

No FEAR Act
ANNUAL REPORT
FISCAL YEAR 2022



U.S. Department of Agriculture



Office of the Secretary
Washington, D.C. 20250

June 8, 2022

USDA Civil Rights Policy Statement

At USDA, we are recommitting ourselves to the values of equity, inclusion, and equal opportunity for each other and those we serve. As Secretary, I will work with our dedicated team to intentionally build and advance a culture of belonging which empowers a diverse mix of people across USDA. It is USDA's mission to actively advance racial justice and equity for one another by rooting out systemic racism and strengthening civil rights programs while building trust within and outside the Department. This commitment is reflected in USDA's Strategic Plan 2022-2026, USDA's Equity Action Plan, and the Office of the Assistant Secretary for Civil Rights' draft FY 2022-2026 Strategic Plan.

As a Department, our core values of respect and dignity, equity and inclusion, trust and integrity, service and results, and science leadership serve as guiding principles, defining appropriate behaviors, expectations for all employees, and directing decision making throughout all levels of the organization.

No employee, former employee, or applicant for employment at the Department will be denied equal opportunity because of race, color, sex, national origin, religion, age, disability, pregnancy, sexual orientation, gender identity, genetic information, retaliation, or any other non-merit-based factor. This not only is the law; it is an essential component of the Department's mission and our responsibility to the public we serve.

All employees have the freedom to compete on a fair and level playing field with equal opportunity for available employment and advancement opportunities. Equal employment opportunity covers all personnel/employment programs, management practices, and decisions, including recruitment/hiring, merit promotion, transfer, reassignments, training and career development, benefits, and separation. These civil rights principles are more than employees' rights by law—they are core values at the USDA.

USDA strives to become a leader in EEO and a model employer. All USDA applicants and employees have the right not only to be free from harassment and discrimination but also to raise an allegation of harassment or discrimination and not fear reprisal. I will not tolerate any form of workplace harassment. Agencies are required to respond to, address, and correct any harassing conduct before it becomes severe or pervasive, and USDA will continue to quickly process complaints of harassment, discrimination, and reprisal and provide robust EEO training to all employees.

I will hold all employees and managers accountable for doing their part to ensure all USDA applicants, customers, constituents, and stakeholders are provided equal access to all opportunities, programs, and services available through USDA. Accordingly, all senior leaders, managers, and supervisors must act in a manner that is deserving of the public's trust and with the utmost integrity in everything we do as public servants, leading always by example, treating everyone with dignity and respect, and promoting an ethical, equitable, and inclusive culture. All must comply with EEO principles as we perform the Department's mission.

Sincerely,

A handwritten signature in blue ink, reading "Thomas J. Vilsack". The signature is fluid and cursive, with the first name "Thomas" and last name "Vilsack" clearly legible.

Thomas J. Vilsack
Secretary

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Annual Reporting Requirements

The Notification and Federal Employee Anti-discrimination and Retaliation Act of 2002 (No FEAR Act), Public Law No. 107-174, Section 203 mandates that Federal Agencies report certain information for each fiscal year (FY). This report contains the:

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

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

Executive Summary

USDA's FY 2022 No FEAR Act Annual Report is the eighteenth report submitted pursuant to the No FEAR Act, Public Law No. 107-174, Section 203. The No FEAR Act Annual Report demonstrates key accomplishments for USDA during FY 2022 to reduce discrimination and retaliation, increase accountability, emphasize training for managers in the management of a diverse workforce, encourage dispute resolution and employee communication skills. During FY 2022 USDA continued to maintain maximum telework posture, along with all other federal agencies.

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

- A decrease of 78 equal employment opportunity (EEO) complaints filed in FY 2022, compared to FY 2021. In addition, the number of filers decreased by 67 in 2022, compared to the previous fiscal year.
- The number of findings of discrimination in EEO complaints increased by nine in FY 2022, compared to FY 2021. Data illustrating this trend can be found in Part 1: Table 7, Final Agency Actions with a finding of discrimination.
- A review of disciplinary actions taken against employees who violated Federal anti-discrimination laws and whistleblower protection statutes shows for FY 2022 there was zero disciplinary actions (See Part III: Table 9 Disciplinary Actions) taken against employees, compared to 1 in FY 2021. The Office of Human Resource Management (OHRM) reported the decrease in disciplinary actions FYs 2021 and FY 2022 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.
- Reduced processing time in employment complaints of discrimination that are now within the statutory timeframes in FY 2022. Specifically, 233 formal complaints of discrimination were processed at the intake stage with an average processing time (APT) of 28 days for acceptance or dismissal determinations. Processed 56 requests for amendments and modifications with an APT of 18 days.
- Streamlined standard operating procedures to eliminate pending inventories of appeal packages and submitted 96 complaint files to the Equal Employment Opportunity Commission's (EEOC), Office of Federal Operations with an APT of 19 days.
- Led the Stakeholder Engagement work group which provided recommendations for the Deputy Assistant Secretary for Civil Rights, Policy and Stakeholder Engagement's communications and engagement with internal and external stakeholders.

In addition, during FY 2022 USDA, through its Office of the Assistant Secretary for Civil Rights (OASCR), implemented the following initiatives to reduce the number of EEO complaints:

- Produced and disseminated four major reports to Congress or Regulatory Bodies for FY 2021, as follows:
 - Affirmative Employment Program Plan for Minorities and Women, and Affirmative Action Plan for Individuals with Disabilities Accomplishment Report and Updates (EEOC MD-715);
 - Age Act Report to Health and Human Services; and
 - Report of Civil Rights Complaints, Resolutions and Actions.
- Conducted oversight and guidance on 56 reviews in accordance with Departmental Regulation 4300-004, Civil Rights Impact Analyses (CRIA), to establish significant proposed, interim, or final rules, a planned reorganization, or advisory committee establishment or renewal. Provided technical assistance to staff offices with no civil rights or program staff in developing CRIsAs.
- Disseminated the No FEAR Act Training, in accordance with 29 CFR § 1614, and management directive 715 (MD-715) governing affirmative employment programs, to more than 104,000 employees on January 4, 2022. Ninety-four percent of the 104,000 USDA employees completed the training successfully in FY 2022.
- Automated data collection, analyses, and reporting systems to modernize and transform business processes within OASCR. Examples of five data analytics and modernization projects in FY 2022 are: SPAM mitigation, MD-715 automation, CR Performance Assessment, religious exemptions, and reconciliation of informal EEO/Alternative Dispute Resolution (ADR) data.
- Currently engaged in the process of developing a self-assessment tool, in accordance with USDA Office of Inspector General (OIG) Audit Report Number **60601-0001-21** (Finding 5) that OASCR must “Strengthen its Oversight Efforts of USDA Agencies” for use by agencies in measuring their civil rights performance.
- Conducted eight annual observances in FY 2022 through its Mission Area Liaison Unit, established by Presidential proclamation or Congressional authority to recognize the contributions and achievements of diverse groups to the nation and our workforce.
 - Dr. Martin Luther King, Jr. Day of Service (January 15)
 - National African American History Month (February)
 - National Women's History Month (March)
 - Asian American and Pacific Islander Heritage Month (May)
 - LGBTQ+ Pride Month (June)
 - National Hispanic Heritage Month (September 15 - October 15)
 - Disability Employment Month (October)
 - Native American and Alaskan Native American Heritage Month (November)

- Submitted timely OIG/GAO monthly audit reports to the Office of the Chief Financial Officer (OCFO).
- Established strategies and process improvements resulting in the closure of seven OIG audit recommendations.
- Implemented Strategic Plan activities to establish key performance measures within OASCR, such as:
 - Created and led an OASCR cross-divisional Strategic Plan Committee to establish strategic goals and implementation strategies;
 - Updated OASCR's five-year strategic plan;
 - Created Collaborative Action Plan; and
 - Created OASCR's Strategic Plan Progress Report to track its strategic plan progress.
- Published *The OASCR Times* newsletter, in FYs 2021, 2022, and 2023. The publication was broadened from an OASCR publication to a department-wide publication.
- Drafted the USDA Civil Rights Performance Assessment (CRPA) and relaunched the civil rights compliance assessment of USDA mission areas, agencies, and staff offices.
- Benchmarked federal agencies' compliance with the Cummings Act and provided recommended reporting strategies for USDA.
- Coordinated the rollout of the FY 2022 mandatory Unconscious Bias Civil Rights training.
- Successfully planned and hosted 2022 USDA Civil Rights Conference.

**PART I:
USDA Formal EEO Complaints
for
Fiscal Years 2021 – 2022**

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 2021 and 2022.

Summary of Data

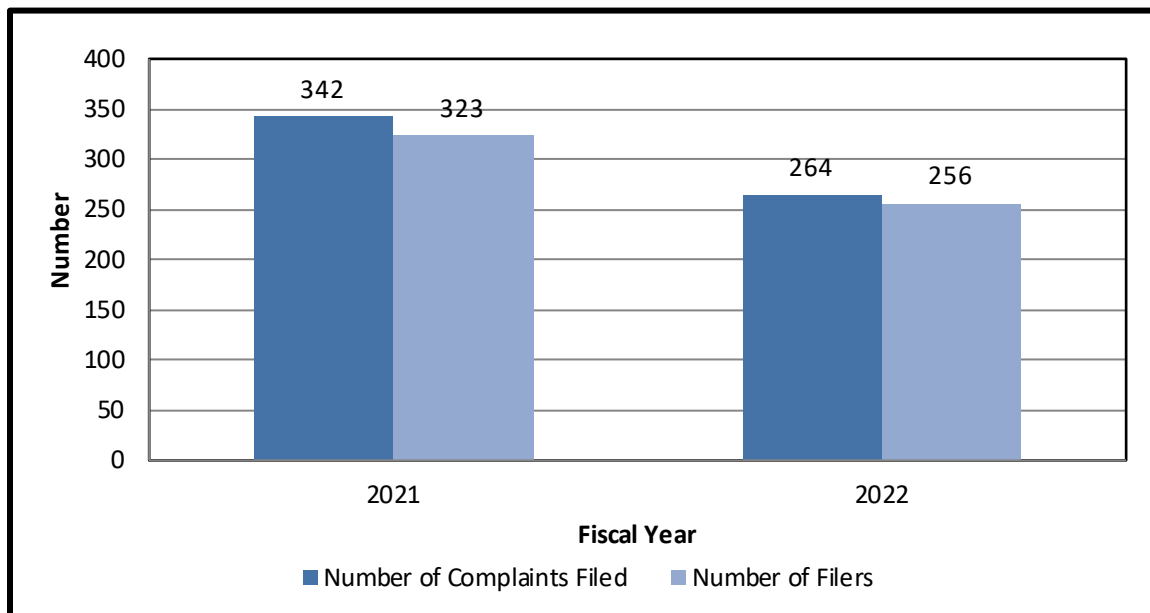
Table 1 below indicates the number of formal EEO complaints filed with USDA by fiscal year and the number of individuals who filed complaints. It shows a decrease in the number of complaints filed and the number of filers over the prior year (See Graph 1).

In FY 2022, 246 complaints were filed, compared to 342 in FY 2021. This represents a 23 percent decrease in complaints filed. Additionally, the number of filers in FY 2022 was 256 compared to 323 in FY 2021. This represents a 21 percent decrease in the number of filers.

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

Fiscal Years	Number of Complaints Filed	Number of Filers
2021	342	323
2022	264	256

Graph 1
Formal EEO Complaints and Filers at USDA



Section B—Most Frequently Cited Bases in Formal EEO Complaints at USDA

Introduction

This section contains information on the most frequently cited bases in formal EEO complaints for FYs 2021 and 2022. The basis of the complaint is the protected characteristic the complainant alleges which formed the motivation for the discriminatory conduct. The bases protected by EEO statutes are race, color, religion, national origin, sex, disability, genetics, age, and retaliation (for participating in the EEO complaint process or for opposing practices made illegal under the EEO laws). A complaint brought under the Equal Pay Act of 1963, as amended, is 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 2022 are: (1) retaliation; (2) disability; (3) race; and (4) sex. In FY 2021, the four most frequently cited bases were: (1) retaliation; (2) race; (3) sex; and (4) disability. 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 2022 and 2021. In FY 2022, 122 complaints cited retaliation as a basis, compared to 162 complaints in FY 2021. This represents a 25 percent reduction in complaints alleging retaliation as a basis.

Complaints Alleging Disability Discrimination

Disability matched retaliation as the most frequently alleged basis in formal EEO complaints at USDA for FY 2022. In FY 2022, 122 complaints cited disability as a basis, compared to 103 complaints in FY 2021. This represents an 18 percent increase in complaints alleging disability as a basis. Of those 122 claims that cited disability as a basis, 32 raised issues of reasonable accommodation.

Complaints Alleging Race Discrimination

Race was the third most frequently alleged basis in formal EEO complaints at USDA in FY 2022. In FY 2022, 86 complaints cited race as a basis, compared to 142 complaints in FY 2021. This represents a 39 percent reduction in complaints alleging race as a basis.

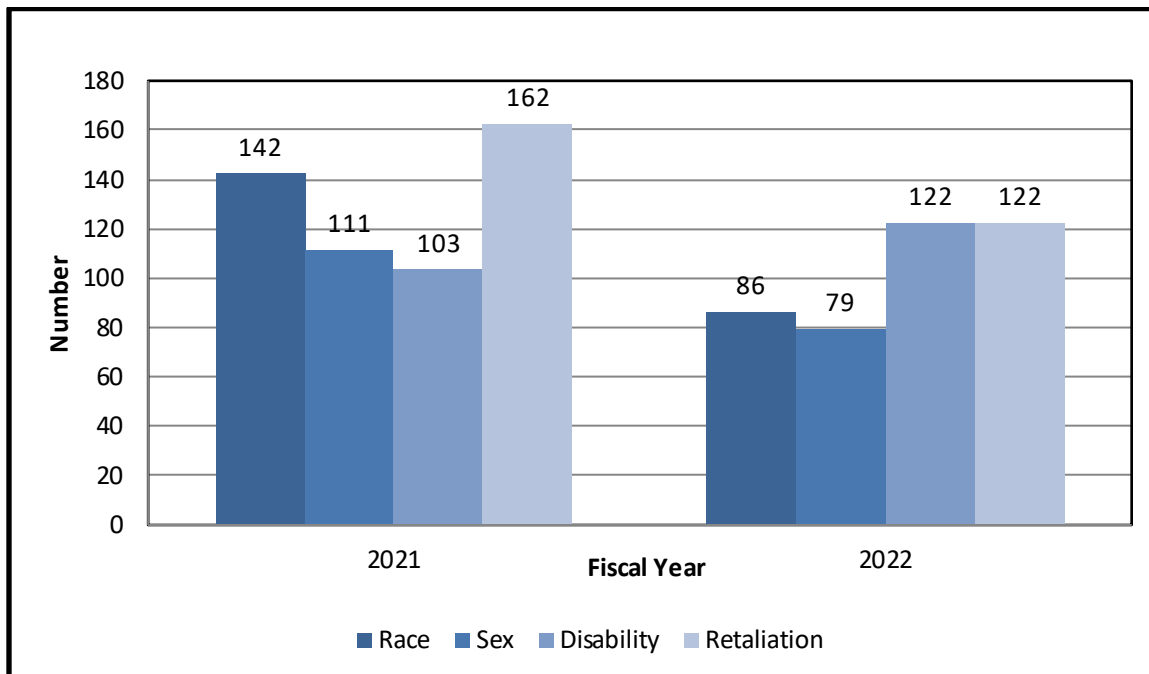
Complaints Alleging Sex Discrimination

Sex was the fourth most frequently alleged basis in formal EEO complaints at USDA in FY 2022. In FY 2022, 79 complaints cited sex as a basis, compared to 111 in FY 2021. This represents a 29 percent reduction in complaints alleging sex as a basis.

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

Frequency of EEO Bases in Formal EEO Complaints									
Year	Race	Color	Religion	Sex	National Origin	Disability	Age	Retaliation	Other ¹
2021	142	52	16	111	41	103	96	162	29
2022	86	35	35	79	20	122	69	122	21

Graph 2
Most Frequently Cited EEO Bases



¹ Other USDA protected bases include Non-EEO, including political beliefs and marital status. Additionally, the basis of sex includes gender identity and expression as well as sexual orientation.

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 2021 and 2022. The No FEAR Act requires federal agencies to post data regarding the nature of the issues raised in EEO complaints. The issue of a complaint is the specific subject matter about which the individual is complaining or the alleged discriminatory incident for which the individual is seeking redress. Table 3 contains a list of issues most 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 2022 were: (1) Harassment; (2) Other (Religious Accommodation, Sex Stereotyping, Telework); and (3) Promotion/Non-selection. In FY 2021, the three EEO issues most frequently cited were: (1) Harassment; (2) Promotion/Non-Selection; and (3) Disciplinary Action. Graph 3 shows the trends for these three issues over the two-year reporting period.

Harassment was the most frequently cited issue in formal EEO cases in FYs 2022 and 2021. In FY 2022, 133 filings of complaints cited harassment as an issue, compared to 151 filings in FY 2021, indicating a 12 percent decrease.

Other (Religious Accommodation, Sex Stereotyping, Telework) replaced Promotion/Non-selection as the second most frequently cited issue in formal EEO cases in FY 2022. A total of 56 filings of complaints cited Other as an issue in FY 2022, compared to three complaints in FY 2021, a 1,780 percent increase.

Promotion/Non-selection swapped places with Disciplinary Action² as the third most frequently cited issue in formal EEO cases in FY 2022. A total of 48 filings of complaints cited Promotion/Non-selection as an issue in FY 2022, compared to 68 complaints in FY 2021, a 29 percent decrease.

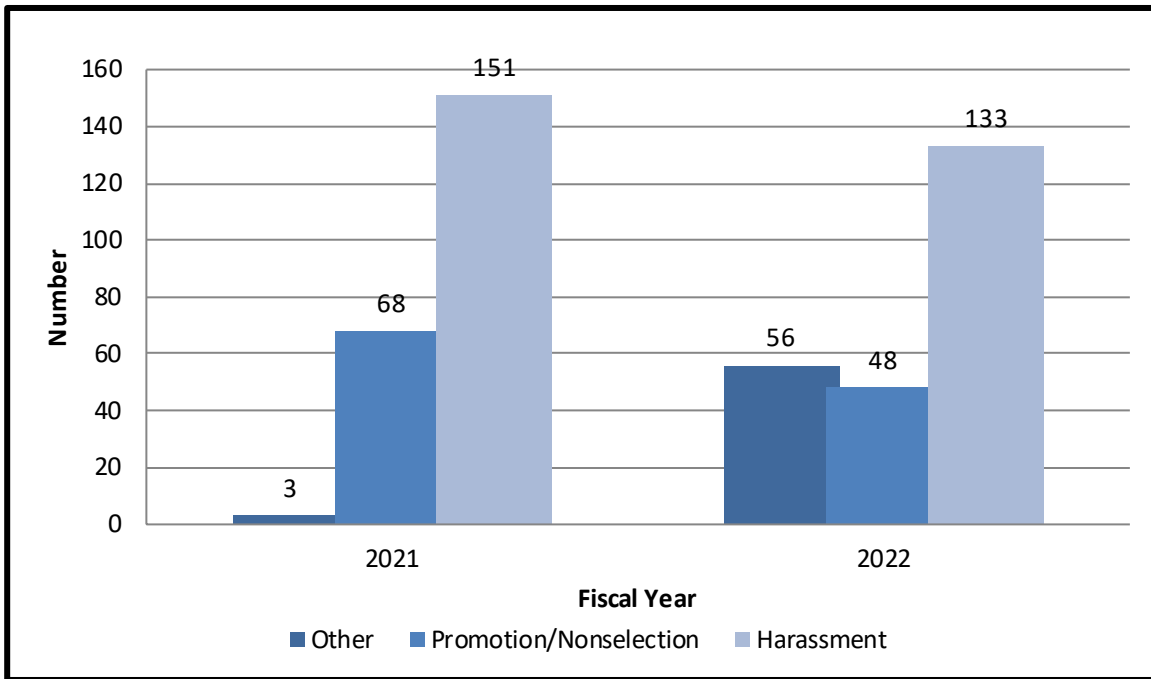
² Disciplinary Action includes demotion, reprimand, suspension, removal and other.

Table 3

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
2021	26	34	7	0	40	5	44	2	151	0	4	68	30	35	1	3	28	56	27	19	3
2022	11	11	4	0	35	0	26	0	133	1	4	48	7	32	0	0	24	0	13	9	56

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

Graph 3
Change in number of top three most frequently cited EEO Issues
in Formal EEO Complaints from FY 2021 to FY 2022



Section D—EEO Processing Stages

Introduction

This section contains data regarding selected stages and associated processing times for formal EEO complaints processed during FYs 2021 and 2022. 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 Decision (FAD) with EEOC Hearing; (3) FAD without EEOC Hearing; and (4) Dismissal. Formal EEO complaints may be withdrawn or settled at any stage and may be dismissed at various stages.

Summary of Data

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

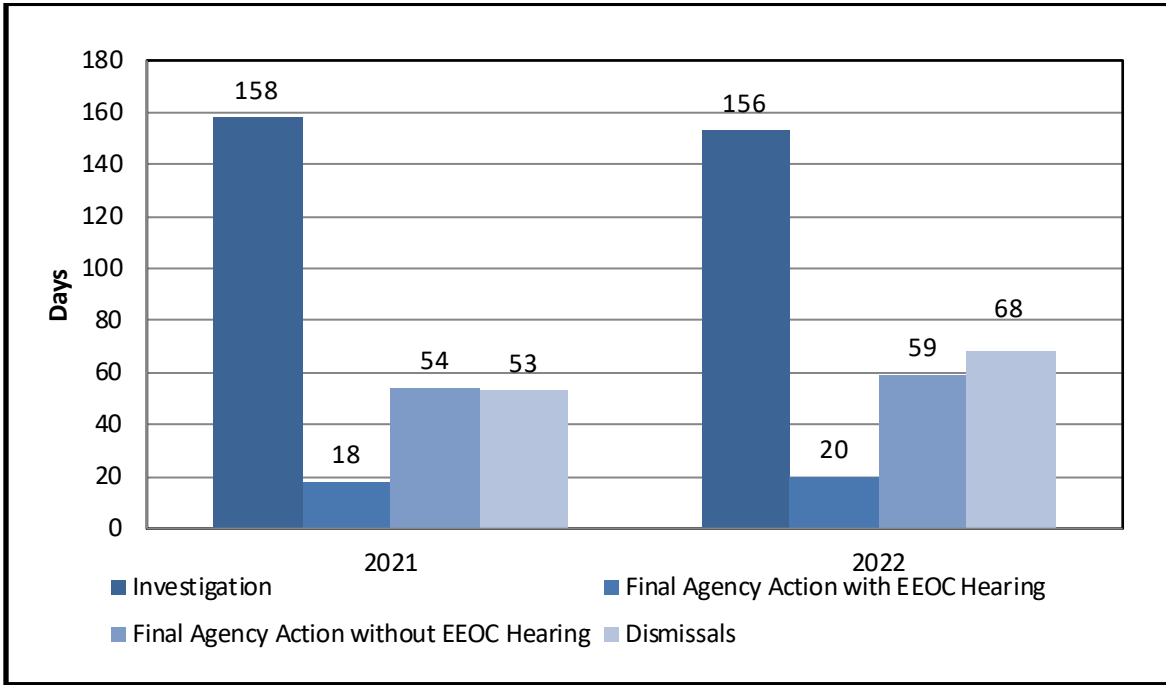
(1) Average Number of Days for Completion of EEO Stages

Table 4 below provides the average number of days for processing a formal EEO complaint at each stage. The data revealed a downward trend (as shown in Graph 4) in the average number of days in investigation and for a FAD with EEOC hearing. There was an upward trend in the average number of days in the FAD without an EEOC hearing and dismissals.

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

Year	Investigation (Includes accept/dismissal and investigation)	FAD Post-EEOC Decision	FAD without EEOC Hearing	Procedural Dismissals (pending prior to dismissal)
2021	158	18	54	53
2022	156	20	59	68

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



(2) Pending Complaints at Various Stages

Table 5 below illustrates the number of pending EEO complaints in FYs 2021 and 2022 at each stage of the EEO process.

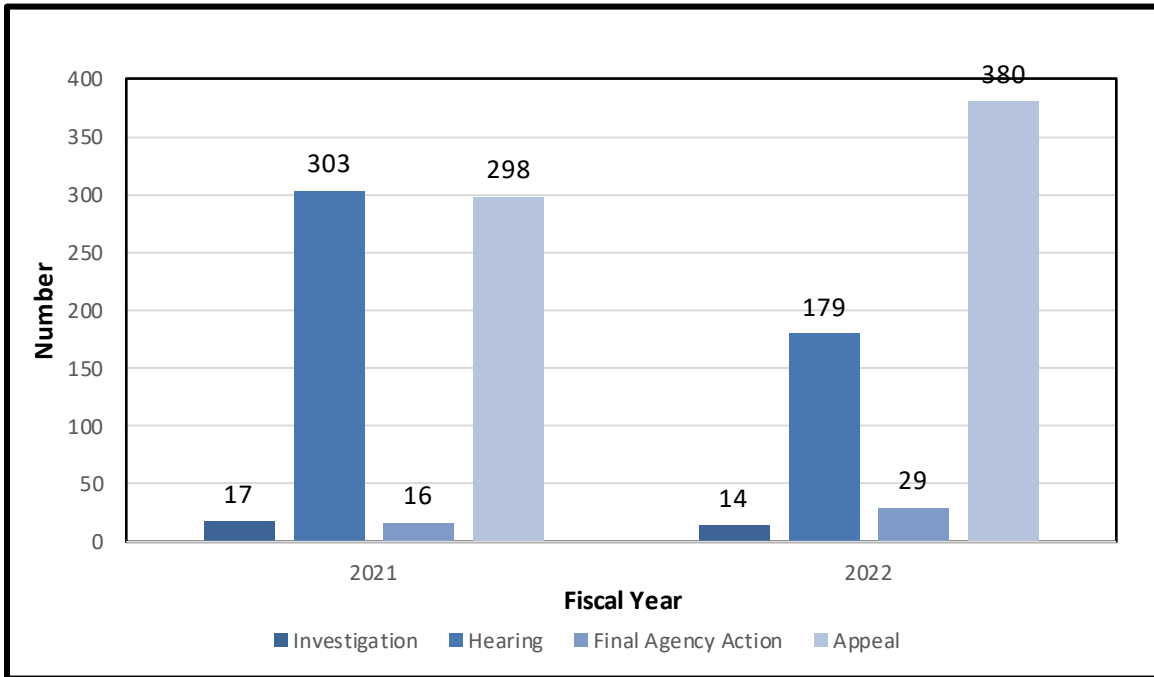
At the conclusion of each fiscal year, the number of pending investigations and the number of EEOC hearings decreased. However, the number of USDA final agency decisions, and the number of appeals pending at the EEOC increased from the number filed in FY 2021.

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

Fiscal Year	Investigation	Hearing	Final Agency Decision	Appeal
2021	17	303	16	298
2022	15	179	29	380

Graph 5 shows a downward trend in pending complaints in the Investigation and Hearing stages. In addition, Graph 5 shows an upward trend in Final Agency Decision and Appeal stages for FYs 2021 and 2022.

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



(3) Formal Complaints Exceeding the 180-Day Requirement for Investigations

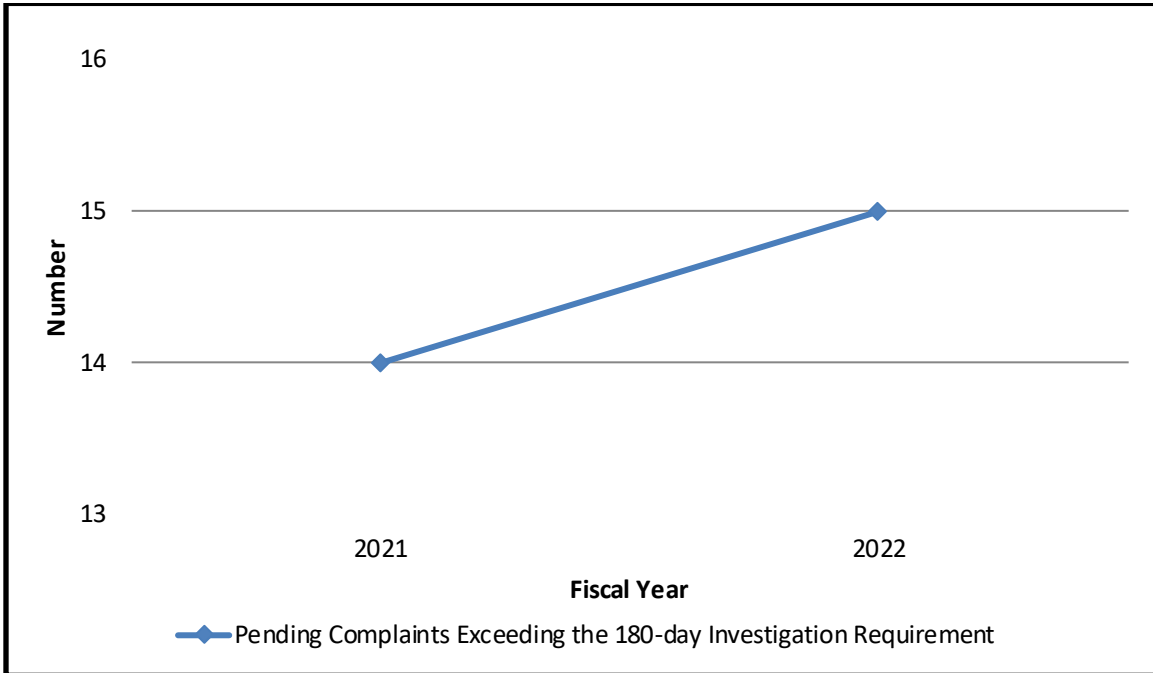
Table 6 and Graph 6 show upward trend in complaints in FY 2022 for formal complaints that exceeded the 180-day investigation requirement from FY 2021.

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

Fiscal Year	Number
2021	14 ³
2022	15

³ Variance of FY 2021 EEO Complaints from total reported previously is due to data reconciliation.

Graph 6
Formal EEO Complaints Exceeding the 180-Day Requirement for Investigations



Section E—Final Agency Decisions with a Finding of Discrimination

Introduction

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

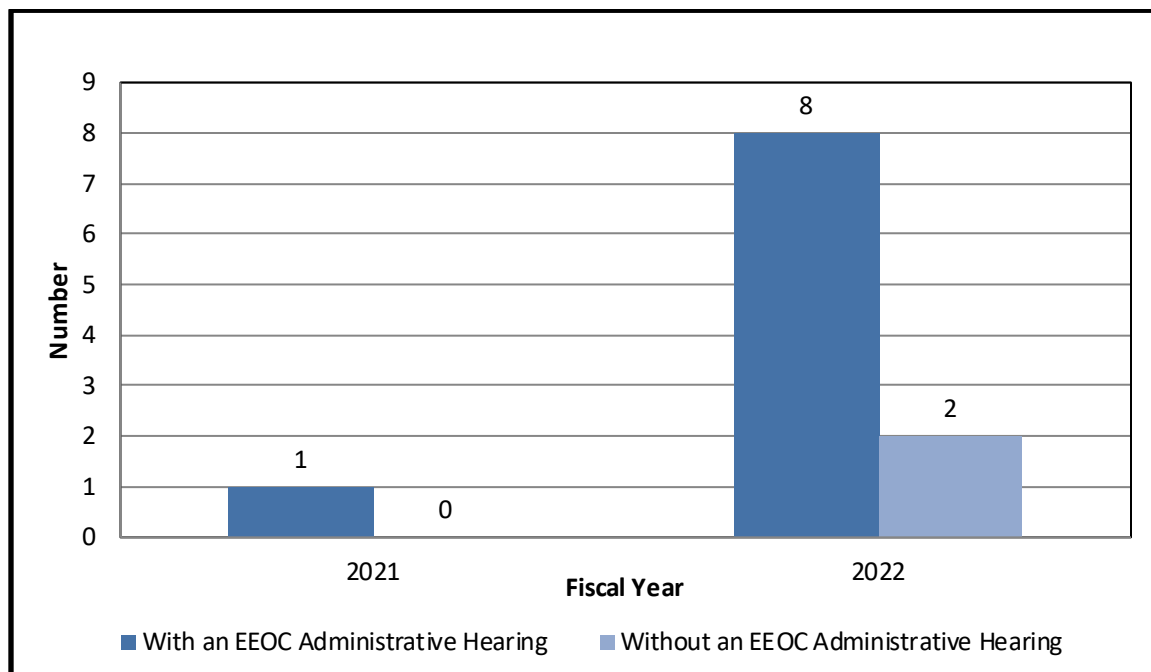
Summary of Data

Table 7 and Graph 7 show that from FY 2021 to FY 2022, the number of findings of discrimination issued with an EEOC Administrative Hearing increased by seven, and the number of findings without an EEOC Administrative Hearing increased by two during FY 2022.

Table 7
Final Agency Decisions with a Finding of Discrimination

Fiscal Year	With an EEOC Administrative Hearing	Without an EEOC Administrative Hearing
2021	1	0
2022	8	2

Graph 7
Final Agency Decisions 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 2022 the following factors impacting the filing of formal EEO complaints.

- The Agricultural Research Service (ARS) reported a 7 percent increase in the number of complaints filed in FY 2022. Specifically, 16 complaints were filed in FY 2022, compared to 15 in FY 2021.
- The Agricultural Marketing Service (AMS) reported a 44 percent decrease in the number of complaints filed in FY 2022. Specifically, 10 complaints were filed in FY 2022, compared to 18 in FY 2021. AMS attributes the decrease in the number of complaints to the continued emphasis on CR/EEO training sessions and the Civil Rights Program's proactive approach in resolving complaints at the earliest stages.
- The Animal and Plant Health Inspection Service (APHIS) reported a 25 percent decrease in the number of complaints filed in FY 2022. Specifically, 29 complaints were filed in FY 2022, compared to 39 in FY 2021. APHIS attributes the decrease to the new, post-Coronavirus global outbreak work environment reducing space sharing, anxieties and less conflict for remote- and telework-eligible positions. APHIS continues to actively engage employees, managers, and supervisors in addressing workplace conflicts at the earliest stages.
- The Conflict Complaints Division (CCD), which processes conflict cases⁴, reported no change in the number of complaints filed in FY 2022. Specifically, 39 complaints were filed in FYs 2022 and 2021. CCD attributes this in part to the Coronavirus global outbreak and the number of religious accommodation complaints as a result of the Department's vaccination policy.
- Economic Research Services (ERS) reported a 100 percent decrease in the number of complaints filed in FY 2022. Specifically, no complaint was filed in FY 2022, compared to one in 2021. ERS attributes the decrease in complaints to the timely CR and EEO training sessions utilized to resolve workplace disputes.

⁴ Conflict case(s) is an EEO complaint involving facts and/or allegations that are determined to pose an actual, perceived, and/or potential conflict of interest between a Responsible Management Official or complainant's position or personal interest, and USDA's responsibility to administer a fair and impartial investigative process and resolution of complaints.

- The Foreign Agricultural Service (FAS) reported a 55 percent decrease in the number of complaints filed in FY 2022. Specifically, four complaints were filed in FY 2022, compared to nine in FY 2021. FAS attributes the decrease in complaints to continued training and educating employees on EEO issues, as well as adhering to USDA's civil rights policy and applicable requirements.
- The Farm Production and Conservation (FPAC) – Business Center (BC) reported a 75 percent decrease in the number of complaints filed in FY 2022. Specifically, one complaint was filed in FY 2022, compared to four in FY 2021. The BC attributes the decrease in the number of complaints to FPAC's continued emphasis on early intervention practices and FPAC Civil Rights and EEO Division's (CREEOD) focus on customer service.
- The FPAC – Farm Service Agency (FSA) reported a 35 percent decrease in the number of formal complaints in FY 2022. Specifically, 13 complaints were filed in FY 2022, compared to 29 in FY 2021. FSA attributes the decrease in the number of complaints to FPAC's efforts in educating employees on EEO civil rights policies and sharing information among FSA personnel fostering a better understanding regarding the EEO process.
- The FPAC – Natural Resources Conservation Service (NRCS) reported a 33 percent decrease in the number of complaints filed in FY 2022. Specifically, 14 complaints were filed in FY 2022, compared to 21 in FY 2021. NRCS attributes the decrease in the complaint numbers to FPAC's continued emphasis on early intervention practices and FPAC CREEOD's focus on customer service.
- The FPAC – Risk Management Agency (RMA) reported a 100 percent increase in the number of complaints filed in FY 2022. Specifically, two complaints were filed in FY 2022, compared to one in 2021. RMA attributes the increase to an increased number of complaint-filings based on race as a result of cultural insensitivity between managers and employees.
- The Forest Service (FS) reported a decrease of 12 percent in the number of complaints filed in FY 2022. Specifically, 59 complaints were filed in FY 2022, compared to 71 in FY 2021. FS attributes the decrease in the number of complaints to the success of the many programs and trainings implemented to eradicate discriminatory practices and patterns in the workplace. In FY 2022, there were three multiple filers compared to five in FY 2021. FS continues to work with employees and management to support proactive intervention and early resolution to conflicts.
- The Food Safety and Inspection Service (FSIS) reported a 21 percent decrease in the number of formal complaints filed in FY 2022. Specifically, 41 complaints filed in FY 2022, compared to 55 filed in FY 2021. FSIS attributes the decrease in the complaints to the actions and activities undertaken during FY 2022, i.e., CR/EEO training, issuance of CR/EEO policies, monthly town hall meetings hosted by leadership, and conducting accountability assessments to identify actions of responsible officials engaging in

discriminatory practices.

- The National Agricultural Statistics Service (NASS) reported a decrease of three complaints filed in FY 2022. Specifically, one complaint was filed in FY 2022, compared to four in FY 2021. NASS attributes the decrease to continuous engagement with employees and management to encourage and support proactive intervention and early resolution to conflicts.
- The National Institute of Food and Agriculture (NIFA) reported no complaints filed in FYs 2021 and 2022. NIFA attributes the static number of complaints to an emphasis on CR training, utilization of ADR, and early proactive prevention of discrimination in the workplace.
- The Office of the Chief Financial Officer (OCFO) reported a 41 percent decrease in the number of complaints filed in FY 2022. Specifically, 10 complaints were filed in FY 2022, compared to 17 in FY 2021. OCFO attributes the decrease to efficient and expert EEO counseling at the informal stage of the EEO process; counselors ensuring that all employees fully understand what actions are covered under EEOC's jurisdiction and other avenues available to address concerns at the lowest possible levels; and the majority of employees working off-site and allowed to telework during the COVID-19 pandemic.

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

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

- facilitating transparent and ongoing communication between top management and the workforce helps improve employee morale and confidence in Agency policy and workplace initiatives;
- promoting the ADR program in addressing conflicts as quickly as possible at the lowest level, by providing training and offering the employees ADR to settle workplace disputes before they become EEO complaints;
- collaborating with Human Resources, mission areas, and staff offices to ensure consistency in recruitment, hiring, retention, development, and advancement for all employees;
- recognizing that COVID-related practices had both positive (decrease in overall complaints due to allowing telework participation) and negative (increase in disability and religious accommodation complaints based on vaccination policy) effects on number and type of complaints;
- ensuring that the workforce, particularly management, receives training on applicable topics, such as equal opportunity, including CR laws and Departmental regulations, policies, manuals, and procedures; and also engaging the workforce and resolving

conflicts by offering employees online CRD supplemental training and virtual Lunch-and-Learn sessions, since the sessions continue to provide opportunities for the Agency to learn employees' interests and concerns regarding EEO issues and barriers to diversity and inclusion.

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

USDA has taken several actions that have proven effective in improving its formal EEO complaint processing. These past actions include the following:

- sponsoring supplemental training sessions for managers and employees on such topics as EEO and Civil Rights laws, Using ADR Techniques, Understanding Harassment, Unconscious Bias, Reasonable Accommodation (RA), and Hostile Work Environment claims, as an ongoing support for meaningful change;
- communicating with employees during return-to-work, reorganizations, and structural changes to help reduce inherent anxiety in such situations;
- reviewing existing compliance review assessment tools to determine whether new evaluation measures were required to assess the EEO programs more effectively, and maximize the results of quarterly EEO compliance reviews to identify trends and potential civil rights violations;
- working closely with HR to ensure that supervisors and managers are trained on ADA compliance obligations and the interactive process regarding possible requests for reasonable accommodations for eligible employees.

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

- continue its training efforts to improve awareness of prohibited discriminatory practices outlined in Departmental Regulation 4120-001, "Annual Department Civil Rights Training";
- continue to provide refresher training to resolving officials to accomplish the goal of resolving complaints at the lowest level in both the informal and formal EEO complaint stages;
- continue to conduct employment compliance reviews to identify workplace issues or trends that may need to be addressed;
- ensure all new employees receive No FEAR Act training as part of the initial onboarding process and a bi-annual refresher through AgLearn;
- continue to develop, conduct, monitor, and evaluate civil rights programs, events, documentation, and trainings to ensure all employees and managers are knowledgeable of civil rights, EEO, and Anti-Harassment regulations, processes, policies, practices, procedures, and requirements;

- host a Virtual Diversity Conference in FY 2023 with topics on inclusive mindsets, gender bias, hidden disabilities, and conflict resolution;
- hold recurring interactive all-employee Town Hall meetings where employee feedback is actively solicited and new policy initiatives on recruitment, retention, benefits, and work-life balance will be implemented and communicated to the workforce;
- provide multi-regional programs to connect colleagues by sharing and celebrating cultural experiences and to provide visibility around, encourage discussion about, and ultimately make positive progress for the critical issues of diversity, equity, inclusion, accessibility, and belonging, in order to better encourage respect of people and their culture by opening minds and welcoming colleagues' perspectives and ideas;
- continue to develop and implement improvements in all areas of the EEO arena – focusing on recruitment, hiring, retention, development, and advancement for all employees; and
- continue to hold Agency leadership, managers, hiring officials, Human Resource professionals, and EEO officials accountable for the effective implementation and management of EEO programs by ensuring managers and supervisors are mindful when it comes to decision-making, providing more robust EEO training on harassment, retaliation, and disability awareness, and continuing to make CR and EEO compliance a critical element of supervisory evaluations.

**PART II:
USDA Reimbursement to
Judgment Fund for
Fiscal Year 2022**

USDA Reimbursement to Judgment Fund for FY 2022

Introduction

Table 8 below provides information on reimbursements by USDA to the U.S. Department of the Treasury's Judgment Fund for monies associated with FY 2022 judgments, awards, or settlements under the statutes addressed in the No FEAR Act.

Table 8
USDA Reimbursement to Judgment Fund for FY 2022 Settlements

USDA Reimbursement to Judgment Fund for FY 2022 Settlements		
Case	Total Amount	Attorney's Fees
1	\$650,000.00	-
2	\$400,000.00	-
3	\$225,000.00	-
4	\$200,000.00	\$115,000.00
5	\$52,500.00	-
6	\$50,000.00	\$5,000.00
7	\$40,000.00	-
8	\$37,000.00	-
9	\$10,000.00	-
Total	\$1,664,500.00	\$120,000.00

Summary

In FY 2022, USDA reimbursed \$1,664,500.00 to the Judgment Fund, of which \$120,000.00 was identified as payment of attorney's fees. This total is up from \$95,000.00 reimbursed to the Judgment Fund, in FY 2021, of which \$0 were for attorney's fees.

PART III:
USDA Disciplinary Actions and Reports
for Fiscal Years 2021 – 2022

**USDA Disciplinary Actions and Reports for
Fiscal Years 2021–2022**

Summary of Data

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

**Table 9
Administrative Disciplinary Actions⁵**

TYPE OF ACTION	FY 2021						FY 2022					
	DISC.	RET.	HAR.	PPP	WBP	TOTAL	DISC.	RET.	HAR.	PPP	WBP	TOTAL
REMOVAL	0	0	0	0	0	0	0	0	0	0	0	0
15 DAY OR MORE	0	0	0	0	0	0	0	0	0	0	0	0
14 DAY OR LESS	0	0	0	0	0	0	0	0	0	0	0	0
REDUCTION IN GRADE	0	0	0	0	0	0	0	0	0	0	0	0
REDUCTION IN PAY	0	0	0	0	0	0	0	0	0	0	0	0
LOR	1	0	0	0	0	1	0	0	0	0	0	0
TOTAL DISCIPLINE	1	0	0	0	0	1	0	0	0	0	0	0

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

**Table 10
Office Of Special Counsel Cases**

CATEGORIES OF CASES	FY 2021	FY 2022	FY 2022 TOTAL
OSC Whistleblower Case	15	39	39
OSC Whistleblower Case Closed	0	0	0

*Data Source: Office of Inspector General - The influx in FY 2022 whistleblower complaint referrals is attributed to the training and education efforts of the USDA Whistleblower Protection Coordinator on whistleblower retaliation and associated protections.

⁵ Table Abbreviations: Disc. = Discrimination; Ret. = Retaliation; Har. = Harassment; PPP = Prohibited Personnel Practice; WBP = Whistleblower Protection Act; and LOR = Letter of Reprimand.

PART IV:
USDA Federal Court Litigation Statistics
for FY 2022

Tables 11, 12, and 13 below provide composite data for cases in Federal Court pending or resolved in FY 2022 and arising under the anti-discrimination and whistleblower protection laws.

**Table 11
Federal Cases Pending in FY 2022**

Pending District Court Cases	33
Pending Appellate Court Cases	1
New Cases Filed in District Court	21

Note: Cases pending at any time during the year, including those filed and those in pendency during the year.

**Table 12
Pending Cases**

	29 U.S.C. §206(d) Equal Pay	29 U.S.C. §631/633a Age	29 U.S.C. §2000ff-1 Genetic Info	29 U.S.C. §791 Disability	42 U.S.C. §2000e-16 Title V11
Disposed of in FY 2022	1	6	4	13	22
Pending at End of FY 2022	0	3	2	17	28

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

	29 U.S.C. §206(d) Equal Pay	29 U.S.C. §631/633a Age	29 U.S.C. §2000ff-1 Genetic Info	29 U.S.C. §791 Disability	42 U.S.C. §2000e-16 Title V11
Settlements	1	4	1	4	8
Withdrawals	0	0	0	0	2
Final Judgment for Plaintiff	0	0	0	0	0
Final Judgment for Agency	0	2	3	9	12
Total Cases disposed of in FY 2022	0	0	0	0	26

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 2021 for period ending September 30, 2022

Complaint Activity					
	2018	2019	2020	2021	2022
Number of Complaints Filed	522	436	394	342	264
Number of Complainants	497	414	381	323	256
Repeat Filers	21	18	11	17	8
Complaints by Basis ⁶					
	2018	2019	2020	2021	2022
<i>Note: Complaints can be filed alleging multiple bases. The sum of the bases may not equal total complaints filed.</i>					
Race	216	195	170	142	86
Color	85	95	59	52	35
Religion	28	35	18	16	35
Reprisal	315	258	224	162	122
Sex	229	171	168	111	79
PDA	2	2	3	3	1
National Origin	68	58	46	41	20
Equal Pay Act	13	7	6	6	4

⁶ **Cases With Multiple Bases Alleged**

1. Of the cases handled by OGC involving the Federal Antidiscrimination Laws covered by the No FEAR Act, approximately 74.6 percent of those cases involve claims of discrimination on multiple bases (e.g., Sex, Race) and under multiple statutes (e.g., Title VII, ADEA).
2. Of the cases handled by OGC involving the Federal Antidiscrimination Laws covered by the No FEAR Act, approximately 61 percent of those cases also included a claim of reprisal/retaliation.

Age	155	157	144	96	69	
Disability	195	170	141	103	122	
Genetics	0	3	3	2	5	
Non-EEO	40	37	38	29	21	
Complaints by Issue						
<i>Note: Complaints can be filed alleging multiple bases. The sum of the bases may not equal total complaints filed.</i>		2018	2019	2020	2021	2022
Appointment/Hire	24	17	31	26	11	
Assignment of Duties	82	72	58	34	11	
Awards	14	8	7	7	4	
Conversion to Full Time/Permanent Status	1	0	0	0	0	
Demotion	3	1	4	0	1	
Reprimand	43	41	24	14	0	
Suspension	37	34	27	19	15	
Removal	21	32	29	7	9	
Other	3	3	5	0	23	
Duty Hours	8	15	12	5	0	
Performance Evaluation/Appraisal	98	91	76	44	26	
Examination/Test	1	1	1	2	0	
Non-Sexual	351	239	199	146	122	
Sexual	24	6	15	5	11	
Medical Examination	0	3	0	0	1	
Pay, including Overtime	11	13	20	4	4	
Promotion/Non-Selection	71	100	82	68	48	

Reassignment					
Denied	21	17	8	11	4
Directed	26	39	16	19	3
Reasonable Accommodation Disability	94	75	56	35	32
Reinstatement	0	3	4	1	0
Religious Accommodation	1	1	2	1	52
Retirement	4	11	5	3	0
Sex-Stereotyping	1	0	0	0	0
Telework	31	20	14	2	4
Termination	35	27	24	28	24
Terms/Conditions of Employment	135	137	58	56	0
Time and Attendance	77	69	42	27	13
Training	45	30	17	19	9
Other Terms/Condition of Employment	0	0	0	0	94
User Defined - Other 1	0	1	2	4	0
User Defined - Other 2	0	0	0	1	0
User Defined - Other 3	0	0	0	0	0
User Defined - Other 4	0	0	0	0	0

Processing Time					
	2018	2019	2020	2021	2022
Average Number of Days in Investigation	173.22	199.49	207.27	157.95	156.07
Average Number of Days in Final Action	36.78	40.62	32.40	35.83	34.18
Average Number of Days in Investigation	172.58	208.32	216.45	166.19	170.42

Average Number of Days in Final Action	21.90	29.15	25.95	18.22	19.54	
Average Number of Days in Investigation	173.78	189.03	190.26	149.99	144.37	
Average Number of Days in Final Action	50.90	55.94	40.90	53.54	58.59	
Complaints Dismissed by Agency						
	2018	2019	2020	2021	2022	
Total Complaints Dismissed by Agency	84	51	46	22	37	
Average Days Pending Prior to Dismissal	20	66	40	53	68	
Total Complaints Withdrawn by Complainants	28	37	46	18	19	
Total Final Agency Decisions Finding Discrimination						
	2018	2019	2020	2021	2022	
	#	%	#	%	#	%
Total Number Findings	1	3	10	1	10	
Without Hearing	0	0	3	30	2	20
With Hearing	1	100	7	70	8	80

<i>Note: Complaints can be filed alleging multiple bases. The sum of the bases may not equal total complaints and findings.</i>	2018		2019		2020		2021		2022	
	#	%	#	%	#	%	#	%	#	%
Total Number Findings	1		3		10		1		10	
Race	0	0	1	33	2	20	0	0	2	20
Color	0	0	1	33	1	10	0	0	2	20
Religion	0	0	0	0	0	0	0	0	0	0
Reprisal	1	100	2	67	6	60	1	100	8	80
Sex	1	100	1	33	5	50	0	0	4	40
PDA	0	0	0	0	0	0	0	0	0	0
National Origin	0	0	0	0	0	0	0	0	0	0
Equal Pay Act	0	0	0	0	0	0	0	0	0	0
Age	0	0	0	0	0	0	0	0	2	20
Disability	0	0	2	67	2	20	1	100	4	40
Genetics	0	0	0	0	0	0	0	0	0	0
Non-EEO	0	0	0	0	1	10	0	0	0	0
Findings After Hearing	1		2		7		1		8	
Race	0	0	0	0	2	29	0	0	2	25
Color	0	0	0	0	1	14	0	0	1	13
Religion	0	0	0	50	0	0	0	0	0	0
Reprisal	1	100	1	0	6	71	1	100	6	75

Sex	1	100	0	0	5	71	0	0	2	25
PDA	0	0	0	0	0	0	0	0	0	0
National Origin	0	0	0	0	0	0	0	0	0	0
Equal Pay Act	0	0	0	0	0	0	0	0	0	0
Age	0	0	0	50	0	0	0	0	2	25
Disability	0	0	1	0	0	0	1	100	3	38
Genetics	0	0	0	0	0	0	0	0	0	0
Non-EEO	0	0	0	0	1	14	0	0	0	0
Findings Without Hearing	0		1		3		0		2	
Race	0	0	1	100	0	0	0	0	0	0
Color	0	0	1	100	0	0	0	0	1	50
Religion	0	0	0	0	0	0	0	0	0	0
Reprisal	0	0	1	100	1	33	0	0	2	100
Sex	0	0	1	100	0	0	0	0	2	100
PDA	0	0	0	0	0	0	0	0	0	0
National Origin	0	0	0	0	0	0	0	0	0	0
Equal Pay Act	0	0	0	0	0	0	0	0	0	0
Age	0	0	0	0	0	0	0	0	0	0
Disability	0	0	1	100	2	67	0	0	1	50
Genetics	0	0	0	0	0	0	0	0	0	0
Non-EEO	0	0	0	0	0	0	0	0	0	0
Findings of Discrimination Rendered by Issue										
	2017		2018		2019		2020		2021	
Total Number Findings	4		1		3		10		#	%

Appointment/Hire	0	0	0	0	0	0	0	0	1	
Assignment of Duties	2	50	0	0	0	0	3	30	0	0
Awards	0	0	0	0	0	0	0	0	0	0
Conversion to Full Time/ Permanent Status	0	0	0	0	0	0	0	0	0	0
Demotion	0	0	0	0	0	0	0	0	0	0
Reprimand	0	0	0	0	0	0	1	10	0	0
Suspension	0	0	0	0	1	33	0	0	0	0
Removal	0	0	0	0	1	33	0	0	0	0
Other	0	0	0	0	0	0	0	0	0	0
Duty Hours	0	0	0	0	0	0	1	10	0	0
Performance Evaluation/ Appraisal	0	0	0	0	1	33	2	20	0	0
Examination/Test	0	0	0	0	0	0	0	0	0	0
Non-Sexual	0	0	0	0	3	100	5	50	1	100
Sexual	0	0	1	10 0	0	0	0	0	0	0
Medical Examination	0	0	0	0	0	0	0	0	0	0
Pay Including Overtime	0	0	0	0	1	33	1	10	0	0
Promotion/Non-Selection	3	75	0	0	0	0	1	10	0	0
Denied	0	0	1	10 0	0	0	0	0	0	0
Directed	0	0	0	0	0	0	0	0	0	0
Reasonable Accommodation Disability	0	0	0	0	2	67	0	0	1	100
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	1	10	0	0
Termination	1	25	0	0	0	0	0	0	0	0
Terms/Conditions of Employment	1	25	0	0	0	0	3	30	0	0
Time and Attendance	0	0	1	10 0	0	0	0	0	0	0
Training	0	0	0	0	0	0	1	10	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
Findings After Hearing	2		1		2		7		1	
Appointment/Hire	0	0	0	0	0	0	0	0	0	0
Assignment of Duties	1	50	0	0	0	0	2	29	0	0
Awards	0	0	0	0	0	0	0	0	0	0
Conversion to Full Time/Perm Status	0	0	0	0	0	0	0	0	0	0
Demotion	0	0	0	0	0	0	0	0	0	0
Reprimand	0	0	0	0	0	0	1	14	0	0
Suspension	0	0	0	0	1	50	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	1	14	0	0
Performance Evaluation/ Appraisal	0	0	0	0	1	50	2	20	0	0
Examination/Test	0	0	0	0	0	0	0	0	0	0
Non-Sexual	0	0	0	0	2	100	4	57	1	100
Sexual	0	0	1	10 0	0	0	0	0	0	0

Medical Examination	0	0	0	0	0	0	0	0	0	0
Pay Including Overtime	0	0	0	0	1	50	0	0	0	0
Promotion/Non-Selection	1	50	0	0	0	0	1	14	0	0
Denied	0	0	1	10 0	0	0	0	0	0	0
Directed	0	0	0	0	0	0	0	0	0	0
Reasonable Accommodation Disability	0	0	0	0	1	50	0	0	1	100
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	1	14	0	0
Termination	1	50	0	0	0	0	0	0	0	0
Terms/Conditions of Employment	0	0	0	0	0	0	2	29	0	0
Time and Attendance	0	0	1	10 0	0	0	0	0	0	0
Training	0	0	0	0	0	0	1	14	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
Findings Without Hearing	2		0		1		3		0	
Appointment/Hire	0	0	0	0	0	0	0	0	0	0
Assignment of Duties	1	50	0	0	0	0	1	33	0	0
Awards	0	0	0	0	0	0	0	0	0	0
Conversion to Full Time/	0	0	0	0	0	0	0	0	0	0

Permanent Status										
Demotion	0	0	0	0	0	0	0	0	0	0
Reprimand	0	0	0	0	0	0	0	0	0	0
Suspension	0	0	0	0	0	0	0	0	0	0
Removal	0	0	0	0	1	100	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	0	0	0	0	0	0	0	0
Examination/Test	0	0	0	0	0	0	0	0	0	0
Non-Sexual	0	0	0	0	1	100	1	33	0	0
Sexual	0	0	0	0	0	0	0	0	0	0
Medical Examination	0	0	0	0	0	0			0	0
Pay Including Overtime	0	0	0	0	0	0	1	33	0	0
Promotion/Non-Selection	2	100	0	0	0	0	0	0	0	0
Denied	0	0	0	0	0	0	0	0	0	0
Directed	0	0	0	0	0	0	0	0	0	0
Reasonable Accommodation Disability	0	0	0	0	1	100	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	0	0	0	0	0	0	0	0	0	0
Terms/Conditions of Employment	1	50	0	0	0	0	1	33	0	0
Time and Attendance	0	0	0	0	0	0	0	0	0	0

Training	0	0	0	0	0	0	0	0	0	0
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
Pending Complaints Filed in Previous Fiscal Years by Status										
	2018	2019	2020	2021	2022					
Total Complaints from Previous Fiscal Years	453	421	369	324	212					
Total Complainants	410	368	321	285	181					
Investigation	17	17	17	18	15					
ROI Issued, Pending Complainant's Action	0	1	0	1	0					
Hearing	426	410	333	303	179					
Final Agency Action	24	36	26	16	29					
Appeal with EEOC Office of Federal Operations	231	274	352	298	380					
Complaint Investigations										
	2018	2019	2020	2021	2022					
Pending Complaints Where Investigations Exceed Required Time Frames	21	16	16	14	15					

*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.