

**STATEMENT OF
CHAI FELDBLUM, COMMISSIONER
U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
BEFORE THE
COMMITTEE ON HOMELAND SECURITY
AND GOVERNMENTAL AFFAIRS
U.S. SENATE**

FEBRUARY 16, 2011

Good afternoon, Mr. Chairman and Members of the Committee. My name is Chai Feldblum and I am one of the five Commissioners who make up the bipartisan U.S. Equal Employment Opportunity Commission (“EEOC” or “Commission”). I appreciate the opportunity to appear before you today on behalf of the EEOC and, in particular, I appreciate Chair Jacqueline Berrien asking me to represent the Commission at this hearing.

It is a privilege to speak on the important topic of improving the employment of people with disabilities. This is an issue to which I have devoted a significant portion of my professional legal career. In addition, as a person with anxiety disorder that is controlled through medication, I have a keen interest in ensuring that all persons are considered on their merits and not judged based on assumptions or stereotypes.

The Committee has asked the EEOC to provide information in the following areas: (1) the Leadership for the Employment of Americans with Disabilities (LEAD Initiative); (2) how the Commission is working with other agencies to meet the goals of the recent Executive Order on increasing the federal employment of people with

disabilities; (3) barriers to improving employment outcomes for people with disabilities; and (4) recommendations to improve the hiring and accommodation of people with disabilities in the federal government.

As you know, on July 26, 2010, the 20th anniversary of the Americans with Disabilities Act of 1990, President Obama issued Executive Order 13548, “Increasing Federal Employment of Individuals With Disabilities.” The President defined the issue as follows: “Individuals with disabilities currently represent just over 5 percent of the nearly 2.5 million people in the federal workforce, and individuals with targeted disabilities currently represent less than 1 percent of that workforce.” And the President issued a challenge, noting that “As the Nation's largest employer, the Federal Government must become a model for the employment of individuals with disabilities.”

As the agency charged with enforcement of the nation’s civil rights employment statutes, including Sections 501 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act, the EEOC has a vital role to play in ensuring that the federal government truly becomes a model employer of individuals with disabilities. At the same time, Federal agencies have a vital role and obligation in ensuring that they are active partners in this effort through our mutual enforcement responsibilities under the civil rights laws.

The EEOC is responsible for administrative oversight of the internal equal employment opportunity (EEO) programs within federal agencies, including the agencies’ EEO complaint processes and affirmative employment programs. The EEOC also provides an opportunity for federal EEO complainants to request a hearing before an

EEOC administrative judge. Finally, the Commission decides appeals from final agency actions on EEO complaints.

The EEOC, through the promulgation of regulations and guidance, including EEOC's Management Directive 715, has provided a roadmap for federal agencies toward becoming model EEO employers under the Civil Rights Act of 1964 and the Rehabilitation Act of 1973. Under Management Directive 715, federal agencies are required to engage in an ongoing self-assessment to identify any potential barriers to EEO within their workforces. If barriers are identified, agencies must set forth and adhere to an action plan to eliminate any barriers to equal opportunity. Agencies must report the results of their assessment annually to the EEOC, including workforce data on issues such as recruitment, hiring, career development and attrition.

The Office of Federal Operations (OFO) at the EEOC includes a talented and committed group of staff who analyze and review these annual reports. Expert staff conduct multi-year trend analyses of these reports to assess how well agencies are progressing. The OFO staff then provide in-depth feedback to the agencies on their EEO effort, both in written form and often with in-person technical assistance.

As you know, people's negative reactions to a wide range of disabilities may serve to unlawfully preclude individuals from enjoying equality of opportunity in employment. Any federal employee or applicant for federal employment who is subjected to such unlawful discrimination can avail themselves of the federal sector EEO complaint process, for which the EEOC has oversight.

However, in assessing how well federal agencies are doing with regard to achieving model EEO status under the Rehabilitation Act, the EEOC has focused on particularly severe disabilities, which we call “targeted” disabilities. People with targeted disabilities are a subset of people with disabilities. The definition of "targeted disabilities" was established in December 1979, and consists of the following impairments: deafness; blindness; missing extremities; partial paralysis; complete paralysis; epilepsy; severe intellectual disabilities, psychiatric disabilities; and dwarfism. The criteria used to select these disabilities included the severity of the impairments, the feasibility of recruitment of people with these disabilities, and the availability of comparative workforce data. Because of unreliable data on the total population of people with disabilities, these disabilities were selected to serve as the initial barometer to assess progress in the federal sector.

The EEOC publishes a variety of reports assessing how well federal agencies are progressing in their EEO and affirmative employment efforts. One such report is the Annual Report on the Federal Work Force. This report shows data on the rate of employment of people with targeted disabilities within the federal government. Our most recent report reveals that the trend of the employment of individuals with targeted disabilities over the past ten years has not been positive. From fiscal year (FY) 2000 to FY 2009, the total workforce of the federal government increased by 368,634 employees, for a net increase of 15.1%. In contrast, the number of federal employees with targeted disabilities **decreased** from 27,231 in FY 2000 to 24,663 in FY 2009, for a net decrease of 9.43%.

The LEAD Initiative

In 2006, under the leadership of then EEOC Commissioner, and now OPM Deputy Director, Christine Griffin, the EEOC launched the Leadership for the Employment of Americans with Disabilities (LEAD Initiative) to spur improvement in the hiring of people with disabilities. Under the auspices of that Initiative, EEOC set a goal for all federal agencies to have individuals with targeted disabilities make up two percent of their workforces. Unfortunately, as of 2009, no large federal agency has met that goal.¹

The LEAD Initiative is one of the EEOC's efforts to address the declining number of employees with targeted disabilities in the federal workforce through a national outreach and education campaign. This Initiative seeks to:

- reverse the trend of decreasing participation in federal employment by people with targeted disabilities;
- increase the awareness of hiring officials about the declining numbers of people with targeted disabilities in federal employment;
- educate federal hiring officials about how to use special hiring authorities to bring people with disabilities on board, particularly those with targeted disabilities;

¹ In 2009, eleven agencies reached that goal, although many of these agencies are relatively small and a number of them deal with disability issues. Those eleven agencies are the Army & Air Force Exchange Service, the Architectural & Transportation Barrier Compliance Board, the Committee for Purchase from People Blind or Severely Disabled, the Equal Employment Opportunity Commission, the Federal Mediation and Conciliation Service, the Inter-American Foundation, the Marine Mammal Commission, the National Council on Disability, the Office of Navajo & Hopi Indian Relocation, the Occupational Safety and Health Review Commission, and the Trade and Development Agency.

- educate applicants with eligible disabilities about how to apply for Federal jobs using the special hiring authorities available, such as Schedule A; and
- supply prospective employees and employers with information and resources on the recruitment of hiring of people with disabilities, and the provision of reasonable accommodations to such individuals.

Since its launch, the LEAD Initiative has engaged in the following activities:

- The EEOC hosts a LEAD webpage with a multitude of resource information (see www.eeoc.gov/eeoc/initiatives/lead/index.cfm).
- With the assistance of the Department of Labor's (DOL) Office of Disability Employment Policy (ODEP), the EEOC has developed and published several guides designed to increase the use of the Schedule A hiring authority, which allows federal agencies to streamline the hiring of individuals with severe disabilities (see www.eeoc.gov/eeoc/initiatives/lead/abcs_of_schedule_a.cfm).
- In partnership with the Department of Defense (DOD) and the Census Bureau, the EEOC developed, piloted, and launched the first comprehensive training course for individuals who serve as disability program managers in the federal workforce in August, 2009. This training was and continues to be desperately needed, as too often agency personnel are given this designation without being fully versed on how to integrate a

- In conjunction with OPM and ODEP, the EEOC participated in a Federal government hiring event this past April limited solely to jobseekers with disabilities. Unlike a traditional hiring fair, representatives from many agencies reviewed resumes prior to the event and invited prospective candidates for job interviews.
- Most notably, the EEOC has reached thousands of federal officials through outreach events and conferences, educating them on the government's obligations to hire and advance individuals with disabilities, as required by the Rehabilitation Act of 1973, as well as in EEOC Management Directive 715.

The goal of the LEAD Initiative is to offer concrete solutions to increase the employment of people with disabilities, including people with targeted disabilities, in the federal sector. Information about the LEAD initiative is available on the EEOC website at www.eeoc.gov/eeoc/initiatives/lead/index.cfm, or by simply searching for the term LEAD from our home page at www.eeoc.gov.

Meeting the Goals of Executive Order 13548

Given the EEOC's long-standing work in this area, we have been delighted with the additional visibility and energy added to this effort by the President's Executive Order 13548, issued in July 2010.

The memo issued by OPM last November to implement the Executive Order, *Model Strategies for Recruitment and Hiring of People with Disabilities as Required Under Executive Order 13548* (available at <http://www.chcoc.gov/transmittals/TransmittalDetails.aspx?TransmittalID=3228>), is an excellent guide for agencies to achieve the requirement of the Executive Order. We were pleased to be consulted by Deputy Director Griffin in the development of that memo and to offer our contributions and insights.

A significant part of our contribution comes from the understanding we have developed regarding the reasons for the under-employment of individuals with targeted disabilities. Staff in our Office of Federal Operations have examined this issue with the goal of identifying solutions and successful practices. A strategic, cross-functional team reviewed data and engaged several interested federal sector stakeholders in discussions on key issues and produced recommendations to improve employment opportunities for individuals with targeted disabilities. The product of that team's efforts is a 2008 report containing extensive analysis of the issue along with recommendations on how agencies can improve the percentage of people with targeted disabilities in the federal workforce. The report is posted on our web site (www.eeoc.gov/federal/reports/pwtd.html) and can be found by searching for "Improving the Participation Rate of People with Targeted Disabilities."

In addition, as directed by Executive Order 13548, the EEOC and OPM have joined forces to launch a series of training sessions to help agencies comply with the

Executive Order. DOD, DOL, the Department of Education, and the White House have all participated in these sessions. Two training sessions have been held thus far, reaching more than 800 federal officials.² Several more are planned for the coming months.

Management Directive 715

A key tool in helping to bring about the goals of the President's Executive Order will be ongoing and vigorous use of EEOC's Management Directive 715 (MD-715) that I mentioned earlier in my testimony.

MD-715 directs agencies to establish goals in the hiring of persons with targeted disabilities, and requires that agencies report to the EEOC on their efforts and progress to remove barriers to the employment of individuals with targeted disabilities. As I noted, our staff in the Office of Federal Operations reviews MD-715 reports annually and conducts multi-year trend analyses, comparing the data submitted with each annual report to earlier data submitted by the federal agencies. This is done so that we can identify those areas where agencies need to direct their efforts to improve and so that we can assess the effectiveness of those efforts.

In conducting our analytical review, we rely not just on the data provided by agencies but on other data sources as well, including workforce data gathered by the Office of Personnel Management and the Census Bureau. We also engage stakeholders to get their assessment of how well an agency is progressing in its effort to become a model employer of individuals with targeted disabilities. Periodically, we provide on-site

² One was held on October 20, 2010 at the Office of Personnel Management; the other occurred on January 20, 2011 at the Department of Agriculture.

technical assistance to agencies and interview employees to get their perspective. On an annual basis, we use this information to provide extensive feedback to agencies with the goal of moving them toward model employer status.

All of these efforts are part of the EEOC's ongoing mission to promote workplace policies and practices that foster an inclusive work culture for all, including individuals with disabilities.

Barriers to the Employment of Persons with Disabilities

In our 2008 report, we identified forth a number of barriers to the employment of people with targeted disabilities in the federal workforce. As we noted:

OFO interviewed several groups about the declining number of federal employees with targeted disabilities. In particular, potential impediments to and best practices for improving the hiring and advancement of PWTD in the federal work force were discussed. Reasons for the decline included: (1) the increased use of contractors for positions at lower grade levels, which may adversely affect PWTD because those positions are eliminated; (2) the reluctance of managers to use special hiring authorities, such as Schedule A; and (3) the misperception of managers that people with targeted disabilities are not likely to be the best candidates, or to be qualified to successfully perform professional jobs within their agency. As well, because the selection process often relies heavily on the interview, a manager's bias may affect how s/he judges the qualifications and/or interview skills of a PWTD. Further, PWTD may be discouraged from applying for federal jobs where the vacancy announcements are hard to understand, the online application process is unnecessarily difficult, or the position requires a security clearance (PWTD may not be eligible for a security clearance if they need a job coach or personal assistant).³

At its core, a significant obstacle to overcoming discrimination -- and particularly

³Improving the Participation Rate of People with Targeted Disabilities, *supra*, at p. 23.

discrimination against individuals with disabilities -- are the false assumptions that supervisors have regarding the capacity of individuals with disabilities to perform a range of jobs. In addition, the lack of awareness by supervisors of how reasonable accommodations can enable people with disabilities to become qualified for a job hinders the ability of many people with disabilities to demonstrate their capacities.

The EEOC has the ability to monitor the hiring decisions of agencies and to make such agencies report their employment statistics on an annual basis. But it will require ongoing education, training, and accountability to ensure that supervisors actually change their hiring and retention practices.

The passage of the ADA Amendments Act of 2008 (ADAAA), which restored the definition of “disability” under both the ADA and the Rehabilitation Act, and the EEOC’s impending issuance of final regulations to implement that law, present the Commission with a perfect opportunity to remind and re-educate federal agencies about their non-discrimination obligations, as well as the benefits of creating a more inclusive environment for individuals with disabilities.

Although individuals with targeted disabilities were clearly covered under the ADA and section 501 of the Rehabilitation Act prior to the passage of the ADA Amendments Act, we hope that the current law will prompt agencies to re-evaluate their policies for providing reasonable accommodations in order to respond to what are likely to be an increased number of accommodation requests, and to examine policies that may – intentionally or unintentionally – exclude qualified individuals with disabilities from the federal workforce. Furthermore, the EEOC’s emphasis on barrier removal has taken

on added significance with the acknowledgement that more workers with disabilities are and will be present in the federal workforce.

The EEOC conducts an extensive amount of training, through classes, conferences and seminars. In delivering relevant information and solutions to federal agencies, we expect agencies to use the information to create more effective EEO programs. In turn, agency officials must be committed to addressing problems. Management must learn to treat individuals with disabilities appropriately, and to be held accountable when they do not. Individuals with disabilities represent a tremendous untapped pool of talent in our country who are capable of successfully competing in the labor market, and who wish to be employed and to make a contribution to their families, communities, and nation.

Recommendations

In our report, “Improving the Participation Rate of People with Targeted Disabilities,” we provide recommendations for federal agencies to help them increase hiring and the provision of reasonable accommodations to persons with targeted disabilities. Some of the recommendations include:

- Demonstrate top-level commitment for employing persons with targeted disabilities;
- Provide managers with training on special hiring authorities for hiring people with disabilities;

- Provide managers with training on reasonable accommodation;
- Enhance clout of disability programs within federal agencies;
- Ensure accountability;
- Recognize success.

Our report contains many other recommendations that agencies can use to improve the federal employment outlook for persons with disabilities.

In summary, the EEOC is making every effort to address the under-employment of individuals with disabilities, including targeted disabilities, in our country, by requiring the nation's largest employer, our federal government, to be a model employer for this community. We use all of the tools available to us, from the adjudication of cases, to education, outreach, and training, to the monitoring of reports and publishing an annual report on the federal workforce. Our decisions and our report are on the EEOC website, with information that reflects the performance—good or bad—for every federal agency.

The EEOC remains committed to supporting and enforcing the ADA, the Rehabilitation Act, and the new Executive Order 13548. We remain committed to eliminating the barriers to the employment of persons who can provide their great talent to the federal workforce: individuals with disabilities.

Thank you. I will be glad to answer any questions you may have.