

**No FEAR Act**  
**ANNUAL REPORT**  
**FISCAL YEAR 2018**



**U.S. Department of Agriculture**

## USDA Civil Rights Policy

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, regardless of race, religion, gender, national origin, or any other characteristic. 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. 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.

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.

Sonny Perdue  
Secretary

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## **Executive Summary**

### **Annual Reporting Requirements**

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

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

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

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

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

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

USDA strives to:

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

### **Summary of the Report**

Congress passed the No FEAR Act in May 2002, to reduce anti-discrimination and retaliation in Federal Agencies, increase agency accountability, emphasize training for managers in the management of a diverse workforce, and encourage dispute resolution and employee communication skills. The annual report summarizes the efforts made by USDA to carry out the mandates of the No FEAR Act.

As demonstrated in the report, USDA experienced a decrease of 39 EEO complaints filed from FY 2017 to FY 2018. In addition, the number of filers decreased by 34 from FY 2017 to FY 2018. However, the number of findings of discrimination increased by two from FY 2017 to FY 2018. Data illustrating this trend can be found in Appendix A.

A review of disciplinary actions taken against employees who violated Federal anti-discrimination laws and whistleblower protection statutes shows in FY 2018 there were 14 [disciplinary actions \(See Part III: Table 9 Disciplinary Actions\) taken against employees compared to 23](#) in FY 2017. This decrease in disciplinary actions between FY 2017 and FY 2018 resulted from the continuation of USDA's Equal Opportunity Accountability initiative, which has strengthened procedures that measure and evaluate both organizational and individual accountability in providing fair and equitable treatment for all USDA employees. The reimbursement provisions of the No FEAR Act continue to result in financial accountability for sub-agencies and individual staff offices within USDA.

During FY 2018, USDA and the Office of the Assistant Secretary for Civil Rights (OASCR) implemented several initiatives to reduce the number of EEO complaints. The accomplishments are outlined below:

- worked with USDA agencies, Departmental Administration (DA), and staff offices to ensure reorganizations and regulations do not adversely impact USDA employees;

- continued services with Language Doctors, LLC for language interpretation, translation, and certification services for OASCR, thereby ensuring accuracy in interpretation of documents and inquiries;
- processed 360 investigations in FY 2018, a significant (25%) decrease compared to 480 in FY 2017, and 411 investigations processed in FY 2016;
- monitored the sufficiency of compliance efforts across the Department by evaluating 24 compliance reviews conducted by USDA agencies, as well as, 64 settlement and conciliation agreements;
- maintained a reduced processing time at historic levels resulting in 493 processed formal complaints at the intake stage, with an average processing time of 14 days;
- managed the Civil Rights Enterprise System to meet the annual assessment and authorization requirements established by USDA's Office of Chief Information Officer (OCIO); and
- handled approximately 25,000 Employment discrimination complaint inquiries. As front-line professionals, each Customer Service Unit staff was trained to answer and return calls promptly, provide helpful and accurate information and defuse customer complaints by maintaining professionalism and treating each caller with respect.

**PART I:  
USDA Formal EEO Complaints  
for  
Fiscal Years 2017 – 2018**

## 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 2017 and 2018.

### Summary of Data

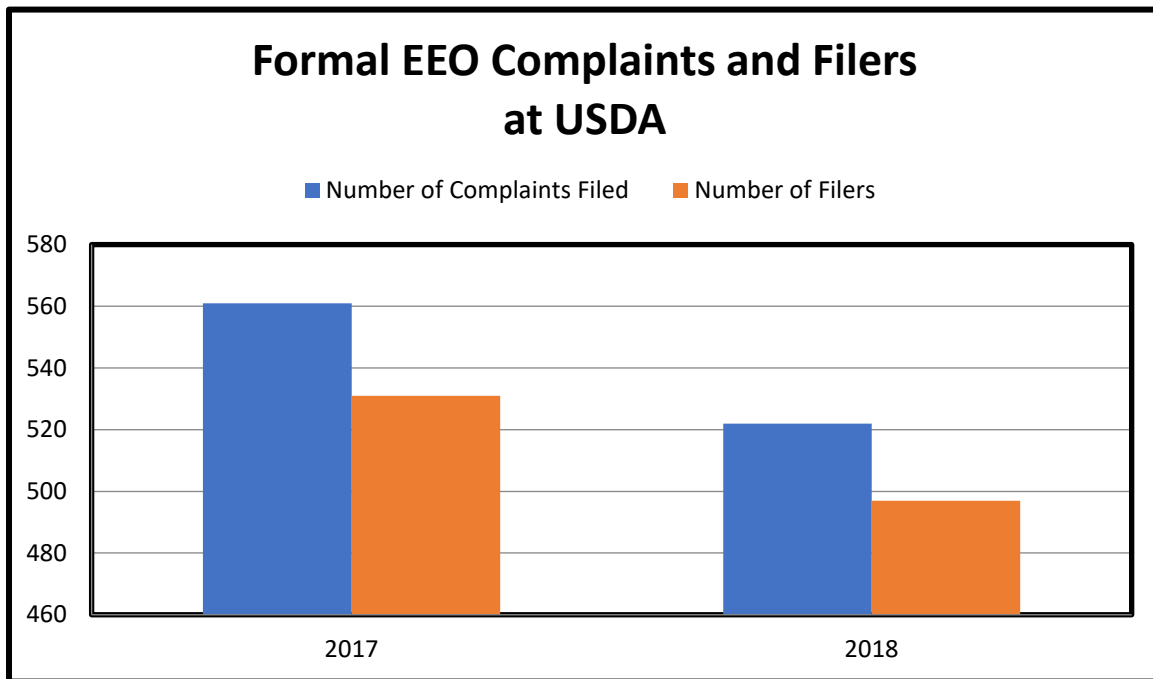
Table 1 below indicates the number of formal EEO complaints filed with USDA by FY and the number of individuals who filed complaints. It shows a decrease in the number of complaints filed and the number of filers over the prior year (See Graph 1).

In FY 2018, the number of complaints filed was 522, and in FY 2017, the number of complaints filed was 561. This represents a seven percent decrease in complaints filed. Additionally, the number of filers in FY 2018 was 497; in FY 2017 the number of filers was 531, a six percent decrease.

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

<b>Fiscal Years</b>	<b>Number of Complaints Filed</b>	<b>Number of Filers</b>
2017	561	531
2018	522	497

**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 FY 2017 and 2018. The basis of the complaint is the protected characteristic the complainant alleges formed the motivation for the discriminatory conduct. The bases protected by EEO statutes are race, color, religion, national origin, sex, disability, age and retaliation (for participating in the EEO complaint process or for opposing practices made illegal under the EEO laws). A complaint brought under the Equal Pay Act of 1963, as amended, is considered to be a complaint based on sex.

### **Summary of Data**

Table 2 provides data on all bases alleged in formal EEO complaints filed with USDA. Of all bases, the four most frequently cited in formal EEO complaints filed in FY 2018 are: (1) retaliation; (2) sex; (3) race; and (4) disability. In FY 2017, the four most frequently cited bases were: (1) retaliation; (2) race; (3) sex; and (4) age. These four bases are illustrated in Graph 2, which shows the two-year trend.

### **Complaints Alleging Retaliation**

Retaliation was the most frequently alleged basis in formal EEO complaints at USDA for both FYs 2018 and 2017. Retaliation was cited in 315 formal EEO complaints in FY 2018, compared to 311 formal EEO complaints in FY 2017, indicating a one percent increase (four complaints) from FY 2017 to FY 2018.

### **Complaints Alleging Sex Discrimination**

Sex was the second most frequently alleged basis in formal EEO complaints at USDA in FY 2018. Sex was cited as a basis in 229 formal EEO complaints in FY 2018, compared to 216 complaints in FY 2017, a 6 percent increase (13 complaints).

### **Complaints Alleging Race Discrimination**

Race was the third most frequently alleged basis in formal EEO complaints at USDA in FY 2018. Race was cited as a basis in 216 formal EEO complaints in FY 2018, compared to 243 complaints in FY 2017, a 12 percent decrease (27 complaints).

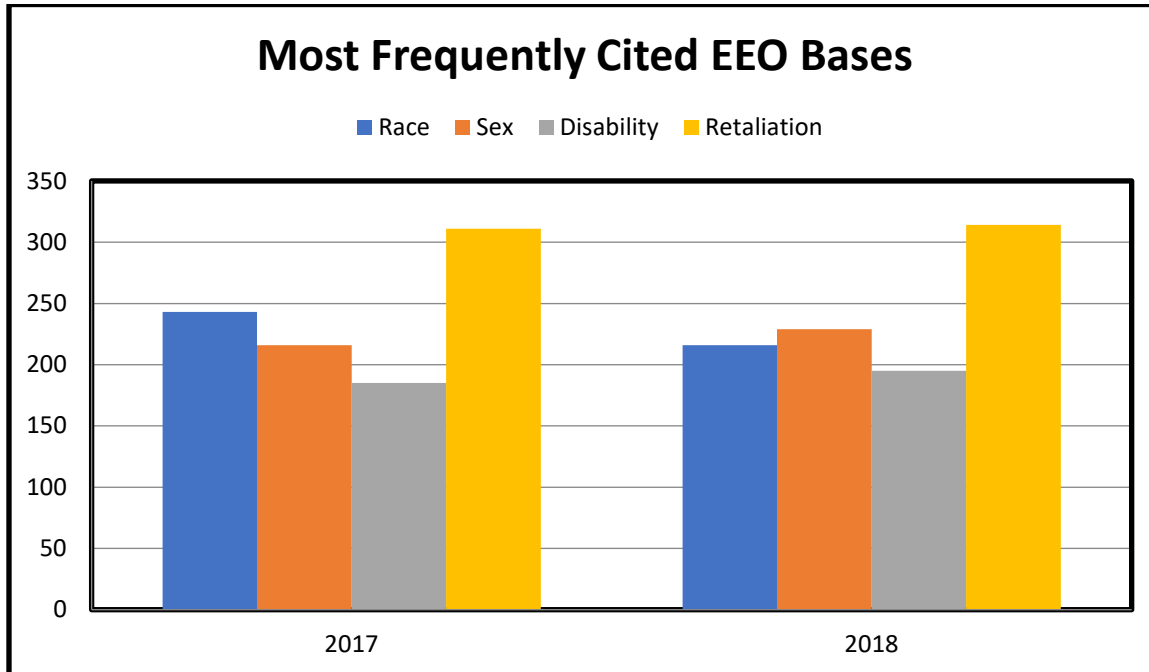
### **Complaints Alleging Disability Discrimination**

Disability was the fourth most frequently alleged basis in formal EEO complaints at USDA for both FYs 2018 and 2017. The basis of disability was cited in 195 formal EEO complaints in FY 2018 compared to 185 complaints in FY 2017, a 5 percent increase (10 complaints).

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

<b>EEO Bases in Formal EEO Complaints</b>									
<b>Year</b>	<b>Race</b>	<b>Color</b>	<b>Religion</b>	<b>Sex</b>	<b>National Origin</b>	<b>Disability</b>	<b>Age</b>	<b>Retaliation</b>	<b>Other<sup>1</sup></b>
<b>2017</b>	243	75	35	216	67	185	207	311	55
<b>2018</b>	216	85	28	229	68	195	155	315	40

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



<sup>1</sup> Other USDA protected bases include: Color, National Origin, Age, and Non-EEO. Additionally, the basis of sex includes gender identity and gender expression.

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

### **Introduction**

This section contains information regarding the most frequently cited issues in formal EEO complaints for FYs 2017 and 2018. The No FEAR Act requires Federal Agencies to post data regarding the nature of the issues raised in EEO complaints. The issue of a complaint is the specific subject matter about which the individual is complaining or the alleged discriminatory incident for which the individual is seeking redress. Table 3 below contains a list of issues most commonly raised in complaints. The “Other” category captures all issues not specifically listed.

### **Summary of Data**

Table 3 provides the most frequently cited issues in formal EEO complaints filed with USDA. The three EEO issues most frequently cited in FY 2018 were: (1) Harassment; (2) Terms/Condition of Employment; and (3) Disciplinary Action. In FY 2017, the three EEO issues most frequently cited were: (1) Harassment; (2) Terms/Condition of Employment; and (3) Promotion/Non-selection. Graph 3 shows the trends for these three issues over the two-year reporting period.

Harassment was the most frequently cited issue in formal EEO cases in FY 2018 and FY 2017. Harassment was cited with 374 filings in FY 2018 compared to 355 filings in FY 2017, indicating a five percent increase (19 complaints) from FY 2017 to FY 2018.

Terms/Condition of Employment was the second most frequently cited issue in formal EEO cases in FY 2018, with 135 filings. In contrast, Terms/Condition of Employment had 146 filings in FY 2017, indicating an 8 percent decrease (11 complaints) from FY 2017 to FY 2018.

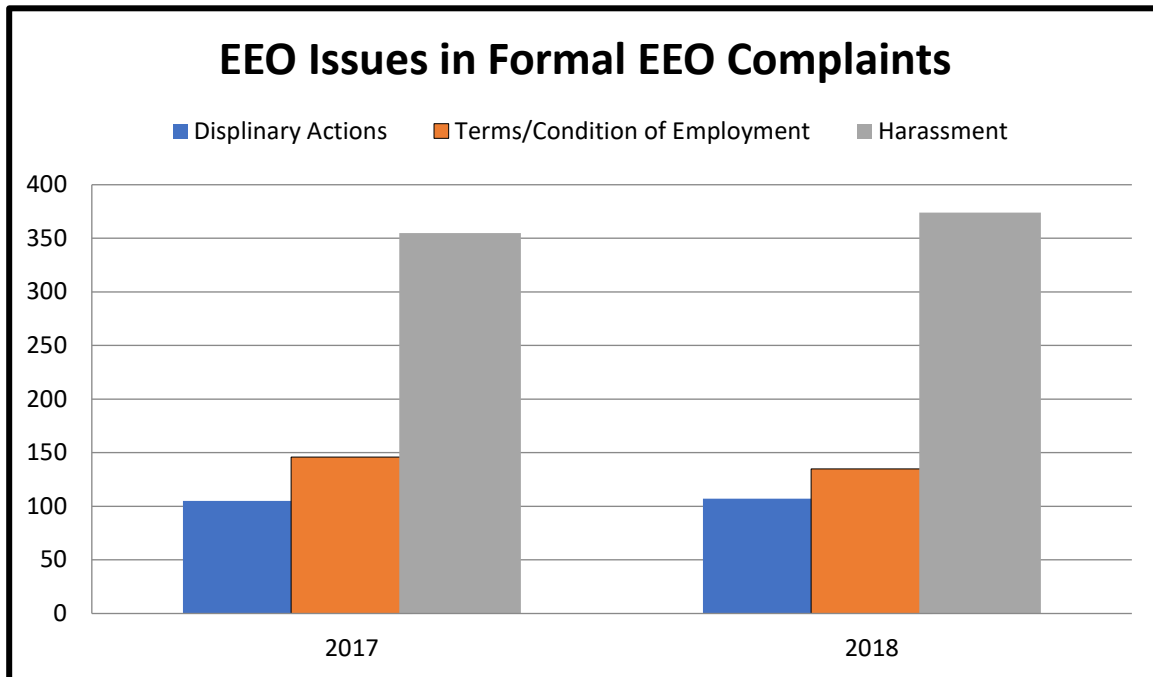
Disciplinary Action was the third most frequently cited issue in formal EEO cases in FY 2018 with 107 filings. Disciplinary Action was cited with 105 filings in FY 2017, indicating a 2 percent increase (2 complaints).

**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
2017	40	87	18	3	105	18	91	2	355	4	30	124	37	84	0	5	36	146	67	40	33
2018	24	82	14	1	107	8	98	1	374	0	11	71	47	94	0	4	35	135	77	45	33

\*Other USDA protected issues include *Religious Accommodation*, Sex-Stereotyping, Tele-work

**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 2017 and 2018. The formal EEO complaint process has various stages. Not all formal complaints complete all processing stages. These stages are: (1) Investigation (which includes Letter of Acceptance); (2) Final Agency Action with EEOC Hearing; (3) Final Agency Action without EEOC Hearing; and (4) Dismissal. Formal EEO complaints may be withdrawn or settled at any stage and may be dismissed at various stages.

### Summary of Data

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

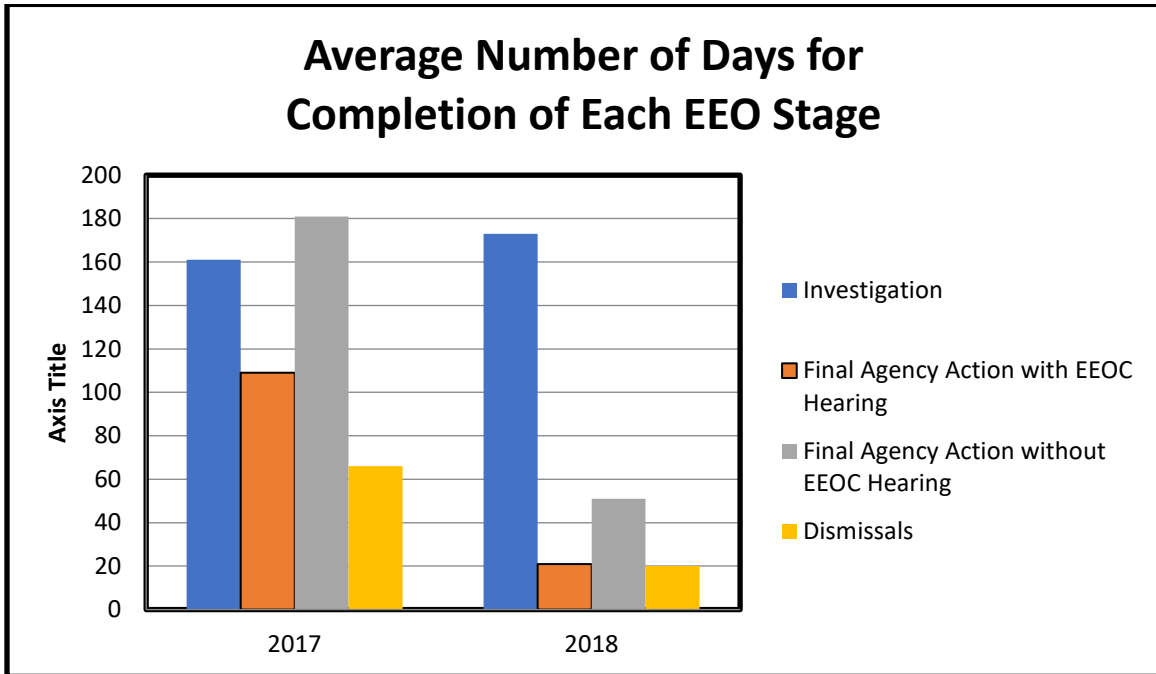
#### **(1) Average Number of Days for Completion of EEO Stages**

Table 4 below provides the average number of days for completing a formal EEO complaint at each stage. The data revealed a downward trend (as shown in Graph 4) in the average number of days for 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</b>
<b>2017</b>	161	109	181	66
<b>2018</b>	173	21	51	20

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



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

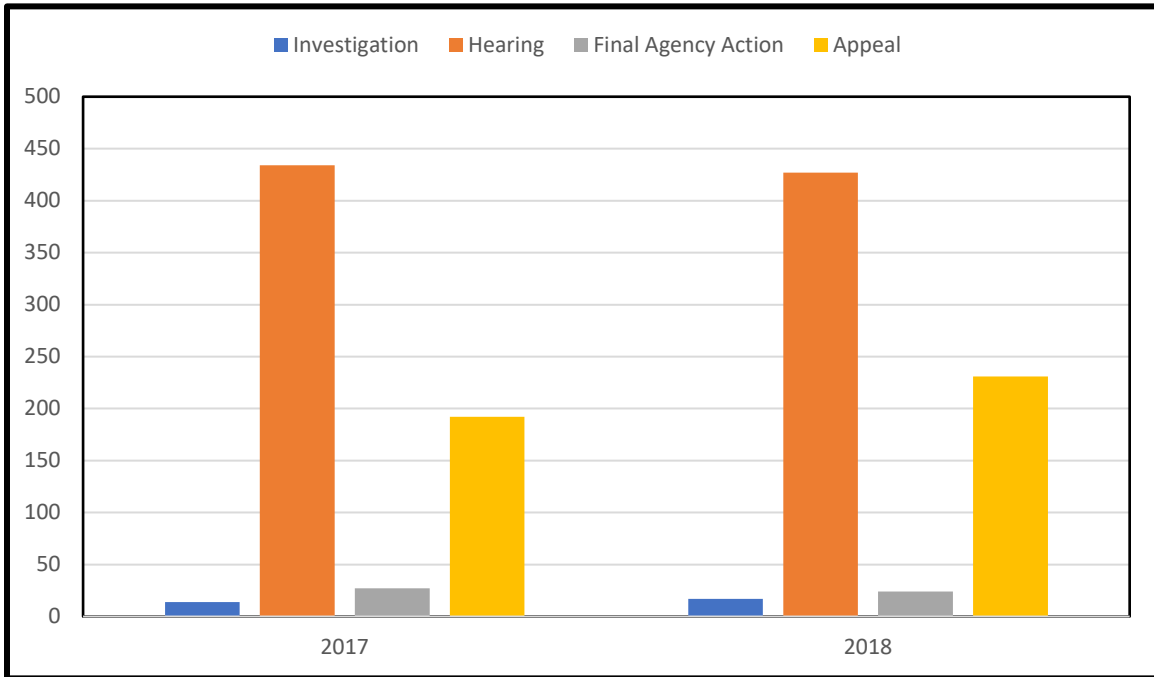
Table 5 below illustrates the number of pending EEO complaints in FYs 2017 and 2018, at each EEO stage.

Graph 5 shows a downward trend in pending complaints in two stages: Hearing and Final Agency Actions. In addition, Graph 5 shows an upward trend in pending complaints in two stages: Investigation; and Appeal.

**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>2017</b>	14	434	27	192
<b>2018</b>	17	427	24	231

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



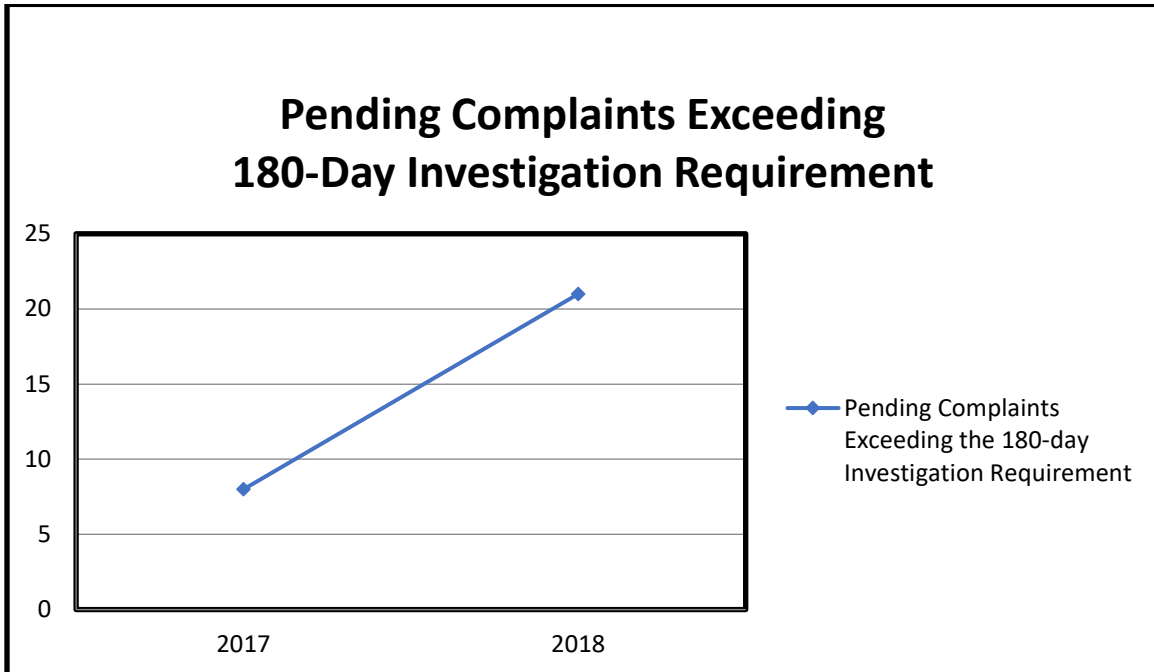
**(3) Pending Formal Complaints Exceeding the 180-Day Investigation Requirement**

Table 6 and Graph 6 show a 163 percent increase in FY 2018 for pending formal complaints that exceed the 180-day investigation requirement over the two-year reporting period.

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

<b>Pending Complaints Exceeding the 180-day Investigation Requirement</b>	
<b>2017</b>	8
<b>2018</b>	21

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





## Section E—Final Agency Actions with a Finding of Discrimination

### Introduction

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

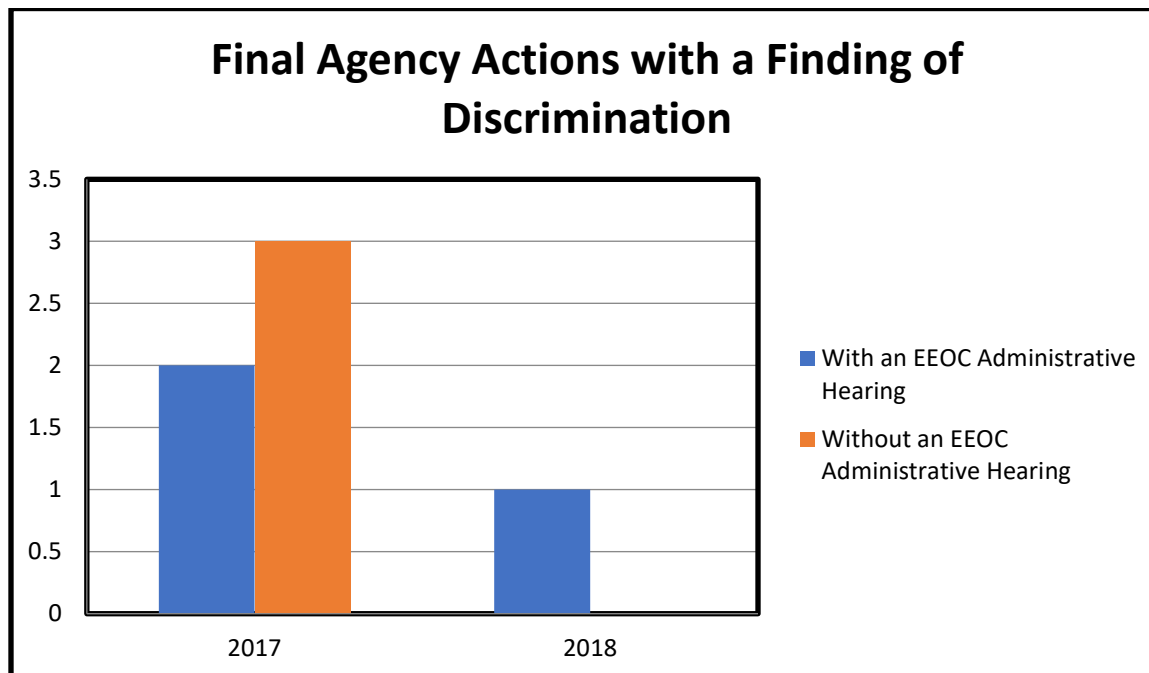
### Summary of Data

Table 7 and Graph 7 show that from FY 2017 to FY 2018, the number of findings of discrimination issued with an EEOC Administrative Hearing decreased by one, and the number of findings without an EEOC Administrative Hearing decreased to zero during FY 2018.

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

Year	With an EEOC Administrative Hearing	Without an EEOC Administrative Hearing
2017	2	3
2018	1	0

**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 2018 the following factors impacting the filing of formal EEO complaints.

- The Agricultural Marketing Service (AMS) reported a 90 percent increase in the number of complaints filed in FY 2018. Specifically, 21 formal complaints were filed in FY 2018, compared to 2 in FY 2017. This increase is attributed to the merger of AMS and the former Grain Inspection, Packers and Stockyard Administration (GIPSA). GIPSA's active complaints were transferred to AMS which created an increase in the number of complaints filed for FY 2018. However, to reduce the inventory, AMS continues to provide conflict management procedures and Alternative Dispute Resolution (ADR) training for FY 2019 to employees.
- The Animal and Plant Health Inspection Service (APHIS) reported a decrease of 20 in the number of complaints filed in FY 2018. Specifically, 40 formal complaints were filed in FY 2018, as compared to 60 filed in FY 2017. APHIS noted the 33 percent decrease may be attributed to streamlined procedures that were implemented, and the aggressive approach utilized in providing education and guidance to employees in EEO and civil rights.
- The Agricultural Research Service (ARS) reported a decrease of one in the number of complaints filed in FY 2018. Specifically, 16 formal complaints were filed in FY 2018, as compared to 17 filed in FY 2017. ARS attributes the six percent decrease to the continued and timely enforcement of mandatory EEO training.
- The Conflict Complaints Division (CCD), which processes conflict cases<sup>2</sup>, reported a decrease of 11 complaints filed in FY 2018. Specifically, 46 formal complaints were filed in FY 2018, as compared to 57 filed in FY 2017. CCD attributes the 24 percent decrease to the civil rights training provided to employees and the ADR program which helps to resolve workplace disputes.
- The Economic Research Service (ERS) reported an increase of one in the number of complaints filed in FY 2018. Specifically, three formal complaints were filed in FY 2018, compared to two filed in FY 2017. ERS attributes the 50 percent increase to employee concerns about the Secretary's proposed budget for the Agency that reduced the budget in half and raised the possibility of staffing cuts by 50 percent.

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<sup>2</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 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 Foreign Agricultural Service (FAS) reported an increase of four in the number of complaints filed in FY 2018. Specifically, 13 formal complaints were filed in FY 2018, compared to 9 filed in FY 2017. FAS attributes the 31 percent increase in the number of complaints filed to employees not electing ADR when offered.
- The Food and Nutrition Service (FNS) reported a decrease of nine complaints filed in FY 2018. Specifically, 11 formal complaints were filed in FY 2018, compared to 20 filed in FY 2017. FNS attributes the decrease in complaints to their new leadership, completion of a reorganization and enforcement of mandatory civil rights training to mitigate the increasing trend toward formal complaints.
- The Forest Service (FS) reported a decrease of two in the number of complaints filed in FY 2018. Specifically, 141 formal complaints were filed in FY 2018, compared to 143 filed in FY 2017. FS attributes this decrease to continued commitment in improving the EEO pre-complaint process and creating a respectful work environment.
- The Farm Service Agency (FSA) reported an increase of two in the number of complaints filed in FY 2018. Specifically, 35 formal complaints were filed in FY 2018, compared to 33 filed in FY 2017. FSA attributes this increase to a continued commitment that requires all FSA employees to view, read and acknowledge all FSA' civil rights policy letters through AgLearn. FSA further stated that the two complaints for FY 2018 are pending resolution.
- The Food Safety and Inspection Service (FSIS) reported a decrease of four in the number of complaints filed in FY 2018. Specifically, 54 formal complaints were filed in FY 2018, as compared to 58 filed in FY 2017. FSIS attributes the decrease to the Agency's continued efforts to providing EEO and Civil Rights training and marketing the availability of the ADR program for resolving workplace disputes.
- The National Agricultural Statistics Service (NASS) reported no formal complaints in FY 2018 compared to two filed in FY 2017. NASS attributes this decrease to the NASS culture, which fosters remediation and resolution at the early stages of disagreements or disputes.
- The National Finance Center, Office of the Chief Financial Officer (NFC-OCFO) reported an increase of seven in the number of complaints filed in FY 2018. Specifically, 42 formal complaints were filed in FY 2018, compared to 35 filed in FY 2017. NFC-OCFO attributes the increase to the dissatisfaction of employees regarding the selection process for an extra effort award that management utilized to recognize specific accomplishments in the aftermath of the tornado that displaced the National Finance Center's staff on February 7, 2017.
- The National Institute of Food and Agriculture (NIFA) reported an increase of one in the number of complaints filed in FY 2018. Specifically, three formal complaints were filed in FY 2018, compared to two filed in FY 2017. NIFA attributes the increase in the number of formal complaints to employee's awareness of their civil rights because of the agency's civil rights training.

- The Natural Resources Conservation Service (NRCS) reported an increase of 14 in the number of complaints filed in FY 2018. Specifically, 40 formal complaints were filed in FY 2018, compared to 26 filed in FY 2017. NRCS attributes the increase in complaints to recent changes in the legal definition of disability.
- The Rural Development (RD) reported a decrease of 23 in the number of complaints filed in FY 2018. Specifically, 39 formal complaints were filed in FY 2018, compared to 62 filed in FY 2017. RD attributes the decrease in complaint filings partially to the EEO staff's concerted effort during the fiscal year to provide advice prior to an employee filing a formal complaint. Furthermore, employees continued to utilize RD's ADR program to seek resolution both outside the EEO complaint process, and during the informal complaint process. In addition, RD continued to raise awareness of equal opportunity during employee training sessions and compliance reviews, which may have led to employees' increased knowledge of their rights and responsibilities and prohibited discriminatory behaviors.
- The Risk Management Agency (RMA) reported a decrease of three formal complaints filed in FY 2018. Specifically, six complaints were filed in FY 2018, compared to nine filed in FY 2017. RMA attributes the decrease to the Agency's leadership commitment to outreach, employee training, and zero tolerance to workplace discrimination.

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

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

- identifying employment issues or conflicts and promptly addressing each through the required corrective actions as noted in compliance reviews;
- continuing to hold managers, supervisors and employees accountable remains a key factor to creating a workplace free from discrimination;
- requiring managers and supervisors to complete training in communication, conflict management/ADR, disability, and work-life balance and allowing early involvement by EEO Counselors;
- ongoing communication on how to recognize, evaluate, and address delicate situations and early interactive engagement at all stages of the EEO process — clarifying legal definitions in briefings helped employees increase their knowledge about civil rights;
- collaborating with stakeholders to create an effective Conflict Prevention & Resolution program resulting from feedback from clients is effective in reducing workplace conflicts;
- working to build positive relationships between employees and management generated a positive work environment, and increased employee productivity; and

staying committed to educating managers, supervisors, and employees on EEO and Civil Rights laws helped to avoid harassment and disciplinary practices.

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

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

- conducted civil rights compliance reviews and assessments to analyze the overall EEO program and work environments and to determine the effectiveness of the program and policies;
- encouraged managers, supervisors and employees to embrace CR policies and hold all employees accountable for complying with anti-discrimination laws and regulatory requirements;
- initiated a pilot program, “Experienced Supervisors Applied Workshop,” to develop subject matter experts to facilitate EEO related issues and concerns;
- conducted interactive EEO training sessions for new supervisors through the “Fundamentals of Human Resource Management training;
- utilized resources through the Shared Neutral program or other Federal resources;
- conducted a comprehensive recruitment and retention program to enhance and retain its diverse workforce; and
- required managers and supervisors to complete training in areas of communication, conflict management/ADR, cultural transformation, leading across and managing workforce generations, handling difficult people, leadership development, disability, work-life balance and others.

Additionally, USDA plans to take the following future actions:

- continue to be proactive in implementing early resolution throughout the EEO complaint process, providing timely feedback and being proactive in conducting comprehensive EEO training for all employees and ADR training;
- coordinate and provide specific training sessions on developing better listening skills for employees and collaborate with human resources to hold these sessions;
- require managers to mitigate the effect of any business decision negatively impacting employees;
- provide refresher training for Resolving Officials to enable complaint resolution at the lowest level in the informal and formal EEO complaint stage;
- incorporate harassment and reprisal training in civil rights training;

- mandate reasonable accommodation training for all USDA employees and require all policy statements to be posted in work areas, visible to employees and contractors;
- and continue to collaborate with HRD to develop specific training for managers and supervisors, targeting EEO related issues and concerns and evaluate managers and supervisors through their performance plans regarding their commitment to USDA and EEO policies and principles;
- use more informal approaches to addressing one-on-one issues by increasing facilitated dialogues rather than mediation;
- communicate with employees in advance of a policy or organizational change so employees are less likely to perceive change as personal attacks or harassment;
- offer improved guidance for the settlement process with the release of DR-1521-001, “Legal Review and Execution of Settlement Agreements”;
- continue to implement improvements in all areas of the EEO arena focusing on recruitment, hiring, retention, development and advancement for all employees and create an Employee Advisory Group to identify proactive steps that support and empower employees and advise senior leaders on steps needed to eliminate harassment and promote a safe, respectful work environment;
- develop a sexual violence and harassment prevention pocket card that includes resources such as contact information for the Harassment Reporting Center, Civil Rights Office and Employee Assistance Program;
- conduct Title VII compliance reviews and ensure the findings are provided to appropriate management officials to take appropriate action(s) and address concerns or deficiencies;
- fully support the principles and requirements of the No FEAR Act that strictly prohibit the abuse of official authority or position to intimidate, coerce, or harass employees and customers;
- ensure experienced counselors receive annual 8 hours of refresher training;
- provide sufficient resources to ensure the workplace is free of discrimination, harassment and retaliation; and
- expand the use of technology in training programs, to include web-based training through Aglearn, WebEx and Live Meeting, to increase and improve the availability and opportunity for all employees to participate in EEO training offered.

**PART II:  
USDA Reimbursement to  
Judgment Fund for  
Fiscal Year 2018**

## USDA Reimbursement to Judgment Fund for Fiscal Year 2018

### 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 2018 judgments, awards, or settlements under the statutes addressed in the No FEAR Act.

**Table 8**  
**USDA Reimbursement to Judgment Fund for FY 2018 Settlements**

<b>USDA Reimbursement to Judgment Fund for FY 2018 Settlements</b>		
<b>Case</b>	<b>Total Amount</b>	<b>Attorney's Fees</b>
1	\$575,000.00	\$0.00
2	\$337,565.79	\$44,934.21
3	\$200,000.00	\$0.00
4	\$ 50,000.00	\$0.00
5	\$ 35,000.00	\$0.00
<b>Total</b>	<b>\$1,197,565.79</b>	<b>\$44,934.21</b>

### Summary

In FY 2018, USDA reimbursed the Judgment Fund \$1,197,565.79, of which \$44,934.21 were identified as payment of attorney's fees.



**PART III:**  
**USDA Disciplinary Actions and Reports**  
**for Fiscal Years 2017 – 2018**

**USDA Disciplinary Actions and Reports for  
Fiscal Years 2017–2018**

**Summary of Data**

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

**Table 9**

<b>ADMINISTRATIVE DISCIPLINARY ACTIONS</b>												
<b>TYPE OF ACTION</b>	<b>FY 2017</b>						<b>FY 2018</b>					
	<b>DISC.</b>	<b>RET.</b>	<b>HAR.</b>	<b>PPP</b>	<b>WBP</b>	<b>TOTAL</b>	<b>DISC.</b>	<b>RET.</b>	<b>HAR.</b>	<b>PPP</b>	<b>WBP</b>	<b>TOTAL</b>
<b>REMOVAL</b>	1	0	5	0	0	6	0	0	3	0	0	3
<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	6	0	0	6	1	0	5	5	0	11
<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>	1	0	10	0	0	11	0	0	0	0	0	0
<b>TOTAL DISCIPLINE</b>	2	0	21	0	0	23	1	0	8	5	0	14

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

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

**Table 10**

<b>OFFICE OF SPECIAL COUNSEL CASES</b>			
<b>CATEGORIES OF CASES</b>	<b>FY 2017</b>	<b>FY 2018</b>	<b>TOTAL</b>
<b>OSC WHISTLEBLOWER CASE</b>	5	0	5
<b>OSC WHISTLEBLOWER CASE CLOSED</b>	0	0	0
<b>OSC WHISTLEBLOWER DISCIPLINE TAKEN</b>	0	0	0

**PART IV:  
USDA Federal Court Litigation Statistics  
for FY 2018**

Tables 11, 12, and 13 below provide composite data for cases in Federal Court pending or resolved in FY 2018 and arising under the anti-discrimination and whistleblower protection laws.

**Table 11  
Federal Cases Pending in FY 2018**

<b>Federal Cases Pending in FY 2018</b>	
Pending District Court Cases	46
Pending Appellate Court Cases	6
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 2018	0	0	3	3	8
Still Pending at End of FY 2018	2	0	10	14	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	0	0	1	3
Withdrawals	0	0	0	0	0
Final Judgment for Complainant	1	0	0	0	0
Final Judgment for Agency	0	0	3	2	5
Total Cases disposed of in 2018	0	0	3	3	8

**NOTES ON CASES WITH MULTIPLE BASES ALLEGED**

- Forty-Four of the cases handled by OGC alleged multiple types of discrimination.
- If a case alleged a violation under 29 U.S.C. § 206(d), 631, 633a, or 791, it is reported under those statutes and not under 42 U.S.C. § 2000e-16 even if it also alleged a violation under 42 U.S.C. § 2000e-16.
- Approximately 77 percent of the cases handled by OGC alleged retaliation in addition to other forms of discrimination.

**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 2018 for period ending September 30, 2018

Complaint Activity					
	2014	2015	2016	2017	FY 2018
Number of Complaints Filed	484	513	531	561	522
Number of Complainants	465	498	508	531	497
Repeat Filers	17	15	19	24	21
Complaints by Basis					
<i>Note: Complaints can be filed alleging multiple bases. The sum of the bases may not equal total complaints filed.</i>	2014	2015	2016	2017	FY 2018
Race	246	205	222	243	216
Color	78	71	63	75	85
Religion	20	24	35	35	28
Reprisal	291	296	273	311	315
Sex	214	217	206	216	229
PDA	3	2	0	2	2
National Origin	76	70	47	67	68
Equal Pay Act	4	2	1	8	13

Age	186	184	185	207	155
Disability	133	167	157	185	195
Genetics	2	2	0	1	0
Non-EEO	54	58	39	55	40
<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>2014</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>	<b>FY 2018</b>
Appointment/Hire	24	36	28	40	24
Assignment of Duties	132	119	92	87	82
Awards	11	19	8	17	14
Conversion to Full Time/Permanent Status	1	0	0	3	1
Demotion	5	3	4	4	3
Reprimand	34	56	27	45	43
Suspension	32	52	26	36	37
Removal	7	9	6	17	21
Other	28	8	7	4	3
Duty Hours	15	23	20	18	8
Performance. Evaluation/Appraisal	86	90	92	96	98
Examination/Test	2	1	1	2	1
Non-Sexual	271	303	285	343	351
Sexual	19	16	18	13	24
Medical Examination	6	8	1	4	0
Pay including Overtime	45	41	22	30	11
Promotion/Non-Selection	117	160	149	124	71

Denied	26	25	14	17	21
Directed	49	39	18	20	26
Reasonable Accommodation Disability	54	84	68	84	94
Reinstatement	0	1	2	0	0
Religious Accommodation	0	0	3	4	1
Retirement	1	1	3	6	4
Sex-Stereotyping	0	0	1	1	1
Telework	0	14	29	25	31
Termination	41	41	27	36	35
Terms/Conditions of Employment	173	167	103	146	135
Time and Attendance	42	79	60	67	77
Training	39	49	54	40	45
User Defined - Other 1	20	13	5	2	0
User Defined - Other 2	7	6	0	1	0
User Defined - Other 3	4	1	0	0	0
User Defined - Other 4	3	1	0	0	0

Processing Time					
	2014	2015	2016	2017	FY 2018
Average Number of Days in Investigation	211.93	198.99	209.13	161.02	173.22
Average Number of Days in Final Action	163.62	106.45	97.53	151.66	36..78
Average Number of Days in Investigation	216.57	203.06	213.18	165.95	172.58
Average Number of Days in Final Action	191.36	94.69	69.31	108.76	21.90



Average Number of Days in Investigation	205.10	192.70	202.08	153.61	173.78
Average Number of Days in Final Action	132.35	114.36	124.03	181.492	50.90

<b>Complaints Dismissed by Agency</b>					
	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>
Total Complaints Dismissed by Agency	64	57	54	83	84
Average Days Pending Prior to Dismissal	188	104	111	64	20
Total Complaints Withdrawn by Complainants	34	35	28	35	28

<b>Total Final Agency Actions Finding Discrimination</b>										
	<b>2014</b>		<b>2015</b>		<b>2016</b>		<b>2017</b>		<b>FY 2018</b>	
	<b>#</b>	<b>%</b>	<b>#</b>	<b>%</b>	<b>#</b>	<b>%</b>	<b>#</b>	<b>%</b>	<b>#</b>	<b>%</b>
Total Number Findings	20		11		7		5		1	
Without Hearing	12	60	5	45	6	86	3	60	0	0
With Hearing	8	40	6	55	1	14	2	40	1	100

<i>Note: Complaints can be filed alleging multiple bases. The sum of the bases may not equal total complaints and findings.</i>										
	<b>2014</b>		<b>2015</b>		<b>2016</b>		<b>2017</b>		<b>FY 2018</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>	19		8		7		4		1	
Race	4	21	1	13	3	43	3	75	0	0
Color	1	5	0	0	1	14	0	0	0	0

Religion	2	11	0	0	0	0	0	0	0	0
Reprisal	6	32	4	50	4	57	1	25	1	100
Sex	1	5	0	0	3	43	0	0	1	100
PDA	0	0	0	0	0	0	0	0	0	0
National Origin	3	16	1	13	0	0	0	0	0	0
Equal Pay Act	1	5	0	0	0	0	0	0	0	0
Age	1	5	1	13	0	0	1	25	0	0
Disability	7	37	7	88	2	29	0	0	0	0
Genetics	0	0	0	0	0	0	0	0	0	0
Non-EEO	2	11	0	0	0	0	0	0	0	0
<b>Findings After Hearing</b>	8		6		1		2		1	
Race	3	38	1	17	1	100	2	100	0	0
Color	1	13	0	0	0	0	0	0	0	0
Religion	2	25	0	0	0	0	0	0	0	0
Reprisal	4	50	3	50	1	100	0	0	1	100
Sex	1	13	0	0	1	100	0	0	1	100
PDA	0	0	0	0	0	0	0	0	0	0
National Origin	2	25	1	17	0	0	0	0	0	0
Equal Pay Act	1	13	0	0	0	0	0	0	0	0
Age	0	0	1	17	0	0	1	50	0	0
Disability	0	0	5	83	0	0	0	0	0	0
Genetics	0	0	0	0	0	0	0	0	0	0
Non-EEO	1	13	0	0	0	0	0	0	0	0
<b>Findings Without Hearing</b>	11		2		6		2		0	
Race	1	9	0	0	2	33	1	50	0	0

Color	0	0	0	0	1	17	0	0	0	0
Religion	0	0	0	0	0	0	0	0	0	0
Reprisal	2	18	1	50	3	50	1	50	0	0
Sex	0	0	0	0	2	33	0	0	0	0
PDA	0	0	0	0	0	0	0	0	0	0
National Origin	1	9	0	0	0	0	0	0	0	0
Equal Pay Act	0	0	0	0	0	0	0	0	0	0
Age	1	9	0	0	0	0	0	0	0	0
Disability	7	64	2	100	2	33	0	0	0	0
Genetics	0	0	0	0	0	0	0	0	0	0
Non-EEO	1	9	0	0	0	0	0	0	0	0
<b>Findings of Discrimination Rendered by Issue</b>										
	<b>2014</b>		<b>2015</b>		<b>2016</b>		<b>2017</b>		<b>FY 2018</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>	19		8		7		4		1	
Appointment/Hire	0	0	0	0	0	0	0	0	0	0
Assignment of Duties	3	16	0	0	1	14	2	50	0	0
Awards	2	11	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	1	5	0	0	0	0	0	0	0	0
Reprimand	0	0	1	13	2	29	0	0	0	0
Suspension	0	0	0	0	1	14	0	0	0	0
Removal	0	0	0	0	0	0	0	0	0	0
Other	1	5	0	0	0	0	0	0	0	0

Duty Hours	0	0	0	0	1	14	0	0	0	0
Performance Evaluation/ Appraisal	0	0	1	13	0	0	0	0	0	0
Examination/Test	0	0	0	0	0	0	0	0	0	0
Non-Sexual	7	37	3	38	2	29	0	0	0	0
Sexual	0	0	0	0	0	0	0	0	1	100
Medical Examination	0	0	0	0	0	0	0	0	0	0
Pay Including Overtime	1	5	0	0	0	0	0	0	0	0
Promotion/Non-Selection	2	11	0	0	2	29	3	75	0	0
Denied	0	0	0	0	0	0	0	0	1	100
Directed	2	11	0	0	0	0	0	0	0	0
Reasonable Accommodation Disability	5	26	4	50	1	14	0	0	0	0
Reinstatement	1	5	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	4	21	0	0	0	0	1	25	0	0
Terms/Conditions of Employment	3	16	0	0	2	29	1	25	0	0
Time and Attendance	0	0	1	13	0	0	0	0	1	100
Training	0	0	0	0	0	0	0	0	0	0
User Defined - Other 1	2	11	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>	8		6		1		2		1	
Appointment/Hire	0	0	0	0	0	0	0	0	0	0
Assignment of Duties	2	25	0	0	1	100	1	50	0	0
Awards	1	13	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	1	17	0	0	0	0	0	0
Suspension	0	0	0	0	0	0	0	0	0	0
Removal	0	0	0	0	0	0	0	0	0	0
Other	0	0	0	0	0	0	0	0	0	0
Duty Hours	0	0	0	0	0	0	0	0	0	0
Performance Evaluation/ Appraisal	0	0	1	17	0	0	0	0	0	0
Examination/Test	0	0	0	0	0	0	0	0	0	0
Non-Sexual	3	38	3	50	0	0	0	0	0	0
Sexual	0	0	0	0	0	0	0	0	1	100
Medical Examination	0	0	0	0	0	0	0	0	0	0
Pay Including Overtime	0	0	0	0	0	0	0	0	0	0
Promotion/Non-Selection	2	25	0	0	0	0	1	50	0	0
Denied	0	0	0	0	0	0	0	0	1	100
Directed	2	25	0	0	0	0	0	0	0	0
Reasonable Accommodation Disability	0	0	2	33	0	0	0	0	0	0
Reinstatement	1	13	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	1	50	0	0
Terms/Conditions of Employment	0	0	0	0	0	0	0	0	0	0
Time and Attendance	0	0	0	0	0	0	0	0	1	100
Training	0	0	0	0	0	0	0	0	0	0
User Defined - Other 1	2	25	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>	11		2		6		2		0	
Appointment/Hire	0	0	0	0	0	0	0	0	0	0
Assignment of Duties	1	9	0	0	0	0	1	50	0	0
Awards	1	9	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	1	9	0	0	0	0	0	0	0	0
Reprimand	0	0	0	0	2	33	0	0	0	0
Suspension	0	0	0	0	1	17	0	0	0	0
Removal	0	0	0	0	0	0	0	0	0	0
Other	1	9	0	0	0	0	0	0	0	0
Duty Hours	0	0	0	0	1	17	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	4	36	0	0	2	33	0	0	0	0

Sexual	0	0	0	0	0	0	0	0	0	0
Medical Examination	0	0	0	0	0	0	0	0	0	0
Pay Including Overtime	1	9	0	0	0	0	0	0	0	0
Promotion/Non-Selection	0	0	0	0	2	33	2	100	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	5	45	2	100	1	17	0	0	0	0
Reinstatement	0	0	0	0	0	0	0	0	0	0
Religious Accommodation	0	0	0	0	0	0	0	0	0	0
Retirement	0	0	0	0	0	0	0	0	0	0
Sex-Stereotyping	0	0	0	0	0	0	0	0	0	0
Telework	0	0	0	0	0	0	0	0	0	0
Termination	4	36	0	0	0	0	0	0	0	0
Terms/Conditions of Employment	3	27	0	0	2	33	1	50	0	0
Time and Attendance	0	0	1	50	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>2014</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>	<b>FY 2018</b>					
Total Complaints from Previous Fiscal Years	467	439	442	472	453					

Total Complainants	420	403	417	429	410
Investigation	21	19	15	14	17
ROI Issued, Pending Complainant's Action	3	1	2	0	0
Hearing	381	381	375	434	426
Final Agency Action	65	50	59	27	24
Appeal with EEOC Office of Federal Operations	102	122	143	192	231
<b>Complaint Investigations</b>					
	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>	<b>FY 2018</b>
Pending Complaints Where Investigations Exceed Required Time Frames	23	16	10	8	21

\*The complaint numbers for Race and National Origin in this report include some instances where complaints alleging Hispanic/Latino were categorized as race instead of national origin. As of FY2024, this error has been corrected in the complaint tracking system, and Hispanic/Latino is now recognized solely as a basis of national origin.