



**Homeland
Security**

March 25, 2011

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 112th United States Congress:

The Honorable Joseph R. Biden
President of the Senate

The Honorable Daniel Inouye
President Pro Tempore, U.S. Senate

The Honorable John Boehner
Speaker of the House of Representatives

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

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

The Honorable Darrell Issa
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 Bennie G. Thompson
Ranking Member, House Committee on Homeland Security

The Honorable Elijah E. Cummings
Ranking Member, House Committee on Oversight and Government Reform

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

The Honorable Jacqueline A. Berrien
Chair, U.S. Equal Employment Opportunity Commission

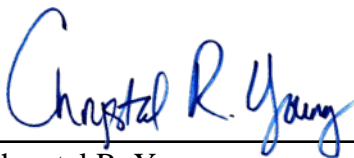
The Honorable Eric H. Holder
Attorney General, U.S. Department of Justice

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



Chrystal R. Young
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Office for Civil Rights and Civil Liberties
U.S. Department of Homeland Security



Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002

No FEAR Act Annual Report

Department of Homeland Security
Office for Civil Rights and Civil Liberties

Fiscal Year 2010



**Homeland
Security**

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

I am pleased 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) 2010. This report summarizes DHS's most significant accomplishments in the DHS Equal Employment Opportunity (EEO) program, particularly focusing on the area of EEO complaint processing. It helps demonstrate the Department's strong commitment to abide by merit systems principles, provide protection from prohibited personnel practices, and promote accountability.

The No FEAR Act, Public Law 107-174, is intended to reduce the incidence of workplace discrimination within the Federal Government and requires that Federal agencies be more accountable for violations of anti-discrimination and whistleblower protection laws. The No FEAR Act requires Federal agencies to:

- Notify employees and applicants for employment about their rights under the discrimination and whistleblower laws.
- Post statistical data relating to Federal sector equal employment opportunity complaints on its public website.
- Ensure that their managers have adequate training in the management of a diverse workforce, early and alternative conflict resolution, and essential communications skills.
- Conduct studies on the trends and causes of complaints of discrimination.
- Implement new measures to improve the complaint process and the work environment.
- Initiate timely and appropriate discipline against employees who engage in misconduct related to discrimination or reprisal.
- Reimburse the Judgment Fund for any discrimination and whistleblower related settlements or judgments reached in Federal court.
- Submit annual reports of status and progress to Congress, the Attorney General and the U.S. Equal Employment Commission on the number of discrimination and retaliation cases, the disposition of those cases, the cost, and the number of employees disciplined for discrimination, harassment, and/or retaliation.

The DHS 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. DHS succeeds in part by ensuring that our workplace decisions are equitable and based upon merit.

The DHS EEO program reflects a strong and collaborative partnership between CRCL and DHS Operational Components, shown in part through the various improvements in the Department's EEO program during FY 2010. FY 2010 accomplishments contained in this report include:

- Implementation of enterprise-wide data systems to track EEO complaint activity and workforce analysis.

- A 41% reduction in the number of cases awaiting merits Final Agency Decision, an area in which the Department has carried a backlog since its inception.
- Completion of over 80% of EEO counseling in the time frame specified by regulation—a five year high for timely completions.
- Average completion time for EEO investigations in 213 days – the shortest recorded annual average completion time at DHS, based on available records from FY 2005 to FY 2010.

The achievements during FY 2010 have paved the way for continued measureable and valuable improvements in the DHS EEO program during FY 2011 and beyond. I look forward to continuing to provide information on the successes in this program in future reports.



Margo Schlanger
Officer for Civil Rights and Civil Liberties

I. Executive Summary

The No FEAR Act is intended to reduce the incidents 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: Federal antidiscrimination and whistleblower protection laws complaint 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 FY 2010 (October 1, 2009, to September 30, 2010).

At 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 Officer for Civil Rights and Civil Liberties, Margo Schlanger, provides policy and technical 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. Secretary Napolitano issued a new Anti-Discrimination Policy statement in FY 2010, reinforcing the Department's commitment to a work environment free from unlawful discrimination, and emphasizing DHS's obligation to prevent and promptly correct harassment in the workplace.

Throughout FY 2010, CRCL continued to partner with the DHS Undersecretary for Management, the DHS Office of the Chief Human Capital Officer (CHCO), DHS Operational Component EEO Offices, and other internal and external stakeholders to promote equality, fairness, workforce diversity, and efficiency. Throughout FY 2010, CRCL has maintained close working relationships with all Components; the CRCL Officer chairs the EEO Council in which all Component EEO and Civil Rights Directors participate. Effective communication and collaboration have grown stronger throughout the course of the fiscal year through shared endeavors.

CRCL and the Components worked together on the procurement and implementation of enterprise-wide data systems during FY 2010. The DHS/Transportation Security Administration (TSA) Integrated Project Team (IPT) played a lead role in implementing these new Departmental EEO applications – iComplaints (EEO complaints tracking) and eVersity (workforce analysis). The separate and successful launches of these applications were contingent upon addressing procurement, compliance, policy, technical, and change-management issues at DHS and Components. As a result of these enterprise solutions, DHS expects to realize unprecedented efficiencies, consistency, and accuracy of reporting for FY 2011 and beyond. The standup of the enterprise applications ties in to other large Department initiatives such as data center consolidation and enterprise authentication services. In recognition, the DHS/TSA IPT was the recipient of a TSA Honorary Award in the "Team" category, and iComplaints was nominated as a Departmental Best Practice by the DHS Human Capital Accountability Audit Team. In the area of EEO complaint processing, numerous improvements have been realized throughout the Department. Timeliness of EEO complaint processing improved at DHS in the

areas of EEO counseling and investigations. During FY 2010, 1,495 of the 1,848 (81%) requests for EEO counseling were timely completed. This is the highest rate since FY 2006 (also 81% timely). Improvements were also realized in the area of EEO investigations where DHS Operational Components completed 78 more investigations during FY 2010 than in FY 2009 (939 and 861, respectively) and timely completed five more EEO investigations during FY 2010 than in FY 2009 (from 561 in FY 2009 to 566 in FY 2010). While the percentage of cases investigated in the time specified by regulations declined slightly, the average days for investigation also declined to 213 days, its lowest point in DHS history.

Within the DHS EEO complaints adjudication program, the backlog of cases awaiting merits Final Agency Decisions (FAD) has been a problem since the Department's origin. FY 2010 saw initiation of a plan to eliminate that backlog by the end of FY 2011, and extremely good progress toward that end. The effort began by focusing on those matters that originated prior to FY 2008; that large component of the backlog was entirely adjudicated during FY 2010, which was a major achievement. In addition, all pending cases were reviewed to assess and prioritize those that contained the most egregious allegations of discrimination. All 27 of these matters, were completed. In total, DHS issued 527 merits FADs during FY 2010, up from 303 in 2009 (a 74% increase), decreasing the number of pending merits FADs from 420 to 247 (a 41% decrease). This was accomplished by focused staff efforts and by the award of two new contracts, for a total of three contracts. There has never been a time at DHS without a significant backlog of matters awaiting adjudication, but we are on track to accomplish that goal in FY 2011.

The focus on the oldest part of the backlog came at the cost of newer complaints. DHS issued only 17 merits FADs during FY 2010 within 60 days of the request (timely under the relevant regulations), essentially unchanged from the 16 matters processed timely in FY 2009. The prioritization of older matters meant that the average age of completed cases went up, from 567 days in FY 2009 to 807 days in FY 2010. During FY 2011, backlog elimination is focusing on newer cases, and efforts to improve the proportion adjudicated timely are proceeding simultaneously. Both the days-to-completion and timeliness rate are expected to improve dramatically over the current fiscal year. (Since many FADs are already overdue by the time CRCL receives the files from Components, that aspect of complaint processing will also receive focused attention.)

In the area of findings of discrimination, DHS experienced a moderate decrease in the number of findings issued in FY 2010 (17) compared to FY 2009 (23). The FY 2010 findings reflected only small shifts in the bases of discrimination and issues alleged (i.e., reprisal continued to be the most frequently asserted basis, followed by physical disability; the most frequently asserted issues included non-selection and non-sexual harassment). A review of FY 2010 EEO complaint data shows no notable changes since the prior report in FY 2009.

During FY 2010, DHS had 243 pending civil actions in Federal district court (including 88 filed in FY 2010) involving the various laws covered in the No FEAR Act. During FY 2010, Federal court judges disposed of 89 cases. 45 cases were decided in favor of the agency, and 44 cases were settled by the parties.

In FY 2010, DHS's Judgment Fund reimbursement totaled \$1,594,200, while the amount of reimbursement for attorney's fees in that same time period totaled \$285,000. During FY 2010, DHS disciplined three employees for discrimination, retaliation, harassment, or other infractions of provisions of law covered by the No FEAR Act.

II. 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.

III. 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), and Section 103(d)(5) of the Act required the appointment of an Officer for Civil Rights and Civil Liberties ("Officer"). On June 5, 2003, the Secretary of Homeland Security delegated authority to the Officer to lead the Department's EEO Programs and Diversity Initiative, and on August 1, 2006, the Officer re-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. 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 and resolving 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 equal employment opportunity 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* ("Rehabilitation Act"), as amended, 29 U.S.C. § 791 *et seq.* To meet this objective, the Deputy Officer for EEO and Diversity Programs and his or her 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.

IV. Results/Data

A. Current Status of EEO Programs and Overview of Initiatives

1. EEO Cases in Federal Court

During FY 2010, DHS had 243 civil actions 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 (164), followed by filings under the *Age Discrimination in Employment Act (ADEA)* (38), the *Rehabilitation Act* (33), the *Whistleblower Act* (6), and under the *Equal Pay Act* (2). Of the 243 cases, 88 were filed in FY 2010.

During FY 2010, Federal court judges disposed of 89 cases: 45 were decided in favor of the Department and 44 were resolved by settlement. For further information regarding FY 2010 employment discrimination and whistleblower cases filed in Federal court against DHS, *see* Appendix 1.

2. Reimbursement to Judgment Fund

During FY 2010, DHS reimbursed the Judgment Fund in the total amount of \$1,594,200, while the amount of reimbursement for attorney's fees in that same period totaled \$285,000. The bulk of the reimbursement to the Judgment Fund derived from cases filed under Title VII, in the amount of \$1,141,850. Cases involving the Rehabilitation Act led to a \$267,500 reimbursement to the Judgment Fund, while the ADEA cases were responsible for an \$184,850 reimbursement. With respect to attorney's fees, Title VII cases involved a total amount of \$125,000, and the Rehabilitation Act cases resulted in \$160,000.

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 2010, DHS disciplined three employees for discrimination, retaliation, harassment, or any other infraction of any provision of law covered by the No FEAR Act. Each of the three employees was removed.

4. EEO Complaint Data

See Appendix 2 for DHS No FEAR Act web posting data for FY 2010.

V. Analysis of Trends/Causality

A. EEO Complaint Activity

During FY 2010, the filing of new statutory and non-statutory EEO complaints declined during FY 2010, with a total of 1,194 complaints being filed – a decrease of 263 complaints (18%) over the number of complaints filed in FY 2009 (1,457), as shown in Appendix 2 of this report. Note, however, that the FY 2009 data was skewed as a result of 359 individual complaints filed that year after the closure of a Federal Emergency Management Agency (FEMA) facility in Puerto Rico. All of the 359 cases involved the same issues and were filed by the same lawyer; DHS procedurally dismissed these cases from the administrative EEO process during FY 2010, because they were filed in Federal District Court.

Setting aside the one-time closure of the FEMA facility as a singular event that obscures overarching trends, the number of complaints filed during FY 2010 (1,194) is a 9% increase (96 more complaints) than the 1,098 other complaints filed in FY 2009, and a 4% increase (49 more complaints) than were filed in FY 2008 (1,145). See Figure 1, below.

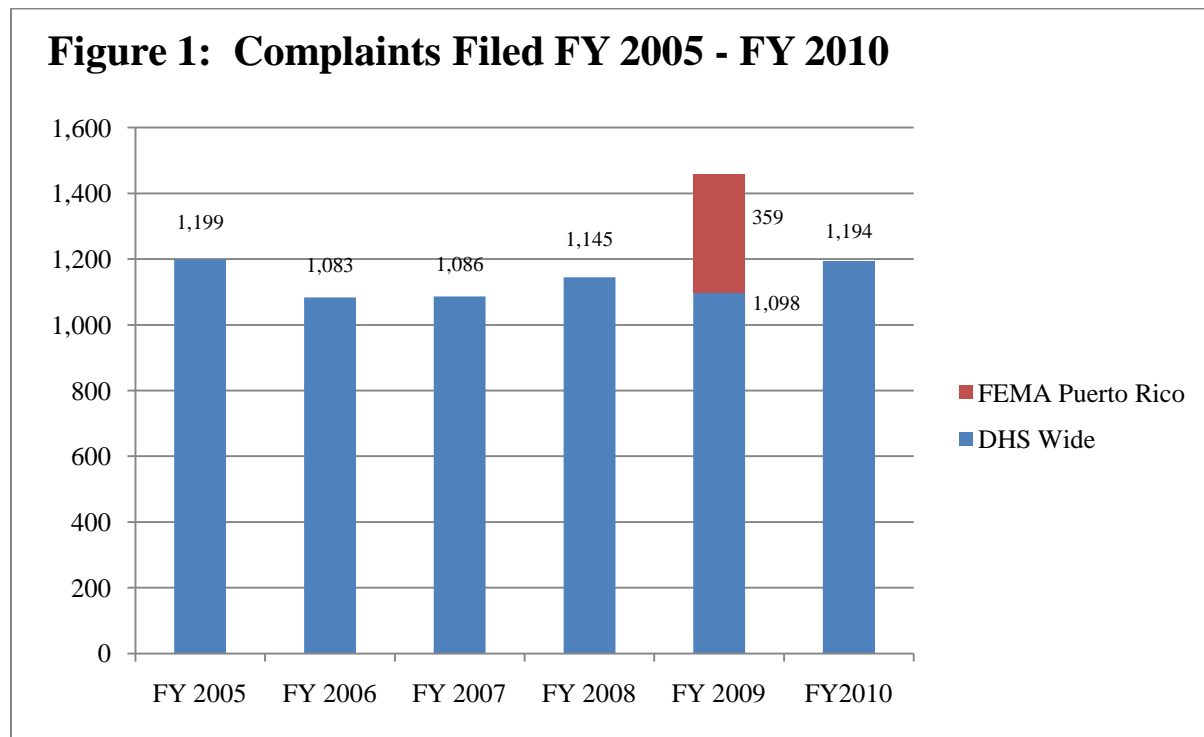


Table 1 compares filing rates across similarly-sized Federal agencies per 1,000 employees. (We use FY 2010 data for DHS, but use FY 2009 data for other agencies because FY 2010 Federal-wide data is not yet available.) In FY 2010, the DHS complaint filing rate was 6.0 complainants per 1,000 DHS employees, on par with the filing rate at the Veterans Administration and slightly lower than the Department of Justice’s filing rate of 6.1 complainants per 1,000 employees in FY 2009. The DHS FY 2010 filing rate was approximately 10% higher than the Government-wide Cabinet level agencies’ filing rate for 2009 of 5.4, and approximately 47% higher than the

Department of Defense, at 3.2 complaints per 1,000 civilian employees. Full data is reported in Table 1, below.

Table 1: Rate of EEO Complaints Compared Across Agencies				
Agency	Civilian Workforce	# Complaints	# Complainants	Complainants / 1000 employees
DHS (FY 2010)	191,150	1,194	1,136	6.0
Non-DHS (FY 2009):*				
Veterans Admin.	295,654	2,221	2,058	7.0
Dept. of Justice	114,758	722	700	6.1
All Cabinet-Level Agencies	2,731,672	15,777	14,783	5.4
Dept. of Defense	843,322	2,935	2,738	3.2

*Source: Annual Report on the Federal Workforce Fiscal Year 2009, <http://www.eeoc.gov/federal/reports/fsp2009/index.cfm#sectione>

B. Bases of Discrimination in EEO Complaints

During FY 2010, DHS’s most-frequently alleged bases of discrimination in formal EEO complaints involved, in order of frequency, reprisal, sex, and race/color. See Figure 2, below. To assist in interpreting trends related to asserted bases, note that the Department’s civilian workforce increased by about 1% (from 189,337 to 191,150 employees), and the average number of bases per complaint increased from FY 2009 to FY 2010, from 1.7 to 1.9. (Again, these figures omit the FEMA Puerto Rico facility complaints, in order to avoid a skew to the FY 2009 data.) Thus while total complaints increased 5%, from 1,098 to 1,154, the total alleged bases of discrimination increased by nearly 10%, from 1,903 to 2,196. In turn, half of the increases described below in particular types of claimed discrimination reflect not more claims, but more alleged bases per claim.

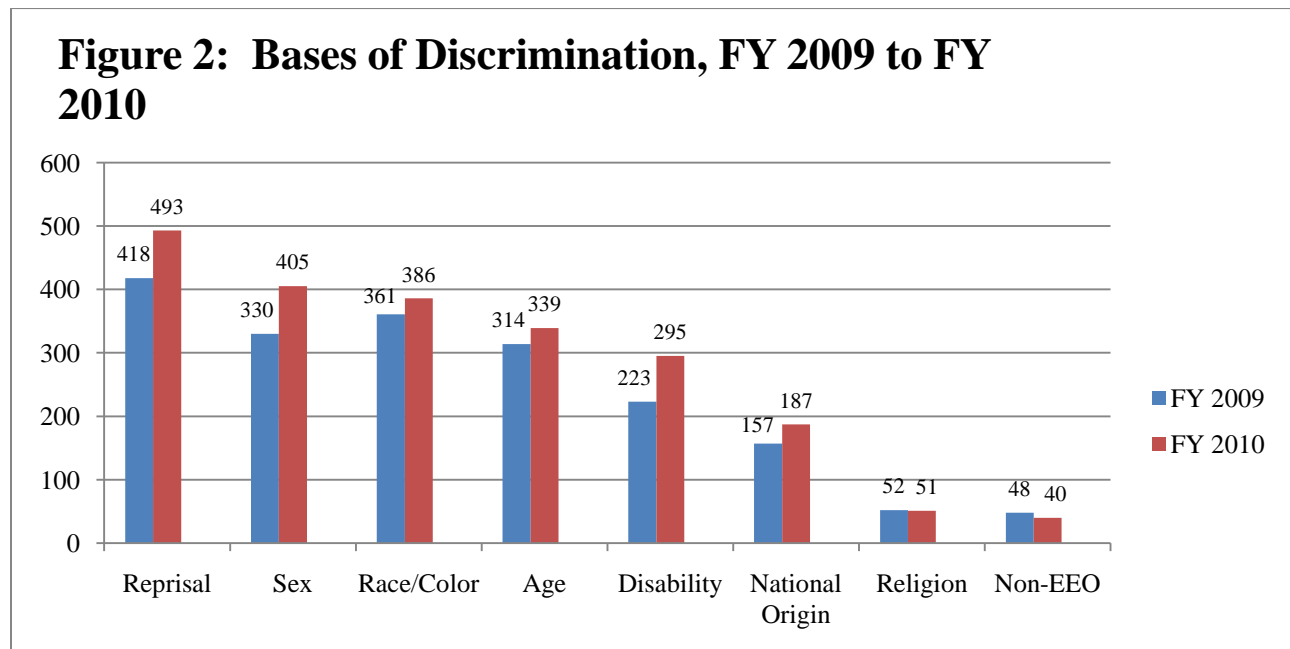
Reprisal: Even without the 359 Puerto Rico FEMA cases, which asserted bases of national origin and reprisal, DHS’s FY 2010 reprisal claims (493) were notably higher than reprisal claims in prior years (FY 2009, 418; FY 2008, 432; FY 2007, 389; FY 2006, 391; and FY 2005, 406.) The leading frequency of reprisal claims at DHS is consistent with Government-wide data for reprisal claims, which constitute the most-frequently alleged basis of discrimination throughout the Federal Government from FY 2005 to FY 2009. At DHS as elsewhere in the Federal Government, reprisal claims are nearly always joined with an underlying EEO complaint on the basis of race, national origin, gender, etc. See Equal Employment Opportunity Commission’s (EEOC) *Annual Report on the Federal Workforce FY 2009* (<http://www.eeoc.gov/federal/reports/fsp2009/index.cfm>).

Gender: During FY 2010, DHS received 405 complaints alleging discrimination on the basis of gender, an increase of 84 cases (26%) from FY 2009 (321). Since FY 2005, gender discrimination claims have numbered in the top three most-frequently filed bases of discrimination. The significance of the increase of 84 cases is difficult to gage. On the one hand, 84 is not a large number, considering the size of the Department’s workforce. On the other hand, the increase is large, compared to the low base rate of complaints. We will pay particular

attention to this issue in FY 2011, to ascertain whether the FY 2010 experience was anomalous or the beginning of a trend.

Table 2: Gender Complaints, FY 2010 and FY 2009		
	FY 2010	FY 2009
Total gender-based complaints filed	405	330
Gender (female)	274	210
Gender (male)	131	120
Total Civilian Workforce	191,150	189,337
Women	62,736	62,096
Men	128,414	127,241
Gender (female) complaints per 1,000 women employees	4.4	3.4
Gender (male) complaints per 1,000 men employees	1.0	0.9

Race/Color: During FY 2010, race and/or color discrimination constituted the third most-frequently filed bases of discrimination, with 386 complaints, an increase of 25 complaints over complaints filed on these bases during FY 2009 (361). For information on these and other bases asserted, see Figure 2, which sets out data from FY 2009 and FY 2010. While the number of complaints filed rose by about 9% (359 FEMA Puerto Rico cases are omitted, to avoid a skew), Figure 2 shows that nearly every complaint basis rose in frequency. Over half the increase in asserted bases between 2009 and 2010 is attributable to the increasing proportion of cases raising two or more bases.



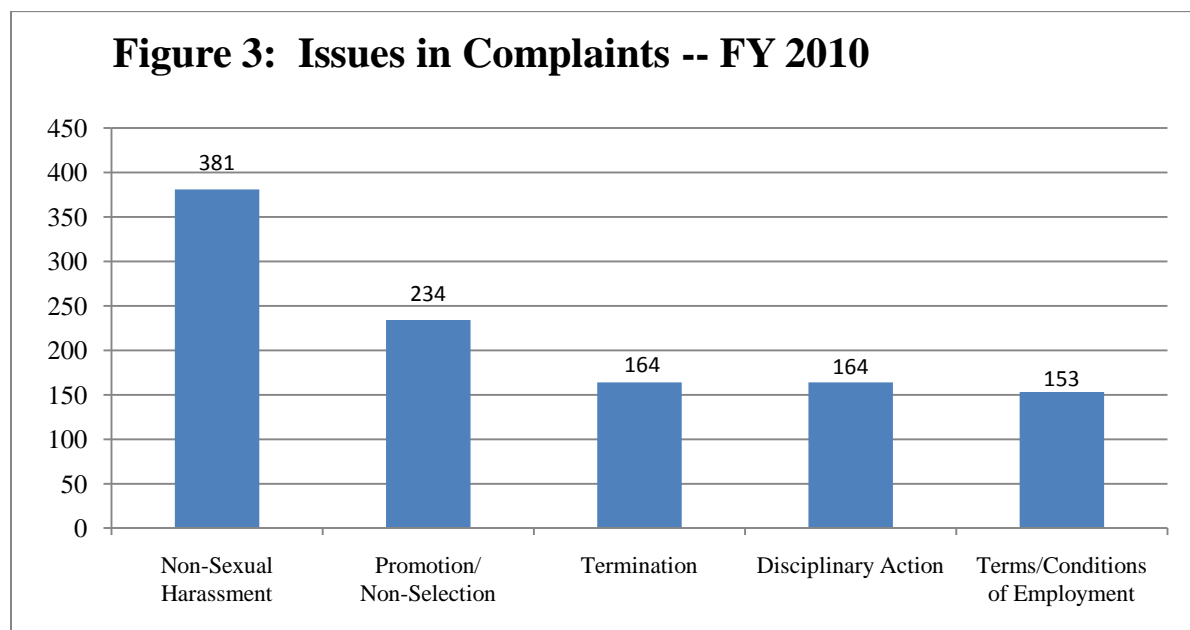
* Nearly all color complaints also reference race.

** Includes parental status, sexual orientation, and genetic bases.

C. Issues in EEO Complaints

The two most-frequently raised issues in discrimination complaints during FY 2010 involved non-sexual harassment¹ (raised in 381 complaints), and promotion/non-selection (raised in 234 complaints). These two issues ranked among the three highest issues in discrimination claims at DHS over the past three fiscal years. The prevalence of these issues 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 2005 to FY 2009, as reported in the EEOC's *Annual Report on the Federal Workplace FY 2009* (<http://www.eeoc.gov/federal/reports/fsp2009/index.cfm>).

As shown in Figure 3, below, terminations were raised in 164 complaints, ranking third among the issues most-frequently raised at DHS during FY 2010.



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

A. EEO Counseling

During FY 2010, DHS made significant progress in the percentage of timely-completed requests for counseling.² Of the 1,848 cases for which counseling was completed during the year, 81%

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).

² In accordance with Title 29 C.F.R. § 1614.105(d), counseling is to be completed within 30 calendar days unless the aggrieved person agrees to extend the counseling period up to an additional 60 calendar days.

(1,495) were timely completed. This is the highest percentage of cases timely counseled at DHS since FY 2006 (also 81% timely), and a marked improvement over FY 2009.

Table 3: EEO Counseling at DHS, FY 2005 - 2010						
<i>FY</i>	<i>2005</i>	<i>2006</i>	<i>2007</i>	<i>2008</i>	<i>2009</i>	<i>2010</i>
Total #	2,221	2,223	2,240	2,064	2,479	1,848
Timely: #	1,874	1,796	1,709	1,497	1,684	1,495
%	84	81	76	73	68	81

Notably, five DHS Components timely completed 90% or more of cases counseled; of those Components, U.S. Customs and Border Protection (CBP) completed 100% of its 506 cases within the regulatory time period. Others in this category include:

- U.S. Coast Guard (USCG), timely completing 70 of 72 (97%);
- U.S. Citizenship and Immigration Services (USCIS), timely completing 185 of 197 (94%);
- DHS Headquarters, timely completing 77 of 84 (92%); and
- U.S. Immigration and Customs Enforcement (ICE), timely completing 191 of 209 (91%)

During FY 2011, DHS plans to promote and facilitate the sharing of best practices among Components in this area of the EEO complaint process.

B. EEO Investigations

During FY 2010, the Department made progress in improving the production, timeliness, and average processing time of EEO investigations when compared to FY 2009 investigations. For example, in FY 2010, DHS completed 939 investigations compared to 861 completed during FY 2009, an increase of 78 (9%) in the number of investigations completed. The number of timely completed investigations also improved slightly during FY 2010 – 566 investigations were timely-completed during FY 2010 compared to 561 during FY 2009. A comparison of prior years' data is contained in Table 4, below

Table 4: EEO Investigations at DHS, FY 2005 - 2010						
<i>FY</i>	<i>2005</i>	<i>2006</i>	<i>2007</i>	<i>2008</i>	<i>2009</i>	<i>2010</i>
Total #	930	796	742	787	861	939
Timely: #	217	254	375	448	561	566
%	23	32	51	57	65	60
Average Days	330	279	248	215	217	213

Three DHS Components stood out in the area of timely completion of EEO investigations during FY 2010: (1) USCIS timely completed 100% of its 86 investigations; (2) CBP timely completed 98% of its 247 investigations; and (3) U.S. Coast Guard (USCG) timely completed 98% of its 40 investigations. During FY 2011, DHS plans to promote and facilitate the sharing of best practices among components in regard to EEO investigations, with the goal of further improvements within the Department.

C. Procedural Dismissals of EEO Complaints

An agency may dismiss a complaint for several reasons, including: a complaint’s failure to state a claim; untimely initial contact with an EEO counselor; filing the identical claim in Federal district court; and failure to provide necessary information to the agency, among other reasons. See 29 C.F.R. § 1614.107(a). DHS Operational Components submit requests to CRCL’s Complaints Management and Adjudications Unit for full dismissal of complaints that meet appropriate regulatory criteria. During FY 2010, DHS issued 550 dismissals, a number significantly higher than FY 2009 when 204 dismissals were issued. The average time period for dismissals also increased, from 241 days in FY 2009 to 385 days in FY 2010. The increases in both number and timeframes are attributed to the 359 cases filed as a result of the closure of a FEMA facility in Puerto Rico and the resulting procedural dismissal of those complaints by DHS. All of the complainants were represented by the same lawyer and all of the complaints were filed in district court, necessitating their dismissal from the EEO administrative complaint process. The planning and preparation work for dismissal of the FEMA Puerto Rico cases began approximately 4 months prior to issuance of the dismissal decisions; decision letters were issued within 27 business days from the date the draft dismissal letters were received from FEMA, an extremely short period of time for this volume of cases. The FEMA cases, filed in two groupings, were approximately 420 and 327 days old, respectively, at the time of dismissal. Again, the volume and age of these cases impacted the timeliness of dismissal closures at DHS during FY 2010. DHS issued 191 other dismissals during FY 2010, a decrease of 13 (6%) from the 204 dismissals issued during FY 2009.

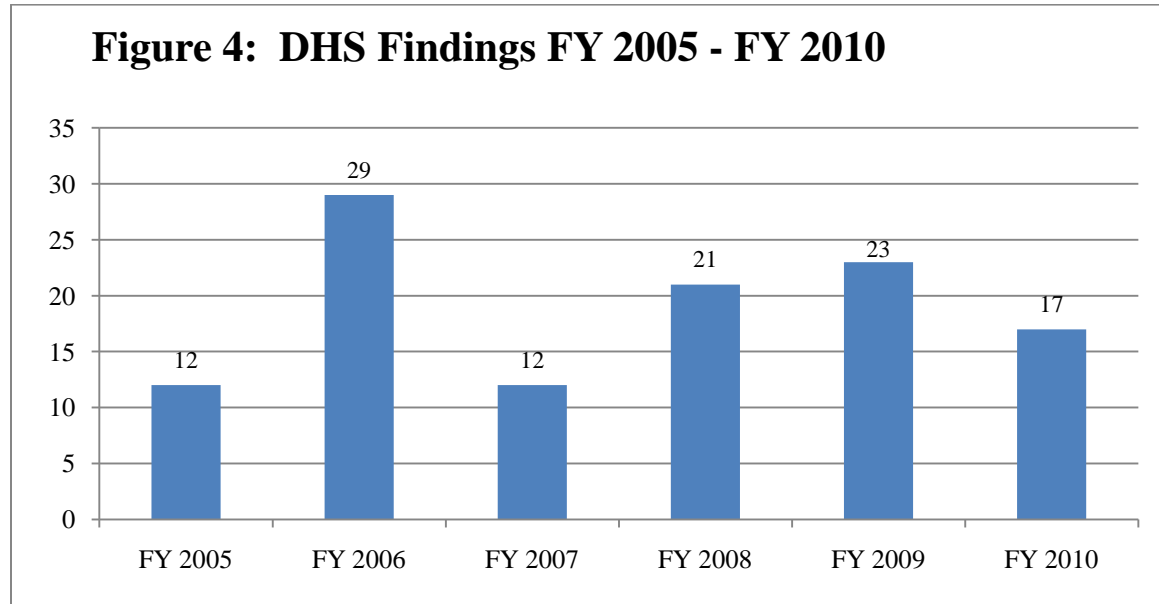
Table 5: DHS Procedural Dismissals, FY 2005-2010						
<i>FY</i>	2005	2006	2007	2008	2009	2010
Total #	296	304	187	247	204	550
Average Processing Days	306	254	257	220	241	385

D. Findings of Discrimination

Section 203(a)(7) of the No FEAR Act requires Federal agencies to examine trends and causes behind the data in the report over the past five years. The following tally of DHS’s findings of discrimination from FY 2005 to FY 2010 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.

Overall, from FY 2005 to FY 2010, DHS has processed 114 findings of discrimination. FY 2010 does not show any systemic EEO issues or trends compared to prior years. During FY 2010, DHS processed 17 cases in which findings of discrimination were made – a decrease from FY 2009 when DHS processed 23 findings of discrimination, and a number slightly below the Department’s average annual number of findings (19) from FY 2005 to FY 2009. The number of findings in FY 2006 (29) was the highest number of findings in the past six fiscal years. The greatest annual fluctuations occurred from FY 2005 to FY 2007, as shown in Figure 4. Findings in FY 2008 (21), FY 2009 (23), and FY 2010 (17) do not show a significant variance year to year, or one from which any systemic trend can be determined. The 17 findings processed in FY

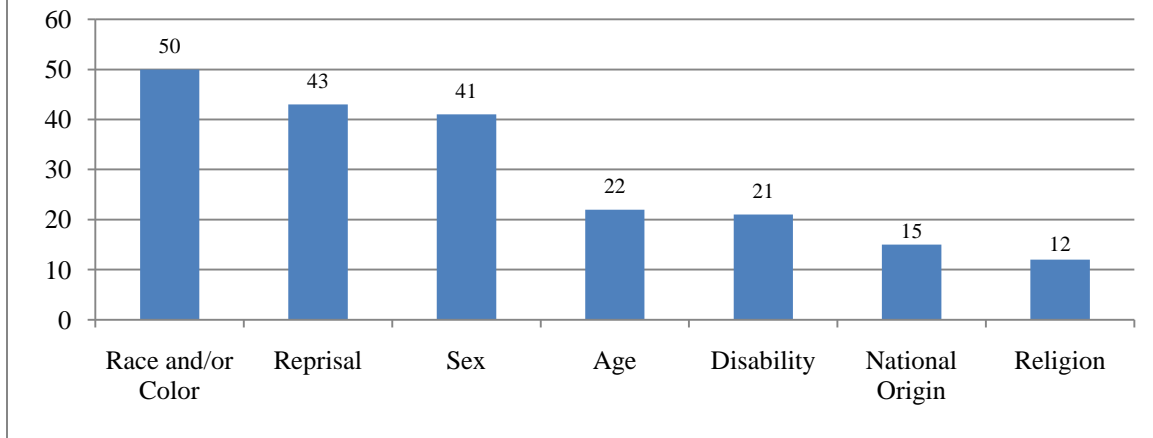
2010 involved varying bases and claims from five different DHS Operational Components; furthermore, the FY 2010 findings were not filed in the same year; rather, these findings originated from complaints filed between FY 2003 and FY 2009. The complaints upon which findings have been made originated in prior fiscal years—often several years prior to the year in which the finding was issued. The annual fluctuations reveal no discernable trend in number or DHS component.



E. Protected Bases

In FY 2010, more findings (8) were based on reprisal than any other basis; this is consistent with FY 2009, when the highest number of findings (11) were based on reprisal. For FY 2010, the next highest bases were disability (6) and sex (4). Remaining bases of discrimination included age (3), race (2) (1 Caucasian and 1 American-Indian), and religion (1) (Christian). The total number of findings by bases from FY 2005 to FY 2010 is shown in Figure 5, below.

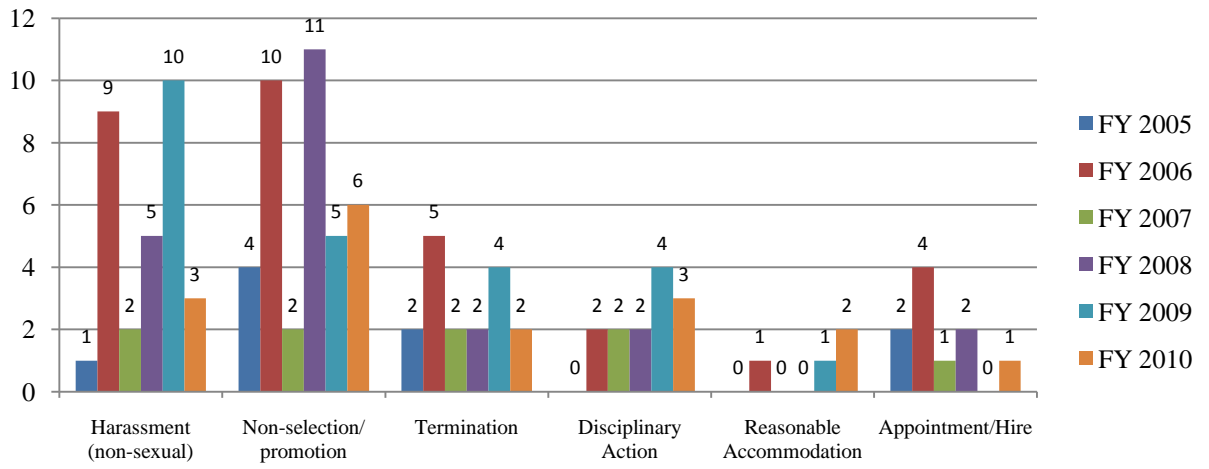
Figure 5: Findings by Bases FY 2005 - FY 2010



F. Issues

FY 2010 findings of discrimination involved issues consistent with previous fiscal years, and do not suggest any particular pattern. In FY 2010, DHS findings predominantly involved non-selection/promotion actions (6), followed by disciplinary actions (3), and non-sexual harassment (3). Other issues in FY 2010 findings were termination (2), reasonable accommodation (2), and appointment/hire (1). Findings decreased significantly from FY 2009 for cases involving non-sexual harassment (10 in FY 2009 to 3 in FY 2010). Findings decreased moderately for cases involving termination (4 in FY 2009 to 2 in FY 2010) and disciplinary action (4 in FY 2009 to 3 in FY 2010). DHS findings increased only slightly for cases involving non-selection/promotion (5 in FY 2009 to 6 in FY 2010), reasonable accommodation (1 in FY 2009 to 2 in FY 2010), and appointment/hire (from 0 in FY 2009 to 1 in FY 2010). As shown in Figure 6, below, findings of non-sexual harassment have fluctuated at a noticeable rate over the period FY 2005 to FY 2010, as have findings in the area of non-selection/promotion, whereas more moderate fluctuations have occurred in the remaining issues of termination, disciplinary action, reasonable accommodation, and appointment/hire.

Figure 6: Findings by Issues -- FY 2005 to FY 2010



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

During FY 2010, DHS achieved significant program improvements and enhancements, resulting in a substantial increase in DHS's production of Final Actions issued in EEO complaints, improved quality of complaint tracking and reporting, and enhanced services to stakeholders. At the beginning of the fiscal year, CRCL and the Department's EEO Directors committed to a collaborative effort to fund and support iComplaints and eVersity – DHS enterprise-wide data systems for EEO complaint management and reporting, and diversity data and analysis, respectively. The collaboration and partnerships between the organizations continued to flourish.

A. Improvements in DHS EEO Complaints Adjudication

1. Improved Production and Strategic Focus

In FY 2010, the DHS complaints adjudication program focused on two areas: (1) completion of merits FADs that originated prior to FY 2008; (2) stratification of cases, to identify the most egregious allegations of discrimination and adjudicate those cases more quickly.

As a result of dedicated focus on the FAD backlog, remarkable progress was made in reducing the backlog, from 420 pending cases at the beginning of FY 2010 to 247 pending cases at the year's close, a 41% decrease during FY 2010. The number of merits FADs issued increased from 303 in FY 2009 to 527 in FY 2010 (a 74% increase). To achieve these accomplishments, DHS engaged contractor resources throughout FY 2010 to supplement internal resources and maintained a dedicated, focused effort on review of the contractor FADs while continuing to maintain internal FAD-writing quality and efficiency. Resulting accomplishments included the successful elimination of the backlog of merits FADs that originated prior to FY 2008, the accelerated adjudication of 27 cases containing the most egregious allegations of discrimination, issuance of 527 merits FADs during FY 2010, and the award of two new contracts – for a total of three contracts – to draft merits FADs and ensure the entire elimination of the backlog during FY 2011.

The focus on the oldest part of the backlog came at the cost of newer complaints. DHS issued only 17 merits FADs during FY 2010 within 60 days of the request (timely under the relevant regulations), essentially unchanged from the 16 matters processed timely in FY 2009. The prioritization of older matters meant that the average age of completed cases went up, from 567 days in FY 2009 to 807 days in FY 2010. DHS is on track with its plan to eliminate the backlog of pending merits FADs during FY 2011, an unprecedented achievement within the Department. During FY 2011, backlog elimination is focusing on newer cases, and efforts to improve the proportion adjudicated timely are proceeding simultaneously. Both the days-to-completion and timeliness rate are expected to improve dramatically. (Since many FADs are already overdue by the time CRCL receives the files from Components, that aspect of complaint processing will also receive focused attention.)

FY	2005	2006	2007	2008	2009	2010
Backlog at year end	171	203	419	568	420	247
Total #	551	266	249	86	303	527
Timely (#)	0	4	4	21	16	17
%	0	2	2	24	5	3
Average Processing Days	1013	400	355	545	567	807

2. Improved Processes and IT Infrastructure

The DHS/TSA IPT implemented new Departmental EEO applications titled iComplaints and eVersity. The successful launch of these enterprise systems required solution of procurement, compliance, policy, technical, and change management issues throughout the Department. The standup of these enterprise applications ties in to other large Department initiatives such as data center consolidation and enterprise authentication services. The DHS/TSA IPT was the recipient of a TSA Honorary Award in the “Team” category and iComplaints has also been nominated as a Departmental Best Practice by the DHS Human Capital Accountability Audit Team.

DHS further streamlined the process by which its procedural dismissals and merits FADs are produced, adding increased reliance on electronic records review and strategic use of both workplace flexibilities and information technology. CRCL partnered with DHS Operational Components and, in turn, CRCL personnel were able to access relevant documents that had been uploaded to the complaints database by EEO staff at the Operational Components. CRCL and Component personnel worked together to design and implement standard naming conventions for documents uploaded to the database, permitting ease of recognition and access to a myriad of EEO complaint documents. During FY 2010, Operational Components also began to notify CRCL electronically via a dedicated email inbox of requests for procedural dismissal and merits FAD. These collaborative efforts between CRCL and DHS Operational Components have reduced the number of “hard copy” records sent to CRCL when adjudication requests are transmitted and, thus, have maximized process efficiency and tracking throughout the Department.

During FY 2010, all CRCL complaints adjudication analysts were issued laptops, thus enabling access to the iComplaints database and other electronic resources available via the DHS network while maximizing scheduling flexibilities such as telework. This solution was in place and worked very well during the historic snowstorm in the Washington, DC area during FY 2010, enabling the majority of complaints adjudication analysts and managers to continue to work throughout the period Washington, DC Federal government offices were closed due to inaccessibility.

3. Staffing

CRCL added two key positions to its complaints adjudication section during FY 2010, hiring a second Supervisory Senior Analyst in May 2010, and a ninth FAD Analyst in July 2010. The immediate impact of these two additional resources immediately contributed to the preparation, review, and issuance of merits FADs and other Final Actions during the remainder of the fiscal

year. During FY 2010, the CRCL complaints adjudications program lost a Team Lead in the Complaints Management section, when the incumbent departed for a promotion opportunity with another agency. The Team Lead position remains unencumbered at this time. During FY 2010, CRCL's EEO and Diversity Programs Division successfully implemented its first-ever summer internship program. The intern's primary responsibilities were to assist in merits FAD inventory-reduction priorities by participating in initiatives related to EEO complaint adjudication.

B. DHS Operational Components

1. Overview of EEO Investigations

During FY 2010, DHS increased the number of timely investigations to 569, eight more than the 561 completed during FY 2009, while simultaneously increasing the overall number of investigations from 861 in FY 2009 to 943 in FY 2010. Six of the nine DHS Component organizations increased the proportion of timely EEO investigations completed during FY 2010 over those completed in FY 2009, and three of the Components did worse (see Table 7, below); this is why DHS plans to promote and facilitate the sharing of best practices among Components in regard to EEO investigations. DHS EEO Directors continued to build on the effectiveness of the EEO Council, established during FY 2009, and have agreed to collaborate, examine trends, and share best practices among Council members during FY 2011, which is expected to further improve timeliness and quality within this critical area of the EEO complaint process.

	<i>FY 2009</i>			<i>FY 2010</i>		
	Total	# Timely	% Timely	Total	# Timely	% Timely
CBP	215	210	98	247	242	98
FEMA	109	12	11	186	22	12
FLETC	6	0	0	4	3	75
ICE	146	108	74	136	69	51
HQ DHS	6	6	100	32	15	47
TSA	240	101	42	201	91	45
USCG	49	47	96	40	39	98
USCIS	77	72	94	86	86	100
USSS	13	5	38	11	2	1
Total	861	561	65	943	569	60

2. Overview of Process Efficiencies

DHS Operational Component EEO Offices instituted new process efficiencies during FY 2010, by utilizing the new iComplaints enterprise database (and its predecessor) when requesting Final Actions by CRCL. During FY 2010, Components collaborated on the development and use of a standardized email by which final actions (primarily procedural dismissals and merits FADs) are requested of DHS. The standard email also certifies that appropriate supporting documentation has been uploaded by Component personnel to the database and, thus is available to the DHS adjudications staff to review electronically. As this initiative has matured throughout FY 2010,

the need for shipping “hard copy” records to DHS has decreased steadily, which has resulted in time and resources saved in shipping records to and from DHS and increased the efficiency of CRCL’s receipt, intake, and assignment of Final Actions. The Components worked together as part of the iComplaints User Group process to design and implement standardized naming conventions for documents uploaded to the iComplaints database. This process increases efficiency as it enables quick and consistent identification of documents for both DHS Component personnel and DHS adjudications staff.

3. Operational Component Staff Training

Each DHS Operational Component EEO Office participated in CRCL-sponsored training in the preparation of the annual 462 Report and No FEAR Act reports. Additionally, each Component participated in training for the iComplaints enterprise data system.

C. Transportation Security Administration (TSA)

Infrastructure

In FY 2010, TSA implemented a critical step towards effective records management in the Office of Civil Rights and Liberties (OCRL) by installing an electronic high density filing system (HDFS). The HDFS holds over 125 linear feet of files; over 10,000 records were converted to this new system. To implement this change, OCRL created a tracking database for all of its records to achieve positive control of its information.

Technology

In FY 2009, OCRL received reprogrammed funding for acquisition and implementation of two separate Commercial Off-the-Shelf (COTS) applications for EEO case management and reporting, to include statutory reporting to EEOC. TSA achieved contract award on all IT contract procurements in late FY 2009. Once fully implemented, TSA’s technology applications are expected to save TSA an estimated \$200,000 annually by reducing system down time and lost productivity; and will exponentially reduce TSA production time for statutory complaint reports in outlying years (based on similar volume from a comparable agency). In January 2010, TSA’s solution was adopted by DHS as the “One-DHS” solution for all civil rights and liberties programs across the Department. As a result, throughout FY 2010, TSA has led the IT investment initiative and enterprise implementation of these applications throughout DHS, working collaboratively with DHS CRCL, DHS Office of the Chief Information Officer (CIO), DHS Acquisitions, all DHS Operational Component EEO offices, TSA CIO, Acquisitions, and Personnel Security. Additionally, TSA initiated the implementation of e-File, which is an electronic complaint filing program.

EEO Complaint Processing

OCRL advanced model workplace/human capital goals by helping managers, supervisors, and employees resolve EEO workplace conflict and disputes through its Alternative Resolutions to Conflict (ARC) program. Initial contacts increased by 9% in FY 2010, while case filings increased by 34% (compared to FY 2009). OCRL responded to 562 informal complaints in FY 2010. Even as informal complaint filings have increased, the mediation resolution rate remains above the TSA standard of 50%. When parties participated in mediation, the cases were

resolved 65% of the time. In OCRL's Formal Complaint Division, formal complaint filings increased by 28 complaints (10.07%), from 278 complaints filed in FY 2009 to 306 complaints filed in FY 2010. For FY 2010, the average number of days for completion of investigations was approximately 238 days. This is an increase over FY 2009 but is remarkable since OCRL had no contract investigation support for more than four months in FY 2010.

Diversity Management

TSA's OCRL worked closely with the TSA Diversity Advisory Council (DAC) to prepare a very strong working draft of TSA's first Diversity Strategic Plan (DSP). OCRL also began coordination with TSA's Senior Leadership Team. In October 2009, TSA held its second annual Diversity Day celebration involving airports from Guam to the Caribbean, as well as the Federal Air Marshal Service (FAMS) and Headquarters offices. It was a day to reflect and learn about different cultures and ideologies, as well as a day for TSA to commit to understanding, acceptance, and inclusion.

Services and Proactive Engagement

In response to heightened FAMS complaint activity, and Congressional and EEOC interest in the FAMS, TSA implemented an aggressive and proactive service model across the FAMS. The goal was to effectively educate and equip FAMS Special Agents in Charge and optimize TSA's efforts to achieve a model workplace in the FAMS.

TSA OCRL achieved a 96% increase in site visits during FY 2010, conducting approximately 45 site visits to provide EEO/civil rights training and technical assistance with EEO compliance, compared to 25 site visits in FY 2009. The site visits included approximately 25 airports across the country; 10 visits to the FAMS training facility in Atlantic City, NJ and other FAMS offices, and 10 Headquarters' offices. These efforts resulted in almost 5,000 TSA employees and contractors receiving live EEO/civil rights training. The site visits delivered legally mandatory EEO and civil rights training to TSA managers and employees and allowed TSA to comply with Federal mandates and EEOC Administrative Judges' orders. During the on-site activity, OCRL also provided EEO counseling services and intervention support for Federal Security Directors and management teams on existing EEO-related disputes or conflicts. The "in person" training is a supplement to the DHS No FEAR Act training provided on-line and required every other year for all TSA employees. TSA also requires all new employees to complete the No FEAR Act training within ninety (90) calendar days of entering service.

In addition, OCRL developed a new training curricula designed to advance diversity and inclusion in TSA. The tailored diversity and EEO support and training greatly enhanced TSA's ability to focus on TSA's vital security mission. TSA OCRL also continued the full range of affirmative employment programs designed to increase awareness and assist with the development and advancement of key employee demographics. Related efforts included various programs in partnership with DHS and other Federal agencies and submission of reports mandated by Executive Orders, Congress, and the EEOC. Finally, TSA OCRL prepared numerous briefings for the TSA workforce and developed a training module to raise awareness of the cultural sensitivities of the traveling public.

D. Federal Law Enforcement Training Center (FLETC)

EEO Complaint Processing

During FY 2010, FLETC completed three of four EEO investigations within the regulatory timeframe of 180 days, achieving a fiscal year goal to increase the number of timely EEO investigations. The FLETC EEO Office began managing the entire investigative process at the beginning of the fiscal year; furthermore, the Office of Chief Counsel (OCC), Human Capital Operations Division (HCOD), and involved management officials worked together to streamline the investigative process. At FLETC, there is now a clear process by which an EEO investigator can acquire documents from HCOD. Additionally, witness letters are sent electronically to the Responding Management Officials and the agency attorney handling the case. These letters describe how important their participation and cooperation is to the timely processing of the complaint and also includes specific timelines for submission of affidavits. FLETC is committed to continuing its efforts to ensure timely completed investigations, by continuing to work closely with investigators, OCC, HCOD, and RMOs. Additionally, FLETC plans to continue to educate managers on the benefits of using Alternative Dispute Resolution techniques, which may promote early resolution of complaints. FLETC EEO Contract investigators completed four EEO investigations during FY 2010. Three of the investigations, completed under the new process initiated in FY 2010, were completed within regulatory timeframes.

Diversity Management

In FY 2010, the FLETC EEO office and HCOD collaborated to develop, review, revise, and make recommendations to specific elements of FLETC recruitment plans. This collaboration ensured that specific components of the plans took into account FLETC's long-term strategic goals and projections, and that diversity and disability hiring initiatives were being achieved. Additionally, during FY 2010 FLETC laid the groundwork for a viable "Operation War Fighter" program, by developing a Memorandum of Understanding (MOU) between FLETC and Fort Stewart to provide opportunities for wounded veterans to work and develop new skills.

Services and Proactive Engagement

In FY 2010, a total of 526 FLETC employees completed the DHS No Fear Act training on-line. Additionally, designated Management Officials were provided a power point presentation on the benefits of ADR and mediation.

E. U.S. Secret Service (USSS)

Infrastructure

In May 2010, the new EEO Director for the Office of Equal Opportunity, Carolyn McMillon, arrived at USSS. In March 2010, the USSS hired a Technical Advisor. As a result of these hiring efforts, USSS had 2 vacant positions at the end of FY 2010: an EEO Specialist position and an Affirmative Employment Program Manager position. By the end of FY 2010, the USSS also began exploring the possibility of creating one or two Sign Language Interpreter/EEO Specialist positions.

EEO Complaint Processing

During FY 2010, 41 individuals (0.6%) initiated pre-complaints out of a workforce population of 6,926 employees. This percentage is below the government-wide average of slightly more than 1%, as cited in EEOC's FY 2009 Annual Report. Out of the total workforce population of 6,926 employees, 20 individuals (0.3%) filed formal complaints. This percentage is below the government-wide average of 0.5% as cited in EEOC's FY 2009 Annual Report. Of the 41 individuals who initiated pre-complaints, 51% (21) did not file formal complaints. Two of these individuals resolved their pre-complaints with a settlement agreement, 18 individuals either withdrew their pre-complaint or failed to pursue a formal complaint, and one individual's complaint was pending at the close of the fiscal year.

During the period of July to August 2010, the Office of Equal Opportunity conducted an internal EEO Assessment of the Office's internal program operations. The assessment revealed that improvements in timeliness were required in the areas of pre-complaint and formal complaint processing; conducting investigations; and submission of case files to the EEOC. In response to follow-up from the internal EEO Program assessment conducted in the final quarter of FY 2010, in October 2010, the EEO Director developed and implemented EEO program benchmarks and management controls to ensure timely processing of EEO complaints and to permit adequate tracking and monitoring of information required by EEOC's Management Directive 715. The corrective measures that were developed and implemented included: (1) Developing an action plan aimed at correcting areas of non-compliance; (2) Implementing benchmarks that compare the USSS discrimination process with 29 C.F.R. § 1614; and (3) Implementing other management controls designed to ensure timely, accurate, complete, and consistent reporting of all other EEO information. As a result of this assessment and in an attempt to decrease processing times of formal complaints, the Office of Equal Opportunity no longer uses contractors to prepare acceptance or dismissal letters and instead completes these letters internally.

Services and Proactive Engagement

During FY 2010, the Office of Human Resources and Training (Recruitment Division and the Diversity Management Program), implemented a series of robust recruitment initiatives that yielded a 64% overall increase in outreach efforts in comparison to FY 2009. These initiatives also yielded a 110% increase in attendance at minority-focused events. During FY 2010, USSS supervisors, in coordination with the Office of Equal Opportunity, utilized the Department of Defense Computer/Electronic Accommodation Program (CAP) to grant four accommodations to USSS employees totaling over \$2,800. The USSS granted a total of 14 requests for reasonable accommodations during FY 2010.

During FY 2010, the Office of Equal Opportunity continued to conduct numerous EEO Briefings to the Special Agents, Uniformed Division, and Administrative, Professional and Technical USSS community as part of training courses or seminars, including Seminar for First Line Supervisors; Emerging Leaders; Cultural Diversity and Inclusion for Managers and Employees; Special Agent Training Course; Uniformed Division Training Course; and Quarterly and Biweekly New Employee Orientation. In addition, all employees were required to complete mandatory online training on Preventing Workplace Harassment and on the Notification and Federal Employee Anti Discrimination and Retaliation Act. Other EEO-related training

included: Reasonable Accommodation; “Why Diversity Matters”; Cultural Diversity and Inclusion Seminars; and Workplace Diversity Awareness. Newly promoted supervisors were required to complete the Emerging Leaders Seminar and the Seminar for First Line Supervisors, each of which has an EEO module.

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

Infrastructure

At USCIS, Director Alejandro Mayorkas demonstrated a strong commitment to equal employment opportunity and fair treatment for all employees and increased management accountability. On March 24, 2010, the Director issued a memorandum to all USCIS employees reminding new employees of the requirement to complete No FEAR Act training within ninety (90) calendar days of entering on duty.

On April 26, 2010, Ms. Paula Thomas entered on duty as the new Chief of the Office of Equal Opportunity and Inclusion (OEOI). The Chief is responsible for leading the development of EEO and diversity plans, monitoring and processing EEO complaints, and submitting annual progress reports to DHS and EEOC. During FY 2010, the Chief’s primary accomplishments and goals focused on the following:

- (1) Developing a plan to train all managers and supervisors regarding their responsibilities to comply with USCIS’s reasonable accommodation procedures;
- (2) Evaluating OEOI’s program goals and priorities, organizational structure, and resources to ensure that they are adequate to achieve a high performing EEO and Diversity program in support of USCIS’s mission; and
- (3) Identifying barriers to a lack of diversity in higher-graded series, and recommend solutions to remove any barriers.

EEO Complaint Processing

In FY 2010, 184 pre-complaint EEO contacts were initiated at USCIS, which is an increase of 7% from FY 2009. In FY 2010, 129 formal complaints were filed - an increase of 37% from FY 2009, which also constituted the highest number of formal complaint filings in the last five fiscal years. A review of the most frequently raised bases and issues raised in the complaints filed in FY 2010 (i.e. bases of reprisal, age and race, and issues of non-sexual harassment, terms and conditions of employment and non-selection) did not reveal any significant change from the types of bases and issues raised in previous years.

USCIS achieved noteworthy successes in EEO complaint processing during FY 2010 and strongly enhanced the efficiency and quality of EEO products and services. USCIS improved EEO investigations, completing 86 (a five year high) investigations with a 100% timeliness rate.

USCIS increased participation in its pre-complaint Alternative Dispute Resolution program by 17% with a total of 63 mediations conducted. These mediations resulted in 19 settlement agreements, which was a 72% increase from FY 2009. It is estimated that USCIS saved

approximately \$90,000 in investigation costs, which does not include the number of hours involved in the overall processing of these EEO complaints had they resulted in formal filings.

In FY 2010, there was also a dramatic increase (10 in FY 2009 to 34 in FY 2010) in the number of formal EEO settlements.

In FY 2010, USCIS had 15 pending civil actions in U.S. District Court, which included 6 new filings, 2 cases where judgment was entered in the agency's favor, and 2 that settled with lump sum payments totaling \$40,000.

Under Federal Labor Relations Authority precedent, the American Federation of Government Employees (AFGE), which is the exclusive bargaining representative for thousands of USCIS employees, has the right to be present during EEO investigator interviews with bargaining unit employees related to a formal EEO complaint filed by a bargaining unit employee. On August 1, 2010, USCIS implemented a procedure by which AFGE is notified in advance of these types of witness interviews in order to enable AFGE to be represented during these sessions.

Diversity Management

In FY 2010, USCIS undertook significant initiatives to promote EEO and diversity management, including: contacting all deaf/hard of hearing and blind/low vision employees to assess their accommodation needs; updating OEOI's intranet webpage; participating with DHS in the implementation of the enterprise iComplaints database that went live in August 2010; and, providing employees with quarterly updates on the reasonable accommodation process. David Kett, an EEO Specialist with OEOI, was awarded a USCIS Employee of the Year award in September 2010.

Services and Proactive Engagement

In FY 2010, a total of 4,016 USCIS employees completed the DHS No Fear Act training on-line. In addition, OEOI sponsored Designated Management Official mediation training at the Western Regional Office in Laguna Niguel, California.

G. U.S. Coast Guard (USCG)

Infrastructure

USCG is in the process of dramatically expanding its personnel base and hiring additional civil rights service providers in order to provide better service to CG personnel. Improvements and updates are being made to CG-wide Civil Rights Awareness training that will soon be ready for deployment. The USCG Commandant's Anti-Discrimination and Anti-Harassment Policy Statement states that any conduct that unreasonably interferes with an individual's work performance or creates an intimidating, offensive, or hostile work environment on the basis of an individual's race, color, religion, sex, sexual orientation, national origin, age, disability, marital status, parental status, political affiliation, engagement in any protected EEO activity, or any other basis protected by law should be reported to leaders and managers. In turn, USCG leaders and managers "must take prompt and appropriate corrective action."

EEO Complaint Processing

In FY 2010, USCG conducted EEO counseling on a total of 72 EEO cases, which represented an 18% decrease from FY 2009. USCG also improved the timeliness of EEO counseling in FY 2010, with 97% completed on a timely basis – an increase from 88% of cases timely counseled in FY 2009. A total of 47 formal complaints were filed with USCG in FY 2010, which represented a 14% increase from FY 2009; however, this number is consistent with an up and down trend of varying increases and decreases over the past five years.

USCG had an 18% decrease in the number of formal EEO investigations conducted in 2010, for a total of 40 investigations. In the area of EEO investigations, over 97% of USCG's investigations were timely, which is an increase in the number of timely investigations conducted in FY 2009. There was also a dramatic increase in the number of merits final agency decisions (FADs) issued for USCG cases in FY 2010; 23 USCG merits FADs were issued by DHS, which represented a 109% increase from the 11 issued in FY 2009.

In FY 2010, USCG had 26 pending civil actions in U.S. District Court, which included 2 new filings. Of these cases, judgments were entered in favor of the agency for 2 cases, and 6 cases were settled, with payments in damages totaling \$230,700 and payments in attorney's fees totaling \$30,000.

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

Infrastructure

ICE has undergone various leadership and organizational changes during FY 2010, including the separation of the EEO and Diversity programs to form two distinct program areas. Additionally, a Senior Executive Service (SES) position was created to lead these programs. During FY 2010, various individuals served in acting capacities for the EEO Director and Chief Diversity Officer (CDO) positions. A permanent SES Director has been selected and the incumbent is slated to begin duties on March 14, 2011, to oversee both the EEO and CDO programs.

EEO Complaint Processing

In FY 2010, the ICE EEO counseling program completed 191 of 209 cases (91%) in a timely manner. ICE's formal complaints program achieved timely completion of 69 of 136 EEO investigations (51%) and ICE requested dismissal of 27 formal complaints, which were completed in an average processing time of 86 days—this reflects ICE's process efficiency for timely submission to DHS, as well as CRCL's timely processing of those requests.

I. DHS Headquarters (HQ)

Infrastructure

During FY 2010, the DHS Headquarters EEO Office (HQ EEO) was directly involved in the successful realignment of the Federal Protective Service (FPS) from U.S. Immigration and Customs Enforcement (ICE) to DHS HQ (National Protection and Programs Directorate (NPPD)). HQ EEO collaborated with NPPD leadership and ICE's Chief Diversity Office to support the transition of more than 1,200 employees to ensure continuity of EEO and Diversity

services and products including EEO complaint processing, mediation, training, and mentoring. During FY 2010, HQ EEO hired an Informal Complaint Manager.

EEO Complaint Processing

In FY 2010, DHS HQ showed increases in the number of EEO cases counseled and formal complaints filed. The increased numbers are reflective of the organizational transfer of the Federal Protective Service workforce to HQ from ICE.

In FY 2010, HQ completed EEO counseling in a total of 84 cases, which represented a 51% increase from FY 2009. Of these 84 cases counseled, 92% were timely. 52 formal complaints were filed in FY 2010, compared to 19 complaints filed by HQ employees in 2009. There was an 81% increase in the number of EEO investigations conducted on HQ complaints in FY 2010 (32 investigations). Additionally, there was an 82% increase in the number of merits FADs issued on HQ cases in FY 2010, from 11 in FY 2009 to 20 in FY 2010. DHS HQ had one pending civil action in U.S. District Court during FY 2010.

Diversity Management

HQ EEO provides operational EEO and diversity management services to all DHS headquarters offices and personnel. HQ EEO is specifically responsible for developing EEO and diversity policies and procedures specific to DHS HQ; providing EEO and diversity guidance to all headquarters executives, managers, supervisors, and line employees; managing the HQ EEO complaints process, including EEO counseling, Alternative Dispute Resolution, and EEO investigations; promoting diversity management initiatives, including special emphasis program management to help headquarters Components recruit, hire, develop, and retain a diverse workforce; managing the headquarters reasonable accommodation process; and providing training on EEO and diversity.

Services and Proactive Engagement

HQ EEO participated in several career fairs during the third quarter of FY 2010, including the Department of Defense's Operation Warfighter Program and the Fort Meade Community Job Fair. The purpose of these events was to share information about DHS and to meet skilled veterans and veterans with disabilities interested in working for DHS.

HQ EEO processed 15 Reasonable Accommodation requests for individuals with disabilities, including the provision of sign language interpreters, and eight ergonomic and accessible technology assessments, in collaboration with the DHS Office of Accessible Systems and Technology (OAST).

During FY 2010, HQ EEO continued to provide expert advice, guidance, and support to managers, supervisors, and employees on various subjects ranging from general information on the EEO process, reasonable accommodation, and EEO/diversity training. HQ EEO promoted EEO and diversity through numerous events and activities which included a joint program with TSA entitled "Equality for All" with Jennifer Kaplan, Deputy Director of the White House Council on Women and Girls as the guest speaker.

More than 200 current DHS HQ employees and over 1,200 new employees were trained during the fiscal year. Up to date information on employees' rights and responsibilities with respect to

applicable EEO laws and regulations, merit systems principles, and the No FEAR Act was provided. Sixty-five supervisors and managers were trained on the prevention of unlawful workplace harassment.

HQ EEO also conducted several special programs and events designed to help employees advance in their careers within DHS. The Third Annual Women's Leadership Forum "Paving the Way for Successful Leaders" was conducted with over 165 attendees. Speakers included Margo Schlanger, the DHS CRCL Officer; Alice Hill, Senior Counselor to Secretary Napolitano; and USCIS Ombudsman January Contreras. A series of leadership webinars was provided during the year on topics which included "Becoming a Person of Influence" and "Resiliency Defined." Numerous "Lunch and Learn" programs were also conducted during this fiscal year. These included one hour workshops on "Making the Most of Mentoring"; "Who Am I and Where Am I Going?" workshop on goal setting; "Work Life Balance and Workplace Flexibility"; and "E-Mailing Your Way into Conflict."

As part of continuing outreach efforts, the HQ EEO staff provided several presentations at local universities and conferences throughout the year on federal résumé writing and employment with DHS.

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

Infrastructure

CBP's Office of Diversity and Civil Rights (DCR) provides civil rights services to 58,700 CBP employees and comprises an Executive Director and three divisions: Headquarters, Complaints Processing Center and regional offices, and Mediation Program. Below is a brief description of each category and its role:

- The Executive Director provides executive leadership and oversight for the effective establishment and management of internal policies and programs.
- The Field Directors report directly to the Executive Director. These positions each oversee and manage two regional offices. Currently, the DCR Office has four regions (Northeast, Southeast, Northwest, and Southwest). The two Field Directors (East and West) are responsible for all field activities.
- The Assistant Field Directors manage the local equal opportunity officers who are responsible for providing leadership and support for DCR programs in their assigned areas. DCR provides field staff services to all CBP Offices.
- The Complaints Processing Center, located in Oakland, CA, managed by a Field Director, is responsible for managing the formal equal employment opportunity complaint process. The Field Director reports directly to the Executive Director.
- DCR Headquarters, located in Washington, D.C., comprises the Mission Support Division and the Diversity and Inclusion Division both provide services to customers in the field. The Diversity and Inclusion Division is responsible for diversity and inclusion, affirmative employment and special emphasis and outreach initiatives. The Mission Support Division responds to executive correspondence, maintains the office budget, provides technical support to the field directors and regional offices on reporting requirements, and maintains DCR webpage.

EEO Complaint Processing

In FY 2010, CBP had a 4% decrease in the number of EEO cases counseled compared to FY 2009. Of the 506 cases counseled in FY 2010, 100% were timely. In FY 2010, 309 formal complaints were filed, an increase of 12% from FY 2009 when 275 complaints were filed. The number of investigations increased by 15% in FY 2010 when 247 investigations were completed compared to 215 investigations in FY 2009. In spite of a 15% increase in the number of complaints requiring an investigation, CBP completed 98% of its investigations within the regulatory timeframe in FY 2010, equal to the 98% timely rate achieved during FY 2009. There were 100 merits FADs issued in FY 2010, which represented a 69% increase from FY 2009 when 59 merits FADs were issued.

In FY 2010, CBP had 40 pending civil actions in U.S. District Court, which included 16 new filings. Of these cases, judgments were entered in favor of the agency for five cases, three cases are currently on appeal and six cases were settled with a lump sum payments totaling \$182,000.

Diversity Management

It is the policy of CBP to treat all employees, members of the trade and traveling public, and individuals detained for law enforcement purposes with dignity and respect. At CBP, diversity is considered a tool for achieving readiness and accomplishing the core mission. CBP's mission – protecting the Nation – is global in nature. CBP's workforce – from Air and Marine Interdiction Agents, Border Patrol Agents, Customs and Border Protection Officers, and mission support staff – must interact with a diverse population each and every day. To maintain status as a high-performing Federal law enforcement organization, it is imperative that CBP build and maintain a talented and diverse workforce to protect and safeguard our nation. By reflecting America's diversity, CBP's workforce can provide a wider range of ideas and solutions aimed at protecting and securing our Nation.

This responsibility is not limited to managerial actions regarding recruiting and employment; CBP works to dispel stereotypes and to build a work environment that is based on mutual respect. CBP holds employees to a commitment to provide fair and equal access to the privileges and benefits of employment based solely on individual merit while requiring personal accountability and integrity in all aspects of the law enforcement mission. To meet this commitment, CBP works to create a work environment that recognizes diversity and fosters inclusion and equal opportunity regardless of an individual's race, color, national origin, religion, sex, age, disability, status as a parent, sexual orientation, or genetic information.

Services and Proactive Engagement

During FY 2010, CBP developed and implemented a five-year strategic plan for DCR. Additionally, a DCR Newsletter was launched and disseminated to the workforce to make them aware of DCR's role to develop, establish, and administer all CBP policies, implementation guidelines, standards, and programs necessary to ensure compliance with Federal civil rights and civil liberties laws, executive orders, and relevant Federal policies.

CBP implemented a Minority Serving Institutions Implementation Plan to build partnerships with Minority Serving Institutions (MSI) to create a diverse pool of candidates by ensuring

students receive experience through internships and career experience programs. In support of the MSI Implementation Plan, DCR targeted 20 Historically Black Colleges and Universities (HBCU) and seven Tribal Colleges and Universities (TCU).

Additionally, through CBP monthly observance activities, Diversity and Inclusion Committee (DIC) volunteers and employees around the nation are cultivating a culture where similarities and differences of individuals are respected and valued. CBP is using DIC volunteers and designees across the country to help build diversity through increased cultural awareness, education, and appreciation of differences. During FY 2010, DIC volunteers sponsored numerous cultural and enrichment programs and activities including, Bring Your Child to Work Day in April; Lesbian, Gay, Bisexual and Transgender Pride Month in June; Family Heritage and Diversity Month in August; and Disability Employment Awareness Month in October. CBP increased the number of workplace diversity awareness programs from 251 in FY 2009, to 662 in FY 2010, which represents a 164% increase. In just one year, CBP employee participation, support and attendance at programs and events increased 37%, from more than 31,450 in FY 2009 to more than 43,100 in FY 2010. DIC volunteers also collaborated with local community organizations at nearly 200 community outreach events to educate the public about CBP's mission and career opportunities that included high schools, colleges, churches, and community organizations throughout the nation.

CBP is committed to investing in the leadership development of all its managers and supervisors. All new supervisors are required to complete EEO Awareness Training during mandatory Supervisory Leadership Training held at the CBP Leadership Academy. During FY 2010, 1,314 new supervisors completed this training on various dates throughout the fiscal year. In addition, 747 supervisors and managers were trained by DCR staff members in supervisory EEO Awareness Training sessions conducted at various duty posts across the country. The supervisory EEO awareness curriculum includes instruction on the topics of diversity and inclusion, affirmative employment, and reasonable accommodation.

CBP continues to participate in the Operation Warfighter initiative. During FY 2010, CBP provided three temporary assignments in the Office of Field Operation (OFO) in this program.

CBP is committed to providing reasonable accommodation for its employees and applicants with disabilities to ensure that qualified individuals with disabilities enjoy full access to equal employment opportunities. As such, during FY 2010, CBP issued a [*Guide to Processing Reasonable Accommodation Requests Based on a Disability*](#). This guide implements DHS policy regarding reasonable accommodation for individuals with a disability and provides guidance to CBP employees, managers, and supervisors regarding the processing of reasonable accommodation requests.

During FY 2010, DCR developed and implemented an Intervention Assessment Referral and Review Process to enhance CBP's ability to resolve workplace conflict surfacing in complaints of discrimination in an efficient and timely manner by allowing for critical review by an Intervention Assessment Team (IAT) of those cases that presented specific concerns or questions.

During FY 2010, CBP established an EEO toll free number and a complaint filing electronic mailbox for individuals to initiate a request for EEO counseling. Both methods were established to provide a more efficient manner to initiate a request for informal EEO counseling and to assign, facilitate, and track requests. DCR launched a communication plan to notify the workforce of these additional methods for seeking EEO counseling, including posting to the Information Display Systems for the Offices of Field Operations and Border Patrol, mass mailings, and posting messages on employees Leave and Earning Statements and on the Intranet.

K. Federal Emergency Management Agency (FEMA)

Diversity Management

In FY 2010, the FEMA Administrator issued a *Diversity Action Plan*, and FEMA is now in the process of implementing the strategies and actions identified in the *Diversity Action Plan*. The plan includes a comprehensive checklist with 32 strategies and initiatives, many of which have already been completed. For example, FEMA has created and published an annual Diversity Policy Statement and established a Diversity Management Advisory Council.

In addition, web-based diversity awareness training has been developed and is now available for FEMA employees. The course recognizes the benefits of diversity in the workforce and FEMA's commitment to valuing the diversity of its employees and customers. Upon completion of the course, participants will be able to define what is meant by diversity, describe the benefits of diversity (both individually and collectively), describe FEMA's vision of diversity, describe the agency's commitment to diversity as stated in the Diversity Action Plan, describe how culture influences interactions with others, and describe the actions individuals can take to optimize diversity.

Other important initiatives in FY 2010 included:

- A Latino Leadership Summit, whose purpose was to help FEMA build new relationships and strengthen existing partnerships in the Latino community. Agenda items included establishing a shared understanding of Emergency Management, Roles and Relationships among key participants in Emergency Management, and Strengthening Relationships with Constituencies. Approximately 106 attendees participated in the event.
- FEMA sponsored a Historically Black College and University (HBCU) conference at the Emergency Management Institute (EMI). Conference agenda included topics on Emergency Management Planning, Preparedness and related Training and Education for HBCU's.
- The FEMA Office of Equal Rights (OER) in partnership with the EMI, sponsored a Tribal Conference, whose agenda focused on Emergency Management Planning, Preparedness, and Education for Tribal Colleges and Universities. Additional topics discussed at the conference included FEMA Preparedness Grant Programs, the FEMA Federal Career Intern Program (FCIP) and a segment on developing emergency managers of the future.
- The OER developed and placed several EEO training courses for employees and managers on FEMA's Knowledge Center located on the Intranet. Over 3,000 managers and employees received EEO training via the interactive training modules.

- The OER contracted EEOC to conduct EEO training for approximately 350 supervisors and managers from Headquarters, Region 10 (Bothell, WA), Region 5 (Chicago, IL), Region 9 (Oakland, CA), Region 1 (Boston, MA), Region 3 (Philadelphia, PA), and Winchester, VA. A sizeable portion of the training curricula focused on recent updates to the Americans with Disabilities Act and the Genetic Information Nondiscrimination Act of 2008. Additional topics included reinforcement of managers' and supervisors' responsibilities in processing and providing timely reasonable accommodations and identifying and preventing harassment and retaliation.
- FEMA developed a 2-day course designed to prepare FEMA personnel who supervise staff at temporary field facilities to apply supervisory practices that result in fair, equitable, and productive work environments. Course topics included supervisory accountability, creating a constructive work environment, addressing and resolving conduct and performance issues and employee rights and supervisory responsibilities.
- FEMA is laying the groundwork for a career development office focusing on employee career development and enhancing FEMA's workforce environment.

EEO Complaint Processing

During FY 2010, FEMA OER personnel worked closely and very effectively with CRCL to coordinate work and transfer information to CRCL involving 359 individual complaints for procedural dismissal. These complaints were filed during FY 2009, after the closure of a FEMA facility in Puerto Rico. All of the 359 cases, filed in two groupings, involved the same issues and were filed by the same lawyer. Procedural dismissal of these complaints was necessary because the complainants also filed in Federal District Court, precluding their further advancement in the administrative EEO process. FEMA OER made early contact with CRCL regarding the cases, personnel were identified to manage this process in both organizations, and a streamlined process flow was agreed-upon. Both offices used electronic transmission of data and documents to the greatest extent possible to maximize efficiencies within the preparation, review, signature, and issuance phases. The approximate age from the date of filing to dismissal for the first and second groups was 420 and 327 days, respectively. The issuance of these cases was achieved in approximately 27 days following strategic coordination between FEMA and CRCL. Not surprisingly, the overall rise in the average processing time of Departmental dismissals is directly attributable to the unprecedented volume of work in this category; however, without the strides in electronic processing and the close coordination between CRCL and FEMA, the dismissal process would undoubtedly have cost a great deal more in time and effort for both FEMA and CRCL.

In FY 2010, FEMA conducted EEO counseling in 253 cases, which represented a 38% decrease from FY 2008 and a 53% decrease from FY 2007.³ There was a 22% decrease of formal complaints filed in FY 2010 (116) compared to FY 2008 (148). In FY 2010, there was a 39% increase in the number of merits FADs issued in FEMA cases. In FY 2010, 53 merits FADs were issued by DHS CRCL compared to 38 in FY 2009.

³ FEMA's complaint data from FY 2009 is skewed as a result of an unusual influx of 359 individual EEO complaints that were filed as the result of a closure of the FEMA Puerto Rico facility; therefore, it is more meaningful to use FY 2007 and FY 2008 data to draw comparisons to the FY 2010 numbers.

FEMA had seven civil actions that filed in U.S. District Court in FY 2010. Judgment was entered in the agency's favor for one case, and another case was settled with payments of \$75,000 in damages and \$30,000 in attorney's fees. In addition, FEMA terminated an employee as a disciplinary measure.

APPENDIX 1

DHS No FEAR Act Federal District Court Data for FY 2010

U.S. Department of Homeland Security FY10 No FEAR Act Data on Federal Cases (Section 203)

NUMBER OF CASES FILED IN FEDERAL COURT, PENDING OR RESOLVED UNDER §724.302(a)(1)							Comparative Data Under §724.302(b)	
<i>Provision of Law</i>		Title VII	ADEA	EPA	Rehab. Act	Whistleblower	Total	
		164	38	2	33	6	243	N/A
FY 10	CBP	38	16	0	7	1	62	
	CIS	13	4	0	5	0	22	
	FEMA	7	2	0	1	0	10	
	FLETC	1	0	0	0	0	1	
	HQ	0	0	0	0	1	1	
	ICE	15	2	0	0	1	18	
	TSA	64	12	2	13	3	94	
	USCG	19	1	0	6	0	26	
USSS	7	1	0	1	0	9		

STATUS OF CASES AND REIMBURSEMENT UNDER §724.302(a)(1-2)							Comparative Data Under §724.302(b)	
<i>Provision of Law</i>		Title VII	ADEA	EPA	Rehab. Act	Whistleblower	Total	
<i>Complaints Filed (FY10)</i>		62	13	1	11	1	88	N/A
FY 10	CBP	15	4	0	5	0	24	
	CIS	5	3	0	1	0	9	
	FEMA	7	2	0	1	0	10	
	FLETC	1	0	0	0	0	1	
	HQ	0	0	0	0	0	0	
	ICE	15	2	0	0	1	18	
	TSA	16	1	1	3	0	21	
	USCG	1	0	0	1	0	2	
USSS	2	1	0	0	0	3		

U.S. Department of Homeland Security FY10 No FEAR Act Data on Federal Cases (Section 203)

STATUS OF CASES AND REIMBURSEMENT UNDER §724.302(a)(1-2)							Comparative Data Under §724.302(b)
Provision of Law		Title VII	ADEA	EPA	Rehab. Act	Whistleblower	Total
FY10	(iii) Amount of Reimbursement for Attorney Fees in FY10	\$125,000.00	\$ -	\$ -	\$160,000.00	\$ -	\$285,000.00
	CBP	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
	CIS	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
	FEMA	\$30,000.00	\$ -	\$ -	\$ -	\$ -	\$30,000.00
	FLETC	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
	HQ	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
	ICE	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
	TSA	\$75,000.00	\$ -	\$ -	\$150,000.00	\$ -	\$225,000.00
	USCG	\$20,000.00	\$ -	\$ -	\$10,000.00	\$ -	\$30,000.00
USSS	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	

TOTAL NUMBER OF EMPLOYEES DISCIPLINED IN CASES UNDER §724.302(a)(3)							Comparative Data Under §724.302(b)
Provision of Law		Title VII	ADEA	Equal Pay Act	Rehab. Act	Whistleblower	Total
FY10	Total Number of Employees and Specific Nature of Discipline in FY10						N/A
	CBP	0	0	0	0	0	0
	CIS	0	0	0	0	0	0
	FEMA	1	0	0	0	0	1
	FLETC	0	0	0	0	0	0
	HQ	0	0	0	0	0	0
	ICE	2	0	0	0	0	2
	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 FY10 No FEAR Act Data on Federal Cases (Section 203)

TOTAL NUMBER OF EMPLOYEES DISCIPLINED IN CASES UNDER §724.302(a)(3)							Comparative Data Under §724.302(b)
Provision of Law	Title VII	ADEA	Equal Pay Act	Rehab. Act	Whistleblower	Total	
FY10	<i>Total Number of Employees and Specific Nature of Discipline in FY10</i>						N/A
	<i>Reprimand</i>	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	
	<i>Suspension without Pay</i>	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		

U.S. Department of Homeland Security FY10 No FEAR Act Data on Federal Cases (Section 203)

TOTAL NUMBER OF EMPLOYEES DISCIPLINED, WHETHER OR NOT IN CONNECTION WITH FEDERAL CASES UNDER §724.302(a)(5) (I.E. INCLUDING EEO ADMINISTRATIVE CASES)							Comparative Data Under §724.302(b)
Provision of Law		Title VII	ADEA	Equal Pay Act	Rehab. Act	Total	
FY10	<i>Total Number of Employees and Specific Nature of Discipline in FY10</i>						N/A
	CBP	0	0	0	0	0	
	CIS	0	0	0	0	0	
	FEMA	1	0	0	0	1	
	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	
	<i>Reprimand</i>						
	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	

U.S. Department of Homeland Security FY10 No FEAR Act Data on Federal Cases (Section 203)

TOTAL NUMBER OF EMPLOYEES DISCIPLINED, WHETHER OR NOT IN CONNECTION WITH FEDERAL CASES UNDER §724.302(a)(5) (I.E. INCLUDING EEO ADMINISTRATIVE CASES)							Comparative Data Under §724.302(b)	
Provision of Law		Title VII	ADEA	Equal Pay Act	Rehab. Act		Total	
FY10	<i>Total Number of Employees and Specific Nature of Discipline in FY10</i>							N/A
	<i>Removal</i>							
	CBP	0	0	0	0	0	0	
	CIS	0	0	0	0	0	0	
	FEMA	1	0	0	0	0	1	
	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 Final Year End EEO Data for FY 2005-2010

DHS EQUAL EMPLOYMENT OPPORTUNITY DATA POSTED PURSUANT TO THE NO FEAR ACT

Data as of September 30, 2010 - 4th Quarter 2010

Complaint Activity						2010 Thru 9-30
	2005	2006	2007	2008	2009	
Number of Complaints Filed	1199	1083	1086	1145	1457	1194
Number of Complainants	1075	1010	1045	1099	1401	1136
Repeat Filers	80	54	42	52	56	45

Complaints by Basis						2010 Thru 9-30
	2005	2006	2007	2008	2009	
<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	361	386
Color	75	83	80	92	83	113
Religion	50	57	38	48	52	51
Reprisal	406	391	389	432	777	493
Sex	408	349	334	385	330	405
National Origin	197	193	158	175	516	187
Equal Pay Act	n/a	1	7	3	0	0
Age	287	336	283	321	314	339
Disability	264	258	260	238	223	295
Non-EEO	16	44	24	16	48	40

Complaints by Issue							2010 Thru 9-30
<i>Note: Complaints can be filed alleging multiple issues. The sum of the issues may not equal total complaints filed.</i>	2005	2006	2007	2008	2009		
Appointment/Hire	16	45	57	57	36	28	
Assignment of Duties	68	59	61	68	342	81	
Awards	60	25	15	22	10	14	
Conversion to Full-time	2	1	3	1	1	0	
Disciplinary Action							
Demotion	17	6	18	11	8	8	
Reprimand	48	19	50	46	41	51	
Removal	36	23	22	34	23	28	
Suspension	41	40	45	30	30	61	
Other	n/a	28	1	14	10	16	
Duty Hours	14	14	22	15	14	18	
Evaluation Appraisal	41	36	38	40	57	67	
Examination/Test	5	8	8	5	3	9	
Harassment							
Non-Sexual	189	282	289	314	599	381	
Sexual	43	51	37	33	46	49	
Medical Examination	2	14	8	10	9	7	
Pay (Including Overtime)	26	28	25	27	20	19	
Promotion/Non-Selection	239	287	277	248	241	234	
Reassignment							
Denied	21	28	34	34	31	17	
Directed	43	30	29	28	40	39	
Reasonable Accommodation	27	34	43	47	40	37	
Reinstatement	0	4	4	2	7	5	
Retirement	2	4	5	2	5	7	
Termination	162	136	135	112	137	164	
Terms/Conditions of Employment	87	116	142	108	404	153	
Time and Attendance	34	42	36	54	29	42	
Training	39	29	26	23	22	31	
Other	96	28	35	44	373	2	

Processing Time						2010 Thru 9-30
	2005	2006	2007	2008	2009	
Complaints pending during fiscal year						
Average number of days in investigation stage	322	406	311.5	249.9	248	257
Average number of days in final action stage	n/a	326	428.1	296	310	411
Complaint pending during fiscal year where hearing was requested						
Average number of days in investigation stage	331	338	242.5	259.4	349	231
Average number of days in final action stage	n/a	48	72.5	64	399	24
Complaint pending during fiscal year where hearing was not requested						
Average number of days in investigation stage	301	413	347.3	312.8	755	275
Average number of days in final action stage	842	443	587.6	660.5	971	577

Complaints Dismissed by Agency						2010 Thru 9-30
	2005	2006	2007	2008	2009	
Total Complaints Dismissed by Agency	296	304	187	247	204	550
Average days pending prior to dismissal	306	254	257	220	241	385
Complaints Withdrawn by Complainants						
Total Complaints Withdrawn by Complainants	n/a	81	96	109	77	92

Total Final Actions Finding Discrimination											2010 Thru 9-30	
	2005		2006		2007		2008		2009		#	%
	#	%	#	%	#	%	#	%	#	%		
Total Number Findings	12		29		12		21		23		17	
Without Hearing	2	17%	4	14%	2	17%	0	0%	1	4%	1	6%
With Hearing	10	83%	25	86%	10	83%	21	100%	22	96%	16	94%

Findings of Discrimination Rendered by Basis

Note: Complaints can be filed alleging multiple bases. The sum of the bases may not equal total complaints and findings.

	2005		2006		2007		2008		2009		2010 Thru 9-30	
	#	%	#	%	#	%	#	%	#	%	#	%
Total Number Findings	12		29		12		21		23		17	
Race	1	8%	21	72%	3	25%	7	33%	8	35%	2	12%
Color	0	0%	2	7%	0	0%	3	14%	3	13%	0	0
Religion	1	8%	1	3%	1	8%	5	24%	3	13%	1	6%
Reprisal	3	25%	10	34%	6	50%	5	24%	11	48%	8	47%
Sex	5	42%	10	34%	7	58%	7	33%	8	35%	4	24%
National Origin	1	8%	1	3%	1	8%	8	38%	4	17%	0	0
Equal Pay Act	0	0%	0	0%	0	0%	0	0%	0	0%	0	0
Age	3	25%	5	17%	2	17%	4	10%	5	22%	3	18%
Disability	5	42%	3	10%	0	0%	2	10%	5	17%	6	35%
Non-EEO	0	0%	0	0%	0	0%	0	0%	0	0%	0	0
Findings After Hearing	10		25		10		21		22		17	
Race	1	100%	18	86%	2	50%	7	100%	8	100%	2	100%
Color	0	0%	1	50%	0	0%	3	100%	3	100%	0	0%
Religion	1	100%	1	100%	1	100%	5	100%	3	100%	1	100%
Reprisal	3	100%	10	100%	4	67%	5	100%	11	100%	8	100%
Sex	5	100%	10	100%	5	71%	7	100%	8	100%	3	75%
National Origin	1	100%	1	100%	1	100%	8	100%	4	100%	0	0%
Equal Pay Act	0	0%	0	0%	0	0%	0	0%	0	100%	0	0%
Age	3	100%	5	100%	2	100%	4	100%	5	100%	3	100%
Disability	4	80%	3	100%	0	0%	2	100%	4	80%	6	100%
Non-EEO	0	0%	0	0%	0	0%	0	0%	0	100%	0	0%

Findings of Discrimination Rendered by Basis

Note: Complaints can be filed alleging multiple bases. The sum of the bases may not equal total complaints and findings.

	2005		2006		2007		2008		2009		2010 Thru 9-30	
	#	%	#	%	#	%	#	%	#	%	#	%
Findings Without Hearing	2		4		2		0		1		1	
Race	0	0	3	14%	2	50%	0	0%	0	0%	0	0%
Color	0	0	1	50%	0	0%	0	0%	0	0%	0	0%
Religion	0	0	0	0	0	0%	0	0%	0	0%	0	0%
Reprisal	0	0	0	0	2	23%	0	0%	0	0%	0	0%
Sex	0	0	0	0	2	29%	0	0%	0	0%	1	25%
National Origin	0	0	0	0	0	0%	0	0%	0	0%	0	0%
Equal Pay Act	0	0	0	0	0	0%	0	0%	0	0%	0	0%
Age	0	0	0	0	0	0%	0	0%	0	0%	0	0%
Disability	1	20%	0	0	0	0%	0	0%	1	20%	0	0%
Non-EEO	0	0	0	0	0	0%	0	0%	0	0%	0	0%

Findings of Discrimination Rendered by Issue											2010 Thru 9-30	
	2005		2006		2007		2008		2009		#	%
	#	%	#	%	#	%	#	%	#	%		
Total Number Findings	12		29		12		21		23		17	
Appointment/Hire	2	17%	4	14%	1	8%	2	10%	0	0%	1	6%
Assignment of Duties	2	17%	1	3%	1	8%	1	5%	2	9%	3	18%
Awards	0	0%	1	3%	0	0%	0	0%	0	0%	0	0%
Conversion to Full-time	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%
Disciplinary Action	0	0%	2	7%	0	0%	0	0%	0	0%	0	0%
Demotion	0	0%	0	0%	0	0%	0	0%	2	9%	0	0%
Reprimand	0	0%	2	7%	0	0%	0	0%	1	4%	0	0%
Suspension	0	0%	0	0%	1	8%	0	0%	0	0%	3	18%
Removal	0	0%	0	0%	0	0%	2	10%	1	4%	0	0%
Other	0	0%	0	0%	1	8%	0	0%	0	0%	0	0%
Duty Hours	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%
Evaluation Appraisal	0	0%	2	0%	0	0%	0	0%	0	0%	1	6%
Examination/Test	0	0%	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%	3	18%
Sexual	0	0%	2	7%	0	0%	0	0%	0	0%	2	12%
Medical Examination	0	0%	1	3%	0	0%	0	0%	1	4%	0	0%
Pay (Including Overtime)	0	0%	1	3%	1	8%	0	0%	1	4%	0	0%
Promotion/Non-Selection	4	33%	10	34	2	17%	11	52%	5	22%	6	35%
Reassignment	0	0%	0	0%	2	17%	0	0%	0	0%	0	0%
Denied	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%
Directed	0	0%	0	0%	2	17%	0	0%	1	4%	1	6%
Reasonable Accommodation	0	0%	1	3%	0	0%	0	0%	1	4%	2	12%
Reinstatement	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%
Termination	2	17%	5	17%	2	17%	2	10%	4	17%	2	12%
Terms/Conditions of Employment	0	0%	3	10%	2	17%	2	10%	2	9%	1	6%
Time and Attendance	0	0%	1	3%	2	17%	0	0%	1	4%	1	6%
Training	0	0%	0	0%	0	0%	0	0%	1	4%	2	12%
Other	0	0%	0	0%	1	8%	0	0%	5	22%	0	0%

Findings of Discrimination Rendered by Issue											2010 Thru 9-30	
	2005		2006		2007		2008		2009		#	%
	#	%	#	%	#	%	#	%	#	%		
Findings After Hearing	10		25		10		21		22		16	
Appointment/Hire	2	100%	4	100%	1	100%	2	100%	0	0%	1	100%
Assignment of Duties	2	100%	1	100%	1	100%	1	100%	2	100%	3	100%
Awards	0	0%	1	100%	0	0%	0	0%	0	0%	0	0%
Conversion to Full-time	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%
Disciplinary Action	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%
Demotion	0	0%	0	0%	0	0%	0	0%	2	100%	0	0%
Reprimand	0	0%	2	100%	0	0%	0	0%	1	100%	0	0%
Suspension	0	0%	0	0%	1	100%	0	0%	0	0%	3	100%
Removal	0	0%	0	0%	0	0%	2	100%	1	100%	0	100%
Other	0	0%	0	0%	1	100%	0	0%	0	0%	0	0%
Evaluation Appraisal	0	0%	1	50%	0	0%	0	0%	0	0%	1	100%
Examination/Test	0	0%	0	0	0	0%	0	0%	0	0%	0	0%
Harassment	1	100%	7	78%	2	100%	5	100%	0	0%	0	
Non-Sexual	1	100%	5	71%	2	100%	5	100%	10	100%	3	100%
Sexual	0	0%	2	100%	0	0%	0	0%	0	0%	1	50%
Medical Examination	0	0%	1	100%	0	0%	0	0%	0	0%	0	0%
Pay (Including Overtime)	0	0%	1	100%	1	100%	0	0%	0	0%	0	0%
Promotion/Non-Selection	4	100%	10	100%	2	100%	11	100%	5	100%	6	100%
Reassignment	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%
Denied	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%
Directed	0	0%	0	0%	0	0%	0	0%	1	100%	1	100%
Reasonable Accommodation	0	0%	1	100%	0	0%	0	0%	1	0%	2	100%
Reinstatement	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%
Termination	1	50%	5	100%	0	0%	2	100%	4	100%	2	100%
Terms/Conditions of Employment	0	0%	3	100%	2	100%	2	100%	2	100%	1	100%
Time and Attendance	0	0%	0	0%	2	100%	0	0%	1	100%	1	100%
Training	0	0%	0	0%	0	0%	0	0%	1	100%	2	100%
Other	0	0%	0	0%	1	100%	0	0%	5	100%	0	0%

Pending Complaints Filed in Previous Fiscal Years by Status				2010 Thru 9-30
	2006	2007	2008	
Total complaints from previous Fiscal Years	2096	1411	1382	1246
Total Complainants	1758	1315	1280	1162
Number complaints pending				
Investigation	480	147	164	104
Hearing	574	438	468	561
Final Action	683	679	649	328
Appeal with EEOC Office of Federal Operations	188	147	164	253

Complaint Investigations				2010 Thru 9-30
	2006	2007	2008	
Pending Complaints Where Investigations Exceeds Required Time Frames	154	367	375	315