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Andrea R. Lucas, Chair
U.S. Equal Employment Opportunity Commission
131 M Street, NE
Washington, DC 20507

cc: Commissioner Kalpana Kotagal; Commissioner Brittany Bull Panuccio

Submitted via Regulations.gov

Re: ***Comments on Federal Sector Equal Employment Opportunity, 91 Fed. Reg. 55,690, RIN 3046-AB46***

Dear Chair Lucas:

Cohen Milstein Sellers & Toll LLP strongly opposes the Commission's proposal to abolish administrative class complaints. For nearly fifty years, class complaints have enabled federal workers to challenge systemic discrimination and obtain meaningful relief through the administrative process. The Commission now proposes to dismantle that mechanism in the name of efficiency, without showing that doing so would reduce delay or improve enforcement. Our decades of experience representing workers in public- and private-sector class actions point to the opposite conclusion: eliminating class procedures would multiply proceedings, increase costs, and leave meritorious claims unheard.

Federal employees deserve timely adjudication of their claims, but abolishing class complaints would make that promise harder to fulfill. Workers challenging the same discriminatory policy would have to pursue separate administrative complaints or seek class-wide relief in federal court, imposing additional burdens on employees, agencies, and the judiciary. Others would abandon their claims because the cost, complexity, or the risk of retaliation by proceeding individually is too great. A smaller administrative docket achieved by deterring claims or shifting them to the courts would offer no measure of success in carrying out the Commission's congressional mandate to eradicate discrimination in the federal government.

The proposal also abandons the Commission's own longstanding findings that class complaints are essential to combating systemic discrimination and can provide a faster, less costly alternative to federal litigation. Those findings informed regulatory reforms that strengthened the class complaint process and expanded access to relief. The Commission offers no adequate explanation for entirely reversing course. Congress charged the Commission with enforcing federal employees' rights, and persistent delays demand practical reforms, adequate staffing, and effective case management—not complete abandonment of the jurisdiction over class complaints. For the reasons herein, the Commission should withdraw this proposal and improve the process it is responsible for administering.

I. Abolishing Administrative Class Complaints Undermines the EEOC's Congressional Mandate to Eliminate Federal Employment Discrimination.

In 1972, Congress extended Title VII's prohibition on employment discrimination to the federal workforce through the Equal Employment Opportunity Act of 1972. The legislative history surrounding the 1972 amendments highlights Congress's particular concern with eradicating discrimination in the federal workforce: As the "single largest employer in the Nation," the federal government's "policies, actions, and programs strongly influence the activities of all other enterprises, organizations and groups. In no area is government action more important than in the area of civil rights."[1]

The 1972 amendments empowered the U.S. Civil Service Commission—whose responsibilities were subsequently transferred to the EEOC in 1978—to enforce Title VII's nondiscrimination prohibitions in federal employment "through appropriate remedies, including reinstatement or hiring of employees with or without back pay, as will effectuate the policies of this section." 42 U.S.C. § 2000e-16(b). The legislative history confirms that this delegation of power was "intended to strengthen the enforcement powers of the Civil Service Commission by providing statutory authority and support for ordering whatever remedies or actions by Federal agencies are needed to ensure equal employment opportunity in Federal employment."[2] Congress further instructed the Commission to issue rules and regulations "necessary and appropriate" to carry out those responsibilities. 42 U.S.C. § 2000e-16(a)–(b).

By creating "complementary administrative and judicial enforcement mechanisms designed to eradicate federal employment discrimination," *Brown v. Gen. Servs. Admin*., 425 U.S. 820, 831 (1976), Congress intended that federal employees' discrimination charges should first be addressed by the administrative process. Indeed, as the Supreme Court explained, the purpose of the 1972 amendments was "to remedy discrimination in federal employment by creating a system that requires resort to administrative relief prior to court action to encourage quicker, less formal, and less expensive resolution of disputes." *West v. Gibson*, 527 U.S. 212, 213 (1999). Thus, the Court reasoned, it would undermine this specially-designed process to "force into court matters that the EEOC might otherwise have resolved." 527 U.S. 212, 219 (1999); *see also id*. at 220 (noting Congress was "anxious to have the EEOC consider as a preliminary matter" Title VII remedies for federal employees). Here, by categorically prohibiting agencies and the EEOC from

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[1] *See* S. Rep. 92-415, at 424, *reprinted in* S. Comm. On Labor and Public Welfare, Legislative History of the Equal Employment Opportunity Act of 1972 118 (Comm. Print 1972).

[2] S. Rep. 92-415, at 421.

investigating, hearing, or deciding class claims, the Commission's proposal forces class claims into court prematurely and circumvents the administrative process Congress created.

As the legislative history surrounding the 1972 amendments makes clear, Congress also understood that class actions were an indispensable mechanism for achieving Title VII's antidiscrimination goals. In *Hackley v. Roudebush*, 520 F.2d 108 (D.C. Cir. 1975), the D.C. Circuit analyzed the legislative history of the Equal Employment Opportunity Act of 1972 to find that "Congress was aware of the importance of class actions in Title VII litigation," *Id.* at n. 177. Emphasizing the "strong federal policy of encouraging class action litigation in situations of pervasive discrimination," the D.C. Circuit found that "Congress gave no hint that a federal employee's Title VII claims do not also 'involve considerations beyond those raised by the individual complainant' which can be adjudicated most efficiently through the class action device." *Id.* Indeed, the legislative history reveals Congress's understanding that "discrimination—particularly when it is systemic—is almost inherently appropriate for class treatment." *Id.* As a result, it is clear that Congress intended that the Commission's responsibilities in enforcing Title VII would extend to rooting out systemic discrimination, including through class claims.

Even more explicitly, in *Barrett v. United States Civil Service Commission*, 69 F.R.D. 544, 549–53 (D.D.C. 1975), the Court found that Title VII requires providing federal workers access to an *administrative* class complaint process, with class-wide relief available where warranted. There, the plaintiffs challenged the regulatory scheme of the EEOC's predecessor, the Civil Service Commission, for not allowing the administrative processing of class complaints along with individual complaints of discrimination from federal workers. *Id.* at 547. The *Barrett* court relied on the D.C. Circuit's analysis in *Hackley* to conclude that "the legislative history of Title VII and the 1972 amendments thereto, and the systemic nature of discrimination itself, indicate that class actions both in the private and federal sectors were indeed envisioned within the scheme of the Act and its amendments." *Id.* at 551. Accordingly, "agencies must, regardless of the applicable standard of review in the courts, provide a forum for the consideration of class relief within the context of an individual complainant's allegation of discrimination and must be prepared to provide class relief, if appropriate." *Id.* The *Barrett* Court therefore concluded that the Commission had "not met its obligations under Title VII of the Civil Rights Act, as amended, 42 U.S.C. §§ 2000e et seq., in that its regulations [did] not clearly provide for the consideration, processing, and resolution of complaints of class discrimination advanced through and in the context of an individual complaint." *Id.* at 553. In response to *Barrett*, the Civil Service Commission promulgated specific regulations providing detailed class administrative procedures and remedies. 29 C.F.R. §§ 1613.601-.643 (later recodified in 29 C.F.R. Part 1614).

In 1978, President Carter's Reorganization Plan No. 1 transferred the Civil Service Commission's federal-sector equal employment opportunity enforcement responsibilities to the EEOC, including its authority under Sections 717(b) and (c) of Title VII to administer the federal-sector discrimination complaint process[3]. As a result, the jurisdiction over administrative class claims was conferred on the EEOC—a responsibility that it cannot simply abandon by regulation.

Since enactment of the Equal Employment Opportunity Act of 1972, Congress has continued to recognize administrative class complaints as an integral part of the protections available to federal employees. The No FEAR Act identified discrimination as an obstacle to effective agency operations and cited class actions against federal agencies among the circumstances requiring reform. Pub. L. No. 107-174, § 101, 116 Stat. 566 (2002). The act expressly requires agencies to post data on the number of individuals filing administrative complaints "including as the agent of a class." *Id.* § 301(b)(2). The Cummings Act strengthened that framework by requiring the EEOC to post information about each class complaint, its allegations, estimated size, and certification status, and extending the EEOC's corresponding reporting obligation. Pub. L. No. 116-283, §§ 1135–1136 (2021). Even more explicitly, the Cummings Act reiterated Congress's instruction that each federal agency "*shall* . . . be responsible for the fair and impartial processing and resolution of complaints of employment discrimination (including retaliation)." Pub. L. No. 116-283, § 1137(b) (2021). The Cummings Act did not give agencies the option to refuse to process entire categories of complaints based on the asserted grounds of promoting "efficiency." Instead, it underscored its expectation that agencies will process and resolve *all* complaints they receive, fairly and impartially.

The Commission's proposal to eliminate class complaints therefore cannot be reconciled with this clear legislative record that placed on the EEOC the responsibility to process and adjudicate administrative class claims.

II. The Commission Has Not Justified Reversing Its Longstanding Findings that Class Complaints Improve Efficiency and Are Necessary for Enforcing Title VII.

The Equal Employment Opportunity Act of 1972 instructed the Commission to issue rules and regulations "necessary and appropriate" to carry out the antidiscrimination goals of Title VII. 42 U.S.C. § 2000e-16(a)–(b). Pursuant to this authority, the Commission issued regulations providing for the processing and adjudication of class complaints which it has only strengthened in the years since. As explained below, the Commission's own prior rulemakings identified concrete reasons to strengthen administrative class procedures, and the proposed rule utterly fails to demonstrate why those reasons no longer hold. *See Dep't of Homeland Sec. v. Regents of the Univ. of Cal.,* 591 U.S. 1, 16 (2020) (when an agency changes a longstanding policy, it must acknowledge the change, provide a reasoned explanation, consider important aspects of the problem, and account for significant reliance interests).

[3] Reorganization Plan No. 1 of 1978, 3 C.F.R. 321 (1979), *reprinted in* 5 U.S.C. app. at 1366 (2006), *and in* 92 Stat. 3781.

In 1977, the Civil Service Commission first promulgated regulations providing detailed class administrative procedures and remedies for federal workers. 29 C.F.R. §§ 1613.601-.643. These regulations were prompted by the *Barrett* ruling, which found that Title VII required the agency to process administrative class complaints and provide class remedies as appropriate. 69 F.R.D. at 549–53. In 1992, the EEOC reorganized the federal-sector EEO complaint procedures previously codified at 29 C.F.R. Part 1613 into a new Part 1614. 57 Fed. Reg. 12,634 (Apr. 10, 1992).

In 1998, the EEOC proposed revisions to the federal sector complaint process, including a number of changes to the class complaint procedures. 63 Fed. Reg. 8594, 8599, 8600 (Feb. 20, 1998). The EEOC spent over a year and a half developing the NPRM, during which time "EEOC consulted extensively with all stakeholders in the federal sector process," including by convening a Federal Sector Workgroup which developed a written report of recommendations. *Id.* at 8595. As a result of this research, the Commission found that too few class complaints were being filed or certified despite evidence of continuing class-based discrimination. Its proposed response was to "*strengthen* the class complaint process" and *increase* the number of class action complaints filed and certified at the administrative level. *Id.* at 8599 (emphasis added). The Commission also explained that resolving complaints arising from a common policy together was more efficient than requiring numerous individual complaints. *Id.* at 8,600.

In the final rule, promulgated in 1999, the Commission explicitly recognized the importance of the administrative class action mechanism:

> Class actions play a particularly vital role in the enforcement of the equal employment laws. They are an essential mechanism for attacking broad patterns of workplace discrimination and providing relief to victims of discriminatory policies or systemic practices. The courts have long recognized that class actions ''are powerful stimuli to enforce Title VII,'' providing for the ''removal of artificial, arbitrary, and unnecessary barriers to employment when the barriers operate invidiously to discriminate on the basis of racial or other impermissible classification.'' *Wetzel v. Liberty Mutual Ins. Co*., 508 F.2d 239, 254 (3d Cir.), cert denied, 421 U.S. 1011 (1975). The class action device exists, in large part, to vindicate the interests of civil rights plaintiffs. *See* 5 James W. Moore, Moore's Federal Practice § 23.43[1][a], at 23–191 (3d ed. 1997). These same policies apply with equal force in the federal sector.

64 Fed. Reg. 37644, 37651 (July 12, 1999). The Commission's 1999 rule also highlighted the many practical benefits of administrative class complaints, explaining that "an effective administrative process for class complaints offers several advantages over litigation in federal court, including informality, lower cost, and the speed of resolution." *Id.*

In the 1999 rule, the Commission also recognized that employees may only learn the class implications of their claims through discovery. As a result, it revised the regulation to allow a complainant to seek certification at any reasonable point when those implications became apparent. *Id.* at 37,652. The Commission's proposal largely eliminates this important opportunity, in direct contradiction of its previous findings, by precluding amendments of existing, like-or-related claims beyond twenty-one days from the initial complaint filing. Combined with the prohibition on class investigation and discovery, the NPRM proposal demands early identification of a pattern of discriminatory conduct while removing means of discovering it.

In 2012, the EEOC again strengthened the class complaint process after years of consideration. A workgroup convened in 2004 considered testimony from a 2002 Commission meeting, staff proposals, and numerous submissions from internal and external stakeholders; a proposed rule followed in 2009. 77 Fed. Reg. 43498, 43498 (July 25, 2012). The final rule made AJ merits decisions in class cases final decisions, rather than recommended decisions, which an agency could implement or appeal, and required decisions on certification appeals within ninety days. *Id.* at 43503. The EEOC reported uniform support in the comments for both class-procedure reforms. *Id.*

While the current NPRM briefly recounts this regulatory history, it fails to demonstrate why it can repudiate the enforcement and efficiency findings supporting those reforms. Before abandoning the class complaint process, EEOC must account for the particular shortcomings from those reforms and demonstrate why revisions to those procedures cannot be achieved. Simply identifying delay as the primary concern does not justify the Commission's wholesale elimination of a procedure that has been in place and continually strengthened for nearly fifty years.

III. EEOC Class Complaints Can Be Managed Efficiently to Secure Relief for Federal Workers.

The Commission's proposal to eliminate class complaints fails to acknowledge the substantial benefits that EEOC class complaints have provided federal workers for decades and ignores the significant improvements in efficiencies that the Commission has achieved in recent years. In fact, the agency's own public data shows that the Commission's adjudication of class claims provided significant relief while also improving docket management and increasing efficiencies in other ways.

The Commission has publicly reported on the success of administrative class complaints in securing relief for federal workers. In its 2024 Annual Report, the EEOC touted that the federal sector hearings program secured "more than $181.4 million in benefits for federal workers," including "over $90 million in settlements of significant class action cases."[4] In 2023, the EEOC

[4] U.S. Equal Emp. Opportunity Comm'n, 2024 Annual Performance Report 48 (Jan. 15, 2025), https://www.eeoc.gov/2024-annual-performance-report.

reported "securing more than $181.6 million in benefits for federal workers," including "over $85 million in settlements of significant class action cases."[5] Among its highlighted achievements for that year, the Commission noted that it had resolved "several significant federal sector class cases involving a discriminatory pattern, practice, or policy with a broad impact on federal employees and applicants, obtaining tens of millions of dollars along with equitable relief in the process."[6] In 2022, the federal hearings program "secur[ed] more than $125.1 million in benefits for federal workers," which included "the $12 million settlement of a landmark class action case involving a finding of discrimination."[7]

Simultaneously, the Commission has implemented case-management strategies, technological advances, and organizational changes that have worked to reduce the backlog of hearings inventory within the federal sector program. In 2023, the EEOC reported that the "federal sector hearings program continued making strides in managing its inventory of hearing requests," and "successfully decreased the pending inventory of its hearing receipts for the sixth year – a reduction of 26.3%" since 2022.[8] The next year, the Commission similarly reported that its "federal sector hearings program continued focusing on strategies to increase efficiency to manage the inventory of hearing requests and resolved 6,679 hearing requests."[9] And this year, Chair Lucas issued EEOC's 2025 Performance Report, which reported that the "federal sector hearings program continued focusing on strategies to increase efficiency to manage the inventory of hearing requests."[10] The report claimed the Commission has "modernized its operations by adopting new technologies, improving internal processes, and refining its structure," leading to an increase in resolutions of federal sector appeals by "67%."[11] In none of its performance reports, including Chair Lucas's most recent report, did the EEOC identify specific inefficiencies in class complaint

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[5] U.S. Equal Emp. Opportunity Comm'n, 2023 Annual Performance Report (Feb. 23, 2024), https://www.eeoc.gov/2023-annual-performance-report.

[6] *Id.*

[7] U.S. Equal Emp. Opportunity Comm'n, 2022 Annual Performance Report (March 2023), https://www.eeoc.gov/2022-annual-performance-report-apr.

[8] U.S. Equal Emp. Opportunity Comm'n, 2023 Annual Performance Report (Feb. 23, 2024), https://www.eeoc.gov/2023-annual-performance-report.

[9] U.S. Equal Emp. Opportunity Comm'n, 2024 Annual Performance Report 48 (Jan. 15, 2025), https://www.eeoc.gov/2024-annual-performance-report.

[10] U.S. Equal Emp. Opportunity Comm'n, FY 2027 Agency Performance Plan (APP) and FY 2025 Agency Performance Report (APR) 44 (Apr. 3, 2026), https://www.eeoc.gov/fy-2027-agency-performance-plan-app-and-fy-2025-agency-performance-report-apr.

[11] *Id.* at 6.

processing or recommend that eliminating class complaints could reduce delays in the resolution of federal sector claims.

The EEOC has reported an overall decrease in its hearing inventory over the past two decades through implementation of case-management strategies and technological advances—all while the Commission *increased* the accessibility of class complaints over this same period.[12] The Commission's proposal fails to demonstrate why such rushed and drastic changes to federal employees' rights are needed at this moment, when the Commission's own data appears to show increased levels of efficiency in administrative hearings.

Despite continuous improvement in reducing hearing backlogs, the EEOC now projects an increase in hearings inventory over the next year.[13] But the Commission itself attributes that projected backlog to *staffing reductions* that it has aggressively pursued in the past year. In its most recent Annual Performance Report, the Commission notes that it began FY 2026 "with a total of 1,809" employees, "a decrease from 2,170 employees onboard at the beginning of Fiscal Year 2025," with the "largest impacts" within "the Office of Federal Sector (OFS) and the Office of Field Programs (OFP)."[14] The Commission's 2027 budget request reveals a significant cut in the number of EEOC administrative judges—from 96 in FY 2024 to only 58 in FY 2026 and FY 2027.[15] The Commission's dramatic reduction of staff in its federal sector operations casts doubt on its claim that eliminating class actions is necessary to increase efficiency. Instead of abolishing a longstanding mechanism for vindicating federal workers' rights, the Commission must commit to providing the staffing and resources necessary to carry out its statutory responsibilities.

In any event, it is irresponsible for the Commission to propose an overhaul of the federal sector regulations while the agency is undergoing such dramatic staffing and organizational changes. As the Commission's most recent performance report noted, the extreme staffing cuts

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[12] *Compare, e.g.,* U.S. Comm'n on Civil Rights, Funding Federal Civil Rights Enforcement: 2000 and Beyond 18, tbl. 2.6 (Feb. 2001) (total pending hearing inventory in 1999 was 24,356) *with* U.S. Equal Emp. Opportunity Comm'n, 2024 Annual Performance Report 48 (Jan. 15, 2025), https://www.eeoc.gov/2024-annual-performance-report (pending hearings inventory declined from 14,885 in 2017 to 6,009 in 2024).

[13] U.S. Equal Emp. Opportunity Comm'n, Fiscal Year 2027 Congressional Budget Justification 29 (March 2026), https://www.eeoc.gov/sites/default/files/2026-04/Fiscal_Year_2027_Congressional_Budget_Justification_-_508.pdf.

[14] U.S. Equal Emp. Opportunity Comm'n, FY 2027 Agency Performance Plan (APP) and FY 2025 Agency Performance Report (APR) 54 (Apr. 3, 2026), https://www.eeoc.gov/fy-2027-agency-performance-plan-app-and-fy-2025-agency-performance-report-apr.

[15] U.S. Equal Emp. Opportunity Comm'n, Fiscal Year 2027 Congressional Budget Justification 29 (March 2026), https://www.eeoc.gov/sites/default/files/2026-04/Fiscal_Year_2027_Congressional_Budget_Justification_-_508.pdf.

have already resulted in a number of changes at the agency, including reassignments, cross-agency collaboration, strategies for more "effectively utiliz[ing] existing technology," and plans for "strategic hiring in order to address mission needs and workforce shortfalls."[16] As a result, it will be impossible for the Commission to accurately gauge the effect of its regulatory changes at the agency. Instead of rushing these significant regulatory changes, the Commission should opt for a more measured, incremental approach once other staffing and organizational changes at the agency are concluded.

IV. Eliminating Class Complaints Will Create More Inefficiency, While Deterring Workers From Bringing Meritorious Claims.

The Commission's principal justification for eliminating class complaints is that class proceedings require case management, discovery, notice, settlement review, and individualized remedial determinations. 91 Fed. Reg. at 55693. But it does not follow from those observations that eliminating class complaints will lead to greater efficiencies. To the contrary, one logical consequence of the Commission's proposal is a dramatic increase in the filing of individual complaints, resulting in wasted resources through repetitive adjudications and inconsistent outcomes for the same kinds of claims. The relevant comparison is between one class proceeding and the administrative and judicial proceedings necessary to address the same violations without class treatment—a comparison the Commission's proposal fails to provide.

The EEOC's premise that its proposal will lead to increased efficiency is doubtful because class proceedings, by definition, address common questions once. If one selection policy injures hundreds of applicants, for example, a class proceeding can identify the policy at issue, examine its effects through analysis of the relevant workforce data, adjudicate common issues of liability and, where it's warranted, supervise relief in a coordinated process. Indeed, in the judicial context, it is clear that "class actions further efficiency through consolidation," by "prevent[ing] multiplicity of actions by enabling a single litigation through representatives on common issues of law and fact where joinder would be impracticable. It thereby conserves both judicial and party resources."[17] Class actions also further efficiency "by reducing the risk of inconsistent adjudications," through "having common legal or factual issues among numerous parties resolved in a single proceeding."[18]

For these reasons, the Administrative Conference of the United States ("ACUS") has issued recommendations to encourage administrative agencies to consider, implement, and strengthen

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[16] U.S. Equal Emp. Opportunity Comm'n, FY 2027 Agency Performance Plan (APP) and FY 2025 Agency Performance Report (APR) 54 (Apr. 3, 2026), https://www.eeoc.gov/fy-2027-agency-performance-plan-app-and-fy-2025-agency-performance-report-apr.

[17] 1 Newberg and Rubenstein on Class Actions § 1:9 (6th ed.).

[18] *Id.*

access to aggregate procedural mechanisms like class actions.[19] Indeed, ACUS specifically found that agencies' resistance to aggregating individual claims "risk[s] wasting resources in repetitive adjudication, reaching inconsistent outcomes for the same kinds of claims, and denying individuals access to the affordable representation that aggregate procedures promise."[20] ACUS recommended class action and other aggregate mechanisms as a solution for increasing efficiency, especially in "high volume adjudications."[21]

The Commission's assumptions about efficiency gains that would result from eliminating class actions directly contradict its own previous findings and the findings of other experts and organizations that have consistently come to the opposite conclusion. Yet the Commission's proposal provides no analysis or estimate of how its proposal aims to limit the amount of work needed to resolve the underlying discrimination claims. It does not identify how many class complaints agencies face, the number of hearings on class complaints requested, or how significant the delays in each of these cases are. The Commission also fails to provide any analysis of what has caused such delays, and whether it could be attributable to staffing shortages or lack of funding. Its statistics about the hearing docket generally do not answer those class-specific questions.

Moreover, the Commission fails to account for the risk that its elimination of class procedures could deter employees from bringing meritorious claims altogether. Class actions provide significant benefits to class members by "reliev[ing] individual members of the cost and work of litigating their claims individually."[22] Should the Commission eliminate class actions, each worker seeking individual administrative relief must instead be an identified complainant who satisfies separate timeliness and pleading requirements. Predictably, such additional requirements may dissuade workers from filing individual claims, even if they are entitled to relief. Moreover, the class complaint mechanism allows unnamed class members to receive relief to which they are entitled without the risks of retaliation that may come with bringing an individual complaint. As the Commission reported in 2025, "retaliation is the most frequently alleged basis of discrimination" in the federal sector, constituting "53.6 percent of formal complaints filed in FY 2020," and "is also the most common discrimination finding in Federal sector cases."[23] Thus, a predictable outcome of the Commission's proposed changes would be an increase in federal

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[19] ACUS Recommendation 2016-2, *Aggregation of Similar Claims in Agency Adjudication*, ¶¶ 3–8 (June 10, 2016), published in 81 Fed. Reg. 40,259 (June 21, 2016).

[20] *Id.*

[21] *Id.*

[22] 1 Newberg and Rubenstein on Class Actions § 1:9 (6th ed.).

[23] U.S. Equal Emp. Opportunity Comm'n, Bending Toward Justice: 60 Years of Civil Rights Laws Protecting Workers in America 33 (Jan. 2025), https://www.eeoc.gov/sites/default/files/2025-01/60th_Anniversary_Civil_Rights_Report_final_2_508.pdf.

workers who simply decide not to vindicate their rights as identified, individual complainants due to a fear of retaliation.

Nor will the discretionary joint processing of individual complaints proposed in the NPRM cure these problems. The proposed rules hypothetically permit shared evidence and coordinated proceedings, but the agency or Commission may deny or limit it as it wishes and the proposal gives no standards by which such determinations will be made. And even in joint proceedings, each person still must pursue an individual complaint, and the resulting proceeding cannot establish the rights of absent workers or provide them individual relief. *Id*. § 1614.204(g)–(h). Nor is joint processing a new substitute whose availability explains abandoning classes: the existing § 1614.606 already permits joint processing of related complaints. The EEOC has failed to demonstrate how this existing procedure can now perform the class mechanism's distinct functions. Reduced EEOC workload achieved by shifting litigation elsewhere—or by deterring claims altogether—does not establish more efficient enforcement.

V. Issues of Delay Should Be Addressed Through Workable Reform, Not Categorical Prohibition of Class Complaints.

The NPRM acknowledges alternatives, including revised class procedures and a specialized class unit, but rejects them with general assertions about the nature of large-class adjudication and the resources specialization would require. 91 Fed. Reg. at 55708–09. It provides no comparative assessment of enforcing existing deadlines, assigning experienced personnel, using staged discovery and common-issue determinations, or restoring adjudicative capacity. Moreover, its concern about "large" classes cannot explain a prohibition covering every class regardless of size, complexity, or suitability for prompt resolution. The Commission must evaluate workable reforms against the actual costs of the fragmented proceedings and court litigation its proposal would induce.

Practical options are readily identifiable. Designating experienced administrative judges to manage class matters, providing shared support and training, and allocating cases according to expertise would address capacity without necessarily creating a new organizational unit. Early case conferences, enforceable certification schedules, phased discovery, and prompt threshold rulings would target delay where it occurs. Subclasses and staged liability and remedial proceedings can organize complex issues and individual relief. Mediation based on a developed common record can produce comprehensive resolutions without prolonged merits proceedings.

These approaches are consistent with the Administrative Conference of the United States's recommendation that agencies consider aggregation to improve adjudication, including identifying related claims, coordinating proceedings, assessing manageability, and assigning trained adjudicators.[24] ACUS recognized the need to manage aggregation's risks and protect fair participation. Its recommendation reinforces the need to assess procedural tools on their merits before assuming that separate adjudication will use fewer resources.

Better workload measures would further improve administration. A class counted as one case may resolve claims affecting hundreds of employees. Tracking class size, procedural stages, relief, and causes of delay would make staffing decisions more informed. And the Commission already has standards that screen out unsuitable cases: numerosity, commonality, typicality, and adequacy of representation. 29 C.F.R. § 1614.204(a)(2). The proposal offers no adequate reason to deny an administrative remedy to classes satisfying those standards rather than improve the procedures through which they proceed.

Conclusion

The Commission should withdraw its proposal to abandon wholesale its jurisdiction over administrative class claims. The record does not justify extinguishing a longstanding vehicle for exposing and addressing systemic discrimination. The proposal conflicts with the statutory enforcement framework, fails to reconcile the Commission's own findings, and substitutes untested predictions for a serious accounting of the consequences. Federal employees deserve timely adjudication of their claims, but the Commission should meet that obligation by improving the process that provides relief, not by closing it to the employees who need collective enforcement.

Sincerely,

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[24] ACUS Recommendation 2016-2, *Aggregation of Similar Claims in Agency Adjudication*, ¶¶ 3–8 (June 10, 2016), published in 81 Fed. Reg. 40,259 (June 21, 2016).