus on those 75,000 people instead of running Craigslist ads scouring up plaintiffs?

Mr. LOPEZ. Let me start out with the Craigslist ad, Senator. We were in communication with your office, and we've done our due diligence. It's my understanding that we did not issue that ad, nor did we contract to have anybody issue that ad. So that is not our ad.

But as to your question about expanding cases——

The CHAIRMAN. Who were you in contact with? This has your e-mail address on it—*texasroadhouse.lawsuit@EEOC.gov*.

Mr. LOPEZ. I've been told that the communication was with another Republican office in the appropriator's office.

The CHAIRMAN. What communication—what could you say about this, since it's your e-mail?

Mr. LOPEZ. I checked with our office when we had the inquiry, and that is not an ad that we put out.

The CHAIRMAN. Well, what——

Mr. LOPEZ. It could be an ad that some other person put out, but that's not an ad that our office put out. That's what my office tells me.

The CHAIRMAN. Is this your e-mail address—*texasroadhouse.lawsuit@EEOC.gov*?

Mr. LOPEZ. I think that is an EEOC address, yes. And that really goes to the whole——

The CHAIRMAN. Well, how often do you use Craigslist to post searches for plaintiffs so that you can file a lawsuit? Do you do that in any other case?

Mr. LOPEZ. As far as I know, we do not use Craigslist. But I do want to talk a little bit about looking for class members related to——

The CHAIRMAN. No, let me go on to my next question. You're saying you didn't—this didn't come from the EEOC despite the fact that——

Mr. LOPEZ. That's what I've been told by the attorneys on the case.

The CHAIRMAN. If you could produce some evidence of that, I'd be grateful. Let me go on to another question. I read several examples of how you've been rebuked by courts in remarkably strong language for the quality or basic incompetence of the lawsuits you've been bringing, and you answered that somewhat.

But take this recent case 2 months ago in Washington State. A fee award—EEOC demanded $25 million each from two defendants. The court said you had failed to conduct an adequate investigation, pursued a frivolous theory, sought frivolous remedies, disregarded the need to have a factual basis to assert a plausible basis. Don't you find this whole series of court rebukes to your attorneys and your lawsuits embarrassing?

Mr. LOPEZ. I think that we had discussed that the last time I was here. With respect to the case——

The CHAIRMAN. Well, that's why I'm so surprised that you're continuing to use—for example, a witness that we talked about the last time you were here—you used a faulty witness that the court rebuked you for, and then you continued the case.

Mr. LOPEZ. Well, let me first address the first case. The first case—there is a district court opinion. But I would certainly counsel caution with respect to cases by the district court.

As you know, the EEOC had been rebuked before in a case called Cintas and a case called CRST. In the Cintas case, the fee award was reversed in its entirety. In CRST, which generated a lot of negative attention for the Commission, the court also recently vacated the fee award. So the first case that you mentioned is still in litigation. It's still pending.

The CHAIRMAN. But you don't deny that—you just say the judge was wrong about that?

Mr. LOPEZ. I mean, it's a case where final judgment hasn't been issued. So it's still in the process of litigation, and we have to look at that.

The CHAIRMAN. You went to a very good law school. I mean, if your professor told you things like that, would you just dismiss it?

Mr. LOPEZ. Of course not. I'm not dismissing your concerns, Senator, and I think——

Mr. CHAIRMAN. I'm not a professor. I'm talking about the judge.

Mr. LOPEZ. As I mentioned in my opening statement, any fee award is one fee award too many, and it's something that we take very seriously. With respect to the case you mentioned about the expert witness, for instance, the EEOC has looked at the way that it worked with the expert witness, its own internal protocols in

terms of contracting with expert witnesses and in terms of making sure that we have enough eyes on the expert witness reports.

But one thing I want to say with respect to the portion of the concurring opinion that you read, which I think sort of leaves a misimpression, is that the witness that we used in that case was used concurrently at the same time as he was in the other case that you mentioned. So it wasn't like we were rebuked in one case and we went back and used the witness. Both those cases were pending at the same time.

The other thing that I think is worth mentioning about that case is that even though the panel did not accept the admissibility of our expert testimony, the panel expressly stated in a footnote that the decision did not go to the merits of the case. So, basically, that issue in that case was an evidentiary issue in terms of how we—whether we were able to establish a *prima facie* case of disparate impact. The district court said we did not, and the appellate court affirmed. But that certainly has generated a lot of attention within the program in terms of how we work with experts, in terms of how we do this work.

We don't want—we want to get good enforcement results. That's why we do this work. So when something like that happens, it captures our attention, and we look at, I think, as a culture how we can do things better to make sure that we don't repeat those results.

The CHAIRMAN. Thank you.

Senator Murray.

Senator MURRAY. Well, thank you for being with us today, Chair Yang, and welcome back to the committee for your first appearance as chair. The EEOC's backlog of cases and the amount of time it takes to resolve complaints are real issues. The erosion of staff due to budget cuts under sequestration and the government shutdown did not help the situation. But I wanted to ask you what does EEOC need to address those problems, and how can Congress help?

Ms. YANG. Thank you, Senator Murray. You've summarized some of the challenges we have had very accurately. We have had over 3 years of hiring freezes, which brought us to our lowest number of investigators in 25 years.

So what we've been doing is rebuilding capacity. The funding that we received in fiscal year 2014 mid-year allowed us to launch a mid-year hiring effort. We've brought on over 116 new investigators and a dozen mediators. We want to continue that hiring, because that is one of our most effective ways to ensure we are timely investigating charges.

I share your concern that justice delayed is justice denied, and it benefits all parties, the employer, the employee, and our agency, to ensure we are acting quickly. So, in addition, we are working on effective case management systems. We just launched a digital charge system. We piloted it in 11 offices, and we're getting good feedback from employers.

So far, our first step is to allow employers to communicate and submit documents with the agency electronically. We'll be expanding that to allow employees to upload information as well and for them to be able to check the status of their charge and other things

online. That will free up our investigators' time to ensure we are more quickly investigating these charges.

And we are firmly committed to early resolution. I mentioned earlier that our mediation settlement and conciliation efforts are where the bulk of our work is done, and we're continuing to improve on our processes to increase our success.

Senator MURRAY. Thank you. We have heard some concerns expressed about multiparty litigation and about litigation where the EEOC initiates an investigation of discrimination or equal pay using its own authority. Can either of you give us some recent examples of those types of cases and what the Commission's actions in those cases have meant for victims of discrimination?

Ms. YANG. Well, why don't I start, and I'll give some background, and then I'll turn it over to our General Counsel. We use our commissioner charge authority very carefully. A number of our statutes allow the Commission to initiate investigations where we learn of a problem. But the bulk of our work is actually done on individual charges.

Where we learn of a problem, we can issue a commissioner's charge, and let me break down how we use that. Seventy-five percent of the time, we use a commissioner's charge where we actually have an existing charge. But during the course of the investigation, we learn additional information that perhaps this is a broader policy than was stated in the charge. It may be nationwide. It may affect other affiliates. So we then issue a commissioner charge to put the employer on notice of the scope of our investigation.

Other times, we may be investigating race discrimination, for example, and we learn about religious discrimination. So we file a commissioner's charge again to put the employer on notice of the scope of the investigation. That's a way for us to use our resources most efficiently to address the problems as we're seeing them and to put our resources where we can have the greatest impact. So where we have commissioner charges, we're really doing it to ensure that we're addressing a real problem that we see.

Another 10 percent of the commissioner charges are brought to us by individuals who are afraid to file a charge because of fear of retaliation. But where they're providing us credible information—for example, an individual came forward from a national homebuilder and reported concerns of a policy that the employer would not allow African-Americans to work in white communities and would not hire them for those communities. She was unfortunately forced to resign as a result of that complaint.

But during the course of our investigation, we identified a problem with promotions for African-Americans and women. So we issued a commissioner charge in that situation to put the employer on notice of the scope of the investigation.

The remaining 15 percent of our commissioner charges come to us from a variety of sources. Sometimes other Federal agencies, during the course of their work, identify a problem that affects our statutes, so they will refer to us. Other times, we may have a third party charge, such as in the case of Henry's Turkeys, which you may be familiar with, where a relative of one of the intellectually disabled individuals involved came forward to report that violation.

Mr. LOPEZ. And if I could just give an example from litigation, we were involved in litigation with a temporary staffing firm. During the course of litigation, we discovered that there were employers that were making sex-specific staffing requests—do not send over women.

So based on that information, one of the commissioners issued a charge, and that case actually turned into litigation, a hiring discrimination case against a company in Cleveland where we discovered that the company, in fact, had hired few, if any, women. As a result of that charge, we were able to settle the case. They were able to change their hiring procedures and hire women—of course, this is in the 21st century—hire women, and also made a commitment that they would hire some of the women that they had rejected.

So it was a really good resolution that we would not have been able to achieve but for the fact of the commissioner's charge, because the women who were deprived of the position—they didn't know. They didn't know that they were deprived of the position because of sex. They didn't know that they were almost being categorically excluded because of sex.

Senator MURRAY. I understand, and I'm over my time.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Murray.

Senator Roberts.

Senator ROBERTS. Mr. Chairman, I was afraid you were going to do that.

The CHAIRMAN. Would you like for me to go to Senator Warren?

Senator ROBERTS. Yes, sir. That would be very helpful.

The CHAIRMAN. I can do that. Actually, it's—I'm sorry. I was out of order, Senator Warren. Senator Franken was the next Senator in order.

Senator Franken.

STATEMENT OF SENATOR FRANKEN

Senator FRANKEN. Thank you, Senator Roberts and Mr. Chairman.

Chair Yang, it's very nice to see you again, and I'm very pleased to see my former senior counsel, Peach Soltis, who I'm sure is doing as great a job at the EEOC as she did when she worked for me. We miss you Peach.

Now, we've talked about your agency's limited resources. You say in your written testimony that the EEOC receives nearly 10 times as many charges as you did in 1965. Just last year, you received nearly 90,000 charges, and you continue to face a backlog, as the chairman has spoken about, that can sometimes lead to lengthy delays to resolve complaints which often places employers and workers in limbo for extended periods of time.

Can you speak to how you are balancing the agency's resources to achieve the agency's goal and to reduce your backlog?

Ms. YANG. Thank you, Senator Franken, for that question and for letting us have Peach. She has done a tremendous job for us at the EEOC.

Senator FRANKEN. I apparently had no choice.

[Laughter.]

Ms. YANG. Well, we appreciate it. We take our responsibility——

Senator FRANKEN. I think you could have gone after me if I had refused to let her go.

[Laughter.]

Ms. YANG. We take our responsibility to use our resources strategically very seriously. One of the things we've done as a commission is issue a strategic enforcement plan which sets out six national priorities that helps to focus our work. This includes areas like systemic recruitment and hiring discrimination, because that's an area where the government can have an important impact, because often people do not know why they weren't hired.

And because we are receiving charges from around the country, we can then start to see patterns of discrimination that are developing. So we are working to ensure that as the charges come in, we are using our resources effectively. We're assessing the issue. We have to investigate each charge. But we need to use those resources where we can do the greatest good.

That is a constant balance and a challenge for the agency, and I do believe we're making progress. With the additional hires that we have, we are beginning to see an improvement this quarter in the rate at which we can process charges. That means that we're giving individuals and companies resolutions earlier.

I mentioned earlier our commitment to our voluntary resolutions. Before I joined the agency, I actually did not realize how much of the agency's work was done through voluntary resolutions, and that's primarily because most of those resolutions are confidential. People don't appreciate how significant they are, because you mostly hear about our litigation.

Senator FRANKEN. Are there ever any cases where you go to somebody, and there's bias in their hiring practices, and you point this out to them, and they say, "Oh, my goodness, you're right," and that's it, and then they change?

Ms. YANG. We are able to exchange information. We will, during the course of the investigation as well as our conciliation process, share with the employer the evidence that we believe supports the violation, and often employers will recognize that.

Senator FRANKEN. So, you're required to conciliate with businesses.

Ms. YANG. Yes. We are required to conciliate. We take that responsibility seriously.

Senator FRANKEN. And when that happens, how often do employers say, "I did not realize we do this," or "This is a practice that just is cultural at our—that's been cultural, we thank you," and then they change?

Ms. YANG. We settle over 1,000, on average, charges through conciliation each year. We resolve through mediations, even earlier, over 70 percent of the charges in our mediation program, which totals about 11,000. And then we settle cases along the investigation. So it does happen quite often.

I believe most employers are trying to do the right thing. They want to comply with the law. When they see that there's a problem, they're trying to fix it.

Senator FRANKEN. Good.

Mr. Lopez, we've heard a lot of criticism about the EEOC's "runaway litigation" program and the rebukes that you've received in some high profile losses. I just want to give you an opportunity to respond to some of your critics. Can you describe the EEOC's litigation program, how you decide which cases the EEOC will litigate, and what policy or guidelines are in place about the cases you refer to the Commission for approval?

Mr. LOPEZ. Sure. The cases that have been discussed with respect to litigation failures or rebukes are really the cases that keep me up at night also. That's really the essence of my job, because we have an obligation to the public, to the taxpayers, and we have very dedicated and committed people committed to the idea of equal opportunity.

But I want to really put these cases in the broader context. That's why I started by talking about how 93 percent of our cases are resolved successfully. And I started by talking about just the overwhelming success of our trial program, which means that when we get an opportunity to tell the story of discrimination to a cross section of the public in the district, then we've been very successful. And it's something that I think all of us are proud of.

With respect to the selection of cases, I think, as you know, the Commission has a strategic enforcement plan which sets forth enforcement priorities. And that is certainly, partly the guide for us in terms of trying to decide which cases would have the most law enforcement impact—those priorities.

All of the districts also have their own priorities because they have different demographics and different industries in those districts. So they're really focused on making a difference within the local communities that they serve.

Certain cases have to go to the Commission for litigation approval. So cases such as the cases that Senator Alexander mentioned involving a large—a significant requirement of resources—those need to go to the Commission. Cases likely to generate public controversy—those have to go to the Commission. Cases where the Commission has not weighed in on policy—those have to go to the Commission. And, recently, when the Commission reaffirmed delegation in its strategic enforcement plan, it also included a requirement that one case from each district go to the Commission.

Senator FRANKEN. Well, thank you.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Franken.

Senator Scott.

STATEMENT OF SENATOR SCOTT

Senator SCOTT. Thank you, Mr. Chairman.

Mr. Lopez, we heard from Senator Alexander earlier about the fact that there are 75,000 claims in your backlog. We hear very consistently that there are limited resources. We have heard of judicial rebukes.

But yet there seems to be a consistent pattern of looking for something else to do other than the 75,000 claims in your backlog, where there are no claimants, nobody stepping forward saying they've been harmed, and yet you guys are investing very precious

limited resources that the taxpayers of our country continue to provide and make available because they're compelled to do so.

Whether it's Deloitte or, as we've heard recently, the Texas Roadhouse situation, I just don't understand how it is that we refuse to take a look at the 75,000 claims in your backlog and go proactively after folks where there are no claimants and no one coming forward asking for help, especially and specifically in Deloitte, the same as—I think it was KPMG and PWC.

Why not invest your limited resources, in taking care of the taxpayers' dollars, in the cases where we know that someone has stepped forward and said that they have been discriminated against versus looking for places to use your very limited resources?

Mr. LOPEZ. Thank you, Senator. And if you don't mind, this might be—we might share the answer, because part of your question goes to the investigative side of the Commission. I just talked a little bit about one of the few cases that we brought that involved either a commissioner's charge or a directed investigation. It's really only a small fraction of cases that we bring where there isn't actually a charge.

But the case I mentioned, I think, is a pretty compelling case involving an employer's absolute failure and refusal to hire women in the 21st century. The other case that the chair mentioned was Henry's Turkeys, which was just an absolutely horrifying situation involving 32 intellectually disabled workers who were really not well positioned to bring charges on their own. And that's another one where there weren't specific charges.

So I think both of those cases really further the public interest in terms of fighting discrimination and preventing discrimination in the future. So with respect to litigation, it's a small fraction, and those are the types of cases that I'm talking about.

Senator SCOTT. How about the Deloitte case or the Texas Roadhouse case? My thought is when you don't ask the question of age on the application, how is it that we determine that they're not hiring someone over a certain age?

Mr. LOPEZ. Texas Roadhouse is a case that is currently in litigation. There's a lot of information in that case about the type of evidence of age discrimination and nationwide age discrimination in that case. That includes, very significant, we allege, statistical disparities, but, very importantly, it includes some pretty compelling anecdotal evidence, and I can go through what some of that anecdotal evidence looks like, if you want me to, in terms of talking about what——

Senator SCOTT. I know that my minute and 24 seconds are heading down to zero very quickly. I'd ask this question. When you talked about the statistical variations—is that what you said?

Mr. LOPEZ. Statistical disparities.

Senator SCOTT. So if there is not a claimant that comes forward, and if you just study the stats, you come to the conclusion that that disparity must be discriminatory in nature and baked into the operations?

Mr. LOPEZ. No. Usually there's other evidence, like anecdotal evidence. In Texas Roadhouse, for instance, there are comments that

are in our complaint that indicated that Texas Roadhouse favored younger people for front-of-the-house positions.

Senator SCOTT. Mr. Chairman, I'll just use my time—unfortunately, I didn't get to Ms. Yang during my time period.

I will tell you that over this weekend, I had an opportunity to travel to four different States—or I think it was three States—and visited several restaurants, just to take a look at their front operations. And I will tell you that having visited half a dozen, maybe more, restaurants, they all appear the same on the front end.

When you look at the Texas Roadhouse specific case, without any information that is actually gathered from an application process, I would like to hear the anecdotal—if we have time, Mr. Chairman—information, and/or please provide it to my office so I can have a better understanding of what it takes to get to where you are in spite of someone coming forward and asking for it.

Mr. LOPEZ. Yes, we'd be happy to provide the complaint, which really lays out the anecdotal evidence.

Senator SCOTT. That would be great.

Mr. LOPEZ. Thanks.

Senator SCOTT. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Scott.

Senator Murphy.

STATEMENT OF SENATOR MURPHY

Senator MURPHY. Thank you very much, Mr. Chairman. I think it's worthwhile to just spend a few minutes on this case that's been cited a few times, the Hill County Farms case. This is a case where dozens of intellectually disabled men were essentially in prisons, for all intents and purposes, for years and years and years. Supervisors hit, kicked, handcuffed, and verbally abused the men, and they were paid $2 a day. These were not workers that had the ability to bring their own case to the EEOC.

So the consequence of a paradigm shift in which the only cases that you're allowed to review are cases that are brought to you effectively renders individuals like this absolutely helpless. I assume you would agree that your mission involves bringing cases, maybe even more importantly, in the cases where people don't have the ability to bring a case for themselves. And you do it on a very limited basis, in fact. I mean, we're talking about—you can tell me the number, but it's dozens of cases, not hundreds of cases that get brought in this fashion. But the precedent that that would send to employers, I would imagine, could be incredibly harmful.

Mr. LOPEZ. Yes, thank you. It's important to remember that both the Commission's charge and directed investigation authority are statutory tools. Those are tools created by Congress, and these are tools that have been used by the Commission since as long as I've been there, which is since 1998. And they are tools that were endorsed by the Commission in its systemic task force report which came out in 2006 under the leadership of Chair Cari Dominguez.

So there hasn't really been any type of departure from our ordinary practice in these areas to speak of. But I think that the Hill County Farms case and the other case involving the exclusion of women are both just very, very good examples about why these tools are absolutely necessary for us to enforce the law in a way

that, really, private litigants can't do, because in a hiring discrimination case, Senator, for the most part, the victims do not know that they've been subject to hiring discrimination.

You'd be surprised that there are some who do, but for the most part, the employers don't say that we're not hiring you because of X, Y, and Z. And it really takes a tool like the commissioner's charge and us finding information, you know, with the temp agency, about sex-specific requests, to get at that type of discrimination.

Senator MURPHY. Do you have a number on how many of these cases you bring on an annual basis?

Mr. LOPEZ. I think the number that we provided during my tenure is 12, but I'll check that. I think it's 12 cases that we brought, which is just a very small fraction.

Senator MURPHY. I think that's a really important context. We're talking about 12 cases that have been brought——

Mr. LOPEZ. Yes.

Senator MURPHY [continuing]. Without applicant, systemic cases. Do you have a ball park as to how many of these cases have been decided in favor of the employees?

Mr. LOPEZ. I think almost all of them have. I think most of them were resolved early, and there's a subset of those cases that involve challenges to age discriminatory pension plans that have resolved early.

Senator MURPHY. I think it would be a great thing for employers if you stopped filing systemic lawsuits, because you win them, and it provides an incentive and, frankly, an advertisement for employers to conduct themselves in a way in which, so long as their employees don't know that discrimination is taking place or they are treated in such a way that they have no means of redress—and that happens in a variety of ways. Maybe it's outright abuse, as happened in Iowa.

But there are other ways in which you can just make clear that the consequences of taking action are so serious that it shelves people's interest in doing it. I think that might be a wonderful thing in the end for employers.

But this is a very limited use of power that has happened over the course of Republican and Democratic administrations. Nothing is changed by way of your use of this statutory allowance to bring systemic cases. What has changed is the number of cases that you are getting from applicants and the declining resources that you have to address those increasing numbers of cases. That's what's changed. What has not changed is your continued reservation of the power to go after cases when employees may not be able to do it themselves.

Mr. LOPEZ. Thank you, Senator.

Senator MURPHY. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Murphy.

Senator Roberts.

STATEMENT OF SENATOR ROBERTS

Senator ROBERTS. Thank you, Mr. Chairman. Thank you for your diligence.

Obviously, EEOC is an important component of ensuring equal opportunity. But, like others have stated—the distinguished Sen-

ator from South Carolina and our chairman—I am concerned that you all have strayed from your core mission, and the 75,000 individual complaints that are waiting on action will fall through the cracks because of investigations brought on by the agenda.

The chairperson has indicated, if I have my notes correct, 90,000—I can't read my writing. Help me out—you said 90,000 changes?

Ms. YANG. Charges, nearly 90,000 charges this past fiscal year.

Senator ROBERTS. Charges. And then you are trying to balance the strategic plan. I have the strategic plan here—eliminating barriers in recruiting and hiring, protecting immigrant, migrant, and other vulnerable workers; addressing emerging and developing issues—that's sort of nebulous—enforcing equal pay laws—that's not nebulous—preserving access to the legal system—that's certainly is not nebulous.

By the way, on the access to the legal system—is that provided to the 75,000 that are still waiting?

Ms. YANG. Excuse me?

Senator ROBERTS. Is this goal of preserving access to the legal system—is that applicable to the 75,000 that are still waiting?

Ms. YANG. We do believe access to the legal system is important, and I do believe that justice delayed can be justice denied. So that is an important priority for the agency to ensure we are timely investigating our charges.

Senator ROBERTS. Then the sixth one was preventing harassment through system enforcement and targeted outreach. But you went on a little bit further than that and said that this strategic plan, adopted in 2012 to be implemented, represents national priorities, a national priority system, with regards to systemic behavior.

Systemic behavior is a pretty serious disease. Systemic behavior means that there are behaviors out there that you obviously view, with these six kinds of things, that you need to address first, as opposed to the 75,000, and that there's a pattern of discrimination, as determined by your goals here or your strategic plan.

I'm not sure that's correct. I do not have the background that you have or the expertise to make that statement. But it seems to me like you are an agency looking for patterns of discrimination, as opposed to taking up action on the 75,000 individual complaints that are waiting.

My question is why, if you did not take up the 75,000 people that are waiting, would that not reflect the same kind of patterns of discrimination that you are addressing in the 2012 plan?

Ms. YANG. I appreciate the concern that you're raising about how we're using our resources, and I'd like to tell you a little bit more about how we're doing that. We right now have 548 investigators. Last year, they investigated 87,000 charges. So we aren't letting those 77,000 charges sit. We are actively investigating those charges.

But during the same year, we received an additional over—maybe—over 88,000 new charges. So we keep getting new charges in. Our investigators are working to resolve those charges. We are focusing our resources where we think the government can have the greatest good. So we're looking at what the larger problems

are, because we want to understand how to help employers change those practices and prevent discrimination going forward.

Systemic harassment is an area that we see consistently. So we have formed an anti-harassment task force led by Commissioner Lipnic and Commissioner Feldblum to look at the root causes. The most frequent kind of harassment we see is race discrimination, followed by disability harassment, and then third is sexual harassment.

We want to understand what are the risk factors in the workplace that are causing those problems so we can look more comprehensively at solutions, because we know that simply litigating and investigating is not going to prevent the problem because we continue to see these cases around the country, and we want to help employers prevent it.

Senator ROBERTS. In the 33 seconds I have left, is there a way that you could determine with the three that you just mentioned—determining systemic behavior and the cost of that, in other words, going out and trying to determine nationally what the patterns of discrimination are, and then the cost of cleaning up, if you possibly can—but you've indicated that you've got 80,000 next year—but at least try to get that number down on the 75,000.

I still think that if you went through the 75,000, you would find the same kind of systemic behavior and patterns of discrimination that you would—rather than going looking for it.

Ms. YANG. Right, and often we do. We investigate individual charges. Sometimes we'll have 50 or 70 charges against the same employer. So we look at what is the consistent problem that we're seeing——

Senator ROBERTS. That's pretty systemic.

Ms. YANG [continuing]. So we can prevent it from getting more charges, right, because if we can help improve the practice, then we won't have the discrimination. So that's why we're trying to use our resources strategically to identify the problem and fix it. Otherwise, we can get relief for one person, but we're going to have more coming down the pipeline.

Senator ROBERTS. Is there any yardstick as to the cost of what you're doing on one hand as opposed to what I have talked about with the 70,000?

Ms. YANG. About 25 percent of our of our cases right now are systemic cases. Seventy-five percent are not. That's the balance that we were aiming for with our resources. It is the highest percentage of systemic cases that we've had, because we see it as an effective use of our resources.

Senator ROBERTS. Where do you think that's heading, 50–50 someplace?

Ms. YANG. We set targets, and we think that's a good balance of our resources, because the systemic cases take more resources, and we need to be very careful about how we invest in them.

Senator ROBERTS. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Roberts.

Now Senator Warren.

STATEMENT OF SENATOR WARREN

Senator WARREN. Thank you, Mr. Chairman.

According to the 2013 census data, women make less than men in 333 out of 342 job categories. That's 97 percent of major occupations. A 2014 analysis published in the Harvard Business Review found that black and Hispanic workers consistently make less than their white and Asian colleagues. A 2015 AARP report shows that older unemployed workers spend longer looking for a job than their younger counterparts. So we've got age, gender, race. A reasonable person would say that we have work to do when it comes to workplace discrimination.

Now, the EEOC helps tens of thousands of individuals every year who file charges of discrimination in the workplace. But thousands more benefit from the results of the systemic program which tries to root out discrimination that affects entire classes of workers.

Back in 2006, Commissioner Silverman, who was appointed by President Bush, concluded—and I want to quote here—"EEOC is uniquely equipped to combat systemic discrimination." And he made that a top priority for the EEOC.

So, Chair Yang, my question for you is whether the EEOC's current focus on systemic investigations is new or if it's just a continuation of the policy begun during the Bush administration.

Ms. YANG. Thank you, Senator Warren. Our systemic work is an important part of the agency's work, and as you recognized, it has been continuing. The systemic task force in 2006 recommended that we invest more of our resources on systemic cases because we can have a greater impact, and it's a particularly important role for the government to play.

They also emphasized that it is important for us to use the commissioner charge and directed investigation process so that we are proactively identifying the greatest needs for our resources, rather than simply being reactive, because we know that for every person that comes forward, there are many others who may not know they're being discriminated against or are afraid to do so.

Senator WARREN. So let's push on this a little. As part of your efforts to combat systemic discrimination, the EEOC has been criticized for using its authority to initiate investigations without a specific complaint from a specific worker who is directly affected. But looking at the same data that the General Counsel looked at, I noted that of the nearly 900 cases filed on the merits since 2010, only 12 were based on investigations initiated by EEOC, or just slightly over 1 percent.

So, Chair Yang, let's focus on that 1 percent. In those few cases where the EEOC brings its own action without a specific employee complaint, is the Commission just duplicating what individuals should be doing on their own, or are there specific reasons why you needed to investigate and initiate these investigations?

Ms. YANG. There's a particularly important role the government plays because, as I mentioned earlier, often individuals do not fully appreciate that they may be subjected to discrimination. We see that a lot with hiring, also with pay, where people do not necessarily know what other people are paid.

But we can see from some of the charge information and our directed investigation authority where there may be a larger problem. So we are using that as a way to invest our resources to address the larger problem.

Senator WARREN. There's been much talk, though, about the backlog that you face. I note that back in 1980, the EEOC had more than 3,000 people working to enforce non-discrimination laws. Since then, the American workforce has expanded by nearly 50 million workers, but the number of people at EEOC who are there to enforce non-discrimination laws has been cut by more than 1,000 workers.

With the number of employees down by a third, how has the EEOC's ability to launch important systemic investigations been affected?

Ms. YANG. That's an important question, and we think carefully about how to use our resources. With the limited resources we have, investing in systemic cases can be one of the most effective ways for us to use those resources, because instead of separately investigating 50 different charges, we can try to affect that practice at issue to ensure that we are preventing discrimination from going forward.

So we are carefully identifying the cases that we are going to file, because we know they take significant resources. But through those efforts, we are working to bring about lasting change that can help the employer build a stronger workplace and become more productive as a result.

Senator WARREN. Thank you. You know, I wish we didn't have to be here today discussing the Equal Employment Opportunity Commission, because I wish the EEOC wasn't necessary. I wish that all Americans could apply for jobs and go to work, confident that they would not be passed over because of their age, confident that they wouldn't get lower pay because of their gender, confident that they wouldn't get worse hours because they're African-American, and confident that they wouldn't be retaliated against when they ask for equal treatment.

But all the independent evidence shows us that we are not there yet. Until we get there, our continued efforts to address this issue are an important part of who we are as a people. We have more work to do, including passing long overdue LGBT anti-discrimination legislation so the EEOC can better protect people who face discrimination in the workplace because of sexual orientation.

But at a minimum, we can encourage the EEOC to do the work it can to protect every working American and make sure that we all have equal opportunities on the job. Thank you very much for your work.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Warren.

Senator Murray, before we conclude, do you have any other questions or comments?

Senator MURRAY. I just have a couple. Thank you.

Chair Yang, I know it is a priority for you to prevent discrimination before it happens. Can you tell us more about how, as chair, you intend to engage in education and outreach efforts to help that?

Ms. YANG. Thank you for that question. Education and outreach is a critical part of our work. One of the things that we've been doing, particularly under our strategic enforcement plan, is to integrate our outreach and education around the country so that our

offices are focusing on some of the persistent issues that we see, and we can reach out to particular regions or occupations where we're seeing a problem so that they understand where they can do better in complying with the law and so we can understand where there are some problems for employers in complying, and we can figure out how to better assist them.

Senator MURRAY. You talked a little bit earlier about conciliation, Mr. Lopez. I know that's an important tool for EEOC to help resolve discrimination cases. So it's really important that it's done right. And I want to ask you do you provide guidance to your enforcement staff on how to conduct conciliations?

Mr. LOPEZ. Well, I want to place this in the context of the way we're structured. The investigative side is responsible for conducting the conciliations, and only after a case fails conciliation will it become legal. Our lawyers are involved in providing counseling in the process in terms of trying to help get to good resolutions in the conciliation process really in a sort of advisory role. But most of the work is really done at the other end of the Commission.

Senator MURRAY. Chair Yang.

Ms. YANG. We do provide guidance to our investigators on the conciliation process, and we're working to provide additional guidance in light of *Mach Mining* so that our investigators understand that even though the review is limited—the court, you know, in *Mach Mining* said the review of our process is limited—we want to emphasize that our efforts to conciliate will not be limited, because it remains a very important way in which we can resolve cases early, get relief, get changes to the practice, rather than being embroiled in years of litigation.

So that's an important area for us that we're going to be continuing to educate our staff on. We have a unit in headquarters that goes out to the field to audit the process. We audited over 20 different offices last year, and they review the process. They look at the conciliation efforts to ensure that they're adequate, and, on a regular basis, supervisors in those field offices are reviewing the conciliation process, because it's required to be documented. So we're ensuring that our staff understands what we expect of them to ensure that we are using this process as productively as possible.

Senator MURRAY. But what is the recent record on conciliation?

Ms. YANG. We have had a very successful success record. We've brought it up, actually, by 40 percent since fiscal year 2010 where we were at a 27 percent success rate. Now we are at a 38 percent success rate, and we have had even higher percentages in other years. So it's a significant part of our work.

Senator MURRAY. Thank you very much.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Murray.

I have several other questions, but I'll submit most of them for the record, if I may, if you all will respond to them.

Let me ask three of them quickly.

No. 1, Mr. Lopez, I understand you issue a press release when EEOC sues an employer. Do you take down the press release if you lose the case?

Mr. LOPEZ. I am not really in charge of that, but we probably should, yes.

The CHAIRMAN. Will you do that?

Mr. LOPEZ. It's not really my line of authority, but I would recommend——

The CHAIRMAN. Whose is it?

Mr. LOPEZ. It would be——

Ms. YANG. That would be mine, and we will certainly look at that. I appreciate that concern, yes.

The CHAIRMAN. But if you lose the case, shouldn't you take down the press release? We know of five examples where you—I mean, it's embarrassing to an employer to be sued, and if the court finds against you, it seems to me the fair thing to do is take it down.

Ms. YANG. I'm glad you raised that issue. I will certainly look into it, and we will be happy to report back to you.

The CHAIRMAN. Thank you.

Ms. Yang, under your procedures, I believe the General Counsel is required to submit to the Commission a case that has a high likelihood of creating public controversy. Is that right?

Ms. YANG. Correct.

The CHAIRMAN. And there are significant concerns with your investigation of accounting firms and their voluntary partnership agreements initiated without a complaint. Do you believe the Commission should vote prior to commencing litigation against *Deloitte*, *KPMG*, or any future case alleging age discrimination in a partnership agreement?

Ms. YANG. Thank you for raising that issue. I know it's been one of interest to many. I can't comment specifically on any particular investigation. But I would expect that if the General Counsel were to recommend litigation on that issue, it would be something that would come up to the Commission. We take seriously——

The CHAIRMAN. Wouldn't you think six congressional hearings would constitute a public controversy?

Ms. YANG. I would. I would agree with that.

The CHAIRMAN. Then if your procedure is that you should consider cases that create a public controversy, why wouldn't the answer be yes, that if you——

Ms. YANG. Well, yes. I do expect that that would be the case. That is true.

The CHAIRMAN. Thank you. And the other one—we've talked a lot about employee wellness, and I'll detail my question to you. But the proposed rule that you put out in April, to me, doesn't solve the problem. This is something that most of us—I'm always hesitant to speak about the Affordable Care Act and say most of us, because we disagree on much of it. But most of us and the President like the idea of encouraging employees to lead a healthy lifestyle by their employers offering a financial reward.

Three of the President's departments wrote regulations according to the Affordable Care Act that many employers followed. EEOC came along with a rule that conflicted. You've tried to fix that, but, in my view, it doesn't fix it, and you even exceed your jurisdiction and authority by limiting to 30 percent the premium that an employer may charge.

Without going into too much detail, I've introduced legislation to try to reaffirm existing law and to try to clear up the confusion. Will you please commit to looking at my legislation as a way forward for the EEOC as the Commission drafts a final rule and taking it into account as you look at your options?

Ms. YANG. Certainly. We, as you know, have a process of public comment, and we are looking to hear feedback from all sources to ensure that we make the rule as good as it can be. We worked hard to design a workable rule that balances the interests of the ADA with the Affordable Care Act as it amends HIPAA, and we worked closely with the other Federal agencies charged with enforcing the ACA to create a rule that could work for companies to promote wellness.

I've talked to many companies who are investing a lot of resources in wellness programs because they truly believe in improving their employees' health. And we want to be able to support those efforts.

The CHAIRMAN. Well, thank you. And please keep in mind that the committee and the Congress that passed the Affordable Care Act included many of the same people that passed the ADA, and the Affordable Care Act came last. So if you were to defer to the Congress and the President that acted last in this area, I think you would have to conclude broad latitude for employers in employee wellness programs.

The hearing record will remain open for 10 days. We thank the witnesses for joining us today. Members may submit additional information and questions for the record within that time if they would like.

The committee will stand adjourned.

[Additional material follows.]

ADDITIONAL MATERIAL

PREPARED STATEMENT OF THE NATIONAL RESTAURANT ASSOCIATION

Chairman Alexander and Ranking Member Murray, thank you for holding this hearing and providing critical oversight on the EEOC's current questionable and controversial enforcement and litigation practices. My name is Angelo Amador and I am senior vice-president and regulatory counsel at the National Restaurant Association.

Our Association is the leading business representative for the restaurant and food service industry. The industry is comprised of 1 million restaurant and food service outlets employing 14 million people—about 10 percent of the U.S. workforce. Restaurants are job creators and the Nation's second-largest private-sector employer. Despite its size, small businesses dominate the industry; even larger chains are often collections of smaller franchised businesses.

Our Association and its members understand the valuable function the EEOC plays in maintaining a bias-free workplace. However, we have serious concerns about some of the EEOC's current actions. For example, the lack of transparency by the EEOC creates immeasurable difficulties for companies as they attempt to defend themselves in litigation. In addition, the EEOC is making significant—and sometimes controversial—policy changes by issuing "guidelines" without the publication and comment period that would be required if they followed the formal regulatory process.

Two of the EEOC's unusual and novel legal theories have proven costly for employers who are increasingly targeted by the EEOC. First, a few years ago, I started hearing from members about EEOC harassing techniques over the use of background checks, in some cases, as has been pointed out, "the same type of background checks that the EEOC itself uses." More recently, while the EEOC has tens of thousands of age discrimination complaints that it should address, it has, instead, started investigating some of our member companies that they find suspect—even when no complaint has been filed. In fact, as Chairman Alexander pointed out at the hearing, the EEOC appears to be putting up "Craigslist" ads trying to find complainants, after starting investigations without any individual filing a complaint.

While the EEOC representatives did not seem to know who at the agency may have placed the Craigslist ads, they confirmed that the e-mail addresses used in them belong to the EEOC. We urge you to ask the agency to fully answer the question they were unable to answer at the hearing as to who and why someone has decided that placing these ads on behalf of the EEOC is the proper way to seek complainants when the agency itself is unable to find any through proper channels.

EEOC General Counsel Lopez seemed to have insinuated in his answer that the ads may not have been placed by the agency. If that is the case, why then has the EEOC not tried to find out who and under what authority are these ads being placed on behalf of the agency. As you can see from a copy of the actual Craigslist advertisement below, it appears extremely improbable that anyone else other than agency staff or someone working under its authority, would have placed this advertisement:

TEXAS ROADHOUSE AGE DISCRIMINATION CASE (NATIONWIDE)

Texas Roadhouse Litigation

(compensation: Pursuant to settlement.)

The EEOC has sued the Texas Roadhouse chain of restaurants, claiming that Texas Roadhouse did not hire people age 40 and older because of their age.

If you believe you may have been denied a front of the house position such as server, hostess/host, bartender, etc. at Texas Roadhouse because of your age or if you have information, please contact the EEOC toll free at:

(855) 556–1129
or by e-mail at:
texasroadhouse.lawsuit@eeoc.gov.

Do not contact this e-mail address or phone number unless you applied for a job with Texas Roadhouse or you have any relevant information. If you want advice or have a claim concerning any other employer or respondent covered by EEOC you can contact an EEOC field office, or call toll-free 1–800–669–4000 (or TTY 1–800–669–6820), or e-mail us at info@eeoc.gov.

- Principals only. Recruiters, please don't contact this job poster.
- do NOT contact us with unsolicited services or offers.

post id: 4996552669 / posted: 25 days ago / updated: 25 days ago

Meanwhile, as the EEOC continues to pursue investigations that do not involve a complainant, the backlog of actual complaints continues to grow and now stands at over 75,000. Our industry is not alone, as the EEOC continues to investigate at least three accounting firms—none of which had a complainant—where partners voluntarily adopted a mandatory retirement age.

One of the most notorious investigations in the restaurant industry involves the Texas Roadhouse restaurant chain—which is also the subject of the Craigslist advertisement copied above. The EEOC began this investigation in 2011 claiming age discrimination—because Texas Roadhouse's hosts, bartenders, and servers seem too young. There was no complaint of such a violation, but the agency's actions forced Texas Roadhouse to fight a lengthy and costly court battle—not to mention the cost to protect its public image against litigation by press release.

As highlighted at the hearing, the EEOC has been losing these lawsuits—which were premised on controversial legal arguments from the start—while receiving strong rebukes from the judges deciding these cases. The EEOC representatives acknowledged that they issue press statements to highlight these cases and investigations at their outset, but do nothing to clear the names and reputations of employers that are cleared of any wrongdoing by the courts.

Meanwhile, employers are left with the task of cleaning the damage to their reputation from headline grabbing press releases when they have not broken the law as the EEOC alleges under dubious legal arguments.

Another recent example of EEOC's overreach is apparent in its discrimination claims against employers that offer discounted health insurance to employees who participate in wellness programs. These programs are allowed, and encouraged, under the Affordable Care Act. Regardless, the EEOC has been filing lawsuits against employers under the Americans with Disabilities Act and the Genetic Information Nondiscrimination Act, claiming that the increased health insurance premiums paid by employees who do not participate are discriminatory.

The National Restaurant Association recently joined other business organizations in asking Congress to pass legislation to increase EEOC transparency and accountability and reaffirm existing law on employee wellness programs. We are encouraged by Chairman Alexander's own legislation to tackle some of these issues.

Once again, while we support the EEOC's mission of preventing discrimination in the workplace, we are troubled by its pursuit of frivolous investigations, particularly those that are not driven by employee complaints.

Thank you again for your vital oversight of the EEOC. We look forward to continuing to work with you and your staff to make sure the EEOC properly addresses the concerns outlined above.

HEALTHCARE LEADERSHIP COUNCIL,
JUNE 2, 2015.

Senate Health, Education, Labor, and Pensions Committee,
428 Dirksen Senate Office Building,
Washington, DC 20510–6300.

Re: Statement for the record for the hearing, "Oversight of the Equal Employment Opportunity Commission: Examining EEOC's Enforcement and Litigation Programs"

DEAR CHAIRMAN ALEXANDER AND RANKING MEMBER MURRAY: On behalf of the Healthcare Leadership Council (HLC), thank you for your leadership in advancing policies designed to improve the health of all Americans and for your interest in further examining the value workplace wellness programs bring to employees and their employers. HLC members have followed the recent activities of your committee regarding workplace wellness programs with interest and look forward to working with you as you provide oversight of the U.S. Equal Employment Opportunity Commission (EEOC) and its forthcoming promulgation of wellness program regulations.

HLC is a coalition of chief executives from all disciplines within American healthcare. It is the exclusive forum for the Nation's healthcare leaders to jointly develop policies, plans, and programs to achieve their vision of a 21st century health system that makes affordable, high-quality care accessible to all Americans. Members of HLC—hospitals, academic health centers, health plans, pharmaceutical companies, medical device manufacturers, biotech firms, health product distributors, pharmacies, and information technology companies—advocate measures to increase the quality and efficiency of American healthcare by emphasizing wellness and prevention, care coordination, and the use of evidence-based medicine, while utilizing consumer choice and competition to enhance value.

HLC members are at the forefront of designing and implementing meaningful wellness programs to better the lives of their employees, communities, and patients. Based on decades of experience in implementing evidence-based wellness programs, we strongly believe appropriately designed wellness programs have the potential to contribute to promoting health and preventing disease. HLC is a strong supporter of the Affordable Care Act (ACA) provisions that encourage the use of workplace wellness programs by allowing increased premium variation incentives for those that complete workplace wellness programs. These provisions were endorsed on a bipartisan basis by your committee and Congress, as well as supported by the President and the Administration, as one of the keys to addressing the chronic disease epidemic, which will continue to dramatically burden the healthcare system if left unchecked.

Given the lack of clarity about the EEOC's position on the extent to which the Americans with Disabilities Act (ADA) permits employers to offer incentives to employees to promote participation in wellness programs, we are pleased to see that the EEOC is finally moving forward with regulation. Guidance will reduce the uncertainty that employers who implement innovative wellness programs currently face and the chilling effect this has produced on the ability of employers to move forward with them.

However, while we are pleased that the EEOC does not view health risk assessments and biometric screenings as incompatible with incentives as part of voluntary programs, we continue to have concerns about the proposed regulation. Specifically, the proposed regulation conflicts with existing law as well as leaves some questions unanswered. We look forward to sharing our full feedback on the proposed rule with the EEOC as well as members of the committee.

As employers and the healthcare industry await the final regulation, we wish to commend your committee for providing oversight to the EEOC's activities. We echo the concerns voiced by members of the committee during the hearing about the timely need for clear regulations regarding workplace wellness programs. We look forward to the release in July of proposed rules regarding the Genetic Information Nondiscrimination Act (GINA) and workplace wellness programs and urge the committee to encourage the EEOC to provide comments harmonized with the ADA regulations to reduce confusion.

As the committee works to ensure that voluntary workplace wellness programs continue to flourish and aid in empowering patients to address health risks that may lead to dramatically reduced health and well-being, please consider us a partner. We offer our assistance and would welcome the opportunity to discuss these ideas with you or your staff.

Sincerely,

MARY R. GREALY,
President.

RESPONSE BY JENNY YANG, TO QUESTIONS OF SENATOR ALEXANDER, SENATOR PAUL, SENATOR COLLINS, AND SENATOR ROBERTS

SENATOR ALEXANDER

Question 1a. According to a January 26, 2015, Bloomberg BNA article, entitled *EEOC Welcomes New Staff to Build on Agency's National Enforcement Strategy*, an EEOC spokesperson told Bloomberg that as of December 1, 2014, EEOC had 820 investigators and 395 attorneys. However, at the May 19 hearing, you stated EEOC only has 548 investigators. Please explain this discrepancy and how many investigators EEOC has in the Office of Field Programs and how many attorneys it has under the Office of General Counsel.

Answer 1a. EEOC currently has 548 available [1] front-line investigators in the Office of Field Programs who take in and investigate charges and 226 attorneys in the Office of General Counsel. Of those attorneys, 55 are supervisory and 171 are non-supervisory.

The 820 investigator figure referenced in the Bloomberg BNA article was based on a December 2014 staffing report listing all staff who held a position that included "investigator" in the job title, as classified by OPM. This staffing report figure included not only our front-line investigators, but also staff in supervisory and management roles at varying grade levels, including intake supervisors, enforcement su-

[1] The 548 investigator number refers to front-line investigators identified as "available" in the agency's quarterly reports. These quarterly reports reflect staff availability to serve as full-time investigators adjusting for factors such as part-time status, military service, detail to other positions (such as mediator), extended leave for medical reasons, and the training status of new EEOC investigators during their first 3 months on the job.

pervisors, enforcement managers, and deputy directors of district offices, as well as field, area, and local office directors.

The 395 attorneys cited in the BNA article include attorneys throughout the agency, in the Office of Legal Counsel, the Office of Federal Operations, the Office of Field Programs, and the Office of General Counsel, as well as other offices.

Question 1b. EEOC litigates less than one quarter of 1 percent (0.15 percent) of all charges filed. Would you consider shifting resources around to devote more staff to reducing the growing backlog of more than 75,000 complaints?

Answer 1b. EEOC devotes by far the largest part of its resources to investigations initiated in response to charges of discrimination, which reflects the priority the agency places on timely investigation of charges. The agency has been steadfastly committed to managing its workload and achieved significant reductions in fiscal years 2010–13 despite fiscal constraints and operational challenges, including a historic rise in charge receipts in fiscal years 2008–13. Sequestration and a 16-day government shutdown in fiscal year 2014 impeded the agency's capacity to sustain significant inventory reductions in fiscal year 2014.

EEOC carefully considers its distribution of resources and devotes the majority of resources to timely management of our inventory. The agency works with employers to resolve voluntarily thousands of charges of discrimination. In fiscal year 2014, EEOC resolved a total of 13,604 charges through voluntary resolutions and litigated 133 lawsuits. Where the agency identifies a significant violation of the law that the parties are unable to resolve voluntarily, a strong litigation program is important to ensure compliance. The resources allocated to the Office of General Counsel ("OGC"), account for less than 15 percent of EEOC's budget. These resources support the agency's litigation as well as the provision of legal advice and support to the agency on policy matters and to investigative staff.

Question 2. Does EEOC ever utilize a third-party to find, or help find, plaintiffs before or during an investigation or litigation? This includes, but is not limited to, Web sites, contracted legal services or investigative services, contract employees, social media, etc.

If so, since 2010, please list each instance where this has occurred and the amount of resources spent in each instance.

Answer 2. When an employer fails to keep records, it may be difficult for EEOC to obtain information on those harmed or potentially harmed by a discriminatory policy or practice.

On rare occasions, after an investigation has been completed and during conciliation, an employer who has not kept the records required by law may agree to Web postings, advertisements, or other means to identify potentially aggrieved individuals. In these circumstances, it is generally the respondent who creates and pays for advertisements.

In certain larger investigations, EEOC may contract for the services of temporary paralegals or support personnel to contact and interview individuals who may be witnesses or who may have been harmed by the discriminatory policy or practice alleged. During the investigation, these paralegals or support personnel may be required to search for contact information where the information on file is inaccurate, missing, or outdated. The time they spend updating or obtaining contact information for potentially aggrieved individuals is not recorded separately from the time they spend on preparing files, organizing documents, and entering data.

In litigation, EEOC has occasionally contracted with a third-party—such as placing ads with a newspaper or radio station—to find an individual for whom the agency seeks to obtain relief.[2] We have identified three instances since 2010 in which EEOC has contracted with a third party during litigation to help find individuals who may have been harmed by the discriminatory policy or practice alleged. We contracted with third parties in these instances because we were unable to identify members of the protected class at issue from the employer's records.

- In 2011, in a case filed against a restaurant with two locations for alleged race discrimination against African-Americans in hiring and job assignments, EEOC contracted for radio ads, at a cost of $7,995, to help identify individuals affected by the discrimination alleged. The lawsuit was settled in 2014.
- In 2012, in a case filed against an automobile shipment company for alleged failure to hire African-Americans because of race and alleged discrimination against applicants with disabilities based on pre-employment medical inquiries, EEOC con-

[2] EEOC is the "plaintiff" in its litigation, and individuals for whom the agency may pursue relief are considered aggrieved or potentially harmed individuals.

tracted for newspaper ads, at a cost of $3,525, to help identify individuals affected by the discrimination alleged. This lawsuit is pending.

• In 2012, in a case filed against a restaurant with six locations for alleged failure to hire individuals 40 years old and over because of age, EEOC contracted for radio ads, at a cost of $2,475, to help identify individuals affected by the discrimination alleged. The lawsuit was settled in 2013.

Question 3. Does EEOC ever review Craigslist to search for evidence of potential discrimination?

If so, how often and how many resources are spent on these efforts?

Answer 3. Over the course of the past 5½ years (fiscal year 2010–15, to date), EEOC has expended minimal resources to review Craigslist advertisements to identify evidence of discrimination. For example, sometimes EEOC learns of potentially discriminatory ads on Craigslist from a member of the public or during the course of an investigation. Investigators would go directly to Craigslist to confirm those allegations. We estimate that during this 5½ year period, investigative staff spent a total of approximately 200 hours to identify evidence of discrimination in ads on Craigslist. In some instances, for example, offices identified potentially discriminatory job advertisements that may have excluded applicants based on gender and age.

Question 4. At the May 19 hearing, I asked that EEOC remove press releases from their Web site in the cases in which EEOC lost the case. You responded that you would take a look at this issue and report back to me. As of May 29, 2015, press releases announcing lawsuits that EEOC ultimately lost remain on EEOC's Web site. Will you commit to removing the press releases and by what date will this be complete?

If you cannot commit to removing these press releases at this time, please explain all of the factors you are weighing as you consider my request.

Answer 4. In response to this request, moving forward, the agency intends to remove press releases after the final resolution of a case in which EEOC has lost and no appeal is being filed or in which the loss is affirmed on appeal. In addition, we will remove from the site press releases for any case that EEOC voluntarily dismisses. We will complete this review over the next 6 months and remove press releases on a rolling basis. Finally, we have removed the five press releases Chairman Alexander referenced at the May 19 hearing.

Question 5a. According to EEOC's Performance and Accountability Reports (PAR), EEOC initiated litigation in 91 systemic cases since fiscal year 2010. According to your testimony from the hearing, 12 of those charges in litigation were based on a charge filed by someone other than the aggrieved party, or roughly 13 percent.

Since 2010, please provide a list in a sortable Microsoft Excel Spreadsheet of all investigations by year, including non-systemic investigations, based on:

1. commissioner's charge;
2. directed investigation; and
3. any other charges filed by someone other than the aggrieved party.

See Question 5b and 5c for response.

Question 5b. For each of these investigations in (a), please indicate if the investigation is systemic or non-systemic, is ongoing, is in litigation, was settled through conciliation, or was dropped by EEOC without reaching a resolution with the employer.

Answer 5a and 5b. Attached are spreadsheets listing Commissioner charges and directed investigations identified by statute, issue, basis, and fiscal year, with notations on whether the matters are systemic or non-systemic, ongoing or closed, as requested. Although our data base does not permit us to provide a spreadsheet of "any other charges filed by someone other than the aggrieved party," we have provided an explanation below.

Typically, more than 50 percent of Commissioner charges and directed investigations have been opened during an investigation of a charge filed by an individual where the evidence suggests a broader policy or practice that affects other workers. Approximately 75 percent of Commissioner charges and directed investigations are based on discrimination in hiring, which is one of the most difficult issues for individual workers to challenge, and is therefore a priority for EEOC.

As the attached spreadsheet of Commissioner charges shows, EEOC opened 125 Commissioner charges from fiscal year 2010 through June 10, 2015. Of those, EEOC resolved 38 charges, and the other 87 remain in investigation. Of the 38 resolutions, 15 were settled with benefits before a finding was issued, the Commission issued a cause finding in 15 investigations and successfully conciliated 7 of those, and for

8 investigations the Commission either administratively closed or did not find sufficient evidence of discrimination to issue a cause finding and dismissed the charge. That means that the Commission found discrimination or obtained a settlement in nearly 80 percent of the charges resolved.

EEOC opened 520 directed investigations—470 under the ADEA and 50 under the EPA—from fiscal year 2010 through June 10, 2015, as the attached spreadsheet of directed investigations shows. Of the 520 directed investigations, EEOC resolved 440, and 80 remain in investigation. Of the 440 resolutions, EEOC found reasonable cause to believe discrimination occurred in 243 investigations (55 percent) and successfully conciliated 164 of these investigations (67 percent). The high number of reasonable cause findings and successful resolution rate reflects the strength and significance of these investigations as well as EEOC's commitment to conciliation efforts. In addition, EEOC settled 110 charges prior to issuing a cause determination. Therefore, of the 440 resolutions, 110 were settled with benefits before a finding was issued, the Commission found reasonable cause to believe discrimination occurred in 243 investigations, of which 164 were successfully conciliated, and the Commission either administratively closed or did not find sufficient evidence to support a cause finding in 87 investigations and closed the investigation. That means that the Commission found discrimination or obtained a settlement in approximately 80 percent of the charges resolved.

Section 706(b) of Title VII provides that charges may be filed "by or on behalf of" individuals claiming to be aggrieved. Our data base identifies the "source of the complaint," including third-party complaints but does not separately categorize charges filed by third parties from those filed by the aggrieved individuals themselves.

Even when the source of the complaint is a third party, the charge will be filed on behalf of an individual alleged to be aggrieved. For example, our data base includes charges filed by parents on behalf of minors; family members or others on behalf of individuals who cannot or are reluctant to file a charge; organizations such as disability rights advocates or other civil rights groups; and attorneys for their clients.

Question 5c. Since 2010, please provide a list in a sortable Microsoft Excel Spreadsheet of all litigation by year, including non-systemic litigation, based on a:

1. commissioner's charge;
2. directed investigation; and
3. any other charges filed by someone other than the aggrieved party.

Answer 5c. Attached is the spreadsheet of litigation.

ADEA and EPA Directed Investigations FY 2010 through June 10, 2015

Fiscal year	Staff function	Status code	Statute	Basis	Issue	Closure action	Was the conciliation failure litigated?
FY 2010	Systemic	C	ADEA	Age	Layoff	No Cause Finding Issued	
FY 2010	Systemic	C	ADEA	Age	Benefits	Conciliation Failure	No
FY 2010	Not Systemic	C	EPA ...	Equal Pay—Female.	Wages	No Cause Finding Issued.	
FY 2010	Systemic	C	ADEA	Age	Referral, Hiring	Successful Conciliation.	
FY 2010	Not Systemic	C	ADEA	Age	Benefits-Retirement/Pension.	No Cause Finding Issued.	
FY 2010	Not Systemic	C	ADEA	Age	Benefits-Retirement/Pension.	No Cause Finding Issued.	
FY 2010	Systemic	C	ADEA	Age	Benefits-Retirement/Pension.	Conciliation Failure	No
FY 2010	Systemic	C	ADEA	Age	Benefits-Retirement/Pension.	Conciliation Failure	No
FY 2010	Systemic	C	ADEA	Age	Benefits-Retirement/Pension.	Conciliation Failure	No
FY 2010	Systemic	C	ADEA	Age	Benefits-Retirement/Pension.	Conciliation Failure	No
FY 2010	Not Systemic	C	ADEA	Age	Terms/Conditions, Benefits.	No Jurisdiction.	

ADEA and EPA Directed Investigations FY 2010 through June 10, 2015—Continued

Fiscal year	Staff function	Status code	Statute	Basis	Issue	Closure action	Was the conciliation failure litigated?
FY 2010	Not Systemic	C	ADEA	Age	Terms/ Conditions, Benefits.	No Jurisdiction.	
FY 2010	Not Systemic	C	ADEA	Age	Benefits, Terms/Conditions.	No Jurisdiction.	
FY 2010	Not Systemic	C	ADEA	Age	Terms/ Conditions, Benefits.	No Jurisdiction.	
FY 2010	Systemic	C	ADEA	Age	Retirement— Involuntary.	Administrative Closure.	
FY 2010	Systemic	C	ADEA	Age	Retirement— Involuntary.	Conciliation Failure.	
FY 2010	Not Systemic	C	ADEA	Age	Referral	Successful Conciliation.	
FY 2010	Systemic	C	ADEA	Age	Hiring	CP Withdrawal-No Ben..	
FY 2010	Systemic	O	ADEA	Age	Discharge, Testing.	Ongoing.	
FY 2010	Systemic	C	ADEA	Age	Advertising, Hiring, Other.	Successful Conciliation.	
FY 2010	Not Systemic	C	ADEA	Age	Hiring, Advertising.	Successful Conciliation.	
FY 2010	Not Systemic	C	ADEA	Age	Advertising	Settlement With Benefits.	
FY 2010	Not Systemic	C	ADEA	Age	Advertising	Settlement With Benefits.	
FY 2010	Not Systemic	C	ADEA	Age	Advertising	Settlement With Benefits.	
FY 2010	Not Systemic	C	ADEA	Age	Advertising	Settlement With Benefits.	
FY 2010	Not Systemic	C	ADEA	Age	Advertising	Settlement With Benefits.	
FY 2010	Not Systemic	C	ADEA	Age	Advertising	Settlement With Benefits.	
FY 2010	Not Systemic	C	ADEA	Age	Advertising	Settlement With Benefits.	
FY 2010	Not Systemic	C	ADEA	Age	Advertising	Settlement With Benefits.	
FY 2010	Not Systemic	C	ADEA	Age	Advertising	Settlement With Benefits.	
FY 2010	Not Systemic	C	ADEA	Age	Advertising	Settlement With Benefits.	
FY 2010	Not Systemic	C	ADEA	Age	Discipline, Discharge, Demotion, Constructive Discharge.	No Cause Finding Issued.	
FY 2010	Not Systemic	C	ADEA	Age	Advertising	Settlement With Benefits.	
FY 2010	Not Systemic	C	ADEA	Age	Advertising	Conciliation Failure	No
FY 2010	Not Systemic	C	ADEA	Age	Advertising	Settlement With Benefits.	
FY 2010	Not Systemic	C	ADEA	Age	Hiring	Settlement With Benefits.	
FY 2010	Systemic	C	ADEA	Age	Hiring	Settlement With Benefits.	
FY 2011	Systemic	C	ADEA	Age	Hiring	Conciliation Failure	Yes
FY 2011	Not Systemic	C	ADEA	Age	Benefits-Retirement/ Pension.	Successful Conciliation.	
FY 2011	Not Systemic	C	ADEA	Age	Benefits-Retirement/ Pension.	Conciliation Failure	Yes
FY 2011	Not Systemic	C	ADEA	Age	Benefits-Retirement/ Pension.	Conciliation Failure	Yes
FY 2011	Not Systemic	C	EPA	Equal Pay— Female.	Wages	Settlement With Benefits.	
FY 2011	Not Systemic	C	EPA	Equal Pay— Female.	Wages	Administrative Closure.	
FY 2011	Not Systemic	C	ADEA	Age	Referral	Settlement With Benefits.	
FY 2011	Not Systemic	C	ADEA	Age	Hiring	No Jurisdiction.	
FY 2011	Systemic	C	ADEA	Age	Hiring, Promotion, Terms/Conditions, Wages, Discharge.	Settlement With Benefits.	
FY 2011	Not Systemic	C	ADEA	Age	Assignment	No Cause Finding Issued.	
FY 2011	Not Systemic	C	ADEA	Age	Hiring	CP Withdrawal-No Ben.	
FY 2011	Not Systemic	C	ADEA	Age	Hiring	No Cause Finding Issued.	
FY 2011	Not Systemic	C	ADEA	Age	Advertising	Conciliation Failure	No

ADEA and EPA Directed Investigations FY 2010 through June 10, 2015—Continued

Fiscal year	Staff function	Status code	Statute	Basis	Issue	Closure action	Was the conciliation failure litigated?
FY 2011	Not Systemic	C	ADEA	Age	Advertising	Successful Conciliation.	
FY 2011	Not Systemic	C	ADEA	Age	Advertising	Conciliation Failure	No
FY 2011	Not Systemic	C	ADEA	Age	Advertising	Conciliation Failure	No
FY 2011	Not Systemic	C	ADEA	Age	Advertising	Successful Conciliation.	
FY 2011	Not Systemic	C	ADEA	Age, Other	Advertising	Settlement With Benefits.	
FY 2011	Not Systemic	C	ADEA	Age	Advertising	Settlement With Benefits.	
FY 2011	Systemic	C	ADEA	Age	Advertising	Conciliation Failure	No
FY 2011	Not Systemic	C	ADEA	Age	Advertising	Successful Conciliation.	
FY 2011	Not Systemic	C	ADEA	Age	Advertising	Settlement With Benefits.	
FY 2011	Not Systemic	C	ADEA	Age	Advertising	CP Withdrawal-No Ben.	
FY 2011	Not Systemic	C	ADEA	Age	Advertising	Conciliation Failure	No
FY 2011	Not Systemic	C	ADEA	Age	Advertising	Conciliation Failure	No
FY 2011	Not Systemic	C	ADEA	Age	Advertising	Conciliation Failure	No
FY 2011	Not Systemic	C	ADEA	Age	Hiring	No Cause Finding Issued.	
FY 2011	Not Systemic	C	ADEA	Age	Hiring, Advertising	Administrative Closure.	
FY 2011	Not Systemic	C	ADEA	Age	Hiring, Exclusion	Successful Conciliation.	
FY 2011	Not Systemic	C	ADEA	Age	Advertising	Successful Conciliation.	
FY 2011	Not Systemic	C	EPA	Equal Pay—Male.	Wages	No Cause Finding Issued.	
FY 2011	Not Systemic	C	EPA	Equal Pay—Male.	Wages	No Cause Finding Issued.	
FY 2011	Not Systemic	C	ADEA	Age	Advertising	Successful Conciliation.	
FY 2011	Not Systemic	C	ADEA	Age	Advertising	Conciliation Failure	No
FY 2011	Systemic	C	ADEA	Age	Advertising	Successful Conciliation.	
FY 2011	Systemic	C	ADEA	Age	Advertising	Successful Conciliation.	
FY 2011	Systemic	C	ADEA	Age	Advertising	Successful Conciliation.	
FY 2011	Not Systemic	C	ADEA	Age	Advertising	Conciliation Failure	No
FY 2011	Not Systemic	C	ADEA	Age	Advertising	Successful Conciliation.	
FY 2011	Not Systemic	C	ADEA	Age	Advertising	Settlement With Benefits.	
FY 2011	Not Systemic	C	ADEA	Age	Advertising	Successful Conciliation.	
FY 2011	Not Systemic	C	ADEA	Age	Advertising	Conciliation Failure	No
FY 2011	Systemic	C	ADEA	Age	Advertising	Successful Conciliation.	
FY 2011	Not Systemic	C	ADEA	Age	Advertising	Conciliation Failure	No
FY 2011	Not Systemic	C	ADEA	Age	Advertising	Successful Conciliation.	
FY 2011	Not Systemic	C	ADEA	Age	Advertising	Successful Conciliation.	
FY 2011	Not Systemic	C	ADEA	Age	Advertising	Conciliation Failure	No
FY 2011	Not Systemic	C	ADEA	Age	Advertising	Successful Conciliation.	
FY 2011	Not Systemic	C	ADEA	Age	Advertising	Successful Conciliation.	
FY 2011	Not Systemic	C	ADEA	Age	Advertising	Successful Conciliation.	
FY 2011	Not Systemic	C	ADEA	Age	Hiring	No Cause Finding Issued.	
FY 2011	Not Systemic	C	ADEA	Age	Advertising	Successful Conciliation.	
FY 2011	Not Systemic	C	ADEA	Age	Advertising	Conciliation Failure	No
FY 2011	Not Systemic	C	ADEA	Age	Hiring	Conciliation Failure	No
FY 2011	Not Systemic	C	ADEA	Age	Advertising	Successful Conciliation.	
FY 2011	Not Systemic	C	ADEA	Age	Advertising	Successful Conciliation.	
FY 2011	Systemic	C	ADEA	Age	Advertising	Settlement With Benefits.	
FY 2011	Not Systemic	C	ADEA	Age	Advertising	Successful Conciliation.	
FY 2011	Not Systemic	C	ADEA	Age	Advertising	Conciliation Failure	No
FY 2011	Not Systemic	C	ADEA	Age	Advertising	Successful Conciliation.	
FY 2011	Not Systemic	C	ADEA	Age	Advertising	Successful Conciliation.	
FY 2011	Not Systemic	C	ADEA	Age	Hiring, Advertising	Administrative Closure.	
FY 2011	Not Systemic	C	EPA	Equal Pay—Female.	Wages	Administrative Closure.	
FY 2011	Systemic	C	EPA	Equal Pay—Female.	Wages	No Cause Finding Issued.	
FY 2011	Systemic	C	EPA	Equal Pay—Female.	Wages	No Cause Finding Issued.	
FY 2011	Systemic	O	ADEA	Age	Discharge, Wages, Promotion, Terms/Conditions, Hiring.	Ongoing.	

ADEA and EPA Directed Investigations FY 2010 through June 10, 2015—Continued

Fiscal year	Staff function	Status code	Statute	Basis	Issue	Closure action	Was the concilia-tion fail-ure liti-gated?
FY 2011	Systemic	C	EPA	Retaliation, Equal Pay—Female.	Wages	Successful Conciliation.	
FY 2011	Systemic	C	ADEA	Retaliation, Age.	Union Representation, Terms/Conditions.	Successful Conciliation.	
FY 2011	Systemic	O	ADEA	Age	Hiring, Advertising	Ongoing.	
FY 2011	Not Systemic	C	ADEA	Age	Hiring	Settlement With Benefits.	
FY 2011	Systemic	C	EPA	Equal Pay—Female.	Wages	No Cause Finding Issued.	
FY 2011	Systemic	C	EPA	Equal Pay—Female.	Wages	No Cause Finding Issued.	
FY 2011	Systemic	C	EPA	Equal Pay—Female.	Wages	No Cause Finding Issued.	
FY 2011	Systemic	O	EPA	Equal Pay—Female.	Wages	Ongoing.	
FY 2011	Systemic	C	ADEA	Age	Benefits-Retirement/Pension, Terms/Conditions, Early Retirement Incentive.	Successful Conciliation.	
FY 2011	Not Systemic	C	ADEA	Age	Advertising, Hiring	Successful Conciliation.	
FY 2011	Systemic	C	ADEA	Age	Hiring, Layoff	No Cause Finding Issued.	
FY 2011	Systemic	R	ADEA	Age	Benefits-Retirement/Pension, Terms/Conditions, Early Retirement Incentive.	Successful Conciliation.	
FY 2011	Systemic	C	ADEA	Age	Ongoing	Conciliation Failure	Yes
FY 2011	Systemic	C	ADEA	Age	Early Retirement Incentive, Terms/Conditions, Benefits-Retirement/Pension.	Settlement With Benefits.	
FY 2011	Systemic	C	EPA	Equal Pay—Female.	Wages	No Cause Finding Issued.	
FY 2011	Systemic	C	EPA	Equal Pay—Female.	Wages	No Cause Finding Issued.	
FY 2011	Systemic	C	EPA	Equal Pay—Female.	Wages	No Cause Finding Issued.	
FY 2011	Not Systemic	C	EPA	Equal Pay—Female.	Wages	Administrative Closure.	
FY 2011	Not Systemic	C	ADEA	Age	Advertising	Settlement With Benefits.	
FY 2011	Not Systemic	C	ADEA	Age	Advertising	Settlement With Benefits.	
FY 2011	Not Systemic	C	ADEA	Age	Advertising	Settlement With Benefits.	
FY 2011	Not Systemic	C	ADEA	Age	Advertising	Settlement With Benefits.	
FY 2011	Not Systemic	C	ADEA	Age	Advertising	Settlement With Benefits.	
FY 2011	Not Systemic	C	ADEA	Age	Advertising	Settlement With Benefits.	
FY 2011	Systemic	C	ADEA	Age	Advertising	Successful Conciliation.	
FY 2011	Systemic	C	ADEA	Age	Advertising, Hiring	Settlement With Benefits.	
FY 2011	Not Systemic	C	ADEA	Age	Advertising	Settlement With Benefits.	
FY 2011	Not Systemic	C	ADEA	Age	Advertising	Settlement With Benefits.	
FY 2011	Not Systemic	C	ADEA	Age	Advertising	Settlement With Benefits.	
FY 2011	Not Systemic	C	ADEA	Age	Advertising	Settlement With Benefits.	
FY 2011	Not Systemic	C	ADEA	Age	Advertising	Settlement With Benefits.	
FY 2011	Not Systemic	C	ADEA	Age	Advertising	Settlement With Benefits.	
FY 2011	Not Systemic	C	ADEA	Age	Advertising	Settlement With Benefits.	
FY 2011	Not Systemic	C	ADEA	Age	Advertising	Settlement With Benefits.	
FY 2012	Not Systemic	C	ADEA	Age	Advertising, Referral	Successful Conciliation.	
FY 2012	Systemic	C	ADEA	Age	Advertising, Hiring	No Jurisdiction.	

ADEA and EPA Directed Investigations FY 2010 through June 10, 2015—Continued

Fiscal year	Staff function	Status code	Statute	Basis	Issue	Closure action	Was the conciliation failure litigated?
FY 2012	Systemic	O	ADEA	Age	Benefits.		
FY 2012	Systemic	C	EPA	Retaliation	Intimidation, Constructive Discharge, Terms and Conditions.	Successful Conciliation.	
FY 2012	Systemic	C	ADEA	Retaliation, Age.	Terms/Conditions, Constructive Discharge.	Successful Conciliation.	
FY 2012	Not Systemic	C	ADEA	Age	Benefits-Retirement/Pension.	Conciliation Failure	Yes
FY 2012	Not Systemic	C	EPA	Equal Pay—Female.	Wages	Settlement With Benefits.	
FY 2012	Not Systemic	C	EPA	Equal Pay—Female.	Wages	Settlement With Benefits.	
FY 2012	Systemic	O	EPA	Equal Pay—Female.	Wages	Ongoing.	
FY 2012	Not Systemic	C	ADEA	Age	Hiring	No Cause Finding Issued.	
FY 2012	Systemic	C	ADEA	Age	Advertising	Successful Conciliation.	
FY 2012	Not Systemic	C	ADEA	Age	Advertising	Successful Conciliation.	
FY 2012	Systemic	C	EPA	Equal Pay—Female.	Wages	No Cause Finding Issued.	
FY 2012	Systemic	C	ADEA	Age	Advertising, Hiring	Successful Conciliation.	
FY 2012	Systemic	O	ADEA	Age	Discharge, Hiring, Promotion.	Ongoing.	
FY 2012	Systemic	O	ADEA	Age	Hiring	Ongoing.	
FY 2012	Not Systemic	C	ADEA	Age	Hiring	Administrative Closure.	
FY 2012	Not Systemic	C	EPA	Equal Pay—Female.	Wages	Administrative Closure.	
FY 2012	Not Systemic	C	EPA	Equal Pay—Female.	Wages	Administrative Closure.	
FY 2012	Not Systemic	C	EPA	Equal Pay—Female.	Wages	Administrative Closure.	
FY 2012	Not Systemic	C	ADEA	Age	Hiring	Administrative Closure.	
FY 2012	Not Systemic	C	ADEA	Age	Advertising	No Jurisdiction.	
FY 2012	Not Systemic	C	ADEA	Age	Advertising	CP Withdrawal-No Ben..	
FY 2012	Not Systemic	C	ADEA	Age	Advertising	CP Withdrawal-No Ben..	
FY 2012	Systemic	O	ADEA	Age	Advertising	Ongoing.	
FY 2012	Systemic	O	ADEA	Age	Advertising	Ongoing.	
FY 2012	Not Systemic	C	ADEA	Age	Layoff	Settlement With Benefits.	
FY 2012	Not Systemic	C	ADEA	Age	Layoff	Settlement With Benefits.	
FY 2012	Systemic	C	EPA	Equal Pay—Female.	Wages	Successful Conciliation.	
FY 2012	Systemic	L	ADEA	Age	Benefits-Retirement/Pension.	Conciliation Failure	No
FY 2012	Not Systemic	C	ADEA	Age	Layoff, Hiring	No Cause Finding Issued.	
FY 2012	Not Systemic	O	EPA	Equal Pay—Female.	Wages	Ongoing.	
FY 2012	Systemic	C	EPA	Equal Pay—Female.	Wages	No Cause Finding Issued.	
FY 2012	Systemic	C	EPA	Equal Pay—Female.	Wages	No Cause Finding Issued.	
FY 2012	Systemic	C	EPA	Equal Pay—Female.	Benefits, Wages	Successful Conciliation.	
FY 2012	Not Systemic	C	ADEA	Age	Advertising, Hiring	Settlement With Benefits.	
FY 2012	Not Systemic	C	EPA	Equal Pay—Female.	Wages	Administrative Closure.	
FY 2012	Systemic	C	EPA	Equal Pay—Female.	Wages	No Cause Finding Issued.	
FY 2012	Systemic	O	ADEA	Age	Recall, Hiring	Ongoing.	
FY 2012	Systemic	R	ADEA	Age	Hiring	Successful Conciliation.	

ADEA and EPA Directed Investigations FY 2010 through June 10, 2015—Continued

Fiscal year	Staff function	Status code	Statute	Basis	Issue	Closure action	Was the conciliation failure litigated?
FY 2012	Not Systemic	C	ADEA	Age	Hiring	CP Withdrawal-No Ben..	
FY 2012	Systemic	O	ADEA	Age	Hiring, Demotion, Discharge.	Ongoing.	
FY 2012	Systemic	O	EPA	Equal Pay—Female.	Wages	Ongoing.	
FY 2012	Not Systemic	C	ADEA	Age	Hiring, Advertising	No Cause Finding Issued.	
FY 2012	Not Systemic	C	ADEA	Age	Advertising, Hiring	Settlement With Benefits.	
FY 2012	Not Systemic	C	ADEA	Age	Hiring, Advertising	Successful Conciliation.	
FY 2012	Not Systemic	C	ADEA	Age	Hiring	No Jurisdiction.	
FY 2012	Systemic	C	EPA	Equal Pay—Female.	Wages	Conciliation Failure	No
FY 2012	Systemic	C	EPA	Other	Wages	No Cause Finding Issued.	
FY 2012	Systemic	R	EPA	Other	Wages	Settlement With Benefits.	
FY 2012	Systemic	O	EPA	Equal Pay—Female.	Wages	Ongoing.	
FY 2012	Not Systemic	C	ADEA	Age	Hiring, Promotion	No Cause Finding Issued.	
FY 2012	Systemic	O	ADEA	Age	Other	Ongoing.	
FY 2012	Systemic	C	ADEA	Age	Hiring	No Cause Finding Issued.	
FY 2012	Systemic	O	ADEA	Age	Discipline, Hiring	Ongoing.	
FY 2012	Not Systemic	C	EPA	Equal Pay—Female.	Wages	Administrative Closure.	
FY 2012	Not Systemic	C	ADEA	Age	Advertising	Administrative Closure.	
FY 2012	Not Systemic	C	ADEA	Age	Advertising	Settlement With Benefits.	
FY 2012	Not Systemic	C	ADEA	Age	Advertising	Settlement With Benefits.	
FY 2012	Not Systemic	C	ADEA	Age	Advertising	Settlement With Benefits.	
FY 2012	Not Systemic	C	ADEA	Age	Advertising	Settlement With Benefits.	
FY 2012	Not Systemic	C	ADEA	Age	Advertising	Settlement With Benefits.	
FY 2012	Not Systemic	C	ADEA	Age	Advertising	Settlement With Benefits.	
FY 2012	Not Systemic	C	ADEA	Age	Advertising	Settlement With Benefits.	
FY 2012	Not Systemic	C	ADEA	Age	Advertising	Settlement With Benefits.	
FY 2012	Not Systemic	C	ADEA	Age	Advertising	Settlement With Benefits.	
FY 2012	Not Systemic	C	ADEA	Age	Advertising	Settlement With Benefits.	
FY 2012	Not Systemic	C	ADEA	Age	Advertising	Settlement With Benefits.	
FY 2012	Not Systemic	C	ADEA	Age	Advertising	Settlement With Benefits.	
FY 2012	Not Systemic	C	ADEA	Age	Advertising	Settlement With Benefits.	
FY 2012	Systemic	C	ADEA	Age	Advertising	Settlement With Benefits.	
FY 2012	Systemic	C	ADEA	Age	Hiring	No Cause Finding Issued.	
FY 2013	Not Systemic	C	ADEA	Age	Advertising	No Jurisdiction.	
FY 2013	Not Systemic	O	ADEA	Age	Hiring	Ongoing.	
FY 2013	Not Systemic	O	ADEA	Age	Hiring	Ongoing.	
FY 2013	Not Systemic	C	EPA	Equal Pay—Male; Equal Pay—Female.	Wages	Settlement With Benefits.	
FY 2013	Not Systemic	C	EPA	Equal Pay—Female.	Wages	No Cause Finding Issued.	
FY 2013	Not Systemic	O	EPA	Equal Pay—Female.	Wages	Ongoing.	
FY 2013	Systemic	O	EPA	Equal Pay—Female.	Wages	Ongoing.	
FY 2013	Systemic	C	ADEA	Age	Advertising, Hiring	Settlement With Benefits.	
FY 2013	Systemic	C	ADEA	Age	Advertising, Hiring	Settlement With Benefits.	
FY 2013	Not Systemic	C	ADEA	Age	Promotion, Hiring	Settlement With Benefits.	
FY 2013	Not Systemic	O	ADEA	Age, Other	Harassment, Terms/ Conditions.	Ongoing.	
FY 2013	Systemic	C	ADEA	Age	Hiring	No Cause Finding Issued.	
FY 2013	Systemic	O	ADEA	Age	Benefits	Ongoing.	
FY 2013	Systemic	O	ADEA	Age	Benefits	Ongoing.	
FY 2013	Systemic	O	ADEA	Age	Benefits	Ongoing.	

ADEA and EPA Directed Investigations FY 2010 through June 10, 2015—Continued

Fiscal year	Staff function	Status code	Statute	Basis	Issue	Closure action	Was the conciliation failure litigated?
FY 2013	Systemic	O	ADEA	Age	Benefits	Ongoing.	
FY 2013	Systemic	O	ADEA	Age	Benefits	Ongoing.	
FY 2013	Systemic	O	ADEA	Age	Benefits	Ongoing.	
FY 2013	Systemic	O	ADEA	Age	Benefits	Ongoing.	
FY 2013	Systemic	O	ADEA	Age	Benefits	Ongoing.	
FY 2013	Not Systemic	C	EPA	Equal Pay—Female.	Wages	No Cause Finding Issued.	
FY 2013	Systemic	C	ADEA	Age	Hiring	Settlement With Benefits.	
FY 2013	Not Systemic	O	ADEA	Age	Hiring	Ongoing.	
FY 2013	Not Systemic	C	ADEA	Age	Benefits, Terms/Conditions.	Successful Conciliation.	
FY 2013	Systemic	O	ADEA	Age	Benefits, Terms/Conditions.	Ongoing.	
FY 2013	Systemic	O	ADEA	Age	Terms/Conditions, Benefits.	Ongoing.	
FY 2013	Systemic	O	ADEA	Age	Benefits, Terms/Conditions.	Ongoing.	
FY 2013	Systemic	O	ADEA	Age	Terms/Conditions, Benefits.	Ongoing.	
FY 2013	Systemic	O	ADEA	Age	Terms/Conditions, Benefits.	Ongoing.	
FY 2013	Not Systemic	C	ADEA	Age	Terms/Conditions, Benefits.	Successful Conciliation.	
FY 2013	Systemic	C	ADEA	Age	Benefits, Terms/Conditions.	Successful Conciliation.	
FY 2013	Systemic	C	ADEA	Age	Terms/Conditions, Benefits.	Successful Conciliation.	
FY 2013	Systemic	O	ADEA	Age	Terms/Conditions, Benefits.	Ongoing.	
FY 2013	Systemic	O	ADEA	Age	Terms/Conditions, Benefits.	Ongoing.	
FY 2013	Not Systemic	C	ADEA	Age	Hiring, Other	Settlement With Benefits.	
FY 2013	Systemic	C	EPA	Retaliation, Equal Pay—Female.	Filing EEO Forms, Union Representation, Terms and Conditions.	Successful Conciliation.	
FY 2013	Systemic	C	ADEA	Retaliation, Age.	Filing EEO Forms, Union Representation, Terms and Conditions.	Successful Conciliation.	
FY 2013	Systemic	C	EPA	Retaliation, Equal Pay—Female.	Filing EEO Forms, Union Representation, Terms and Conditions.	Successful Conciliation.	
FY 2013	Systemic	C	ADEA	Retaliation, Age.	Union Representation, Terms/Conditions.	Successful Conciliation.	
FY 2013	Not Systemic	C	EPA	Equal Pay—Female.	Wages	No Cause Finding Issued.	
FY 2013	Not Systemic	C	EPA	Equal Pay—Female, Equal Pay—Male.	Wages	No Cause Finding Issued.	
FY 2013	Not Systemic	C	ADEA	Age	Advertising, Hiring	Successful Conciliation.	
FY 2013	Not Systemic	C	ADEA	Age	Advertising, Hiring	Successful Conciliation.	
FY 2013	Not Systemic	C	ADEA	Age	Advertising	Settlement With Benefits.	
FY 2013	Not Systemic	C	ADEA	Age	Advertising	Settlement With Benefits.	
FY 2013	Not Systemic	C	ADEA	Age	Advertising	Settlement With Benefits.	
FY 2013	Not Systemic	C	ADEA	Age	Advertising	Settlement With Benefits.	
FY 2013	Not Systemic	C	ADEA	Age	Advertising	Settlement With Benefits.	
FY 2013	Not Systemic	C	ADEA	Age	Advertising	Settlement With Benefits.	

ADEA and EPA Directed Investigations FY 2010 through June 10, 2015—Continued

Fiscal year	Staff function	Status code	Statute	Basis	Issue	Closure action	Was the conciliation failure litigated?
FY 2013	Not Systemic	C	ADEA	Age	Advertising	Settlement With Benefits.	
FY 2013	Not Systemic	C	ADEA	Age	Advertising	Settlement With Benefits.	
FY 2013	Not Systemic	C	ADEA	Age	Advertising	Settlement With Benefits.	
FY 2013	Not Systemic	C	ADEA	Age	Advertising	Settlement With Benefits.	
FY 2013	Not Systemic	C	ADEA	Age	Advertising	Settlement With Benefits.	
FY 2013	Not Systemic	C	ADEA	Age	Advertising	Settlement With Benefits.	
FY 2013	Not Systemic	C	ADEA	Age	Advertising	Settlement With Benefits.	
FY 2013	Not Systemic	C	ADEA	Age	Advertising	Settlement With Benefits.	
FY 2013	Not Systemic	C	ADEA	Age	Advertising	Settlement With Benefits.	
FY 2013	Not Systemic	C	ADEA	Age	Advertising	Settlement With Benefits.	
FY 2013	Not Systemic	C	ADEA	Age	Advertising	Settlement With Benefits.	
FY 2013	Not Systemic	C	ADEA	Age	Advertising	Settlement With Benefits.	
FY 2013	Not Systemic	C	ADEA	Age	Advertising	Settlement With Benefits.	
FY 2013	Not Systemic	C	ADEA	Age	Advertising	Settlement With Benefits.	
FY 2013	Not Systemic	C	ADEA	Age	Advertising	Settlement With Benefits.	
FY 2013	Not Systemic	C	ADEA	Age	Advertising	Settlement With Benefits.	
FY 2013	Not Systemic	C	ADEA	Age	Advertising	Settlement With Benefits.	
FY 2013	Not Systemic	C	ADEA	Age	Advertising	Settlement With Benefits.	
FY 2013	Not Systemic	C	ADEA	Age	Advertising	Settlement With Benefits.	
FY 2013	Not Systemic	C	ADEA	Age	Advertising	Settlement With Benefits.	
FY 2013	Not Systemic	C	ADEA	Age	Advertising	Settlement With Benefits.	
FY 2013	Not Systemic	C	ADEA	Age	Advertising	Conciliation Failure	No
FY 2013	Not Systemic	C	ADEA	Age	Advertising	Settlement With Benefits.	
FY 2013	Not Systemic	C	ADEA	Age	Advertising	Settlement With Benefits.	
FY 2013	Not Systemic	C	ADEA	Age	Advertising	Settlement With Benefits.	
FY 2013	Systemic	C	ADEA	Age	Hiring	Settlement With Benefits.	
FY 2014	Systemic	O	ADEA	Age	Discharge, Discipline, Layoff, Discharge.	Ongoing.	
FY 2014	Systemic	O	ADEA	Age	Hiring	Ongoing.	
FY 2014	Not Systemic	C	EPA	Equal Pay—Female.	Wages	Administrative Closure.	
FY 2014	Not Systemic	O	ADEA	Age	Hiring	Ongoing.	
FY 2014	Not Systemic	O	ADEA	Age	Hiring	Ongoing.	
FY 2014	Not Systemic	O	EPA	Equal Pay—Female.	Wages	Ongoing.	
FY 2014	Systemic	O	EPA	Equal Pay—Female.	Wages	Ongoing.	
FY 2014	Systemic	C	ADEA	Age	Hiring	No Cause Finding Issued.	
FY 2014	Systemic	C	ADEA	Age	Hiring	Conciliation Failure	No
FY 2014	Systemic	C	ADEA	Age	Assignment	Administrative Closure.	
FY 2014	Not Systemic	C	ADEA	Age	Advertising	Successful Conciliation.	
FY 2014	Not Systemic	C	ADEA	Age	Advertising	Successful Conciliation.	
FY 2014	Not Systemic	C	ADEA	Age	Advertising	No Jurisdiction.	
FY 2014	Not Systemic	C	ADEA	Age	Advertising	Successful Conciliation.	
FY 2014	Not Systemic	C	ADEA	Age	Advertising	Conciliation Failure	No
FY 2014	Not Systemic	C	ADEA	Age	Advertising	Successful Conciliation.	
FY 2014	Not Systemic	C	ADEA	Age	Advertising	Successful Conciliation.	
FY 2014	Not Systemic	C	ADEA	Age	Advertising	Successful Conciliation.	
FY 2014	Not Systemic	C	ADEA	Age	Advertising	Successful Conciliation.	
FY 2014	Not Systemic	C	ADEA	Age	Advertising, Hiring	Successful Conciliation.	
FY 2014	Not Systemic	C	ADEA	Age	Advertising	Conciliation Failure	No
FY 2014	Not Systemic	C	ADEA	Age	Advertising	Successful Conciliation.	
FY 2014	Not Systemic	C	ADEA	Age	Advertising	Conciliation Failure	No
FY 2014	Not Systemic	C	ADEA	Age	Advertising	Successful Conciliation.	
FY 2014	Not Systemic	C	ADEA	Age	Hiring, Advertising	No Cause Finding Issued.	
FY 2014	Not Systemic	C	ADEA	Age	Hiring, Advertising	Successful Conciliation.	
FY 2014	Not Systemic	C	ADEA	Age	Advertising, Hiring	Successful Conciliation.	
FY 2014	Not Systemic	C	ADEA	Age	Advertising, Hiring	Conciliation Failure	No
FY 2014	Not Systemic	C	ADEA	Age	Advertising, Hiring	Conciliation Failure	No
FY 2014	Not Systemic	C	ADEA	Age	Advertising, Hiring	Successful Conciliation.	
FY 2014	Not Systemic	C	ADEA	Age	Hiring, Advertising	Successful Conciliation.	

ADEA and EPA Directed Investigations FY 2010 through June 10, 2015—Continued

Fiscal year	Staff function	Status code	Statute	Basis	Issue	Closure action	Was the conciliation failure litigated?
FY 2014	Not Systemic	C	ADEA	Age	Advertising, Hiring	Conciliation Failure	No
FY 2014	Not Systemic	C	ADEA	Age	Advertising, Hiring	Successful Conciliation.	
FY 2014	Not Systemic	C	ADEA	Age	Hiring, Advertising	Successful Conciliation.	
FY 2014	Not Systemic	C	ADEA	Age	Hiring, Advertising	Successful Conciliation.	
FY 2014	Not Systemic	C	ADEA	Age	Advertising, Hiring	Conciliation Failure	No
FY 2014	Not Systemic	C	ADEA	Age	Hiring, Advertising	Successful Conciliation.	
FY 2014	Not Systemic	C	ADEA	Age	Advertising, Hiring	Successful Conciliation.	
FY 2014	Not Systemic	C	ADEA	Age	Advertising, Hiring	Conciliation Failure	No
FY 2014	Not Systemic	C	ADEA	Age	Advertising, Hiring	No Jurisdiction.	
FY 2014	Not Systemic	C	ADEA	Age	Advertising, Hiring	Successful Conciliation.	
FY 2014	Not Systemic	C	ADEA	Age	Advertising, Hiring	Successful Conciliation.	
FY 2014	Not Systemic	C	ADEA	Age	Advertising, Hiring	Successful Conciliation.	
FY 2014	Not Systemic	C	ADEA	Age	Advertising, Hiring	Successful Conciliation.	
FY 2014	Not Systemic	C	ADEA	Age	Advertising, Hiring	Successful Conciliation.	
FY 2014	Not Systemic	C	ADEA	Age	Advertising, Hiring	Conciliation Failure	No
FY 2014	Not Systemic	C	ADEA	Age	Advertising, Hiring	Administrative Closure.	
FY 2014	Not Systemic	C	ADEA	Age	Advertising, Hiring	Successful Conciliation.	
FY 2014	Not Systemic	C	ADEA	Age	Advertising, Hiring	Conciliation Failure	No
FY 2014	Not Systemic	C	ADEA	Age	Advertising, Hiring	Successful Conciliation.	
FY 2014	Not Systemic	C	ADEA	Age	Advertising	Conciliation Failure	No
FY 2014	Not Systemic	C	ADEA	Age	Advertising	Conciliation Failure	No
FY 2014	Not Systemic	C	ADEA	Age	Advertising	Conciliation Failure	No
FY 2014	Not Systemic	C	ADEA	Age	Advertising	Administrative Closure.	
FY 2014	Not Systemic	C	ADEA	Age	Advertising	Conciliation Failure	No
FY 2014	Not Systemic	C	ADEA	Age	Advertising	Conciliation Failure	No
FY 2014	Not Systemic	C	ADEA	Age	Advertising	Conciliation Failure	No
FY 2014	Not Systemic	C	ADEA	Age	Advertising	Successful Conciliation.	
FY 2014	Not Systemic	C	ADEA	Age	Advertising	Successful Conciliation.	
FY 2014	Not Systemic	C	ADEA	Age	Advertising	Successful Conciliation.	
FY 2014	Not Systemic	C	ADEA	Age	Advertising	Conciliation Failure	No
FY 2014	Not Systemic	C	ADEA	Age	Advertising	Successful Conciliation.	
FY 2014	Not Systemic	C	ADEA	Age	Advertising	Successful Conciliation.	
FY 2014	Not Systemic	C	ADEA	Age	Advertising	Conciliation Failure	No
FY 2014	Not Systemic	C	ADEA	Age	Advertising	Conciliation Failure	No
FY 2014	Not Systemic	C	ADEA	Age	Advertising	No Jurisdiction.	
FY 2014	Not Systemic	C	ADEA	Age	Advertising	Conciliation Failure	No
FY 2014	Not Systemic	C	ADEA	Age	Advertising	Successful Conciliation.	
FY 2014	Not Systemic	C	ADEA	Age	Advertising	Conciliation Failure	No
FY 2014	Not Systemic	C	ADEA	Age	Advertising	Conciliation Failure	No
FY 2014	Not Systemic	C	ADEA	Age	Advertising	Successful Conciliation.	
FY 2014	Not Systemic	C	ADEA	Age	Advertising	Conciliation Failure	No
FY 2014	Not Systemic	C	ADEA	Age	Advertising	Successful Conciliation.	
FY 2014	Not Systemic	C	ADEA	Age	Advertising	Conciliation Failure	No
FY 2014	Not Systemic	C	ADEA	Age	Advertising	Successful Conciliation.	
FY 2014	Not Systemic	C	ADEA	Age	Advertising	Conciliation Failure	No
FY 2014	Not Systemic	C	ADEA	Age	Advertising	Conciliation Failure	No
FY 2014	Not Systemic	C	ADEA	Age	Advertising	Conciliation Failure	No
FY 2014	Not Systemic	C	ADEA	Age	Advertising	Conciliation Failure	No
FY 2014	Not Systemic	C	ADEA	Age	Advertising	Conciliation Failure	No
FY 2014	Not Systemic	C	ADEA	Age	Advertising	Conciliation Failure	No
FY 2014	Not Systemic	C	ADEA	Age	Advertising	No Jurisdiction.	
FY 2014	Not Systemic	C	ADEA	Age	Advertising	Conciliation Failure	No
FY 2014	Not Systemic	C	ADEA	Age	Advertising	Successful Conciliation.	
FY 2014	Not Systemic	C	ADEA	Age	Advertising	Conciliation Failure	No
FY 2014	Not Systemic	O	ADEA	Age	Advertising	Ongoing.	
FY 2014	Not Systemic	O	ADEA	Age	Advertising	Ongoing.	
FY 2014	Not Systemic	O	ADEA	Age	Advertising	Ongoing.	
FY 2014	Not Systemic	O	ADEA	Age	Advertising	Ongoing.	
FY 2014	Not Systemic	O	ADEA	Age	Advertising	Ongoing.	
FY 2014	Not Systemic	C	ADEA	Age	Advertising	No Cause Finding Issued.	

ADEA and EPA Directed Investigations FY 2010 through June 10, 2015—Continued

Fiscal year	Staff function	Status code	Statute	Basis	Issue	Closure action	Was the concilia-tion fail-ure liti-gated?
FY 2014	Not Systemic	O	ADEA	Age	Advertising	Ongoing.	
FY 2014	Not Systemic	C	ADEA	Age	Advertising	Successful Conciliation.	
FY 2014	Not Systemic	O	ADEA	Age	Advertising	Ongoing.	
FY 2014	Not Systemic	O	ADEA	Age	Advertising	Ongoing.	
FY 2014	Not Systemic	C	ADEA	Age	Advertising	No Cause Finding Issued.	
FY 2014	Not Systemic	O	ADEA	Age	Advertising	Ongoing.	
FY 2014	Systemic	C	ADEA	Age	Hiring	Successful Conciliation.	
FY 2014	Systemic	O	EPA	Equal Pay—Female.	Wages	Ongoing.	
FY 2014	Not Systemic	C	ADEA	Age	Hiring	Settlement With Benefits.	
FY 2014	Not Systemic	C	ADEA	Age	Hiring	No Cause Finding Issued.	
FY 2014	Not Systemic	C	ADEA	Age	Hiring	No Cause Finding Issued.	
FY 2014	Not Systemic	O	ADEA	Age	Hiring	Ongoing.	
FY 2014	Not Systemic	O	ADEA	Age	Hiring	Ongoing.	
FY 2014	Not Systemic	C	ADEA	Age	Advertising, Hiring	Successful Conciliation.	
FY 2014	Not Systemic	O	ADEA	Age	Advertising, Hiring	Ongoing.	
FY 2014	Systemic	C	ADEA	Age	Advertising, Hiring	No Jurisdiction.	
FY 2014	Not Systemic	C	ADEA	Age	Advertising, Hiring	Successful Conciliation.	
FY 2014	Systemic	O	ADEA	Age	Hiring	Ongoing.	
FY 2014	Systemic	O	ADEA	Age	Hiring	Ongoing.	
FY 2014	Not Systemic	C	ADEA	Age	Advertising	Conciliation Failure	No
FY 2014	Not Systemic	C	ADEA	Age	Advertising	Conciliation Failure	No
FY 2014	Not Systemic	C	ADEA	Age	Advertising	Settlement With Benefits.	
FY 2014	Not Systemic	C	ADEA	Age	Advertising	Settlement With Benefits.	
FY 2014	Not Systemic	C	ADEA	Age	Advertising	Settlement With Benefits.	
FY 2014	Not Systemic	C	ADEA	Age	Advertising	Settlement With Benefits.	
FY 2014	Not Systemic	C	ADEA	Age	Advertising	Settlement With Benefits.	
FY 2014	Not Systemic	C	ADEA	Age	Advertising	No Jurisdiction.	
FY 2014	Not Systemic	C	ADEA	Age	Advertising	Settlement With Benefits.	
FY 2014	Not Systemic	C	ADEA	Age	Advertising	Settlement With Benefits.	
FY 2014	Not Systemic	C	ADEA	Age	Advertising	Settlement With Benefits.	
FY 2014	Not Systemic	C	ADEA	Age	Advertising	Settlement With Benefits.	
FY 2014	Not Systemic	C	ADEA	Age	Advertising	Settlement With Benefits.	
FY 2014	Not Systemic	C	ADEA	Age	Advertising	Settlement With Benefits.	
FY 2014	Not Systemic	C	ADEA	Age	Advertising	Settlement With Benefits.	
FY 2014	Not Systemic	C	ADEA	Age	Advertising	No Jurisdiction.	
FY 2014	Not Systemic	C	ADEA	Age	Hiring, Qualifications	Successful Conciliation.	
FY 2014	Not Systemic	C	ADEA	Age	Hiring	Successful Conciliation.	
FY 2014	Not Systemic	C	ADEA	Age	Hiring	Successful Conciliation.	
FY 2014	Not Systemic	C	ADEA	Age	Advertising, Hiring	Conciliation Failure	No
FY 2014	Not Systemic	C	ADEA	Age	Hiring	Successful Conciliation.	
FY 2014	Not Systemic	C	ADEA	Age	Hiring	Successful Conciliation.	
FY 2014	Not Systemic	C	ADEA	Age	Hiring	Successful Conciliation.	
FY 2014	Not Systemic	C	ADEA	Age	Hiring	Successful Conciliation.	
FY 2014	Not Systemic	C	ADEA	Age	Hiring	Successful Conciliation.	
FY 2014	Not Systemic	C	ADEA	Age	Hiring	Successful Conciliation.	
FY 2014	Not Systemic	C	ADEA	Age	Hiring	Successful Conciliation.	
FY 2014	Not Systemic	C	ADEA	Age	Hiring	Successful Conciliation.	
FY 2014	Not Systemic	O	ADEA	Age	Hiring	Ongoing.	
FY 2014	Not Systemic	C	ADEA	Age	Hiring	Successful Conciliation.	
FY 2014	Not Systemic	C	ADEA	Age	Hiring	Successful Conciliation.	
FY 2014	Not Systemic	C	ADEA	Age	Hiring	Successful Conciliation.	
FY 2014	Not Systemic	O	ADEA	Age	Hiring	Ongoing.	
FY 2014	Not Systemic	C	ADEA	Age	Hiring	Successful Conciliation.	
FY 2014	Not Systemic	C	ADEA	Age	Hiring	Successful Conciliation.	
FY 2014	Not Systemic	C	ADEA	Age	Hiring	Successful Conciliation.	
FY 2014	Not Systemic	C	ADEA	Age	Hiring	Successful Conciliation.	
FY 2014	Not Systemic	C	ADEA	Age	Hiring	Successful Conciliation.	
FY 2014	Not Systemic	C	ADEA	Age	Hiring	Successful Conciliation.	
FY 2014	Not Systemic	C	ADEA	Age	Advertising, Hiring	Settlement With Benefits.	

ADEA and EPA Directed Investigations FY 2010 through June 10, 2015—Continued

Fiscal year	Staff function	Status code	Statute	Basis	Issue	Closure action	Was the conciliation failure litigated?
FY 2014	Not Systemic	C	ADEA	Age	Hiring	Settlement With Benefits.	
FY 2014	Not Systemic	C	ADEA	Age	Hiring	Settlement With Benefits.	
FY 2014	Not Systemic	C	ADEA	Age	Hiring	Settlement With Benefits.	
FY 2014	Not Systemic	C	ADEA	Age	Advertising, Hiring	Successful Conciliation.	
FY 2014	Not Systemic	C	ADEA	Age	Hiring	Successful Conciliation.	
FY 2014	Not Systemic	C	ADEA	Age	Hiring	Successful Conciliation.	
FY 2014	Not Systemic	C	ADEA	Age	Hiring	Successful Conciliation.	
FY 2014	Not Systemic	C	ADEA	Age	Hiring	Conciliation Failure	No
FY 2014	Not Systemic	C	ADEA	Age	Advertising, Hiring	Successful Conciliation.	
FY 2014	Not Systemic	C	ADEA	Age	Advertising, Hiring	Successful Conciliation.	
FY 2014	Not Systemic	C	ADEA	Age	Hiring	Successful Conciliation.	
FY 2014	Not Systemic	C	ADEA	Age	Hiring	Successful Conciliation.	
FY 2014	Not Systemic	C	ADEA	Age	Hiring	Successful Conciliation.	
FY 2014	Not Systemic	C	ADEA	Age	Advertising, Hiring	Successful Conciliation.	
FY 2014	Not Systemic	C	ADEA	Age	Hiring	Successful Conciliation.	
FY 2014	Not Systemic	C	ADEA	Age	Advertising, Hiring	Successful Conciliation.	
FY 2014	Not Systemic	C	ADEA	Age	Hiring	Successful Conciliation.	
FY 2014	Not Systemic	C	ADEA	Age	Hiring	Conciliation Failure	No
FY 2014	Not Systemic	C	ADEA	Age	Advertising, Hiring	Successful Conciliation.	
FY 2014	Not Systemic	C	ADEA	Age	Advertising, Hiring	Successful Conciliation.	
FY 2014	Not Systemic	C	ADEA	Age	Hiring	Successful Conciliation.	
FY 2014	Not Systemic	C	ADEA	Age	Advertising, Hiring	Successful Conciliation.	
FY 2014	Not Systemic	C	ADEA	Age	Hiring	Successful Conciliation.	
FY 2014	Not Systemic	C	ADEA	Age	Hiring	Successful Conciliation.	
FY 2015	Systemic	O	ADEA	Age	Terms/Conditions, Promotion, Discharge, Hiring.	Ongoing.	
FY 2015	Systemic	O	ADEA	Age	Benefits, Discharge, Constructive Discharge, Assignment, Promotion, Hiring, Retirement—Involuntary, Terms/Conditions, Layoff, Other.	Ongoing.	
FY 2015	Not Systemic	C	ADEA	Age	Advertising, Hiring	Administrative Closure.	
FY 2015	Not Systemic	O	ADEA	Age	Benefits-Insurance, Terms/Conditions.	Ongoing.	
FY 2015	Not Systemic	C	ADEA	Age	Advertising	Conciliation Failure	No
FY 2015	Not Systemic	C	ADEA	Age	Advertising	Successful Conciliation.	
FY 2015	Not Systemic	C	ADEA	Age	Advertising	Successful Conciliation.	
FY 2015	Not Systemic	C	ADEA	Age	Advertising	Successful Conciliation.	
FY 2015	Not Systemic	C	ADEA	Age	Advertising	Successful Conciliation.	
FY 2015	Not Systemic	C	ADEA	Age	Advertising	Successful Conciliation.	
FY 2015	Not Systemic	C	ADEA	Age	Advertising	Successful Conciliation.	
FY 2015	Not Systemic	C	ADEA	Age	Advertising	Conciliation Failure	No
FY 2015	Not Systemic	C	ADEA	Age	Advertising	Conciliation Failure	No
FY 2015	Not Systemic	C	ADEA	Age	Advertising	Successful Conciliation.	
FY 2015	Not Systemic	C	ADEA	Age	Advertising	Successful Conciliation.	
FY 2015	Not Systemic	C	ADEA	Age	Advertising	Conciliation Failure	No
FY 2015	Not Systemic	C	ADEA	Age	Advertising	Successful Conciliation.	
FY 2015	Not Systemic	C	ADEA	Age	Advertising	Successful Conciliation.	
FY 2015	Not Systemic	C	ADEA	Age	Advertising	Conciliation Failure	No
FY 2015	Not Systemic	C	ADEA	Age	Advertising	Successful Conciliation.	
FY 2015	Not Systemic	C	ADEA	Age	Advertising	Administrative Closure.	
FY 2015	Not Systemic	C	ADEA	Age	Advertising	No Jurisdiction.	
FY 2015	Not Systemic	C	ADEA	Age	Advertising	Conciliation Failure	No
FY 2015	Not Systemic	C	ADEA	Age	Advertising	Successful Conciliation.	

ADEA and EPA Directed Investigations FY 2010 through June 10, 2015—Continued

Fiscal year	Staff function	Status code	Statute	Basis	Issue	Closure action	Was the concilia-tion fail-ure liti-gated?
FY 2015	Not Systemic	C	ADEA	Age	Advertising	Conciliation Failure	No
FY 2015	Not Systemic	C	ADEA	Age	Advertising	Conciliation Failure	No
FY 2015	Not Systemic	C	ADEA	Age	Advertising	Successful Conciliation.	
FY 2015	Not Systemic	C	ADEA	Age	Advertising	Conciliation Failure	No
FY 2015	Not Systemic	C	ADEA	Age	Advertising	Successful Conciliation.	
FY 2015	Not Systemic	O	ADEA	Age	Advertising	Ongoing.	
FY 2015	Not Systemic	C	ADEA	Age	Advertising	Successful Conciliation.	
FY 2015	Not Systemic	C	ADEA	Age	Advertising	Successful Conciliation.	
FY 2015	Not Systemic	C	ADEA	Age	Advertising	Administrative Closure.	
FY 2015	Not Systemic	O	ADEA	Age	Advertising	Ongoing.	
FY 2015	Not Systemic	O	ADEA	Age	Advertising	Ongoing.	
FY 2015	Not Systemic	O	ADEA	Age	Advertising	Ongoing.	
FY 2015	Not Systemic	O	ADEA	Age	Advertising	Ongoing.	
FY 2015	Not Systemic	O	ADEA	Age	Advertising	Ongoing.	
FY 2015	Not Systemic	O	ADEA	Age	Advertising	Ongoing.	
FY 2015	Not Systemic	O	ADEA	Age	Advertising	Ongoing.	
FY 2015	Not Systemic	O	ADEA	Age	Advertising	Ongoing.	
FY 2015	Not Systemic	O	ADEA	Age	Advertising	Ongoing.	
FY 2015	Not Systemic	O	ADEA	Age	Advertising	Ongoing.	
FY 2015	Not Systemic	O	ADEA	Age	Advertising	Ongoing.	
FY 2015	Not Systemic	O	ADEA	Age	Hiring	Ongoing.	
FY 2015	Not Systemic	C	ADEA	Age	Hiring	Successful Conciliation.	
FY 2015	Not Systemic	C	ADEA	Age	Hiring	Successful Conciliation.	
FY 2015	Not Systemic	C	ADEA	Age	Advertising, Hiring	Successful Conciliation.	
FY 2015	Not Systemic	C	ADEA	Age	Advertising, Hiring	Successful Conciliation.	
FY 2015	Not Systemic	C	ADEA	Age	Advertising, Hiring	Successful Conciliation.	
FY 2015	Not Systemic	C	ADEA	Age	Advertising	Successful Conciliation.	
FY 2015	Not Systemic	C	ADEA	Age	Advertising, Hiring	Successful Conciliation.	
FY 2015	Not Systemic	C	ADEA	Age	Advertising	Successful Conciliation.	
FY 2015	Not Systemic	C	ADEA	Age	Advertising	Successful Conciliation.	
FY 2015	Not Systemic	C	ADEA	Age	Advertising	Successful Conciliation.	
FY 2015	Not Systemic	O	ADEA	Age	Hiring	Ongoing.	
FY 2015	Not Systemic	C	ADEA	Age	Hiring	No Cause Finding Issued.	
FY 2015	Not Systemic	C	ADEA	Age	Advertising, Hiring	Successful Conciliation.	
FY 2015	Not Systemic	C	ADEA	Age	Hiring	Successful Conciliation.	
FY 2015	Not Systemic	O	ADEA	Age	Hiring	Ongoing.	
FY 2015	Not Systemic	C	ADEA	Age	Hiring	Successful Conciliation.	
FY 2015	Not Systemic	C	ADEA	Age	Hiring	Successful Conciliation.	
FY 2015	Not Systemic	O	ADEA	Age	Hiring	Ongoing.	
FY 2015	Not Systemic	C	ADEA	Age	Hiring	Successful Conciliation.	
FY 2015	Not Systemic	O	ADEA	Age	Terms/Conditions, Wages, Hiring, Discharge.	Ongoing.	

Case name	Filed	Resolved	Court	Civil action #	Jurisdictional basis of suit	Systemic?	Resolution	Monetary benefits	Number of beneficiaries	Non-monetary relief	On appeal?
PBM Graphics, Inc.	9/29/2011	12/19/2012	MDNC	1:11–cv–805	Commissioner's charge (Leslie Silverman).	Y	Consent Decree.	$334,000	61	All new contracts entered into between Defendant and temporary agencies at Durham facility will state that Defendant is an equal employment opportunity employer. Defendant shall distribute specified legitimate, nondiscriminatory criteria to all Durham facility managers and supervisors involved with the selection of temporary workers into the "returning or regular" group of temporary workers. Defendant shall distribute specified legitimate, nondiscriminatory criteria to all Durham facility managers and supervisors involved with the assignment of hours of temporary workers. Defendant shall maintain, redistribute, and post two specified EEO policies. Defendant shall provide annual Title VII training. Defendant shall post Employee Notice. Defendant shall maintain specified records and provide two reports.	N
Rosebud Restaurants, Inc.	09/17/13		NDIL ..	13–cv–6656	Commissioner's charge (Constance Barker).	Y	.....	.....			

Case name	Filed	Resolved	Court	Civil action #	Jurisdictional basis of suit	Systemic?	Resolution	Monetary benefits	Number of beneficiaries	Non-monetary relief	On appeal?
Source One Staffing, Inc. ...	03/04/15	05/06/15	NDIL ..	15–cv–1958	Commissioner's charge (Chai Feldblum).	Y	Consent Decree.	$800,000	7,304	Injunction against discrimination and retaliation. The decree also requires Defendant to: (1) train its employees on employee rights under Title VII and the ADA; (2) report complaints of discrimination during the decree's 3-year term; (3) change its employment policies and practices to conform to the ADA and Title VII; and (4) post a notice of the Decree at all of its locations.	N
PMT Corporation	03/06/14		DMN ..	0:14–cv–00599 ..	Commissioner's charge (Victoria Lipnic)/Directed ADEA investigation.	Y	.....				
Minnesota Board of Public Defense.	1/25/2012	4/26/2012	DMN ..	12–cv–00205–RHK–FLN.	Directed ADEA investigation.	Y	Consent Decree.	$53,514	4	.....	N
Minnesota Dept. of Commerce.	9/26/2011	11/9/2011	DMN ..	11–cv–2746–JNE–AJB.	Directed ADEA investigation.	Y	Consent Decree.	$8,925	1	.....	N
Minnesota Dept. of Natural Resources.	9/26/2011	11/7/2011	DMN ..	11–cv–2745–JNE–AJB.	Directed ADEA investigation.	Y	Consent Decree.	$84,517	1	.....	N
Hill Country Farms, Inc	4/6/2011	6/11/2013	SDIA ..	3:11–cv–00041 ..	Third party charge by sister of aggrieved individual.	Y	Judgment upon remittitur of jury verdict.	$3,406,431	32	The Order included an injunction was ordered, including non-discrimination, accommodation and training, was ordered against any future business operations of the employer or a successor employer.	N
Bass Pro Shops	9/21/2011		SDTX	4:11–cv–03425 ..	Commissioner's charge (Stuart Ishimaru).	Y	.....			.....	N

Jacksonville Ass'n of Firefighters, Local 122, IAFF.	4/30/2012		MDFL	3:12–cv–00491 ..	Commissioner's charge (Stuart Ishimaru).	Y	.....			.....	N
Texas Roadhouse	9/30/2011		DMA ..	11–11732	Directed ADEA investigation.	Y	.....			.....	N
FAPS INC	6/17/2010		DNJ ...	2:10CV03095	Commissioner's charge (Stuart Ishimaru).	Y	.....			.....	N
Presrite Corporation	2/4/2011	4/24/2013	NDOH	1:11cv00260	Commissioner's charge (Christine Griffin).	Y	Consent Decree.	$700,000	140	Defendant will offer jobs to no fewer than 40 women. Defendant will give those females priority consideration and offer them jobs before any current applicants, prevent future discrimination through periodic reports to EEOC disclosing the number of females and males who applied as compared to those who were hired; mandatory training; and retention of applicant and employment records, including creating and producing electronic data. The decree includes an injunction prohibiting Defendant from discriminating against women in the recruiting and hiring process and compelling the company to make all good-faith, reasonably necessary efforts to find female candidates to fill vacancies in laborer or operative positions.	N
Murphy School District #21	4/7/2014		DAZ ...	2:14–CV–00721–SRB.	Directed ADEA investigation.	Y	.....			.....	N

Question 6. EEOC received 88,778 charges in fiscal year 2014. At the hearing you stated in fiscal year 2014 EEOC resolved about 87,000 charges. This is the lowest number of charges resolved since fiscal year 2010, despite higher numbers of charge receipts in those years. In fact, in fiscal year 2010, EEOC received 99,922 charges and resolved 104,999; in fiscal year 2011, EEOC received 99,947 charges and resolved 112,499; in fiscal year 2012, EEOC received 99,412 charges and resolved 111,139; and in fiscal year 2013, EEOC received 93,727 and resolved 97,252. While EEOC's budget has fluctuated some between fiscal year 2010 and 2014, it has generally remained stable. Please explain why the number of charge resolutions dropped significantly in 2014, especially in light of the lower number of receipts that year as well.

Answer 6. Significant rescissions in EEOC's budget, specifically $734,606 in fiscal year 2011 and $26 million in fiscal year 2013, considerably reduced our investigative capabilities. The fiscal year 2011 rescission—coupled with cost-of-living and step increases and associated increases in benefits for EEOC personnel as well as rising rents—triggered a 3-year hiring freeze that lasted into fiscal year 2014. Since EEOC's fixed operating costs—including compensation, benefits, and rent—consume 93 percent of its budget, even where the budget remains relatively flat, this requires the agency to reduce its staffing level to account for increases in salary, benefits, and rent. These factors, together with the government shutdown in the first quarter of fiscal year 2014, and the $26 million rescission in fiscal year 2013, contributed to a decrease in the number of charges resolved in fiscal year 2014.

The agency is committed to investing in staff and systems to strengthen our enforcement, deliver excellent service to the public, and promote compliance with Federal civil rights laws. In fact, EEOC reduced its pending inventory to 77,424 charges during the second quarter of fiscal year 2015.

This reflects a 1 percent decline in our inventory over a single 3 month period, despite a 5 percent increase in the number of charges filed during the first two quarters of fiscal year 2015, as compared to fiscal year 2014.

EEOC staff resolved a total of 43,561 charges during the first two quarters of this fiscal year. This includes 23,564 charges in the second quarter, which is 7 percent more than in the first quarter, when we resolved 19,997 charges. Compared to the same period last year, EEOC increased its charge resolutions by 15 percent—43,561 at the end of second quarter fiscal year 2015 versus 37,928 at the end of second quarter fiscal year 2014.

We attribute this positive trend in our pending charge inventory to several factors, including hiring new staff beginning in mid-fiscal year 2014, increased staff productivity, and a continued emphasis on effective and efficient case management. The impact of 2014 hiring, however, occurred too late in the year to significantly affect resolutions. As newly hired investigators and other enforcement employees complete their training, they are reaching full productivity and contributing to inventory reduction efforts. Even as we received more new charges during the quarter, we made steady progress both in handling newly filed charges and in resolving those pending in the inventory.

Question 7. EEOC has issued significant and controversial guidance without allowing the public to comment on the draft guidance. In March, the Supreme Court questioned the "timing, consistency, and thoroughness" of EEOC guidance. Next time you plan to issue guidance, will you let the public have the opportunity to first review and comment on a draft before it is finalized?

Answer 7. The Commission is exploring a process to provide the public with an opportunity to review and provide input on proposed subregulatory guidance documents before they are final. This effort builds upon the avenues the agency has used to receive public input. For example, EEOC frequently holds Commission meetings before issuing guidance. We request public feedback during and in the 15 days after those meetings and carefully consider the feedback provided.

Further, EEOC posts its final guidance online and provides a means for public comment there. The Commission is consulting with Federal agencies that have established processes for requesting public input on proposed subregulatory guidance documents to identify effective practices for obtaining additional public input while efficiently using agency resources. Concurrently, we are looking into the kinds of guidance documents that may be appropriate for additional public input. We will keep you apprised of our progress.

Question 8a. Given the Supreme Court's decision in *Mach Mining*, what do you believe EEOC now has to do to *fulfill* its conciliation obligations?

What steps have you taken at EEOC to ensure future conciliations comply with *Mach Mining*?

Answer 8a. The Supreme Court's decision in *Mach Mining LLC* v. *EEOC*, 135 S.Ct. 1645 (2015), provides needed clarity across the courts concerning the standards for judicial review of EEOC's conciliation efforts. In *Mach Mining*, the Supreme Court held that in assessing the Commission's conciliation efforts, a reviewing court may consider two things: (1) whether EEOC informed the employer about the specific allegation(s), describing what the employer has done and which employees (or class of employees) have suffered as a result; and (2) whether EEOC tried to communicate with the employer to give the employer an opportunity to remedy the alleged discrimination. It has been EEOC's practice to take these steps, and I recently re-affirmed these instructions to all field staff engaged in conciliation efforts following the *Mach Mining* decision. In addition, this May at a systemic investigators and coordinators training, participants discussed current conciliation practices to ensure the agency continues to engage in the steps outlined in the *Mach Mining* decision. We are also adding guidance on the *Mach Mining* decision to the training materials for current investigators who receive Intermediate Skills Training, to the New Investigator Training, and to a webinar on conciliations for EEOC staff.

Question 8b. Your testimony stated that the "Commission . . . will ensure that additional guidance and training for EEOC staff further advances the agency's effectiveness in [its] conciliation efforts." What, specifically, will this training and guidance include?

Answer 8b. EEOC already has begun training on effective conciliation practices, and we will prioritize continued training on these issues. This August, the New Investigators Training Program, a 2-week program for newly hired EEOC investigator staff nationwide, will deliver an updated segment on conciliation, settlement, and negotiation skills. This training will afford investigators hands-on experience through exercises involving a case study of conciliation. Our Intermediate Skills Training Program for experienced investigators includes model conciliation techniques and will be completed by all of our offices in fiscal year 2016. In addition, we are developing an agency-wide webinar focused solely on conciliation, which we will deliver to investigators, attorneys, and other field and headquarters staff. This training will cover best practices, including steps for conducting effective conciliations in systemic cases.

Question 9a. In fiscal year 2013 and 2014, the Commission voted on litigation decisions in only 16 and 17 cases, respectively. This is just barely more than the 15 required. Do you believe the Commission should vote on additional litigation decisions?

Answer 9a. The current delegation of litigation authority, adopted on a bipartisan basis, carefully balances the need for Commission oversight with the benefits of streamlined operations. With the goal of increasing the efficiency and effectiveness of its enforcement programs, a unanimous Commission delegated litigation authority to the General Counsel in the 1996 National Enforcement Plan. This action enabled the Commission to focus more of its time on significant policy issues.

In the 2012 Strategic Enforcement Plan ("SEP"), the Commission, on a bi-partisan basis, reaffirmed that delegation of authority, which requires that the Commission approve decisions to commence or intervene in litigation in significant cases that: (1) require a major expenditure of resources; (2) address a developing area of law; or (3) raise issues of public controversy. Further, the Commission must review and approve all recommendations for EEOC to participate as *amicus curiae*. In addition, the 2012 SEP added a further requirement directing that each EEOC district office present a minimum of one litigation recommendation for Commission consideration each fiscal year, including litigation recommendations based on the above criteria. The 2012 SEP also established quarterly reports and meetings to continually assess the success of the delegated authority. In addition, the General Counsel has consistently followed the delegation rules. The Commission has regularly concurred with the General Counsel's litigation recommendations. Of the 48 cases that the General Counsel submitted to the Commission from fiscal years 2011 through 2014, the Commission voted to approve all but one, and the General Counsel withdrew one litigation recommendation, following a tie vote.

Question 9b. If not, is the Commission unable to handle voting on additional litigation decisions? If so, why?

Answer 9b. The current delegation criteria strike an appropriate balance by requiring Commission approval of significant litigation where review is warranted, while ensuring that the agency uses its resources efficiently. Although the Commission could, and has in the past, reviewed additional litigation recommendations, this takes time from considering significant policy matters that could provide a substan-

tial benefit in aiding employers and employees in understanding the law and preventing discrimination from occurring.

Question 10. The Commission is required to vote on decisions that "require a major expenditure of resources." What do you consider to be a major expenditure of resources?

How does EEOC determine if a case will involve a major expenditure of resources—is there a policy in place?

If so, please provide the policy. If not, please explain why you do not have a policy and whether you will consider if a policy is necessary.

Answer 10. In determining whether cases "require a major expenditure of resources," the Office of General Counsel carefully examines case cost estimates to understand their basis and makes adjustments, as necessary. Such determinations are reached on a case-by-case basis. The General Counsel generally submits to the Commission all cases that he believes will require expenditures of more than $100,000.

Question 11. In a September 2014 report, the EEOC Inspector General identified that EEOC does not have an adequate system in place to safeguard classified information. What are you doing to address the Inspector General's finding to make sure classified information is properly handled?

Answer 11. EEOC works with classified information during the Federal sector EEO process. This information is maintained in paper-based files or off-network only because EEOC does not have a classified network infrastructure. As noted in the Office of Inspector General September 2014 Semi-annual Report to Congress, at that time, EEOC did not have formal, documented policies and procedures to address the safeguarding, transfer, storage, or disposal of classified information. The Office of the Chief Financial Officer and the Office of the Chief Human Capital Officer jointly have developed a corrective action plan, which outlines formal documented policies and procedures to ensure that the 18 staff that currently can access classified information are safeguarding, transferring, storing, and disposing of it properly. In addition, I have designated the Deputy Chief Operating Officer as the senior agency official responsible for managing the Agency's classified national security information program in accordance with Executive Order 13526.

Question 12a. In fiscal year 2014, EEOC hired nine social science research experts to support its systemic investigations. What are the job requirements and duties of an EEOC social science research expert?

Answer 12a. The position of social scientist at EEOC requires a 4-year degree in a behavioral or social science, 4 years of relevant experience, or some combination of the two. EEOC's social scientists provide guidance and direction to senior-level management, investigators, and trial attorneys on the quantitative analysis of employment discrimination investigations, especially with respect to social science methodology and employee selection processes. For example, our social scientists apply statistical/quantitative techniques and research design principles to analyze whether the data gathered during an investigation reflects statistical evidence of discrimination at a specific employer or union. Social scientists also apply the same knowledge and skills to analyzing data and conducting and interpreting studies to inform Commission goals and policies, to measure our effectiveness as an agency, and to provide information to the public concerning employment patterns, such as demographics and occupational trends. For example, in commemoration of the agency's 50th Anniversary, EEOC released *American Experiences versus American Expectations*, a report that examines private sector participation rates of women and minorities using EEO–1 data.

Question 12b. Do the social science research experts work to reduce the backlog?

Answer 12b. Social scientists at EEOC help reduce the pending inventory of active charges by analyzing relevant quantitative information developed in an investigation to determine whether the evidence supports the allegations at issue. The primary responsibilities of EEOC's social scientists are to develop statistical analyses, review employment practices, assist with the collection of relevant information from electronic databases as part of the investigation of charges, and offer analysis relevant to allegations of employment discrimination.

Question 13. Fiscal Year 2014's PAR stated that the Employees' Viewpoint Survey found EEOC employees "continue to express concern about disclosing a suspected violation of any law, rule, or regulation [to EEOC management] without fear of reprisal." Your testimony indicates that it's a priority to educate all employers about how to prevent retaliation in the workplace. What are you doing, specifically, to en-

sure EEOC employees feel comfortable reporting unlawful behavior to EEOC management?

Answer 13. Ensuring that employees of EEOC feel comfortable coming forward to report concerns or violations of the law is a high priority. On June 17, I issued the agency's annual internal statement on preventing harassment and retaliation of EEOC employees, in conjunction with the Commission meeting entitled, "Retaliation in the Workplace: Causes, Remedies and Strategies for Prevention." This statement emphasized that,

> "I am firmly committed to ensuring that EEOC is a retaliation-free workplace and that employees feel free to report issues of concern without fear of retaliation or reprisal."

Additionally, I have emphasized the importance of these issues consistently with our leadership. For example, in April, I convened a meeting of EEOC's senior staff, during which we discussed concerns about fear of reprisal reflected in the Employee Viewpoint Survey. I stressed to our leaders the importance of identifying the reasons for this perception and taking concrete steps to foster an environment where employees feel free to come forward with concerns without fear of reprisal.

In fiscal year 2013, EEOC rolled out Diversity and Inclusion program training to senior leaders, supervisors, and managers. Since 2014 we have been deploying this training to non-supervisory employees. These sessions provide employees an opportunity to share their ideas for creating a more inclusive work environment and ensuring that prohibited personnel practices, including retaliation, are not tolerated. Once this training is complete, we will implement new practices based on employee feedback.

In addition, as part of our commitment to address retaliation and reprisal, in fiscal year 2015, EEOC began providing agency-wide training on preventing harassment in the workplace. This training establishes a system of accountability for ensuring a workplace free from unlawful harassment based on race, color, religion, sex, national origin, age, and disability. During this training, we also emphasize that EEOC will not tolerate retaliation against any employee for reporting matters under this policy or for assisting in any inquiry about such a report.

Further, our New Manager Training and Fundamentals of Performance Management courses, delivered in conjunction with the Office of Personnel Management, include a module on prohibited personnel practices and merit system principles, as well as harassment and retaliation.

We provide training on the No FEAR Act (NFA) to all agency staff every 2 years, as required by law, as well as to new employees within 90 days of their entry into service with EEOC. I am committed to ensuring that all managers are aware of their responsibilities and that employees know their rights as identified under the NFA, including freedom from retaliation.

To more broadly address concerns raised by the Federal Employee Viewpoint Survey, EEOC launched the BEST initiative—Building Employee Satisfaction Together. As part of that initiative, in fiscal year 2015 and fiscal year 2016, we will incorporate a substantive discussion of retaliation and prohibited personnel practices in training to all employees and in our mandatory training for managers and supervisors. Specifically, our final quarterly Employee Education Webinars and Webinars for Managers and Supervisors for this fiscal year will address retaliation and prohibited personnel practices.

Question 14. Last year, a court dismissed a case EEOC filed against CVS because it failed to first try to conciliate the claim. EEOC admitted in the case it did not attempt to conciliate the claim and instead took the position it didn't need to conciliate claims in this case. Why did EEOC take this position?

Has EEOC always had the position that it did not need to conciliate certain claims?

Do you intend to bring more cases without attempting to conciliate them first?

Answer 14. EEOC's claim in the *CVS* action was that the employer conditioned receipt of severance pay on execution of a separation agreement that contained language that deterred employees from filing discrimination charges with EEOC and State Fair Employment Practice Agencies and interfered with employees' ability to communicate voluntarily with EEOC and the State agencies. The case was brought under section 707 of Title VII, which authorizes EEOC to bring suit to enjoin employers from "engag[ing] in a pattern or practice of resistance to the full enjoyment of [Title VII rights]." EEOC's suit alleged that CVS's use of the separation agreement constituted such resistance under section 707, and asked the court to enjoin CVS from further use of the separation agreement. No monetary relief was sought from CVS.

Although EEOC did attempt to resolve the matter with CVS prior to filing suit, EEOC's position is that suits brought under section 707 to enjoin practices that constitute resistance to the full enjoyment of title VII rights do not require either a charge of discrimination or conciliation efforts. EEOC also brings suits under section 707 based on charges of discrimination that allege violations of sections 703 or 704 of Title VII. EEOC has always attempted to conciliate such claims prior to bringing suit and will continue to do so.

EEOC had not taken a position prior to *CVS* on whether actions under section 707 to enjoin resistance to the enjoyment of title VII rights required conciliation efforts. However, we have argued the general principle that some of the administrative prerequisites to filing a suit do not apply under Section 707. *See* EEOC Reply Brief in *Serrano & EEOC* v. *Cintas Corp.*, filed July 11, 2011, available at: *http://www.eeoc.gov/eeoc/litigation/briefs/cintas1.txt*.

EEOC appreciates the importance of resolving matters short of court action, and as in CVS the agency always attempts to settle claims voluntarily even where we do not believe conciliation is required by statute. EEOC actions to enforce prior resolutions, such as conciliation agreements and consent decrees, are not subject to statutory conciliation requirements (because they are brought to enforce provisions of the agreements rather than of a statute); but here as well the agency always attempts to obtain voluntary compliance prior to filing suit.

Question 15a. In 2011, EEOC began an investigation of Massachusetts-based Marylou's Coffee for alleged age discrimination. Was that investigation based on a complaint?

Answer 15a. EEOC's Boston Area Office filed an ADEA directed charge against Marylou's Coffee on February 28, 2011. The charge was closed on October 21, 2012, with a finding that there was no reasonable cause to believe that discrimination occurred based upon evidence obtained in investigation. Pursuant to our record-keeping policy, we maintain charge files up to 2 years after they are closed. Since this 2-year period expired, no other information on the charge is available.

Question 15b. Is the investigation ongoing? If not, how and when was it resolved?

Answer 15b. The charge was closed on October 21, 2012, with a finding that there was no reasonable cause to believe that discrimination occurred.

Question 16. Earlier this year, Representative Tim Walberg (R-MI) introduced the *EEOC Transparency and Accountability Act* (H.R. 550), which would, among other things, require EEOC to report additional statistics and figures in its annual Performance and Accountability Report (PAR). Would you consider expanding the PAR to include the following information:

a. The number of investigations initiated that fiscal year by a directed investigation or commissioner's charge and the nature of the alleged discrimination;

EEOC would be open to expanding the reporting in the PAR to include information relating to the initiation of directed investigations or the filing of Commissioner charges, along with a summary of the bases and issues alleged in these charges/directed investigations during the fiscal year.

b. The number of investigations ongoing that fiscal year initiated by a directed investigation or commissioner's charge and the nature of the alleged discrimination;

EEOC would be open to expanding the reporting in the PAR to include information relating to the number of investigations ongoing during the fiscal year that were initiated in prior years as directed investigations or the filing of commissioner charges, along with a summary of the bases and issues alleged in these charges/directed investigations.

c. The number of lawsuits filed that fiscal year based on a directed investigation or commissioner's charge and whether that litigation decision was approved by a vote of the majority of the commissioners;

EEOC would be open to expanding the reporting in the PAR to include information relating to the number of lawsuits filed that fiscal year based on a directed investigation or commissioner charge.

d. Each instance in which EEOC was ordered to pay attorney's fees or court fees and costs or sanctioned by the court, including the amount of such fees and costs ordered to be paid, the amount of fees and costs actually paid by EEOC, and the reason for the fee or cost award, regardless of whether EEOC is appealing the decision;

EEOC would be open to expanding the reporting in the PAR to include a description of final attorney's fees awarded against the agency based on the defendant having prevailed on the merits of EEOC's suit.

e. The number of cases of systemic discrimination brought in court by EEOC under section 706 or 707 of the Civil Rights Act of 1964 and the nature of the alleged discrimination; and

EEOC would be open to expanding the reporting in the PAR to include the number of cases of systemic discrimination brought in court by EEOC under section 706 or 707 of the Civil Rights Act of 1964, along with a summary of the bases and issues alleged in the suit.

f. EEOC's success rate at the appellate level. If not, please explain your reasoning for excluding each of those statistics.

EEOC would be open to expanding the reporting in the PAR to include EEOC's success rate at the appellate level.

Question 17. EEOC's fiscal year 2014 PAR does not include information about the percentage of favorable resolutions EEOC achieved in circuit court. Please provide the number and percentage of favorable resolutions EEOC achieved in circuit court in all cases and specifically in merit cases since 2010. Please provide the same information for district court cases.

Answer 17. The information concerning circuit court favorable resolutions is being compiled and will be provided when it is available.

The information concerning district court favorable resolutions is as follows:

Fiscal Year	Filed	Favorable	Percent
2010	286	266	93
2011	270	243	90
2012	247	227	92
2013	213	186	87
2014	136	126	93

SENATOR PAUL

Question 1. Do EEOC personnel, including the Office of the Inspector General, currently receive firearms training? Has EEOC personnel received firearms training in the past?

Answer 1. EEOC has three GS–1811 criminal investigators who investigate waste, fraud, and abuse. They are assigned to the Office of Inspector General and receive quarterly training, including firearms training, at the Federal Law Enforcement Training Center, as part of the Criminal Investigator Training Program.

Question 2. Has EEOC ever purchased, provided, or accepted firearms and ammunition of any type to its personnel for use, including for firearms training, by its personnel?

Answer 2. EEOC's Office of Inspector General (OIG) has purchased three firearms and ammunition to maintain the training qualifications of the three GS–1811 criminal investigators, pursuant to the U.S. Attorney General's Guidelines for Offices of Inspector General with Statutory Law Enforcement Authority, issued December 8, 2003.

Question 3. If EEOC personnel are supplied with firearms, what selection criteria are used to determine which employees are issued firearms?

Answer 3. The only EEOC personnel authorized to be issued firearms are the Office of Inspector General GS–1811 criminal investigators who have been trained at the Federal Law Enforcement Training Center and maintain their firearm qualifications standards.

Question 4. What is EEOC policy with regard to providing firearms to its personnel and under what circumstances would an agent of EEOC carry a firearm when discharging their duties?

Answer 4. EEOC's Office of Inspector General would allow only GS–1811 criminal investigators to carry firearms, on a case-by-case basis or in conjunction with a joint task force, when documentation supports the need, a determination of need has been established, and the U.S. Department of Justice has granted authorization.

SENATOR COLLINS

Question. Under title VII, only the Commission is authorized to commence litigation. I understand, however, that the Commission has delegated litigation authority (with a few exceptions) to the General Counsel of the Commission. I further understand that the current General Counsel, Mr. Lopez, has delegated much of his litigation authority to the Commission's district offices. According to Mr. Lopez, this delegation promotes "an entrepreneurial approach" to litigation in the district offices. It appears that the Commission does not authorize the vast majority of litigation filed by the EEOC. For example, in fiscal year 2013, only 16 out of 131 cases (12 percent) were brought to the Commission for a vote; in fiscal year 2014, only 17 out of 133 cases (13 percent) were brought to the Commission for a vote. Yet one of the most significant duties of the Commission is to determine when to initiate litigation. Given the importance of EEOC litigation, please describe the justifications for the Commission's current delegation of litigation authority to the General Counsel. In addition, please describe the justifications for Mr. Lopez's further delegation of that litigation authority to regional offices.

Answer. As noted in the earlier response, the current delegation of litigation authority, adopted on a bi-partisan basis, carefully balances the need for Commission oversight with the benefits of streamlined operations. With the goal of increasing the efficiency and effectiveness of its enforcement programs, a unanimous Commission delegated litigation authority to the General Counsel in the 1996 National Enforcement Plan. This action enabled the Commission to focus more of its time on significant policy issues.

In the 2012 Strategic Enforcement Plan, on a bi-partisan basis, the Commission reaffirmed that delegation of authority and established quarterly reports and meetings to continually assess the success of the delegated authority. The Commission reaffirmed the delegation criteria "with the goal of increasing the efficiency and effectiveness of the agency's enforcement programs."

Currently, the Commission must approve decisions to commence or intervene in litigation in significant cases that: (1) require a major expenditure of resources; (2) address a developing area of law; or (3) raise issues of public controversy. In addition, the Commission must review and approve all recommendations for EEOC to participate as *amicus curiae*. The 2012 Strategic Enforcement Plan also directs that each EEOC district office present a minimum of one litigation recommendation for Commission consideration each fiscal year, including litigation recommendations based on the above criteria.

Under the 1995 National Enforcement Plan, the General Counsel was authorized and encouraged to redelegate litigation authority to the regional attorneys, as appropriate, because it furthers efficiency, enhances accountability, improves responsiveness to local issues, and encourages the exercise of sound judgment. Note, however, all proposed litigation—including those cases re-delegated to regional attorneys—are reviewed by OGC prior to filing and, after such review, the OGC sometimes modifies or advises the regional attorney to withdraw the proposed litigation.

There is no difference in quality or success among cases voted on by the Commission, delegated to the General Counsel, or delegated to regional attorneys. Indeed, several significant successes have emerged from cases approved by regional attorneys under delegated authority, including the Supreme Court decision in *EEOC* v. *Abercrombie & Fitch*, 135 S. Ct. 2028 (2015), a landmark religious accommodation case, as well as the $1.5 million jury verdict in *EEOC* v. *New Breed Logistics*, 783 F.3d 1057 (6th Cir. 2015), a multi-victim sexual harassment case that was tried in Memphis, TN and affirmed on appeal.

SENATOR ROBERTS

Question 1. In February 2012, EEOC voted in its Strategic Plan to adopt a Quality Control Plan to measure the quality of investigations and conciliations. Since then the vote to implement this plan has been delayed twice. EEOC's Inspector General (IG) said this should be a high priority for the Commission as it could effectively and efficiently reduce the backlog. What is the status of the QCP and when do you plan to vote on it?

Answer 1. Ensuring the quality of EEOC's investigations and conciliations is a high priority of mine, and I am working with my fellow commissioners to gain consensus on a plan to strengthen the quality of our work. While the previous Commission was unable to reach consensus on a draft Quality Control Plan (QCP), the agency has proceeded with strategies to improve quality, including incorporating quality measures into performance plans, conducting additional staff training on best practices, implementing more effective management strategies throughout EEOC, and formulating standard operating procedures, as required by the SEP,

which will address many of the quality control recommendations included in the draft QCP.

Question 2. If an employer is prohibited from asking an applicant his/her age on an application, how can a company be sued for age discrimination for failing to meet undetermined quotas?

Answer 2. The ADEA does not require employers to meet any hiring or employment quotas based on age. Also, the ADEA does not prohibit employers from asking an applicant's age on an application; however, employers generally do not ask applicants their age because age is usually an irrelevant factor in employment decisions. Where an employer asks an applicant his or her age, this may be evidence of discrimination, if the employer relies on that information to deny an older applicant the job.

RESPONSE BY P. DAVID LOPEZ TO QUESTIONS OF SENATOR ALEXANDER, SENATOR PAUL, SENATOR COLLINS, AND SENATOR ROBERTS

SENATOR ALEXANDER

Question 1. Does EEOC ever utilize a third-party to find, or help find, potential plaintiffs before or during an investigation or litigation? This includes, but is not limited to, Web sites, contracted legal services or investigative services, contract employees, social media, etc.

If so, since 2010, please list each instance where this has occurred and the amount of resources spent in each instance.

Answer 1. When an employer fails to keep records, it may be difficult for EEOC to obtain information on those harmed or potentially harmed by a discriminatory policy or practice. On rare occasions, after an investigation has been completed and during conciliation, an employer who has not kept the records required by law may agree to web postings, advertisements, or other means to identify potentially aggrieved individuals. In these circumstances, it is generally the respondent who creates and pays for advertisements.

In certain larger investigations, EEOC may contract for the services of temporary paralegals or support personnel to contact and interview individuals who may be witnesses or who may have been harmed by the discriminatory policy or practice alleged. During the investigation, these paralegals or support personnel may be required to search for contact information where the information on file is inaccurate, missing, or outdated. The time these contract personnel spend identifying potentially aggrieved individuals is not recorded separately from the time they spend preparing files, organizing documents, and entering data.

In litigation, EEOC has occasionally contracted with a third-party—such as placing ads with a newspaper or radio station—to find individuals for whom the agency seeks to obtain relief.[1] We have identified three instances since 2010 where EEOC has contracted with a third-party during litigation to find or help find individuals who may be entitled to relief in the litigation. This occurs when we have been unable to identify members of the protected class at issue from the employer's records.

- In 2011, in a case filed against a restaurant with two locations for alleged race discrimination against African-Americans in hiring and job assignments, EEOC contracted for radio ads, at a cost of $7,995, to help identify individuals affected by the discrimination alleged. The lawsuit was settled in 2014.
- In 2012, in a case filed against an automobile shipment company for alleged failure to hire African-Americans because of race and alleged discrimination against applicants with disabilities based on pre-employment medical inquiries, EEOC contracted for newspaper ads, at a cost of $3,525, to help identify individuals affected by the discrimination alleged. This lawsuit is pending.
- In 2012, in a case filed against a restaurant with six locations for alleged failure to hire individuals 40 years old and over because of age, EEOC contracted for radio ads, at a cost of $2,475, to help identify individuals affected by the discrimination alleged. The lawsuit was settled in 2013.

Question 2. During the May 19 hearing, you maintained that EEOC does not use, or contract for the use of, Craigslist to find potential plaintiffs. As you are aware, a Craigslist ad was posted soliciting plaintiffs in EEOC's lawsuit against Texas Roadhouse, and it appeared to have been posted by EEOC. Indeed, in part, the ad

[1] EEOC is the "plaintiff" in its litigation, and individuals for whom the agency may pursue relief are considered aggrieved or potentially aggrieved individuals.

stated "e-mail us at *info@eeoc.gov*." The ad has now been removed. Does EEOC view this ad to be fraudulent?

Did EEOC report this ad as fraudulent to Craigslist?

If so, on what date did EEOC report the ad as fraudulent and by what means?

Answer 2. The Craigslist ad to which you refer duplicated language about the Texas Roadhouse case found on EEOC's Web site. The ad was not placed or authorized by EEOC. EEOC contacted Craigslist on May 26 and informed them that the ad was not authorized by EEOC and requested information about the posting. EEOC contacted Craigslist again on June 2, 2015, to gather information about the posting of the ad. Both times, EEOC was advised by Craigslist that a subpoena was necessary before any information would be released. EEOC staff then referred the matter to EEOC's Office of Inspector General (OIG) for further review.

Based on information gained through a subpoena filed by counsel representing Texas Roadhouse in our pending suit against them, we have learned that the person who placed the ad did so from an Internet address in Alaska and used an e-mail address that appears to belong to an individual that has never been employed by EEOC. Additionally, the IP address used to post the ad was not an EEOC IP address.

Question 3. Does EEOC ever review Craigslist to search for evidence of potential discrimination?

If so, how often and how many resources are spent on these efforts?

Answer 3. Over the course of the past 5½ years (fiscal year 2010–15 to date), EEOC has expended a limited amount of resources to review Craigslist advertisements to identify evidence of discrimination. For example, sometimes EEOC learns of potentially discriminatory ads on Craigslist from a member of the public or during the course of an investigation. Investigators would go directly to Craigslist to confirm those allegations. We estimate that during this 5½-year period, investigative staff spent a total of approximately 200 hours to identify evidence of discrimination in ads on Craigslist. In some instances, for example, offices identified potentially discriminatory job advertisements that may have excluded applicants based on gender or age. Such review occurs at the investigative stage and is therefore not supervised by the General Counsel.

Question 4. When you believe a case has a high likelihood of creating "public controversy," you are required to submit that case to the Commission for a vote prior to commencing litigation. Given the extensive congressional concerns with EEOC's investigation of accounting firms and their partnership agreements, and Chair Yang's statement at the hearing that if you were to recommend litigation in this area "it would be something that would come up to the Commission," will you commit to submitting to commissioners for a vote any future case alleging age discrimination against an accounting firm due to the mandatory retirement age included in their partnership agreement—including Deloitte, KPMG, and any other firm currently under investigation?

Answer 4. During my tenure to date, I have never approved on my own authority a case alleging age discrimination against an accounting firm because of a mandatory retirement age included in a partnership agreement. I have submitted one such recommendation to the Commission for a vote based on my assessment that the case was likely to generate public controversy. As I have noted to this committee before, I intend to continue doing so.

Question 5. At the May 19, hearing, I expressed concern that you continued to rely on expert witness testimony in one case (*EEOC* v. *Freeman*) on appeal in the Fourth Circuit of Appeals after the Sixth Circuit Court of Appeals strongly rebuked the same expert testimony in another case (*EEOC* v. *Kaplan*). In response, you stated, "it wasn't like we were rebuked in one case and then went back and used the witness; both of those cases were pending at the same time." While both cases were pending at the same time, after EEOC lost *Kaplan* in the Sixth Circuit, it submitted a reply appellate brief in *Freeman* and presented oral argument. Why did EEOC not withdrawal the appeal in *Freeman* after EEOC lost the *Kaplan* case?

Is EEOC still using Kevin Murphy as an expert witness?

How much has EEOC paid Kevin Murphy in cases it has lost?

How much has EEOC paid Kevin Murphy in total?

Answer 5. EEOC used Kevin Murphy as an expert witness in the *Freeman* and *Kaplan* cases, but the two appeals raised different issues. In *Freeman*, EEOC argued that the district court abused its discretion in excluding the reports as unreliable under *Daubert* v. *Merrell Dow Pharmaceuticals*, 509 U.S. 579 (1993), because purported flaws in Murphy's analyses concerned data, not methodology, and therefore concerned weight/credibility issues for trial, not admissibility.

By contrast, *EEOC* v. *Kaplan*, 748 F.3d 749 (6th Cir. 2014) was a case in which the court of appeals affirmed the district court's ruling on the unreliability of an untested racial identification methodology. In short, *Kaplan* primarily concerned methodology, which was not an issue in *Freeman*, and so was not directly relevant to the *Freeman* appeal.

EEOC is not currently using Kevin Murphy as an expert witness in any pending litigation and has not used him as an expert in any case aside from *Freeman* and *Kaplan*. EEOC has paid a total of $224,513 to the entities Landy Litigation Support Group and Lamorinda Consulting for work on these two cases; Kevin Murphy was a consultant or principal for each entity and the entities employed multiple adjunct experts who assisted him in completing the work.

Question 6. Fiscal Year 2014's Performance and Accountability Report stated that the Employees' Viewpoint Survey found EEOC employees "continue to express concern about disclosing a suspected violation of any law, rule, or regulation [to EEOC management] without fear of reprisal." Chair Yang's testimony indicates that it's a priority to educate all employers about how to prevent retaliation in the workplace. What are you doing, specifically, to ensure EEOC employees feel comfortable reporting unlawful behavior to EEOC management?

Answer 6. As General Counsel, I expect the highest standard of ethical and professional conduct from all OGC staff. Therefore, I take allegations of retaliation very seriously, and I have communicated my open door policy to all OGC staff. Please be assured that my office promptly investigates all allegations of retaliation asserted by OGC staff in accordance with the agency's established procedures.

In fiscal year 2013, EEOC rolled out Diversity and Inclusion program training to senior leaders, supervisors, and managers. Currently, we are deploying this training to non-supervisory employees. These sessions provide employees an opportunity to share their ideas for creating a more inclusive work environment and ensuring that prohibited personnel practices, including retaliation, are not tolerated. Once this training is complete, we will implement new practices based on employee feedback.

In addition, as part of our commitment to address retaliation and reprisal, in fiscal year 2015, EEOC began providing agency-wide training on preventing harassment in the workplace. This training establishes a system of accountability for ensuring a workplace free from unlawful harassment based on race, color, religion, sex, national origin, age, or disability. During this training, we also emphasize that EEOC will not tolerate retaliation against any employee for reporting matters under this policy or for assisting in any inquiry about such a report.

Further, our New Manager Training and Fundamentals of Performance Management courses, delivered in conjunction with the Office of Personnel Management, include modules on prohibited personnel practices and merit system principles, as well as harassment and retaliation.

To more broadly address concerns raised by the Federal Employee Viewpoint Survey, EEOC launched the BEST initiative—Building Employee Satisfaction Together. As part of that initiative, in fiscal year 2015 and fiscal year 2016, we will incorporate a substantive discussion of retaliation and prohibited personnel practices in training to all employees and in our mandatory training for managers and supervisors. Specifically, our final quarterly Employee Education Webinars and Webinars for Managers and Supervisors for this fiscal year will address retaliation and prohibited personnel practices.

Question 7. The Commission is required to vote on decisions that "require a major expenditure of resources." What do you consider to be a major expenditure of resources?

How does EEOC determine if a case will involve a major expenditure of resources—is there a policy in place? If so, please provide the policy. If not, please explain why you do not have a policy and whether you will consider if a policy is necessary.

Answer 7. In determining whether cases "require a major expenditure of resources," I carefully examine case cost estimates to understand their basis and make adjustments, as necessary. Such determinations are reached on a case-by-case basis. I generally submit to the Commission all cases that I believe will cost more than $100,000.

Question 8. Please provide the dates by which you will publish the Office of General Counsel Annual Report for each of the following fiscal years: 2012, 2013, 2014, and 2015.

Answer 8. OGC's Annual Report for fiscal year 2012 has been issued and posted on the EEOC Web site. We plan to issue the fiscal year 2013 OGC Annual Report

by September 30, 2015, the fiscal year 2014 OGC Annual Report by December 31, 2015, and the fiscal year 2015 OGC Annual Report by March 31, 2016.

Question 9. During your confirmation process last year, you were asked:

> "If confirmed, will you include in the Office of General Counsel annual reports the number of times, and the amounts, EEOC is ordered to pay defendants in attorney's fees and other costs each year, including those instances where fees and costs were awarded but not necessarily paid."

You responded, "Yes." The fiscal year 2011 report did not include any fee awards. When contacted by HELP Committee staff, EEOC staff stated,

> "there were no final fee awards from fiscal year 2011 to include in the fiscal year 2011 annual report. Going forward, we will include final fee awards in the annual reports."

The question you answered in the affirmative during the confirmation process did not differentiate between final fee awards and fee awards on appeal and therefore encompassed *all* fees awarded, regardless of whether they are a final award.

Accordingly, do you plan to adhere to your earlier commitment to including *all* fees and costs awarded, regardless of whether EEOC is appealing the decision, in all future Office of General Counsel Annual Reports as you stated you would during your confirmation process?

Answer 9. When I answered "Yes" to the question at my confirmation hearing regarding including attorney's fees awards against EEOC in the Office of General Counsel annual reports, I did not see the need to include the terms "final awards" in my answer, because in litigation almost no determination by a trial court has legal effect until the party opposing the determination has exhausted its appeal rights. As I discussed at the May 19 oversight hearing, the appellate courts have reversed and vacated high profile fee awards against the Commission because they lacked an adequate legal or factual foundation. Therefore, I understood the question to refer to legally final awards of attorney's fees. Consistent with how trial court determinations are treated in litigation, I intend in future annual reports to include only attorney's fees awards against EEOC which either have not been appealed by the agency or which have been affirmed on appeal. These attorney's fees awards will be included in annual reports for the years in which the time for EEOC to appeal expired without an appeal being taken or in which a court of appeals decision affirming the award (either all or in part) was issued.

I also want to clarify that I interpreted "attorney's fees awards" to mean only those fees awarded to the defendant as a "prevailing party" after a determination by the trial court on the merits of EEOC's suit. Attorney's fees sometimes are awarded to parties prior to a determination on the merits due to events occurring during the litigation process, usually involving discovery matters. Such fees are sometimes awarded as sanctions, or sometimes based just on a party's success on a particular discovery dispute. Unlike attorney's fees based on "prevailing party" status, which in EEOC cases can be recovered only by defendants, not by the government, attorney's fees awards prior to a determination on the merits can be made to either party, and are often recovered by EEOC. Regardless of my initial understanding of the committee's questions about including attorney's fees awards against EEOC in the Office of General Counsel's annual reports, beginning with fiscal year 2014 EEOC will include all final attorney's fees awards against EEOC, whether made prior to or following a determination on the merits, in the annual reports, as well as fee awards secured by the Commission against defendants.

SENATOR PAUL

Question. Does EEOC Office of General Counsel use interns who receive no financial compensation or stipend to assist with its directed investigations and litigation?

If yes, provide specific information with regard to the duties performed by interns, or policies related to delegation of duties normally performed by paid staff to interns during investigation and litigation.

Answer. EEOC uses intern volunteers in many offices to assist with our litigation matters including legal research, drafting legal memos and interviewing potential claimants. Many interns receive third-party grants or law school credit for their internship, and thus we ensure that the experience for all interns at EEOC is educational.

SENATOR COLLINS

Question. Under title VII, only the Commission is authorized to commence litigation. I understand, however, that the Commission has delegated litigation authority

(with a few exceptions) to the General Counsel of the Commission. I further understand that the current General Counsel, Mr. Lopez, has delegated much of his litigation authority to the Commission's district offices. According to Mr. Lopez, this delegation promotes "an entrepreneurial approach" to litigation in the district offices. It appears that the Commission does not authorize the vast majority of litigation filed by the EEOC. For example, in fiscal year 2013, only 16 out of 131 cases (12 percent) were brought to the Commission for a vote; in fiscal year 2014, only 17 out of 133 cases (13 percent) were brought to the Commission for a vote. Yet one of the most significant duties of the Commission is to determine when to initiate litigation. Given the importance of EEOC litigation, please describe the justifications for the Commission's current delegation of litigation authority to the General Counsel. In addition, please describe the justifications for Mr. Lopez's further delegation of that litigation authority to regional offices.

The current delegation of litigation authority, adopted by the Commission on a bipartisan basis, carefully balances the need for Commission oversight with the benefits of streamlined operations. With the goal of increasing the efficiency and effectiveness of its enforcement programs, a unanimous Commission delegated litigation authority to the General Counsel in the 1996 National Enforcement Plan. This action enabled the Commission to focus more of its time on significant policy issues.

In its December 2012 Strategic Enforcement Plan, on a bipartisan basis, the Commission reaffirmed that delegation of authority and established quarterly reports and meetings to continually assess the success of the delegated authority. The Commission reaffirmed the delegation criteria "with the goal of increasing the efficiency and effectiveness of the agency's enforcement programs."

Currently, the Commission must approve decisions to commence or intervene in litigation in significant cases that: (1) require a major expenditure of resources; (2) address a developing area of law; or (3) raise issues of public controversy. In addition, the Commission must review and approve all recommendations for EEOC to participate as *amicus curiae*. The 2012 Strategic Enforcement Plan also directs that each EEOC district office present a minimum of one litigation recommendation for Commission consideration each fiscal year, including litigation recommendations based on the above criteria.

Under the 1995 National Enforcement Plan, the General Counsel was authorized and encouraged to redelegate litigation authority to the regional attorneys, as appropriate, because it furthers efficiency, enhances accountability, improves responsiveness to local issues, and encourages the exercise of sound judgment. Note, however, all proposed litigation—including those cases redelegated to regional attorneys—are reviewed by my office prior to filing and, after such review, the OGC sometimes modifies the litigation recommendation or advises the regional attorney to withdraw the proposed litigation.

There is no difference in quality or success among cases voted on by the Commission, delegated to the General Counsel, or delegated to regional attorneys. Indeed, several significant successes have emerged from cases approved by regional attorneys under delegated authority, including the Supreme Court decision in *EEOC* v. *Abercrombie & Fitch*, 135 S. Ct. 2028 (2015), a land-mark religious accommodation case, as well as the $1.5 million jury verdict in *EEOC* v. *New Breed Logistics*, 783 F.3d 1057 (6th Cir. 2015), a multi-victim sexual harassment case that was tried in Memphis, TN and affirmed on appeal.

SENATOR ROBERTS

Question 1. Has EEOC conducted an analysis of the cost—both in dollars and staff time—of investigations and lawsuits against employers without a complainant, including the accounting firms and restaurants you're currently investigating? Will you please provide me that break down?

Answer 1. We have not conducted such an analysis. We do not track our resources in a way that allows us to separate out the dollars and staff time spent working on specific investigations and litigation.

Question 2. If an employer is prohibited from asking an applicant his/her age on an application, how can a company be sued for age discrimination for failing to meet undetermined quotas?

The ADEA does not require employers to meet any hiring or employment quotas based on age. Although the ADEA does not prohibit employers from asking an applicant's age on an application, employers generally do not ask applicants their age because age is usually an irrelevant factor in employment decisions. Where an employer asks an applicant his or her age, this may be evidence of discrimination, if the employer relies on that information to deny an older applicant the job. In many

cases, employers can surmise an applicant's approximate age through observation of the applicant or through information provided in an application or resumé regarding work experience, education, or other activities.

[Whereupon, at 11:15 a.m., the hearing was adjourned.]

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