

Discrimination and the U.S. Equal Employment Opportunity Commission's Flawed Federal EEO Complaint Program: *“A Threat to All Americans”*



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President
The Coalition For Change, Inc. (C4C)



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Agenda

- I. Discrimination in the Federal Sector
- II. Federal Workplace Discrimination: A Threat to All
- III. About the EEOC: Origin and Mission
- IV. Five Flaws: The Federal Complaint System
- V. The Coalition For Change, Inc. (C4C) Advocacy
- VI. Conclusion



I. Discrimination in the Federal Sector



Discrimination in the Federal Sector

2002

The Notification and Federal Employee Antidiscrimination Act (No FEAR Act)

- President George W. Bush signed
- To increase federal departments & agencies accountability for acts of discrimination or reprisal against employees.

2021

Elijah Cummings Federal Employee Anti-discrimination Act of 2020 (Cummings Act)



Headlines: Discrimination in the Federal Sector



“Older Feds Are Facing Persistent Racial and Gender Pay Disparities, the EEOC Has Found”

Government Executive
February 14, 2022



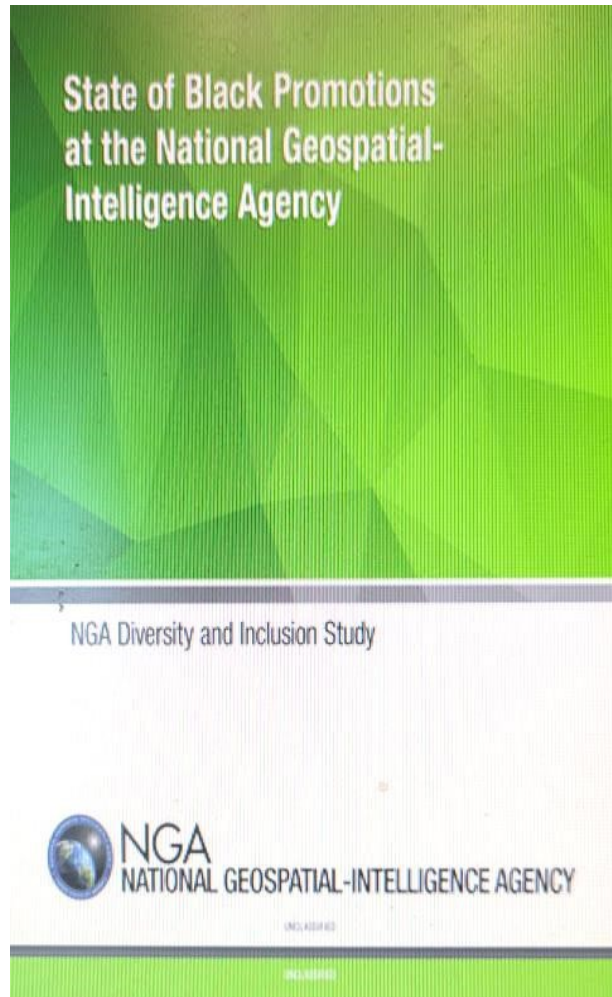
Headlines: Discrimination in the Federal Sector



“Rape, harassment
and retaliation in the
U.S. Forest Service”

PBS News Hour
March 1, 2018

Headlines: Discrimination in the Federal Sector



Study of promotions at
Department of Defense's
NGA,
a combat support agency,
revealed supervisors practiced
"Like me bias"
that created barriers for
black employees.

State of Black Promotions at NGA
(2018)

Headlines: Discrimination in the Federal Sector



Census Bureau's \$15M Hiring Bias Settlement OK'd

Bloomberg Law
Sept. 22, 2016

Picture: Bureau of Census
<https://www.flickr.com/photos/usensusbureau/7024455607/in/photostream/>

Headlines: Discrimination in the Federal Sector



FAA to Pay Older Flight Controllers \$44 Million Under Bias Pact

Bloomberg

April 29, 2021

Dorrian, P.

Lawsuit alleges workers “were fired because they were 40 or older”

II. Federal Workplace Discrimination: A Threat to All



“Whatever affects one directly,
affects all indirectly.”

Martin Luther King, Jr.

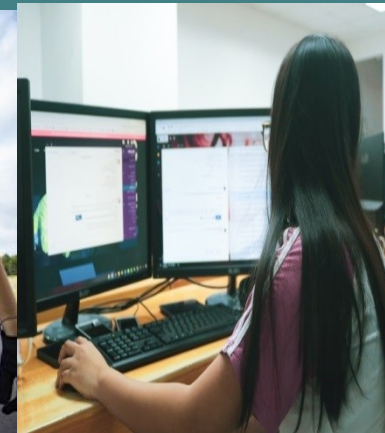
Federal Workplace Discrimination Inequality Impacts Policy: “A Threat to All”



Federal Workplace Discrimination Harms Civil Servants “Upholders of the Public Trust”



FDA



USDA



NIH

[flickr.com/photos/nihgov/30646945891/in/album-72157674380028181/](https://www.flickr.com/photos/nihgov/30646945891/in/album-72157674380028181/)



US Marshals

[flickr.com/photos/usmarshals/52260857499/in/photo-stream](https://www.flickr.com/photos/usmarshals/52260857499/in/photo-stream)



U.S. Customs and Border Protection

Los Angeles Field Office



<https://www.flickr.com/photos/nws/25419988785/in/album-72157663946112703/>



EPA

Federal Workplace Discrimination:Retaliation



Within the EEO system managers routinely attempt to silence civil rights whistleblowers who expose:

- A violation of a law, rule, or regulation;
- Gross mismanagement;
- A gross waste of funds;
- An abuse of authority;
- A substantial and specific danger to public health or safety

<<<-My assigned office after becoming actively involved in Janet Howard et. al vs Carlos M. Gutierrez, Class Action action Case 1:05-cv-01968-JDB.

Federal Workplace Discrimination: A Threat to All

Why Should YOU
Care About the Federal
EEO Complaint
System?



The EEOC led EEO
complaint system fails to curb
discrimination in the Federal
workplace and it negatively
impacts your life
(*whether you know it or not*)



Federal Workplace Discrimination: A Threat to All



“While I am so proud that Dr. Corbett was able to contribute her stellar skills for the good of all, the Federal sector needs a sound EEO complaint system to ensure that discriminating federal officials do not limit the job opportunities of any employee who can best protect the lives of Americans and contribute to the progress of our nation.”

Tanya Ward Jordan

Dr. Kizzmekia Corbett

Dr. Corbett’s ground-breaking research led to the invention of the Moderna Covid-19 vaccine.



https://commons.wikimedia.org/wiki/File:Kizzmekia_Corbett_portrait.jpg
No changes made



III. About the EEOC



About the EEOC



President Lyndon Johnson signed the Civil Rights Act of 1964. Title VII of the Act

- Created the U.S. EEOC
- Banned *employment* discrimination based on race, sex, color, religion, & national origin.



About the EEOC

MISSION: To enforce federal laws that make it illegal to discriminate against a job applicant or employee because of:

- race, color, religion
- national origin
- age (40 or older)
- disability and genetic information
- sex (including pregnancy, sexual orientation, or gender identity)



About the EEOC

In 1972,

President Nixon signed the Equal Employment Opportunity Act, which amended Title VII to include federal employees.

In 1978,

President Carter signed the The Civil Service Reform Act which gave the EEOC the authority to enforce equal employment laws in the federal agencies.



IV. Five Flaws: The Federal Complaint System



NOTE: Report presents only 5 of the many flaws within the EEOC led federal complaint program



FLAW 1. “Fox Guarding the Hen House”



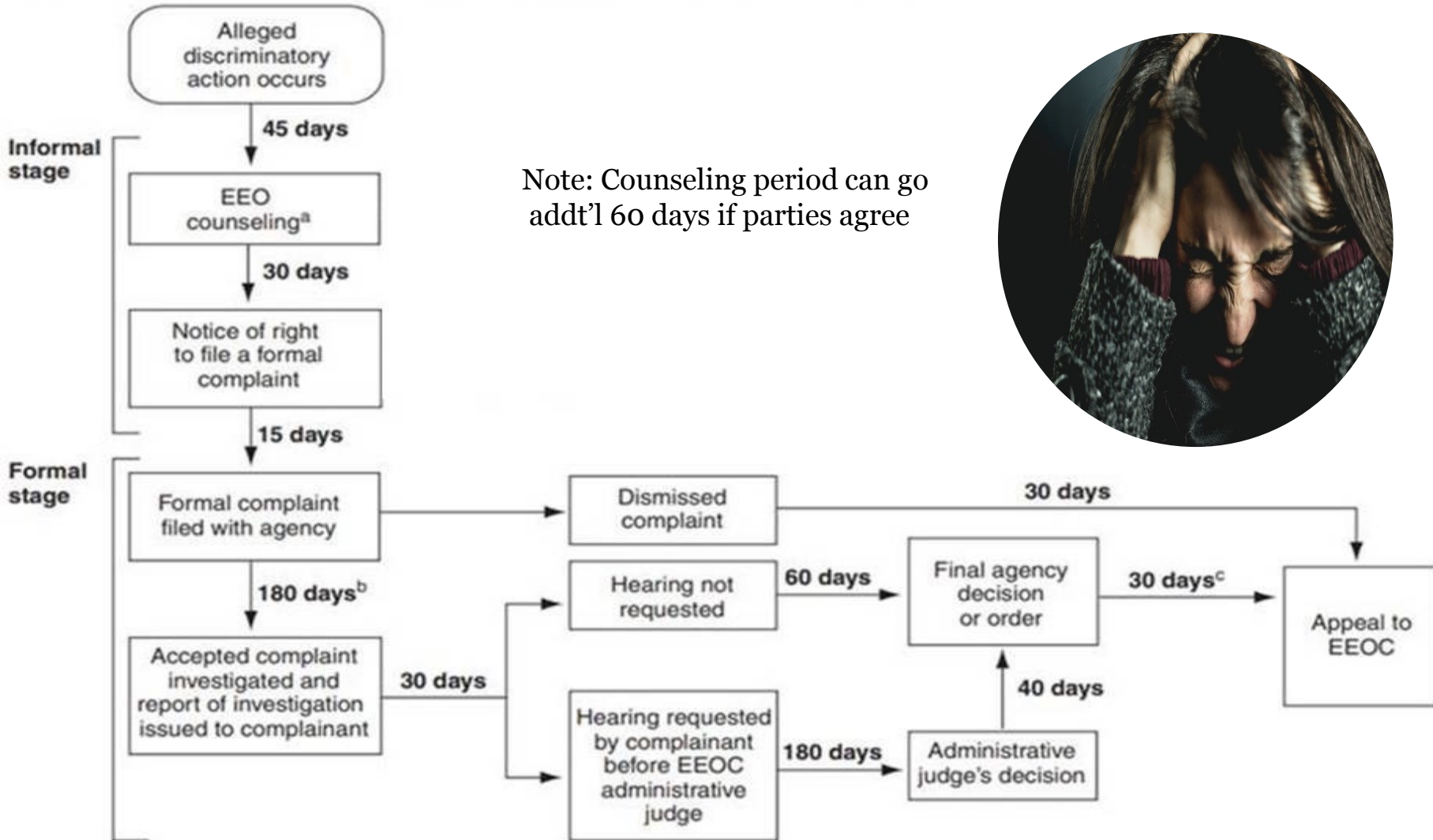
Defending Agency:

- Processes intake of claims
- Counsels employees
- At times, Reframes employees claims
- Approves/Denies claims
- Conducts/Oversees investigation
- Rules on complaint merits
(re: Final Agency Decision)
- Often involves Agency Counsel



FLAW 2. EEOC Fails to Enforce Regulations Fairly

Figure 1: The EEO Administrative Complaint Process with Related Time Frames



FLAW 3. EEOC Long Processing Times

Some employees opt for a hearing with the U.S. EEOC rather than have “defending agency” issue a final agency decision on their claims.



Fiscal Year	FY2016
HEARINGS	500 days*
APPEALS	447 days*



*Days From request to decision



FLAW 4. No Accountability For EEOC Malfeasances

“Congress has not authorized, either expressly or impliedly, a cause of action against the EEOC for the EEOC's alleged negligence or other malfeasance in processing an employment discrimination charge.”

Smith v. Casellas,
[119 F.3d 33, 34](#) (D.C. Cir.)”



FLAW 5. EEOC Fails to Refer Cases to Office of Special Counsel When Discrimination is Proven.

The EEOC

rarely

refers cases to the Office of Special Counsel (OSC) which has authority to take disciplinary action against federal officials found guilty of unlawful discrimination.



V. C4C Advocacy



C4C Advocacy: Recommends EEO Reforms

Elijah Cummings Federal Employee Anti-discrimination Act of 2020

- ❑ Passed under Nat'l Defense Authorization Act
- ❑ Congress passed bill into law Jan 2021
- ❑ Amends No FEAR Act of 2002
- ❑ Includes C4C's accountability /transparency measures
 - Nondisclosure Agreement Limitations
 - Disciplinary Referrals to OSC
 - Notation - Employee Personnel Folder
 - Other accountability/transparency measures



Tanya Ward Jordan (L) and Paulette Taylor (R) with
Congressman Elijah Cummings (Center)

C4C Member: Sets Precedent



Anthony Perry

Supreme Court ruled in Perry's favor.

The Supreme Court held the proper review forum when the Merit Systems Protection Board dismisses a mixed case on “jurisdictional” grounds is District Court, not the Federal Circuit.

Perry v Merit Systems Protection Board
No. 16-399



C4C Member: Sets Precedent



Joyce E. Megginson

The Court of Appeals ruled in
Megginson's favor.

The court rejected the government's
“novel attempt” to reconfigure
Congress's statutory scheme and
impose a six-year statute limit on
federal employees'
Title VII claims.

Howard v. Pritzker
No. 12-5370 (D.C. Cir. 2015)



C4C Member: Advancing Safety in Workplace



Gulf War Veteran Edgar Dion Lee

Gulf War Veteran Edgar Dion Lee filed formal EEO complaint and Office of Special Counsel complaint. He alleged Commerce officials exposed employees (including himself) to unsafe levels of asbestos in the U.S. Department of Commerce's Herbert Hoover Building. The Office of Special Counsel *substantiated* Mr. Lee's allegations.

Civil Action No. 11-0358
OSC File No. DI-100454

C4C Advocacy: Identifies Deficiencies



Consulted with the Government
Accountability Office
and identified flaws within the
U.S. EEOC Office of Federal
Operations Federal EEO
Complaint Program

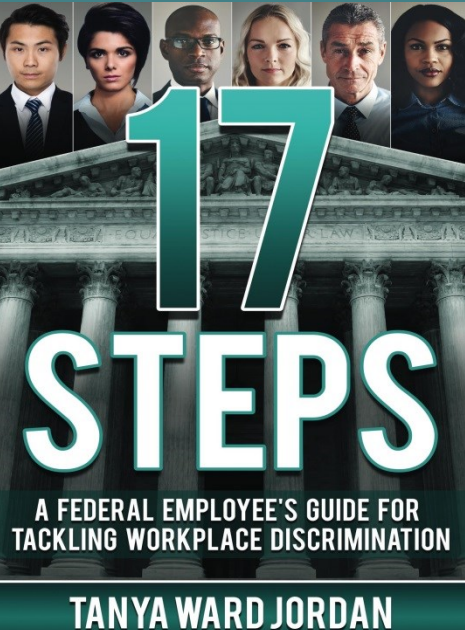
August 2022



CONCLUSION

“To protect our national self-interest, we must protect our workforce by strengthening the federal EEO complaint system.”

Tanya Ward Jordan



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