

U.S. SECURITIES AND EXCHANGE COMMISSION



NOTIFICATION AND FEDERAL EMPLOYEE ANTIDISCRIMINATION AND RETALIATION ACT OF 2002

ANNUAL REPORT TO CONGRESS
FISCAL YEAR 2020

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INTRODUCTION

Congress enacted the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (No FEAR Act), Pub. L. No. 107-174, as amended by the Elijah E. Cummings Federal Employee Antidiscrimination Act of 2020, to hold agencies accountable for violations of antidiscrimination and whistleblower protection laws. Section 203 of the No FEAR Act requires that, no later than 180 days after the end of each fiscal year, each agency submit an annual report to the Speaker of the House of Representatives, the President *pro tempore* of the Senate, the Committee on Governmental Affairs of the Senate,¹ the Committee on Government Reform of the House of Representatives,² each committee of Congress with jurisdiction relating to the agency, the Chair of the Equal Employment Opportunity Commission (EEOC), and the Attorney General of the United States. Regulations from the Office of Personnel Management (OPM) implementing the No FEAR Act, 5 C.F.R., Part 724, Subpart C, also require the submission of an annual report to the Director of OPM.

The Annual No FEAR Act Report must provide the following information:

- The number of federal court cases, pending or resolved, arising under the No FEAR Act laws, and the status and disposition of the cases;
- Judgment Fund reimbursements and adjustments to the agency's budget to meet reimbursement requirements;
- The number and type of disciplinary actions related to discrimination, retaliation, or harassment, and the agency's policy relating to appropriate disciplinary action;
- Year-end summary data related to the agency's Equal Employment Opportunity (EEO) complaint activity for the fiscal year;³
- An analysis of trends, causation, and practical knowledge gained through experience;
- Actions planned or taken to improve the agency's discrimination complaint programs; and
- The agency's No FEAR Act training plan.

¹ This Committee is now named the U.S. Senate Committee on Homeland Security and Governmental Affairs.

² This Committee is now named the U.S. House of Representatives Committee on Oversight and Reform.

³ The No FEAR Act data for the SEC can be accessed from the agency's homepage ([SEC.gov](https://sec.gov)), or directly at [SEC.gov/eoinfo/nofeardata.htm](https://sec.gov/eoinfo/nofeardata.htm).

This is the United States Securities and Exchange Commission’s (SEC) Annual No FEAR Act Report for Fiscal Year (FY) 2020. OPM regulations governing reporting obligations are published at 5 C.F.R. § 724.302. The required information is provided below.

Section 724.302(a)(1): The number of cases in Federal court pending or resolved in each fiscal year and arising under each of the respective provisions of the Federal Antidiscrimination Laws applicable to them as defined in § 724.102 of subpart A of this part in which an employee, former Federal employee, or applicant alleged a violation(s) of these laws, separating data by the provision(s) of law involved.

Section 724.302(a)(2)(i): In the aggregate, for the cases identified pursuant to 724.302(a)(1), the status or disposition (including settlement).

Cases Pending or Resolved in U.S. Federal Courts⁴ by Statute and Their Disposition						
STATUTES	FISCAL YEARS					
	2015	2016	2017	2018	2019	2020
<i>Title VII of the Civil Rights Act of 1964</i>						
Pending Cases	5	4	4	5	3	2
Decision Issued	3	2	0	1	3	1
Cases Settled	0	0	1	0	0	0
<i>Age Discrimination in Employment Act of 1967</i>						
Pending Cases	4	3	5	6	3	2
Decision Issued	3	2	0	1	4	1
Cases Settled	0	0	0	0	0	0
<i>Rehabilitation Act of 1973</i>						
Pending Cases	5	4	2	1	0	0
Decision Issued	3	1	0	1	1	0
Cases Settled	0	0	0	0	0	0
<i>Civil Service Reform Act of 1978, Whistleblower Protection Act and Related Laws</i>						
Pending Cases	0	1	1	0	0	0
Decision Issued	0	0	0	1	0	0
Cases Settled	0	0	0	0	0	0
<i>Equal Pay Act</i>						
Pending Cases	0	0	0	0	0	0
Decisions Issued	0	0	0	0	1	0
Cases Settled	0	0	0	0	0	0
<i>Genetic Information Nondiscrimination Act (GINA) of 2008⁵</i>						
Pending Cases	0	0	0	0	0	0
Decisions Issued	0	0	0	0	0	0
Cases Settled	0	0	0	0	0	0

⁴ Includes both U.S. District Courts and Courts of Appeals. A case is listed as “Pending” if it was open on the last day of the fiscal year. “Decision Issued” does not include cases that have been appealed to a Court of Appeals.

⁵ Neither the No FEAR Act (enacted in 2002) nor implementing regulations (finalized and published in the Federal Register in 2006) have been amended to include reference to the Genetic Information Nondiscrimination Act of 2008 (GINA).

Section 724.302(a)(2)(ii): The amount of money required to be reimbursed to the Judgment Fund by the agency for payments as defined in § 724.102 of subpart A of this part.

No reimbursements to the Judgment Fund were required during the period FY 2015 – 2020.

Section 724.302(a)(2)(iii): The amount of reimbursement to the Fund for attorney's fees where such fees have been separately designated.

No reimbursements to the Judgment Fund for attorney's fees were required during the period FY 2015 – 2020.

Section 724.302(a)(3): In connection with cases identified in paragraph (a)(1) of this section, the total number of employees in each fiscal year disciplined as defined in § 724.102 of subpart A of this part and the specific nature, e.g., reprimand, etc., of the disciplinary actions taken, separated by the provision(s) of law involved.

No employees were disciplined during the period FY 2015 – 2020 in connection with cases identified in paragraph (a)(1) of this section.

Section 724.302(a)(4): The final year-end data about discrimination complaints for each fiscal year that was posted in accordance with Equal Employment Opportunity Regulations at subpart G of title 29 of the Code of Federal Regulations (implementing section 301(c)(1)(B) of the No FEAR Act).

The final year-end EEO complaint case data for FY 2020 are found in Attachment A.

Section 724.302(a)(5): Whether or not in connection with cases in Federal court, the number of employees in each fiscal year disciplined as defined in § 724.102 of subpart A of this part in accordance with any agency policy described in paragraph (a)(6) of this section. The specific nature, e.g., reprimand, etc., of the disciplinary actions taken must be identified.

Four employees were disciplined (suspensions and a letter of reprimand) during the period FY 2015 – 2020 (one in FY 2017, one in FY 2018, and two in FY 2020), in accordance with the agency policy described in paragraph (a)(6) of this section. (See immediately below.)

Section 724.302(a)(6): A detailed description of the agency's policy for taking disciplinary action against Federal employees for conduct that is inconsistent with Federal Antidiscrimination Laws and Whistleblower Protection Laws or for conduct that constitutes another prohibited personnel practice revealed in connection with agency investigations of alleged violations of these laws.

The SEC’s EEO Policy Statement sets forth the agency’s commitment to maintaining a work environment that is free of discrimination and retaliation. Further, in FY 2020, the SEC implemented revised SEC Administrative Regulation 6-20, Disciplinary and Adverse Actions.⁶ The regulation sets forth policies and procedures for taking disciplinary and adverse actions against bargaining unit and non-bargaining unit employees. The process and procedures covering SEC disciplinary actions are incorporated by reference in the Collective Bargaining Agreement (CBA) between the SEC and its Union. The CBA explains that disciplinary and adverse actions are taken “for such cause as will promote the efficiency of the service.” See Attachment B – SECR 6-20; CBA, Art. 34, Disciplinary Actions; CBA, Art. 35, Adverse Actions. See also 5 U.S.C. §§ 7503(a) & 7513(a) (codifying that an agency may take disciplinary or adverse actions against an employee “for such cause as will promote the efficiency of the service”).⁷

Section 724.302(a)(7): An analysis of the information provided in paragraphs (a)(1) through (6) of this section in conjunction with data provided to the Equal Employment Opportunity Commission in compliance with 29 C.F.R. part 1614 subpart F of the Code of Federal Regulations. Such analysis must include: (i) An examination of trends; (ii) Causal analysis; (iii) Practical knowledge gained through experience; and (iv) Any actions planned or taken to improve complaint or civil rights programs of the agency with the goal of eliminating discrimination and retaliation in the workplace.

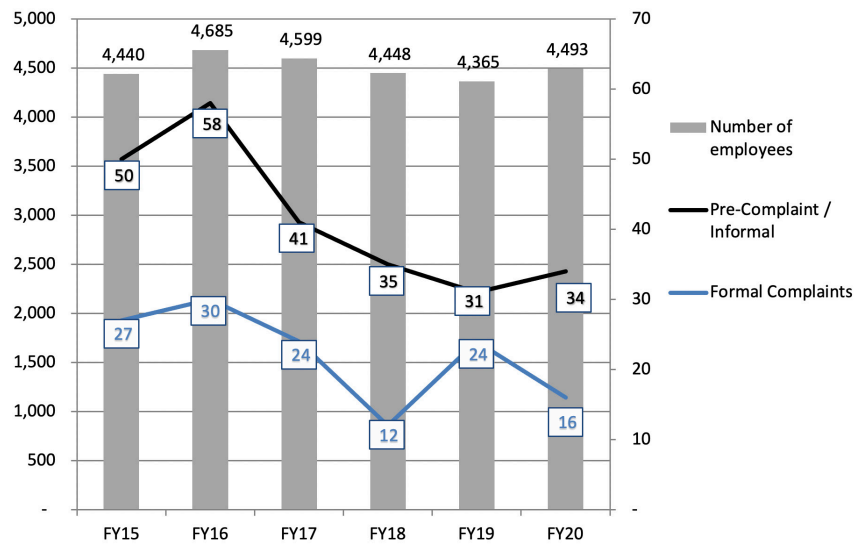
⁶ The SEC issued a revised Administrative Regulation 6-20 on February 10, 2020, that supersedes an administrative regulation issued in 2016.

⁷ The SEC Office of the Inspector General (OIG) has its own Disciplinary and Adverse Action policy that sets forth the policies and procedures relating to employee misconduct for SEC OIG employees.

EXAMINATION OF TRENDS

The average number of SEC employees during the period covered in this report (FY 2015 – 2020) was approximately 4,500. Between FY 2015 – 2020, the average number of formal administrative EEO complaints filed annually was 22. In FY 2020, there were a total of 16 complaints filed by 16 individuals.

Total Employees, Pre-Complaint / Informal, and Formal Complaints by Fiscal Year Filed



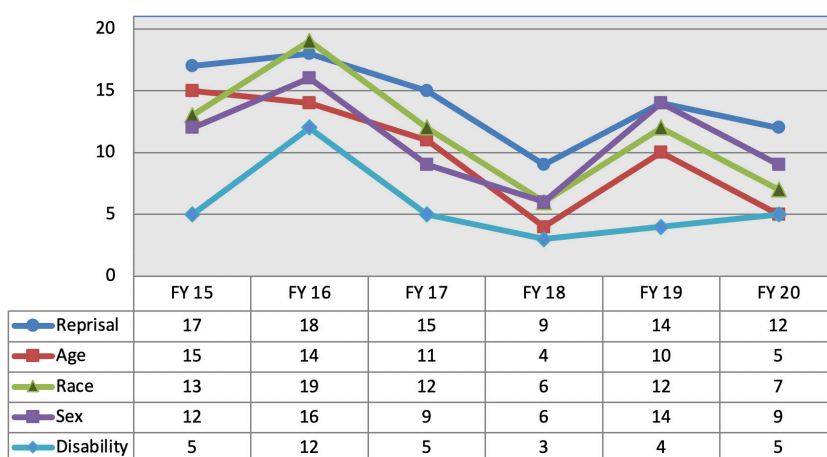
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CAUSAL ANALYSIS

With an annual average of only 22 complaints filed for approximately 4,500 employees during this five-year period, there is insufficient data to draw meaningful conclusions as to the cause and effect of the bases and issues raised in these complaints of employment discrimination. Further, in the cases closed during this five-year period, there were no findings of employment discrimination from which possible causation factors could be gleaned.

For the reporting period FY 2015 – 2020, the five discrimination bases alleged most frequently at the SEC were: reprisal (85), race (69), sex (66), age (59), and disability (34). The table and graphic below show the number of complaints filed under each of the most common bases during this reporting period.

Most Common Bases Alleged at the SEC FY 2015 – FY 2020

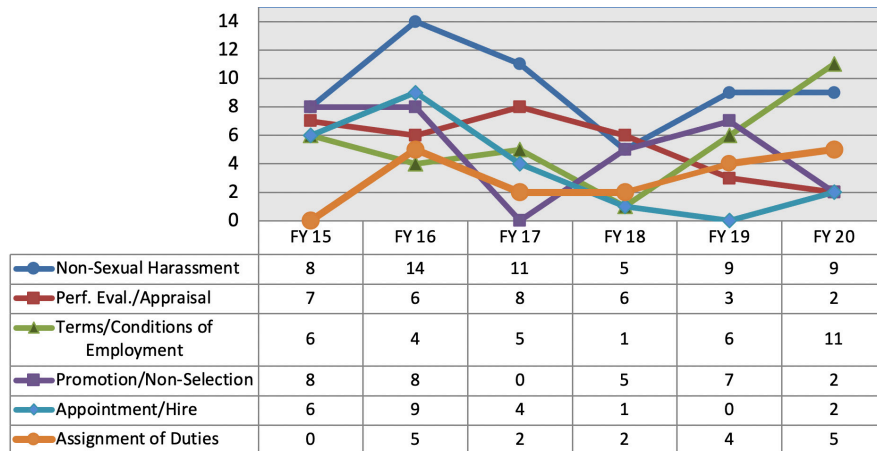


In FY 2020, the discrimination bases alleged most frequently at the SEC were: reprisal (12), sex (nine), race (seven), age (five), and disability (five). For comparison purposes, according to the EEOC's *Annual Report on the Federal Workforce for FY 2018 Complaint Tables*, the top five bases in complaint allegations filed for FY 2018 were disability (physical), age, reprisal/retaliation, sex (female), and race (Black/African American).⁸

⁸ U.S. Equal Employment Opportunity Commission, Office of Federal Operations, *Annual Report on the Federal Workforce Fiscal Year 2018*, Table B-8 FY 2018 Complaints Filed Basis and Issues – Grand Total.

For the reporting period FY 2015 – 2020, the employment issues raised most frequently at the SEC were: non-sexual harassment (56), performance evaluation/appraisal (32), promotion/non-selection (30), terms and conditions of employment (33),⁹ appointment/hire (22), and assignment of duties (18). The table and graphic below show the number of complaints filed under each of the most common issues during this reporting period.

Issues Raised Most Frequently at SEC FY 2015 – FY 2020



In FY 2020, the issues most frequently raised at the SEC were: terms/conditions of employment (11), non-sexual harassment (nine), assignment of duties (five), promotion/non-selection (two), appointment/hire (two), awards (two), reasonable accommodation/disability (two), and performance evaluation/appraisal (two). According to the EEOC’s *Annual Report on the Federal Workforce for FY 2018 Complaint Tables*, the top five issues in complaint allegations were harassment - non-sexual, disciplinary action, terms and conditions of employment, promotion/non-selection, and reasonable accommodation.¹⁰

The EEOC regulations governing data posted pursuant to Title III of the No FEAR Act limit the case disposition data to the following types: dismissals by the agency, withdrawals by complainants, and findings of discrimination. See [SEC.gov/eeoinfo/nofeardata.htm](https://www.eeoc.gov/eeoinfo/nofeardata.htm). During FY 2015-2020, the SEC dismissed nine complaints and five complaints were withdrawn. As noted above, there were no findings of discrimination during this period. In FY 2020, the average number of days to complete an investigation was 218.88, as compared to 175.78 days in FY 2019. At the close of FY 2020, 15 complaints filed in previous years were pending hearings before Administrative Judges at the EEOC. There were four other complaints filed in previous years that were on appeal to the EEOC’s Office of Federal Operations.

⁹ Examples of terms and conditions of employment issues include, but are not limited to, over-scrutinizing of job, classification of position review, modified duties, office space, and denial of participation in an event.

¹⁰ U.S. Equal Employment Opportunity Commission, Office of Federal Operations, Annual Report on the Federal Workforce Fiscal Year 2018, Table B-8 FY 2018 Complaints Filed Basis and Issues – Grand Total.

ANALYSIS OF DATA, PRACTICAL KNOWLEDGE GAINED THROUGH EXPERIENCE, AND ACTIONS PLANNED TO IMPROVE COMPLAINT AND CIVIL RIGHTS PROGRAMS

The SEC evaluates its EEO program on an annual basis, as required by the EEOC's Management Directive 715. As discussed above, the SEC reviewed and updated the formal EEO complaint case data maintained in iComplaints and reported in Attachment A.

In FY 2020, OEEO completed 34 counselings under Part 1614. All but one counseling completed in FY 2020 qualified as timely under 29 C.F.R. § 1614.105, and that one counseling extended beyond the 90-day time limit for completion pursuant to a settlement agreement provision for revocation under the Older Workers Benefit Protection Act, 29 U.S.C. § 626(f). Five counselings were timely completed within 30 days, and 16 traditional counselings were completed timely with written extensions of no longer than 60 days. Twelve counselings were processed through the SEC's alternative dispute resolution (ADR) program and were timely completed within 90 days. Of the 34 counselings completed, 17 were resolved at the informal stage. In each of these counselings, the agency provided the regulatory-required notification to individuals of their various rights and responsibilities in the EEO process. This information was provided during the initial counseling session verbally and also later in writing.

In FY 2020, 16 new formal EEO complaints were filed under Part 1614, compared with 24 in FY 2019. In all new formal complaints, the agency issued acknowledgement letters. Of the new formal complaints that were filed in FY 2020, the average length of time for issuing the acknowledgement letter increased following the loss of administrative support and delays caused by the pandemic. In one instance, receipt of the formal complaint was delayed by several weeks due to the pandemic. In addition, OEEO generally issued all Acceptance letters/Dismissal decisions within a reasonable time (e.g., 60 days) after receipt of the written EEO counselor's report. In FY 2020, OEEO conducted investigations of formal EEO complaints in a timely fashion. Of the 15 investigations completed during FY 2020, one was untimely. (Another federal agency processed a conflict case on behalf of the SEC and did not begin the investigation until after receipt of the hearing request; OEEO has enhanced mechanisms for overseeing complaints processed by other federal agencies.) OEEO provides complainants with the regulatory-required "180-day letter" if an investigation is expected to exceed 180 days. This letter notifies complainants of the date by which OEEO expects to complete the investigation and informs complainants of their right to request a hearing before an EEOC Administrative Judge or to file a lawsuit. In FY 2020, two Final Agency Decisions (no discrimination found) were issued.

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Analysis of Data

The SEC’s complainant rate of .48% in FY 2020 was below the most recently reported rate across the federal government (.52%) and for medium-sized agencies (.55%) like the SEC.¹¹ The table below shows, for each year in the reporting period, the number and percent of complaints filed and the number and percent of individuals filing at least one complaint (i.e., complainants). The SEC assessed whether the observed decrease in the complainant rates was larger than would be expected due to chance. The observed decrease in FY 2020 was not statistically significant compared to FY 2019, but was statistically significant (one-tailed, directional) compared to FY 2016. This indicates a statistically significant long-term decline over the last four years.¹²

Fiscal Year	Number of Complaints Filed	Number of Complainants*	Total Workforce	Complaints Filed as a % of Total Workforce	Number of Complainants as a % of Total Workforce
2015	27	25	4,440	0.61%	0.56%
2016	30	29	4,685	0.64%	0.62%
2017	24	23	4,599	0.52%	0.50%
2018	12	12	4,448	0.27%	0.27%
2019	23	21	4,365	0.53%	0.48%
2020	16	16	4,493	0.36%	0.36%

* Complainants may file multiple complaints.

SEC has taken steps to reduce case-processing times, where feasible, while also increasing the quality of documents and communications issued to the parties at each stage of the complaints process. In FY 2020, OEEO onboarded a Compliance & Resolutions Branch Manager dedicated to maintaining and enhancing the quality and timeliness of all aspects of the Part 1614 complaint process. SEC follows the requirements, standards, and practices in 29 C.F.R. Part 1614 and is also developing additional tools to promote uniformity in all complaint-program activities. These resources will facilitate consistent, timely processing of EEO matters. OEEO continued to make enhancements to the complaints program in FY 2020, including, for example:

- Transitioning seamlessly to electronic complaint processing in light of the pandemic and the SEC’s mandatory telework posture since mid-March 2020;

¹¹ To gain some insight into the frequency of complaint filings, the EEOC calculates the percentage of federal employees who file formal complaints—or who become “complainants”—at each agency. Government-wide, the rate of complainants was .52% and for medium-size agencies (1,000 to 14,999 employees), the rate was .55%. See U.S. Equal Employment Opportunity Commission, Office of Federal Operations, Form 462 Complaints Tables, Table B1 FY 2018 Total Work Force, Counselings and Complaints, *available at* [EEOC.gov/federal/reports/tables.cfm](https://www.eeoc.gov/federal/reports/tables.cfm).

¹² Two-by-two contingency tables with a Fisher’s exact test were analyzed comparing complainant rates during FY 2020 with the complainant rate in each of the prior years.

- Continuing to distribute the educational resource, Top 10 Reasons to Consider ADR, to management officials and employees to increase participation in ADR;
- Identifying opportunities and developing strategies to bring greater awareness of the compliance program, such as through the SEC's daily employee newsletter and updated OEEO intranet site that highlight in plain language the programs and staff responsibilities for complaint processing, ADR, and preventing harassment;
- Creating templates for Final Agency Decisions and Final Agency Orders; updating witness notification to include sanctions language pursuant to 29 C.F.R. Part 1614; revising acceptance letters to eliminate redundancies; and updating complaints program standard operating procedures and forms including, an updated intake form and process to identify cases for ADR earlier, and iComplaints security and recordkeeping requirements;
- Enhancing quality control of data entry for complaints tracking to be consistent with EEOC guidance regarding issues and corrective actions; enhancing complaints-related tracking tools including, for example, those related to referrals to and from OEEO, open case status, and upcoming due dates;
- Assessing quality-control measures related to EEO complaint-processing contractors to ensure they are providing quality work;
- Continuing use of generic email accounts to ensure ready access to OEEO staff;
- Leveraging facilitation services offered through Office of Human Resources (OHR) for some counseling matters;
- Expanding the pool of mediators and EEO counselors available through contracts;
- Streamlining the acquisitions process for complaint processing services, including contract mediators, EEO Counselors, and EEO Investigators; and
- Developing and issuing procedures for processing claims of discrimination raised pursuant to Executive Orders regarding parental status, sexual orientation, and gender identity.

Practical Knowledge Gained

Over the past five years of enforcing EEO laws at the Commission, OEEO staff members have gained insights that have helped improve SEC's overall EEO program. Lessons learned include:

- Maintaining EEO office independence—e.g., organizational autonomy from the Office of General Counsel (OGC), OHR, and others with conflicting interests—is indispensable to safeguarding the statutory enforcement mechanisms that federal law and the EEOC require agencies to establish and maintain to remedy civil rights violations. This independence is also vital to fostering trust that the EEO program is (and appears) impartial and separate from other offices with potentially conflicting interests.
- Many substantive EEO concepts are complex, and new supervisors may sometimes struggle to apply complicated rules (e.g., those involving disability and anti-retaliation laws). Consistent proactive prevention of discrimination, harassment, retaliation (including whistleblower retaliation), and other prohibited personnel practices—through training and targeted technical assistance—remains vital to fostering workplace civil rights and upholding Merit System Principles.
- The federal-sector EEO process itself can seem confusing to new employees, and often even to career civil servants. There are numerous, sometimes-overlapping sources of legal protection (e.g., via statutes, regulations, and Executive Orders) and various related enforcement processes (e.g., the 29 C.F.R. Part 1614 process, intra-agency harassment procedures, union grievances, Office of Special Counsel/Merit Systems Protection Board complaints). Accordingly, regular messaging reinforced through outreach can aid understanding and minimize confusion. In particular, explaining the differences between filing an EEO complaint alleging violations of federal law and Executive Orders and reporting harassment under the SEC's harassment prevention policy is important.
- Raising awareness through sharing personal stories about words and conduct that could be perceived as offensive in the workplace can help reduce EEO complaints alleging harassment. OEEO will continue to monitor educational efforts to determine if this impact is sustained over the longer term.
- All organizational leaders must consider EEO and civil service protections before and while implementing new or changed policies, practices, procedures, and organizational matters that could affect the workforce. Reaching out to the EEO Director early and often to obtain crucial input and feedback on personnel, budget, technology, and other workforce issues can help prevent potential EEO missteps and ensure EEO best practices are adopted.

- Resolving issues early and expeditiously helps maintain a work environment that fosters open communication, trust, and engagement. Used properly in appropriate circumstances, ADR can provide faster, less expensive and contentious, and more productive results in resolving workplace disputes, including claims of discrimination, harassment, and retaliation and workstyle or personality conflicts that may arise. SEC must be open to and make reasonable efforts to settle complaints of discrimination as early as possible in and throughout the administrative processing of complaints.

Action Plans

OEEEO is applying the above experience and insights in planning its priorities. SEC's FY 2020 EEO Program Status (Management Directive 715) Report will provide a detailed review of EEO program efforts and outline activities planned for FY 2021 and beyond. A primary focus will be implementing Goal 3 of [SEC Strategic Plan for Fiscal Years 2018-2022](#) (Elevate the SEC's performance by enhancing analytical capabilities and human capital development) and Initiative 3.1 (Focus on the SEC's workforce to increase capabilities, leverage shared commitment to investors, and promote diversity, inclusion, and equality of opportunity among the agency's staff). In addition to contributing to implementing the SEC Strategic Plan, in FY 2020, OEEEO:

- Continued to process all informal and formal complaints and requests for ADR in compliance with 29 C.F.R. Part 1614 and EEOC MD-110;
- Supported efforts to continue implementing the EEOC's affirmative action regulations under Section 501 of the Rehabilitation Act of 1973 and contributed expertise to a variety of agency efforts focused on disability, including, revising the public website for accessibility and reasonable accommodation information, reviewing and updating SEC's reasonable accommodation and Section 508 policies, and leading efforts to finalize complaint procedures related to accessibility issues under Section 504 and 508 of the Rehabilitation Act;
- Updated the SEC's No FEAR Act notice that is publicly available on [SEC.gov](#);
- Conducted ongoing barrier analyses required by the EEOC, including monitoring action plans that effectively address identified barriers; and
- Collaborated with the federal sector EEO community to share and learn best practices and innovative approaches to enhance equality of employment opportunity.

Further, OEEEO will continue to support SEC in focusing on the following objectives during FY 2021:

- Incorporating the EEOC's Six Essential Elements of a Model EEO Program to achieve greater program effectiveness;
- Briefing senior leadership on the state of the EEO program to reaffirm support for the program, provide awareness of issues and trends (systemic or otherwise), and solicit input on strengthening the EEO program;
- Maintaining accuracy of EEO complaint data;
- Leveraging internal communication channels to distribute EEO-related information and promoting communication of information and early intervention to help officials identify the issues and bases that may give rise to EEO complaints;

- Training supervisors and managers to provide proactive approaches to resolving issues stemming from alleged violations of personnel policies and practices;
- Fostering constructive, open, and continuous communication between employees and management to help resolve workplace conflicts at the earliest possible opportunity, and ensuring that employees, management officials, and persons with settlement authority understand the purpose and value of ADR;
- Increasing employee awareness of EEO statutes;
- Continuing to collaborate with stakeholders across the agency to analyze workforce demographic data and to foster employment opportunity for all consistent with applicable law, rules, regulations, and guidance;
- Reviewing information from employee surveys, exit interviews, focus groups, and training to identify opportunities for improvement; and
- Incorporating EEO best practices gained through the SEC's coalitions with other federal agencies.

Section 724.302(a)(8): For each fiscal year, any adjustments needed or made to the budget of the agency to comply with its Judgment Fund reimbursement obligation(s) incurred under § 724.103 of this part.

As noted above, no reimbursements were made by the SEC to the Judgment Fund during the period FY 2015 – 2020; therefore, no adjustments were made to the SEC's budget to comply with this section.

Section 724.302(a)(9): The agency's written plan developed under § 724.203(a) of subpart B of this part to train all of its employees (including supervisors and managers) about the rights and remedies available under the Antidiscrimination Laws and Whistleblower Protection Laws applicable to them.

SEC'S NO FEAR ACT TRAINING PLAN

The No FEAR Act requires each agency to develop a plan to train all employees (including managers and supervisors) about the rights and remedies available under the Antidiscrimination Laws and Whistleblower Protection Laws applicable to them. OPM regulations require agencies to include No FEAR Act training plans in the annual No FEAR Act Report. *See* 5 C.F.R. § 724.302(a)(9). SEC obtained certification from the U.S. Office of Special Counsel (OSC) through its 5 U.S.C. § 2302(c) program¹³ in December 2016; this certification expired December 2019 and OSC recertified the SEC in March 2020. As part of on-going efforts related to certification, SEC accomplished the following in FY 2020:

- In spring 2020, OEEO led an update to the mandatory No FEAR Act training to ensure all applicable discrimination and whistleblowing protections for federal employees were included.
- In June 2020, OEEO updated and published on sec.gov an enhanced No FEAR Act notice describing all anti-discrimination and whistleblowing protections, including venues and timeframes for asserting rights, in an effort to further transparency and ease of finding information for those seeking information on rights under applicable anti-discrimination laws and Executive Orders.
- 223 managers viewed the recording of the training OSC provided in FY 2019 on prohibited personnel practices and merit system principles.
- OGC routinely advises new employees of whistleblower rights during orientation.
- OGC and the Chair's Office provided notification to all employees of the right to be free from reprisal via an agency-wide email.
- SEC provides information to employees about OSC, Prohibited Personnel Practices (PPP), and whistleblower rights on a designated SEC intranet page.
- SEC's website links directly to OSC's website enabling individuals to learn about their rights and get instructions on where and how to file PPP and whistleblower-related claims.
- SEC placed updated posters from OSC throughout headquarters and regional offices.
- OGC offered training to managers on addressing retaliation, harassment, and discrimination.
- OEEO coordinated a training (for the second year in a row) on retaliation with stakeholders in OGC, OHR, OIG, and the Office of Support Operations.

¹³ Pursuant to 5 U.S.C. § 2302(c), agency heads must ensure in consultation with the Special Counsel and the Inspector General of the agency that employees of the agency are informed of the rights and remedies available to them under the Civil Service Reform Act (CSRA), the Whistleblower Protection Act (WPA), the Whistleblower Protection Enhancement Act (WPEA), and related laws. OSC's 2302(c) Certification Program allows federal agencies to meet these statutory obligations.

In April 2020, at the invitation of the agency’s Office of Acquisitions, the OEEEO delivered a virtual presentation entitled “Workplace Rights and Protections for SEC Contractors” to SEC Contracting Officers and Contracting Officer Representatives. This was the first time that OEEEO had presented on this topic, and OEEEO leveraged this opportunity to provide SEC Contracting Officers and Contracting Officer Representatives with an understanding of the types of EEO workplace issues and complaints that SEC contractors might raise, and how SEC offices and, primarily OEEEO, process these issues and complaints. The 140 participants at the presentation were highly engaged and at the conclusion of the presentation, rated their knowledge of the topic very high. Following the presentation, OEEEO revised the presentation to better address some of the questions that were raised, made the presentation 508-compliant, and posted it on the SEC’s learning platform called LEAP. Collectively, these efforts apprise employees of the SEC’s commitment to EEO across all its programs, policies, and activities.

Training for New SEC Employees

As part of the SEC's ongoing effort to train all SEC employees on their rights, remedies, and responsibilities under the No FEAR Act, new SEC employees receive information about their rights and responsibilities under the anti-discrimination and whistleblower protection laws during new employee orientation, including the SEC's EEO and harassment prevention policies. All new employees are also instructed, during new employee orientation, to take an online No FEAR Act training course within 30 days after joining the SEC. The training is formally assigned and tracked through the SEC's LEAP.

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Training for All SEC Employees Every Two Years

In compliance with the requirement to provide No FEAR Act training every two years, the SEC updated its online No FEAR Act Training and mandated that all SEC employees complete the training. Over 99 percent of employees completed the training in 2020. As a result of the pandemic, several SEC employees were, and continue to be, on extended leave without access to the No FEAR Act training; these employees were included as part of the one percent. The SEC will provide mandatory No FEAR Act training to all SEC employees again in 2022 and track completion through the SEC's LEAP system.

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ADDITIONAL OUTREACH REGARDING RIGHTS AND REMEDIES

OEEO, in partnership with other SEC offices, works to ensure all employees are aware of and know how to access EEO policies and related information. The SEC maintains an EEO Policy, which advises employees of the SEC's commitment to equal employment opportunity laws and provides information on how to participate in the EEO complaint process. In addition, the SEC's Policy on Preventing Harassment (PPH) expresses the SEC's commitment to a harassment-free work environment. The PPH was designed to identify and stop behavior that might be offensive on a protected basis before it escalates. These policies are emailed annually to employees by the SEC Chair, are physically posted in prominent locations throughout the SEC's headquarters and regional offices, and are available on SEC's intranet.

The OEEO intranet page contains contact and location information, important information and resources about EEO laws and policies, and complaint-processing procedures. This helps ensure that employees can easily seek assistance—including EEO counseling—in person or virtually. SEC also provides contact and other relevant information to members of the public, including applicants for employment, on [SEC.gov](https://www.sec.gov).

In FY 2019, OEEO launched a new initiative to provide anti-discrimination and whistleblower protection information to each new supervisor soon after on-boarding or promotion. OEEO has provided resources and conducted in-person meetings to relay information to 109 new supervisors, including 32 new supervisors in FY 2020. OEEO has also deployed an in-person, scenario-based training designed to raise awareness of the kinds of words and conduct that could offend others regardless of intent. During FY 2020, OEEO also worked with stakeholders in other offices to present and/or collaborate on other trainings, including diversity dialogues deployed by the SEC Office of Minority and Women Inclusion in response to societal events in the summer of 2020 and EEO compliance and contractors with the SEC Office of Acquisitions, as described above.

Section 724.302(9)(c): Agencies must provide copies of each report to the following:

1. Speaker of the U.S. House of Representatives;
2. President *Pro Tempore* of the U.S. Senate;
3. Committee on Governmental Affairs, U.S. Senate [now named the Committee on Homeland Security and Governmental Affairs, U.S. Senate];
4. Committee on Government Reform [now named the Committee on Oversight and Reform], U.S. House of Representatives;
5. Each Committee of Congress with jurisdiction relating to the agency;
6. Chair, Equal Employment Opportunity Commission;
7. Attorney General; and
8. Director, U.S. Office of Personnel Management.

ATTACHMENT A: FY 2020 NO FEAR ACT COMPLAINT CASE DATA

EQUAL EMPLOYMENT OPPORTUNITY DATA POSTED PURSUANT TO THE NO FEAR ACT: U.S. SECURITIES AND EXCHANGE COMMISSION

For 4th Quarter 2020 for period ending September 30, 2020

Complaint Activity	Comparative Data					
	Previous Fiscal Year Data					2020 Thru 09-30
	2015	2016	2017	2018	2019	
Number of Complaints Filed	27	30	24	12	24	16
Number of Complainants	25	29	23	12	21	16
Repeat Filers	2	1	1	0	3	0

Complaints by Basis <i>Note: Complaints can be filed alleging multiple bases. The sum of the bases may not equal total complaints filed.</i>	Comparative Data					
	Previous Fiscal Year Data					2020 Thru 09-30
	2015	2016	2017	2018	2019	
Race	13	19	12	6	12	7
Color	4	6	4	2	3	3
Religion	1	5	2	1	4	0
Reprisal	17	18	15	9	14	12
Sex	12	16	9	6	14	9
PDA	0	0	0	0	1	0
National Origin	2	2	2	1	1	1
Equal Pay Act	3	2	1	2	4	0
Age	15	14	11	4	10	5
Disability	5	12	5	3	4	5
Genetics	0	0	0	0	0	0
Non-EEO	1	5	2	0	4	2

Complaints by Issue <i>Note: Complaints can be filed alleging multiple bases. The sum of the bases may not equal total complaints filed.</i>	Comparative Data					
	Previous Fiscal Year Data					2020 Thru 09-30
	2015	2016	2017	2018	2019	
Appointment/Hire	6	9	4	1	0	2
Assignment of Duties	0	5	2	2	4	5
Awards	2	4	2	3	2	2
Conversion to Full Time/Perm Status	0	1	0	0	0	0

Complaints by Issue <i>Note: Complaints can be filed alleging multiple bases. The sum of the bases may not equal total complaints filed.</i>	Comparative Data					
	Previous Fiscal Year Data					2020 Thru 09-30
	2015	2016	2017	2018	2019	
Disciplinary Action						
Demotion	2	0	1	0	0	0
Reprimand	1	1	1	0	1	1
Suspension	1	1	1	0	0	1
Removal	2	2	1	2	2	1
Duty Hours	0	1	0	0	0	0
Perf. Eval./ Appraisal	7	6	8	6	3	2
Examination/Test	0	0	0	0	0	0
Harassment						
Non-Sexual	8	14	11	5	9	9
Sexual	0	1	1	0	2	0
Medical Examination	0	0	0	0	0	0
Pay Including Overtime	3	3	2	1	3	1
Promotion/Non-Selection	8	8	0	5	7	2
Reassignment						
Denied	0	2	0	0	0	1
Directed	1	3	2	1	1	0
Reasonable Accommodation Disability	0	6	2	1	3	2
Reinstatement	0	0	0	0	0	0
Religious Accommodation	0	1	0	0	0	0
Retirement	0	0	0	1	0	0
Sex – Stereotyping	0	0	0	0	0	0
Telework	2	2	0	0	0	0
Termination	2	1	2	0	1	1
Terms/Conditions of Employment	6	4	5	1	6	11
Time and Attendance	2	3	1	1	1	0
Training	2	0	1	0	0	0
Other						
Other 1 – Non EEO Harassment	0	0	0	0	0	0
None Provided	0	0	1	0	0	0
User Defined – Other 3	0	0	0	0	0	0
User Defined – Other 4	0	0	0	0	0	0

Processing Time	Comparative Data						2020 Thru 09-30
	Previous Fiscal Year Data						
	2015	2016	2017	2018	2019		
Complaints Pending During Fiscal Year							
Average Number of Days in Investigation	129.88	169.40	198.95	189.76	175.78		218.88
Average Number of Days in Final Action	46.29	46.79	43.86	38.10	57.38		52.00
Complaint Pending During Fiscal Year Where Hearing Was Requested							
Average Number of Days in Investigation	126.00	181.79	203.50	207.50	174.71		226.57
Average Number of Days in Final Action	18.50	34.50	29.67	23.00	50.50		48.00
Complaint Pending During Fiscal Year Where Hearing Was Not Requested							
Average Number of Days in Investigation	131.17	153.64	191.14	161.83	179.50		183.00
Average Number of Days in Final Action	57.40	51.70	54.50	52.80	78.00		60.00

Complaints Dismissed by Agency	Comparative Data						2020 Thru 09-30
	Previous Fiscal Year Data						
	2015	2016	2017	2018	2019		
Total Complaints Dismissed by Agency	3	0	1	0	5		0
Average Days Pending Prior to Dismissal	42	0	41	0	141		0
Complaints Withdrawn by Complainants							
Total Complaints Withdrawn by Complainants	1	1	0	3	0		0

Total Final Agency Actions Finding Discrimination	Comparative Data											
	Previous Fiscal Year Data										2020 Thru 09-30	
	2015		2016		2017		2018		2019			
	#	%	#	%	#	%	#	%	#	%	#	%
Total Number Findings	0		0		0		0		0		0	
Without Hearing	0	0	0	0	0	0	0	0	0	0	0	0
With Hearing	0	0	0	0	0	0	0	0	0	0	0	0

Findings of Discrimination Rendered by Basis <i>Note: Complaints can be filed alleging multiple bases. The sum of the bases may not equal total complaints and findings.</i>	Comparative Data											
	Previous Fiscal Year Data										2020 Thru 09-30	
	2015		2016		2017		2018		2019			
	#	%	#	%	#	%	#	%	#	%	#	%
Total Number Findings	0		0		0		0		0		0	
Race	0	0	0	0	0	0	0	0	0	0	0	0
Color	0	0	0	0	0	0	0	0	0	0	0	0
Religion	0	0	0	0	0	0	0	0	0	0	0	0
Reprisal	0	0	0	0	0	0	0	0	0	0	0	0
Sex	0	0	0	0	0	0	0	0	0	0	0	0
PDA	0	0	0	0	0	0	0	0	0	0	0	0
National Origin	0	0	0	0	0	0	0	0	0	0	0	0
Equal Pay Act	0	0	0	0	0	0	0	0	0	0	0	0
Age	0	0	0	0	0	0	0	0	0	0	0	0
Disability	0	0	0	0	0	0	0	0	0	0	0	0
Genetics	0	0	0	0	0	0	0	0	0	0	0	0
Non-EEO	0	0	0	0	0	0	0	0	0	0	0	0
Findings After Hearing	0		0		0		0		0		0	
Race	0	0	0	0	0	0	0	0	0	0	0	0
Color	0	0	0	0	0	0	0	0	0	0	0	0
Religion	0	0	0	0	0	0	0	0	0	0	0	0
Reprisal	0	0	0	0	0	0	0	0	0	0	0	0
Sex	0	0	0	0	0	0	0	0	0	0	0	0
PDA	0	0	0	0	0	0	0	0	0	0	0	0
National Origin	0	0	0	0	0	0	0	0	0	0	0	0
Equal Pay Act	0	0	0	0	0	0	0	0	0	0	0	0
Age	0	0	0	0	0	0	0	0	0	0	0	0
Disability	0	0	0	0	0	0	0	0	0	0	0	0
Genetics	0	0	0	0	0	0	0	0	0	0	0	0
Non-EEO	0	0	0	0	0	0	0	0	0	0	0	0
Findings Without Hearing	0		0		0		0		0		0	
Race	0	0	0	0	0	0	0	0	0	0	0	0
Color	0	0	0	0	0	0	0	0	0	0	0	0
Religion	0	0	0	0	0	0	0	0	0	0	0	0
Reprisal	0	0	0	0	0	0	0	0	0	0	0	0
Sex	0	0	0	0	0	0	0	0	0	0	0	0
PDA	0	0	0	0	0	0	0	0	0	0	0	0
National Origin	0	0	0	0	0	0	0	0	0	0	0	0
Equal Pay Act	0	0	0	0	0	0	0	0	0	0	0	0
Age	0	0	0	0	0	0	0	0	0	0	0	0
Disability	0	0	0	0	0	0	0	0	0	0	0	0
Genetics	0	0	0	0	0	0	0	0	0	0	0	0
Non-EEO	0	0	0	0	0	0	0	0	0	0	0	0

Findings of Discrimination Rendered by Issue	Comparative Data											
	Previous Fiscal Year Data										2020 Thru 09-30	
	2015		2016		2017		2018		2019			
	#	%	#	%	#	%	#	%	#	%	#	%
Total Number Findings	0		0		0		0		0		0	
Appointment/Hire	0	0	0	0	0	0	0	0	0	0	0	0
Assignment of Duties	0	0	0	0	0	0	0	0	0	0	0	0
Awards	0	0	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	0	0
Disciplinary Action												
Demotion	0	0	0	0	0	0	0	0	0	0	0	0
Reprimand	0	0	0	0	0	0	0	0	0	0	0	0
Suspension	0	0	0	0	0	0	0	0	0	0	0	0
Removal	0	0	0	0	0	0	0	0	0	0	0	0
Duty Hours	0	0	0	0	0	0	0	0	0	0	0	0
Perf. Eval./ Appraisal	0	0	0	0	0	0	0	0	0	0	0	0
Examination/Test	0	0	0	0	0	0	0	0	0	0	0	0
Harassment												
Non-Sexual	0	0	0	0	0	0	0	0	0	0	0	0
Sexual	0	0	0	0	0	0	0	0	0	0	0	0
Medical Examination	0	0	0	0	0	0	0	0	0	0	0	0
Pay Including Overtime	0	0	0	0	0	0	0	0	0	0	0	0
Promotion/Non-Selection	0	0	0	0	0	0	0	0	0	0	0	0
Reassignment												
Denied	0	0	0	0	0	0	0	0	0	0	0	0
Directed	0	0	0	0	0	0	0	0	0	0	0	0
Reasonable Accommodation Disability	0	0	0	0	0	0	0	0	0	0	0	0
Reinstatement	0	0	0	0	0	0	0	0	0	0	0	0
Religious Accommodation	0	0	0	0	0	0	0	0	0	0	0	0
Retirement	0	0	0	0	0	0	0	0	0	0	0	0
Sex – Stereotyping	0	0	0	0	0	0	0	0	0	0	0	0
Telework	0	0	0	0	0	0	0	0	0	0	0	0
Termination	0	0	0	0	0	0	0	0	0	0	0	0
Terms/Conditions of Employment	0	0	0	0	0	0	0	0	0	0	0	0
Time and Attendance	0	0	0	0	0	0	0	0	0	0	0	0
Training	0	0	0	0	0	0	0	0	0	0	0	0
Other – User Define												
Other 1 – Non EEO Harassment	0	0	0	0	0	0	0	0	0	0	0	0
None Provided	0	0	0	0	0	0	0	0	0	0	0	0
User Defined – Other 3	0	0	0	0	0	0	0	0	0	0	0	0
User Defined – Other 4	0	0	0	0	0	0	0	0	0	0	0	0

Findings of Discrimination Rendered by Issue	Comparative Data											
	Previous Fiscal Year Data										2020 Thru 09-30	
	2015		2016		2017		2018		2019			
	#	%	#	%	#	%	#	%	#	%	#	%
Findings After Hearing	0		0		0		0		0		0	
Appointment/Hire	0	0	0	0	0	0	0	0	0	0	0	0
Assignment of Duties	0	0	0	0	0	0	0	0	0	0	0	0
Awards	0	0	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	0	0
Disciplinary Action												
Demotion	0	0	0	0	0	0	0	0	0	0	0	0
Reprimand	0	0	0	0	0	0	0	0	0	0	0	0
Suspension	0	0	0	0	0	0	0	0	0	0	0	0
Removal	0	0	0	0	0	0	0	0	0	0	0	0
Duty Hours	0	0	0	0	0	0	0	0	0	0	0	0
Perf. Eval./Appraisal	0	0	0	0	0	0	0	0	0	0	0	0
Examination/Test	0	0	0	0	0	0	0	0	0	0	0	0
Harassment												
Non-Sexual	0	0	0	0	0	0	0	0	0	0	0	0
Sexual	0	0	0	0	0	0	0	0	0	0	0	0
Medical Examination	0	0	0	0	0	0	0	0	0	0	0	0
Pay Including Overtime	0	0	0	0	0	0	0	0	0	0	0	0
Promotion/Non-Selection	0	0	0	0	0	0	0	0	0	0	0	0
Reassignment												
Denied	0	0	0	0	0	0	0	0	0	0	0	0
Directed	0	0	0	0	0	0	0	0	0	0	0	0
Reasonable Accommodation Disability	0	0	0	0	0	0	0	0	0	0	0	0
Reinstatement	0	0	0	0	0	0	0	0	0	0	0	0
Religious Accommodation	0	0	0	0	0	0	0	0	0	0	0	0
Retirement	0	0	0	0	0	0	0	0	0	0	0	0
Sex – Stereotyping	0	0	0	0	0	0	0	0	0	0	0	0
Telework	0	0	0	0	0	0	0	0	0	0	0	0
Termination	0	0	0	0	0	0	0	0	0	0	0	0
Terms/Conditions of Employment	0	0	0	0	0	0	0	0	0	0	0	0
Time and Attendance	0	0	0	0	0	0	0	0	0	0	0	0
Training	0	0	0	0	0	0	0	0	0	0	0	0
Other – User Define												
Other 1 – Non EEO Harassment	0	0	0	0	0	0	0	0	0	0	0	0
None Provided	0	0	0	0	0	0	0	0	0	0	0	0
User Defined – Other 3	0	0	0	0	0	0	0	0	0	0	0	0
User Defined – Other 4	0	0	0	0	0	0	0	0	0	0	0	0

Findings of Discrimination Rendered by Issue	Comparative Data											
	Previous Fiscal Year Data										2020 Thru 09-30	
	2015		2016		2017		2018		2019			
	#	%	#	%	#	%	#	%	#	%	#	%
Findings Without Hearing	0		0		0		0		0		0	
Appointment/Hire	0	0	0	0	0	0	0	0	0	0	0	0
Assignment of Duties	0	0	0	0	0	0	0	0	0	0	0	0
Awards	0	0	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	0	0
Disciplinary Action												
Demotion	0	0	0	0	0	0	0	0	0	0	0	0
Reprimand	0	0	0	0	0	0	0	0	0	0	0	0
Suspension	0	0	0	0	0	0	0	0	0	0	0	0
Removal	0	0	0	0	0	0	0	0	0	0	0	0
Duty Hours	0	0	0	0	0	0	0	0	0	0	0	0
Perf. Eval./Appraisal	0	0	0	0	0	0	0	0	0	0	0	0
Examination/Test	0	0	0	0	0	0	0	0	0	0	0	0
Harassment												
Non-Sexual	0	0	0	0	0	0	0	0	0	0	0	0
Sexual	0	0	0	0	0	0	0	0	0	0	0	0
Medical Examination	0	0	0	0	0	0	0	0	0	0	0	0
Pay Including Overtime	0	0	0	0	0	0	0	0	0	0	0	0
Promotion/Non-Selection	0	0	0	0	0	0	0	0	0	0	0	0
Reassignment												
Denied	0	0	0	0	0	0	0	0	0	0	0	0
Directed	0	0	0	0	0	0	0	0	0	0	0	0
Reasonable Accommodation Disability	0	0	0	0	0	0	0	0	0	0	0	0
Reinstatement	0	0	0	0	0	0	0	0	0	0	0	0
Religious Accommodation	0	0	0	0	0	0	0	0	0	0	0	0
Retirement	0	0	0	0	0	0	0	0	0	0	0	0
Sex – Stereotyping	0	0	0	0	0	0	0	0	0	0	0	0
Telework	0	0	0	0	0	0	0	0	0	0	0	0
Termination	0	0	0	0	0	0	0	0	0	0	0	0
Terms/Conditions of Employment	0	0	0	0	0	0	0	0	0	0	0	0
Time and Attendance	0	0	0	0	0	0	0	0	0	0	0	0
Training	0	0	0	0	0	0	0	0	0	0	0	0
Other – User Define												
Other 1 – Non EEO Harassment	0	0	0	0	0	0	0	0	0	0	0	0
None Provided	0	0	0	0	0	0	0	0	0	0	0	0
User Defined – Other 3	0	0	0	0	0	0	0	0	0	0	0	0
User Defined – Other 4	0	0	0	0	0	0	0	0	0	0	0	0

Pending Complaints Filed in Previous Fiscal Years by Status	Comparative Data					
	Previous Fiscal Year Data					2020 Thru 09-30
	2015	2016	2017	2018	2019	
Total Complaints From Previous Fiscal Years	12	11	19	19	15	17
Total Complainants	10	11	19	17	13	13
Number Complaints Pending						
Investigation	0	0	0	0	0	0
ROI Issued, Pending Complainant's Action	0	0	0	0	0	0
Hearing	11	11	17	18	15	15
Final Agency Action	1	0	2	1	0	2
Appeal with EEOC Office of Federal Operations	0	5	5	6	1	4

Complaint Investigations	Comparative Data					
	Previous Fiscal Year Data					2020 Thru 09-30
	2015	2016	2017	2018	2019	
Pending Complaints Where Investigations Exceed Required Time Frames	0	0	0	0	0	1

ATTACHMENT B: SEC'S DISCIPLINARY ACTION POLICIES

SEC ADMINISTRATIVE REGULATION

U.S. Securities and Exchange Commission
Office of Human Resources
Washington, D.C. 20549

SECR 6-20
February 10, 2020

DISCIPLINARY AND ADVERSE ACTIONS

This administrative regulation describes the policy and principles of the U.S. Securities and Exchange Commission (SEC) for maintaining discipline and for taking disciplinary and adverse actions.

Except as otherwise noted, this policy applies to all SEC employees without regard to bargaining unit status. This policy applies to the SEC's Office of the Inspector General to the extent it does not interfere with or impede the authorities or independence of the Inspector General pursuant to the Inspector General Act of 1978.

This administrative regulation shall be reviewed at least every three years to ensure the contents remain relevant and reflect current federal laws, rules, regulations, and SEC regulations.

Summary of Changes.

This revision supersedes SECR 6-20, "Disciplinary and Adverse Actions," dated January 15, 2016. This revision reflects a change in the policy approving officials; updates to the policy, authority, and responsibilities sections; and other administrative updates.

//Signature on File//

James P. McNamara
Chief Human Capital Officer
Office of Human Resources

**SEC ADMINISTRATIVE REGULATION
DISCIPLINARY AND ADVERSE ACTIONS**

1. Purpose and Scope

This administrative regulation describes the policy and principles of the U.S. Securities and Exchange Commission (SEC) for maintaining discipline and for taking disciplinary and adverse actions.

2. Policy

It is the policy of the SEC that disciplinary and adverse actions will be taken for such cause as will promote the efficiency of the federal service.

3. General Procedures

3.1. Except as otherwise noted, refer to Article 34, “Disciplinary Actions,” and Article 35, “Adverse Actions,” of the Collective Bargaining Agreement (CBA) and the [askHR portal](#) for related procedures.

3.2. Except as otherwise noted, refer to Article 36, “Unacceptable Performance,” of the CBA and the [askHR portal](#) for information regarding actions based on unacceptable performance.

4. Authority

- Chapters 43 and 75 of Title 5, United States Code
- Parts 432 and 752 of Title 5, Code of Federal Regulations, current edition
- Public Law 95-452, “Inspector General Act of 1978,” October 12, 1978, as amended
- Collective Bargaining Agreement between the United States Securities and Exchange Commission and the National Treasury Employees Union, current edition

5. Applicability

5.1. Except as noted in subsection 5.2. below, this administrative regulation applies to all SEC employees without regard to bargaining unit status.

5.2. This policy applies to the SEC’s Office of the Inspector General to the extent it does not interfere with or impede the authorities or independence of the Inspector General pursuant to the Inspector General Act of 1978.

5.3. Until further notice, except as noted in subsection 5.4. below, the authorities cited above and Article 34, “Disciplinary Actions,” Article 35, “Adverse Actions,” and Article 36, “Unacceptable Performance,” of the CBA shall apply to all SEC employees.

5.4. The following provisions of the CBA shall not apply to non-bargaining unit employees:

- 5.4.1. Article 34, the last sentence of Section 5.G.;
- 5.4.2. Article 34, Section 7;
- 5.4.3. Article 35, the last sentence of Section 3.7.;
- 5.4.4. Article 35, Section 5; and
- 5.4.5. Article 36, Section 5.

6. Definitions

Except as otherwise noted, refer to Article 34, “Disciplinary Actions,” Article 35, “Adverse Actions,” and Article 36, “Unacceptable Performance,” of the CBA for related definitions.

7. Responsibilities

7.1. Chief Human Capital Officer, Office of Human Resources, or designee(s), shall establish policies and procedures for disciplinary and adverse actions, in consultation with the Office of the General Counsel (OGC).

7.2. General Counsel, OGC, or designee(s), shall provide legal and technical expertise, advice, and guidance (including the proper processes and procedures to be followed) to supervisory and management officials on disciplinary and adverse actions.

7.3. Supervisors shall comply with the provisions of this administrative regulation and the CBA, as applicable.

Except as otherwise noted, refer to Article 34, “Disciplinary Actions,” Article 35, “Adverse Actions,” and Article 36, “Unacceptable Performance,” of the CBA for additional related responsibilities.

2018 COLLECTIVE BARGAINING AGREEMENT BETWEEN
U.S. SECURITIES AND EXCHANGE COMMISSION
AND THE NATIONAL TREASURY EMPLOYEES UNION

Article 34
DISCIPLINARY ACTIONS

Section 1

For purposes of this Article, disciplinary actions are written reprimands and suspensions for fourteen (14) calendar days or fewer.

Section 2

In effecting disciplinary actions, the Employer endorses the use of like penalties for like offenses and progressive discipline. The Employer will consider the existence of any mitigating and/or aggravating circumstances, the nature of the position occupied by the employee at issue, and any other factors bearing upon the incident(s) or act(s) underlying the action. The degree of discipline administered will be proportionate to the offense and will be determined on a case-by-case basis.

Section 3

When the Employer determines that discipline of an employee is appropriate, the Employer may consider informal actions before taking disciplinary action. However, the Employer need not take informal action before taking disciplinary action.

The Employer will take a disciplinary action for such cause as will promote the efficiency of the service.

Section 4

No advance notice is required for the issuance of a written reprimand. However, a written reprimand will state the specific reasons for the action and include a statement in the written reprimand advising the employee of his/her rights to challenge the written reprimand.

Written reprimands will be placed in the employee's Official Personnel Folder for no more than two (2) years from the date of issuance.

Section 5

The Employer will follow these procedures when proposing and deciding to suspend an employee under this Article:

- A. Give the employee advance written notice stating the specific reasons for the proposed suspension. In cases where a disciplinary action is proposed for

reasons of off-duty misconduct, the Employer's written notification also will contain a statement of the nexus between the off-duty misconduct and the efficiency of the service.

- B. Provide the employee with a copy of the information relied upon to support the proposed disciplinary action.
- C. Grant the employee a reasonable amount of duty time, up to four hours, to prepare his/her response to the proposed suspension. The Employer may consider a written request from the employee for additional duty time to prepare his/her response.
- D. Give the employee the opportunity to reply to the notice orally and/or in writing within seven calendar days from the date the employee receives notice of the proposed suspension. The Employer may consider a written request from the employee to extend the reply period.
- E. If the employee elects to make an oral reply, the Deciding Official, or his/her designee, will prepare a summary of the oral reply for the record. The Employer will provide a copy of this summary to the employee and the employee's representative and allow at least one day for comment and/or correction.
- F. Consider the employee's reply.
- G. Give the employee a written decision letter concerning the proposed suspension. Normally, the decision will be made by a management official of a higher level than the official who issued the notice of the proposed suspension. The decision letter will be issued prior to the effective date of the suspension, and will contain the Employer's findings with respect to each specification and charge made against the employee in the notice of proposed action and the dates of the suspension. The Employer also will include a statement in the decision letter advising the employee of the Union's right to challenge the suspension.

Section 6

Upon request an employee is entitled to representation at any examination by a representative of the Employer in connection with an investigation if the employee reasonably believes that the examination may result in disciplinary action against the employee.

Section 7

An employee against whom a disciplinary action has been taken may grieve that action under Article 32 of this Agreement (Grievance Procedure). For actions effected after a second level management decision (suspensions), the grievance procedure may be bypassed and the Union may elect to proceed directly to arbitration in accordance with Article 33.

Section 8

If a disciplinary action is canceled, all documentation relative to that action (or proposed action) in the employee's Official Personnel File will be destroyed, with confirmation of destruction sent to the employee. The Employer will not destroy any documentation required to be preserved under laws, rules, or regulations.

Article 35
ADVERSE ACTIONS

Section 1

For purposes of this Article, adverse actions are suspensions for more than fourteen (14) calendar days, removals (except for actions taken under Article 36 (Unacceptable Performance)), reductions in grade or pay (except for actions taken under Article 36 (Unacceptable Performance)), or furloughs of thirty (30) calendar days or fewer. The provisions of this Article do not apply to the removal of probationary or term employees. The Employer will take an adverse action for such cause as will promote the efficiency of the service.

Section 2

The Employer and the Union agree to the concept of progressive discipline. Every situation warranting discipline is different and in some instances, progressive discipline may not be appropriate. In deciding what action may be appropriate, the Employer will give due consideration to the relevance of any mitigating and/or aggravating circumstances, including those listed below. All of these factors may not be relevant in a particular case, and each case must be considered individually. Selection of the appropriate penalty requires a responsible balancing of the factors relevant to the particular case.

1. The nature and seriousness of the offense, and its relation to the employee's duties, position, and responsibilities, including whether the offense was intentional or technical and inadvertent, or was committed maliciously or for gain, or was frequently repeated;
2. The employee's job level and type of employment including fiduciary role, contacts with the public, and prominence of the position;
3. The employee's past disciplinary record;
4. The employee's past work record, including length of service, performance on the job, ability to get along with fellow workers, and dependability;
5. The effect of the offense upon the employee's ability to perform at a satisfactory level and its effect upon the Employer's confidence in the employee's ability to perform assigned duties;
6. Consistency of the penalty with those imposed upon other employees for the same or similar offenses;
7. The notoriety of the offense or its impact upon the reputation of the Employer;
8. The clarity with which the employee was on notice of any rules that were violated in committing the offense, or had been warned about the conduct in question;
9. Potential for the employee's rehabilitation;

10. Mitigating circumstances surrounding the offense such as unusual job tensions, personality problems, mental impairment, harassment or bad faith, malice or provocation on the part of the others involved in the matter; and
11. The adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employee or others.

Section 3

The Employer will follow these procedures when proposing and deciding to take adverse actions against an employee under this Article:

1. Give the employee at least thirty (30) calendar day advance written notice stating the specific reasons for the proposed adverse action. In cases where an adverse action is proposed for reasons of off-duty misconduct, the Employer's written notification also will contain a statement of the nexus between the off-duty misconduct and the efficiency of the service.
2. Provide the employee with a copy of any information relied upon to support the proposed adverse action.
3. Grant the employee a reasonable amount of duty time, normally no more than eight (8) hours, to prepare his/her response to the proposed adverse action. The Employer may consider a written request from the employee for additional duty time to prepare his/her response.
4. Give the employee the opportunity to reply to the notice orally and/or in writing within ten calendar days from the date the employee receives notice of the proposed adverse action. The Employer may consider a written request from the employee to extend the reply period unless the proposed action is being taken under the 'crime provision' (5 CFR §752.404), in which case a request for an extension of the reply period will not be considered.
5. If the employee elects to make an oral reply, the Deciding Official or his/her designee, will prepare a summary of the oral reply for the record. The Employer will provide a copy of this summary to the employee and the employee's representative and allow at least one day for comment and/or correction.
6. Consider the employee's reply.
7. Give the employee a written decision letter concerning the proposed adverse action. Normally, the decision will be made by a management official of a higher level than the official who issued the notice of the proposed adverse action. The decision letter will be issued prior to the effective date of the adverse action, and will contain the Employer's findings with respect to each specification made against the employee in the notice of proposed action. The Employer also will include a statement in the decision letter advising the employee of his/her or the Union's rights to challenge the adverse action.

Section 4

Upon request, an employee is entitled to representation at any examination by a representative of the Employer in connection with an investigation if the employee reasonably believes that the examination may result in disciplinary action against the employee.

Section 5

An employee against whom an adverse action has been taken may challenge that action in accordance with Article 32 (Grievance Procedure) of this Agreement. The grievance procedure may be bypassed and the Union may elect to proceed directly to arbitration in accordance with Article 33. This would not preclude the employee's option to appeal the adverse action directly to the Merit Systems Protection Board if arbitration is not invoked.

Section 6

If an adverse action is canceled, all documentation relative to that action (or proposed action) in the employee's Official Personnel File will be destroyed, with confirmation of destruction sent to the employee. The Employer will not destroy any documentation required to be preserved under laws, rules, or regulations.

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