



United States Department of Agriculture

Food, Conservation, and Energy Act of 2008

Section 14010

Report of Civil Rights Complaints, Resolutions, and Actions

Fiscal Year 2012

Office of the Secretary
United States Department of Agriculture
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Executive Summary

Annual Reporting Requirements

Section 14010 of the Food, Conservation, and Energy Act of 2008 (2008 Farm Bill), mandates the U.S. Department of Agriculture (USDA) to prepare an annual report on each of its agency's civil rights complaints, resolutions, and actions. In accordance with that section, this report provides the following information:

- number of civil rights complaints filed that relate to the agency, including whether a complaint is a program complaint or an employment complaint;
- length of time the agency took to process each civil rights complaint;
- number of proceedings brought against the agency, including the number of complaints described in Section 14010 (1) that were resolved with a finding of discrimination; and
- number and type of personnel actions taken by the agency following resolution of civil rights complaints.

The 2008 Farm Bill requires that a copy of this report be submitted to the Committee on Agriculture of the House of Representatives, the Committee on Agriculture, Nutrition, and Forestry of the Senate, and made available to the public by posting it on the USDA website.

The USDA agencies included in the report are: Agricultural Marketing Service (AMS); Agricultural Research Service (ARS); Animal and Plant Health Inspection Service (APHIS); Economic Research Service (ERS); Farm Service Agency (FSA); Food and Nutrition Service (FNS); Food Safety and Inspection Service (FSIS); Foreign Agricultural Service (FAS); Forest Service (FS); Grain Inspection, Packers and Stockyards Administration (GIPSA); National Agricultural Statistical Service (NASS); National Appeals Division (NAD); National Institute of Food and Agriculture (NIFA), formerly Cooperative State Research, Education and Extension Service (CSREES); Natural Resources Conservation Service (NRCS); Office of the Chief Financial Officer (OCFO); Office of Inspector General (OIG); Rural Development (RD); Risk Management Agency (RMA); Departmental Management (DM); and Office of the Assistant Secretary for Civil Rights (OASCR).¹

¹ Complaints initiated or filed against the USDA DM and Staff Offices were processed by an independent staff/contractor. The DM and Staff Office complaints are identified in this report with the CRSD (Civil Rights Services Division) acronym.

USDA Accomplishments

In April 2009, Secretary Vilsack sent a memo to all USDA employees calling for "a new era of civil rights" for the Department. He emphasized that USDA would have zero tolerance for any form of discrimination. He also directed OASCR to lead a comprehensive program to improve USDA's record on civil rights and move us into a new era as a model employer and premier service provider.

As of this Fiscal Year's (FY) 2012 Farm Bill Report, OASCR is accomplishing the Secretary's directive for program complaints as follows:

- USDA has received and responded to the Pigford I and Pigford II settlements, which stem from a series of discrimination complaints made against USDA by African American farmers. Similar lawsuits, known as Keepseagle, Garcia and Love have been filed by Native American, Hispanic, and female farmers.
- In response to the Pigford II class complaint, USDA and the U.S. Department of Justice jointly announced the historic \$1.25 billion Pigford II settlement with African American farmers.
- In response to the Keepseagle class complaint, USDA announced a historic settlement agreement with Native American farmers who claim to have faced discrimination by USDA in past decades. In addition, to improve relations with Native American Tribes, USDA appointed for the first time a Senior Advisory on Tribal Relations, and all USDA agencies are working to engage with and be thoughtful about tribal issues.
- In relation to the Hispanic and female farmers complaints, USDA is currently carrying out a unified claims process to provide a path to justice for Hispanic and women farmers and ranchers who claim to have faced discrimination by USDA in past decades.
- To improve USDA programs' ability to serve minority farmers, all proposed, interim and final policies, regulations, rules and decisions were analyzed to determine potential adverse impacts for civil rights. Over three years, OASCR has recommended important changes on about 20 percent of all policies reviewed.
- OASCR created a single, USDA-wide form that USDA customers and program participants can use to file a civil rights complaint. By capturing all of the information needed to accept a complaint, the form will reduce the time it takes to process complaints. The form helps to simplify and expedite the process for those who believe they have been discriminated against. Previously, writing a letter was the only way to file a complaint.
- OASCR has consistently and effectively pursued a reduction in USDA's program complaint inventory. As a result the Program Complaints' End of Year Inventory for USDA has undergone a dramatic decrease over the past three years. The program complaint inventory decreased from 888 complaints in FY 2010 to 472 complaints in FY 2012, which represented a 46 percent reduction of complaints at the end of the fiscal year, and illustrates the continued focus OASCR has attributed to closing program complaints.

- The Office of Inspector General (OIG) recently completed an audit reviewing how OASCR oversees agreements reached in program complaints.² The results of the audit indicate that OASCR has significantly improved its monitoring of settlement agreements and closure of program complaints. One of the most recent improvements is the development of a Program Complaints Management System (PCMS) User Instruction Manual for PCMS. The manual is comprehensive, as it describes when, what, how, and by whom new information is to be entered. It includes screen shots of each step and functions as a “how-to” guide for PCMS. In addition, OIG’s findings indicated that OASCR improved the organization of case files in its file room and took steps to improve the program complaints process by hiring a contractor to conduct a review of OASCR’s management processes.
- OASCR undertook an office-wide data clean-up project to address existing data errors in PCMS. This effort emphasizes the priority OASCR has placed on strengthening its controls and improving upon its procedures to ensure that the American farmers’ issues and/or complaints are handled efficiently and expeditiously.
- USDA has reported the four lowest years of equal employment opportunity (EEO) complaints by employees since OASCR began keeping track of its complaints inventory, which is well below the government average of complaints per 1,000 employees. In addition, we have aggressively pursued bad actors with the highest number of findings of complaints by any Department in the Federal Government for FYs 2010, 2011 and 2012.
- The Secretary announced his strategy for resolving all open EEO complaints by using Alternative Dispute Resolution, and gave each Under and Assistant Secretary responsibility for handling all open Departmental EEO complaints within 60 days.
- For the first time since 2009, training was provided to FSA, NRCS, and RD leadership and staff at State Offices. More than a dozen select States of these respective agencies’ have a history of civil rights problems.

² Review of the OASCR’s Oversight of Agreements Reached in Program Complaints (60601-001-23, August 2012).

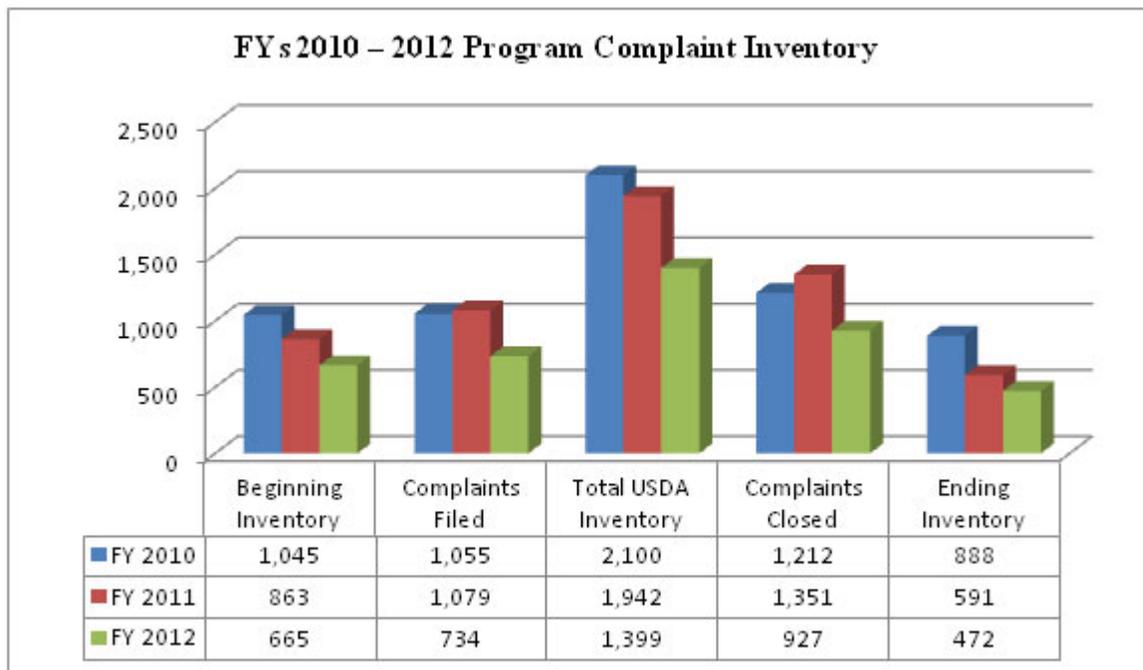
Summary of the Report

USDA Program Comparison Data for FY 2010 - 2012

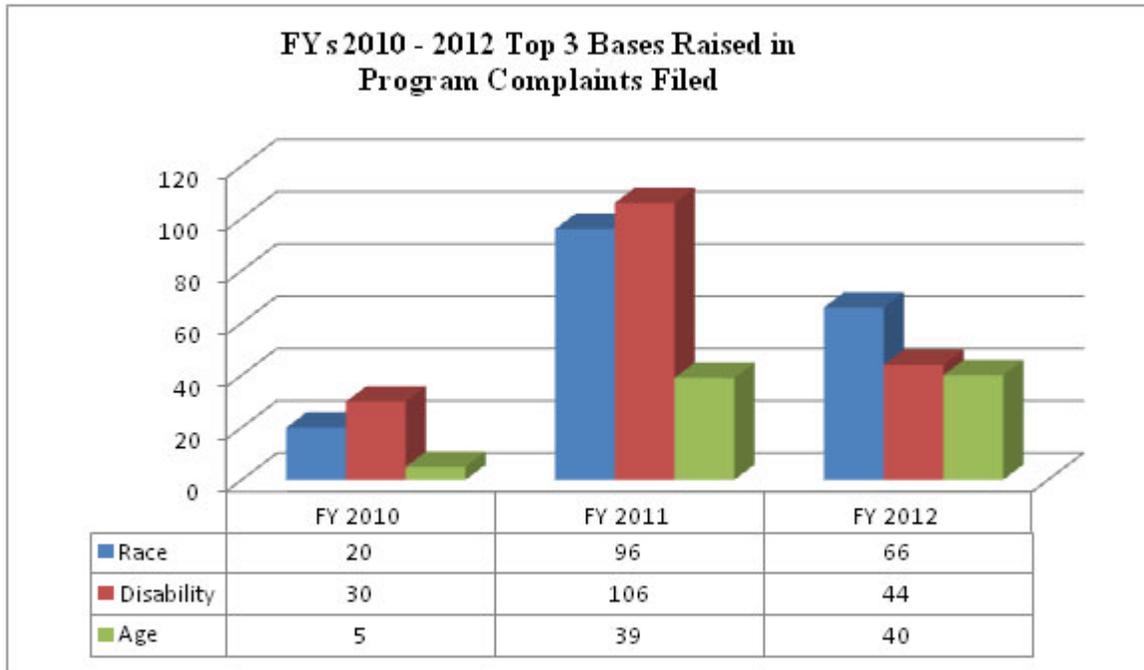
Unlike EEO complaints, program discrimination complaints are filed by participants of USDA's federally funded programs and activities. FSA's Farm Loan and RD's Single Family Housing Loan programs represent examples of programs that are directly funded by USDA but administered through local USDA offices. Complaints filed are against RD programs in which non-government entities receive rural housing funds, such as multi-family housing programs, which are administered or managed by non-USDA employees.

USDA also received complaints filed against recipients of USDA federal financial assistance, primarily State and local agencies and multi-family housing authorities. Examples are FNS' programs, such as the Supplemental Nutrition Assistance Program (SNAP), in which the application and applicant eligibility are determined by the State or local government entities.

In spite of OASCR's budget constraints and loss of resources, the program complaint inventory declined 34 percent between FYs 2010 and 2012. At the beginning of each of these fiscal years (2010 – 2012), the beginning inventory was markedly lower compared to the fiscal years beginning inventory prior to 2010. This decline is due to the number of program complaints filed (30% decrease between FYs 2010 and 2012), and USDA maintaining an average complaint closure rate of 64 percent for three years. The chart and graph below depict trends of the program complaint inventory between FYs 2010 and 2012 for all of USDA:



Disability and race interchanged as the first and second frequently alleged bases in program complaints filed at USDA during FYs 2010 - 2012. Age was the third frequently alleged basis for all fiscal years. The chart and graph below depict trends of the top three bases raised in program complaints between FYs 2010 and 2012 for all of USDA:



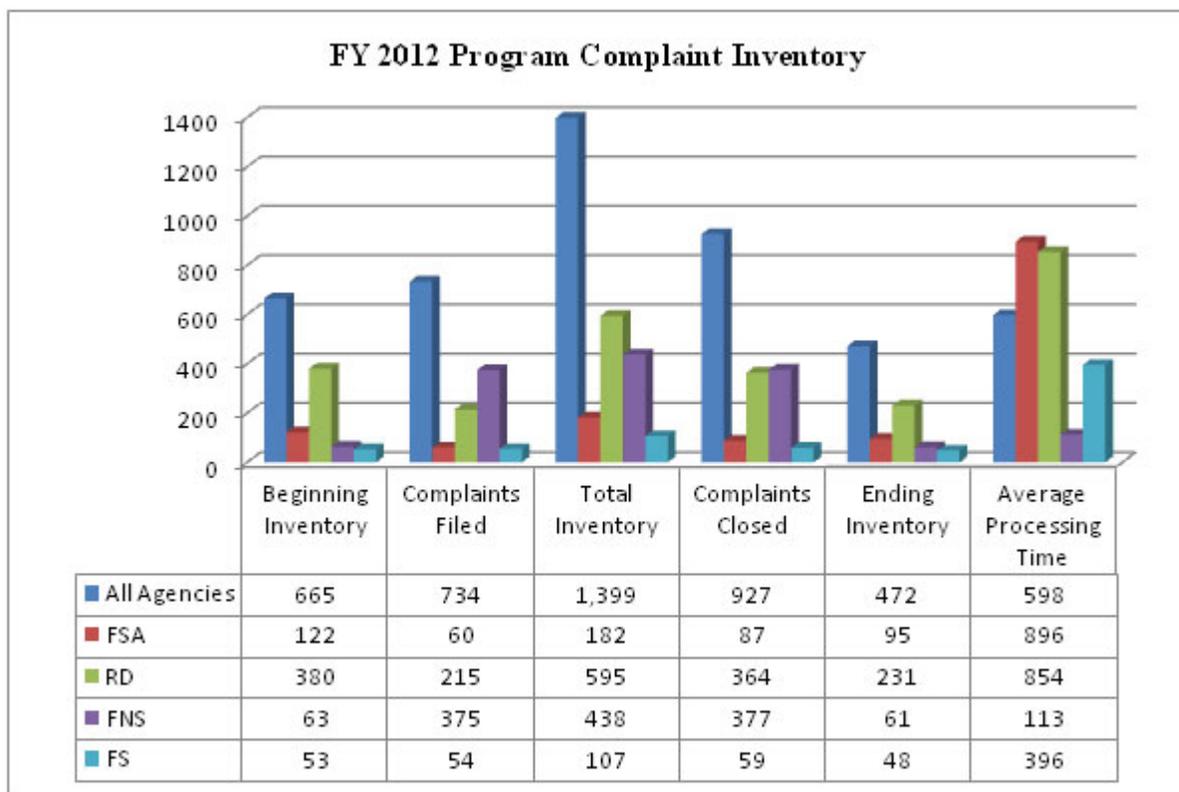
USDA Program Data for FY 2012

During FY 2012, USDA had a total of 1,399 complaints in the program complaint inventory. At the beginning of FY 2012, USDA's open inventory was 665 program complaints (See Table 1-1).³ During the fiscal year, USDA received an additional 734 complaints (See Table 1-1). USDA closed a total of 927 program complaints during FY 2012 and ended FY 2012 with an ending inventory of 472 open program complaints. This represents a 20 percent reduction from FY 2011's ending inventory (See Table 1-2).⁴

The Program complaint inventory of FSA, RD, FNS and FS accounted for approximately 95 percent (1,322) of the total USDA complaint inventory discussed above. Out of 734 program complaints filed with USDA, FNS had 375, RD had 215, FSA had 60 and FS had 54. The chart and graph below depicts this data for FY 2012:

³ PCMS data reconciliation efforts in FY 2012 inherent to database quality control yielded an increase of 74 cases (665 vs. 591 case ending inventory in FY 2011) (See Table 1-2).

⁴ This decline is due to a decrease of 32 percent in the number of complaints filed in FY 2012 (734 vs. 1,079 in FY 2011), and ongoing data reconciliation efforts.



By the end of FY 2012, the average length of time to process program complaints was 598 days (See Table 1-1). This constitutes an increase of approximately 21 percent from the 496-day average processing in FY 2011. The data shows an increase in the processing time of program complaints from FYs 2011 to 2012. This is due to USDA's emphasis on the Equal Credit Opportunity Act (ECOA) cases,⁵ with a two-year statute of limitation during the reporting period. This emphasis was a causal factor for the increase in the processing time of aged complaint inventory not regulated by the ECOA statute.⁶ Recently, Congress passed legislation extending the statute of limitation for processing ECOA complaints (five-year statute), which allows USDA to increase the efficiency of processing aged complaints. USDA developed a process to identify aged inventory, which ensures all complaints are prioritized by age and subsequently, reduces processing time.

⁵ Statute of Limitations (SOL) cases, also sometimes referred to as “expired ECOA cases” are program complaints that were accepted for investigation, but the investigation was not completed prior to the statute of limitations expiring. A policy decision was made that the USDA would hold these cases in abeyance and not investigate, or adjudicate such cases, while Congress considers funding to process and address them. Seventy-five of the 472 open program complaints are SOL ECOA cases.

All of these cases involve complaints under the ECOA, a law that prohibits discrimination in lending based on race, color, religion, national origin, sex, marital status, age, receipt of public assistance income or exercising a right under the Consumer Credit Protection Act. Prior to the Dodd-Frank Act, there was a two-year statute of limitations for ECOA complaints. Effective July 21, 2011, the Dodd-Frank Act extended the SOL to five years. The extended SOL was not retroactive.

⁶ Aged complaints are open program discrimination complaints in PCMS for more than 180 days from the time of filing.

For complaints closed during FY 2012, the processing time was calculated based on time between the formal filing date (regardless of the fiscal year) and the date of closure. For complaints that remained in open status at the end of FY 2012, the processing time was calculated based on the time between the formal filing date (regardless of fiscal year) and the end of FY 2012 (September 30, 2012).

There were 10 program discrimination cases resolved with a finding of discrimination during FY 2012 (See Table 1-3).⁷ In addition, there was one settlement in program discrimination complaints. There were no personnel actions taken by USDA agencies following resolution of program complaints.

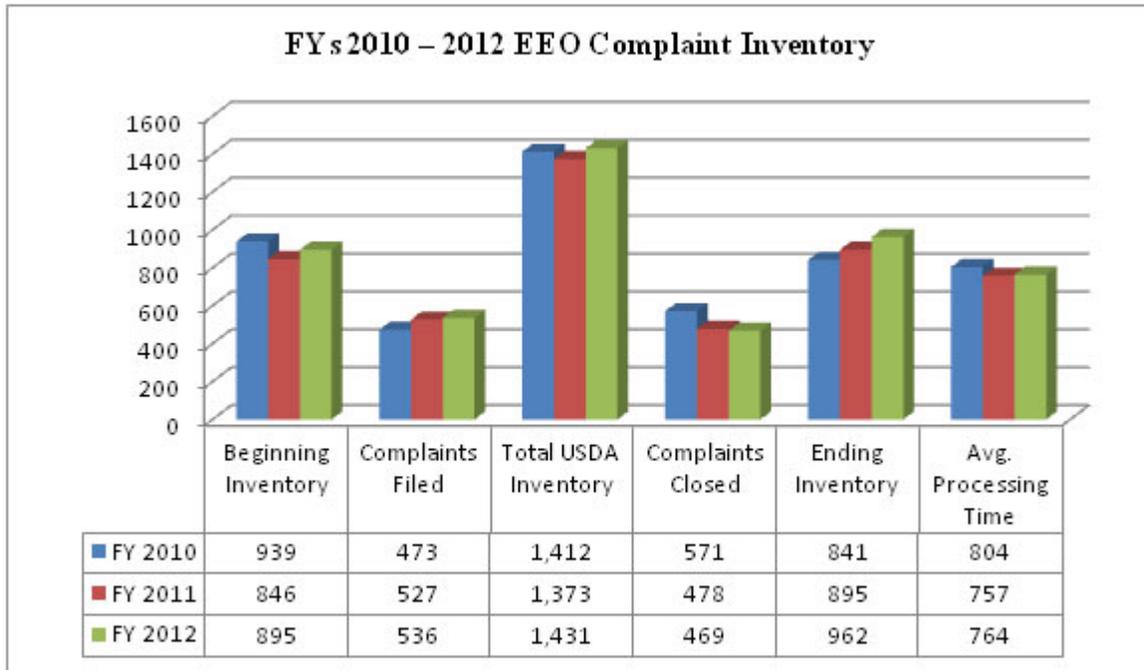
A summary of FY 2012 program complaint data for each USDA agency is provided in Part I of this report. The data includes both federally assisted and conducted allegations of program discrimination. Federally assisted program complaints of discrimination concern programs or activities in which Federal financial assistance is provided through a recipient, a third party such as a State or instrumentality of a State. Federally conducted program complaints of discrimination concern the day-to-day operations of an agency's program or activity. These programs or activities result in or contribute to the availability of, or delivery of services, benefits, or resources to customers. The FSA's Direct Farm Loan program is an example of a conducted program in which loans are directly funded by FSA and administered directly through local FSA offices. Moving forward, USDA will continue to validate and improve the quality of data contained in its' program complaints repositories.

Exhibit 1 provides information on the processing time of each complaint by Agency.

⁷ USDA has a Memorandum of Understanding (MOU) with FNS that allows FNS to process and resolve their discrimination complaints. This number includes one discrimination complaint resolved by FNS with a finding of discrimination pursuant to their MOU.

USDA Employment Comparison Data for FY 2010-2012

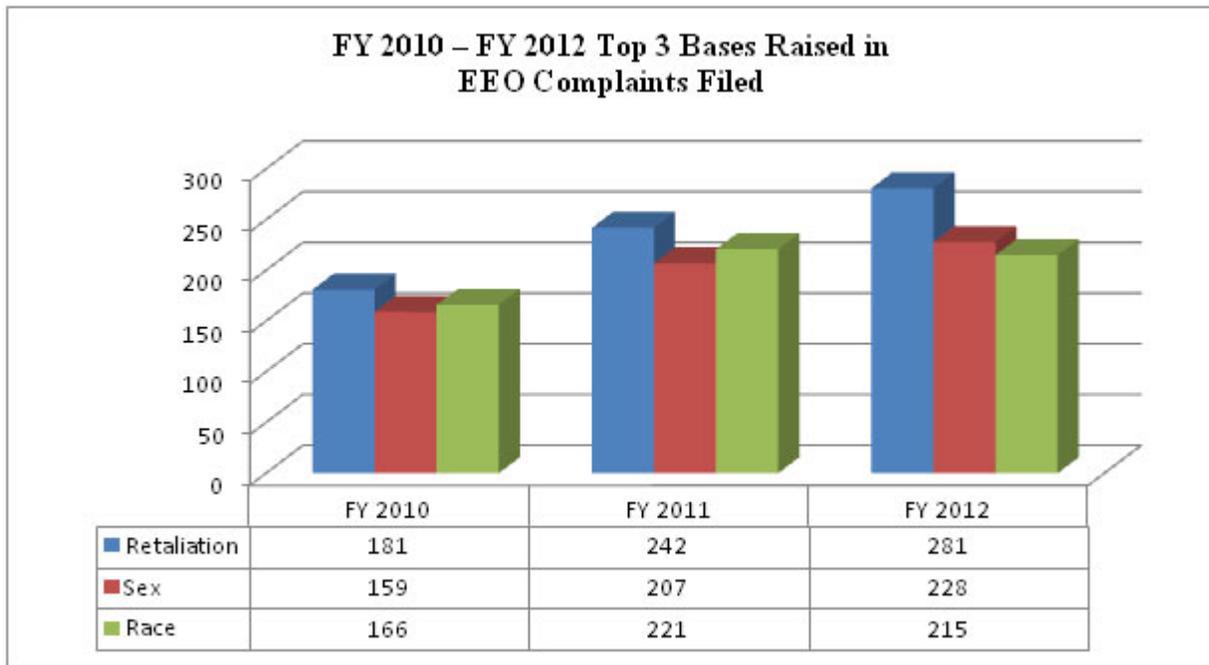
In spite of a declining budget for OASCR, the total EEO inventory remained relatively consistent between FYs 2010 and 2012. Although the number of EEO complaints filed increased slightly (11%) between FYs 2010 and 2011, the filing rate declined to 1.7 percent between FYs 2011 and 2012. The chart and graph below depict trends of the EEO complaint inventory between FYs 2010 and 2012 for all of USDA:



During FY 2012, USDA had a total of 1,431 complaints in the EEO complaint inventory.⁸ At the beginning of FY 2012, USDA had an open inventory of 895 EEO complaints (See Table 2-1). During the fiscal year, USDA received an additional 536 EEO complaints (See Table 2-1). USDA closed a total of 469 EEO complaints during FY 2012, including 18 complaints resolved with a finding of discrimination (See Tables 2-2 and 2-3). At the end of the fiscal year, USDA had an inventory of 962 open EEO complaints (See Table 2-2).

In FYs 2010-2012, retaliation was the most frequently alleged basis in formal EEO complaints at USDA. Race and sex interchanged as the second and third frequently alleged bases. The chart and graph below depict trends of the top three bases raised in EEO complaints between FYs 2010 and 2012 for all of USDA:

⁸ The total complaint inventory in FY 2011 was 1,373. In FY 2012, there were more complaints filed and fewer complaints closed compared to FY 2011. In FY 2012, 536 complaints were filed vs. 527 in FY 2011, this represents approximately a two percent increase. In FY 2012, 469 complaints were closed versus 478 in FY 2011; this represents a two percent decrease.



USDA EEO Data for FY 2012

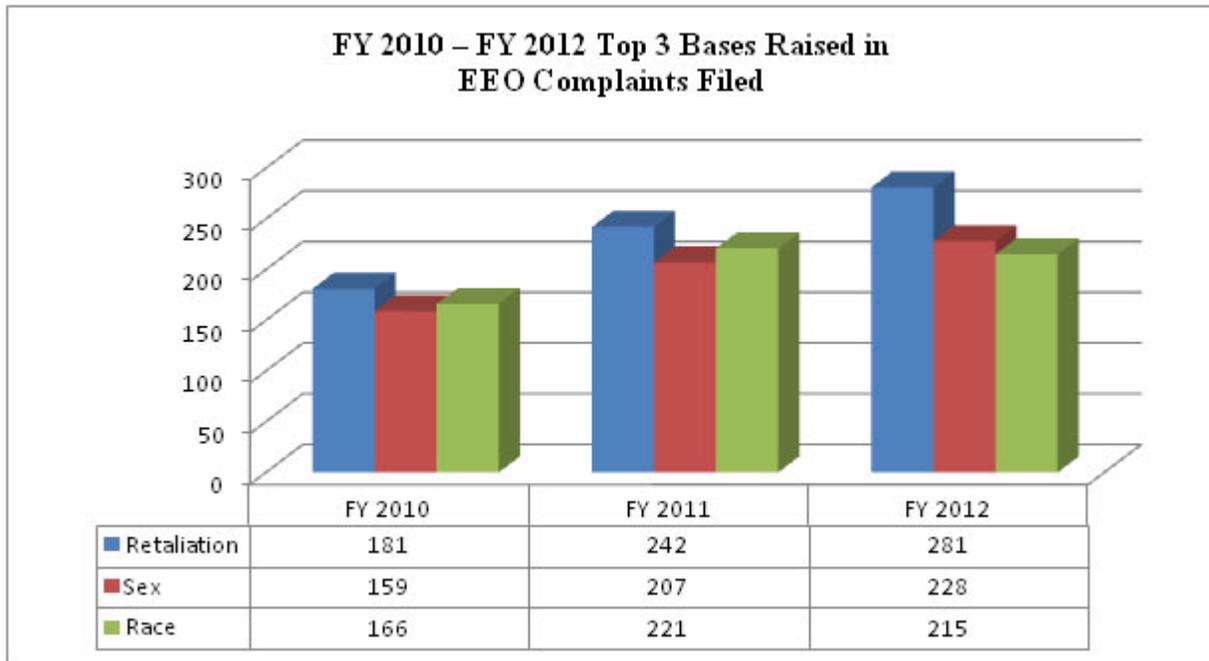
By the end of FY 2012, the average length of time that the complaints were in the EEO process was 764 days (See Table 2-1). This represents a slight increase of approximately one percent from the 757 days average processing time in FY 2011. The average processing time includes 17 complaints that were subsumed in a class complaint and held in abeyance pending the disposition of the class actions. The Equal Employment Opportunity Commission (EEOC) does not allow opt-outs; thus, these complaints must remain in the system. Additionally, the average processing time includes 478 complaints that were at the EEOC for a hearing.⁹ Removal of these complaints reduces the average processing time to 638 days. This represents an increase of approximately 22 percent from FY 2011, a 525-day average processing time calculated after excluding those cases.¹⁰ For complaints closed during FY 2012, time in the process was calculated based on the time between the formal filing date (regardless of the fiscal year) and the date of closure. For complaints that remained on open status by the end of FY 2012, time in the process was calculated based on the time between the formal filing date (regardless of the fiscal year) and the end of FY 2012 (September 30, 2012).¹¹

⁹ There are five complaints in class action and hearing status.

¹⁰ The increase in average processing time is attributed to fewer complaints held in abeyance in FY 2012 (17) vs. FY 2011 (44).

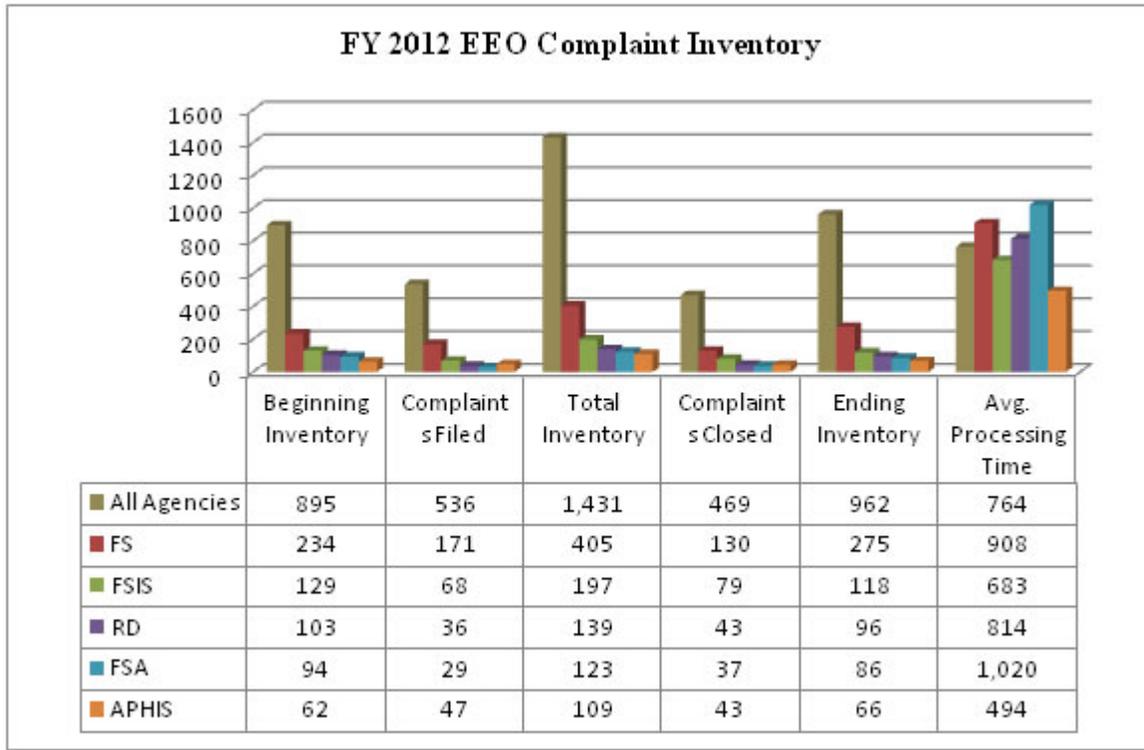
¹¹ The FY 2012 complaint inventory includes 13 remand complaints; six are in remand and hearing status. A remand is an EEO complaint that is returned to the Agency, by the EEOC, for further action based on an appeal decision. Time in the process for these complaints was calculated based on the time between the remand date (regardless of the fiscal year) and the date of the remand closure. For remanded complaints that remained on open status by the end of FY 2012, time in the process was calculated based on the time between the remand date (regardless of the fiscal year) and the end of FY 2012 (September 30, 2012).

Retaliation was the most frequently alleged basis in formal EEO complaints at USDA. Race and sex interchanged as the second and third frequently alleged bases. The chart and graph below depict trends of the top three bases raised in EEO complaints between FYs 2010 and 2012 for all of USDA:



The total number of personnel actions taken by USDA agencies following resolution of EEO complaints was 462.¹² The types of personnel actions taken included monetary and non-monetary (See Table 2-4). The number of final decisions finding discrimination decreased from 32 in FY 2011 to 18 in FY 2012 a 44 percent decrease. There were 12 disciplinary actions taken against USDA employees who were found to have committed prohibited acts of discrimination (See Table 2-5).

¹² This includes findings of discrimination, as well as, complaints voluntarily resolved by settlement agreement.



A summary of EEO complaint data for each USDA agency is provided in Part II of this report. The attachments provide information regarding the processing of each complaint.

FY 2012 Complaint Data

By USDA Agency

Part I: Program Discrimination Complaint Data by USDA Agency

This section provides summary data for program complaints in FY 2012 for each USDA agency. References are made to the exhibits section of this report regarding detailed program complaint data for each USDA agency.

Table 1-1					
Program Complaints Inventory During FY 2012					
Agency	Beginning Complaint Inventory	Complaints Filed	Total Complaint Inventory During FY 2012	Complaint Average Time (Days) In The Process	Exhibit 1 Page(s)
AMS	0	1	1	92	1
APHIS	4*	0	4	1,000	1
DM	0	1	1	39	1
FNS	63*	375	438	113	1-14
FS	53*	54	107	396	14-18
FSA	122*	60	182	896	18-23
FSIS	1	0	1	943	23
GIPSA	1	0	1	573	23
NIFA	3*	1	4	1,114	23-24
NRCS	21*	5	26	908	24
OTHER GOVERNMENT AGENCY	9*	20	29	1,010	24-25
RD	380*	215	595	854	25-44
RMA	7*	2	9	793	44
USDA-WIDE	1*	0	1	3,343	44
Total USDA	665*	734	1,399	598	1-44

*This number is different from the FY 2011 Farm Bill Report's ending inventory due to PCMS reconciliation efforts conducted during FY 2012.

Table 1-2

Number of Program Complaints Closed in FY 2012

Agency	Total Complaint Inventory During FY 2012	Total Number of Complaints Closed	Ending Complaint Inventory	Exhibit 1 Page(s)
AMS	1	1	0	1
APHIS	4	4	0	1
DM	1	0	1	1
FNS	438	377	61	1-14
FS	107	59	48	14-18
FSA	182	87	95	18-23
FSIS	1	0	1	23
GIPSA	1	1	0	23
NIFA	4	1	3	23-24
NRCS	26	11	15	24
OTHER GOVERNMENT AGENCY	29	19	10	24-25
RD	595	364	231	25-44
RMA	9	3	6	44
USDA-WIDE	1	0	1	44
Total USDA	1,399	927	472 ¹³	1-44

¹³ Seventy-five (75) of these cases are SOL ECOA cases.

Table 1-3	
Number of Program Complaints Resolved With Finding of Discrimination	
Agency	Findings of Discrimination
AMS	0
APHIS	0
ARS	0
DM	0
ERS	0
FAS	0
FNS	1
FS	1
FSA	5
FSIS	0
GIPSA	0
NAD	0
NASS	0
NIFA	0
NRCS	1
OCFO	0
OIG	0
RD	2
RMA	0
Total USDA	10

Part II: EEO Complaint Data by USDA Agency

This section provides summary data for EEO complaints in FY 2012 for each USDA agency. References are made to the exhibits section of this report regarding detailed EEO complaint data for each USDA agency.

Table 2-1					
EEO Complaints Inventory During FY 2012					
Agency	Beginning Complaint Inventory	Complaints Filed	Total Complaint Inventory During FY 2012	Complaint Average Time (Days) In The Process	Exhibit 2 Page(s)
AMS	23*	21	44	1,073	1-2
APHIS	62*	47	109	494	2-5
ARS	31	30	61	536	5-7
CRSD	46*	27	73	712	7-9
ERS	15	1	16	1,390	9
FAS	10*	10	20	1,198	9-10
FNS	11	8	19	430	10-11
FS	234*	171	405	908	11-22
FSA	94*	29	123	1,020	22-26
FSIS	129*	68	197	683	26-32
GIPSA	16*	9	25	501	32-33
NAD	1	0	1	718	33
NASS	2	1	3	263	33
NIFA	2	1	3	262	33
NRCS	46*	41	87	557	33-35
OCFO	49*	23	72	615	35-37
OIG	11	8	19	666	38
RD	103*	36	139	814	38-42
RMA	10*	5	15	522	42-43
Total USDA	895	536	1,431	764	1-43

*This number is different from the FY 2011 Farm Bill Report ending inventory due to reconciliation efforts conducted in FY 2012.

Table 2-2

Number of EEO Complaints Closed in FY 2012

Agency	Total Complaint Inventory	Total Number of Complaints Closed	Ending Complaint Inventory	Exhibit 2 Page(s)
AMS	44	19	25	1-2
APHIS	109	43	66	2-5
ARS	61	27	34	5-7
CRSD	73	21	52	7-9
ERS	16	1	15	9
FAS	20	2	18	9-10
FNS	19	9	10	10-11
FS	405	130	275	11-22
FSA	123	37	86	22-26
FSIS	197	79	118	26-32
GIPSA	25	7	18	32-33
NAD	1	1	0	33
NASS	3	1	2	33
NIFA	3	2	1	33
NRCS	87	24	63	33-35
OCFO	72	15	57	35-37
OIG	19	2	17	38
RD	139	43	96	38-42
RMA	15	6	9	42-43
Total USDA	1,431	469	962	1-43

Table 2-3	
Number of EEO Complaints Resolved With Finding of Discrimination	
Agency	Findings of Discrimination
AMS	0
APHIS	1
ARS	1
CRSD	1
ERS	0
FAS	1
FNS	0
FS	6
FSA	2
FSIS	2
GIPSA	1
NAD	0
NASS	0
NIFA	0
NRCS	2
OCFO	0
OIG	0
RD	1
RMA	0
Total USDA	18

Table 2-4

Number of Personnel Actions Following Resolution of EEO Complaints	
Agency	Number of Personnel Actions
AMS	30
APHIS	31
ARS	23
CRSD	41
ERS	0
FAS	3
FNS	5
FS	131
FSA	23
FSIS	111
GIPSA	5
NAD	1
NASS	3
NIFA	3
NRCS	16
OCFO	6
OIG	0
RD	21
RMA	9
Total USDA	462

As noted in the referenced exhibits section, a total of 462 personnel actions are reported. However, the number of complaints resolved with personnel actions was 185 cases.

Detailed information regarding number and types of personnel actions taken following the resolution of each complaint is provided in Exhibit 2-1.

Table 2-5 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:

Table 2-5					
Disciplinary Actions in EEO Complaint Findings of Discrimination					
Disciplinary Action	Discrimination Type				
	Retaliation	Harassment	Prohibited Personnel Practice	Discrimination	Total
Removal	0	0	0	0	0
15 Days or More Suspension	0	0	0	0	0
14 Days or Less Suspension	2	4	1	2	9
Reduction-in-Grade	0	0	0	0	0
Reduction-in-Pay	0	0	0	0	0
Letter of Reprimand	0	1	0	2	3
Total	2	5	1	4	12

EXHIBITS

Exhibit 1: FY 2012 USDA Program Complaint Inventory

Exhibit 2: FY 2012 USDA EEO Complaint Inventory

Exhibit 2-1: Number and Type of Personnel Actions Taken Following Resolution of EEO Complaints

The exhibits listed above to this report are not available on our website. We are in the process of putting the exhibits in a format that will be accessible to all. You may obtain a copy of the exhibits by contacting the Office of the Assistant Secretary for Civil Rights, Information Research Service, on (202) 401-0005 or (800) 795-3272 (toll free) or by sending an email request to CR-INFO@ascr.usda.gov