

**STATEMENT OF
CARLTON M. HADDEN, DIRECTOR
OFFICE OF FEDERAL OPERATIONS
U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
BEFORE THE
SUBCOMMITTEE ON CIVIL SERVICE
AND AGENCY ORGANIZATION
COMMITTEE ON GOVERNMENT REFORM
U.S. HOUSE OF REPRESENTATIVES**

October 15, 2003

Good morning Madame Chairman and Members of the Subcommittee. I appreciate the opportunity to appear before you today on behalf of Cari M. Dominguez, Chair of the U.S. Equal Employment Opportunity Commission (EEOC). I am Carlton M. Hadden, Director of EEOC's Office of Federal Operations.

The United States government employs over two million women and men across the country and around the world. The ability of our government to meet the complex needs of our nation and the American people rests squarely on these dedicated and hard-working individuals.

Now more than ever before--as the public's need for effective government institutions is expanding in very real and complex ways--federal agencies must position themselves to attract, develop and retain a top-quality workforce, led by a talented and

effective senior executive corps, that can deliver results and ensure our nation's continued security, growth and prosperity.

To do so, federal agencies must ensure that employees, including those at the senior level, are drawn from all segments of society after fair and open competition. Selection, advancement and all other employment decisions must be based solely on merit to ensure that all receive equal opportunity and to maximize the probability of selecting those with the best skills to do the job. In addition, agencies must maintain an inclusive work environment in which the talents and energy of all individuals are valued, respected and fully utilized.

As the federal government embarks on this common path, the January 2003 General Accounting Office (GAO) study on the federal Senior Executive Service indicates that agencies will be faced with both significant challenges and opportunities. GAO found that two-thirds of current SES positions are occupied by white males and less than fourteen percent (14%) are occupied by minority males and females. GAO further found that by October 2007 more than one-half of the over 6,000 career SES members will have left service. Most significantly, GAO has projected that if current appointment trends remain the same, there will be very little change in the diversity of the federal senior executive corps when the vacated positions are filled. GAO predicts that, if current appointment trends continue, the number of white women holding positions in the SES will increase by 2007—from 19% of the SES ranks to 23%—but there will be virtually no change in the number of minorities holding senior positions.

GAO noted, in discussing these trends with federal agencies, that it was generally recognized that more will have to be done than in the past if diversity in the SES is to be enhanced.

Management Directive (MD)-715

EEOC agrees with GAO that the projected large losses in the SES ranks over the next few years present the federal government with both a unique challenge and an opportunity. As a critical step towards leading the federal government towards a more inclusive workplace, the Commission unanimously voted to approve new guidance, effective October 1 of this year, to federal agencies on how to meet their responsibilities and structure the equal employment opportunity (EEO) programs required by Title VII of the Civil Rights Act of 1964 and Section 501 of the Rehabilitation Act of 1973. This guidance is known as EEOC Management Directive (MD)-715 and its full text is available on our website at eeoc.gov. I have also provided the Subcommittee with a copy of the directive and ask that it be placed in the official record of this hearing.

It should be noted that prior to final approval of the directive, EEOC distributed an earlier draft to federal agencies for review and comment, pursuant to the requirements of Executive Order 12067. Much of the input received from agencies was incorporated into the final draft.

Approval of the guidance is especially significant as the last time EEOC issued guidance in this area was over fifteen years ago. The new directive will replace Management Directives 712, 713 and 714 which were issued in the 1980s. EEOC will provide agencies with operational instructions for the implementation of MD-715. We anticipate these instructions being issued before the end of this calendar year (December 31). EEOC will also offer a series of training sessions to federal agency personnel who have responsibilities for agency compliance with MD-715.

The new directive requires agencies to take appropriate steps to ensure that all employment decisions are free from discrimination and is designed to reemphasize that equality of opportunity for all in the federal workplace is key to attracting, developing and retaining top-quality employees who can deliver results and ensure our nation's continued security, growth and prosperity. The Directive requires federal agencies to systematically and regularly examine employment policies and practices to identify and remove barriers to free and open workplace competition. Plans for addressing barriers will be developed by agencies and progress towards removing barriers will be monitored by EEOC.

In its study, GAO found that the "vast majority of replacements" for departing SES members come from the ranks of federal employees at the GS-15 and 14 levels. Therefore, EEOC believes that it will be critical for agencies to pay special attention to potential barriers to entry into these successor pools of GS-15s and 14s, with a focus on those positions which typically lead to senior level management. In addition, potential

barriers should be examined in training and other developmental opportunities which increase qualifications for future SES positions. Finally, as future SES positions may also be filled by candidates moving from private industry rather than the federal ranks, potential barriers in areas like executive recruitment efforts should also be examined.

Another important component of MD-715 is the defining of the following “Essential Elements” for structuring model EEO programs at federal agencies. It is EEOC’s belief that attainment of a model EEO program at an agency will provide the infrastructure necessary for the agency to achieve the ultimate goal of a discrimination free work environment characterized by an atmosphere of inclusion and free and open competition for employment opportunities. In brief, the six elements identified as necessary for a model EEO program are:

- Demonstrated commitment from agency leadership;
- Integration of EEO into the agency’s strategic mission;
- Management and program accountability;
- Proactive prevention of unlawful discrimination;
- Efficiency; and
- Responsiveness and legal compliance.

In achieving a model program, the directive requires federal agencies to fully integrate access, inclusion and equality of opportunity into all aspects of the mission of the agency, and align equal opportunity principles with strategic agency plans and objectives. Agencies will be asked to conduct periodic self-assessments of their Title

VII and Rehabilitation Act programs against the six model elements. Areas in need of improvement will be addressed in action plans developed by agencies and monitored by EEOC.

It should also be noted that MD-715 addresses the unique challenges facing employees with disabilities. Although not addressed by the GAO report, this is an area of particular concern to EEOC. In FY 2002, the percentage of people with targeted disabilities in the federal work force decreased for the fifth consecutive year, stretching this decline to more than 20 percent over the last decade. Our nation is home to approximately 30 million people of working age who have disabilities. The rate of unemployment among those with severe disabilities has been estimated as high as 70 percent. The President has made his New Freedom Initiative, aimed at bringing people with disabilities into all aspects of mainstream life, a hallmark of his Administration. Agencies must make immediate and significant improvements in their ability to provide opportunities to qualified individuals with disabilities to work and compete on equal footing for all levels of positions within the federal government.

In addition to the new guidance provided to federal agencies in Management Directive 715, EEOC has been, and remains, vigorously engaged, on a day-to-day basis, in assisting federal agencies in the proactive prevention of discrimination. We provide outreach, technical assistance and oversight to federal agencies in their efforts to develop and maintain model EEO programs. EEOC monitors and evaluates agencies' plans to identify and correct barriers to equal opportunity, their reasonable

accommodation procedures for individuals with disabilities, and their alternative dispute resolution programs. EEOC also gathers and analyzes data on employment trends and EEO complaint processing from federal agencies and issues periodic reports which are publically available. In addition, through our Revolving Fund, EEOC develops and delivers training to federal agencies and other interested parties on a wide variety of federal sector non-discrimination issues.

No Fear Regulations

Complementing EEOC's efforts is the recent passage of the Notification and Federal Employee Antidiscrimination Act ("No Fear" Act), which was signed into law in May 2002. The No Fear Act has several components intended to enhance federal agency compliance with anti-discrimination and whistleblower laws, hold agencies to greater accountability, and improve Congressional oversight.

Among the features of the law are:

- requirements for reimbursement to the Treasury by agencies for judgments and settlements;
- notification and training for employees about their rights under the various laws;
- mandatory reporting by agencies to the Congress, EEOC and the Department of Justice; and
- the posting of agency EEO data on agency public web sites.

EEOC has responsibility for issuing government-wide regulations under one of the titles--Title III--of the Act. Under Title III, federal agencies must post on their public web sites, on a quarterly basis, information pertaining specifically to the processing of administrative complaints of employment discrimination filed within their agency under 29 C.F.R. Part 1614. In addition to its rulemaking responsibilities and the requirement common to all federal agencies to post internal EEO data, EEOC must also post on its web site, again on a quarterly basis, government-wide data for administrative EEO complaints in which a hearing is requested or an appeal is filed.

This summer, the Commission voted on a proposed interim regulation under Title III of the No Fear Act. Following the Commission's vote, the proposed regulation was circulated to federal agencies for review under Executive Order 12067. Comments were received from 23 agencies. Revisions were made based on the comments received, and the Commission voted to approve the revised proposed interim regulation late last week. The proposed interim regulation has now been submitted to the Office of Management and Budget (OMB) for approval under the Executive Order 12866 process.

The No Fear Act should provide the federal government with one more tool to assist in efforts to identify and eliminate barriers to equal opportunity for all to compete for positions at senior levels. As the Act states, agencies cannot run effectively if they practice or tolerate unlawful discrimination. The No Fear Act is designed to hold federal

agencies to greater accountability and compliance with the non-discrimination laws. Through the various mechanisms available under the Act, agencies should be more aware of and responsive to issues of discrimination and retaliation in their agencies. We anticipate that this heightened awareness will be positively reflected in agency management of personnel practices, and to the extent that discriminatory practices are placing barriers to equal employment opportunity in the SES workforce, lead toward the elimination of such practices and create a level playing field. This would include not only personnel decisions made at the SES level, but also agency actions affecting those grades that most often lead to advancement to the SES.

It should be the goal of all federal agencies to make appointments to the SES that ensure that the most qualified candidates are selected without regard to race, ethnicity, religion, sex or disability. By requiring agencies to report and post information about their internal cases and complaints and by holding them fiscally responsible, the No Fear Act will contribute toward reaching this goal.

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