



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

2011

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 2011**

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	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
	Resolved	<b>0</b>			
Civil Service Reform Act 5 U.S.C. 2302(b)(9) Whistleblowing	Pending	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
	Resolved	<b>0</b>			
Fair Labor Standards Act 29 U.S.C. 206(d) and Title VII	Pending	<b>1</b>	<b>0</b>	<b>0</b>	<b>0</b>
	Resolved	<b>0</b>			
Age Discrimination in Employment Act of 1967 29 U.S.C. 631 and 633a	Pending	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
	Resolved	<b>1</b>			
Rehabilitation Act of 1973 29 U.S.C. 791	Pending	<b>3</b>	<b>0</b>	<b>0</b>	<b>0</b>
	Resolved	<b>0</b>			
Civil Rights Act of 1964 (Title VII) 42 U.S.C. 2000e-16	Pending	<b>14</b>	<b>0</b>	<b>0</b>	<b>0</b>
	Resolved	<b>3</b>			
Title VII and ADEA	Pending	<b>2</b>	<b>0</b>	<b>0</b>	<b>0</b>
	Resolved	<b>1</b>			
Title VII and ADEA and Rehabilitation Act	Pending	<b>1</b>	<b>0</b>	<b>0</b>	<b>0</b>
	Resolved	<b>0</b>			
Title VII and Rehabilitation Act	Pending	<b>3</b>	<b>0</b>	<b>0</b>	<b>0</b>
	Resolved	<b>1</b>			
ADEA and Rehabilitation Act	Pending	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
	Resolved	<b>1</b>			
Title VII and CSRA (Whistleblowing)	Pending	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
	Resolved	<b>0</b>			
Total	Pending	<b>24</b>	<b>0</b>	<b>0</b>	<b>0</b>
	Resolved	<b>7</b>			

**Table 1.B: Judgment Fund Expenditures, 2011**

<b>Judgment Fund Expenditures, FY 2011</b>			
<b>Judgment Fund Total</b>	<b>Judgments</b>	<b>Settlements</b>	<b>Attorney's Fees</b>
\$0.00	\$0.00	\$0.00	\$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					
	2006	2007	2008	2009	2010	2011
Number of Complaints Filed	123	156	131	412	1130	278
Number of Complainants	120	145	123	390	1105	265
Repeat Filers	4	11	8	18	20	13

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>	2006	2007	2008	2009	2010	2011
Race	49	74	49	159	435	115
Color	19	21	12	39	130	27
Religion	6	2	2	28	70	18
Reprisal	58	92	73	197	346	129
Sex	33	53	35	124	319	74
National Origin	11	19	11	39	115	35
Equal Pay Act	0	2	0	5	2	0
Age	44	61	58	147	365	97
Disability	38	40	39	104	249	81
Non-EEO	1	0	0	33	212	14

Complaints by Issue	Comparative Data					
	Previous Fiscal Year Data					2011
<i>Note: Complaints can be filed alleging multiple issues. The sum of the issues may not equal total complaints filed.</i>	2006	2007	2008	2009	2010	
Appointment/Hire	2	9	10	44	126	45
Assignment of Duties	28	41	26	41	77	35
Awards	11	13	14	4	4	6
Conversion to Full-time	0	0	0	0	0	0
<b>Disciplinary Action</b>						
Demotion	2	0	0	1	26	2
Reprimand	7	11	8	16	18	14
Removal	0	0	0	0	0	0
Suspension	6	6	3	8	4	17
Other	0	3	3	3	5	3
Duty Hours	0	0	1	2	15	0
Evaluation Appraisal	22	27	33	37	38	39
Examination/Test	0	0	0	1	8	9
<b>Harassment</b>						
Non-Sexual	43	77	59	145	247	113
Sexual	4	4	6	14	52	14
Medical Examination	1	0	0	0	0	0
Pay (Including Overtime)	0	5	4	8	60	9
Promotion/Non-Selection	26	43	41	55	77	27
<b>Reassignment</b>						
Denied	2	1	6	6	12	1
Directed	9	12	10	8	16	9
Reasonable Accommodation	18	15	14	33	44	18
Reinstatement	0	0	0	1	0	0
Retirement	0	3	2	0	1	0
Termination	23	24	17	180	649	74
Terms/Conditions of Employment	16	6	6	3	76	12
Time and Attendance	18	28	24	27	32	27
Training	12	13	7	17	19	13
Other	3	17	10	43	134	21

Processing Time	Comparative Data					2011
	Previous Fiscal Year Data					
	2006	2007	2008	2009	2010	
Complaints pending during fiscal year						
Average number of days in investigation stage	129	108	119	106	98	85
Average number of days in final action stage	254	97	89	92	125	115
Complaint pending during fiscal year where hearing was requested						
Average number of days in investigation stage	141	122	132	118	103	93
Average number of days in final action stage	13	17	29	15	9	13
Complaint pending during fiscal year where hearing was not requested						
Average number of days in investigation stage	125	117	110	104	96	82
Average number of days in final action stage	313	128	94	121	150	181

Complaints Dismissed by Agency <sup>1</sup>	Comparative Data					2011
	Previous Fiscal Year Data					
	2006	2007	2008	2009	2010	
Total Complaints Dismissed by Agency	25	38	32	74	235	206
Average days pending prior to dismissal	129	52	57	46	67	112
<b>Complaints Withdrawn by Complainants</b>						
Total Complaints Withdrawn by Complainants	13	13	8	12	19	28

<sup>1</sup> 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.

Total Final Actions Finding Discrimination	Comparative Data											
	Previous Fiscal Year Data										2011	
	2006		2007		2008		2009		2010			
	#	%	#	%	#	%	#	%	#	%	#	%
Total Number Findings	1	100	1	100	0	0	3	100	0	100	3	100
Without Hearing	0	0	0	0	0	0	1	33	0	0	3	100
With Hearing	1	100	1	100	0	0	2	67	0	0	0	0

Findings of Discrimination Rendered by Basis	Comparative Data											
	Previous Fiscal Year Data										2011	
	2006		2007		2008		2009		2010			
	#	%	#	%	#	%	#	%	#	%	#	%
<i>Note: Complaints can be filed alleging multiple bases. The sum of the bases may not equal total complaints and findings.</i>												
Total Number Findings	1	100	1	100	0	0	3	100	0	0	3	100
Race	0	0	0	0	0	0	0	0	0	0	0	0
0	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	29	0	0	3	100
Sex	1	25	1	50	0	0	2	29	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	14	0	0	0	0
Disability	1	25	0	0	0	0	2	28	0	0	0	0
Non-EEO	0	0	0	0	0	0	0	0	0	0	0	0
<b>Findings After Hearing</b>	1	100	1	100	0	0	2	67	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	1	25	1	50	0	0	2	33	0	0	3	100
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
<b>Findings Without Hearing</b>	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	0	0
Non-EEO	0	0	0	0	0	0	0	0	0	0	0	0

Findings of Discrimination Rendered by Issue	Comparative Data										2011	
	Previous Fiscal Year Data											
	2006		2007		2008		2009		2010		#	%
	#	%	#	%	#	%	#	%	#	%		
<b>Total Number Findings</b>	1	100	1	100	0	100	3	100	0	100	3	100
Appointment/Hire	0	0	0	0	0	0	0	0	0	0	0	0
Assignment of Duties	0	0	1	20	0	0	0	0	0	0	0	0
Awards	1	33	1	20	0	0	1	20	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	1	33	1	20	0	0	2	40	0	0	3	100
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	34	1	20	0	0	1	20	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	0	0
Terms/Conditions of Employment	0	0	0	0	0	0	0	0	0	0	0	0
Time and Attendance	0	0	1	20	0	0	0	0	0	0	0	0
Training	0	0	0	0	0	0	1	20	0	0	0	0

Other	0	0	0	0	0	0	0	0	0	0	0	0
<b>Findings After Hearing</b>	1	100	1	100	0	0	2	100	0	0	0	0
Appointment/Hire	0	0	0	0	0	0	0	0	0	0	0	0
Assignment of Duties	0	0	1	20	0	0	0	0	0	0	0	0
Awards	1	33	1	20	0	0	1	25	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
Evaluation Appraisal	0	0	0	0	0	0	0	0	0	0	0	0
Examination/Test	1	33	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	1	20	0	0	2	50	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	34	1	20	0	0	1	25	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	0	0
Terms/Conditions of Employment	0	0	0	0	0	0	0	0	0	0	0	0
Time and Attendance	0	0	1	20	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

<b>Findings Without Hearing</b>	0	0	0	0	0	0	1	100	0	0	0	0
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	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	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

<b>Pending Complaints Filed in Previous Fiscal Years by Status</b>	<b>Comparative Data</b>					<b>2011</b>
	<b>Previous Fiscal Year Data</b>					
	<b>2006</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	
Total complaints from previous Fiscal Years	171	119	76	79	230	710
Total Complainants	148	95	68	72	207	670
<b>Number complaints pending</b>						
Investigation	2	1	0	0	18	4
Hearing	42	31	39	42	132	259
Final Action	35	9	11	12	53	233
Appeal with EEOC Office of Federal Operations	36	30	26	24	27	64

<b>Complaint Investigations</b>	<b>Comparative Data</b>					<b>2011</b>
	<b>Previous Fiscal Year Data</b>					
	<b>2006</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	
Pending Complaints Where Investigation Exceeds Required Time Frames	53	0	9	2	74	248

### **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 2011, 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 2011, the Department of Commerce litigated 31 cases in Federal district and appellate courts. Seven of those cases have been resolved, leaving 24 cases pending at the time of this report.

Of the 7 cases resolved, the Department settled none 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

### **Part 5.b: Administrative EEO Complaints**

#### Number of filings:

The large spike in complaint activity for FY 2010 and FY 2011 is attributable to the 2010 Decennial Census. 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.

From FY 2009 through the end of FY 2011, OCR received 1,269 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. At the end of the second quarter of FY 2012, there are approximately 300 Decennial complaints still open, most either at hearing or pending final action.

Non-Decennial-related formal filings rose 7.7 % between FY2010 and FY2011. Filings at the largest bureaus, Census and NOAA, were up slightly, but most of the activity is attributable to the smaller bureaus, most notably the Minority Business Development Administration and the Bureau of Industry and Security. The underlying cause(s) is not readily apparent, but the



increasingly austere budget climate seems to be one factor. Repeat filings declined 35%, from 20 to 13, some of which is due to the end of Decennial operations.

#### Bases of Complaints:

The top five bases of complaints overall during FY 2011 were reprisal (22%), race (19%), age (16%), disability (14%) and sex (12%). Among Decennial complainants, race and sex were tied for first place at 33% each, followed by age (24%), reprisal (21%) and disability (14%). Decennial complaints based on sex were 35% filed by males and 65% filed by females.

#### Issues in Complaints:

The top five issues in complaints in FY 2011 were non-sexual harassment (23%), terminations (15%), appointment/hire (9%), evaluation/appraisal, (8%) and assignment of duties (8%). The Decennial Census accounts for most of the complaints concerning appointment/hire, termination, non-sexual harassment, but complaints based on terminations declined 89% from FY 2010 when we received 649 of them.

Excluding Decennial Census complaints, the top five issues in FY09 were non-sexual harassment (49%), promotion (26%), evaluation/appraisal (19%), termination (18%) and assignment of duties (16%).

#### Findings of Discrimination

The Department had three findings of discrimination in Fiscal Year 2011. All three cases arose at the Census Bureau's National Processing Center in Jeffersonville, Indiana and stemmed from related sets of facts. Two cases were filed by the same complainant and consolidated for hearing. All three cases were decided by the same Administrative Judge (AJ) in the EEOC's Indianapolis District Office. All three complaints involved the same coworkers and supervisors. The Department adopted the AJ's findings that one complainant had been retaliated against for asserting a claim of sexual harassment and that the other complainant, who participated in the investigation of the first complainant's sexual harassment case, was also subjected to retaliation.

### **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:

The U. S. Department of Commerce's training plan encompasses a variety of training delivery platforms as follows:

- a. We offer on-line training through the Commerce Learning Center (CLC). SkillSoft developed the No FEAR Act training, while GeoLearning provides the e-learning delivery platform. The staffs from the Offices of Civil Rights at the U.S. Departments of Commerce and Housing and Urban Development reviewed and edited the No FEAR Act training prior to its release by SkillSoft.
- b. We offer PowerPoint and text versions of the No FEAR Act training which provide a Section 508 compliant alternative format for persons with visual disabilities. The printed versions serve as a back up to the CLC and provide training for employees who do not have access to the CLC, such as some Census field staff.
- c. We developed an in-house version of the No FEAR Act training to train new employees during new employee orientation sessions. These documents are also housed permanently on the Office of Civil Rights website at <http://www.osec.doc.gov/ocr/nofear/newemployeetraining-nofear.html>. This training is available to all employees at any time as initial training or as a refresher or reference.
- d. We provide classroom training to new supervisors on the provisions of the No FEAR Act.

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