

Equal Employment Opportunity Commission
Plan for Retrospective Analysis of Existing Rules
[July 29, 2011]

I. Executive Summary of Equal Employment Opportunity Commission’s Plan for Retrospective Review and Compliance with Executive Order 13563

Executive Order (E.O.) 13563 recognizes the importance of maintaining a consistent culture of retrospective review and analysis throughout the executive branch. Determining the costs and benefits of a regulation before it is implemented is a challenging task and it often cannot be accomplished with perfect precision. The Equal Employment Opportunity Commission’s (EEOC or Commission) Plan for Retrospective Analysis of Existing Rules is designed to create a defined method and schedule for identifying certain significant rules that warrant repeal, modification, strengthening, complementing, or modernizing where necessary or appropriate for effective and efficient enforcement that considers costs and benefits, both quantifiable and non-quantifiable.

II. Scope of Plan

This Plan covers significant regulations (including regulations currently in effect and regulations that have not yet been finalized by the Commission) and existing information collections.

III. Retrospective Review of Regulations

- a. Historically, the EEOC has conducted retrospective analysis of regulations on several bases, including:
 1. Legal: When the Congress and President enact new federal EEO laws, or when the Supreme Court issues a decision on the laws enforced by the Commission, the EEOC reviews existing regulations to determine whether any regulatory changes should be made. For example, the Commission’s rulemaking concerning the ADEA’s disparate impact burden of proof and “reasonable factors other than age” defense, which is now in the final rule stage, involves updating the EEOC’s ADEA regulations in light of two Supreme Court decisions.
 2. Congressional and Executive Branch Input: Both congressional input and comments from other federal agencies are considered by the EEOC and, as appropriate, may prompt review of an existing regulation.
 3. Clarity and Interaction with Other Laws: The EEOC maximizes clarity of language and coordination with other laws, considering (a) whether significant regulations are clear to those with rights and responsibilities under the law, and (b) whether the regulations take into account the

existence of other laws enacted after they went into effect and how they interact with those subsequently-enacted laws.

4. Stakeholder Input: Both employees and employers, including organizations representing their respective interests, provide their input to the agency through meetings, letters, telephone calls, and questions at conferences. In addition, EEOC Chair Berrien has instituted a process for stakeholder comment following Commission meetings. EEOC staff considers all input and responds, as appropriate, depending on the nature of the request.

b. On the EEOC's spring 2011 Regulatory Agenda, all of the items in the categories for Final or Completed Rules are revisions to current regulations based on statutory amendments, Supreme Court decisions, or stakeholder/congressional input. See <http://www.regulations.gov/public/custom/jsp/navigation/main.jsp>.

IV. Compliance with E.O. 13563

a. Fostering a Culture of Retrospective Analysis

The EEOC currently has a robust culture of retrospective analysis. As soon as Congress enacts new EEO legislation or the Supreme Court issues a decision interpreting a statute enforced by the EEOC, agency attorneys analyze whether changes to the EEOC's regulations are necessary and present recommendations to the Chair, who oversees the regulatory process. A majority vote of the Commissioners is required in order to finalize a regulatory revision.

The EEOC also is in compliance with the Regulatory Flexibility Act (RFA). Under section 610 of the RFA, any regulations that have a significant economic impact on a substantial number of small entities must be reviewed within 10 years of implementation. The RFA review focuses on the regulation's impact on small business to determine whether the rule should be revised or rescinded.

In light of Executive Order 13563, the EEOC intends to strengthen its culture of retrospective analysis by developing a timeline for the periodic review of its significant regulations; identifying staff to conduct the review; and providing for ongoing public participation by, for example, asking the public to comment on regulations selected for retrospective review and by making the results of such reviews publicly available. If a future regulation has a significant economic impact on a substantial number of small entities, the EEOC also will comply with the retrospective review requirements of Section 610 of the RFA.

b. Prioritization

The factors and procedures the EEOC will use to guide its retrospective review process have been tailored to the EEOC's mission of promoting equality of

opportunity in the workplace and enforcing federal EEO laws, as well as to the resources available to the agency. The EEOC will use the following factors to identify matters for retrospective review:

- Legal developments – legislation or Supreme Court decisions that impact EEOC regulations
- Enforcement input – experience derived from litigation or enforcement
- Public comments – including stakeholder, congressional, and executive branch input
- Clarity and interaction with other laws – clarity to stakeholders and effect of subsequently-enacted laws on existing regulations
- Changed circumstances – administrative policy, economic conditions, technological or scientific knowledge, new information about the effects of regulations including actual costs and/or benefits, or obsolete information
- Significant economic impact on a substantial number of small entities – usually identified through a review of the rule pursuant to Section 610 of the Regulatory Flexibility Act
- Other requests for interpretation or petitions from the public

The EEOC prioritizes regulatory reviews that are mandated by new legislation or Supreme Court decisions, and that involve existing agency regulations.

c. Public Access and Participation

The EEOC is committed to dialogue with its stakeholders about its Retrospective Review Plan. In March 2011, the agency solicited and received public comments about how to structure this plan and which regulations to review first. There were a total of 53 comments, from 38 parties, some of whom filed multiple comments. This includes 11 late-filed comments, all of which the EEOC considered. The EEOC posted a link to the public comments it received from March through May. *See* http://www.eeoc.gov/laws/regulations/comment_retrospective.cfm.

After considering these comments in light of the legal and operational factors identified above and its available resources, the Commission identified five rules for review in the next two years in its Preliminary Plan for Retrospective Analysis of Existing Rules (May 24, 2011) (Preliminary Plan):

- ADEA Rulemaking: Disparate Impact Burden of Proof under the Age Discrimination in Employment Act; Reasonable Factors Other Than Age Under the Age Discrimination in Employment Act, 29 CFR Part 1625;
- Federal Sector Equal Employment Opportunity Complaint Processing, 29 CFR Part 1614;

- Procedures for Coordinating the Investigation of Complaints or Charges of Employment Discrimination Based on Disability Subject to the Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973, 29 CFR Part 1640;
- Procedures for Complaints/Charges of Employment Discrimination Based on Disability Filed Against Employers Holding Government Contracts or Subcontracts, 29 CFR Part 1641; and
- Procedures for Complaints of Employment Discrimination Filed Against Recipients of Federal Financial Assistance, 29 CFR Part 1691.

d. Summary of Public Comments about the Preliminary Plan

On June 6, 2011, the EEOC sought input from all members of the public about this Preliminary Plan. *See* http://www.eeoc.gov/laws/regulations/comment_retrospective.cfm. The EEOC also issued a press release that was forwarded directly to over 250 media outlets, encouraging public input for purposes of finalizing the Preliminary Plan. <http://www.eeoc.gov/eeoc/newsroom/release/6-6-11.cfm>. Comments were requested by July 6, 2011. The EEOC will also solicit ongoing comments about regulatory review through its special email account, Public.Comments.RegulatoryReview@eeoc.gov.

A total of 27 comments were received: 12 from persons expressing individual concerns about their charges or complaints against an employer: eight from civil rights groups and unions commenting on the Preliminary Plan, three from individuals discussing the Preliminary Plan or EEOC policy, two from plaintiff-side attorneys; and two from employer or consultant groups (one of which was an inquiry about where to find the first round of comments).

Civil rights groups, advocacy groups, and labor unions strongly endorsed the EEOC's priorities and its choice of regulations for review during the first two-year period. The National Employment Lawyers Association (NELA) "enthusiastically support[ed] the EEOC's initial list of five candidate rules for review"; the Communication Workers of America (CWA) agreed with the EEOC's priorities and with its "identification of appropriate candidates for rulemaking"; the International Brotherhood of Electrical Workers (IBEW) stated that the EEOC's Preliminary Plan "strikes the right balance between costs and benefits;" and the AARP commended the EEOC's emphasis on the qualitative benefits of ending employment discrimination. Significantly, none of the comments complained that the EEOC omitted specific regulations or data collections from its Preliminary Plan. Similarly, no one recommended removal of any of the regulations that the EEOC included in the Preliminary Plan.

In addition to endorsing the Preliminary Plan as a whole, employee advocacy groups focused on specific regulations relevant to their stakeholders. The AARP commended the EEOC for prioritizing the rulemaking under the Age Discrimination in Employment Act regarding disparate impact. NELA and the Burton Blatt Institute (Centers of Innovation on Disability), as well as several individual commenters, reminded the Commission of the importance of updating its federal sector procedural rule, especially in light of the federal government's role as a model employer of individuals with disabilities. Finally, NELA noted the ongoing importance of interagency coordination of EEO complaints that may be subject to the jurisdiction of the EEOC and another federal agency.

Expressly referring to the first round of public comments, both AARP and NELA disagreed with the March 2011 comments of the Chamber of Commerce recommending that the EEOC rescind its July 1997 *Policy Statement on Mandatory Binding Arbitration of Employment Discrimination Disputes as a Condition of Employment*. Also alluding to earlier comments, the Tri-County Independent Living Center, Inc., agreed that the EEOC should collect compensation data and data about disability, as long as an individual was not requested to disclose a specific diagnosis.

A consultant for employers suggested that the EEOC expand existing regulations to provide comprehensive guidance on reasonable steps for employers to take in order to prevent and correct discrimination, harassment, and retaliation in the workplace. The commenter referred the EEOC to the Federal Sentencing Guidelines as a model for such a comprehensive guidance.

The CWA, NELA, the IBEW, and several individuals also urged the Commission to issue new policy documents (sub-regulatory), focusing on topics such as applicant screening based on credit reports, arrest or conviction records, and employment status. Similarly, the Burton Blatt Institute (Centers of Innovation on Disability) and the CWA both urged the EEOC to provide more guidance on reasonable accommodation including leave, employment services, and employer-based wellness programs. Finally, the Consortium for Citizens with Disabilities, Rights Task Force, called for the EEOC to revise its regulations under Section 501 of the Rehabilitation Act to require federal agency employers to use affirmative action for individuals with disabilities, including minimum goals and standards.

d. Final Regulatory Review Plan and Response to Second Round of Public Comments

In light of the generally supportive public comments and the resources currently available to the agency, the EEOC will limit its Final Regulatory Review Plan to the same five regulations listed in the Preliminary Plan. While the Commission will take under advisement the comments received about a variety of current and potential sub-regulatory policy guidance documents, the Commission will not add any such documents to the Final Regulatory Review Plan. The Commission's first priority, especially in light of current resources and charge filings, must remain ensuring conformance of its regulations to the law.

e. Final regulatory review plan: List of rules for review over the next two years

1. ADEA Rulemaking: Disparate Impact Burden of Proof under the Age Discrimination in Employment Act; Reasonable Factors Other Than Age Under the Age Discrimination in Employment Act, 29 CFR Part 1625. Prior to the Supreme Court's decision in *Smith v. City of Jackson*, 544 U.S. 228 (2005), Commission regulations interpreted the Age Discrimination in Employment Act (ADEA) to require employers to prove that actions with an age-based disparate impact were justified as job related and consistent with business necessity. In *Smith*, the Supreme Court announced that the defense was not business necessity but reasonable factors other than age (RFOA). Subsequently, the Supreme Court held in *Meacham v. Knolls Atomic Laboratory*, 131 S. Ct. 413 (2010), that employers bear the burden of proving the RFOA defense.

While the Court in *Smith* and *Meacham* decided major unresolved questions involving disparate impact and the ADEA, it did not provide guidance on the meaning of RFOA except to say that the RFOA defense is a lower standard than job related and consistent with business necessity (the employer's defense to ADEA impact in the EEOC's prior rule).

The Commission has evaluated the benefits and costs of the proposed changes associated with this rule, including those that are difficult or impossible to quantify. The proposed changes will have qualitative, dignitary, and related intrinsic benefits,¹ and will also have economic benefits.² The proposal is not expected to directly impose reporting,

¹ The qualitative, dignitary, and related intrinsic benefits are as follows: (1) by reducing age discrimination, the rule will promote human dignity and self-respect; (2) by reducing age discrimination, the rule will yield third-party benefits such as the reduction of age based stereotypes in the workplace; (3) by increasing participation in the workforce of older workers, the rule will benefit employers and co-workers in ways that may not be subject to monetary quantification, for example by increasing diversity, understanding, and fairness in the workplace; and (4) by reducing age discrimination, the rule will benefit workers in general and society at large by creating less discriminatory work environments.

² The economic benefits of this rule include: (1) Guidance regarding nondiscriminatory employment practices increases the accuracy of employee evaluations and may have a positive impact on employers' business practices;

recordkeeping, or any other requirements for compliance, and it will not expand ADEA coverage to additional employers or employees. Finally, the proposed changes contained in this rulemaking are expected to reduce the burden on employers of defending against Age Discrimination in Employment Act (ADEA) disparate impact claims by replacing the business necessity defense in the existing ADEA regulations with the less stringent “reasonable factors other than age” (RFOA) defense, in conformance with the Supreme Court’s decisions.

In light of the proposed changes contained in this rule, some employers may choose to modify their practices to avoid disparate impact liability, which itself could result in increased costs. However, it is expected that the costs associated with such modifications will be minimal.³

2. Federal Sector Equal Employment Opportunity Complaint Processing, 29 CFR Part 1614. The federal sector process provides the framework by which federal employees and applicants seek redress of alleged employment discrimination by federal government employers. Clarifying and streamlining this regulation will ease the burdens of compliance.

The EEOC initiated a narrowly tailored rulemaking to address specific proposed corrections and changes to the current process. These changes include: revising provisions due to case law development, accommodating electronic filing, and allowing agencies to obtain temporary variances from parts of the required process. All proposed changes will make the federal sector process more fair and efficient.

and (2) Elimination of neutral practices that act as barriers to the employment of older workers may result in fewer unemployed older workers and greater benefits to the economy.

³ For example, employers may choose to modify their practices by performing additional disparate impact analyses, taking steps to reduce harm to older workers, and providing additional instruction and guidance to managers. Because the Commission does not expect that large numbers of employers will perform additional analysis – especially smaller entities, which are unlikely to engage in actions that involve a large number of people – the associated costs are expected to be minimal. In addition, larger businesses already routinely employ sophisticated methods of detecting disparate impact and already possess the expertise and resources required to analyze age data. Costs to employers of taking steps to reduce harm will only affect a limited number of employer decisions, and the rule states that an employer would not be required to take steps that were overly burdensome. Where additional instruction is needed, the associated costs will generally be minimal because larger employers may incorporate it into their regular training, and smaller businesses can utilize less expensive informal training and Commission assistance to limit costs.

Many of the proposed changes to this regulation are cost neutral and will therefore increase efficiency without any increase in regulatory costs.⁴ While some of the proposed changes will have an increased regulatory cost for agencies and the Commission, many of these changes will also provide benefits in increased efficiencies.⁵ Lastly, some of the proposed changes result in decreased costs to the agencies and the Commission as well as an increase in net benefits.⁶

In addition, the Commission continues its review of the entire federal sector EEO complaint process to make it more efficient and effective.

3. Procedures for Coordinating the Investigation of Complaints or Charges of Employment Discrimination Based on Disability Subject to the Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973, 29 CFR Part 1640. Executive Order 12067 granted EEOC the authority to coordinate all federal EEO law enforcement. In its coordination role, the EEOC has established procedures for processing charges or complaints of employment discrimination when there is overlapping jurisdiction over private and state or local employers between the EEOC and the Department of Justice, the Department of Labor, or another federal civil rights enforcement authority. These coordination rules reduce duplicative efforts by different federal agencies, and also reduce the burden on employers subject to these laws.

An internal EEOC stakeholder alerted the Retrospective Review Team that the coordination rules are not consistent in terms of tolling the statute of limitations and referring charges between agencies. This lack of consistency creates delays and prevents resolution of charges, thus increasing the burden on charging parties and employers.

The Commission will review this regulation to conform and clarify the procedures for referring “dual-filed” or “joint” disability discrimination complaints or charges as between the relevant federal grant-making department or agency and the EEOC.

⁴ These proposed changes include corrections to cross references, editorial changes, and the codification of current federal sector practice or case law.

⁵ For example, the proposed Pilot Program for agencies to examine alternative ways of processing complaints will have implementation and design costs for agencies and the EEOC. However, it is also expected that these programs will introduce new efficiencies that could be implemented government-wide. The proposed amendment to enable agencies to appeal AJ decisions on class complaints will also have costs associated with it, yet there will be cost savings as agencies will not need to write decisions on all class cases and will only need to appeal unfavorable decisions.

⁶ For example, allowing administrative judges to issue decisions, rather than recommendations, in class cases; requiring that agencies submit electronic files and records to EEOC; and changing the time period within which an agency must provide ordered relief from 60 to 120 days, are all proposals that are expected to lead to decreased costs for agencies and the Commission while also streamlining the federal sector process.

These procedures govern the agencies' internal handling of charges of employment discrimination and do not impose any regulatory costs on employers or charging parties. The revised procedures, however, will provide a net benefit to stakeholders and the agencies by streamlining the process for coordinated investigations.

4. Procedures for Complaints/Charges of Employment Discrimination Based on Disability Filed Against Employers Holding Government Contracts or Subcontracts, 29 CFR Part 1641. Executive Order 12067 granted EEOC the authority to coordinate all federal EEO law enforcement. In its coordination role, the EEOC has established procedures for processing charges or complaints of employment discrimination when there is overlapping jurisdiction over private and state or local employers between the EEOC and the Department of Justice, the Department of Labor, or another federal civil rights enforcement authority. These coordination rules reduce duplicative efforts by different federal agencies, and thereby reduce the burden on employers subject to these laws.

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The Commission will review this regulation to conform and clarify procedures for referring "dual-filed" or "joint" disability discrimination complaints or charges as between the Department of Labor's Office of Federal Contract Compliance Programs and the EEOC.

These procedures govern the agencies' internal handling of charges of employment discrimination and do not impose any regulatory costs on employers or charging parties. The revised procedures, however, will provide a net benefit to stakeholders and the agencies by streamlining the process for coordinated investigations.

5. Procedures for Complaints of Employment Discrimination Filed Against Recipients of Federal Financial Assistance, 29 CFR Part 1691. Executive Order 12067 granted EEOC the authority to coordinate all federal EEO law enforcement. In its coordination role, the EEOC has established procedures for processing charges or complaints of employment discrimination when there is overlapping jurisdiction over private and state or local employers between the EEOC and the Department of Justice, the Department of Labor, or another federal civil rights enforcement authority. These coordination rules reduce duplicative efforts by different federal agencies, and thereby reduce the burden on employers covered by more than one of these laws.

An internal EEOC stakeholder alerted the Retrospective Review Team that the coordination rules are not consistent in terms of the tolling the statute of limitations and referring charges between agencies. This lack of consistency creates delays and prevents resolution of charges, thus increasing the burden on charging parties and employers.

The Commission will review this regulation to conform and clarify procedures for referring “dual-filed” or “joint” complaints based on race, color, national origin, religion or sex as between the relevant federal grant-making departments or agencies and the EEOC.

These procedures govern the agencies’ internal handling of charges of employment discrimination and do not impose any regulatory costs on employers or charging parties. The revised procedures, however, will provide a net benefit to stakeholders and the agencies by streamlining the process for coordinated investigations.

d. Structure and Staffing

Regulatory revisions, policy changes, and the Retrospective Review Plan itself are approved by a majority vote of the EEOC’s 5-member, bipartisan Commission. The EEOC’s Office of Legal Counsel (OLC) staffs the EEOC’s retrospective review process. The Legal Counsel directs the Office of Legal Counsel in all regulatory activities – both retrospective and new – and reports to the Office of the Chair. The structure and resources of the EEOC do not allow for a separate office, such as a sub-agency or program-specific entity, to staff the retrospective review process.

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e. Independence of Retrospective Review Team

OLC attorneys, functioning as the Retrospective Review Team, consult with the agency’s litigation and enforcement staff before sending proposed revisions of regulations to the Chair and to the Commissioners for a vote. The 5-member, bipartisan Commission must approve the Retrospective Review Plan, as well as regulatory and policy changes, by a majority vote. Each Commissioner’s office is staffed with legal personnel who review all regulations prior to a vote.

f. EEOC's Retrospective Review Expertise

The Retrospective Review Team is comprised of attorneys who are very familiar with administrative law, the Regulatory Flexibility Act, and the Paperwork Reduction Act. The Retrospective Review Team participates in executive branch briefings about E.O. 13563 and receives ongoing training consistent with the agency's resources.

The Retrospective Review Team makes every effort, in light of staffing and budget, to "use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible," including consultation with experts in the Office of Management and Budget when assistance with assessing the costs and benefits of proposed regulations is needed. E.O. 13563 § 1(c). We note, though, that little data exists to demonstrate the economic impact of some laws enforced by the EEOC. *See Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act, as Amended*, 76 Fed. Reg. 16978, 16987 (Mar. 25, 2011) ("Our assessment of both the costs and benefits of this rule was necessarily limited by the data that currently exists. Point estimates are not possible at this time. For that reason, and consistent with OMB Circular A-4, we have provided a range of estimates in this assessment.")

Many of the EEOC's regulations create important benefits that stem from "values that are difficult or impossible to quantify," including "equity, human dignity, fairness and distributive impacts." *Id.* In response to the EEOC's request for public comment on the retrospective review the IBEW, AARP, CWA, and LIUNA all stressed the importance of evaluating the qualitative benefits of EEOC's regulations. While many comments emphasized qualitative factors, EEOC did not receive any comments regarding the quantitative costs or benefits of any of the rules identified in the Plan.

g. EEOC's Retrospective Analysis over the Next Two Years and Beyond

Based on the priorities identified in this Plan, the Retrospective Review Team has identified five regulations for review over the next two years. The final decisions about regulatory changes reside with the Commissioners. However, once this final Plan for retrospective review is approved by the Commission, no further action will be needed for staff to begin work on the rules identified herein for review during the next two years.

The Retrospective Review Team will maintain an EEOC email address for public comment on regulatory review, Public.Comments.RegulatoryReview@eoc.gov. This email address also is available to EEOC enforcement and legal staff.

h. Agency Action Based upon Retrospective Review Analysis

The Retrospective Review Team reports on all regulatory actions to the Office of the Chair. A majority vote by the Commissioners is necessary to approve this Plan and to approve all regulatory, policy, and recordkeeping initiatives and changes. After Commission approval, notices of proposed rulemaking or proposals to modify information collections that result from this retrospective review will be made public, and the EEOC will post all public comments for further discussion as soon as possible.

i. Periodic Review

The EEOC has identified the rules it will review over the next two years. The Retrospective Review Team will establish a timeline to examine significant rules that require periodic retrospective analysis in light of the EEOC's regulatory review factors discussed in Sections IV and V above. Going forward, the EEOC contemplates reviewing such regulations at least once every ten years, or more frequently if circumstances warrant. The Regulatory Review Team will ensure that appropriate staff is consulted to determine whether the EEOC should revise the regulations being reviewed.

j. Inter-Agency Consultation

The EEOC has coordination responsibilities pursuant to E.O. 12067, as well as overlapping jurisdiction with several agencies, such as the Department of Labor and the Department of Justice. The EEOC coordinates regularly with these agencies regarding joint rules and memoranda of understanding, to ensure that the executive branch is consistently enforcing the equal employment opportunity laws. The EEOC will continue to engage in such inter-agency coordination.

k. Peer Review

The EEOC coordinates on an ongoing basis with the Department of Labor's Office of Federal Contract Compliance Programs and with the Department of Justice's Civil Rights Division, both sister civil rights agencies. Because it can ultimately act only through a Commission vote, the EEOC's reliance on peer review is limited.

VI. Components of Retrospective Cost-Benefit Analysis

The EEOC must provide the Office of Management and Budget with an assessment of the potential costs and benefits of a regulatory action whenever the rule meets E.O. 12866's definition of a "significant" regulation. E.O. 12866, § 6(a)(3)(B)(ii). Most of the Commission's significant rules are "significant" because they raise "novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth" in Executive Order 12866, as amended. *Id.* at § 3(f)(4).

E.O. 13563 emphasizes that the nation's regulatory system must take into account benefits and costs, both quantitative and qualitative. "Where appropriate and permitted by law, each agency may consider (and discuss qualitatively) values that are difficult or impossible to quantify, including equity, human dignity, fairness, and distributive impacts." E.O. 13563 § 1(c). Because the Commission's mission is to promote equality of opportunity in the workplace and enforce federal anti-discrimination laws, qualitative factors are highly relevant to assessing the benefits of its rules.

In the context of this mission, current staffing, and budget, the EEOC makes every effort to "use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible." E.O. 13563 § 1(c). Even when benefits might in theory be quantifiable, however, little data may exist. *See Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act, as Amended*, 76 Fed. Reg. 16978, 16987 (Mar. 25, 2011) *See supra* Section V.f.

VII. Publication of EEOC's Plan

The EEOC publishes its Retrospective Review Plan on the agency website dedicated to retrospective review pursuant to E.O. 13563. *See* http://www.eeoc.gov/laws/regulations/comment_retrospective.cfm. The Plan is also included on EEOC's Open Government website www.eeoc.gov/open. The appropriate agency contact for the Open Government website is Deidre Flippen, Director of the EEOC's Office of Research, Information and Planning.