

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND REFORM

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January 23, 2020

The Honorable Janet Dhillon
Chair
Equal Employment Opportunity Commission
131 M Street, N.E.
Washington, D.C. 20507

Dear Chair Dhillon:

We are writing to request documents and information about the change proposed by the Equal Employment Opportunity Commission (EEOC) to longstanding federal rules ensuring that federal employees who bring complaints for illegal employment discrimination may be accompanied by the representative of their choice.

For 40 years, EEOC has required that federal agencies allow employees to use work hours to bring formal complaints of employment discrimination against their agencies. Agencies are required to provide a “reasonable amount of official time” to complainants to “prepare the complaint and respond to agency and EEOC requests for information.”¹

The rule also ensures that representatives chosen by complainants, if they are employees of the agency, “shall be on official time” when they advise, accompany, and represent complainants.²

On December 11, 2019, EEOC published a Notice of Proposed Rulemaking that would amend that agency requirement and allow agencies to deny official time for any representative who is “an officer, steward or otherwise in an official capacity” with a union. The proposed rule would exclude only union representatives from the government-wide Equal Employment Opportunity (EEO) official time requirement.³

As the Chairwoman of the Committee on Oversight and Reform, which has jurisdiction over Title 5 of the U.S. Code, the Federal Service Labor Management Relations Statute (FSLMRS), and the Civil Service Reform Act, and the Chairman of the Committee on Education and Labor, which has jurisdiction over EEOC, we are extremely concerned about the potential effects of this proposed rule on the enforcement of employment anti-discrimination laws and policies affecting

¹ 29 C.F.R. § 1614.605(b).

² *Id.*

³ 84 Fed. Reg. 67683 (Dec. 11, 2019) (online at www.federalregister.gov/d/2019-26545).

federal employees and the fairness of the federal workplace.

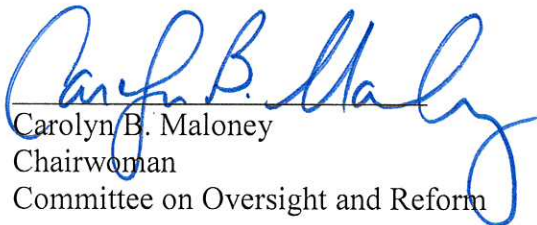
To assist the Committees' oversight, we request the following information and documents by February 6, 2020:


1. All communications, studies, analyses, memoranda, and opinions concerning the following potential effects of the proposed rule:
 - a. How the proposed rule would affect the EEO regulatory requirement in 29 C.F.R. § 1614.605(a) that complainants have the right to "a representative of the complainant's choice" during interactions with an EEO counselor and when formally filing a complaint and appealing the agency decision to EEOC;
 - b. How the proposed rule would affect the EEO regulatory requirement in 29 C.F.R. § 1614.102(a)(12) to "enlist" the cooperation of labor organizations in maintaining an affirmative program to promote equal opportunity;
 - c. How the proposed rule would affect the financial cost to complainants, including the average financial cost to complainants, if the rule led complainants to retain attorneys to represent them in matters for which they would otherwise have enlisted a union representative on official time;
 - d. How the proposed rule is expected to affect the number of *pro se* complainants;
 - e. How the proposed rule might affect the backlog of EEO cases awaiting adjudication, the average length of adjudications, and the workload on administrative judges;
 - f. How a decrease in the number of union-represented complainants would affect the effectiveness and efficiency of EEO proceedings;
 - g. Whether the proposed rule is intended to exclude any federal employee who serves "as an officer, steward or otherwise in an official capacity" with a union from receiving any official time under Section 1614.605(b), even if he or she is not eligible for official time under a collective bargaining agreement;
 - h. The basis for the Commission's statement in its notice of proposed rulemaking that it "believes that the relevant labor relations statute articulates the best policy for determining if someone receives official time when they act for a labor organization" when the FSLMRS does not explicitly mention EEO;
 - i. How the purposes of EEO are advanced by prohibiting official time for union representatives while requiring official time for non-union representatives; and
 - j. Any cost benefit analyses undertaken and all analyses substantiating EEOC's claim that this proposed rule is not a "significant regulatory action" under Executive Orders 12866 or 13563, which would require that an agency propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs.

2. All communications of Victoria Lipnic, former Acting Chair, Janet Dhillon, Chair, and Andrew Maunz, Special Assistant to the Chair, concerning the development of this draft rule, from January 2019 to the present;
3. All communications between EEOC and other federal agencies, including the Office of Personnel Management, relating to the union status of representatives chosen by EEO complainants, including comments from federal agencies about the draft proposed rule, from January 2019 to the present; and
4. For each of the past five years, the following information and analyses as reported by each agency that submitted information under the No FEAR Act:⁴
 - a. The total number of EEO cases;
 - b. The number of cases in which complainants chose to have representatives at any stage of the proceedings;
 - c. The number of cases in which the complainants self-represented;
 - d. The status type of the representatives chosen by complainants (private attorney, union representative, non-union co-worker); and
 - e. Analyses concerning the union status of representatives chosen by EEO complainants or concerning the costs borne by EEO complainants.

The Committee on Oversight and Reform is the principal oversight committee of the House of Representatives and has broad authority to investigate “any matter” at “any time” under House Rule X. The Committee on Education and Labor has oversight responsibilities regarding laws under its purview under House Rule X. An attachment to this letter provides additional instructions for responding to this request. If you have any questions, please contact Jaron Bourke (Committee on Oversight and Reform) at Jaron.Bourke@mail.house.gov or Cathy Yu (Committee on Education and Labor) at Cathy.Yu@mail.house.gov. Please direct all official correspondence to both Committees’ Chief Clerks at Elisa.LaNier@mail.house.gov (Committee on Oversight and Reform) and Tylease.Fitzgerald@mail.house.gov (Committee on Education and Labor). Thank you for your attention to this matter, and we look forward to your response.

Sincerely,


Carolyn B. Maloney
Chairwoman
Committee on Oversight and Reform


Robert C. “Bobby” Scott
Chairman
Committee on Education and Labor

cc: The Honorable Jim Jordan, Ranking Member, Committee on Oversight and Reform
The Honorable Virginia Foxx, Ranking Member, Committee on Education and Labor

⁴ Pub. L. No. 107-174 (2002).