



U. S. Department of Commerce
Annual Report on the No FEAR Act

2012

The Department of Commerce is pleased to submit this annual report in accordance with Section 5, Part 724 of the Code of Federal Regulations (5 C.F.R. § 724), Implementation of Title II of the Notification and Federal Employee Antidiscrimination and Retaliation (No FEAR) Act. The report is divided into seven sections that track the reporting areas required by the regulations: pending and resolved federal court cases; administrative equal employment opportunity complaints; disciplinary actions resulting from violations of nondiscrimination and whistleblower protection statutes; agency disciplinary policies; trend analyses of court cases and administrative complaints; a budgetary impact analysis; and the agency training plan.

This report does not include data or responses from the U.S. Patent and Trademark Office (USPTO). The USPTO is submitting its own report under separate cover.

Part 1. The Number of Federal Court Cases Pending and Resolved

Section 5, Parts 724.302(a)(1) through (3) of the Code of Federal Regulations require agencies to report:

(1) The number of cases in Federal court pending or resolved in each fiscal year and arising under each of the respective provisions of the Federal Antidiscrimination Laws and Whistleblower Protection Laws applicable to them as defined in Sec. 724.102 of subpart A of this part in which an employee, former Federal employee, or applicant alleged a violation(s) of these laws, separating data by the provision(s) of law involved;

(2) In the aggregate, for the cases identified in paragraph (a)(1) of this section and separated by provision(s) of law involved:

(i) The status or disposition (including settlement);

(ii) The amount of money required to be reimbursed to the Judgment Fund by the agency for payments as defined in Sec. 724.102 of subpart A of this part;

(iii) The amount of reimbursement to the Fund for attorney's fees where such fees have been separately designated;

(3) In connection with cases identified in paragraph (a)(1) of this section, the total number of employees in each fiscal year disciplined as defined in Sec. 724.102 of subpart A of this part and the specific nature, e.g., reprimand, etc., of the disciplinary actions taken, separated by the provision(s) of law involved.

Response: The statutes applicable to this report are:

Section 2302(b)(1) of the Civil Service Reform Act, which prohibits discrimination in personnel actions based on: race, color, religion, sex, or national origin (as prohibited by Title VII of the Civil Rights Act of 1964); age (as prohibited by sections 12 and 15 of the Age Discrimination in Employment Act of 1967); sex (as prohibited by section 6(d) of the Fair Labor Standards Act of 1938); handicapping condition (as prohibited by section 501 of the Rehabilitation Act of 1973); and marital status or political affiliation.

Section 2302(b)(9) of the Civil Service Reform Act, which prohibits taking a personnel action based on an employee's: exercise of any appeal, complaint, or grievance right; testimony or other lawful assistance in the exercise of any appeal, complaint, or grievance right; cooperation

with or disclosure to the agency=s Inspector General or the Office of Special Counsel; or refusal to obey an illegal order.

Section 6(d)(1) of the Fair Labor Standards Act of 1938, also known as the Equal Pay Act, which prohibits discrimination “between employees on the basis of sex by paying wages to employees ... at a rate less than the rate [paid] to employees of the opposite sex ... for equal work on jobs the performance of which requires equal skill, effort and responsibility, and which are performed under similar working conditions...” 29 U.S.C. 206(d)(1)

The Age Discrimination in Employment Act (ADEA) of 1967, as amended, which states that, "All personnel actions affecting employees or applicants for employment who are at least 40 years of age ... in executive agencies ... shall be made free from any discrimination based on age." 29 U.S.C. ' 633a(a).

Section 501 of the Rehabilitation Act of 1973, 29 U.S.C. § 791 et seq., which prohibits discrimination on the basis of disability and requires agencies of the Federal government to make reasonable accommodation to the known physical or mental limitations of qualified employees with disabilities, unless the agency can demonstrate that accommodation would prove to be an "undue hardship."

Section 717 of the Civil Rights Act of 1964 (Title VII), which prohibits discrimination based on race, color, religion, sex, or national origin against federal employees in executive agencies. 42 U.S.C. ' 2000e-16(a). Under Title VII, it is also unlawful "for an employer to discriminate against any of its employees because [the employee] has opposed any practice made an unlawful employment practice by Title VII, or because [the employee] has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under Title VII.

Tables showing the number and disposition of civil actions filed in a United States District Court under any of these statutes appear below:

Table 1.A: Federal Court Litigation, FY 2012

Statute	Number of Cases		Final Judgments Against Agency	Settled	Employees Disciplined
	Pending	Resolved			
Civil Service Reform Act 5 U.S.C. 2302(b)(1) Prohibited Personnel Practices	Pending	0	0	0	0
	Resolved	0			
Civil Service Reform Act 5 U.S.C. 2302(b)(9) Whistleblowing	Pending	0	0	0	0
	Resolved	0			
Fair Labor Standards Act 29 U.S.C. 206(d) and Title VII	Pending	0	0	1	0
	Resolved	1			
Age Discrimination in Employment Act of 1967 29 U.S.C. 631 and 633a	Pending	0	0	0	0
	Resolved	1			
Rehabilitation Act of 1973 29 U.S.C. 791	Pending	2	0	1	0
	Resolved	1			
Civil Rights Act of 1964 (Title VII) 42 U.S.C. 2000e-16	Pending	20	0	2	0
	Resolved	8			
Title VII and ADEA	Pending	3	0	0	0
	Resolved	3			
Title VII and ADEA and Rehabilitation Act	Pending	3	0	0	0
	Resolved	1			
Title VII and Rehabilitation Act	Pending	3	0	1	0
	Resolved	1			
ADEA and Rehabilitation Act	Pending	1	0	0	0
	Resolved	0			
Title VII and CSRA (Whistleblowing)	Pending	0	0	0	0
	Resolved	0			
Total	Pending	32	0	5	0
	Resolved	17			

Table 1.B: Judgment Fund Expenditures, 2012

Judgment Fund Expenditures 2012			
Judgment Fund Total	Judgments	Settlements	Attorney's Fees
\$680,322.10	\$0.00	\$680,322.10	\$0.00

Part 2. Administrative Equal Employment Opportunity Complaint Data

Section 5, Part 724.302(a)(4) of the Code of Federal Regulations requires agencies to report:

The final year-end data about discrimination complaints for each fiscal year that was posted in accordance with Equal Employment Opportunity Regulations at subpart G of title 29 of the Code of Federal Regulations (implementing section 301(c)(1)(B) of the No FEAR Act).

Response: See the following tables.

Complaint Activity	Comparative Data					
	Previous Fiscal Year Data					
	2007	2008	2009	2010	2011	2012
Number of Complaints Filed	156	131	412	1130	278	178
Number of Complainants	145	123	390	1105	265	174
Repeat Filers	11	8	18	20	13	4

Complaints by Basis	Comparative Data					
	Previous Fiscal Year Data					
<i>Note: Complaints can be filed alleging multiple bases. The sum of the bases may not equal total complaints filed.</i>	2007	2008	2009	2010	2011	2012
Race	74	49	159	435	115	72
Color	21	12	39	130	27	15
Religion	2	2	28	70	18	14
Reprisal	92	73	197	346	129	108
Sex	53	35	124	319	74	58
National Origin	19	11	39	115	35	29
Equal Pay Act	2	0	5	2	0	0
Age	61	58	147	365	97	59
Disability	40	39	104	249	81	73
GINA	0	0	0	0	0	0
Non-EEO	0	0	33	212	14	14

Complaints by Issue	Comparative Data					
	Previous Fiscal Year Data					2012
<i>Note: Complaints can be filed alleging multiple issues. The sum of the issues may not equal total complaints filed.</i>	2007	2008	2009	2010	2011	
Appointment/Hire	9	10	44	126	45	8
Assignment of Duties	41	26	41	77	35	34
Awards	13	14	4	4	6	7
Conversion to Full-time	0	0	0	0	0	0
Disciplinary Action						
Demotion	0	0	1	26	2	1
Reprimand	11	8	16	18	14	13
Removal	0	0	0	0	0	13
Suspension	6	3	8	4	17	0
Other	3	3	3	5	3	3
Duty Hours	0	1	2	15	0	0
Evaluation Appraisal	27	33	37	38	39	45
Examination/Test	0	0	1	8	9	0
Harassment						
Non-Sexual	77	59	145	247	113	92
Sexual	4	6	14	52	14	4
Medical Examination	0	0	0	0	0	1
Pay (Including Overtime)	5	4	8	60	9	7
Promotion/Non-Selection	43	41	55	77	27	22
Reassignment						
Denied	1	6	6	12	1	2
Directed	12	10	8	16	9	10
Reasonable Accommodation	15	14	33	44	18	10
Reinstatement	0	0	1	0	0	0
Retirement	3	2	0	1	0	0
Termination	24	17	180	649	74	41
Terms/Conditions of Employment	6	6	3	76	12	15
Time and Attendance	28	24	27	32	27	25
Training	13	7	17	19	13	6
Other	17	10	43	134	21	2

Processing Time	Comparative Data					2012
	Previous Fiscal Year Data					
	2007	2008	2009	2010	2011	
Complaints pending during fiscal year						
Average number of days in investigation stage	108	119	106	98	85	113
Average number of days in final action stage	97	89	92	125	115	367 ¹
Complaint pending during fiscal year where hearing was requested						
Average number of days in investigation stage	122	132	118	103	93	119
Average number of days in final action stage	17	29	15	9	13	10
Complaint pending during fiscal year where hearing was not requested						
Average number of days in investigation stage	117	110	104	96	82	104
Average number of days in final action stage	128	94	121	150	181	280

¹ The increase is due to the remaining Decennial inventory, all of which will be closed out before September 30, 2013. There are currently 60 Final Agency Decisions, 45 of which have been assigned and no pending Final Orders.

Complaints Dismissed by Agency ²	Comparative Data					2012
	Previous Fiscal Year Data					
	2007	2008	2009	2010	2011	
Total Complaints Dismissed by Agency	38	32	74	235	206	39
Average days pending prior to dismissal	52	57	46	67	112	52
Complaints Withdrawn by Complainants						
Total Complaints Withdrawn by Complainants	13	8	12	19	28	15

Total Final Actions Finding Discrimination	Comparative Data										2012	
	Previous Fiscal Year Data											
	2007		2009		2009		2010		2011		#	%
	#	%	#	%	#	%	#	%	#	%		
Total Number Findings	1	100	0	0	3	100	0	100	3	100	4	100
Without Hearing	0	0	0	0	1	33	0	0	3	100	1	25
With Hearing	1	100	0	0	2	67	0	0	0	0	3	75

2 Dismissals for FY 2010 and FY2011 increased due to the Decennial Census. Many Decennial complaints fail to allege a basis within the purview of the EEO process. Average days also went up because many Decennial complainants could not be located during the investigation. Their complaints were dismissed later in the process.

Findings of Discrimination Rendered by Basis	Comparative Data											
	Previous Fiscal Year Data											2012
<i>Note: Complaints can be filed alleging multiple bases. The sum of the bases may not equal total complaints and findings.</i>	2007		2008		2009		2010		2011		2012	
	#	%	#	%	#	%	#	%	#	%	#	%
	Total Number Findings	1	100	0	0	3	100	0	0	3	100	4
Race	0	0	0	0	0	0	0	0	0	0	0	0
Color	0	0	0	0	0	0	0	0	0	0	0	0
Religion	0	0	0	0	0	0	0	0	0	0	0	0
Reprisal	1	50	0	0	2	29	0	0	3	100	3	75
Sex	1	50	0	0	2	29	0	0	0	0	0	0
National Origin	0	0	0	0	0	0	0	0	0	0	0	0
Equal Pay Act	0	0	0	0	0	0	0	0	0	0	0	0
Age	0	0	0	0	1	14	0	0	0	0	1	25
Disability	0	0	0	0	2	28	0	0	0	0	0	0
Non-EEO	0	0	0	0	0	0	0	0	0	0	0	0
Findings After Hearing	1	100	0	0	2	67	0	0	0	0	3	75
Race	0	0	0	0	0	0	0	0	0	0	0	0
Color	0	0	0	0	0	0	0	0	0	0	0	0
Religion	0	0	0	0	0	0	0	0	0	0	0	0
Reprisal	1	25	1	50	0	0	2	33	0	0	3	75
Sex	1	25	1	50	0	0	2	33	0	0	0	0
National Origin	0	0	0	0	0	0	0	0	0	0	0	0
Equal Pay Act	0	0	0	0	0	0	0	0	0	0	0	0
Age	1	25	0	0	0	0	1	17	0	0	0	0
Disability	1	25	0	0	0	0	1	17	0	0	0	0
Non-EEO	0	0	0	0	0	0	0	0	0	0	0	0
Findings Without Hearing	0	0	0	0	0	0	1	33	0	0	0	0
Race	0	0	0	0	0	0	0	0	0	0	0	0
Color	0	0	0	0	0	0	0	0	0	0	0	0
Religion	0	0	0	0	0	0	0	0	0	0	0	0
Reprisal	0	0	0	0	0	0	0	0	0	0	0	0
Sex	0	0	0	0	0	0	0	0	0	0	0	0

National Origin	0	0	0	0	0	0	0	0	0	0	0	0
Equal Pay Act	0	0	0	0	0	0	0	0	0	0	0	0
Age	0	0	0	0	0	0	0	0	0	0	0	0
Disability	0	0	0	0	0	0	1	100	0	0	1	25
Non-EEO	0	0	0	0	0	0	0	0	0	0	0	0

Findings of Discrimination Rendered by Issue	Comparative Data										2012	
	Previous Fiscal Year Data											
	2007		2008		2009		2010		2011		#	%
	#	%	#	%	#	%	#	%	#	%		
Total Number Findings	1	100	0	100	3	100	0	100	3	100	4	100
Appointment/Hire	0	0	0	0	0	0	0	0	0	0	1	25
Assignment of Duties	1	20	0	0	0	0	0	0	0	0	0	0
Awards	1	20	0	0	1	20	0	0	0	0	0	0
Conversion to Full-time	0	0	0	0	0	0	0	0	0	0	0	0
Disciplinary Action	0	0	0	0	0	0	0	0	0	0	0	0
Demotion	0	0	0	0	0	0	0	0	0	0	0	0
Reprimand	0	0	0	0	0	0	0	0	0	0	0	0
Suspension	0	0	0	0	0	0	0	0	0	0	0	0
Removal	0	0	0	0	0	0	0	0	0	0	0	0
Other	0	0	0	0	0	0	0	0	0	0	0	0
Duty Hours	0	0	0	0	0	0	0	0	0	0	0	0
Evaluation Appraisal	0	0	0	0	0	0	0	0	0	0	1	25
Examination/Test	0	0	0	0	0	0	0	0	0	0	0	0
Harassment	0	0	0	0	0	0	0	0	0	0	0	0
Non-Sexual	1	20	0	0	2	40	0	0	3	100	0	0
Sexual	0	0	0	0	0	0	0	0	0	0	0	0
Medical Examination	0	0	0	0	0	0	0	0	0	0	0	0
Pay (Including Overtime)	0	0	0	0	0	0	0	0	0	0	0	0
Promotion/Non-Selection	1	20	0	0	1	20	0	0	0	0	0	0
Reassignment	0	0	0	0	0	0	0	0	0	0	0	0
Denied	0	0	0	0	0	0	0	0	0	0	0	0
Directed	0	0	0	0	0	0	0	0	0	0	0	0
Reasonable Accommodation	0	0	0	0	0	0	0	0	0	0	1	25
Reinstatement	0	0	0	0	0	0	0	0	0	0	0	0

Retirement	0	0	0	0	0	0	0	0	0	0	0	0
Termination	0	0	0	0	0	0	0	0	0	0	1	25
Terms/Conditions of Employment	0	0	0	0	0	0	0	0	0	0	0	0
Time and Attendance	1	20	0	0	0	0	0	0	0	0	0	0
Training	0	0	0	0	1	20	0	0	0	0	0	0
Other	0	0	0	0	0	0	0	0	0	0	0	0
Findings After Hearing												
Appointment/Hire	1	100	0	0	2	100	0	0	0	0	3	75
Assignment of Duties	0	0	0	0	0	0	0	0	0	0	1	25
Awards	1	20	0	0	0	0	0	0	0	0	0	0
Conversion to Full-time	1	20	0	0	1	25	0	0	0	0	0	0
Disciplinary Action	0	0	0	0	0	0	0	0	0	0	0	0
Demotion	0	0	0	0	0	0	0	0	0	0	0	0
Reprimand	0	0	0	0	0	0	0	0	0	0	0	0
Suspension	0	0	0	0	0	0	0	0	0	0	0	0
Removal	0	0	0	0	0	0	0	0	0	0	0	0
Other	0	0	0	0	0	0	0	0	0	0	0	0
Evaluation Appraisal	0	0	0	0	0	0	0	0	0	0	1	25
Examination/Test	0	0	0	0	0	0	0	0	0	0	0	0
Harassment	0	0	0	0	0	0	0	0	0	0	0	0
Non-Sexual	1	20	0	0	2	50	0	0	0	0	0	0
Sexual	0	0	0	0	0	0	0	0	0	0	0	0
Medical Examination	0	0	0	0	0	0	0	0	0	0	0	0
Pay (Including Overtime)	0	0	0	0	0	0	0	0	0	0	0	0
Promotion/Non-Selection	1	20	0	0	1	25	0	0	0	0	0	0
Reassignment	0	0	0	0	0	0	0	0	0	0	0	0
Denied	0	0	0	0	0	0	0	0	0	0	0	0
Directed	0	0	0	0	0	0	0	0	0	0	0	0
Reasonable Accommodation	0	0	0	0	0	0	0	0	0	0	0	0
Reinstatement	0	0	0	0	0	0	0	0	0	0	0	0
Retirement	0	0	0	0	0	0	0	0	0	0	0	0
Termination	0	0	0	0	0	0	0	0	0	0	1	25
Terms/Conditions of Employment	0	0	0	0	0	0	0	0	0	0	0	0
Time and Attendance	1	20	0	0	0	0	0	0	0	0	0	0
Training	0	0	0	0	0	0	0	0	0	0	0	0

Other	0	0	0	0	0	0	0	0	0	0	0	0
Findings Without Hearing	0	0	0	0	0	0	1	100	0	0	1	25
Appointment/Hire	0	0	0	0	0	0	0	0	0	0	0	0
Assignment of Duties	0	0	0	0	0	0	0	0	0	0	0	0
Awards	0	0	0	0	0	0	0	0	0	0	0	0
Conversion to Full-time	0	0	0	0	0	0	0	0	0	0	0	0
Disciplinary Action	0	0	0	0	0	0	0	0	0	0	0	0
Demotion	0	0	0	0	0	0	0	0	0	0	0	0
Reprimand	0	0	0	0	0	0	0	0	0	0	0	0
Suspension	0	0	0	0	0	0	0	0	0	0	0	0
Removal	0	0	0	0	0	0	0	0	0	0	0	0
Other	0	0	0	0	0	0	0	0	0	0	0	0
Duty Hours	0	0	0	0	0	0	0	0	0	0	0	0
Evaluation Appraisal	0	0	0	0	0	0	0	0	0	0	0	0
Examination/Test	0	0	0	0	0	0	0	0	0	0	0	0
Harassment	0	0	0	0	0	0	0	0	0	0	0	0
Non-Sexual	0	0	0	0	0	0	0	0	0	0	0	0
Sexual	0	0	0	0	0	0	0	0	0	0	0	0
Medical Examination	0	0	0	0	0	0	0	0	0	0	0	0
Pay (Including Overtime)	0	0	0	0	0	0	0	0	0	0	0	0
Promotion/Non-Selection	0	0	0	0	0	0	0	0	0	0	0	0
Reassignment	0	0	0	0	0	0	0	0	0	0	0	0
Denied	0	0	0	0	0	0	0	0	0	0	0	0
Directed	0	0	0	0	0	0	0	0	0	0	0	0
Reasonable Accommodation	0	0	0	0	0	0	0	0	0	0	1	25
Reinstatement	0	0	0	0	0	0	0	0	0	0	0	0
Retirement	0	0	0	0	0	0	0	0	0	0	0	0
Termination	0	0	0	0	0	0	0	0	0	0	0	0
Terms/Conditions of Employment	0	0	0	0	0	0	0	0	0	0	0	0

Time and Attendance	0	0	0	0	0	0	0	0	0	0	0	0
Training	0	0	0	0	0	0	1	100	0	0	0	0
Other	0	0	0	0	0	0	0	0	0	0	0	0

Pending Complaints Filed in Previous Fiscal Years by Status	Comparative Data					2012
	Previous Fiscal Year Data					
	2007	2008	2009	2010	2011	
Total complaints from previous Fiscal Years	119	76	79	230	560	345
Total Complainants	95	68	72	207	540	299
Number complaints pending						
Investigation	1	0	0	18	4	4
Hearing	31	39	42	132	259	154
Final Action	9	11	12	53	233	153
Appeal with EEOC Office of Federal Operations	30	26	24	27	64	34

Complaint Investigations	Comparative Data					2012
	Previous Fiscal Year Data					
	2007	2008	2009	2010	2011	
Pending Complaints Where Investigation Exceeds Required Time Frames	0	9	2	74	248	15

Part 3. Disciplinary Actions

Section 5, Part 724.302(a)(5) of the Code of Federal Regulations requires agencies to report:

Whether or not in connection with cases in Federal court, the number of employees in each fiscal year disciplined as defined in Sec. 724.102 of subpart A of this part in accordance with any agency policy described in paragraph (a)(6) of this section. The specific nature, e.g., reprimand, etc., of the disciplinary actions taken must be identified.

Response: Consistent with the fact that there were no final judgments of discrimination against the Department in Fiscal Year 2012, no employees were disciplined in connection with cases in Federal court.

Part 4. Disciplinary Policies

Section 5, Part 724.302(a)(6) of the Code of Federal Regulations requires agencies to report:

A detailed description of the agency's policy for taking disciplinary action against Federal employees for conduct that is inconsistent with Federal Antidiscrimination Laws and Whistleblower Protection Laws or for conduct that constitutes another prohibited personnel practice revealed in connection with agency investigations of alleged violations of these laws.

Response: The Department's policy for taking disciplinary action against Federal Employees for conduct that is inconsistent with Federal Antidiscrimination Laws and Whistleblower Protection Laws or for conduct that constitutes another prohibited personnel practice revealed in connection with agency investigations of alleged violations of these laws is set forth in Department Administrative Order 202-751 (DAO 202-751), a copy of which is appended to this report. The relevant offenses appear at Numbers 36, 42, 45, and 46 on the Table of Offenses and Penalties:

- Harassing, threatening or taking reprisal action against an employee as a result of or in anticipation of a grievance, appeal, complaint, or other exercise of rights (5 days suspension to removal);
- Misrepresentation, falsification, or omission of material fact in connection with application, employment or any record, report, investigation or other proceeding (written reprimand to removal);
- Discrimination. As used in the Table of Offenses and Penalties, discrimination refers to specific acts taken by an employee in the performance of his/her official duties which discriminate against one or more individuals on the basis of race, sex, religion, color, age, national origin, disability, marital status, or political affiliation. (5 day suspension to removal); and
- Refusal to answer appropriate interrogation in a properly authorized inquiry (written reprimand to removal).

Departmental Administrative Order 202-955, a copy of which is appended to this report, also provides an expedited process for reviewing allegations of harassment, terminating actual

incidents of harassment, and taking disciplinary actions as appropriate, which includes stopping any ongoing harassment and initiating disciplinary or adverse action when an inquiry results in a finding that misconduct has occurred.

Part 5. Trend Analyses

Section 5, Part 724.302(a)(7) of the Code of Federal Regulations requires agencies to report:

An analysis of the information provided in paragraphs (a)(1) through (6) of this section in conjunction with data provided to the Equal Employment Opportunity Commission in compliance with 29 CFR part 1614 subpart F of the Code of Federal Regulations. Such analysis must include:

- (i) An examination of trends;
- (ii) Causal analysis;
- (iii) Practical knowledge gained through experience; and
- (iv) Any actions planned or taken to improve complaint or civil rights programs of the agency with the goal of eliminating discrimination and retaliation in the workplace;

Part 5.a: Civil Actions Filed in Federal Court

Analysis of Totals:

For Fiscal Year 2012, the Department of Commerce litigated 49 cases in Federal district and appellate courts. Seventeen of those cases have been resolved, leaving 32 cases pending at the time of this report.

Of the 17 cases resolved, the Department settled five of them, and there was no final judgment of discrimination against the Department. Consequently, there was no case requiring the discipline of any Department employee.

Analysis of Trends:

During the reporting period, there were no lawsuits brought against the Department based on a violation of 5 U.S.C. 2302(b)(1) (Civil Service Reform Act) or 29 U.S.C. 206(d) (pay discrimination). The majority of lawsuits against the Department are based on an alleged violation of Title VII of the Civil Rights Act of 1964.

As shown in the table below, there is an uneven, but fairly steady, trend in the number of new antidiscrimination and whistleblower protection lawsuits brought against the Department.

Fiscal Year	# of New Suits
2003	18
2004	16
2005	12
2006	11
2007	8
2008	10
2009	14
2010	11
2011	13
2012	25

Part 5.b: Administrative EEO Complaints

Number of filings:

The large spike in complaint activity in FY 2010 and FY 2011 is attributable to the 2010 Decennial Census. For FY 2012, new filings returned to pre-Decennial levels, but we still have Decennial cases pending at hearing or in the final action stage. Decennial applicants and employees do not have the array of avenues of redress available to permanent federal employees and many of the complaints received concerned non-EEO matters such as veteran’s preference, whistleblowing, and general workplace conflicts. This is reflected in the tables above as increases the number of dismissals, complaint bases reported as “non-EEO” and issues reported as “other.” The highly compressed operational calendar for the Decennial Census also had a significant effect on processing time as reflected in the relevant tables. Forty-seven Decennial cases are being held in abeyance pending the outcome of a class action in U. S. District Court concerning the background check process.

From FY 2009 through the end of FY 2012, OCR received 1,275 formal complaints from the Decennial Census. Seven hundred thirty three of these were filed in the last quarter of FY 2010. The largest Decennial operation, Non-Response Follow Up (NRFU), took place from April to July 2010. At the end of NRFU, most of the 800,000 temporary employees were terminated, resulting in an influx of complaints. All Decennial field activity ceased in October 2010, but the Department received an additional 84 complaints in FY2011 and six in FY 2012. At the end of the second quarter of FY 2013, there are approximately 76 Decennial complaints still open, most either at hearing (11) or pending final action (65).

Non-Decennial-related formal filings declined 11% between FY 2011 and FY 2012. The underlying cause(s) is not readily apparent, but may be due to rounds of retirements under the Voluntary Early Retirement Authority/Voluntary Separation Incentive Program. Census, for example, had a number of VERA/VSIP retirements in anticipation of the closure of six of its twelve Regional Offices. Repeat filings declined from 13 to 4.

Bases of Complaints:

The top bases of complaints overall during FY 2012 were reprisal, disability, race and age. Among Decennial complainants, race, sex and age were tied for first place, followed by reprisal and disability.

Issues in Complaints:

The top five issues in complaints in FY 2012 were non-sexual harassment, evaluations, terminations, assignment of duties and time and attendance. The Decennial Census did not account for any significant changes in FY12. Three of the six new Decennial complaints concerned terminations, two concerned pay and one concerned failure to pass the background check (“other”)

Findings of Discrimination

The Department had four findings of discrimination in Fiscal Year 2012. One case decided without a hearing determined that the National Oceanic and Atmospheric Administration failed to provide reasonable accommodation with respect to training. Two other cases were filed by the same complainant and consolidated for hearing. One of the cases resulted in a finding of no discrimination on a Decennial Census employee’s sex-based harassment claim, but the AJ did find retaliation in the complainant’s subsequent assignments and performance appraisal. The same employee was not selected for a non-Decennial position, which the AJ found was due to retaliation. The Agency accepted the AJ’s decision. The fourth case also concerned a Decennial employee. The Agency accepted the AJ’s finding that the complainant’s termination was the result of reprisal. The complainant appealed the attorney’s fees and damages awards. That appeal is still pending.

Part 6. Budgetary Adjustments

Section 5, Part 724.302(a)(8) requires agencies to report:

For each fiscal year, any adjustment needed or made to the budget of the agency to comply with its Judgment Fund reimbursement obligation(s) incurred under 5 C.F.R. § 724.103.

Response: The Department of Commerce has not made or needed to make adjustments to its budget to comply with its Judgment Fund reimbursement obligation(s) incurred under 5 C.F.R. § 724.103.

Part 7. Training Plan

Section 5, Part 724.302(a)(9) requires agencies to report:

The agency's written plan developed under 5 C.F.R. § 724.203(a) to train its employees.

Response:

Following is the U.S. Department of Commerce training plan for the No FEAR Act training for FY 12.

- Trained 28,556 (85%) employees through the Commerce Learning Center platform.
- Developed a 508-compliant version of the training in Word for employees who were visually impaired.
- Posted information on the No FEAR Act training in the webpage belonging to the Department's Office of Civil Rights – including a reminder to new employees of the requirement to take the training within 90 days of their entering on duty.
- Developed separate training module on whistleblower protection rights for worldwide employees of the U.S. & Foreign Commercial Service who are under the Foreign Service Act of 1980 (P.L. 96-465).

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Washington, D.C. 20515

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Washington, D.C. 20515

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2157 Rayburn House Office Building
Washington, D.C. 20515

Jacqueline A. Berrien, Chair
Equal Employment Opportunity Commission
131 M Street, NE,
Washington, D.C. 20507

Attorney General Eric H. Holder, Jr.
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530

Elaine Kaplan, Acting Director
U.S. Office of Personnel Management
1900 E Street, N.W.
Washington, D.C. 20415