



Notification and Federal Employee Anti-Discrimination and Retaliation Act of 2002 Annual Report for Fiscal Year 2022

Mar 13, 2023



**Homeland
Security**

*U.S. Department of Homeland Security
Office for Civil Rights and Liberties*

MESSAGE FROM THE SENIOR OFFICIAL PERFORMING THE DUTIES OF OFFICER FOR CIVIL RIGHTS AND CIVIL LIBERTIES

March 13, 2023

I am pleased to present the U.S. Department of Homeland Security's (DHS or the Department) *Notification and Federal Employee Anti-discrimination and Retaliation Act of 2002* (No FEAR Act) Annual Report for Fiscal Year (FY) 2022.



The No FEAR Act, Public Law 107-174, as amended by the Elijah E. Cummings Federal Employee Antidiscrimination Act of 2020, requires federal agencies be publicly accountable for violations of anti-discrimination laws and policies. Federal agencies must post quarterly and annual data relating to federal-sector Equal Employment Opportunity (EEO) complaints on their public website; reimburse the Judgment Fund for payments made to employees, former employees, or applicants for federal employment arising out of claims of actual or alleged violations of Federal antidiscrimination laws, Federal whistleblower protection laws, and/or retaliation claims arising from the assertion of rights under those laws; and notify employees and applicants for employment about their rights under the federal anti-discrimination and whistleblower laws.

This report summarizes the most significant accomplishments within the Department's EEO program. The report is a testament to the exceptional EEO professionals at the Department, whose dedication endures through all challenges. It evidences the Department's strong commitment to prevent and reduce the incidence of workplace discrimination, abide by merit system principles, provide protection against prohibited personnel practices, and promote accountability on the part of its leadership.

Pursuant to Section 203 of the No FEAR Act, this report is being provided to the following Members of Congress:

The Honorable Vice President Kamala Harris
President of the Senate

The Honorable Patty Murray
President Pro Tempore, U.S. Senate

The Honorable Kevin McCarthy
Speaker of the House, U.S. House of Representatives

The Honorable Gary C. Peters
Chairman, U.S. Senate Committee on Homeland Security and Governmental Affairs

The Honorable Rand Paul

Ranking Member, U.S. Senate Committee on Homeland Security and Governmental Affairs

The Honorable Dick Durbin

Chairman, U.S. Senate Committee on the Judiciary

The Honorable Lindsey Graham

Ranking Member, U.S. Senate Committee on the Judiciary

The Honorable Mark Green

Chairman, U.S. House of Representatives Committee on Homeland Security

The Honorable Bennie G. Thompson

Ranking Member, U.S. House of Representatives Committee on Homeland Security

The Honorable Jim Jordan

Chairman, U.S. House of Representatives Committee on the Judiciary

The Honorable Jerrold Nadler

Ranking Member, U.S. House of Representatives Committee on the Judiciary

The Honorable James R. Comer

Chairman, U.S. House of Representatives Committee on Oversight and Accountability

The Honorable Jamie Raskin

Ranking Member, U.S. House of Representatives Committee on Oversight and Accountability

Pursuant to the No FEAR Act, this report is also provided to the Chair of the U.S. Equal Employment Opportunity Commission (EEOC), the Attorney General of the United States, and the Director of the U.S. Office of Personnel Management (OPM).

The Department's Office for Civil Rights and Civil Liberties (CRCL) supports the Department's mission to secure the Nation while preserving individual liberty, fairness, and equality under the law. CRCL's mission includes leading the Department's EEO programs and promoting workforce diversity. The Department succeeds in its mission, in part, by ensuring workplace decisions are equitable, fairly implemented, and for the benefit of all employees.

The Department's EEO program continued to demonstrate a strong and collaborative partnership between CRCL and the Department's Components, which will continue into the next fiscal year and beyond. This fiscal year had several unique programmatic challenges, including handling an unprecedented number of reasonable accommodation requests to be exempt from the COVID-19 vaccine as a result of Executive Order (EO) 14043, *Requiring Coronavirus Disease 2019 Vaccination for Federal Employees*, and the uncertainty that ensued after a nationwide federal court injunction suspended enforcement of EO 14043. Additionally, despite resource challenges at many Component EEO programs, the Department's EEO programs accomplished a great deal.

CRCL and Component partners will continue to develop and strengthen the Department's anti-discrimination and whistleblower protection programs into the next fiscal year and beyond. I look forward to providing information on our program successes in future reports. Please contact the Department's Office of Legislative Affairs for additional information at (202) 447-5890.

Sincerely,

A handwritten signature in blue ink that reads "Peter Mina". The signature is written in a cursive style with a large initial "P" and a long, sweeping underline.

Peter E. Mina
Senior Official Performing the Duties of the CRCL Officer
Office for Civil Rights and Civil Liberties
Department of Homeland Security



Fiscal Year 2022 No FEAR Act Annual Report

Table of Contents

EXECUTIVE SUMMARY	3
I. BACKGROUND.....	7
II. RESULTS AND DATA	8
A. The Department’s Component EEO and Civil Rights Offices	8
1. The Cybersecurity Infrastructure and Security Agency (CISA)	8
2. Federal Emergency Management Agency (FEMA).....	8
3. The Federal Law Enforcement Training Centers (FLETC)	9
4. DHS Headquarters EEO Office (HQ EEO).....	9
5. Transportation Security Administration (TSA).....	9
6. U.S. Citizenship and Immigration Services (USCIS).....	9
7. U.S. Coast Guard (USCG).....	9
8. U.S. Customs and Border Protection (CBP).....	10
9. U.S. Immigration and Customs Enforcement (ICE).....	10
10. U.S. Secret Service (USSS).....	10
B. EEO and Whistleblower Cases Filed in Federal District Court.....	11
C. Reimbursements to Judgment Fund.....	11
D. Disciplinary Actions	11
Figure 1: Number of Employees Disciplined in Connection with Federal Court Cases Under Section 724.302(a)(3)	12

Figure 2: Number of Employees Disciplined, Whether or Not in Connection with Federal Court Cases Under Section 724.302(a)(5) (i.e., Including EEO Administrative Cases) 12

E. EEO Complaint Data 12

III. ANALYSIS OF TRENDS AND CAUSALITY 12

A. EEO Complaint Activity..... 12

B. Bases of Discrimination in EEO Complaints..... 14

C. Issues in EEO Complaints 15

IV. COMPLAINT PROCESSING AND ADJUDICATION DATA 15

A. EEO Counseling..... 16

B. EEO Investigations 16

C. Procedural Dismissals..... 18

D. Findings of Discrimination 19

1. Protected Bases..... 20

2. Issues 21

V. PRACTICAL KNOWLEDGE GAINED THROUGH EXPERIENCE, AND ACTIONS PLANNED OR TAKEN TO IMPROVE THE COMPLAINTS AND CIVIL RIGHTS PROGRAM..... 22

A. Improvements in the Department’s EEO Program 23

1. Advancing Joint Opportunity Initiatives Through Implementation of the EEO and Diversity Program’s Strategic Plan..... 23

2. Collaborating and Leading the Department’s Components 24

3. Issuances of Merit FADs..... 25

Appendices

Appendix 1: The Department’s No FEAR Act Federal District Court Data for FY 2022

Appendix 2: The Department’s No FEAR Final Year End EEO Data for FYs 2017-2022*

Appendix 3: Glossary of Terms

*Due to the EEOC’s required formatting of the tables in Appendix 2, the tables may not be completely in compliance with Section 508 of the Rehabilitation Act. Please contact CRCL if any assistance is needed in accessing this information.

EXECUTIVE SUMMARY

The purpose of the “Notification and Federal Employee Anti-discrimination and Retaliation Act of 2002” (No FEAR Act), Public Law 107-174, as amended by the “Elijah E. Cummings Federal Employee Antidiscrimination Act of 2020,” is to reduce the incidence of workplace discrimination within the Federal Government by making agencies and departments more accountable for violations of anti-discrimination and whistleblower protection laws. Section 203 of the No FEAR Act specifically requires that each federal agency submit to certain Congressional committees and members, not later than 180 days after the end of each fiscal year, an annual report containing the following information on cases brought under federal anti-discrimination and whistleblower protection laws: complaint activity (including Federal District Court cases); resulting disciplinary actions; associated Judgment Fund reimbursements and adjustments to agency budgets to meet reimbursement requirements; and an analysis of trends, causation, and practical knowledge gained through experience. This report covers Fiscal Year (FY) 2022 (October 1, 2021, to September 30, 2022).

Continued Partnerships

The Department’s Director for EEO and Diversity, who is also one of CRCL’s Deputy Officer (Deputy Officer), chairs the EEO Directors’ Council (the EEO Council), of which all Component EEO and Civil Rights Directors are members. During FY 2022, the EEO Council continued its efforts to advance the Council’s FY 2020-2024 strategic plan, again aimed at achieving a unity of effort across the Department’s EEO and Diversity programs. The strategic plan advances five goals: 1) integrate EEO and Diversity into agency operations, 2) develop the DHS EEO and Diversity workforce, 3) promote voluntary resolution of workplace disputes, 4) proactively prevent discrimination by addressing potential barriers to EEO and identifying emerging issues, and 5) optimize coordination to ensure effectiveness, efficiency, and legal compliance of Department and Component EEO and Diversity programs.

In FY 2022, CRCL’s partnership with Component EEO and Civil Rights Directors via the Council was instrumental in guiding the Department’s implementation of Executive Order (EO) 14043, *Requiring Coronavirus Disease 2019 Vaccination for Federal Employees*. Foreseeing an unprecedented volume of employee requests for exemptions from the vaccine mandate for medical or religious reasons, CRCL and the Council collaborated across the Department to devise a vaccine exemption board process to handle a large number of reasonable accommodation requests that promoted an appropriate level of consistency for similarly situated employees, consistent with the Department’s legal obligations. The Department and its Components received approximately 20,000 vaccine exemption requests before a temporary court-ordered nationwide injunction suspended enforcement of the EO 14043 vaccine mandate. Although the injunction paused the work of the vaccine exemption boards, the Council’s efforts have positioned the Department to effectively handle the sizeable number of pending exemption requests, should the injunction be lifted and enforcement of EO 14043 resume.

Vaccine Mandate and Impact on EEO Complaint Processing. On September 9, 2021, President Biden issued Executive Order (EO) 14043, *Requiring Coronavirus Disease 2019 Vaccination for Federal Employees*, which required all Federal employees to be fully vaccinated against the

COVID-19 virus by November 22, 2021, subject to exceptions required by law. While in the process of adjudicating these requests, on January 21, 2022, the United States District Court for the Southern District of Texas issued a nationwide preliminary injunction enjoining federal agencies from “implementing or enforcing the EO.” In response, the Safer Federal Workforce Task Force issued guidance instructing all Federal agencies to hold such accommodation requests in abeyance and to notify employees that implementation or enforcement of the COVID-19 vaccination requirement pursuant to EO 14043 is currently enjoined and that an exception therefore is not necessary so long as the nationwide injunction is in place. In addition, Federal agencies were advised to hold all EEO complaints related to the mandate in abeyance. As of this date, the injunction against enforcement of the EO is still in litigation in federal court. Consequently, DHS continues to hold the processing of the aforementioned accommodation requests and certain EEO complaints related to the mandate in abeyance in compliance with the injunction.

EEO Complaint Program

Report of Investigation (ROI) Feedback Tool. Throughout FY 2022, CRCL provided Components an objective assessment of the quality of their EEO Reports of Investigation (ROI) through the ROI Feedback Tool (Feedback Tool). Launched in FY 2016, the Feedback Tool enables CRCL to provide Components quarterly feedback on the quality (e.g., legal sufficiency, organization, documentation) of their ROIs, whether prepared by internal personnel or by contractors. Additionally, CRCL continued to disseminate aggregate information on the quality of contractor-produced ROIs within the DHS EEO program to all Components. This aggregate information continues to provide Components with a snapshot of CRCL’s assessments of the quality of ROIs issued by all contract firms. This information allows Components to make strategic improvements and decisions regarding their future ROI contractual needs.

Complaint Activity. In FY 2022, DHS experienced a 42 percent increase in the number of pre-complaints. In FY 2022, 2,831 cases were counseled, up from 2,000 cases in FY 2021. In addition, the number and the percentage of counselings completed within the regulatory timeframe (within 30 days of an employee’s initial contact, absent the employee’s agreement to extend the timeframe by up to an additional 60 days) increased in FY 2022. In FY 2021, 98 percent (1,959 of 2,000) of all counselings were timely completed, compared with 99 percent (2,795 of 2,831) in FY 2022. The number of formal complaints filed increased by 46 percent in FY 2022 (1,637), as compared to FY 2021 (1,121). Additional information on complaint activity is provided in Section IV of this report.

EEO Investigations. In FY 2022, the Department experienced a slight increase (4 percent) in the number of investigations (882) completed compared to FY 2021 (850). The percentage of timely investigations (completed within 180 days of the filing of a formal complaint or within a regulatorily permissible extension period) also slightly increased – 70 percent (613) in FY 2022, compared to 68 percent (576) in FY 2021. Additionally, the Department’s average number of processing days for investigations decreased by three percent – from 273 average processing days in FY 2021 to 265 average processing days in FY 2022.

Adjudication. CRCL’s incoming final agency decision (FAD)¹ workload decreased in FY 2022, with 510 requests for FADs received in FY 2022, compared to 567 requests received in FY 2021. CRCL issued 660 FADs in FY 2022, reflecting a slight decrease from the 676 FADs issued during the prior fiscal year. CRCL’s rate of timely FAD issuance increased markedly, from 19 percent (128 of 676) in FY 2021, to 48 percent (319 of 660) in FY 2022. The average processing days decreased by a remarkable 42 percent (137 days) to 191 days, when compared to the 328 average processing days in FY 2021.

In FY 2022, DHS issued or took final action on 23 findings of discrimination,² a significant increase from the ten findings processed in FY 2021. A more detailed explanation regarding this increase is included in Section V of this report. In FY 2022, reprisal was the most frequently alleged basis on which complainants prevailed, followed by disability, sex, age, race, color, and national origin discrimination. The most frequently raised issues on which complainants prevailed were harassment (non-sexual), reasonable accommodation, and non-selection/non-promotion.

During FY 2022, 286 civil actions filed against the Department, involving laws covered by the No FEAR Act, were pending or resolved in Federal District Court. Federal judges disposed of 91 cases, with 59 cases decided in favor of the Department, 30 settled by the parties, and two decided in favor of the Complainant.

Components reported that the Department’s reimbursement to the Judgment Fund for awarded damages during FY 2022 was \$1,801,500.00. Additionally, \$137,500.00 was reimbursed to the Judgment Fund for attorney’s fees. During FY 2022, 25 Department employees were disciplined for discrimination, retaliation, harassment, or other infractions of laws covered by the No FEAR Act. This information is described in Section III of this report.

LEGISLATIVE REQUIREMENT

This document responds to the reporting requirements set forth in Section 203 of the “*Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002*,” or the “No FEAR Act” (Pub. L. No. 107-174), which states:

(a) Annual Report. — Subject to subsection (b), [(b) pertains to requirements for the first report] not later than 180 days after the end of each fiscal year, each Federal agency shall submit to the Speaker of the House of Representatives, the President pro tempore of the Senate, the Committee on Homeland Security and Governmental Affairs of the Senate, the Committee on Oversight and Reform of the House of Representatives, each committee of Congress with jurisdiction relating to the agency, the Equal Employment Opportunity Commission, and the Attorney General an annual report (in an electronic

¹ A FAD is a written decision on the merits of an employment discrimination complaint.

² The Department issued 16 FADs and seven Final Orders (fully implementing EEOC AJ decisions) where there was a finding of discrimination. A more detailed explanation can be found in Section V of this report.

format prescribed by the Director of the Office of Personnel Management which shall include, with respect to the fiscal year —

- (1) the number of cases arising under each of the respective provisions of law covered by paragraphs (1) and (2) of section 201(a) in which discrimination on the part of such agency was alleged;
- (2) the status or disposition of cases described in paragraph (1);
- (3) the amount of money required to be reimbursed by such agency under section 201 in connection with each of such cases, separately identifying the aggregate amount of such reimbursements attributable to the payment of attorneys' fees, if any;
- (4) the number of employees disciplined for discrimination, retaliation, harassment, or any other infraction of any provision of law referred to in paragraph (1);
- (5) the final year-end data posted under section 301(c)(1)(B) for such fiscal year (without regard to section 301(c)(2));
- (6) a detailed description of —
 - (A) the policy implemented by that agency relating to appropriate disciplinary actions against a Federal employee who —
 - (i) discriminated against any individual in violation of any of the laws cited under section 201(a)(1) or (2); or
 - (ii) committed another prohibited personnel practice that was revealed in the investigation of a complaint alleging a violation of any of the laws cited under section 201(a)(1) or (2); and
 - (B) with respect to each of such laws, the number of employees who are disciplined in accordance with such policy and the specific nature of the disciplinary action taken;
- (7) an analysis of the information described under paragraphs (1) through (6) (in conjunction with data provided to the Equal Employment Opportunity Commission in compliance with Part 1614 of Title 29 of the Code of Federal Regulations (C.F.R.)) including —
 - (A) an examination of trends;
 - (B) causal analysis;
 - (C) practical knowledge gained through experience;
 - (D) any actions planned or taken to improve complaint or civil rights programs of the agency; and
- (8) any adjustment (to the extent the adjustment can be ascertained in the budget of the agency) to comply with the requirements under section 201.

Further guidance on each agency's reporting obligations is provided in 5 C.F.R. § 724.302, which also requires the submission of the annual report to the Director of OPM, for the implementation of a best practices study and the issuance of advisory guidelines.

I. BACKGROUND

The mission of the Department is to safeguard the American people, our homeland, and our values. The Department was established through the *Homeland Security Act of 2002*, Pub. L. No. 107-296; Section 103(d)(5) of the Act provides for the presidential appointment of an Officer for Civil Rights and Civil Liberties (CRCL Officer). On October 26, 2012, the Secretary of Homeland Security issued Delegation Number 19003, which delegated to the CRCL Officer the authority to render final decisions on behalf of the Secretary in EEO complaints, pursuant to 29 C.F.R. § 1614.110, or pursuant to the Departmental EEO Complaint Procedures, when that regulation is not applicable.

CRCL, which is located within the Office of the Secretary, provides technical and policy advice to Department leadership on civil rights and civil liberties issues. The CRCL Officer, by statute, reports directly to the Secretary and assists senior leadership in shaping policy in ways that protect the civil rights and civil liberties of all persons, internal or external to DHS, who are protected by our laws. In accordance with 6 U.S.C. § 345 and 42 U.S.C. § 2000ee-1, CRCL supports the Department's mission to secure the nation while preserving individual liberty, fairness, and equality under the law. CRCL performs four key functions to integrate civil rights and civil liberties into all the Department's missions and activities:

1. Promoting respect for civil rights and civil liberties in policy creation and implementation by advising Department leadership and personnel, and state and local partners.
2. Communicating with individuals and communities whose civil rights and civil liberties may be affected by Department activities, informing them about policies and avenues of redress, and promoting appropriate attention within the Department to their experiences and concerns.
3. Investigating civil rights and civil liberties complaints filed by the public regarding Department policies or activities, or actions taken by Department personnel.
4. Leading the Department's EEO programs and promoting workforce diversity and merit system principles.

To maximize its effectiveness, the Department seeks to maintain an exemplary EEO program with the goal of eliminating discrimination in the workplace. CRCL provides departmental guidance and standards for establishing and maintaining effective programs for EEO, as required under both Title VII of the *Civil Rights Act of 1964* (Title VII), 42 U.S.C. §§ 2000(e) - 2000(e-17), and Section 501 of the *Rehabilitation Act of 1973* (Rehabilitation Act), 29 U.S.C. § 791. CRCL also works to advance the anti-discrimination protections set forth under the *Age Discrimination in Employment Act of 1967* (ADEA), 29 U.S.C. §§ 621-634 (2015), the *Equal Pay Act of 1963* (EPA), 29 U.S.C. § 206 (d)(1), and the *Genetic Information Nondiscrimination Act of 2008* (GINA), 42 U.S.C. §§ 2000(ff)-2000(ff-11). To meet these objectives, the Deputy Officer for CRCL and the staff develop and monitor

and guidance; deliver EEO training; conduct oversight of the Component EEO programs; adjudicate EEO complaints; and prepare and submit annual reports to stakeholders including Congress, the White House, the U.S. Department of Justice, EEOC, and OPM relating to the Department's diversity and EEO activities.

II. RESULTS AND DATA

A. The Department's Component EEO and Civil Rights Offices

Section 301 of the No FEAR Act requires each Federal agency to post summary statistical data pertaining to complaints of employment discrimination filed against it by employees, former employees, and applicants for employment. Accordingly, DHS Components complete the EEOC Annual Federal Equal Employment Opportunity Statistical Report of Discrimination Complaints (Form 462). In addition, DHS Components provide CRCL with additional data required under the No FEAR Act. This composite report is prepared by compiling and analyzing the data submitted by all DHS Components. Below is a brief description of each Component and their EEO and/or civil rights office:

1. The Cybersecurity Infrastructure and Security Agency (CISA)

CISA leads the national effort to understand, manage, and reduce risk to our cyber and physical infrastructure.

CISA's Office of Equity, Diversity, Inclusion, and Accessibility (OEDIA) promotes a work environment at CISA that ensures equal employment opportunity and fosters a culture that values diversity, equity, inclusion, and accessibility, and empowers individuals so that they may contribute to their fullest potential in support of CISA's mission. OEDIA provides EEO services to over 2,689 employees by enforcing compliance with EEO laws, regulations, and mandates; providing guidance to management officials and employees on EEO and DEIA; preventing and addressing unlawful employment discrimination; and ensuring that all CISA employees have a working environment that is free from unlawful discrimination, harassment, and retaliation.

2. Federal Emergency Management Agency (FEMA)

FEMA's emergency management role is to raise risk awareness before disasters occur; alert, warn, and message during disasters; and coordinate Federal recovery efforts after disasters.

FEMA's Office of Equal Rights (OER) provides EEO services to 22,160 employees. FEMA OER is composed of five functional areas: (1) Business Management Unit; (2) EEO Unit; (3) External Civil Rights Division, in addition to CADRE (reservist and non-reservist employees); (4) Disability Unit; and (5) Affirmative Employment Unit.

3. The Federal Law Enforcement Training Centers (FLETC)

FLETC's mission: through strategic partnerships, prepares the federal law enforcement community to safeguard America's people, property, and institutions.

The FLETC EEO Office provides services to 1,309 FLETC employees. The Office is comprised of the EEO Officer, Complaints Manager, five EEO Specialists, and one Staff Assistant.

4. DHS Headquarters EEO Office (HQ EEO)

HQ EEO provides EEO services to over 6,200 DHS Headquarters employees by enforcing compliance with EEO laws, regulations, and mandates; providing guidance to Headquarters management officials and employees on EEO and diversity; preventing and addressing unlawful employment discrimination; and ensuring that all Headquarters employees have a working environment that is free from unlawful discrimination, harassment, or reprisal and that will support them in the fulfillment of their mission to protect the homeland.

5. Transportation Security Administration (TSA)

TSA's mission is to protect the nation's transportation systems to ensure freedom of movement for people and commerce.

TSA's EEO Management (EEOM) Branch provides EEO complaint processing and dispute resolution services to over 60,000 employees, former employees, and applicants. EEOM serves as a neutral resource, providing guidance on the Federal EEO process and internal TSA policies and procedures related to complaints of discrimination. EEOM also oversees the EEO informal complaint, alternative dispute resolution, formal complaint, investigative, and compliance functions.

6. U.S. Citizenship and Immigration Services (USCIS)

USCIS oversees lawful immigration to the United States with a mission to uphold America's promise as a nation of welcome and possibility with fairness, integrity, and respect for all we serve.

The USCIS Office of Equal Opportunity and Inclusion (OEOI) guides agency efforts to leverage diversity and inclusion in the workplace, and to provide a work environment free from discrimination where all employees feel valued, respected, and empowered. OEOI provides service to 19,077 employees. OEOI has three divisions: the Complaint Resolution Division (CRD); the Diversity Management Operations Division; and the Policy, Planning, and Resources Division. In addition, OEOI administers the agency's Anti-Harassment Program and advises USCIS on certain external civil rights matters.

7. U.S. Coast Guard (USCG)

USCG safeguards the American people and promotes national security, border security, and economic prosperity in a complex and evolving maritime environment.

The USCG Civil Rights Directorate (CRD) provides services to 9,138 civilian employees and over 46,164 service members. The Civil Rights Director reports to the Commandant of the USCG. The field staff serve within the four CRD regions and their zones, and an EEO Manager leads the complaints processing unit and the Solution and Complaints Division.

8. U.S. Customs and Border Protection (CBP)

CBP's priority mission is keeping terrorists and their weapons out of the Nation. It also has a responsibility for securing the border and facilitating lawful international trade and travel while enforcing hundreds of U.S. laws and regulations, including immigration and drug laws.

Within CBP's Office of the Commissioner, the Privacy and Diversity Office (PDO), is responsible for developing and administering all policies and directives related to ensuring full compliance with the Privacy Act, Freedom of Information Act (FOIA), Federal diversity and inclusion policies, EEO laws, and civil rights and civil liberties laws. The PDO's Diversity and EEO Division provides EEO and diversity and inclusion services to almost 64,000 CBP employees in the performance of their homeland security mission. The Diversity and EEO Division's management consists of a Director, two Deputy Directors, and several Assistant Directors.

9. U.S. Immigration and Customs Enforcement (ICE)

ICE's mission is to protect America through criminal investigations and enforcing immigration laws to preserve national security and public safety.

ICE's Office of Diversity and Civil Rights (ODCR) provides EEO counseling, investigation, and Alternative Dispute Resolution (ADR) services to 20,899 ICE employees through its Complaints and Resolution Division (CRD). The CRD is led by a Division Chief, Deputy Division Chief, one Senior EEO specialist, an ADR Program Manager, and three junior EEO Specialists.

10. U.S. Secret Service (USSS)

USSS's mission is to protect our nation's highest elected leaders, visiting foreign heads of state, and national special security events, and safeguard the U.S. financial infrastructure and payment systems.

The Office of Equity and Employee Support Services (EES) -- Equity, Diversity, and Inclusion (EDI) Program ensures Agency compliance with the laws, regulations, policies, and guidance that prohibit discrimination in the federal workplace. EDI provides services to 7,848 employees and is composed of the EES Executive, Deputy EEO Director (Vacant), Formal Complaints Program Manager, Pre-Complaints Program Manager, Disability Program Manager, Affirmative Employment Program Manager (Vacant), Administrative Officer, EEO Specialists, and Program

Analysts. The program also includes collateral duty EEO Counselors as well as collateral duty Special Emphasis Program Managers.

B. EEO and Whistleblower Cases Filed in Federal District Court

During FY 2022, the Department had 286 pending or resolved civil actions in Federal District Court under the laws covered in the No FEAR Act. The majority of those filings (172) arose under Title VII, followed by filings under the Rehabilitation Act (66), filings under the ADEA (34), filings under the *Whistleblower Protection Act of 1989*, 5 U.S.C. §1201 (9), filings under EPA (3), and filings under GINA (2).

During FY 2022, 91 cases were disposed of in Federal District Court: 59 were decided in favor of the Department, 30 were resolved by settlement, and two decided in favor of the Complainant. In addition, 36 cases were appealed. For further information regarding FY 2022 employment discrimination and whistleblower cases filed against the Department in Federal District Court, see Appendix 1.

C. Reimbursements to Judgment Fund

During FY 2022, as reported by the Department's Components, the Department reimbursed a total of \$1,801,500.00 in damages to the Judgment Fund. The amount reimbursed resulted from cases filed under Title VII and the Rehabilitation Act. Reimbursements came from the following Components, in order of the largest to the smallest amount: USSS - \$555,000.00, USCIS - \$400,000.00, TSA - \$392,500.00, CBP - \$215,000.00, FEMA - \$164,000.00, and HQ EEO - \$75,000.00. In addition, \$137,500.00 was reimbursed to the Judgment Fund for attorney's fees by CBP and HQ EEO, which stemmed from Title VII and Rehabilitation Act cases.

D. Disciplinary Actions

DHS Components retain independent authority to discipline their respective employees, including individuals found to have engaged in discriminatory, retaliatory, or harassing conduct, as set forth in findings of discrimination. As part of any relief ordered, Components were required to consider disciplinary action against any individual found responsible for discriminatory actions or conduct. During FY 2022, a total of 21 employees (15 from FEMA, four from USSS, one from TSA, and one from ICE) were disciplined because of findings of discriminatory, retaliatory, or harassing conduct. The disciplinary actions resulted from violations of Title VII and the *Whistleblower Protection Act of 1989*, 5 U.S.C. §1201. The breakdown is included in Figure 1 below.

Figure 1: Number of Employees Disciplined in Connection with Federal Court Cases Under Section 724.302(a)(3)

	<i>Whistleblower Protection Act of 1989, 5 U.S.C. §1201</i>
Reprimand	0
Suspension without Pay	0
Reduction in grade or pay	0
Removal	0

Figure 2: Number of Employees Disciplined, Whether or Not in Connection with Federal Court Cases Under Section 724.302(a)(5) (i.e., Including EEO Administrative Cases)

	Title VII	<i>Whistleblower Protection Act of 1989, 5 U.S.C. §1201</i>
Reprimand	8	0
Suspension without Pay	9	0
Reduction in grade or pay	0	0
Removal	4	0

E. EEO Complaint Data

See Appendix 2 for the Department’s No FEAR Act data for FY 2022, which is also posted online (<http://www.dhs.gov/homeland-security-no-fear-act-reporting>).

III. ANALYSIS OF TRENDS AND CAUSALITY

A. EEO Complaint Activity

Section 203(a)(7) of the No FEAR Act requires federal agencies to examine trends and causes behind the data in their reports over the past five years. Figure 3 shows the number of complaints filed Department-wide each year for the past five years and the variance from the prior year’s filings.

Figure 3: Complaints Filed, FY 2017– FY 2022

	<i>2017</i>	<i>2018</i>	<i>2019</i>	<i>2020</i>	<i>2021</i>	<i>2022</i>
Department-wide Filings	1,245	1,472	1,266	1,276	1,121	1,637
Variance from prior year complaints	-70	+227	-206	+10	-155	+516
Department-wide Population	197,593	206,449	211,421	213,653	216,015	215,243
Variance in employee population from prior year	+4,727	+8,856	+4,972	+2,232	+2,362	-772

The Department’s workforce population steadily increased between 2017 and 2021. However, in FY 2022, the workforce decreased by 772 employees to 215,243, from 216,015 in FY 2021. The FY 2022 reduction reflects workforce decreases at all Components, except for three: TSA, USCIS, and CISA.³

While the Department’s workforce population decreased in FY 2022, the Department experienced an increase in formal EEO complaint filings in FY 2022: 1,637 compared to 1,121 in FY 2021 (516 more complaints filed). The formal EEO complaint filings increased at all Components, except for HQ EEO, which had a slight decrease of 70 formal EEO complaint filings in FY 2022 (compared to 86 formal EEO complaints in FY 2021), which is most likely a result of CISA processing their own EEO complaints, whereas HQ EEO used to process these complaints. FLETC, ICE, and USCG showed the most significant increases in the number of formal complaints filed from FY 2021 to FY 2022. FLETC showed a 150 percent increase in filings (20 in FY 2022 compared to 8 in FY 2021), ICE showed a 91 percent increase in filings (260 in FY 2022 compared to 136 in FY 2021), and USCG showed an 83 percent increase in filings (53 in FY 2022 compared to 29 in FY 2021). The majority of the Components attribute these increases in complaint activity to return-to-work initiatives after the pandemic, including COVID-19 mitigation measures, as well as resulting conflicts from more people being in the physical workplace together.

³ CISA was included as a Headquarters element in prior years’ reports. Therefore, there are no comparison numbers from prior fiscal years.

B. Bases of Discrimination in EEO Complaints

During FY 2022, the most frequently alleged bases of discrimination in formal EEO complaints were, in order of frequency: reprisal, disability, and sex. See Figure 4.

- *Reprisal*: In FY 2022, there was a 6 percent increase in the number of reprisal claims (635), compared to FY 2021 (594). Reprisal remains the most commonly alleged basis of discrimination at DHS, and government-wide, as reported by the EEOC.⁴ At the Department, and across the federal sector, reprisal claims are almost always joined with an underlying EEO complaint based on race, national origin, sex, etc.
- *Disability*: During FY 2022, disability discrimination was alleged in 560 complaints, which is a 67 percent increase over the prior year, when disability discrimination was raised in 373 complaints.
- *Sex*: During FY 2022, DHS received 489 complaints alleging discrimination based on sex, including claims of discrimination based on lesbian, gay, bisexual, and transgender (LGBT) status. Females alleging discrimination based on sex accounted for the most frequently raised basis, with 317 complaints. Males alleged discrimination based on sex in 161 complaints. LGBT claims were raised in 11 complaints. The 489 complaints raising sex discrimination in FY 2022 represent a 27 percent increase from the 385 complaints alleging sex discrimination in FY 2021.

Figure 4: Bases of Discrimination, FY 2017 - FY 2022

	<i>2017</i>	<i>2018</i>	<i>2019</i>	<i>2020</i>	<i>2021</i>	<i>2022</i>
Reprisal	596	735	633	681	594	635
Disability	424	477	480	462	373	560
Sex	476	509	460	473	402	489
Race	391	488	407	438	366	440
Age	386	398	366	409	335	395
Religion	57	62	53	53	61	376
Color	181	187	146	193	139	198
National Origin	207	263	173	210	196	195
Non-Statutory	100	90	69	91	102	116
GINA	4	6	3	6	7	23

⁴ <https://www.eeoc.gov/sites/default/files/2021-07/2019%20Annual%20Report%20Complaints%20Tables.zip>.

C. Issues in EEO Complaints

The most frequently raised issue in EEO complaints at DHS during FY 2022 was harassment (non-sexual).⁵ Non-sexual harassment has been the most frequently raised issue in EEO complaints at the Department and across the federal sector as reflected in the most recent EEOC report.⁶ There was a 16 percent increase in the number of non-sexual harassment complaints between FY 2021 (528) and FY 2022 (610).

The second-most raised issue at DHS in FY2022, disciplinary action, was raised in 235 complaints. This represented a five percent increase from FY 2021, when it was raised in 224 complaints. As Figure 5 below shows, disciplinary action has consistently been the second or third-most frequently raised issue at the Department.

The third-most frequently raised issue at DHS in FY 2022 was non-selection, which was raised in 195 complaints. This represents a 24 percent increase over FY 2021, when non-selection was raised in 157 complaints.

Figure 5: Issues in Complaints, FY 2017- FY 2022

	<i>2017</i>	<i>2018</i>	<i>2019</i>	<i>2020</i>	<i>2021</i>	<i>2022</i>
Non-Sexual Harassment	502	628	588	658	528	610
Disciplinary Action	304	282	228	207	224	235
Assignment of Duties	126	222	131	178	196	-- ⁷
Promotion/Non-Selection	280	235	215	195	157	195
Time and Attendance	92	102	95	93	120	112

IV. COMPLAINT PROCESSING AND ADJUDICATION DATA

⁵ The No FEAR Act requires reporting of complaints involving sexual harassment (i.e., sex-based claims involving actionable unwelcome conduct of a sexual nature) and non-sexual harassment (i.e., claims involving actionable unwelcome conduct not of a sexual nature, e.g., based instead on race, sex, national origin, color, religion, age, disability, or reprisal).

⁶ <https://www.eeoc.gov/sites/default/files/2021-07/2019%20Annual%20Report%20Complaints%20Tables.zip>.

⁷ For FY 2022, EEOC revised the list of issues so that assignment of duties, duty hours, and terms and conditions of employment were among several issues that were captured under the issue of “Other terms/conditions of employment.”

A. EEO Counseling

EEO counselings are completed at the Component level. In accordance with 29 C.F.R. § 1614.105(d), EEO Counseling must be completed within 30 days of the date the aggrieved person contacted the agency’s EEO, unless the aggrieved person agrees to a longer counseling period (not to exceed 90 days) or chooses an ADR procedure.

DHS experienced a 42 percent increase in the total number of completed counselings (from 2,000 in FY 2021 to 2,831 in FY 2022) with a 99 percent (2,795 of 2,831) timely completion rate. In FY 2022, DHS experienced the highest number of completed and timely completed counselings since FY 2018. As described above, the majority of the Components attribute these increases in complaint activity to return-to-work initiatives after the pandemic, including COVID-19 mitigation measures, as well as resulting conflicts from more people being in the physical workplace together. See Figure 6.

USCG, CBP, USSS, FLETC, and USCIS had a 100 percent timely rate for completed counseling. Notably, for the last three fiscal years, USCG, CBP, and USSS have remained at 100 percent, and FLETC timely completed 100 percent of their counselings for the last two fiscal years.

FEMA continues to show improvement in their number of completed counselings (394 in FY 2022 versus 258 in FY 2021). FEMA also showed an increase in their percentage of timely-completed counseling (from 90 percent in FY 2021 to 95 percent in FY 2022).

TSA remained nearly steady with timely completed counselings, showing a one percent increase from 98 in FY 2021 to 99 percent in FY 2022. ICE experienced an increase in completed counselings (from 228 in FY 2021 to 368 in FY 2022) but a decrease in timely completed counselings (93 percent in FY 2022 versus 98 percent in FY 2021); and HQ EEO experienced a decrease in completed counselings (from 116 in FY 2021 to 100 in FY 2022) and a decrease in timely completed counselings (from 99 percent in FY 2021 to 92 percent in FY 2022).

Figure 6: EEO Counseling at the Department, FY 2017 – FY 2022

	2017	2018	2019	2020	2021	2022
Total Number Completed	2,517	2,685	2,339	2,252	2,000	2,831
Timely Number	2,387	2,587	2,141	2,140	1,959	2,795
Percentage Timely	95	96	92	95	98	99

B. EEO Investigations

Like EEO counselings, EEO investigations are completed at the Component level. In accordance with 29 C.F.R. § 1614.108(e), an investigation must be completed within 180 calendar days, unless the complainant and the respondent agency voluntarily extend the time period (for not more than an additional 90 days), the respondent agency unilaterally extends the

time period or any period of extension for not more than 30 days where it must sanitize a complaint file that contains classified information, or the complaint is amended. The following compares the number of formal complaints filed Department-wide to the number of EEO investigations completed, and to those that were timely completed.⁸

In FY 2022, 882 investigations were completed Department-wide, which is a moderate increase from the number of investigations completed in FY 2021 (850). The number of timely completed investigations also increased in FY 2022 to 613 (70 percent) from 576 (68 percent) in FY 2021. Additionally, the average number of days to complete an investigation decreased slightly to 265 days in FY 2022 from 273 days in FY 2021. See Figure 7.

This fiscal year, Components showed a mix of improvements and setbacks in the area of EEO investigations. FLETC, USCIS, and USCG maintained a 100 percent timely rate to complete their investigations within the regulatory timeframe. By contrast, CBP had the most notable setback in this area. CBP's number of completed investigations increased to 172 in FY 2022, from 149 completed in FY 2021. However, CBP showed a dramatic decrease in the number of timely completed investigations, from 55 in FY 2021 to 15 in FY 2022 (37 percent in FY 2021 to 9 percent in FY 2022), as well as an increase in the average number of days to complete the investigation (from 390 days in FY 2021 to 507 days in FY 2022). CBP's lack of staffing and funding had a direct impact in this area.

Other notable information regarding Components' FY 2022 investigation data includes:

- Components showing a decrease in the total number of completed investigations this fiscal year were FEMA (145 in FY 2022 from 150 in FY 2021), ICE (107 in FY 2022 from 122 in FY 2021), and USSS (20 in FY 2022 from 29 in FY 2021).
- In addition to CBP, noted above, other Components showing a decrease in the number of timely completed investigations were ICE (47 in FY 2022 from 67 in FY 2021) and USSS (19 in FY 2022 from 25 in FY 2021).
- Components showing a decrease in the number of days to complete investigations were HQ EEO (273 days in FY 2022 from 276 days in FY 2021), FLETC (118 days in FY 2022 from 148 days in FY 2021), FEMA (197 days in FY 2022 from 338 days in FY 2021), TSA (136 days in FY 2022 from 199 days in FY 2021), USCG (109 days in FY 2022 from 114 days in FY 2021), and USSS (169 days in FY 2022 from 176 days in FY 2021).
- In addition to CBP, noted above, other Components showing an increase in the total number of completed investigations this fiscal year were HQ EEO (72 in FY 2021 to 77 in FY 2022) and TSA (191 in FY 2021 to 223 in FY 2022).

⁸ Complaints filed in one fiscal year may not always be investigated in the same fiscal year.

- Components showing an increase in the number of timely completed investigations were FEMA (70 in FY 2021 to 118 in FY 2022), HQ EEO (45 in FY 2021 to 48 in FY 2022), and TSA (177 in FY 2021 to 221 in FY 2022).
- In addition to CBP, noted above, other Components showing an increase in the number of days to complete the investigations were ICE (276 days in FY 2021 to 342 days in FY 2022) and USCIS (222 days in FY 2021 to 228 days in FY 2022).

Figure 7: EEO Investigations at the Department, FY 2017 – FY 2022

	<i>2017</i>	<i>2018</i>	<i>2019</i>	<i>2020</i>	<i>2021</i>	<i>2022</i>
Total Formal Complaints Filed⁹	1,245	1,472	1,266	1,276	1,121	1,637
Total Completed Investigations	1,135	1,179	1,177	1,185	850	882
Timely Investigations	812	840	768	931	576	613
Percentage Timely	72	71	65	79	68	70
Average Days	238	271	291	239	273	265

C. Procedural Dismissals

An agency may procedurally dismiss an EEO complaint for one of several reasons, including, but not limited to: failure to state a claim, untimely initial contact with an EEO counselor, filing the identical claim in Federal District Court, or failure to respond or provide sufficient information in response to the agency’s request for same. See 29 C.F.R. § 1614.107(a). At DHS, Components send CRCL requests for procedural dismissal of complaints that, based on Components’ review, meet the appropriate regulatory criteria; CRCL then reviews the record and makes a final determination to dismiss the matter, or returns the case to the Component for investigation.

In FY 2022, there was a 57 percent increase (129) in the number of procedural dismissals issued by CRCL, when compared to FY 2021 (82). It is noted that the incoming number of requests for procedural dismissals was higher in FY 2022 than in FY 2021 (165 versus 104). DHS’s average processing for procedural dismissals was 247 days in FY 2022, a 14-day increase from FY 2021 (233). See Figure 8.

⁹ Investigations are not completed for all formal complaints; some complaints are procedurally dismissed without an investigation (See Section IV.C, below), and other cases may be settled or withdrawn before an investigation is completed.

Figure 8: Procedural Dismissals, FY 2017 – FY 2022

	2017	2018	2019	2020	2021	2022
Total Number	111	186	97	110	82	129
Average Number of Processing Days	211	163	199	296	233	247

D. Findings of Discrimination

At DHS, findings of discrimination in the federal administrative EEO process result from either a merit FAD issued by CRCL¹⁰ or a decision by an EEOC Administrative Judge (AJ) when the complainant elects a hearing. When an AJ issues a decision on the merits of a complaint, CRCL is required to take final action by issuing a Final Order on behalf of DHS within 40 days of the AJ’s decision. The Final Order must notify the complainant whether the agency intends to fully implement the AJ’s decision or file an appeal with EEOC’s Office of Federal Operations (OFO).

The following tally of the Department’s findings of discrimination from FY 2017 to FY 2022 illustrates the protected bases upon which the findings were made, and the specific issues involved in the findings during this period.

As shown in Figure 9, below, from FY 2017 to FY 2022, the Department processed 115 findings of discrimination through the issuance of merit FADs or Final Orders. In FY 2022, the Department issued 1,065 merit FADs and Final Orders, 23 of which resulted in a finding of discrimination. The discriminatory conduct in these cases dates from 2011-2012, and from 2016-2021. These cases included 16 merit FADs issued by CRCL and seven EEOC AJ decisions that the Department fully implemented in Final Orders. The 23 findings in FY 2022 represents a notable increase from the ten findings in FY 2021. Part of this increase may be explained by CRCL’s successful elimination of the backlog of cases from previous years that were pending FADs. Several of the FY 2022 findings were included in the backlog.

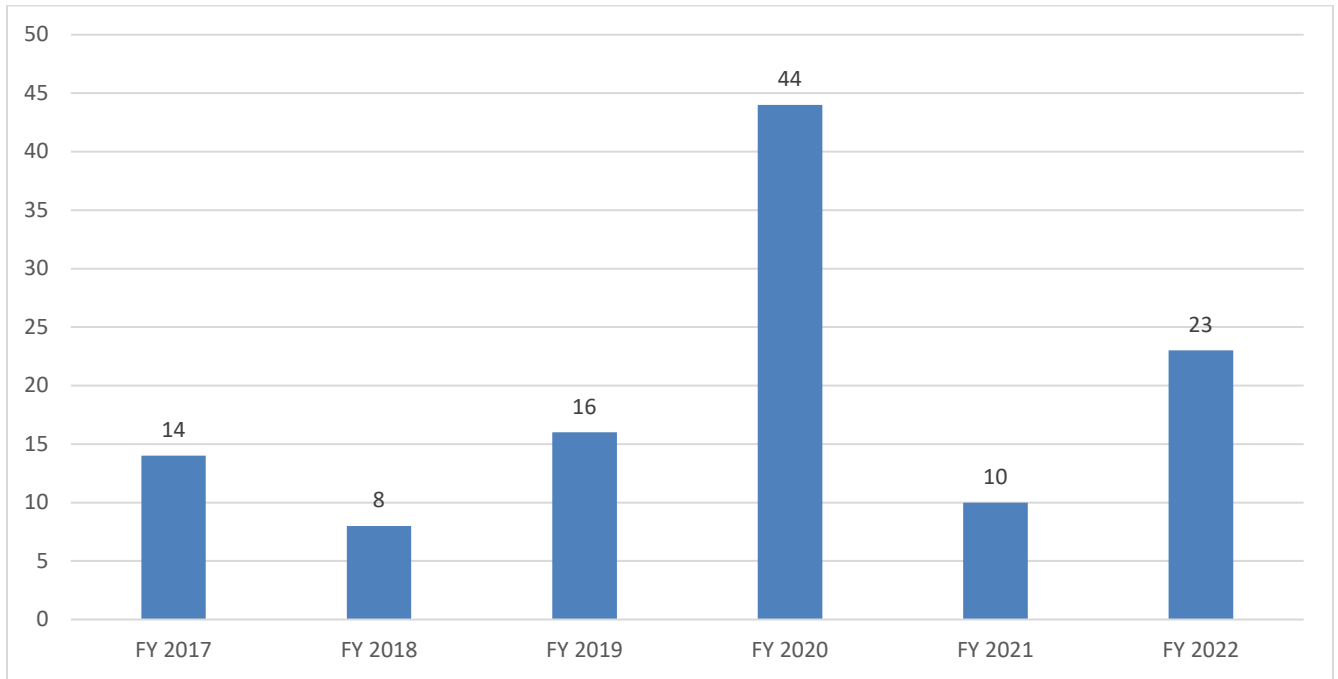
Notably, the 23 findings in FY 2022 represents just two percent of merit FADs and Final Orders (1,065) the Department issued in FY 2022. In addition, the Department’s FY 2022 finding rate is equal to the government-wide percentage of findings of discrimination in FY 2019,¹¹ which was two percent (175 findings).¹² While the number of findings at DHS in FY 2022 reflects a small percentage of the Department’s overall complaint inventory, such findings receive significant attention from CRCL and Component leadership.

¹⁰ Further discussion of merit FADs can be found in Section VI of this report.

¹¹ The FY 2019 data tables are the most recent Federal workforce numbers that EEOC has released.

¹² <https://www.eeoc.gov/sites/default/files/2021-07/2019%20Annual%20Report%20Complaints%20Tables.zip>.

Figure 9: Complaints with Findings, FY 2017 – FY 2022



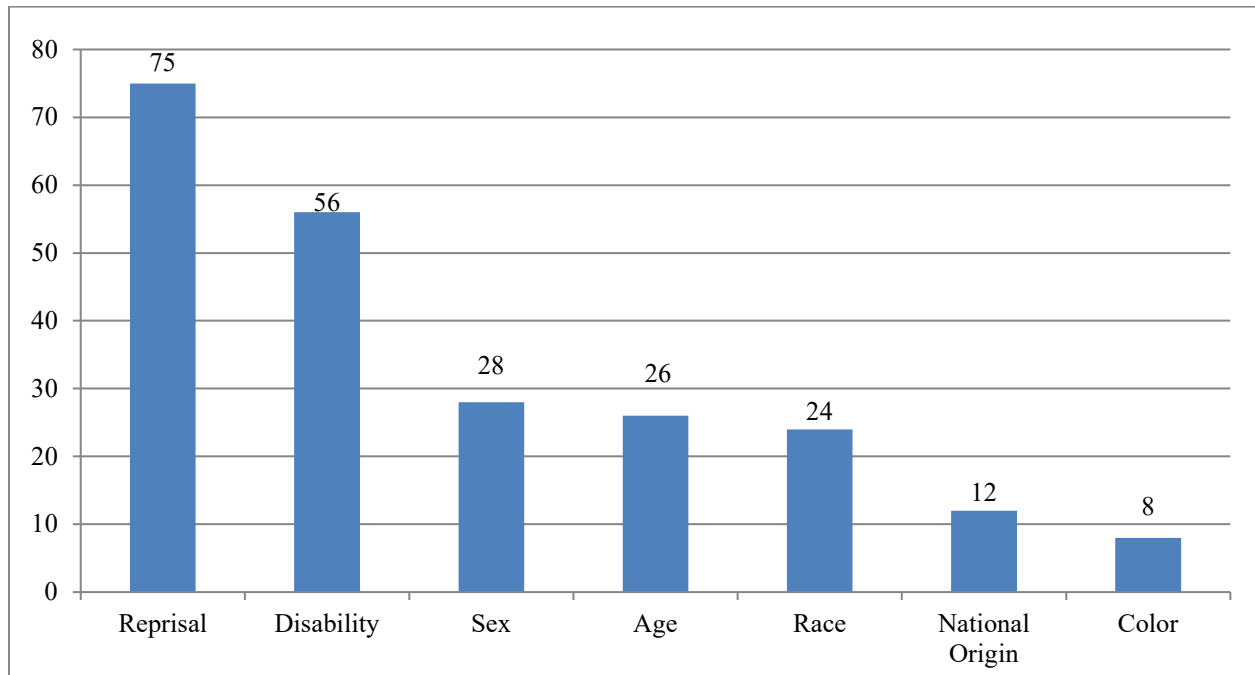
1. Protected Bases

In FY 2022, findings were issued with respect to claims of discrimination on the bases of reprisal (29), disability (17), age (2), sex (2), color (1), national origin (1), and race (1).¹³ Historically, the greatest number of findings are based on reprisal, with the exception of FY 2021, when disability discrimination accounted for the greatest number of findings. The number of findings issued in FY 2022 is higher than the number of findings in FY 2021, so it follows that the number of bases upon which those findings were made in FY 2022 would be higher. It is important to note that the total number of bases within findings of discrimination may exceed the total number of findings issued because one decision may find discrimination on more than one basis. There do not appear to be any significant trends.

A comprehensive look at the number of findings by basis for the period from FY 2017 to FY 2022 is shown in Figure 10.

¹³ In some complaints, findings were made on multiple claims. Accordingly, the total number of claims on which findings were made is greater than the number of complaints in which findings were made.

Figure 10: Total Findings by Basis, FY 2017 – FY 2022



2. Issues

Consistent with previous years, the FY 2022 findings of discrimination involved complaints raising a myriad of issues, with no discernable pattern or trend. As indicated in Figure 11 below, the 23 findings of discrimination in FY 2022 involved the following ten issues: 1) Harassment (non-sexual); 2) Reasonable Accommodation; 3) Non-selection/Non-promotion 4) Disciplinary Action; 5) Time and Attendance; 6) Reassignment; 7) Termination; 8) Evaluation/appraisal; 9) Sexual Harassment; and 10) Training. As indicated above, the number of findings issued in FY 2022 is higher than the number of findings in FY 2021, so it follows that the number of issues raised in those findings would be higher than the previous year. As with protected bases, the total number of issues within the findings of discrimination may exceed the total number of findings issued, given that one decision may find discrimination regarding multiple issues. In FY 2022, there were increases in the number of issues raised from prior years; however, this is largely because of the increase in the number of FADs finding discrimination that were issued, and the decreases do not appear to signify any particular trend. See Figure 11.

Figure 11: Findings by Issue, FY 2017 – FY 2022

	2017	2018	2019	2020	2021	2022 ¹⁴	Total
Appointment/hire	0	0	1	2	0	0	3
Assignment of duties	9	1	1	11	2	--	24
Awards	0	0	0	2	0	0	2
Disciplinary action	0	2	4	8	2	3	19
Duty hours	0	0	0	0	0	--	0
Evaluation/appraisal	0	2	8	13	0	1	24
Examination/test	2	0	0	0	0	0	2
Harassment (non-sexual)	11	6	11	46	4	16	94
Harassment (sexual)	0	0	0	4	0	1	5
Medical Examination	2	3	0	2	0	0	7
Non-selection/non-promotion	2	1	3	15	0	4	25
Other Terms/conditions of employment	--	--	--	--	--	0	0
Pay/overtime	1	0	0	0	0	0	1
Reasonable accommodation	2	0	1	7	3	12	25
Reassignment	0	0	3	15	0	2	20
Telework	0	0	0	2	0	0	2
Termination	0	0	1	3	1	2	7
Terms/conditions of employment	4	3	7	6	1	--	21
Time and Attendance	0	2	0	1	4	3	10
Training	0	0	0	1	0	1	2

V. PRACTICAL KNOWLEDGE GAINED THROUGH EXPERIENCE, AND ACTIONS PLANNED OR TAKEN TO IMPROVE THE COMPLAINTS AND CIVIL RIGHTS PROGRAM

¹⁴ For FY 2022, the EEOC revised the list of issues so that assignment of duties, duty hours, and terms and conditions of employment were among several issues that were captured under the issue of “Other terms/conditions of employment.”

A. Improvements in the Department's EEO Program

During FY 2022, the Department continued to capitalize on program enhancements started in previous fiscal years and implemented new initiatives. CRCL broadened its collaborative work with the Department's EEO Directors and Component EEO offices in several areas.

1. Advancing Joint Opportunity Initiatives Through Implementation of the EEO and Diversity Program's Strategic Plan

The EEO Council continued in its efforts to advance the Council's FY 2020-2024 strategic plan, again aimed at achieving a unity of effort across the Department's EEO and Diversity programs. The strategic plan advances five goals: 1) integrate EEO and Diversity into agency operations, 2) develop the DHS EEO and Diversity workforce, 3) promote voluntary resolution of workplace disputes, 4) proactively prevent discrimination by addressing potential barriers to EEO and identifying emerging issues, and 5) optimize coordination to ensure effectiveness, efficiency, and legal compliance of Department and Component EEO and Diversity programs.

In FY 2022, CRCL and the Council were instrumental in guiding the Department's implementation of Executive Order (EO) 14043, *Requiring Coronavirus Disease 2019 Vaccination for Federal Employees*. Foreseeing an unprecedented volume of employee requests for exemptions from the vaccine mandate for medical or religious reasons, CRCL and the Council collaborated across the Department to devise a vaccine exemption board process to handle a large number of reasonable accommodation requests that promoted an appropriate level of consistency for similarly situated employees, consistent with the Department's legal obligations. The Department and its Components received approximately 20,000 vaccine exemption requests before a temporary court-ordered injunction suspended enforcement of the EO 14043 vaccine mandate. Although a nationwide temporary injunction barring the enforcement of EO 14043 paused the work of the vaccine exemption boards, the Council's efforts have positioned the Department to effectively handle the sizeable number of pending exemption requests, should the injunction be lifted and enforcement of EO 14043 resume.

During FY 2022, the ADR section received 475 requests for mediation, which is a 34 percent increase from the 356 requests received in FY 2021. As a result of mediations conducted across the Department, there were 52 settlements in FY 2022, compared to 46 settlements in FY 2021. Finally, the ADR section hosted two mandatory refresher trainings for the mediators who were already on the shared neutrals roster.

Figure 12: FY 2022 Mediations Conducted by Shared Neutrals

	Number of Times Used Shared Neutrals	Settlements
USCIS	14	3
CBP	272	30
FEMA	15	0
USCG¹⁵	0	0
ICE¹⁶	83	4
TSA	34	1
FLETC	13	0
HQ EEO	53	14
USSS	0	0
TOTAL	484 ¹⁷	52

2. Collaborating and Leading the Department’s Components

In addition to the EEO Directors’ Council’s monthly meetings, throughout FY 2022, CRCL led quarterly meetings with the Component EEO Complaint Managers, providing opportunities for Components’ input on agenda topics and encouraging and facilitating discussions. This regular collaboration between CRCL and Components proved key in strengthening relationships and enabling managers within this community to share challenges and provide input on solutions and best practices.

CRCL’s EEO compliance program monitors Components’ implementation of remedial relief following findings of discrimination and reports compliance progress to the EEOC for EEOC-issued decisions in which discrimination was found. CMAS continued its collaboration with the EEOC’s compliance officer to effectively address the Department’s oldest cases pending full implementation.

Throughout FY 2022, CRCL also provided Components an objective assessment of the quality of their EEO ROIs through the ROI Feedback Tool. Launched in FY 2016, the feedback tool enables CMAS to provide Components quarterly feedback on the quality (*i.e.*, legal sufficiency, organization, documentation, etc.) of their ROIs, whether prepared by internal personnel or by contractors. The feedback tool has been effective in improving the quality of investigation overall. Additionally, CMAS continued to disseminate aggregate information on the quality of contractor-produced ROIs within the DHS EEO program to all Components. This aggregate information continues to provide Components with a snapshot of CMAS’ assessments of the quality of ROIs issued by all contract firms and allows Components to make strategic

¹⁵ USCG and USSS do not utilize the Shared Neutrals roster as part of their ADR programs.

¹⁶ ICE and TSA primarily use contractors to provide mediation services for their ADR programs.

¹⁷ This number includes requests for mediation from FY 2021.

improvements and decisions regarding their future ROI contractual needs. Throughout FY 2022, CMAS also provided the Components with ROI Issuance Reports, which are monthly reports on cases coming due for action to ensure that CMAS received timely FAD requests.

CRCL is required to vet DHS employees nominated to receive certain high-level awards from DHS leadership. The vetting consists of a review of EEO complaint history to ensure there is no disqualifying information on the nominees, including having engaged in any discriminatory conduct. In FY 2022, CMAS processed 9 vetting requests, totaling over 900 employees, and completed 100 percent of vetting requests by their requested or extended due date.

3. Issuances of Merit FADs

Merit FADs are issued by CRCL after the following events have occurred: at the Component level, a complainant files a formal complaint alleging discrimination (after participating in EEO counseling), the Component accepts and investigates the complaint, and if a complainant does not request a hearing before an EEOC AJ, the Component sends a FAD request to CRCL. This request may be made because the complainant specifically requested a FAD, result from the filing of a mixed case,¹⁸ be requested by the Component because of the complainant's failure to make an election before the expiration of the post-investigation election period, or be ordered by an EEOC AJ after dismissal of the complaint from the hearing process. EEOC regulations, at 29 C.F.R. Part 1614, require most merit FADs to be issued within 60 days of election, or other event triggering the FAD request (the primary exception being mixed case FADs which are required to be issued in 45 days). Figure 13 shows CRCL's six-year trend in merit FAD issuances.

CRCL experienced a decrease in the number of incoming requests for merit FADs (510) in FY 2022, compared to those received in FY 2021 (567). CRCL's rate of timely FAD issuance increased significantly, from 19 percent (128 of 676) in FY 2021 to 48 percent (319 of 660) in FY 2022.¹⁹ And, the average processing days decreased by a remarkable 137 days to 191 days, when compared to the 328 average processing days in FY 2021.

¹⁸ A mixed case is a complaint of employment discrimination that stems from an action that can be appealed to the Merit Systems Protection Board. In accordance with 29 C.F.R. § 1614.302(d)(2), the agency must issue a FAD within 45 days of completion of the investigation of a mixed case.

¹⁹ In FY 2022, CRCL surpassed its goal to issue 51 percent of merit-based final actions within regulatory timeframes by issuing 68 percent (719 of 1065) timely final actions. These final actions included both merit FADs and Final Orders.

Figure 13: Merit FADs FY 2017 – FY 2022

	<i>2017</i>	<i>2018</i>	<i>2019</i>	<i>2020</i>	<i>2021</i>	<i>2022</i>
Backlog at Year End	149	172	311 ²⁰	407	178	3
Total FADs Issued	405	417	399	432	676	660
Number Timely Issued	105	152	83	74	128	319
Percentage Timely	26	37	21	17	19	48
Average Processing Days	207	173	238	315	328	191

In FY 2022, CRCL issued 660 merit FADs, which is a slight decrease from the 676 FADs issued in FY 2021, but it still is an impressive number of issuances. The high level of FAD issuances in FY 2021 and continuing into FY 2022 helped to effectively eliminate the outstanding FAD backlog, from 178 at the end of FY 2021 to three at the end of FY 2022. Those remaining three cases are expected to be issued in early FY 2023.

One reason for the significant increase in merit FAD issuances was the addition of new staff to the Complaints Management and Adjudication Section (CMAS) in CRCL. Specifically, a second Deputy Director for Complaints Adjudication was hired, along with two new FAD Analysts. The CMAS Director, who came on board in June 2021, continued to have a significant impact on the high number of FADs issued, placing a renewed focus on issuing timely FADs. CMAS also continued to use the services of two FAD drafting contracts. This additional support significantly improved FAD production by addressing outstanding FADs pending from prior fiscal years, while Analysts could focus on issuing timely FADs within the regulatory timeframe. As a result, the 660 FADs CRCL issued included 244 FADs drafted with contractor support.

CONCLUSION

The information in this report highlights the successes and challenges of the Department’s EEO program during FY 2022. Despite the year’s challenges, an impressive level of collaboration across the Department’s EEO programs continued through the collaboration of the EEO Directors’ Council, the ADR Shared Neutrals Program, the implementation of the ROI Issuance Reports, the continued use of the ROI Feedback Tool, regular engagement through the quarterly Complaint Managers meetings, and other initiatives.

²⁰ In FY 2019, CRCL changed the method by which the FAD backlog was calculated by defining the backlog as any FAD request that had been pending with CRCL for more than 60 days. In previous fiscal years, the backlog was defined as a pending FAD request that had not been assigned to an Analyst. The backlog would have been 257 if the former calculation method was used. This newer method, however, is a truer measure of the actual backlog inventory in CRCL.

Due to our commitment, resilience, and collaboration, the Department's EEO program continues to press forward and strengthen the Department's pursuit of a workplace free of discrimination and retaliation.

FY22 Annual No FEAR Act Report – Federal Court Cases

Department of Homeland Security

***Number of Cases Filed in Federal Court,
Pending or Resolved Under Section 724.302(a)(1)***

	TITLE VII	ADEA	EPA	REHABILITATION ACT	GINA	WHISTLEBLOWER
Number of cases filed, pending, or resolved	167	34	3	66	2	9

***Number of Cases and Reimbursement by Status
Under Section 724.302(a)(1-2)***

	TITLE VII	ADEA	EPA	REHABILITATION ACT	GINA	WHISTLEBLOWER
Cases pending hearing	88	18	1	36	1	4
Cases heard/pending decision	0	0	0	0	0	0
Decision issued in favor of the Complainant (either in its entirety or partial)	1	0	0	0	0	0
Decision issued in favor of the Agency	38	8	0	9	1	2
Arbitration/Mediation	0	0	0	0	0	0
Settlement	17	2	0	9	0	1
Appeal	23	4	0	7	0	1
Remand	0	0	0	0	0	0
Amount of Reimbursement	\$1,361,500.00	\$0	\$0	\$440,000.00	\$0	\$0
Amount of Reimbursement for Attorney Fees	\$62,500.00	\$37,500.00	\$0	\$37,500.00	\$0	\$0

Number of Employees Disciplined in Cases Under Section 724.302(a)(3)

	TITLE VII	ADEA	EPA	REHABILITATION ACT	GINA	WHISTLEBLOWER
Reprimand	0	0	0	0	0	0
Suspension without pay	0	0	0	0	0	2
Reduction of grade or pay	0	0	0	0	0	0
Removal	0	0	0	0	0	0

Number of Employees Disciplined, Whether or Not in Connection with Federal Cases Under Section 724.302(a)(5) (i.e. Including EEO Administrative Cases)

	TITLE VII	ADEA	EPA	REHABILITATION ACT	GINA	WHISTLEBLOWER
Reprimand	8	0	0	0	0	0
Suspension without pay	9	0	0	0	0	2
Reduction of grade or pay	0	0	0	0	0	0
Removal	4	0	0	0	0	0

Equal Employment Opportunity Data Posted Pursuant to the No Fear Act: DHS

For 4th Quarter 2022 for period ending September 30, 2022

Complaint Activity	Comparative Data					
	Previous Fiscal Year Data					2022Thru09-30
	2017	2018	2019	2020	2021	
Number of Complaints Filed	1275	1504	1300	1314	1152	1637
Number of Complainants	1227	1447	1261	1250	1086	1559
Repeat Filers	38	52	35	57	59	78
Complaints by Basis	Comparative Data					
	Previous Fiscal Year Data					2022Thru09-30
	2017	2018	2019	2020	2021	
<i>Note: Complaints can be filed alleging multiple bases. The sum of the bases may not equal total complaints filed.</i>						
Race	464	545	466	497	403	463
Color	194	201	162	202	146	211
Religion	61	68	55	58	64	529
Reprisal	645	768	669	710	627	689
Sex	465	526	471	496	401	517
PDA	13	19	17	15	15	16
National Origin	207	264	183	228	204	213

Equal Pay Act	11	6	3	4	4	2
Age	390	409	382	424	341	420
Disability	337	416	411	413	331	506
Genetics	4	6	4	6	9	29
Non-EEO	103	90	69	91	103	116
Complaints by Issue	Comparative Data					
	Previous Fiscal Year Data					2022Thru09-30
Note: Complaints can be filed alleging multiple bases. The sum of the bases may not equal total complaints filed. Starting in FY2022, issues marked with:* are reported under Other Terms / Conditions of Employment.** are reported under Other Disciplinary Actions.	2017	2018	2019	2020	2021	
Appointment/Hire	87	98	94	110	67	85
Assignment of Duties*	139	224	140	187	202	0
Awards	24	20	21	24	18	30
Conversion to Full Time/Perm Status*	1	0	0	0	0	0
Disciplinary Action						
Demotion	12	16	11	12	12	9
Reprimand**	79	81	60	65	57	0
Suspension	88	87	63	67	58	65
Removal	36	40	38	26	35	35
Disciplinary Warning**	0	0	0	0	0	0
Other Disciplinary Actions**	60	0	0	0	0	161
Other 2**	0	0	0	0	0	0
Duty Hours*	23	28	21	23	29	0

Perf. Eval./ Appraisal	150	150	137	130	132	136
Examination/Test	7	27	14	11	6	16
Harassment						
Non-Sexual	527	645	618	690	551	643
Sexual	46	70	47	52	31	49
Medical Examination	16	33	36	27	15	199
Pay including overtime	62	44	49	55	44	54
Promotion/Non-Selection	288	240	218	199	167	203
Reassignment						
Denied	34	32	22	23	16	28
Directed	53	56	42	38	27	50
Reasonable Accommodation Disability	100	114	130	122	88	117
Reinstatement*	3	7	2	2	2	0
Religious Accommodation	10	12	7	10	10	41
Retirement*	5	3	8	9	11	0
Sex-Stereotyping	1	1	0	1	0	0
Telework	20	21	12	29	21	28
Termination	113	155	129	135	102	111
Terms/Conditions of Employment*	173	235	172	127	119	0
Time and Attendance	98	105	103	96	124	116
Training	55	40	42	40	25	65
Other Terms/Conditions of Employment*	0	0	0	0	0	732
User Defined - Other 1*	0	0	0	0	0	0
User Defined - Other 2*	9	0	0	0	0	0
User Defined - Other 3*	2	0	0	0	0	0

User Defined - Other 4*	1	0	0	0	0	0
Processing Time	Comparative Data					
	Previous Fiscal Year Data					2022Thru09-30
	2017	2018	2019	2020	2021	
Complaints pending during fiscal year						
Average number of days in investigation	248.21	274.04	286.32	239.84	272.21	264.51
Average number of days in final action	137.42	108.31	124.96	160.91	200.36	117.86
Complaint pending during fiscal year where hearing was requested						
Average number of days in investigation	237.05	247.87	272.03	224.82	251.10	272.56
Average number of days in final action	70.40	68.06	73.65	89.13	83.48	76.02
Complaint pending during fiscal year where hearing was not requested						
Average number of days in investigation	264.53	308.53	301.97	264.85	298.72	249.25
Average number of days in final action	188.34	167.36	271.78	328.82	366.60	176.44
Complaints Dismissed by Agency	Comparative Data					
	Previous Fiscal Year Data					2022Thru09-30
	2017	2018	2019	2020	2021	
Total Complaints Dismissed by Agency	111	188	98	113	103	129
Average days pending prior to dismissal	213	271	187	309	218	247
Complaints Withdrawn by Complainants						
Total Complaints Withdrawn by Complainants	111	120	140	134	110	137

Total Final Agency Actions Finding Discrimination	Comparative Data											
	Previous Fiscal Year Data										2022Thru09-30	
	2017		2018		2019		2020		2021			
	#	%	#	%	#	%	#	%	#	%	#	%
Total Number Findings	14		9		15		46		14		23	
Without Hearing	12	86	4	44	15	100	21	46	10	71	16	70
With Hearing	2	14	5	56	0	0	25	54	4	29	7	30
Findings of Discrimination Rendered by Basis	Comparative Data											
	Previous Fiscal Year Data										2022Thru09-30	
	2017		2018		2019		2020		2021			
	#	%	#	%	#	%	#	%	#	%	#	%
<i>Note: Complaints can be filed alleging multiple bases. The sum of the bases may not equal total complaints and findings.</i>												
Total Number Findings	12		6		15		44		10		23	
Race	2	17	1	17	6	40	11	25	1	10	1	4
Color	0	0	1	17	1	7	4	9	0	0	1	4
Religion	0	0	0	0	0	0	0	0	0	0	0	0
Reprisal	7	58	6	100	5	33	22	50	3	30	17	74
Sex	4	33	2	33	5	33	14	32	3	30	2	15
PDA	0	0	0	0	0	0	1	2	0	0	0	0
National Origin	1	8	0	0	0	0	9	20	1	10	1	4
Equal Pay Act	0	0	0	0	0	0	0	0	0	0	0	0
Age	3	25	0	0	5	33	13	30	1	10	3	13
Disability	4	33	2	33	4	27	16	36	5	50	17	74
Genetics	0	0	0	0	0	0	0	0	0	0	0	0
Non-EEO	0	0	0	0	0	0	4	9	0	0	0	0

Findings After Hearing	2		5		4		25		4		7	
Race	1	50	1	20	1	25	5	20	0	0	1	14
Color	0	0	1	20	0	0	1	4	0	0	0	0
Religion	0	0	0	0	0	0	0	0	0	0	0	0
Reprisal	1	50	5	100	2	50	14	56	1	25	6	86
Sex	0	0	2	40	1	25	7	28	1	25	2	29
PDA	0	0	0	0	0	0	1	4	0	0	0	0
National Origin	0	0	0	0	0	0	6	24	0	0	2	29
Equal Pay Act	0	0	0	0	0	0	0	0	0	0	0	0
Age	0	0	0	0	0	0	8	32	0	0	2	29
Disability	0	0	2	40	1	25	11	44	2	50	5	71
Genetics	0	0	0	0	0	0	0	0	0	0	0	0
Non-EEO	0	0	0	0	0	0	2	8	0	0	0	0
Findings Without Hearing	10		1		11		19		6		16	
Race	1	10	0	0	5	45	6	32	1	17	0	0
Color	0	0	0	0	1	9	3	16	0	0	1	6
Religion	0	0	0	0	0	0	0	0	0	0	0	0
Reprisal	6	60	1	100	3	27	8	42	2	33	11	65
Sex	4	40	0	0	4	36	7	37	2	33	1	6
PDA	0	0	0	0	0	0	0	0	0	0	0	0
National Origin	1	10	0	0	0	0	3	16	1	17	1	6
Equal Pay Act	0	0	0	0	0	0	0	0	0	0	0	0
Age	3	30	0	0	5	45	5	26	1	17	1	6

Disability	4	40	0	0	3	27	5	26	3	50	7	41
Genetics	0	0	0	0	0	0	0	0	0	0	0	0
Non-EEO	0	0	0	0	0	0	2	11	0	0	0	0

Starting in FY2022, issues marked with:* are reported under Other Terms / Conditions of Employment.** are reported under Other Disciplinary Actions.

Findings of Discrimination Rendered by Issue	Comparative Data											
	Previous Fiscal Year Data										2022Thru09-30	
	2017		2018		2019		2020		2021		#	%
	#	%	#	%	#	%	#	%	#	%		
Total Number Findings	12		6		15		42		10		23	
Appointment/Hire	0	0	0	0	1	7	3	7	0	0	0	0
Assignment of Duties*	3	25	0	0	1	7	4	10	1	10	0	0
Awards	0	0	0	0	1	7	2	5	0	0	0	0
Conversion to Full Time/Perm Status*	0	0	0	0	0	0	0	0	0	0	0	0
Disciplinary Action												
Demotion	0	0	0	0	0	0	0	0	1	10	1	4
Reprimand**	0	0	0	0	0	0	1	2	0	0	0	0
Suspension	0	0	0	0	1	7	1	2	0	0	0	0
Removal	0	0	1	17	2	13	1	2	1	10	0	0
Other Disciplinary Actions**	0	0	0	0	0	0	0	0	0	0	0	0
Duty Hours*	0	0	0	0	0	0	0	0	0	0	0	0
Perf. Eval./ Appraisal	0	0	1	17	2	13	8	19	0	0	1	4
Examination/Test	1	8	0	0	0	0	0	0	0	0	0	0
Harassment												
Non-Sexual	4	33	2	33	6	40	19	45	3	30	10	42

Findings Without Hearing	10		1		11		18		6		16	
Appointment/Hire	0	0	0	0	1	9	0	0	0	0	0	0
Assignment of Duties*	3	30	0	0	0	0	1	6	1	17	0	0
Awards	0	0	0	0	0	0	1	6	0	0	0	0
Conversion to Full Time/Perm Status*	0	0	0	0	0	0	0	0	0	0	0	0
Disciplinary Action												
Demotion	0	0	0	0	0	0	0	0	0	0	0	0
Reprimand**	0	0	0	0	0	0	1	6	0	0	0	0
Suspension	0	0	0	0	1	9	0	0	0	0	0	0
Removal	0	0	0	0	1	9	0	0	1	17	0	0
Other Disciplinary Actions**	0	0	0	0	0	0	0	0	0	0	0	0
Duty Hours*	0	0	0	0	0	0	0	0	0	0	0	0
Perf. Eval./ Appraisal	0	0	0	0	2	18	3	17	0	0	1	6
Examination/Test	1	10	0	0	0	0	0	0	0	0	0	0
Harassment												
Non-Sexual	4	40	0	0	4	36	7	39	3	50	8	47
Sexual	0	0	0	0	0	0	4	22	1	17	1	6
Medical Examination	0	0	0	0	0	0	1	6	0	0	0	0
Pay including overtime	0	0	0	0	0	0	0	0	0	0	0	0
Promotion/Non-Selection	0	0	1	100	1	9	5	28	0	0	3	18
Reassignment												
Denied	0	0	0	0	0	0	0	0	0	0	0	0
Directed	0	0	0	0	1	9	2	11	0	0	0	0

Reasonable Accommodation Disability	1	10	0	0	2	18	1	6	1	17	3	18
Reinstatement*	0	0	0	0	0	0	0	0	0	0	0	0
Religious Accommodation	0	0	0	0	0	0	0	0	0	0	0	0
Retirement*	0	0	0	0	0	0	0	0	0	0	0	0
Sex-Stereotyping	0	0	0	0	0	0	0	0	0	0	0	0
Telework	0	0	0	0	0	0	1	6	0	0	0	0
Termination	1	10	0	0	0	0	0	0	0	0	0	0
Terms/Conditions of Employment*	3	30	0	0	3	27	2	11	0	0	0	0
Time and Attendance	0	0	0	0	0	0	1	6	1	17	1	6
Training	0	0	0	0	1	9	0	0	0	0	0	0
Other Terms/Conditions of Employment*	0	0	0	0	0	0	0	0	0	0	4	24
User Defined - Other 1*	0	0	0	0	0	0	0	0	0	0	0	0
User Defined - Other 2*	0	0	0	0	0	0	0	0	0	0	0	0
User Defined - Other 3*	0	0	0	0	0	0	0	0	0	0	0	0
User Defined - Other 4*	0	0	0	0	0	0	0	0	0	0	0	0
Pending Complaints Filed in Previous Fiscal Years by Status	Comparative Data											
	Previous Fiscal Year Data					2022Thru09-30						
	2017	2018	2019	2020	2021							
Total complaints from previous Fiscal Years	2083	2092	2169	2045	1654	1184						
Total Complainants	1914	1892	1984	1885	1517	1110						

Number complaints pending						
Investigation	214	90	114	88	163	257
ROI issued, pending Complainant's action	28	24	32	10	15	5
Hearing	1590	1597	1488	1302	1069	802
Final Agency Action	215	308	500	596	381	124
Appeal with EEOC Office of Federal Operations	818	978	1187	1364	1415	1404
Complaint Investigations	Comparative Data					
	Previous Fiscal Year Data					2022Thru09-30
	2017	2018	2019	2020	2021	
Pending Complaints Where Investigations Exceed Required Time Frames	228	169	136	120	243	377

GLOSSARY OF TERMS

ADR	Alternative Dispute Resolution
AJ	Administrative Judge
CBP	U.S. Customs and Border Protection
CMAS	Complaints Management and Adjudication Section
CRCL	Office for Civil Rights and Civil Liberties
CISA	Cybersecurity Infrastructure and Security Agency
EEOC	U.S. Equal Employment Opportunity Commission
FAD	Final Agency Decision
FEMA	Federal Emergency Management Agency
FLETC	Federal Law Enforcement Training Centers
FO	Final Order
HQ EEO	Headquarters EEO Office
ICE	U.S. Immigration and Customs Enforcement
ROI	Report of Investigation
TSA	Transportation Security Administration
USCIS	U.S. Citizenship and Immigration Services
USCG	U.S. Coast Guard
USSS	U.S. Secret Service