



# SOUTHWORTH PC

---

## FEDERAL EMPLOYMENT ATTORNEYS

Shaun C. Southworth, Esq.  
Southworth PC  
1100 Peachtree ST NE Suite 200  
Atlanta, GA 30309  
(404) 585-8095  
Shaun.southworth@southworthpc.com

August 25, 2026

*Via Email:* [commissionmeetingcomments@eeoc.gov](mailto:commissionmeetingcomments@eeoc.gov)

Chair Andrea R. Lucas  
Commissioner Kalpana Kotagal  
Commissioner Brittany Bull Panuccio  
Raymond D. Windmiller, Executive Officer  
U.S. Equal Employment Opportunity Commission  
131 M Street, NE  
Washington, DC 20507

**Re:** RIN 3046-AB46 — Request to Defer Action, Disclose the Draft, and Preserve Federal Employees' Procedural Protections

Dear Chair Lucas, Commissioners Kotagal and Panuccio, and Mr. Windmiller:

Southworth PC represents federal employees in matters arising under 29 C.F.R. Part 1614. We write before the Commission's August 26, 2026 open meeting to oppose any proposal that would eliminate precomplaint counseling and early mediation, remove a complainant's present right to elect a hearing before an EEOC Administrative Judge, or abolish the administrative class-complaint procedure. Those mechanisms are not administrative ornament. They provide early resolution, independent factfinding, discovery, credibility testing, and a practical path for employees who cannot finance de novo federal litigation.

As of August 24, the public cannot read the proposal the Commission will consider. The public record establishes that EEOC submitted RIN 3046-AB46, "Revision and Update to 29 CFR Part 1614," to the Office of Information and Regulatory Affairs on July 22, 2026; OIRA concluded review on August 19 as "Consistent with Change"; and the Commission will deliberate and vote on a draft Notice of Proposed Rulemaking on August 26. But no draft regulatory text, preamble, redline, supporting analysis, transition plan, Federal Register proposed rule, public-inspection filing, or Regulations.gov docket is publicly available.

Our objections therefore address the architecture credibly reported from a closed July 27 briefing, not language EEOC has disclosed. If those reports are incomplete or wrong, immediate release of the actual text is the answer. The Commission should not treat the absence of text-specific public criticism as assent to text the public has never been allowed to see.

### **Requests concerning this letter and the August 26 meeting**

Please take the following actions:

1. Circulate this letter before the meeting to every Commissioner and to the relevant Office of Legal Counsel, Office of Federal Operations (and any successor Office of Federal Sector), hearings-program, and Executive Secretariat staff.
2. Preserve this letter with the materials concerning the August 26 agenda item and include it in the meeting record to the extent EEOC's procedures permit.
3. If the Commission authorizes publication, place this letter in the rulemaking record for RIN 3046-AB46, or incorporate it by reference, and confirm how Southworth PC should resubmit it when a formal docket opens. We understand that this pre-vote letter is advocacy, not a substitute for a docketed comment.
4. Release promptly after any vote the Commission-approved regulatory text, a redline against current Part 1614, the preamble, workload and governmentwide cost analyses, the transition plan, the development and consultation chronology, the agencies consulted under Executive Order 12067 and 29 C.F.R. Part 1690, nonprivileged material interagency comments, and the text submitted to and cleared by OIRA or a meaningful change log.
5. Provide at least 90 days for public comment (and in no event less than the 60 days contemplated by 29 C.F.R. § 1690.304(a)(3)) and hold a dedicated public hearing at which federal employees, unions, practitioners, agency EEO professionals, Administrative Judges, and affected organizations may participate.
6. Expressly solicit comment on narrower alternatives, including pilots under 29 C.F.R. § 1614.102(f), rather than presenting a single wholesale architecture as an accomplished choice.
7. State that existing Part 1614 procedures remain fully operative unless and until a final rule becomes effective, and include an express savings clause protecting pending

complaints, requested or assigned hearings, appeals, certified and putative classes, settlements, tolling, and accrued filing rights.

8. Confirm receipt of this letter and whether EEOC will honor the circulation, preservation, and record requests above.

### **The Commission should not make neutral adjudication exceptional**

If reports are accurate, the employing agency would investigate itself, construct the administrative record, and issue the first merits ruling in every complaint. A complainant would receive discovery, live testimony, credibility findings, sanctions for missing evidence, and independent adjudication only if the newly designated Office of Federal Sector later granted a hearing on appeal. No public source identifies the gatekeeping standard, the decision sequence, the time limit, or any review of a denial.

That design would make the quality of the agency-created Report of Investigation decisive while reducing the employee's ability to expose gaps in that record. Before proceeding, the Commission should answer publicly:

- What objective and binding criteria would govern whether a hearing is granted?
- Must the gatekeeper provide written reasons, and can a denial be reconsidered or reviewed?
- How can an employee obtain material evidence or test credibility before the accused agency's record becomes the basis for denying a hearing?
- What happens when an investigation is incomplete or the agency misses the proposed 180-day deadline?
- What staffing and processing model permits prompt nationwide gatekeeping when EEOC reports that recent staffing losses have fallen heavily on its federal-sector appeals and hearings operations?

Title VII's de novo civil-action pathway is indispensable, but it is not an equivalent substitute for accessible neutral administrative adjudication. Federal litigation imposes filing costs, pleading requirements, discovery burdens, motion practice, and representation barriers. The reported proposal therefore presents two foreseeable consequences that EEOC must model: some otherwise viable claims may be abandoned without any neutral merits adjudication, while others may move into federal court.

### **The proposal may displace cost and privacy burdens into de novo federal litigation**

The reported proposal presents a governmentwide cost-shifting problem. Under the current regulation, an EEOC Administrative Judge oversees development of the record, permits reasonable discovery, compels evidence, may impose sanctions, and conducts a hearing that is closed to the public. 29 C.F.R. § 1614.109(a), (d)-(h). If a complainant can no longer elect that forum and the new gatekeeper denies a discretionary hearing, the principal remaining forum for neutral evidentiary adjudication will be a civil action in federal district court.

That civil action is not deferential review of the agency-created ROI or FAD. Title VII authorizes a federal employee to file a civil action against the agency head, 42 U.S.C. § 2000e-16(c), and *Chandler v. Roudebush*, 425 U.S. 840 (1976), holds that the proceeding is de novo. The parties therefore may have to develop evidence again under the Federal Rules of Civil Procedure through pleadings, disclosures, document discovery, depositions, experts, motion practice, and trial, followed by possible appellate proceedings.

The privacy consequences also matter. EEOC states that Part 1614 hearings and their records are closed to the public. Federal civil complaints and most related filings, by contrast, are ordinarily available through PACER, subject to redaction, sealing, and protective orders. Limiting administrative hearings may move disputes involving harassment, disability, medical restrictions, and retaliation from a closed adjudicative forum onto a public docket. EEOC must assess that change in employees' privacy calculus and its deterrent effect, not assume that preserving a statutory court remedy preserves meaningful access.

Executive Order 12988 makes litigation migration a rulemaking issue, not merely a budget preference. Section 3 directs agencies to write proposed regulations "to minimize litigation" under a heading requiring regulations that do not unduly burden the federal court system. Section 4 calls on agencies to reduce delay, facilitate self-representation, and encourage early settlement in administrative adjudication. A proposal that removes counseling, early mediation, and complainant-elected neutral hearings should explain how it satisfies those directives.

Title VII adds a stakeholder directive of its own: EEOC must consult with and solicit recommendations from interested individuals, groups, and organizations on federal equal employment opportunity. 42 U.S.C. § 2000e-16(b)(3). That general duty does not itself require release of draft text before a Commission vote, but it underscores the need for meaningful input from agency leaders and counsel, EEO professionals, unions, employee-side practitioners, Administrative Judges, disability and civil-rights organizations, and self-represented complainants before a wholesale redesign.

Nor may efficiency be measured only on EEOC's ledger. Congress generally reserved the conduct and supervision of litigation involving federal agencies to the Department of Justice, 28 U.S.C. §§ 516, 519, and directed U.S. Attorneys to defend civil actions in which the Government is concerned, *id.* § 547(2). Agency counsel and program offices still must preserve and produce ESI, locate evidence, prepare witnesses, support DOJ, evaluate settlement, and respond to motions. Federal courts must manage the resulting cases. Counting avoided AJ expenditures while omitting agency, DOJ, U.S. Attorney, and judicial-branch costs would measure a budget transfer, not net public savings.

The scale warrants evidence, not assumption. EEOC received 7,175 hearing requests in FY 2025. No one can responsibly predict that every denied hearing will become a lawsuit; many employees may instead abandon otherwise viable claims. But even a modest marginal increase in district-court filings could be material.

Nor should EEOC assume that the historical expense of district-court litigation will cap filing volume. Modern case-management and document-review technology may reduce some marginal plaintiff-side costs, and legal-service models will adapt. Those changes do not eliminate discovery enforcement, depositions, experts, witness time, motion practice, or judicial resources, and they are not equally available to self-represented employees. The Commission must model both foreseeable outcomes: migration to court and abandonment without neutral adjudication.

Before proceeding, the Commission should disclose and answer:

- What consultation has occurred with DOJ's Civil Division, the Executive Office for U.S. Attorneys, agency General Counsel and EEO offices, OMB, and other affected departments and agencies; which entities received early drafts; and what timetable will EEOC use for the publication-ready formal submission and agency-review period required by Executive Order 12067 and 29 C.F.R. Part 1690? Will any waiver be invoked or any materially changed OIRA-cleared version be recirculated?
- What model projects referrals for hearing, denials, abandonments, settlements, district-court filings, and duplicated evidence development, and what empirical basis and sensitivity range supports each forecast?
- What governmentwide costs were counted, including agency and DOJ attorney time, ESI preservation and production, depositions, experts, witness and supervisor time, motions, trials, appeals, settlements, judgments, fee awards, and federal-court administration?
- How does the proposal comply with Executive Order 12988's directives to minimize litigation and promote just, efficient administrative adjudication, including self-representation and early settlement?
- What privacy and deterrence effects were assessed, and what narrower alternatives were compared before making neutral administrative adjudication discretionary?

The public record does not reveal how long internal development or interagency consultation lasted, so this letter does not claim that speed alone is unlawful. But the public-facing sequence is compressed: OIRA review concluded August 19; EEOC dated its meeting notice August 19; the vote is scheduled for August 26; and no text or docket is public as of August 24. The Commission should disclose its development and consultation chronology, identify any statutory, judicial, or executive deadline said to require this schedule, and not use the compressed sequence to truncate public comment or stakeholder engagement.

### **EEOC's own evidence requires answers, not assumptions**

EEOC's published data do not support eliminating early resolution without a serious workload model. In FY 2021, agencies completed 33,506 counselings, but only 12,226 — 36.5 percent — resulted in formal complaints. ADR was offered in 87.8 percent of completed counselings and accepted in 55.5 percent. Those figures do not establish that every matter ending without a complaint was successfully resolved. They do establish that counseling and ADR perform substantial screening, notice, issue-framing, and early-resolution functions. The

Commission must estimate how many matters will become formal investigations, and at what cost, if those functions disappear.

The reported 180-day model is equally unexplained. EEOC reports that an investigation alone averaged 185 days in FY 2021 and cost an average of \$5,133. A separate EEOC study found that only 47 percent of merit Final Agency Decisions were timely in FY 2021; untimely FADs were issued an average of 178.1 days after they were due. If agencies must investigate, prepare the ROI, complete legal review, and issue a reasoned FAD inside one 180-day period, the proposal must identify the operational change that makes the deadline realistic and the remedy when an agency supplies a late or deficient record.

Neutral review also produces measurable value. EEOC reports that its hearings program resolved 6,178 matters and obtained almost \$78.1 million in benefits in FY 2025. Its appellate program reversed nearly 35 percent of reviewed procedural dismissals. Those results demonstrate the importance of independent EEOC review. They do not explain why independent merits adjudication should become exceptional.

The Commission must also reconcile the proposal with its own recent representations to Congress. EEOC's March 2026 FY 2027 budget justification described the hearings program as providing full, fair, and impartial adjudication of individual and class claims; requested \$35.377 million for hearings and \$2 million for mediation; and identified individual and class case management and national ADR as continuing work. What evidence or policy judgment changed between that submission and the July 22 submission to OIRA? Has EEOC provided Congress a revised program, workload, and cost justification?

### **Administrative class complaints cannot disappear without addressing exhaustion, tolling, and reliance**

Eliminating 29 C.F.R. § 1614.204 would remove the only specialized administrative mechanism for developing systemic federal-sector claims, deciding certification, providing notice, preserving tolling, adjudicating classwide liability, and processing individual relief. A statement that employees remain free to file individual complaints or sue in federal court does not answer what happens to certified classes, pending certification motions, putative members, notice obligations, settlements, class-agent and class-counsel status, exhaustion, tolling, and later Rule 23 litigation.

Any proposal must address those issues section by section and explain its relationship to the government's recent representation in *AFGE v. EEOC* that administrative class processing should not be suspended. At minimum, an express savings clause must preserve existing classes and all tolling and reliance interests. A prospective procedural rule should not be allowed to strand employees who followed the procedure EEOC itself required.

### **EEOC has narrower, evidence-based alternatives**

EEOC debated the same issues in 2002. Its 2004 workgroup found no consensus for wholesale revision. Its 2015 Advance Notice of Proposed Rulemaking expressly asked whether

hearings should be discretionary and who should decide. EEOC received a substantial stakeholder record but did not adopt a comprehensive restructuring.

EEOC later created pilot authority in 29 C.F.R. § 1614.102(f) to test alternative complaint-processing models using defined objectives, reliable measures, and evaluation controls. No public pilot evaluation has been identified that supports nationwide elimination of counseling, complainant-elected hearings, or administrative classes. Before dismantling the existing architecture, the Commission should test and compare narrower options, including early neutral ADR, enforceable investigation-quality standards, prompt AJ triage, expedited hearing tracks, sanctions for incomplete records, published screening criteria, targeted staffing, and better case-management technology.

A final rule changing long-settled procedure remains subject to review under 5 U.S.C. § 706. The Commission must examine relevant evidence, acknowledge its change in policy, address serious reliance interests, consider obvious alternatives, and reasonably connect the record to the design it chooses. See *Motor Vehicle Manufacturers Association v. State Farm Mutual Automobile Insurance Co.*, 463 U.S. 29, 43 (1983); *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515-16 (2009); *Department of Homeland Security v. Regents of the University of California*, 591 U.S. 1, 30-33 (2020). It should also disclose and document compliance with 42 U.S.C. § 2000e-16, Executive Orders 12067 and 12988, and 29 C.F.R. Part 1690.

### **Requested disposition**

The Commission should defer action until the proposal and its supporting analysis can be examined publicly. At minimum, it should authorize only a genuinely open proposal: immediate disclosure, at least 90 days for comment, a dedicated public hearing, a complete governmentwide evidentiary and cost record, analysis of court workload and privacy effects, meaningful consideration of narrower alternatives, and an express savings clause.

Southworth PC will review and submit text-specific comments when EEOC opens a formal docket. This letter provides contemporaneous notice that eliminating neutral hearing access, counseling and early ADR, and the administrative class mechanism presents serious factual, operational, governmentwide cost-shifting, litigation-migration, privacy, reliance, exhaustion, and transition problems. The Commission now has both the opportunity and the responsibility to confront those problems before it proceeds.

Respectfully,

/s/ Shaun C. Southworth  
Shaun C. Southworth  
Southworth PC  
[Shaun.Southworth@southworthpc.com](mailto:Shaun.Southworth@southworthpc.com) | (404) 585-8095

### **Sources cited**

1. EEOC, Notice of Open Commission Meeting (Aug. 19, 2026), <https://www.eeoc.gov/meetings/notice-open-commission-meeting-August-26>.

2. OIRA, RIN 3046-AB46, Revision and Update to 29 CFR Part 1614, <https://www.reginfo.gov/public/do/eoDetails?rrid=1477811>.
3. KCNF, Major Changes Coming to the Federal Sector EEO Process (July 29, 2026), <https://kcnfdc.com/blog/major-changes-coming-to-the-federal-sector-eEO-process/>.
4. Bloomberg Law, Federal Worker EEO Process Eyed for Major Overhaul in Trump Plan (July 31, 2026), <https://news.bloomberglaw.com/daily-labor-report/federal-worker-eEO-process-eyed-for-major-overhaul-in-trump-plan>.
5. 29 C.F.R. Part 1614 (current), <https://www.ecfr.gov/current/title-29/subtitle-B/chapter-XIV/part-1614>.
6. EEOC, FY 2021 Annual Report on the Federal Workforce, Part I, <https://www.eeoc.gov/fy-2021-annual-report-federal-workforce-part-1-eEO-complaint-processing-activity>.
7. EEOC, Timeliness of Merit Final Agency Decisions in the Federal Sector, <https://www.eeoc.gov/federal-sector/reports/timeliness-merit-final-agency-decisions-federal-sector>.
8. EEOC, Fiscal Year 2027 Congressional Budget Justification, <https://www.eeoc.gov/fiscal-year-2027-congressional-budget-justification>.
9. EEOC, FY 2027 Agency Performance Plan and FY 2025 Agency Performance Report, <https://www.eeoc.gov/fy-2027-agency-performance-plan-app-and-fy-2025-agency-performance-report-apr>.
10. EEOC, Advance Notice of Proposed Rulemaking, 80 Fed. Reg. 6669 (Feb. 6, 2015), <https://www.govinfo.gov/content/pkg/FR-2015-02-06/pdf/2015-02330.pdf>.
11. EEOC, Commission Meeting on Federal Sector Reform Transcript (Nov. 12, 2002), <https://www.eeoc.gov/meetings/commission-meeting-federal-sector-reform-november-12-2002/transcript>.
12. EEOC, Pilot Project Toolkit, <https://www.eeoc.gov/federal-sector/management-directive/pilot-project-tool-kit>.
13. 42 U.S.C. § 2000e-16, [https://uscode.house.gov/view.xhtml?req=\(title:42%20section:2000e-16%20edition:prelim\)](https://uscode.house.gov/view.xhtml?req=(title:42%20section:2000e-16%20edition:prelim)).
14. 29 C.F.R. Part 1690, <https://www.ecfr.gov/current/title-29/subtitle-B/chapter-XIV/part-1690>.
15. Executive Order 12067, Providing for Coordination of Federal Equal Employment Opportunity Programs, <https://www.eeoc.gov/history/executive-order-12067>.
16. Chandler v. Roudeshush, 425 U.S. 840 (1976), <https://www.govinfo.gov/content/pkg/USREPORTS-425/pdf/USREPORTS-425-840.pdf>.
17. Executive Order 12988, Civil Justice Reform, 61 Fed. Reg. 4729 (Feb. 7, 1996), <https://www.govinfo.gov/content/pkg/FR-1996-02-07/pdf/FR-1996-02-07.pdf>.
18. 28 U.S.C. § 516, [https://uscode.house.gov/view.xhtml?req=\(title:28%20section:516%20edition:prelim\)](https://uscode.house.gov/view.xhtml?req=(title:28%20section:516%20edition:prelim)).
19. 28 U.S.C. § 519, [https://uscode.house.gov/view.xhtml?req=\(title:28%20section:519%20edition:prelim\)](https://uscode.house.gov/view.xhtml?req=(title:28%20section:519%20edition:prelim)).
20. 28 U.S.C. § 547, [https://uscode.house.gov/view.xhtml?req=\(title:28%20section:547%20edition:prelim\)](https://uscode.house.gov/view.xhtml?req=(title:28%20section:547%20edition:prelim)).
21. EEOC, Management Directive 110, Chapter 7: Hearings, <https://www.eeoc.gov/federal-sector/management-directive/chapter-7-hearings>.
22. Administrative Office of the U.S. Courts, Access to Court Proceedings, <https://www.uscourts.gov/court-records/access-court-proceedings>.