

**No FEAR Act**  
**ANNUAL REPORT**  
**FISCAL YEAR 2021**



**U.S. Department of Agriculture**



United States Department of Agriculture

Office of the Secretary  
Washington, D.C. 20250

April 9, 2021

### **USDA Civil Rights Policy Statement**

At USDA, we are recommitting ourselves to the values of equity, inclusion, and equal opportunity for each other and those we serve. As Secretary, I will work with our dedicated team to actively advance racial justice and equity for one another. We will do so by rooting out systemic racism and strengthening civil rights programs while building trust within and outside the Department, ensuring transparency and the equitable delivery of quality programs and services, and holding ourselves accountable toward meeting those goals.

As a Department that operates with excellence in leadership, we must affirm and ensure USDA provides equal employment opportunity for all employees and applicants for employment, regardless of race, religion, color, sex (including pregnancy, gender identity and sexual orientation), national origin, age, genetic information, or disability. All employees have the freedom to compete on a fair and level playing field with equal opportunity for available employment and advancement opportunities. Equal employment opportunity covers all personnel/employment programs, management practices, and decisions, including recruitment/hiring, merit promotion, transfer, reassignments, training and career development, benefits, and separation. These civil rights principles are more than employees' rights by law—they are core values at the USDA.

USDA strives to become a leader in EEO and a model employer. All USDA applicants and employees have the right not only to be free from harassment and discrimination but also to raise an allegation of harassment of discrimination and not fear reprisal. I will continue to enforce zero tolerance toward any form of workplace harassment. Agencies are required to respond to, address, and correct any harassing conduct before it becomes severe or pervasive. USDA will continue to quickly process complaints of harassment, discrimination, and reprisal and provide robust EEO training to all employees.

I will hold all employees and managers accountable for doing their part to ensure all USDA applicants, customers, constituents, and stakeholders are provided equal access to all opportunities, programs, and services available through USDA. Accordingly, all senior leaders, managers, and supervisors must model values-based leadership and appropriate behavior, leading always by example, treating everyone with dignity and respect, and promoting an ethical, equitable, and inclusive culture. All employees must comply with EEO principles as we perform the Department's mission.

A handwritten signature in blue ink that reads "Thomas J. Vilsack".

Thomas J. Vilsack  
Secretary

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## **Annual Reporting Requirements**

The Notification and Federal Employee Anti-discrimination and Retaliation Act of 2002 (No FEAR Act), Public Law No. 107-174, Section 203 mandates that Federal Agencies report certain information for each fiscal year (FY). This report contains the:

- number of complaints filed with USDA alleging discrimination based on race, color, religion, national origin, sex, disability, genetics, age, reprisal, and violations of whistleblower protection laws;
- amount of money USDA has reimbursed to the Judgment Fund in accordance with the No FEAR Act;
- aggregate amount USDA has reimbursed to the Judgment Fund that is attributable to the payment of attorney's fees;
- USDA policies relating to disciplinary actions to be taken against employees who have violated anti-discrimination or whistleblower laws or engaged in prohibited personnel practices;
- number of employees USDA has disciplined for discrimination, retaliation, harassment, or prohibited personnel practices;
- number of cases in Federal Court arising under the anti-discrimination and whistleblower protection laws; and
- statistical data USDA is required to post on its public website.

In addition, the No FEAR Act requires that USDA provide an analysis of the information submitted in the report, including: (1) an examination of trends; (2) causal analysis; (3) practical knowledge gained through experience; and (4) actions planned or taken to improve its complaint or civil rights programs and procedures. USDA is also required to report any ascertainable adjustments made in its budget as a result of its compliance with the reimbursement requirement.

## **Executive Summary**

USDA's FY 2021 No FEAR Act Annual Report is the seventeenth report submitted pursuant to the Notification and Federal Employee Anti-discrimination and Retaliation Act of 2002 (No FEAR Act), Public Law No. 107-174, Section 203. The No FEAR Act Annual Report demonstrates key accomplishments for USDA during FY 2021 to reduce anti-discrimination and retaliation, increase accountability, emphasize training for managers in the management of a diverse workforce, encourage dispute resolution and employee communication skills. During FY 2021 USDA was in a maximum telework posture, as other federal agencies. We will be monitoring complaint activity to assess the impact, if any, of maximum telework.

As demonstrated in the report, key accomplishments in line with the requirements of the No FEAR Act and the Secretary of Agriculture's (Secretary) Civil Rights objectives, consist of the following:

- A decrease of 52 equal employment opportunity (EEO) complaints filed in FY 2021, compared to FY 2020. In addition, the number of filers decreased by 58 in 2021, compared to the previous fiscal year.
- The number of findings of discrimination decreased by six in FY 2021, compared to FY 2020. Data illustrating this trend can be found in Part 1: Table 7, Final Agency Actions with a finding of discrimination.
- A review of disciplinary actions taken against employees who violated Federal anti-discrimination laws and whistleblower protection statutes shows that in FY 2021 there was one disciplinary action (See Part III: Table 9 Disciplinary Actions) taken against an employee, compared to 14 in FY 2020. The Office of Human Resource Management (OHRM) reported the decrease in disciplinary actions between FY 2021 and FY 2020 resulted from the continuation of USDA's Equal Opportunity Accountability initiative, which has strengthened procedures that measure and evaluate both organizational and individual accountability in providing fair and equitable treatment for all USDA employees.

In addition, during FY 2021 USDA, through its Office of the Assistant Secretary for Civil Rights (OASCR), implemented the following initiatives to reduce the number of EEO complaints:

- Reduced processing time in employment complaints of discrimination that are now within the statutory timeframes in FYs 2021. Specifically, 296 formal complaints of discrimination were processed at the intake stage with an average processing time of 31 days for acceptance or dismissal determinations. Investigations averaged 154 days and final agency decisions without a hearing averaged 54 days in FY21
- Processed 281 investigations, a significant decrease as compared to 393 investigations processed in FY 2020.
- Continued monitoring the sufficiency of settlement agreements as well as compliance efforts across the Department by providing oversight and guidance to 16 USDA agencies.

- Continued managing the Civil Rights Enterprise System to meet the annual assessment and authorization requirements established by USDA’s Office of Chief Information Officer.
- Developed and implemented Reasonable Accommodation (RA) training entitled, *The Nuts and Bolts of Reasonable Accommodation*. The training was designated mandatory civil rights training for all 100,000+ USDA employees, and covered current RA laws, the USDA RA Departmental Regulation, and related policies and procedures for obtaining a RA.
- Developed a USDA Civil Rights Mobile Application (app) for Apple and Android devices which provides USDA employees and customers information and resources about Federal civil rights. This Civil Rights App is the first of its kind in the Federal Government and reaffirms the Biden-Harris Administration’s commitment to ensure civil rights for all Americans. The app can be automatically uploaded on USDA employees’ mobile devices and is available to the public in the App Store or Google Play Store. The app brings to users’ fingertips civil rights news, frequently asked questions, a video library of short films, easy access to USDA and other Federal offices specializing in Federal civil rights. The app provides information about How to File a USDA Program or Equal Employment Opportunity Complaint, it includes links to USDA civil rights contacts and resources for accessibility and assistive technologies, reasonable accommodation, the USDA ethics app and more. It links to the USDA Technology & Accessible Resources Give Employment Today (TARGET) Center, where USDA employees with disabilities are provided assistive technologies and services and access to USDA Reasonable Accommodation Coordinators. The app also features a feedback form to capture input on ways to improve its content and accessibility.
- Developed “The OASCR Times Newsletter” which is a quarterly publication of salient stories about civil rights, past and present, while incorporating articles highlighting OASCR leadership and team members. The newsletter covers recent developments in civil rights, OASCR’s Special Emphasis Programs, monthly observances, book reviews regarding civil rights, and is filled with guideposts beckoning the reader to explore and learn more about the covered topic.

**PART I:  
USDA Formal EEO Complaints  
for  
Fiscal Years 2020 – 2021**

## Section A— Number of Formal EEO Complaints and Filers at USDA

### Introduction

This section contains comparative information regarding the number of formal EEO complaints filed and the number of filers for FYs 2020 and 2021.

### Summary of Data

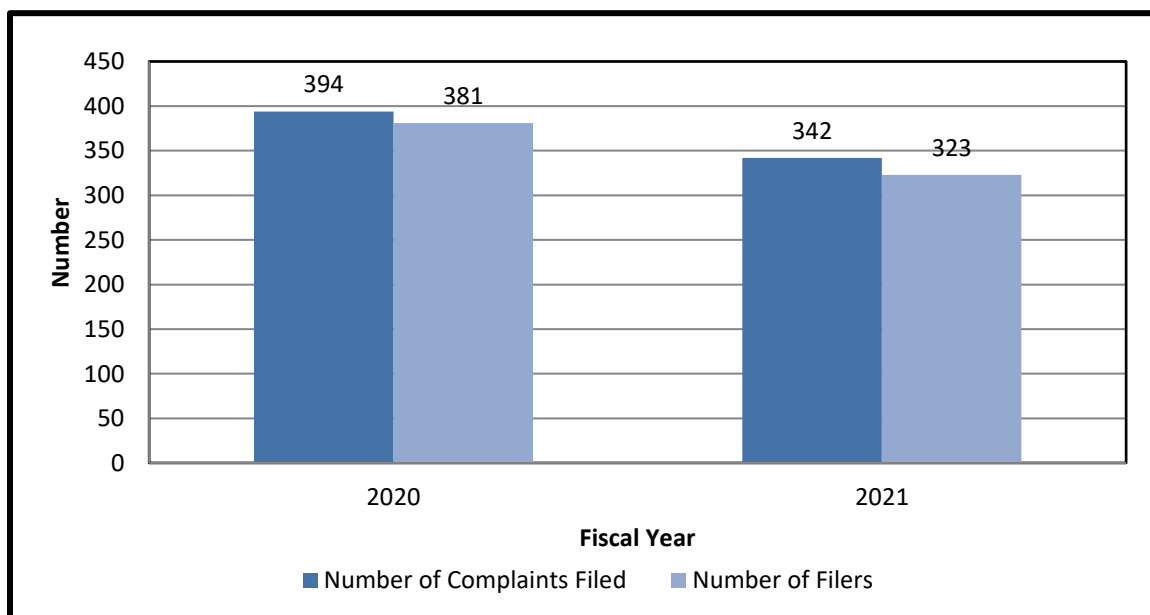
Table 1 below indicates the number of formal EEO complaints filed with USDA by fiscal year and the number of individuals who filed complaints. It shows a decrease in the number of complaints filed and the number of filers over the prior year (See Graph 1).

In FY 2021, 342 complaints were filed, compared to 394 in FY 2020. This represents a 13 percent decrease in complaints filed. Additionally, the number of filers in FY 2021 was 323, compared to 381 in FY 2020. This represents a 15 percent decrease in the number of filers.

**Table 1**  
**Number of Formal EEO Complaints and Number of Filers at USDA**

Fiscal Years	Number of Complaints Filed	Number of Filers
2020	394	381
2021	342	323

**Graph 1**  
**Formal EEO Complaints and Filers at USDA**





## **Section B—Most Frequently Cited Bases in Formal EEO Complaints at USDA**

### **Introduction**

This section contains information on the most frequently cited bases in formal EEO complaints for FYs 2020 and 2021. The basis of the complaint is the protected characteristic the complainant alleges which formed the motivation for the discriminatory conduct. The bases protected by EEO statutes are race, color, religion, national origin, sex, disability, genetics, age, and retaliation (for participating in the EEO complaint process or for opposing practices made illegal under the EEO laws). A complaint brought under the Equal Pay Act of 1963, as amended, is a complaint based on sex.

### **Summary of Data**

Table 2 provides data on all bases alleged in formal EEO complaints filed with USDA. Of all bases, the four most frequently cited in formal EEO complaints filed in FY 2021 are: (1) retaliation; (2) race; (3) sex; and (4) disability. In FY 2020, the four most frequently cited bases were: (1) retaliation; (2) race; (3) sex; and (4) age. These four bases are illustrated in Graph 2, which shows the two-year trend.

### **Complaints Alleging Retaliation**

Retaliation was the most frequently alleged basis in formal EEO complaints at USDA for both FYs 2021 and 2020. In FY 2021, 47 percent of complaints cited retaliation as a basis, compared to 57 percent in FY 2020. This represents a 10 percent reduction in complaints alleging retaliation as a basis.

### **Complaints Alleging Race Discrimination**

Race was the second most frequently alleged basis in formal EEO complaints at USDA in FY 2021. In FY 2021, 41 percent of complaints cited race as a basis, compared to 43 percent in FY 2020. This represents a two percent reduction in complaint alleging race as a basis.

### **Complaints Alleging Sex Discrimination**

Sex was the third most frequently alleged basis in formal EEO complaints at USDA in FY 2021. In FY 2021, 32 percent of complaints cited sex as a basis, compared to 43 percent in FY 2020. This represents a 11 percent reduction in complaint alleging sex as a basis.

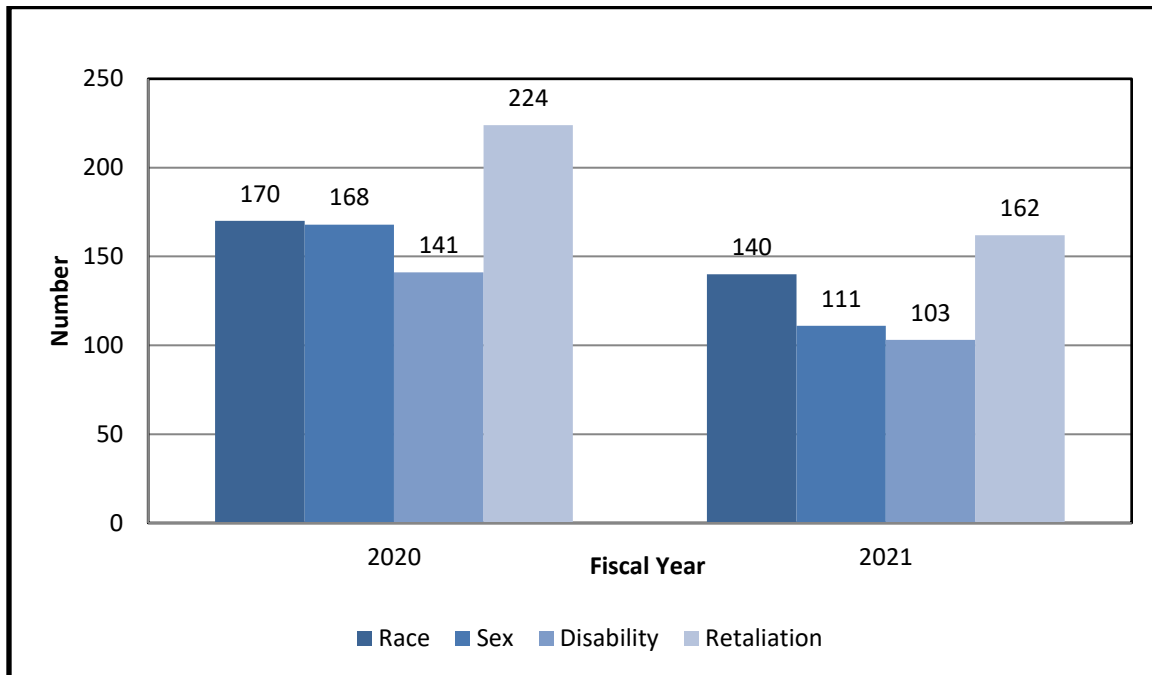
### **Complaints Alleging Disability Discrimination**

Disability replaced Age as the fourth most frequently alleged basis in formal EEO complaints at USDA for FY 2021. In FY 2021, 30 percent of complaints cited Disability as a basis, compared to 36 percent in FY 2020. This represents a six percent reduction in complaint alleging disability as a basis. Of those 103 claims that cited disability as a basis, 68 raised issues of reasonable accommodation.

**Table 2**  
**Most Frequently Cited EEO Bases in Formal EEO Complaints at USDA**

Frequency of EEO Bases in Formal EEO Complaints									
Year	Race	Color	Religion	Sex	National Origin	Disability	Age	Retaliation	Other <sup>1</sup>
2020	170	59	18	168	46	141	144	224	38
2021	142	52	16	111	41	103	96	162	29

**Graph 2**  
**Most Frequently Cited EEO Bases**



<sup>1</sup> Other USDA protected bases include: Non-EEO. Additionally, the basis of sex includes gender identity and expression.

## **Section C—Most Frequently Cited Issues in Formal EEO Complaints at USDA**

### **Introduction**

This section contains information regarding the most frequently cited issues in formal EEO complaints for FYs 2020 and 2021. The No FEAR Act requires Federal Agencies to post data regarding the nature of the issues raised in EEO complaints. The issue of a complaint is the specific subject matter about which the individual is complaining or the alleged discriminatory incident for which the individual is seeking redress. Table 3 contains a list of issues most commonly raised in complaints. The “Other” category captures all issues not specifically listed.

### **Summary of Data**

Table 3 provides the most frequently cited issues in formal EEO complaints filed with USDA. The three EEO issues most frequently cited in FY 2021 were: (1) Harassment; (2) Promotion/Non-Selection; and (3) Disciplinary Action. In FY 2020, the three EEO issues most frequently cited were: (1) Harassment; (2) Disciplinary Action; and (3) Promotion/Non-Selection. Graph 3 shows the trends for these three issues over the two-year reporting period.

Harassment was the most frequently cited issue in formal EEO cases in FY 2021 and FY 2020. In FY 2021, 151 filings of complaints cited harassment as an issue, compared to 214 filings in FY 2020, indicating a 29 percent decrease.

Promotion/Non-selection swapped places with Disciplinary Action<sup>2</sup> as the second most frequently cited issue in formal EEO cases in FY 2021. A total of 68 filings of complaints cited Promotion/Non-selection as an issue in FY 2021, compared to 82 complaints in FY 2020, a 17 percent decrease.

Disciplinary Action was the third most frequently cited issue in formal EEO cases in FY 2021. A total of 40 filings of complaints cited Disciplinary Action as an issue in FY 2021, compared to 89 filings in FY 2020, a 55 percent decrease.

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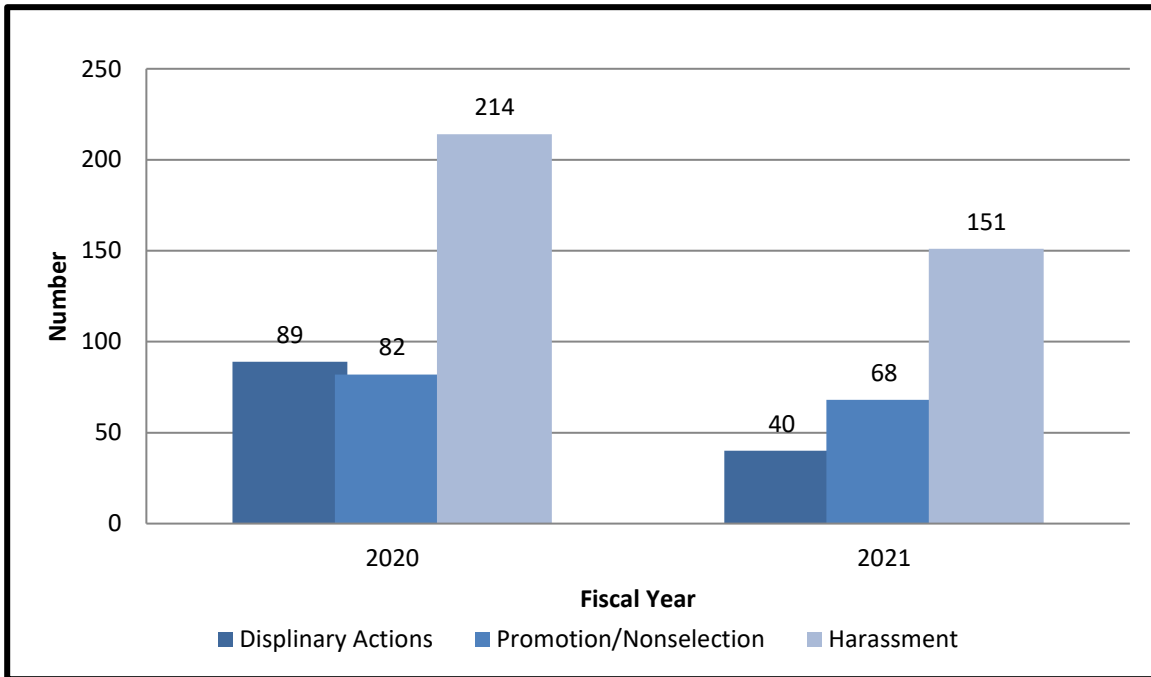
<sup>2</sup> Disciplinary Action includes demotion, reprimand, suspension, removal and other.

**Table 3**

<b>EEO Issues in Formal EEO Complaints</b>																					
<b>Year</b>	<b>Appointment/Hire</b>	<b>Assignment of Duties</b>	<b>Awards</b>	<b>Conversions to Full Time</b>	<b>Disciplinary Action</b>	<b>Duty Hours</b>	<b>Performance Evaluation/Appraisal</b>	<b>Examination/Test</b>	<b>Harassment</b>	<b>Medical Examination</b>	<b>Pay/Overtime</b>	<b>Promotion /Non-Selection</b>	<b>Reassignment</b>	<b>Reasonable Accommodation Disability</b>	<b>Reinstatement</b>	<b>Retirement</b>	<b>Termination</b>	<b>Terms and Conditions of Employment</b>	<b>Time and Attendance</b>	<b>Training</b>	<b>*Other</b>
<b>2020</b>	31	58	7	0	89	12	76	1	214	0	20	82	24	56	4	5	24	58	42	71	16
<b>2021</b>	26	34	7	0	40	5	44	2	151	0	4	68	30	35	1	3	28	56	27	19	3

\*Other USDA protected issues include Religious Accommodation, Sex Stereotyping, Telework

**Graph 3**  
**EEO Issues in Formal EEO Complaints**



## Section D—EEO Processing Stages

### Introduction

This section contains data regarding selected stages and associated processing times for formal EEO complaints processed during FYs 2020 and 2021. The formal EEO complaint process has various stages. Not all formal complaints complete all processing stages. These stages are: (1) Investigation (which includes Letter of Acceptance); (2) Final Agency Action with EEOC Hearing; (3) Final Agency Action without EEOC Hearing; and (4) Dismissal. Formal EEO complaints may be withdrawn or settled at any stage and may be dismissed at various stages.

### Summary of Data

The following is an analysis of data for the three EEO processing stages. This section contains data on: (1) the average number of days for completion of each stage; (2) pending complaints at various stages of the EEO process; and (3) pending formal complaints exceeding the 180-day investigation requirement.

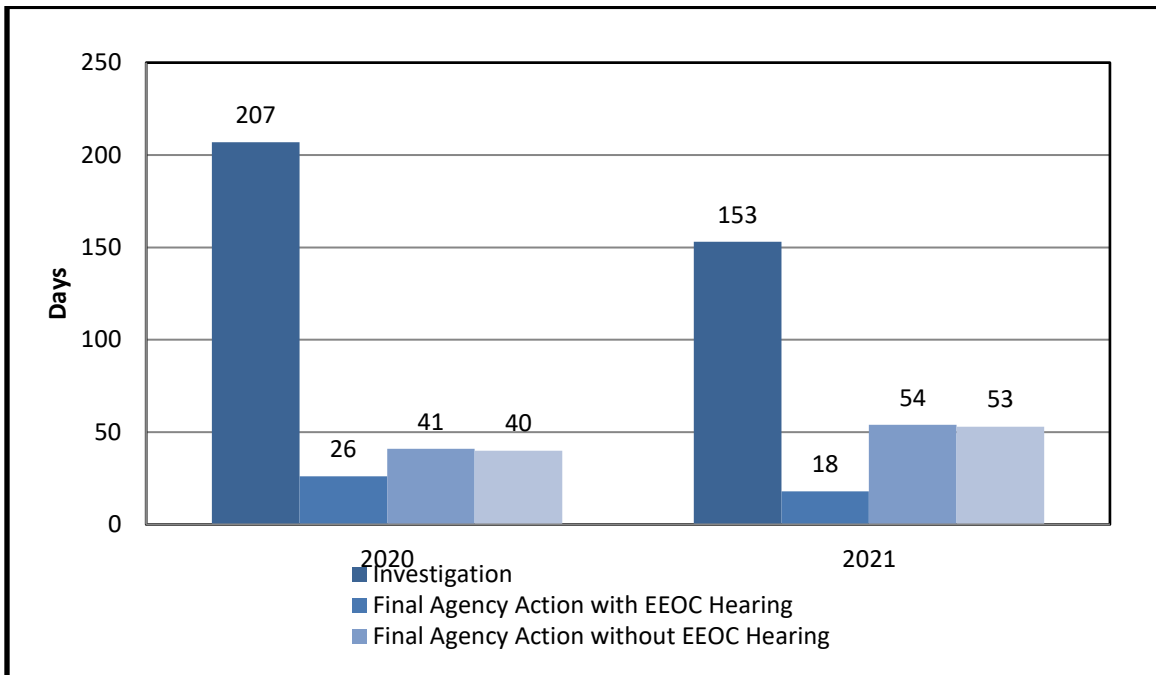
#### **(1) Average Number of Days for Completion of EEO Stages**

Table 4 below provides the average number of days for processing a formal EEO complaint at each stage. The data revealed a downward trend (as shown in Graph 4) in the average number of days in Investigation and for a Final Agency Action with EEOC hearing. There was an upward trend in the average number of days in the Final Agency Action without an EEOC hearing and dismissals.

**Table 4**  
**Average Number of Days for Completion of Each EEO Stage**

<b>Year</b>	<b>Investigation (Includes accept/dismissal and investigation)</b>	<b>Final Agency Action Post-EEOC Decision</b>	<b>Final Agency Action without EEOC Hearing</b>	<b>Procedural Dismissals (pending prior to dismissal)</b>
<b>2020</b>	207	26	41	40
<b>2021</b>	158	18	54	53

**Graph 4  
The Number of Days for Completion of Each EEO Stage**



**(2) Pending Complaints at Various Stages**

Table 5 below illustrates the number of pending EEO complaints in FYs 2020 and 2021 at each stage of the EEO process.

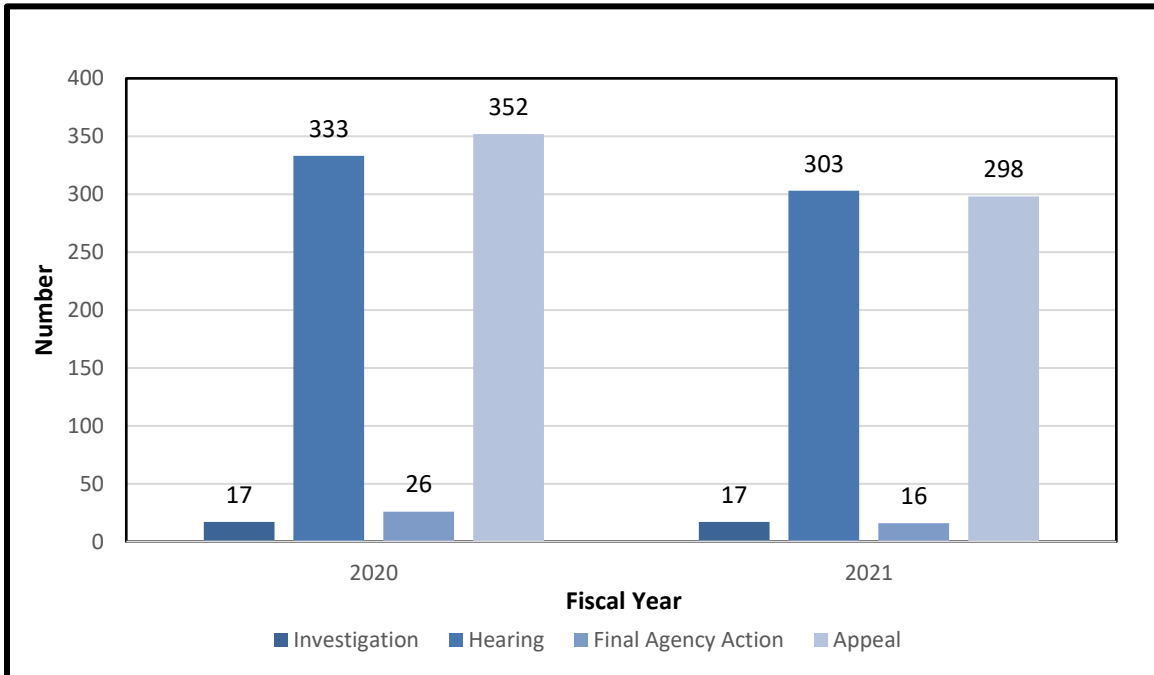
At the conclusion of each fiscal year, the number of pending investigations remained the same. However, the number of EEOC hearings, USDA final agency actions, and the number of appeals pending at the EEOC decreased from the number filed in FY 2020.

**Table 5  
Pending EEO Formal Complaints by Stage**

<b>Fiscal Year</b>	<b>Investigation</b>	<b>Hearing</b>	<b>Final Agency Action</b>	<b>Appeal</b>
<b>2020</b>	17	333	26	352
<b>2021</b>	17	303	16	298

Graph 5 shows a downward trend in pending complaints in the Hearing, Final Agency Action and Appeal stages. In addition, Graph 5 shows no change in Investigation stages for FYs 2020 and 2021.

**Graph 5  
Pending EEO Formal Complaints by Stage**



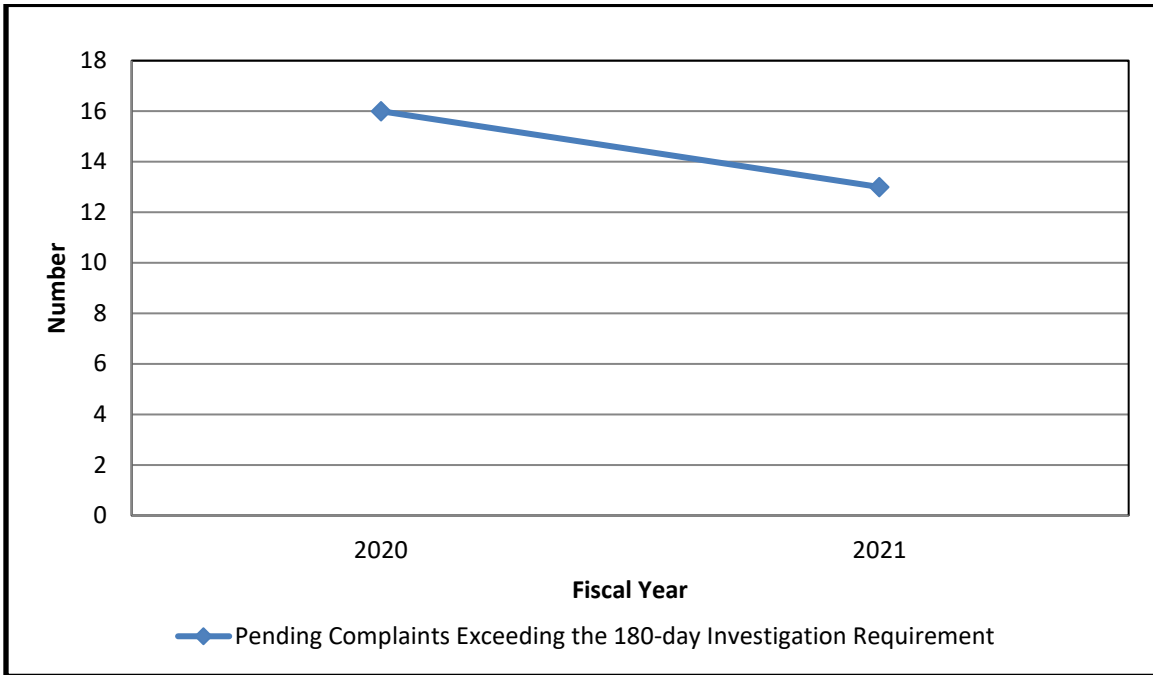
**(3) Formal Complaints Exceeding the 180-Day Requirement for Investigations**

Table 6 and Graph 6 show no change in complaints in FY 2021 for formal complaints that exceeded the 180-day investigation requirement from FY 2020.

**Table 6  
Formal EEO Complaints Exceeding the 180-Day Requirement for Investigations**

<b>Fiscal Year</b>	<b>Number</b>
<b>2020</b>	16
<b>2021</b>	13

**Graph 6**  
**Formal EEO Complaints Exceeding the 180-Day Requirement for Investigations**





## Section E—Final Agency Actions with a Finding of Discrimination

### Introduction

Final Agency Actions involving a finding of discrimination may be issued on the record or following an EEOC Administrative Hearing. The final actions involving a finding of discrimination may include complaints with a variety of bases and issues. The No FEAR Act requires Federal Agencies to post the total number of final actions involving a finding of discrimination, along with the issues and bases for those complaints.

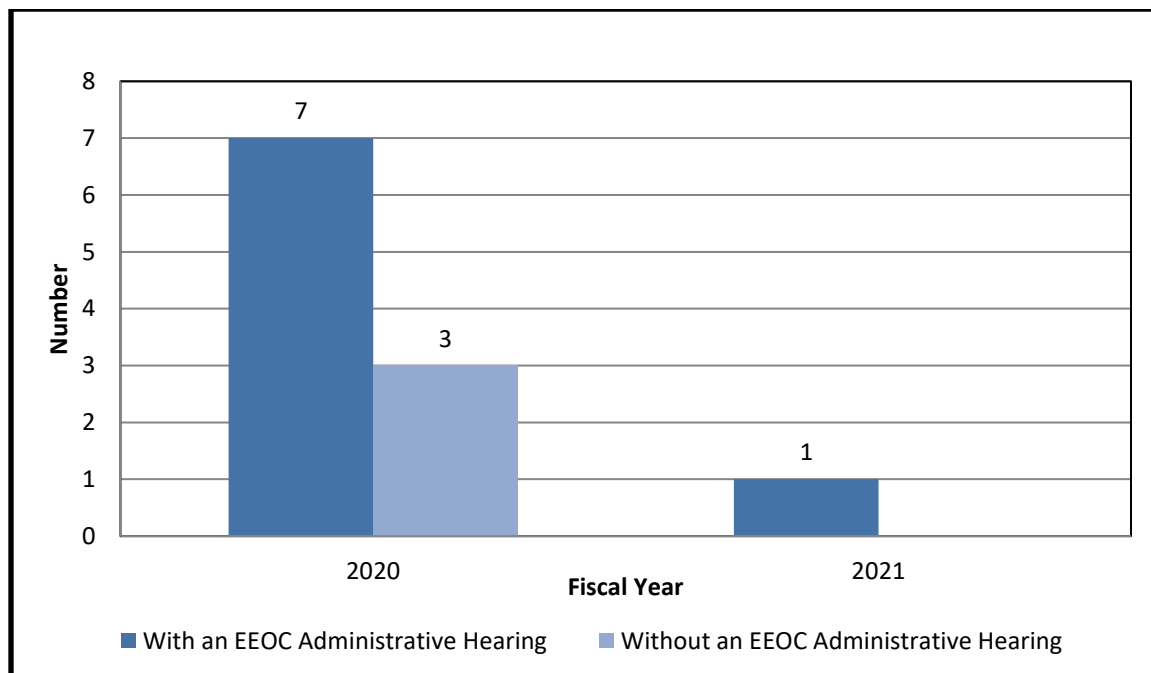
### Summary of Data

Table 7 and Graph 7 show that from FY 2020 to FY 2021, the number of findings of discrimination issued with an EEOC Administrative Hearing decreased by six, and the number of findings without an EEOC Administrative Hearing decreased to zero during FY 2021.

**Table 7**  
**Final Agency Actions with a Finding of Discrimination**

<b>Fiscal Year</b>	<b>With an EEOC Administrative Hearing</b>	<b>Without an EEOC Administrative Hearing</b>
2020	7	3
2021	1	0

**Graph 7**  
**Final Agency Actions with a Finding of Discrimination**



## Section F—Analysis, Experience, and Actions

### Introduction

The No FEAR Act requires: (1) an examination of trends; (2) a causal analysis; (3) practical knowledge gained through experience; and (4) any actions planned or taken to improve USDA's complaint or civil rights programs. The prior sections (Sections A-E) provided an examination of trends. Described below are various observations related to the remaining three areas:

#### (1) Causal Analysis

USDA and its sub-component agencies identified and reported in FY 2021 the following factors impacting the filing of formal EEO complaints.

- The Agricultural Marketing Service (AMS) reported an 18 percent decrease in the number of complaints for FY 2021. Specifically, 18 complaints were filed in FY 2021, compared to 22 in FY 2020. AMS attributes the decrease in the number of complaints to the CR/EEO training sessions and the Civil Rights Program's proactive approach in resolving complaints at the earliest stages.
- The Animal and Plant Health Inspection Service (APHIS) reported an 18 percent increase in the number of complaints filed in FY 2021. Specifically, 39 complaints were filed in FY 2021, compared to 33 in FY 2020. APHIS attributes the increase to Coronavirus global outbreak, as well as employee concerns regarding Emergency Leave and Telework eligible positions. Managers and employees experienced challenges in adapting to the virtual setting. APHIS continues to actively engage employees, managers, and supervisors in addressing workplace conflicts at the earliest stages.
- The Agricultural Research Service (ARS) reported a 15 percent increase in the number of complaints filed in FY 2021. Specifically, 15 complaints were filed in FY 2021, compared to 13 in FY 2020. ARS attributes the increase to supervisors and managers different management styles, lack of communication and generational perceptions. In addition, ARS attributes the increase to filings based on reprisal, race, and disability.
- The Conflict Complaints Division (CCD), which processes conflict cases<sup>3</sup>, reported a decrease of 30 percent in the number of complaints filed in FY 2021. Specifically, 39 complaints were filed in FY 2021, compared to 56 in FY 2020. CCD attributes the decrease to the Coronavirus global outbreak and the Departments maximum telework policy instituted since March of 2020. In addition, CCD attributes the decrease to a reduced number of compliant of filings based on sex, reprisal, and disability and harassment/non-sexual and promotion/non-selection claims.

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<sup>3</sup> Conflict case(s) is an EEO complaint involving facts and/or allegations that are determined to pose an actual, perceived, and or potential conflict of interest between a Responsible Management Official or complainant's position or personal interest, and USDA's responsibility to administer a fair and impartial investigative process and resolution of complaints.

- Economic Research Services (ERS) reported no change in the number of complaints filed in FY 2021. Specifically, one complaint was filed in FYs 2021 and 2020. ERS attributes the static number in complaints to the timely Civil Rights (CR) and EEO supplemental training offered to managers, supervisors, and employees on conflict management.
- The Foreign Agricultural Service (FAS) reported a 18 percent decrease in the number of complaints filed in FY 2021. Specifically, 9 complaints were filed in FY 2021, compared to 11 in FY 2020<sup>4</sup>. FAS attributes the decrease in complaints to continued training and educating employees on EEO issues, as well as adhering to USDA's civil rights policy and applicable requirements.
- The Food and Nutrition Service (FNS) reported a 53 percent decrease in complaints filed. Specifically, 9 complaints were filed in FY 2021, compared to 19 in FY 2020. FNS attributes the decrease in complaints filed to the proactive approach of offering various online and virtual trainings to all employees on related EEO topics, such as Anti-Harassment and the Conflict Prevention and Resolution.
- The Farm Production and Conservation (FPAC) – Business Center (BC) reported a 33 percent decrease in the number of complaints filed in FY 2021. Specifically, four complaints were filed in FY 2021, compared to six in FY 2020. The BC attributes the decrease in the number of complaints to FPAC's continued maximizing synergy in leadership as a result of their reorganization and streamlining case management within its Civil Rights and EEO Division.
- The FPAC – Farm Service Agency (FSA) reported a 29 percent increase in the number of formal complaints in FY 2021. Specifically, 22 complaints were filed in FY 2021, compared to 17 in FY 2020. FSA attributes the increase in the number of complaints to FPAC's efforts in educating employees on EEO civil rights policies and their rights to participate in the EEO process without reprisal or retaliation.
- The FPAC – Natural Resources Conservation Service (NRCS) reported a 23 percent increase in the number of complaints filed in FY 2021. Specifically, 21 complaints were filed in FY 2021, compared to 17 in FY 2020. NRCS attributes the increase in the complaint numbers to FPAC's efforts in educating employees on EEO civil rights policies and their rights to participate in the EEO process without reprisal or retaliation.
- The FPAC – Risk Management Agency (RMA) reported no change in the number of complaints filed in FY 2021. Specifically, one complaint was filed in FYs 2021 and 2020. RMA attributes the static number in complaints to the CR and EEO supplemental training on conflict management, unconscious bias, diversity, and inclusion.
- The Forest Service (FS) reported an increase of one complaint filed in FY 2021. Specifically, 71 complaints were filed in FY 2021, compared to 70 complaints file in FY 2020. FS attributes the increase in the number of complaints to the upsurge of multiple

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<sup>4</sup> Due to data reconciliation during FY 2021 FAS received 11 complaints in FY 2020 as opposed to 20 complaints reported in FY 2020 No FEAR Report

fliers. In FY 2020, there were three multiple filers compared to five in FY 2021. FS continues to work with employees and management to support proactive intervention and early resolution to conflicts.

- The Food Safety and Inspection Service (FSIS) reported a five percent decrease in the number of formal complaints filed in FY 2021. Specifically, 55 complaints filed in FY 2021, compared to 58 filed in FY 2020. FSIS attributes the decrease in the complaints to the actions and or activities undertaken during FY 2020, i.e., CR/EEO training, conducting Title VII compliance reviews, continued marketing of alternative dispute resolution (ADR) for complaint resolution at the lowest level, and the FSIS reorganization.
- The National Agricultural Statistics Service (NASS) reported an increase of three complaints filed in FY 2021. Specifically, four complaints were filed in FY 2021, compared to one in FY 2020. NASS attributes the increase in complaints to one employee filing multiple complaints. NASS continues to work with employees and management to encourage and support proactive intervention and early resolution to conflicts.
- The National Institute of Food and Agriculture (NIFA) reported no complaints filed in FY's 2020 and 2021. NIFA attributes the static number of complaints to emphasis on CR training, utilization of ADR, and early proactive prevention of discrimination in the workplace.
- The Office of the Chief Financial Officer (OCFO) reported a 37 percent decrease in the number of complaints filed in FY 2021. Specifically, 17 complaints were filed in FY 2021, compared to 27 in FY 2020. OCFO attributes the decrease to allowing maximum participation of employees to telework during the COVID-19 Pandemic and offering other avenues to address concerns at the lowest possible levels.
- The Rural Development (RD) reported a 25 percent increase in complaints filed in FY 2021. Specifically, 20 complaints were filed in FY 2021, compared to 16 in FY 2020. RD attributes the increase in the number of complaints filed to the Agency realignments and reorganizations. These shifts caused impacts on hundreds of employees and changed their reporting structures resulting in an increase in complaints.

## **(2) Experience Gained by USDA in the Processing of Formal Complaints**

USDA, including all its Mission Areas and agencies, has learned the following lessons from its experience in processing and resolving formal EEO complaints by:

- issuing mandatory training to all employees and ensuring the training met the EEO competency requirements;
- conducting on-going Title VII compliance reviews which identify recommendations on how to address issues at the early stages;

- holding managers, supervisors, and employees accountable for engaging in discriminatory practices to prevent such conduct in the future;
- collaborating with Human Resources, Mission Areas, and staff offices to ensure consistency in recruitment, hiring, retention, development, and the advancement for all employees;
- encouraging managers, supervisors, and employees to actively communicate with external customers to diminish the complaint data trends;
- posting the new Anti-Harassment Policy Statement and reaffirming the Secretary's EEO policy to ensure relevant information is disseminated to all employees;
- analyzing complaint data collected from compliance reviews conducted in various regions like the Northeast, Western Regional and National Office, facilitates informed decisions that are based on the findings;
- increasing communication to all employees in advance of policy and/or organizational changes to deter the anxiety resulting from the changes;
- establishing a new Title VII Equal Employee Complaints Processing and Resolution Branch, which is committed to a revitalized focus on case management and customer service;
- remaining committed to educating managers, supervisors, and employees on EEO and Civil Rights laws in its efforts to avoid harassment and discriminatory practices;
- allowing maximum participation of all employees for employees to telework; and
- strengthening the pre-complaint process to accurately identify and process allegations in accordance with the EEO laws.

### **(3) Past and Future Actions by USDA Relating to EEO Complaints Processing**

USDA has taken several actions that have proven effective in improving its formal EEO complaint processing. These past actions include the following:

- continued to reinforce the USDA's commitment to ensure a harassment-free work environment;
- developed a plan to provide Diversity and Inclusion Training to the workforce as a foundation for meaningful change in current practices;
- determined the training needs of all employees by assessing views on anti-harassment, and workforce diversity;

- remained committed to educating managers, supervisors, and employees in EEO and Civil Rights laws in an effort to avoid harassment and discriminatory practices;
- strengthened communications, identified trends, and evaluated the possibility of early resolution for complaints;
- maximized the results of quarterly EEO compliance reviews to identify trends and potential civil rights violations;
- monitored recent reorganizations to ensure program offices provided the identified resources needed to aid employees in the transition;
- required employees to complete Civil Rights and EEO training which included guidance on discrimination, retaliation, harassment and instituted appropriate resolutions;
- published information on upcoming leadership plans for employees through intranet accessibility;
- provided training to senior leaders, managers, and supervisors on their role in the complaint process. Training was communicated through handouts and presentations at Senior Leadership meetings;
- hosted supplemental training sessions for managers and employees to include such topics as Using ADR Techniques, Understanding Harassment, Unconscious Bias, Reasonable Accommodation (RA), and Hostile Environment Claims;
- created a new division which deals with “Customer and Employee Engagement” to listen, learn, and measure what matters to customers and employees;
- provided RA training to new supervisors, frontline supervisors, and various offices within the Agency to reinforce understanding of RA procedures; and
- reaffirmed and disseminated the Secretary's EEO policy statement and Anti-harassment Policy Statement to all employees and managers.

USDA is also introducing new initiatives to reduce complaints in future years. USDA plans to take the following actions:

- hold quarterly “Lunch and Learning” sessions on topics that include Employee Resource Groups, the Veterans Employee Organization, Equality USDA (LGBTQ+), and the Dynamic Employees Beyond Disabilities group;
- create and sustain a safe, resilient, and respectful working environment through a national Work Environment and Performance Office and progressive Civil Rights initiatives;
- provide refresher training for resolving officials in order to accomplish OneUSDA’s goal

of resolving complaints at the lowest level in both the informal and formal EEO complaints stages;

- conduct interactive EEO training sessions for new supervisors through the Fundamentals of Human Resource Management training;
- encourage supervisors and managers to continue to communicate with employees during return to work, reorganizations, and structural changes which may help reduce inherent anxiety in such situations;
- continue to work closely with HR to ensure that supervisors and managers are trained on ADA compliance obligations and the interactive process regarding possible requests for reasonable accommodations for eligible employees;
- continue to review the best practices in formal EEO complaint tracking and to provide conflict micro-aggression, and unconscious bias courses to managers, supervisors, and employees which will contribute to a better work environment;
- enhance its RA program to improve efficiency and to ensure compliance with the EEOC's requirements; and
- enforce compliance review assessment tools to determine whether new measures are required to effectively assess the Agency's EEO Program.

**PART II:  
USDA Reimbursement to  
Judgment Fund for  
Fiscal Year 2021**



## USDA Reimbursement to Judgment Fund for FY 2021

### Introduction

Table 8 below provides information on reimbursements by USDA to the U.S. Department of Treasury's Judgment Fund for monies associated with FY 2020 judgments, awards, or settlements under the statutes addressed in the No FEAR Act.

**Table 8**  
**USDA Reimbursement to Judgment Fund for FY 2021 Settlements**

<b>USDA Reimbursement to Judgment Fund for FY 2021 Settlements</b>		
<b>Case</b>	<b>Total Amount</b>	<b>Attorney's Fees</b>
<b>1</b>	\$75,000.00	-
<b>2</b>	\$20,000.00	-
		-
<b>Total</b>	<b>\$95,000.00</b>	<b>\$0</b>

### Summary

In FY 2021, USDA reimbursed \$95,000.00 to the Judgment Fund, of which \$0 was identified as payment of attorney's fees.

**PART III:**  
**USDA Disciplinary Actions and Reports**  
**for Fiscal Years 2020 – 2021**

**USDA Disciplinary Actions and Reports for  
Fiscal Years 2020–2021**

**Summary of Data**

**PART 1:** Table 9 below contains the number of disciplinary actions taken against employees who were found to have committed prohibited acts of discrimination, retaliation, harassment, or prohibited personnel practices (including those acts discovered in conjunction with investigations of whistleblower protection or civil rights complaints).

**Table 9  
Administrative Disciplinary Actions<sup>5</sup>**

TYPE OF ACTION	FY 2020						FY 2021					
	DISC.	RET.	HAR.	PPP	WBP	TOTAL	DISC.	RET.	HAR.	PPP	WBP	TOTAL
REMOVAL	0	0	0	0	0	0	0	0	0	0	0	0
15 DAY OR MORE	0	0	0	0	0	0	0	0	0	0	0	0
14 DAY OR LESS	1	2	5	0	1	9	0	0	0	0	0	0
REDUCTION IN GRADE	0	0	0	0	0	0	0	0	0	0	0	0
REDUCTION IN PAY	0	0	0	0	0	0	0	0	0	0	0	0
LOR	1	0	4	0	0	5	1	0	0	0	0	0
TOTAL DISCIPLINE	2	2	9	0	1	14	1	0	0	0	0	1

**PART 2:** Table 10 below illustrates the number of complaints referred to the Office of Special Counsel (OSC) Whistleblower cases.

**Table 10  
Office Of Special Counsel Cases**

CATEGORIES OF CASES	FY 2020	FY 2021	TOTAL
OSC Whistleblower Case	18	15	15
OSC Whistleblower Case Closed	0	0	

\*Data Source: Office of Inspector General

<sup>5</sup> Table Abbreviations: Disc. = Discrimination; Ret. = Retaliation; Har. = Harassment; PPP = Prohibited Personnel Practice; WBP = Whistleblower Protection Act; and LOR = Letter of Reprimand.

**PART IV:  
USDA Federal Court Litigation Statistics  
for FY 2021**

Tables 11, 12, and 13 below provide composite data for cases in Federal Court pending or resolved in FY 2020 and arising under the anti-discrimination and whistleblower protection laws.

**Table 11  
Federal Cases Pending in FY 2021**

Pending District Court Cases	33
Pending Appellate Court Cases	1
New Cases Filed in District Court	11

Note: Cases pending at any time during the year, including those filed and those in pendency during the year.

**Table 12  
Pending Cases**

	<b>29 U.S.C. §206(d)</b>	<b>29 U.S.C. §631</b>	<b>29 U.S.C. §633a</b>	<b>29 U.S.C. §791</b>	<b>42 U.S.C. §2000e-16</b>
Disposed of in FY 2021	0	4	4	6	10
Pending at End of FY 2021	1	8	8	16	29

**Table 13  
Disposition of Cases  
(Including Dismissals)**

	<b>29 U.S.C. §206(d)</b>	<b>29 U.S.C. §631</b>	<b>29 U.S.C. §633a</b>	<b>29 U.S.C. §791</b>	<b>42 U.S.C. §2000e-16</b>
Settlements	0	1	1	4	5
Withdrawals	0	0	0	0	0
Final Judgment for Complainant	0	0	0	0	0
Final Judgment for Agency	0	3	3	2	5
Total Cases disposed of in FY 2021	0	0	0	0	13

**Appendix A**  
**Equal Employment Opportunity Data**  
**Posted Pursuant to the No FEAR Act**

## Equal Employment Opportunity Data Posted Pursuant to the No FEAR Act

FY 2020 for period ending September 30, 2021

Complaint Activity					
	2017	2018	2019	2020	2021
Number of Complaints Filed	561	522	436	394	342
Number of Complainants	531	497	414	381	323
Repeat Filers	24	21	18	11	17
Complaints by Basis <sup>6</sup>					
	2017	2018	2019	2020	2021
<i>Note: Complaints can be filed alleging multiple bases. The sum of the bases may not equal total complaints filed.</i>					
Race	243	216	195	170	142
Color	75	85	95	59	52
Religion	35	28	35	18	16
Reprisal	311	315	258	224	162
Sex	216	229	171	168	111
PDA	2	2	2	3	3
National Origin	67	68	58	46	41

<sup>6</sup> **Cases With Multiple Bases Alleged**

1. Of the cases handled by OGC involving the Federal Antidiscrimination Laws covered by the No FEAR Act, approximately 76.5 percent of those cases involve claims of discrimination on multiple bases (e.g., Sex, Race) and under multiple statutes (e.g., Title VII, ADEA).
2. Of the cases handled by OGC involving the Federal Antidiscrimination Laws covered by the No FEAR Act, approximately 53.1 percent of those cases also included a claim of reprisal/retaliation.

Equal Pay Act	8	13	7	6	6	
Age	207	155	157	144	96	
Disability	185	195	170	141	103	
Genetics	1	0	3	3	2	
Non-EEO	55	40	37	38	29	
<b>Complaints by Issue</b>						
<i>Note: Complaints can be filed alleging multiple bases. The sum of the bases may not equal total complaints filed.</i>		<b>2017</b>	<b>2018</b>	<b>2019</b>	<b>2020</b>	<b>2021</b>
Appointment/Hire	40	24	17	31	26	
Assignment of Duties	87	82	72	58	34	
Awards	17	14	8	7	7	
Conversion to Full Time/Permanent Status	3	1	0	0	0	
Duty Hours	18	8	15	12	5	
Performance. Evaluation/Appraisal	96	98	91	76	44	
Examination/Test	2	1	1	1	2	
Medical Examination	4	0	3	0	0	
Pay including Overtime	30	11	13	20	4	



Promotion/Non-Selection	124	71	100	82	68
Reassignment					
Reasonable Accommodation Disability	84	94	75	56	35
Reinstatement	0	0	3	4	1
Religious Accommodation	4	1	1	2	1
Retirement	6	4	11	5	3
Sex-Stereotyping	1	1	0	0	0
Telework	25	31	20	14	2
Termination	36	35	27	24	28
Terms/Conditions of Employment	146	135	137	58	56
Time and Attendance	67	77	69	42	27
Training	40	45	30	17	19

Processing Time					
	2017	2018	2019	2020	2021
Average Number of Days in Investigation	161.02	173.2 2	199.49	207.27	157.95
Average Number of Days in Final Action	151.66	36.78	40.62	32.40	35.83
Average Number of Days in Investigation	165.95	172.5 8	208.32	216.45	166.19

Average Number of Days in Final Action	108.76	21.90	29.15	25.95	18.22
Average Number of Days in Investigation	153.61	173.78	189.03	190.26	149.99
Average Number of Days in Final Action	181.49	50.90	55.94	40.90	53.54

<b>Complaints Dismissed by Agency</b>					
	<b>2017</b>	<b>2018</b>	<b>2019</b>	<b>2020</b>	<b>2021</b>
Total Complaints Dismissed by Agency	83	84	51	46	22
Average Days Pending Prior to Dismissal	64	20	66	40	53
Total Complaints Withdrawn by Complainants	35	28	37	46	18

<b>Total Final Agency Actions Finding Discrimination</b>										
	<b>2017</b>	<b>2018</b>	<b>2019</b>	<b>2020</b>	<b>2021</b>					
	<b>#</b>	<b>%</b>	<b>#</b>	<b>%</b>	<b>#</b>	<b>%</b>	<b>#</b>	<b>%</b>	<b>#</b>	<b>%</b>
									1	
									0	0
									1	100

<i>Note: Complaints can be filed alleging multiple bases. The sum of the bases may not equal total complaints and findings.</i>										
	<b>2017</b>	<b>2018</b>	<b>2019</b>	<b>2020</b>	<b>2021</b>					
<b>#</b>	<b>%</b>	<b>#</b>	<b>%</b>	<b>#</b>	<b>%</b>	<b>#</b>	<b>%</b>	<b>#</b>	<b>%</b>	
									1	

Race	3	75	0	0	1	33	2	20	0	0
Color	0	0	0	0	1	33	1	10	0	0
Religion	0	0	0	0	0	0	0	0	0	0
Reprisal	1	25	1	100	2	67	6	60	1	100
Sex	0	0	1	100	1	33	5	50	0	0
PDA	0	0	0	0	0	0	0	0	0	0
National Origin	0	0	0	0	0	0	0	0	0	0
Equal Pay Act	0	0	0	0	0	0	0	0	0	0
Age	1	25	0	0	0	0	0	0	0	0
Disability	0	0	0	0	2	67	2	20	1	100
Genetics	0	0	0	0	0	0	0	0	0	0
Non-EEO	0	0	0	0	0	0	1	10	0	0
<b>Findings After Hearing</b>	2		1		2		7		1	
Race	2	10 0	0	0	0	0	2	29	0	0
Color	0	0	0	0	0	0	1	14	0	0
Religion	0	0	0	0	0	50	0	0	0	0
Reprisal	0	0	1	100	1	0	6	71	1	100
Sex	0	0	1	100	0	0	5	71	0	0
PDA	0	0	0	0	0	0	0	0	0	0
National Origin	0	0	0	0	0	0	0	0	0	0
Equal Pay Act	0	0	0	0	0	0	0	0	0	0
Age	1	50	0	0	0	50	0	0	0	0
Disability	0	0	0	0	1	0	0	0	1	100
Genetics	0	0	0	0	0	0	0	0	0	0
Non-EEO	0	0	0	0	0	0	1	14	0	0

<b>Findings Without Hearing</b>	2		0		1		3		0	
Race	1	50	0	0	1	100	0	0	0	0
Color	0	0	0	0	1	100	0	0	0	0
Religion	0	0	0	0	0	0	0	0	0	0
Reprisal	1	50	0	0	1	100	1	33	0	0
Sex	0	0	0	0	1	100	0	0	0	0
PDA	0	0	0	0	0	0	0	0	0	0
National Origin	0	0	0	0	0	0	0	0	0	0
Equal Pay Act	0	0	0		0	0	0	0	0	0
Age	0	0	0	0	0	0	0	0	0	0
Disability	0	0	0	0	1	100	2	67	0	0
Genetics	0	0	0	0	0	0	0	0	0	0
Non-EEO	0	0	0	0	0	0	0	0	0	0
<b>Findings of Discrimination Rendered by Issue</b>										
	<b>2017</b>		<b>2018</b>		<b>2019</b>		<b>2020</b>		<b>2021</b>	
									<b>#</b>	<b>%</b>
Appointment/Hire	0	0	0	0	0	0	0	0	1	
Assignment of Duties	2	50	0	0	0	0	3	30	0	0
Awards	0	0	0	0	0	0	0	0	0	0
Conversion to Full Time/ Permanent Status	0	0	0	0	0	0	0	0	0	0
Demotion	0	0	0	0	0	0	0	0	0	0
Reprimand	0	0	0	0	0	0	1	10	0	0
Suspension	0	0	0	0	1	33	0	0	0	0
Removal	0	0	0	0	1	33	0	0	0	0

Other	0	0	0	0	0	0	0	0	0	0
Duty Hours	0	0	0	0	0	0	1	10	0	0
Performance Evaluation/ Appraisal	0	0	0	0	1	33	2	20	0	0
Examination/Test	0	0	0	0	0	0	0	0	0	0
Non-Sexual	0	0	0	0	3	100	5	50	1	100
Sexual	0	0	1	10 0	0	0	0	0	0	0
Medical Examination	0	0	0	0	0	0	0	0	0	0
Pay Including Overtime	0	0	0	0	1	33	1	10	0	0
Promotion/Non-Selection	3	75	0	0	0	0	1	10	0	0
Denied	0	0	1	10 0	0	0	0	0	0	0
Directed	0	0	0	0	0	0	0	0	0	0
Reasonable Accommodation Disability	0	0	0	0	2	67	0	0	1	100
Reinstatement	0	0	0	0	0	0	0	0	0	0
Religious Accommodation	0	0	0	0	0	0	0	0	0	0
Retirement	0	0	0	0	0	0	0	0	0	0
Sex-Stereotyping	0	0	0	0	0	0	0	0	0	0
Telework	0	0	0	0	0	0	1	10	0	0
Termination	1	25	0	0	0	0	0	0	0	0
Terms/Conditions of Employment	1	25	0	0	0	0	3	30	0	0
Time and Attendance	0	0	1	10 0	0	0	0	0	0	0
Training	0	0	0	0	0	0	1	10	0	0
User Defined - Other 1	0	0	0	0	0	0	0	0	0	0
User Defined - Other 2	0	0	0	0	0	0	0	0	0	0
User Defined - Other 3	0	0	0	0	0	0	0	0	0	0

User Defined - Other 4	0	0	0	0	0	0	0	0	0	0
<b>Findings After Hearing</b>	<b>2</b>		<b>1</b>		<b>2</b>		<b>7</b>		<b>1</b>	
Appointment/Hire	0	0	0	0	0	0	0	0	0	0
Assignment of Duties	1	50	0	0	0	0	2	29	0	0
Awards	0	0	0	0	0	0	0	0	0	0
Conversion to Full Time/Perm Status	0	0	0	0	0	0	0	0	0	0
Demotion	0	0	0	0	0	0	0	0	0	0
Reprimand	0	0	0	0	0	0	1	14	0	0
Suspension	0	0	0	0	1	50	0	0	0	0
Removal	0	0	0	0	0	0	0	0	0	0
Other	0	0	0	0	0	0	0	0	0	0
Duty Hours	0	0	0	0	0	0	1	14	0	0
Performance Evaluation/ Appraisal	0	0	0	0	1	50	2	20	0	0
Examination/Test	0	0	0	0	0	0	0	0	0	0
Non-Sexual	0	0	0	0	2	100	4	57	1	100
Sexual	0	0	1	10 0	0	0	0	0	0	0
Medical Examination	0	0	0	0	0	0	0	0	0	0
Pay Including Overtime	0	0	0	0	1	50	0	0	0	0
Promotion/Non-Selection	1	50	0	0	0	0	1	14	0	0
Denied	0	0	1	10 0	0	0	0	0	0	0
Directed	0	0	0	0	0	0	0	0	0	0
Reasonable Accommodation Disability	0	0	0	0	1	50	0	0	1	100
Reinstatement	0	0	0	0	0	0	0	0	0	0
Religious Accommodation	0	0	0	0	0	0	0	0	0	0

Retirement	0	0	0	0	0	0	0	0	0	0
Sex-Stereotyping	0	0	0	0	0	0	0	0	0	0
Telework	0	0	0	0	0	0	1	14	0	0
Termination	1	50	0	0	0	0	0	0	0	0
Terms/Conditions of Employment	0	0	0	0	0	0	2	29	0	0
Time and Attendance	0	0	1	10 0	0	0	0	0	0	0
Training	0	0	0	0	0	0	1	14	0	0
User Defined - Other 1	0	0	0	0	0	0	0	0	0	0
User Defined - Other 2	0	0	0	0	0	0	0	0	0	0
User Defined - Other 3	0	0	0	0	0	0	0	0	0	0
User Defined - Other 4	0	0	0	0	0	0	0	0	0	0
<b>Findings Without Hearing</b>	<b>2</b>		<b>0</b>		<b>1</b>		<b>3</b>		<b>0</b>	
Appointment/Hire	0	0	0	0	0	0	0	0	0	0
Assignment of Duties	1	50	0	0	0	0	1	33	0	0
Awards	0	0	0	0	0	0	0	0	0	0
Conversion to Full Time/ Permanent Status	0	0	0	0	0	0	0	0	0	0
Demotion	0	0	0	0	0	0	0	0	0	0
Reprimand	0	0	0	0	0	0	0	0	0	0
Suspension	0	0	0	0	0	0	0	0	0	0
Removal	0	0	0	0	1	100	0	0	0	0
Other	0	0	0	0	0	0	0	0	0	0
Duty Hours	0	0	0	0	0	0	0	0	0	0
Performance Evaluation/ Appraisal	0	0	0	0	0	0	0	0	0	0
Examination/Test	0	0	0	0	0	0	0	0	0	0

Non-Sexual	0	0	0	0	1	100	1	33	0	0
Sexual	0	0	0	0	0	0	0	0	0	0
Medical Examination	0	0	0	0	0	0			0	0
Pay Including Overtime	0	0	0	0	0	0	1	33	0	0
Promotion/Non-Selection	2	100	0	0	0	0	0	0	0	0
Denied	0	0	0	0	0	0	0	0	0	0
Directed	0	0	0	0	0	0	0	0	0	0
Reasonable Accommodation Disability	0	0	0	0	1	100	0	0	0	0
Reinstatement	0	0	0	0	0	0	0	0	0	0
Religious Accommodation	0	0	0	0	0	0	0	0	0	0
Retirement	0	0	0	0	0	0	0	0	0	0
Sex-Stereotyping	0	0	0	0	0	0	0	0	0	0
Telework	0	0	0	0	0	0	0	0	0	0
Termination	0	0	0	0	0	0	0	0	0	0
Terms/Conditions of Employment	1	50	0	0	0	0	1	33	0	0
Time and Attendance	0	0	0	0	0	0	0	0	0	0
Training	0	0	0	0	0	0	0	0	0	0
User Defined - Other 1	0	0	0	0	0	0	0	0	0	0
User Defined - Other 2	0	0	0	0	0	0	0	0	0	0
User Defined - Other 3	0	0	0	0	0	0	0	0	0	0
User Defined - Other 4	0	0	0	0	0	0	0	0	0	0
<b>Pending Complaints Filed in Previous Fiscal Years by Status</b>										
	<b>2017</b>	<b>2018</b>	<b>2019</b>	<b>2020</b>	<b>2021</b>					
Total Complaints from Previous Fiscal Years	472	453	421	369	324					



Total Complainants	429	410	368	321	285
Investigation	14	17	17	17	18
ROI Issued, Pending Complainant's Action	0	0	1	0	1
Hearing	434	426	410	333	303
Final Agency Action	27	24	36	26	16
Appeal with EEOC Office of Federal Operations	192	231	274	352	298
<b>Complaint Investigations</b>					
	<b>2017</b>	<b>2018</b>	<b>2019</b>	<b>2020</b>	<b>2021</b>
Pending Complaints Where Investigations Exceed Required Time Frames	8	21	16	16	14