

# Discrimination

## In the Federal Sector

"STATE OF THE BLACK FEDERAL WORK FORCE"



## Agenda/Contents

### INTRODUCTION

The Coalition For Change, Inc. (C4C): Mission & Vision

### II. FEDERAL SECTOR RACE DISCRIMINATION

SIX (6) Obstacles To Change

- 1) Recruitment Obstacle: *Reliance on Civilian Labor Workforce Data*
- 2) Advancement Obstacle: *Special Emphasis Programs Lacking for African-American Employees*
- 3) Appraisal System Obstacle: *Rating Bias / Performance Plan Abuses*
- 4) Pay System Obstacle: *Pay Flexibilities Promote Disparity*
- 5) Congressional Funding Obstacle: *Free & Unconditional Legal Representation for Federal Agencies/Managers*
- 6) Accountability Obstacle: *Lack of Discipline for Proven Discrimination*

### III. SUMMARY OF RECOMMENDATIONS

### IV. APPENDICES {TO BE UPLOADED ONTO WEBSITE}

- APPENDIX A: News Collage – Department of Commerce Workforce Culture  
APPENDIX B: Government Executive Article: “*The Big Payback*”  
APPENDIX C: Army 12/17/04 Letter – Black Employee Receives Death Threat  
APPENDIX D: Commerce 03/31/04 Letter of Apology  
APPENDIX E: Commerce Advances and Reimbursement Fund  
APPENDIX F: Photo of T. Ward Jordan’s “Storage Room Office”  
APPENDIX G: Statement of Commerce’s Medical Officer  
APPENDIX H: Bureau of Prisons – EEOC’s Order Regarding Class Certification  
APPENDIX I: Social Security Administration’s Class Complaint  
APPENDIX J: OPM Pay Grade Distribution: FY 2006 Government Statistics



# I. INTRODUCTION

## Mission

The Coalition for Change, Inc. (C4C) is a proactive non-profit organization comprised of present, former, injured and concerned employees dedicated to improving the safety of public goods and services by addressing “*racial discrimination*” in the Federal workplace. C4C serves primarily to:

- Identify internal personnel and civil right weaknesses within the Federal government;
- Recommend viable solutions; and
- Pursue human resource management / civil rights initiatives for promoting efficiency in the Federal sector.

## Vision

C4C aims to be a proactive volunteer organization that:

- Convenes braintrusts with leaders from various advocacy groups interested in addressing “*racial discrimination*” in the Federal workplace;
- Provides fellowship and information support to Federal employees, particularly Black-American employees, who bravely report civil rights violations of Title VII of the Civil Rights Act of 1964. {Title VII prohibits employment discrimination based on race, color, religion, sex and national origin.}
- Serves as guardians of justice and conductors for change providing relevant information to the public about the state of goods and services rendered by the Federal sector.

Who We Are NOT . . .	Who We ARE . . .
Financial Support Fund	<p><i>A functioning support team</i> for our members who face race discrimination and reprisal</p> <p><i>A taskforce</i> that examines workplace statistics to identify trends and to suggest corrective solutions to workforce problems</p> <p><i>A non-profit volunteer group</i> that promotes transparency in government and that disseminates useful information to the public about Federal workforce culture via the world wide web</p>
Training Organization	
EEO Counseling Group	
Legal Aid/ Services Entity	
Chapter Membership Driven Organization	



## II. FEDERAL SECTOR RACE DISCRIMINATION

The Equal Employment Opportunity Commission (EEOC) cited in its' FY 2008 Budget Justification to Congress that “*Race and color discrimination is still very much alive in the American workplace and significant work needs to be done.*”<sup>i</sup> Additionally, it is a well documented that African-Americans “have been the victims of consistent and deliberate unjust treatment.”<sup>ii</sup> (McClenaghan,2002, p. 595). Despite the momentous inauguration of Barack Obama, the first African-American elected President in United States history, racial discrimination continues to impede the career advancement of many African-Americans.

- Black employees remain disproportionately shut out of Federal jobs, most notably in Washington Headquarter Offices. {FY2007 Census data suggest systemic discrimination in the Federal workplace when reviewing demographic data of surrounding Federal areas such as Washington, DC. For example, according to Census data, Blacks populated 55.2% of Washington DC.<sup>iii</sup> However, according to OPM’s FY 2008 Federal Employment Opportunity Recruitment data, Blacks comprised only 17.7% of the Federal workforce. }
- According to EEOC,during FY 2006, FY 2007, and FY 2008 the bases of alleged “race” discrimination most often raised was – **Black.**

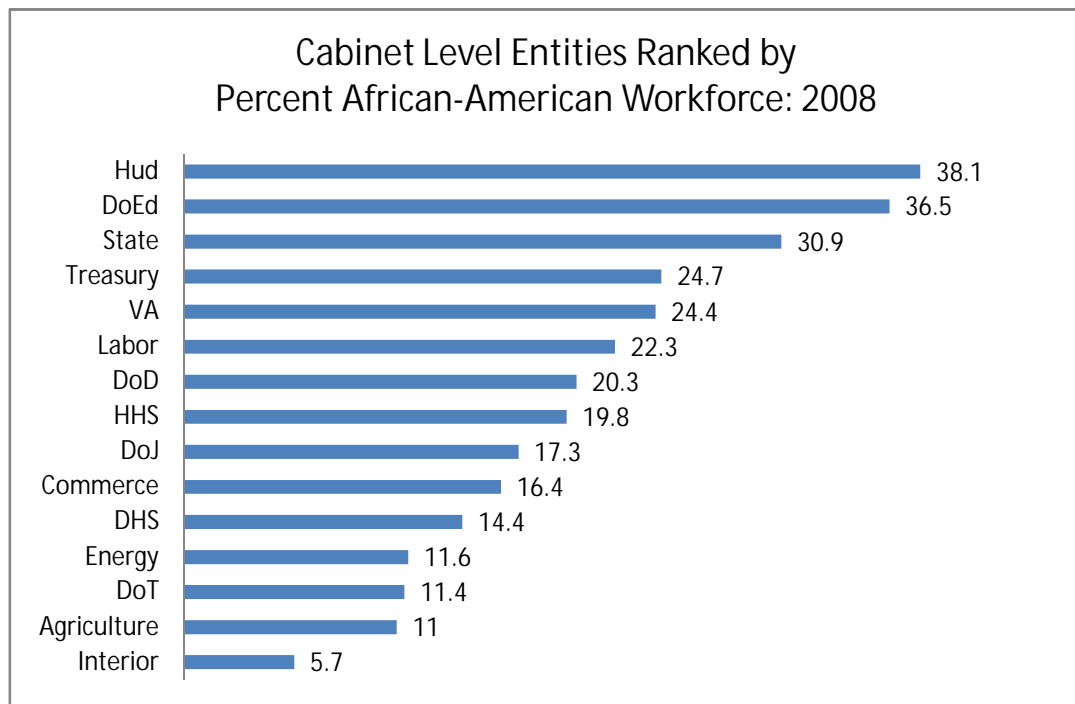
### SIX (6) Obstacles to Change

The Federal government has progressed since the era of government where, one group of employees was placed “formally” in a subordinate position to others, solely because of their - race.<sup>iv</sup> However, informal practices (*i.e. the good ole boy network*) and *flexible personnel systems* foster a new breed of career segregation. Statistics reveal that such practices have yielded significant disparities between Black employees and White employees with regard to pay, ratings, and access to senior management jobs. This section examines the six (6) obstacles that impinge directly upon the Federal careers of African-American employees across Federal agencies.



**1. Recruitment Obstacle: Reliance on Civilian Labor Workforce Data.**

The Office of Personnel Management (OPM) relies on flawed civilian labor force (CLF) data when targeting minority recruitment efforts. **OPM officials assert that Blacks are fully represented in all major Federal departments except for the Department of Interior.** (See chart below). OPM’s reliance on private sector hiring trends is faulty and continues to shut out many qualified educated African-Americans. Black employees have traditionally been the last hired first fired. The federal government should emerge as the “model employer” and set the standard for hiring. It should not measure federal sector’s recruitment practices by a marketplace that has its’ own diversity challenges.



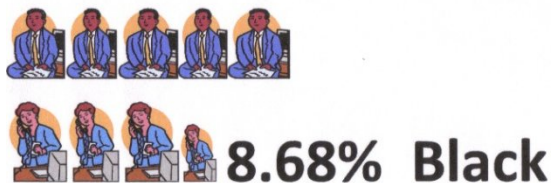
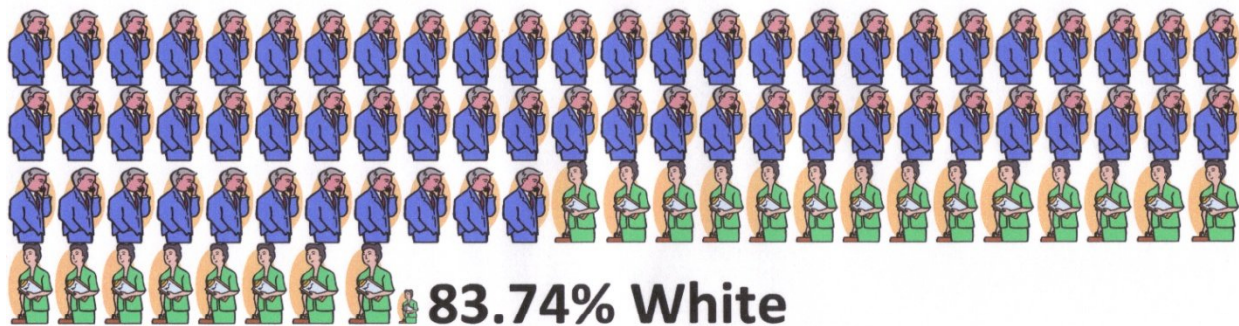
**Compiled by: C4C, Inc.**  
**Data Source: OPM FY 2008 FEORP**



**2. Advancement Obstacle: Lack of Special Emphasis Programs for African-American Employees**

Even when well equipped with both job expertise and education Black employees remain the least likely to attain a top management position. Blacks are stalled in lower grades and are not afforded such career advancement opportunities that have been expressly called for in such plans as *Hispanic 9-Pt Plan* or *Asian-Pacific Initiative*. **EEOC FY07 reported that Black employees represented only 8.69% of Senior Executive Level positions**

**Government-Wide Distribution of SES Positions**  
FY07 (Black & White Comparison)



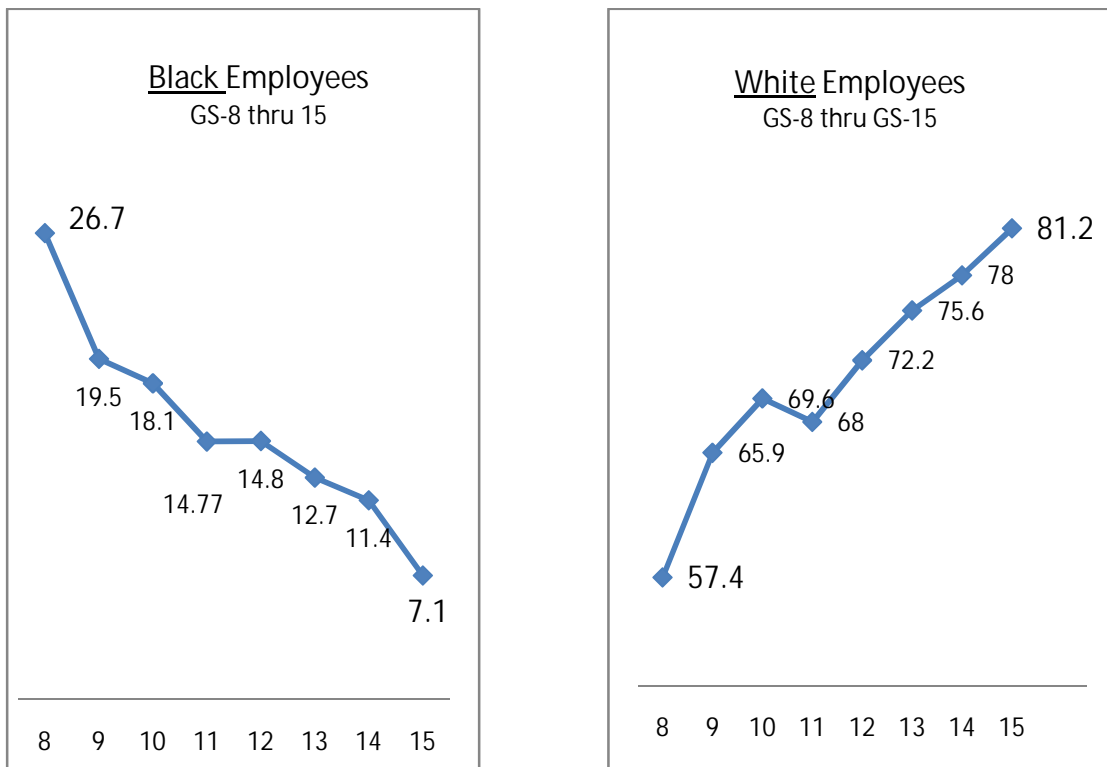
Source: *EEOC Annual Report on The Federal Work Force FY 2007*  
\*Representation with respect to gender not exact.



## 2. Advancement Obstacle (cont'd.)

OPM's FY 2006 governmentwide statistics<sup>v</sup> disclosed that Blacks (17.6% of the General Schedule and related pay plans) are less likely than Whites (67.8% General Schedule and related pay plans) to be promoted up the career ladder. The chart below compares the career advancement of Black employees (*declining line*) against the career advancement of White employees (*rising line*) from Grades 8 thru Grades 15.

**Career Advancement in the Federal Sector**  
Comparison of Black & White Employees  
FY2006



### **3. Appraisal System Obstacle: Rating Bias and Performance Improvement Plan Abuses**

Within the Federal government, rating bias exists. Based on available data, it appears that White employees are more likely than Black employees to receive high ratings such as “OUTSTANDING”. Conversely, Black employees are more likely than White employees to receive low ratings such as “UNSATISFACTORY”. {Note: Government-wide data is not readily available} Biasness in the rating process is problematic. This is particularly true since the appraisal ratings influence such things as pay, bonuses, time-off awards, ability to telecommute and employee removal from the Federal workplace.

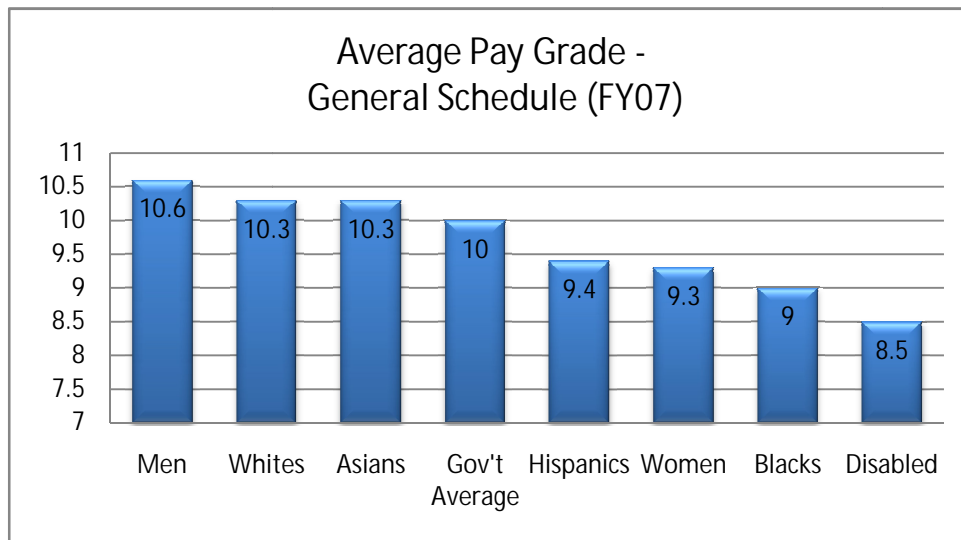
It has been well documented that some managers drop employees’ ratings after they file an EEO complaint exposing racial discrimination within the agency. Employees, who seek to challenge ratings through the EEO system, are subjected to years of litigation. Under the EEO redress system, it may at times take seven years or more to challenge an unfair rating. A number of Black employees are removed from Federal service before they even have an opportunity in the EEOC redress system to challenge the rating. The class action case of Janet Howard et. al. vs Carlos Gutierrez, Secretary of Commerce serves as an example of how a poorly monitored rating system that lacks accountability can impose severe harm on anyone who challenges workplace injustice. Ms. Howard, who had 25 years of Federal service, was targeted for removal after filing an EEOC certified class complaint in U.S. District Court. {See *Appendix E: Advances and Reimbursement Funds*. Also See *Appendix G: Statement of DoC Medical Doctors Court Case*}





#### 4. Pay System Obstacle: Pay Flexibilities Promote Disparity

Black employees' average pay grade of GS-9 remains below the government average according to EEOC FY2007 data.<sup>vi</sup> (See chart below.) The average pay rate for White women, White Men, Asians, and Hispanics are all above Black employees working in the Federal sector. Trends to move away from the General Schedules (GS) System and to offer broad salary ranges without quantifiable goals, serve to exacerbate existing pay problems. Under more flexible pays systems, supervisors are now able to freely award larger pay based on *subjective* reasoning. Discretion in a poorly monitored system has fostered even more → discrimination.



**5. Congressional Funding Obstacle: Free & Unconditional Legal Representation For Federal Agencies/Managers**

Federal agencies receive the benefit of free legal representation from the Department of Justice. Presently, little to no incentive exists to encourage agencies to resolve complaints at the lowest level possible. Agencies are afforded such services unconditionally and managers are afforded professional liability insurance just in case they are found personally liable in lawsuits filed against them. Although, Alternate Disputes Resolution (ADR) programs exist within Federal entities, **no mandate** requires that managers participate in them or that the agency make ADR available to all employees who file complaints. EEOC's regulation, 29 C.F.R. § 1614.603, only requires agencies to “make reasonable efforts” to voluntarily settle EEO discrimination complaints.

ADR is a process in which a third party neutral assists disputants reach an amicable resolution using a variety of approaches to resolve workplace conflict. **It serves to avoid the cost, delay, and uncertainty of the traditional adjudicatory processes, that includes hearing or litigation. It also serves to improve workplace communication and morale.** Most importantly, effective ADR can free up agency resources for mission-related programs and activities to better serve the public. The Administrative Dispute Resolution Act (ADRA) of 1990 required each federal agency to adopt a policy on ADR use. In 1996, ADRA was reenacted as the Administrative Dispute Resolution Act of 1996 (ADR Act). In 2000, the Equal Employment Opportunity Commission (EEOC) required all federal agencies to establish or make available an ADR program during the pre-complaint and formal complaint stages of the EEO process.

**POOREST “ADR OFFER RATE”**

In FY 2007, two cabinet level departments (Department of Education and the Department of Housing and Urban Development) and one oversight agency (Office of Personnel Management) had the poorest ADR offer rates in the -- formal complaint process.

Education	OPM	HUD
0%	0%	4.35%



## **6. Accountability Obstacle: Lack of Discipline for Proven Discrimination**

Managers found guilty of discriminations are seldom disciplined or disciplined in a manner inconsistent with egregious offenses. Despite the passage of the Notification and Federal Employee Anti-discrimination and Retaliation of 2002 (No FEAR), culpable officials are not being held accountable for violations of anti-discrimination and whistleblower protection laws. The Act only imposed a “*reporting feature*” with regard to discipline. Specifically, Section 203 entitled Reporting Requirement mandates under paragraph (4) that the agency *report the number of employees disciplined for discrimination, retaliation, harassment, or any other infraction of any provision of the law.* **Although well intended, the No FEAR Act of 2002 failed to “mandate” discipline.**



### III. SUMMARY OF RECOMMENDATIONS

Obstacle	Solution(s)
<p><b>Recruitment Obstacle</b></p>	<p>Establish new method other than Civilian Labor WorkForce Data comparison for recruitment and representation assessment. <i>Consider demographics of surrounding Federal worksite.</i></p>
<p><b>Advancement Obstacle</b></p>	<p>Establish aggressive plan to matriculate African-Americans into mid-level and senior level positions.</p> <p><i>“Just as we are addressing the problem of Hispanic under-representation we must also address this situation of African-American under-representation head on . . .this situation will not be remedied without aggressive action”</i></p> <p>John Sepulveda, OPM Deputy Director 2000</p>
<p><b>Appraisal System Obstacle</b></p>	<p>Promote transparency and encourage fairness by requiring agencies to <i>publish ratings and Performance Improvement Plan data</i> by Race and National Origin (RNO) annually.</p>
<p><b>Pay System Obstacle</b></p>	<p>Disallow flexible pay systems to agencies that are under consent decrees; settlement agreements or have / had certified class action related to pay /ratings.</p> <p>Prohibit use of alternative pay systems (non-GS <i>pay for performance</i>) in agencies where under-representation of any group is prevalent in senior management positions</p> <p>Require agencies with flexible pay (non-GS) systems to report workforce “<i>pay</i>” statistics by RNO</p>
<p><b>Congressional Funding Obstacle</b></p>	<p>Discontinue providing “free” Department of Justice representation to Departments that fail to fully engage in mediation {ADR}. <b><u>Amend ADR Act of 1996.</u></b></p>
<p><b>Accountability Obstacle</b></p>	<p><b><u>Mandate discipline</u></b> for managers found guilty of <i>discrimination</i>. At a minimum - require that a notation regarding offense be placed in discriminating manager’s Official Personnel Folder.</p> <p>Require that managers found guilty of discrimination be permanently removed from supervisory position and demoted at least one pay grade level.</p>



The Coalition For Change, Inc. (C4C)



P.O. Box 142  
Washington DC 20044

Tanya Ward Jordan  
President

G. Nicole Harrison  
Vice-President

Renee Berry  
Public Liaison Officer

Willie Berry, Chair  
Diversity Compliance

Milton Hill, Chair  
Outreach

Paulette Taylor, Chair  
Civil Rights

Philip Taylor, Chair  
Media Relations

Diane Williams, Chair  
Legislative Research



## References

- 
- <sup>i</sup> Equal Employment Opportunity Commission. (February 2007). *FY 2008 Congressional Budget Justification: Meeting the Chair's Priorities (Paragraph D)*
- <sup>ii</sup> McClenaghan, W. (2002). *American Government*. Upper Saddle River, New Jersey: Prentice Hall.
- <sup>iii</sup> Census Bureau. (2007). State and County Quick Facts. Retrieved from <http://quickfacts.census.gov/qfd/states/11000.html>
- <sup>iv</sup> King, D. (1999). The Racial Bureaucracy: African Americans and the Federal Government in The Era of Segregated Race Relations, *Governance*, 12(4), 345–377. Blackwell Publishers, Inc.
- <sup>v</sup> Office of Personnel Management. (2006). *Table 2-Race/National Origin Distribution of Federal Civilian Employment by Payplan and Grade as of September 30, 2006*.
- <sup>vi</sup> Equal Employment Opportunity Commission. (2007). *FY 2007 Annual Report on the Federal Workforce*.

