



Report to the Ranking Member,  
Committee on Oversight and  
Accountability, House of  
Representatives

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June 2024

# EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

## Improved Oversight Processes Needed to Help Agencies Address Program Deficiencies

# GAO Highlights

Highlights of [GAO-24-105874](#), a report to the Ranking Member, Committee on Oversight and Accountability, House of Representatives

## Why GAO Did This Study

Effective EEO complaint programs help ensure a workplace free of unlawful employment discrimination. Federal agencies are required to maintain EEO programs to promote equal opportunity and eliminate discriminatory practices and policies. EEOC has government-wide responsibility for guiding and overseeing these programs.

GAO was asked to review EEOC's oversight of federal EEO complaint processes. This report examines the extent to which EEOC supports and oversees federal EEO complaint programs, among other objectives.

GAO reviewed federal EEO laws and regulations and EEOC policies, processes, and management directives. GAO analyzed EEOC Technical Assistance letters to agencies and interviewed EEOC officials.

## What GAO Recommends

GAO is making four recommendations to EEOC to improve its processes for overseeing agencies' compliance with timely reporting, compiling and analyzing agency EEO information; ensuring consistent use of tools to record agency information; and invoking public notification procedures on agency noncompliance. EEOC agreed with all four recommendations.

View [GAO-24-105874](#). For more information, contact Dawn G. Locke at (202) 512-6806 or [locked@gao.gov](mailto:locked@gao.gov).

June 2024

# EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

## Improved Oversight Processes Needed to Help Agencies Address Program Deficiencies

### What GAO Found

The Equal Employment Opportunity Commission (EEOC) supports federal Equal Employment Opportunity (EEO) laws through directives and training for agency EEO programs. EEOC also monitors EEO programs through Technical Assistance reviews of executive branch agencies every 3 years. These reviews provide feedback and guidance to agencies on their progress toward attaining a model EEO program. EEOC has reported actions to help address common EEO program deficiencies identified at a number of agencies (see table).

**Selected Common Deficiencies Identified in Equal Employment Opportunity Commission (EEOC) Technical Assistance Letters to 24 Agencies and Examples of Related Commission Actions (2020-2021)**

| Identified Deficiency  | Number of Agencies | EEOC Reported Actions  |
|--|--------------------|--|
| Did not issue <b>final agency decisions</b> for complaints within required timeframes                | 16                 | Shared promising practices on strategies to improve final agency decision timeliness |
| Did not have an <b>anti-harassment policy</b>  | 16                 | Shared promising practices on strategies for preventing harassment                   |
| Equal employment opportunity (EEO) Director did not <b>directly report to the head of the agency</b> | 11                 | Issued report to encourage agency heads to embrace direct reporting structures       |
| Did not complete <b>EEO investigations</b> within required timeframe                                 | 8                  | Enhanced training and issued report  |

Source: GAO analysis of EEOC Technical Assistance letters. | GAO-24-105874

Note: The 24 agencies are those listed at 31 U.S.C. § 901(b). These Technical Assistance feedback letters analyzed were the most recently available at the time of this review.

While EEOC supports and oversees federal EEO programs, GAO found that EEOC's oversight processes could be improved. Agencies must assess their own EEO programs, identify deficiencies, and develop plans to address them. Agencies do this by completing an annual report that includes a checklist based on EEOC criteria for operating a model EEO program. However, GAO has found that EEOC's current system for tracking submission of these reports does not ensure timely submissions or facilitate the identification of deficiencies across agencies. This affects EEOC's ability to do analysis and compile government-wide information on compliance with EEO requirements.

GAO found that EEOC routinely identifies agency deficiencies during Technical Assistance reviews but does not require that EEOC staff use its standardized tool to record them. Also, this does not facilitate the identification of deficiencies across agencies. Use of a standardized tool would help ensure that staff are recording deficiencies consistently to support analysis. With regard to enforcement, EEOC has established procedures for public notification of when an agency has not responded timely or in good faith with a compliance plan to address deficiencies. However, EEOC does not outline criteria for when to invoke public notification, which could be used as an enforcement tool.

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**Abbreviations**

|         |   |
|---------|---|
| CFO Act | Chief Financial Officers Act              |
| DOT     | Department of Transportation              |
| EEO     | Equal Employment Opportunity              |
| EEOC    | Equal Employment Opportunity Commission   |
| MD-110  | Management Directive 110                  |
| MD-715  | Management Directive 715                  |
| USAID   | U.S. Agency for International Development |

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June 13, 2024

The Honorable Jamie Raskin  
Ranking Member  
Committee on Oversight and Accountability  
House of Representatives

Dear Mr. Raskin:

As our nation's largest employer, the federal government's effective implementation of equal employment opportunity (EEO) laws and regulations helps support efforts to ensure workplaces are free from discrimination for more than 2 million federal employees. Federal agencies are required to maintain a continuing EEO program to promote equal opportunity and eliminate discriminatory practices and policies.<sup>1</sup> However, Office of Inspectors General investigations and reported increases in the findings of discrimination in the federal government suggest that EEO concerns still exist in federal agencies.<sup>2</sup> This underscores the need for effective implementation and enforcement of EEO laws and regulations to protect federal employees.

The U.S. Equal Employment Opportunity Commission (EEOC) is the primary federal agency that enforces all federal laws that prohibit employment discrimination. It coordinates and leads the federal government's efforts to eradicate workplace discrimination. As part of these responsibilities, EEOC oversees federal executive branch agency EEO programs and assures federal agency compliance with relevant regulations.

You asked us to review how the federal EEO complaint process can be enhanced to address unlawful employment discrimination and advance equal opportunity in the workplace. In this report we examine: (1) the

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<sup>1</sup>29 C.F.R. § 1614.102.

<sup>2</sup>For example, see Department of Veterans Affairs Office of Inspector General, *Summary of Internal Investigations regarding Misconduct by a Former VA OIG Special Agent in Charge*, Report #23-00524-21 (Washington, D.C.: Nov. 21, 2022), Architect of the Capitol, *Follow-Up Evaluation of the Congressional Request for Architect of the Capitol's Response to Sexual Harassment*, Report No. OIG-FLD-2022-01 (Washington, D.C.: Jun. 1, 2023), and Federal Deposit Insurance Corporation, *Press Release: FDIC Special Review Committee Releases Independent Report on Workplace Misconduct and Culture* (Washington, D.C.: May 7, 2024).

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extent to which EEOC supports and oversees federal EEO complaint programs; (2) the extent to which the U.S. Agency for International Development (USAID) was consistent with selected EEO laws and EEOC guidance; and (3) the extent to which the Department of Transportation (DOT) was consistent with selected EEO laws and EEOC guidance.

We reviewed relevant federal laws, regulations, and EEOC policies and management directives related to the federal EEO complaint process. Our review of laws included selected provisions of Title VII of the Civil Rights Act of 1964, the Notification and Federal Employee Antidiscrimination and Retaliation (No FEAR) Act of 2002, and the Elijah E. Cummings Federal Employee Antidiscrimination Act of 2020.<sup>3</sup>

To review EEOC's role in supporting and overseeing federal EEO programs, we analyzed its most recently available Technical Assistance feedback letters (2020 and 2021) to 24 Chief Financial Officer (CFO) Act agencies on their EEO programs.<sup>4</sup> We reviewed and analyzed EEOC documentation related to how it oversees federal EEO programs. This included a review of the EEOC's Management Directive 110 (MD-110) on EEO complaint processing and Management Directive 715 (MD-715) guidance on essential elements of a model EEO program. We reviewed EEOC's standard operating procedures related to how the Office of Federal Operations oversees federal EEO programs and their compliance with relevant requirements. We reviewed examples of EEOC program evaluations and compliance reporting from selected agencies.

We also reviewed our related prior reports on the federal EEO complaint process and federal EEO programs, as well as reports from other governmental organizations on selected EEO program issues. See appendix I for examples of our selected reports and open recommendations for EEO programs.

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<sup>3</sup>Civil Rights Act of 1964, Pub. L. No. 88-352, 78 Stat. 241 (1964), *codified as amended at* 42 U.S.C. §§ 2000e-2000e-17; No FEAR Act, Pub. L. No. 107-174, 116 Stat. 566 (2002), *codified as amended at* 5 U.S.C. § 2301 note; Elijah E. Cummings Federal Employee Antidiscrimination Act of 2020, Pub. L. No. 116-283, div. A, tit. XI, subtit. B, §§ 1131-37, 134 Stat. 3388, 3900-05 (2021), *codified at* 5 U.S.C. § 2301 note.

<sup>4</sup>The CFO Act of 1990 agencies are listed in 31 U.S.C. § 901(b), see also <https://www.cio.gov/handbook/it-laws/cfo-act/>. EEOC sends a feedback letter to the EEO Director and agency head, describing the agency's progress on addressing deficiencies, identifying new or unaddressed deficiencies, and highlighting any observed best practices.

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To examine agency adherence to selected EEO laws and EEOC directives, we judgmentally selected the USAID and DOT from the 24 CFO Act agencies to study agencies with varying sizes and EEO program structures. USAID has a centralized EEO program managed through its Office of Civil Rights. DOT has multiple EEO programs in different sub-agencies in addition to an overall EEO program for all of DOT managed in the Departmental Office of Civil Rights. These agencies also provided perspectives on EEOC's role in overseeing and monitoring the federal EEO complaint process. The findings from these agencies are not generalizable to other agencies or the federal government as a whole.

To determine the extent to which USAID's and DOT's programs were consistent with selected EEO laws and EEOC directives, we reviewed EEO policies and program documentation. This included reviewing and analyzing agency Form 462 reports on the EEO complaint processing and outcomes data for USAID and DOT from 2019 through 2023. We chose this time frame to examine data from before and after EEOC's Technical Assistance reviews, which monitor each agencies' compliance with EEO laws and requirements and take place every 3 years. We reviewed annual MD-715 reports from each of these agencies to understand self-identified EEO deficiencies and related action plans. We reviewed No FEAR data reporting for fiscal years 2022 and 2023 to determine agency consistency with reporting requirements. We also reviewed organizational charts and related reporting structure to understand structural reporting lines for each of these agencies' EEO programs. We interviewed relevant EEOC, USAID, and DOT officials responsible for carrying out EEO program functions.

To gain additional views on the federal EEO process, we interviewed selected stakeholders in the EEO complaint process, including EEO advocacy groups, federal EEO practitioners, and academic researchers focused on EEO issues.<sup>5</sup> These individuals or groups represented perspectives of federal sector employees who have made EEO complaints or federal employees who have worked with EEO complaints. The views of the selected stakeholders are not generalizable.

We conducted this performance audit from February 2022 to June 2024 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain

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<sup>5</sup>We selected these stakeholders based on a literature search and their previous experience presenting and offering training on EEO program management and compliance.

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sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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## Background

### Framework for EEOC's Oversight and Enforcement in the Nation's Workplaces

Created by Title VII of the Civil Rights Act of 1964, EEOC is statutorily responsible for enforcing employment antidiscrimination laws.<sup>6</sup> As part of this responsibility, it enforces and oversees various statutes, executive orders, regulations, and other executive policies related to federal EEO. Executive Order 12067 requires EEOC to lead and coordinate agencies' efforts to enforce EEO laws, executive orders, and regulations requiring equal employment opportunity without regard to race, color, religion, sex, national origin, age, or handicap.<sup>7</sup>

To address concerns about discrimination and retaliation in the federal workplace, Congress passed and the President signed into law the No FEAR Act of 2002.<sup>8</sup> The No FEAR Act requires agencies to report on the number of employees disciplined for discrimination, retaliation, or any other infraction. Agencies must post on their website summary statistical data relating to EEO complaints filed by their employees or former

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<sup>6</sup>EEOC is responsible for enforcing Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000e – 2000e-17, prohibiting employment discrimination on the basis of race, color, religion, sex, and national origin; the Equal Pay Act of 1963, as amended, 29 U.S.C. § 206(d), prohibiting sex-based wage discrimination; the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. §§ 621-34, prohibiting employment discrimination against persons 40 years of age or older; Title I of the Americans with Disabilities Act of 1990, as amended 42 U.S.C. §§ 12111-17, prohibiting employment discrimination against qualified individuals with disabilities; Section 501 of the Rehabilitation Act of 1973, 29 U.S.C. § 791, prohibiting employment discrimination against individuals with disabilities in the federal sector; the Pregnancy Discrimination Act of 1978, which amended Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, to specify that discrimination on the basis of pregnancy, childbirth, or related medical conditions constitutes unlawful sex discrimination; the Genetic Information Nondiscrimination Act of 2008, as amended, 42 U.S.C. §§ 2000ff – 2000ff-11, prohibiting discrimination on the basis of genetic information in employment; and the Pregnant Workers Fairness Act of 2022, 42 U.S.C. §§ 2000gg – 2000gg-6, requiring covered employers to reasonably accommodate qualified workers' known limitations related to pregnancy, childbirth, or related medical conditions, absent undue hardship.

<sup>7</sup>Exec. Order No. 12067, *Providing for Coordination of Federal Equal Employment Opportunity Program*, 43 Fed. Reg. 28967 (July 5, 1978).

<sup>8</sup>Pub. L. No. 107-174, 116 Stat. 566 (2002), *codified at* 5 U.S.C. § 2301 note.



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employees.<sup>9</sup> The Elijah E. Cummings Federal Employee Antidiscrimination Act of 2020 (Cummings Act) amended the No FEAR Act to require agencies to publicly post on their agency website a notice stating that a finding of discrimination or retaliation has been made, not later than 90 days after the finding.<sup>10</sup> The Cummings Act also requires the head of each federal agency EEO program to report directly to the head of the agency.<sup>11</sup>

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## EEOC's Federal Workplace Activities

EEOC issues rules, regulations, orders, and instructions to carry out its responsibility for the review and evaluation of the operation of all federal executive branch agency EEO programs.<sup>12</sup> EEOC also develops management directives containing instructions and guidance to help agencies comply with various EEO requirements.<sup>13</sup>

## Management Directive 715

EEOC's MD-715 provides policy, guidance, and standards to establish and maintain effective EEO programs government-wide.<sup>14</sup> MD-715, among other things, requires agencies to identify EEO deficiencies in the workplace, develop and execute plans to eliminate those deficiencies, and report them annually to EEOC through its online portal. MD-715 requires agencies to self-assess their EEO programs' compliance using a checklist based on EEOC criteria for operating a model EEO program.<sup>15</sup>

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<sup>9</sup>Pub. L. No. 107-174, §§ 203(a), 301(a), 116 Stat. at 569-70, 573.

<sup>10</sup>No FEAR Act, Pub. L. No. 107-174, § 202, 116 Stat. at 569, *as amended by* Elijah E. Cummings Federal Employee Antidiscrimination Act of 2020, Pub. L. No. 116-283, div. A, tit. XI, subtit. B, § 1133, 134 Stat. at 3900-01 (2021), *codified at* 5 U.S.C. § 2301 note.

<sup>11</sup>Pub. L. No. 116-323, div. A, tit. XI, subtit. B, § 1137, 134 Stat. at 3903.

<sup>12</sup>42 U.S.C. § 2000e-16(b).

<sup>13</sup>Agencies are statutorily required to comply with EEOC rules, regulations, orders, and instructions. See 42 U.S.C. § 2000e-16(b). EEOC's regulations also state that agency programs shall comply with EEOC Management Directives and Bulletins. 29 C.F.R. § 1614.102(e). EEOC regulations in part 1614 of Title 29 in the Code of Federal Regulations, MD-715, and MD-110 apply to military departments defined at 5 U.S.C. § 102; executive agencies defined at 5 U.S.C. § 105; the U.S. Postal Service, the Postal Regulatory Commission, the Tennessee Valley Authority; all units of the judicial branch of the federal governments with positions in the competitive service, except for complaints under the Rehabilitation Act; the National Oceanic and Atmospheric Administration Commissioned Corps, the Government Printing Office, except for complaints under the Rehabilitation Act; and the Smithsonian Institution. 29 C.F.R. § 1614.103(b).

<sup>14</sup>EEOC, *EEO Management Directive 715 (EEO-MD-715)*, (Washington, D.C.: Oct. 1, 2003).

<sup>15</sup>This self-assessment checklist sets forth the minimum requirements for a model EEO program. Agencies may establish more stringent or comprehensive standards.

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EEOC Regulations and  
Management Directive 110

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Agencies self-identify program deficiencies during that process.<sup>16</sup> In addition, agencies are required to describe their action plans for addressing identified program deficiencies.<sup>17</sup> EEOC uses MD-715 reports as the basis of its Technical Assistance reviews. It is also a key information source for information aggregated for EEOC's annual federal workforce report.<sup>18</sup>

EEOC has issued rules, regulations, orders, and instructions governing the federal sector EEO complaint process. EEOC's regulations also establish the required time frames for agency investigation of complaints. For example, agencies are required to complete investigations of complaints in an appropriate and impartial manner within 180 days of the filing of the complaint. EEOC regulations also establish the required time frames for each stage of the federal EEO complaint process. See figure 1 and appendix II for more details on the EEO complaint process.

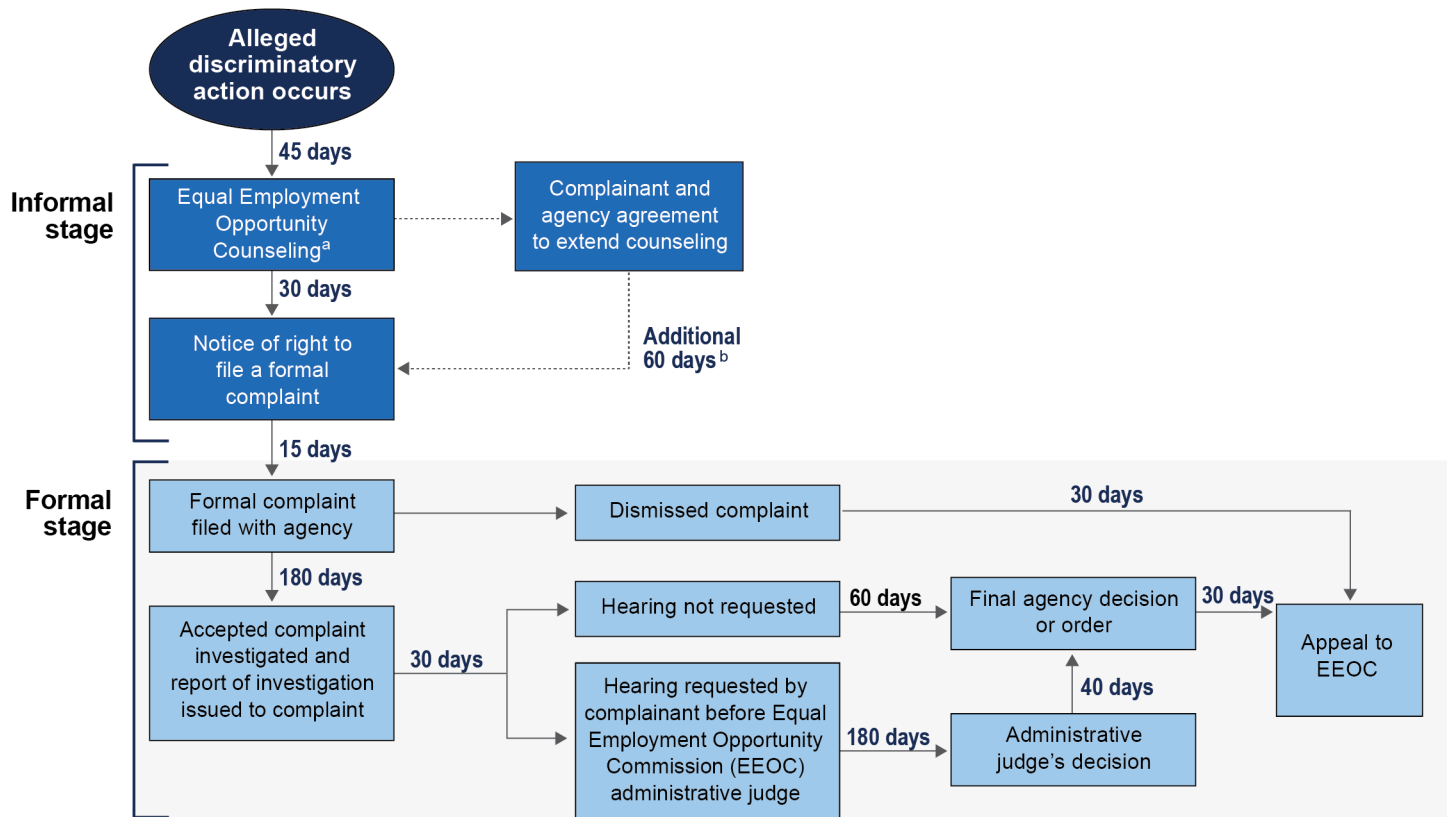
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<sup>16</sup>The checklist provides a series of compliance indicators for each essential element set forth in MD-715. "Yes/No" questions measure compliance with each indicator. A "No" response to any measure is an EEO program deficiency. For each "No" response, an agency is required to identify a plan for correcting the identified deficiency. A "Yes" response indicated agency compliance with the essential EEO element.

<sup>17</sup>MD-715 requires agencies to demonstrate meaningful progress toward the removal of deficiencies, and to develop action plans for how agencies will attain the essential elements of a model EEO program.

<sup>18</sup>EEOC's Annual Report on the Federal Workforce is a public document that summarizes selected EEO programs of federal agencies and their subcomponents, and their efforts to have model EEO programs. See for example EEOC, *FY 2020 Annual Report on the Federal Workforce* (Washington, D.C.: Mar. 23, 2023).

**Figure 1: Federal Sector Equal Employment Opportunity Complaint Process Stages and Time Frames**



Source: GAO, based on EEOC regulations. | GAO-24-105874

<sup>a</sup>Aggrieved individuals who believe they have been discriminated against on the basis of race, color, religion, sex, national origin, age, disability, genetic information, or pregnancy, childbirth, or related medical conditions must initiate contact with an EEO counselor within 45 days of the alleged discriminatory action. In the case of a personnel action, aggrieved individuals must also initiate contact with an EEO counselor within 45 days of the effective date of the action.

<sup>b</sup>The 30-day counseling period can be extended by up to 60 additional days for a total of 90 days.

EEOC’s MD-110 provides federal agencies with policies, procedures, and guidance on the processing of employment discrimination complaints, and the organization and structure of federal EEO program offices. For example, EEO directors must report directly to the head of the agency.<sup>19</sup> MD-110 states that the purpose of this requirement is to ensure that EEO

<sup>19</sup>Pub. L. No. 116-283, div. A, tit. XI, subtit. B, §§ 1137, 134 Stat. at 3903, *codified at* 5 U.S.C. § 2301 note; 29 C.F.R. § 1614.102(b)(4).

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directors have the access and authority to ensure that the agency prioritizes eliminating workplace discrimination as a fundamental aspect of its mission.

To maintain the EEO directors' independent authority, MD-110 also states they cannot be placed under the supervision of the agency's Chief Human Capital Officer or other officials responsible for personnel actions or providing legal defense to claims of discrimination. Agencies also must avoid conflicts of interest or the appearance of such conflicts by, among other actions, separating their EEO complaint processes from their personnel functions.<sup>20</sup>

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## EEOC Tracks EEO Program Deficiencies but Current Monitoring Processes Do Not Facilitate Oversight of EEO Programs

EEOC enforces federal EEO laws and promotes effective EEO programs through training, government-wide reviews, technical assistance, and targeted program evaluations. However, EEOC does not have automated processes for tracking agencies' MD-715 reports and the program deficiencies they contain. It also does not require its staff to use its standardized tool to record those deficiencies. EEOC also does not have specific criteria and guidelines for when it should notify the public of EEO program noncompliance.

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## EEOC Oversees and Supports Federal EEO Programs

EEOC oversees and supports agency compliance with EEO requirements by conducting Technical Assistance reviews and annual program evaluations. It also provides training and guidance to EEO staff government-wide.<sup>21</sup>

## Technical Assistance Review

EEOC reviews over 200 executive branch EEO programs on a 3-year cycle for their compliance with EEO laws and requirements.<sup>22</sup> These Technical Assistance reviews are designed to provide feedback and

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<sup>20</sup>EEOC, *Equal Employment Opportunity Management Directive for 29 C.F.R. Pt. 1614*, EEO-MD-110 (Washington, D.C.: Aug. 5, 2015).

<sup>21</sup>EEOC officials explained, in addition to efforts discussed here, they also provide agencies with technical assistance on issues such as the EEO complaint adjudication process, provide guidance and assistance to Administrative Judges who conduct hearings and adjudicate appeals on administrative decisions made by federal agencies on EEO complaints.

<sup>22</sup>EEOC reviews a third of all executive branch EEO programs of agencies under its authority each year grouped by cabinet-level agencies, subcomponent agencies, and small agencies.

guidance to federal agencies on their *progress* towards attaining a model EEO program. EEOC officials explained that they conduct Technical Assistance by reviewing agency-submitted reports and data, including the annual MD-715 report that includes EEO Directors' self-assessments and self-identified deficiencies, No FEAR Act data, and EEO policies and procedures. EEOC staff also meet with agencies' EEO program staff to follow up on previously identified and new program deficiencies as well as related action plans.

At the end of a Technical Assistance review, EEOC sends a feedback letter to the EEO Director and agency head, describing the agency's progress on addressing deficiencies, identifying new or unaddressed deficiencies, and highlighting any observed best practices. An agency may be directed to submit a compliance report in response to the feedback letter to document its plans for and progress made on addressing identified deficiencies.

We reviewed feedback letters from EEOC to the 24 CFO Act agencies in 2020 and 2021. See table 1 for common deficiencies EEOC identified during its Technical Assistance reviews and some actions it took to help agencies address those deficiencies.

**Table 1: Common Deficiencies Identified in the Equal Employment Opportunity Commission's (EEOC) Technical Assistance Letters to 24 Chief Financial Officer Act Agencies (2020-2021)**

| Identified Deficiency  | Description of Deficiency  | Number of Agencies with Deficiency and Reported EEOC Actions to Address Deficiency <sup>a</sup>  |
|--|--|--|
| <p><b>Untimely Final Agency Decisions.</b><br/>Agency did not issue decisions within 60 days of receiving either the complainant's request for a final decision or the end of the required 30-day period for the complainant to request a hearing.<sup>b</sup></p> | <p>Final agency decisions on a complaint of discrimination, made without an Administrative Judge, are appealable to the EEOC. It includes agency decisions on the merits or to dismiss the complaint. Complainants have the right to appeal final agency decisions within 30 days of receipt, which begins EEOC's hearing process.</p>   | <p><b>16 agencies.</b><br/>In September 2023, EEOC shared promising practices with agencies on strategies for improving timeliness of the final agency decision.</p>   |
| <p><b>Noncompliant Anti-Harassment Policy.</b><br/>Agency lacked an anti-harassment policy.</p>  | <p>Agencies are required to establish comprehensive anti-harassment policies that cover all protected bases. These policies must clearly explain prohibited conduct, assure employee protection against retaliation, and assure employees that the agency will take immediate and appropriate corrective action when it has determined that harassment has occurred, among other things.</p> | <p><b>16 agencies.</b><br/>In April 2023, EEOC shared its promising practices with agencies on strategies for preventing harassment, including issuing and posting an annual anti-harassment policy statement.</p> |

| Identified Deficiency  | Description of Deficiency   | Number of Agencies with Deficiency and Reported EEOC Actions to Address Deficiency <sup>a</sup>   |
|--|---|---|
| <p><b>Incomplete Applicant Flow/Workforce Data.</b><br/>Agency did not provide complete applicant data and/or workforce data for the annual Management Directive 715 report.</p>   | <p>Applicant flow data, or applicant demographic information analyzed with hiring milestones, are essential to evaluating where barriers may exist within the agency. Agencies are required to collect applicant flow data for (1) new hires and promotions to mission-critical occupations, (2) promotions to senior grade levels, and (3) participation in career development programs.</p> | <p><b>12 agencies.</b><br/>EEOC and the Office of Personnel Management are jointly developing guidance to agencies. They have not announced when the guidance will be issued.</p> |
| <p><b>Low Alternate Dispute Resolution (ADR) Participation Rate in Pre-Complaint Stage.</b><br/>Agency ADR participation rate in the pre-complaint stage is less than EEOC's goal of 50 percent.<sup>c</sup></p>           | <p>ADR generally refers to a variety of approaches designed to resolve disputes rather than traditional adjudicatory or adversarial methods. ADR techniques include mediation, facilitation, and settlement conferences.</p>  | <p><b>12 agencies.</b><br/>EEOC issued a report on ADR activities government-wide for fiscal year 2021.</p>   |
| <p><b>Noncompliant Reporting Structure.<sup>d</sup></b><br/>Agency equal employment opportunity (EEO) Director not reporting to the agency head or the EEO program reporting structure creates a conflict of interest.</p> | <p>EEO Directors are required to report directly to the head of the agency. This underscores the importance of EEO to the mission of each federal agency and helps ensure that the EEO Director is able to act with the greatest degree of independence.</p>  | <p><b>11 agencies.</b><br/>In July 2022, EEOC issued a report to encourage agency heads to embrace direct reporting structures.</p>   |
| <p><b>Untimely EEO Investigations.<sup>e</sup></b><br/>Agency EEO investigations were not completed within the 180-day required timeframe.</p>   | <p>Federal agencies are required to complete EEO investigations within 180 days of the date the complaint was filed. Otherwise, they should notify the complainant that they were unable to complete their investigations, provide the estimate date of completion, and inform the complainants about their right to file a civil action or request a hearing.</p>                            | <p><b>8 agencies.</b><br/>In June 2004, EEOC issued a report on investigation timeliness and costs. More recently, EEOC has also enhanced training on this issue.</p>             |

Source: GAO analysis of EEOC Technical Assistance feedback letters and EEOC guidance. | GAO-24-105874

Note: The 24 Chief Financial Officer Act agencies are listed at 31 U.S.C. § 901(b). See <https://www.cio.gov/handbook/it-laws/cfo-act/>.

<sup>a</sup>We did not evaluate the effectiveness of EEOC actions to address these deficiencies.

<sup>b</sup>29 C.F.R. § 1614.110(b).

<sup>c</sup>Agencies are required to establish an ADR program for use in the pre-complaint and formal complaint stages of the EEO process, 29 C.F.R. § 1614.102(b)(2). According to an EEOC fact sheet on ADR, agencies have discretion as to which EEO cases are offered ADR. EEOC has established a goal that agencies use ADR in 50 percent of EEO counselings. Agencies received a deficiency for failure to meet this 50 percent goal.

<sup>d</sup>The Elijah E. Cummings Federal Employee Antidiscrimination Act of 2020 requires agency EEO program heads to report directly to the agency head. Pub. L. No. 116-283, div. A, tit. XI, subtit. B, § 113, 134 Stat. 3388, 3903 (2021), *codified at* 5 U.S.C. § 2301 note.

<sup>e</sup>29 C.F.R. § 1614.108(e).

**Targeted Program Evaluations** EEOC evaluates two to three executive branch EEO programs each year to identify potential process improvements and compliance with requirements. EEOC's Office of Federal Operations staff judgmentally

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select the EEO programs for evaluation based on their knowledge of ongoing program challenges, including failure to meet timeframes, weaknesses in reasonable accommodation programs, and noncompliant EEO program structures.

EEOC's program evaluations vary in scope and may concern an agency's overall EEO program, or a specific policy or practice of an EEO program. Program evaluations may also focus on any aspect of an agency's EEO operations and activities, including its program management, data collection and reporting, personnel practices and policies, barrier analysis, complaint processing, and alternative dispute resolution. According to EEOC officials, program evaluations examine: (1) agency management of its EEO program, (2) fulfillment of an EEO program's goals and objectives, and (3) an EEO program's effects on agency-wide operations.

Based on the program evaluation, EEOC may recommend that the agency make organizational, policy, or procedural changes to its EEO program. EEOC documents the results of its review in a program evaluation report and receives quarterly corrective action plans from the agency until it has substantially complied with EEOC's recommendations. According to agency officials, EEOC leverages information obtained through a program evaluation to hone Technical Assistance reviews, improve training, and refine guidance.

## Training, Guidance, and Support

The EEOC provides training and guidance on EEO promising practices to federal agencies. For example, it organizes conferences and trainings on employment discrimination issues and customizes training to meet specific agency needs. EEOC regulations also establish the mandatory training requirements for agency EEO investigators and counselors.

EEOC supports the federal EEO community in a variety of ways. This includes EEOC's website, newsletters, and emails that provide updated guidance, news, and upcoming trainings and conferences. Additionally, EEOC convenes quarterly listening sessions for EEO directors to ask questions to experts, raise crosscutting issues, obtain informal advice, and make connections with other EEO colleagues.

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## EEOC Monitors Its Receipt of Agency MD-715 Reports, but Its Manual Tracking Mechanism Does Not Facilitate Its Oversight of Timely Submission

### Equal Employment Opportunity Program Deficiencies Contained in Management Directive 715 Reports

The Equal Employment Opportunity Commission's (EEOC) Management Directive 715 (MD-715) establishes the essential elements of a model agency equal employment opportunity (EEO) program. EEOC uses MD-715 to assess the sufficiency of agency EEO programs in Technical Assistance reviews and program evaluations.

The essential elements are those necessary to create and maintain a program that meets the minimum requirements of various EEO laws, including Title VII of the Civil Rights Act of 1964. Agencies must self-identify a program deficiency for any instance of noncompliance with the essential elements in reports required in MD-715.

Source: GAO review of MD-715. | GAO-24-105874

EEOC monitors when agencies submit and certify their MD-715 reports, but its manual tracking system cannot and does not ensure timely submissions. The MD-715 reports agencies must submit each year provide critical information for EEOC's Technical Assistance review, including a self-assessment of agencies' compliance with EEO requirements and their plans for correcting program deficiencies.<sup>23</sup>

EEOC officials explained that the tracking features in the online portal where agencies submit and certify MD-715 reports are limited. For example, officials cannot use the portal to easily identify which agencies are required to submit reports. The number of agencies required to submit MD-715 reports each year may vary because of changes to agency structure or size.<sup>24</sup> Further, officials said it can be frustrating to manually query the portal for agencies' submission status because it was not designed for this purpose.

Instead, EEOC staff use manual workarounds to monitor whether they have received agencies' MD-715 reports. For example, EEOC officials explained that data scientists look up the status of each report submission to develop a list for monitoring purposes. This is a labor-intensive process because hundreds of agencies and their subcomponents submit MD-715 reports each year.

EEOC officials told us that they discourage late submissions by reminding agencies of submission and certification deadlines. They also said that EEOC has hired more data scientists to help troubleshoot technical issues faced by agencies using the online portal to submit and certify the

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<sup>23</sup>EEO MD-715. Agencies are also required to submit information on complaints processing data and Federal EEO Statistical Report of Discrimination Complaints (Form 462) reports. For more information on the content of these required reports, see GAO, *Equal Employment Opportunity: Additional Actions Would Improve USDA's Collection and Reporting of Key Data*, GAO-24-106791 (Washington, D.C.: Nov. 2, 2023).

<sup>24</sup>EEOC officials explained that more agencies are registered in the online portal than may be required to submit and certify a report each year because of these changes. Each department-level EEO program as well as second-level subcomponents with 1,000 or more employees must submit a MD-715 report to EEOC each year.



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MD-715 reports.<sup>25</sup> However, agencies do not always submit and certify their MD-715 reports.<sup>26</sup> For example, a DOT sub-agency did not submit a report in fiscal year 2020 and submitted it late the following year.<sup>27</sup> We also previously reported in June 2020 that USAID did not submit its MD-715 report for fiscal year 2018.<sup>28</sup>

Late or missing MD-715 reports reduce the completeness, accuracy, and usefulness of EEO information government-wide. EEOC officials explained that agencies sometimes submit their reports manually after system deadlines, which results in uncertified data that cannot be checked for completeness and accuracy. EEOC officials said that they cannot verify or aggregate uncertified information for inclusion in government-wide reports, such as EEOC's annual report to Congress.<sup>29</sup> EEOC noted that this is especially problematic when large cabinet departments do not certify their reports. EEOC agreed that improvements to existing processes could enhance its ability to monitor timely completion of MD-715 reports.

Federal internal control standards require that entities monitor their activities and evaluate results. Ongoing monitoring includes regular activities and comparisons and the use of automated tools to increase

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<sup>25</sup>EEOC's Federal Sector Equal Employment Opportunity Portal (FedSEP) also allows agencies to provide complaint processing data, complaint files for hearings and appellate cases, among other functions. An external evaluation of the portal included numerous recommendations for FedSEP to be more customer facing and accurately reflect EEOC's business rules and applicable laws. See KAI Partners *Customer Service Portals Evaluation Prepared for the EEOC Office of Inspector General*, [2022-001-EOIG](#) (Sept. 12, 2023).

<sup>26</sup>MD-715 requires the agency head and the EEO Director to certify that the agency has completed an annual self-assessment of its EEO Program against the MD-715 essential elements and conducted comprehensive barrier analyses. Agencies must both submit and certify their MD-715 reports within the reporting deadline for EEOC to consider it complete.

<sup>27</sup>This DOT subagency has retroactively submitted its MD-715 reports for these missing years.

<sup>28</sup>See GAO, *USAID: Mixed Progress in Increasing Diversity, and Actions Needed to Consistently Meet EEO Requirements*, [GAO-20-477](#) (Washington, D.C.: June 23, 2020). According to USAID officials, EEOC was aware that USAID had not submitted an MD-715 report and allowed USAID to submit a less detailed report on self-identified deficiencies and action plans.

<sup>29</sup>See Equal Employment Opportunity Commission, *Annual Report on the Federal Workforce*, Fiscal Year 2020. EEOC's fiscal year 2020 report was the most recently available report for our review.

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efficiency.<sup>30</sup> In addition, our guide on using evidence to improve organizational performance established that poor quality or incomplete information limits its usefulness and affects the conclusions that can be drawn from it.<sup>31</sup> By taking additional steps to automate or improve its process for ensuring that agencies complete their MD-715 reports, EEOC could operate more efficiently and would be better positioned to provide timely, accurate information for monitoring agencies' compliance with EEO requirements.

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<sup>30</sup>GAO, *Standards for Internal Control in the Federal Government*, [GAO-14-704G](#) (Washington, D.C.: September 2014).

<sup>31</sup>GAO, *Evidence-Based Policymaking: Practices to Help Manage and Assess the Results of Federal Efforts*, [GAO-23-105460](#) (Washington, D.C.: July 12, 2023).

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## EEOC's Manual Tracking of Information in MD-715 Reports Does Not Facilitate Its Analysis of Government-wide EEO Deficiencies

### Equal Employment Opportunity Commission (EEOC) Analysis of Deficiencies to Identify Annual Trends

EEOC's fiscal year 2020 annual report analyzed the federal government's commitment to equal employment opportunity (EEO) by reviewing agencies' responses to questions in their Management Directive 715 reports, including:

- Do all managers and supervisors have an element in their performance appraisals that evaluates their commitment to agency EEO policies and principles and their participation in the EEO program? (88.6 percent of agencies answered "Yes")
- Does the agency prominently post reasonable accommodation procedures throughout the workplace and on its public website? (91.9 percent of agencies answered "Yes")
- Is the agency head the immediate supervisor of the "EEO Director" who has day-to-day control over the EEO office? (60.3 percent of agencies answered "Yes")

According to EEOC, agencies that answered yes to these questions were considered to be demonstrating commitment to EEO.

Source: EEOC Annual Report on the Federal Workforce, Fiscal Year 2020. | GAO-24-105874

EEOC can better track program deficiencies contained in agency MD-715 reports to facilitate its annual analysis of underlying trends in federal EEO programs. EEOC uses these agency-reported deficiencies to help Congress, agencies, and EEOC leadership monitor EEO activities government-wide. The analysis provides benchmarks for measuring federal agency compliance with EEO laws and regulations.<sup>32</sup> In addition, EEOC intends this analysis to increase awareness of EEO challenges that could help it and other agencies prevent EEO violations from occurring. For example, EEOC has found that federal agencies inconsistently demonstrated a commitment to EEO and recommended that agencies engage senior leadership to resolve related deficiencies.<sup>33</sup>

However, EEOC does not have an automated function to compile deficiencies from agencies' MD-715 reports. Instead, according to EEOC officials, staff manually compile information from hundreds of files to gather information to identify EEO trends across agencies. Tracking deficiencies across so many disparate files can be time consuming and labor intensive. It can also delay EEOC's ability to include the most recent reports in its analysis. For example, the annual report released in March 2023 contained agency deficiencies from fiscal year 2020.<sup>34</sup>

EEOC officials told us that they previously intended to track identified deficiencies through electronic folders but stopped using it when staff found it to be cumbersome and inaccessible. EEOC officials also explained that they are continually improving tracking systems for monitoring and overseeing agency programs, including those systems to track EEO deficiencies across agencies. These improvements offer an opportunity to include capabilities to organize and analyze government-wide deficiencies in a more efficient and timely way. EEOC officials agreed that enhancing tracking of deficiencies government-wide could strengthen its identification and analysis of trends.

Federal internal control standards require that entities establish and conduct activities to monitor internal control systems and evaluate results, including the development of automated tools to increase efficiency.<sup>35</sup>

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<sup>32</sup>EEOC, *Annual Report on the Federal Workforce*, Fiscal Year 2020.

<sup>33</sup>EEOC, *Annual Report on the Federal Workforce*, Fiscal Year 2020.

<sup>34</sup>EEOC officials explained that another factor that contributes to delays is the need to clean and verify agency complaints data.

<sup>35</sup>[GAO-14-704G](#).

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Automated tools used for ongoing monitoring could assist with overall analysis of EEO program deficiencies. This can include enabling more detailed and timely supervision and comparisons to facilitate monitoring of EEO program trends and deficiencies.

EEOC believes that increasing awareness of program deficiencies may better equip federal agencies to successfully prevent EEO violations from occurring.<sup>36</sup> By implementing automated tracking mechanisms to efficiently identify and monitor deficiencies across agencies, EEOC can better target and address government-wide deficiencies and assess whether federal agencies are committed to EEO issues. Further, improved tracking and analysis could allow EEOC to more efficiently incorporate information from agency reports.

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## EEOC Routinely Identifies Program Deficiencies, but Does Not Require That Staff Use Its Standardized Tool to Record Them

EEOC routinely reviews agencies' self-identified deficiencies during its Technical Assistance reviews but does not require that its staff record them in a standardized tool. Recording deficiencies in a consistent manner facilitates EEOC's ability to monitor deficiencies over time and assess agencies' efforts to address them.

### Recording Program Deficiencies

The Equal Employment Opportunity Commission's (EEOC) notice letter deficiency tracker is a tool that records equal employment opportunity (EEO) program information, including deficiencies by agency. EEO staff complete the tool after each Technical Assistance review. The tool includes EEO deficiencies corrected since the most recent feedback letter and current deficiencies.

EEO deficiencies recorded on the tool correspond to agency identified deficiencies contained in its annual Management Directive 715 report and reviewed as part of EEOC Technical Assistance.

Source: GAO review of EEOC documents. | GAO-24-105874

EEOC staff record the information collected and deficiencies identified during Technical Assistance reviews in a standardized tool. However, EEOC does not require that all staff use the tool when conducting Technical Assistance reviews. EEOC officials told us that this tool was created by consolidating other recording tools used in the past and they believe it to be effective for tracking and monitoring program deficiencies.

EEOC does not require its use because it assumes that staff will naturally want to use the consolidated tool to capture information more efficiently and comprehensively. EEOC officials said that, in practice, all staff use this tool as of fiscal year 2023. Nevertheless, federal internal control standards call for managers to communicate policies and procedures required of personnel to effectively fulfill their assigned responsibilities. Managers should also require that those control activities be performed consistently.<sup>37</sup> By requiring the use of this tool, there would be greater assurance that Technical Assistance staff are recording deficiencies consistently to support analysis. This could help provide EEOC with

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<sup>36</sup>EEOC, *Annual Report on the Federal Workforce*, Fiscal Year 2020.

<sup>37</sup>[GAO-14-704G](#).

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complete or useful information to hold agencies accountable for fully addressing deficiencies.

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## EEOC Has Established Procedures to Handle Agency Noncompliance but Does Not Have Criteria and Guidelines for When to Invoke Notification

### **Equal Employment Opportunity Commission (EEOC) Procedures for Public Notification of Agency Noncompliance**

When agencies do not respond timely and in good faith with sufficient plans to bring the agency program into compliance, the EEOC will publicly identify the agency and information related to the noncompliance.

The Chair of the EEOC will evaluate the repercussions and reach of the effect of noncompliance and publish or publicly identify the fact of noncompliance, as appropriate.

Source: GAO review of EEOC Management Directive 110. | GAO-24-105874

EEOC has established procedures for ways to notify the public when an agency fails to respond timely and in good faith with a plan to bring the agency into compliance. However, it lacks specific criteria and guidelines for invoking public notification of noncompliance.

The Management Directive 110 states that agencies found to be noncompliant with EEO requirements will be notified and given the opportunity to respond. The agency response should contain a statement of the agency's compliance, a plan to bring the program into compliance, or an explanation of why the agency will not comply. Failure to respond or an inadequate response will result in escalation to the next step, which includes written notice to the head of the federal agency. If efforts to obtain agency compliance are unsuccessful, EEOC regulations and directives have established procedures on ways to notify the public about the noncompliance.<sup>38</sup> Examples of public identification include publication in the Annual Report to Congress, a press release, posting some form of notice of noncompliance on EEOC's public website, or other appropriate means.

However, EEOC does not outline the specific criteria for when to invoke the public notification provision to hold agencies accountable for addressing noncompliance. EEOC officials stated that although some agencies may not have provided timely responses to noncompliance notification, they have not invoked this public notification provision.

EEOC publicizes agency noncompliance to a limited extent by listing agencies that have not submitted and certified their MD-715 reports in its annual report to Congress.<sup>39</sup> EEOC posted EEO program compliance scorecards on its website in fiscal year 2008 but later removed them. EEOC officials explained that they were evaluating whether that information accurately reflected how well the EEO programs performed.

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<sup>38</sup>EEOC MD-110.

<sup>39</sup>EEOC listed the following cabinet-level agencies as not certifying their MD-715 report in its March 2023 annual report: U.S. Departments of Defense—Department of the Army, Veterans Affairs, and Transportation. See EEOC, *Annual Report on the Federal Workforce*, Fiscal Year 2020.

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EEOC officials noted that they have not publicly posted scorecards or other similar information since then.<sup>40</sup>

Instead of identifying the agency publicly or to Congress, EEOC officials said they prefer to motivate and encourage compliance rather than publicize deficiencies.<sup>41</sup> EEOC officials explained that it is their preference to work one on one with agencies to bring them into compliance. Further, EEOC officials told us that the Technical Assistance review is largely intended to build good relationships with EEO programs government-wide in addition to acting as an informal check with agencies on their implementation of legal requirements and EEOC guidance. EEOC officials told us they believe this approach simultaneously strengthens EEOC's working relationships and effectively brings agencies into compliance. However, EEOC agreed that developing specific criteria would be useful.

Generally, external stakeholders we interviewed identified the lack of consequences for agencies that do not comply to be a weakness in the EEO oversight process.<sup>42</sup> For example, one interviewee cited the effectiveness of the scorecards EEOC posted in 2008 to promote transparency and publicly hold agencies accountable. Two interviewees proposed that EEOC should publicly share more information about its activities.

By not maximizing the use of its notification procedures established in EEOC directives and regulations and developing specific criteria and guidelines for when to use them, Congress and the public are not getting the full picture of EEO issues at specific agencies. Further, federal internal control standards state that agencies should document policies that outline their responsibilities. Without greater clarity on when to invoke

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<sup>40</sup>EEOC's EEO Program Compliance Assessment scorecard included information on its assessment of agency performance under each model element of MD-715, timeliness of investigations, final agency decisions, submission of complaint files for hearings and appeals, among other things. See GAO, *Equal Employment Opportunity: Pilot Projects Count Help Test Solutions to Long-standing Concerns with the EEO Complaint Process*, [GAO-09-712](#) (Washington, D.C.: Aug. 12, 2009).

<sup>41</sup>EEOC aims to assist agencies in perfecting their EEO programs and will persuade agencies whose programs fall short of EEO standards to correct any deficiencies. Federal Sector Equal Employment Opportunity, 77 Fed. Reg. 43498, 43499 (July 25, 2012).

<sup>42</sup>We interviewed a nongeneralizable sample of stakeholders in the EEO complaint process, including advocacy groups, federal practitioners, and academic researchers focused on EEO issues.

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public notification, EEOC risks not holding agencies accountable and not making use of a potentially effective tool for helping to address long-standing, persistent EEO shortcomings.

While building good relationships with agencies is a positive action, EEOC efforts to motivate and encourage compliance do not always effectively minimize EEO deficiencies that fluctuate over time across the federal government. By leveraging all its enforcement tools, including public notifications, EEOC can better ensure federal agency compliance with EEO laws and regulations.<sup>43</sup>

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## USAID Has Addressed Some Deficiencies and Instituted Organizational Changes So the EEO Director Reports to the Agency Head as Required

USAID has addressed some deficiencies identified by EEOC during its Technical Assistance review. For example, EEOC's fiscal year 2021 Technical Assistance review noted that USAID did not provide any required EEO trainings. In response, USAID trained more than 12,000 employees on EEO requirements and reasonable accommodations in fiscal year 2022. It also offered trainings on EEO complaints and harassment allegations to supervisors and managers in fiscal year 2023.

USAID addressed other deficiencies identified by EEOC in fiscal year 2021 related to the timeliness of its EEO investigations and issuance of final agency decisions. USAID completed EEO complaint investigations in fewer than 160 days on average, within the requirement to do so in 180 days in fiscal year 2022. It also issued final agency decisions in fewer than 50 days on average, which is within the required 60-day time frame.

USAID has also addressed an ongoing deficiency with the reporting structure for its EEO program, the Office of Civil Rights. During the course of our review, we found that the EEO Director did not report directly to the head of the agency—the USAID Administrator—and this reporting structure did not comply with the law.<sup>44</sup> Agency EEO program heads are statutorily required to report directly to the head of the agency.<sup>45</sup> Further, EEOC has long held that a direct reporting structure between EEO Directors and agency heads helps maintain an effective and compliant

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<sup>43</sup>EEOC is statutorily responsible for enforcing EEO laws and reviewing and evaluating agency EEO programs. 42 U.S.C. § 2000e -16(b).

<sup>44</sup>See, USAID MD-715 report for fiscal year 2022.

<sup>45</sup>Pub. L. No. 116-283, div. A, § 1137, 134 Stat. at 3904, *codified as amended at* 5 U.S.C. § 2301 note. EEOC regulations also require that federal agency EEO directors be under the immediate supervision of the agency head. 29 C.F.R. § 1614.102(c)(4).

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EEO program.<sup>46</sup> It has also found that agencies with such reporting structures exhibit fewer EEO deficiencies.

When we asked why the EEO Director did not report directly to the USAID Administrator, officials explained that they believed their EEO Director had an effective means of advising the agency head and senior management officials of the program's effectiveness, efficiency, and legal compliance. However, in practice, the EEO Director's access to the agency head was limited. For example, USAID noted that the Administrator was unable to attend the state of the agency presentation delivered by the EEO Director in September 2022.<sup>47</sup>

The USAID Office of Civil Rights took corrective action when we informed it of its noncompliance with the reporting structure requirement. Specifically, in January 2024, USAID officials explained that they were in the process of making structural changes to ensure that the EEO Director reported directly to the USAID Administrator. Officials also told us that they hired a new permanent EEO Director and intended to change the Office of Civil Rights' organizational reporting structure so that the Director will report to the USAID Administrator. In April 2024, USAID provided evidence of organizational changes necessary to comply with the law.

USAID's actions to move its EEO reporting structure into legal compliance provides the USAID Administrator direct supervision over the individual with day-to-day responsibilities for ensuring compliance with EEO laws. A direct reporting structure also affords opportunities for unfettered discussions on the EEO program's effectiveness, efficiency, and legal compliance at the highest level.

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<sup>46</sup>EEOC MD-715.

<sup>47</sup>See, USAID MD-715 report for fiscal year 2022.



## While Delays Persist, DOT Has Begun Taking Steps to Improve Timeliness of Final Agency Decisions

DOT has taken steps to address deficiencies related to the timely processing of EEO complaints. For example, EEOC found that DOT took an average of 298 days to complete an EEO investigation in fiscal year 2020 although regulation requires agencies to do so within 180 days.<sup>48</sup> To address this deficiency, DOT leveraged detailees and temporary EEO specialists until additional staff could be hired. According to DOT officials, these steps resulted in an average of about 130 days to complete an investigation in fiscal year 2023, an improvement over their 2020 timeframes.

However, DOT faces persistent challenges with the timely completion of final agency decisions, another deficiency identified by EEOC during its 2020 Technical Assistance review. Agencies are required to issue decisions within 60 days of receiving a complainant's request for an immediate final agency decision but we found that DOT has consistently exceeded that timeframe, see table 2.<sup>49</sup>

**Table 2: Average Days to Issue Department of Transportation Final Agency Decisions on Equal Employment Opportunity Complaints**

| Fiscal Year  | 2019    | 2020    | 2021     | 2022     | 2023     |
|--------------|---------|---------|----------|----------|----------|
| Average days | 82 days | 68 days | 247 days | 193 days | 219 days |

Source: GAO analysis of the Department of Transportation's Departmental Office of Civil Rights Form 462 data. | GAO-24-105874

Note: Final agency decisions are decisions on a complaint of discrimination made by the agency, without an administrative judge, that are appealable to the Equal Employment Opportunity Commission. These include agency decisions to dismiss or agency decisions on the merits. Agencies are generally required to issue these decisions within 60 days of receiving a complainant's request for an immediate final agency decision. See 29 C.F.R. § 1614.110(b).

DOT reported that backlogs from previous fiscal years and staffing shortages contributed to the delays. DOT officials described planned actions to address the delays, including hiring more staff to minimize DOT's reliance on contractors to draft final agency decisions. DOT

<sup>48</sup>EEOC requires agencies to conduct impartial and appropriate investigations of accepted claim(s) within 180 days of the filing unless the parties agree, in writing, to extend the time period. When complaints are amended, the agency must complete the investigation within 180 days after the last amendment, or 360 days after the original complaint was filed. 29 C.F.R. § 1614.106(e)(2).

<sup>49</sup>29 C.F.R § 1614.110(b). Agencies are required to issue final decisions within 60 days of receiving notification that a complainant has requested an immediate decision from the agency, or within 60 days of the end of the 30-day period for the complainant to request a hearing or an immediate final decision where the complainant has not requested either a hearing or a decision.

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officials explained that using contractors requires them to spend additional time reviewing and revising their work. As of December 2023, DOT has made progress in filling some, but not all, vacant positions related to complaint processing.

DOT officials told us that additional hiring is part of their goal to fill all full-time positions and that they are developing performance measures to track progress related to this hiring. DOT officials explained they began documenting the results of strategic planning sessions that identified hiring goals and related actions at the end of fiscal year 2023. Officials also explained that they meet weekly to assess progress towards meeting these goals. DOT officials explained that they believe these workforce strategies will facilitate the more timely issuance of final agency decisions.

DOT officials are also faced with the need to adopt new approaches or change existing processes based on factors beyond their control. For example, officials explained that they have on occasion received a large volume of EEO complaints resulting from class action lawsuits without much advanced notice. Our guide on using evidence to improve organizational performance established that ongoing and sustained review of progress toward goals can help organizations adopt new approaches if necessary.<sup>50</sup> DOT's hiring goals and related actions are steps toward improving the timeliness of final agency decisions. Going forward, it will be important for DOT to sustain ongoing monitoring and implementation of its planned efforts.

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## Conclusions

By issuing guidance, directives, and regulations; offering training; and working with agencies on self-identified program deficiencies, EEOC supports and oversees federal EEO programs and complaint processing. While EEOC's role includes ensuring agency compliance with EEO requirements, its processes for ensuring the receipt of required reports and recording deficiencies across government need improvements.

Improved monitoring processes would result in more complete, accurate, and useful information to aid EEOC's oversight responsibilities. A policy requiring that EEOC staff use a standardized method to track deficiencies would ensure a consistent approach to recording EEO program deficiencies. Further, establishing plans to clearly outline when it should notify the public of EEO noncompliance would strengthen EEOC's

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<sup>50</sup>[GAO-23-105460](#).

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existing procedures for addressing agency noncompliance. These process improvements would strengthen EEOC's tools for holding agencies accountable for addressing known program deficiencies. Effective oversight processes result in corrective actions to improve EEO programs, as evidenced by the reporting structure changes implemented by USAID during the course of our review.

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## Recommendations for Executive Action

We are making the following four recommendations to EEOC:

The Chair of the EEOC should ensure that the Office of Federal Operations improves or automates existing tracking processes for monitoring agencies' timely completion of Management Directive 715 reports. (Recommendation 1)

The Chair of the EEOC should ensure that the Office of Federal Operations enhances its ability to compile and analyze information gathered from its Technical Assistance reviews. For example, EEOC could automate existing features to analyze deficiencies contained in agency Management Directive 715 reports to help it identify EEO trends. (Recommendation 2)

The Chair of the EEOC should ensure that the Office of Federal Operations requires staff to record the information obtained through Technical Assistance reviews, including all deficiencies, using the same tracking tool consistently. (Recommendation 3)

The Chair of the EEOC should ensure that the Office of Federal Operations develops and implements criteria and guidelines for invoking its public notification procedures related to agency noncompliance as stated in Management Directive 110. (Recommendation 4)

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## Agency Comments

We provided a draft of this report to EEOC, USAID, and DOT for review and comment. In its comments, EEOC concurred with all four of our recommendations and acknowledged that they would help enhance and modernize its oversight processes. EEOC's comments are reproduced in appendix III. EEOC also provided technical comments, which we incorporated as appropriate. USAID provided comments expressing its commitment to comply with EEO laws and policies. USAID's comments are reproduced in appendix IV. DOT did not have comments.

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We are sending copies of this report to the appropriate congressional committees, the EEOC Chair, the Secretary of Transportation, the USAID

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Administrator, and other interested parties. In addition, the report is available at no charge on the GAO website at <http://www.gao.gov>.

If you or your staff have any questions about this report, please contact me at (202) 512-6806 or [locked@gao.gov](mailto:locked@gao.gov). Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made key contributions to this report are listed in appendix V.

A handwritten signature in black ink, appearing to read "Dawn G. Locke". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Dawn G. Locke  
Director, Strategic Issues

# Appendix I: Selected GAO Related Reports and Open Recommendations

We have made more than 120 recommendations to 31 federal agencies and subcomponents between October 2016 and April 2024 that remain unimplemented.<sup>1</sup> See table 3 for selected open recommendations related to addressing program deficiencies and legal noncompliance, providing equal employment opportunity trainings, and preventing sexual harassment.

**Table 3: Selected GAO Reports and Open Recommendations Related to Federal Equal Employment Opportunity (EEO) Programs 2020-2024, Updated April 2024**

| Agencies                         | Recommendation  | Report                        |
|----------------------------------|---|-------------------------------|
| Department of Agriculture (USDA) | The Secretary of Agriculture should ensure that Office of the Assistant Secretary for Civil Rights documents and implements a process to review and compare selected complaint data in USDA's Notification and Federal Employee Antidiscrimination and Retaliation (No FEAR) Act and Equal Employment Opportunity Commission (EEOC) Form 462 reports, and identifies and resolves, as appropriate, any inconsistencies before issuing the No FEAR Act reports.  | <a href="#">GAO-24-106791</a> |
| Department of Defense (DOD)      | The Secretary of Defense should ensure that the Under Secretary of Defense for Personnel and Readiness, in collaboration with the Director of the Office for Diversity, Equity, and Inclusion, takes steps to assure that as the department finalizes the development of the central repository for EEO data, the planned repository includes data for all DOD components and is updated frequently, such as on a quarterly basis.  | <a href="#">GAO-21-113</a>    |
| DOD                              | The Secretary of Defense should ensure that the Under Secretary of Defense for Personnel and Readiness, in collaboration with the Director of the Office for Diversity, Equity, and Inclusion, expands guidance that specifies and defines uniform data elements that all DOD components should use when collecting and reporting on allegations of harassment made by DOD federal civilian employees outside of the EEO process, such as information about the parties involved, the type of harassment, and actions taken to respond to the allegation.   | <a href="#">GAO-21-113</a>    |
| DOD                              | The Secretary of Defense should ensure that the Under Secretary of Defense for Personnel and Readiness, in collaboration with the Director of the Office for Diversity, Equity, and Inclusion, clarifies guidance regarding the requirement for the Secretaries of the military departments to maintain data on informal complaints of harassment, including the definition of an informal complaint for tracking purposes; how such data should be maintained, including by a headquarters-level organization; and which informal complaints should be reported to the Office for Diversity, Equity, and Inclusion on an annual basis. | <a href="#">GAO-21-113</a>    |

<sup>1</sup>These recommendations related to the EEO complaints process and polices were judgmentally selected from reports we issued between fiscal years 2016 and 2024 on the topics of equal employment opportunity, discrimination, harassment, and assault. Agencies had not implemented the recommendations in this table as of May 1, 2024.

**Appendix I: Selected GAO Related Reports and Open Recommendations**

| Agencies | Recommendation   | Report                     |
|----------|--|----------------------------|
| DOD      | The Secretary of Defense should ensure that the Under Secretary of Defense for Personnel and Readiness, in collaboration with the Deputy Assistant Secretary of Defense for Civilian Personnel Policy and the Director of the Sexual Assault Prevention and Response Office, issues guidance for the military departments to comprehensively track information about reported work-related sexual assaults involving DOD federal civilian employee victims in the continental United States, regardless of eligibility for DOD-provided sexual assault support services, including the status and affiliation of the victim and alleged offender and actions taken by DOD in response, such as any referrals or support services provided. | <a href="#">GAO-21-113</a> |
| DOD      | The Secretary of Defense should ensure that the Under Secretary of Defense for Personnel and Readiness, in collaboration with the Deputy Assistant Secretary of Defense for Civilian Personnel Policy and the Director of the Sexual Assault Prevention and Response Office, issues guidance that requires all DOD components, including agencies and field activities, to track reported work-related sexual assaults involving their federal civilian employees as victims or alleged offenders, including the specific data elements to be collected, such as status and affiliation of the victim and alleged offender and actions taken by DOD in response, and common definitions for those data elements.                           | <a href="#">GAO-21-113</a> |
| DOD      | The Secretary of Defense should ensure that the Under Secretary of Defense for Personnel and Readiness, in collaboration with the Director of the Sexual Assault Prevention and Response Office, take steps to provide DOD-credentialed Sexual Assault Response Coordinators across the department, including coordinators assigned to an agency or field activity, access to record and review their components' reported work-related sexual assaults in the Defense Sexual Assault Incident Database.   | <a href="#">GAO-21-113</a> |
| DOD      | The Secretary of Defense should ensure that the Under Secretary of Defense for Personnel and Readiness, in collaboration with the Director of the Office for Diversity, Equity, and Inclusion, clarifies guidance specifying how DOD components' anti-harassment programs should be separated from the formal EEO process when the EEO office oversees the anti-harassment program.  | <a href="#">GAO-21-113</a> |
| DOD      | The Secretary of Defense should ensure that the Under Secretary of Defense for Personnel and Readiness, in collaboration with the Director of the Office for Diversity, Equity, and Inclusion and the Secretaries of the military departments, issues guidance that clearly defines which civilians under 10 U.S.C. § 1561 are eligible for command investigations of complaints alleging sexual harassment.   | <a href="#">GAO-21-113</a> |
| DOD      | The Secretary of Defense should ensure that the Under Secretary of Defense for Personnel and Readiness, in collaboration with the Director of the Sexual Assault Prevention and Response Office and the Deputy Assistant Secretary of Defense for Civilian Personnel Policy, establishes guidance requiring the establishment of Sexual Assault Prevention and Response programs for federal civilian employees of DOD components, including agencies and field activities, where they do not currently exist. For example, DOD may establish or designate a program for use by multiple DOD agencies or require each component to establish its own program based on common department-wide standards.                                    | <a href="#">GAO-21-113</a> |

**Appendix I: Selected GAO Related Reports and Open Recommendations**

| Agencies             | Recommendation  | Report                     |
|----------------------|---|----------------------------|
| DOD                  | The Secretary of Defense should ensure that the Under Secretary of Defense for Personnel and Readiness, in collaboration with the Director of the Sexual Assault Prevention and Response Office and the Secretaries of the military departments, reports to the congressional defense committees on the status of restricted reporting for DOD federal civilian employee victims of sexual assault. This should include, but not be limited to, the history of restricted reporting for DOD federal civilian employees by military department, the anticipated benefits and challenges of extending restricted reporting to DOD federal civilian employees, and requests for congressional actions, if any, that are considered appropriate and necessary to extend restricted reporting to DOD federal civilian employees who are otherwise eligible to file unrestricted reports of sexual assault. | <a href="#">GAO-21-113</a> |
| DOD                  | The Secretary of Defense should ensure that the Under Secretary of Defense for Personnel and Readiness, in collaboration with the Director of the Sexual Assault Prevention and Response Office and the Deputy Assistant Secretary of Defense for Civilian Personnel Policy, conducts an analysis to determine the feasibility, benefits, and challenges of expanding eligibility for filing unrestricted reports and providing sexual assault support services to all DOD federal civilian employees within the continental United States and reports to Congress on the findings of this analysis.  | <a href="#">GAO-21-113</a> |
| DOD                  | The Secretary of Defense should ensure that the Under Secretary of Defense for Personnel and Readiness, in collaboration with the Director of the Sexual Assault Prevention and Response Office and Deputy Assistant Secretary of Defense for Civilian Personnel Policy, clarifies guidance regarding notification responsibilities of SAPR personnel, if any, when a DOD federal civilian employee who is either not eligible or does not file a restricted or unrestricted report discloses work-related sexual assault.  | <a href="#">GAO-21-113</a> |
| DOD                  | The Secretary of Defense should ensure that the Under Secretary of Defense for Personnel and Readiness, in collaboration with the Deputy Assistant Secretary of Defense for Civilian Personnel Policy and the Director of the Office for Diversity, Equity, and Inclusion, issues additional guidance to clearly specify minimum frequency and required content for mandatory sexual harassment training for DOD federal civilian employees in line with leading practices.   | <a href="#">GAO-21-113</a> |
| DOD                  | The Secretary of Defense should ensure that the Under Secretary of Defense for Personnel and Readiness, in collaboration with the Deputy Assistant Secretary of Defense for Civilian Personnel Policy and the Director of the Sexual Assault Prevention and Response Office, issues guidance for all DOD components to provide training on sexual assault prevention and response to all DOD federal civilian employees and military leaders who supervise federal civilian employees. The guidance should include, but not be limited to, the minimum frequency for such training and required content, in line with leading practices identified by subject-matter experts, such as those identified by GAO or those currently required in Sexual Assault Prevention and Response training for servicemembers, appropriately adapted for the civilian workforce.                                    | <a href="#">GAO-21-113</a> |
| DOD                  | The Secretary of Defense should ensure that the Under Secretary of Defense for Personnel and Readiness, in collaboration with the Deputy Assistant Secretary of Defense for Civilian Personnel Policy and the Director of the Office for Diversity, Equity, and Inclusion, incorporates clearly detailed DOD-wide sexual harassment prevention efforts specific to DOD federal civilian employees in existing or additional strategic guidance.   | <a href="#">GAO-21-113</a> |
| Department of Energy | The Secretary of Energy should fully implement plans to address the department's equal employment opportunity (EEO) program deficiencies relevant to sexual harassment and work with National Nuclear Security Administration to fully implement plans to address the agency's EEO program deficiencies relevant to sexual harassment.  | <a href="#">GAO-21-307</a> |

**Appendix I: Selected GAO Related Reports and Open Recommendations**

| <b>Agencies</b>  | <b>Recommendation</b>  | <b>Report</b>                 |
|--|--|-------------------------------|
| Department of Veterans Affairs (VA)                    | VA's Assistant Secretary for Human Resources and Administration/Operations, Security, and Preparedness should realign VA's EEO Director position to adhere to the applicable EEOC directive by ensuring the position is not responsible for personnel functions.   | <a href="#">GAO-20-387</a>    |
| VA   | VA's Deputy Assistant Secretary for Resolution Management should complete VA's EEO Program Manager realignment initiative at Veterans Benefit Administration and Veterans Health Administration in accordance with VA policy.  | <a href="#">GAO-20-387</a>    |
| VA   | VA's Assistant Secretary for Human Resources and Administration/Operations, Security, and Preparedness, in consultation with the Office of Resource Management (ORM), should require managers to report all sexual harassment complaints they receive to ORM and ORM should use this information and other available data about sexual harassment prevalence at VA to assess and improve its efforts to prevent and address sexual harassment.   | <a href="#">GAO-20-387</a>    |
| VA   | VA's Deputy Assistant Secretary for Resolution Management should develop and implement policies and procedures to ensure that, for sexual harassment complaints addressed through the management process, any corrective actions decided on are implemented, including requiring managers and supervisors to provide evidence to ORM that these actions occurred.  | <a href="#">GAO-20-387</a>    |
| VA   | The Secretary of VA should finalize the Inclusion, Diversity, Equity and Access dashboard and use the data in the dashboard to regularly conduct trend analysis of internal and other data on perceived experiences of discrimination. Such analyses should pinpoint problematic locations, guide preventive efforts, and incorporate available data from VA's All Employee Survey; EEO and Harassment Prevention Program data; and information from other internal and external data collection efforts and assess trends down to the facility level.   | <a href="#">GAO-23-105429</a> |
| VA   | The Secretary of VA should ensure that the Deputy Assistant Secretary for Resolution Management, Diversity and Inclusion assesses and addresses any potential risks to the independence of the agency's EEO program, including the Harassment Prevention Program.  | <a href="#">GAO-23-105429</a> |
| VA   | The Secretary of VA should ensure that the Deputy Assistant Secretary for Resolution Management, Diversity and Inclusion assesses the factors that increase the time it takes to implement the terms of final decisions in cases where discrimination is found and develops a plan to ensure these final decisions are implemented in a timely manner.   | <a href="#">GAO-23-105429</a> |
| VA   | The Secretary of VA should work with the relevant offices to establish a comprehensive policy for addressing veterans' complaints of discrimination while accessing VA services or participating in VA programs. This policy should include (a) a standardized process for handling veteran complaints of discrimination from intake to final resolution; (b) requirements for communicating with veterans about the status of their complaints; (c) a process for coordinating related efforts across the agency; and (d) a centralized process and requirements for collecting comprehensive data on veterans' complaints, including their resolution. | <a href="#">GAO-23-105429</a> |
| Federal Air Marshal Service                            | The Executive Assistant Administrator/Director of the Federal Air Marshal Service should take steps to reaffirm and strengthen efforts to prevent discrimination by, for example, updating and following through on its 2012 action plan and renewing leadership commitment to the plan's goals.   | <a href="#">GAO-20-125</a>    |
| National Oceanic and Atmospheric Administration (NOAA) | The Administrator of NOAA should ensure that future updates to the agency's sexual harassment and sexual assault prevention and response policy are consistent with all relevant legal requirements in the 2017 National Defense Authorization Act.  | <a href="#">GAO-21-560</a>    |



**Appendix I: Selected GAO Related Reports and Open Recommendations**

| <b>Agencies</b>   | <b>Recommendation</b>   | <b>Report</b>                 |
|---|---|-------------------------------|
| NOAA  | The Administrator of NOAA should implement a mechanism requiring oversight by senior agency leaders of all disciplinary actions involving misconduct related to sexual assault and sexual harassment before such actions are finalized.   | <a href="#">GAO-21-560</a>    |
| NOAA  | The Administrator of NOAA should ensure that the agency provides specific and readily accessible information on its website, through frequently asked questions and in staff training. The information should describe and explain the differences among complaint systems and what to expect from each when reporting allegations of sexual harassment or assault.   | <a href="#">GAO-21-560</a>    |
| NOAA  | The Administrator of NOAA should ensure the agency provides more information to specific individuals and the larger NOAA workforce about how the agency is responding to allegations of sexual assault and sexual harassment, as appropriate, such as by regularly updating individuals on the status of their cases and by annually developing summary-level information for the workforce about the number, type, and resolution of cases.  | <a href="#">GAO-21-560</a>    |
| NOAA  | The Administrator of NOAA should ensure that the central tracking system being developed will collect consistent data and appropriately document the number and type of incidents of sexual assault and harassment across complaint systems.  | <a href="#">GAO-21-560</a>    |
| Office of Refugee Resettlement (ORR)  | The Director of ORR should develop a plan including roles, responsibilities, and timeframes to guide and focus ORR's efforts to meet its goals to: conduct an audit of each facility's compliance with ORR standards on preventing and responding to sexual assault, as required under the Interim Final Rule, conduct on-site monitoring visits to each facility at least every 2 years in accordance with ORR policy, and report any noncompliance to the facility within 30 days of the site visit, in accordance with ORR policy. | <a href="#">GAO-20-609</a>    |
| Small Business Administration (SBA)   | The Administrator of SBA should develop and implement policies and procedures for obtaining employee feedback about the agency's reasonable accommodations efforts and use such information to evaluate the ongoing effectiveness of the program. This may include identifying any effects on employee retention, identifying potential risks, and determining any improvements that may be warranted.  | <a href="#">GAO-20-384</a>    |
| DOD; Departments of Interior and State; Environmental Protection Agency; Federal Deposit Insurance Corporation; General Services Administration; and Securities and Exchange Commission | Agencies should implement the department's plan to evaluate its required sexual harassment prevention training to identify needed improvements. The evaluation should also include an assessment of training content and implementation to determine whether revisions are needed to better align with management practices to enhance the effectiveness of sexual harassment prevention training.  | <a href="#">GAO-24-106589</a> |

Source: GAO. | GAO-24-105874

Note: For the implementation status of these recommendations go to [www.gao.gov](http://www.gao.gov) and search for the report number.

# Appendix II: Equal Employment Opportunity Complaint Process Stages and Time Frames

**Table 4: Stages of the Federal Equal Employment Opportunity Complaint Process<sup>a</sup>**

|                                 |   |   |
|---------------------------------|---|---|
| <b>Informal Complaint Stage</b> | 1. Pre-Complaint Processing/Equal Employment Opportunity (EEO) Counseling | <ul style="list-style-type: none"> <li>Aggrieved individuals must initiate contact with an EEO counselor within 45 days of the alleged discriminatory action or, in the case of a personnel action, within 45 days of the effective date of the action.</li> <li>The EEO Counselor has 30 days to complete EEO counseling unless the aggrieved individual agrees to an extension of up to 60 days. When an aggrieved individual agrees to participate in Alternative Dispute Resolution (ADR), the counseling period may not exceed 90 days.<sup>b</sup></li> <li>If the matter is not resolved in counseling, the EEO counselor must issue a written “Notice of Right to File a Discrimination Complaint” (“Notice”), which informs the aggrieved individual of their right to file a formal discrimination complaint.</li> </ul>  |
|                                 | 2. Complainant Files Formal Complaint with Agency                         | Upon receipt of a written Notice, aggrieved individuals choosing to proceed must file their formal discrimination complaints within 15 days. The formal discrimination complaint is a signed statement from the individual claiming to be aggrieved (or from their representative) that specifies the complainant, the agency, the basis of discrimination (such as race or sex), and the action alleged to be discriminatory. The agency must acknowledge receipt of the complaint.  |
| <b>Formal Complaint Stage</b>   | 3. Acceptance or Dismissal of Complaints                                  | The agency determines whether to accept the complaint, dismiss the complaint, or accept the complaint in part and dismiss the complaint in part. Prior to a request for a hearing in a case, agencies may dismiss an entire complaint for specified reasons, such as untimeliness or a failure to state a claim. If an agency believes that some, but not all, of the claims in a complaint should be dismissed, it must notify the complainant in writing of the rationale for the determination, identify the allegations which will not be investigated, and place a copy of this notice in the investigative file. The determination is reviewable by an Equal Employment Opportunity Commission (EEOC) administrative judge if a hearing is requested on the remainder of the complaint, but is not appealable until final action is taken by the agency on the remainder of the complaint. A dismissed complaint is immediately appealable. |
|                                 | 4. Investigation of Complaints  | <ul style="list-style-type: none"> <li>Agencies must develop an impartial and appropriate factual record upon which to make findings on the accepted claims raised by the written complaint. The agency must complete its investigation within 180 days of the filing of the complaint. If the complaint is amended, the agency must complete its investigation within the earlier of 180 days of the last amendment to the complaint or 360 days after the filing of the original complaint. The time period for investigation is also extended up to 360 days when a complaint is consolidated with another complaint.</li> <li>At the conclusion of the investigation, the agency provides the complainant with a copy of the investigative file and notification of their right to request, within 30 days, either a hearing and decision from an administrative judge or an immediate final decision from the agency.</li> </ul>             |

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**Appendix II: Equal Employment Opportunity  
Complaint Process Stages and Time Frames**

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5. Final Action

- There are two types of final actions by agencies: a final action by an agency following a decision by an administrative judge and a final action in all other circumstances.
- When an administrative judge issues a decision, the agency takes final actions on the complaint by issuing an order within 40 days informing the complainant as to whether the agency will fully implement the decision and of their right to file an appeal with EEOC, among other things. The claimant may file an appeal with EEOC if the agency's final order does not fully implement the administrative judge's decision.
- An agency can also take final action on a complaint by issuing a final decision when:
  - complainant has requested an immediate final decision, or
  - an agency has dismissed a complaint in its entirety, or
  - complainant does not reply to an agency's notice of their right to request a hearing or immediate final decision.
- Final agency decisions include the agency's findings on the merits of each issue in the complaint, or, as appropriate, the rationale for dismissing any claims in the complaint, and, when discrimination is found, appropriate remedies.
- A complainant may appeal an agency's final action to Office of Federal Operations or file a civil action in federal district court.

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Source: GAO analysis of EEOC directives and regulations contained in 29 C.F.R. pt. 1614. | GAO-24-105874

<sup>a</sup>This table does not describe stages of a complaint that has been appealed nor EEOC's hearings and appeals processes.

<sup>b</sup>ADR generally refers to a variety of approaches to resolving conflict, such as mediation, that differ from traditional adjudicatory methods or adversarial methods. If ADR is offered during the informal stage, the complainant may choose between participating in ADR or EEO counseling. If the complainant files a complaint, the agency may offer ADR during the formal complaint stage.

# Appendix III: Comments from the Equal Employment Opportunity Commission



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION  
Washington, D.C. 20507

May 29, 2024

Dawn G. Locke  
Director  
Strategic Issues  
U.S. Government Accountability Office  
441 G Street, N.W.  
Washington, D.C. 20548

Dear Ms. Locke:

Thank you for the opportunity to review the Government Accountability Office's (GAO) draft report entitled *Improved Oversight Processes Needed to Help Agencies Address Program Deficiencies*. In the draft report, GAO examined the U.S. Equal Employment Opportunity Commission's (EEOC) oversight of federal equal employment opportunity (EEO) programs. The EEOC respectfully submits the following comments.

The EEOC was created in direct response to the historic 1963 March on Washington for Jobs and Freedom and first opened its doors in 1965 with a simple mission — to prevent and remedy discrimination in our nation's workplaces. Today, the agency's role in enforcing the nation's federal workplace anti-discrimination laws is as necessary as ever. Because the federal government is the largest employer in the United States, reducing unlawful employment discrimination in the federal sector is an integral part of combatting employment discrimination nationwide. To that end, the EEOC provides leadership and guidance to federal agencies on all aspects of the federal government's EEO programs.

GAO's draft report recognizes the EEOC's efforts to enforce federal EEO laws and promote effective EEO programs through training, government-wide reviews, technical assistance, and targeted program evaluations. The draft report also sets forth areas where the EEOC can improve its processes for overseeing agencies' compliance with timely reporting, compiling and analyzing agency EEO information, ensuring consistent use of tools to record agency information, and invoking public notification procedures on agency noncompliance.

The EEOC prioritizes and deploys our resources to achieve our important mission of preventing and remedying unlawful employment discrimination and advancing equal employment opportunity for all. As the EEOC works to improve and modernize existing processes in alignment with these resources and priorities, GAO's analysis will assist the EEOC in further enhancing its ability to promote broad compliance with federal workplace anti-discrimination laws and to take remedial actions when agencies fail to comply with the EEOC's regulations or directives.

In the draft report, GAO recommends that the EEOC improve or automate existing tracking processes for monitoring agencies' timely completion of Management Directive 715 (MD-715) reports (Recommendation 1). Currently, the EEOC monitors MD-715 submissions and works to aid agencies with timely submission through technical assistance visits and periodic

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**Appendix III: Comments from the Equal  
Employment Opportunity Commission**

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check-ins throughout the MD-715 reporting period. In rare instances, additional measures are necessary. The EEOC diligently keeps track of agencies that fail to submit and certify timely MD-715 reports and addresses this issue through technical assistance visits and feedback letters. In those rare instances in which an agency does not submit and certify a timely MD-715 report, we reach out to the agency to document the reason and list the agency in our Annual Report on the Federal Workforce. The EEOC continually strives to improve our mission-critical services and agrees that improvements to existing processes could enhance the agency's ability to monitor timely completion of MD-715 reports. The EEOC already has begun working to enhance MD-715 report tracking and has created tools that monitor all agencies that have not yet submitted certified MD-715 reports, including a visual map that shows the reporting status of all agencies. The EEOC will explore the feasibility of further enhancements to tracking systems taking into account the resources available to the agency.

GAO also recommends that the EEOC enhance its ability to compile and analyze information gathered from technical assistance reviews (Recommendation 2). As reflected in GAO's draft report in Table 1, the EEOC continuously monitors and analyzes common program deficiencies among federal agencies and takes various actions to address them, including through sharing promising practices, issuing reports, and providing enhanced training to address widespread deficiencies. The EEOC has already developed tools for tracking priority deficiencies government-wide. Additionally, the EEOC has the ability to run a data query on MD-715, Part G compliance indicators government-wide. This allows the EEOC to determine how many agencies selected an affirmative response to a particular question within the MD-715 report. The EEOC agrees that enhancing its tracking of deficiencies government-wide to the extent feasible, given accessibility concerns and limited resources, could strengthen the agency's identification and analysis of trends. In fact, the agency previously worked to develop such a tracker; however, given the agency's limited resources and the difficulty of creating a government-wide tracker addressing all 156 deficiencies for 200+ agencies, the tracker contained a large number of data cells and failed to meet 508 accessibility requirements. GAO's recommendation will be helpful to the EEOC as it continues to modernize, and we will explore the feasibility of developing new tracking systems considering agency resources.

GAO recommends that the EEOC require staff to record the information obtained through technical assistance reviews, including all deficiencies, using the same tracking tool consistently (Recommendation 3). The EEOC agrees that formally requiring the use of a standard tracking tool would minimize the possibility of inconsistent tracking. It is important to note that in practice, all EEOC staff have used the same tracking tool to record information obtained through technical assistance reviews beginning in fiscal year 2023. In addition to using this tracking tool, the EEOC tracks each agency individually through a shared electronic folder. Within a particular agency's shared electronic folder, which is accessible across the division and to office management, the EEOC includes all information on agency deficiencies, utilizing information received from technical assistance visits, feedback letters, compliance reports, MD-715s, corrective action plans, etc.

GAO's final recommendation is that the Chair of the EEOC should ensure that the Office of Federal Operations develops and implements criteria and guidelines for invoking its public notification procedures related to agency noncompliance as stated in MD-110 (Recommendation

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**Appendix III: Comments from the Equal  
Employment Opportunity Commission**

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4). While the EEOC agrees that more specific criteria could be developed, the EEOC also reiterates that the agency does have existing procedures within its regulations governing its response to noncompliant agencies.<sup>1</sup> These procedures culminate in the invocation of public notification of noncompliance. Prior to reaching this step, the EEOC takes many other actions and uses various tools to address deficiencies and bring noncompliant agencies into compliance, including: conducting technical assistance visits and program evaluations; issuing documentation, including corrective action plans; and continuously monitoring compliance efforts through ongoing discussions, periodic check-ins, and comprehensive review of documentation, such as the MD-715 and compliance reports. These methods simultaneously strengthen the EEOC's working relationship with the agencies it oversees and have been effective at bringing noncompliant agencies into compliance. However, the EEOC agrees that developing and implementing specific criteria and guidelines for invoking its public notification procedures related to agency noncompliance would be useful in the event that other methods fail to secure agency compliance. The EEOC will work to develop and implement such criteria and guidelines.

We appreciate the opportunity to review the draft report and to submit these comments for your consideration. We hope that you find this information helpful.

Sincerely,



Charlotte A. Burrows  
Chair

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<sup>1</sup> Pursuant to 29 C.F.R. § 1614.102(e), in cases where any part of an agency's EEO programs or activities are found to be not in compliance with a Commission issuance, the agency will be notified of such non-compliance. The agency's response should contain a statement of the agency's compliance, a plan to bring the program or activity into compliance, or a justification as to why the agency will not comply. Failure to respond or an inadequate agency response will result in escalation to the next step in this process, which includes written notice to the head of the federal agency. Public notification is the final step of the non-compliance process, which is used only "where the head of the agency fails to respond timely and in good faith with a plan that the Director of Federal Operations believes is sufficient to bring the agency program into compliance." MD-110, Chapter 1(IX)(C).

# Appendix IV: Comments from the U.S. Agency for International Development



May 29, 2024

Dawn G. Locke  
Director, Strategic Issues  
U.S. Government Accountability Office  
441 G Street, N.W.  
Washington, D.C. 20226

Re: ***Equal Employment Opportunity Commission: Improved Oversight Processes Needed to Help Agencies Address Program Deficiencies (Report No: GAO-24-105874)***

Dear Ms. Locke:

I am pleased to provide the formal response of the U.S. Agency for International Development (USAID) to the draft report produced by the U.S. Government Accountability Office (GAO) titled, *Equal Employment Opportunity Commission: Improved Oversight Processes Needed to Help Agencies Address Program Deficiencies (Report No: GAO-24-105874)*. This report does not contain any recommendations for action on behalf of USAID.

USAID is committed to creating and maintaining a model Equal Employment Opportunity (EEO) program and complying with federal laws and regulations to ensure a work environment where all individuals are treated with respect and dignity. USAID has worked diligently to ensure compliance with the requirements of all EEO laws and policies, including the Elijah E. Cummings Federal Employee Antidiscrimination Act of 2020. USAID appreciates GAO's recognition in the draft report that USAID has addressed deficiencies identified in the 2021 technical assistance review conducted by the Equal Employment Opportunity Commission, including restructuring the reporting relationship for the EEO Director to report directly to the USAID Administrator, as required by the law.

I am transmitting this letter from USAID for inclusion in the GAO's final report. Thank you for the opportunity to respond to the draft report, and for the courtesies extended by your staff while conducting this engagement.

Sincerely,

*Colleen R. Allen*

Colleen Allen  
Assistant Administrator  
Bureau for Management

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# Appendix V: GAO Contact and Staff Acknowledgments

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## GAO Contact

Dawn G. Locke, (202) 512-6806 or [locked@gao.gov](mailto:locked@gao.gov)

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## Staff Acknowledgments

In addition to the contact named above, key contributors to this report were Shirley Hwang (Assistant Director), Keith O'Brien (Analyst in Charge), Alissa Czyz, Timothy F. Jackson, Serae LaFache-Brazier, Samantha Lalisan, and Serena Lo. In addition, Sarah Cornetto, Ann Czapiewski, Amy Konstas, Katherine Lenane, and Lauren Sherman made significant contributions to this report.



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