

No FEAR Act
ANNUAL REPORT
FISCAL YEAR 2017



U.S. Department of Agriculture

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Executive Summary

Annual Reporting Requirements

This is USDA's thirteenth annual report submitted pursuant to the Notification and Federal Employee Anti-discrimination 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) 2017. This report contains the:

- number of complaints filed with USDA alleging discrimination based on race, sex (including gender identity), sexual orientation, 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 anti-discrimination or whistleblower laws or engaged in prohibited personnel practices;
- number of employees USDA has disciplined for discrimination, retaliation, harassment, or prohibited personnel practices;
- number of cases in Federal Court arising under the anti-discrimination and whistleblower protection laws; and
- statistical data USDA is required to post on its public website.

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 and procedures. 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:

- ensure USDA programs are delivered efficiently, effectively, and with integrity and a focus on customer service;
- maximize the ability of American agricultural producers to prosper by feeding and clothing the world;
- promote American agricultural products and exports;
- facilitate rural prosperity and economic development;
- strengthen the stewardship of private lands through technology and research;
- foster productive and sustainable use of our National Forest System Lands; and
- provide all Americans access to a safe, nutritious and secure food supply.

Summary of the Report

Congress passed the No FEAR Act in May 2002, to reduce anti-discrimination and retaliation in Federal Agencies, increase agency accountability, emphasize training for managers in the management of a diverse workforce, and encourage dispute resolution and employee 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 an increase of 31 EEO complaints being filed from FY 2016 to FY 2017. The number of filers increased by 24 from FY 2016 to FY 2017. Also, there was a decrease in the number of findings of discrimination from FY 2016 to FY 2017. Data illustrating this trend can be found in Appendix A.

A review of disciplinary actions taken against employees who violated Federal anti-discrimination laws and whistleblower protection statutes shows that in FY 2017, there were 23 disciplinary actions (See Part III: Table 9 Disciplinary Actions) taken against employees, as compared to 7¹ disciplinary actions taken against employees in FY 2016. This increase in disciplinary actions between FY 2016 and FY 2017 resulted from the establishment of USDA's Equal Opportunity Accountability initiative, which has strengthened procedures that measure and evaluate both organizational and individual accountability in providing fair and equitable treatment for all USDA employees. The reimbursement provisions of the No FEAR Act continue to result in financial accountability for sub-agencies and individual staff offices within USDA.

¹ Subsequent database reconciliation revealed there were a total of eight findings of discrimination.

During FY 2017, USDA and the Office of the Assistant Secretary for Civil Rights (OASCR) implemented several initiatives to reduce the number of EEO complaints. These initiatives and accomplishments are outlined below:

- collaborated with USDA agencies, Departmental Management (DM), and staff offices to ensure that regulations and reorganizations do not adversely impact USDA employees.
- extended the contract with Language Doctors, LLC for language interpretation, translation, and certification services for OASCR.
- instituted an EEO 180-Day Initiative which increased efficiencies and reduced processing times to historic measures. OASCR staff developed training materials and streamlined standard operating procedures to eradicate pending inventories of formal complaints and appeal records to be submitted to Equal Employment Opportunity Commission's (EEOC) Office of Federal Operations. OASCR led and served on several work groups in order to increase efficiency including: Standardization of the EEO Counselor Report and Improved Formal Complaint Processing. In addition, OASCR staff evaluated and made recommendations for permanent revisions to operating procedures to ensure continued improvement and efficiency;
- processed 480 investigations in FY 2017. This was an increase compared to the 411 investigations processed in FY 2016, and the 426 investigations processed in FY 2015;
- monitored the sufficiency of compliance efforts across the Department by evaluating 19 compliance reviews conducted by USDA agencies, as well as, 4 settlement and conciliation agreements;
- conducted a briefing of the Agency Head Assessment for the agency Administrators and senior managers, civil rights and EEO practitioners, and program analysts and provided an overview of the Performance Plan requirements and procedures. This comprehensive evaluation and assessment of the agencies' senior executives ensure civil rights compliance and accountability;
- provided USDA personnel with training on conflict management techniques and strategies to utilize when encountering conflict. OASCR coordinated training workshops that were offered via live audience and webinar. The training provided employees with tools needed to resolve the conflict which ultimately improved employees' morale, working relationships, and communication amongst co-workers and management;
- partnered with several USDA agencies and provided field-based training in several locations on topics such as conflict management, team building, and leadership training for USDA personnel. OASCR has broadened its training capability to meet the needs of the workplace. This led to an increased interest by USDA leadership to add leadership tools such as conflict management and Alternative Dispute Resolution (ADR). OASCR also developed a web site which hosts a library of conflict management tools such as presentations and resources for managers and employees;
- conducted 21 class-room instructor-led Civil Rights training sessions, attended by 387 employees at 15 USDA agencies and staff offices across the country, while at the same time reaching 86,625 employees across the department through AgLearn, for a total of

87,000 employees trained. Training topics included: the EEO complaint process, reasonable accommodation, anti-harassment, reprisal, alternative dispute resolution, unconscious bias, Lesbian, Gay, Bisexual, and Transgender nondiscrimination in the Federal workplace; conflict resolution; limited English proficiency, workplace bullying; team building and communications;

- launched an online training course on AgLearn, unconscious bias, which was the mandatory FY 2017 civil rights training topic. By the end of the fiscal year, approximately 86,000 employees (77%) had completed the mandatory training. Evaluation feedback on the course was very positive—the course was video-based and featured Howard Ross, a well-known expert, as the trainer. Use of AgLearn significantly increased the number of employees trained across the department;
- assisted the Office of Human Resource Management, Special Emphasis Program staff in planning and conducting a training program in recognition of Women’s Equality Day. The session focused on developing a competitive resume and identifying and strengthening transferrable skills was on August 15, 2017; approximately 80 individuals attended and more than 100 participated on-line;
- ensured the Civil Rights Enterprise System met the annual assessment and authorization requirements established by USDA’s Office of Chief Information Officer (OCIO). During this process, the USDA/OCIO reviewed and issued a memo, which granted OASCR’s Chief Information Officer the Authority to Operate; and
- handled approximately 22,000 Employment discrimination complaint inquiries. As front-line professionals, each Customer Service Unit staff was trained to answer and return calls promptly, provide helpful and accurate information and defuse customer complaints by maintaining professionalism and treating each caller with respect.

**PART I:
USDA Formal EEO Complaints
for
Fiscal Years 2016 – 2017**

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

Introduction

This section contains comparative information regarding the number of formal EEO complaints filed and the number of filers for FYs 2016 and 2017.

Summary of Data

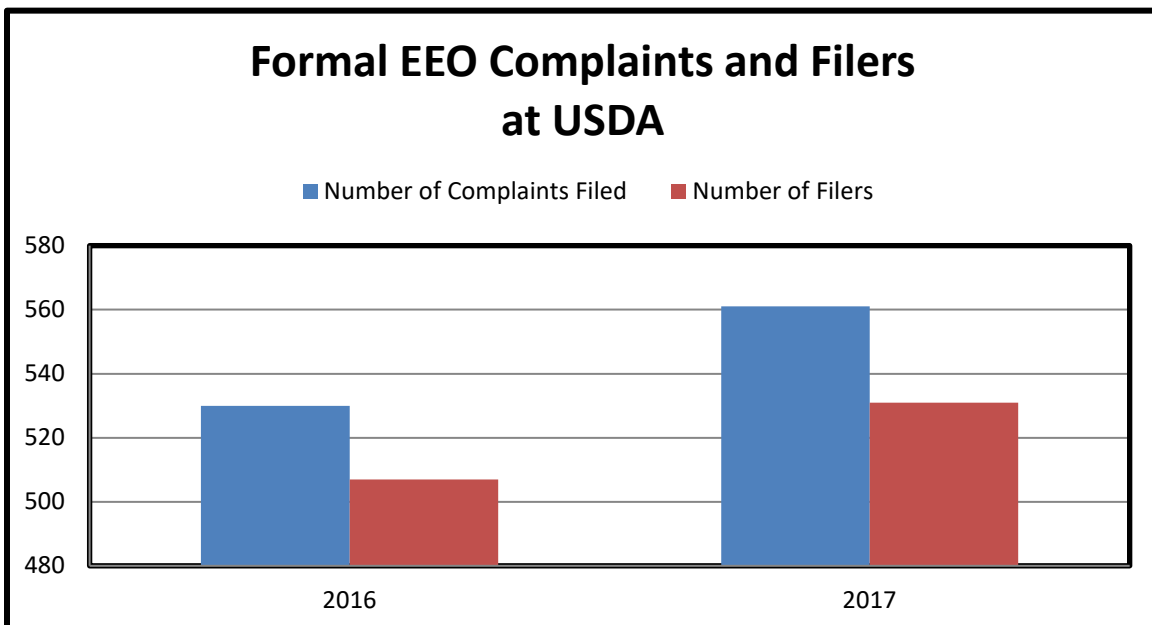
Table 1 below indicates the number of formal EEO complaints filed with USDA by FY and the number of individuals who filed complaints. It shows an increase in the number of complaints filed and the number of filers over the prior year (See Graph 1).

In FY 2017, the number of complaints filed was 561; whereas, in FY 2016, the number of complaints filed was 530. This represents a six percent increase in complaints filed. Additionally, the number of filers in FY 2017 was 531; whereas, in FY 2016, the number of filers was 507. This represents an eight percent increase in the number of filers.

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

Fiscal Years	Number of Complaints Filed	Number of Filers
2016	530	507
2017	561	531

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 2016 and 2017. The basis of the complaint is the protected characteristic 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 2017 are: (1) retaliation; (2) race; (3) sex; and (4) age. In FY 2016, 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.

Complaints Alleging Retaliation

“Retaliation” was the most frequently alleged basis in formal EEO complaints at USDA for both FYs 2017 and 2016. The basis of “Retaliation” was cited in 311 formal EEO complaints in FY 2017, compared to 270 formal EEO complaints in FY 2016. This represents a 15 percent increase (41 complaints) over a two-year period.

Complaints Alleging Race Discrimination

“Race” was the second most frequently alleged basis in formal EEO complaints at USDA in FY 2017. The basis of “Race” was cited in 243 formal EEO complaints in FY 2017, compared to 222 complaints in FY 2016, a 9 percent increase (21 complaints) over a two-year period.

Complaints Alleging Sex Discrimination

“Sex” was the third most frequently alleged basis in formal EEO complaints at USDA in FY 2017. The basis of “Sex” was cited in 216 formal EEO complaints in FY 2017, compared to 206 complaints in FY 2016, a 5 percent increase (10 complaints) over a two-year period.

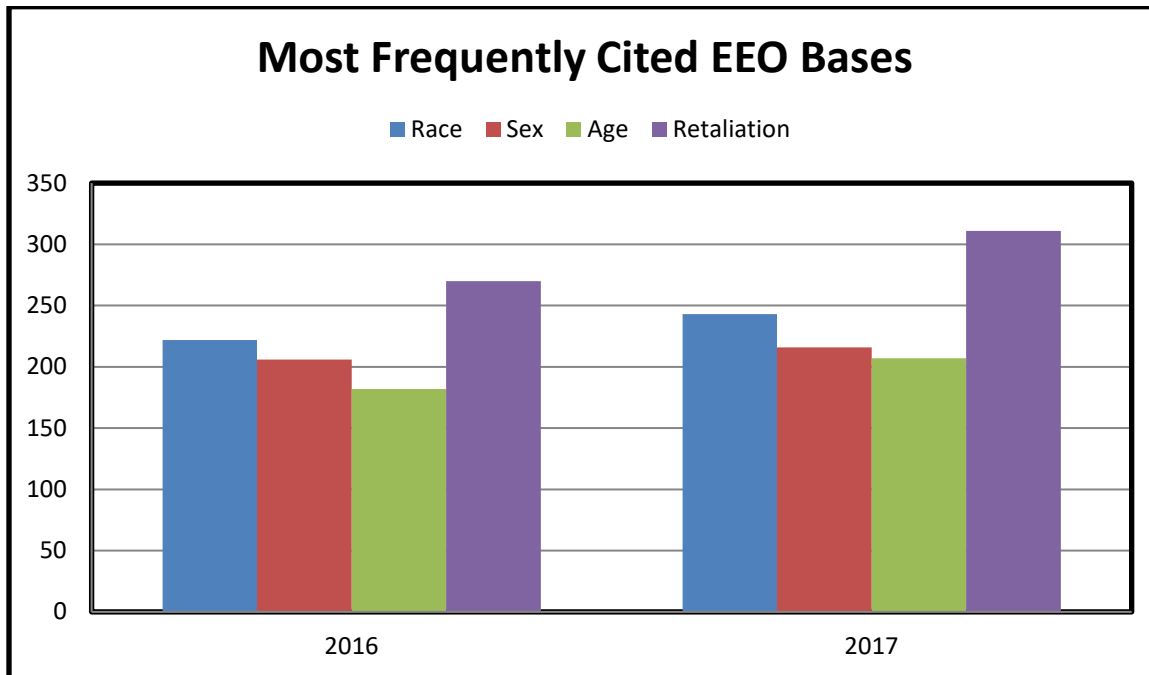
Complaints Alleging Age Discrimination

“Age” was the fourth most frequently alleged basis in formal EEO complaints at USDA in FY 2017. The basis of “Age” was cited in 207 formal EEO complaints in FY 2017, compared to 182 complaints in FY 2016, a 14 percent increase (25 complaints) over a two-year period.

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

EEO Bases in Formal EEO Complaints									
Year	Race	Color	Religion	Sex	National Origin	Disability	Age	Retaliation	Other²
2016	222	63	35	206	47	157	182	270	41
2017	243	75	35	216	67	185	207	311	66

Graph 2
Most Frequently Cited Bases



² Other USDA protected bases include Pregnancy Discrimination Act (PDA), Equal Pay Act, Genetics, and Non-EEO. Additionally, the bases of sex include gender identity and gender expression.

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 2016 and 2017. 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 subject matter about which the individual is complaining or the alleged discriminatory incident for which the individual is seeking redress. Table 3 below 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 2017 were: (1) Harassment; (2) Terms/Condition of Employment; 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 2017, with 355 filings. In contrast, “Harassment” had 300 filings in FY 2016, indicating an 18 percent increase (55 complaints) from FY 2016 to FY 2017.

“Terms/Condition of Employment” was the second most frequently cited issue in formal EEO cases in FY 2017, with 146 filings. In contrast, “Terms/Condition of Employment” had 102 filings in FY 2016, indicating a 43 percent increase (44 complaints) from FY 2016 to FY 2017.

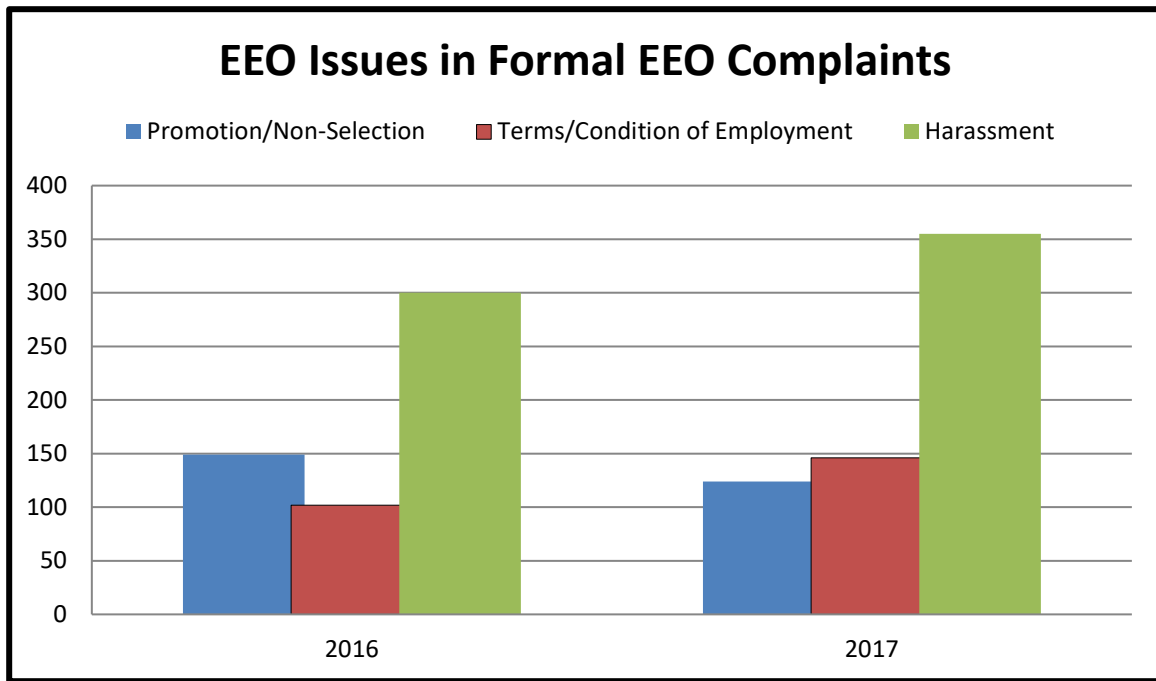
“Promotion/Non-selection” was the third most frequently cited issue in formal EEO cases in FY 2017, with 124 filings. In contrast, “Promotion/Non-selection” had 149 filings in FY 2016, indicating a 17 percent decrease (25 complaints) from FY 2016 to FY 2017.

**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	Performance Evaluation/Appraisal	Examination/Test	Harassment	Medical Examination	Pay/Overtime	Promotion /Non-Selection	Reassignment	Reasonable Accommodation Disability	Reinstatement	Retirement	Termination	Terms and Conditions of Employment	Time and Attendance	Training	*Other
2016	27	92	9	0	71	20	91	1	300	1	21	149	32	69	2	4	27	102	59	51	38
2017	40	87	18	3	105	18	91	2	355	4	30	124	37	84	0	5	36	146	67	40	33

*Other USDA protected issues include Religious Accommodation, Sex-Stereotyping, Telework, and Other.

**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 2016 and 2017. The formal EEO complaint process has various stages. Not all formal complaints complete all processing 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 processing 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.

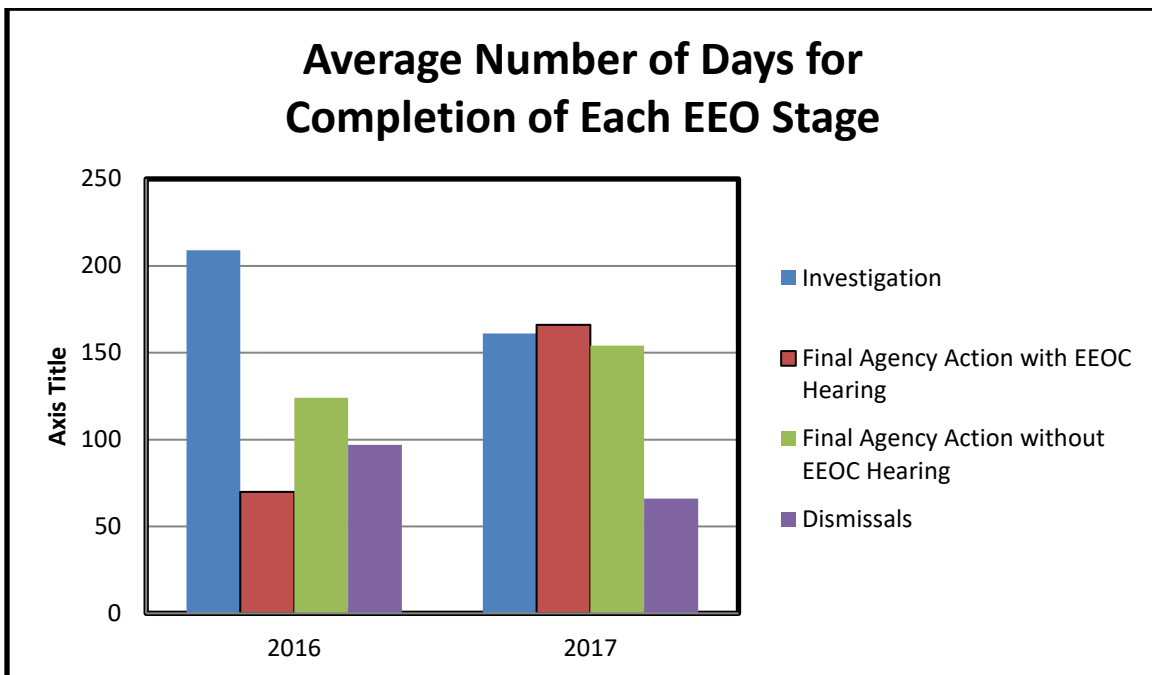
(1) Average Number of Days for Completion of Selected EEO Stages

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 and in dismissals. For all Final Agency Actions with an EEOC hearing and without an EEOC hearing, there was an upward trend in the average number of days for processing.

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

Year	Investigation	Final Agency Action with EEOC Hearing	Final Agency Action without EEOC Hearing	Dismissals
2016	209	70	124	97
2017	161	109	181	66

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



(2) Pending Complaints at Various Stages

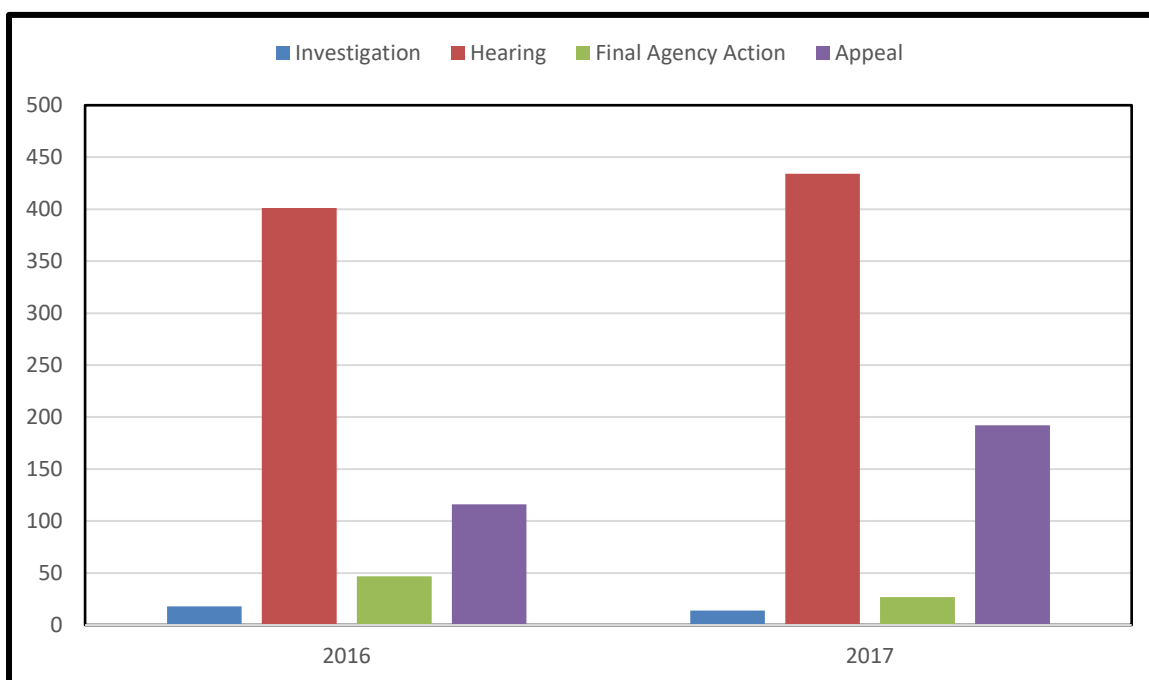
Table 5 below illustrates the number of pending EEO complaints in FYs 2016 and 2017, at each EEO stage.

Graph 5 shows a downward trend in pending complaints in following stages: Final Agency Actions; and Investigations. In addition, Graph 5 shows an upward trend in pending complaints in following stages: Hearings; and Appeals.

Table 5
Pending EEO Formal Complaints by Stage³

Year	Investigation	Hearing	Final Agency Action	Appeal
2016	18	401	47	116
2017	14	434	27	192

Graph 5
Pending EEO Formal Complaints by Stage



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

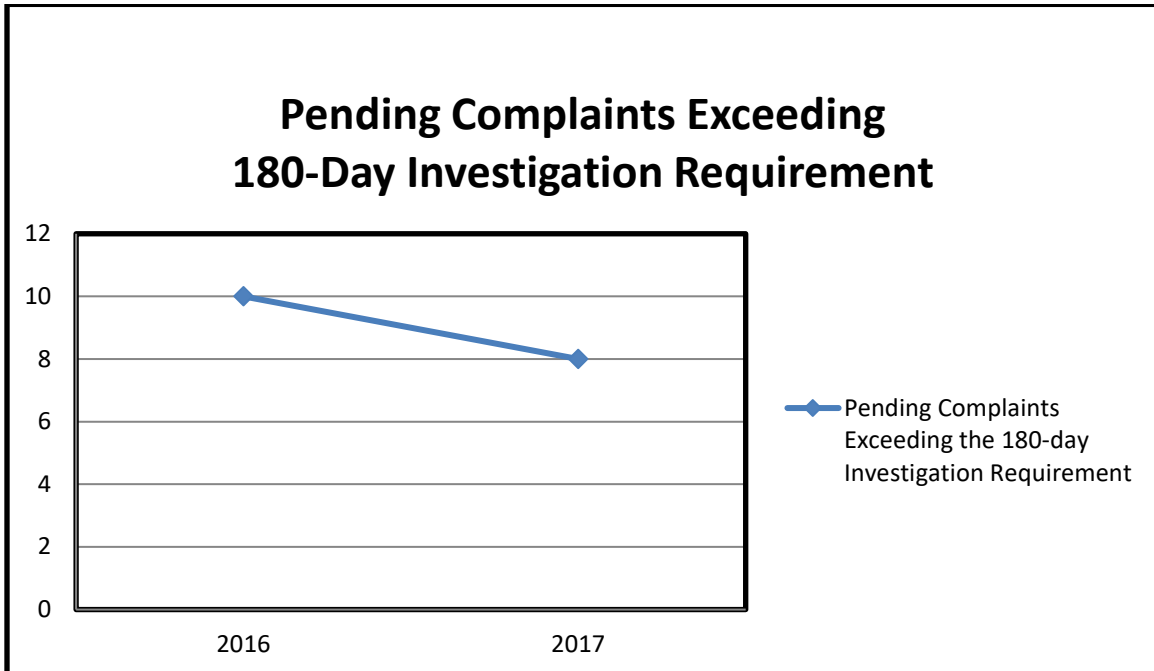
Table 6 and Graph 6 shows a 20 percent decrease for pending formal complaints that exceed the 180-day investigation requirement over the two-year reporting period.

³ The data reflected in Table 5 is inclusive of Pending EEO Formal Complaints in the Investigation Stage that are either: Formal, Mixed or Class Complaints from the previous fiscal year (FY). The numbers may not comport with other FY EEO data reports and methodologies.

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

Pending Complaints Exceeding the 180-day Investigation Requirement	
2016	10
2017	8

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.

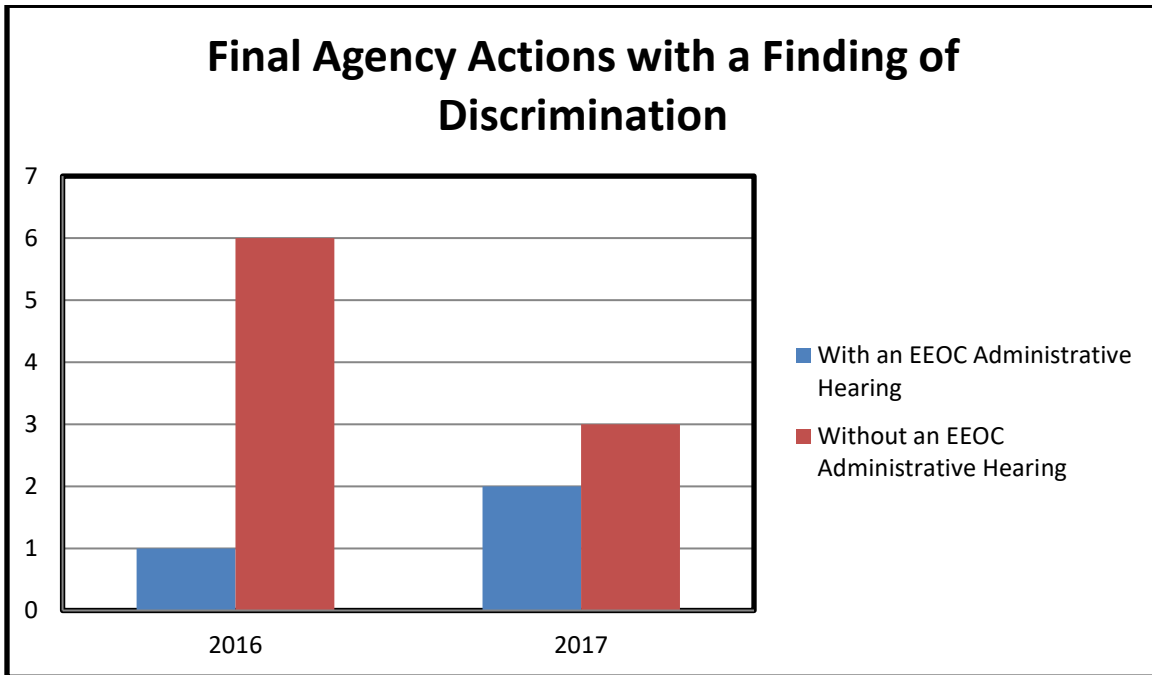
Summary of Data

Table 7 and Graph 7 show the number of findings of discrimination issued with an EEOC Administrative Hearing increased by one, from FY 2016 to FY 2017, and the number of findings without an EEOC Administrative Hearing decreased by three from FY 2016 to FY 2017.

Table 7
Final Agency Actions with a Finding of Discrimination

Year	With an EEOC Administrative Hearing	Without an EEOC Administrative Hearing
2016 ⁴	1	6
2017	2	3

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:

(1) Causal Analysis

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

⁴ Subsequent database reconciliation revealed that there were a total of eight findings of discrimination in FY 2016.

- The Agricultural Marketing Service (AMS) reported a decrease by eight in the number of complaints filed in FY 2017. Specifically, there were 2 formal complaints filed in FY 2017, as compared to 10 formal complaints filed in FY 2016. AMS attributes the decrease in formal complaints filed to the intensification of Civil Rights and EEO training and the Civil Rights Program’s proactive approach in resolving complaints in the informal stage of the compliant process.
- The Animal and Plant Health Inspection Service (APHIS) reported an increase by 19 in the number of complaints filed in FY 2017. Specifically, there were 60 formal complaints filed in FY 2017, as compared to 41 formal complaints filed in FY 2016. APHIS noted there was no definitive contributing factor(s) to which this increase may be attributed.
- The Agricultural Research Service (ARS) reported a decrease by two in the number of complaints filed in FY 2017. Specifically, there were 17 formal complaints filed in FY 2017, as compared to 19 formal complaints filed in FY 2016. ARS attributes this decrease to the timely and effective issuance of all current EEO policies, as well as, identifying and enforcing mandatory EEO training.
- The Conflict Complaints Division, which processes conflict cases⁵, reported an increase by 10 in the number of complaints filed in FY 2016. Specifically, there were 57 formal complaints filed in FY 2017, as compared to 47 formal complaints filed in FY 2016.
- The Economic Research Service (ERS) reported a decrease by one in the number of complaints filed in FY 2017. Specifically, there was zero formal complaint filed in FY 2017, as compared to one formal complaint filed in FY 2016. ERS attributes the decrease in complaints to the early intervention of the Office of Civil Rights and more importantly by ERS managers. Through training, managers were taught EEO complaints can be avoided if they take time to listen to employee concerns daily.
- The Foreign Agricultural Service (FAS) reported an increase by two in the number of complaints filed in FY 2017. Specifically, there were nine formal complaints filed in FY 2017, as compared to seven formal complaints filed in FY 2016. FAS attributes the increase in the number of complaints filed to its effort in educating employees on EEO and civil rights policies and their rights to participate in the EEO process without reprisal or retaliation. This education and information sharing has educated employees on EEO issues, concerns and the opportunity to come to OASCR to discuss their issues and concerns.

⁵ Conflict case(s) is an EEO complaint involving facts and/or allegations that are determined to pose an actual, perceived, and or potential conflict between a Responsible Management Official or complainant’s position or personal interest, and USDA’s responsibility to administer a fair and impartial investigative process and resolution of complaints.

- The Food and Nutrition Service (FNS) reported an increase by two in the number of complaints filed in FY 2017. Specifically, there were 20 formal complaints filed in FY 2017, as compared to 18 formal complaints filed in FY 2016. FNS attributes the increase in complaints to FNS' leadership turnover and a re-organization in FY 2015 and FY 2016. These changes are believed to have continued to create a stressful environment for some employees in FY 2017.
- The Forest Service (FS) reported a decrease by 15 in the number of complaints filed in FY 2017. Specifically, there were 143 formal complaints filed in FY 2017, as compared to 158 formal complaints filed in FY 2016. FS attributes this decrease to the continuous commitment to eradicating workplace discrimination by creating a variety of Civil Rights programs and trainings for employees and managers.
- The Farm Service Agency (FSA) reported an increase by six in the number of formal EEO complaints filed FY 2017. Specifically, there were 33 formal complaints filed in FY 2017, as compared to 27 formal complaints filed in FY 2016. FSA attributes this to a newly initiated policy that requires all FSA employees to view and acknowledge reading all FSA civil rights policy letters through AgLearn.
- The Food Safety and Inspection Service (FSIS) reported a decrease by 10 in the number of formal EEO complaints filed in FY 2017. Specifically, there were 58 complaints filed in FY 2017, as compared to 68 formal complaints filed in FY 2016. FSIS attributes the decrease to the Agency's continued efforts to provide EEO and Civil Rights training and market ADR to the workforce.
- The Grain Inspection, Packers and Stockyards Administration (GIPSA) reported an increase by four in the number of formal EEO complaints filed in FY 2017. Specifically, there were 12 formal complaints filed in FY 2017, as compared to 8 formal complaints filed in FY 2016. GIPSA attributes the increase to the rise in termination of employees.
- The National Agricultural Statistics Service (NASS) reported no change in the number of complaints filed in FY 2017. Specifically, there were two formal complaints filed in FYs 2017 and 2016. NASS attributes the static level of complaints to the training offered to its managers, supervisors and employees annually. The training plays a critical role in raising awareness and fostering behaviors that can prevent complaints.
- The National Finance Center, Office of the Chief Financial Officer (NFC-OCFO) reported a decrease by 13 in the number of formal complaints filed in FY 2017. Specifically, there were 35 formal complaints filed in FY 2017, as compared to 48 formal complaints filed in FY 2016. The NFC-OCFO attributes the decrease to counseling and conflict resolution techniques used to de-escalate issues and matters between employees and managers.
- The National Institute of Food and Agriculture (NIFA) reported a decrease by one in the number of formal complaints filed in FY 2017. Specifically, there were two formal complaints filed in FY 2017, as compared to three formal complaints filed in FY 2016. NIFA attributes the decrease in complaints to its emphasis on Civil Rights training, ADR, and early proactive prevention of discrimination in its workplace.

- The Natural Resources Conservation Service (NRCS) reported an increase by six in the number of formal complaints filed in FY 2017. Specifically, there were 26 formal complaints filed in FY 2017, as compared to 20 formal complaints filed in FY 2016. NRCS attributes the increase in complaints to unexpected decisions affecting employees and differential treatment of employees by management.
- The Rural Development (RD) reported an increase by 17 in the number of formal complaints filed in FY 2017. Specifically, there were 62 formal complaints filed in FY 2017, as compared to 45 formal complaints in FY 2016. RD attributes the increase of complaint filings to political leadership turnover, and hiring of new employees and leadership. Additionally, the increase in the number of filings was attributed to an increased focus on equal opportunity training, which resulted in more employees being aware of how to file a complaint.
- The Risk Management Agency (RMA) reported an increase of four in the number of formal complaints filed in FY 2017. Specifically, there were nine complaints filed in FY 2017, as compared to five formal complaints filed in FY 2016. RMA attributes the increase to workplace disputes to misinformation and miscommunication.

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

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

- scheduling annual compliance reviews of USDA's offices helps to assist management in addressing employee concerns and strengthening Civil Rights Programs;
- holding managers, supervisors and employees accountable from exhibiting discriminatory practices and inappropriate conduct helps to create a workplace that is free from discrimination;
- planning mandatory Civil Rights Training assists in decreasing complaints by helping USDA employees deal with delicate situations and understand the difference between workplace conflicts (grievances) and alleged discrimination;
- budget constraints, resulting in the absence of travel to field offices, greatly hinders the mediation processes within the state and county offices;
- the early involvement by managers and supervisors in working with EEO Counselors/ Mediators continues to be instrumental in the early identification of employment concerns;
- collaborating with stakeholders and incorporating feedback from clients during ADR reduces the number of formal employment discrimination complaints filed at USDA;
- disseminating information in briefings helps employees become more knowledgeable about their rights;

- employees and supervisors working together results in building positive relationships, generates a positive work environment, and increases employee productivity; and
- working with Human Resources helps ensure new employee orientation packages include appropriate EEO and Civil Rights information.

(3) Past and Future Actions by USDA Relating to EEO Complaints 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. The past actions include:

- utilized the services of the Human Resources Division and the Conflict Resolution Division to address an increasing number of non-EEO employment concerns;
- evaluated USDA EEO policies, procedures, and practices through internal compliance reviews and comprehensive EEO complaint briefings;
- required that all policy statements be posted in all work areas visible to USDA employees and contractors;
- conducted trend analysis of EEO systemic bases, claims and barriers, to develop desired learning objectives for Mandatory Annual Civil Rights Training;
- offered the following ADR services: Mediation, Conflict Coaching, Consultation, Facilitated Dialogue, Group Facilitation, and Group Intervention;
- required new and current employees to complete No Fear Training and Anti-Harassment Training on Preventing Workplace Harassment;
- conducted the following “Teachable Moments” sessions for managers and supervisors: The ABC’s of Civil Rights; EEO Observer; Civil Rights, Diversity, and Inclusion; EEO Complaint Process; Reasonable Accommodation; Disability and Religious Discriminations; The pitfalls of the Reasonable Accommodation Process; Retaliation/Reprisal for Engaging in EEO activities; Workplace Harassment (Sexual Orientation and Sexual Harassment Training); Whistleblower Protection and EEO; Discussions on EEO and the Hatch Act; Theories of Discrimination (i.e., Adverse Impact, Disparate Treatment and Hostile Work Environment);
- continued proactive steps to ensure employees adhered to USDA’s civil rights policy, and current prohibited personnel practices through the distribution of civil rights information via email messages and trainings; and
- re-issued policy statements on (civil rights and diversity, reasonable accommodations, and anti-harassment policy and procedures), reiterating the zero-tolerance policy towards discrimination in employment related actions, such as selections, merit promotions, awards, transfers, reassignments, training, disciplinary actions or removals.

Additionally, USDA plans to take the following future actions:

- provide employees copy of the No FEAR Act and the Whistleblower Protection Act;
- develop new EEO-related webinars in FY 2018, to provide information and guidance to agency employees at all levels;
- conduct Civil Rights Exit Interviews with employees to assess the reasons for their departure and experience;
- require employees to complete Understanding Limited English Proficiency (LEP) training;
- increase training efforts to improve awareness of prohibited discriminatory practices outlined in Departmental Regulation (DR) 4120-001, "Annual Departmental Civil Rights Training; and
- identify and track EEO trends as they occur through its monthly complaint activity report and disseminate the information to key stakeholders.

PART II:
USDA Reimbursement to Judgment
Fund for
Fiscal Year 2017

USDA Reimbursement to Judgment Fund for Fiscal Year 2017

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 2017 judgments, awards, or settlements under the statutes addressed in the No FEAR Act.

Table 8
USDA Reimbursement to Judgment Fund for FY 2017 Settlements

USDA Reimbursement to Judgment Fund for FY 2017 Settlements		
Case	Total Amount	Attorney's Fees
1	\$999,999.00	\$0.00
2	\$305,000.00	\$0.00
3	\$200,000.00	\$0.00
4	\$65,000.00	\$0.00
5	\$45,000.00	\$0.00
6	\$35,000.00	\$0.00
7	\$30,000.00	\$0.00
Total	\$1,679,999.00	\$0.00

Summary

In FY 2017, USDA reimbursed the Judgment Fund \$1,679,999.00, of which zero dollars were identified as payment of attorney's fees.

PART III:
USDA Disciplinary Actions and Reports
for Fiscal Years 2016 – 2017

**USDA Disciplinary Actions and Reports for
Fiscal Years 2016–2017**

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

ADMINISTRATIVE DISCIPLINARY ACTIONS												
TYPE OF ACTION	FY 2016						FY 2017					
	DISC.	RET.	HAR.	PPP	WBP	TOTAL	DISC.	RET.	HAR.	PPP	WBP	TOTAL
REMOVAL	0	3	0	0	0	3	1	0	5	0	0	6
15 DAY OR MORE	0	0	0	0	0	0	0	0	0	0	0	0
14 DAY OR LESS	0	1	0	0	0	1	0	0	6	0	0	6
REDUCTION IN GRADE	0	0	0	0	0	0	0	0	0	0	0	0
REDUCTION IN PAY	0	0	0	0	0	0	0	0	0	0	0	0
LOR	0	3	0	0	0	3	1	0	10	0	0	11
TOTAL DISCIPLINE	0	7	0	0	0	7	2	0	21	0	0	23

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 (OSC) Whistleblower cases and the numbers of employees disciplined under the Department’s disciplinary policies related to whistle-blowing and discrimination.

Table 10

OFFICE OF SPECIAL COUNSEL CASES			
CATEGORIES OF CASES	FY 2016	FY 2017	TOTAL
OSC WHISTLEBLOWER CASE	5	5	10
OSC WHISTLEBLOWER CASE CLOSED	0	0	0
OSC WHISTLEBLOWER DISCIPLINE TAKEN	0	0	0

PART IV:
USDA Federal Court Litigation Statistics
for FY 2017

Tables 11,12, and 13 below provide composite data for cases in Federal Court pending or resolved in FY 2017 and arising under the anti-discrimination and whistleblower protection laws.

**Table 11
Federal Cases Pending in FY 2017**

Federal Cases Pending in FY 2017	
Pending District Court Cases	54
Pending Appellate Court Cases	7 ⁶
New Cases Filed in District Court	23
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**

Pending Cases					
	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 2017	1	0	3	3	8
Still Pending at End of FY 2017	0	0	8	6	28

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

Disposition of Cases (Including Dismissals)					
	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	1	0	0	0	1
Withdrawals	0	0	0	0	0
Final Judgment for Complainant	0	0	0	0	0
Final Judgment for Agency	0	0	3	1	4
Total disposed of Cases in 2017	1	0	3	1	5

⁶ Four (4) appellate cases were also pending in district court case at some point in FY 2017.

Appendix A

Equal Employment Opportunity Data Posted Pursuant to the No FEAR Act

USDA
FY 2017 for period ending September 30, 2017

Complaint Activity	Comparative Data				
	Previous Fiscal Year Data				
	2013	2014	2015	2016	2017
Number of Complaints Filed	544	481	509	530	561
Number of Complainants	512	465	496	507	531
Repeat Filers	26	17	14	19	24
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>	2013	2014	2015	2016	2017
Race	213	243	206	222	243
Color	64	73	71	63	75
Religion	19	19	24	35	35
Reprisal	311	270	296	270	311
Sex	213	207	215	206	216
PDA	2	3	1	0	2
National Origin	59	74	69	47	67
Equal Pay Act	8	4	2	1	8
Age	201	183	181	182	207
Disability	150	130	165	157	185
Genetics	3	2	2	1	1
Non-EEO	42	55	59	39	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>	2013	2014	2015	2016	2017
Appointment/Hire	34	25	35	27	40
Assignment of Duties	119	117	115	92	87
Awards	24	9	19	9	18
Conversion to Full-time	2	1	0	0	3
Disciplinary Action					
Demotion	3	5	3	4	4
Reprimand	28	23	55	28	44
Suspension	30	27	49	26	36
Removal	13	7	10	6	17
Other	17	31	11	7	4
Duty Hours	11	11	23	20	18
Evaluation Appraisal	85	73	90	91	91
Examination/Test	1	1	1	1	2
Harassment					
Non-Sexual	275	264	303	282	342
Sexual	12	20	16	18	13
Medical Examination	2	4	8	1	4
Pay (Including Overtime)	29	39	42	21	30
Promotion/Non-Selection	123	111	162	149	124
Reassignment					
Denied	19	27	25	14	17
Directed	33	43	40	18	20
Reasonable Accommodation	63	48	83	69	84

Disability					
Reinstatement	0	0	1	2	0
Religious Accommodation*	0	0	0	3	4
Retirement	2	1	1	4	5
Sex-Stereotyping*	0	0	0	1	1
Telework*	0	0	0	29	25
Termination	40	34	40	27	36
Terms/Conditions of Employment	176	146	163	102	146
Time and Attendance	50	32	78	59	67
Training	41	33	49	51	40
Other	26	23	28	5	3
Processing Time	Comparative Data				
	Previous Fiscal Year Data				
	2013	2014	2015	2016	2017
Complaints Pending During Fiscal Year					
Average Number of Days in Investigation	242.05	212.08	198.94	208.93	161.02
Average Number of Days in Final Action	165.94	169.31	106.7	97.94	151.66
Complaint Pending During Fiscal Year Where Hearing was Requested					
Average Number of Days in Investigation	247.31	217.23	203.6	212.88	165.95
Average Number of Days in Final Action	119.33	199.47	96.48	69.94	108.76
Complaint Pending During Fiscal Year Where Hearing was not Requested					
Average Number of Days in Investigation	233.21	204.07	192.73	202.01	153.61
Average Number of Days in Final Action	187.19	134.58	112.82	124.03	181.49

*Data was not collected prior to Fiscal year 2016

Complaints Dismissed by Agency	Comparative Data									
	Previous Fiscal Year Data									
	2013		2014		2015		2016		2017	
Total Complaints Dismissed by Agency	67		64		55		57		83	
Average Days Pending Prior to Dismissal	83		188		89		97		66	
Complaints Withdrawn by Complainants										
Total Complaints Withdrawn by Complainants	29		32		29		28		35	
Total Final Agency Actions Finding Discrimination	Comparative Data									
	Previous Fiscal Year Data									
	2013		2014		2015		2016		2017	
	#	%	#	%	#	%	#	%	#	%
Total Number Findings	19		24		5		7		5	
Without Hearing	4	21	15	63	0	0	6	86	3	60
With Hearing	4	21	9	38	5	100	1	14	2	40

Findings of Discrimination Rendered by Basis	Comparative Data									
	Previous Fiscal Year Data									
	2013		2014		2015		2016		2017	
<i>Note: Complaints can be filed alleging multiple bases. The sum of the bases may not equal total complaints and findings.</i>	#	%	#	%	#	%	#	%	#	%
Total Number Findings	32		24		5		7		4	
Race	2	11	6	25	1	20	3	43	3	75
Color	2	11	1	4	0	0	1	14	0	0
Religion	0	0	2	8	0	0	0	0	0	0
Reprisal	6	32	7	29	2	40	4	57	1	25
Sex	5	26	2	8	0	0	3	43	0	0
PDA	0	0	0	0	0	0	0	0	0	0
National Origin	3	16	5	21	0	0	0	0	0	0

Equal Pay Act	0	0	1	4	0	0	0	0	0	0
Age	6	32	2	8	1	20	0	0	1	25
Disability	6	32	8	33	4	80	2	29	0	0
Genetics	0	0	0	0	0	0	0	0	0	0
Non-EEO	3	16	2	8	0	0	0	0	0	0
Findings After Hearing										
	4		9		5		1		2	
Race	2	50	4	44	1	20	1	100	2	10
Color	2	50	1	11	0	0	0	0	0	0
Religion	0	0	2	22	0	0	0	0	0	0
Reprisal	0	0	4	44	2	40	1	100	0	0
Sex	1	25	2	22	0	0	1	100	0	0
PDA	0	0	0	0	0	0	0	0	0	0
National Origin	0	0	2	22	0	0	0	0	0	0
Equal Pay Act	0	0	1	11	0	0	0	0	0	0
Age	3	75	1	11	1	20	0	0	1	50
Disability	1	25	0	0	4	80	0	0	0	0
Genetics	0	0	0	0	0	0	0	0	0	0
Non-EEO	2	50	1	11	0	0	0	0	0	0
Findings Without Hearing										
	15		15		0		6		2	
Race	0	0	2	13	0	0	2	33	1	50
Color	0	0	0	0	0	0	1	17	0	0
Religion	0	0	0	0	0	0	0	0	0	0
Reprisal	6	40	3	20	0	0	3	50	1	50
Sex	4	27	0	0	0	0	2	33	0	0
PDA	0	0	0	0	0	0	0	0	0	0
National Origin	3	20	3	20	0	0	0	0	0	0

Equal Pay Act	0	0	0	0	0	0	0	0	0	0
Age	3	20	1	7	0	0	0	0	0	0
Disability	5	33	8	53	0	0	2	33	0	0
Genetics	0	0	0	0	0	0	0	0	0	0
Non-EEO	1	7	1	7	0	0	0	0	0	0
Findings of Discrimination Rendered by Issue	Comparative Data									
	Previous Fiscal Year Data									
	2013		2014		2015		2016		2017	
	#	%	#	%	#	%	#	%	#	%
Total Number Findings	19		24		5		7		4	
Appointment/Hire	2	11	0	0	0	0	0	0	0	0
Assignment of Duties	0	0	3	13	0	0	1	14	2	50
Awards	0	0	1	4	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	1	4	0	0	0	0	0	0
Reprimand	0	0	0	0	1	20	2	29	0	0
Suspension	2	11	1	4	0	0	1	14	0	0
Removal	1	5	0	0	0	0	0	0	0	0
Other	0	0	1	4	0	0	0	0	0	0
Duty Hours	0	0	0	0	0	0	1	14	0	0
Performance Evaluation/Appraisal	0	0	1	4	1	20	0	0	0	0
Examination/Test	0	0	0	0	0	0	0	0	0	0
Harassment										
Non-Sexual	5	26	8	33	2	40	2	29	0	0
Sexual	1	5	0	0	0	0	0	0	0	0
Medical Examination	0	0	0	0	0	0	0	0	0	0
Pay (Including Overtime)	0	0	1	4	0	0	0	0	0	0

Promotion/Non-Selection	4	21	5	21	0	0	2	29	3	75
Reassignment										
Denied	0	0	0	0	0	0	0	0	0	0
Directed	1	5	2	8	0	0	0	0	0	0
Reasonable Accommodation Disability	3	16	5	21	2	40	1	14	0	0
Reinstatement	0	0	0	0	0	0	0	0	0	0
Religious Accommodation*	0	0	0	0	0	0	0	0	0	0
Retirement	0	0	0	0	0	0	0	0	0	0
Sex-Stereotyping*	0	0	0	0	0	0	0	0	0	0
Telework*	0	0	0	0	0	0	0	0	0	0
Termination	3	16	6	25	0	0	0	0	1	25
Terms/Conditions of Employment	2	11	3	13	0	0	2	29	1	25
Time and Attendance	2	11	0	0	0	0	0	0	0	0
Training	0	0	1	4	0	0	0	0	0	0
Other - User Defined	2	11	1	4	0	0	0	0	0	0
Findings After Hearing	4		9		5		1		2	
Appointment/Hire	1	25	0	0	0	0	0	0	0	0
Assignment of Duties	0	0	2	22	0	0	1	100	1	50
Awards	0	0	0	0	0	0	0	0	0	0
Conversion to Full-time/Perm Status	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	1	20	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

Performance Evaluation/Appraisal	0	0	1	11	1	20	0	0	0	0
Examination/Test	0	0	0	0	0	0	0	0	0	0
Harassment										
Non-Sexual	0	0	3	33	2	40	0	0	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)	0	0	0	0	0	0	0	0	0	0
Promotion/Non-Selection	1	25	4	44	0	0	0	0	1	50
Reassignment										
Denied	0	0	0	0	0	0	0	0	0	0
Directed	0	0	2	22	0	0	0	0	0	0
Reasonable Accommodation	1	25	0	0	2	40	0	0	0	0
Reinstatement	0	0	0	0	0	0	0	0	0	0
Religious Accommodation*	0	0	0	0	0	0	0	0	0	0
Retirement	0	0	0	0	0	0	0	0	0	0
Sex-Stereotyping*	0	0	0	0	0	0	0	0	0	0
Telework*	0	0	0	0	0	0	0	0	0	0
Termination	1	25	0	0	0	0	0	0	1	50
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	0	0
Training	0	0	0	0	0	0	0	0	0	0
Other - User Defined	0	0	1	11	0	0	0	0	0	0
Findings Without Hearing	15		15		0		6		2	
Appointment/Hire	1	7	0	0	0	0	0	0	0	0
Assignment of Duties	0	0	1	7	0	0	0	0	1	50
Awards	0	0	1	7	0	0	0	0	0	0

Conversion to Full-time/Perm Status	0	0	0	0	0	0	0	0	0	0
Disciplinary Action										
Demotion	0	0	1	7	0	0	0	0	0	0
Reprimand	0	0	0	0	0	0	2	33	0	0
Suspension	2	13	1	7	0	0	1	17	0	0
Removal	1	7	0	0	0	0	0	0	0	0
Other	0	0	1	7	0	0	0	0	0	0
Duty Hours	0	0	0	0	0	0	1	17	0	0
Performance Evaluation/Appraisal	0	0	0	0	0	0	0	0	0	0
Examination/Test	0	0	0	0	0	0	0	0	0	0
Harassment										
Non-Sexual	5	33	5	33	0	0	2	33	0	0
Sexual	1	7	0	0	0	0	0	0	0	0
Medical Examination	0	0	0	0	0	0	0	0	0	0
Pay (Including Overtime)	0	0	1	7	0	0	0	0	0	0
Promotion/Non-Selection	3	20	1	7	0	0	2	33	2	100
Reassignment										
Denied	0	0	0	0	0	0	0	0	0	0
Directed	1	7	0	0	0	0	0	0	0	0
Reasonable Accommodation Disability	2	13	5	33	0	0	1	17	0	0
Reinstatement	0	0	0	0	0	0	0	0	0	0
Religious Accommodation*	0	0	0	0	0	0	0	0	0	0
Retirement	0	0	0	0	0	0	0	0	0	0
Sex-Stereotyping*	0	0	0	0	0	0	0	0	0	0
Telework*	0	0	0	0	0	0	0	0	0	0
Termination	2	13	6	40	0	0	0	0	0	0
Terms/Conditions of Employment	2	13	3	20	0	0	2	33	1	50

Time and Attendance	2	13	0	0	0	0	0	0	0	0
Training	0	0	1	7	0	0	0	0	0	0
Other - User Defined	2	13	0	0	0	0	0	0	0	0

*Data was not collected prior to Fiscal Year 2016

Pending Complaints Filed in Previous Fiscal Years by Status	Comparative Data				
	Previous Fiscal Year Data				
	2013	2014	2015	2016	2017
Total Complaints from Previous Fiscal Years	956	938	878	472 ⁷	472
Total Complainants	797	885	482	482	429
Number Complaints Pending					
Investigation	28	35	33	18	14
ROI Issued, Pending Complainant's Action	1	3	1	2	0
Hearing	399	520	448	401	434
Final Agency Action	68	50	41	47	27
Appeal to EEOC Office of Federal Operations	11	61	27	116	192
Complaint Investigations	Comparative Data				
	Previous Fiscal Year Data				
	2013	2014	2015	2016	2017
Pending Complaints Where Investigations Exceed Required Time Frames	85	190	32	10	8

⁷ Due to recommendations made by Federal Agencies (at Micro Pact's Annual No FEAR User Forum) to change the formula for calculating the number of "Total complaints from previous Fiscal Years," this field has experienced a significant decrease in complaints between FY 2015 and FY 2016.