



U.S. Department of Homeland Security

No FEAR Act Annual Report

Fiscal Year 2009



Homeland
Security

Office for Civil Rights and Civil Liberties

April 21, 2010



**Homeland
Security**

April 21, 2010

The Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (No FEAR Act) is intended to reduce the incidence of workplace discrimination within the Federal government by making agencies and departments more accountable. The U.S. Department of Homeland Security's (DHS) overriding and urgent mission is to lead the unified national effort to secure the country and preserve our freedoms. In order to maximize its effectiveness, DHS seeks to achieve an exemplary Equal Employment Opportunity (EEO) program.

Section 203 of the No FEAR Act specifically requires that, not later than 180 days after the end of each fiscal year, each Federal agency submit an annual report to the Speaker of the House of Representatives, the President Pro Tempore of the Senate, the Committee on Governmental Affairs of the Senate, the Committee on Government 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. The No FEAR Act Annual Report is required to include specific information relating to each agency's EEO complaints activity (including Federal district court cases) and resulting disciplinary actions, Judgment Fund reimbursements, adjustments to agency budgets to meet reimbursement requirements, as well as an analysis of trends, causation, and practical knowledge gained through experience. 5 C.F.R. Part 724 provides further guidance on each agency's reporting obligations, and also requires the submission of the annual report to the Director of U.S. Office of Personnel Management (OPM) for the implementation of a best practices study and the issuance of advisory guidelines.

Pursuant to statutory requirements, this report is being provided to the following members of the 111th United States Congress:

The Honorable Joseph R. Biden
President of the Senate

The Honorable Robert Byrd
President pro tempore, U.S. Senate

The Honorable Nancy Pelosi
Speaker of the House of Representatives

The Honorable Joseph I. Lieberman
Chairman, Senate Committee on Homeland Security and Governmental Affairs

The Honorable Bennie G. Thompson
Chairman, House Committee on Homeland Security

The Honorable Edolphus Towns
Chairman, House Committee on Oversight and Government Reform

The Honorable Susan M. Collins
Ranking Member, Senate Committee on Homeland Security and Governmental Affairs

The Honorable Darrell Issa
Ranking Member, House Committee on Oversight and Government Reform

The Honorable Peter T. King
Ranking Member, House Committee on Homeland Security

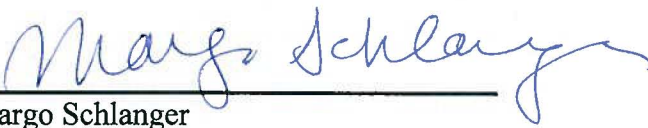
Pursuant to statutory requirements, this report is being provided to the following members of the Executive Branch:

The Honorable Stuart J. Ishimaru
Acting Chairman, U.S. Equal Employment Opportunity Commission


The Honorable Eric H. Holder
Attorney General, U.S. Department of Justice

The Honorable John Berry
Director, U.S. Office of Personnel Management

This No FEAR Act Report was prepared by the DHS Office for Civil Rights and Civil Liberties (CRCL) and no one else, pursuant to Congressional requirements.



Margo Schlanger
Officer for Civil Rights and Civil Liberties
U.S. Department of Homeland Security



Stephen T. Shih
Deputy Officer, and Director for EEO and Diversity Programs
Office for Civil Rights and Civil Liberties
U.S. Department of Homeland Security

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**Message from the
Officer for Civil Rights and Civil Liberties
U.S. Department of Homeland Security**

It is my privilege to present the U.S. Department of Homeland Security's (DHS) Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (No FEAR Act) Annual Report for Fiscal Year (FY) 2009. The No FEAR Act is intended to reduce the incidence of workplace discrimination within the Federal Government by making agencies and departments more accountable. This report summarizes DHS's most significant FY 2009 No FEAR Act accomplishments, and helps demonstrate the Department's strong commitment to abide by merit systems principles, provide protection from prohibited personnel practices, and promote accountability.

The Office for Civil Rights and Civil Liberties (CRCL) supports the Department as DHS secures the nation while preserving individual liberty, fairness, and equality under the law. CRCL's mission includes helping DHS promote full equal employment opportunity (EEO) for all employees and applicants while promoting workforce diversity and merit system principles. We accomplish this mission in coordination with DHS Operational Component EEO and Civil Rights Offices. During FY 2009, DHS achieved a number of successes in promoting EEO and workforce diversity and inclusion. These accomplishments helped optimize our Department's effectiveness across our missions in: preventing terrorism and enhancing security; securing and managing our borders; enforcing and administering our immigration laws; safeguarding and securing cyberspace; and ensuring resilience to disasters.

DHS's EEO complaints processing program demonstrated noteworthy improvement during FY 2009. Specifically, DHS successfully increased the completion of EEO investigations during FY 2009 (861 investigations completed in FY 2009 compared to 787 investigations completed in FY 2008), and simultaneously increased the number of timely-completed investigations (561 timely investigations in FY 2009 compared to 448 timely investigations in FY 2008) (Agencies are generally required to complete EEO investigations within 180 days of the date complaints are filed). Additionally, DHS decreased its EEO complaint adjudication inventory by 23% from FY 2008, largely as a result of streamlined processes, strong internal controls, and enhanced performance. DHS issued 1,071 Final Actions in FY 2009 – a 39.6% increase over the 767 Final Actions issued by DHS in FY 2008. Moreover, DHS achieved these processing improvements while also improving the quality of EEO products and services.

The Department further emphasized in numerous other ways our continued commitment to EEO and merit systems compliance. During FY 2009, DHS developed and achieved a number of strategic objectives to promote EEO and diversity management, including the following: posting a No FEAR Act Notice; developing and delivering Department-wide No FEAR Act training; implementing a new anti-harassment management directive; re-constituting the DHS Diversity Planning and Policy Subcouncil to develop a new proposed Diversity Management and Inclusion Strategic Plan; implementing a 120-day Diversity Action Plan; implementing a new Management Directive on Employee Affinity Groups; conducting headquarters and component diversity forums and training; procuring a new EEO complaint automated database;

demonstrating Department-wide commitment to the hiring of veterans and disabled veterans (including a DHS on-boarding goal of 50,000 veterans by the end of FY 2012); and demonstrating a Department-wide commitment to the recruitment, development, advancement, and retention of women, minorities, and individuals with disabilities through effective diversity management and inclusion strategies, including continuing outreach and job-marketing activities to reach organizations, colleges, and universities serving a diverse pool of potential new employees.

I am pleased about the progress made in FY 2009, and I am fully committed to achieving even greater successes in the following months. Thank you for your attention to this report and for your support of DHS.

A handwritten signature in blue ink that reads "Margo Schlanger". The signature is written in a cursive, flowing style.

Margo Schlanger
Officer for Civil Rights and Civil Liberties
U.S. Department of Homeland Security

Executive Summary

The No FEAR Act is intended to reduce the incidence of workplace discrimination within the Federal government by making agencies and departments more accountable. Section 203 of the No FEAR Act specifically requires that, not later than 180 days after the end of each fiscal year, each Federal agency submit, to certain Congressional committees and members, an annual report with the following information: EEO complaints activity (including Federal district court cases) and resulting disciplinary actions; Judgment Fund reimbursements; adjustments to agency budgets to meet reimbursement requirements; and an analysis of trends, causation, and practical knowledge gained through experience. This No FEAR Act Annual Report covers Fiscal Year (FY) 2009, from October 1, 2008 to September 30, 2009, and is to be issued by March 29, 2010.

At the U.S. Department of Homeland Security (DHS), Secretary Janet Napolitano, Deputy Secretary Jane Holl Lute, and other senior DHS leaders demonstrate a strong commitment to abide by merit systems principles, provide protection from prohibited personnel practices, and promote accountability. DHS's Office for Civil Rights and Civil Liberties (CRCL), under the leadership of the Officer for CRCL, Margo Schlanger, provides technical and policy advice to Secretary Napolitano and senior DHS leadership on civil rights and civil liberties issues, and directs the Department's EEO and diversity management programs.

During FY 2009, CRCL continued to partner with the DHS Undersecretary for Management, the DHS Office of the Chief Human Capital Officer (OCHCO), DHS Operational Component EEO and Civil Rights Offices, and other internal and external stakeholders to promote merit system principles and workforce diversity. Within CRCL, the Deputy Officer/Director for EEO and Diversity Programs ("Deputy Officer"), Stephen Shih, is responsible for leading the development of EEO and diversity plans, monitoring implementation, adjudicating EEO complaints, and submitting annual progress reports including this No FEAR Act Annual Report.

During FY 2009, DHS undertook significant strategic initiatives to promote EEO and diversity management, including: posting a No FEAR Act Notice; developing and delivering Department-wide No FEAR Act training; implementing a new anti-harassment management directive; providing technical guidance to Component EEO Offices' development of anti-harassment and reasonable accommodation procedures; re-constituting the DHS Diversity Planning and Policy Subcouncil to develop a new proposed Diversity Management and Inclusion Strategic Plan; implementing a 120-day Diversity Action Plan; providing guidance to Component diversity offices' development of diversity management strategic plans; implementing a new Management Directive on Employee Affinity Groups; conducting diversity forums and training; implementing the Secretary's initiative for DHS to employ 50,000 veterans by the end of FY 2012; conducting substantial outreach to minority-serving institutions; and procuring a new EEO complaint automated database.

DHS achieved noteworthy successes in EEO complaint processing during FY 2009, and strongly enhanced the efficiency and quality of EEO products and services. DHS improved EEO investigations, completing 74 more investigations during FY 2009 (from 787 in FY 2008 to 861 in FY 2009) and increasing by 113 the number of timely-completed EEO investigations (from 448 timely investigations in FY 2008 to 561 timely investigations in

FY 2009). Additionally, we decreased our EEO complaint adjudication inventory by 23% (from 567 at the beginning of FY 2009 to 437 at the end of FY 2009), by issuing 1,071 Final Actions in FY 2009 – a 39.6% increase over the 767 Final Actions issued in FY 2008. This Final Action production included a 241% increase in the issuances of Final Agency Decisions (FADs) (i.e., procedural dismissals and merit decisions where no EEOC hearing is requested) – from 86 FADs in FY 2008 to 302 FADs in FY 2009.

During FY 2009, DHS received 1,457 complaints – an increase of 312 complaints (27.25%) over the number of complaints filed in FY 2008; this increase is entirely attributable to the filing of 359 EEO complaints as a result of the closure of a Federal Emergency Management Agency (FEMA) facility in Puerto Rico; all 359 complaints involved the same issues, and were filed with the assistance of the same lawyer. Without this large group of individual complaints, DHS would have received a total of 1,098 formal EEO complaints filed during FY 2009 – 47 fewer than the number filed in FY 2008 (1,145), and a number more consistent with the number of complaints filed in FY 2007 (1,086) and FY 2006 (1,083).

DHS experienced a slight increase in the number of discrimination findings made in FY 2009 over the number of findings made during FY 2008 (23 findings in FY 2009, compared to 21 findings in FY 2008). The FY 2009 findings also reflected only small shifts in the total numbers of bases of discrimination and issues alleged (i.e., bases of reprisal, race, and gender, and issues of non-sexual harassment and non-selection). A review of DHS's FY 2009 EEO complaint data does not indicate any systemic EEO issues or trends.

During FY 2009, DHS had 145 pending civil actions in Federal district court (including 67 filed in FY 2009) involving the various laws covered in the No FEAR Act. During FY 2009, Federal court judges issued 74 decisions with the following results: one case was decided in favor of the complainant; 55 cases were decided in favor of the Department; and 18 led to settlements.

In FY 2009, DHS's Judgment Fund reimbursement totaled \$1,223,800.00, while the amount of reimbursement for attorneys' fees in that same time period totaled \$108,920.00. During FY 2009, DHS disciplined a total of two employees for discrimination, retaliation, harassment, or any other infraction of any provision of law covered by the No FEAR Act.

I. Legislative Requirement

This document responds to the reporting requirements set forth in Section 203 of the No FEAR Act (Pub. L. No. 107-174), which states:

(a) Annual Report. – Subject to subsection (b), 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 Governmental Affairs of the Senate, the Committee on Government 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 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) 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.

5 C.F.R. § 724.302 provides further guidance on each agency's reporting obligations, and also requires the submission of the annual report to the Director of the U.S. Office of Personnel Management (OPM) for the implementation of a best practices study and the issuance of advisory guidelines.

II. Background

DHS's overriding and urgent mission is to lead the unified national effort to secure the country and preserve our freedoms. In order to maximize its effectiveness, DHS seeks to achieve an exemplary EEO program. DHS was established through the Homeland Security Act of 2002, Pub. L. No. 107-296, (*see* http://www.dhs.gov/xlibrary/assets/hr_5005_enr.pdf), of which Section 103(d)(5) required the appointment of an Officer for Civil Rights and Civil Liberties ("Officer"). On June 5, 2003, the Secretary of DHS delegated authority to the Officer to lead the Department's EEO Programs and Diversity Initiative, and on August 1, 2006, the Officer sub-delegated this responsibility to the Deputy Officer for EEO and Diversity Programs, in CRCL.

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

1. Advising Department leadership, personnel, and partners about civil rights and civil liberties issues, ensuring respect for civil rights and civil liberties in policy decisions and implementation of those decisions.
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 and resolving civil rights and civil liberties complaints filed by the public.
4. Leading the Department's EEO programs and promoting workforce diversity and merit system principles.

CRCL provides Departmental guidance and standards for establishing and maintaining effective programs for diversity management and EEO, as required under both Title VII of the Civil Rights Act of 1964 ("Title VII"), as amended, 42 U.S.C. § 2000(e) *et seq.*, and Section 501 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 791 *et seq.* To meet this objective, the Deputy Officer for EEO and Diversity Programs and his staff develop policies and plans, deliver training, conduct oversight, adjudicate EEO complaints, and submit annual reports to important stakeholders including Congress, the White House Initiatives Offices, the Department of Justice, the Equal Employment Opportunity Commission, and the Office of Personnel Management.

III. Results/Data

A. Current Status of EEO Programs and Overview of Initiatives

1. *Number of Cases Filed in Federal Court, Pending or Resolved during FY 2009, Arising under the Various Anti-Discrimination and Whistleblower Protection Statutes Listed in the No FEAR Act.*

During FY 2009, DHS had 145 cases in Federal court, pending or resolved under the laws covered in the No FEAR Act. The majority of those Federal district court filings arose under Title VII (109), followed by filings under the Age Discrimination in Employment Act (ADEA) (32), Rehabilitation Act (20), the Equal Pay Act (5), and under Whistleblower Protection statutes (6). Of the 145 cases, 67 were filed in FY 2009.

During FY 2009, Federal court judges issued 74 decisions with the following results: one case was decided in favor of the complainant; 55 cases were decided in favor of the Department, and 18 led to settlements. For further information regarding FY 2009 employment discrimination and whistleblower cases filed in Federal court against DHS, *see* Appendix 1.

2. *Reimbursement to Judgment Fund*

During FY 2009, DHS reimbursed the Judgment Fund in the total amount of \$1,223,800.00 while the amount of reimbursement for attorneys' fees in that same time period totaled \$108,920.00. The bulk of the reimbursement to the Judgment Fund derived from cases filed under Title VII, in the amount of \$1,192,500.00. Cases involving the ADEA led to a \$26,300.00 reimbursement to the Judgment Fund, while Rehabilitation Act cases were responsible for a \$5,000.00 reimbursement. With respect to attorneys' fees, Title VII cases involved a total amount of \$93,720.00, and ADEA cases resulted in \$15,200.00.

3. *Disciplinary Actions*

At DHS, disciplinary action is determined on a case-by-case basis, depending on the specific facts or circumstances at issue. During FY 2009, DHS disciplined a total of two employees – issuing them reprimands for discrimination, retaliation, harassment, or any other infraction of any provision of law covered by the No FEAR Act.

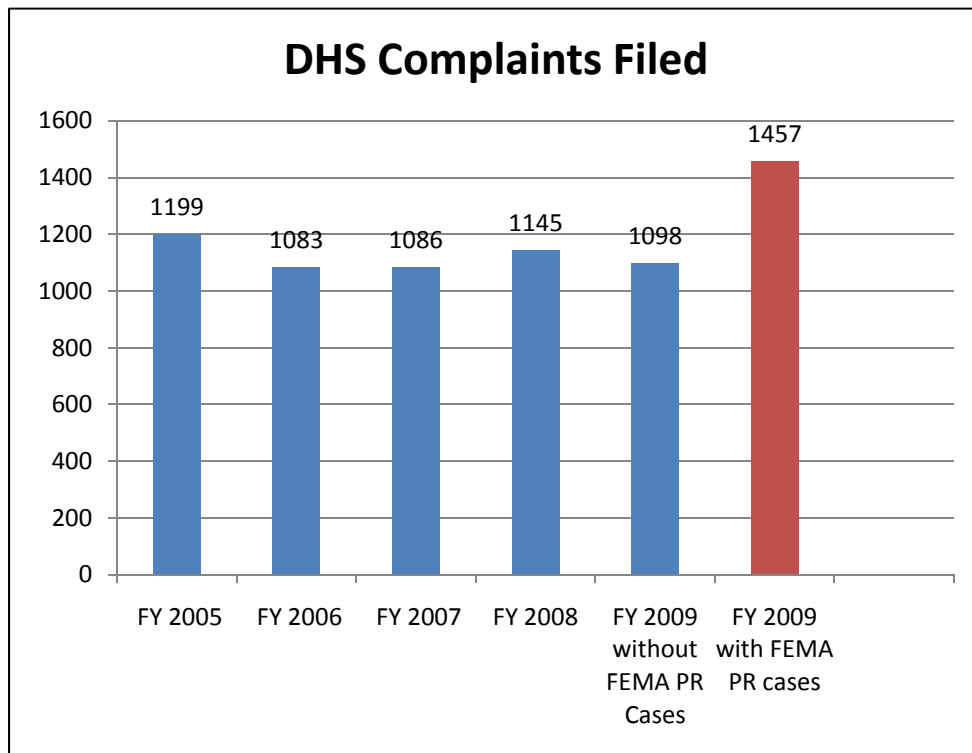
4. *EEO Complaint Data*

See Appendix 2 for DHS No FEAR Act web posting data for FY 2009.

IV. Analysis of Trends/Causality

A. EEO Complaint Activity

During FY 2009, DHS experienced an increase from FY 2008 in the aggregate number of filed EEO complaints; however, this increase does not signal a worsening in DHS's workplace conditions nor does this increase indicate any systemic EEO issues. Specifically, although DHS received 1,457 complaints during FY 2009 – an increase of 312 complaints (27.25%) over the number of complaints filed in FY 2008 – this increase is entirely attributable to the filing of 359 EEO complaints as a result of the closure of the Federal Emergency Management Agency (FEMA) Puerto Rico National Processing Services Center (PRNPSC); all 359 complaints involved the same issues, and were filed with the assistance of the same lawyer. In conducting an appropriate trend analysis – setting aside the one-time closure of the FEMA facility, a singular event which does not establish a trend or pattern – DHS received 1,098 formal EEO complaints during FY 2009, 47 fewer than the number filed in FY 2008 (1,145), and a number more consistent with the number of DHS EEO complaints filed in FY 2007 (1,086) and FY 2006 (1,083). The DHS workforce increased from approximately 179,871 employees in FY 2008 to 189,507 employees in FY 2009. As discussed in the next section on the following page, the FEMA PRNPSC complaints also skewed DHS's FY 2009 data on the most-frequently alleged bases of discrimination, sharply increasing the number of complaints alleging national origin discrimination and reprisal. (Note: our trend analysis focuses on specifically identifying any patterns or systemic issues, and does not represent any prejudice about the severity or pervasiveness of the matters involved in the FEMA PRNPSC cases, which are pending litigation.)



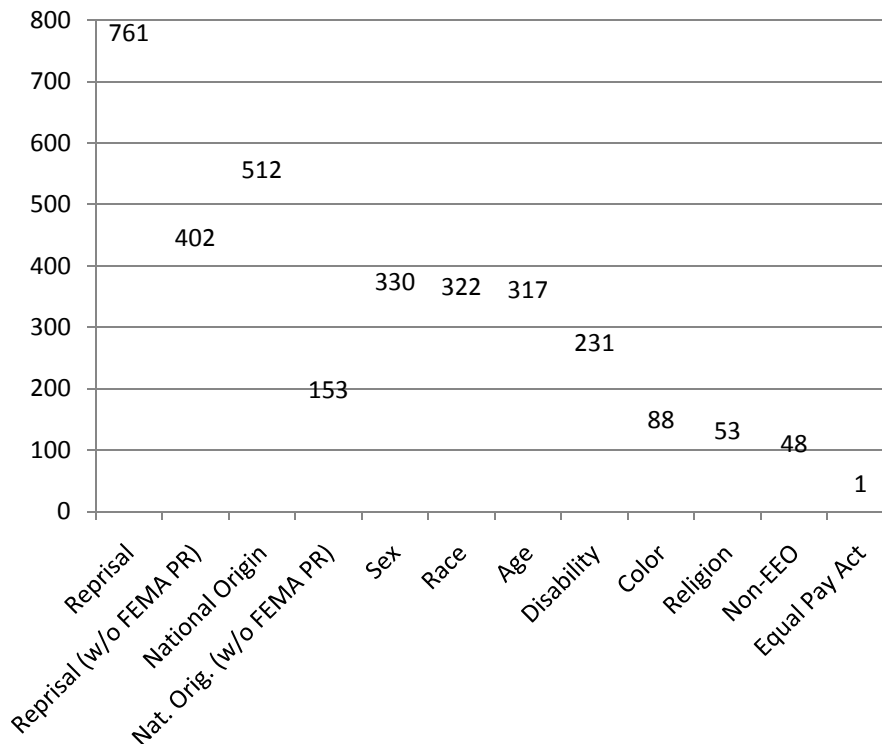
B. Bases of Discrimination in EEO Complaints

During FY 2009, DHS's most-frequently alleged bases of discrimination raised in formal EEO complaints involved reprisal, national origin, and sex (listed in order of frequency) – with significant increases in the numbers of complaints alleging reprisal and national origin, again directly attributable to the FEMA PRNPSC complaints filed in FY 2009 as a result of an isolated event. Omitting the PRNPSC complaints in order to analyze trends, DHS's FY 2009 EEO other complaints data reflects: a decrease in the number of retaliation claims from FY 2008; a lower number of national origin claims filed than in each of the previous fiscal years; a decreased number of gender claims from FY 2008; and fairly consistent complaint activity involving other bases of alleged discrimination. These trends are significant because they show DHS's EEO complaint activity has generally decreased despite an increase in DHS's workforce during FY 2009 (from approximately 179,871 employees in FY 2008 to approximately 189,507 employees in FY 2009). The following provides a more detailed analysis of specific bases of discrimination.

1. Reprisal (or retaliation) claims were raised in 761 complaints, and constituted the basis of discrimination most frequently alleged in DHS EEO complaints during FY 2009. DHS experienced the filing of 761 reprisal claims in FY 2009 – an increase of 329 formal complaints from FY 2008; however, this increase in reprisal is again attributable to the 359 FEMA PRNPSC complaints which all alleged reprisal. Omitting the PRNPSC complaints in order to analyze trends, DHS's EEO complaints data indicate DHS received 402 other reprisal complaints during FY 2009 – a number comparable with reprisal claims raised in DHS complaints filed during FY 2006 (391), FY 2007 (389), and FY 2008 (432). The leading frequency of reprisal claims at DHS is consistent with Government-wide trends for reprisal claims, which constitute the most-frequently alleged basis of discrimination throughout the Federal Government from FY 2004 to FY 2008. *See Equal Employment Opportunity Commission's (EEOC) Annual Report on the Federal Workforce FY 2008* (<http://www.eeoc.gov/federal/reports/fsp2008/fsp2008.pdf>).
2. During FY 2009, DHS's national origin claims dramatically increased, becoming the second most-frequently raised basis of discrimination at DHS during any fiscal year of DHS's existence (during FY 2009, DHS received 512 complaints alleging national origin discrimination while DHS received the following numbers of national origin complaints in the years prior to FY 2009: 175 complaints in FY 2008; 158 complaints in FY 2007; 193 complaints in FY 2006; and 197 complaints in FY 2005); again, this spike in allegations of national origin discrimination is directly related to the 359 FEMA PRNPSC complaints filed in FY 2009, all of which raised national origin claims. Omitting the PRNPSC complaints in order to analyze trends, DHS received 153 other national origin complaints during FY 2009 – a number actually lower than the number of national origin complaints filed in previous fiscal years.

3. During FY 2009, DHS received 330 complaints alleging discrimination on the basis of gender, a decrease of 55 cases from FY 2008. Since FY 2005, sex discrimination claims have numbered in the top three most-frequently filed bases of discrimination.
4. DHS's FY 2009 EEO complaints data regarding the remaining bases of discrimination reflect certain shifts and trends, but mostly does not show any significant increase in complaints filed on certain bases when considering the large size of the Department's aggregate workforce (approximately 189,507 employees) and the Department's increased workforce from FY 2008 (approximately 179,871 employees). The following lists some additional observations:
 - a. Race claims: raised in 322 complaints, an increase of 24 complaints from FY 2008.
 - b. Age discrimination claims: raised in 317 complaints – slightly fewer than the 321 age claims filed in FY 2008.
 - c. Disability claims: raised in 231 complaints – slightly fewer than the 238 disability claims filed during FY 2008.
 - d. Color claims: raised in 88 complaints – four fewer than FY 2008.
 - e. Religious claims: raised in 53 complaints – five more than FY 2008.
 - f. Equal Pay Act claim: raised in one complaint – two fewer than FY 2008, and six fewer than FY 2007.
 - g. Non-EEO claims: tripled during FY 2009 – with 48 claims raised in FY 2009 compared to 16 claims raised in FY 2008. DHS's non-EEO claims have fluctuated significantly in prior years, however (i.e., 24 claims in FY 2007, 44 claims in FY 2006, and 16 claims in FY 2005). The increase of 32 non-EEO claims is not significant given the size of the Department's workforce.

Bases of Discrimination FY 2009

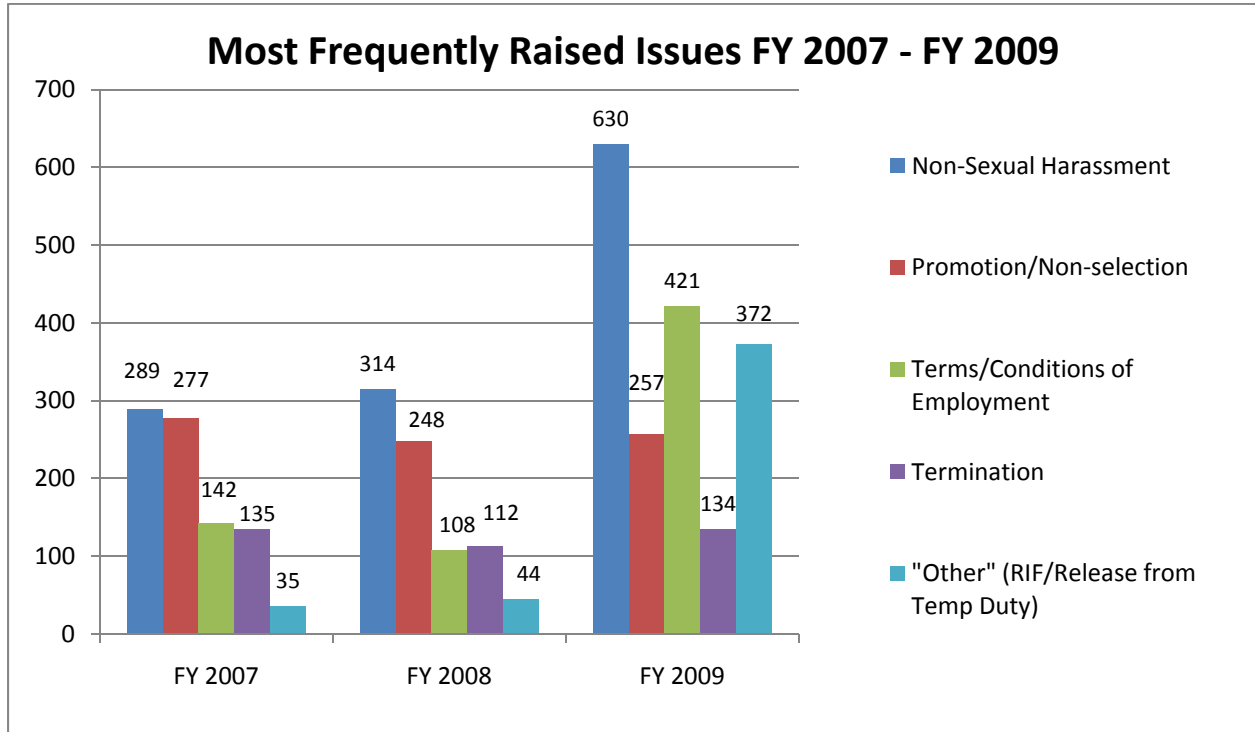


C. Issues in EEO Complaints

1. The two most-frequently raised issues in discrimination complaints during FY 2009 involved non-sexual harassment¹ (raised in 630 complaints), and terms and conditions of employment (raised in 421 complaints). As previously discussed, the frequency of these two issues spiked during FY 2009 as a result of the 359 FEMA PRNPSC cases; however, notwithstanding the PRNPSC cases, these two issues have consistently ranked among the three highest issues in discrimination claims at DHS over the past three fiscal years. The prevalence of these issues at DHS is consistent with Government-wide trends (i.e., these two issues ranked among the three most-frequently raised issues in discrimination complaints throughout the Federal Government from FY 2004 to FY 2008, as reported in the EEOC's *Annual Report on the Federal Workforce FY 2008*).
2. Uncategorized issues (identified as "other") were raised in 372 complaints, ranking third among the issues most-frequently raised during FY 2009; however, nearly all of these allegations resulted from the reduction-in-force and release from temporary duty issues

¹ The No FEAR Act requires reporting of complaints involving sexual harassment (i.e., gender-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., race, gender, national origin, color, religion, age, disability, or reprisal).

raised in the 359 FEMA PRNPSC complaints. Temporary duty releases are almost unique to FEMA’s workforce and disaster mission. In previous years, and without the PRNPSC complaints, DHS’s EEO complaints data reflects the “other” category in far fewer complaints (i.e., 13 in FY 2009; 44 in FY 2008; 35 in FY 2007; 28 in FY 2006; and 96 in FY 2005).



D. Actions Planned/Taken to Improve the Complaints Adjudication and Complaints Management Functions Within DHS

1. EEO Investigations

During FY 2009, the Department made significant progress in improving the production, timeliness, and average processing time of EEO investigations for complaints pending during FY 2009. The Federal EEO Statistical Report on Discrimination Complaints (“462 Report”) shows marked progress in the total number and percentage of timely-completed DHS EEO investigations. For example, in FY 2008, DHS completed 787 investigations, of which 448 were timely completed (57%); in FY 2009, DHS improved both the number of investigations and the portion that were timely completed: 861 investigations were completed, of which 561 were timely completed (65%). DHS has demonstrated steady improvement in the number of timely-completed investigations since 2005.

2. Dismissals of EEO Complaints

An agency may dismiss a complaint for several reasons, including: a complainant’s failure to state a claim; untimely initial contact with an EEO counselor; or failure to provide necessary

information to the agency. *See* 29 C.F.R. § 1614.107(a). During FY 2009, DHS issued 204 dismissals in an average of 241 days – an issuance rate slightly higher than in FY 2008, in which 247 dismissals were issued in an average of 220 days. CRCL is working closely with DHS Component EEO Offices to apply more expedient methods for electronic submission of requests for dismissal to CRCL. Additionally, CRCL is currently reviewing and improving internal processes to maximize efficiencies and lessen timeframes for issuance of dismissals.

3. *Final Agency Decisions (without EEOC hearing)*

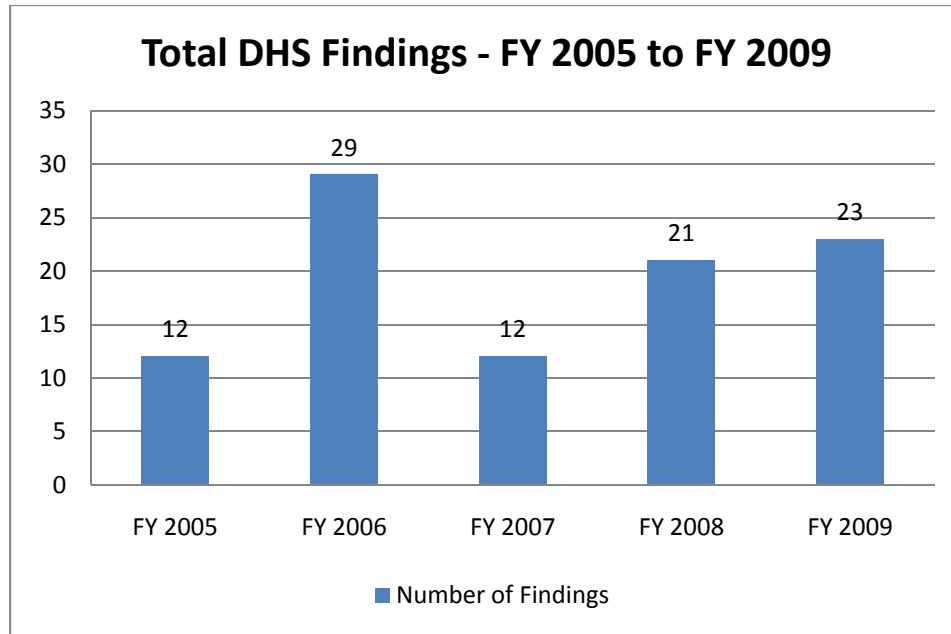
During FY 2009, DHS achieved tremendous improvement in Final Agency Decision (FAD) productivity. Specifically, DHS issued a total of 302 FADs, in an average of 847 days, compared to 86 FADs issued in FY 2008, in an average of 968 days – a 241% increase in FAD production. The Department continues to identify and apply a number of strategic solutions to improve the timely and efficient issuance of all Final Actions and to reduce the inventory of aged complaints pending issuance of a Final Agency Decision. DHS continues to build upon the training and procedural improvements leveraged during FY 2009 to demonstrate new successes in FY 2010.

E. Findings of Discrimination

Section 203(a)(7) of the No FEAR Act requires federal agencies to undertake an examination of trends and causes behind the data in the report. The following survey of DHS's findings of discrimination from FY 2005 to FY 2009 analyzes DHS's EEO complaint trends and causes based on the overall number of findings at the Department, the protected bases upon which the findings were made, and the types of claims or issues involved in the findings during this period. FY 2009 does not show any systemic EEO issues or trends compared to prior years. Although DHS findings in FY 2009 reveal minor fluctuations in the protected bases and claims involved, these differences do not rise to the level of a discernable trend.

1. *Overall Number of Findings*

The overall number of findings issued in FY 2009 does not reveal a trend. During FY 2009, DHS processed 23 findings of discrimination – a slight increase from DHS's 21 findings of discrimination in FY 2008, and a moderate increase over the average annual number of findings (19) from FY 2005 to FY 2008. This small increase in the number of findings in FY 2009 does not reveal a statistically-significant trend, however, because the findings involved varying bases and claims from four different DHS Operational Components. Furthermore, the FY 2009 findings were not filed in the same year; rather, these findings originated from complaints filed between 2002 and 2008. Thus, the number of DHS's FY 2009 findings does not reflect any systemic EEO issues or particular trends.

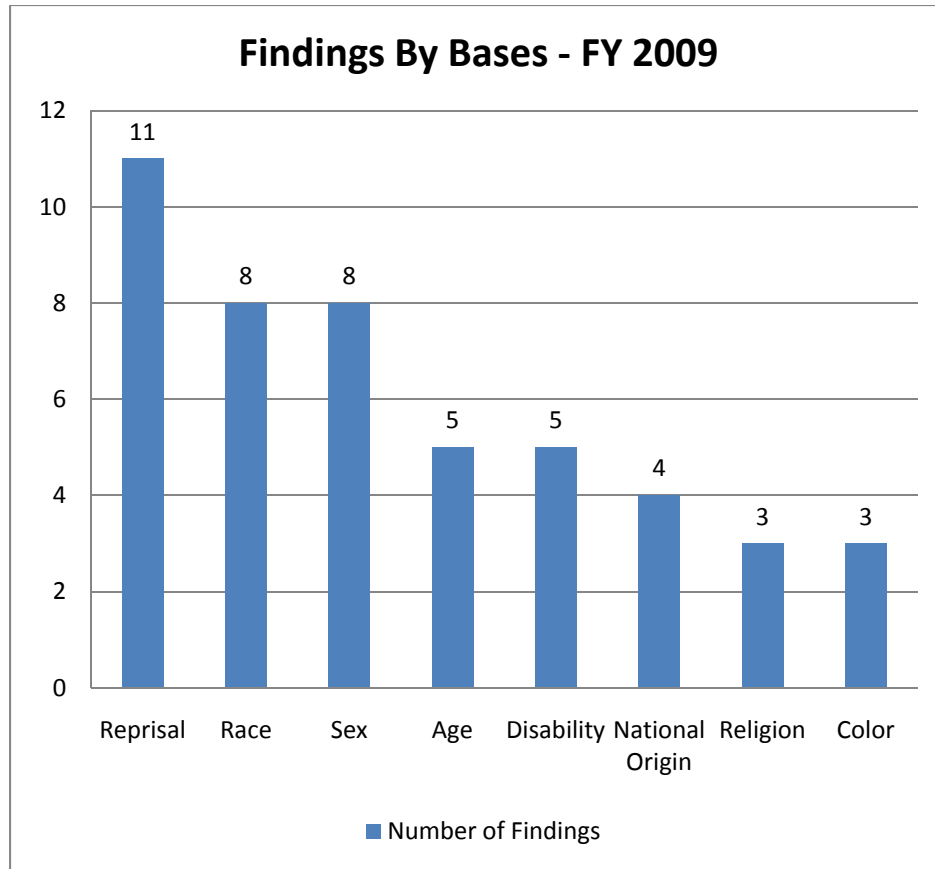


2. Findings Rendered by Protected Bases and Issues

a. Findings Based on Race, Sex, and Reprisal

DHS's FY 2009 data does not exhibit any significant trends with regard to the protected bases underlying the findings of discrimination. In FY 2009, race, sex, and reprisal were the three bases most-commonly involved in findings of discrimination. In FY 2009, DHS processed eight findings based on race, eight based on sex, and 11 based on reprisal.² In comparison, in FY 2008, DHS issued seven findings based on race, seven based on sex, and five based on reprisal. Although findings on race, sex, and reprisal rose slightly between FY 2008 and FY 2009, DHS findings from FY 2005 to FY 2007 show these three protected bases consistently constituted the most-commonly raised bases of discrimination during those years. Moreover, FY 2009 data reveals the findings based on race, sex, and reprisal were made against four different DHS Operational Components and concerned a variety of issues, including: supervisory hostile work environment; non-selections; assignments of duties; placement on leave; and demotions. Thus, the increase of race, sex, and reprisal findings in FY 2009 does not reflect any systemic or particular trends.

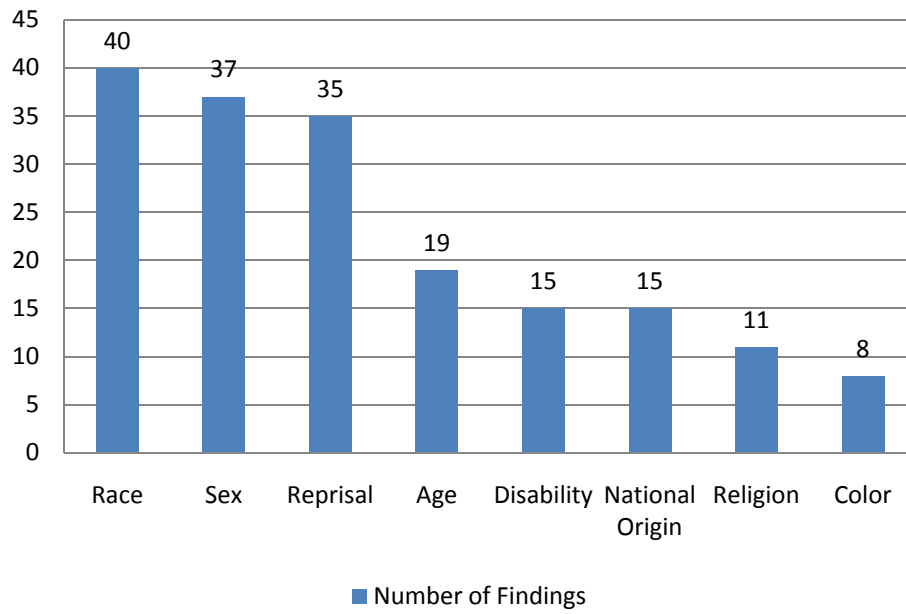
² Findings can involve multiple bases or issues; thus, the sum of the bases or issues may not equal the total number of findings.



b. Findings Made on Bases other than Race, Sex, or Reprisal

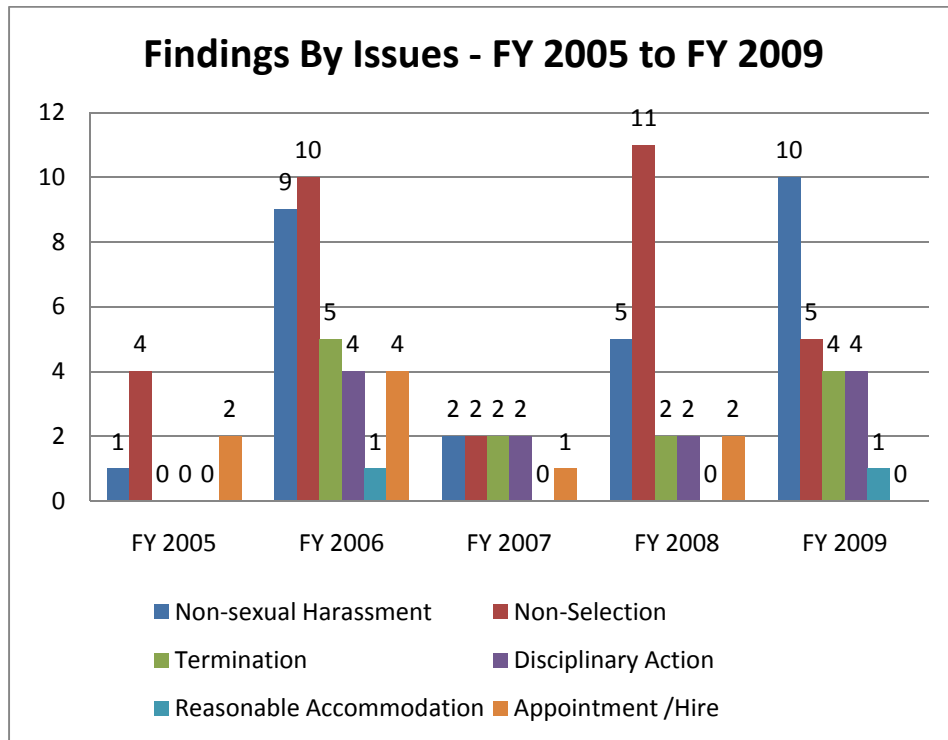
Similarly, FY 2009 data shows minor increases in the findings involving other bases of discrimination; again, these changes do not establish a noteworthy trend. Between FY 2008 and FY 2009, findings involving the bases of age and disability increased from six findings to 10 findings, while national origin and religion findings decreased from 13 to seven. DHS’s data in each fiscal year since the establishment of DHS reveals a relative proportional consistency in the number of findings based on age, disability, national origin, and religion. Furthermore, DHS processed findings of discrimination against four different DHS Operational Components, involving different claims such as: non-selections; hostile work environment; denial of reasonable accommodations; constructive discharge; and a *per se* violation of the Rehabilitation Act. Thus, although DHS experienced small fluctuations in the numbers of findings during FY 2009, these minor differences do not indicate any trend or systemic EEO issue. The following chart provides a snapshot of DHS findings made on bases other than race, sex or reprisal.

Findings By Bases - FY 2005 to FY 2009



c. Findings By Issues

FY 2009 findings of discrimination involved the type of issues consistent with previous fiscal years, and do not suggest any particular pattern. In FY 2009, DHS findings predominately involved issues of non-sexual harassment (10) and non-selection (5); however, DHS's EEO complaints data from FY 2005 to FY 2008 reveal these two issues were also included in a majority of the findings made in previous fiscal years. Although the quantity of non-sexual harassment and non-selection findings are proportionately high compared to other types of issues, DHS's FY 2009 data demonstrates these findings occurred in different DHS Operational Components, in different locations, and involved different bases of discrimination. Additionally, the findings involving claims of termination, removal, and demotion slightly increased since FY 2005; however, these minor changes over the years do not reveal any trend or issue.



V. Practical Knowledge Gained Through Experience, and Actions Planned or Taken to Improve the Complaint or Civil Rights Programs

During FY 2009, DHS achieved numerous, significant program improvements and efficiencies, resulting in a substantial increase in DHS production of Final Actions issued in EEO complaints, improved quality in products, and enhanced services to stakeholders. At the beginning of the fiscal year, CRCL and the Department's Component EEO and Civil Rights Directors committed to a collaborative effort to identify and implement corporate and Component strategies to increase Department-wide coordination on EEO complaint processing, including the development and implementation of Department EEO policies, the sharing of best practices, the development of standard operating procedures, and enhanced communication on individual complaints. DHS Operational Component EEO and Civil Rights Offices subsequently demonstrated a number of notable successes in the processing of EEO complaints. These successes include: Department-wide improvements in the number and percentage of timely EEO investigations; enhancements in process efficiencies through electronic submission of requests to CRCL for Final Action; the establishment of dedicated e-mail accounts for receipt of CRCL Final Action issuances; and staff training and competency development in EEO functions including counseling and investigations.

A. DHS Operational Component Successes

1. *EEO Investigations*

During FY 2009, DHS Operational Component EEO and Civil Rights Offices increased both the total number of EEO investigations completed and the number of timely-completed investigations. DHS timely completed 561 of 861 investigations (65.16%) during FY 2009, compared to timely completing 448 of 787 investigations (56.93%) in FY 2008.

2. *Process Efficiencies*

DHS Operational Component EEO and Civil Rights Offices instituted new process efficiencies during FY 2009, by electronically transmitting requests for Final Actions to CRCL, and establishing dedicated e-mail accounts for receipt of CRCL Final Action issuances. These measures successfully leveraged technology to enhance the efficient transmission and receipt of actions, case tracking and accountability, and continuity of operations.

3. *Staff Training*

Several DHS Operational Component EEO and Civil Rights Offices conducted skills enhancement training during FY 2009 for staff involved in EEO complaint processing, including holding forums involving EEO case law updates and technical EEO and diversity training.

Additionally, each DHS Operational Component and Civil Rights Office participated in CRCL-sponsored training in the preparation of No FEAR Act reports and the annual 462 Report.

4. *Component Staffing*

During FY 2009, CRCL provided critical assistance and leadership to help Operational Components with their EEO recruitment actions. For example, the CRCL Deputy Officer/Director for EEO and Diversity Programs participated in the selection of new EEO Directors at U.S. Citizenship and Immigration Services and U.S. Secret Service (USSS), as well as in the selection of a senior technical advisor for USSS. Additionally, on two occasions in FY 2009, CRCL staff members assisted the DHS Headquarters (HQ) EEO Director in the evaluation of candidates and for interviews in key positions within the HQ EEO Office. These positions provided critical support to the Components and helped build a more robust, well-led, and effective Departmental EEO program.

Additionally, DHS developed a multitude of meaningful strategic objectives to improve its complaint adjudication program, including: (1) comprehensive training for adjudication employees on employment discrimination case law, complaint analysis, legal writing, and document management; (2) improved processes to ensure issuance of Final Actions within regulatory deadlines, including new Standard Operating Procedures (SOPs), streamlined reviews of Final Actions, and enhancements in technology, inventory control, document management, and reporting; and (3) implementation of performance metrics and plans that were specific, measurable, accountability-enhancing, results-oriented, and focused on timeliness, along with regular performance evaluation and feedback sessions. Moreover, DHS successfully improved the quality of adjudication work products and services by providing cross-component leadership at the enterprise level while also providing a number of technical and consultative services directly to specific DHS Operational Components.

B. Improvements in DHS EEO Complaints Adjudication

1. *Improved Production – Training for Adjudication Staff*

Throughout FY 2009, all DHS adjudication staff received numerous critical trainings geared toward the development of specific competencies related to EEO complaint adjudication. These strategically-aligned trainings increased technical and analytical skills, and also helped staff mesh into cohesive, coordinated teams which worked effectively together during FY 2009 toward common goals. Adjudications staff regularly participated in training and educational events to develop their knowledge of case law and to advance their analytical abilities and writing skills for preparation of Final Actions. These developmental experiences particularly focused on enabling adjudications staff to quickly and consistently identify appropriate legal authorities, and to apply consistent and efficient formats – all resulting in the efficient production of Final Agency Decisions with improved structure, clarity, and analysis. Additionally, DHS adjudications managers and supervisors attended training in strategic planning and leadership, while several non-supervisory staff members also attended training to develop team-building and leadership skills. Furthermore, DHS administrative complaints management staff received

training and guidance on the use of electronic technologies to manage, track, issue, and file correspondence, documents, and files.

2. *Improved Processes*

a. New Standard Operating Procedures

DHS developed SOPs for each phase of the complaint adjudication process including case intake, assignment, development of Final Actions, out processing, and records management. These procedures ensured uniformity and accountability and served as a foundation for much of the developmental training provided to complaints adjudication staff. DHS's new case intake and assignment procedures significantly enhanced DHS's effective complaint tracking and management, resulting in the successful processing of 96% of the 941 incoming Final Actions and 91% of the 1,071 outgoing Final Actions, within two business days. SOPs provided a solid framework for cross-training administrative staff members in the various DHS adjudication program operational areas, thereby enhancing resource coverage and ensuring continuity of operations. Moreover, DHS adjudications staff developed standardized Final Action "type codes" and file-naming conventions, which are used throughout the life cycle of each case; the result has been nearly immediate location of case information and documents within our internal electronic network.

b. Streamlined Review Processes

During FY 2009, DHS implemented a streamlined review process for Final Actions, eliminating unnecessary layers and minimizing average review time for all EEO complaint adjudication decisions. Concurrently, DHS continually focused on improving the analytical and written quality of Final Actions which enabled the reduction of multiple layers of reviews. Consequently, DHS achieved an 80% success rate in completing reviews and signatures of Final Actions within 10 business days from initial draft completion.

c. New Technology: Enterprise-Wide EEO Complaints Database

DHS has established a plan for an Interagency Agreement and cost-sharing for a new enterprise-wide database system for EEO complaint data and reporting. This enterprise coordination and information technology efficiency will enable DHS to implement a cross-component system to standardize data collection and reporting. This "One DHS" solution also streamlined redundancies and leveraged economies of scale to provide DHS exceptional savings in cost and time.

d. Inventory Control and Tracking

DHS developed an internal electronic inventory tracking system to enhance control over incoming requests for Final Actions, case assignments, Final Action review processes, and out-processing of signed Final Actions. Additionally, DHS created a process by which each incoming request for a merit Final Agency Decision is reviewed and assigned a triage level to

indicate the complexity of the case. The triage level then permits targeted and strategic case assignments to adjudications staff members.

e. Document Management

DHS achieved a milestone in process efficiency, timeliness, and cost-savings during FY 2009, with the advent of all-electronic transmission of Final Action issuances to DHS Component EEO Offices and Offices of Counsel. During the year, 100% of Final Action issuances were transmitted electronically to DHS components.

Additionally, CRCL established two dedicated e-mail in-boxes for receipt of incoming requests for Final Action and customer inquiries to promote efficiency, timeliness, cost savings, and enhanced accountability. DHS Component EEO Offices similarly established dedicated e-mail accounts for receipt of Final Actions and other documentation from CRCL. Seven of nine components instituted this standardized practice, which also enhanced continuity of operations independent of staff changes.

f. Reporting

DHS achieved a significant milestone during FY 2009, by timely submitting the Department's first No FEAR Act Annual Report (for FY 2008). This comprehensive report included extensive information on the Department's EEO complaint activity and diversity accomplishments from FY 2004 through FY 2008. Moreover, the FY 2008 report established a solid foundation upon which to evaluate the DHS EEO complaint program each year through the annual No FEAR Act Report – establishing baselines for quantifying results and identifying areas of improvement or needed change. Additionally, throughout FY 2009, DHS coordinated with DHS Component EEO Offices in order to post Department-wide quarterly No FEAR Act webpostings of EEO complaint data.

At the beginning of FY 2009, DHS also timely submitted the FY 2008 462 Report to the EEOC, and this report provided extensive statistical data for the entire DHS EEO complaint program. The timely submission of the DHS 462 Report resulted from the critical, collaborative efforts and coordination between CRCL and each DHS Operational Component's EEO or Civil Rights Office.

3. *Performance Metrics Plans, Assessment, and Feedback*

a. Precise Performance Metrics and Performance Plans

During FY 2009, the DHS Complaints Adjudication Unit formulated and instituted precise and robust performance standards for all its staff, with specific, measurable, accountability-enhancing, results-oriented, and time-bound performance goals aligned to the Department's strategic goals. These performance goals clearly communicated performance expectations to staff and provided objective and equitable benchmarks centered on timeliness, quality, and customer service. These clear goals enabled complaints adjudication staff to understand specific performance goals towards which they should strive, and rely upon quantifiable and objective

means of assessing their performance towards their performance goals throughout the year. Consequently, DHS's complaints adjudication production skyrocketed during FY 2009, as described more fully in paragraph "4" below ("Results"), while employees maintained a high level of morale and ownership toward organizational goals.

b. Regular Performance Monitoring and Feedback

In addition to instituting more precise goals and performance standards, DHS adjudications leaders provided regular performance feedback to adjudications staff, through weekly performance meetings and also through written feedback on each work product produced by employees (e.g., intake, tracking, document management, preparation of decision, and out-processing of all Final Actions), providing guidance to staff and tracking quantity and quality of performance. Furthermore, adjudications employees prepared quarterly performance scorecards, enabling each employee to assess his/her accomplishments and progress toward achieving annual performance goals. In addition to regularly providing feedback, coaching, and training, adjudications leaders timely issued mid-year progress reviews to all employees and developed plans to address performance issues. Consequently, adjudications employees demonstrated impressive performance levels during FY 2009, and this included a number of employees who initially exhibited performance deficiencies which they were able to impressively reverse with the consistent and timely guidance, support, and coaching from their supervisors.

4. Results

a. Production of Final Actions and Inventory Reduction

DHS achieved numerous significant results in FY 2009, including: substantially increasing the number of Final Actions issued; greatly decreasing the number of days required to process incoming complaints and to issue completed adjudications, as well as the time involved in the adjudications review process; eliminating the inventory of complaints pending adjudication for three of nine DHS Components; and significantly lowering the net inventory of cases pending adjudication. These achievements are even more noteworthy in light of the physical relocation of CRCL's EEO and Diversity Programs Division to a different office during January 2009, which resulted in significant disruption to operations; this relocation required extensive planning, consuming large amounts of time for managers and staff, necessitating pre- and post-move manual inventory of approximately 500 open EEO complaint files pending adjudication, and involving the relocation and archiving of approximately 4,500 closed records for weeks following the move.

Some of DHS's most notable EEO complaints adjudication achievements during FY 2009 include the following:

- 1,071 Final Actions issued in FY 2009 – an increase of 304 (39.6%) Final Actions from the 767 Final Actions issued in FY 2008.
- 23% inventory reduction during FY 2009 from FY 2008 inventory, from 567 pending cases at the beginning of FY 2009, to 437 pending cases at the end of FY 2009.

- 100% of Final Order Findings of Discrimination (22) were timely assigned, prepared, issued, and transmitted.
- 96% of Incoming Final Actions completed intake processing and docketing within two business days.
- 91% of Final Action issuances were out-processed within two business days.
- 100% of Congressional and other DHS-directed correspondences were timely answered.
- 95% of appellate documentation was sent to components within two days of DHS's receipt from the EEOC's Office of Federal Operations, and 100% of this material was transmitted electronically.
- Archived closed records (over 4,500 cases)

b. Improved Quality

In FY 2009, complaints adjudication staff significantly improved the quality of relevant work products in two important ways: legal analysis and writing clarity. With respect to legal sufficiency, DHS's complaints adjudication leaders dedicated substantial time to train adjudications staff on relevant and current case law, and to implement updated templates and standard procedures for adjudicating complaints. Consequently, DHS's Final Actions and other adjudications (e.g., breach determinations) contained a consistently more accurate and deeper level of analysis, enhancing the legal sufficiency of the adjudications and limiting the possibility of reversal on appeal. Moreover, complaints adjudication leaders emphasized improved clarity in the writing of Final Actions and other adjudications – focusing on improved organization and structure, clarity, brevity, relevance, and professional writing.

c. Enhanced Customer Service

During FY 2009, DHS demonstrated a continued commitment to EEO and merit systems compliance, by developing and accomplishing a number of strategic objectives to promote EEO and diversity management, including strategic plans, policies, procedures, outreach events, and technical guidance. DHS Operational Component EEO and Civil Rights Offices further coordinated with CRCL on a number of cross-component EEO initiatives, such as pilot programs, developmental assignments, training, outreach, and staffing.

d. Cross-Component Enterprise Coordination and Leadership to DHS Components

During FY 2009, DHS implemented significant strategic objectives to promote EEO and diversity management, including the following: posting a No FEAR Act Notice; developing and delivering Department-wide No FEAR Act training; implementing a new anti-harassment management directive; coordinating on the development of corporate and Component anti-harassment and reasonable accommodation procedures; re-constituting the DHS Diversity Planning and Policy Subcouncil to develop a new Diversity Management and Inclusion Strategic Plan; implementing a 120-day Diversity Action Plan; providing guidance to Component diversity offices' development diversity management strategic plans; implementing a new Management Directive on Employee Affinity Groups; conducting Component diversity forums and training; demonstrating Department-wide commitment to the hiring of veterans and disabled

veterans (including an on-boarding goal of 50,000 veterans by the end of FY 2012); continuing to conduct outreach to institutions and colleges and universities serving women, minorities, and individuals with disabilities; and procuring a new EEO complaint automated database.

e. Pilot Programs and Developmental Assignments

During FY 2009, DHS Operational Components participated in two pilot projects and a developmental assignment opportunity offered by CRCL, involving the following initiatives and successes: (1) enhanced and speedier services through electronic transmittal of appellate information to one Component's EEO and General Counsel Offices; (2) technical guidance to a Component regarding preparation of draft procedural dismissals of complaints; and (3) enhanced understanding of DHS processes in assessing cases for assignment to complaint adjudications staff. These projects permitted increased cross-component coordination and sharing of practices and expertise.

f. Training and Outreach

During FY 2009, DHS conducted training for DHS Component EEO personnel in the preparation of 462 Reports and the No FEAR Act quarterly web data-posting reports. As a result, Component personnel completed their 462 Reports in a more timely and effective manner, enabling DHS to timely complete and submit the DHS 462 Report to the EEOC.

DHS also designed "Quarterly Compliance Tips" information sheets for Component EEO Offices, which provided information on best practices and effective techniques in reporting completion of relief ordered in appellate decisions issued by the EEOC's Office of Federal Operations.

Furthermore, complaints adjudication staff shared monthly reports, identifying Final Action requests and Final Actions issued for each Operational Component. This report enabled Component EEO Complaint Managers to reconcile their Component EEO complaint inventory on a monthly basis and greatly contributed to accurate case tracking, management, and reporting.

Appendix 1

DHS No FEAR Act Federal District Court Data for FY 2009

U.S. Department of Homeland Security FY09 No FEAR Act Data on Federal Cases (Section 203)

NUMBER OF CASES FILED IN FEDERAL COURT, PENDING OR RESOLVED UNDER 5 CFR § 724.302(a)(1)							Comparative Data Under §724.302(b)
Provision of Law	Title VII	ADEA	Equal Pay Act	Rehab. Act	Whistleblower	Total	
	109	32	5	20	6	145	N/A
CBP	13	13	0	5	1	32	
CIS	6	1	0	3	0	10	
FEMA	3	1	0	0	1	5	
FLETC	0	0	0	0	0	0	
HQ	0	0	0	0	1	1	
ICE	6	1	0	0	0	7	
TSA	80	16	5	12	3	89	
USCG	1	0	0	0	0	1	
USSS	0	0	0	0	0	0	

STATUS OF CASES AND REIMBURSEMENT UNDER 5 CFR § 724.302(a)(1-2)							Comparative Data Under §724.302(b)
Provision of Law	Title VII	ADEA	Equal Pay Act	Rehab. Act	Whistleblower	Total	
<i>Complaints Filed (FY09)</i>	51	13	1	9	3	67	N/A
CBP	9	5	0	3	1	18	
CIS	6	1	0	2	0	9	
FEMA	3	1	0	0	1	5	
FLETC	0	0	0	0	0	0	
HQ	0	0	0	0	0	0	
ICE	1	0	0	0	0	1	
TSA	31	6	1	4	1	33	
USCG	1	0	0	0	0	1	
USSS	0	0	0	0	0	0	
<i>(i) Status or Disposition as of end of FY09</i>							
<i>Pending Hearing</i>	28	13		2	2	45	

U.S. Department of Homeland Security FY09 No FEAR Act Data on Federal Cases (Section 203)

<i>Heard, Pending Decision</i>	3			2		5	
<i>Decisions</i>							
<i>In favor of Complainant ,either in its entirety or partial</i>	1					1	
<i>In favor of Agency</i>	49	12	5	7	1	55	
<i>Arbitration/Mediation</i>						0	
<i>Settlement</i>	16	2				18	
<i>Appeal</i>	1				1	2	
<i>Remand</i>						0	
<i>(ii) Amount of Reimbursement in FY09</i>	\$ 1,192,500	\$ 26,300	\$ -	\$ 5,000	\$ -	\$1,223,800	
CBP	\$ 40,000	\$ 26,300	\$ -	\$ -	\$ -	\$66,300	
CIS	\$ 65,000	\$ -	\$ -	\$ -	\$ -	\$65,000	
FEMA	\$ -	\$ -	\$ -	\$ -	\$ -	\$0	
FLETC	\$ -	\$ -	\$ -	\$ -	\$ -	\$0	
HQ	\$ -	\$ -	\$ -	\$ -	\$ -	\$0	
ICE	\$10,500	\$ -	\$ -	\$ -	\$ -	\$10,500	
TSA	\$1,022,000	\$ -	\$ -	\$5,000	\$ -	\$1,027,000	
USCG	\$55,000	\$ -	\$ -	\$ -	\$ -	\$55,000	
USSS	\$ -	\$ -	\$ -	\$ -	\$ -	\$0	
<i>(iii) Amount of Reimbursement for Attorney Fees in FY09</i>	\$ 93,720.00	\$ 15,200.00	\$ -	\$ -	\$ -	\$108,920	
CBP	\$ 30,000.00	\$ 15,200.00	\$ -			\$45,200	*one complaint
CIS	\$ -	\$ -	\$ -	\$ -	\$ -	\$0	
FEMA	\$ -	\$ -	\$ -	\$ -	\$ -	\$0	
FLETC	\$ -	\$ -	\$ -	\$ -	\$ -	\$0	
HQ	\$ -	\$ -	\$ -	\$ -	\$ -	\$0	
ICE	\$38,720	\$ -	\$ -	\$ -	\$ -	\$38,720	
TSA	\$25,000	\$ -	\$ -	\$ -	\$ -	\$25,000	
USCG	\$ -	\$ -	\$ -	\$ -	\$ -	\$0	
USSS	\$ -	\$ -	\$ -	\$ -	\$ -	\$0	

U.S. Department of Homeland Security FY09 No FEAR Act Data on Federal Cases (Section 203)

TOTAL NUMBER OF EMPLOYEES DISCIPLINED IN CASES UNDER 5 CFR § 724.302(a)(3)							Comparative Data Under §724.302(b)
Provision of Law	Title VII	ADEA	Equal Pay Act	Rehab. Act	Whistleblower	Total	
FY09	Total Number of Employees and Specific Nature of Discipline in FY09	0	0	0	0	0	N/A
	CBP	0	0	0	0	0	
	CIS	0	0	0	0	0	
	FEMA	0	0	0	0	0	
	FLETC	0	0	0	0	0	
	HQ	0	0	0	0	0	
	ICE	0	0	0	0	0	
	TSA	0	0	0	0	0	
	USCG	0	0	0	0	0	
	USSS	0	0	0	0	0	
	Reprimand	0	0	0	0	0	
	CBP	0	0	0	0	0	
	CIS	0	0	0	0	0	
	FEMA	0	0	0	0	0	
	FLETC	0	0	0	0	0	
	HQ	0	0	0	0	0	
	ICE	0	0	0	0	0	
	TSA	0	0	0	0	0	
	USCG	0	0	0	0	0	
	USSS	0	0	0	0	0	
	Suspension without Pay	0	0	0	0	0	
	CBP	0	0	0	0	0	
	CIS	0	0	0	0	0	
	FEMA	0	0	0	0	0	
	FLETC	0	0	0	0	0	
	HQ	0	0	0	0	0	
	ICE	0	0	0	0	0	
	TSA	0	0	0	0	0	
	USCG	0	0	0	0	0	

U.S. Department of Homeland Security FY09 No FEAR Act Data on Federal Cases (Section 203)

	USSS	0	0	0	0	0	0
	<i>Reduction of Grade or Pay</i>	0	0	0	0	0	0
	CBP	0	0	0	0	0	0
	CIS	0	0	0	0	0	0
	FEMA	0	0	0	0	0	0
	FLETC	0	0	0	0	0	0
	HQ	0	0	0	0	0	0
	ICE	0	0	0	0	0	0
	TSA	0	0	0	0	0	0
	USCG	0	0	0	0	0	0
	USSS	0	0	0	0	0	0
	<i>Removal</i>	0	0	0	0	0	0
	CBP	0	0	0	0	0	0
	CIS	0	0	0	0	0	0
	FEMA	0	0	0	0	0	0
	FLETC	0	0	0	0	0	0
	HQ	0	0	0	0	0	0
	ICE	0	0	0	0	0	0
	TSA	0	0	0	0	0	0
	USCG	0	0	0	0	0	0
	USSS	0	0	0	0	0	0

TOTAL NUMBER OF EMPLOYEES DISCIPLINED, WHETHER OR NOT IN CONNECTION WITH FEDERAL CASES UNDER 5 CFR § 724.302(a)(5) (i.e., INCLUDING EEO ADMINISTRATIVE CASES)							Comparative Data Under §724.302(b)
<i>Provision of Law</i>		Title VII	ADEA	Equal Pay Act	Rehab. Act	Whistleblower	Total
	<i>Total Number of Employees and Specific Nature of Discipline in FY09</i>		2	0	0	0	2
	CBP		0	0	0	0	0
	CIS		2	0	0	0	2
	FEMA		0	0	0	0	0
							N/A

U.S. Department of Homeland Security FY09 No FEAR Act Data on Federal Cases (Section 203)

FY09	FLETC	0	0	0	0	0	0
	HQ	0	0	0	0	0	0
	ICE	0	0	0	0	0	0
	TSA	0	0	0	0	0	0
	USCG	0	0	0	0	0	0
	USSS	0	0	0	0	0	0
	<i>Reprimand</i>	2	0	0	0	0	2
	CBP	0	0	0	0	0	0
	CIS	2	0	0	0	0	2
	FEMA	0	0	0	0	0	0
	FLETC	0	0	0	0	0	0
	HQ	0	0	0	0	0	0
	ICE	0	0	0	0	0	0
	TSA	0	0	0	0	0	0
	USCG	0	0	0	0	0	0
	USSS	0	0	0	0	0	0
	<i>Suspension without Pay</i>	0	0	0	0	0	0
	CBP	0	0	0	0	0	0
	CIS	0	0	0	0	0	0
	FEMA	0	0	0	0	0	0
	FLETC	0	0	0	0	0	0
	HQ	0	0	0	0	0	0
	ICE	0	0	0	0	0	0
	TSA	0	0	0	0	0	0
	USCG	0	0	0	0	0	0
	USSS	0	0	0	0	0	0
	<i>Reduction of Grade or Pay</i>	0	0	0	0	0	0
	CBP	0	0	0	0	0	0
	CIS	0	0	0	0	0	0
	FEMA	0	0	0	0	0	0
	FLETC	0	0	0	0	0	0
	HQ	0	0	0	0	0	0
ICE	0	0	0	0	0	0	
TSA	0	0	0	0	0	0	
USCG	0	0	0	0	0	0	
USSS	0	0	0	0	0	0	

U.S. Department of Homeland Security FY09 No FEAR Act Data on Federal Cases (Section 203)

	<i>Removal</i>	0	0	0	0	0	0
	CBP	0	0	0	0	0	0
	CIS	0	0	0	0	0	0
	FEMA	0	0	0	0	0	0
	FLETC	0	0	0	0	0	0
	HQ	0	0	0	0	0	0
	ICE	0	0	0	0	0	0
	TSA	0	0	0	0	0	0
	USCG	0	0	0	0	0	0
	USSS	0	0	0	0	0	0

Appendix 2

DHS No FEAR Act Final Year End EEO Data for FY 2005-2009

DHS EQUAL EMPLOYMENT OPPORTUNITY DATA POSTED PURSUANT TO THE NO FEAR ACT:
4th Quarter FY 2009 -- Data as of September 30 2009

Complaint Activity	Comparative Data				2009
	Previous Fiscal Year Data				
	2005	2006	2007	2008	
Number of Complaints Filed	1199	1083	1086	1145	1457
Number of Complainants	1075	1010	1045	1099	1401
Repeat Filers	80	54	42	52	56

Complaints by Basis	Comparative Data				2009
	Previous Fiscal Year Data				
	2005	2006	2007	2008	
<i>Note: Complaints can be filed alleging multiple bases. The sum of the bases may not equal total complaints filed.</i>					
Race	339	326	368	298	322
Color	75	83	80	92	88
Religion	50	57	38	48	53
Reprisal	406	391	389	432	761
Sex	408	349	334	385	330
National Origin	197	193	158	175	512
Equal Pay Act	n/a	1	7	3	1
Age	287	336	283	321	317
Disability	264	258	260	238	231
Non-EEO	16	44	24	16	48

Complaints by Issue	Comparative Data				2009
	Previous Fiscal Year Data				
	2005	2006	2007	2008	
<i>Note: Complaints can be filed alleging multiple issues. The sum of the issues may not equal total complaints filed.</i>					
Appointment/Hire	16	45	57	57	40
Assignment of Duties	68	59	61	68	346
Awards	60	25	15	22	10
Conversion to Full-time	2	1	3	1	1
Disciplinary Action					
Demotion	17	6	18	11	7
Reprimand	48	19	50	46	42
Removal	36	23	22	34	20
Suspension	41	40	45	30	35
Other	n/a	28	1	14	10
Duty Hours	14	14	22	15	12
Evaluation Appraisal	41	36	38	40	75
Examination/Test	5	8	8	5	3
Harassment					
Non-Sexual	189	282	289	314	630
Sexual	43	51	37	33	48
Medical Examination	2	14	8	10	10
Pay (Including Overtime)	26	28	25	27	18
Promotion/Non-Selection	239	287	277	248	257
Reassignment					
Denied	21	28	34	34	39
Directed	43	30	29	28	46
Reasonable Accommodation	27	34	43	47	34
Reinstatement	0	4	4	2	7
Retirement	2	4	5	2	5
Termination	162	136	135	112	134
Terms/Conditions of Employment	87	116	142	108	421
Time and Attendance	34	42	36	54	35
Training	39	29	26	23	27
Other	96	28	35	44	372

Processing Time	Comparative Data					2009
	Previous Fiscal Year Data					
	2005	2006	2007	2008		
Complaints pending during fiscal year						
Average number of days in investigation stage	322	406	311.5	249.9		221.9
Average number of days in final action stage	n/a	326	428.1	296		540.3
Complaint pending during fiscal year where hearing was requested						
Average number of days in investigation stage	331	338	242.5	259.4		211.9
Average number of days in final action stage	n/a	48	72.5	64		187.6
Complaint pending during fiscal year where hearing was not requested						
Average number of days in investigation stage	301	413	347.3	312.8		229.1
Average number of days in final action stage	842	443	587.6	660.5		1076.2

Complaints Dismissed by Agency	Comparative Data					2009
	Previous Fiscal Year Data					
	2005	2006	2007	2008		
Total Complaints Dismissed by Agency	231	281	187	247		204
Average days pending prior to dismissal	306	254	257	220		241
Complaints Withdrawn by Complainants						
Total Complaints Withdrawn by Complainants	n/a	81	96	109		84

Total Final Actions Finding Discrimination	Comparative Data										2009	
	Previous Fiscal Year Data											
	2005		2006		2007		2008					
	#	%	#	%	#	%	#	%	#	%		
Total Number Findings	12		29		12		21		23			
Without Hearing	2	17%	4	14%	2	17%	0	0%	1	4%		
With Hearing	10	83%	25	86%	10	83%	21	100%	22	96%		

Findings of Discrimination Rendered by Basis	Comparative Data										2009	
	Previous Fiscal Year Data											
	2005		2006		2007		2008					
#	%	#	%	#	%	#	%	#	%			
<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		29		12		21		23			
Race	1	8%	21	72%	3	25%	7	33%	8	35%		
Color	0	0%	2	7%	0	0%	3	14%	3	13%		
Religion	1	8%	1	3%	1	8%	5	24%	3	13%		
Reprisal	3	25%	10	34%	6	50%	5	24%	11	48%		
Sex	5	42%	10	34%	7	58%	7	33%	8	35%		
National Origin	1	8%	1	3%	1	8%	8	38%	4	17%		
Equal Pay Act	0	0%	0	0%	0	0%	0	0%	0	0%		
Age	3	25%	5	17%	2	17%	4	10%	5	22%		
Disability	5	42%	3	10%	0	0%	2	10%	5	22%		
Non-EEO	0	0%	0	0%	0	0%	0	0%	0	0%		
Findings After Hearing	10		25		10		21		22			
Race	1	100%	18	86%	2	50%	7	100%	8	100%		
Color	0	0%	1	50%	0	0%	3	100%	3	100%		
Religion	1	100%	1	100%	1	100%	5	100%	3	100%		
Reprisal	3	100%	10	100%	4	67%	5	100%	11	100%		
Sex	5	100%	10	100%	5	71%	7	100%	8	100%		
National Origin	1	100%	1	100%	1	100%	8	100%	4	100%		
Equal Pay Act	0	0%	0	0%	0	0%	0	0%	0	100%		
Age	3	100%	5	100%	2	100%	4	100%	5	100%		
Disability	4	80%	3	100%	0	0%	2	100%	4	80%		
Non-EEO	0	0%	0	0%	0	0%	0	0%	0	100%		
Findings Without Hearing	2		4		2		0		1			
Race	0	0	3	14%	2	50%	0	0%	0	0%		
Color	0	0	1	50%	0	0%	0	0%	0	0%		
Religion	0	0	0	0	0	0%	0	0%	0	0%		

Reprisal			0	0	0	0	2	23%	0	0%	0	0%
Sex			0	0	0	0	2	29%	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			1	20%	0	0	0	0%	0	0%	1	20%
Non-EEO			0	0	0	0	0	0%	0	0%	0	0%

Findings of Discrimination Rendered by Issue	Comparative Data										2009	
	Previous Fiscal Year Data											
	2005		2006		2007		2008		#	%		
	#	%	#	%	#	%	#	%				
Total Number Findings			12		29		12		21		23	
Appointment/Hire			2	17%	4	14%	1	8%	2	10%	0	0%
Assignment of Duties			2	17%	1	3%	1	8%	1	5%	2	9%
Awards			0	0%	1	3%	0	0%	0	0%	0	0%
Conversion to Full-time			0	0%	0	0%	0	0%	0	0%	0	0%
Disciplinary Action			0	0%	2	7%	0	0%	0	0%	0	0%
Demotion			0	0%	0	0%	0	0%	0	0%	2	9%
Reprimand			0	0%	2	7%	0	0%	0	0%	1	4%
Suspension			0	0%	0	0%	1	8%	0	0%	0	0%
Removal			0	0%	0	0%	0	0%	2	10%	1	4%
Other			0	0%	0	0%	1	8%	0	0%	0	0%
Duty Hours			0	0%	0	0%	0	0%	0	0%	0	0%
Evaluation Appraisal			0	0%	2	0%	0	0%	0	0%	0	0%
Examination/Test			0	0%	0	0%	0	0%	0	0%	0	0%
Harassment			1	8%	11	40%	2	17%	5	24%		
Non-Sexual			1	8%	9	31%	2	17%	5	24%	10	43%
Sexual			0	0%	2	7%	0	0%	0	0%	0	0%
Medical Examination			0	0%	1	3%	0	0%	0	0%	1	4%
Pay (Including Overtime)			0	0%	1	3%	1	8%	0	0%	1	4%
Promotion/Non-Selection			4	33%	10	34	2	17%	11	52%	5	22%
Reassignment			0	0%	0	0%	2	17%	0	0%	0	0%
Denied			0	0%	0	0%	0	0%	0	0%	0	0%
Directed			0	0%	0	0%	2	17%	0	0%	1	4%
Reasonable Accommodation			0	0%	1	3%	0	0%	0	0%	1	4%
Reinstatement			0	0%	0	0%	0	0%	0	0%	0	0%
Retirement			2	17%	0	0%	0	0%	0	0%	0	0%
Termination			0	0%	5	17%	2	17%	2	10%	4	17%
Terms/Conditions of			0	0%	3	10%	2	17%	2	10%	2	9%
Time and Attendance			0	0%	1	3%	2	17%	0	0%	1	4%
Training			0	0%	0	0%	0	0%	0	0%	1	4%
Other			0	0%	0	0%	1	8%	0	0%	5	22%
Findings After Hearing			10		25		10		21		22	
Appointment/Hire			2	100%	4	100%	1	100%	2	100%	0	0%
Assignment of Duties			2	100%	1	100%	1	100%	1	100%	2	100%
Awards			0	0%	1	100%	0	0%	0	0%	0	0%
Conversion to Full-time			0	0%	0	0%	0	0%	0	0%	0	0%
Disciplinary Action			0	0%	0	0%	0	0%	0	0%	0	0%
Demotion			0	0%	0	0%	0	0%	0	0%	2	100%
Reprimand			0	0%	2	100%	0	0%	0	0%	1	100%
Suspension			0	0%	0	0%	1	100%	0	0%	0	0%
Removal			0	0%	0	0%	0	0%	2	100%	1	100%
Other			0	0%	0	0%	1	100%	0	0%	0	0%
Evaluation Appraisal			0	0%	1	50%	0	0%	0	0%	0	0%
Examination/Test			0	0%	0	0	0	0%	0	0%	0	0%
Harassment			1	100%	7	78%	2	100%	5	100%	0	0%
Non-Sexual			1	100%	5	71%	2	100%	5	100%	10	100%
Sexual			0	0%	2	100%	0	0%	0	0%	0	0%
Medical Examination			0	0%	1	100%	0	0%	0	0%	0	0%
Pay (Including Overtime)			0	0%	1	100%	1	100%	0	0%	0	0%
Promotion/Non-Selection			4	100%	10	100%	2	100%	11	100%	5	100%
Reassignment			0	0%	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%	1	100%
Reasonable Accommodation			0	0%	1	100%	0	0%	0	0%	1	0%
Reinstatement			0	0%	0	0%	0	0%	0	0%	0	0%
Retirement			0	0%	0	0%	0	0%	0	0%	0	0%
Termination			1	50%	5	100%	0	0%	2	100%	4	100%
Terms/Conditions of			0	0%	3	100%	2	100%	2	100%	2	100%
Employment												
Time and Attendance			0	0%	0	0%	2	100%	0	0%	1	100%
Training			0	0%	0	0%	0	0%	0	0%	1	100%
Other			0	0%	0	0%	1	100%	0	0%	5	100%
Findings Without Hearing			2		4		2		0		1	
Appointment/Hire			0	0%	0	0%	0	0%	0	0%	0	0%
Assignment of Duties			0	0%	0	0%	0	0%	0	0%	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%
Disciplinary Action			0	0%	0	0%	0	0%	0	0%	0	0%
Demotion			0	0%	0	0%	0	0%	0	0%	0	0%
Reprimand			0	0%	0	0%	0	0%	0	0%	0	0%
Suspension			0	0%	0	0%	0	0%	0	0%	0	0%
Removal			0	0%	0	0%	0	0%	0	0%	0	0%
Other			0	0%	0	0%	0	0%	0	0%	0	0%
Duty Hours			0	0%	0	0%	0	0%	0	0%	0	0%
Evaluation Appraisal			0	0%	1	50%	0	0%	0	0%	0	0%
Examination/Test			0	0%	0	0%	0	0%	0	0%	0	0%

Harassment			0	0%	4	36%	0	0%	0	0%	0	0%
Non-Sexual			0	0%	4	44%	0	0%	0	0%	0	0%
Sexual			0	0%	0	0%	0	0%	0	0%	0	0%
Medical Examination			0	0%	0	0%	0	0%	0	0%	1	100%
Pay (Including Overtime)			0	0%	0	0%	0	0%	0	0%	0	0%
Promotion/Non-Selection			0	0%	0	0%	0	0%	0	0%	0	0%
Reassignment			0	0%	0	0%	2	100%	0	0%	0	0%
Denied			0	0%	0	0%	0	0%	0	0%	0	0%
Directed			0	0%	0	0%	2	100%	0	0%	0	0%
Reasonable Accommodation			0	0%	0	0%	0	0%	0	0%	0	0%
Reinstatement			0	0%	0	0%	0	0%	0	0%	0	0%
Retirement			0	0%	0	0%	0	0%	0	0%	0	0%
Termination			1	50%	0	0%	0	0%	0	0%	0	0%
Terms/Conditions of Employment			0	0%	0	0%	0	0%	0	0%	0	0%
Time and Attendance			0	0%	1	100%	0	0%	0	0%	0	0%
Training			0	0%	0	0%	0	0%	0	0%	0	0%
Other			0	0%	0	0%	0	0%	0	0%	0	0%

Pending Complaints Filed in Previous Fiscal Years by Status	Comparative Data				2009
	Previous Fiscal Year Data				
	2005	2006	2007	2008	
Total complaints from previous Fiscal Years	2595	2096	1411	1382	1400
Total Complainants	2262	1758	1315	1280	1292
Number complaints pending					
Investigation	997	480	147	164	56
Hearing	652	574	438	468	528
Final Action	651	683	679	649	595
Appeal with EEOC Office of Federal Operations	254	188	147	164	221

Complaint Investigations	Comparative Data				2009
	Previous Fiscal Year Data				
	2005	2006	2007	2008	
Pending Complaints Where Investigations Exceeds Required Time Frames	634	154	367	375	529