U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

STRATEGIC ENFORCEMENT PLAN

FY 2013 - 2016

EXECUTIVE SUMMARY

The U.S. Equal Employment Opportunity Commission's (EEOC or Commission) Strategic Plan for Fiscal Years 2012 – 2016 directed the Commission to develop a Strategic Enforcement Plan (SEP) that (1) establishes priorities and (2) integrates all components of EEOC's private, public, and federal sector enforcement.[1] The purpose of the SEP is to focus and coordinate the EEOC's programs to have a sustainable impact in reducing and deterring discriminatory practices in the workplace. The Commission approved the Strategic Enforcement Plan for Fiscal Years 2013 – 2016 on December 17, 2012.

SEP Priorities

Integrated enforcement uses a range of strategies from among the EEOC's tools, including investigations, litigation, federal sector oversight and adjudication, policy development, research, and outreach and education. Based on intensive efforts by a staff work group and Commissioners, and extensive public input, the Commission adopts the following national priorities:

1. Eliminating Barriers in Recruitment and Hiring. The EEOC will target class-based recruitment and hiring practices that discriminate against racial, ethnic and religious groups, older workers, women, and people with disabilities.

2. Protecting Immigrant, Migrant and Other Vulnerable Workers. The EEOC will target disparate pay, job segregation, harassment, trafficking and discriminatory policies affecting vulnerable workers who may be unaware of their rights under the equal employment laws, or reluctant or unable to exercise them.

3. Addressing Emerging and Developing Issues. The EEOC will target emerging issues in equal employment law, including issues associated with significant events, demographic changes, developing theories, new legislation, judicial decisions and administrative interpretations.

4. Enforcing Equal Pay Laws. The EEOC will target compensation systems and practices that discriminate based on gender.

5. Preserving Access to the Legal System. The EEOC will target policies and practices that discourage or prohibit individuals from exercising their rights under employment discrimination statutes, or that impede the EEOC's investigative or enforcement efforts.

6. Preventing Harassment Through Systemic Enforcement and Targeted Outreach. The EEOC will pursue systemic investigations and litigation and conduct a targeted outreach campaign to deter harassment in the workplace.

The national priorities of the SEP will be complemented by district and federal sector priorities, recognizing that particular issues most salient to these communities also demand focused attention.

Integrating the EEOC's Work

Through the SEP, the Commission adopts strategies to coordinate and maximize the use of communications, outreach, education, training, research, and technology as enforcement tools. These strategies should also ensure consistent and integrated enforcement throughout all three sectors – private, public, and federal.

In adopting this SEP, the EEOC takes an important step toward fulfilling its mission to "stop and remedy discriminatory practices in the workplace" so that the nation can finally realize the vision of "justice and equality in the workplace."

I. INTRODUCTION

Background

The U.S. Equal Employment Opportunity Commission's (EEOC or Commission) is a bipartisan body composed of five members who are appointed by the President and confirmed by the Senate. The President designates one member of the EEOC to serve as Chair. The Chair is responsible for the administrative operations of the EEOC and for the hiring of personnel.

The EEOC's General Counsel, also appointed by the President and confirmed by the Senate, is responsible for the conduct of litigation pursuant to the agency's statutory authority.

The EEOC is the nation's lead governmental enforcer of employment anti-discrimination laws and chief promoter of equal employment opportunity. The Commission, through its staff, is responsible for enforcing Title VII of the Civil Rights Act of 1964 (Title VII), the Age Discrimination in Employment Act of 1967 (ADEA), the Equal Pay Act of 1963 (EPA), 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). Together, these laws protect individuals from employment discrimination on the basis of race, color, religion, sex, national origin, age, disability, and genetic information (which includes family medical history). They also make it illegal to retaliate against a person for opposing employment discrimination, filing a charge of discrimination, or participating in an investigation or lawsuit regarding employment discrimination.

The EEOC has jurisdiction to enforce the nation's anti-discrimination laws in three sectors – private, state and local government ("public sector"), and federal. Congress granted EEOC the power to "prevent any person from engaging in any unlawful employment practice."[2] The EEOC is charged with achieving this goal by investigating and conciliating charges[3] of

discrimination brought by individuals or by Commissioners alleging unlawful discrimination by private employers, state and local government employers, employment agencies and labor organizations. The General Counsel and legal staff have authority to litigate cases against private employers to enforce all of the federal equal employment opportunity laws and against state and local government employers to enforce the ADEA and EPA. The Department of Justice has authority to bring litigation against state and local governments in Title VII, ADA, and GINA cases.

In the federal sector, the Commission has authority to hold hearings on complaints of discrimination by federal employees and applicants and to adjudicate appeals of decisions on such claims. The Commission also has oversight responsibility to review, approve, and evaluate federal agency compliance with federal equal employment opportunity laws.

The Commission is also charged with providing education and technical assistance on the federal employment anti-discrimination laws and with performing technical studies that will help effectuate the purposes of those laws. Finally, the Commission collects data on the private, public, and federal workforces.

Since the EEOC opened its doors in 1965, the nation has made great strides towards equal employment opportunity for all. Never before in our nation's history has the American workplace been more inclusive than it is today. Greater racial and ethnic diversity can be found throughout the workforce. Workers who once would have been forced out of jobs due to mandatory retirement policies can choose to remain in the labor force. Women now comprise nearly half of the nation's workforce. Technological advances have enhanced opportunities for persons with disabilities to participate fully in the workplace. Once-prevalent practices, such as sex-specific advertisements for job openings, have largely been abandoned.

Yet, despite this progress, challenges remain, and the EEOC's work is unfinished. The nation still confronts discriminatory practices that limit employment opportunities based on race, national origin, sex, religion, age, and disability. Immigrant, migrant and other vulnerable workers are too often subjected to discriminatory treatment in the workplace. Many of today's workers are still subjected to pernicious forms of discrimination, including harassment. Individuals who exercise their rights to challenge workplace discrimination or assist others in doing so face retaliation too frequently.

Over the last decade, the number of charges filed against private and public employers increased by more than 22 percent.[4] In Fiscal Year (FY) 2012, the EEOC received 99,412 charges of discrimination (85 percent against private employers and 15 percent against state and local government employers). Another 43,467 charges were dual-filed with the EEOC in FY 2012, but investigated by state and local fair employment practices agencies (FEPAs).

While the number of complaints filed in the federal sector has decreased by 23 percent over the last decade, the number of allegations of discrimination is still far too high for the nation's

largest employer. Federal employees and applicants filed 16,974 complaints of alleged unlawful employment discrimination in FY 2011 (the most recent year available),[5] and in FY 2012, the EEOC received 7,728 requests for hearings on federal sector complaints and received 4,350 appeals of federal agency actions on complaints.[6]

Even as the nation confronts a rise in claims of discrimination, the resources allocated to the EEOC and designated for the FEPAs have failed to keep pace. Between FY 2000 and 2008, EEOC staffing levels and funding dropped nearly 30 percent. An infusion of resources in 2009 allowed for some rebuilding of capacity, but that was quickly stalled when funding was reduced and hiring freezes were implemented in FY 2011 and FY 2012. The agency is faced with meeting all of its mission responsibilities at a time of unprecedented demand for its services, notwithstanding its limited resources.

II. DEVELOPING THE STRATEGIC ENFORCEMENT PLAN

A. The Strategic Plan

On February 22, 2012, the Commission approved a Strategic Plan for Fiscal Years 2012 – 2016 ("the Strategic Plan"). The plan establishes a framework for achieving the EEOC's mission to "stop and remedy unlawful employment discrimination," so that the nation might realize the Commission's vision of "justice and equality in the workplace." The plan has three objectives: 1) combat employment discrimination through strategic law enforcement; 2) prevent employment discrimination through education and outreach; and 3) deliver excellent and consistent service through a skilled and diverse workforce and effective systems.[7]

Under its first objective, the Strategic Plan required the development of a Strategic Enforcement Plan (SEP) that 1) establishes the EEOC's priorities and 2) integrates the agency's investigation, conciliation and litigation responsibilities in the private and public sectors; adjudicatory and oversight responsibilities in the federal sector; and research, policy development, and education and outreach activities.

The Strategic Plan also provides for the development of a Quality Control Plan for private and public sector investigations and conciliations and a Quality Control Plan for federal sector hearings and appeals, both of which will address consistency and customer service issues more extensively.[8]

B. Input into the Development of the SEP

The SEP is the product of an extensive effort by staff and Commissioners and broad public input. A Work Group consisting of a cross-section of field and headquarters staff, led by Chair Jacqueline Berrien, General Counsel David Lopez, and Memphis District Director Katharine Kores provided input to the Commission. *See Appendix A for a list of all SEP Work Group members.*

On June 5, 2012, the Commission solicited written input on the SEP's development. In response, comments were received from more than 100 individuals, organizations, and coalitions internal and external to the agency and from across the nation. *See Appendix B for June 5 release.*

On July 18, 2012, the Commission held a public meeting to receive input from more than 30 stakeholders on the issues they believed should be addressed in the plan. *See Appendix C for the press release.*

On September 4, 2012, the Commission released a draft of the SEP for public comment and again received comments from more than 100 individuals and organizations. *See Appendix D for the press release.*

C. Guiding Principles

The Commission is guided by the belief that targeted enforcement efforts will have broad and significant impact to prevent and remedy discriminatory practices in the workplace. Targeted enforcement also supports effective management of the agency's charge inventory, as a clearly defined set of priorities informs categorization of charges to promote timely resolution. Finally, the Commission recognizes that in order to make the best use of limited resources, the agency will have to undertake an integrated approach to its work --- one that mobilizes all segments of agency operations and emphasizes effectiveness, efficiency and consistency.

1. A Targeted Approach. A targeted approach means focused attention on an identified set of priorities.

Under this approach, priorities will receive a greater share of agency time and resources as the Commission carries out its statutory obligations. Federal agencies, as well as private entities, often direct resources toward specific practices to secure compliance and more effectively manage their limited resources.[9] For agencies that receive complaints,[10] targeted enforcement necessitates a paradigm shift to focus on specific priorities, recognizing that a focused effort should have a broad and lasting impact to more effectively advance the agency's mission and the public interest.

2. An Integrated Approach. An integrated approach ensures the full use of communications, outreach, education, training, research, and technology as tools to advance the agency's overall mission in concert with administrative enforcement (investigations, mediations, and conciliations) and legal enforcement (litigation, amicus curiae participation, and policy development in the private and state and local government sectors, and hearings and appeals in the federal sector). An integrated approach also recognizes that, where possible, enforcement in the private, public, and federal sectors should be coordinated and consistent. Commission

policies and positions that apply to private and public employers should be applied to the federal government as an employer as well.

Moreover, an integrated approach envisions collaboration and coordination among staff, offices, and program areas and promotes the sharing of information and strategies to implement a national law enforcement model. An integrated approach also requires that all internal agency plans, policies, and procedures increase efficiency and consistency and maximize customer satisfaction to further the ultimate goals of the agency. In short, an integrated approach means "one EEOC."

An integrated approach also acknowledges that the EEOC is one part of a multi-pronged national equal employment law enforcement effort. The Department of Justice, Department of Labor, Fair Employment Practices Agencies (FEPAs), Tribal Employment Rights Organizations (TEROs), and the private bar all play a vital role in enforcing laws prohibiting employment discrimination. As a result, it is important that the EEOC collaborate with each effectively to further its mission.

3. Accountability. The EEOC is a national organization comprised of a Commission, General Counsel, headquarters office, and 53 district, field, area, and local offices across the nation. Throughout the Commission's history, the agency's success has hinged on a careful balancing of the need for national priorities, standards, and oversight with the need for local awareness, responsiveness, and discretion. In this time of limited resources and rising demand, striking that balance properly has never been more important. To this end, the SEP seeks to establish clear expectations for those charged with implementing this plan and to provide for regular and meaningful communication amongst the Commission, General Counsel, agency leadership, and agency staff. In doing so, the Commission can ensure that the strategic, integrated and consistent enforcement approach established by the SEP is implemented and the expertise of the agency's workforce informs and enhances that implementation throughout the country.

D. Previous Plans and Continuing Commitments

The Commission's previous efforts to establish priorities, integrate enforcement, and manage the charge inventory consist of the National Enforcement Plan, Priority Charge Handling Procedures, Comprehensive Enforcement Program, and Systemic Task Force Recommendations.

Priority Charge Handling Procedures. In 1995, the Commission adopted a Priority Charge Handling Procedures (PCHP) system to categorize and expedite the handling of its charge inventory to focus the agency's resources on strategic enforcement. PCHP revoked the full investigation protocol of the 1980s. The PCHP system was based on the development of National and Local Enforcement Plans (NEP, LEPs) that prioritized issues for Commission action.[11] PCHP identified enforcement plan issues as the first and highest priority for charge categorization.[12]

With the adoption of the SEP and the Strategic Plan, PCHP must be examined and updated to ensure that meritorious priority matters receive greater resources and attention, as the NEP priorities received in the early years of PCHP implementation. Agency experience demonstrates that PCHP is most effective as a charge management system when priorities are clearly defined and consistently used in the categorization of charges.

PCHP initially resulted in a significant reduction in the EEOC's pending inventory of charges. However, the charge inventory increased significantly between 2002 and 2008. During this period, the NEP and LEPs were used inconsistently to prioritize charges and the number of investigative staff decreased.[13] While the number of incoming charges also decreased from 2003 through 2006, charge receipts rose in 2007. The charge inventory more than doubled between 2005 and 2008.

Budget increases between 2008 and 2010 allowed the agency to fill many vacant positions, update technology, and expand staff training opportunities. In FY 2010, Chair Jacqueline Berrien initiated a multi-year approach of sustained management attention to reverse the growth of the charge inventory. As a result, the number of unresolved charges was reduced by approximately 9 percent by the end of FY 2011 --- the first reduction in nearly a decade.

This progress will be enhanced by ensuring that PCHP is thoroughly examined and updated to fully implement the SEP and Strategic Plan. The Strategic Plan continues this course by directing staff to "[r]igorously and consistently implement charge and case management systems to focus resources and enforcement on the EEOC's priorities."[14]

National Enforcement Plan of 1996. Approved by the Commission in 1996, the National Enforcement Plan (NEP) articulated the general principles governing the Commission's enforcement efforts, established national enforcement priorities, set parameters for Local Enforcement Plans (LEPs), and delegated significant litigation authority to the General Counsel.[15] The SEP replaces the NEP.

Comprehensive Enforcement Program of 2000. In 2000, Chair Ida Castro initiated a Comprehensive Enforcement Program (CEP) to recommend best practices for administrative and legal enforcement coordination in the development of cases. In 2011, Chair Jacqueline Berrien, General Counsel David Lopez, and Director of the Office of Field Programs Nicholas Inzeo reaffirmed the importance of these principles in directives to the field.

Systemic Task Force Recommendations of 2006. The recommendations of the Systemic Task Force, unanimously adopted by the Commission in 2006, established a nationwide systemic program as a top priority of the Commission. In adopting the Systemic Task Force Report, the Commission sought to change how EEOC operated by requiring plans and procedures for early identification of systemic cases, by deploying the resources needed for successful systemic enforcement, and by implementing a national law firm model. Through the SEP, the Commission

reaffirms the approach and principles of the Systemic Task Force, that systemic enforcement must be strategic, nationwide, coordinated and adequately resourced.

III. NATIONAL PRIORITIES FOR INTEGRATED ENFORCEMENT

The Commission's goal in identifying these priorities is to ensure that agency resources are targeted to prevent and remedy discriminatory practices where government enforcement is most likely to achieve broad and lasting impact. The Commission anticipates that each of these priorities will require the development of a multi-pronged response to include enforcement, education and outreach, research, and policy development. The Commission believes that a comprehensive and coordinated focus on the following priorities will significantly advance its mission.

The Commission does not expect that every EEOC office will approach every SEP priority identically or with the same level of intensity. Charge trends and demographic differences may demand a more localized approach in addressing different priorities, which will be set forth in the District Complement Plans (DCP) (*Infra* at IV.C).

A. Criteria for Determining Priorities

The Commission has identified priorities for national enforcement in the private, public, and federal sectors based on the following criteria:

1. Issues that will have broad impact because of the number of individuals, employers or employment practices affected;

2. Issues involving developing areas of the law, where the expertise of the Commission is particularly salient;

3. Issues affecting workers who may lack an awareness of their legal protections, or who may be reluctant or unable to exercise their rights;

4. Issues involving discriminatory practices that impede or impair full enforcement of employment anti-discrimination laws; and

5. Issues that may be best addressed by government enforcement, based on the Commission's access to information, data, and research.

B. National Priorities

The Commission identifies the following issue priorities, with the goal and expectation that a concentrated and coordinated approach will result in reduced discrimination in these areas. Some of the priority categories, such as hiring discrimination, raise challenging and complicated issues

affecting all of the protected classes, which the EEOC is better situated than the private bar to address given its investigatory authority and access to data. Other priorities, such as emerging issues, are more discrete, but a concerted effort by the agency may result in early resolution of an unsettled area that promotes increased and lasting compliance with equal employment laws.

The strategies for effectively addressing the priorities will vary as well. For some, a multi-pronged, coordinated enforcement, outreach, research and policy effort may be appropriate. For others such as harassment and retaliation, the Commission may intensify and target its education and outreach strategies.

1. Eliminating Barriers in Recruitment and Hiring. The EEOC will target class-based intentional recruitment and hiring discrimination and facially neutral recruitment and hiring practices that adversely impact particular groups. Racial, ethnic, and religious groups, older workers, women, and people with disabilities continue to confront discriminatory policies and practices at the recruitment and hiring stages. These include exclusionary policies and practices, the channeling/steering of individuals into specific jobs due to their status in a particular group, restrictive application processes, and the use of screening tools (e.g., pre-employment tests, background checks, date-of-birth inquiries). Because of the EEOC's access to data, documents and potential evidence of discrimination in recruitment and hiring, the EEOC is better situated to address these issues than individuals or private attorneys, who have difficulties obtaining such information.

2. Protecting Immigrant, Migrant and Other Vulnerable Workers. The EEOC will target disparate pay, job segregation, harassment, trafficking and other discriminatory practices and policies affecting immigrant, migrant and other vulnerable workers, who are often unaware of their rights under the equal employment laws, or reluctant or unable to exercise them.

3. Addressing Emerging and Developing Issues. As a government agency, the EEOC is responsible for monitoring trends and developments in the law, workplace practices, and labor force demographics. Under this SEP, the EEOC will continue to prioritize issues that may be emerging or developing. Given the EEOC's research, data collection, and receipt of charges in the private and public sectors, and adjudication of complaints and oversight in the federal sector, the agency is well-situated to address these issues.

Swift and responsive attention to demographic changes (*e.g.* the aging of the workforce), recently enacted legislation, developing judicial and administrative interpretations and theories, and significant events (*e.g.* the attacks of 9/11) that may impact employment practices can prevent the spread of emerging discriminatory practices by promoting greater awareness and facilitating early, voluntary compliance with the law.

For example, the Commission recognizes that elements of the following issues are emerging or developing: 1) certain ADA issues, including coverage, reasonable accommodation, qualification standards, undue hardship, and direct threat, as refined by the Strategic Enforcement Teams

(*Infra* at IV.B); 2) accommodating pregnancy-related limitations under the Americans with Disabilities Act Amendments Act (ADAAA) and the Pregnancy Discrimination Act (PDA); and 3) coverage of lesbian, gay, bisexual and transgender individuals under Title VII's sex discrimination provisions, as they may apply.

These issues are illustrative and not exhaustive. Additional emerging or developing issues may be identified and recommended by the Strategic Enforcement Team for Emerging or Developing Issues (*Infra* at IV.B). The team will also make recommendations as to when an issue should no longer be considered a priority under the emerging or developing category.

4. Enforcing Equal Pay Laws. The EEOC will target compensation systems and practices that discriminate based on gender. Among the many strategies to address these issues, the Commission particularly encourages the use of directed investigations and Commissioner Charges to facilitate enforcement.

5. Preserving Access to the Legal System. The EEOC will also target policies and practices that discourage or prohibit individuals from exercising their rights under employment discrimination statutes, or which impede the EEOC's investigative or enforcement efforts. These policies or practices include retaliatory actions, overly broad waivers, settlement provisions that prohibit filing charges with the EEOC or providing information to assist in the investigation or prosecution of claims of unlawful discrimination, and failure to retain records required by EEOC regulations.

6. Preventing Harassment Through Systemic Enforcement and Targeted Outreach. Harassment is one of the most frequent complaints raised in the workplace.[16] Harassment claims based on race, ethnicity, religion, age and disability combined significantly outnumber even sexual harassment claims in the private and public sectors.[17] The same is true in the federal sector.[18] While investigation and litigation of harassment claims has been successful,[19] the Commission believes a more targeted approach that focuses on systemic enforcement and an outreach campaign aimed at educating employers and employees will greatly deter future violations.

IV. Implementation of SEP National Priorities

For the SEP to succeed, resources must align with the priorities established herein. As part of the Strategic Plan for Fiscal Years 2012 – 2016, the Commission established Performance Measure 14, which requires the EEOC's budgetary resources for FY 2014 – 2017 to align with the plan.[20] The following guidelines are intended to ensure that SEP priorities receive the necessary attention and resources to advance the agency's mission of ending and remedying unlawful discrimination in the workplace and to achieve the goals of a targeted and integrated national law enforcement approach.[21]

A. Implementation of Priorities in Administrative Enforcement and Legal Enforcement (Private and Public Sectors)

Identifying priorities for enforcement is a critical tool for strategically managing investigations and for guiding case selection. The SEP and District Complement Plans (*Infra at* IV.C) set forth those priorities for the EEOC.

Office Directors and Regional Attorneys are entrusted to exercise leadership and prosecutorial discretion in determining whether government enforcement of select charges and cases furthers the effective implementation of the Strategic Plan, the SEP, and District Complement Plans. The pursuit of any investigation or case must be premised on the strength of the evidence and its potential as a strong vehicle for meaningful law enforcement. Charges or cases should not be pursued, even if they fall within a priority category, unless a rigorous assessment of the merits determines significant law enforcement potential. While resources will focus on priorities, meritorious charges and cases in non-priority areas may be pursued where resources permit and based on the sound discretion of the District Director and Regional Attorney.

The Office of Field Programs and Office of the General Counsel should strengthen capacity in priority areas through expanded training on investigating and litigating priority issues and should facilitate greater collaboration in the investigation, development, and resolution of priority charges.

Implementing SEP priorities through administrative and legal enforcement will require increased coordination within and between offices, particularly for systemic cases, to facilitate strategic decisions about which types of charges and cases within the SEP priorities should be pursued and where and when they should be pursued. Implementation of SEP priorities can also be facilitated by collaboration with other law enforcement partners (such as the Department of Justice on state and local government sector charges and the private bar), and through interaction with employers to promote voluntary compliance.

1. Priority Charge Handling Procedures (PCHP) Implementation

The Commission recognizes that PCHP must be updated and adapted to successfully implement the SEP. The Commission expects staff to fully comply with PCHP as described below and in forthcoming implementation guidance. Rigorous implementation of PCHP remains the key tool for reducing our pending inventory of charges, effectively managing new charges, and ensuring that enforcement priorities receive appropriate attention.

Under PCHP, "enforcement plan cases are the highest priority."[22] Thus, charges raising priorities identified in either the SEP or in the District Complement Plans (*Infra at* IV.C) should be afforded the highest priority.

Charges shall be screened promptly to determine if an SEP or district priority issue is raised. Where a preliminary assessment indicates that a priority issue in a charge is likely to have merit, the charge shall be initially designated as the highest category in PCHP. Given the complexity of some of the SEP issues, this initial designation permits a deeper and more expeditious examination to determine whether the charge is sufficiently meritorious to pursue. Charges raising SEP or district priorities that are deemed meritorious shall receive greater investigatory attention and resources to ensure timely and quality enforcement action.

Throughout the investigation of any charge, including charges raising SEP or district priorities, offices are expected to re-evaluate the charge's category designation on an ongoing basis and should promptly re-categorize a charge, as appropriate. Charges raising priority issues, as with all charges, should be dismissed as soon as the office has sufficient information to conclude that further investigation is not likely to result in a cause finding.

Under PCHP, enforcement plan charges (SEP or DCP) are the highest priority. In addition, PCHP also includes two other types of charges among the top category: where further investigation likely would result in a cause finding or where irreparable harm will result unless processing is expedited. These designations will continue until PCHP is updated (*Supra at* II.D). Non-priority issue charges may be pursued if resources permit. Where they are of equal merit and strength to an SEP or DCP charge, the priority charge should take precedence.

2. Litigation Program

Meritorious cases raising SEP or district priority issues should be given precedence in case selection. Where appropriate, SEP priorities should also be considered in selecting cases for amicus curiae participation.

Where resources permit, meritorious cases in non-priority areas may also be filed where government enforcement is needed and is likely to have impact. Neither the Commission nor the General Counsel will establish rigid goals as to the number of cases, priority or otherwise, that should be filed.

The Commission recognizes that it will not be able to litigate every meritorious case that fails conciliation, including cases that fall within the SEP or under District Complement Plans. Thus, the Commission encourages the General Counsel, District Directors, and Regional Attorneys to continue to collaborate with the private bar, non-profit organizations, the Department of Justice, the Office of Federal Contract Compliance Programs (OFCCP), and the EEOC's state and local partners to support their critical role in civil rights enforcement.

3. Systemic Program[23]

Eradicating systemic discrimination has long been one of the EEOC's top priorities, as underscored in the Strategic Task Force Recommendations of 2006 and reaffirmed in the Strategic Plan. The SEP and District Complement Plans (*Infra* at IV.C) will focus the types of

systemic investigations and cases to be pursued by the Commission on enforcement priorities at the national and local levels. Meritorious systemic charges and cases that raise SEP or district priority issues should be given precedence over individual priority matters and over all non-priority matters, whether individual or systemic. Where resources permit, meritorious systemic charges and cases in non-priority areas may be pursued based on the sound discretion of the District Director and Regional Attorney.

4. Alternative Dispute Resolution Programs

The Commission recognizes that mediation and other forms of alternative dispute resolution (ADR) are integral components of an effective enforcement program. Resolution of charges through mediation comprised 91 percent of all administrative settlements by the agency in FY 2012.[24] The EEOC's mediation program resolved 76 percent of the 11,380 charges that individuals and employers agreed to mediate in FY 2012.[25] Most parties who participate in EEOC's mediation program view mediation very favorably, with 98 percent reporting confidence in the program.[26]

Mediation and other forms of ADR also play a critical role in resolving many federal sector and internal agency EEO complaints. ADR has thus contributed significantly to the successful resolution of private and public sector charges and federal sector complaints filed with the EEOC. The Commission encourages the continued use of ADR to resolve individual discrimination charges and complaints.

As the Strategic Plan and Strategic Enforcement Plan shift investigative and litigation resources to address SEP and district priorities, ADR will become even more important as a tool to improve customer service and promote timely resolution of discrimination charges filed with the agency. Offices should explore opportunities to expand the use of ADR by referring meritorious non-priority charges to mediation; through the use of pro bono mediators; partnering with local law school clinics; and encouraging participation in ADR in technical assistance programs and other agency public education events. Increased support for staff and contract mediators should be considered as resources permit.

B. Strategic Enforcement Teams

To ensure the development of integrated and comprehensive strategies for addressing the SEP priorities, the Chair will appoint Strategic Enforcement Teams, as appropriate. Each team will identify specific strategies among the wide range of enforcement tools at the EEOC's disposal, including investigations, mediation, conciliation, litigation, directed investigations, commissioners charges, amicus curiae participation, federal sector oversight, federal sector hearings and appeals, policy development, research, staff training, communications, outreach and education, and state, local, and federal agency collaboration. Teams should also recommend methods of evaluating the effectiveness of the proposed strategies.

Strategies developed by the teams are to be considered recommendations to the Chair, Commission, General Counsel, Program Directors, Office Directors and Regional Attorneys. Nothing in this Section is meant to alter existing lines of authority.

C. District Complements to the SEP

The priorities above lay out a vision for the EEOC operating as a *whole* -- as a national law enforcement agency. The EEOC's 15 district offices and 38 field, area, and local offices are integral components to the effective implementation of the SEP at the local level. The SEP contemplates that implementation strategies, types of cases investigated, and cases filed raising SEP priority issues may vary from office to office.

Even as EEOC offices focus on national priorities, the Commission recognizes that local challenges demand attention as well and specifically provides for local priorities as an important component of the District Complement Plans. District offices are best situated to address and respond flexibly to significant issues and systemic practices in their communities. In determining the district priorities to complement the SEP, District Directors and Regional Attorneys are expected to consider demographic data, charge data, trends, and input from stakeholders.

Under the leadership of the General Counsel and the Director of the Office of Field Programs, each District Office Director and Regional Attorney, in consultation with Field, Local, and Area Office Directors in their district, shall develop a District Complement Plan to the SEP by March 29, 2013. At a minimum, these plans should: 1) identify how the office will implement the SEP priorities; 2) identify local enforcement priorities, including areas for systemic investigation and litigation and strategies for addressing them; and (3) identify strategies for collaborative legal/enforcement efforts (*Infra at* V.A.1).

In consultation with members of the Commission, the Chair will review District Complement Plans to ensure that, taken together, they effectively complement national SEP priorities. Plans submitted by March 29, 2013 shall take effect on June 1, 2013, unless expressly disapproved by the Chair.

District Complement Plans shall be evaluated and revised as the SEP is evaluated and revised, or as necessary to remain current and relevant.

D. Federal Sector Complement to the SEP

The Strategic Plan also requires that the SEP address the need for a federal sector enforcement plan.[27] After careful consideration, the Commission has determined a federal sector plan is needed.

The Office of Federal Operations and Office of Field Programs shall develop a Federal Sector Complement Plan (FCP) to the SEP by March 29, 2013. At a minimum, this plan should: 1)

identify how the federal sector will implement the SEP priorities; 2) identify specific enforcement priorities for the federal sector and strategies for addressing them; and 3) recommend strategies to improve communication, oversight, and consistency across the federal sector.

This plan should determine how enforcement priorities for the federal sector will be reflected in the federal sector case management system, required by Performance Measure 3 of the Strategic Plan.[28] In addition, the plan should address how enforcement priorities will be incorporated into the forthcoming integrated data system required by Performance Measure 5 of the Strategic Plan, which will be used to identify and address potentially discriminatory policies or practices in federal agencies.[29]

The Commission shall vote on the plan by May 31, 2013.

The FCP shall be evaluated and revised as the SEP is evaluated and revised, as the Strategic Plan performance measures that relate to the federal sector are implemented, or as necessary to remain current and relevan

E. Other Priorities

The SEP replaces all existing enforcement priorities and initiatives. Like District Complement Plans, Chair initiatives should complement, rather than replace national SEP priorities.

V. INTEGRATION

The EEOC has been afforded many internal tools and authorities – administrative enforcement (including investigations, mediation, and conciliation), litigation, amicus curiae participation, policy development, federal sector oversight and adjudication, education, outreach, and research – through which it pursues its mission to stop and remedy unlawful employment discrimination. The Commission also partners with agencies at the federal, state, and local levels to enforce workplace anti-discrimination laws. Ensuring that each of these components works together efficiently and effectively is both a challenge and an opportunity for the EEOC. As noted in the guiding principles above, the Commission is committed to an integrated approach at the agency that promotes broad sharing and consideration of ideas, strategies, and best practices and furthers collaboration and coordination throughout the agency, beginning with the following requirements.

A. Integrating Administrative Enforcement and Legal Enforcement in the Private and Public Sectors

The Commission has a statutory responsibility to investigate charges. If the Commission determines there is reasonable cause to believe discrimination has occurred, it

attempts to end the alleged unlawful practice through conciliation. If conciliation fails, the Commission has the authority to bring a civil action.

Congress placed those responsibilities upon the Commission as an integrated whole -- not on discrete units within the Commission. As the Supreme Court recognized in a case brought shortly after the Commission was granted litigation authority, Congress created an "integrated, multi-step enforcement procedure" for the agency.[30] Having a seamless, integrated effort between the staff who investigate and conciliate charges and staff who litigate cases on behalf of the Commission is paramount. The importance of such integrated, sequential work has been emphasized by the Commission[31] and by the courts.[32]

Many EEOC offices already ensure that legal staff are appropriately consulted during administrative enforcement. To establish a baseline of consistency across all offices so that the "integrated, multistep enforcement procedure" that the Supreme Court referenced becomes an enduring reality, the SEP requires:

1. Consultation between Investigative and Legal Enforcement Staff. The Commission reaffirms the importance of regular and meaningful consultation and collaboration between investigative and legal staff throughout investigations and conciliations. To ensure this occurs, Legal/Enforcement Interaction procedures for such collaboration and coordination will be part of the District Complement Plans. The Commission also expects that the Quality Control Plan, required by Performance Measure 2 of the Strategic Plan for all investigations and conciliations, will further support measures to improve coordination between investigative and legal enforcement functions. The Commission believes that an integrated approach will increase quality and timeliness in the investigation of priority issues as investigative and legal staff work collaboratively on such charges.

2. Coordination of Systemic Enforcement. The Commission reaffirms that systemic enforcement must be coordinated and adequately resourced, in addition to focusing on SEP and district priorities. Pursuit of systemic matters should utilize integrated strategies, including research, outreach, and communications to have the broadest impact.

Systemic enforcement should be coordinated across EEOC districts. Offices are expected to avoid duplication of effort and promote efficiency through collaboration, consultation and strategic partnerships.

To improve coordination, the Committee of Advisors on Systemic Enforcement (CASE) shall review the agency's systemic efforts in light of the SEP and the DCPs and shall provide recommendations for improvements to the program to the Chair, Commissioners, General Counsel and Director of the Office of Field Programs.

B. Integrating Federal Sector Activities

While the statutory obligations of the Commission in the federal sector differ from the Commission's enforcement responsibilities in the private and public sectors, the same goals for equal opportunity apply for employees, applicants, and employers in all sectors. Moreover, the same principles of targeted, integrated and consistent enforcement apply.

To promote increased coordination in the federal sector, the SEP applies to the federal sector, and requires the development of an FCP (*Supra* at IV.D).

The Commission also believes that it is important to fully evaluate the current structure of the federal sector hearings program, specifically with respect to the placement and status of Administrative Judges in the EEOC's organization, and related issues impacting the effectiveness of the program. The Commission shall vote on these recommendations (Federal Sector Organization Plan) September 30, 2013. At a minimum, those responsible for developing the recommendation to the Commission shall consult with members of the Commission, the Administrative Judges Association, EEOC Council of Locals 216, the Directors of the Office of Federal Operations and the Office of Field Programs, the Senior Executive Service Advisory Counsel and agency leadership.

C. *Integrating Education and Outreach Activities*

Congress specifically recognized the importance of education and outreach as a part of EEOC's powers when it created the Commission in 1964 and in subsequent statutory amendments.[33] The Commission has reaffirmed the importance of education and outreach in the Strategic Plan for 2012-2016.[34] The EEOC conducts hundreds of fee-based and free technical training and assistance programs each year for employers, employees, advocates, agency stakeholders, and other interested members of the public. The agency also informs the public about its activities and the requirements of laws enforced by the EEOC through its website (www.eeoc.gov) and various publications. Additionally, the Commission issues regulations and other materials to assist employers and employees in understanding their rights and responsibilities under the federal anti-discrimination laws.

Clear and accessible information and legal guidance are crucial aspects of preventing discrimination and furthering enforcement. To ensure the public has easy access to information and technical assistance from the EEOC and that the EEOC is presenting a coordinated and consistent national message, the Commission adopts the following strategies:

1. The Office of Legal Counsel, in consultation with the Office of General Counsel, Office of Field Programs, and Office of Federal Operations, shall develop a multi-year plan for reviewing and updating subregulatory guidance to support and further the implementation of the SEP priorities, consistent with Performance Measure 11 in the Strategic Plan. In consultation

with members of the Commission and agency leadership, the Chair shall review and approve the plan.

2. The Office of Communications and Legislative Affairs, Office of Field Programs, Office of Federal Operations, Office of the General Counsel, Office of Legal Counsel, and the Strategic Enforcement Teams shall collaborate to develop a multi-year nationwide communications and outreach plan to ensure consistency and coordination in message content and management of the agency's communications, program outreach, technical assistance, and legislative outreach. The plan may have both national and local components and should address the private, public, and federal sectors. In consultation with members of the Commission and agency leadership, the Chair will review and approve the plan.

3. The Office of Communications and Legislative Affairs shall assume responsibility for the management of the EEOC's public website.

D. Integrating Research, Data and Enforcement

Among the powers granted to the Commission is the power to "make such technical studies as are appropriate to effectuate the purposes and policies of this subchapter and to make the results of such studies available to the public."[35] Today, collecting and analyzing data is central to the EEOC's enforcement and educational efforts.

The Commission must be able to conduct relevant research on a timely basis for cases in litigation, and have the ability to research broad issues of employment discrimination that are not connected to pending cases. Moreover, the Commission must have the appropriate technological capacity to collect data in a useful form.

In order to enhance the integration of its research efforts, the Commission adopts the following strategy:

The Office of Research and Information Planning, the Office of Field Programs, the Office of Federal Operations, the Office of the General Counsel, the Office of Legal Counsel, the Office of Communications and Legislative Affairs, the Office of Information Technology, and the Strategic Enforcement Teams shall collaborate to develop a multi-year research plan that identifies research needs for the SEP priority areas and includes an integrated approach for working with all offices within the Commission.

The Commission shall vote on the plan by July 31, 2013.

E. Collaboration with State and Local Fair Employment Practice Agencies

State and local Fair Employment Practices Agencies (FEPAs) are critical partners in the EEOC's enforcement of equal employment laws. As noted above, FEPAs currently investigate

approximately 45,000 charges a year that are dual filed with the EEOC. Consistent with Performance Measure 7 of the 2012-2016 Strategic Plan, and to engage the state and local FEPAs in strategic enforcement plan implementation, the Commission adopts the following strategy:

The Office of Field Programs shall consult with the leadership of state and local FEPAs, members of the Commission, and agency leadership to develop recommendations concerning ways to engage FEPAs more fully in the pursuit of SEP and DCP priorities.

F. Supporting Private Enforcement of the Federal Anti-Discrimination Laws

The Commission has an obligation to ensure meaningful legal protections for individuals while also effectively using its resources to have the greatest impact. Given its limited resources, the EEOC litigates only a fraction of the charges it receives annually. In FY 2011, the Commission filed 261 lawsuits on the merits. Workers and their advocates filed 16,879 federal lawsuits under the federal civil rights statutes in calendar year 2011. Suits by individuals are critical to the enforcement of federal anti-discrimination laws. With regard to all charges, the EEOC's staff may share, to the extent permitted under the law, information to facilitate swift enforcement and early resolution of charges.

To better assist individuals whose charges are not pursued by the EEOC, district offices may provide referrals to local and state bar associations.

G. Revising National Standard Operating Procedures, Practices, and Processes

As a law enforcement agency, the EEOC's leadership and staff interact each day with thousands of individuals -- employers, lawyers, advocates, members of the general public -- throughout the Commission's headquarters and 53 field offices. That each of our customers receives the same high quality of service and professionalism in all of our offices is of vital importance to achieving our mission and promoting good government.

In keeping with Strategic Objective I of the Strategic Plan on strategic law enforcement and Strategic Objective III on quality customer service,[36] the Director of the Office of Field Programs and General Counsel shall submit recommendations for standard operating procedures at each stage of interaction with EEOC's customers, including during private and public sector enforcement and federal sector adjudicatory proceedings.

With respect to federal sector matters, the Director of the Office of Federal Operations (OFO) and the Director of the Office of Field Programs (OFP) and their designees shall develop recommendations to improve communication, oversight, and consistency across the federal sector, including consistency (a) between OFO staff, Administrative Judges, and other staff of the hearings program, and (b) across OFO appeals units, and (c) across all offices.

VI. CONTINUED DELEGATION OF AUTHORITY

With the goal of increasing the efficiency and effectiveness of the agency's enforcement programs, the Commission has delegated substantial authority to its District Directors, to its General Counsel (and through the General Counsel, to its Regional Attorneys), and to its Office of Federal Operations. Their assessment of how the delegated authority has been exercised and whether the Commission's stated goals have been better achieved as a result of such delegation shall be included in the reports from the Directors of the Office of Field Programs and the Office of Federal Operations, and the General Counsel, described in Part VII below.

In its 2012-2016 Strategic Plan, the Commission committed to improving the timeliness and quality of its enforcement activities in all sectors. Consistent with this goal, staff who investigate, litigate and adjudicate claims have an obligation to act expeditiously in all enforcement matters. The Commission has a similar obligation to expeditiously resolve the matters within its decision-making authority as well.

A. Investigations and Conciliations

The delegation of authority from the Commission to its District Directors is codified in regulations at 29 C.F.R. § 1601. Under these regulations, the Commission delegates authority to its District Directors to negotiate settlements and conciliation agreements, issue no cause findings, and make reasonable cause determinations in most cases that come before the Commission. The Commission reaffirms this delegation of authority.

B. Legal Enforcement

1. The delegation of litigation authority to the General Counsel was established in the 1996 National Enforcement Plan. The Commission delegates to the General Counsel the decision to commence or intervene in litigation in all cases except the following:

    a. Cases involving a major expenditure of resources, e.g., cases involving extensive discovery or numerous expert witnesses and many systemic, pattern-or-practice or Commissioner's charge cases;

    b. Cases that present issues in a developing area of law where the Commission has not adopted a position through regulation, policy guidance, Commission decision, or compliance manuals;

    c. Cases that the General Counsel reasonably believes to be appropriate for submission for Commission consideration because of their likelihood for public controversy or otherwise (e.g., recently modified or adopted Commission policy);

d. All recommendations in favor of Commission participation as *amicus curiae*, which shall continue to be submitted to the Commission for review and approval.

A minimum of one litigation recommendation from each District Office shall be presented for Commission consideration each fiscal year, including litigation recommendations based on the above criteria.

2. The Commission ratifies its decision to give the General Counsel the authority to redelegate to regional attorneys the authority to commence litigation. The Commission encourages such redelegation of litigation authority as appropriate.

3. The Commission restates and ratifies its April 19, 1995 delegation to the General Counsel of the authority to refer public sector Title VII and ADA cases which fail conciliation to the Department of Justice, as well as the authority to redelegate this authority to Regional Attorneys. The Commission further authorizes delegation of authority to the General Counsel to refer public sector GINA cases which fail conciliation to the Department of Justice, as well as the authority to redelegate this authority to Regional Attorneys.

C. Federal Sector

The Commission regulations at 29 C.F.R. § 1614 grant certain authority in the federal sector to the EEOC's staff. These regulations authorize Administrative Judges to hold hearings on federal sector complaints[37] and authorize the Office of Federal Operations to issue decisions on appeals "on behalf of the Commission."[38] The Commission reaffirms this authority.

VII. EVALUATION

The Commission believes this is an opportune moment for transformative change. But such change will require rigorous and consistent implementation of the strategic enforcement and integration recommendations of the SEP.

A. Commission Oversight on Implementation of SEP

The Commission has the responsibility to carry out its statutory mandate in a manner that provides consistent and quality service and that maximizes the use of agency resources to stop and remedy unlawful employment discrimination. The SEP puts into place systems for regular communication with the Chair and members of the Commission to fulfill their oversight responsibilities.

1. Quarterly Commission Meetings on SEP Enforcement

Beginning in the second quarter of FY 2013, the Chair will convene quarterly meetings on implementation of the SEP. As noted in Part VI above, all office directors must include an assessment of the delegated authority in their quarterly report.

The Director of the Office of Field Programs shall report on significant decisions by administrative judges in the federal sector and the Director of the Office of Federal Operations shall report on appellate decisions by OFO attorneys on priority areas under the SEP and Federal Sector Complement Plan, and on other significant issues. A written report by each Director to the Commission shall summarize significant decisions by each priority area.

The Director of the Office of Field Programs shall report on investigations, conciliations, and pre-determination settlements on SEP and district priority areas and other significant matters, such as the effectiveness of legal/enforcement interaction strategies. A written report to the Commission shall summarize these investigations, conciliations and settlements by each priority area.

The General Counsel will report to the Commission on cases and settlements within SEP and district priority areas, other significant litigation, and other significant matters, such as the effectiveness of legal/enforcement interaction strategies. A written report to the Commission shall summarize these cases and settlements by each priority area and include non-priority litigation. The report shall also include a discussion of significant Supreme Court decisions that may affect the work of the Commission.

2. Annual Reporting on SEP Implementation

As a federal agency, the Commission is required to issue a Performance and Accountability Report (PAR) after the end of each fiscal year. The report presents the agency's most significant achievements in enforcement, communications, outreach, research, policy and technology efforts and highlights progress made toward achieving the Performance Measures of the Strategic Plan. In keeping with the principle of accountability, the Commission shall hold a public meeting within 45 days of the release of the PAR on implementation of the Strategic Plan, which will include a discussion of the Strategic Enforcement Plan, to evaluate progress and consider recommendations for improvement.

B. Timeline and Reporting Requirements

Required by SEP	**Key Deadlines**
*Quality Control Plan**	*Submitted to the Commission by March 29, 2013.* *Voted on by the Commission by April 30, 2013.*

Federal Sector Complement Plan	Submitted to the Commission by March 29, 2013. Voted on by the Commission by May 31, 2013.
District Complement Plans (15)	Submitted to the Chair by March 29, 2013. Approved by the Chair by May 31, 2013. *If not disapproved by this date, a plan becomes effective.*
Research and Data Plan	Submitted to the Commission by June 28, 2013. Voted on by the Commission by July 31, 2013.
Federal Sector Organization Plan	Submitted to the Commission by August 30, 2013. Voted on by the Commission by September 30, 2013.

*The Quality Control Plan is a requirement of the Strategic Plan.

EFFECTIVE DATE

The SEP is effective the day following approval by the Commission and will remain in effect until superseded, modified or withdrawn by vote of a majority of members of the Commission.[39]

The Commission approved the SEP on December 17, 2012 by a vote of 3-1.

ACKNOWLEDGEMENTS

The Commission would like to thank all those who participated in the development of the SEP, beginning with the leaders and members of the SEP Work Group and all those who submitted public comments.

APPENDIX A

EEOC STRATEGIC ENFORCEMENT PLAN WORK GROUP

Leadership

Chair Jacqueline A. Berrien
General Counsel David Lopez
Memphis District Director Katharine Kores

Members

Lynette Barnes
Regional Attorney, Charlotte District Office

Dexter Brooks
Director of Federal Sector Programs, Office of Federal Operations

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Ex-Officio Members

Claudia Withers
Chief Operating Officer and Performance Improvement Officer

Deidre Flippen
Director, Office of Research, Information and Planning and Deputy, Performance Improvement Officer

Key Staff Support

Leslie Annexstein, *Senior Attorney Advisor, Office of General Counsel*
Joi Chaney, *Special Assistant, Office of the Chair*
Patrick Patterson, *Senior Counsel, Office of the Chair*

APPENDIX B

Press Release 6-5-12

EEOC Seeks Public Input in Developing Strategic Enforcement Plan

In February 2012, the U.S. Equal Employment Opportunity Commission (EEOC) approved a Strategic Plan for Fiscal Years 2012 – 2016. The Strategic Plan establishes a framework for achieving the EEOC's mission to stop and remedy unlawful employment discrimination by focusing on strategic law enforcement, education and outreach, and efficiently serving the public. The first performance measure of the plan requires the Commission to approve a Strategic Enforcement Plan (SEP). The Commission is now developing the SEP and would like input from the public. We encourage participation from individuals, employers, advocacy groups, agency stakeholders and other interested parties.

While no specific format is required, we are most interested in what the EEOC's national priorities should be for the next three years to have the greatest impact in combating discrimination in the workplace; and recommendations for improving enforcement, outreach and prevention, and customer service. Please also include a contact email and/or mailing address.

Suggestions must be submitted by 5:00 pm EDT on June 19, 2012 to strategic.plan@eeoc.gov or received by mail at ***Executive Officer, Office of the Executive Secretariat, U.S. Equal Employment Opportunity Commission, 131 M Street, NE, Washington, DC 20507***.

All submissions will be reviewed for possible inclusion in a future Commission meeting in Washington, D.C. on the development of the SEP. If selected, the author or a representative would be invited to testify before the Commission in person, via phone, or via live video.

For general inquiries about the 2012 Strategic Plan or the development of the SEP, please email strategic.plan@eeoc.gov or call (202) 663-4070/(TTY: 202-663-4494). For press inquiries, please contact the Office of Communications and Legislative Affairs at (202) 663-4191 or newsroom@eeoc.gov. If you are a private citizen seeking EEOC information, please see the "Contact Us" page of our website at www.eeoc.gov/contact or call 1-800-669-4000.

The EEOC enforces federal laws prohibiting employment discrimination. Further information about the EEOC is available on its web site at www.eeoc.gov.

APPENDIX C

Press Release 7-18-12

EEOC Holds Unprecedented Public Meeting to Hear Views on Strategic Enforcement Plan

Five Roundtable Discussions With 32 People From Many Different Viewpoints Presented

WASHINGTON—The U.S. Equal Employment Opportunity Commission today held an unprecedented public meeting at which academics, representatives of the civil rights, business and federal sector communities, as well as former EEOC leaders and current employees presented their views about the agency's proposed Strategic Enforcement Plan (SEP).

"We welcome the views of interested members of the public as we consider how to better leverage the EEOC's resources to improve enforcement, outreach and customer service," said EEOC Chair Jacqueline Berrien. "An open strategic planning process ensures that the Commission is prepared for 21st century challenges and also honors the spirit of open government."

The Strategic Enforcement Plan grew out of the agency's Strategic Plan (Plan) adopted at a Commission meeting on February 22, 2012, governing fiscal years 2012-2016. That Plan set forth three underlying values that will guide the work of the EEOC: commitment to justice, accountability, and integrity; and three strategic objectives: strategic law enforcement, education and outreach, and efficiently serving the public. One requirement of the Strategic Plan was to develop the SEP and have it in place by the start of fiscal year 2013 — October 1, 2012.

While all cabinet level departments and agencies are required to develop Strategic Plans with enforcement components, it is highly unusual that plans are developed with so much input from the public. The EEOC sought views about what its national priorities should be for the next three years to have the greatest impact in combating discrimination in the workplace; and also recommendations for improving enforcement, outreach, and customer service. Over 80 organizations and individuals responded to the request for input, with their responses totaling more than 450 pages.

At the meeting, participants noted the importance of the EEOC continuing to use systemic investigations and litigation to target specific issues and practices where government enforcement will have the greatest impact. Several advocacy groups urged the Commission to focus its enforcement efforts on hiring discrimination and retaliation which affect so many workers, as well as focusing on pay, pregnancy, and caregiver discrimination, and developing issues under the Americans with Disabilities Act Amendments Act. Both employee and employer representatives highlighted the need for consistent practices and procedures across

field offices. Participants from many different backgrounds requested the Commission devote more resources to enhance efficient charge processing, and urged new outreach and education initiatives, including greater use of social media.

Participants in the roundtable focusing on the EEOC's federal sector program included representatives from other agencies, unions representing federal employees, and federal employee affinity groups. They noted, among other issues, the need to clarify the role of agency counsel in the investigative stage of proceedings, the need for increased oversight of federal agency enforcement, the need for training for managers on supervision as well as EEO, and for employees on navigating the complaints process.

The Commission will consider all of the input—both written and from the meeting—in crafting its SEP. That document will be posted on the Commission's website when finalized. Additionally, the comments that were submitted will be available for onsite review in the EEOC's library.

The EEOC will hold open the July 18, 2012, Commission meeting record for 15 days, and invites audience members, as well as other members of the public, to submit written comments on any issues or matters discussed at the meeting. Public comments may be mailed to Commission Meeting, EEOC Executive Officer, 131 M Street, N.W., Washington, D.C. 20507, or e-mailed to Commissionmeetingcomments@eeoc.gov.

The EEOC enforces federal laws prohibiting employment discrimination. Further information about the EEOC is available on its web site at www.eeoc.gov.

APPENDIX D

Press Release 9-4-12

EEOC Seeks Input on Strategic Enforcement Plan

The U.S. Equal Employment Opportunity Commission (EEOC) has released for public comment a draft of its Strategic Enforcement Plan (SEP). Comments must be submitted by 5:00 pm ET on September 18, 2012 at strategic.plan@eeoc.gov or received by mail at Executive Officer, Office of the Executive Secretariat, U.S. Equal Employment Opportunity Commission, 131 M Street, NE, Washington, D.C. 20507. The Commission plans to vote on the draft plan at the end of this fiscal year.

The first requirement of the EEOC's Strategic Plan for Fiscal Years 2012 - 2016 was to develop the SEP by the start of fiscal year 2013 -- October 1, 2012. The SEP will establish the Commission's priorities and integrate all components of EEOC's private, public and federal sector enforcement.

The process for developing the SEP has been highly inclusive and collaborative. The plan was developed by the Commission with input from a Work Group consisting of district and headquarters staff, led by Chair Jacqueline Berrien, General Counsel P. David Lopez, and Memphis District Director Katharine Kores. On June 5, the Commission solicited written input on the SEP's development. In response, comments were submitted by more than 100 individuals, organizations, and coalitions - internal and external to the agency - from across the nation. On July 18, the Commission held a public meeting to receive input from more than 30 stakeholders on the issues they believed should be addressed in the plan.

The Commission is continuing this inclusive effort by soliciting comments from the general public on a draft of the SEP. Your input is vital to their efforts to ensure accountability to our nation's workers, employers, and taxpayers in general. All comments will be reviewed and considered as the Commission continues to edit the plan.

The EEOC has served as the nation's lead enforcer of employment antidiscrimination laws and chief promoter of equal employment opportunity (EEO) since 1965. The agency is responsible for enforcing Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967, the Equal Pay Act of 1963, Section 501 of the Rehabilitation Act of 1973, Titles I and V of the Americans with Disabilities Act of 1990, and Title II of the Genetic Nondiscrimination Act of 2008. Together, these laws protect private, public, and federal workers from employment discrimination on the basis of race, color, religion, sex, national origin, age, disability, or genetic information. They also make it illegal to retaliate against a person for filing a charge of, or participating in an investigation or lawsuit regarding, employment discrimination.

For general inquiries about the plan, please email strategic.plan@eeoc.gov or call (202) 663-4070/(TTY: 202-663-4494). For press inquiries, please contact the Office of Communications and Legislative Affairs at (202) 663-4191 or newsroom@eeoc.gov. If you are seeking EEOC information, please call (202) 663-4900 or e-mail info@eeoc.gov. Further information about the EEOC is available on its web site at www.eeoc.gov.

ENDNOTES

[1] *See* U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, *Strategic Plan for Fiscal Years 2012-2016,* http://www.eeoc.gov/eeoc/plan/strategic_plan_12to16.cfm.

[2] 42 U.S.C. § 2000e-5(a).

[3] "Charges" are filed in private and public sector enforcement proceedings, *see* 42 U.S.C. §2000e-5(b), while "complaints" are filed with federal agencies in federal sector enforcement proceedings. *See* 42 U.S.C. §2000e-16(c).

[4] The EEOC received 99,412 charges in FY 2012 and 81,293 charges in FY 2003. *See* U.S. Equal Employment Opportunity Commission Charge Statistics, http://www.eeoc.gov/eeoc/statistics/enforcement/charges.cfm.

[5] *See* U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, *FY 2011 Annual Report on the Federal Work Force Part I EEO Complaints Processing,* http://www.eeoc.gov/federal/reports/index.cfm.

[6] This represents a decrease of 4.7 percent from 8,113 requests for hearings in FY 2011 and a decrease of 16 percent from 5,175 appeals in FY 2011.

[7] *Strategic Plan*, *supra* note 1, at 11.

[8] *Id.* at 16-18.

[9] *See* David Weil, *Improving Workplace Conditions Through Strategic Enforcement, A Report to the Wage and Hour Division of the Department of Labor* (2010).

[10] The Commission has a statutory obligation to accept charges, serve notice on the respondent, and to "make an investigation." 42 U.S.C. § 2000e-5(b). The statute does not define the elements or scope of that investigation, nor condition an individual's right to sue on the agency taking any action. *Federal Express, Corp. v. Holowecki,* 552 U.S. 389 (2008). Determining the appropriate extent of an investigation of a particular charge lies within the discretion of the agency, guided by the purposes of the anti-discrimination statutes.

[11] *See* U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, *Priority Charge Handling Procedures,* June 1995, p. 1 (hereinafter "PCHP").

[12] "***Category A: Enforcement Plan/Potential Cause Charges.*** The first category includes (1) charges that fall within the national or local enforcement plan and (2) other charges where further investigation will probably result in a cause finding. Cases should also be classified as

Category A if irreparable harm will result unless processing is expedited…. Within resource constraints, enforcement plan cases are the highest priority." *Id.* at 4.

[13] *See* FEDERAL CONSULTING GROUP, *U.S. Equal Employment Opportunity Commission Evaluation of the Priority Charge Handling Procedures Report*, December 2010.

[14] *Strategic Plan*, *supra* note 1, at 11.

[15] *See* U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, *National Enforcement Plan* (1996), http://www.eeoc.gov/eeoc/plan/nep.cfm.

[16] In FY 2012, harassment claims were raised in 29 percent of charges filed in the private and public sectors. *See* U.S. Equal Employment Opportunity Commission Harassment Charge Statistics, http://www.eeoc.gov/eeoc/statistics/enforcement/harassment.cfm; http://www.eeoc.gov/eeoc/statistics/enforcement/sexual_harassment.cfm.

In the federal sector, 38 percent of all complaints filed raised harassment in FY 2011. *See* U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, *FY 2011 Annual Report on the Federal Work Force Part I EEO Complaints Processing*, http://www.eeoc.gov/federal/reports/index.cfm.

[17] In FY 2012, non-sexual harassment claims were raised in 21 percent of charges filed in the private and public sectors. *See* U.S. Equal Employment Opportunity Commission Harassment Charge Statistics, http://www.eeoc.gov/eeoc/statistics/enforcement/harassment.cfm. Also, 8 percent of charge filings contained sexual harassment claims. *Id.* at http://www.eeoc.gov/eeoc/statistics/enforcement/sexual_harassment.cfm.

[18] In the federal sector, harassment is the most frequent issue raised by complainants (35 percent of complaints brought against federal agencies raised non-sexual harassment claims, plus another 3 percent raised sexual harassment claims). *See* U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, *FY 2011 Annual Report on the Federal Work Force Part I EEO Complaints Processing*, http://www.eeoc.gov/federal/reports/index.cfm.

[19] In the last four years, one third of the systemic discrimination suits filed by the agency challenged discriminatory harassment in the workplace.

[20] *Strategic Plan*, *supra* note 1, at 12.

[21] As required by the Strategic Plan, more detailed internal guidance will be developed and coordinated by the Chair to insure that the SEP is fully implemented.

[22] *Strategic Plan, supra* note 11, at 4.

[23] The Commission defines systemic cases as pattern or practice, policy, and/or class cases where the alleged discrimination has a broad impact on an industry, occupation, business, or geographic area. While systemic cases typically involve a class of individuals, they may also originate from a single charging party alleging that a policy is discriminatory, for example. In the current Strategic Plan, the Commission established a performance measure requiring that systemic cases figure more prominently in the agency's litigation docket by setting a target percentage rather than a fixed number of cases filed each year. *See Strategic Plan, supra* note 19.

[24] An administrative settlement is a signed agreement to which the EEOC and the charging party or the respondent are parties, negotiated before a determination has been made on the merits of the case.

[25] *See* U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, *Fiscal Year 2012 Performance and Accountability Report*, http://www.eeoc.gov/eeoc/plan/2011par.cfm.

[26] *Id*. at 26.

[27] *Strategic Plan, supra* note 1, at 16.

[28] *Id.* at 17-18.

[29] *Id.* at 19-20.

[30] *Occidental Life Ins. Co. v. EEOC*, 432 U.S. 355, 359-60 (1977) ("In the Equal Employment Opportunity Act of 1972, Congress established an *integrated, multistep enforcement procedure* culminating in the EEOC's authority to bring a civil action in a federal court. That procedure begins when a charge is filed with the EEOC . . . The EEOC is then required to investigate the charge and determine whether there is reasonable cause to believe that it is true . . . When 'the Commission (is) unable to secure . . . a conciliation agreement acceptable to the Commission, the Commission may bring a civil action….'"). (footnotes omitted; emphasis added).

[31] In the 1996 NEP, the Commission required a "coordinated enforcement strategy, which the Comprehensive Enforcement Program (CEP) of 2000 reaffirmed by "link[ing] and integrat[ing] every phase of the Commission's work in the private sector program, from outreach to taking and developing charges of discrimination, investigation, and final resolution."

[32] *See also Hickey-Mitchell Co.*, 507 F.2d 944, 948 (8th Cir. 1974) ("'The Commission's '"power of suit and administrative process [are not] unrelated activities, [but] sequential steps in a

unified scheme for securing compliance with Title VII."') (alterations in original), *quoting EEOC v. E.I. DuPont de Nemours & Co.*, 373 F. Supp. 1321, 1333 (D. Del. 1974)).

[33] 42 U.S.C. §§2000e-4(g)(3), (h), (j).

[34] *See Strategic Plan, supra* note 1, at 23-27.

[35] 42 U.S.C. § 2000e-4(g)(5).

[36] The Commission anticipates that the Quality Control Plans for private sector investigations and for federal sector hearings and appeals as part of the implementation of the Strategic Plan will provide focused attention on consistency and quality issues.

[37] 29 C.F.R. § 1614.109 (2012).

[38] 29 C.F.R. § 1614.405 (2012).

[39] *See Strategic Plan, supra* note 1 at 15.