

# **U.S. Department of Agriculture**



## **Notification and Federal Employee Antidiscrimination and Retaliation Act (No FEAR Act) Report to Congress**

**Fiscal Year 2020**



United States Department of Agriculture

Office of the Secretary  
Washington, D.C. 20250

May 22, 2020

## USDA Civil Rights Policy Statement

The hallmark of my tenure as Secretary of the U.S. Department of Agriculture (USDA) is to do right and feed everyone and I don't intend for that to be just a hollow creed. This pledge is at the heart of our work, which includes our commitment to protecting the civil rights of all USDA employees and customers.

Doing right means treating all people equally, regardless of an individual's race, color, national origin, religion, sex (including pregnancy, gender identity and sexual orientation), disability, age, genetic information, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). We are part of the same human family, imbued with dignity and worthy of respect. I expect every USDA employee to foster a workplace free from discrimination, harassment, and retaliation so everyone can reach his or her full potential. Workplace harassment will not be tolerated, and managers and supervisors will correct the harassing conduct before it becomes severe or pervasive. Our workplace will be a model for proper enforcement of civil rights protections, not only because it's the law, but also because it's the right thing to do.

Equal employment opportunity covers all personnel/employment programs, management practices, and decisions, including, but not limited to, recruitment/hiring, merit promotion, transfer, reassignments, training and career development, benefits, and separation.

Feeding everyone means it doesn't matter what you look like or where you come from, USDA programs are for you. Hunger knows no color or creed. Whether we are responding to disasters with food aid, cultivating sustainable agriculture programs overseas, or improving school meals here at home, at USDA we know food has the power to unite.

When you start with a simple expression of integrity and equality, upholding civil rights and all the freedoms enshrined in our laws is not just compulsory, it becomes intrinsic. For that reason and working together, we will continue to return to our touchstone: Do right ... by everyone ... and feed everyone.

A handwritten signature in blue ink that reads "Sonny Perdue". The signature is fluid and cursive, written in a professional style.

Sonny Perdue  
Secretary

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## **Annual Reporting Requirements**

The Notification and Federal Employee Anti-discrimination and Retaliation Act of 2002 (No FEAR Act), Public Law No. 107-174, Section 203 mandates that Federal Agencies report certain information on actions taken to promote nondiscrimination in employment and process complaints of discrimination for each fiscal year (FY). This report contains the:

- number of complaints filed with USDA alleging discrimination based on race, color, religion, national origin, sex, disability, genetics, 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 USDA to provide: (1) an examination of trends; (2) causal analysis; (3) practical knowledge gained through experience; (4) actions planned or taken to improve its complaint or civil rights programs and procedures and any ascertainable adjustments made in its budget as a result of its compliance with the reimbursement requirement.

## **Executive Summary**

USDA's FY 2020 No FEAR Act Annual Report is the sixteenth 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 Annual Report demonstrates key accomplishments for USDA during FY 2020 to reduce anti-discrimination and retaliation, increase accountability, emphasize training for managers in the management of a diverse workforce, encourage dispute resolution and employee communication skills.

As demonstrated in the report, key accomplishments in line with the requirements of the No FEAR Act and the Secretary of Agriculture's (Secretary) Civil Rights objectives, consist of the following:

- A decrease of 13 percent in equal employment opportunity (EEO) complaints filed in FY 2020 as compared to FY 2019.
- The number of filers decreased by eight percent in FY 2020 as compared to FY 2019.
- The number of findings of discrimination increased by seven in FY 2020 as compared to FY 2019.
- Disciplinary actions taken against employees who violated Federal anti-discrimination laws and whistleblower protection statutes shows there were 14 in FY 2020.<sup>1</sup>
- The Office of the Assistant Secretary for Civil Rights (OASCR) conducted an in-depth audit of its open inventory of cases which resulted in the identification of approximately 90 complaints inaccurately reflecting open status. Through our partnership with the Equal Employment Opportunity Commission (EEOC) to obtain the necessary confirmation, OASCR closed 46 of those cases.

During FY 2020, USDA through OASCR, implemented the following initiatives to reduce the number and improve timeliness of EEO complaints:

- Processed 360 formal complaints of discrimination. Complaints were processed at the intake stage with an average processing time of 24 days for acceptance or dismissal determinations.
- Processed 395 investigations as compared to 393 investigations processed in FY 2019.
- Worked to eliminate a backlog of untimely complaints under a 180-day Investigative Initiative. This Initiative resulted in no complaints over 180 days old and an average processing time reduced below the statutory requirement to 171 days.
- Reduced the processing times for adjudicating final agency decision (Final Agency Decisions without a Hearing) from 41 days as compared to 56 days in FY2019.

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<sup>1</sup> (See Part III: Table 9 Disciplinary Actions) taken against employees, as compared to 17 in FY 2019)

During FY 2020, USDA through OASCR, implemented the following initiatives to both achieve Employment Opportunity standards for a model EEO program and strengthen civil rights activities:

- Revised and posted civil rights and anti-harassment (AH) policy statements in accordance with the Equal Employment Opportunity Commission’s (EEOC), Management Directive 715 requirements.
- Developed and implemented USDA’s revised Reasonable Accommodation (RA) and Personal Assistant Services Departmental Regulation (DR), 29 C.F.R. § 16.14.203(d)(3). This DR establishes the USDA policy for providing a RA to qualified employees and applicants with disabilities. This DR will help provide qualified people with disabilities an equal opportunity to obtain and successfully perform a job to the same extent as employees without disabilities and enjoy the benefits and privileges of employment.
- Established a USDA wide task force to establish USDA’s Anti-harassment Program through the development of a USDA Anti-harassment DR due to be issued in fiscal year 2021.
- Developed an on-line civil rights app to ensure all employees and customers have access to critical civil rights information and know their legal rights. This new phone application and quick reference guide will be uploaded on every USDA employee’s mobile device. This app will be updated regularly with current civil rights information.
- Strengthened USDA’s ability to analyze civil rights impacts by:
  - Implementing a communication strategy to all USDA Mission Areas, agencies, and staff offices requiring compliance with DR) 4300-004, Section 8(a) (6-9) and realigning existing civil rights impact analysis (CRIA) procedures to the DR;
  - Developed and issued a comprehensive CRIA Guidebook to educate internal and external stakeholders on the CRIA process and procedures in accordance with DR 4300-004, CRIA; and
  - Developed and implemented a CRIA tracking system and dashboard.

**PART I:  
USDA Formal EEO Complaints  
for  
Fiscal Years 2019 – 2020**

## 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 2019 and 2020.

### Summary of Data

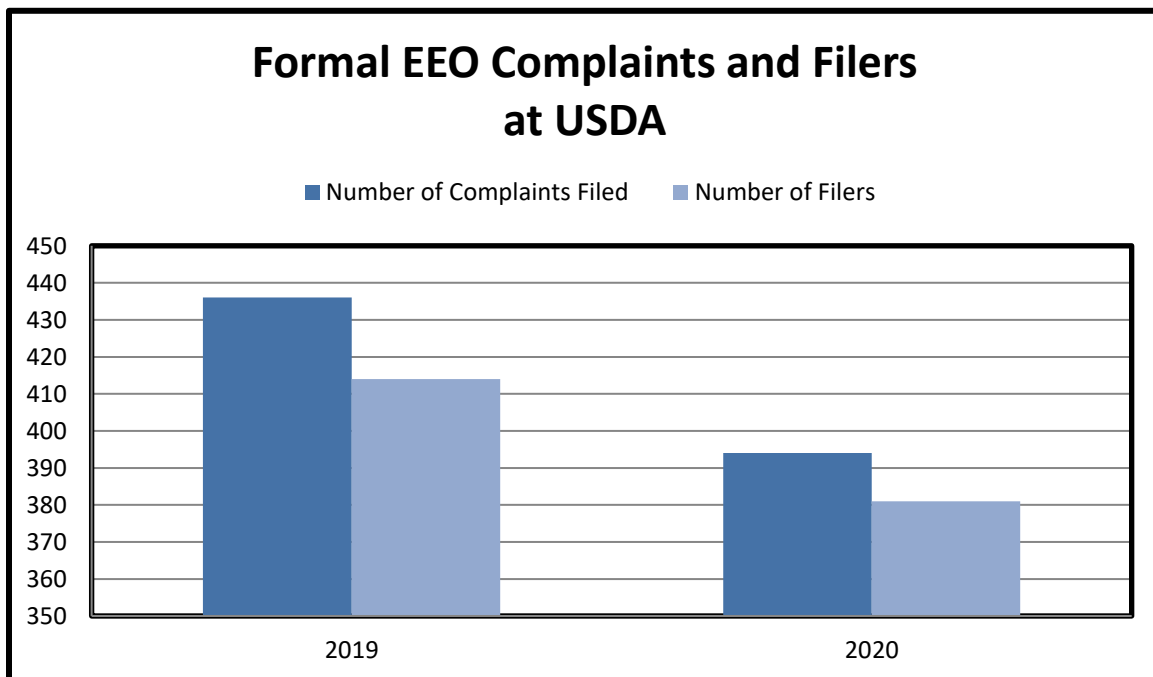
Table 1 below indicates the number of formal EEO complaints filed and the number of filers who filed complaints with USDA by fiscal year. It shows a decrease in the number of complaints filed and the number of filers over the prior year (See Graph 1).

In FY 2020, 394 complaints were filed as compared to 436 in FY 2019. This represents a ten percent decrease in complaints filed. Additionally, the number of filers was 381 as compared to 414 in FY 2019. This represents an eight percent decrease 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
2019	436	414
2020	394	381

**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 on the most frequently cited bases in formal EEO complaints for FYs 2019 and 2020. The basis of the complaint is the protected characteristic the complainant alleges which formed the motivation for the discriminatory conduct. The bases protected by EEO statutes are race, color, religion, national origin, sex, disability, genetics, 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 2020 are: (1) retaliation; (2) race; (3) sex; and (4) age. In FY 2019, the four most frequently cited bases were: (1) retaliation; (2) race; (3) sex; and (4) disability. These four bases are illustrated in Graph 2.

### **Complaints Alleging Retaliation**

Retaliation was the most frequently alleged basis in formal EEO complaints at USDA for FYs 2020 and 2019. In FY 2020, 57 percent of complaints cited retaliation as a basis, compared to 59 percent in FY 2019.

### **Complaints Alleging Race Discrimination**

Race was the second most frequently alleged basis in formal EEO complaints at USDA in FY 2020. In FY 2020, 43 percent of complaints cited race as a basis, compared to 55 percent in FY 2019.

### **Complaints Alleging Sex Discrimination**

Sex was the third most frequently alleged basis in formal EEO complaints at USDA in FY 2020. In FY 2020, 42 percent of complaints cited sex as a basis, compared to 61 percent in FY 2019.

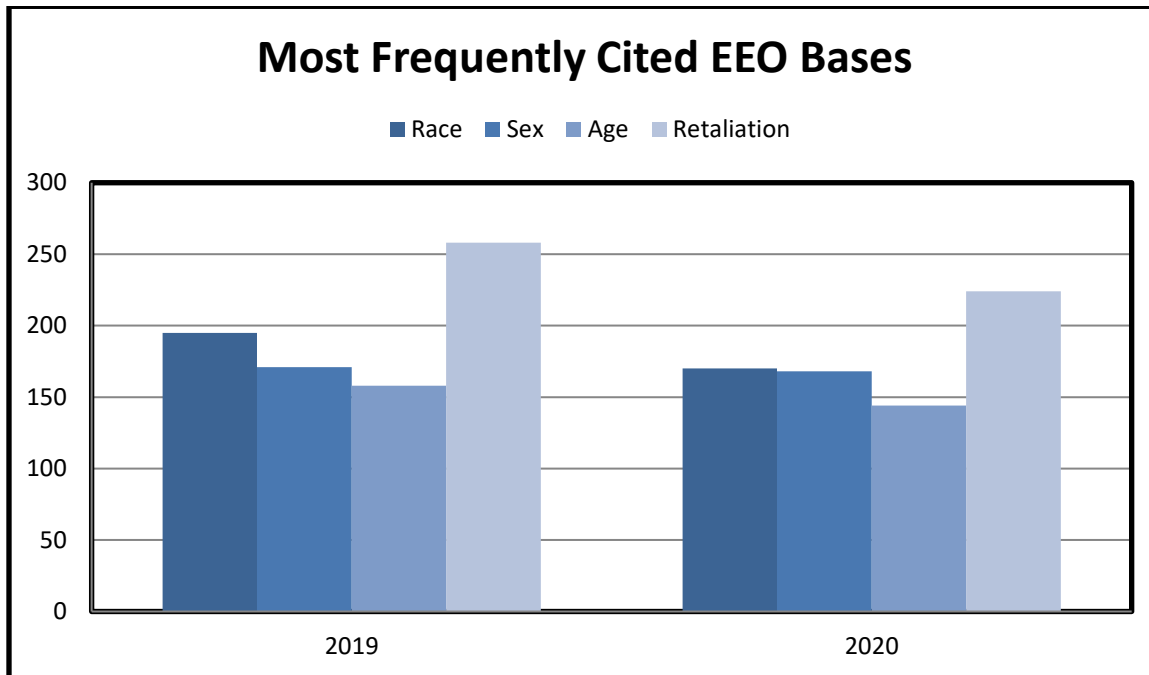
### **Complaints Alleging Age Discrimination**

Age was the fourth most frequently alleged basis in formal EEO complaints at USDA for FY 2020. In FY 2020, 36 percent of complaints cited age as a basis.

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

Frequency of EEO Bases in Formal EEO Complaints									
Year	Race	Color	Religion	Sex	National Origin	Disability	Age	Retaliation	Other <sup>2</sup>
2019	195	93	35	171	58	170	157	258	37
2020	170	59	18	168	46	141	144	224	38

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



<sup>2</sup> Other USDA protected bases include: Non-EEO. Additionally, the basis of sex includes gender identity and 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 2019 and 2020. 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 contains a list of issues most 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 2020 were: (1) Harassment; (2) Disciplinary Action; and (3) Promotion/Non-Selection. In FY 2019, the three EEO issues most frequently cited were: Harassment; (2) Terms/Condition of Employment; and (3) Disciplinary Action. 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 FYs 2020 and 2019. In FY 2020, 54 percent (214 filings) of complaints cited harassment as an issue as compared to 44 percent (245<sup>3</sup> filings) in FY 2019, indicating a 13 percent decrease from FY 2019 to FY 2020.

Disciplinary Action<sup>4</sup> was the second most frequently cited issue in formal EEO cases in FY 2020. Approximately 23 percent (89 filings) of complaints cited disciplinary actions as an issue in FY 2020 as compared to 75 percent (111 complaints) in FY 2019, a 19 percent decrease from FY 2019 to FY 2020.

Promotion/Non-selection was the third most frequently cited issue in formal EEO cases in FY 2020. Approximately 21 percent (82 filings) of complaints cited Promotion/Non-selection as an issue in FY 2020, compared to 77 percent (100 filings) in FY 2019, an 18 percent increase.

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<sup>3</sup> Data reconciliation is conducted on a regular basis; therefore, the number may change.

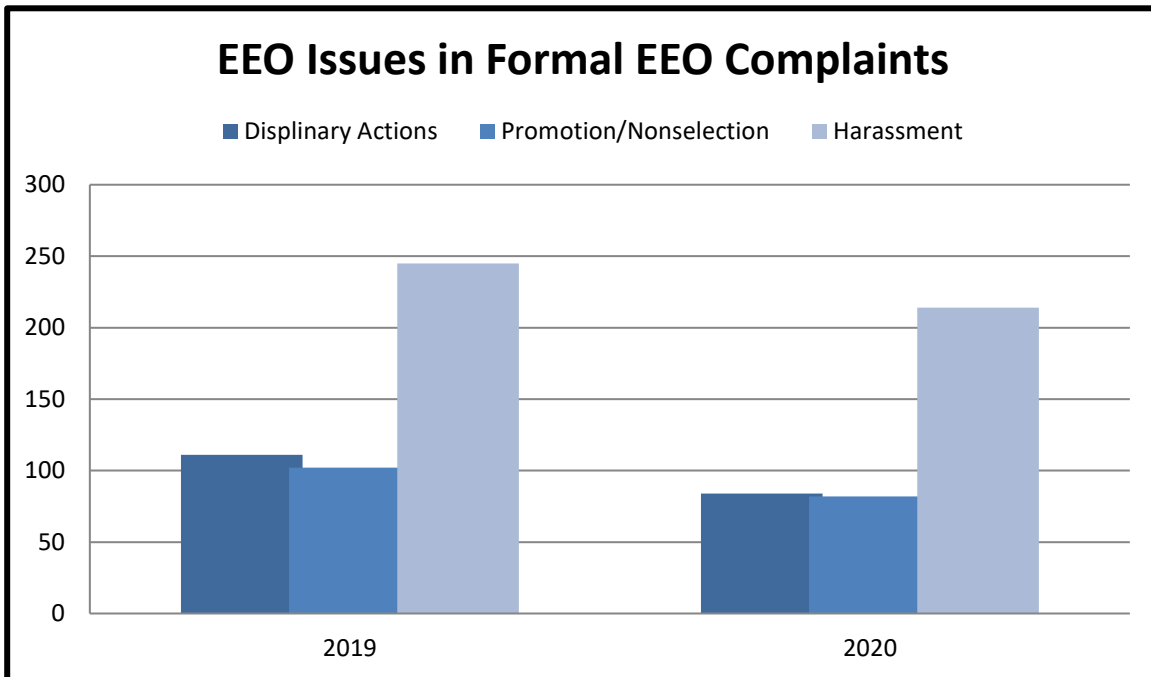
<sup>4</sup> Disciplinary Action includes demotion, reprimand, suspension, removal and other.

**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
2019	17	72	8	0	111	15	91	1	245	3	13	100	57	75	3	11	27	137	69	30	21
2020	31	58	7	0	89	12	76	1	214	0	20	82	24	56	4	5	24	58	42	71	16

\*Other USDA protected issues include Religious Accommodation, Sex Stereotyping, Telework

**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 2019 and 2020. 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 three EEO processing stages. This section contains data on: (1) the average number of days for completion of each stage; (2) pending complaints at various stages of the EEO process; and (3) pending formal complaints exceeding the 180-day investigation requirement.

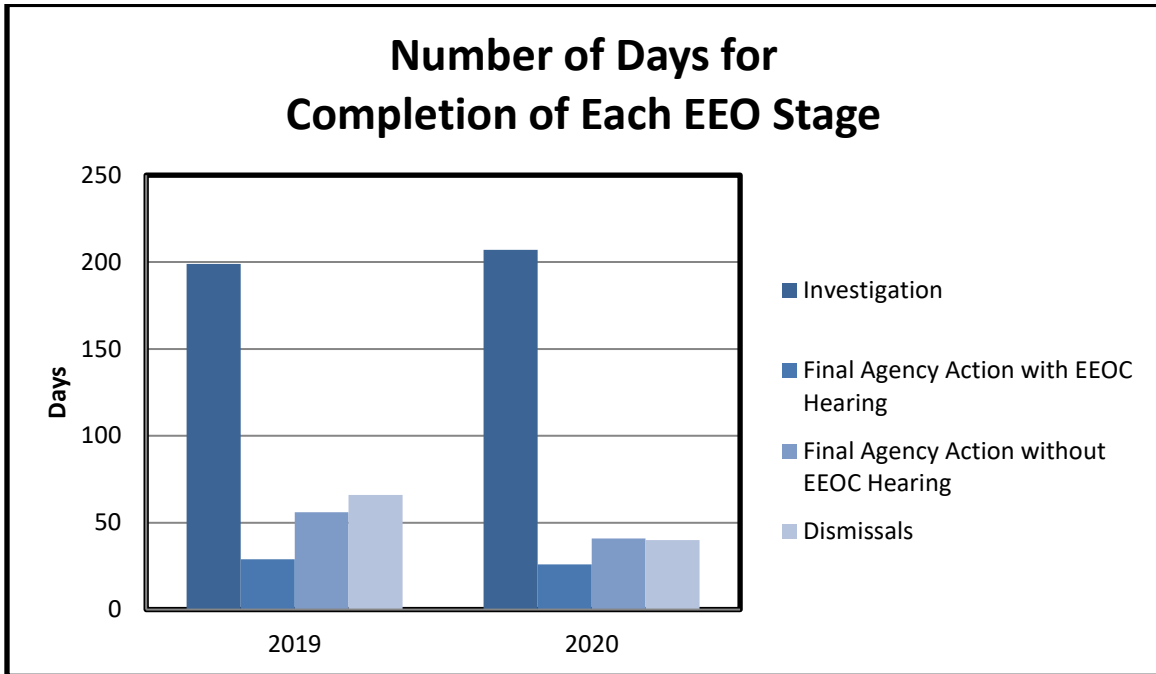
#### **(1) Average Number of Days for Completion of EEO Stages**

Table 4 below provides the average number of days for processing 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 dismissals and for all Final Agency Actions with and without an EEOC hearing. There was an upward trend in the average number of days for investigations.

**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 (pending prior to dismissal)</b>
<b>2019</b>	199	29	56	66
<b>2020</b>	207	26	41	40

**Graph 4**  
**The 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 2019 and 2020 at each EEO stage.

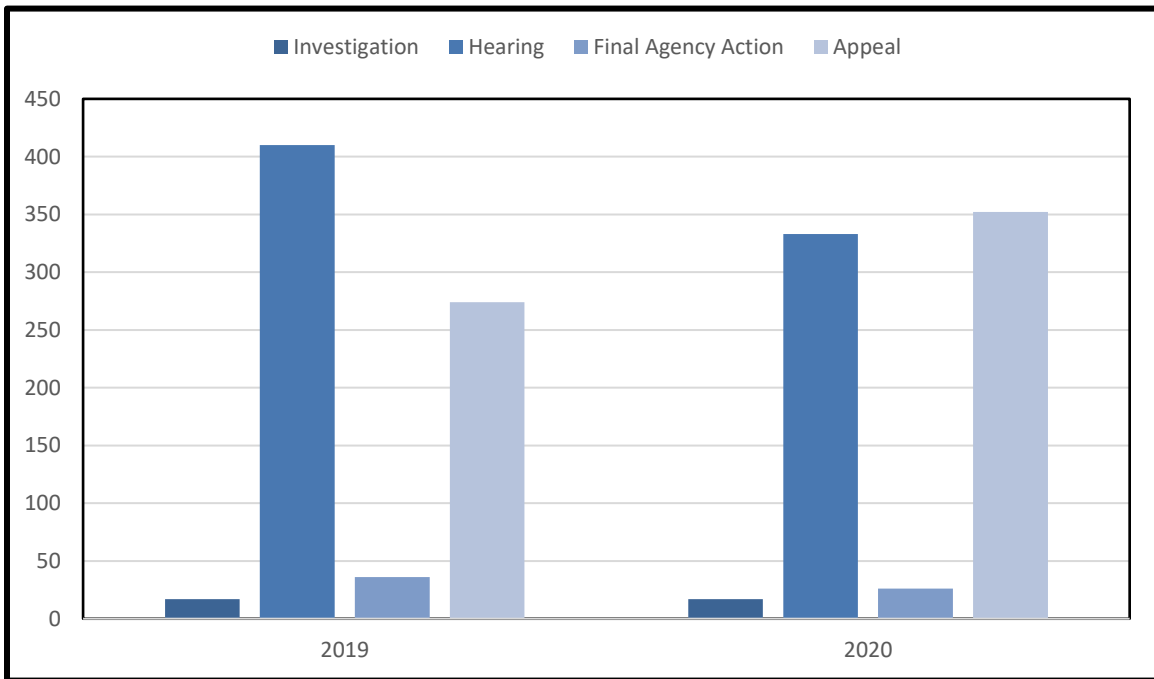
At the conclusion of each fiscal year, the number of pending investigations remained the same. However, the number of EEOC hearings and USDA final agency actions decreased from the number filed in FY 2019. The number of appeals pending at the EEOC at the end of the FY increased.

**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>2019</b>	17	410	36	274
<b>2020</b>	17	333	26	352

Graph 5 shows a decrease in the number of pending complaints in the Hearing and Final Agency Action stages and no change in Investigation. In addition, Graph 5 shows an upward trend in pending complaints at the Appeal stage.

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



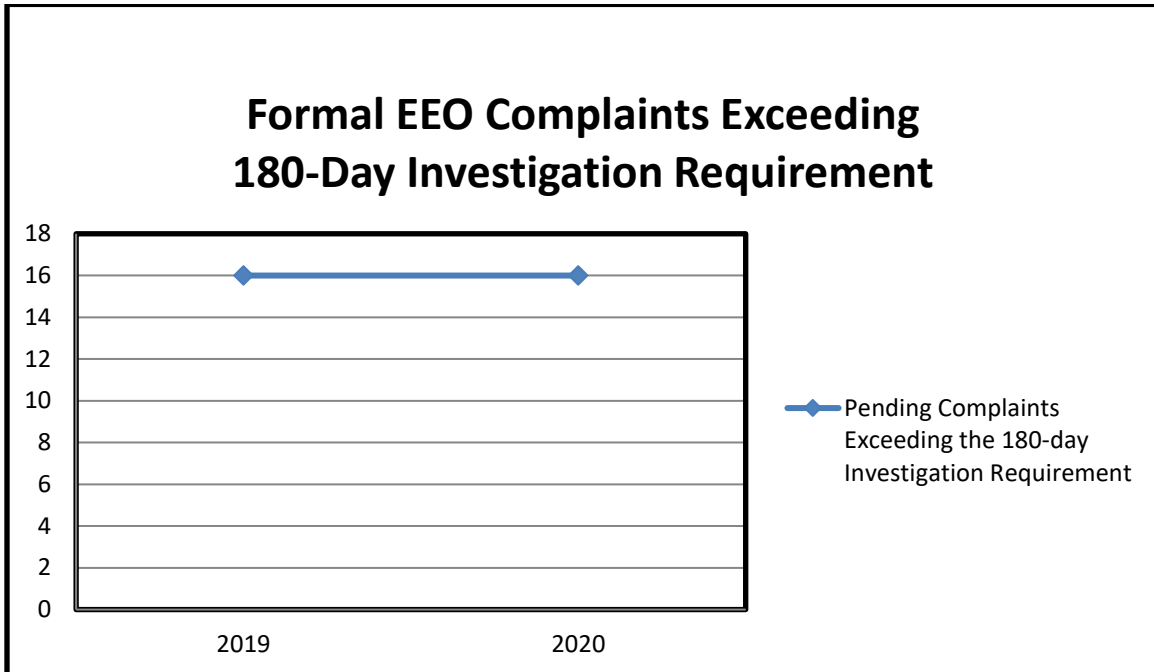
**(3) Formal Complaints Exceeding the 180-Day Investigation Requirement**

Table 6 and Graph 6 show no change in the number of complaints (16) in FY 2020 for formal complaints that exceeded the 180-day investigation requirement from FY 2019 to FY 2020.

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

<b>Complaints Exceeding the 180-day Investigation Requirement</b>	
<b>2019</b>	16
<b>2020</b>	16

**Graph 6**  
**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 may 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.

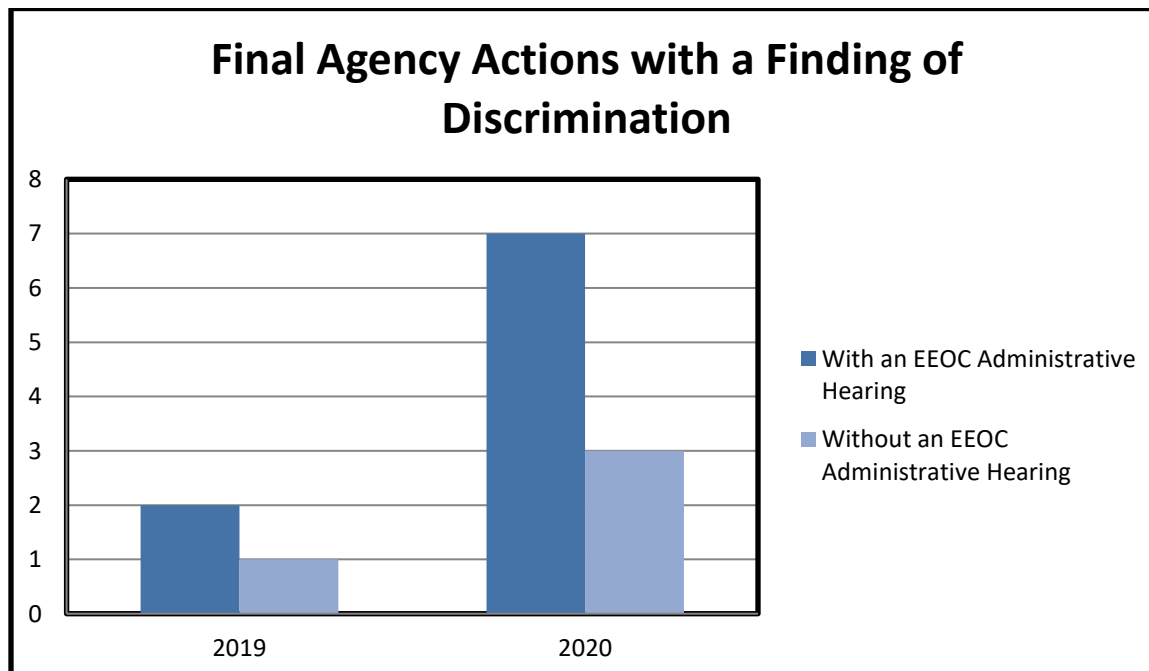
### Summary of Data

Table 7 and Graph 7 show that from FY 2019 to FY 2020, the number of findings of discrimination issued with an EEOC Administrative Hearing increased by five, and the number of findings without an EEOC Administrative Hearing increased by two during FY 2020.

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

Year	With an EEOC Administrative Hearing	Without an EEOC Administrative Hearing
2019	2	1
2020	7	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 and reported in FY 2020 the following factors impacted the filing of formal EEO complaints.

- The Agricultural Marketing Service (AMS) reported no change in the number of complaints for FYs 2020 and 2019. Specifically, 22 complaints were filed in FYs 2020 and 2019. AMS attributes the static number to the CR/EEO training sessions and the Civil Rights Program's proactive approach in resolving complaints at the earliest stages.
- The Animal and Plant Health Inspection Service (APHIS) reported a six percent decrease in the number of complaints filed in FY 2020. Specifically, 33 complaints were filed in FY 2020, compared to 35 in FY 2019. APHIS attributes the decrease to engagement by managers and supervisors in addressing workplace conflicts at the earliest stages.
- The Agricultural Research Service (ARS) reported a 13 percent decrease in the number of complaints filed in FY 2020. Specifically, 13 complaints were filed in FY 2020, compared to 15 in FY 2019. ARS attributes the decrease to timely and effective issuance of EEO policies and training.
- The Conflict Complaints Division (CCD), which processes conflict cases<sup>5</sup>, reported an increase of six percent in the number of complaints filed in FY 2020. Specifically, 56 complaints were filed in FY 2020, compared to 53 in FY 2019. Further analysis will be conducted to determine causation.
- The Foreign Agricultural Service (FAS) reported a ten percent decrease in the number of complaints filed in FY 2020. Specifically, nine complaints were filed in FY 2020, compared to ten in FY 2019. FAS attributes the decrease in complaints to continued training and educating employees on EEO issues, as well as interaction with employees.

The Food and Nutrition Service (FNS) reported a 73 percent increase in complaints filed. Specifically, 19 complaints were filed in FY 2020, compared to 11 in FY 2019. FNS attributes the upsurge in complaints filed to the Coronavirus global outbreak, as well as the shift to a virtual setting. Managers and employees experienced challenges in adapting to the virtual setting.

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<sup>5</sup> Conflict case(s) is an EEO complaint involving facts and/or allegations that are determined to pose an actual, perceived, and or potential conflict of interest 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 Farm Production and Conservation (FPAC) – Business Center (BC) reported a 25 percent decrease in the number of complaints filed in FY 2020. Specifically, six complaints were filed in FY 2020, compared to eight in FY 2019. The BC attributes the decrease in the number of complaints to FPAC’s maximizing synergy in leadership as a result of their reorganization and streamlining case management within its Civil Rights and EEO Division (CREEOD).
- The FPAC – Farm Service Agency (FSA) reported a 37 percent decrease in the number of formal complaints in FY 2020. Specifically, 17 complaints were filed in FY 2020, compared to 27 in FY 2019. As mentioned above the decrease in complaint activity is attributed to maximizing synergy in leadership as a result of their reorganization and streamlining case management within its CREEOD.
- The FPAC – Natural Resources Conservation Service (NRCS) reported a 35 percent decrease in the number of complaints filed in FY 2020. Specifically, 17 complaints were filed in FY 2020, compared to 26 in FY 2019. As mentioned above the decrease in complaint activity is attributed to maximizing synergy in leadership as a result of their reorganization and streamlining case management within its CREEOD.
- The FPAC – Risk Management Agency (RMA) reported no change in the number of complaints filed in FY 2020. Specifically, one complaint was filed in FY 2020, compared to one in FY 2019. RMA attributes no change in the number of complaints to the CR and EEO supplemental training on conflict management, unconscious bias, diversity, and inclusion.
- The Forest Service (FS) reported a 30 percent decrease in the number of complaints filed in FY 2020. Specifically, 70 complaints were filed in FY 2020, compared to 100 complaints file in FY 2019. FS attributes the decrease in the number of complaints to effectively improving the EEO pre-complaint process and addressing disparate impact and disparate treatment discrimination in the work environment.
- The Food Safety and Inspection Service (FSIS) reported a five percent decrease in the number of formal complaints filed in FY 2020. Specifically, 55 complaints filed in FY 2020, compared to 58 filed in FY 2019. FSIS attributes the decrease in the complaints to the actions and or activities undertaken during FY 2020, i.e., CR/EEO training, conducting Title VII compliance reviews, continued marketing of alternative dispute resolution (ADR) for complaint resolution at the lowest level, and the FSIS reorganization.
- The National Agricultural Statistics Service (NASS) reported a 50 percent decrease in the number of complaints filed in FY 2020. Specifically, one complaint was filed in FY 2020, compared to two in FY 2019. NASS attributes the decrease to its continued efforts to foster a culture that works on resolving conflicts at the earliest stages of disagreements or disputes.

- The National Institute of Food and Agriculture (NIFA) reported no complaints filed in FY 2020. Specifically, no complaints were filed in FY 2020, compared to three complaints filed in FY 2019. NIFA attributes the decrease in the number of complaints to continuous CR training, utilization of ADR, and early proactive prevention of discrimination in the workplace.
- The Office of the Chief Financial Officer (OCFO) reported a 23 percent decrease in the number of complaints filed in FY 2020. Specifically, 27 complaints were filed in FY 2020, compared to 35 in FY 2019. OCFO attributes the decrease to expert EEO counseling and attempts to resolve matters at the lowest possible level within the agency.
- The Rural Development (RD) reported a 45 percent decrease in complaints filed in FY 2020. Specifically, 16 complaints were filed in FY 2020, compared to 29 in FY 2019. RD attributes the decrease in the number of complaints filed to the EEO staff's proactive approach in mitigating issues during or prior to an individual initiating the informal EEO process.

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

USDA, including all its Mission Areas and agencies, have learned the following lessons from its experience in processing and resolving formal EEO complaints by:

- allowing maximum participation of all employees for employees to telework, EEO complaint activity declined;
- providing training to employees and managers and partnering with Human Resource Division was effective in resolving complaint and workplace issues;
- EEO accountability addressing wrongdoing must continue to be a focus of improvement;
- strengthening and better coordinating the pre-complaint process to accurately identify and process allegations in accordance with the EEO laws and resolve disputes is needed;
- additional procedures and training around harassment issues in the workforce may help reduce the number of claims citing harassment; and
- maximizing ADR and conflict resolution programs before or during the pre-complaint process must be strengthened and fully maximized.

## **(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. These past actions include the following:

- published information on upcoming leadership plans for employees through intranet accessibility;

- increased communication to all employees in advance of policy and/or organizational changes to decrease perceived personal attacks or harassment;
- addressed the increased inventory due to the 180-day initiative by maintaining progress towards timely adjudication and sustained quality.
- conducted an in-depth audit of open inventory cases which resulted in the identification of 90 inaccurate complaints pending open status. Partnering with the Equal Employment Opportunity Commission (EEOC) to obtain the necessary confirmation, 46 of those cases were closed by the end of the fiscal year.
- provided guidance and training to managers, supervisors and employees on harassment in the workplace, complaint processing procedures, conflict resolution, ADR, and the difference between EEO and non-EEO related matters;
- disseminated the Secretary's civil rights and anti-harassment policy statements to all supervisory personnel to ensure their understanding, cooperation, and compliance;
- hosted supplemental training sessions for managers and employees to include such topics as Using ADR Techniques, Understanding Harassment, Unconscious Bias, Reasonable Accommodation (RA), and Hostile Environment Claims;
- continued to work collaboratively with experts such as the Office of General Counsel, as well as external USDA trainers to provide supplemental training for employees;
- created a new division which deals with "Customer and Employee Engagement" in order to listen, learn, and measure what matters to customers and employees;

USDA is also introducing new initiatives to reduce complaints in future years. USDA plans to take the following future actions:

- encourage supervisors and managers to cooperate with EEO officials and investigators throughout the complaint process, to respond to requests for information and documents in a timely and accurate manner, to participate in mediation at any stage of the complaint process, and to participate in training, especially Title VII, and EEO training;
- focus civil rights training on topics aligned with our EEO top cited basis such as race, reprisal, and sex appear to help reduce complaint filings;
- continue to review the best practices in formal EEO complaint tracking and provide conflict micro-aggression, and unconscious bias courses to managers, supervisors, and employees which contributes to a better work environment;
- enhance its RA program to improve efficiency and to ensure compliance with the EEOC's requirements;

- enforce compliance review assessment tools to determine whether new measures are required to effectively assess the Agency's EEO Program;
- assure all Civil Rights/EEO counseling and investigative personnel receive the required 32 hours of training and the annual 8-hour refresher training; and
- encourage individuals to engage in early resolution of complaints and to ensure EEO conflicts are resolved at the lowest level possible.

**PART II:**  
**USDA Reimbursement to**  
**Judgment Fund for**  
**Fiscal Year 2020**

## USDA Reimbursement to Judgment Fund for Fiscal Year 2020

### 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 2020 judgments, awards, or settlements under the statutes addressed in the No FEAR Act.

**Table 8**  
**USDA Reimbursement to Judgment Fund for FY 2020 Settlements**

<b>USDA Reimbursement to Judgment Fund for FY 2020 Settlements</b>		
<b>Case</b>	<b>Total Amount</b>	<b>Attorneys' Fees</b>
<b>1</b>	\$4,000.00	-
<b>2</b>	\$933,417.50	<b>\$476,937.31</b>
<b>3</b>	\$100,000.00	-
<b>4</b>	\$30,000.00	-
<b>5</b>	\$200,000.00	-
<b>6</b>	\$132,899.44	<b>\$70,424.80</b>
<b>Total</b>	<b>\$1,400,316.94</b>	<b>\$547,362.11</b>

### Summary

In FY 2020, USDA reimbursed the Judgment Fund \$1,400,316.94, of which \$547,362.11 were identified as payment of attorneys' fees.



**PART III:**  
**USDA Disciplinary Actions and Reports**  
**for Fiscal Years 2019 – 2020**

**USDA Disciplinary Actions and Reports for  
Fiscal Years 2019–2020**

**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<sup>6</sup></b>												
<b>TYPE OF ACTION</b>	<b>FY 2019</b>						<b>FY 2020</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>	0	0	2	0	0	2	0	0	0	0	0	0
<b>15 DAY OR MORE</b>	0	0	0	0	0	0	0	0	0	0	0	0
<b>14 DAY OR LESS</b>	0	0	5	0	0	5	1	2	5	0	1	9
<b>REDUCTION IN GRADE</b>	0	0	0	0	0	0	0	0	0	0	0	0
<b>REDUCTION IN PAY</b>	0	0	0	0	0	0	0	0	0	0	0	0
<b>LOR</b>	0	0	9	1	0	10	1	0	4	0	0	5
<b>TOTAL DISCIPLINE</b>	0	0	16	1	0	17	2	2	9	0	1	14

**PART 2:** Table 10 below contains the number of complaints referred to the Office of Special Counsel (OSC) Whistleblower cases.

**Table 10**

<b>OFFICE OF SPECIAL COUNSEL CASES*</b>			
<b>CATEGORIES OF CASES</b>	<b>FY 2019</b>	<b>FY 2020</b>	<b>TOTAL</b>
<b>OSC WHISTLEBLOWER CASE</b>	0	18	18
<b>OSC WHISTLEBLOWER CASE CLOSED</b>	0	0	0

\*Data Source: Office of Inspector General

<sup>6</sup> Table Abbreviations: Disc. = Discrimination; Ret. = Retaliation; Har. = Harassment; PPP = Prohibited Personnel Practice; WBP = Whistleblower Protection Act; and LOR = Letter of Reprimand.

**PART IV:  
USDA Federal Court Litigation Statistics  
for FY 2020**

Tables 11, 12, and 13 below provide composite data for cases in Federal Court pending or resolved in FY 2020 and arising under the anti-discrimination and whistleblower protection laws.

**Table 11  
Federal Cases Pending in FY 2020**

<b>Federal Cases Pending in FY 2020</b>	
Pending District Court Cases	38
Pending Appellate Court Cases	4
New Cases Filed in District Court	17
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 2020	0	10	10	8	19
Still Pending at End of FY 2020	1	9	9	16	29

**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	2	2	2	6
Withdrawals	0	2	2	1	2
Final Judgment for Complainant	0	0	0	0	0
Final Judgment for Agency	0	6	6	5	11
Total Cases disposed of in FY 2020	0	0	0	0	24

## **NOTES ON CASES WITH MULTIPLE BASES ALLEGED**

1. Of the cases handled by OGC involving the Federal Antidiscrimination Laws covered by the No FEAR Act, approximately 82.3 percent of those cases involve claims of discrimination on multiple bases (e.g., Sex, Race) and/or under multiple statutes (e.g., Title VII, ADEA).
2. Of the cases handled by OGC involving the Federal Antidiscrimination Laws covered by the No FEAR Act, approximately 72.5 percent of those cases also included a claim of reprisal/retaliation.

# **Appendix A**

## **Equal Employment Opportunity Data Posted Pursuant to the No FEAR Act**

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

FY 2019 for period ending September 30, 2020

Complaint Activity					
	2016	2017	2018	2019	2020
Number of Complaints Filed	531	561	522	436	394
Number of Complainants	508	531	497	414	381
Repeat Filers	19	24	21	18	11
Complaints by Basis					
<i>Note: Complaints can be filed alleging multiple bases. The sum of the bases may not equal total complaints filed.</i>	2016	2017	2018	2019	2020
Race	222	243	216	195	170
Color	63	75	85	95	59
Religion	35	35	28	35	18
Reprisal	273	311	315	258	224
Sex	206	216	229	171	168
PDA	0	2	2	2	3
National Origin	47	67	68	58	46
Equal Pay Act	1	8	13	7	6
Age	185	207	155	157	144

Disability	157	185	195	170	141	
Genetics	0	1	0	3	3	
Non-EEO	39	55	40	37	38	
<b>Complaints by Issue</b>						
<i>Note: Complaints can be filed alleging multiple bases. The sum of the bases may not equal total complaints filed.</i>		<b>2016</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>	<b>2020</b>
Appointment/Hire	28	40	24	17	31	
Assignment of Duties	92	87	82	72	58	
Awards	8	17	14	8	7	
Conversion to Full Time/Permanent Status	0	3	1	0	0	
Demotion	4	4	3	1	4	
Reprimand	27	45	43	41	24	
Suspension	26	36	37	34	27	
Removal	6	17	21	32	29	
Other	7	4	3	3	5	
Duty Hours	20	18	8	15	12	
Performance. Evaluation/Appraisal	92	96	98	91	76	
Examination/Test	1	2	1	1	1	
Non-Sexual	285	343	351	239	199	
Sexual	18	13	24	6	15	
Medical Examination	1	4	0	3	0	
Pay including Overtime	22	30	11	13	20	
Promotion/Non-Selection	149	124	71	100	82	



Reassignment					
Denied	14	17	21	17	8
Directed	18	20	26	39	16
Reasonable Accommodation Disability	68	84	94	75	56
Reinstatement	2	0	0	3	4
Religious Accommodation	3	4	1	1	2
Retirement	3	6	4	11	5
Sex-Stereotyping	1	1	1	0	0
Telework	29	25	31	20	14
Termination	27	36	35	27	24
Terms/Conditions of Employment	103	146	135	137	58
Time and Attendance	60	67	77	69	42
Training	54	40	45	30	17
User Defined - Other 1	5	2	0	1	2
User Defined - Other 2	0	1	0	0	0
User Defined - Other 3	0	0	0	0	0
User Defined - Other 4	0	0	0	0	0

Processing Time					
	2016	2017	2018	2019	2020
Average Number of Days in Investigation	209.13	161.02	173.22	199.49	207.27
Average Number of Days in Final Action	97.53	151.66	36.78	40.62	32.40
Average Number of Days in Investigation	213.18	165.95	172.58	208.32	216.45

Average Number of Days in Final Action	69.31	108.76	21.90	29.15	25.95
Average Number of Days in Investigation	202.08	153.61	173.78	189.03	190.26
Average Number of Days in Final Action	124.03	181.49	50.90	55.94	40.90

<b>Complaints Dismissed by Agency</b>						
	<b>2016</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>	<b>2020</b>	
Total Complaints Dismissed by Agency	54	83	84	51	46	
Average Days Pending Prior to Dismissal	111	64	20	66	40	
Total Complaints Withdrawn by Complainants	28	35	28	37	46	

<b>Total Final Agency Actions Finding Discrimination</b>										
	<b>2016</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>	<b>2020</b>					
	<b>#</b>	<b>%</b>	<b>#</b>	<b>%</b>	<b>#</b>	<b>%</b>	<b>#</b>	<b>%</b>	<b>#</b>	<b>%</b>
Total Number Findings	7		5		1		3		10	
Without Hearing	6	86	3	60	0	1	1	33	3	30
With Hearing	1	4	2	40	1	10	2	67	7	70

<i>Note: Complaints can be filed alleging multiple bases. The sum of the bases may not equal total complaints and findings.</i>										
	<b>2016</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>	<b>2020</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>	7		4		1		3		10	

Race	3	43	3	75	0	0	1	33	2	20
Color	1	14	0	0	0	0	1	33	1	10
Religion	0	0	0	0	0	0	0	0	0	0
Reprisal	4	57	1	25	1	100	2	67	6	60
Sex	3	43	0	0	1	100	1	33	5	50
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	0	0	1	25	0	0	0	0	0	0
Disability	2	29	0	0	0	0	2	67	2	20
Genetics	0	0	0	0	0	0	0	0	0	0
Non-EEO	0	0	0	0	0	0	0	0	1	10
<b>Findings After Hearing</b>	1		2		1		2		7	
Race	1	100	2	100	0	0	0	0	2	29
Color	0	0	0	0	0	0	0	0	1	14
Religion	0	0	0	0	0	0	0	50	0	0
Reprisal	1	100	0	0	1	100	1	0	6	71
Sex	1	100	0	0	1	100	0	0	5	71
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	0	0	1	50	0	0	0	50	0	0
Disability	0	0	0	0	0	0	1	0	0	0
Genetics	0	0	0	0	0	0	0	0	0	0
Non-EEO	0	0	0	0	0	0	0	0	1	14

<b>Findings Without Hearing</b>	6		2		0		1		3	
Race	2	33	1	50	0	0	1	100	0	0
Color	1	17	0	0	0	0	1	100	0	0
Religion	0	0	0	0	0	0	0	0	0	0
Reprisal	3	50	1	50	0	0	1	100	1	33
Sex	2	33	0	0	0	0	1	100	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
Age	0	0	0	0	0	0	0	0	0	0
Disability	2	33	0	0	0	0	1	100	2	67
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 of Discrimination Rendered by Issue</b>										
	<b>2016</b>		<b>2017</b>		<b>2018</b>		<b>FY 2019</b>		<b>FY 2020</b>	
<b>Total Number Findings</b>	7		4		1		3		10	
Appointment/Hire	0	0	0	0	0	0	0	0	0	0
Assignment of Duties	1	14	2	50	0	0	0	0	3	30
Awards	0	0	0	0	0	0	0	0	0	0
Conversion to Full Time/ Permanent Status	0	0	0	0	0	0	0	0	0	0
Demotion	0	0	0	0	0	0	0	0	0	0
Reprimand	2	29	0	0	0	0	0	0	1	10
Suspension	1	14	0	0	0	0	1	33	0	0
Removal	0	0	0	0	0	0	1	33	0	0

Other	0	0	0	0	0	0	0	0	0	0
Duty Hours	1	14	0	0	0	0	0	0	1	10
Performance Evaluation/ Appraisal	0	0	0	0	0	0	1	33	2	20
Examination/Test	0	0	0	0	0	0	0	0	0	0
Non-Sexual	2	29	0	0	0	0	3	100	5	50
Sexual	0	0	0	0	1	100	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	1	33	1	10
Promotion/Non-Selection	2	29	3	75	0	0	0	0	1	10
Denied	0	0	0	0	1	100	0	0	0	0
Directed	0	0	0	0	0	0	0	0	0	0
Reasonable Accommodation Disability	1	14	0	0	0	0	2	67	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	1	10
Termination	0	0	1	25	0	0	0	0	0	0
Terms/Conditions of Employment	2	29	1	25	0	0	0	0	3	30
Time and Attendance	0	0	0	0	1	100	0	0	0	0
Training	0	0	0	0	0	0	0	0	1	10
User Defined - Other 1	0	0	0	0	0	0	0	0	0	0
User Defined - Other 2	0	0	0	0	0	0	0	0	0	0
User Defined - Other 3	0	0	0	0	0	0	0	0	0	0
User Defined - Other 4	0	0	0	0	0	0	0	0	0	0

<b>Findings After Hearing</b>	1		2		1		2		7	
Appointment/Hire	0	0	0	0	0	0	0	0	0	0
Assignment of Duties	1	100	1	50	0	0	0	0	2	29
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
Demotion	0	0	0	0	0	0	0	0	0	0
Reprimand	0	0	0	0	0	0	0	0	1	14
Suspension	0	0	0	0	0	0	1	50	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	1	14
Performance Evaluation/ Appraisal	0	0	0	0	0	0	1	50	2	20
Examination/Test	0	0	0	0	0	0	0	0	0	0
Non-Sexual	0	0	0	0	0	0	2	100	4	57
Sexual	0	0	0	0	1	100	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	1	50	0	0
Promotion/Non-Selection	0	0	1	50	0	0	0	0	1	14
Denied	0	0	0	0	1	100	0	0	0	0
Directed	0	0	0	0	0	0	0	0	0	0
Reasonable Accommodation Disability	0	0	0	0	0	0	1	50	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	1	14
Termination	0	0	1	50	0	0	0	0	0	0
Terms/Conditions of Employment	0	0	0	0	0	0	0	0	2	29
Time and Attendance	0	0	0	0	1	100	0	0	0	0
Training	0	0	0	0	0	0	0	0	1	14
User Defined - Other 1	0	0	0	0	0	0	0	0	0	0
User Defined - Other 2	0	0	0	0	0	0	0	0	0	0
User Defined - Other 3	0	0	0	0	0	0	0	0	0	0
User Defined - Other 4	0	0	0	0	0	0	0	0	0	0
<b>Findings Without Hearing</b>	<b>6</b>		<b>2</b>		<b>0</b>		<b>1</b>		<b>3</b>	
Appointment/Hire	0	0	0	0	0	0	0	0	0	0
Assignment of Duties	0	0	1	50	0	0	0	0	1	33
Awards	0	0	0	0	0	0	0	0	0	0
Conversion to Full Time/ Permanent Status	0	0	0	0	0	0	0	0	0	0
Demotion	0	0	0	0	0	0	0	0	0	0
Reprimand	2	33	0	0	0	0	0	0	0	0
Suspension	1	17	0	0	0	0	0	0	0	0
Removal	0	0	0	0	0	0	1	100	0	0
Other	0	0	0	0	0	0	0	0	0	0
Duty Hours	1	17	0	0	0	0	0	0	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
Non-Sexual	2	33	0	0	0	0	1	100	1	33
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	1	33
Promotion/Non-Selection	2	33	2	100	0	0	0	0	0	0
Denied	0	0	0	0	0	0	0	0	0	0
Directed	0	0	0	0	0	0	0	0	0	0
Reasonable Accommodation Disability	1	17	0	0	0	0	1	100	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	0	0	0	0	0	0	0	0	0	0
Terms/Conditions of Employment	2	33	1	50	0	0	0	0	1	33
Time and Attendance	0	0	0	0	0	0	0	0	0	0
Training	0	0	0	0	0	0	0	0	0	0
User Defined - Other 1	0	0	0	0	0	0	0	0	0	0
User Defined - Other 2	0	0	0	0	0	0	0	0	0	0
User Defined - Other 3	0	0	0	0	0	0	0	0	0	0
User Defined - Other 4	0	0	0	0	0	0	0	0	0	0
<b>Pending Complaints Filed in Previous Fiscal Years by Status</b>										
	<b>2016</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>	<b>2020</b>					
Total Complaints from Previous Fiscal Years	442	472	453	421	369					
Total Complainants	417	429	410	368	321					



Investigation	15	14	17	17	17
ROI Issued, Pending Complainant's Action	2	0	0	1	0
Hearing	375	434	426	410	333
Final Agency Action	59	27	24	36	26
Appeal with EEOC Office of Federal Operations	143	192	231	274	352
<b>Complaint Investigations</b>					
	<b>2016</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>	<b>2020</b>
Pending Complaints Where Investigations Exceed Required Time Frames	10	8	21	16	16