

NO FEAR ACT ANNUAL REPORT
FISCAL YEAR 2011



U.S. Department of Agriculture

NONDISCRIMINATION STATEMENT

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To file an EEO complaint of discrimination, write to USDA, Assistant Secretary for Civil Rights, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue, S.W., Washington, D.C. 20250-9410, or call toll free at (866) 632-9992 (voice) All EEO complaints must be raised within 45 days of the alleged discriminatory action. Individuals who are deaf, hard of hearing or have speech disabilities may contact USDA through the Federal Relay service at (800) 877-8339 or (800) 845 6136 (in Spanish). USDA is an equal opportunity provider, employer and lender.

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Table of Contents

Executive Summary	i
PART I: USDA Formal EEO Complaints For Fiscal Years 2010 - 2011	1
Section A – Number of Formal EEO Complaints and Number of Filers	2
Section B – Most Frequently Cited Bases in Formal EEO Complaints at USDA	3
Section C – Most Frequently Cited Issues in Formal EEO Complaints at USDA	5
Section D – EEO Processing Stages	7
(1) Average Number of Days for Completion of Selected EEO Stages	
(2) Pending Complaints at Various Stages	
(3) Pending Formal Complaints Exceeding the 180-Day Investigation Requirement	
Section E – Final Agency Actions with a Finding of Discrimination	10
Section F – Analysis, Experience, and Actions	11
(1) Causal Analysis	
(2) Experience Gained by USDA in the Processing of Formal EEO Complaints	
(3) Past and Future Actions by USDA Relating to EEO Complaints Processing	
PART II: USDA Reimbursement to Judgment Fund for Fiscal Year 2011	17
PART III: USDA Disciplinary Actions and Reports for Fiscal Years 2010 - 2011	19
PART IV: USDA Federal Court Litigation Statistics for Fiscal Year 2011	23
Appendix	A-1

Executive Summary

Annual Reporting Requirements

This is the USDA's seventh annual report submitted pursuant to the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (No FEAR Act), Public Law No. 107-174, Section 203.

The No FEAR Act mandates that Federal agencies report certain information for Fiscal Year (FY) 2011. This report contains the:

- number of complaints filed with USDA alleging discrimination based on race, sex, color, religion, national origin, disability, 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 antidiscrimination or whistleblower laws or engaged in prohibited personnel practices;
- number of employees USDA has disciplined for discrimination, retaliation, harassment, or prohibited personnel practices; and
- number of cases in Federal Court arising under the antidiscrimination and whistleblower protection laws.

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) any actions planned or taken to improve its complaint or civil rights programs. USDA is also required to report any ascertainable adjustments made in its budget as a result of its compliance with the reimbursement requirement.

USDA's Mission and Mission-Related Functions

The mission of USDA is to provide leadership on food, agriculture, natural resources, and related issues based on sound public policy, the best available science, and efficient management.

USDA strives to:

- expand international trade for agricultural products and support international economic development;
- expand domestic marketing opportunities for agricultural products;
- strengthen risk management, the use of financial tools, and the provision of sound information to help farmers and ranchers in their decision-making process;
- develop alternative markets for agricultural products and activities;
- provide financing needed to help expand job opportunities and improve housing, utilities, and infrastructure in rural America;
- enhance food safety by taking steps to reduce the prevalence of food borne hazards from farm to table, and safeguard agriculture from natural and intentional threats;
- improve nutrition by providing food assistance and nutrition education and promotion; and
- protect and manage America's public and private lands working cooperatively with other levels of government and the private sector.

Summary of the Report

Congress passed the No FEAR Act in May 2002 as a vehicle for reducing discrimination and retaliation in Federal agencies, increasing agency accountability, emphasizing training for managers in the management of a diverse workforce, and encouraging dispute resolution and communication skills. The annual report summarizes the efforts made by USDA to carry out the mandates of the No FEAR Act.

As demonstrated in greater detail below, USDA experienced a slight increase of 52 EEO complaints filed from FY 2010 to FY 2011, ending the EEO inventory at the end of FY 2011 with 893¹ complaints. The number of filers also increased by 48 from FY 2010 to FY 2011, as well as, the number of findings of discrimination increased from FY 2010 to FY 2011. Data illustrating this trend is found in the Appendix.

A review of disciplinary actions taken against employees who violated Federal antidiscrimination laws and whistleblower protection statutes shows that in FY 2011, 28 employees were disciplined; while in FY 2010 13 employees were disciplined. This increase in disciplinary actions between FY 2010 and FY 2011 indicates a continual level of accountability present within USDA and the Secretary's enforcement of a zero tolerance of any form of discrimination. The reimbursement provisions of the No FEAR Act continue to result in financial accountability for sub-agencies and individual staff offices within USDA

¹ This number subsequently increased to 895 due to database reconciliation efforts.

During FY 2011, USDA has implemented several initiatives that will assist in its effort to reduce the number of EEO complaints. These initiatives are outlined below:

- USDA awarded a contract to conduct an independent assessment of the USDA Delivery of Technical and Financial Assistance to All Americans (Civil Rights Assessment). On March 31, 2011, the report was provided to USDA where it provided recommendations regarding their review of existing laws, policies, and procedures, an analysis of USDA's current customer base and constituencies in comparison to the existing population; an evaluation of current outreach efforts; and reviews of cultural competencies and considerations. As a result, the USDA Assistant Secretary for Civil Rights is currently reviewing these recommendations for implementation in FY 2012.
- As a result of the Departmental Initiative for the Review of Settlement Agreements and Decisions in Program, Individual, and Employee Complaints of Discrimination: 1) USDA personnel are held accountable and responsible for their behavior and actions, 2) policies have been established to ensure that all services are available in a non-discriminatory manner, and 3) manager's civil rights awareness has been raised in decision-making positions to make responsible decisions.
- USDA utilized the Cooperative Resolution Program (CRP), which offers custom-tailored services that address the specific needs of the employees to enhance their communication effectiveness and minimize workplace conflict. The CRP offers employees conflict consultation, conflict management training, and mediation services to address issues as an alternative to the traditional complaint grievance systems available for resolving non-EEO related workplace issues.
- The Office of the Assistant Secretary for Civil Rights (OASCR) provides overall leadership, coordination, and direction for USDA's compliance with civil rights laws in EEO. In order to carry out these duties, the OASCR conducted four compliance reviews of 17 USDA agencies in FY 2011. A strong compliance review program is an essential element of raising awareness to practices and policies that contribute to perceptions of bias or unfairness. Therefore, the OASCR is conducting compliance reviews on a regular basis, to assist in identifying systemic issues and barriers both at Headquarters and field offices. Once the compliance review is completed, the OASCR works with each agency to recommend training and monitors those agencies for any required corrective actions based on the findings of each review.
- The OASCR began a process to review and revise 16 of USDA Civil Rights Departmental Regulations, C.F.R.s, and Departmental Manuals to be consistent with current civil rights laws. Clearance and posting of these Departmental Regulations and manuals is expected to be accomplished by FY 2012.
- The OASCR conducted the civil rights review of all USDA agencies' policies, rules, regulations, advisory committees, and reorganizations submitted for Departmental clearance. This involved a review and civil rights impact analysis of highly sensitive policies, actions, and decisions that will affect the USDA employment or USDA programs or activities. These reviews facilitate the identification of potential disparate

impact on proposed policies or practices. Over 20 percent of our reviews resulted in recommendations for changes prior to concurrence rather than an immediate concurrence.

- The newly established Training Division in the Office of Compliance, Policy and Training, as a result of the OASCR reorganization, provided civil rights, sexual orientation, gender identity, diversity and early dispute resolution training to employees at all levels across the organization. The purpose of the training is to heighten awareness about civil rights laws, personal responsibilities and liabilities, complaints avoidance actions, and good customer service practices. The OASCR civil rights education program is resulting in more wide spread recognition that all USDA employees are protected by civil rights laws, and the phrase “civil rights” is not bad nor should it instill fear.
- USDA implemented a number of new initiatives to improve the EEO complaint process. These initiatives improved EEO counseling, increased mediation between complainants, and constructive settlement agreements. These efforts have contributed to an overall decrease in formal complaints and have vastly improved communication between managers and employees.
- Additionally, training is being provided to USDA managers to assist them in identifying EEO issues, thereby, increasing the possibility of resolving the complaints at the informal EEO process. This training is also geared to assist the managers in identifying systemic EEO and management issues that lead to the filing of EEO complaints.
- Adherence to EEOC Management Directive 715 (MD-715) requirements and other efforts to overcome identified barriers, the OASCR's MD-715 working group continues to address the identified barriers and hold agencies accountable for reporting quarterly on the completion of their objectives to attain the essential elements of a Model EEO Program.
- Through its annual Agency Head Assessment, USDA continues to evaluate all heads of agencies and separate staff offices on their agency’s civil rights performance. This assessment holds the agency’s senior executives accountable for employment discrimination complaints and other civil rights statutes and regulations.
- The OASCR began an initiative to develop, institutionalize and lead an ongoing annual process to review, analyze, and report on lessons learned from both EEO complaints and program complaints closed during the year. The plan would include identification of recurring themes. The plan is expected to be published during the first quarter of FY 2012. In conjunction with the report, OASCR will provide a detailed briefing to the sub-cabinet.

PART I

USDA Formal EEO Complaints
for
Fiscal Years 2010 - 2011

Section A- Number of Formal EEO Complaints and Number of Filers at USDA

Introduction

This section contains comparative information regarding the number of formal EEO complaints filed and the number of filers for FYs 2010 and 2011.

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 an increase in the number of complaints filed over the prior year and a slight increase in the number of filers for the current year. (See Graph 1).

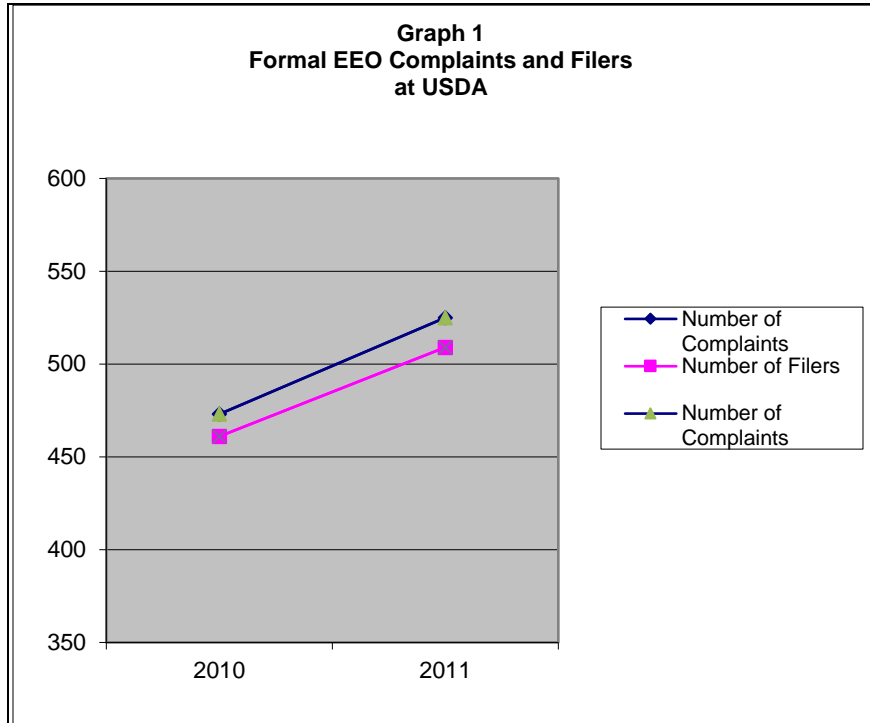
In FY 2011, the number of complaints filed was 525, whereas, in FY 2010 the number of complaints filed was 473. This represents an 11 percent increase in complaints filed. However, the number of filers in FY 2011 was 509, which is 48 more than the number of filers (461), in FY 2010.

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

Fiscal Years	Number of Complaints	Number of Filers
2010	473	461
2011	525 ²	509

² This number subsequently increased to 527 due to database reconciliation efforts.

**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 regarding the most frequently cited bases in formal EEO complaints for FYs 2010 and 2011. The basis of the complaint is the protected characteristic that the complainant alleges which forms the motivation for the discriminatory conduct. The bases protected by EEO statutes are race, color, religion, national origin, sex, disability, 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 considered to be a complaint based on sex.

Summary of Data

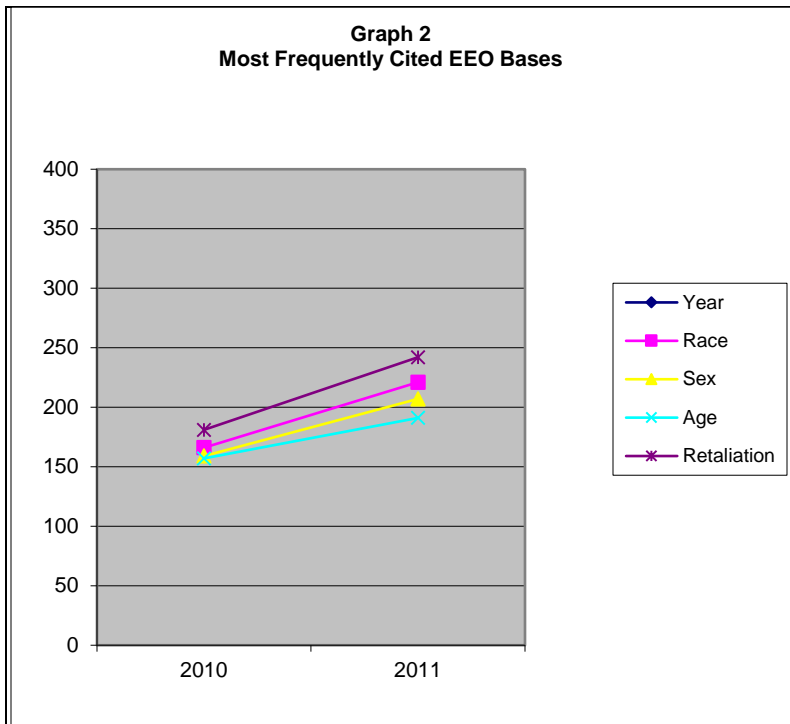
Table 2 provides data on all bases alleged in formal EEO complaints filed with USDA. Of all bases, the four most frequently cited in formal EEO complaints filed in FY 2011 are: (1) retaliation; (2) race; (3) sex; and (4) age. In FY 2010, the four most frequently cited bases were: (1) retaliation; (2) race; (3) sex; and (4) age. These four bases are illustrated in Graph 2, which shows the trend over the two-year reporting period.

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

EEO Bases in Formal EEO Complaints									
Year	Race	Color	Religion	Sex	National Origin	Disability	Age	Retaliation	Other*
2010	166	23	16	159	49	97	157	181	44
2011	221	32	21	207	57	104	191	242	42

*Other USDA protected bases include marital status, parental status, and sexual orientation, political beliefs, genetic information and familial status. Additionally, the base of sex includes gender identity and gender expression.

Graph 2
Most Frequently Cited Bases



Complaints Alleging Retaliation

“Retaliation” is the most frequently alleged basis in formal EEO complaints at USDA. This is true for both FYs 2011 and 2010. The basis of “Retaliation” was cited in 242 formal EEO complaints in FY 2011, compared to 181 complaints in FY 2010, a 34 percent (61 complaints) increase over a two-year period.

Complaints Alleging Race Discrimination

“Race” is the second most frequently alleged basis in formal EEO cases at USDA. The basis of “Race” was cited in 221 formal EEO complaints in FY 2011, compared to 166 complaints in FY 2010, an 33 percent increase (55 complaints) over a two-year period.

Complaints Alleging Sex Discrimination

“Sex” was the third most frequently alleged basis in formal EEO cases at USDA in FY 2011. The basis of “Sex” was cited in 207 formal EEO complaints in FY 2011, compared to 159 complaints in FY 2010, an 30 percent increase (48 complaints) over a two-year period.

Complaints Alleging Age Discrimination

“Age” was the fourth most frequently alleged basis in formal EEO cases at USDA in FY 2011. The basis of “Age” was cited in 191 formal EEO complaints in FY 2011, compared to 157 complaints in FY 2010, a 22 percent (34 complaints) increase over a two-year period.

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 2010 and 2011. 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 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 2011 were: (1) Harassment; (2) Promotion/Non-Selection; and (3) Evaluation/Appraisal. 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 2011, with 247 filings. In contrast, “Harassment” had 190 filings in FY 2010. There was a 30 percent increase (57 complaints) from FY 2010 to FY 2011.

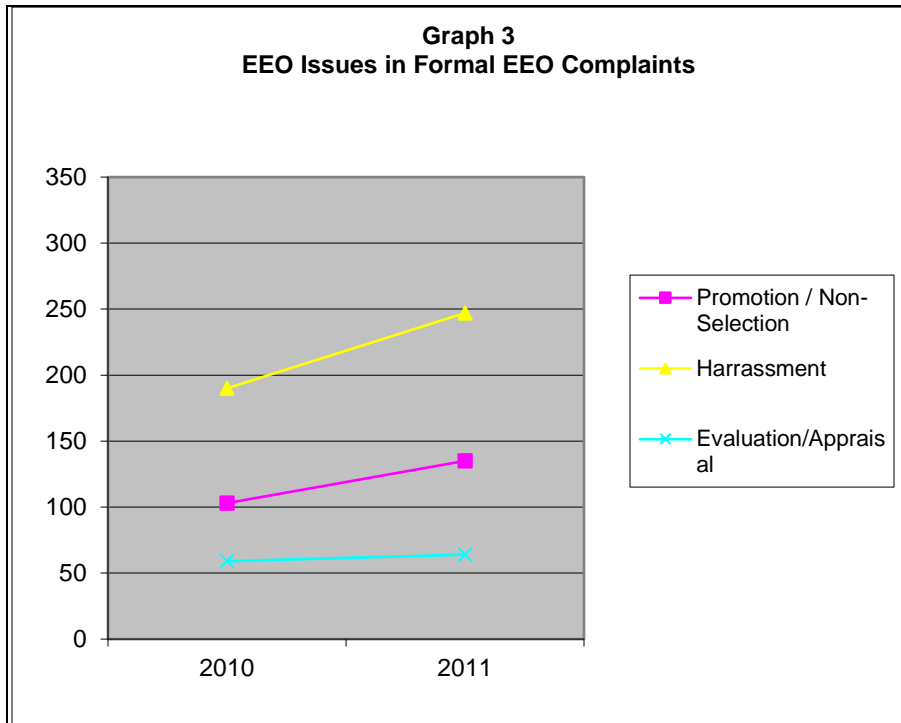
“Promotion/Non-selection” was the second most frequently cited issue in formal EEO cases in FY 2011, with 135 filings. In contrast, “Promotion/Non-Selection” had 103 filings in FY 2010. There was a 31 percent increase (32 complaints) from FY 2010 to FY 2011.

“Evaluation/Appraisal” was the third most frequently cited issue in formal EEO cases in FY 2011, with 64 filings. In contrast, “Evaluation/Appraisal” had 59 filings in FY 2010. There was an increase of 8 percent (5 complaints) from FY 2010 to FY 2011.

Table 3
EEO Issues in Formal EEO Complaints

EEO Issues in Formal EEO Complaints																					
Year	Appointment/Hire	Assignment of Duties	Awards	Conversions to Full Time	Disciplinary Action	Duty Hours	Evaluation/Appraisal	Examination/Test	Reassignment	Training	Time & Attendance	Termination	Medical Examination	Pay/Overtime	Promotion /Non-Selection	Harassment	Reinstatement	Retirement	Terms and Conditions of Employment	Reasonable Accommodation	Other
2010	23	51	11	1	58	5	59	1	25	22	22	34	1	10	103	190	2	1	38	32	64
2011	38	62	20	0	61	6	64	1	28	27	28	39	0	13	135	247	1	6	52	36	60

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 2011 and 2010. The formal EEO complaint process has various stages. Not all formal complaints complete all 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 four EEO stages. This section contains data on: (1) the average number of days for completion of selected stages; (2) pending complaints at various stages of the EEO process; and (3) pending formal complaints exceeding the 180-day investigation requirement.

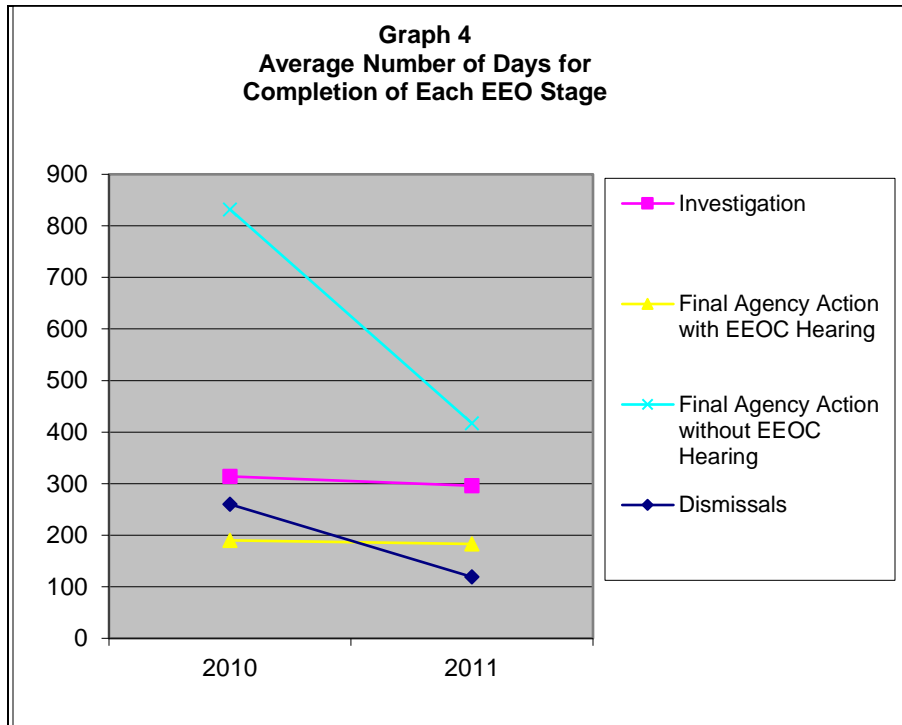
(1) Average Number of Days for Completion of Selected EEO Stages

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

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

Year	Investigation	Final Agency Action with EEOC Hearing	Final Agency Action without EEOC Hearing	Dismissals
2010	314	190	832	257
2011	296	183	417	119

Graph 4
Average Number of Days for Completion of Each EEO Stage



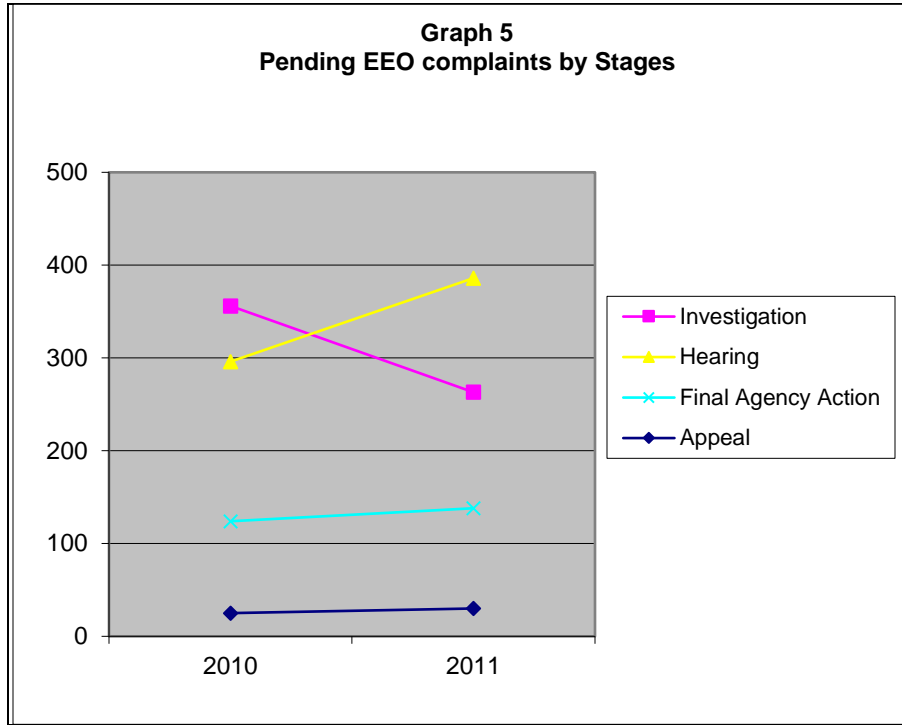
(2) Pending Complaints at Various Stages

- Table 5 below illustrates the number of pending EEO complaints in FYs 2011 and 2010, at each EEO stage.
- Graph 5 shows a downward trend in pending complaints in investigations, and an upward trend in pending complaints for hearings and Final Agency Actions and appeals.

Table 5
Pending EEO Formal Complaints by Stage

Year	Investigation	Hearing	Final Agency Action	Appeal
2010	356	296	124	25
2011	263	386	138	30

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



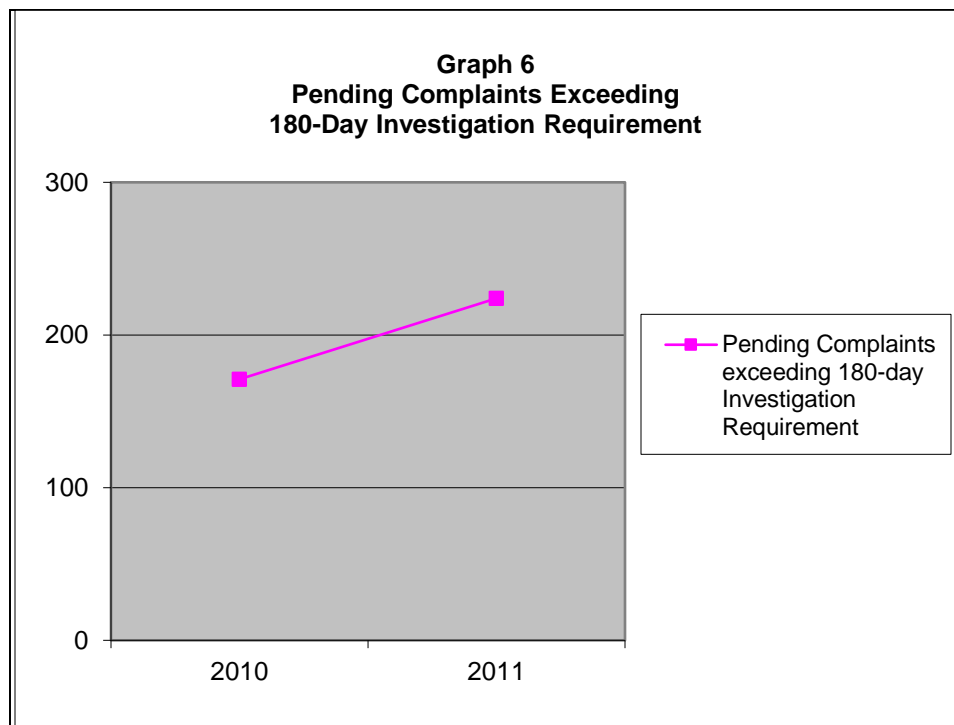
(3) Pending Formal Complaints Exceeding the 180-Day Investigation Requirement

Table 6 and Graph 6 show a 17 percent increase for pending formal complaints that exceed the 180-day investigation requirement over the two-year reporting period.

**Table 6
Pending Formal EEO Complaints Exceeding the 180-Day Investigation Requirement**

Pending Complaints Exceeding the 180-day Investigation Requirement	
2010	192
2011	224

Graph 6
Pending Formal EEO Complaints Exceeding 180-Day Investigation Requirement



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 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.

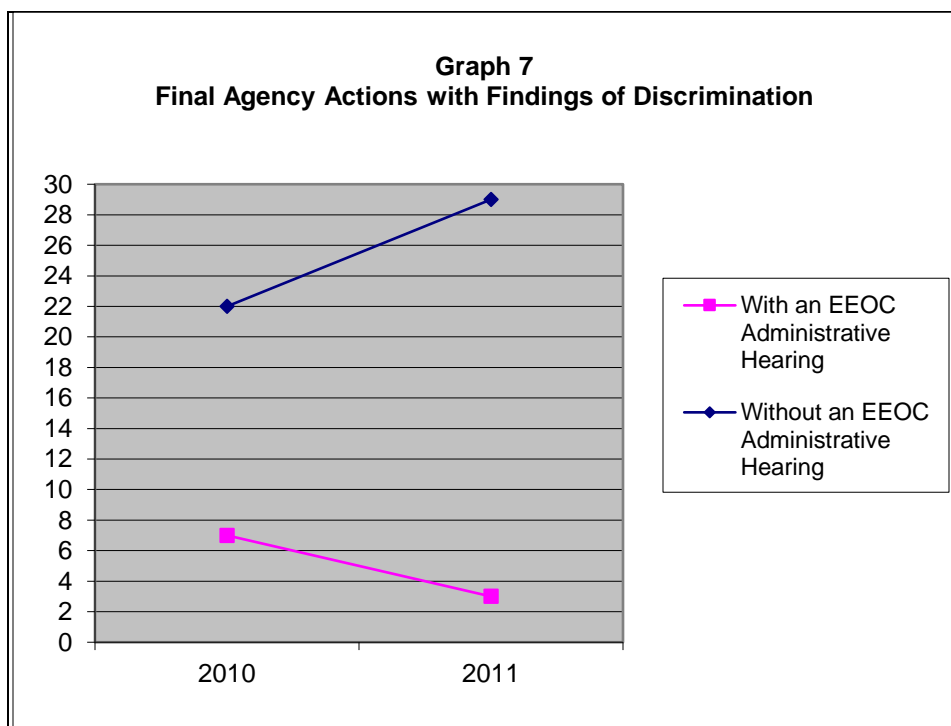
Summary of Data

Table 7 and Graph 7 show that the number of findings of discrimination issued with an EEOC Administrative Hearing decreased by four in FY 2011 from FY 2010, and without an EEOC Administrative Hearing increased by seven in FY 2011 from FY 2010.

Table 7
Final Agency Actions with a Finding of Discrimination

Year	With an EEOC Administrative Hearing	Without an EEOC Administrative Hearing
2010	7	22
2011	3	29

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 various factors impacting the filing of formal EEO complaints. Examples are as follows:

1. The Agricultural Marketing Service (AMS) reported an increase in the number of formal complaints filed in FY 2011 (18) as compared to 12 formal complaints filed in FY 2010. This 50 percent increase is attributed to the number of trainings conducted, which resulted in an increased awareness of prohibited discriminatory practices. Also, an increase may be attributed to the expansion of the definition of an individual with a disability under the American with Disabilities Act (Amendments Act of 2008).
2. The Animal and Plant Health Inspection Service (APHIS) reported an increase by four in the number of complaints filed in FY 2011. Specifically, there were 49 formal complaints filed in FY 2011, as compared to 45 formal complaints filed in FY 2010.
3. The Agricultural Research Service reported a decrease in the number of complaints filed in FY 2011. Specifically, there were 18 formal complaints filed in FY 2011, as compared to 25 formal complaints filed in FY 2010. This decrease in the number of complaints filed in FY 2011 is attributed to training and the agency encouraging the use of mediation and cooperative resolution to resolve complaint matters.
4. The Economic Research Service (ERS) reported a decrease of two complaints for FY 2011 (1) from FY 2010 (3). ERS attributes the decrease to the new Civil Rights Director who spent a great deal of time addressing civil rights issues with employees and management.
5. The Foreign Agricultural Service (FAS) reported an increase of four formal complaints filed in FY 2011, (from 3 in FY 2010 to 7 in FY 2011). The increase in FAS' formal EEO complaint activity for FY 2011 can be attributed in part to the large number of Agency employees retiring. This exodus has resulted in a loss of historical knowledge and expertise in many areas of the Agency. This has left managers and employees having to do more with fewer resources. This is especially noticeable in the surge of complaints where the issues are relevant to assignment of duties; a 400 percent increase from FY 2010 (5 filed in FY 2011 versus 1 filed in FY 2010). Another causative factor which has given rise to the increase in the number of complaints filed under Terms/Conditions of Employment can be seen in the deployment of FAS employees to Provincial Reconstruction Teams. State-side employees are not familiar with the hardships (lack of running water and electricity, etc.) and perhaps ill-prepared to live in such austere conditions for extended periods of time (one year or longer).
6. The Food and Nutrition Service (FNS) reported a decrease in the number of formal EEO complaints filed in FY 2011 compared to those filed in FY 2010.
7. The Forest Service (FS) reported an increase in the number of formal EEO complaints filed in FY 2011 compared to those filed in FY 2010. The increase was due to complainants having filed more than one complaint.

8. The Farm Service Agency (FSA) reported an increase in formal complaints filed in FY 2011. Specifically, there were 25 formal complaints filed in FY 2011, as compared to 37 formal complaints filed in FY 2010. FSA attributes this increase to a lack of training and knowledge of EEO/Civil Rights regulations, and the loss of Full Time Employees.
9. The Food Safety and Inspection Service reported an increase in the number of formal EEO complaints filed in FY 2011 compared to those filed in FY 2010.
10. The Grain Inspection, Packers and Stockyards Administration (GIPSA) reported 11 complaints filed in FY 2011; an increase of 22 percent from 2010 (9). GIPSA attributes the increase to the number of complaints filed on the basis of Color, Disability, and Reprisal. Also, GIPSA attributes the increase to several supervisory positions that became vacant and were advertised. Several Complainants applied for the vacancies but were not selected for the positions.
11. The National Agricultural Statistics Service (NASS) reported that the number of complaints and filers increased in FY 2011 compared to FY 2010. Specifically, NASS had two formal complaints filed in 2011 - an increase of one from FY2010.
12. The National Institute of Food and Agriculture (NIFA) (formerly known as the Cooperative State Research, Education and Extension Service) reported 3 complaints for FY 2011. NIFA attributes their 3 complaints to a reorganization and establishment of a new organization, resulting in a relocation of resources and reassignment of employees. Hence, the organizational changes were viewed by some employees as unfavorable.
13. The Natural Resources Conservation Service reported an increase in the number of formal complaints filed in FY 2011 compared to those filed in FY 2010.
14. The Risk Management Agency (RMA) reported that the number of formal complaints filed in FY 2011 (10) increased by 7 from FY 2010 (3). RMA attributes the increase in complaints to the result of a management change in at least two of its regional offices.
15. The Rural Development (RD) reported a decrease in the number of complaints filed in FY 2011 compared to those filed in FY 2010. This decrease is attributed to an increase in mandatory training given to managers. In addition, a number of management control reviews were conducted during FY 2010 in which employees took the opportunity to ask questions and receive clarification on EEO policies and procedures, thereby increasing the level of awareness of the difference in the EEO and Administrative/Negotiated Grievance procedures.

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

USDA has learned the following from its past experience in processing and addressing formal EEO complaints:

- emphasizing that efficient processing and an effective Alternative Dispute Resolution (ADR) program are essential to resolving complaints;

- acknowledging that frequent discussions and dissemination of information has helped agencies identify the issues and bases that give rise to EEO complaints;
- acknowledging that when a filed complaint is addressed promptly at the Departmental level, there is a greater likelihood the complaint will be investigated and adjudicated within regulatory timeframes;
- holding management officials accountable when discrimination is found;
- working with investigation contractors to ensure that they produce timely and complete investigation reports;
- emphasizing that managers have to understand that their role in the process requires that they maintain all documentary evidence and provide accurate testimony during the course of the investigation and hearing;
- recognizing that the EEOC's delay of moving cases into the hearing stage appears to be the leading cause in the increase in the processing time for pending cases;
- recognizing that staff coordination is needed to prevent the challenges that cause a formal EEO complaint to be lost or hidden;
- ensuring on-going compliance reviews that identify EEO-related workplace issues and provide recommendations on how to address those issues before they evolve into EEO complaints;
- ensuring that EEO Advisory Committee members are active, participative and are disseminating relevant information to their respective employees;
- emphasizing that early resolution improves management-employee relations, reduces administrative costs significantly, and precludes the need for extended litigation;
- emphasizing that importance of facilitating early resolution of complaints with employees and management;
- identifying and addressing employment related issues and concerns within the Agency and continue to utilize ADR; and
- improving relations with the Union, via the establishment of a Labor-Management committee and through Cultural Transformation efforts, all to no avail. Efforts will continue.

(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. USDA is also introducing new initiatives to reduce complaints in future years. These past and future actions include:

1. USDA is conducting a number of focus groups in FY 2012 to obtain insight into the challenges and issues faced by individuals in the protected groups. USDA can use the information gathered in focus groups to develop training plans for managers and implement solutions in areas that may be ripe for complaints.
2. USDA has employed conflict coaching to engage both complainants and management. This process includes asking questions to determine what will best empower each side to reach their objectives and develop stronger communication skills for difficult conversations.
3. The Civil Rights Program continues to actively monitor the timelines established for investigators to complete their investigations. AMS requires strict adherence to timeframes to complete investigations.
4. The USDA's Civil Rights Programs and Human Resource staffs have collaborated to train managers and employees on cultural and diversity sensitivity and appropriate conduct. These trainings targeted discrimination on the basis of disability and proper management of employees' medical documentation.
5. USDA's Accountability Policy and Procedures are continually emphasized as an effective method for tracking and removing policies and practices that contribute to findings of discrimination.
6. The OASCR is conducting regular compliance reviews and providing technical assistance to sub-agencies to ensure full compliance with antidiscrimination laws.
7. In an effort to further reduce EEO complaint activity through information and education, the ADR Center developed a Mediation Podcast. The podcast provides an overview of the mediation process and enables employees to view a step-by-step reenactment of how a mediation session is conducted, thereby providing them with reassurance in utilizing mediation as a tool to assist in resolving their concerns.
8. USDA (APHIS) will continue to maintain its 1-800 helpline (1-800-372-7428) for supervisors and managers to contact the EEO Specialists for assistance in dealing with civil rights and employment complaint issues.
9. USDA will promote the utilization of the CRP to enhance manager and employee communication and aid in conflict management.

10. USDA has heightened its marketing of all Special Emphasis Program (SEP) observances to encourage better participation at these activities from Agency employees. This endeavor is taking place through different marketing initiatives; such as the SharePoint employee news information system, posters, and flyers advertising SEP Programs.
11. Distribute Civil Rights information regularly to all employees via email messages to ensure awareness of the latest prohibited personnel practices and/or procedures.
12. USDA provided a refresher course on working with employees with disabilities and reasonable accommodations for first and second line supervisors.
13. The USDA's future priorities include enhancement of its ADR program, including conducting an ADR awareness survey, providing training in ADR for supervisors and employees, and establishing a Departmental cadre of resolving officials.
14. USDA continues to work collaboratively with the EEOC through its relationship management arrangement to access training opportunities and expertise in various areas.

PART II

USDA Reimbursement to Judgment Fund for Fiscal Year 2011

USDA Reimbursement to Judgment Fund for Fiscal Year 2011

Introduction

Table 8 below provides information on reimbursements by USDA to the Department of Treasury's Judgment Fund for monies associated with FY 2011 judgments, awards, or settlements under the statutes addressed in the No FEAR Act.

Table 8
USDA Reimbursement to Judgment Fund for FY 2011 Settlements

USDA Reimbursement to Judgment Fund For FY 2011 Settlements		
Case	Total Amount	Attorney's Fees
1	\$305,000.00	\$ 162,000.00
2	\$148,000.00	
3	\$75,000.00	
4	\$70,000.00	
5	\$60,000.00	
6	\$50,000.00	
7	\$8,500.00	\$8,500.00
8	\$7,500.00	
9	\$7,000.00	
10	\$5,000.00	\$5,000.00
Total	\$ 736,500.00	\$ 175,500.00

Summary

In FY 2011, USDA reimbursed the Judgment Fund \$ 736,500.00, of which \$ 175,500.00 was identified as payment of attorney's fees. No monies were paid for judgments or awards.

PART III

**USDA Disciplinary Actions and Reports
for Fiscal Years 2010 – 2011**

**USDA Disciplinary Actions and Reports for
Fiscal Years 2010– 2011**

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												
TYPE OF ACTION	FY 2010						FY 2011					
	DISC.	RETAIL	HAR	PPP	WBP	TOTAL	DISC	RET.	HAR	PPP	WBP	TOTAL
REMOVAL	2		3			5			1			1
15 DAY OR MORE			1			1	1		2			3
14 DAY OR LESS			4			4	3	1	3	1		8
REDUCTION IN GRADE												
REDUCTION IN PAY												
LOR			3			3	4	1	8	3		16
TOTAL DISCIPLINE	2		11			13	8	2	14	4		28

Table Abbreviations: Disc. = Discrimination; Retail. = Retaliation; Har. = Harassment; PPP = Prohibited Personnel Practice; WBP = Whistleblower Protection Act; and LOR = Letter of Reprimand.

PART 2: Table 10 below illustrates the number of Office of Special Counsel Whistleblower cases and the numbers of employees disciplined under the Department’s disciplinary policies related to whistle-blowing and discrimination.

Table 10

OFFICE OF SPECIAL COUNSEL CASES			
CATEGORIES OF CASES	FY 2010	FY 2011	TOTAL
OSC WHISTLEBLOWER CASE	5	10	15
OSC WHISTLEBLOWER CASE CLOSED	0	0	0
OSC WHISTLEBLOWER DISCIPLINE TAKEN	0	0	0

Disciplinary Policy

Improving the civil rights environment throughout the Department is a priority for USDA. There is a “Zero Tolerance” policy for acts of discrimination, harassment, or reprisal of any kind. It is USDA policy to pursue appropriate administrative action against anyone who is found to have engaged in such activities. USDA continues to apply its accountability policy and employee awareness activities in its effort to prevent illegal discriminatory actions and to discipline those who commit such offenses. Civil Rights and Office of Human Resources Management (OHRM) staffs work in close cooperation, using proven tracking and reporting systems, to monitor compliance activities and readily identify emerging trends.

In cases involving discrimination, harassment, or reprisal, subordinate components of USDA effect disciplinary or corrective action in accordance with current laws, rules, regulations, and policies. The USDA OHRM reviews agency disciplinary or corrective in cases involving discrimination, harassment, or reprisal. The type and severity of disciplinary action is based on the USDA Guide for Disciplinary Penalties, Appendix A, Department Personnel Manual 751. This guide contains specific sections on discrimination and retaliation, sexual misconduct, and prohibited personnel practices.

In May 2010, USDA implemented an initiative to provide increased oversight of cases involving violation of anti-discrimination and whistleblower protection laws in which there is a finding of liability against the Department. As part of that initiative, OHRM established the Equal Opportunity Accountability Unit (EOAU) with the primary mission of ensuring that USDA personnel are held accountable and responsible for their actions. The EOAU raises awareness and ensures that individuals in decision making positions implement appropriate corrective actions when it is determined that a violation of this nature has occurred. The EOAU is also charged with implementing program improvements to ensure that all USDA services are available in a non-discriminatory manner.

In October 2007, USDA OHRM updated Departmental Regulation (DR) 4070-735-001, Employee Responsibilities and Conduct. This DR establishes guidelines and requirements for employees and works in conjunction with government-wide ethics regulations. It specifically prohibits employees from engaging in workplace harassment, sexually inappropriate conduct, retaliation in response to protected activities, creating a hostile work environment, or illegal discrimination. The DR requires that each employee receive a copy to ensure that they are fully aware of the responsibility and conduct standards for the Department.

In January 2006, USDA Office of Civil Rights and OHRM issued DR-4300-010, Civil Rights Accountability Policy and Procedures. The purpose of this directive is to ensure employees are held accountable for discriminatory or related misconduct and to outline management’s obligation to take appropriate corrective action against those who have engaged in these prohibited acts. This policy also requires that all USDA employees be made aware of its contents.

In addition to Department-wide policies and initiatives, USDA mission areas have taken steps to improve the civil rights environment throughout their respective subordinate agencies. The most recent initiatives are: the Leadership Accountability Action Plan which was updated by the FS in 2011, and a newly established Policy on Equal Employment Opportunity which was implemented by the Office of the Chief Financial Officer in 2011. These initiatives complement the overall Departmental policy of increased accountability. The following is a list of other current policies by agency:

Food, Nutrition & Consumer Services

FNS & CNPP Harassment Prevention Policy 2009-3

FNS & CNPP Civil Rights Policy 2009-2

Food Safety

Directive 4735.3; Employee Responsibilities and Conduct

Forest Service

Forest Service Civil Rights Policy Statement

Forest Service Anti-Harassment Policy

Research, Education & Economics

Policy & Procedure 461.5; Misconduct, Discipline, and Adverse Actions

Rural Development

RD Instruction 2045-GG; Disciplinary and Adverse Actions, Performance-Based Actions, and Probationary Terminations

PART IV

USDA Federal Court Litigation Statistics for Fiscal Year 2011

The following tables provide composite data for cases in Federal court pending or resolved in FY 2011 and arising under the antidiscrimination and whistleblower protection laws.

**Table 11
Federal Cases Pending in FY 2011**

Federal Cases Pending in FY 2011	
Pending District Court Cases	54
Pending Appellate Court Cases	17
New Cases Filed in District Court	18
Note: Cases pending at any time during the year, including those filed during the year, and those disposed of during the year.	

**Table 12
Pending Cases**

Pending Cases					
	29 U.S.C. §206(d)	29 U.S.C. §631	29 U.S.C. §633a	29 U.S.C. §791	42 U.S.C. §2000e-16
Disposed of during FY 2011	0	0	2*	2*	32**
Still Pending at end of FY 2011	0	0	2^^	2	32***
* More than one basis alleged in 1 case.					
** More than one basis alleged in 7 cases.					
*** More than one basis alleged in 6 cases					
^^ More than one basis alleged in 2 cases					

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

Disposition of Cases (Including Dismissals)					
	29 U.S.C. §206(d)	29 U.S.C. §631	29 U.S.C. §633a	29 U.S.C. §791	42 U.S.C. §2000e-16
Settlements	0	0	0	0	15^
Withdrawals	0	0	0	0	0
Final Judgment for Complainant	0	0	2	2*	18^^
Final Judgment for Agency	0	0	0	0	0
*Denotes more than one basis alleged in 4 cases.					
^ More than one basis alleged in 3 cases.					
^^ More than one basis alleged in 2 cases					

Appendix

Equal Employment Opportunity Data Posted Pursuant to the No Fear Act

USDA

2011 for period ending September 30, 2011

Complaint Activity	Comparative Data				
	Previous Fiscal Year Data				
	2007	2008	2009	2010	2011
Number of Complaints Filed	545	508	528	473	525
Number of Complainants	487	395	394	461	509
Repeat Filers	33	48	21	7	12
Complaints by Basis	Comparative Data				
	Previous Fiscal Year Data				
	2007	2008	2009	2010	2011
<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
Race	185	184	181	166	221
Color	43	36	44	23	32
Religion	21	18	13	16	21
Reprisal	258	267	248	181	242
Sex	176	174	178	159	207
National Origin	41	44	61	49	57
Equal Pay Act	8	0	3	1	4
Age	180	158	168	157	191
Disability	103	107	91	97	104
Non-EEO	14	31	33	44	42

Complaints by Issue	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
Appointment/Hire	33	28	20	23	38
Assignment of Duties	58	52	80	51	62
Awards	10	24	21	11	20
Conversion to Full-time	0	0	0	1	0
Disciplinary Action					
Demotion	4	3	4	5	3
Reprimand	14	15	25	13	24
Suspension	20	25	23	26	19
Removal	9	7	7	6	5
Other	14	6	11	8	10
Duty Hours	7	9	9	5	6
Evaluation Appraisal	37	62	66	59	64
Examination/Test	2	2	2	1	1
Harassment					
Non-Sexual	200	215	237	177	224
Sexual	20	15	15	13	23
Medical Examination	0	0	0	1	0
Pay (Including Overtime)	5	9	5	10	13
Promotion/Non-Selection	139	124	117	103	135
Reassignment					
Denied	6	4	10	5	8

Directed	35	17	35	20	20
Reasonable Accommodation	40	36	28	32	36
Reinstatement	1	1	1	2	1
Retirement	5	3	6	1	6
Termination	37	11	35	34	39
Terms/Conditions of Employment	42	50	49	38	52
Time and Attendance	40	36	31	22	28
Training	19	38	35	22	27
Other	70	51	57	64	60
Processing Time	Comparative Data				
	Previous Fiscal Year Data				
	2007	2008	2009	2010	2011
Complaints pending during fiscal year					
Average number of days in investigation	271.25	234.76	160.67	314.71	295.88
Average number of days in final action	433.35	736.90	677.81	626.85	360.54
Complaint pending during fiscal year where hearing was requested					
Average number of days in investigation	340.81	233.11	20.60	281.79	282.63
Average number of days in final action	120.83	213.93	176.76	189.78	182.83
Complaint pending during fiscal year where hearing was not requested					
Average number of days in investigation	214.80	235.92	256.26	335.43	304.05
Average number of days in final action	614.43	914.71	825.73	817.92	416.86
Complaints Dismissed by Agency	Comparative Data				

	Previous Fiscal Year Data									
	2007		2008		2009		2010		2011	
Total Complaints Dismissed by Agency	81		73		54		39		56	
Average days pending prior to dismissal	690		288		248		257		119	
Complaints Withdrawn by Complainants										
Total Complaints Withdrawn by Complainants	29		31		24		33		31	
Total Final Agency Actions Finding Discrimination	Comparative Data									
	Previous Fiscal Year Data									
	2007		2008		2009		2010		2011	
	#	%	#	%	#	%	#	%	#	%
Total Number Findings	8		10		15		27		32	
Without Hearing	3	38	4	40	13	87	22	81	29	91
With Hearing	5	63	6	60	2	13	5	19	3	9
Findings of Discrimination Rendered 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 and findings.</i>	2007		2008		2009		2010		2011	
	#	%	#	%	#	%	#	%	#	%
Total Number Findings	7		8		15		27		32	
Race	1	14	0	0	4	27	7	26	2	6
Color	0	0	0	0	0	0	2	7	0	0
Religion	0	0	0	0	0	0	0	0	0	0
Reprisal	3	43	6	75	4	27	12	44	11	34
Sex	3	43	2	25	6	40	5	19	5	16
National Origin	2	29	0	0	1	7	1	4	0	0

Equal Pay Act	0	0	0	0	0	0	0	0	0	0
Age	0	0	3	38	7	47	9	33	12	38
Disability	2	29	0	0	2	13	5	19	10	31
Non-EEO	0	0	0	0	0	0	1	4	0	0
Findings After Hearing	4		4		2		5		3	
Race	1	25	0	0	1	50	2	40	0	0
Color	0	0	0	0	0	0	0	0	0	0
Religion	0	0	0	0	0	0	0	0	0	0
Reprisal	1	25	2	50	1	50	3	60	2	67
Sex	2	50	1	25	1	50	2	40	0	0
National Origin	1	25	0	0	0	0	0	0	0	0
Equal Pay Act	0	0	0	0	0	0	0	0	0	0
Age	0	0	3	75	0	0	3	60	0	0
Disability	0	0	0	0	0	0	1	20	1	33
Non-EEO	0	0	0	0	0	0	0	0	0	0
Findings Without Hearing	2		4		8		16		23	
Race	0	0	0	0	3	38	1	6	2	9
Color	0	0	0	0	0	0	0	0	0	0
Religion	0	0	0	0	0	0	0	0	0	0
Reprisal	1	50	4	100	0	0	7	44	5	22
Sex	1	50	1	25	2	25	2	13	4	17
National Origin	0	0	0	0	1	13	1	6	0	0
Equal Pay Act	0	0	0	0	0	0	0	0	0	0
Age	0	0	0	0	6	75	5	31	11	48
Disability	2	100	0	0	2	25	3	19	8	35
Non-EEO	0	0	0	0	0	0	1	6	0	0

Findings of Discrimination Rendered by Issue	Comparative Data									
	Previous Fiscal Year Data									
	2007		2008		2009		2010		2011	
	#	%	#	%	#	%	#	%	#	%
Total Number Findings	7		8		15		27		32	
Appointment/Hire	0	0	0	0	0	0	0	0	0	0
Assignment of Duties	1	14	2	25	0	0	2	7	4	13
Awards	0	0	2	25	0	0	0	0	0	0
Conversion to Full-time	0	0	0	0	0	0	0	0	0	0
Disciplinary Action										
Demotion	0	0	0	0	0	0	0	0	0	0
Reprimand	0	0	0	0	0	0	0	0	0	0
Suspension	2	29	0	0	1	7	1	4	2	6
Removal	0	0	0	0	0	0	1	4	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
Evaluation Appraisal	0	0	3	38	1	7	0	0	3	9
Examination/Test	0	0	0	0	0	0	0	0	0	0
Harassment										
Non-Sexual	2	29	4	50	1	7	12	44	16	50
Sexual	0	0	1	13	0	0	0	0	0	0
Medical Examination	0	0	0	0	0	0	0	0	0	0
Pay (Including Overtime)	0	0	1	13	1	7	0	0	1	3
Promotion/Non-Selection	3	43	0	0	10	67	4	15	7	22
Reassignment										
Denied	0	0	0	0	0	0	0	0	2	6

Directed	0	0	2	25	1	7	1	4	6	19
Reasonable Accommodation	1	14	0	0	0	0	3	11	4	13
Reinstatement	0	0	0	0	0	0	0	0	0	0
Retirement	0	0	0	0	0	0	1	4	1	3
Termination	0	0	0	0	1	7	1	4	2	6
Terms/Conditions of Employment	1	14	0	0	1	7	0	0	2	6
Time and Attendance	1	14	0	0	0	0	1	4	3	9
Training	0	0	0	0	0	0	0	0	0	0
Other - User Defined	0	0	1	13	0	0	3	11	0	0
Findings After Hearing	4		4		2		5		3	
Appointment/Hire	0	0	0	0	0	0	0	0	0	0
Assignment of Duties	0	0	1	25	0	0	0	0	2	67
Awards	0	0	1	25	0	0	0	0	0	0
Conversion to Full-time	0	0	0	0	0	0	0	0	0	0
Disciplinary Action										
Demotion	0	0	0	0	0	0	0	0	0	0
Reprimand	0	0	0	0	0	0	0	0	0	0
Suspension	1	25	0	0	0	0	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	0	0	0	0
Evaluation Appraisal	0	0	1	25	0	0	0	0	0	0
Examination/Test	0	0	0	0	0	0	0	0	0	0
Non-Sexual	2	50	3	75	0	0	2	40	1	33
Sexual	0	0	0	0	0	0	0	0	0	0

Medical Examination	0	0	0	0	0	0	0	0	0	0
Pay (Including Overtime)	0	0	1	25	0	0	0	0	0	0
Promotion/Non-Selection	2	50	0	0	1	50	2	40	0	0
Reassignment										
Denied	0	0	0	0	0	0	0	0	0	0
Directed	0	0	1	25	1	50	0	0	0	0
Reasonable Accommodation	0	0	0	0	0	0	0	0	0	0
Reinstatement	0	0	0	0	0	0	0	0	0	0
Retirement	0	0	0	0	0	0	1	20	0	0
Termination	0	0	0	0	0	0	0	0	0	0
Terms/Conditions of Employment	0	0	0	0	0	0	0	0	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
Other - User Defined	0	0	1	25	0	0	0	0	0	0
Findings Without Hearing	3		4		13		22		29	
Appointment/Hire	0	0	0	0	0	0	0	0	0	0
Assignment of Duties	1	33	1	25	0	0	2	9	2	7
Awards	0	0	1	25	0	0	0	0	0	0
Conversion to Full-time	0	0	0	0	0	0	0	0	0	0
Disciplinary Action										
Demotion	0	0	0	0	0	0	0	0	0	0
Reprimand	0	0	0	0	0	0	0	0	0	0
Suspension	1	33	0	0	1	8	1	5	2	7
Removal	0	0	0	0	0	0	1	5	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
Evaluation Appraisal	0	0	2	50	1	8	0	0	3	10
Examination/Test	0	0	0	0	0	0	0	0	0	0
Harassment										
Non-Sexual	0	0	1	25	1	8	10	45	15	52
Sexual	0	0	1	25	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	8	0	0	1	3
Promotion/Non-Selection	1	33	0	0	9	69	2	9	7	24
Reassignment										
Denied	0	0	0	0	0	0	0	0	2	7
Directed	0	0	1	25	0	0	1	5	6	21
Reasonable Accommodation	1	33	0	0	0	0	3	14	4	14
Reinstatement	0	0	0	0	0	0	0	0	0	0
Retirement	0	0	0	0	0	0	0	0	1	3
Termination	0	0	0	0	1	8	1	5	2	7
Terms/Conditions of Employment	1	33	0	0	1	8	0	0	2	7
Time and Attendance	1	33	0	0	0	0	1	5	3	10
Training	0	0	0	0	0	0	0	0	0	0
Other - User Defined	0	0	0	0	0	0	3	14	0	0
Pending Complaints Filed in Previous Fiscal Years by Status	Comparative Data									
	Previous Fiscal Year Data									
	2007	2008	2009	2010	2011					
Total complaints from previous Fiscal Years	1384	1333	1210	939	837					
Total Complainants	1078	1063	932	696	706					

Number complaints pending					
Investigation	75	102	89	81	63
ROI issued, pending Complainant's action	8	6	1	7	12
Hearing	303	350	300	228	290
Final Agency Action	469	360	109	88	80
Appeal with EEOC Office of Federal Operations	20	23	24	28	30
Complaint Investigations	Comparative Data				
	Previous Fiscal Year Data				
	2007	2008	2009	2010	2011
Pending Complaints Where Investigations Exceed Required Time Frames	113	163	171	176	161