



The Coalition For Change, Inc. (C4C)

*“It is not only what we do, but also what we do not do,
for which we are accountable.”*

Moliere

Chair Charlotte A. Burrows
U.S. Equal Employment Opportunity Commission
131 M St. N.E.
Washington D.C. 20507

**Re: Docket EEOC-2022-00004-0001
FY-2022-2036 Draft Strategic Plan for Public Comment**

Dear Chair Burrows,

On behalf of The Coalition For Change, Inc. (C4C), I (Tanya Ward Jordan) submit comments on the U.S. Equal Employment Opportunity Commission’s (EEOC) Draft Strategic Plan for Fiscal Years 2022-2026. We expect the EEOC to publish our comments without redaction.

The C4C¹ is a volunteer civil rights organization. Our members comprise former and present employees harmed due to Federal workplace discrimination. The C4C contributed invaluable input to the 'Elijah E. Cummings Federal Employee Antidiscrimination Act of 2021 (Cummings Act).² In 2016, we approached the EEOC’s Office of Federal Operations (OFO) with reform measures to combat Federal workplace discrimination. Unfortunately, the OFO snubbed our recommendations and stopped meeting with our stakeholder group. Nevertheless, we found a committed champion for Federal workers in Representative Elijah E. Cummings. He vigorously spearheaded the C4C’s measures, which became law.

At present, we offer commentary about the EEOC’s Draft Strategic Plan that warrants your attention. We have numbered our nine comments. We have also included three attachments for your review. They exemplify a few areas where the EEOC’s OFO needs to improve if it seeks to combat the blight of discrimination in the Federal sector.

¹ The Coalition For Change, Inc. (C4C) maintains a dual mission. We serve as a support network for Federal employees harmed by race discrimination and retaliation. We also serve as an advocacy group to advance equality in the Federal sector. Website: <https://coalition4change.org/index.html>

² Congress of the United States. Ranking Member Elijah E. Cummings Statement on the Record in Support of Federal Employee Antidiscrimination Act conveys thanks to Tanya Ward Jordan, Paulette Taylor, and C4C members for work on the measures and perseverance. Statement available at https://oversight.house.gov/sites/democrats.oversight.house.gov/files/documents/170711CummingsStatementforRecordonHR702_0.pdf

The Coalition For Change, Inc.'s (C4C)
*Commentary on the U.S. Equal Employment Opportunity Commission's (EEOC)
Draft Strategic Plan for Fiscal Years 2022-2026*

Strategic Goal 1 ---“reflects the EEOC’s primary mission of preventing unlawful employment discrimination” (EEOC Draft Strategic Plan, p.13)

Coverage: The C4C limits comments to **Strategic Goal 1**. After arduous review of the EEOC’s Strategic Draft Plan (Plan), we gleaned the following:

1. **The EEOC fails to align performance measures with its dual role as an enforcer of Title VII of the Civil Rights Act for Federal and Non-Federal employers.** In the non-federal arena, the EEOC conducts intake services, investigates charges, and files lawsuits. Contrastingly, in the Federal arena, the EEOC adjudicates complaints and monitors agencies’ compliance with the EEOC’s regulations.
2. **The EEOC presents a blurred write-up to describe the measures it will use when it reports enforcement activities for Federal employers vs Non-Federal employers.** In brief, the EEOC Plan lacks clarity. The Plan makes it a grueling exercise to distinguish which measures the EEOC will apply for Federal employers apart from Non-Federal employers. Moreover, the EEOC fails to address coherently how it will tackle problems that clog the complaint process and gut the integrity of the *Federal Equal Employment Opportunity (EEO) complaint program*. The Plan omits strategic measures needed to correct the weaknesses complainants and stakeholders have raised with the EEOC about its hearing program and the appeal program.
3. **The EEOC fails to address how it will use its enforcement authority** to conduct on-site agency compliance reviews or to impose sanctions on agencies that habitually disregard its 180-day complaint investigation requirement and other guidance found at 29 CFR 1614.³
4. **The EEOC fashioned a broad strategic approach for non-federal employers and Federal employers alike.** Hence, the Plan insults federal stakeholders who have waited decades for the EEOC to correct identified weaknesses germane just to the Federal EEO complaint program. The Plan’s measures/strategies present as if the EEOC interfaces with federal employers (i.e., *cabinet departments and agencies*), and non-federal employers (i.e., *private sector employers, local and state government*) in like manner. Definitively, the enforcement

³ 29 CFR Part 1614 – Federal Sector Equal Employment Opportunity. Available at <https://www.ecfr.gov/current/title-29/subtitle-B/chapter-XIV/part-1614?toc=1>

role the EEOC performs in the Federal sector differs from the enforcement role the EEOC performs in the non-federal sector.

5. **The EEOC fails to include applicable Cummings Act provisions⁴ in its Plan.** As part of its enforcement role, the EEOC has the authority to refer disciplinary cases to the Office of Special Counsel (OSC) when it finds unlawful discrimination. Yet, the Plan fails to address steps the EEOC will take to hold lawbreakers accountable. The EEOC and the OSC signed a Memorandum of Understanding (MOU)⁵ long ago about disciplinary referrals. The C4C made a Freedom of Information Act request into the MOU matter. We learned the EEOC had not actively referred cases to the OSC. We informed Congressman Cummings of the EEOC's failure to foster accountability, and we recommended improvement. As a result, the referral provision now resides in the Cummings Act. On a related matter, the EEOC's Management Directive 110 instructs Federal entities to ensure the EEO Director is "*under the immediate supervision of the agency head.*"⁶ Some ignore the EEOC directive. Yet, the EEOC fails to address in its Plan what it intends to do to spur agencies towards 100% compliance with the Cummings law.
6. **The EEOC puts unequal weight on its enforcement role with businesses not under the government's direct control.** The performance measures discussed in the Plan's narrative, Appendix B, and the Strategic Plan Crosswalk largely center on *non-federal* employers. The EEOC slights civil servants. The EEOC fails to cover its duty to enforce anti-discrimination laws in the U.S. Federal Government. Openly, the Plan displays how little care the EEOC's leadership gives to Federal employees and applicants seeking Federal employment.
7. **The EEOC fails to map out a strategy to combat unlawful discrimination when Federal agencies dismiss "credible" claims because a complainant fails to meet the EEOC guidelines at 29 CFR 1614.** For example, the EEOC directs agencies to dismiss discrimination claims where an employee, often unskilled with EEO complaint procedures, raises a viable allegation but misses a counseling or complaint filing time requirement. Additionally, the EEOC directs agencies to toss discrimination complaints when an individual exits the EEOC's drawn-out pro-agency administrative complaint system and later, files a civil action. In both scenarios described, the EEOC simply directs agencies to dismiss a party's complaint **with no provision to follow up on claims that recognizably held merit.** Hence, despite the EEOC's mantra under the Plans' Strategic

4 Subtitle B—Elijah E. Cummings Federal Employee Antidiscrimination Act of 2020.

Available at <https://coalition4change.org/Cummings.pdf>

5 Memorandum of Understanding Between U.S. Office of Special Counsel And Equal Employment Opportunity Commission. Available at <https://www.eeoc.gov/mou/memorandum-understanding-between-us-office-special-counsel-and-equal-employment-opportunity>

6 U.S. EEOC. Management Directive 110. Available at <https://www.eeoc.gov/federal-sector/management-directive/chapter-1>. Also Reference Cummings Act. Sec. 403. Head of Program Supervised by Head of Agency.

Goal 1 - the EEOC practices restraint when preventing unlawful employment discrimination in the Federal sector.

8. **The EEOC's Plan breeds reporting integrity issues.** The Plan leaves a way (*perhaps unintentionally*) for the EEOC to claim unmet achievements when it submits the EEOC's *Annual Performance Report (APR)* to Congress. The Plan's combined and muddled performance measures write-up about two unrelated employers (Federal vs Non-Federal) may deliver misleading information to Congress. Blurred measures (Strategic Plan) yield blurred results (APR).

9. **The EEOC's Plan delivers a dismal message to civil servants.** By omission, the Plan carries the message --- "*Combatting and preventing discrimination in the Federal sector is not an EEOC priority.*" Rather, the EEOC's priority is to reduce the hearing and appeal complaint workload. *Towards this, we will wait out Federal complainants until they either file suit in court,⁷ or die.*

In closing, the Coalition For Change, Inc. (C4C) knows the Federal government wants to be the "Model Employer" for private and public sector employers in America. With this in mind, we call for the Commission, as it finalizes its Draft Strategic Plan for Fiscal Years 2022-2026, to develop, identify, and classify the strategies separately it will use to tackle discrimination in the "U.S. Federal Government," the nation's largest employer.

In Pursuit of Equality for All,

Tanya Ward Jordan, President
The Coalition For Change, Inc. (C4C)

cc:

President Joseph Biden, White House
Senator Chris Van Hollen, Chair, Sub-Committee Financial Services and General Government
Representative. Carolyn B. Maloney, Chairwoman, House Committee on Oversight and Reform
Representative Hakeem Jeffries, Chairman of the Democratic Caucus

ATTACHMENTS: (3)

Attachment A: Compliance Evaluation Review - Failure to Perform
Attachment B: Hearings/Motions/Sanctions - Failure to Perform
Attachment C: Disciplinary Referrals to the Office of Special Counsel - Failure to Perform

⁷ To reduce its backlog the EEOC conducts hearings/appeals at a snail's pace, which propels many victims seeking relief from discrimination into court. Once in court, the EEOC maintains a "hands-off approach" and directs agency EEO offices to dismiss a party's discrimination complaint no matter how egregious it may be.

EEOC ACTIVITY --- Compliance Evaluation Review [Failure to Perform]

Summary of Attachment: Email from U.S. Department of Justice - Alcohol, Tobacco, and Firearm (ATF) Criminal Investigator (Lori McLaughlin) to U.S. EEOC Office of Federal Operations Director (Carlton Hadden) requesting on-site compliance evaluations of the ATF EEO Office. McLaughlin reported her concerns to Senator Charles Grassley who requested a Government Accountability Office (GAO). GAO reported how employee misconduct investigations had been used to retaliate against individuals who report wrongdoing. {The EEOC OFO failed to act on the concerns ATF McLaughlin reported years earlier.}

From: Lori.D.McLaughlin@usdoj.gov [mailto:Lori.D.McLaughlin@usdoj.gov]
Sent: Friday, September 08, 2017 3:14 PM
To: CARLTON HADDEN <CARLTON.HADDEN@EEOC.GOV>
Cc: AWO SARPONG ANSU <AWO.SARPONG ANSU@FFOC.GOV>; Donellen.S.Schlosser@usdoj.gov;
Richard.Toscano@usdoj.gov; Snider.Page@usdoj.gov
Subject: RE: Request for DOJ/EEOC Counselor

Emal L; Pg 1

Hello –

I have been waiting for a response for over two (2) weeks regarding the below email. Please advise, if the EEOC is still forcing Federal employees (DOJ/ATF) to process our EEO Discrimination Complaints within a corrupt EEO Complaints Program. If you recall, your office previously advised us that the EEOC would “consider” evaluating the ATF in FY-2017. After the EEOC notification, we continued to report integrity/misconduct violations by our EEO Office. Given that we are coming to the end of FY-2017, what is the status of that decision? Please advise. Thanks!

From: McLaughlin, Lori D.
Sent: Friday, August 25, 2017 2:10 PM
To: 'CARLTON HADDEN' <CHADDEN@EEOC.GOV>
Cc: Page, Snider <Snider.Page@atf.gov>; AWO.SARPONG ANSU@EEOC.GOV; Schlosser, Donellen S. (OIG) <Donellen.S.Schlosser@usdoj.gov>; Toscano, Richard (JMD) <Richard.Toscano@usdoj.gov>; McLaughlin, Lori D. (Lori.McLaughlin@atf.gov) <Lori.McLaughlin@atf.gov>
Subject: RE: Request for DOJ/EEOC Counselor

Hello –

For our records, I would greatly appreciate a written response from the EEOC. As you both are aware, our EEO Discrimination Complaints are not being processed in accordance with any Federal regulation. Unless, you can direct us to a Federal regulation that allows for the falsification of EEO forms, illegal termination of EEO investigations/counseling sessions, removal of evidence from official ROI and the falsification of evidence. Thanks!

EEOC ACTIVITY --- HEARINGS/MOTIONS/ORDERS [Failure to Perform]

Summary of Attachment: *Juanita Kennedy vs Thomas Vilsack*, U.S. Department of Agriculture. Excerpt from complainant Juanita Kennedy's Motion For Sanctions and Default Order against the U.S. Department of Agriculture (USDA). Background: Ms. Kennedy made a timely request to the EEOC for a hearing on her discrimination claims against her employer (USDA). After months of waiting for the EEOC to respond, she later learned the USDA (Defendant) failed to comply with an EEOC Administrative Order to provide the Report of Investigation and complete investigative file. When she learned the USDA had defied the Administrative Judges' Order, she motioned for sanctions and default order. Rather than act preventively or issue sanctions(s) against the USDA who defied the Order, the EEOC wrongly remanded the case back to USDA (Defendant). **The case is now in court.**

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION WASHINGTON FIELD OFFICE 131 M Street, N.E., Room 4NW02F Washington, D.C. 20507		
Juanita Kennedy	*	
Complainant	*	
vs	*	EEOC No. 570-2016-00127X Agency No. APHIS-2014-00369
Thomas Vilsack, Secretary U.S. Department of Agriculture	*	
Agency	*	
<u>COMPLAINANT'S MOTION FOR SANCTIONS AND DEFAULT JUDGMENT</u>		
COMES NOW, the Complainant, Juanita Kennedy, by and thru undersigned counsel motions this commission to enter an order in favor of the complainant and against Thomas Vilsack, Secretary, U.S. Department of Agriculture, Agency. In support thereof Complainant states as follows:		
1. That on March 15, 2016 the commission issued an Order directing the Agency to produce the complete complaint file, including the ROI within 15 days of the date of the Order.		

**EEOC ACTIVITY --- DISCIPLINARY REFERRALS TO OFFICE OF SPECIAL
COUNSEL [Failure to Perform]**

Summary of Attachment The following three (3) pages document the EEOC's reply to the Coalition For Change, Inc. (C4C). We requested information on the number of referrals the EEOC made to the Office of Special Counsel from beginning FY2008 through requested date in 2014. During this interval, the EEOC confirmed it had not made any referrals to deter discrimination in the Federal sector.



**U.S. Equal Employment Opportunity Commission
Office of Legal Counsel**

131 M Street NE
Washington, DC 20507
(202) 663-4500
(202) 663-7028 TTY
(202) 663-4679 FAX

JUN 9 2014

Tanya Ward Jordan
The Coalition for Change, Inc. C4C
P.O. Box 142
Washington, DC 20044

Re: FOIA No.: 820-2014-200116

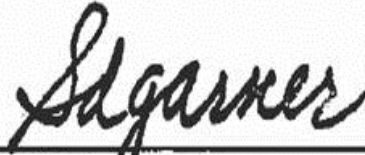
Dear Ms. Jordan:

Your Freedom of Information Act (FOIA) request, received in this office on April 25, 2014 has been processed. Our search began on April 25, 2014. All agency records in creation as of April 25, 2014 are within the scope of the EEOC's search for responsive records. The paragraph(s) checked below apply:

- Your request does not reasonably describe the records you wish disclosed or No records fitting the description of the records you seek disclosed exist or could be located after a thorough search. The remainder of your request is:
- Your request is granted.
- Your request is denied pursuant to the subsections of the FOIA indicated at the end of this letter. An attachment to this letter explains the use of these exemptions in more detail.
- Your request is granted in part and denied in part. Portions not released are being withheld pursuant to the subsections of the FOIA indicated at the end of this letter. An attachment to this letter explains the use of these exemptions in more detail.
- You must send a check for \$[] made payable to the United States Treasurer by mail to the above address. Manual search and review time is billed per quarter hour based on the personnel category of the person conducting the search. Fees for search services range from \$5.00 per quarter hour to \$20.00 per quarter hour. Direct costs are billed for computer searches and in certain other circumstances. Photocopying is billed at \$.15 per page. 29 C.F.R. §1610.15. The attached Comments page will further explain any direct costs assessed. The fee has been computed as follows:
- Commercial use requests: pages of photocopying; quarter hour(s) of review time; and quarter hour(s) of search time; Direct costs are billed in the amount of for .
- Requests by educational or noncommercial scientific institutions or representatives of the news media: pages of photocopying. The first 100 pages are provided free of charge.
- All other requests: pages of photocopying and quarter hour(s) of search time. Direct costs are billed in the amount of for . The first 100 pages and 2 hours of search time are provided free of charge.
- The disclosed records are enclosed. No fee is charged because the cost of collecting and processing the chargeable fee equals or exceeds the amount of the fee. 29 C.F.R. § 1610.15(d)

- The disclosed records are enclosed. Photocopying and search fees have been waived pursuant to 29 C.F.R. § 1610.14.
- You may appeal this decision by writing within thirty days of receipt of this letter to the Office of Legal Counsel, FOIA Programs, Equal Employment Opportunity Commission, 131 M Street, N.E., Suite 5NW02E, Washington, D.C. 20507. Your appeal will be governed by 29 C.F.R. § 1610.11.
- See attached Comments page for further information.

Sincerely,



Stephanie D. Garner
 Assistant Legal Counsel
 FOIA Programs
 (202) 663-4634

Applicable Sections of the Freedom of Information Act, 5 U.S.C. § 552(b):

- | | |
|--|---|
| <input type="checkbox"/> (2) | <input type="checkbox"/> (6) |
| <input type="checkbox"/> (3) (A)(i) | <input type="checkbox"/> (7)(A) |
| <input type="checkbox"/> Section 706(b) of Title VII | <input type="checkbox"/> (7)(B) |
| <input type="checkbox"/> Section 709(e) of Title VII | <input type="checkbox"/> (7)(C) |
| <input type="checkbox"/> Section 107 of the ADA | <input type="checkbox"/> (7)(D) |
| <input type="checkbox"/> Section 207 of the GINA | <input type="checkbox"/> Other (see attached) |
| <input type="checkbox"/> (3)(A)(ii) | |
| <input type="checkbox"/> 41 U.S.C. §253b(m) of the
National Defense Authorization Act | |
| <input type="checkbox"/> (4) | |
| <input type="checkbox"/> (5) | |

Comment

Your Freedom of Information Act (FOIA) request received by the Equal Employment Opportunity Commission, Office of Legal Counsel, FOIA Programs has been processed. In your request, you seek "beginning FY 2008 thru present of the total number of cases EEOC has referred to the Office of Special Counsel (OSC) by fiscal year and also a listing identifying the case number as well as the offending agency". We have completed an extensive search and found there has not been any cases reported to OSC from 2008 to present.

Therefore, this request has been denied due to "no records".