



# Notification and Federal Employee Anti-Discrimination and Retaliation Act of 2002 Annual Report for Fiscal Year 2020

*June 2, 2021*



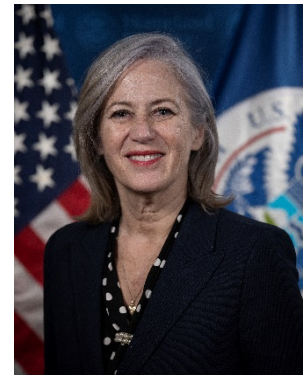
**Homeland  
Security**

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

# MESSAGE FROM THE OFFICER FOR CIVIL RIGHTS AND CIVIL LIBERTIES

June 2, 2021

I am pleased to present the U.S. Department of Homeland Security's (DHS or the Department) "*Notification and Federal Employee Anti-discrimination and Retaliation Act of 2002*" (No FEAR Act) Annual Report for Fiscal Year (FY) 2020.



The No FEAR Act, Public Law 107-174, requires federal agencies be publicly accountable for violations of anti-discrimination laws and policies. Federal agencies must post quarterly and annual statistical data relating to federal sector Equal Employment Opportunity (EEO) complaints on their public website, reimburse the Judgment Fund for payments made, and notify employees and applicants for employment about their rights under the federal anti-discrimination and whistleblower laws.

This report summarizes the most significant accomplishments within the Department's EEO program to implement the No FEAR Act, focusing principally on EEO complaint processing, and the results of District Court filings, to include whistleblower protection complaints. The report is a testament to the exceptional EEO professionals at the Department, whose commitment endures through all challenges. It evidences the Department's strong commitment to abide by merit system principles, provide protection from prohibited personnel practices, and promote accountability on the part of its leadership.

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

**The Honorable Patrick Leahy**  
President Pro Tempore, U.S. Senate

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

**The Honorable Rob Portman**  
Ranking Member, U.S. Senate Committee on Homeland Security and Governmental Affairs

**The Honorable Dick Durbin**  
Chairman, U.S. Senate Committee on the Judiciary

**The Honorable Chuck Grassley**  
Ranking Member, U.S. Senate Committee on the Judiciary

**The Honorable Nancy Pelosi**  
Speaker of the House, U.S. House of Representatives

**The Honorable Bennie G. Thompson**

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

**The Honorable John Katko**

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

**The Honorable Jerrold Nadler**

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

**The Honorable Jim Jordan**

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

**The Honorable Carolyn B. Maloney**

Chairwoman, U.S. House of Representatives Committee on Oversight and Reform

**The Honorable James R. Comer**

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

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

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

The Department's EEO program continued to demonstrate a strong and collaborative partnership between CRCL and the Department's Components throughout FY 2020. The year brought several program challenges, described in greater detail in this report, including the impact of the COVID-19 pandemic and continuing resource challenges that affected all Component EEO programs. Nevertheless, the program accomplished a great deal despite those challenges. This is a testament to the vitality, tenacity, and professionalism of the dedicated EEO staff throughout DHS.

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

Sincerely,



Katherine Culliton-González  
Officer, Office for Civil Rights and Civil Liberties



# Fiscal Year 2020 No FEAR Act Annual Report

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

# EXECUTIVE SUMMARY

The purpose of the “Notification and Federal Employee Anti-discrimination and Retaliation Act of 2002” (No FEAR Act), Public Law 107-174, is to reduce the incidence of workplace discrimination within the Federal Government by making agencies and departments more accountable for violations of anti-discrimination and whistleblower protection laws. Section 203 of the No FEAR Act specifically requires that each federal agency submit to certain Congressional committees and members, not later than 180 days after the end of each fiscal year, an annual report containing the following information on cases brought under federal anti-discrimination and whistleblower protection laws: complaint activity (including Federal District Court cases); resulting disciplinary actions; associated Judgment Fund reimbursements and adjustments to agency budgets to meet reimbursement requirements; and an analysis of trends, causation, and practical knowledge gained through experience. This report covers Fiscal Year (FY) 2020 (October 1, 2019, to September 30, 2020).

FY 2020 was an incredibly difficult year for DHS, both programmatically and on a personal level for our employees. The murders of several black citizens, like George Floyd, once again brought front and center serious concerns about racial inequality, while the COVID-19 pandemic upended the way people lived and worked, and resulted in hundreds of thousands of deaths, including many DHS employees. While we are still battling the pandemic in 2021 and working to understand its long-term effects, the pandemic resulted in immediate and continuing workplace changes for many DHS program offices, including DHS’s EEO programs. Beginning with the March 2020 stay-at-home orders, many offices transitioned to 100 percent telework. Since then, some have transitioned back to an office environment, while others remain a remote workplace, and some have adopted a hybrid approach. While the transition was not always seamless, the dedication of the Department’s employees ensured that critical operations continued without fail. In the Department’s EEO programs, there was an increased use of collaborative online meeting platforms to allow for face-to-face interactions. In this report, readers will see the varying consequences the pandemic had on the Components’ EEO programs; but regardless of the challenges, DHS personnel adapted to ensure that the important work that we do continued to be accomplished without a loss of the quality of service DHS employees should expect from its EEO programs.

## *Continued Partnerships*

During FY 2020, CRCL continued its partnerships with various entities to promote equality, fairness, diversity, and efficiency within the Department’s workforce. Specifically, CRCL partnered with the Department’s Office of the Chief Human Capital Officer (OCHCO), the Department’s Component EEO offices, and other internal and external stakeholders. The CRCL Deputy Officer (Deputy Officer), who serves as the Department’s Director for EEO and Diversity, chairs the EEO Directors’ Council (the EEO Council), of which all Component EEO and Civil Rights Directors are members. The Deputy Officer is also a member of the Secretary’s Employee Engagement Executive Steering Committee, the mission of which is to identify strategies leading to improvements in employee morale throughout the Department. Throughout FY 2020, CRCL and its partners strengthened relationships through their collective efforts to continue to improve the Department’s workforce environment.

Building on the accomplishments of the inaugural strategic plan, during the reporting period the EEO Council developed a new five-year plan (FY 2020-2024), again aimed at achieving a unity of effort across the Department's EEO and Diversity programs. This current plan advances five goals: integrate EEO and Diversity into agency operations, develop the DHS EEO and Diversity workforce, promote voluntary resolution of workplace disputes, proactively prevent discrimination by addressing potential barriers to EEO and identifying emerging issues, and optimize coordination to ensure effectiveness, efficiency, and legal compliance of Department and Component EEO and Diversity programs.

In FY 2020, the EEO Council stood up new working groups, staffed by EEO and Diversity practitioners from across the Department, to begin undertaking measurable actions in furtherance of the plan. Although exigencies related to adapting to the COVID-19 environment delayed the working groups' efforts, measurable results are expected in FY 2021.

### ***EEO Complaint Program***

*COVID-related Processing Delays.* On April 6, 2020, the EEOC's Director of the Office of Federal Operations (OFO) issued a memorandum entitled, "Processing Information for All Parties in Federal EEO Processing under 29 C.F.R. Part 1614." The memorandum was issued to provide agencies with complaint processing guidelines as a result of the national emergency declared by the President because of the COVID-19 pandemic. The OFO Director wrote that the EEOC "is deeply concerned about protecting (and committed to ensuring every federal employee continues to have) all their rights during this time of National Emergency." To that end, EEOC "ask[ed] agencies not to issue final actions on any EEO complaint, unless the investigation is complete and the Complainant has requested that the final action be issued." On July 26, 2020, the OFO Director issued an update on the guidance, stating that agencies should resume issuing final actions.

The memo indicated that "EEOC is instructing agencies to return to issuing final actions in the usual manner." The EEOC's initial guidance inhibited agencies from issuing final actions, to include procedural dismissals, final orders, and final agency decisions (FADs), for over three months. The delay had a major negative affect on the timely issuance rate and average processing days of final actions over that period.

*Report of Investigation (ROI) Feedback Tool.* Throughout FY 2020, CRCL provided Components an objective assessment of the quality of their EEO Reports of Investigation (ROI) through the ROI Feedback Tool (Feedback Tool). Launched in FY 2016, the Feedback Tool enables CRCL to provide Components quarterly feedback on the quality (e.g. legal sufficiency, organization, documentation) of their ROIs, whether done by internal personnel or by contractor. Additionally, CRCL continued to disseminate to all Components aggregate information on the quality of only the contractor-produced ROIs within the DHS EEO program. This aggregate information continues to provide-Components a snapshot of CRCL's ROI assessments for all contract firms, allowing Components to make strategic decisions regarding future contract needs, based on this aggregated data.



*Complaint Activity and Timeliness.* In FY 2020, DHS experienced a decrease in the number of pre-complaints, during which time EEO counseling was to be completed within 30 days of an employee's initial contact, unless the employee agreed to an extension. In FY 2020, 2,252 cases were counseled, down from 2,339 cases in FY 2019. Formal complaints slightly increased in FY 2020 (1,276), as compared to FY 2019 (1,266). Additional information on complaint activity is provided in Section IV of this report.

*EEO Investigations.* The Department completed roughly the same number of investigations in FY 2020 (1,185) as in FY 2019 (1,177), but the rate of timeliness increased – 79 percent (931) in FY 2020, compared to 65 percent (768) in FY 2019. Additionally, the Department's average number of processing days for investigations decreased by 18 percent – 239 average processing days in FY 2020, down from 291 average processing days in FY 2019, which was a positive development.

*Adjudication.* CRCL's incoming final agency decision (FAD)<sup>1</sup> workload decreased by three percent in FY 2020; however, this small decrease follows years of significant increases in the number of incoming requests, which is further explained in Section V of the report. CRCL issued 432 FADs in FY 2020, an eight percent increase from the 399 FADs issued during the prior year. CRCL's rate of timely FAD issuance decreased, from 21 percent (83 of 399) in FY 2019 to 17 percent (74 of 432) in FY 2020. Unfortunately, due to the increases in FAD requests, the average processing days increased by 77 days (315), when compared to the 238 average processing days in FY 2019.

Additionally, CRCL experienced a significant increase in incoming EEOC Administrative Judges' (AJ) decisions, after which CRCL issued merit-based final actions, referred to as Final Orders. During FY 2020, incoming decisions from EEOC AJs rose by eight percent (468 cases) over FY 2019 (433 cases). This increase follows a notable 67 percent (433) increase in FY 2019, and a 42 percent (259) increase in FY 2018 of AJ decisions received. The foregoing workload, and CRCL's continued staffing challenges in the adjudications program, led to an increase in the backlog of FADs, from 311, at the end of FY 2019, to 407 cases as of the end of FY 2020, even though the FAD issuance rate had increased over the previous year's output.

In FY 2020, DHS issued or took final action on 44 findings of discrimination,<sup>2</sup> a significant increase from the 16 findings processed in FY 2019. A more detailed explanation regarding this increase can be found at Section V of this report. The FY 2020 findings were similar to the prior year's findings regarding the bases of discrimination and issues on which complainants prevailed. In FY 2020, reprisal was the most frequently alleged basis on which complainants prevailed, followed by disability, sex, and age discrimination. The most frequently raised issues on which complainants prevailed were harassment (non-sexual), non-selection/non-promotion, and assignment of duties.

During FY 2020, 259 civil actions which were filed against the Department, involving various laws covered by the No FEAR Act, were pending or resolved in Federal District Court. Federal

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

<sup>2</sup> The Department issued 20 FADs and 24 Final Orders (fully implementing EEOC AJ decisions) where there was a finding of discrimination. A more detailed explanation can be found in Section V of this report.

judges disposed of 64 cases, 48 of which were decided in favor of the agency, two were decided in favor of the plaintiff, and 14 of which were settled by the parties.

Components reported that the Department's reimbursement to the Judgment Fund for damages during FY 2020 was in the amount of \$937,500.00. Additionally, \$455,000.00 was reimbursed to the Judgment Fund for attorney's fees. During FY 2020, eight employees were disciplined for discrimination, retaliation, harassment, or other infractions of provisions of law covered by the No FEAR Act. This information is described in Section III of this report.

## LEGISLATIVE REQUIREMENT

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

(a) Annual Report. — Subject to subsection (b), [(b) pertains to requirements for the first report] not later than 180 days after the end of each fiscal year, each Federal agency shall submit to the Speaker of the House of Representatives, the President pro tempore of the Senate, the Committee on 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.

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

## I. BACKGROUND

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

CRCL, which is located within the Office of the Secretary, provides technical and policy advice to Department leadership on civil rights and civil liberties issues. The Officer, by statute, reports directly to the Secretary and assists senior leadership in shaping policy in ways that protect the civil rights and civil liberties of all persons, internal or external to DHS, who are protected by our laws. In accordance with 6 U.S.C. § 345 and 42 U.S.C. § 2000ee-1, CRCL’s mission is to support the Department, to ensure commitment to our values, as it secures the Nation while preserving individual liberty, fairness, and equality under the law. CRCL performs four key

functions to integrate civil rights and civil liberties into all the Department's missions and activities:

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

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

## II. RESULTS AND DATA

### A. EEO and Whistleblower Cases Filed in Federal District Court

During FY 2020, the Department had 259 pending or resolved civil actions in Federal District Court under the laws covered in the No FEAR Act. The majority (168) of those Federal District Court filings arose under Title VII, followed by filings under the Rehabilitation Act (49), filings under the ADEA (31), then filings under the *Whistleblower Protection Act of 1989*, 5 U.S.C. §1201 (10), and finally a filing under GINA (1). There were no filings under the Equal Pay Act during FY 2020.

During FY 2020, 64 cases were disposed of in Federal District Court: 48 were decided in favor of the Department, two were decided in favor of the plaintiff, and 14 were resolved by settlement. In addition, there were 17 cases that were appealed. For further information

regarding FY 2020 employment discrimination and whistleblower cases filed against the Department in Federal District Court, see Appendix 1.

#### B. Reimbursements to Judgment Fund

During FY 2020, as reported by the Department’s Components, the Department reimbursed a total of \$937,500.00 in damages to the Judgment Fund. The amount reimbursed resulted from cases filed under Title VII, the ADEA, and the Rehabilitation Act. Reimbursements came from the following Components, in order of the largest to the smallest amount: Transportation Security Administration (TSA),<sup>3</sup> Immigration and Customs Enforcement (ICE), Headquarters (HQ), and U.S. Customs and Border Protection (CBP). In addition, \$455,000.00 was reimbursed to the Judgment Fund for attorney’s fees by TSA and CBP, which stemmed from ADEA and Rehabilitation Act cases.

#### C. Disciplinary Actions

Components retain independent authority to discipline employees, including individuals found to have engaged in discriminatory, retaliatory, or harassing conduct, as set forth in findings of discrimination. As part of any relief ordered, Components were required to consider disciplinary action against any individual found responsible for a discriminatory act. During FY 2020, a total of eight employees (five from CBP, two from U.S. Secret Service (USSS), and one from U.S. Citizenship and Immigration Services (USCIS)) were disciplined because of findings of discriminatory, retaliatory, or harassing conduct. The disciplinary actions resulted from violations of the Title VII and the Rehabilitation Act. The breakdown is included in Figure 1 below.

**Figure 1: Number of Employees Disciplined, Whether in Connection with Federal Cases Under Section 724.302(a)(5) (i.e. Including EEO Administrative Cases)**

	Title VII	The Rehabilitation Act
Reprimand	1	1
Suspension without Pay	2	1
Reduction in grade or pay	1	0
Removal	2	0

#### D. EEO Complaint Data

See Appendix 2 for the Department’s No FEAR Act data for FY 2020, which is also posted online (<http://www.dhs.gov/homeland-security-no-fear-act-reporting>).

<sup>3</sup> TSA’s records for reimbursement do not distinguish between payments to plaintiffs and attorney’s fees.

### III. ANALYSIS OF TRENDS AND CAUSALITY

#### A. EEO Complaint Activity

Section 203(a)(7) of the No FEAR Act requires federal agencies to examine trends and causes behind the data in their reports over the past five years. Figure 2 shows the number of complaints filed Department-wide each year for the past five years and the variance from the prior year's filing.

The Department's workforce population has steadily increased in recent years. The largest recent increase in staffing at the Department occurred between FY 2017 and FY 2018, when the number of employees grew from 197,593 to 206,449— an increase of 8,856 employees. In FY 2019, the workforce grew to 211,421, an increase of 4,972, and in FY 2020 the workforce grew again, to 213,653 employees. The 2020 gains reflect workforce increases at all Components, except for two: TSA and the United States Coast Guard (USCG). USCG stayed steady with the same number of employees while TSA experienced a slight workforce decrease of about 2,900 employees in FY 2020.

The Department experienced a slight increase of ten formal EEO complaints filings in FY 2020 (1,276) compared to FY 2019 (1,266). USCIS, ICE, CBP, HQ EEO, Federal Emergency Management Agency (FEMA), and the Federal Law Enforcement Training Centers (FLETC) experienced slight to moderate increases in the total number of complaints filed, while the USCG, USSS, and TSA experienced slight decreases in complaint filings. Notably, FLETC and HQ EEO showed the most significant increases in the number of formal complaints filed from FY 2019 to FY 2020, while TSA showed the most significant decrease. FLETC showed a 250 percent increase (four in FY 2019 compared to 14 in FY 2020), HQ EEO showed a 49 percent increase (67 in FY 2019 compared to 100 in FY 2020), and TSA showed a 28 percent decrease (390 in FY 2019 compared to 289 in FY 2020). See Figure 2.

**Figure 2: Complaints Filed, FY 2015 – FY 2020**

	<i>2015</i>	<i>2016</i>	<i>2017</i>	<i>2018</i>	<i>2019</i>	<i>2020</i>
<b>Department-wide Filings</b>	1,262	1,315	1,245	1,472	1,266	1,276
<b>Variance from prior year complaints</b>	+49	+53	-70	+227	-206	+10
<b>Department-wide Population</b>	190,431	192,866	197,593	206,449	211,421	213,653
<b>Variance in employee population from prior year</b>	-1,544	+2,435	+4,727	+8,856	+4,972	+2,232

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

During FY 2020, the most frequently alleged bases of discrimination in formal EEO complaints were, in order of frequency: reprisal, sex, and disability. See Figure 3.

- *Reprisal*: In FY 2020, there was an 8 percent increase in the number of reprisal claims (681), compared to in FY 2019 (633). Reprisal remains the most commonly alleged basis of discrimination at DHS, and government-wide, as reported by the EEOC.<sup>4</sup> At the Department, and across the federal sector, reprisal claims are almost always joined with an underlying EEO complaint based on race, national origin, sex, etc.
- *Sex*: During FY 2020, DHS received 473 complaints alleging discrimination based on sex, including claims of lesbian, gay, bisexual, and transgender (LGBT) discrimination. Specifically, females alleging discrimination based on sex accounted for the most frequently raised basis, with 322 complaints. Males alleged discrimination based on sex in 145 complaints. LGBT claims were raised in six complaints. The 473 complaints raising sex discrimination in FY 2020 represent a modest three percent increase from the 460 complaints alleging sex discrimination in FY 2019.
- *Disability*: During FY 2020, disability discrimination was alleged in 462 complaints, which is a four percent decrease over the prior year when disability discrimination was raised in 480 complaints.

<sup>4</sup> <https://www.eeoc.gov/federal-sector/reports/annual-report-federal-workforce-form-462-and-md-715-data-tables-fy-2017>.

**Figure 3: Bases of Discrimination, FY 2015 - FY 2020**

	<b>2015</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>	<b>2020</b>
<b>Reprisal</b>	576	667	596	735	633	681
<b>Sex</b>	430	453	476	509	460	473
<b>Disability</b>	355	379	424	477	480	462
<b>Race</b>	402	403	391	488	407	438
<b>Age</b>	392	396	386	398	366	409
<b>National Origin</b>	186	218	207	263	173	210
<b>Color</b>	165	159	181	187	146	193
<b>Non-Statutory*<sup>5</sup></b>	82	74	100	90	69	91
<b>Religion</b>	58	66	57	62	53	53
<b>GINA</b>	5	7	4	6	3	6

\* *Bostock v. Clayton County*, 140 S. Ct. 1731 (2020), made clear that LGBT discrimination is covered under Title VII. However, previous EEOC guidance allowed complainants to bring complaints of discrimination involving an LGBT basis under Title VII, or under an agency’s non-statutory procedures. Accordingly, these figures include some LGBT claims in addition to all claims of parental status discrimination.

### C. Issues in EEO Complaints

The most frequently raised issue in EEO complaints at DHS during FY 2020 was harassment (non-sexual).<sup>6</sup> Non-sexual harassment has been the most frequently raised issue in EEO complaints at the Department over the past eight years, as has been the case across the federal sector as reflected in the most recent EEOC report.<sup>7</sup> Yet concurrently, the basis of sex was the basis most frequently raised in non-sexual harassment complaints (269 complaints), and 71 percent (191) of those complaints were based on sex (female). There was a 12 percent increase in the number of non-sexual harassment complaints between FY 2019 (588) and FY 2020 (658). With regard to sexual harassment complaints, there were 49 in FY 2020, which is only slightly higher than the 45 sexual harassment complaints in FY 2019 (45).

<sup>5</sup> The Commission has held that a claim of discrimination based on sexual orientation necessarily states a claim of sex discrimination under Title VII. Agencies should treat claims of sexual orientation discrimination as sex discrimination claims under Title VII and process such complaints pursuant to 29 C.F.R. § 1614, unless a complainant requests that the Agency’s alternative complaint process, if one exists, be used. *Baldwin v. Dep’t of Transp.*, EEOC Appeal No. 0120133080 (July 15, 2015). At the Department, a complainant may elect to have a sexual orientation claim processed under Executive Order 13087, and those claims are included in the “Non-Statutory” category.

<sup>6</sup> The No FEAR Act requires reporting of complaints involving sexual harassment (i.e., sex-based claims involving actionable unwelcome conduct of a sexual nature) and non-sexual harassment (i.e., claims involving actionable unwelcome conduct not of a sexual nature, e.g., based instead on race, sex, national origin, color, religion, age, disability, or reprisal).

<sup>7</sup> <https://www.eeoc.gov/federal-sector/reports/annual-report-federal-workforce-form-462-and-md-715-data-tables-fy-2017-and>.



The second-most commonly raised issue at DHS, disciplinary action, was raised in 207 complaints. This represented a nine percent decrease from FY 2019, when it was raised in 228 complaints. As Figure 4, below, shows, disciplinary action has consistently been the second- or third-most frequently raised issue at the Department.

The third-most frequently raised issue at DHS was promotion/non-selection, which was raised in 195 complaints. This represents a nine percent decrease over FY 2019, when promotion/non-selection was raised in 215 complaints.

**Figure 4: Issues in Complaints, FY 2015 - FY 2020**

	<i>2015</i>	<i>2016</i>	<i>2017</i>	<i>2018</i>	<i>2019</i>	<i>2020</i>
<b>Non-Sexual Harassment</b>	479	584	502	628	588	658
<b>Disciplinary Action</b>	247	259	304	282	228	207
<b>Promotion/Non-Selection</b>	224	296	280	235	215	195
<b>Assignment of Duties</b>	141	150	126	222	131	178
<b>Terms/Conditions of Employment</b>	105	147	158	221	161	116

## IV. COMPLAINT PROCESSING AND ADJUDICATION DATA

### A. EEO Counseling

Department-wide, both the COVID-19 pandemic and staffing challenges impacted completed counselings.<sup>8</sup> DHS experienced a 4 percent decrease in the total number of completed counselings, from 2,339 in FY 2019 to 2,252 in FY 2020. This is the second fiscal year with a decrease in the number of completed counseling. In FY 2019, there was a 13 percent decrease from FY 2018 (2,685 to 2,339). See Figure 5. Despite the Department-wide decrease, five Components have shown a marked increase in their number of completed timely-completed counselings: FEMA’s completed counselings increased by 62 (238 in FY 2020 from 176 in FY 2019), followed by HQ EEO with an increase of 47 completed counselings (142 from 95), ICE

<sup>8</sup> In accordance with 29 C.F.R. § 1614.105(d), counseling of an informal EEO complaint (also referred to as a pre-complaint) must be completed within 30 calendar days, unless the aggrieved person agrees to extend the counseling period up to an additional 60 calendar days.

with an increase of 44 completed counselings (282 from 238), USCIS with an increase of 25 completed counselings (222 from 197), and FLETC with a 15 case increase (19 from 4).

The remaining four Components experienced a decrease in both completed and timely completed counselings. The breakdown is as follows: TSA (from 771 in FY 2019 to 532 in FY 2020), CBP (from 710 in FY 2019 to 699 in FY 2020), USCG (from 100 in FY 2019 to 75 in FY 2020), and USSS (from 48 in FY 2019 to 43 in FY 2020).

**Figure 5: EEO Counseling at the Department, FY 2015 – FY 2020**

	<i>2015</i>	<i>2016</i>	<i>2017</i>	<i>2018</i>	<i>2019</i>	<i>2020</i>
<b>Total Number</b>	2,391	2,510	2,517	2,685	2,339	2,252
<b>Timely Number</b>	2,081	2,253	2,387	2,587	2,141	2,140
<b>Percentage Timely</b>	87	90	95	96	92	95

Individual Components’ program accomplishments regarding timely counselings in FY 2020 are highlighted below:

- Four Components provided timely EEO counseling in 100 percent of their cases in FY 2020: CBP (699), HQ EEO (142), USCG (75), and USSS (43).
- Three additional Components provided timely counseling in a high percentage of their cases: TSA, 98 percent timely (522 of 532 cases); USCIS, 99 percent timely (221 of 222 cases); and FLETC, 95 percent timely (18 of 19 cases).

#### B. EEO Investigations

In accordance with 29 C.F.R. § 1614.108(e), an investigation must be completed within 180 calendar days, unless the complainant agrees to extend the deadline, or the complaint is amended. The following compares the number of formal complaints filed Department-wide to the number of EEO investigations completed, and to those that were timely completed.<sup>9</sup>

In FY 2020, 1,185 investigations were completed Department-wide, which is a slight increase over the number of investigations completed in FY 2019 (1,177). The number of timely completed investigations notably increased in FY 2020, to 931 (79 percent), from 768 (65 percent) in FY 2019. Additionally, the average number of days to complete an investigation decreased 18 percent, from 291 days in FY 2019 to 239 days in FY 2020.

Despite challenges presented by the COVID-19 pandemic, the majority of Components completed more investigations in FY 2020 as compared to last fiscal year. In addition, there were marked improvements on the rate of timely completed investigations. Notably, TSA

<sup>9</sup> Complaints filed in one fiscal year may not always be investigated during the same fiscal year.

completed 390 investigations, 65 more than in FY 2019, and TSA’s timeliness rate for completed investigations improved from 86 percent (280 of 325) in FY 2019 to 92 percent (358 of 390) in FY 2020. Additionally, TSA’s average processing days to complete their investigations decreased from 186 days in FY 2019 to 160 days in FY 2020. See Figure 6.

**Figure 6: EEO Investigations at the Department, FY 2015 – FY 2020**

	<b>2015</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>	<b>2020</b>
<b>Total Formal Complaints Filed<sup>10</sup></b>	1,262	1,315	1,245	1,472	1,266	1,276
<b>Total Investigations</b>	865	1,122	1,135	1,179	1,177	1,185
<b>Timely Investigations</b>	535	522	812	840	768	931
<b>Percentage Timely</b>	62	47	72	71	65	79
<b>Average Days</b>	253	296	238	271	291	239

Other notable information regarding Components’ FY 2020 investigation data includes:

- FLETC timely completed 100 percent of their EEO investigations.
- Five Components timely completed their EEO investigations at 91 percent or above: USCG (98 percent), USCIS (97 percent), HQ EEO (96 percent), TSA (92 percent), and CBP (91 percent).
- Two Components experienced decreases in the total number of completed investigations while their rate of timely investigations increased. ICE’s total completed investigations decreased from 175 in FY 2019 to 154 in FY 2020, but their rate of timely completed investigations increased from 13 percent in FY 2019 to 34 percent in FY 2020. Likewise, FEMA’s number of completed investigations dropped by 49 percent from FY 2019 (204) to FY 2020 (105); however, FEMA’s rate of timely completed investigations increased from 13 percent in FY 2019 to 29 percent in FY 2020.

### C. Procedural Dismissals

An agency may procedurally dismiss an EEO complaint for one of several reasons, including, but not limited to: failure to state a claim, untimely initial contact with an EEO counselor, filing the identical claim in Federal District Court, or failure to provide necessary information to the agency. See 29 C.F.R. § 1614.107(a). At DHS, Components send CRCL requests for procedural dismissal of complaints that, based on Components’ review, meet the appropriate regulatory

<sup>10</sup> Investigations are not completed for all formal complaints; some complaints are procedurally dismissed without an investigation (See Section IV.C, below) and other cases may be settled or withdrawn before an investigation is completed.

criteria; CRCL then reviews the record and makes a final determination to dismiss the matter, or return the case to the Component for investigation.

In FY 2020, there was a 13 percent increase (110) in the number of procedural dismissals issued, when compared to FY 2019 (97). CRCL’s average processing days in FY 2020 was 296 days, which is a 97-day increase (199) over the average processing days of dismissals in FY 2019. The increase in average processing days is attributable to adjudication program staffing challenges, increases in the workload for other final actions, and the delays caused by EEOC’s guidance to agencies to not issue certain final actions for over three months because of the COVID-19 pandemic. See Figure 7.

**Figure 7: Procedural Dismissals, FY 2015 – FY 2020**

	<b>2015</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>	<b>2020</b>
<b>Total Number</b>	92	61	111	186	97	110
<b>Average Number of Processing Days</b>	163	206	211	163	199	296

#### D. Findings of Discrimination

Findings of discrimination in the federal administrative EEO process result from either a merit FAD issued by CRCL<sup>11</sup> or a decision by an EEOC AJ. CRCL is required to take final action within 40 days, on behalf of DHS, when an AJ issues a decision on the merits of a complaint; this type of final action is called a Final Order. The Final Order must notify the complainant whether the agency intends to fully implement the AJ’s decision or file an appeal with EEOC’s Office of Federal Operations (OFO).

The following tally of the Department’s findings of discrimination from FY 2015 to FY 2020 illustrates the protected bases upon which the findings were made and the specific issues involved in the findings during this period.

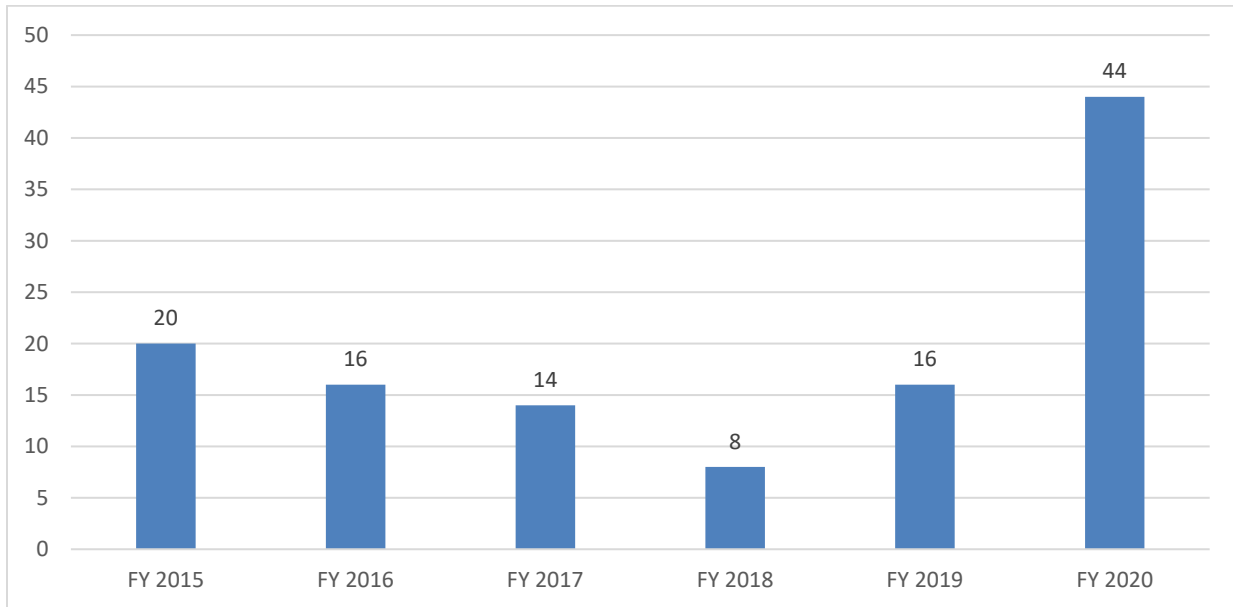
As shown in Figure 8, below, from FY 2015 to FY 2020, the Department processed 118 findings of discrimination through the issuance of merit FADs or Final Orders. In FY 2020, the Department processed a total of 44 cases in which findings of discrimination were made. The discriminatory conduct in these cases dates from 2010 to 2018. These cases included 20 merit FADs issued by CRCL and 24 EEOC AJ decisions that the Department fully implemented. The 44 findings in FY 2020 represents a significant increase from the 16 findings in FY 2019.

The 44 findings in FY 2020 represent five percent of the 893 merit FADs and Final Orders the Department issued in FY 2020. This is higher than the two percent (16 of 832) in FY 2019. In addition, the Department’s FY 2020 findings rate is higher than the government-wide percentage

<sup>11</sup> Further discussion of merit FADs can be found in Section VI of this report.

of findings of discrimination in FY 2018, which was two percent (139 findings).<sup>12</sup> While findings reflect a relatively small percentage of the Department’s overall complaint inventory, they get significant attention by CRCL and Component leadership.

**Figure 8: Complaints with Findings, FY 2015 – FY 2020**



The reasons for the increase in FY 2020 are not immediately apparent and are likely complex and multi-faceted. First, the number of findings in FY 2019 may be undercounted based on the 35-day lapse in appropriation funding experienced in FY 2019, during which cases could not be processed. Second, it is important to note that most of the discrimination took place in FY 2015, 2016, and 2017; however, in one case the discrimination occurred in 2010. Cases may have complicated procedural histories, which can cause long periods of time to elapse between the discriminatory conduct and the issuance of a finding. For instance, a complaint may have been initially procedurally dismissed, but the dismissal was subsequently overturned on appeal. In other cases, a complainant may have initially requested a hearing before an AJ, and the case may have been at hearing for several years before it was ultimately remanded to CRCL to issue a FAD. Finally, due to staffing resource challenges at the EEOC, the time between a hearing request and the actual hearing is several years.

### 1. Protected Bases

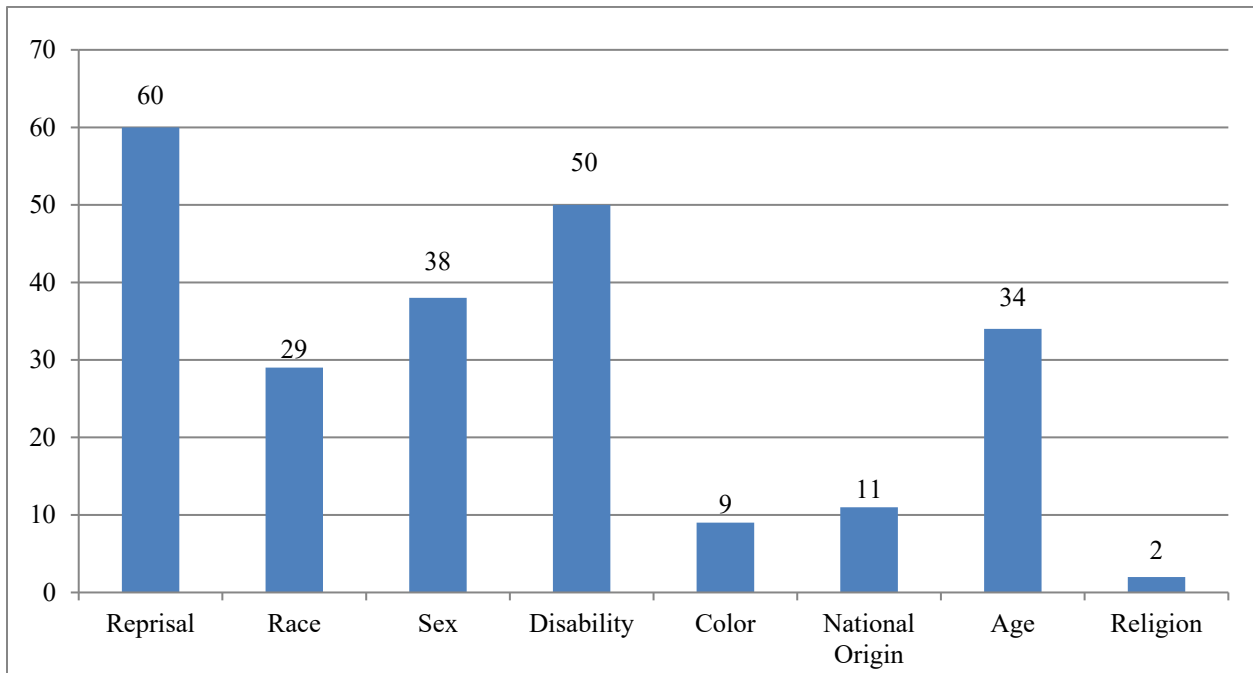
In FY 2020, findings of discrimination were issued on the bases of reprisal (21), disability (19), sex (12), age (12), race (10), national origin (9), and color (4). The greatest number of findings were based on reprisal (21) in FY 2020, which has been the case for each of the past five years, except FY 2019, when the greatest number of findings were based on race. The 44 findings

<sup>12</sup> <https://www.eeoc.gov/federal-sector/reports/annual-report-federal-workforce-form-462-and-md-715-data-tables-fy-2017-and>.

issued in FY 2020 is higher than the 16 findings in FY 2019, so it follows that the number of bases upon which those findings were made in FY 2020 would be higher than previous years. It is important to note that the total number of bases within findings of discrimination may exceed the total number of findings issued because one decision may find discrimination on more than one basis. Despite the increase in bases, there do not appear to be any significant trends.

A comprehensive look at the number of findings by basis for the period from FY 2015 to FY 2020 is shown in Figure 9.

**Figure 9: Findings by Basis, FY 2015 – FY 2020**



## 2. Issues

Consistent with previous years, the FY 2020 findings of discrimination involved complaints raising 15 issues in different areas, with no discernible pattern or trend. There were, however, a couple of issues that stood out in FY 2020. For the first time, telework was raised as an issue for two findings. In addition, sexual harassment was raised as an issue in findings for the first time since 2016, and was raised four times. As indicated above, the 44 findings issued in FY 2020 is higher than the 16 findings in FY 2019, so it follows that the number of issues raised in those findings would be higher than previous years. As with protected bases, the total number of issues within the findings of discrimination may exceed the total number of findings issued, given that one decision may find discrimination regarding multiple issues. In FY 2020, there were increases in the number of issues raised from prior years; however, these do not appear to signify a trend. See Figure 10.

**Figure 10: Findings by Issue, FY 2015 – FY 2020**

	<i>2015</i>	<i>2016</i>	<i>2017</i>	<i>2018</i>	<i>2019</i>	<i>2020</i>	<i>Total</i>
<b>Appointment/hire</b>	0	0	0	0	1	2	3
<b>Assignment of duties</b>	2	3	9	1	1	11	27
<b>Awards</b>	0	1	0	0	0	2	3
<b>Disciplinary action</b>	1	1	0	2	4	8	16
<b>Duty hours</b>	1	0	0	0	0	0	1
<b>Evaluation/appraisal</b>	2	0	0	2	8	13	25
<b>Examination/test</b>	0	0	2	0	0	0	2
<b>Harassment (non-sexual)</b>	26	10	11	6	11	46	110
<b>Harassment (sexual)</b>	8	3	0	0	0	4	15
<b>Medical Examination</b>	0	0	2	3	0	2	7
<b>Non-selection/non-promotion</b>	5	4	2	1	3	15	30
<b>Pay/overtime</b>	0	0	1	0	0	0	1
<b>Reasonable accommodation</b>	1	2	2	0	1	7	13
<b>Reassignment</b>	3	1	0	0	3	15	22
<b>Telework</b>	0	0	0	0	0	2	2
<b>Termination</b>	3	0	0	0	1	3	7
<b>Terms/conditions of employment</b>	3	0	4	3	7	6	23
<b>Time and Attendance</b>	2	0	2	0	1	2	7
<b>Training</b>	2	0	0	0	1	0	3

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

### A. Improvements in the Department’s EEO Program

During FY 2020, the Department continued to capitalize on program enhancements started in previous fiscal years and implemented new initiatives. CRCL broadened its collaborative work with the Department’s EEO Directors and Component EEO offices in several areas.

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

Building on the accomplishments of the inaugural plan, the DHS EEO Council developed a new five-year strategic plan (FY 2020-2024), again aimed at achieving a unity of effort across the Department's EEO and Diversity programs. The plan advances five goals: integrate EEO and Diversity into agency operations, develop the DHS EEO and Diversity workforce, promote voluntary resolution of workplace disputes, proactively prevent discrimination by addressing potential barriers to EEO and identifying emerging issues, and optimize coordination to ensure effectiveness, efficiency, and legal compliance of Department and Component EEO and Diversity programs.

In FY 2020, the Council stood up new working groups, staffed by EEO and Diversity practitioners from across the Department, to begin undertaking measurable actions in furtherance of the plan. Although exigencies related to adapting to the COVID-19 environment delayed the working groups' efforts, measurable results are expected in FY 2021.

During FY 2020, the DHS-HQ Anti-Harassment Unit created working groups, consisting of representatives from each Component, to provide guidance on implementing the DHS anti-harassment policy and to ensure that Components anti-harassment programs have effective and efficient programs. To assist Components in their program development, a compliance worksheet was created that outlines the elements of a successful anti-harassment program. CRCL will be conducting technical visits to each Component and providing feedback using the worksheet as its guide. CRCL will continue to send out data calls each quarter requesting program information from the Components. The collected data will be used to monitor the number of harassment complaints received and the agency's response time, in an effort to address any potential problems found.

During FY 2020, the Council continued efforts to promote voluntary resolution of workplace disputes through ADR initiatives. In FY 2019, Components used mediators from the DHS Shared Neutrals<sup>13</sup> roster in 235 cases, a 25 percent increase from FY 2019, when these mediators were used in 176 cases. Mediators on the shared neutrals roster achieved settlement on average of 19 percent. This is an increase from FY 2019 (17 percent). In comparison, mediations conducted by contract mediators had an average settlement rate of 17 percent.

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<sup>13</sup> The DHS Shared Neutrals program was established in 2016, and is a collection of trained, collateral duty mediators who support DHS Components' ADR programs.



**Figure 11: FY 2020 Mediations Conducted by Shared Neutrals**

	<b>Number of Times Used Shared Neutrals</b>	<b>Settlements</b>
<b>USCIS</b>	24	4
<b>CBP</b>	146	30
<b>FEMA<sup>14</sup></b>	-	-
<b>USCG</b>	1	0
<b>ICE</b>	38	7
<b>TSA</b>	3	1
<b>FLETC</b>	3	0
<b>HQ EEO</b>	20	7
<b>USSS</b>	-	-
<b>TOTAL</b>	235	49

## 2. Collaborating and Leading the Department’s Components

Through the beginning part of the year, CRCL continued planning our biennial EEO and Diversity Conference, with plans to offer dozens of skill-enhancing workshops for EEO and Diversity practitioners from across the Department. When it became apparent that CRCL would have to cancel plans for an in-person conference, due to the COVID-19 pandemic environment, CRCL redirected its efforts to develop and deliver standalone EEO Counselor and Investigator refresher training on a virtual platform to ensure that Component practitioners’ continuing training requirements would be satisfied. CRCL arranged for knowledgeable instructors from across the Department to teach the two daylong sessions, reaching 100+ practitioners from across the Department.

Throughout FY 2020, CRCL led quarterly meetings of the Component EEO Complaint Managers, providing opportunities for Components’ input on agenda topics and encouraging and facilitating discussions. This regular collaboration between CRCL and Components proved key in strengthening relationships and enabling managers within this community to share challenges and provide input on solutions and best practices. In FY 2019, CRCL launched efforts to coordinate with four Components and update their organizational hierarchy designations in the enterprise complaints management database, this project continued in FY 2020, and the updates for two of the four Components were successfully completed.<sup>15</sup>

CRCL’s EEO compliance program monitors Components’ implementation of remedial relief that was ordered in findings of discrimination, and reports compliance progress to the EEOC for EEOC-issued decisions in which discrimination was found. During FY 2020, CMAS continued

<sup>14</sup> FEMA and USSS do not utilize the Shared Neutrals roster as part of their ADR programs.

<sup>15</sup> The hierarchy designations are the names of the offices within a specific Component. As reorganizations occur and office names change, there is a need to update the hierarchy in the database.

its collaboration with the EEOC's Compliance Officer, fostering an effective working relationship while focusing on the oldest cases pending implementation.

During FY 2020, CMAS provided quarterly feedback to DHS Components on the quality of their Reports of Investigation (ROI) through use of an ROI Feedback Tool (Tool). The Tool, developed and launched by CMAS in FY 2016, allowed CMAS's Adjudication Analysts to assess and rate the quality of ROIs reviewed when preparing Final Agency Decisions (FADs). Analysts assigned numerical ratings for several criteria related to legal sufficiency and readability and provided narrative information if needed to further explain numerical ratings. Component EEO Offices have been able to use the feedback as an additional method to assess the quality of their ROIs. The tool has proven to be an effective way for CMAS to partner with Components to improve the quality of ROIs across DHS. Since the Tool's inception, DHS Component Complaint Managers have welcomed the thorough feedback and detailed comments and offered their own suggestions for improvement. The Complaint Managers share the feedback with their staff members and contractors as an objective improvement mechanism. Notably, the ROI Feedback Tool has been recommended as a best practice for other federal agencies by the EEOC.

#### B. Challenges in the Issuance of Merit FADs

Merit FADs are issued by CRCL after the following events have occurred: a complainant files a formal complaint alleging discrimination (after undergoing EEO counseling), the Component accepts the complaint, investigates, and a request is made for the CRCL to issue a decision as to whether discrimination occurred. This request may be made by the complainant, may result from the filing of a mixed case,<sup>16</sup> may be requested by the Component because of the complainant's failure to make an election before the expiration of the post-investigation election period, or may be ordered by an EEOC AJ after dismissal of the complaint from the hearing process. Specifically, the EEOC regulations, at 29 C.F.R. Part 1614, require most merit FADs to be issued within 60 days of election, or other event triggering the FAD request (the exception being mixed case FADs which are required to be issued in 45 days).

CRCL surpassed its goal to issue 47 percent of merit-based final actions within regulatory timeframes, issuing 49 percent (437 of 893) timely final actions. In FY 2020, CRCL issued 432 merit FADs, which is an eight percent increase from the 399 FADs issued in FY 2019, and the most merit FADs issued within the last seven years. CRCL's rate of timely FAD issuance decreased, from 21 percent (83 of 399) in FY 2019 to 17 percent (74 of 432) in FY 2020. And, the average processing days increased by 77 days (315), when compared to the 238 average processing days in FY 2019. These decreases were mainly caused by the EEOC's guidance to agencies to not issue certain final actions for over three months because of the COVID-19 pandemic. Some additional reasons for the changes in timely issuance and average processing days for FADs are discussed further below. Figure 12 shows CRCL's six-year trend in merit FAD issuances.

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<sup>16</sup> A mixed case is a complaint of employment discrimination that stems from an action that can be appealed to the Merit Systems Protection Board. In accordance with 29 C.F.R. § 1614.302(d)(2), the agency must issue a FAD within 45 days of completion of the investigation.

**Figure 12: Merit FADs FY 2015 – FY 2020**

	<b>2015</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>	<b>2020</b>
<b>Backlog at Year End</b>	0	22	149	172	311 <sup>17</sup>	407
<b>Total FADs Issued</b>	297	278	405	417	399	432
<b>Number Timely Issued</b>	120	94	105	152	83	74
<b>Percentage Timely</b>	40	34	26	37	21	17
<b>Average Processing Days</b>	115	166	207	173	238	315

In FY 2020, multiple factors negatively impacted CRCL’s adjudication program and contributed to a decrease in CRCL’s timely merit FAD issuances and a rise in the FAD backlog in FY 2020: (1) adjudication staffing challenges in FY 2020, to include the retirement of the CMAS Director, a Team Lead, and another employee’s need for extended leave; (2) vacancy of an attorney-advisor position, which is a critical resource that supports the EEO program; and (3) the backlog of cases that has accumulated over the past several years.

In FY 2020, CRCL experienced a slight decrease in the number of incoming requests for merit FADs (651) over those received in FY 2019 (672). This slight decrease, however, follows years of increases in the number of incoming requests: ten percent (411) in FY 2016, 26 percent (568) in FY 2018, and an 18 percent increase (651) in FY 2019. The CRCL FAD backlog increased from 311 at the end of FY 2019, to 407 at the end of FY 2020, due to the aforementioned staffing and workflow challenges.

CRCL also experienced an increase in another category of cases that increased the adjudicatory workload. As part of the regulatory process, following an EEOC AJ’s merit-based decision in a complaint, CRCL must review the record and issue a Final Order indicating whether the Agency will fully implement the AJ’s decision or will not fully implement the decision (with a simultaneous appeal to EEOC). There was an eight percent increase in the number of AJ decisions received in FY 2020 (468), when compared to FY 2019 (433). Moreover, this increase follows a notable 67 percent (433) increase in FY 2019, and a 42 percent (259) increase in FY 2018 of AJ decisions received, compared to the 182 AJ decisions received in FY 2017

With the growing inventory of pending FADs due to the extremely high incoming workload and internal staffing challenges, CRCL continued to face competing adjudication priorities, i.e., issuing merit FADs within the regulatory 45- or 60-day time frame and ensuring that merit FADs which had already surpassed the regulatory time frame (whether prior to or after CRCL’s receipt of the FAD request) were prioritized for issuance. In response, CRCL was compelled to adopt a strategic FAD assignment approach, striking a balance between issuing regulatory timely FADs, while also addressing older cases to avoid disadvantaging complainants whose FAD requests

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<sup>17</sup> In FY 2019, CRCL changed the way the backlog was calculated by defining the backlog as any pending FAD request that had been at CRCL for more than 60 days. In previous fiscal years, the backlog was defined as a pending FAD request that had not been assigned to an Analyst. The backlog would have been 257 if the former calculation method was used. This newer method, however, is a truer measure of the actual case inventory in CRCL.

were pending for a longer period. Additionally, CRCL dedicated additional funding to a contract to aid in the drafting of merit FADs. This additional support significantly improved FAD production by addressing FADs pending from prior fiscal years. As a result, CRCL closed 179 FADs with contractor support. At the end of FY 2020, CRCL awarded an additional contract to further assist in efforts to address the backlog of cases. CRCL leadership has pledged to continue funding for additional resources into FY 2021, as its budget allows.

### C. The Department's Component EEO and Civil Rights Offices

Components continued to move forward with their process efficiency initiatives during a year of many staffing and resource challenges. With the centralization of EEO information and documents into the Department's enterprise database system, Component offices have leveraged the benefits of consistency and the reliability of having a robust enterprise data system.

#### 1. Federal Emergency Management Agency (FEMA)

##### ***Infrastructure***

FEMA's Office of Equal Rights (OER) provides EEO services to approximately 20,000 employees.

In FY 2020, for the first time in FEMA's 40-year history, OER was officially organized into five functional areas: Business Management Unit; EEO Unit; External Civil Rights Division; Disability Unit; and the Affirmative Employment Unit. In order to conduct this reorganization, OER evaluated its mission, staffing structure, and personnel needs, and developed a comprehensive staffing organizational chart. The new organization of OER was approved by Office Chief Component Human Capital Officer (OCCHCO) in FY 2020.

As a result of the reorganization, OER was able to make significant strides in re-classifying positions and ensuring the "right-sizing" of the functional areas. Efforts to staff these positions resulted in hiring critical positions, such as a Business Management Unit Executive Officer, External Civil Rights Division Director, External Civil Rights Analysts, Program Analysts, and Administrative Assistants. Despite the hiring of these critical positions, OER still experienced decreases in staffing.

##### ***Complaint Processing***

In FY 2020, OER improved its service to FEMA stakeholders on many fronts. OER continued implementing the end-to-end processing of EEO complaints by EEO Case Managers. EEO Case Managers were offered many training opportunities throughout FY 2020, including an overview of the EEO complaint process, Report of Investigation Sufficiency Review training, and the Department's EEO Counselor's Refresher training offered by CRCL.

FEMA OER experienced a 35 percent increase in the number of completed counselings in FY 2020 (238), as compared to FY 2019 (176). Of those 238 completed counselings, FEMA timely counseled 76 percent (180 of 238), which is a slight decrease, as compared to 84 percent timely completed counselings (148 of 176) in FY 2019. During the fiscal year, FEMA used the services

of the United States Postal Service Interagency Reimbursable Work Authorization (IRWA) to aid in timely case processing.

In FY 2020, 118 formal complaints were filed with FEMA OER, representing a seven percent increase from FY 2019, when 106 formal filings were filed. Despite the increase in complaints processed and decreased staffing, efficiency significantly increased during the same period. The average processing time for completing investigations decreased in FY 2020, from an average of 507 days in FY 2019, to an average of 457 days in FY 2020. The average number of days to process procedural dismissal decisions, increased from 210 days in FY 2019, to an average of 588 days in FY 2020. As noted throughout this report, the marked increase and/or decreases in timelines or average number of days are largely due to delays caused by EEOC's guidance to agencies to not issue certain actions, for a time, due to the COVID-19 pandemic.

### ***Services and Proactive Engagement***

OER's service and proactive engagement efforts are driven by the Disability Unit and the Affirmative Employment Unit. The Disability Unit provides employment-related disability training and oversight over policy or guidance that affects FEMA's employees with disabilities. The Disability Unit also manages FEMA's reasonable accommodation program<sup>18</sup> for employees.

The Disability Unit collaborated with FEMA's OCCHCO to revise the employment offer letters to notify new employees on how to request a reasonable accommodation. The Disability Unit drafted and issued a factsheet to inform FEMA employees and managers on the procedures and policies regarding requesting a reasonable accommodation before and during disasters deployments. Throughout FY 2020, the Disability Unit conducted 14 training and outreach events, as well as participating in FEMA's "Supervisory Essentials" training sessions.

Along with the entire FEMA community, the Disability Unit quickly adjusted to respond to the challenges raised by the COVID-19 pandemic. The pivot to respond to the needs of the workforce included the Disability Unit working with vendors to ensure that employees who are deaf and hard of hearing had interpreting and closed captioning services available to them on virtual meeting platforms.

Additionally, in FY 2020, OER:

- Conducted two townhall sessions in various regions. OER also conducted Crucial Conversations training for managers and supervisors.
- Continued to use the services of the EEOC and a contractor to provide anti-harassment training to 1,939 employees, managers, and supervisors. Additionally, OER successfully certified 39 FEMA employees to deliver anti-harassment/civil treatment training. These trainers will be responsible for ensuring all FEMA employees are trained in this valuable,

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<sup>18</sup> The Rehabilitation Act of 1973 requires that Federal agencies provide reasonable accommodations to qualified employees or applicants with disabilities. A reasonable accommodation program facilitates the reasonable accommodation process.

instructor-led class. All FEMA employees are required to participate in these mandatory classes.

- Facilitated the “Employee Rights and Responsibilities” portion of FEMA’s “New Employee Orientation” course. This training instructed new FEMA employees on the topics of the federal sector EEO process, anti-harassment, reprisal, and the reasonable accommodation process and was delivered 22 times to a total of 1,455 new FEMA employees. In response to the COVID-19 pandemic, all training, including “New Employee Orientation” was transferred to virtual training. OER staff quickly adjusted to deliver the course in a virtual environment.
- Continued its work with the Inclusive Diversity Council (IDC), a FEMA advisory group, under the direction of OCCHCO and OER, brought together to assist with addressing matters of diversity, inclusion, and employee engagement.

## 2. The Federal Law Enforcement Training Centers (FLETC)

### ***Infrastructure***

FLETC’s EEO Office provides services to 1,283 FLETC employees. The Office is staffed by the EEO Officer, Complaints Manager, five EEO Specialists, and one Staff Assistant. One EEO Specialist serves as the Disability Program Manager. Each EEO Specialist manages at least one special emphasis program, presents EEO information for New Employee Orientation, counsels informal EEO complaints, processes requests for reasonable accommodation due to disabilities and religion, and processes accommodations for pregnancy-related issues. The Complaints Manager and Disability Program Manager also develop and present management training on EEO topics, including ADR, harassment prevention, and reasonable accommodation.

### ***Complaint Processing***

During FY 2020, FLETC completed 19 pre-complaint counselings (14 FLETC cases and five DHS conflict of interest cases) of which, 95 percent (18 of 19) were timely completed. This is an increase of 15 completed counseling from FY 2019, in which FLETC completed a total of four pre-complaint counselings. This also resulted in an increase of formal complaint filings from four in FY 2019 to 14 in FY 2020.

FLETC completed 100 percent (seven) of formal EEO complaint investigations within the regulatory timeframe. FLETC remains committed to completing all EEO investigations in a timely manner. To continue to fulfill this goal, the FLETC EEO Office continues to work closely with EEO contract investigators, responding management officials, the Human Capital Office (HCO), and the Office of Chief of Counsel (OCC).

Further, FLETC also continued to support the DHS Shared Neutrals Program through the Complaint Manager’s role in co-leading the DHS Basic Mediation Training sessions.

### ***Services and Proactive Engagement***

During FY 2020, the EEO Office drafted and submitted a new Reasonable Accommodation Directive and began its revision of the FLETC Anti-Harassment Procedures.

During FY 2020, 13 new supervisors and managers participated in FLETC's New Supervisor Training Program, which is a week-long program that is mandatory for all new supervisors within their first year of supervision. Training modules on both the EEO process and reasonable accommodation procedures are included in the program. Additionally, 16 supervisors attended reasonable accommodation training provided by FLETC's EEO Office.

The EEO Office/Disability Program Manager developed and implemented a new Student and Employee Disability Access initiative to encourage all FLETC professionals to work in a unified and supportive manner to comply with the Rehabilitation Act. The purpose of this new FY 2020 initiative is (1) to increase capacity for ensuring enterprise-wide collaboration on projects that contain elements of disability laws, and (2) to enhance service delivery to students, FLETC employees, job applicants, and members of the general public who have disabilities. Members include OCC, HCO, IT Business Management Division, Facilities Management Division, Student Services Division, Critical Incident Stress Management Office, and the EEO Office. The network created has been successfully used for assisting with reasonable accommodation efforts and participating in the development and delivery of 2020 National Disability Employment Awareness Month virtual activities.

FLETC drafted a charter for its Strategic Recruitment, Diversity, and Inclusion Council to develop individual goals for cultivating an organizational culture that includes engagement, diversity, information sharing, and equity for all employees that will enable FLETC to achieve a high level of mission performance. The Council is in the formative stage, however, upon establishment, FLETC senior leaders will lead this effort. The Deputy Director will serve as the Executive Sponsor. The Council will identify initiatives that address and support an inclusive environment for consideration and implementation.

### 3. DHS Headquarters EEO Office (HQ EEO)

#### ***Infrastructure***

HQ EEO provides EEO services to over 8,000 DHS Headquarters and Cybersecurity and Infrastructure Security Agency (CISA) employees and program offices by enforcing compliance with EEO laws, regulations, and mandates; providing guidance to Headquarters and CISA management officials and employees on EEO and diversity; preventing and addressing unlawful employment discrimination; and ensuring that all Headquarters and CISA employees have a working environment that is free from unlawful discrimination, harassment, or reprisal and that will support them in the fulfillment of their mission to protect the homeland.

In FY 2020, HQ EEO experienced several staffing changes. In late FY 2020, HQ EEO completed the hiring of an EEO Specialist to work on reports, advance the affirmative employment program at Headquarters, advance Special Emphasis programs, and lead diversity and inclusion initiatives. However, two staff members also departed HQ EEO, causing a

temporary shortage of resources. The HQ EEO Director is working on filling those vacancies, so that in FY 2021, there should be a full complement of staff to continue the work of the office. To assist in strategically preparing for staffing needs in the future, HQ EEO built a staffing model. HQ EEO evaluated and itemized current staffing levels, historic and anticipated workloads, and contextual challenges and opportunities in order to accurately assess staffing needs going forward. This staffing model will serve as the “blueprint” to ensure that HQ EEO will have the proper resourcing in future years.

### ***Complaint Processing***

In FY 2020, HQ EEO timely completed pre-complaint counseling on 142 complaints of employment discrimination and conducted 57 EEO investigations—record level highs of completed counselings and investigations at Headquarters, when compared to the prior seven fiscal years. Notwithstanding the increase in the number of complaints processed, HQ EEO also increased the timely completion rates compared to the prior fiscal year: 100 percent (142 of 142) of counselings were timely conducted, and 96 percent (55 of 57) of investigations were timely completed. This was the first time in HQ EEO’s history when all counselings were completed within regulatory timeframes. HQ EEO’s accomplishments in complaints processing were achieved through refinements in the intake process and ongoing commitments to ensuring data accountability and transparency in tracking cases.

### ***Services and Proactive Engagement***

In FY 2020, HQ EEO kept employees engaged and informed about EEO and diversity by maintaining a regular training cadence. HQ EEO provided EEO briefings at New Employee Orientations for all incoming Headquarters and CISA employees, including for new incoming Headquarters and CISA senior executives. HQ EEO staff also provided EEO and reasonable accommodation trainings during the quarterly Human Resources Essentials training courses aimed at developing new HQ and CISA supervisors. Additionally, HQ EEO conducted monthly internal EEO Counselor meetings to discuss the status of cases and provide a forum for regular, technical refresher training. Finally, HQ EEO contributed to CRCL’s efforts to host and run an annual EEO Counselor and Investigator Refresher training available for all DHS EEO practitioners. This training was conducted fully virtually and consisted of trainings led by federal staff within DHS and from partner federal agencies.

HQ EEO also continued to enhance performance in FY 2020 by growing its reasonable accommodation program. In addition to handling daily contacts from employees and managers seeking advice and guidance on the reasonable accommodation process and disability rights and responsibilities, HQ EEO processed reasonable accommodation requests made by 134 employees, applicants for employment, and contractors at Headquarters and CISA. The reasonable accommodation program also conducted 25 re-evaluations, pursuant to updated requests or for options for continuing accommodations. In addition, a number of reasonable accommodation trainings were provided including: four on disability etiquette and awareness (three to Headquarters and CISA employees, and one Department-wide), two reasonable accommodation trainings to the Headquarters Human Resources office and to CISA supervisors and managers, and one COVID-19 pandemic reasonable accommodation briefing to the Office of the Chief Human Capital Officer. Moreover, the reasonable accommodation program assisted in various programs that advanced the disability programs at Headquarters, including: the



Disability Access Forum, hosted by CRCL; the Department-wide ADA Anniversary Event; and the Disability Mentoring program. Staff will continue to coordinate with Headquarters offices to conduct reasonable accommodation trainings in addition to Schedule A and Disability Etiquette trainings.

#### 4. Transportation Security Administration (TSA)

##### ***Infrastructure***

TSA Civil Rights & Liberties, Ombudsman and Traveler Engagement's (CRL/OTE) Civil Rights, Diversity & Inclusion Division (CRDI) provides EEO services to a workforce of more than 61,000 employees. CRDI is organized into three main branches: the EEO Management Branch, the Affirmative Employment Branch, and the Diversity and Inclusion Branch. At the end of FY 2020, the staffing level of CRDI consisted of 38 full-time federal employees. In addition to its federal employees, CRDI also was supported by two contract investigative firms and one contract mediation firm.

##### ***Complaint Processing***

In FY 2020, CRDI completed 532 pre-complaint counselings. Of the 532 pre-complaints, 98 percent (522 of 532) were timely completed, as compared to 93 percent (697 of 771) in FY 2019. The opportunity to participate in ADR was offered in 409 pre-complaints. Of those 409 pre-complaints, 239 (58 percent) were accepted into the ADR program.

TSA had a decrease of 28 percent in the number of formal complaint filings in FY 2020, from 390 in FY 2019, to 281 in FY 2020. Regarding EEO investigations, CRDI timely completed 92 percent (358 of 390) of its investigations. This is an increase in timely completed investigations from 86 percent in FY 2019.

##### ***Services and Proactive Engagement***

In FY 2020, CRDI staff provided Civil Rights/EEO training to approximately 995 TSA managers and supervisors. The training was provided at Federal Air Marshal Service field offices, airports nationwide, and TSA Headquarters. CRDI's training, which was primarily virtual this fiscal year due to the COVID-19 pandemic, was supplemented by TSA's Online Learning Center's No FEAR Act training, which all employees are required to complete every other year. TSA also requires all new employees to complete No FEAR Act training within the first 90 calendar days of entering service.

During FY 2020, CRDI's ADR Program (CRDI-ADR) conducted 166 pre-complaint ADR sessions, resulting in 40 withdrawals, 21 settlements, five memoranda of understanding, and 27 additional individuals who chose not to pursue an EEO complaint. In addition, CRDI-ADR conducted 19 ADR events during the formal complaint stage, resulting in six settlements and three withdrawals from the EEO process.

Additionally, CRDI-ADR expanded its traditional EEO ADR options of mediation and facilitation by onboarding a new ADR contractor. New ADR services available included pre-mediation coaching, settlement conferences, and post impasse shuttle diplomacy. In the wake of

the COVID-19 pandemic, CRDI-ADR leveraged technology by using video conferencing, cloud-based scheduling, and electronic document/signature technology to facilitate virtual in-person mediation. CRDI-ADR also completed updates to its new program management dashboard, which allows near real-time monitoring of crucial ADR metrics.

To reduce ADR expenditures, CRDI-ADR expanded its partnerships with other TSA ADR programs by training 13 certified mediators to conduct mediations specific to EEO disputes. CRDI-ADR also completed oversight of a contracted agencywide study to determine an optimal organizational structure for the agency's array of conflict resolution programs. One of the study's key findings was the need for a single-entry intake point for the agency's complaints and complaint mitigation processes. The single-entry intake point process is expected to be deployed in FY 2021. To increase employee awareness of EEO ADR, CRDI-ADR created and disseminated a sample ADR marketing video and an ADR session, and initiated the agencywide recognition of Conflict Resolution Day, which is a global event.

## 5. U.S. Citizenship and Immigration Services (USCIS)

### ***Infrastructure***

The mission of USCIS's Office of Equal Opportunity and Inclusion (OEOI) is to guide agency efforts to leverage diversity and inclusion in the workplace, and to provide a work environment free of discrimination where all employees feel valued, respected, and empowered. OEOI services a USCIS federal workforce of 19,210 employees. The Chief of OEOI reports directly to the USCIS Office of the Director, underscoring the agency's commitment to the importance of EEO as an integral part of the USCIS mission to ensure a workplace free from discrimination. In FY 2020, OEOI was organized into three divisions: The Complaints Resolution Division (CRD); the Diversity Management Operations (DMO) Division; and the Policy, Planning and Resources (PPR) Division. In addition, OEOI administers the agency's Anti-Harassment Program and advises USCIS on public disability accommodation and accessibility issues. OEOI currently employs 29 full-time employees and several long-term detailees. Additionally, USCIS employs the assistance of approximately 105 collateral duty SEPMs and 49 reasonable accommodation coordinators at various USCIS offices nation-wide to assist it in achieving its EEO, outreach, and education objectives.

### ***Complaint Processing***

CRD showed a 13 percent decrease in the number of pre-complaints initiated in FY 2020 (198) from FY 2019 (223); however, the number of completed counselings increased. In FY 2020, the number of completed counselings increased to 222, as compared to 197 completed counselings in FY 2019. The rate of timely completed counselings remained steady at 99 percent for both FY 2020 and FY 2019. Formal complaint filings increased by 22 percent in FY 2020 (139), as compared to FY 2019 (115), and CRD processed 98 percent (111 of 114) of its EEO investigations within EEOC's regulatory timeframes.

During FY 2020, CRD collaborated with the USCIS Office of Intake and Document Production to initiate an efficiency review of CRD EEO case processing procedures. As a result of

exploring options to increase efficiency in EEO case processing, in FY 2020 CRD implemented an electronic EEO intake option and transitioned to paperless EEO case processing. While the implementation of all efficiency recommendations will continue into FY 2021, USCIS experienced a decrease in the average number of days for investigation from 229 days in FY 2019 to 218 days in FY 2020. This is attributed to the process improvements from the efficiency review.

USCIS's ADR program has continued to have a positive impact on the efficiency of the overall EEO complaint processing. Notably, the ADR participation rate was 66 percent in FY 2020. Furthermore, the informal ADR resolution rate was 48 percent. In March 2020, due to the COVID-19 pandemic, all ADR sessions were transitioned to a virtual environment. In addition, USCIS developed and presented training on virtual mediation to over 70 members of the DHS Shared Neutrals cadre and then offered it to multiple other federal agencies through the Interagency ADR Working Group. USCIS continued to be an active participant in the DHS Shared Neutrals Program, utilizing the shared neutrals cadre for 28 mediations in FY 2020, which resulted in a cost savings of \$18,000. In addition, USCIS renegotiated the interagency agreement with Federal Mediation and Conciliation Services, which resulted in a cost savings of \$42,000. The ADR Program provided mediation training to 200 Designated Management Officials (DMOs) across USCIS, which explained the role of a DMO, discussed the goals and benefits of mediation, and familiarized participants with the overall mediation process.

### ***Services and Proactive Engagement***

OEOI established a stand-alone USCIS Anti-Harassment Program in FY 2020 and hired an Anti-Harassment Program Manager. Anti-harassment hotline contacts rose 13 percent from 217 contacts in FY 2019 to 252 contacts in FY 2020. Furthermore, all Management Inquiry Officers and Office of Investigations Special Agents, who are the USCIS personnel tasked with conducting harassment inquiries, completed mandatory DHS CRCL Fact Finder Training. During FY 2020, OEOI staff provided training on various EEO topics to over 10,000 employees and managers at USCIS, up from 3,000 in FY 2019. Specifically, CRD rolled out a new webinar in FY 2020 entitled "Supervisor Skill Building: Practical Tips on EEO Matters," which was presented to 75 managers. In addition, the Disability Accommodations Program in OEOI provided mandatory disability accommodation training to nearly 900 employees and managers. Additionally, OEOI provided training on topics including anti-harassment, diversity and inclusion, and ADR.

In FY 2020, denial of a reasonable accommodation was the second most frequently issue raised in EEO complaints. As a proactive measure, OEOI along with several other stakeholder offices, held focus group sessions to educate employees and managers about sign language interpretation service procurement processes. The focus groups provided more transparency for those involved in the process of requesting sign language interpretation services and resulted in the development of a Question and Answer document that could be shared with others.

## 6. U.S. Coast Guard (USCG)

### ***Infrastructure***

The USCG Civil Rights Directorate (CRD) provides services to over 10,005 Civilian Employees and over 47,814 Service members. The Civil Rights Director reports to the Commandant of the USCG. The EEO complaint processing program is comprised of Headquarters staff who have four geographical regions of responsibility. Each region is divided into 14 geographical zones. The regions and their respective zones conduct the informal complaint processing, with 46 full-time EEO Counselors. An EEO Manager leads the complaints processing unit, i.e., the Solutions and Complaints Division (SCD). The Division consist of two ADR Specialists, two Complaints Managers, two Technical Advisors, an Information Technology Specialist, and an EEO Assistant. In addition, CRD uses a contract firm to assist in conducting EEO investigations.

### ***Complaint Processing***

During FY 2020, the USCG maintained an effective, efficient complaint processing unit.

Pre-complaints: USCG timely completed 100 percent of its 75 counselings in FY 2020. USCG Counselors resolved 36 pre-complaints, which is a decrease from the 51 pre-complaints resolved in 2019.

Formal Complaints: There were 41 formal complaints filed in FY 2020, a 16 percent decrease from the 49 complaints filed in FY 2019. USCG completed a total of 42 investigations in FY 2020, which represents a 35 percent increase compared to the 31 investigations completed in FY 2019. The SCD continued using the electronic file transfer system, Department of Defense Secure Access File Exchange (DoD SAFE), to provide EEO documents to complainants, their representatives, and investigators. This expedited method of delivery resulted in 98 percent of USCG's investigations being completed within the regulatory timeframe in FY 2020. This exceeded the government-wide average of 84 percent.<sup>19</sup> USCG completed its investigations in an average of 129 days, which is a 5 percent decrease from the 136 average processing days in FY 2019. Further, since implementation of the electronic file transfer system in FY 2018, USCG has achieved an overall 36 percent decrease (71 days) in investigation processing time, compared to the 200 average processing days in FY 2017.

ADR: In an effort to resolve issues at the earliest opportunity, USCG offered ADR to 99 percent of individuals initiating pre-complaints in FY 2020. This resulted in a 51 percent participation rate in FY 2020, which is a slight increase from the 49 percent participation rate in FY 2019. Of the 38 cases in which ADR was conducted during the pre-complaint process, settlement was achieved in 24 percent (9) of the cases, which exceeded the government-wide average of 22 percent. In FY 2020, USCG offered ADR to 100 percent of individuals who filed formal complaints. This resulted in a 25 percent participation rate, which is significantly higher than the government-wide average participation rate of seven percent. Of the 13 cases in which ADR was conducting during the formal complaint process, settlement was achieved in one case.

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<sup>19</sup> <https://www.eeoc.gov/federal-sector/reports/annual-report-federal-workforce-form-462-and-md-715-data-tables-fy-2017-and>.

### ***Services and Proactive Engagement***

Reasonable Accommodations and Personal Assistance Services: USCG granted 93 percent (174 of 187) of requests for reasonable accommodation. This includes, but is not limited to, electronic equipment, ergonomic chairs, telework, alternative work schedules, motorized scooters, wheelchairs, and sign language interpreters. USCG continued its relationship with the Department of Transportation Disability Resource Center (DRC). DRC provides the USCG with a centrally funded resource to provide reasonable accommodation services, personal assistance services, technical assistance, training, and outreach to all managers, supervisors, employees, and job applicants. USCG did not receive any requests for personal assistance services in FY 2020.

The USCG Headquarters mobility program provided devices, such as motorized scooters and wheelchairs, to USCG employees, applicants, and visitors. In FY 2020, the program received five requests, which provided temporary accommodations for individuals with mobility needs. The coronavirus pandemic restrictions significantly reduced the number of requests made due to an overwhelming amount of the workforce working remotely from home.

In another program area, USCG performed annual assessments of its units to determine if any perceptions of bias or triggers exist that affect the EEO climate. USCG achieved this review through EEO climate assessments and surveys. For FY 2020, USCG conducted 12 on-site climate assessment reviews, a lower number than previous years due to pandemic restrictions. In addition to participating in the Federal Employee Viewpoint Survey, USCG unit Commanding Officers and supervisors must offer their employees an opportunity to participate in an annual climate assessment survey. USCG collaborates with DoD's Office of People Analytics to utilize its survey and reporting services. The Defense Organizational Climate Survey assesses workforce perceptions of discrimination, harassment, equal opportunity, and other organizational effectiveness measures. Each completed survey report provides unit leadership with the ability to better analyze the work climate. Leaders must share the resulting report with their supervisor and create an action plan to foster any positive behaviors and address any concerns. The Defense Equal Opportunity Management Institute (DEOMI) provides comprehensive tools to create effective action plans through its "Assessments to Solutions" website.

USCG continued its requirement for triennial EEO awareness training for all military and civilian members of the workforce. The triennial training modules include information on the EEO complaint process, ADR, reasonable accommodations, personal assistance services, anti-harassment and hate incident procedures, along with special emphasis programs, climate surveys, and social climate incident reporting. During FY 2020, Civil Rights Service Providers (CRSP) presented and facilitated discussions during in-person training sessions for 11,165 individuals. Due to COVID-19 pandemic restrictions, USCG transitioned to an instructor-led virtual training environment, facilitating sessions for an additional 8,534 individuals. Overall, instructors provided training to 19,699 individuals, including 1,346 supervisors, a 33 percent increase for supervisory training in FY 2020, when compared with FY 2019 (1,013).

CRD continued to publish a monthly newsletter, "Civil Rights On Deck," which is targeted to internal and external readers. The newsletter provides an important avenue through which the

agency educates the workforce and key stakeholders on EEO cases, general EEO complaint process information, best practices, EEO awards, and special observances.

Finally, USCG biennially recognizes an individual military and/or civilian leader in its Senior Leader Award program. The award recognizes senior leaders who demonstrate a commitment to equal opportunity and support activities, which promote a model EEO program. CRD recognizes, biennially, a military or civilian CRSP through its CRSP award program. CRSPs are a vital link between civilian employees, military members, and management as they actively support equal opportunity and the implementation of civil rights programs.

## 7. U.S. Customs and Border Protection (CBP)

### ***Infrastructure***

Within CBP's Office of the Commissioner, the Privacy and Diversity Office (PDO) is responsible for developing and administering all policies and directives related to ensuring full compliance with the Privacy Act, Freedom of Information Act, federal diversity and inclusion policies, EEO laws, and civil rights and civil liberties laws. PDO's Diversity and EEO Division provides EEO and diversity and inclusion services to over 63,000 CBP employees. The Diversity and EEO Division is led by a Director, two Deputy Directors, and several Assistant Directors.

### ***Complaint Processing***

During FY 2020, 706 informal complaints were initiated, compared to 721 during FY 2019, representing a two percent decrease. CBP counseled and closed 699 complaints, representing a two percent decrease from FY 2019, when 710 complaints were counseled. Of the 699 cases counseled in FY 2020, 100 percent were counseled timely, 494 were closed through the issuance of a Notice of Right to File (Notice), 192 were withdrawn, and 13 were settled.

In FY 2020, 371 formal complaints were filed, representing a four percent increase from FY 2019, when 356 complaints were filed. However, the number of formal complaints filed reflects an overall increase in formal complaints filed since FY 2017 (266). In FY 2018, 419 complaints were filed (a 58 percent increase from the 266 filed in FY 2017); in FY 2019, 356 complaints were filed (a 34 percent increase from FY 2017); and in FY 2020, 371 complaints were filed (a 39 percent increase from FY 2017). CBP attributes the increase in formal filings to an increase in the workforce from 59,178 employees in FY 2017 to 63,685 employees in FY 2020. In addition, CBP focused on providing more training in the areas of EEO awareness and Anti-Harassment.

In FY 2020, PDO experienced staff attrition and increased formal complaint activity. As an interim solution until new investigators could be on-boarded, CBP entered into a contractual agreement with a company to provide supplemental investigative services during FY 2020. Despite staff attrition, a total of 290 investigations were completed in FY 2020, compared to 256 investigations in FY 2019, which represented a 13 percent increase over the previous year. Of the 290 completed investigations, the overall average processing time increased from 221 days to

240 days. The number of investigations completed within the regulatory timeframes decreased slightly, from 92 percent in FY 2019, to 91 percent in FY 2020.

**Alternative Dispute Resolution:** In FY 2020, CBP continued to promote ADR as a preferred method used to resolve EEO complaints at the lowest possible level. CBP utilized an internal cadre of collateral duty mediators and participated in the DHS Shared Neutrals program. Overall, there were 354 mediation sessions conducted in FY 2020. Informal complaints accounted for 304 of these sessions, and formal complaints accounted for 50 of these sessions. CBP's cadre of mediators conducted 208 of these mediation sessions, and the remaining 146 were conducted by DHS Shared Neutrals.

CBP also continued to participate in the Department-wide Shared Neutrals Program, and the ADR Program Coordinator served on the Department's ADR Advisory Council, providing guidance and input, and assisting in component-wide training. The continued coordination provided the opportunity for CBP to be more closely aligned with the Department's management of the ADR program.

Of the 699 informal complaints counseled during FY 2020, 513 were offered mediation for a 73 percent offer rate. Of those offered mediation, 392 accepted mediation, resulting in a 76 percent acceptance rate. These mediations resulted in 13 settlements (five percent of the 281 mediations conducted) and 71 withdrawals (25 percent of the 281 mediations conducted).

Of the 290 investigations during FY 2020, 232 were offered mediation, for an 80 percent offer rate. Of those offered mediation, 61 accepted mediation, resulting in a 26 percent acceptance rate. These mediations resulted in five settlements (12 percent of the 41 formal complaint mediations conducted) and one withdrawal (two percent of the 41 formal mediations conducted).

**EEO Staff Training:** In December 2019, 24 Diversity and EEO Division employees participated in a five-day Team Lead course at the CBP Advanced Training Center. The course was focused on non-supervisory employees and based on the DHS Leadership Development Program. The Team Lead course was part of the CBP Leadership Development Framework, the first step that must be completed before an employee can become a supervisor. The curriculum focused on leadership basics, leadership strengths, problem solving, culture of respect, employee development, effective communication, motivation, conflict management, ethical decision making, and resiliency.

The Diversity and EEO Division staff also participated in a two-day virtual refresher training for EEO Counselors and EEO Investigators hosted by CRCL, on September 15-16, 2020. Both virtual training sessions included participants from CBP's PDO leadership team, as well as senior staff members from other Components who helped present some of the sessions.

Overall, both training sessions provided CBP's EEO staff with updated guidance on the counseling and investigative processes, provided problem-solving skills for issues that may arise, and created a forum for discussion on best practices and techniques, shared amongst all of the Department's EEO Offices.

Efficiencies: Due to an increased volume in complaint activity, the Diversity and EEO Division leadership team collaborated to create a new mediation scheduling procedure to support the Complaint Processing Teams. On April 16, 2020, CBP held a training session for the EEO Counselors and EEO Investigators to update the mediation scheduling procedures for both informal and formal complaints, which are now routed to the Diversity and Inclusion Team for processing. This was done to provide support and assistance to the EEO Counselors and EEO Investigators in response to the high volume of case inventories they experienced during the FY. By allowing the EEO Officers from the Diversity and Inclusion Team to facilitate and schedule mediation sessions, PDO:

- Enhanced the EEO Officer's ability to address and assess any local EEO training needs;
- Built connections and relationships with stakeholders and customers; and
- Provided an opportunity for peer learning with the Complaint Processing and Diversity and Inclusion teams.

To further assist CBP's EEO Investigators manage investigations sent to the contractor, the Diversity and EEO Division leadership team issued a "How to Guide," for processing contract EEO investigations on May 12, 2020. This guide provided written guidance for processing and reviewing a contract investigator's work, such as:

- Updating the enterprise complaint management database with the correct event codes;
- Notating the required timeframes for reviewing and returning contractor work products;
- Notifying witnesses and drafting the Letter of Authorization; and
- Developing a "cheat sheet" to assist EEO Investigators with ensuring consistency and data integrity.

### ***Services and Proactive Engagement***

CBP continuously strives to incorporate EEO into everyday practice and makes diversity and inclusion principles fundamental parts of CBP's organizational culture. During FY 2020, CBP continued implementation of its Diversity and Inclusion Strategic Plan FY 2016 – FY 2020. The Plan incorporates a comprehensive and integrated approach to diversity and inclusion within CBP's human resource strategies, while aligning CBP's strategic goals with EEO principles to advance the goal of building and maintaining a model workplace.

During FY 2020, CBP concentrated its efforts on training employees and promoting cultural awareness as two methods to reduce discrimination in the workplace. Approximately 80 percent of the CBP workforce are assigned to three major operating offices: Office of Field Operations, U.S. Border Patrol, and Air and Marine Operations. PDO has assigned an EEO Specialist to service each of the 40 major operating locations, which compose these operating offices, to provide training opportunities and organizing diversity and inclusion programs.

1. Training – CBP engaged in multiple training activities across various platforms (on-site, webinar, and computer-based) to further strengthen its EEO program. Training included:
  - Supervisory Leadership Training: All new supervisors must complete this three-week-long training program within their first year of promotion into a



supervisory position. During FY 2020, 7,233 supervisors completed Supervisory Leadership Training.

- EEO Awareness, Harassment, and Reasonable Accommodation Training: During FY 2020, CBP's PDO conducted EEO-related trainings at all 40 of the major CBP locations. Each location had at least two training sessions, furthering demonstrating CBP's commitment to diversity and equal employment opportunity. A total of 37 sessions of EEO Awareness Training were conducted, and 243 non-supervisors and 256 supervisors were trained. A total of 213 sessions of Harassment Awareness Training were conducted, and 1,764 non-supervisors and 1,767 supervisors were trained. A total of 47 sessions of reasonable accommodation training were conducted, resulting in 129 non-supervisors and 955 supervisors being trained. These training sessions provided: an overview of CBP's anti-discrimination policy and commitment to diversity; a review of EEO laws and Executive Orders; discussions of what constitutes discriminatory behavior and harassment; and an overview on the reasonable accommodation process.
  - DHS Preventing and Addressing Workplace Harassment Training Module: The course provided examples of harassing behavior, informed participants how allegations can be reported, and demonstrated how to use this knowledge to assess behaviors in practical scenarios. During FY 2020, 57,271 employees (90 percent of the workforce) completed the course.
  - Personal Use of Social Media Training Module: The course covered acceptable and unacceptable behavior – including harassment – on social media, and the potential consequences for violating rules regarding the use of social media. During FY 2020, 32,106 employees (50 percent of the workforce) completed the course.
2. Anti-Harassment Program – CBP continued to review its anti-harassment program, identify trends, and review existing policies and practices.
- Anti-Discrimination and Anti-Harassment Policy Statement: CBP's Anti-Discrimination and Anti-Harassment Policy Statement specifically stated that CBP will not tolerate harassment or bullying in the workplace, whether it occurs on duty, off duty, face-to-face, or remotely through electronic means (i.e., e-mail, social media, or telephone).
  - Harassment Complaints: During FY 2020, CBP's Office of Professional Responsibility received a total of 1,002 complaints from employees and members of the traveling public. CBP completed inquiries into 625 of the 1,002 complaints, which resulted in three memoranda of instruction, 30 verbal counselings, 23 written counselings, 15 written reprimands, and six suspensions.

## 8. U.S. Immigration and Customs Enforcement (ICE)

### ***Infrastructure***

ICE's Office of Diversity and Civil Rights (ODCR) provides EEO counseling, investigation, and ADR services to more than 20,000 ICE employees through its Complaints and Resolution Division (CRD). The CRD is led by a Division Chief and Deputy Division Chief. EEO counseling and complaint investigations are managed by the Complaints Management and Complaints Investigation Units. The delivery of ADR services and dispute resolution training are managed by the ADR Program Manager.

The Complaints Management Unit is led by a Complaints Management Unit Chief, who is aided by a Lead EEO Specialist, a Senior EEO Specialist, and five EEO Specialists. The Complaints Management Unit Chief is a new position created during FY 2020.

The Complaints Investigation Unit is led by the Investigations Unit Chief, a manager detailed to ODCR from Homeland Security Investigations (HSI). The Investigations Unit Chief oversees the Internal Investigation Program (IIP), which includes 17 collateral duty EEO Investigators, all of whom are supervisors at the GS-14 level or above. At the end of FY 2019, ODCR selected 35 managers and supervisors from across ICE to serve as collateral duty EEO investigators in the IIP for FY 2020. EEOC was scheduled to provide New Investigator Training to this cadre in the second quarter of FY 2020; however, the training was postponed due to the COVID-19 pandemic. The training was provided virtually to 17 participants in August 2020, and initial case assignments began in September 2020. In addition to helping build the IIP, the HSI detailee who served as CRD's Investigations Unit Chief, completed five investigations. The 60 percent timeliness rate for these internally completed investigations far exceeded the 33 percent contract investigation timeliness rate and resulted in an actual cost savings of \$17,600 in contract investigation costs.

CRD was challenged in timely complaint processing by staffing issues throughout FY 2020. In response to these challenges, CRD onboarded a Deputy Division Chief in January 2020, hired a new EEO Specialist in May 2020, and reassigned an EEO Specialist from another section to CRD in June 2020. While most of CRD's vacancies have been or are in the process of being filled, the EEO Specialists who perform intake and complaints management duties have limited experience, with the most experienced having two years of experience as an EEO Specialist.

### ***Complaint Processing***

During FY 2020, ICE experienced increases in both pre-complaint and formal complaint activity when compared to FY 2019. Despite this increased workload and the previously referenced staffing challenges, ICE dramatically improved timeliness in both the informal and formal complaint processes.

ICE completed counseling for 282 informal complaints in FY 2020, which represents an 18 percent increase over the 238 informal complaints counseled in FY 2019. During FY 2020, 85 percent of counselings were processed within the regulatory time limits. This is a 29 percent improvement over the FY 2019 timely counseling rate of 64 percent.

In FY 2020, ICE received 184 formal complaints of discrimination, which represents a 29 percent increase over the 143 formal complaints received in FY 2019. ICE completed 154 investigations in FY 2020, which is a 12 percent decrease from the 175 investigations completed in FY 2019. Of the investigations completed in FY 2020, 34 percent (52) were completed within the regulatory timeframes. This is a dramatic improvement from the FY 2019 formal timeliness rate of 13 percent and is the second-highest formal timeliness rate ICE has had in the past eight years.

During the 2<sup>nd</sup> quarter of FY 2020, the Complaints Management Branch conducted a thorough examination of processes within the complaint management life cycle. This examination identified 34 inefficiencies, which were all corrected. These corrections, along with staffing and operational changes, resulted in significant improvements in timeliness, despite the staffing turnovers experienced in FY 2020. ICE reduced the average time to issue an acceptance letter to 49 days in FY 2020, which is a 61 percent improvement over the 126-day average to issue acceptance letters in FY 2019. On average, formal complaints were accepted and assigned to an investigator in 66 days in FY 2020, which represents a 55 percent improvement from the 148-day average in FY 2019. CRD's EEO Specialists began preparing letters of acceptance and dismissal at the beginning of FY 2020. Previously, this task was performed by another agency under an Inter-Agency Agreement.

This change resulted in more formal complaints identified as suitable for dismissal under one of the nine regulatory criteria set forth in the 29 C.F.R. § 1614 regulations. In FY 2020, 25 of ICE's formal complaints were dismissed by CRCL. Bringing the function of drafting acceptance and dismissal letters back under the responsibility of ODCR's EEO Specialists improved the skills of the CRD staff, and also resulted in a tangible cost savings of \$206,650, which included costs avoided for investigations for complaints that were identified as dismissible under the EEOC regulations.

The processing improvements in the pre-complaint process resulted in more time for ADR to occur at the informal stage. ICE conducted 123 mediations during the informal process in FY 2020, which is an all-time high for the agency, and a 62 percent increase over the 76 conducted in FY 2019. Consequently, informal ADR settlements increased by 86 percent, from 14 in FY 2019 to 26 in FY 2020. The increased number of informal pre-complaints mediated resulted in a tangible cost savings of \$167,000 for ICE.

When an aggrieved individual agrees to participate in informal ADR, 46 percent of the time that individual does not later file a formal complaint, even if the matter was not settled at the informal stage. By these employees not filing EEO complaints, ICE realized an overall cost savings of \$343,200 at the formal investigation stage.

### ***Services and Proactive Engagement***

During FY 2020, ODCR continued its practice of providing training at New Employee Orientation sessions for new National Capital Region (NCR) employees. These sessions include information on the EEO complaints process, contact information, and timeframes. Outside of the NCR, this information was provided in orientation materials. ODCR continued to provide

training about the EEO complaint process and management responsibilities during ICE's Supervisory Leadership Training.

Based on data, anecdotal information, and feedback from managers and supervisors, ODCR identified a need to revise mandatory EEO sessions. Rather than addressing violations once they occurred, the refreshed training emphasized how appropriate behaviors from leadership can minimize risk to the agency. As a result, ODCR's senior leadership team engaged in a certification program with Employment Learning Innovations (ELI). ELI's program is designed to provide tools for leaders to manage employees fairly within the context of a legal framework to address behavior such as retaliation, harassment, and discrimination.

The ELI training would typically be delivered in-person at each ICE Field Office, Special Agent in Charge Office, and Chief Counsel's Office. In FY 2020, this training was only provided to leaders in ICE offices located in New York, Baltimore, and Philadelphia. Delivery of the training was interrupted by the COVID-19 pandemic, which led ODCR leadership to provide briefings to field leadership via Microsoft Teams. During these virtual site visits, field executives, managers, and supervisors were provided with overviews of their office's EEO complaint activity, workforce diversity data, and briefed on how to utilize ICE's Lionbridge interpretation contract as part of ICE's Language Access Plan.

In late FY 2020, ODCR deployed a promotional campaign to increase awareness of ADR. The ADR Program Manager collaborated with ICE's Office of Public Affairs to present three articles discussing ADR, which appeared in ICE's weekly internal employee newsletter, *ICE Breaker*. Each article was accompanied by a video testimonial recorded by a senior manager discussing her or his experience with the agency's ADR program. The awareness campaign culminated in a mock mediation conducted via Microsoft Teams and shared with each of ICE's employees via *ICE Breaker*. This recording will be used to train new supervisors, as well as any manager or supervisor who has not participated in mediation before. As a result of the promotional campaign, three senior leaders contacted ODCR to request conflict resolution training for their leadership teams.

## 9. U.S. Secret Service (USSS)

### ***Infrastructure***

The USSS's Equity, Diversity, and Inclusion (EDI) Program, located in the Office of Equity and Employee Support Services (EES), works to proactively address discrimination, conflict resolution, and the processing of complaints of discrimination for employees and contract employees. EDI provides services to more than 7,000 employees and is staffed by the EEO Director, Deputy EEO Director, Formal Complaints Manager, Pre-Complaints Manager, Disability Program Manager, Affirmative Employment Program Manager, an EEO Assistant, an EEO Specialist (Generalist), and two Program Analysts. The program also includes 16 collateral duty EEO counselors, as well as seven collateral duty Special Emphasis Program Managers.

### ***Complaint Processing***

During FY 2020, EDI completed 100 percent (43) of pre-complaint counselings timely. The 43 pre-complaint counselings completed in FY 2020 is a ten percent decrease from the 48 pre-complaint counselings completed in FY 2019.

USSS had 28 formal complaints filed in FY 2020, which is a decrease from the 37 formal complaints filed in FY 2019. In the area of investigations, USSS experienced decreases in both the number completed and the number timely completed. In FY 2020, USSS completed 26 investigations, which is a 24 percent decrease from the 34 it completed in FY 2019. USSS timely completed 13 investigations in FY 2020, or 50 percent, which was substantially lower than the 26 (76 percent) timely completed investigations in FY 2019.

In addition, the average processing days for investigations increased to 214 days in FY 2020, compared to 186 days in FY 2019. EDI attributed these decreases to several issues, including an EEO Assistant leaving the agency and the Formal Complaints Manager working a part-time schedule. EDI also noted that due to the COVID-19 pandemic, the staff switched to 100 percent telework, and there were initial IT infrastructure issues that were initial barriers to this new telework structure. In addition, mail delivery was stopped for a period of time, and because of a “stay at home” order, staff could only physically go into the office on a limited basis to issue ROIs. Finally, EDI indicated that one of its contract investigation firms had to withdraw from the contract because they were unable to honor the performance work statement due to the pandemic.

Over the past three years, the top three bases representing formal complaint activity were reprisal, race, and disability, and the top two issues were identified as harassment (non-sexual), and non-selections.

### ***Services and Proactive Engagement***

During FY 2020, USSS continued to encourage participation in the Early Dispute Resolution Program (EDRP) for individuals involved in EEO and non-EEO-related conflicts. EDI continued to encourage participation in mediation during the complaint process. Informational materials (brochures) regarding mediation were distributed to the general workforce and to employees during the pre-complaint intake process. This information was also made available to all employees during the New Employee Orientation training, First Line Supervisor training, as well as Special Agent/Uniformed Division Trainee instructional training courses. As a proactive measure, EDI continued its partnership with the Office of Chief Counsel in providing education and training to ensure the workforce is informed on the complaint process, reasonable accommodation process, and the Anti-Harassment Program.

During FY 2020, the EDI staff conducted the following EEO-related training modules, which included the EEO Process, Anti-Harassment, Reasonable Accommodation, Religious Accommodation, and other pertinent information regarding employee support services. Training was presented to the following audiences:

- 65 Supervisors received training by participating in the First-Line Supervisor’s

Training Course, which is a two-day training that is mandatory for all new supervisors within their first year of being a supervisor;

- 92 employees received training during the New Employee Orientation Program;
- 175 Special Agent and 105 Uniformed Division trainees received training as part of their specialized training program;
- 141 new supervisors and managers received training by participating in the New Supervisor/Manager Orientation, which is a one-day training that is mandatory for all new supervisors and managers within their first 90 days of their hire or promotion date; and,
- 5,985 employees completed mandatory training entitled “Preventing and Addressing Workplace Harassment.”

In addition, all USSS employees are required to complete EEO-related online training through the agency’s Performance and Learning Management System.

# CONCLUSION

The information in this report highlights the Department's EEO program's successes and various challenges during FY 2020. Despite the challenges presented because of the COVID-19 pandemic, an impressive level of collaboration across the Department's EEO program continued through initiatives such as the EEO Directors' Council Strategic Plan working groups, the EEO Counselors and Investigators Refresher training, the ADR Shared Neutrals Program, continued use of the ROI Feedback Tool, and regular engagement through the quarterly Complaint Manager meetings.

Many notable accomplishments were realized this year despite the pandemic and other challenges, such as staffing shortages and a continued high volume of incoming requests for FADs.

- CRCL developed and delivered EEO Counselor and Investigator refresher training on a virtual platform to ensure that Component practitioners' continuing training requirements would be satisfied. CRCL arranged for knowledgeable instructors from across the Department to teach the two daylong sessions, reaching 100+ practitioners from across the Department.
- The EEO Director's Council stood up new working groups, staffed by EEO and Diversity practitioners from across the Department, to begin undertaking measurable actions in furtherance of the plan.
- The DHS-HQ Anti-Harassment Unit created working groups, consisting of representatives from each Component, to provide guidance on implementing the DHS anti-harassment policy and to ensure that Components anti-harassment programs have effective and efficient programs.
- CMAS exceeded its goal to issue 47 percent of merit-based final agency actions within regulatory timeframes, issuing 49 percent (437 of 893) timely final actions.

Because of the commitment, resilience, determined effort, and continued bonds of collaboration, the Department's EEO program continues to press forward and strengthen. The program will continue to capitalize on the progress made during FY 2020 to achieve greater accomplishments in FY 2021.

FY2020 Annual No FEAR Act Report – Federal Court Cases

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Department of Homeland Security

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

	TITLE VII	ADEA	EPA	REHABILITATION ACT	GINA	WHISTLEBLOWER
Number of cases filed, pending, or resolved	168	31	0	49	0	10

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

	TITLE VII	ADEA	EPA	REHABILITATION ACT	GINA	WHISTLEBLOWER
Cases pending hearing	110	27	0	28	1	4
Cases heard/pending decision	4	1	0	0	0	0
Decision issued in favor of the Complainant (either in its entirety or partial)	1	0	0	1	0	0
Decision issued in favor of the Agency	34	3	0	9	0	2
Arbitration/Mediation	0	0	0	0	0	0
Settlement	10	1	0	3	0	0
Appeal	13	1	0	1	0	2
Remand	0	0	0	0	0	0
Amount of Reimbursement	\$437,500.00	\$20,000.00	\$0	480,000.00	\$0	\$0
Amount of Reimbursement for Attorney Fees	\$0	\$425,000.00	\$0	\$30,000.00	\$0	\$0



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

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

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

	TITLE VII	ADEA	EPA	REHABILITATION ACT	GINA	WHISTLEBLOWER
Reprimand	1	0	0	1	0	0
Suspension without pay	2	0	0	1	0	0
Reduction of grade or pay	1	0	0	0	0	0
Removal	2	0	0	0	0	0

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

## DHS (and below)

For 4th Quarter 2020 for period ending September 30, 2020

Complaint Activity	Comparative Data					
	Previous Fiscal Year Data					2020Thru09-30
	2015	2016	2017	2018	2019	
Number of Complaints Filed	1289	1349	1275	1504	1300	1276
Number of Complainants	1244	1301	1227	1447	1261	1216
Repeat Filers	40	42	38	52	35	48
Complaints by Basis	Comparative Data					
	Previous Fiscal Year Data					2020Thru09-30
	2015	2016	2017	2018	2019	
<i>Note: Complaints can be filed alleging multiple bases. The sum of the bases may not equal total complaints filed.</i>	2015	2016	2017	2018	2019	2020Thru09-30
Race	448	450	464	545	466	497
Color	178	167	194	201	162	202
Religion	65	66	61	68	55	58
Reprisal	607	685	645	768	669	710
Sex	467	481	465	526	471	496
PDA	23	23	13	19	17	15

National Origin	195	222	207	264	183	228
Equal Pay Act	8	4	11	6	3	4
Age	411	407	390	409	382	424
Disability	330	348	337	416	411	413
Genetics	5	8	4	6	4	6
Non-EEO	89	80	103	90	69	91
<b>Complaints by Issue</b>	<b>Comparative Data</b>					
	<b>Previous Fiscal Year Data</b>					<b>2020Thru09-30</b>
<i>Note: Complaints can be filed alleging multiple bases. The sum of the bases may not equal total complaints filed.</i>	<b>2015</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>	
Appointment/Hire	85	86	87	98	94	110
Assignment of Duties	143	132	139	224	140	187
Awards	20	20	24	20	21	24
Conversion to Full Time/Perm Status	0	3	1	0	0	0
<b>Disciplinary Action</b>						
Demotion	9	11	12	16	11	12
Reprimand	65	42	79	81	60	65
Suspension	74	79	88	87	63	67
Removal	56	56	36	40	38	26
Duty Hours	29	41	23	28	21	23
Perf. Eval./ Appraisal	145	115	150	150	137	130
Examination/Test	6	15	7	27	14	11
<b>Harassment</b>						
Non-Sexual	513	594	527	645	618	690
Sexual	35	38	46	70	47	52

Medical Examination	22	27	16	33	36	27
Pay including overtime	53	43	62	44	49	55
Promotion/Non-Selection	230	302	288	240	218	199
<b>Reassignment</b>						
Denied	30	34	34	32	22	23
Directed	35	44	53	56	42	38
Reasonable Accommodation Disability	84	89	100	114	130	122
Reinstatement	6	5	3	7	2	2
Religious Accommodation	0	11	10	12	7	10
Retirement	6	4	5	3	8	9
Sex-Stereotyping	0	2	1	1	0	1
Telework	0	20	20	21	12	29
Termination	88	85	113	155	129	135
Terms/Conditions of Employment	105	117	173	235	172	127
Time and Attendance	72	80	98	105	103	96
Training	28	44	55	40	42	40
<b>Other</b>						
<b>Processing Time</b>	<b>Comparative Data</b>					
	<b>Previous Fiscal Year Data</b>					<b>2020Thru09-30</b>
	<b>2015</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>	
Complaints pending during fiscal year						
Average number of days in investigation	257.44	293.53	248.21	274.04	286.32	239.84
Average number of days in final action	77.07	104.47	137.42	108.31	124.96	160.91
Complaint pending during fiscal year where hearing was requested						

Average number of days in investigation	258.71	284.51	237.05	247.87	272.03	224.82						
Average number of days in final action	46.53	57.32	70.40	68.06	73.65	89.13						
Complaint pending during fiscal year where hearing was not requested												
Average number of days in investigation	255.26	297.65	264.53	308.53	301.97	264.85						
Average number of days in final action	112.82	159.83	188.34	167.36	271.78	328.82						
<b>Complaints Dismissed by Agency</b>	<b>Comparative Data</b>											
	<b>Previous Fiscal Year Data</b>										<b>2020Thru09-30</b>	
	<b>2015</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>							
Total Complaints Dismissed by Agency	96	63	111	188	98						110	
Average days pending prior to dismissal	153	206	213	271	187						296	
<b>Complaints Withdrawn by Complainants</b>												
Total Complaints Withdrawn by Complainants	120	121	111	120	140						133	
<b>Total Final Agency Actions Finding Discrimination</b>	<b>Comparative Data</b>											
	<b>Previous Fiscal Year Data</b>										<b>2020Thru09-30</b>	
	<b>2015</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>							
	<b>#</b>	<b>%</b>	<b>#</b>	<b>%</b>	<b>#</b>	<b>%</b>	<b>#</b>	<b>%</b>	<b>#</b>	<b>%</b>	<b>#</b>	<b>%</b>
Total Number Findings	14		18		14		9		15		44	
Without Hearing	0	0	11	61	12	86	4	44	15	100	20	45
With Hearing	14	100	7	39	2	14	5	56	0	0	24	55





<b>Findings of Discrimination Rendered by Issue</b>	<b>Comparative Data</b>											
	<b>Previous Fiscal Year Data</b>										<b>2020Thru09-30</b>	
	<b>2015</b>		<b>2016</b>		<b>2017</b>		<b>2018</b>		<b>2019</b>		<b>#</b>	<b>%</b>
	<b>#</b>	<b>%</b>	<b>#</b>	<b>%</b>	<b>#</b>	<b>%</b>	<b>#</b>	<b>%</b>	<b>#</b>	<b>%</b>		
<b>Total Number Findings</b>	14		16		12		6		15		44	
Appointment/Hire	0	0	1	6	0	0	0	0	1	7	3	7
Assignment of Duties	2	14	2	13	3	25	0	0	1	7	4	10
Awards	0	0	1	6	0	0	0	0	1	7	2	5
Conversion to Full Time/Perm Status	0	0	0	0	0	0	0	0	0	0	0	0
<b>Disciplinary Action</b>												
Demotion	0	0	0	0	0	0	0	0	0	0	0	0
Reprimand	1	7	1	6	0	0	0	0	0	0	1	2
Suspension	1	7	0	0	0	0	0	0	1	7	1	2
Removal	0	0	0	0	0	0	1	17	2	13	1	2
Duty Hours	0	0	1	6	0	0	0	0	0	0	0	0
Perf. Eval./ Appraisal	1	7	0	0	0	0	1	17	2	13	8	19
Examination/Test	0	0	0	0	1	8	0	0	0	0	0	0
<b>Harassment</b>												
Non-Sexual	7	50	8	50	4	33	2	33	6	40	19	45
Sexual	1	7	4	25	0	0	1	17	0	0	5	12
Medical Examination	0	0	0	0	0	0	1	17	0	0	2	5
Pay including overtime	0	0	0	0	0	0	0	0	0	0	0	0
Promotion/Non-Selection	4	29	4	25	2	17	1	17	2	13	9	21
<b>Reassignment</b>												







Other - User Define												
<b>Findings Without Hearing</b>	3		9		10		1		11		18	
Appointment/Hire	0	0	1	11	0	0	0	0	1	9	0	0
Assignment of Duties	0	0	1	11	3	30	0	0	0	0	1	6
Awards	0	0	0	0	0	0	0	0	0	0	1	6
Conversion to Full Time/Perm Status	0	0	0	0	0	0	0	0	0	0	0	0
Disciplinary Action												
Demotion	0	0	0	0	0	0	0	0	0	0	0	0
Reprimand	0	0	0	0	0	0	0	0	0	0	1	6
Suspension	0	0	0	0	0	0	0	0	1	9	0	0
Removal	0	0	0	0	0	0	0	0	1	9	0	0
Duty Hours	0	0	0	0	0	0	0	0	0	0	0	0
Perf. Eval./ Appraisal	0	0	0	0	0	0	0	0	2	18	3	17
Examination/Test	0	0	0	0	1	10	0	0	0	0	0	0
Harassment												
Non-Sexual	1	33	4	44	4	40	0	0	4	36	7	39
Sexual	0	0	2	22	0	0	0	0	0	0	4	22
Medical Examination	0	0	0	0	0	0	0	0	0	0	1	6
Pay including overtime	0	0	0	0	0	0	0	0	0	0	0	0
Promotion/Non-Selection	2	67	1	11	0	0	1	100	1	9	5	28
Reassignment												
Denied	0	0	0	0	0	0	0	0	0	0	0	0
Directed	0	0	1	11	0	0	0	0	1	9	2	11

Reasonable Accommodation Disability	0	0	1	11	1	10	0	0	2	18	1	6
Reinstatement	0	0	0	0	0	0	0	0	0	0	0	0
Religious Accommodation	0	0	0	0	0	0	0	0	0	0	0	0
Retirement	0	0	0	0	0	0	0	0	0	0	0	0
Sex-Stereotyping	0	0	0	0	0	0	0	0	0	0	0	0
Telework	0	0	0	0	0	0	0	0	0	0	1	6
Termination	0	0	0	0	1	10	0	0	0	0	0	0
Terms/Conditions of Employment	0	0	0	0	3	30	0	0	3	27	2	11
Time and Attendance	1	33	0	0	0	0	0	0	0	0	1	6
Training	2	67	0	0	0	0	0	0	1	9	0	0

Other - User Define

Pending Complaints Filed in Previous Fiscal Years by Status	Comparative Data						2020Thru09-30
	Previous Fiscal Year Data						
	2015	2016	2017	2018	2019		
Total complaints from previous Fiscal Years	1419	1760	2083	2092	2169	2045	
Total Complainants	1328	1635	1914	1892	1984	1885	
<b>Number complaints pending</b>							
Investigation	199	210	214	90	114	88	
ROI issued, pending Complainant's action	9	11	28	24	32	10	
Hearing	1061	1237	1590	1597	1488	1302	
Final Agency Action	147	252	215	308	500	596	
Appeal with EEOC Office of Federal Operations	369	751	818	978	1187	1364	

<b>Complaint Investigations</b>	<b>Comparative Data</b>					
	<b>Previous Fiscal Year Data</b>					<b>2020Thru09-30</b>
	<b>2015</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>	
Pending Complaints Where Investigations Exceed Required Time Frames	287	236	228	169	136	120

# **GLOSSARY OF TERMS**

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