

Congress of the United States
Washington, DC 20515

September 28, 2026

The Honorable Andrea Lucas
Chair
U.S. Equal Employment Opportunity Commission
Washington, DC 20507

Re: Federal Sector Equal Employment Opportunity; RIN 3046-AB46

Dear Chair Lucas:

We strongly oppose the Equal Employment Opportunity Commission's (EEOC) proposed rule, which would revise the federal-sector equal employment opportunity complaint process. As Members representing hundreds of thousands of federal employees who serve our country every day, we are deeply concerned that this proposal would make it more difficult for those workers to challenge workplace discrimination and would weaken safeguards intended to ensure impartial review of their claims. As such, we urge the Commission to withdraw this proposal and pursue reforms that make the federal-sector EEO process both faster and fairer.

We agree that the existing federal-sector Equal Employment Opportunity (EEO) process needs improvement. The current process is slow and understaffed, agencies often miss deadlines, and the structure requires an employing agency to investigate allegations against itself.¹ Reforming the process should correct these shortcomings. However, unlike the proposed rule, the reforms should not eliminate protections and shift more power to the agency accused of discrimination.

First, the proposal would replace mandatory pre-complaint counseling with direct filing and a substantially more demanding threshold. Under the current framework, a worker generally has 45 days to contact an EEO counselor, who confidentially explains the process and could possibly facilitate early resolution.² Under the proposed rule, the worker instead would have 60 days to file a formal complaint to their agency that "must contain sufficient factual matter, accepted as true, to state a claim for relief that is plausible on its face." This not only removes the process for employees to speak with an expert about the process, but it also increases the standard for which federal employees can seek relief and notifies the agency directly of the complaint. Many federal employees are unrepresented and lack access to evidence, such as internal communications, personnel records, or other information that is controlled by the agency. A plausibility screen at the outset therefore risks dismissal of potentially meritorious claims precisely because the agency holds the facts needed to prove them. In fact, EEOC's own analysis shows that complaints can be erroneously dismissed, as shown by a 30% to 45% annual reversal rate for agency procedural

¹ U.S. Government Accountability Office, *Equal Employment Opportunity Commission: Improved Oversight Processes Needed to Help Agencies Address Program Deficiencies*, GAO-24-105874 (June 2024), <https://www.gao.gov/assets/gao-24-105874.pdf>

² When taken into conjunction with recent rules from OPM that end certain MSPB-EEOC mixed cases, the elimination of the mandatory pre-complaint counseling further disadvantages federal employees who would now not have access to detailed explanations of their rights and the various options available to them. (See *Suitability Action Appeals*, 91 Fed. Reg. 5352 (proposed Feb. 6, 2026); *Reduction in Force Appeals*, 91 Fed. Reg. 5861 (proposed Feb. 10, 2026); *Streamlining Probationary and Trial Period Appeals*, 91 Fed. Reg. 49,072 (Aug. 3, 2026) (final rule))

dismissals from 2008-2012.³ These dismissals occurred even with the lower standard for seeking relief.

The 60 days to file is also shorter than the 180 days granted to legislative branch employees and the 300 days granted to most private sector employees, thus creating a system that disadvantages federal employees compared to other workers.

Second, the proposal would eliminate a federal employee's right to elect an impartial administrative judge proceeding after the agency investigation or after 180 days. Instead, the agency's final decision would become the ordinary adjudication mechanism, and an administrative judge would become available only if the EEOC's Office of Federal Sector determines that referral is "necessary or efficient" during an appeal.

Administrative judges provide an essential independent check for federal employees concerned about conflict of interest. They take sworn testimony, resolve disputed facts and credibility issues, and assist in developing a complete evidentiary record. Under the proposal, however, an agency would investigate the complaint, decide whether the agency engaged in discrimination, and potentially conduct its own internal hearing. Concentrating these functions in the agency whose conduct is being challenged raises serious concerns about independence, investigatory bias, and conflicts of interest.

Not only is the criteria for determining whether a hearing is "necessary or efficient" vague and burdensome for employees, the proposal significantly underestimates the amount of time required to review an appeal and determine whether it should be referred to the administrative judge. Agency reports of investigations are typically several hundred to thousands of pages; however, the proposal estimate review of these reports will take one-half hour.⁴ This timeline is wholly inadequate for the Commission to comprehend that much material and make a complete, unbiased decision on whether a hearing is warranted. This appellate review of a written record is not a replacement for access to an independent hearing and investigation.

Additionally, the proposed rule places the burden on the employee to request such proceedings and explain why they are warranted. The proposal would penalize workers who do not know to request those proceedings by allowing them to be waived if the worker fails to make the proper request. Given that an employee would no longer go through pre-complaint counseling, it could be difficult for the employee to know that they need to ask for a hearing.

The plan would also shift substantial new adjudicatory and administrative responsibilities onto federal agencies at the very moment many lack the personnel and infrastructure to carry them out. The proposal would make the final agency decision the ordinary disposition for every accepted complaint, while requiring agencies to revise procedures; retrain EEO, human resources, and legal staff; update case-management systems; and satisfy expanded tracking obligations. The NPRM does not explain how agencies will absorb these demands, especially amid the Administration's reductions in force and buyouts that have hollowed out the workforce responsible for implementation. We have already seen the strain agencies' HR departments are under trying to keep up with routine employee requests and paperwork.⁵ In discrimination cases, administrative

³ U.S. Equal Employment Opportunity Commission, *Preserving Access to the Legal System: Common Errors by Federal Agencies in Dismissing Complaints of Discrimination on Procedural Grounds* (Sept. 15, 2014), <https://www.eeoc.gov/federal-sector/reports/preserving-access-legal-system-common-errors-federal-agencies-dismissing>

⁴ *Federal Sector Equal Employment Opportunity*, 91 Fed. Reg. No. 116, pg 55707 (proposed Aug. 28, 2026).

⁵ Jory Heckman, CDC, *After Months of Delays, Gives Employees 20 Days to Resubmit Disability Accommodation Documentation*, Gov't Exec. (Sept. 8, 2026), <https://www.govexec.com/management/2026/09/cdc-employees-20-days-resubmit-disability-accommodation-documentation/415854/>; Meryl Kornfield, *Historic Wave of Retirements Is*

delays are not harmless inconveniences, but rather significant barriers that postpone meaningful review and, for employees with meritorious claims, relief and accountability. These delays are unacceptable and should not be made worse.

Additionally, the proposed elimination of administrative class complaints would severely weaken the ability of federal workers to challenge systemic discrimination. The proposed rule would permit a worker to assert a putative class claim only for exhaustion purposes and would allow related individual complaints to be processed jointly, but it would prohibit class certification, class notice, class-wide findings, and relief for absent class members. Joint processing is not a substitute for a class mechanism. Administrative class complaints can spread litigation costs, resolve common questions consistently, and provide relief where individual recoveries are too small to make separate cases realistic. Illustratively, in fiscal years 2023 and 2024, \$175 million for federal workers was secured through class settlements.⁶ Abolishing the process would shift systemic disputes into more expensive federal litigation, increase burdens on the courts, and leave many workers without a practical remedy.

The rule also purportedly seeks to implement the Elijah E. Cummings Federal Employee Antidiscrimination Act of 2020; however, it does so selectively and does not address all of the law’s provisions. For example, the rule does not ensure EEO programs avoid conflicts of interest by being separated from the agency’s HR or General Counsel offices. It also does not address referrals to the Office of Special Counsel (OSC) for disciplinary actions—a critical tool given OSC’s ability to act against those who perpetrate discrimination.

The Commission’s proposed changes are counter to Congressional intent. Congress has found that “[f]ederal agencies cannot be run effectively if those agencies practice or tolerate discrimination.”⁷ The Commission’s proposed changes will make it more difficult for federal employees to challenge discrimination and easier for agencies to evade accountability. While Section 717 of Title VII contemplates that federal agencies shall receive discrimination complaints, it also charges the EEOC with effective enforcement of anti-discrimination requirements, including by issuing rules that carry out its responsibility. The current rules, while imperfect, better effectuate these responsibilities by accounting for potential conflicts of interest that may arise from agencies adjudicating complaints.⁸ Indeed, by providing federal employees with the right to an impartial hearing before the EEOC, where complainants may have access to discovery and a third-party adjudicator, the current process enables federal employees to have recourse in cases where federal agencies are delaying investigations or appear to be biased in their handling of complaints.

Putting Huge Strains on the Government, Wash. Post (Oct. 13, 2025),

<https://www.washingtonpost.com/politics/2025/10/13/retirements-buyouts-federal-government-trump>

⁶ U.S. Equal Employment Opportunity Commission, *Annual Performance Report for Fiscal Year 2023* (2024),

<https://www.eeoc.gov/2023-annual-performance-report>; U.S. Equal Emp. Opportunity Comm’n, *Annual Performance Report for Fiscal Year 2024* (2025), <https://www.eeoc.gov/2024-annual-performance-report>.

⁷ 5 U.S.C. 2301.

⁸ One of the primary reasons Congress enacted the Equal Employment Opportunity Act of 1972 (the Act) was to address the impartial resolution of federal workers’ discrimination complaints. *See* Subcommittee on Labor of the S. Comm. on Labor and Public Welfare, 92d Cong. 2d Sess., *Legislative History of the Equal Employment Opportunity Act of 1972*, 1728 (Comm. Print 1972). Under the pre-Act system, federal agencies investigated themselves, the agency heads made the final determination of whether there had been discrimination, and the only appeal available was to the then-Civil Service Commission (Commission). *Id.* Federal workers were deeply skeptical that they were being treated fairly under this system, and this discouraged them from filing complaints. *Id.* at 1728-29. Congress sought to address this issue by giving the Commission new authority “to reconsider its entire complaint structure and the relationships between the employees, agency and Commission in these cases.” *Id.* at 1729. This authority included, for example, the ability to issue rules, regulations, orders and instructions to effectuate its responsibilities. Therefore, it would be inconsistent with Congressional intent to now implement a complaint process in which the conflict-of-interest concerns are not mitigated but heightened.

Moreover, Congress established the federal sector administrative process to provide federal employees with a more informal and less-costly mechanism to vindicate their rights. Unfortunately, under the guise of simplification, the NPRM needlessly imposes federal court standards on complaints and eliminates employees' ability to challenge systemic discrimination, burdening federal courts.⁹

Further, the proposed rule would also make it more difficult for federal employees to obtain legal representation by reducing attorney's fee awards. The proposal disfavors the use of standard fee matrices, asserts that employment discrimination cases are not complex litigation, restricts compensation for work on unsuccessful claims, and generally allows fees only for services performed after a written complaint is filed. For attorneys who must rely on fee recovery, lower or less predictable awards may make it economically impracticable to accept federal-sector EEO matters. The likely consequence is that more employees will be required to navigate an increasingly technical process without counsel.

Finally, the 30-day public comment period is insufficient for review of such complex changes and is contrary to the Commission's purported interest in substantive feedback. Notably, the docket shows that the NPRM was withdrawn twice on August 28 before being re-posted on August 31. These technical issues likely caused confusion for stakeholders who sought to submit comments during that time period and ultimately gives stakeholders fewer than 30 days to comment.

We urge the Commission to withdraw the NPRM and engage Congress in developing a revised proposal. While speed and efficiency matter, this proposed rule could have the effect of making EEO claims slower on top of stripping federal employees of key rights. The federal government should be a model employer free of discrimination, and its civil-rights process should reflect that obligation.

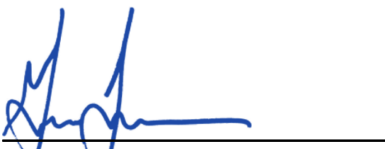
Sincerely,



Chris Van Hollen
United States Senator



Kweisi Mfume
Member of Congress



Greg Landsman
Member of Congress



Donald S. Beyer Jr.
Member of Congress

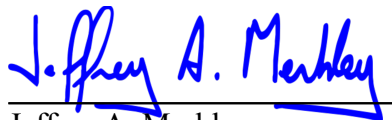
⁹ The Act's legislative history states that Congress also wanted the then-Civil Service Commission to address "various forms of systemic discrimination in the [federal] system." *Id.* at 1729. Therefore, removing federal workers' ability to challenge systemic discrimination in their workplaces would also undermine one of the purposes of the Act.



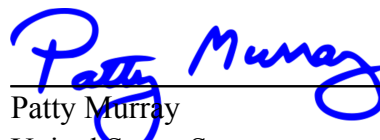
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Gary C. Peters
United States Senator
Ranking Member, Committee
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Bernard Sanders
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Adam B. Schiff
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United States Senator



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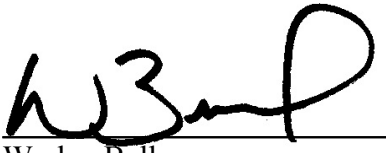
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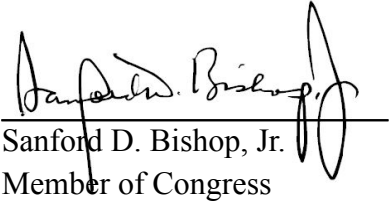
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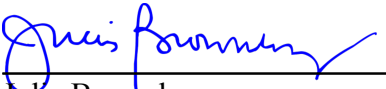
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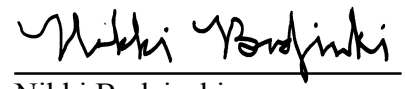
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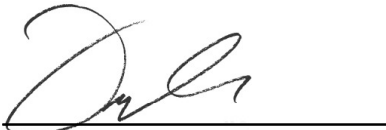
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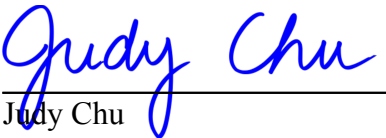
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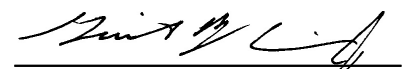
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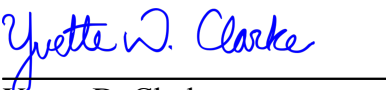
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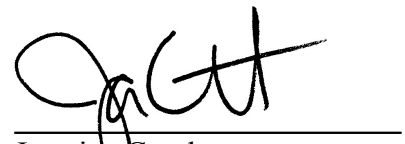
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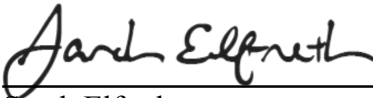
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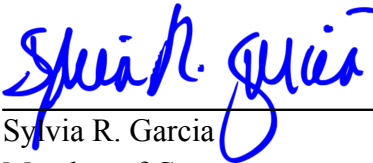
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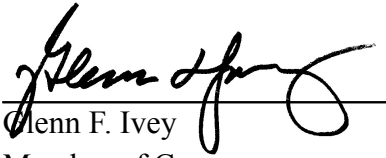
Al Green
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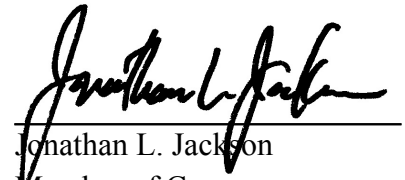
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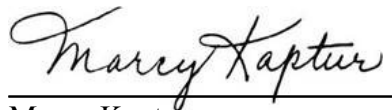
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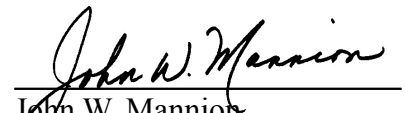
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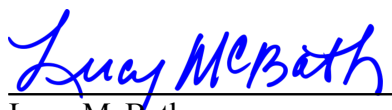
Summer L. Lee
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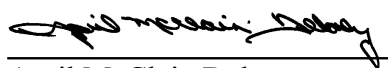
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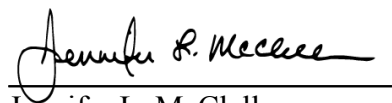
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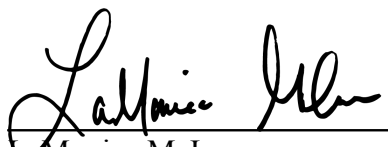
Lucy McBath
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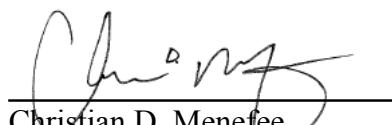
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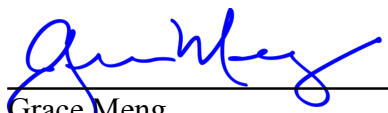
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Christian D. Menefee
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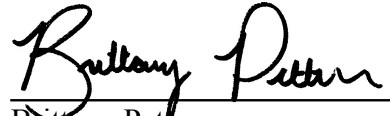
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Alexandria Ocasio-Cortez
Member of Congress



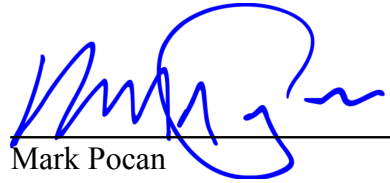
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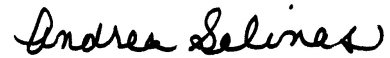
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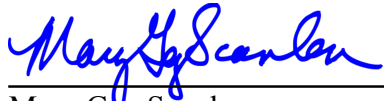
Mark Pocan
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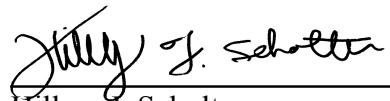
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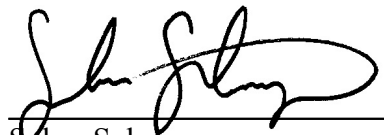
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Adam Smith
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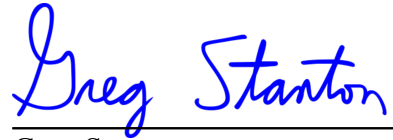
Dina Titus
Member of Congress



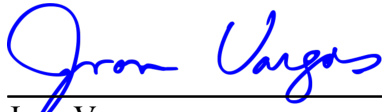
Rashida Tlaib
Member of Congress



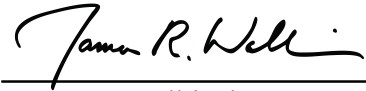
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