

**NO FEAR ACT ANNUAL REPORT**  
**FISCAL YEAR 2012**



**U.S. Department of Agriculture**

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## **Executive Summary**

### **Annual Reporting Requirements**

This is the USDA's eighth annual report submitted pursuant to the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (No FEAR Act), Public Law No. 107-174, Section 203.

The No FEAR Act mandates that Federal agencies report certain information for Fiscal Year (FY) 2012. This report contains the:

- number of complaints filed with USDA alleging discrimination based on race, sex, color, religion, national origin, disability, age, reprisal, and violations of whistleblower protection laws;
- amount of money USDA has reimbursed to the Judgment Fund in accordance with the No FEAR Act;
- aggregate amount USDA has reimbursed to the Judgment Fund that is attributable to the payment of attorney's fees;
- USDA policies relating to disciplinary actions to be taken against employees who have violated antidiscrimination or whistleblower laws or engaged in prohibited personnel practices;
- number of employees USDA has disciplined for discrimination, retaliation, harassment, or prohibited personnel practices; and
- number of cases in Federal Court arising under the antidiscrimination and whistleblower protection laws.

In addition, the No FEAR Act requires that USDA provide an analysis of the information submitted in the report, including: (1) an examination of trends; (2) causal analysis; (3) practical knowledge gained through experience; and (4) any actions planned or taken to improve its complaint or civil rights programs. USDA is also required to report any ascertainable adjustments made in its budget as a result of its compliance with the reimbursement requirement.

### **USDA's Mission and Mission-Related Functions**

The mission of USDA is to provide leadership on food, agriculture, natural resources, and related issues based on sound public policy, the best available science, and efficient management.

USDA strives to:

- expand international trade for agricultural products and support international economic development;
- expand domestic marketing opportunities for agricultural products;
- strengthen risk management, the use of financial tools, and the provision of sound information to help farmers and ranchers in their decision-making process;
- develop alternative markets for agricultural products and activities;
- provide financing needed to help expand job opportunities and improve housing, utilities, and infrastructure in rural America;
- enhance food safety by taking steps to reduce the prevalence of food borne hazards from farm to table, and safeguard agriculture from natural and intentional threats;
- improve nutrition by providing food assistance and nutrition education and promotion; and
- protect and manage America's public and private lands working cooperatively with other levels of government and the private sector.

### **Summary of the Report**

Congress passed the No FEAR Act in May 2002 as a vehicle for reducing discrimination and retaliation in Federal agencies, increasing agency accountability, emphasizing training for managers in the management of a diverse workforce, and encouraging dispute resolution and communication skills. The annual report summarizes the efforts made by USDA to carry out the mandates of the No FEAR Act.

As demonstrated in greater detail below, USDA experienced a slight increase of 11 EEO complaints filed from FY 2011 to FY 2012, ending the EEO inventory at the end of FY 2012 with 884 complaints. The number of filers also increased by 10 from FY 2011 to FY 2012, but the number of findings of discrimination decreased by 15 from FY 2011 to FY 2012. Data illustrating this trend is found in the Appendix.

A review of disciplinary actions taken against employees who violated Federal antidiscrimination laws and whistleblower protection statutes shows that in FY 2012, 12 employees were disciplined; while in FY 2011, 28 employees were disciplined. This decrease in disciplinary actions between FYs 2011 and 2012 indicates a continual level of accountability present within USDA and the Secretary of Agriculture's enforcement of a zero tolerance of any form of discrimination. The reimbursement provisions of the No FEAR Act continue to result in financial accountability for sub-agencies and individual staff offices within USDA.

During FY 2012, USDA has implemented several initiatives that will assist in its effort to reduce the number of EEO complaints. These initiatives are outlined below:

- USDA utilized the Cooperative Resolution Program (CRP), which offers custom-tailored services that address the specific needs of the employees to enhance their communication effectiveness and minimize workplace conflict. The CRP offers employees conflict consultation, conflict management training, and mediation services to address issues as an alternative to the traditional complaint grievance systems available for resolving non-EEO related workplace issues.
- The Office of the Assistant Secretary for Civil Rights (OASCR) provides overall leadership, coordination, and direction for USDA's compliance with civil rights laws in EEO. In order to carry out these duties, OASCR conducted five employment compliance reviews in FY 2012. OASCR's compliance reviews assist the Agencies in identifying systemic issues and barriers both at the Agency Headquarters and the Field Offices. Once the compliance review is completed, OASCR works with each Agency to recommend any training and corrective actions and, thereupon, monitors the Agencies based on the findings of each compliance review. In turn, the corrective action requirement heightens the Agency's awareness and knowledge of the issues regarding its workforce, and directs its leadership to take the necessary steps to comply with all civil rights and EEO laws and regulations.
- OASCR began a process to review and revise 16 USDA Civil Rights Departmental Regulations, C.F.R., and Departmental Manuals to be consistent with current civil rights laws and regulations.
- OASCR conducted the civil rights review of all USDA agencies' policies, rules, regulations, advisory committees, and reorganizations submitted for Departmental clearance. This involved a review and civil rights impact analysis of highly sensitive policies, actions, and decisions that could affect USDA employment programs and activities. These reviews facilitate the identification of potential disparate impacts on proposed policies or practices. Over 31 percent of our reviews resulted in recommendations for changes prior to concurrence rather than an immediate concurrence.
- The Training Division conducted numerous training sessions on various civil rights topics, such as the 1964 Civil Rights Act, EEO Complaint Process, Disability Legislation, Age Discrimination, Workplace Harassment, No FEAR Act, and Alternative Dispute Resolution (ADR). Civil rights training is a method of providing awareness and education to USDA employees which can lead to a greater understanding of their responsibilities and ultimately aid in reducing the number of employment complaints.
- Through its annual Agency Head Assessment, USDA continues to evaluate Agency Heads and separate Staff Offices on their agency's civil rights performance. This assessment holds the Agency's Senior Executives accountable for employment discrimination complaints and other civil rights statutes and regulations. For FY 2012, OASCR evaluated and assessed 17 USDA Agencies and six Staff Offices.

- In FY 2012, USDA launched several initiatives to ensure that EEO complaints are timely and consistently processed. USDA enhanced its ability to track EEO complaint case files by modifying file routing sheets, revised many of its EEO complaint processing templates, updated standard operating procedures throughout its divisions to reflect processing changes, and began a peer review of standard complaint forms with the agencies.
- In an ongoing effort to ensure the uniformity and efficiency of complaint processing by EEO Specialists, USDA facilitated multiple training opportunities in FY 2012, including: Accept/Dismiss and Claim Fragmentation training; EEO Complaint Harassment and Fragmentation training EEO Counselor's Report training; EEO Counselor's Refresher training; and Settlement Agreements, Non-compliance Complaints and Remand training. As a result of the Office of Adjudication's (OA) initiatives during FY 2012, USDA's EEO complaint processing time has been significantly reduced at both the complaint intake and complaint adjudication stages.

**PART I**

**USDA Formal EEO Complaints**  
**for**  
**Fiscal Years 2011-2012**



## **Section A- Number of Formal EEO Complaints and Number of Filers at USDA**

### **Introduction**

This section contains comparative information regarding the number of formal EEO complaints filed and the number of filers for FYs 2011 and 2012.

### **Summary of Data**

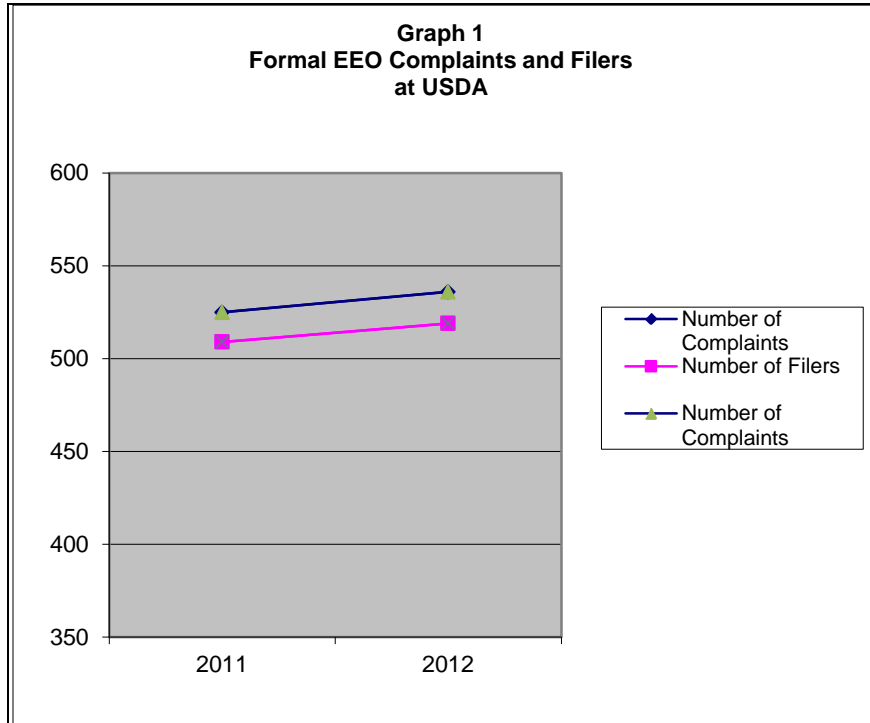
Table 1 below indicates the number of formal EEO complaints filed with USDA by fiscal year and the number of individuals who filed complaints. It shows an increase in the number of complaints filed over the prior year and a slight increase in the number of filers for the current year. (See Graph 1)

In FY 2012, the number of complaints filed was 536, whereas, in FY 2011 the number of complaints filed was 525. This represents a two percent increase in complaints filed. However, the number of filers in FY 2012 was 519, which is 10 more than the number of filers (509) in FY 2011.

**Table 1  
Number of Formal EEO Complaints and Number of Filers  
at USDA**

<b>Fiscal Years</b>	<b>Number of Complaints</b>	<b>Number of Filers</b>
2011	525	509
2012	536	519

**Graph 1  
Formal EEO Complaints and Filers  
at USDA**



**Section B– Most Frequently Cited Bases in Formal EEO Complaints  
at USDA**

**Introduction**

This section contains information regarding the most frequently cited bases in formal EEO complaints for FYs 2011 and 2012. The basis of the complaint is the protected characteristic that the complainant alleges which forms the motivation for the discriminatory conduct. The bases protected by EEO statutes are race, color, religion, national origin, sex, disability, age and retaliation (for participating in the EEO complaint process or for opposing practices made illegal under the EEO laws). A complaint brought under the Equal Pay Act of 1963, as amended, is considered to be a complaint based on sex.

**Summary of Data**

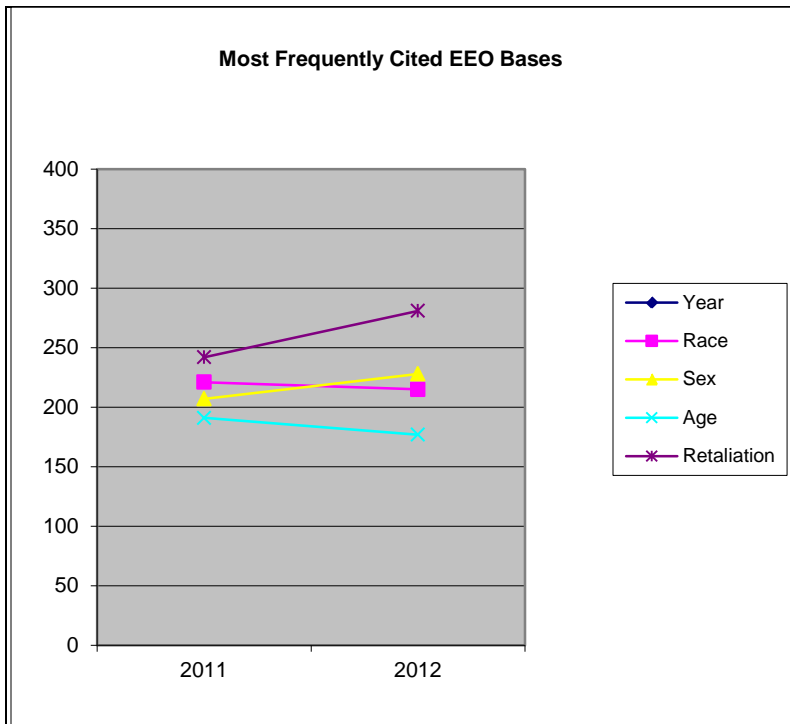
Table 2 provides data on all bases alleged in formal EEO complaints filed with USDA. Of all bases, the four most frequently cited in formal EEO complaints filed in FY 2012 are: (1) retaliation; (2) sex; (3) race; and (4) age. In FY 2011, the four most frequently cited bases were: (1) retaliation; (2) race; (3) sex; and (4) age. These four bases are illustrated in Graph 2, which shows the trend over the two-year reporting period.

**Table 2**  
**Most Frequently Cited EEO Bases in Formal EEO Complaints**  
**at USDA**

<b>EEO Bases in Formal EEO Complaints</b>									
<b>Year</b>	<b>Race</b>	<b>Color</b>	<b>Religion</b>	<b>Sex**</b>	<b>National Origin</b>	<b>Disability</b>	<b>Age</b>	<b>Retaliation</b>	<b>Other*</b>
<b>2011</b>	221	32	21	207	57	104	191	242	42
<b>2012</b>	215	56	23	228	61	141	177	281	60

\*Other USDA protected bases include marital status, parental status, sexual orientation, political beliefs, genetic information and familial status. \*\*Additionally, the base of sex includes gender identity and gender expression.

**Graph 2**  
**Most Frequently Cited Bases**



Complaints Alleging Retaliation

“Retaliation” is the most frequently alleged basis in formal EEO complaints at USDA. This is true for both FYs 2012 and 2011. The basis of “Retaliation” was cited in 281 formal EEO complaints in FY 2012, compared to 242 complaints in FY 2011, a 16 percent (39 complaints) increase over a two-year period.

### Complaints Alleging Sex Discrimination

“Sex” was the second most frequently alleged basis in formal EEO cases at USDA in FY 2012. The basis of “Sex” was cited in 228 formal EEO complaints in FY 2012, compared to 207 complaints in FY 2011, which represents a 10 percent increase (21 complaints) over a two-year period.

### Complaints Alleging Race Discrimination

“Race” is the third most frequently alleged basis in formal EEO cases at USDA in FY 2012. The basis of “Race” was cited in 215 formal EEO complaints in FY 2012, compared to 221 complaints in FY 2011, which represents a three percent decrease (six complaints) over a two-year period.

### Complaints Alleging Age Discrimination

“Age” was the fourth most frequently alleged basis in formal EEO cases at USDA in FY 2012. The basis of “Age” was cited in 177 formal EEO complaints in FY 2012, compared to 191 complaints in FY 2011, which represents a seven percent (14 complaints) decrease over a two-year period.

## **Section C- Most Frequently Cited Issues in Formal EEO Complaints at USDA**

### **Introduction**

This section contains information regarding the most frequently cited issues in formal EEO complaints for FYs 2011 and 2012. The No FEAR Act requires Federal agencies to post data regarding the nature of the issues raised in EEO complaints. The issue of a complaint is the specific matter about which the individual is complaining or the alleged discriminatory incident for which the individual is seeking redress. Table 3 contains a list of issues most commonly raised in complaints. The “Other” category captures all issues not specifically listed.

### **Summary of Data**

Table 3 provides the most frequently cited issues in formal EEO complaints filed with USDA. The three EEO issues most frequently cited in FY 2012 were: (1) Harassment; (2) Disciplinary Action; and (3) Promotion/Non-Selection. Graph 3 shows the trends for these three issues over the two-year reporting period.

“Harassment” was the most frequently cited issue in formal EEO cases in FY 2012, with 319 filings. In contrast, “Harassment” had 247 filings in FY 2011. There was a 29 percent increase (72 complaints) from FY 2011 to FY 2012.

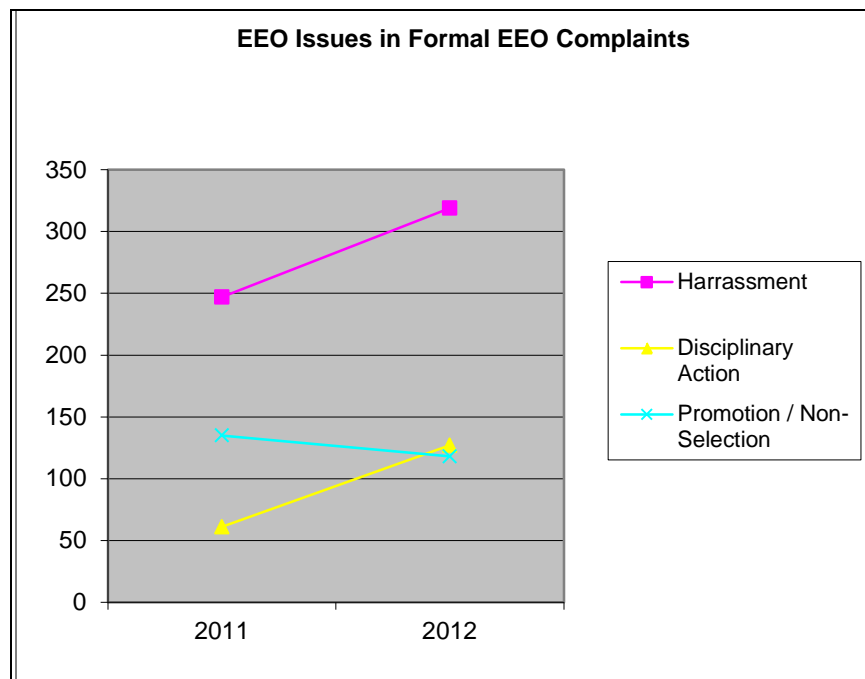
“Disciplinary Action” was the second most frequently cited issue in formal EEO cases in FY 2012, with 127 filings. In contrast, “Disciplinary Action” had 61 filings in FY 2011. There was an increase of 108 percent (66 complaints) from FY 2011 to FY 2012.

“Promotion/Non-selection” was the third most frequently cited issue in formal EEO cases in FY 2012, with 118 filings. In contrast, “Promotion/Non-Selection” had 135 filings in FY 2011. There was a 13 percent decrease (17 complaints) from FY 2011 to FY 2012.

**Table 3**  
**EEO Issues in Formal EEO Complaints**

EEO Issues in Formal EEO Complaints																					
Year	Appointment/Hire	Assignment of Duties	Awards	Conversions to Full Time	Disciplinary Action	Duty Hours	Evaluation/Appraisal	Examination/Test	Reassignment	Training	Time & Attendance	Termination	Medical Examination	Pay/Overtime	Promotion /Non-Selection	Harassment	Reinstatement	Retirement	Terms and Conditions of Employment	Reasonable Accommodation	Other
2011	38	62	20	0	61	6	64	1	28	27	28	39	0	13	135	247	1	6	52	36	60
2012	23	100	22	1	127	15	60	4	46	49	58	35	4	14	118	319	2	2	85	58	61

**Graph 3**  
**EEO Issues in Formal EEO Complaints**



## Section D- EEO Processing Stages

### Introduction

This section contains data regarding selected stages and associated processing times for formal EEO complaints processed during FYs 2012 and 2011. The formal EEO complaint process has various stages. Not all formal complaints complete all stages. These stages are: (1) Investigation (which includes Letter of Acceptance); (2) Final Agency Action with EEOC Hearing; (3) Final Agency Action without EEOC Hearing; and (4) Dismissal. Formal EEO complaints may be withdrawn or settled at any stage and may be dismissed at various stages.

### Summary of Data

The following is an analysis of data for the four EEO stages. This section contains data on: (1) the average number of days for completion of selected stages; (2) pending complaints at various stages of the EEO process; and (3) pending formal complaints exceeding the 180-day investigation requirement.

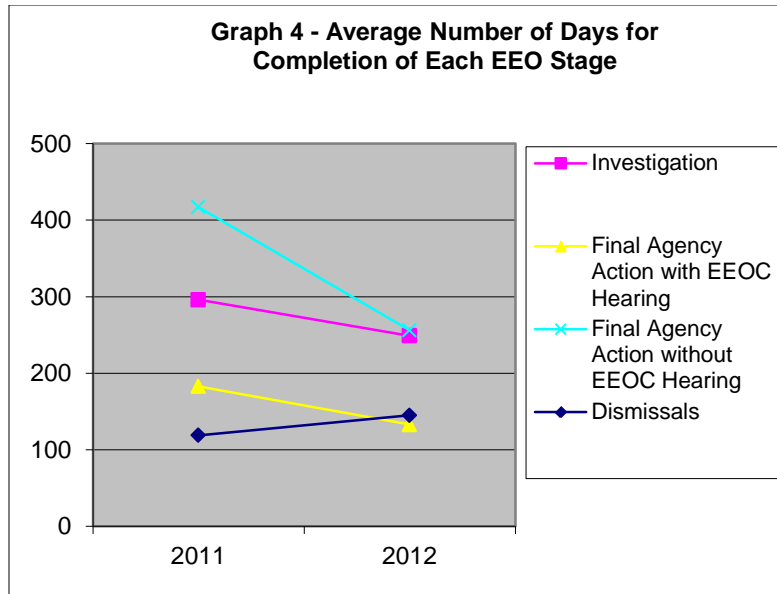
#### **(1) Average Number of Days for Completion of Selected EEO Stages**

Table 4 below provides the average number of days for completing a formal EEO complaint at each stage. The data revealed a downward trend (as shown in Graph 4) in the average number of days for an investigation, in the Final Agency Action without an EEOC hearing, in the Final Agency Action with a hearing and in dismissals.

**Table 4**  
**Average Number of Days for Completion of Each EEO Stage**

<b>Year</b>	<b>Investigation</b>	<b>Final Agency Action with EEOC Hearing</b>	<b>Final Agency Action without EEOC Hearing</b>	<b>Dismissals</b>
<b>2011</b>	296	183	417	119
<b>2012</b>	249	133	256	145

**Graph 4**  
**Average Number of Days for Completion of Each EEO Stage**



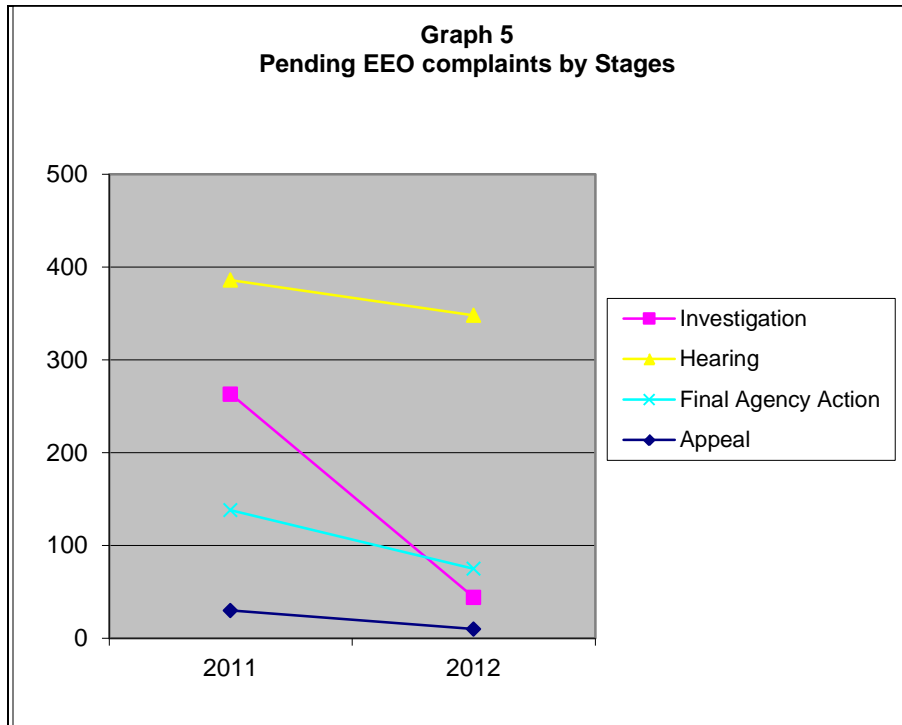
**(2) Pending Complaints at Various Stages**

- Table 5 below illustrates the number of pending EEO complaints in FYs 2012 and 2011, at each EEO stage.
- Graph 5 shows a downward trend in pending complaints in investigations, hearings, Final Agency Actions and appeals.

**Table 5**  
**Pending EEO Formal Complaints by Stage**

<b>Year</b>	<b>Investigation</b>	<b>Hearing</b>	<b>Final Agency Action</b>	<b>Appeal</b>
<b>2011</b>	263	386	138	30
<b>2012</b>	44	348	75	10

**Graph 5  
Pending EEO Formal Complaints by Stage**



**(3) Pending Formal Complaints Exceeding the 180-Day Investigation Requirement**

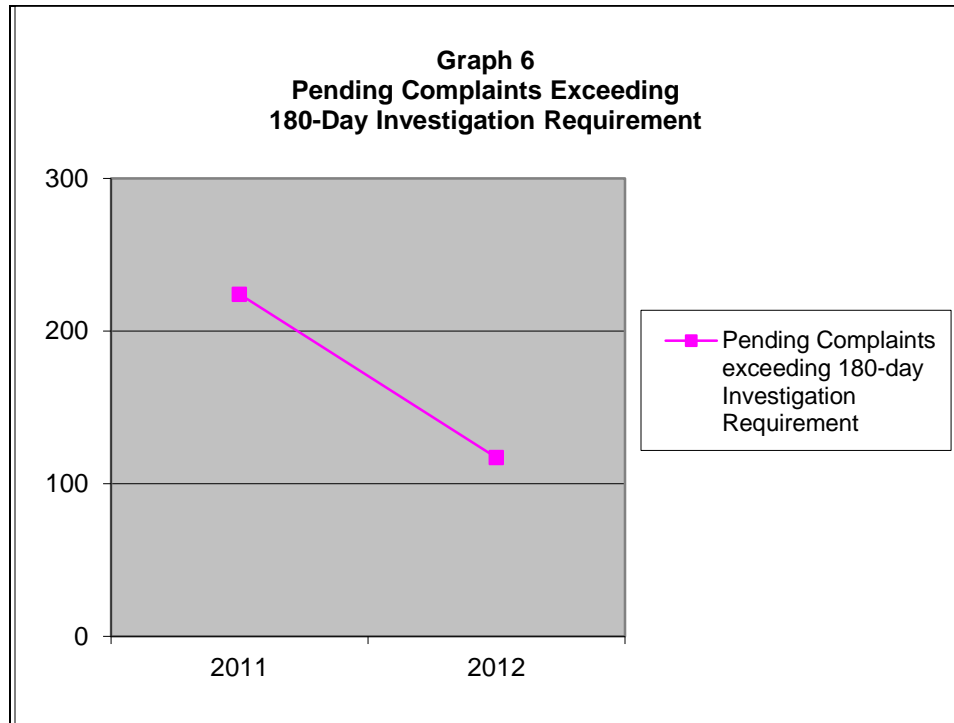
Table 6 and Graph 6 show a 48 percent decrease for pending formal complaints that exceed the 180-day investigation requirement over the two-year reporting period.

**Table 6  
Pending Formal EEO Complaints Exceeding the 180-Day Investigation Requirement**

<b>Pending Complaints Exceeding the 180-day Investigation Requirement</b>	
<b>2011</b>	224
<b>2012</b>	117



**Graph 6**  
**Pending Formal EEO Complaints Exceeding 180-Day Investigation Requirement**



## **Section E- Final Agency Actions with a Finding of Discrimination**

### **Introduction**

Final Agency Actions involving a finding of discrimination may be issued on the record or following an EEOC Administrative Hearing. The final actions involving a finding of discrimination include complaints with a variety of bases and issues. The No FEAR Act requires Federal agencies to post the total number of final actions involving a finding of discrimination, along with the issues and bases for those complaints.

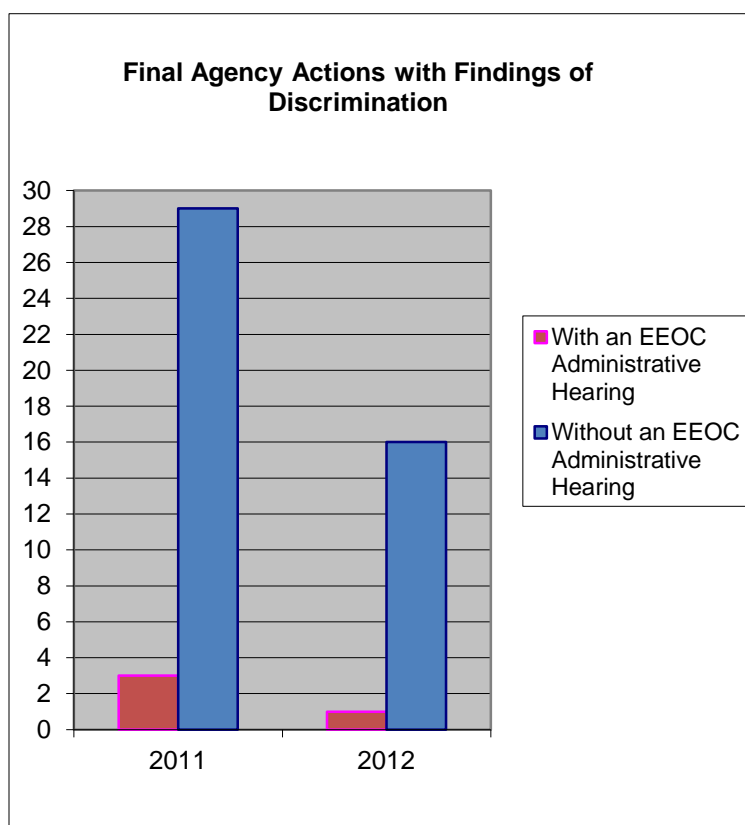
### **Summary of Data**

Table 7 and Graph 7 show that the number of findings of discrimination issued with an EEOC Administrative Hearing decreased by one in FY 2012, and without an EEOC Administrative Hearing decreased by 13 in FY 2012.

**Table 7**  
**Final Agency Actions with a Finding of Discrimination**

<b>Year</b>	<b>With an EEOC Administrative Hearing</b>	<b>Without an EEOC Administrative Hearing</b>
<b>2011</b>	3	29
<b>2012</b>	2 <sup>1</sup>	16

**Graph 7**  
**Final Agency Actions with a Finding of Discrimination**



## Section F- Analysis, Experience, and Actions

### Introduction

The No FEAR Act requires: (1) an examination of trends; (2) a causal analysis; (3) practical knowledge gained through experience; and (4) any actions planned or taken to improve USDA’s complaint or civil rights programs. The prior sections (Sections A-E) provided an examination of trends. Described below are various observations related to the remaining three areas:

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<sup>1</sup> Number reconciled to reflect data based on FY 2012 Farm Bill Report.

## **(1) Causal Analysis**

USDA and its sub-component agencies identified various factors impacting the filing of formal EEO complaints. Examples are as follows:

1. The Agricultural Marketing Service reported an increase in the number of formal complaints filed in FY 2012. Specifically, there were 21 formal complaints filed in FY 2012 as compared to 18 formal complaints filed in FY 2011. This increase is attributed to the consolidation of several offices and the closure of offices in the field.
2. The Animal and Plant Health Inspection Service reported a decrease by two in the number of complaints filed in FY 2012. Specifically, there were 47 formal complaints filed in FY 2011, as compared to 49 formal complaints filed in FY 2011. This represents a 4 percent decrease in the number of complaints.
3. The Agricultural Research Service reported an increase in the number of complaints filed in FY 2012. Specifically, there were 30 formal complaints filed in FY 2012, as compared to 18 formal complaints filed in FY 2011. This increase in the number of complaints filed in FY 2012 is attributed to filings based on race, reprisal, and age.
4. The Corporate Services Division revealed that the open complaint inventory at the end of the fiscal year was 52<sup>2</sup> in FY 2012. This represents an increase when compared to FY 2011, which ended with 45<sup>3</sup> open formal complaints. The increase in the numbers of filers is due to complainants having filed more than one complaint. Additionally, employees are educated from civil rights training on what their rights are, increasing awareness and visibility of the complaints process.
5. The Economic Research Service (ERS) reported no change in complaints filed between FY 2012 (1) and FY 2011 (1). The steady trend in complaints filed could be attributed to the early intervention process utilized by the ERS Office of Civil Rights.
6. The Foreign Agricultural Service (FAS) had an increase from seven (FY 2011) to 10 (FY 2012) in formal complaints filed. The increase in FAS' formal EEO complaint activity for FY 2012 represents a 43 percent increase.
7. The Food and Nutrition Service reported that the average number of complaints remains constant at seven cases per year. There was an increase of one complaint from FY 2011 to FY 2012.
8. The Forest Service (FS) reported an increase in complaint activity when compared to FY 2011. FS attributes this increase to improved employee awareness and visibility of the complaints process. Another factor in the rise of complaint numbers may be attributed to recent accountability initiatives established Department-wide to ensure that USDA personnel are held accountable and responsible for their actions.

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<sup>2</sup> This number subsequently increased to 56 due to database reconciliation efforts.

<sup>3</sup> This number subsequently increased to 48 due to database reconciliation efforts.

9. The Farm Service Agency (FSA) reported a decrease of nine complaints for FY 2012 (29) from FY 2011 (38). FSA attributes this decrease to enhancing steps in the formal EEO investigation procedures, tracking performance and accountability in complaint processing procedures, and conducting annual mandatory EEO and Civil Rights training.
10. The Food Safety and Inspection Service (FSIS) reported a decrease in the number of formal EEO complaints filed in FY 2012 compared to those filed in FY 2011. FSIS attributes this decrease to budgetary constraints and continued training and educational efforts by FSIS' Civil Rights Division.
11. The Grain Inspection, Packers and Stockyards Administration (GIPSA) reported nine complaints filed in FY 2012; a decrease of 18 percent from FY 2011 (11). GIPSA attributes the decrease in the number of complaints filed to an increase in the number of complainants choosing to participate in ADR during the informal process.
12. The National Agricultural Statistics Service (NASS) reported that the number of complaints decreased in FY 2012 compared to FY 2011. In FY 2012, NASS had one complaint (a decrease of one from FY 2011).
13. The National Institute of Food and Agriculture (NIFA) (formerly known as the Cooperative State Research, Education and Extension Service) reported one formal complaint filed in FY 2012, as compared to three formal complaints filed in FY 2011. NIFA attributes this decrease to the re-organization and establishment of a new organization required by the Food, Conservation, Energy Act (Farm Bill), resulting in reallocation of resources and reassignment of employees.
14. The Natural Resources Conservation Service (NRCS) reported an increase in the number of formal complaints filed in FY 2012. NRCS notes that allegations of workplace discrimination generally tend to rise during economic recessions, when people are more likely to lose their jobs and have trouble finding new work.
15. The Rural Development (RD) reports a decrease in complaints filed in FY 2012 compared to FY 2011. This decrease is attributed to the Agency's continued implementation of EEO initiatives and policies that comply with the Department's accountability policies. Additionally, RD attributes the continued decline in complaint filings to the Agency's proactive complaint resolution efforts to resolve employee issues at the lowest level possible.
16. The Risk Management Agency (RMA) reported that the number of formal complaints filed in FY 2012 (5) decreased by five from FY 2011 (10). RMA attributes the decrease in complaints to increased visibility and effective communication between senior management and employees.

## **(2) Experience Gained by USDA in the Processing of Formal EEO Complaints**

USDA has learned the following from its past experiences in processing and addressing formal EEO complaints:

- Continuing to conduct ADR training along the lines of conflict resolution is essential. It is a known fact that “change” can bring about fears, anxiety, anger, etc., hence, managers must receive sensitivity training and employees should receive more information and training on coping with change;
- Involving not only managers and supervisors, but Deputy Administrators and Directors early in the resolution of complaints. Involvement in resolution discussions by senior management officials has proven beneficial;
- Ensuring on-going compliance reviews that identify EEO-related workplace issues and provide recommendations on how to address those issues before they evolve into EEO complaints;
- Holding supervisors and managers accountable for engaging in discriminatory practices in order to deter such conduct in the future;
- Educating aggrieved parties about the EEO process (to include the availability of ADR) and working aggressively with these individuals and other Agency officials in order to reach resolution;
- Providing training on how to recognize, evaluate, and eliminate self-defeating habits, how to deal with delicate situations and difficult people, and recognizing the obligation to maintain responsibility for the way employees are treated are components that need to be addressed;
- Providing EEO training to all employees and managers continues to be important in decreasing complaint activity;
- Recognizing that increased participation and involvement of special emphasis programs will contribute to the decrease in the number of EEO complaints filed;
- Designing a structure for effective management, accountability and self-analysis will ensure program success and compliance with EEOC Management Directive (MD) 715;
- Continuing support for the ADR program and using a full-time certified mediator is imperative in reducing the number of formal complaints;
- Continuing to utilize ADR/mediation early in the process may assist in the early resolution of complaints;

- Providing training and open communications result in a more productive, inclusive work environment; thereby, reducing the number of complaints;
- Understanding that the need to continue to closely monitor EEO discrimination complaints, and to engage in dialogue with Employee Relations and Civil Rights leaderships to address early resolution of cases where weakness in policies and practices exist; and
- Emphasizing that early resolution improves management-employee relations, reduces administrative costs significantly, and precludes the need for extended litigation.

### **(3) Past and Future Actions by USDA Relating to EEO Complaint Processing**

USDA has taken several actions that have proven effective in improving its formal EEO complaint processing. USDA is also introducing new initiatives to reduce complaints in future years. These actions include the following:

1. Distribute civil rights information regularly to all employees via email messages to ensure awareness of the latest prohibited personnel practices and/or procedures.
2. Offer employees conflict consultation, conflict management training and mediation services to address issues as an alternative to the traditional complaint grievance systems available for resolving non-EEO related workplace issues.
3. Collaborate with Civil Rights and Human Resources specialists to train managers and employees on cultural and diversity sensitivity and appropriate conduct. These trainings target discrimination on the basis of disability and the proper management of employees' medical documentation.
4. Promote the utilization of the CRP to enhance manager and employee communications and aid in conflict management.
5. Continue to monitor the complaint trends, along with conducting and planning trainings that target the complaint trend areas, ensuring that employees and managers are aware of behavior that is inappropriate for the workplace and may be deemed discriminatory.
6. Include enhancement of the ADR program, including conducting an ADR awareness survey, providing training in ADR for supervisors and employees, and establishing a Departmental cadre of resolving officials.
7. Continue to present Civil Rights and Equal Employment webinar modules (a combined computer-based/teleconference-based broadcast) on the EEO complaint process, preventing reprisal, mixed cases, and reducing EEO complaints.
8. Update EEO/diversity and discrimination policy statements, provide EEO training to managers and employees and conduct site visits to area offices to continue to decrease complaints.

9. Continue to actively monitor the timelines established for investigators to complete their investigations. USDA requires strict adherence to timeframes to complete investigations.
10. Continue to conduct compliance reviews to determine specific EEO trends and potential civil rights violations. This will enable the staff to identify potential complaints early and engage in efforts to eradicate issues before they escalate to a complaint filing.
11. Work with the Office of Communications to record and closed-caption all of USDA's Special Emphasis Program events. This will greatly expand the number of employees that will be able to participate.
12. Execute a superior awareness of Cultural Transformation throughout each entity of USDA. This transformational work will start with a cultural assessment that lays the foundation for meaningful change in current practices.
13. Provide a refresher course for first and second line supervisors on working with employees with disabilities and how to provide reasonable accommodations.
14. Develop a recruitment and development plan that establishes clear goals and objectives for implementing strategies to recruit and retain underrepresented groups.
15. Continue to work collaboratively with the EEOC through its relationship management arrangement to access training opportunities.

## **PART II**

# **USDA Reimbursement to Judgment Fund for Fiscal Year 2012**



## USDA Reimbursement to Judgment Fund for Fiscal Year 2012

### Introduction

Table 8 below provides information on reimbursements by USDA to the U.S. Department of Treasury's Judgment Fund for monies associated with FY 2012 judgments, awards, or settlements under the statutes addressed in the No FEAR Act.

**Table 8**  
**USDA Reimbursement to Judgment Fund for FY 2012 Settlements**

<b>USDA Reimbursement to Judgment Fund For FY 2011 Settlements</b>		
<b>Case</b>	<b>Total Amount</b>	<b>Attorney's Fees</b>
1	\$400,000.00	\$0
2	\$78,500.00	\$0
3	\$50,000.00	\$0
4	\$30,000.00	\$0
5	\$21,000.00	\$0
6	\$5,000.00	\$0
7	\$5,000.00	\$0
<b>Total</b>	<b>\$ 589,500.00</b>	<b>\$0</b>

### Summary

In FY 2012, USDA reimbursed the Judgment Fund the sum of \$589,500.00 for settlements (of which zero dollars was identified as payment of attorney's fees). No monies were paid for judgments or awards.

**PART III**

**USDA Disciplinary Actions and Reports  
for Fiscal Years 2011–2012**

**USDA Disciplinary Actions and Reports for  
Fiscal Years 2011– 2012**

**Summary of Data**

**PART 1:** Table 9 below contains the number of disciplinary actions taken against employees who were found to have committed prohibited acts of discrimination, retaliation, harassment, or prohibited personnel practices (including those acts discovered in conjunction with investigations of whistleblower protection or civil rights complaints).

**Table 9**

<b>ADMINISTRATIVE DISCIPLINARY ACTIONS</b>												
<b>TYPE OF ACTION</b>	<b>FY 2011</b>						<b>FY 2012</b>					
	<b>DISC.</b>	<b>RET.</b>	<b>HAR.</b>	<b>PPP</b>	<b>WBP</b>	<b>TOTAL</b>	<b>DISC.</b>	<b>RET.</b>	<b>HAR.</b>	<b>PPP</b>	<b>WBP</b>	<b>TOTAL</b>
<b>REMOVAL</b>			1			1						
<b>15 DAY OR MORE</b>	1		2			3						
<b>14 DAY OR LESS</b>	3	1	3	1		8	2	2	4	1		9
<b>REDUCTION IN GRADE</b>												
<b>REDUCTION IN PAY</b>												
<b>LOR</b>	4	1	8	3		16	2		1			3
<b>TOTAL DISCIPLINE</b>	8	2	14	4		28	4	2	5	1		12

**Table Abbreviations: Disc. = Discrimination; Ret. = Retaliation; Har. = Harassment; PPP = Prohibited Personnel Practice; WBP = Whistleblower Protection Act; and LOR = Letter of Reprimand.**

**PART 2:** Table 10 below illustrates the number of Office of Special Counsel Whistleblower cases and the numbers of employees disciplined under the Department’s disciplinary policies related to whistle-blowing and discrimination.

**Table 10**

<b>CATEGORIES OF CASES</b>	<b>OFFICE OF SPECIAL COUNSEL CASES</b>		
	<b>FY 2011</b>	<b>FY 2012</b>	<b>TOTAL</b>
<b>OSC WHISTLEBLOWER CASE</b>	10	12	22
<b>OSC WHISTLEBLOWER CASE CLOSED</b>	0	0	0
<b>OSC WHISTLEBLOWER DISCIPLINE TAKEN</b>	0	0	0

## **Disciplinary Policy**

Improving the civil rights environment throughout the Department continues to be a priority for USDA. There is a “Zero Tolerance” policy for acts of discrimination, harassment or reprisal of any kind. It is USDA’s policy to pursue appropriate administrative action against anyone who is found to have engaged in such activities. USDA continues to apply its accountability policy and employee awareness activities in its effort to prevent illegal discriminatory actions and to discipline those who commit such offenses. Civil Rights and Human Resources staffs work in close cooperation, using proven tracking and reporting systems, to monitor compliance activities and readily identify emerging trends.

In cases involving discrimination, harassment, or reprisal, subordinate components of USDA impact disciplinary or corrective actions in accordance with applicable laws, rules, regulations, and policies. OHRM reviews the disciplinary or corrective actions taken by each agency in cases involving discrimination, harassment, or reprisal. The type and severity of disciplinary action is based on the USDA Guide for Disciplinary Penalties, Appendix A, Department Personnel Manual 751. This guide contains specific sections on discrimination and retaliation, sexual misconduct, and prohibited personnel practices.

In May 2010, USDA started an initiative to provide increased oversight of cases involving violation of anti-discrimination and whistleblower protection laws where liability was found against the Department. As part of that initiative, OHRM established the Equal Opportunity Accountability Unit (EOAU) with the primary mission of ensuring that USDA personnel are held accountable and responsible for their actions. The EOAU raises awareness and ensures that individuals in decision-making positions implement appropriate corrective actions when it is determined that a violation of this nature has occurred. The EOAU is also responsible for the implementation of program improvements to make certain that USDA continues to provide its services in a non-discriminatory manner. The initiative has been effective in ensuring that all USDA personnel are held accountable and responsible for their actions to implement program improvements, to ensure that all services are available in a non-discriminatory manner, and in raising awareness of individuals in positions of authority to make responsible decisions. The initiative has resulted in an increase in the number of instances where individuals are now being held accountable for action or inaction that resulted in a finding of discrimination and/or significant liability to USDA.

In October 2007, USDA OHRM updated Departmental Regulation (DR) 4070-735-001, Employee Responsibility and Conduct. The updated DR works in conjunction with Government-wide ethics regulations and establishes guidelines and requirements for USDA employees. Specifically, it prohibits employees from engaging in workplace harassment, sexually inappropriate conduct, retaliation in response to protected activities, creating a hostile work environment, or illegal discrimination. The updated DR also requires that each employee receive a copy to ensure that they are fully aware of the responsibility and conduct standards for the Department.

In January 2006, the former USDA Office of Civil Rights (now OASCR) and OHRM issued DR-4300-010, Civil Rights Accountability Policy and Procedures. The purpose of this directive is to make certain that employees are held accountable for discriminatory or related misconduct and outlines management's obligation to take appropriate corrective action against those who have engaged in these prohibited acts. This policy also requires that all USDA employees be made aware of its contents.

In addition to Department-wide policies and initiatives, USDA mission areas have taken steps to improve the civil rights environment throughout their respective subordinate agencies. The most recent initiatives are the following: the Leadership Accountability Action Plan which was updated by the FS in 2011; and a newly established Policy on Equal Employment Opportunity which was implemented by the Office of the Chief Financial Officer in 2011. These initiatives complement the overall Departmental policy of increased accountability. The following is a list of other current policies by agency:

Food, Nutrition & Consumer Services

FNS & CNPP Harassment Prevention Policy 2009-3

FNS & CNPP Civil Rights Policy 2009-2

Food Safety

Directive 4735.3; Employee Responsibilities and Conduct

Forest Service

Forest Service Civil Rights Policy Statement

Forest Service Anti-Harassment Policy

Research, Education & Economics

Policy & Procedure 461.5; Misconduct, Discipline, and Adverse Actions

Rural Development

RD Instruction 2045-GG; Disciplinary and Adverse Actions, Performance-Based Actions, and Probationary Terminations

## **PART IV**

# **USDA Federal Court Litigation Statistics for Fiscal Year 2012**

The following tables provide composite data for cases in Federal court pending or resolved in FY 2012 and arising under the antidiscrimination and whistleblower protection laws.

**Table 11  
Federal Cases Pending in FY 2012**

<b>Federal Cases Pending in FY 2012</b>	
Pending District Court Cases	33
Pending Appellate Court Cases	9
New Cases Filed in District Court	22
Note: Cases pending at any time during the year, including those filed during the year, and those disposed of during the year.	

**Table 12  
Pending Cases**

<b>Pending Cases</b>					
	29 U.S.C. §206(d)	29 U.S.C. §631	29 U.S.C. §633a	29 U.S.C. §791	42 U.S.C. §2000e-16
Disposed of during FY 2012	0	0	4*	3	6
Still Pending at end of FY 2012	0	0	6**	9	24***
* More than one basis alleged in 2 case.					
** More than one basis alleged in 4 cases.					
*** More than one basis alleged in 1 case.					

**Table 13  
Disposition of Cases  
(Including Dismissals)**

<b>Disposition of Cases (Including Dismissals)</b>					
	29 U.S.C. §206(d)	29 U.S.C. §631	29 U.S.C. §633a	29 U.S.C. §791	42 U.S.C. §2000e-16
Settlements	0	0	1	0	3***
Withdrawals	0	0	0	0	0
Final Judgment for Complainant	0	0	1***	3	3
Final Judgment for Agency	0	0	0	0	0
*** More than one basis alleged in 1 case.					

# Appendix



# Equal Employment Opportunity Data Posted Pursuant to the No Fear Act

USDA  
FY 2012 for period ending September 30, 2012

Complaint Activity	Comparative Data				
	Previous Fiscal Year Data				
	2008	2009	2010	2011	2012
Number of Complaints Filed	508	528	473	525	536
Number of Complainants	395	394	461	509	519
Repeat Filers	48	21	7	12	12
Complaints by Basis	Comparative Data				
	Previous Fiscal Year Data				
<i>Note: Complaints can be filed alleging multiple bases. The sum of the bases may not equal total complaints filed.</i>	2008	2009	2010	2011	2012
Race	184	181	166	221	215
Color	36	44	23	32	56
Religion	18	13	16	21	23
Reprisal	267	248	181	242	281
Sex	174	178	159	207	228
PDA	0	0	0	0	0
National Origin	44	61	49	57	61
Equal Pay Act	0	3	1	4	3
Age	158	168	157	191	177
Disability	107	91	97	104	141
Genetics	0	0	0	0	2
Non-EEO	31	33	44	42	55

Complaints by Issue	Comparative Data				
	Previous Fiscal Year Data				
<i>Note: Complaints can be filed alleging multiple bases. The sum of the bases may not equal total complaints filed.</i>	2008	2009	2010	2011	2012
Appointment/Hire	28	20	23	38	23
Assignment of Duties	52	80	51	62	100
Awards	24	21	11	20	22
Conversion to Full-time	0	0	1	0	1
<b>Disciplinary Action</b>					
Demotion	3	4	5	3	7
Reprimand	15	25	13	24	42
Suspension	25	23	26	19	40
Removal	7	7	6	5	10
Other	6	11	8	10	28
Duty Hours	9	9	5	6	15
Evaluation Appraisal	62	66	59	64	60
Examination/Test	2	2	1	1	4
<b>Harassment</b>					
Non-Sexual	215	237	177	224	303
Sexual	15	15	13	23	16
Medical Examination	0	0	1	0	4
Pay (Including Overtime)	9	5	10	13	14
Promotion/Non-Selection	124	117	103	135	118
<b>Reassignment</b>					
Denied	4	10	5	8	13

Directed	17	35	20	20	33
Reasonable Accommodation	36	28	32	36	58
Reinstatement	1	1	2	1	2
Retirement	3	6	1	6	2
Termination	11	35	34	39	35
Terms/Conditions of Employment	50	49	38	52	85
Time and Attendance	36	31	22	28	58
Training	38	35	22	27	49
Other	51	57	64	60	61
<b>Processing Time</b>	<b>Comparative Data</b>				
	<b>Previous Fiscal Year Data</b>				
	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>
Complaints pending during fiscal year					
Average number of days in investigation	234.76	160.67	314.71	295.88	248.60
Average number of days in final action	736.90	677.81	626.85	360.54	214.93
Complaint pending during fiscal year where hearing was requested					
Average number of days in investigation	233.11	20.60	281.79	282.63	235.23
Average number of days in final action	213.93	176.76	189.78	182.83	133.49
Complaint pending during fiscal year where hearing was not requested					
Average number of days in investigation	235.92	256.26	335.43	304.05	273.79
Average number of days in final action	914.71	825.73	817.92	416.86	255.96

Complaints Dismissed by Agency	Comparative Data									
	Previous Fiscal Year Data									
	2008		2009		2010		2011		2012	
Total Complaints Dismissed by Agency	73		54		39		56		45	
Average days pending prior to dismissal	288		248		257		119		145	
Complaints Withdrawn by Complainants										
Total Complaints Withdrawn by Complainants	31		24		33		31		29	
Total Final Agency Actions Finding Discrimination	Comparative Data									
	Previous Fiscal Year Data									
	2008		2009		2010		2011		2012	
	#	%	#	%	#	%	#	%	#	%
Total Number Findings	10		15		27		32		17	
Without Hearing	4	40	13	87	22	81	29	91	16	94
With Hearing	6	60	2	13	5	19	3	9	2 <sup>4</sup>	6

Findings of Discrimination Rendered by Basis	Comparative Data									
	Previous Fiscal Year Data									
	2008		2009		2010		2011		2012	
<i>Note: Complaints can be filed alleging multiple bases. The sum of the bases may not equal total complaints and findings.</i>	#	%	#	%	#	%	#	%	#	%
<b>Total Number Findings</b>	8		15		27		32		17	
Race	0	0	4	27	7	26	2	6	6	35
Color	0	0	0	0	2	7	0	0	0	0
Religion	0	0	0	0	0	0	0	0	0	0

<sup>4</sup> This number has subsequently increase by 1 due to database reconciliation efforts.

Reprisal	6	75	4	27	12	44	11	34	6	35
Sex	2	25	6	40	5	19	5	16	2	12
PDA	0	0	0	0	0	0	0	0	0	0
National Origin	0	0	1	7	1	4	0	0	1	6
Equal Pay Act	0	0	0	0	0	0	0	0	0	0
Age	3	38	7	47	9	33	12	38	4	24
Disability	0	0	2	13	5	19	10	31	6	35
Genetics	0	0	0	0	0	0	0	0	0	0
Non-EEO	0	0	0	0	1	4	0	0	0	0
<b>Findings After Hearing</b>	4		2		5		3		1	
Race	0	0	1	50	2	40	0	0	0	0
Color	0	0	0	0	0	0	0	0	0	0
Religion	0	0	0	0	0	0	0	0	0	0
Reprisal	2	50	1	50	3	60	2	67	1	100
Sex	1	25	1	50	2	40	0	0	0	0
PDA	0	0	0	0	0	0	0	0	0	0
National Origin	0	0	0	0	0	0	0	0	0	0
Equal Pay Act	0	0	0	0	0	0	0	0	0	0
Age	3	75	0	0	3	60	0	0	0	0
Disability	0	0	0	0	1	20	1	33	0	0
Genetics	0	0	0	0	0	0	0	0	0	0
Non-EEO	0	0	0	0	0	0	0	0	0	0
<b>Findings Without Hearing</b>	4		8		16		23		16	
Race	0	0	3	38	1	6	2	9	6	38
Color	0	0	0	0	0	0	0	0	0	0
Religion	0	0	0	0	0	0	0	0	0	0

Reprisal	4	100	0	0	7	44	5	22	5	31
Sex	1	25	2	25	2	13	4	17	2	13
PDA	0	0	0	0	0	0	0	0	0	0
National Origin	0	0	1	13	1	6	0	0	1	6
Equal Pay Act	0	0	0	0	0	0	0	0	0	0
Age	0	0	6	75	5	31	11	48	4	25
Disability	0	0	2	25	3	19	8	35	6	38
Genetics	0	0	0	0	0	0	0	0	0	0
Non-EEO	0	0	0	0	1	6	0	0	0	0
<b>Findings of Discrimination Rendered by Issue</b>	<b>Comparative Data</b>									
	<b>Previous Fiscal Year Data</b>									
	<b>2008</b>		<b>2009</b>		<b>2010</b>		<b>2011</b>		<b>2012</b>	
	<b>#</b>	<b>%</b>	<b>#</b>	<b>%</b>	<b>#</b>	<b>%</b>	<b>#</b>	<b>%</b>	<b>#</b>	<b>%</b>
<b>Total Number Findings</b>	8		15		27		32		17	
Appointment/Hire	0	0	0	0	0	0	0	0	0	0
Assignment of Duties	2	25	0	0	2	7	4	13	2	12
Awards	2	25	0	0	0	0	0	0	0	0
Conversion to Full-time	0	0	0	0	0	0	0	0	0	0
<b>Disciplinary Action</b>										
Demotion	0	0	0	0	0	0	0	0	0	0
Reprimand	0	0	0	0	0	0	0	0	0	0
Suspension	0	0	1	7	1	4	2	6	0	0
Removal	0	0	0	0	1	4	0	0	0	0
Other	0	0	0	0	0	0	0	0	1	6
Duty Hours	0	0	0	0	0	0	0	0	0	0
Evaluation Appraisal	3	38	1	7	0	0	3	9	3	18

Examination/Test	0	0	0	0	0	0	0	0	0	0
Harassment										
Non-Sexual	4	50	1	7	12	44	16	50	8	47
Sexual	1	13	0	0	0	0	0	0	1	6
Medical Examination	0	0	0	0	0	0	0	0	0	0
Pay (Including Overtime)	1	13	1	7	0	0	1	3	1	6
Promotion/Non-Selection	0	0	10	67	4	15	7	22	1	6
Reassignment										
Denied	0	0	0	0	0	0	2	6	1	6
Directed	2	25	1	7	1	4	6	19	1	6
Reasonable Accommodation	0	0	0	0	3	11	4	13	4	24
Reinstatement	0	0	0	0	0	0	0	0	0	0
Retirement	0	0	0	0	1	4	1	3	0	0
Termination	0	0	1	7	1	4	2	6	1	6
Terms/Conditions of Employment	0	0	1	7	0	0	2	6	0	0
Time and Attendance	0	0	0	0	1	4	3	9	3	18
Training	0	0	0	0	0	0	0	0	0	0
Other - User Defined	1	13	0	0	3	11	0	0	1	6
<b>Findings After Hearing</b>	4		2		5		3		1	
Appointment/Hire	0	0	0	0	0	0	0	0	0	0
Assignment of Duties	1	25	0	0	0	0	2	67	0	0
Awards	1	25	0	0	0	0	0	0	0	0
Conversion to Full-time	0	0	0	0	0	0	0	0	0	0
Disciplinary Action										
Demotion	0	0	0	0	0	0	0	0	0	0

Reprimand	0	0	0	0	0	0	0	0	0	0
Suspension	0	0	0	0	0	0	0	0	0	0
Removal	0	0	0	0	0	0	0	0	0	0
Other	0	0	0	0	0	0	0	0	0	0
Duty Hours	0	0	0	0	0	0	0	0	0	0
Evaluation Appraisal	1	25	0	0	0	0	0	0	0	0
Examination/Test	0	0	0	0	0	0	0	0	0	0
Harassment										
Non-Sexual	3	75	0	0	2	40	1	33	0	0
Sexual	0	0	0	0	0	0	0	0	0	0
Medical Examination	0	0	0	0	0	0	0	0	0	0
Pay (Including Overtime)	1	25	0	0	0	0	0	0	0	0
Promotion/Non-Selection	0	0	1	50	2	40	0	0	0	0
Reassignment										
Denied	0	0	0	0	0	0	0	0	0	0
Directed	1	25	1	50	0	0	0	0	0	0
Reasonable Accommodation	0	0	0	0	0	0	0	0	0	0
Reinstatement	0	0	0	0	0	0	0	0	0	0
Retirement	0	0	0	0	1	20	0	0	0	0
Termination	0	0	0	0	0	0	0	0	0	0
Terms/Conditions of Employment	0	0	0	0	0	0	0	0	0	0
Time and Attendance	0	0	0	0	0	0	0	0	1	100
Training	0	0	0	0	0	0	0	0	0	0
Other - User Defined	1	25	0	0	0	0	0	0	0	0
<b>Findings Without Hearing</b>	4		13		22		29		16	



Appointment/Hire	0	0	0	0	0	0	0	0	0	0
Assignment of Duties	1	25	0	0	2	9	2	7	2	13
Awards	1	25	0	0	0	0	0	0	0	0
Conversion to Full-time	0	0	0	0	0	0	0	0	0	0
Disciplinary Action										
Demotion	0	0	0	0	0	0	0	0	0	0
Reprimand	0	0	0	0	0	0	0	0	0	0
Suspension	0	0	1	8	1	5	2	7	0	0
Removal	0	0	0	0	1	5	0	0	0	0
Other	0	0	0	0	0	0	0	0	1	6
Duty Hours	0	0	0	0	0	0	0	0	0	0
Evaluation Appraisal	2	50	1	8	0	0	3	10	3	19
Examination/Test	0	0	0	0	0	0	0	0	0	0
Harassment										
Non-Sexual	1	25	1	8	10	45	15	52	8	50
Sexual	1	25	0	0	0	0	0	0	1	6
Medical Examination	0	0	0	0	0	0	0	0	0	0
Pay (Including Overtime)	0	0	1	8	0	0	1	3	1	6
Promotion/Non-Selection	0	0	9	69	2	9	7	24	1	6
Reassignment										
Denied	0	0	0	0	0	0	2	7	1	6
Directed	1	25	0	0	1	5	6	21	1	6
Reasonable Accommodation	0	0	0	0	3	14	4	14	4	25
Reinstatement	0	0	0	0	0	0	0	0	0	0
Retirement	0	0	0	0	0	0	1	3	0	0
Termination	0	0	1	8	1	5	2	7	1	6

Terms/Conditions of Employment	0	0	1	8	0	0	2	7	0	0
Time and Attendance	0	0	0	0	1	5	3	10	2	13
Training	0	0	0	0	0	0	0	0	0	0
Other - User Defined	0	0	0	0	3	14	0	0	1	6

<b>Pending Complaints Filed in Previous Fiscal Years by Status</b>	<b>Comparative Data</b>				
	<b>Previous Fiscal Year Data</b>				
	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>
Total complaints from previous Fiscal Years	1333	1210	939	837	884
Total Complainants	1063	932	696	706	797
<b>Number complaints pending</b>					
Investigation	102	89	81	63	44
ROI issued, pending Complainant's action	6	1	7	12	5
Hearing	350	300	228	290	348
Final Agency Action	360	109	88	80	75
Appeal with EEOC Office of Federal Operations	23	24	28	30	10
<b>Complaint Investigations</b>	<b>Comparative Data</b>				
	<b>Previous Fiscal Year Data</b>				
	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>
Pending Complaints Where Investigations Exceed Required Time Frames	163	171	176	161	117