

Status and Impact of Direct Reporting Structures for Federal Agencies



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Executive Summary

Background

Equal employment opportunity (EEO) programs in the Federal sector are designed to be proactive, with a mandate to assist leadership in creating and maintaining fair and inclusive workforce practices. An effective EEO program provides real-time consultation to senior leadership on important workplace issues. From trends in applicant data to issues raised during exit interviews, leadership needs an independent assessment of employment opportunity within the organization. This is the fundamental purpose of the EEO program and the key to its success.

The U.S. Equal Employment Opportunity Commission (EEOC) has long held that a direct reporting structure must be established between EEO Directors and agency heads to maintain an effective and compliant EEO program. The EEOC defines a direct reporting structure as one where the head of the agency supervises the person with day-to-day control of the agency's EEO program. The U.S. Congress has voiced its support for direct reporting through the passage of the Elijah E. Cummings Federal Employee Antidiscrimination Act of 2020 (Cummings Act).

Over the years, the EEOC has gathered empirical evidence of the success of direct reporting structures. This report combines several of these sources to provide a comprehensive assessment of agencies' reporting structures following the passage of the Cummings Act. First, the EEOC examined data from agencies' MD-715 and Form 462 reports from FY 2019 and FY 2020. EEOC researchers categorized these agencies by size and identified relevant trends in compliance to provide recommendations for further action. The results of EEOC's FY 2021 survey were also incorporated.

Main Findings

The EEOC drew the following conclusions from these sources:

- While Federal agencies of all sizes demonstrated high levels of compliance with the reporting structure requirement in FY 2019, cabinet-level agencies reached only mixed levels of compliance during this period.
- In FY 2020, levels of compliance increased for all agencies except those in the mid-sized category. Small agencies attained the highest levels of compliance during this year, indicating that their practices could be a model for other agencies.
- The EEOC's FY 2021 survey identified similar trends in compliance; small agencies again achieved the greatest levels of success on this initiative, while mid-sized, large, and cabinet-level agencies reported only mixed levels of compliance.

The report follows with a case study detailing the impact of reporting structures upon various subcomponents of one cabinet-level agency. EEOC researchers investigated the relationship between subcomponents' reporting structures and their success in achieving 11 critical EEO factors. These factors measure the involvement of senior leadership with the EEO program, seeking to determine whether EEO initiatives are provided sufficient funding, training, and guidance on important issues. From this analysis, the EEOC found that subcomponents with compliant reporting structures exhibited fewer "deficiencies" among these 11 factors than those without a direct structure. This finding provides strong support for the EEOC's efforts to enforce the report-



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ing structure requirement of the Cummings Act.

The EEOC also conducted a survey of Federal sector EEO Directors to obtain these officials' perspectives on the impact of a direct reporting structure upon their programs. The EEOC received 214 responses from 154 agencies. These results presented further evidence of the importance of a direct reporting structure in maintaining a successful EEO program:

- A majority of respondents with a direct reporting structure stated that this system had positively impacted their program's operations.
- Respondents with a direct reporting structure maintained frequent communication with their agency head.

Only 3 survey respondents (1.6%) indicated that a direct reporting structure would negatively impact their EEO program. The survey also asked respondents to identify best practices and challenges associated with implementing a direct reporting structure. Their answers provide valuable insight on areas in which the EEOC could improve or strengthen its efforts on this objective:

- Leadership reluctance represented the greatest obstacle to achieving a direct reporting structure, suggesting that the EEOC should target these officials to increase compliance.

Common first steps to implementing this structure included discussions with agency leadership, requests for guidance from the EEOC, and memoranda written to agency leadership. An understanding of these tactics could benefit other agencies' efforts to achieve a direct reporting structure.

Furthermore, the EEOC held focus groups and conducted interviews of select survey participants to gather additional details about agencies' reporting structures. Overall, most participants expressed their support for the Cummings Act, indicating that it had strengthened their position as an EEO representative in conversations with senior leadership. In spite of this promising feedback, several respondents stated that their agency did not intend to comply with the new mandate, asserting that their current structure adhered to the "spirit of the law" if not its formal provisions. Based on individual testimony and group discussion, it also became clear that many officials used differing definitions of a "direct reporting structure," indicating one area in which the EEOC could clarify its guidance.

Through the results of this analysis, the EEOC hopes to encourage agency heads to embrace the mandate of the Cummings Act which, for the first time, codified direct reporting. It is EEOC's expectation that over the coming months, agencies will increase their compliance with the law.



Background and History

The requirement for a direct reporting structure between EEO Directors and agency heads has evolved throughout the history of Federal EEO programs. The recently passed Cummings Act is the first Congressional statute to mandate that Federal agencies' EEO Directors report directly to agency heads.

Previously, EEO reporting structures were only addressed through executive orders and EEOC regulations and guidance. Specifically, in July 1948, President Harry S. Truman issued Executive Order 9980, which prohibited discrimination in Federal employment on the bases of race, color, religion, and national origin. The Order designated the head of each Federal department to appoint a Fair Employment Officer to explain department personnel actions, receive discrimination complaints, and take necessary corrective or disciplinary action. This appointed officer was “under the immediate supervision of the department head” and given full operating responsibility for carrying out the fair-employment policy. Additionally, the officer’s decisions were appealable to the head of the department. Lastly, the Order established a Fair Employment Board (FEB) in the Civil Service Commission (CSC) to advise department heads, disseminate information, coordinate programs, and review decisions made by the department heads.

In 1955, President Eisenhower issued Executive Order 10590, establishing the President’s Committee on Government Employment Policy. This committee advised the President periodically as to whether the civilian employment practices in the Federal government conformed with non-discriminatory employment policy. The Order allowed the head of each executive agency to designate an Employment Policy Officer, who “shall be under the immediate supervision of the head of his department or agency and shall be given the authority necessary to enable him to carry out his responsibilities under [the] order.”

Almost a decade later, Congress and President Johnson enacted the landmark Civil Rights Act of 1964. Title VII of the Act prohibited employment discrimination based on race, color, religion, sex, national origin, and protected activity. However, Title VII did not initially apply to Federal government employees and applicants. As a result of procedural obstacles within the Federal sector complaint process and inadequate remedies, Congress and President Nixon passed amended Title VII in 1972, extending employment discrimination protections to Federal employees and applicants.

In 1978, the EEOC was given enforcement authority over employment discrimination claims under the Rehabilitation Act, the Age Discrimination in Employment Act (ADEA), the Equal Pay Act (EPA), and Section 717 of Title VII. President Carter stated that “[t]ransfer of the [CSC’s] equal employment opportunity responsibilities to EEOC is needed to ensure that: (1) Federal employees have the same rights and remedies as those in the private sector and in state and local government; (2) Federal agencies meet the same standards as are required of other employers; and (3) Potential conflicts between an agency’s equal employment opportunity and personnel management functions are minimized.”

Shortly thereafter, Congress passed the Civil Service Reform Act of 1978, which abolished the CSC and distributed its functions primarily among three agencies: EEOC, the Office of Personnel Management (OPM), and the Merit Systems Protection Board (MSPB). The EEOC was also given responsibility over the affirmative employment requirements of Title VII and the Rehabilitation Act.

To realize the intent of Congress, the EEOC issued regulations and guidance, which can be found at 29 C.F.R. § 1614, and in the EEOC’s Management Directives (MD) 110 and 715. These regulations and directives address the reporting structure for Federal sector EEO programs. Specifically, 29 C.F.R. § 1614.102(b)(4) states that



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each Federal agency shall appoint a Director of Equal Employment Opportunity (EEO Director), who shall be under the immediate supervision of the agency head. MD-110 notes that the EEO Director should have the access and authority to ensure that the agency truly considers the elimination of workplace discrimination to be a fundamental aspect of the agency’s mission. MD-110 further explains that, by placing the EEO Director under the immediate supervision of the agency head, the agency ensures that the EEO Director is able to act with the greatest degree of independence and “allows the agency head to have a clear understanding of EEO factors when making organizational decisions.” In addition, MD-110 states that where agency subcomponents are authorized, the EEO Director shall be under the immediate supervision of the head of the subcomponent or, in the alternative, may report to either the EEO Director of the parent organization or the head of the parent organization.

Likewise, the EEOC’s MD-715, Section II.B states that agencies must maintain a reporting structure that provides the agency’s EEO Director with regular access to the agency head and other senior management officials. This provides for unfettered reporting on the effectiveness, efficiency, and legal compliance of the agency’s Title VII and Rehabilitation Act programs. MD-715 notes that this reporting structure is necessary to integration of EEO into an agency’s strategic mission.

In 2002, Congress passed the Notification and Federal Employee Antidiscrimination and Retaliation Act (No FEAR Act) to strengthen laws prohibiting discriminatory and retaliatory acts against Federal employees. For example, this Act created new requirements to inform employees of their rights. In 2020, the Cummings Act amended the No FEAR Act to include a statutory direct reporting requirement, underscoring its importance.

Methodology

To thoroughly assess direct reporting in the Federal sector, the EEOC took a multi-faceted approach. The EEOC gathered fiscal year (FY) 2019 and 2020 data from the EEOC’s Federal complaint data collection form (i.e., Form 462) and MD-715 reports, where agencies state their reporting structure status each year.

To gather empirical evidence, the EEOC also reviewed the results of program evaluations that included an assessment of reporting structure over the last ten years. One cabinet-level agency, consisting of several subcomponents with a variety of reporting structures, was selected to demonstrate the effectiveness of EEO programs that maintain direct reporting structures compared to those that do not. This is reported in the “Empirical Evidence for the Benefits of a Direct Reporting Structure” section of this report.

In addition, the EEOC created a 22-question survey and sent it to Federal sector EEO Directors to gather the status of the reporting structure of their offices for 2021, EEO Directors’ grade level information, challenges experienced, and other relevant information. EEO specialists encouraged the participation of their assigned agencies. The survey closed on June 14, 2021.

Finally, the EEOC conducted four 90-minute focus groups with 24 participants. These focus groups provided stakeholder feedback on the effectiveness and desirability of a direct reporting structure, as well as challenges faced by agencies in implementing such a structure. The EEOC also conducted three interviews of EEO officials—two of whom have a direct reporting structure and one who has faced resistance from leadership.

Status of Agency Structure, 2019 to 2021

The EEOC conducted a review of 278 agencies’ reporting structures using MD-715 report and Form 462



report data from FY 2019 and FY 2020. EEOC researchers compared agencies' MD-715 reports and the data reported in their Form 462 submissions to look for any discrepancies in reporting structure. Specifically, the EEOC examined two questions:

- From MD-715: Is the agency head the immediate supervisor of the person (“EEO Director”) who has day-to-day control over the EEO office?
- From Form 462: Does the EEO Director report to the agency head?

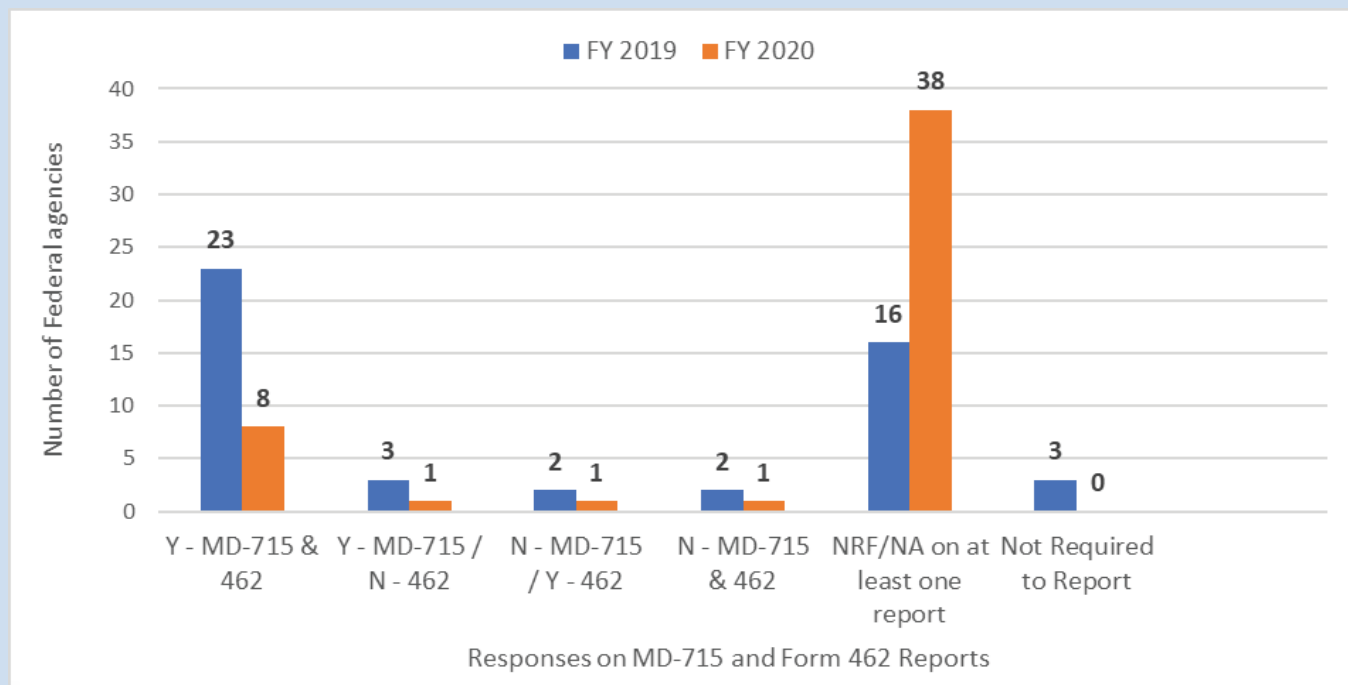
The EEOC also incorporated FY 2021 data gathered on agency status from a survey to gauge agencies' compliance in the wake of the Cummings Act.

For the purposes of this report, agencies were classified as small (1-199 employees), mid-sized (200-499 employees), large (500+ employees), or cabinet-level. Some agencies were not required to file an MD-715 report in either FY 2019 or FY 2020, so their data could not be included in this section of the analysis. Out of the 200 agencies required to file an MD-715 report, 49 (about 25%) belonged to the small category, 18 (9%) were mid-sized, 119 (60%) were large, and 14 (7%) were cabinet-level. A separate analysis of the 53 National Guard Offices was also conducted.

Small Agencies

Overall, 33 small agencies (about 67%) indicated that they had a direct reporting structure in FY 2019. This included agencies that stated so in both MD-715 and Form 462 reports, stated so in only one report, and

Figure I. Direct Reporting Structure at Small Federal Agencies, FY 2019 and FY 2020



Notes: FY = Fiscal Year. Y = Yes. N = No. NRF = No Report Filed. NA = Not Available.

Source: U.S. Equal Employment Opportunity Commission.



those that failed to file one report but stated so in the other. These agencies are hereafter referred to as “compliant.” Almost half of small agencies (47%) stated that they had a direct reporting structure in both their MD-715 and Form 462 reports, indicating that these agencies maintained a consistent definition of “direct reporting” and made a strong effort to comply with EEOC guidance.

In contrast, only 3 agencies (6%) stated they had a direct reporting structure in their MD-715 report, but not in Form 462. And only 2 agencies (4%) stated not having a direct reporting structure in their MD-715 report but did report so in Form 462. One possible explanation for this inconsistency may be that an agency’s reporting structure changed between the dates that the two reports were filed. Another explanation may be that the form preparers applied different definitions of “direct reporting,” especially since the questions were worded differently in each report. Furthermore, 2 agencies (4%) reported not having a direct reporting structure in both their MD-715 and Form 462 reports. Finally, 16 agencies (32%) failed to file at least one of the two reports. And 3 agencies (6%) were not required to file an MD-715 report for FY 2019.

In FY 2020, 37 small agencies (76%) were compliant. This included 8 small agencies that stated having a direct reporting structure in both MD-715 and Form 462 reports, as well as 2 agencies (4%) that stated so in one report but not the other (see Figure 1). The remaining 27 compliant agencies stated that they had a direct reporting structure on one report but failed to file the other; these agencies are included in the NRF/NA category of Figure 1. Only 1 agency stated that they did not have a direct reporting structure in both their MD-715 and Form 462 reports. These inconsistencies likely reflect the substantial increase in the number of agencies that failed to file at least one of the reports—38 agencies (78%) in FY 2020, compared to 16 agencies (32%) in FY 2019.

Table 1. Survey on Direct Reporting Structure at Small Federal Agencies, FY 2021

FY	Total Agencies	Yes	No	Yes/No	DNP
2021	49	23 (46.9%)	2 (4.1%)	0	24 (49.0%)

Note: FY = Fiscal Year. DNP = Did Not Participate. Yes/No indicates that the agency made two attempts to complete the survey, possibly submitted by different individuals.

Source: U.S. Equal Employment Opportunity Commission.

Mid-Sized Agencies

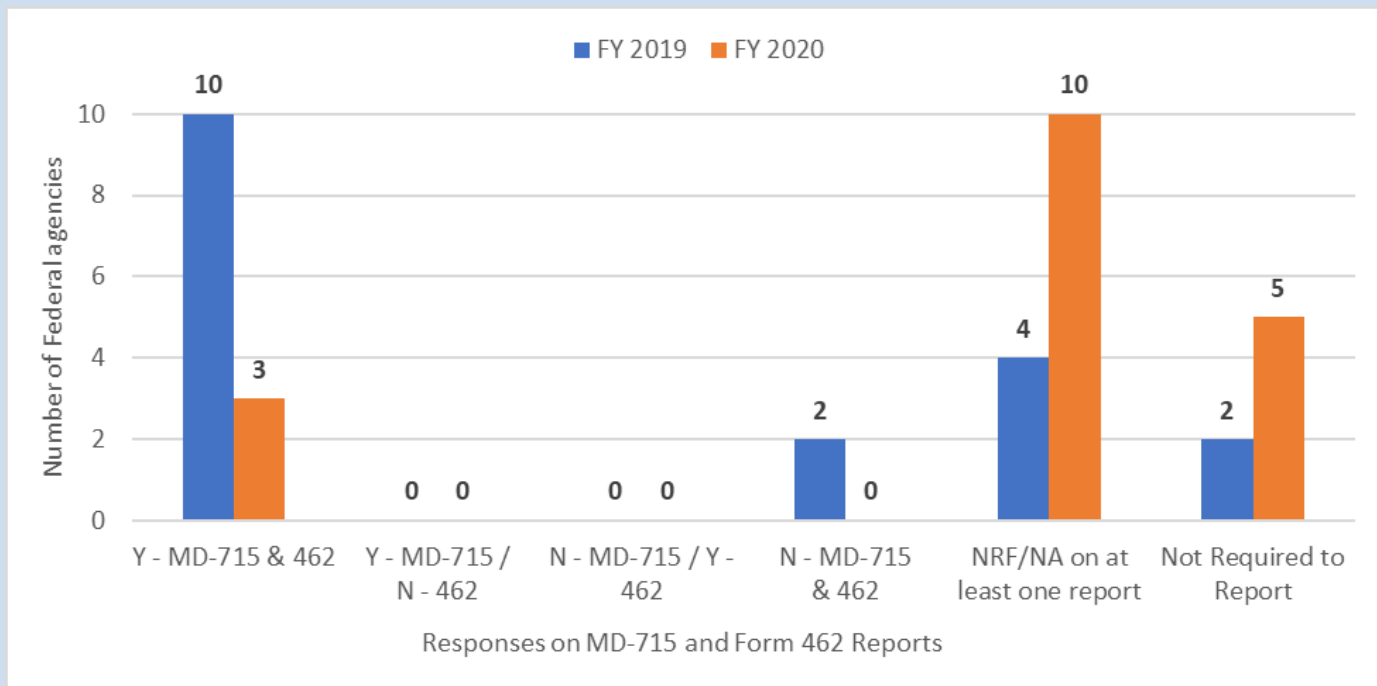
Out of 18 mid-sized agencies, 11 agencies (61%) were compliant in FY 2019. This included 10 agencies that stated that they had a direct reporting structure in both their MD-715 and Form 462 reports, and 1 agency that did not file an MD-715 report but still answered Yes in Form 462 (counted in the NRF/NA category). This indicates strong compliance with EEOC directives (see Figure 2).

In contrast, 2 agencies (11%) reported they did not have a reporting structure in both their MD-715 and Form 462 reports in FY 2019. Another 2 agencies (11%) failed to file an MD-715 report but answered No in Form 462. Overall, 4 mid-sized agencies (22%) failed to file at least one of the reports, and 2 agencies (11%) were not required to file an MD-715 report.

In FY 2020, 10 agencies (56%) were compliant—but only 3 agencies (17%) stated they had a direct reporting



Figure 2. Direct Reporting Structure at Mid-Size Federal Agencies, FY 2019 and FY 2020



Notes: FY = Fiscal Year. Y = Yes. N = No. NRF = No Report Filed. NA = Not Available.

Source: U.S. Equal Employment Opportunity Commission.

structure in both their MD-715 and Form 462 reports. In addition, 1 agency (6%) reported Yes in their MD-715 report but failed to file Form 462, and 6 agencies (33%) failed to file an MD-715 report but answered Yes in Form 462.

In contrast, 3 agencies (17%) failed to file an MD-715 report and answered No in Form 462. Notably, 56% of mid-sized agencies failed to file at least one of the reports, reflecting a trend similar to the one observed in small agencies. Finally, 5 agencies (22%) were not required to file an MD-715 report in FY 2020.

In the FY 2021 survey, 6 mid-sized agencies (33%) reported having a direct reporting structure, whereas 4 (22%) indicated that they did not (see Table 2). These results suggest lower levels of compliance with the Cummings Act among these survey respondents. In addition, 7 mid-size agencies (39%) did not participate.

Table 2. Survey on Direct Reporting Structure at Mid-Size Federal Agencies, FY 2021

FY	Total Agencies	Yes	No	Yes/No	DNP
2021	18	6 (33.3%)	4 (22.2%)	1 (5.6%)	7 (38.9%)

Notes: FY = Fiscal Year. DNP = Did Not Participate. Yes/No indicates that the agency made two attempts to complete the survey, possibly submitted by different individuals.

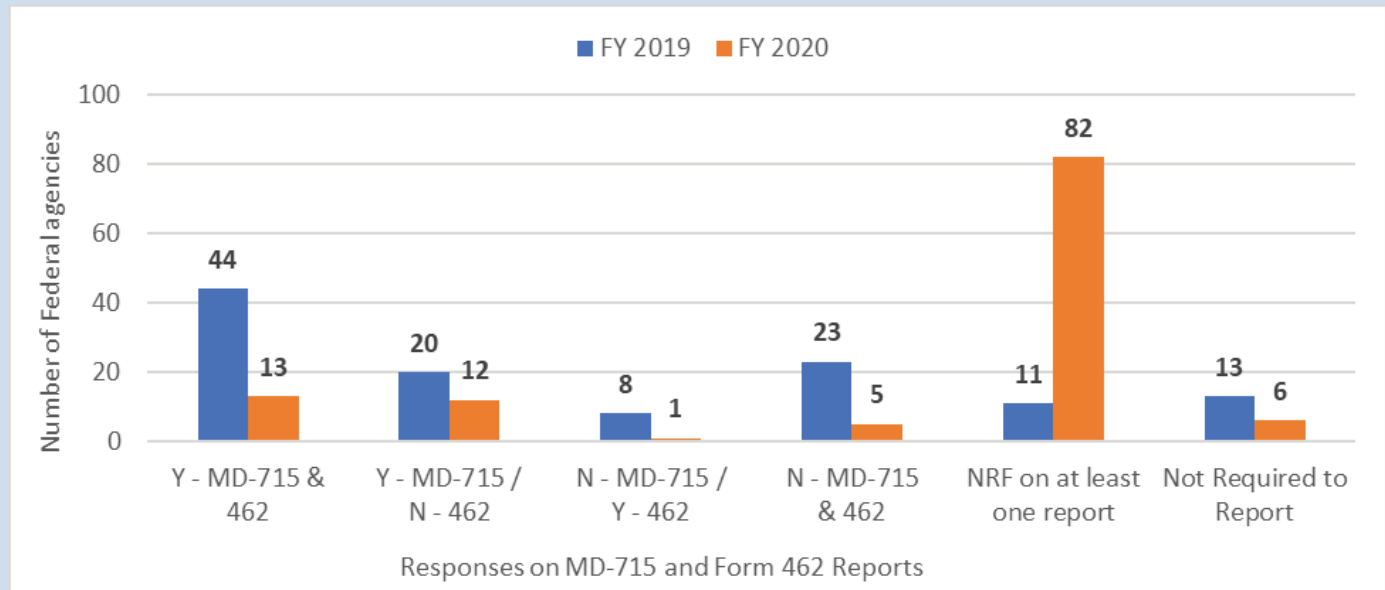
Source: U.S. Equal Employment Opportunity Commission.



Large Agencies

Overall, out of 119 large agencies, 54 agencies (45%) were compliant in FY 2019. This included 44 agencies (37%) that stated they had a direct reporting structure in both their MD-715 and Form 462 reports (see Figure 3). In addition, 28 agencies (23%) stated they had a direct reporting structure in one report, but not the other.

Figure 3. Direct Reporting Structure at Large Federal Agencies, FY 2019 and FY 2020



Notes: FY = Fiscal Year. Y = Yes. N = No. NRF = No Report Filed. NA = Not Available.

Source: U.S. Equal Employment Opportunity Commission.

In contrast, 23 large agencies (19%) stated that they did not have a direct reporting structure in both reports in FY 2019. In addition, 11 agencies (9%) failed to file at least one of the reports, and 13 (11%) were not required to file an MD-715 report. These findings suggest some inconsistencies in the respondents' reporting and levels of compliance.

In FY 2020, 65 large agencies (55%) were compliant. This included 13 agencies (11%) that stated that they had a direct reporting structure in both reports, as well as 13 agencies (11%) that stated so in one report but not the other.

In contrast, only 5 large agencies (4%) indicated that they did not have a direct reporting structure in both reports. In addition, 82 large agencies (69%) failed to file at least one of the reports, continuing the trend observed in both small and mid-sized agencies during FY 2020. And 6 large agencies (5%) were not required to file an MD-715 report. These results again indicate mixed levels of compliance among large agencies.

Based on data obtained through the FY 2021 survey, 43 large agencies (36%) stated that they maintained a direct reporting structure, while 37 (31%) indicated that they did not (see Table 3). However, 36 large agencies



(30%) did not participate in the survey. These findings suggest that larger agencies have yet to fully respond to the mandates outlined in the Cummings Act.

Table 3. Survey on Direct Reporting Structure at Large Federal Agencies, FY 2021

FY	Total Agencies	Yes	No	Yes/No	DNP
2021	119	43 (36.1%)	37 (31.1%)	3 (2.5%)	36 (30.3%)

Notes: FY = Fiscal Year. DNP = Did Not Participate. Yes/No indicates that the agency made two attempts to complete the survey, possibly submitted by different individuals.

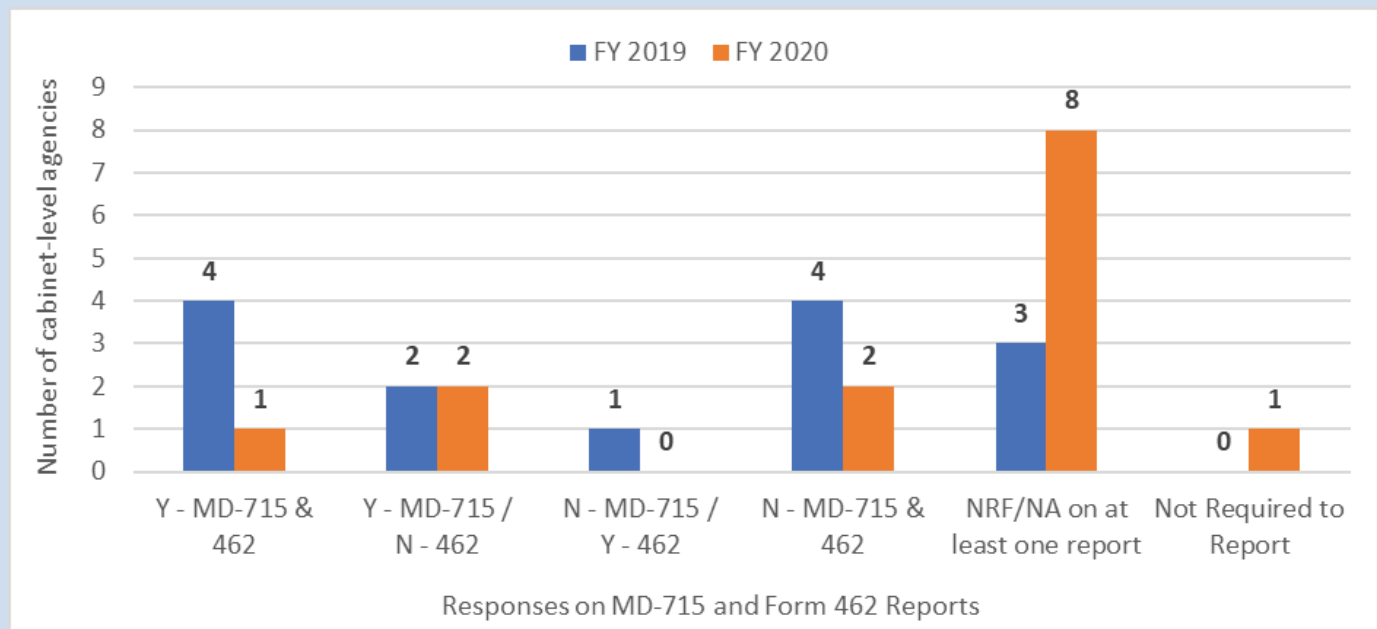
Source: U.S. Equal Employment Opportunity Commission.

Cabinet-Level Agencies

This report analyzes data from 14 out of the 15 cabinet-level agencies, with the exception being the Department of Defense (DOD). While a number of the DOD's subcomponents have been included in previous sections of the report based on size, the DOD itself is not required to aggregate report information from a central office.

Overall, 5 cabinet-level agencies (36%) were compliant in FY 2019. This included 4 cabinet-level agencies (29%) that stated having a direct reporting structure in both their MD-715 and Form 462 reports (see Figure 4). In

Figure 4. Direct Reporting Structure at Cabinet-Level Agencies, FY 2019 and FY 2020



Notes: FY = Fiscal Year. Y = Yes. N = No. NRF = No Report Filed. NA = Not Available.

Source: U.S. Equal Employment Opportunity Commission.



addition, 3 agencies (21%) stated they had a direct reporting structure in one report, but not the other.

In contrast, 4 cabinet-level agencies (29%) stated that they had not implemented a direct reporting structure in both reports in FY 2019. And 3 agencies (21%) failed to file an MD-715 report. This suggests mixed levels of compliance among cabinet-level agencies.

In FY 2020, 7 cabinet-level agencies (50%) were compliant, a noticeable increase from the previous fiscal year. This included 1 agency (7%) that stated having a direct reporting structure in both reports, as well as 2 agencies (14%) that reported so in their MD-715 report but not their Form 462 report.

In contrast, 2 cabinet-level agencies (14%) stated they did not have a direct reporting structure in both reports in FY 2020. Furthermore, 8 agencies (57%) failed to file at least one report. And 1 agency (7%) was not required to file an MD-715 report.

The EEOC's FY 2021 survey showed that 3 cabinet-level agencies (about 21%) stated that they had a direct reporting structure, while 6 agencies (43%) stated that they did not (see Table 4). In the wake of the Cummings Act, this high level of noncompliance among cabinet-level agencies is troubling. In addition, 3 agencies (21%) did not participate in the survey.

Table 4. Survey on Direct Reporting Structure at Cabinet-Level Federal Agencies, FY 2021

FY	Total Agencies	Yes	No	Yes/No	DNP
2021	14	4 (28.6%)	6 (42.9%)	1 (7.1%)	3 (21.4%)

Notes: FY = Fiscal Year. DNP = Did Not Participate. Yes/No indicates that the agency made two attempts to complete the survey, possibly submitted by different individuals.

Source: U.S. Equal Employment Opportunity Commission.

National Guard Offices

Of the 53 National Guard offices—including personnel in Washington D.C., Puerto Rico, and the Virgin Islands—12 offices (23%) reported compliance in FY 2019. This included 11 offices (21%) that indicated a direct reporting structure in both their MD5 and Form 462 reports, as well 10 offices (19%) that stated so in one report but not the other (see Figure 5).

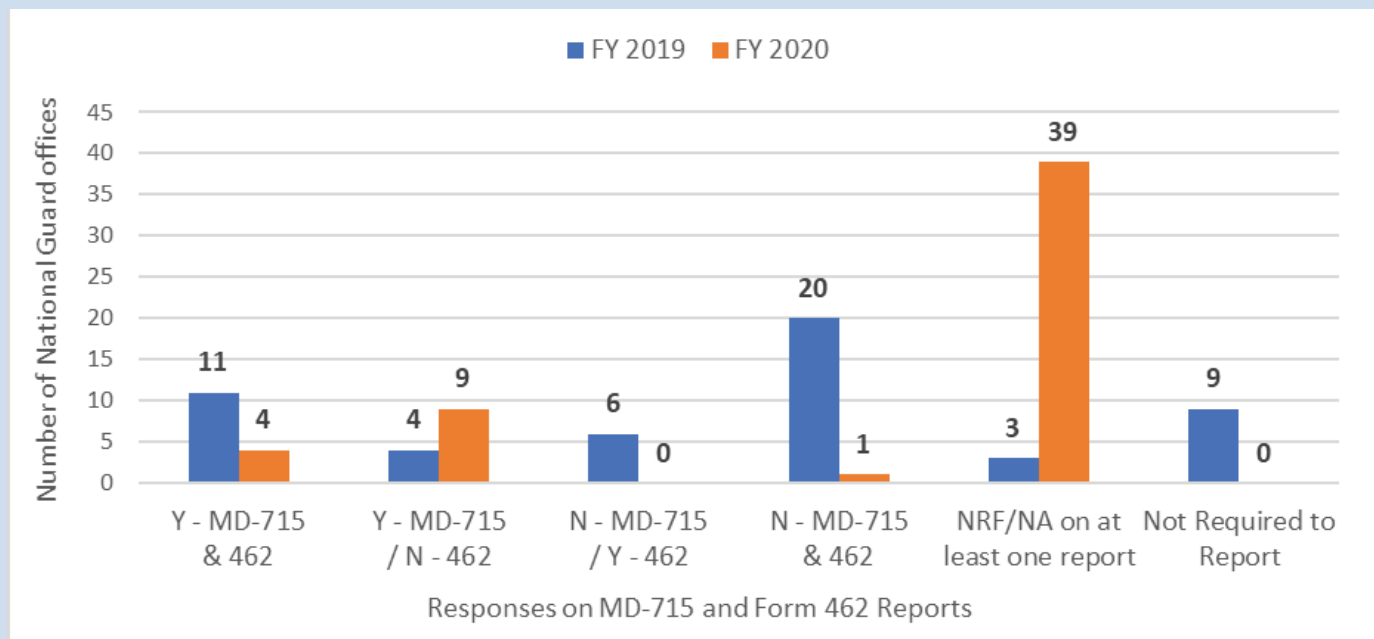
In contrast, 20 offices (38%) stated they did not have a direct reporting structure in both reports, indicating mixed compliance with EEOC directives among the National Guard bureaus. In addition, 3 offices (6%) failed to file their MD-715 report, and 9 offices (17%) were not required to file an MD-715 report for FY 2019.

In FY 2020, 24 National Guard offices (45%) were compliant, doubled the number from the previous fiscal year. However, only 4 of those offices (8%) indicated a direct reporting structure in both their MD-715 and Form 462 reports, a significant decline from the previous fiscal year. In addition, 9 offices (17%) that stated they had a direct reporting structure in one report but not the other.

In contrast, only 1 office (2%) stated they did not have a direct reporting structure in both reports. However, 39 offices (76%) failed to file an MD-715 report in FY 2020—a significant increase from the 3 offices that did not do so in FY 2019. All offices were required to file an MD-715 report in FY 2020.



Figure 5. Direct Reporting Structure at National Guard Offices, FY 2019 and FY 2020



Notes: FY = Fiscal Year. Y = Yes. N = No. NRF = No Report Filed. NA = Not Available.

Source: U.S. Equal Employment Opportunity Commission.

The majority of National Guard offices (72%) did not participate in the EEOC’s FY 2021 survey (see Table 5). Of the 15 offices that did participate, responses were almost equally divided—with 7 offices (13%) indicating that they had implemented a direct reporting structure and 8 offices (15%) stating that they had not. These findings suggest that the EEOC needs to take additional steps to ensure compliance of the Cummings Act among National Guard offices.

Table 5. Survey on Direct Reporting Structure at National Guard Offices, FY 2021

FY	Total Agencies	Yes	No	Yes/No	DNP
2021	53	7 (13.2%)	8 (15.1%)	0	38 (71.7%)

Notes: FY = Fiscal Year. DNP = Did Not Participate. Yes/No indicates that the agency made two attempts to complete the survey, possibly submitted by different individuals.

Source: U.S. Equal Employment Opportunity Commission.

Summary

Based on the EEOC’s analysis of MD-715 and Form 462 data, Federal agencies of all sizes maintained fairly high levels of compliance and consistency regarding direct reporting structures in FY 2019. In contrast, agencies at the cabinet-level achieved only mixed levels of compliance during that fiscal year.



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In FY 2020, each size category experienced a drastic increase in the number of agencies that failed to file at least one of the reports. Despite of this trend, levels of compliance increased for all categories except mid-sized agencies between FY 2019 and FY 2020. However, the decline in the mid-sized category represented only a single additional agency that failed to comply, decreasing the compliance rate from 61% to 55% between the two fiscal years. Therefore, agencies in all categories experienced relatively high levels of compliance for FY 2020. At over 76%, small agencies achieved the highest level of compliance that fiscal year.

Finally, the results of the EEOC's FY 2021 survey showed that small agencies had again achieved the highest levels of compliance with the direct reporting structure requirement of the Cummings Act. By comparison, mid-sized, large, and cabinet-level agencies had achieved only mixed levels of success. These findings suggest that additional guidance or regulation from the EEOC may help ensure adherence to this statute.

Empirical Evidence: Case Study of One Department

The EEOC conducts program evaluations of Federal agencies, including entire departments and their sub-components. In many of these evaluations, the EEOC has reviewed the reporting structure of the EEO office and the impact of misaligned structures on the agency's overall EEO program. The EEOC does not share the names of the department or its subcomponents, but instead refers to them by number. In this section, the EEOC shares the results of one such evaluation to show the empirical results of the EEOC's evaluation, rather than to specifically call out the deficiencies of any one agency.

The EEOC has consistently found that, to the extent that agencies' EEO directors report directly to their agency head, there is a positive correlation with the overall effectiveness of that agency's EEO program. In other words, where there are direct reporting relationships with the agency head, the agency has fewer deficiencies in its EEO program. Subcomponent 8 of the agency described here had the proper structure and no noted deficiencies. In contrast, the reporting structures of the cabinet-level department and most of its other subcomponents were in violation of the mandate for direct reporting. These structural deficiencies decreased the effectiveness of its EEO program, which did not fully leverage EEO resources and expertise.

Issues Related to Reporting Structure

In this section, the EEOC reports on its review of 11 selected factors of the EEO program for the Departmental/Office of the Secretary's (OS) EEO office and each of its subcomponents. The EEOC's Management Directives (MD) 715 and 110 provide guidance to agencies on these aspects of their EEO programs. The 11 factors were selected because they are the ones most affected by the involvement of senior leadership:

1. Effective EEO program policy statement
2. Sufficient resources allocated to the EEO program
3. Workforce informed about the EEO program, including the EEO complaint process
4. Managers receive sufficient EEO training
5. Effective coordination with human resources
6. Operational independence from the Office of General Counsel
7. EEO program included in agency strategic planning
8. Adequate Special Emphasis Program (SEP)



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9. Managers and supervisors evaluated on ensuring EEO

10. Regular internal audits conducted

11. And an effective ADR program.

Overall, the EEOC found that the subcomponents with compliant reporting structures had the fewest “negative factors,” or factors that EEOC found were not in compliance. Increased proximity to the agency head seemed to inversely affect an agency’s number of negative factors. The EEOC found that the Department’s Subcomponents numbered 2 through 7 did not have a direct reporting structure. Subcomponent 6’s EEO program reported one level below the agency head. The EEO programs in Subcomponents 2, 3, 4, 5, and 7 reported two levels below the agency head. Two subcomponents with indirect reporting structures had only one deficiency each, but one of those was a sub-agency with fewer than 300 employees.

The EEOC also found that most of the subcomponent EEO offices did not have the access necessary to fully assist the organization’s senior leadership team. Some subcomponents had not briefed the leadership team in many years. Most of these subcomponents routinely met with one designated leader, who then reported back to the entire senior leadership team. This funneling of information is not as effective as direct access, which allows the EEO director to learn about issues facing the agency; develop relationships with the different operational leaders; and assist the leadership team with ideas to aid in conflict resolution, employee engagement, and operational effectiveness. Indirect access may undermine the organization’s EEO efforts if the designated leader does not support or endorse the ideas presented by the EEO program. In several prior evaluations addressing similar reporting issues, the EEOC found that the designated leader was the root cause of an ineffective EEO program.

On the other hand, Subcomponent 8 effectively leveraged its EEO program. The EEO Director presented the annual State of the Agency briefing to the agency head after the subcomponent’s submission of its MD-715 reports to the EEOC. The subcomponent’s agency head also personally expressed commitment to EEO principles through a public online video. Additionally, the EEO Director met quarterly with senior leadership at various divisions and facilities, gave briefings at senior leadership meetings, and led search committees for senior positions.

Table 6 summarizes the EEOC’s review of all subcomponents. The checkmarks in the below table signify areas in which EEOC found each subcomponent to be in compliance, while the red squares represent deficiencies. We added a row to the 11 factors indicating which subcomponents had direct reporting structures for ease of reference.

As previously noted, Subcomponent 8 had no negative factors. Subcomponent 8 had clear and regular communication and collaboration between the agency head and the EEO Director. By comparison, Subcomponent 6 didn’t have direct reporting or any negative factors, but the EEO Director (in practice) had regular access to the senior leadership team and agency head. This, in effect, supported the EEOC’s position that a direct reporting structure results in a more effective EEO program. Subcomponent 1, one of the three subcomponents with regular direct access to the agency head, had four negative factors. On its face this seems to contradict EEOC’s conclusion. However, Subcomponent 1’s reporting structure changed only 3 weeks prior to the EEOC’s on-site visit. A change in reporting structure cannot be expected to impact the overall program in such a short time.

MD-715 calls, as the second essential element of a model EEO program, for agencies to integrate their EEO



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Table 6. EEO Compliance at Department and its Subcomponents

Factor	OS	1	2	3	4	5	6	7	8
1. Policy statement	✓	✓	✓	x	✓	✓	✓	✓	✓
2. Sufficient resources	x	x	✓	x	x	x	✓	✓	✓
3. Informed workforce	✓	✓	✓	✓	✓	✓	✓	✓	✓
4. Management training	✓	✓	✓	✓	✓	✓	✓	✓	✓
5. HR coordination	✓	✓	x	✓	✓	✓	✓	x	✓
6. Operational independence	✓	✓	✓	✓	✓	✓	✓	✓	✓
7. Strategic planning	x	x	✓	x	✓	✓	✓	x	✓
8. Special emphasis	x	x	✓	x	✓	✓	✓	x	✓
9. Supervisors evaluated	✓	✓	✓	✓	✓	✓	✓	✓	✓
10. Internal audits	✓	✓	✓	✓		✓	✓	✓	✓
11. Effective ADR	✓	x	✓	✓	✓		✓	✓	✓
12. Compliant reporting structure	x	✓	x	x	x	x	x	x	✓

Notes: Checkmarks show compliance under that factor. Red squares with an “x” represent deficiencies. OS = Office of the Secretary. HR = Human Resources. ADR = Alternative Dispute Resolution.

Source: U.S. Equal Employment Opportunity Commission.

program into their strategic mission. This factor is so important that it is one of six essential elements that make up the model EEO program, according to MD-715. The table above shows that when an agency does not include EEO in its strategic planning (factor 7), it is also more likely to fall short on allocating sufficient resources (factor 2) for the EEO program. While Subcomponent 7 did not appear to have a problem with allocation of resources, it fell short in HR coordination (factor 5) and in having an adequate SEP (factor 8).

In every instance where EEO was not included in strategic planning, there was a deficiency (negative factor) in the provision of an adequate SEP.¹ Therefore, the EEOC’s evaluation found that failing to integrate EEO into strategic missions strongly correlates to the failure to provide adequate SEPs. The EEOC also noted that the Department-level EEO office did not (and to this day does not) report directly to the agency head. This makes it difficult for the departmental EEO office to require its subcomponents to comply. Nonetheless, the recent passage of the Cummings Act may make this a moot point.

The Departmental EEO Reporting Structure

The Departmental EEO Director reported two levels below the Secretary. Although the EEO Director’s su-

¹ The EEOC positively noted that, regardless of reporting structure, each subcomponent ensured the issuance of a policy statement by the agency head each year (factor one); informed its workforce about the EEO process (factor three); provided its managers with EEO management training (factor four); ensured operational independence (factor six); and at least minimally evaluated all supervisors on their commitment to EEO (factor nine). In addition, with the exception of Subcomponent 4, all subcomponents conducted regular internal audits of their EEO programs by submitting Form 462 reports containing an assessment of their complaint activity and MD-715 reports reviewing their affirmative employment programs (factor ten).



pervisor at the Department stated that she had access to the agency head whenever necessary, she had never met with the then-Secretary, who had been in the position for three years. During the same period, there was also no State of the Agency briefing. Moreover, during the review, the EEOC was unable to identify how the Department’s EEO program provides consultation to the Secretary or, equally important, assists the agency’s leadership in understanding and addressing EEO issues. This reporting structure did not allow for effective use of the EEO program.

Survey

On May 20, 2021, the EEOC sent a 22-question survey to Federal sector EEO Directors to gather feedback on the merits and the current use of a direct reporting structure. The EEOC sent a reminder on June 7. The EEOC’s EEO Specialists also reached out to their assigned agencies to encourage greater participation.

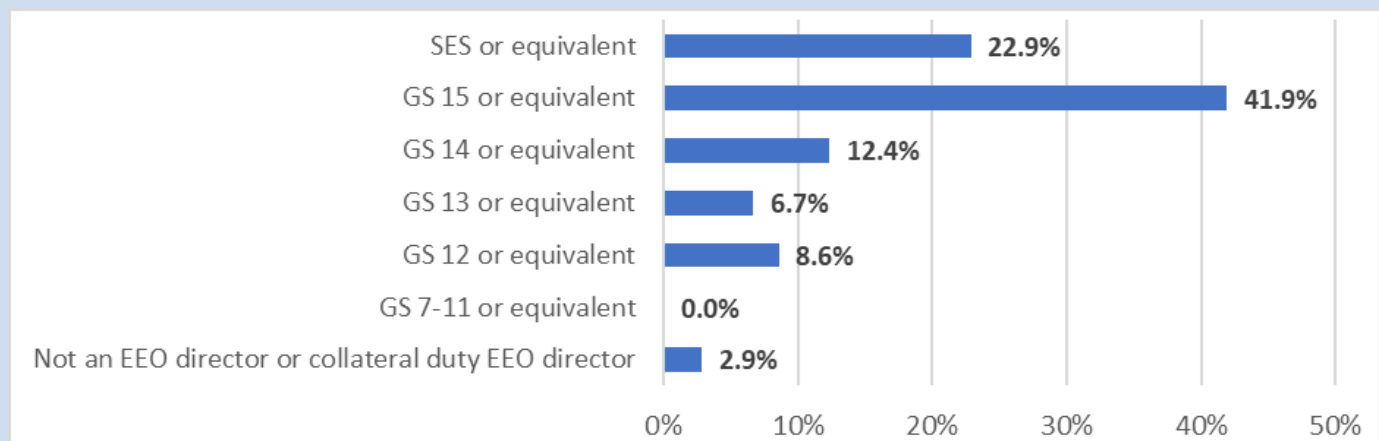
By the time the survey closed on June 14, the EEOC had received a total of 214 responses from 154 agencies. These included responses from 3 Agency Heads, 166 EEO Directors, 10 Collateral Duty EEO Directors, 9 Deputy Directors, 6 other EEO personnel, and 18 individuals in various other roles. About 38% (82) of total respondents worked at a subcomponent of a parent agency.

When the survey asked respondents whether they had a direct reporting structure, 180 individuals responded. About 58% (105) of these individuals stated that the EEO Director reported directly to the agency head.

Respondents’ Grade Levels

The EEOC examined whether the status of the reporting structure impacted the grade level of EEO Directors. The survey found that about 65% of EEO Directors (68) with a direct reporting structure were at least at the GS-15 level—about 23% (24) were at the SES level and 42% (44) were at the GS-15 level. Another 12% of EEO Directors (13) were GS-14 or equivalent, 7% (7) were GS-13, and 9% (9) were GS-12. None of the EEO Directors under a direct reporting structure were below the GS-11 level or equivalent (see Figure 6).

Figure 6. Current Grade Level of EEO Directors or Collateral Duty EEO Directors Under a Direct Reporting Structure



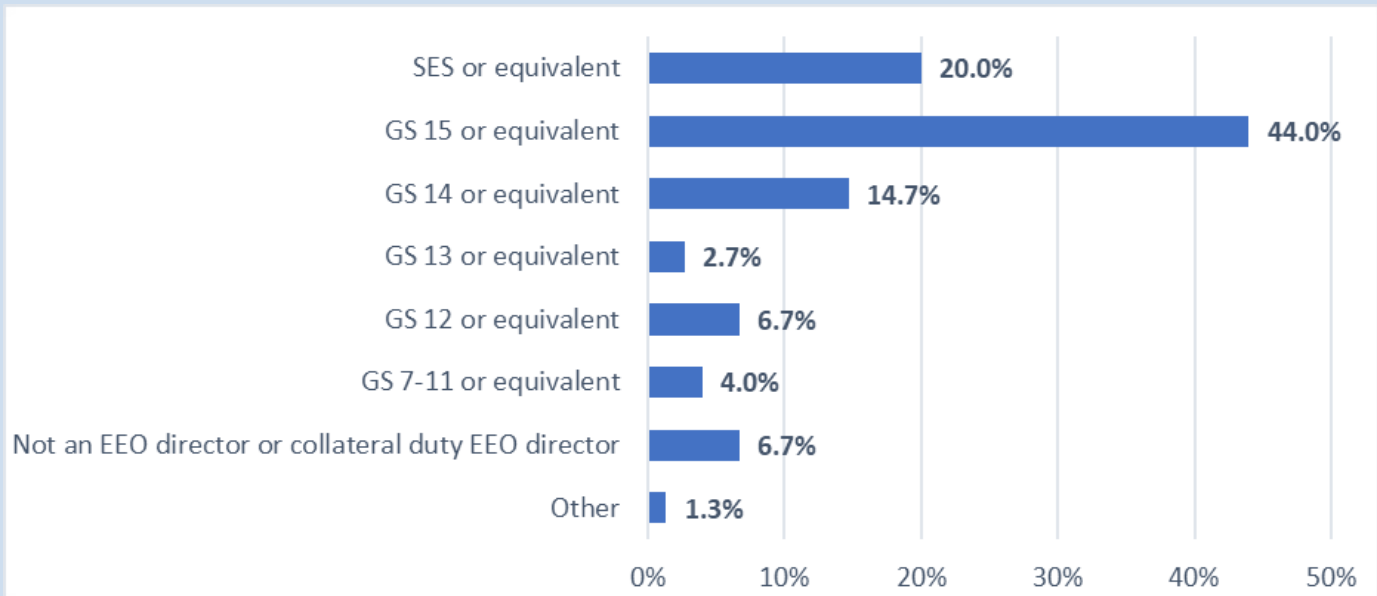
Notes: GS = General Schedule. SES = Senior Executive Service.

Source: U.S. Equal Employment Opportunity Commission.



In contrast, for the 75 EEO Directors without a direct reporting structure, the EEOC found that 64% (48) were also at least at the GS-15 level or equivalent—about 20% (15) were at the SES level and 44% (33) were at the GS-15 level. Another 15% (11) were GS-14 or equivalent, 3% (2) were GS-13 or equivalent, 7% (5) were GS-12 or equivalent, and 4% (3) indicated their grade level was GS 7-11 or equivalent see. Lastly, 7% (5) stated they were not an EEO Director or collateral duty EEO Director (see Figure 7).

Figure 7. Current Grade Level of EEO Directors or Collateral Duty EEO Directors Without a Direct Reporting Structure



Notes: GS = General Schedule. SES = Senior Executive Service. The one participant that reported “Other” was at AGR CW4, a military pay band.

Source: U.S. Equal Employment Opportunity Commission.

The EEOC found the type of reporting structure, surprisingly, did not appear to have a substantial impact on the grade level of the EEO Director. However, under a direct reporting structure, positions were no lower than a GS-12, compared to some EEO Directors graded at GS-11 or lower without such a structure. This suggests that having a direct reporting structure may result in slightly higher graded positions for EEO Directors.

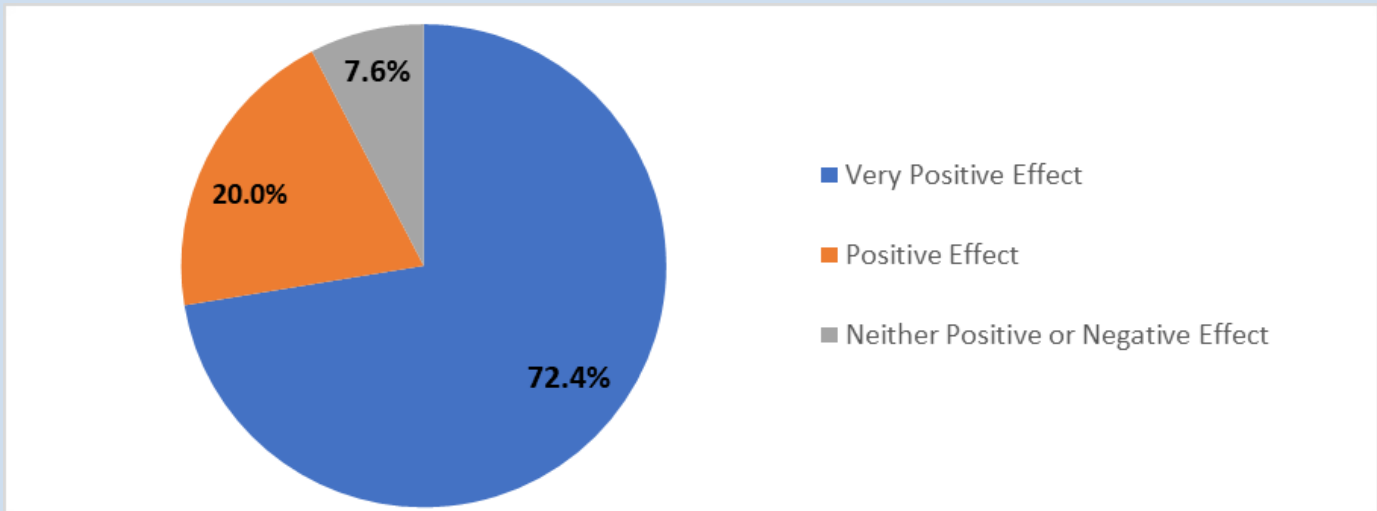
Direct Reporting Structure Respondents

No agency that reported having a direct reporting structure opined that this structure had a negative impact on their EEO program. Over 92% stated it would have a positive or very positive effect, while less than 8% indicated that it would have neither a negative nor positive impact (see Figure 8).

Among those with a direct reporting structure, 101 agencies responded to further questions about their programs. About 76% stated that this structure had been in place for more than three years, 9% had maintained this structure for one or two years, and 15% had utilized this structure for one year or less (see Figure 9).



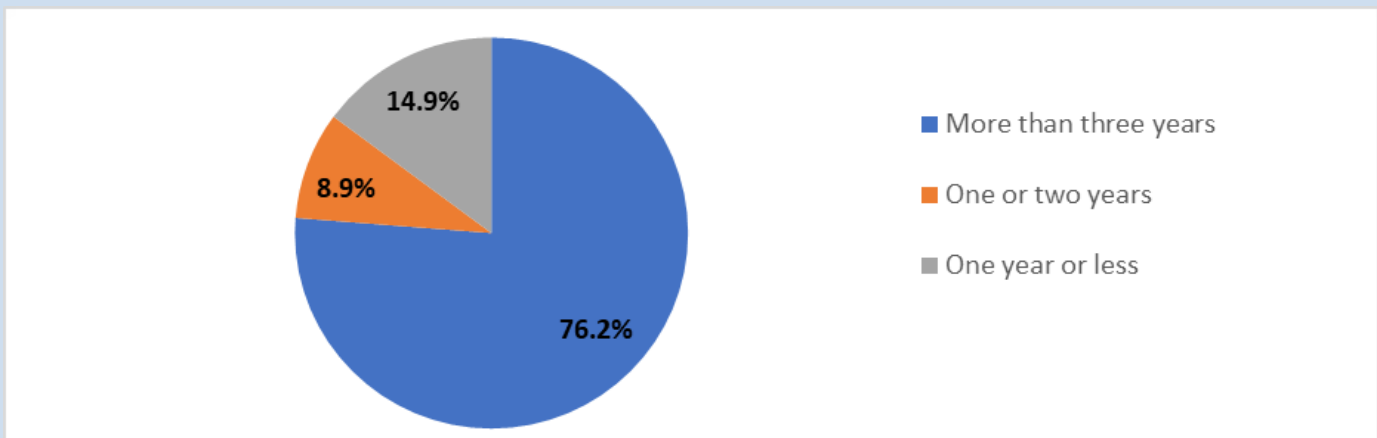
Figure 8. Perceived Impact of a Direct Reporting Structure on Agency's EEO program



Note: No agency stated that a direct reporting structure would have a negative or very negative effect on its EEO program.

Source: U.S. Equal Employment Opportunity Commission.

Figure 9. Length of Time Agency Has Had a Direct Reporting Structure

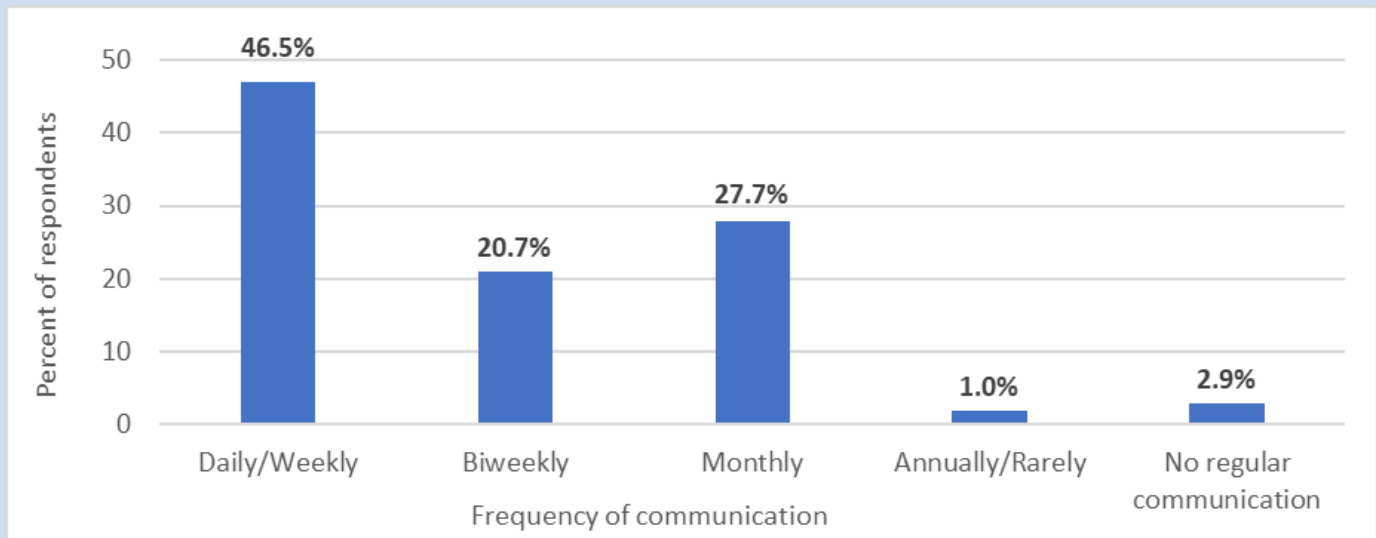


Source: U.S. Equal Employment Opportunity Commission.

In addition, 47% of respondents stated that they worked directly with the agency head on a daily or weekly basis. Another 21% of respondents communicated with the agency head on a bi-weekly basis and 28% did so on a monthly basis. In contrast, only 1% of respondents stated that they communicated annually or rarely with the agency head, and 3% indicated no regular communication (see Figure 10). These survey results confirm that a direct reporting structure facilitates frequent communication between agency leadership and EEO personnel.



Figure 10. Frequency of Communication Between EEO Personnel and Agency Head



Source: U.S. Equal Employment Opportunity Commission.

The survey also inquired about the steps that respondents took to obtain a direct reporting structure. Nearly 40% had discussed the reporting structure with agency leadership. In addition, about 16% requested the reporting structure via memorandum to agency leadership and another 16% requested guidance and support from the EEOC. Lastly, 16% employed other methods, including the use of MD-715, to accomplish this objective (see Figure 11).

When asked if they had faced any obstacles in obtaining a direct reporting structure, almost a quarter 24%

Figure 11. Steps Taken in Attempt to Obtain a Direct Reporting Structure



Source: U.S. Equal Employment Opportunity Commission (EEOC).



reported reluctance from leadership. Another 15% experienced excessive bureaucratic vetting and 8.3% reported a lack of opportunity to propose these changes to agency leadership. Notably, only 4% of respondents cited a lack of support from the EEOC. In contrast, about 64% of respondents stated that they had not faced any obstacles in obtaining a direct reporting structure (see Table 7).

Table 7. Obstacles Survey Respondents Faced in Obtaining a Direct Reporting Structure for the EEO Program

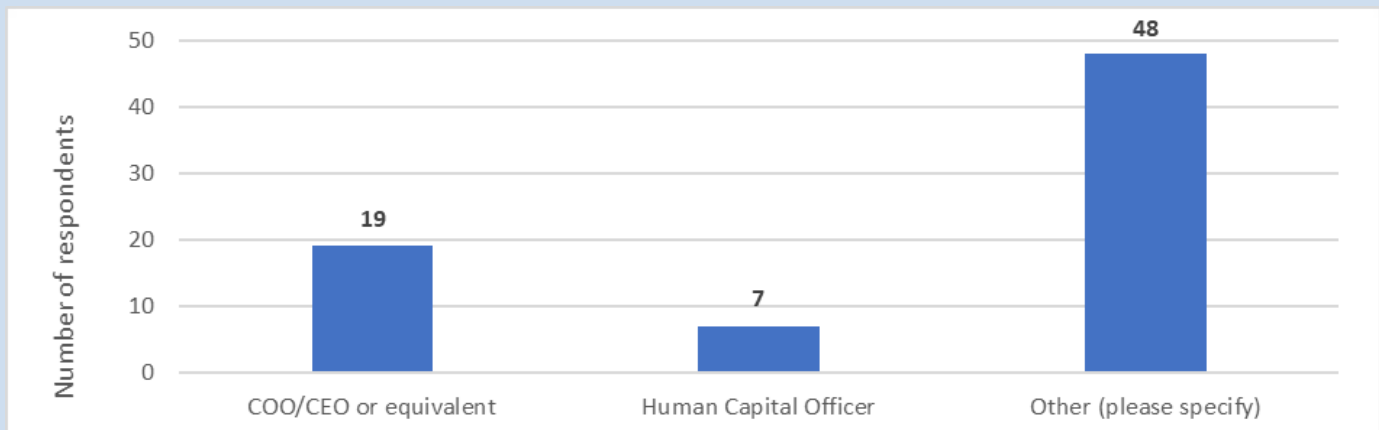
Response	Frequency
No obstacles	63.5%
Leadership reluctance	23.9%
Other	18.7%
Excessive bureaucratic vetting	14.5%
Lack of opportunity to propose changes to leadership	8.3%
Lack of EEOC support	4.1%

Source: U.S. Equal Employment Opportunity Commission (EEOC).

Non-Direct Reporting Structure Respondents

The survey also revealed that 75 respondents did not have a direct reporting structure in place. Out of those, about 65% indicated that they report to another official, such as the Deputy Associate Administrator, Chief of Staff, and the Senior Advisor to the Director. Another 26% reported to a Chief Operating Officer/Chief Executive Officer or equivalent. And 9% of respondents reported to the Human Capital Office (see Figure 12).

Figure 12. Official to Whom EEO Personnel Report to at Agencies Without a Direct Reporting Structure



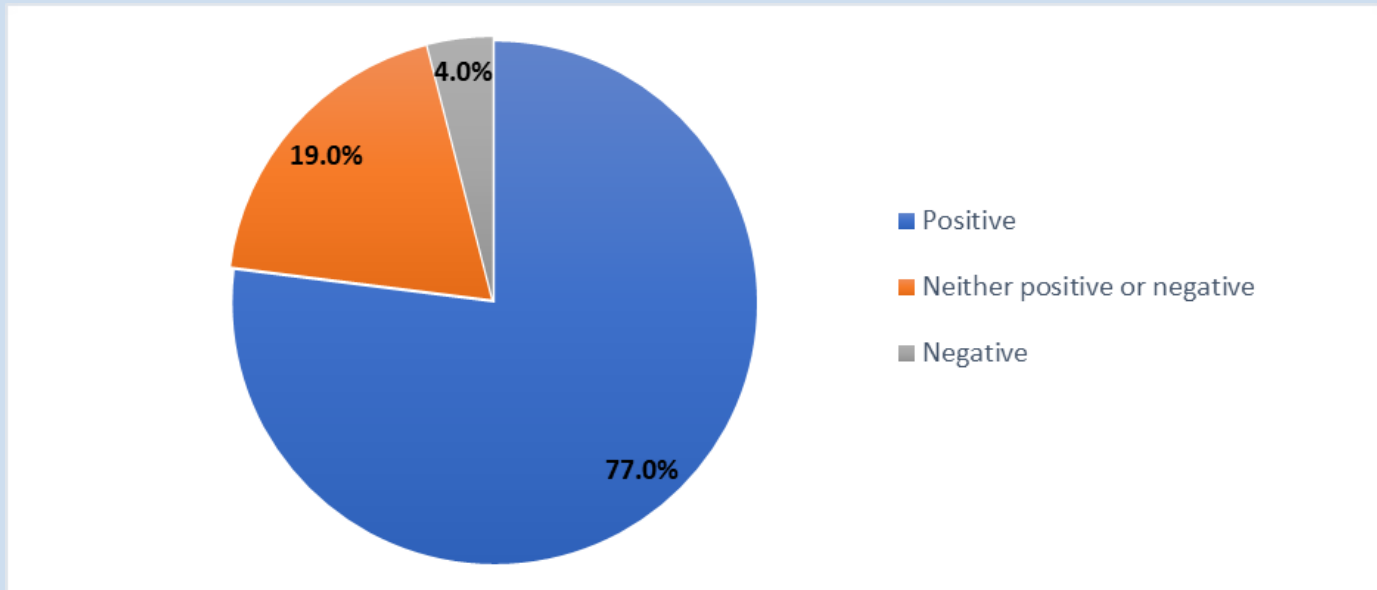
Notes: COO = Chief Operating Officer. CEO = Chief Executive Officer. “Other” includes the Deputy Associate Administrator, Chief of Staff, and the Senior Advisor to the Director.

Source: U.S. Equal Employment Opportunity Commission.



At agencies without a direct reporting structure, respondents' opinions of its possible impact on the EEO program varied. About 77% of these respondents thought it would have a positive or very positive effect. By comparison, 19% indicated that the effect would be neither positive nor negative. And, importantly, only 4% (two EEO Directors and one collateral duty EEO Director) indicated that a direct reporting structure would have a negative or very negative impact on the EEO program (see Figure 13). The survey did not ask for reasons behind these opinions.

Figure 13. Perceived Impact of a Direct Reporting Structure on EEO Programs at Agencies Without Such a Structure



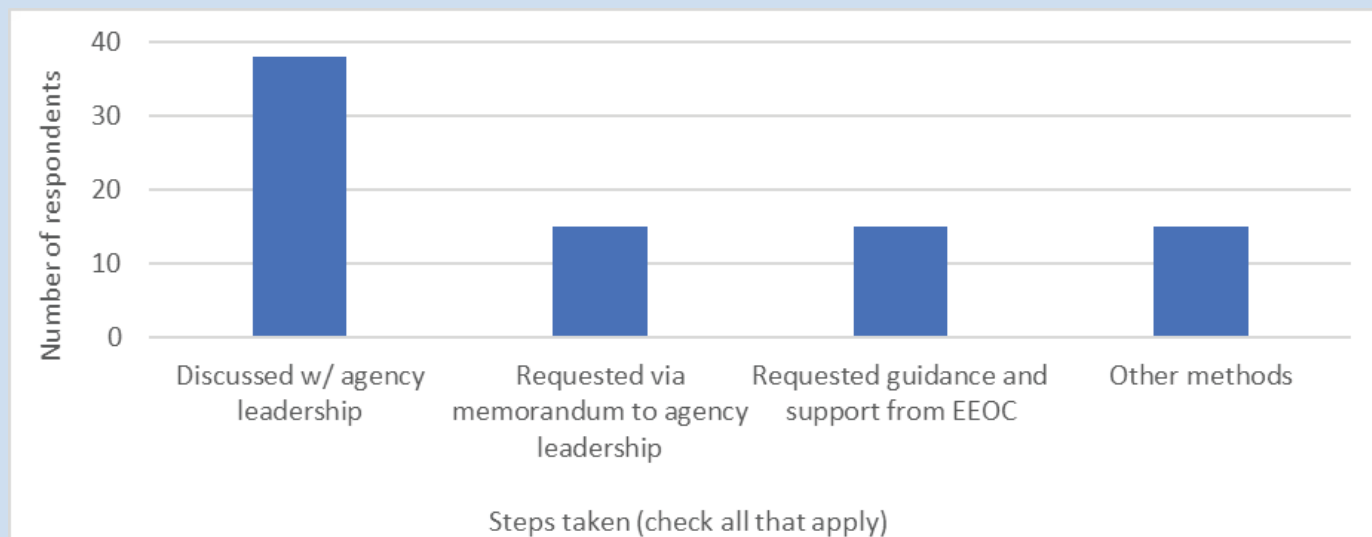
Source: U.S. Equal Employment Opportunity Commission.

When asked if they had attempted to obtain a direct reporting structure, 63% of respondents replied “Yes.” Of these, 60% of respondents discussed the direct reporting structure with agency leadership, 12% requested the direct reporting structure via memorandum to agency leadership, and 19% requested guidance and support from the EEOC (see Figure 14). And 30% employed other methods, such as raising the issue annually during the completion of the MD-715 annual report in an effort to gain leadership’s buy-in.

When asked what obstacles they faced in obtaining a direct reporting structure, 41% reported leadership reluctance, around 12% reported a lack of opportunity to propose these changes to agency leadership, 19% experienced excessive bureaucratic vetting, and 11% felt a lack of EEOC support. Respondents could select all options that applied and add additional obstacles under “Other” (see Table 8). About 36% selected “Other” and added a narrative. While the “Other” responses differed, the top trending obstacles provided were: (1) that constant organizational changes resulted in the loss of momentum to follow through, and (2) the fear of too many direct reports to the agency head. Over one fifth of respondents (21%) selected that they had not faced any obstacles in obtaining a direct reporting structure. Given the lack of any obstacles, it is unclear why those agencies do not yet have a direct reporting structure.



Figure 14. Steps Taken in Attempt to Obtain a Direct Reporting Structure



Source: U.S. Equal Employment Opportunity Commission.

Table 8. Obstacles Survey Respondents at Agencies Without a Direct Reporting Structure Faced in Obtaining Such a Structure for the EEO Program

Response	Frequency
Leadership reluctance	41.1%
Other	36.1%
No obstacles	21.9%
Excessive bureaucratic vetting	19.1%
Lack of opportunity to propose changes to leadership	11.8%
Lack of EEOC support	10.9%

Source: U.S. Equal Employment Opportunity Commission (EEOC).

Summary

These findings show the clear benefits of a direct reporting structure for agencies’ EEO programs. A majority of respondents who currently operate under this structure felt that it had positively impacted their EEO efforts, representing a strong endorsement in favor of this model. Only 3 (1.6%) of the survey’s total respondents reported that a direct reporting structure would negatively impact their EEO operations, and none of these individuals currently had a direct reporting structure. Further illustrating the positive elements of this plan, those with a direct reporting structure reported frequent communications with their agency head, enabling them to better convey the needs of the EEO program to their supervisors and effectively integrate EEO initiatives into their organizations’ missions.

Regardless of whether the agency had a direct reporting structure or not, respondents indicated that leader-



ship reluctance posed the greatest obstacle to obtaining such a structure—suggesting that the EEOC should pursue mitigation strategies at this level. Of those who had attempted to implement a direct reporting structure, most respondents had initiated discussions with agency leadership, requested guidance from the EEOC, or drafted a memorandum to senior leaders. These are promising first steps for agencies seeking to achieve compliance.

Focus Group Findings

The EEOC gathered opinions, perceptions, attitudes, and experiences from the EEO Directors of 24 agencies regarding their reporting structures through four 90-minute focus groups. Two groups were conducted with EEO Directors who initially indicated that they had a direct reporting structure, and two groups with EEO Directors who reported that they did not.

EEO Directors were encouraged to contribute their ideas concerning challenges, best practices, or opportunities associated with a direct reporting structure that would be useful to the entire Federal EEO community. Each group received the following definition of a direct reporting structure: “The individual (regardless of title) with control over the day-to-day operations of the EEO program reports to the head of the agency. This person should not also manage the Human Resources office.”

During the focus groups, EEO Directors were asked between 9 and 11 prompting questions and several follow-up questions (see Appendices B and C). These questions covered four main areas:

- EEO Director’s current reporting status
- EEO Director’s current access to the agency head
- Impact the Cummings Act has had on the agency’s reporting structure and/or operations
- How the EEOC can best assist agencies in complying with the law.

EEO Directors’ Current Reporting Status

Focus Groups with Direct Reporting Structure

Participants for two of the focus groups indicated, on the EEOC survey, that they report directly to the agency head. These groups were comprised of 14 EEO Directors. Upon further exploration, 10 directors indicated that, for some of the everyday operations of the EEO program, they reported to at least one additional agency official. In addition, 2 EEO Directors explained that agency operations were split between the Chairman and General Counsel, so the directors had to report to both through their designees. The EEO Directors who reported to designees, in either their past or current positions, identified the Chief Operating Officer, Chief Management Officer, Chief of Staff, Chief Accountability Officer, Deputy Administrator, Deputy Director, or Deputy Secretary as designee for day-to-day operations.

The remaining 2 directors stated that they had a direct reporting structure and did not identify designees for day-to-day matters. One of these 2 participants noted that, although the Director reports to the agency head, their team falls under a newly created Business Center model.

Focus Groups Without a Direct Reporting Structure

Two additional focus groups were conducted with a total of 10 EEO Directors. All initially indicated that they were responsible for the day-to-day operations of the EEO program, but that they did not report directly to



the agency head.

Directors identified varying designees, including Deputy Director, Senior Vice President under the CEO, and the Office of the Director (which encompasses the Director, and the Deputy Director, and Chief Operating Officer). One director stated that they report to the Human Resources Office for administrative purposes and have a direct line to the head of the agency.

EEO Directors' Current Access to the Head of the Agency

The EEOC examined whether and to what extent participants had access to their agency head regardless of reporting structure. One EEO Director stated that, prior to having a direct reporting structure, they were in close proximity to the agency head, which positively impacted the EEO program. However, once the direct reporting structure was implemented, the physical office moved—a change that negatively impacted the working relationship between senior leadership and the EEO Office.

Another director reported having unfettered access to the agency head, which made a direct reporting structure irrelevant. This director stated that a non-direct structure had zero impact on operations. The same director described work at a previous agency that did have a reporting structure but didn't allow as much access to the agency head. This director described a situation where the Chief of Staff was named in an EEO complaint, an event which helped explain to the agency head why it was so important to have unfettered access. This director suggested that the EEOC should look at the actual organization and structure of reporting systems, since some systems may have the correct structure on paper, but fail to encourage compliance.

The directors of the first focus group with a direct reporting structure universally expressed that a reporting structure is not solely based on where the lines are drawn, but also the quality of the interactions and support from the agency head. Several directors indicated they had monthly meetings with the agency head, and some stated that both the agency head and the Chief of Staff attended. This didn't necessarily mean that the agency head dealt with everyday EEO matters.

Most the participants indicated that they conduct a State of the Agency briefing on an annual basis to communicate EEO priorities to the agency head. EEO Directors also often included this kind of information in monthly meetings with the agency head. Three directors from the non-compliant agencies reported that they do conduct an annual State of the Agency briefing. Another director indicated that they provide the State of the Agency in writing to the agency head. However, 3 EEO Directors stated that they do not conduct an annual State of the Agency briefing, and another indicated such a briefing wasn't common practice.

Since a majority of participants indicated that they work with “designees” on a day-to-day basis, they were asked further questions about disagreements with the designee. Regarding their ability to contact the agency head directly, EEO Directors universally indicated that the designee and the agency head were in sync with regard to positions and were aware that the designee spoke for the agency head. One director stated that the agency head would sometimes ask directly for a conversation, but the agency head never contradicted what their designee had previously said.

Several EEO Directors stated that leadership at multiple levels pushed back. One indicated it “gets tense, tight, and weird when there are disagreements over whether the agency actually complies.” Another described being “personally bruised” by pushback. However, some EEO Directors indicated that they received full support and autonomy from senior leadership. No opinion was offered as to whether the lack of pushback was related to the direct reporting structure.



Impact of the Cummings Act

The focus group participants were also asked how the passage of the Cummings Act impacted their agencies. Although some participants noted that their agencies already had a compliant direct reporting structure, several indicated this was only so on paper. For example, the EEO Director may report to an official two levels removed from the agency head or need approval from Human Resources before making decisions. Some Directors indicated that, when the Cummings Act passed, they briefed senior leadership and the agency head with excerpts of the law to convince them of the importance of a direct reporting structure in practice.

Several directors described positive changes since the passage of the Cummings Act. One indicated that the agency's current reorganization efforts were entirely due to the Cummings Act. These efforts provided an opportunity to discuss a compliant EEO reporting structure. Another director stated that the agency had received audits from the Government Accountability Office and the EEOC on this issue, pushing the agency closer to achieving changes to its reporting structure. Yet another director described that more EEO personnel have been invited to leadership meetings since the passage of the Cummings Act and that senior leadership no longer sees the EEO program as a liability, but as a means to increase the efficiency and reliability of the agency.

However, some directors were still getting resistance from senior leadership. For example, the effectiveness of a direct reporting structure can depend on the person in charge. Complaints that involve the chain of command may create impractical conflicts of interest. This underscores the need for greater consistency in reporting structures to avoid being dependent on the official in charge. Lastly, one EEO Director stated that the agency's leadership only wanted to make superficial changes, such as adding a dotted line to the organizational chart. Another director stated that a direct reporting structure "would just be frustrating and maybe confusing within the agency.

How Best Can EEOC Assist Agencies in Achieving Compliance?

EEO Directors indicated that the EEOC plays a big role in helping them enforce regulations. As a good practice, participants suggested that the EEOC's Office of Federal Operations (OFO) should meet with both the EEO Director and agency head—not designees.

Furthermore, greater involvement from the EEOC could add credibility and weight to the agency's EEO office. For example, EEO Directors at agencies without a direct reporting structure often stated that senior leadership did not listen to the EEO Office. Although the EEOC assigns an EEO Specialist to every Federal agency, some EEO Directors wanted a higher-level contact. One director stated that it "would have been helpful to have someone from the EEOC in the building, telling the agency that they are in violation."

Finally, participants indicated a need for greater awareness and clarity about the different responsibilities of the Human Resources and EEO Offices.

Summary

Overall, focus group participants communicated varying understanding of what constitutes a direct reporting structure. Several directors indicated that they had a direct report while actually taking direction from a designee. Others felt that maintaining unfettered access to the agency head was more representative of the letter of the law than a direct structure on paper. These discrepancies suggest that the EEOC should further clarify the specific requirements of the Cummings Act.



Most participants felt that the Cummings Act had positively impacted their attempts to obtain or maintain a direct reporting structure, providing solid support for EEO initiatives in conversations with senior leadership. However, some participants still expressed their agency's reluctance or even refusal to comply with the law, indicating that the EEOC may need to strengthen future enforcement efforts.

To assist agencies in achieving compliance, participants felt that the EEOC should seek to address the challenges raised by agency leaders. Regular meetings between OFO officials, EEO Directors, and agency heads could reinforce the importance of EEO initiatives and clarify what resources and expertise are necessary to maintain a successful EEO Office.

Interviews

To gain further insight about the impact of reporting structures on EEO offices, the EEOC interviewed three Federal EEO officials in August 2021. Two were EEO Directors reporting directly to their agencies' heads, while the third was an EEO official (but not a titular EEO Director) at a large cabinet agency without a direct reporting structure.

Direct Reporting Structure's Impact on EEO Programs

Both EEO Directors stated that directly reporting to their agency heads has had a marked impact on their agencies' EEO programs. For example, implementing a direct reporting structure improved the EEO program's access to resources, influence on policy decisions, participation in senior leadership meetings, and the creation of new offices and executive positions. The structure also gave the EEO program greater credibility, sending the message that the agency head thinks EEO is important. In addition, a direct reporting structure better allowed directors to make EEO a highly visible priority for agency leadership. For example, one director noted that, as a top agency executive, he votes on budget, hiring, and other important agency matters. "The difference is night and day," that director stated.

Both EEO Directors indicated that they meet often with their agency heads, at least weekly. They expressed that direct access to agency heads was critical to address topics such as trends in EEO complaint activity, policy issues, reasonable accommodation requests, and exit surveys. As required by MD-715, the EEO Directors also gave annual State of the Agency briefings to the agency head.

One director indicated that directly reporting to the agency head not only increases communication with senior leadership, but also increases the ability to communicate with the agency at large about EEO matters. For example, this director is one of three agency officials who can send a blast email announcement to the entire agency. Blast emails may discuss topics such as retaliation, whistleblowing, employee well-being, the Employee Assistance Program (EAP), and peer support networks. The director also provided EEO training to every agency employee. "People see these messages consistently come from me," the director stated.

Challenges Associated with Direct Reporting Structure

Although the EEO Directors noted that having a direct reporting structure generally improves EEO programs, they also noted challenges. For example, one director felt he often had to prove the significance of EEO relative to peer senior leaders with larger areas of responsibility. While the Chief Financial Officers (CFO) discuss billion-dollar appropriations, the EEO program may need \$50,000 for the Reasonable Accommodation Program.



A direct reporting structure may also present some conflict of interest. Since EEO complaints may be discussed at senior leadership meetings, one director worried about potential conflicts of interest. She also had to be careful not to make her senior executive colleagues feel like she is “going behind their backs” to discuss issues with the agency head.

Challenges at Agency Without a Direct Reporting Structure

The third EEO official reported directly to the Director of Human Resources. The agency head was two levels above the EEO Director. This official indicated that the agency’s EEO Program was not highly prioritized by senior leadership. For example, the agency’s EEO Director did not provide a state of the agency briefing to the agency head, the agency head was not present during an annual Diversity and Inclusion Council, and the EEO Director did not meet directly with the agency head. Instead, the Director of Human Resources that oversees the agency’s EEO Office met directly with the agency head.

These issues have resulted in an overall lack of communication and knowledge about EEO matters amongst senior leadership. For example, the agency head is generally unaware that, under EEOC regulations and the Cummings Act, agency EEO Directors must report directly to the agency head. These issues have also made the agency’s EEO program vulnerable to outside influence, such as when the EEO Director was influenced by the Office of the General Counsel to weaken an initiative to hold managers accountable for EEO efforts in their performance plans. Another issue for this agency was the multi-year delay in adopting compliant reasonable accommodations procedures even after numerous interventions from the EEOC, which would not likely have persisted with a direct reporting structure.

The Cummings Act has not improved prospects for a direct reporting structure at her agency. Instead, the agency has stopped talking about the required reporting structure. The EEO official stated that having the EEO Director report directly to the agency head would provide the EEO Program with more autonomy and authority. It would also send the message that EEO is important and protected by the agency head.

Advice for Agencies Without a Direct Reporting Structure

The interviewees recommend using a value-added approach to appeal to senior leadership about the need for a direct reporting structure. For example, this structure could make the agency a better place to work and the agency more invested in its EEO program. One director warned that “fear-based approaches are not going to land you a spot at the table.”

The interviewees also advised EEO Directors who do not report directly to their agency head to ask for one-on-one meetings with the agency head. Scheduling regular meetings opens up the opportunity to discuss EEO trends or ways that the agency can improve its EEO practices.

Summary

The EEOC’s interviews with three EEO officials revealed that a direct reporting structure yields many benefits to EEO programs. Officials cited benefits such as increased communication with agency heads and senior leaders, increased visibility of EEO programs, increased impact on agency policies and priorities, and greater understanding of EEO matters and initiatives among senior leaders.

However, EEO officials also indicated that the increased visibility and influence associated with a direct reporting structure brought about challenges. For example, EEO Directors may need to justify their place at the se-



nior leadership table and guard against conflicts of interest that may undermine their neutral role in processing EEO complaints. Although passage of the Cummings Act provides a statutory mandate for a direct reporting structure, there may still be significant resistance to establishing such a structure in the Federal sector.

Conclusion and Next Steps

This report assessed the status and impact of a direct reporting structure at Federal agencies. The EEOC examined not only the historical mandate for direct reporting structures, but also analyzed data from agencies' MD-715 and Form 462 reports and a government-wide survey to EEO Directors. The EEOC also collected insights from EEO officials during four focus groups and three individual interviews.

The results indicate that, almost without exception, EEO Directors believe direct reporting structures to be beneficial in maintaining an effective EEO program. However, reluctance from senior leadership posed the greatest obstacle to implementing a direct reporting structure. Given that there is no reasonable way to require open dialogue with the agency head, mandating a direct reporting structure represents the best option for prioritizing EEO principles and programs. The greatest levels of compliance were found in small agencies, while cabinet-level agencies had the highest number of infractions. This suggests that the EEOC should focus more of its enforcement efforts on these high-ranking agencies.

EEOC directives have required a direct reporting structure for over a decade, and numerous prior executive orders spanning decades have also implemented such a practice. Through the passage of the Cummings Act, the U.S. Congress has codified its support for a direct reporting structure at Federal agencies. The EEOC hopes that, over the coming months, agencies will increase their compliance with the law.



Appendix A: FY 2021 Survey of EEO Directors

Note: Multiple choice responses to each question were not provided in this appendix.

1. What is your agency's name?
2. Are you at a subcomponent agency?
3. Please indicate the name of your parent agency or department.
4. What position do you hold within your agency's EEO program?
5. (If you are an EEO Director or collateral duty EEO Director) What is your current grade level?
6. (If you are an EEO Director or collateral duty EEO Director) What is the highest possible grade level for your position?
7. In your opinion, how does a direct reporting structure impact an agency's EEO program?
8. You stated that you believe direct reporting has a positive impact on the EEO program. Please explain why.
9. You stated that you believe direct reporting has a negative impact on the EEO program. Please explain why.
10. As the person responsible for oversight of your agency's EEO program, do you report directly to the agency head? Note: For the purposes of this question, reporting to the Chief of Staff, Chief Operating Officer, or other equivalent, does not qualify as a direct reporting structure.
11. You stated you report directly to the agency head; please specify if the agency head you report to is at the parent agency level or subcomponent level.
12. How long has your agency had a direct reporting structure?
13. How often do you communicate directly with the agency head? (Check all that apply)
14. You stated that you do not report directly to the agency head. To whom do you report?
15. Regardless of current reporting structure, have you ever attempted to obtain a direct reporting structure?
16. What steps did you take in your attempt to obtain a direct reporting structure? (Check all that apply)
17. What obstacles, if any, have you faced in obtaining a direct reporting structure for the EEO program? (Check all that apply)
18. Would you be interested in participating in an EEOC-led focus group on direct reporting? (Note: you will be given the opportunity to provide your contact information at the end of the survey.)



Appendix B: Focus Group Questions for Agencies With a Direct Reporting Structure

For the purposes of this focus group, the EEOC has a particular definition for a direct reporting structure. That is, the individual (regardless of title) with control over the day-to-day operations of the EEO program reports to the head of the agency. This person should not also manage the HR office.

This group seeks responses from agencies that DO currently have a direct reporting structure for the EEO Director position. Please raise your hand if you DO NOT have a direct reporting structure.

For this first question, I will go around the room to have everyone respond with your name and title and state whether you are an EEO director as EEOC defines the role? (If someone says they are not EEO Director, ask if the agency has an EEO Director, as defined by EEOC? And who that person is.)

1. As an EEO director do you report directly to the agency head? If not, to whom do you report?
2. How long has your agency had a direct reporting structure?
3. Has the 2020 Elijah E. Cummings Federal Employee Antidiscrimination Act had an impact on your agency?
4. Follow up: Has your agency changed its position regarding reporting structure?
5. Are there any subcomponent agencies present? If so, how has this impacted your reporting structure?
6. How can the EEOC assist your agencies in achieving the best results from your reporting structure?
7. For those of you who report to an intermediate designee, are you able to reach your agency head directly if an issue arises?
8. Is there often pushback to the implementation of MD-715 action plans at your agency?
9. Do you conduct a “State of the Agency” report on a frequent basis for agency leadership?
10. What would you like to see in the EEOC’s report?



Appendix C: Focus Group Questions for Agencies Without a Direct Reporting Structure

For the purposes of this focus group, the EEOC has a particular definition for a direct reporting structure. That is, the individual (regardless of title) with control over the day-to-day operations of the EEO program reports to the head of the agency. This person should not also manage the HR office.

1. This group seeks responses from agencies that DO NOT currently have a direct reporting structure for the EEO Director position. Please raise your hand if you DO have a direct reporting structure.
2. For this first question, I will go around the room to have everyone respond with your name and title and state whether you are an EEO director as EEOC defines the role? (If someone says they are not EEO Director, ask if the agency has an EEO Director, as defined by EEOC? And who that person is.)
3. Given that you DO NOT have a direct reporting structure, how has the passage of the 2020 Elijah E. Cummings Federal Employee Antidiscrimination Act impacted your agency?
4. Follow up: Has your agency changed its position regarding reporting structure?
5. Have there been any leadership discussions, either formal or informal?
6. Please explain how you feel a direct reporting structure would impact your EEO program. In general, would it be a negative or positive effect?
7. Given that you do not have a direct reporting structure, has this factor ever limited your ability to obtain funding?
8. If you have never attempted to have a reporting structure change, what is preventing you from pursuing a direct reporting structure?
9. How might a direct reporting structure help your agency's operations? (What problems, if any, have arisen as a result of not having a direct reporting structure?)
10. For example, has anyone experienced conflicts of interest by having to report on an issue or problem? to OGC? to HR? to Labor Relations?
11. For example, trouble getting funding for programs?
12. As the EEO Director, do you conduct an annual "State of the Agency" report for agency leadership?
13. What would you like to see in the EEOC's report?



Appendix D: Abbreviations

- ADEA: Age Discrimination in Employment Act
- ADR: Alternative Dispute Resolution
- CAO: Chief Administrative Officer
- CFO: Chief Financial Officer
- CSC: Civil Service Commission
- DNP: Did Not Participate
- DVAAP: Disabled Veterans Affirmative Action Program
- EAP: Employee Assistance Program
- EAP: Executive Advisor Program
- EEO: Equal Employment Opportunity
- EEOC: Equal Employment Opportunity Commission
- EPA: Equal Pay Act
- FEB: Fair Employment Board
- FEORP: Federal Equal Opportunity Recruitment Program
- FY: Fiscal Year
- GS: General Schedule
- HR: Human Resources
- MD: Management Directive
- MSPB: Merit Systems Protection Board
- OFO: Office of Federal Operations
- OIG: Office of Inspector General
- OPM: Office of Personnel Management
- OS: Office of the Secretary
- SEP: Special Emphasis Program
- SEPM: Special Emphasis Program Manager
- SES: Senior Executive Service

