



# Notification and Federal Employee Anti-Discrimination and Retaliation Act of 2002 Annual Report for Fiscal Year 2018

*June 10, 2019*



Homeland  
Security

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

# MESSAGE FROM THE OFFICER FOR CIVIL RIGHTS AND CIVIL LIBERTIES

June 10, 2019

I am pleased to present the U.S. Department of Homeland Security's (Department's) "*Notification and Federal Employee Anti-discrimination and Retaliation Act of 2002*" (No FEAR Act) Annual Report for Fiscal Year (FY) 2018.



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

This report summarizes the most significant accomplishments within the Department's EEO program in implementing the No FEAR Act, focusing principally on EEO complaint processing. It evidences the Department's strong commitment to abide by merit system principles, provide protection from prohibited personnel practices, and promote accountability on the part of its leadership.

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

**The Honorable Chuck Grassley**  
President Pro Tempore, U.S. Senate

**The Honorable Ron Johnson**  
Chairman, U.S. Senate Committee on Homeland Security and Governmental Affairs

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

**The Honorable Lindsey Graham**  
Chairman, U.S. Senate Committee on the Judiciary

**The Honorable Dianne Feinstein**  
Ranking Member, U.S. Senate Committee on the Judiciary

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

**The Honorable Bennie G. Thompson**

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

**The Honorable Mike Rogers**

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

**The Honorable Jerrold Nadler**

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

**The Honorable Doug Collins**

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

**The Honorable Elijah E. Cummings**

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

**The Honorable Jim Jordan**

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

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

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

The Department's EEO program continued to demonstrate a strong and collaborative partnership among CRCL and the Department's Components during FY 2018. These efforts contributed to the overall accomplishments and improvements in the Department's EEO program during the year.

A few of the FY 2018 EEO program highlights in this report, attributable to both an excellent workforce committed to quality work and excellent customer service, include:

- Ninety-six percent of requests for EEO counseling (2,587 of 2,685) were completed within regulatory timeframes; this constitutes the highest number of counselings and the most efficient timeliness rate of all reporting years.
- The number of EEO investigations completed in FY 2018 (1,179) increased from the 1,135 completed in FY 2017. Seventy-one percent (840 of 1,179) of investigations were completed within regulatory timeframes.

- The number of Final Agency Decision (FAD) issuances within the regulatory timeframe increased from 26 percent (105 of 405) in FY 2017, to 36 percent (152 of 417) in FY 2018.
- CRCL hosted the 2018 EEO and Diversity Training Conference in Washington, D.C., in June 2018, which convened over 300 EEO and diversity professionals from across the Department. Promoting leadership, partnership, and skill building, the training conference offered 20 dynamic workshops and fostered the sharing of best practices across Components.

FY 2018's achievements, and program challenges, are described in detail in this report. I expect that CRCL and Component partnerships will continue to develop and enhance the Department's EEO program. I look forward to continuing to provide information on the successes of the program in future reports. Please contact the Department Office of Legislative Affairs for additional information (202) 447-5890.

Sincerely



Cameron P. Quinn  
Officer, Office for Civil Rights and Civil Liberties



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

# EXECUTIVE SUMMARY

The purpose of the “Notification and Federal Employee Anti-discrimination and Retaliation Act of 2002” (No FEAR Act), Public Law 107-174, is to reduce the incidence of workplace discrimination within the Federal Government by making agencies and departments more accountable for violations of anti-discrimination and whistleblower protection laws. Section 203 of the No FEAR Act specifically requires that each federal agency submit to certain Congressional committees and members, not later than 180 days after the end of each fiscal year, an annual report containing the following information on cases brought under federal anti-discrimination and whistleblower protection laws: complaint activity (including Federal District Court cases), resulting disciplinary actions; associated Judgment Fund reimbursements and adjustments to agency budgets to meet reimbursement requirements; and an analysis of trends, causation, and practical knowledge gained through experience. This report covers FY 2018 (October 1, 2017, to September 30, 2018).

At the U.S. Department of Homeland Security (DHS or the Department), senior leaders demonstrate a strong commitment to promote equal employment opportunity, abide by merit system principles, provide protection from prohibited personnel practices, and promote accountability. The Department’s Office for Civil Rights and Civil Liberties (CRCL) provides policy and technical advice to senior Department leadership on civil rights and civil liberties issues, and directs the Department’s Equal Employment Opportunity (EEO) and Diversity Management programs.

During FY 2018, CRCL partnered with the Department’s Office of the Chief Human Capital Officer (OCHCO), the Department’s Component EEO offices, and other internal and external stakeholders, in order to promote equality, fairness, diversity, and efficiency within the Department’s workforce. The CRCL Deputy Officer (Deputy Officer), who serves as the Department’s Director for EEO and Diversity, is a member of the Secretary’s Employee Engagement Executive Steering Committee, the mission of which is to identify strategies that will lead to improvements in employee morale throughout the Department. Throughout FY 2018, CRCL maintained close working relationships with all Components’ EEO offices. The Deputy Officer chairs the EEO Directors’ Council (the EEO Council), on which all Component EEO and Civil Rights Directors participate. Effective communication and collaboration contributed to strengthened partnerships with the Components throughout FY 2018.

During FY 2018, the EEO Council continued to execute its five-year Strategic Plan (Plan), which was launched in FY 2015. The Plan focuses on unity of effort across the Department’s EEO and Diversity communities. Council-led working groups, each of which focused on one of the Plan’s goals and was led by EEO and Diversity practitioners from across the Department, undertook measurable actions in furtherance of their respective goals. These actions are discussed in greater depth in Section VI of this report. The working groups’ FY 2018 accomplishments included: (1) administering the Department-wide EEO and Diversity awards program, with awards being given at the Department’s EEO and Diversity Conference in June 2018; (2) developing a proposal to broaden the criteria parameters of the Secretary’s Diversity Award, which is part of the Secretary’s Awards Program; (3) developing an additional advanced barrier analysis course to allow practitioners to more effectively conduct barrier analysis within their Components; and

(4) conducting a study resulting in a report and recommendations of anti-harassment programs across government and in the private sector.

In June 2018, CRCL hosted the 2018 DHS EEO and Diversity Training Conference in Washington, D.C. Building on the Department's inaugural EEO and Diversity Training Conference in 2016, the dynamic 2018 conference brought together over 300 EEO and diversity professionals from across the Department to further hone practitioners' skill sets and foster the sharing of best practices. In keeping with the Department's Leadership Year—the DHS effort to promote a culture of leadership across the Department—the training conference theme, “Partners in Leadership and Excellence,” highlighted the critical roles that EEO and diversity practitioners play in engendering effective leadership at all levels and promoting excellence throughout the Department. The training conference featured over 20 high-powered breakout workshops on EEO and diversity-related topics, provided an advanced first-of-its-kind barrier analysis session, and offered refresher training for EEO counselors and investigators from across DHS.

Throughout FY 2018, CRCL continued to provide Components with an objective assessment of the quality of their EEO complaint Reports of Investigation (ROI) through the ROI Feedback Tool (Feedback Tool). Launched in FY 2016, the Feedback Tool provides quarterly feedback on the quality (e.g. legal sufficiency, organization, documentation) of ROIs to each of the Department's Components. In FY 2018, CRCL evaluated results of a poll conducted of all Components' Complaints Managers regarding their use of the Tool, which indicated that Components appreciated the feedback, using it for a variety of purposes, such as training and monitoring contractor's performance.

DHS continued to show improvements in several areas of its EEO complaints program during FY 2018. One area was in the EEO pre-complaint process, during which EEO counseling is required to be completed within 30 days (or up to 90 days if an extension is granted) after the employee makes initial contact with the EEO office. In FY 2018, 96 percent of the counselings (2,587 of 2,685) were timely completed. This achievement marks the Department's highest number of timely completed counselings in a year, since FY 2010, and the highest percentage of timely completed counselings in a year, since FY 2009. In FY 2018, DHS experienced an 18 percent increase (1,472) in the number of new formal EEO complaints filed as compared to FY 2017 (1,245).

In the area of EEO investigations, the Department completed 1,179 investigations, a modest increase over the 1,135 investigations completed in FY 2017. Moreover, there was a moderate increase in the number of timely investigations completed in FY 2018 (840) over the number timely completed in FY 2017 (812). Seven of the Components decreased their average number of processing days for investigations. ICE, however, experienced a 32 percent increase (from 272 days in FY 2017 to 360 days in FY 2018), due to a senior staffing shortage that negatively affected management of the investigation inventory. Additionally, FEMA experienced a 38 percent increase (from 240 days in FY 2017 to 330 days in FY 2018), which was a result of FEMA addressing a backlog of cases pending investigation. This increase also contributed to the Department's average number of processing days for investigations to increase from 238 days in FY 2017 to 271 days in FY 2018.

The Department increased the number of merit final agency decisions (FADs) issued during FY 2018 (417) compared to FY 2017 (405). Further, CRCL issued 36 percent (152 of 417) of merit FADs within the regulatory timeframe, an improvement over FY 2017 when 26 percent (105 of 405) of merit FADs were timely issued. In addition, CRCL saw a 31 percent increase in incoming FAD requests during FY 2018 (570) as compared with FY 2017 (434). As a result, CRCL's inventory of unassigned FAD requests<sup>1</sup> grew from 149 at the end of FY 2017, to 172 by the end of FY 2018, a challenge discussed in Section VI of this report.

In FY 2018, DHS processed eight findings of discrimination,<sup>2</sup> which is a decrease from the 14 findings processed in FY 2017. In the FY 2018 findings, there were only small shifts in the bases of discrimination and issues alleged compared with previous fiscal years. In FY 2018, reprisal was the most frequently alleged basis on which complainants prevailed, followed by race (Black/African American), and then color. The most frequently raised issues on which judgment was rendered in favor of the complainants were harassment (non-sexual), medical examinations, and terms and conditions of employment.

During FY 2018, 197 civil actions filed against the Department, involving the various laws covered in the No FEAR Act, were pending or resolved in Federal District Court. Federal judges disposed of 71 cases, 48 of which were decided in favor of the agency and 22 of which were settled by the parties. One case was disposed of through arbitration/mediation.

Components reported that the Department's reimbursement to the Judgment Fund during FY 2018, was in the amount of \$2,558,000.00. Additionally, \$221,000.00 was reimbursed to the Judgment Fund for attorney's fees. During FY 2018, 11 employees were disciplined for discrimination, retaliation, harassment, or other infractions of provisions of law covered by the No FEAR Act. This information is described in Section III of this report.

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<sup>1</sup> These cases have not yet been assigned to a FAD writer's docket of cases being actively worked.

<sup>2</sup> The Department issued one merit FAD and four Final Orders fully implementing Equal Employment Opportunity Commission (EEOC) Administrative Judges' (AJ) decisions finding discrimination; The Department also issued three Final Orders that it did not fully implement, and had appealed the AJs' decisions finding discrimination. A more detailed explanation can be found in Section V of this report.

# I. LEGISLATIVE REQUIREMENT

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

(a) Annual Report. — Subject to subsection (b), [(b) pertains to requirements for the first report] not later than 180 days after the end of each fiscal year, each Federal agency shall submit to the Speaker of the House of Representatives, the President pro tempore of the Senate, the Committee on Governmental Affairs of the Senate, the Committee on Government Reform of the House of Representatives, each committee of Congress with jurisdiction relating to the agency, the Equal Employment Opportunity Commission, and the Attorney General an annual report which shall include, with respect to the fiscal year

- (1) the number of cases arising under each of the respective provisions of law covered by paragraphs (1) and (2) of section 201(a) in which discrimination on the part of such agency was alleged;
- (2) the status or disposition of cases described in paragraph (1);
- (3) the amount of money required to be reimbursed by such agency under section 201 in connection with each of such cases, separately identifying the aggregate amount of such reimbursements attributable to the payment of attorneys’ fees, if any;
- (4) the number of employees disciplined for discrimination, retaliation, harassment, or any other infraction of any provision of law referred to in paragraph (1);
- (5) the final year-end data posted under section 301(c)(1)(B) for such fiscal year (without regard to section 301(c)(2));
- (6) a detailed description of —
  - (A) the policy implemented by that agency relating to appropriate disciplinary actions against a Federal employee who —
    - (i) discriminated against any individual in violation of any of the laws cited under section 201(a)(1) or (2); or
    - (ii) committed another prohibited personnel practice that was revealed in the investigation of a complaint alleging a violation of any of the laws cited under section 201(a)(1) or (2); and
  - (B) with respect to each of such laws, the number of employees who are disciplined in accordance with such policy and the specific nature of the disciplinary action taken;

(7) an analysis of the information described under paragraphs (1) through (6) (in conjunction with data provided to the Equal Employment Opportunity Commission in compliance with Part 1614 of Title 29 of the Code of Federal Regulations) including —

- (A) an examination of trends;
- (B) causal analysis;
- (C) practical knowledge gained through experience;
- (D) any actions planned or taken to improve complaint or civil rights programs of the agency; and

(8) any adjustment (to the extent the adjustment can be ascertained in the budget of the agency) to comply with the requirements under section 201.

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

## II. BACKGROUND

The Department's mission is to ensure a homeland that is safe, secure, and resilient against terrorism and other hazards where American interests, aspirations, and way of life can thrive. This mission is embodied in the DHS motto: *With honor and integrity, we will safeguard the American people, our homeland, and our values.*

The Department was established through the *Homeland Security Act of 2002*, Pub. L. No. 107–296, and Section 103(d)(5) of the Act provides for the presidential appointment of an Officer for Civil Rights and Civil Liberties (Officer). On October 26, 2012, the Secretary issued Delegation Number 19003, which delegated to the Officer for CRCL the authority to render final decisions on behalf of the Secretary in EEO complaints, pursuant to 29 C.F.R. § 1614.110, or pursuant to the Departmental EEO Complaint Procedures, when that regulation is not applicable. Delegation Number 19003 superseded Delegation Numbers 3095 and 19002.

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

1. Advising Department leadership, personnel, and partners about civil rights and civil liberties issues, and ensuring respect for civil rights and civil liberties in policy decisions and implementation of those decisions.

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

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

### III. RESULTS AND DATA

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

During FY 2018, the Department had 197 pending or resolved civil actions in Federal District Court under the laws covered in the No FEAR Act. The majority (119) of those Federal District Court filings arose under Title VII, followed by filings under the Rehabilitation Act (45), then filings under the ADEA (27), then filings under the *Whistleblower Protection Act of 1989*, 5 U.S.C. §1201 (4), and then filings under the Equal Pay Act (2).

During FY 2018, 71 cases were disposed of in Federal District Court: 48 were decided in favor of the Department, 22 were resolved by settlement, and one was resolved through arbitration/mediation. For further information regarding FY 2018 employment discrimination and whistleblower cases filed against the Department in Federal District Court, see Appendix 1.

#### B. Reimbursements to Judgment Fund

During FY 2018, as reported by the Department's Components, the Department reimbursed a total of \$2,558,000.00 to the Judgment Fund. The amount reimbursed resulted from cases filed under Title VII and the Equal Pay Act. Reimbursements came from the following Components

in order of largest to smallest amount: Transportation Security Administration (TSA),<sup>3</sup> U.S. Customs and Border Protection (CBP), Federal Emergency Management Agency (FEMA), and U.S. Immigration and Customs Enforcement (ICE). In addition, \$221,000.00 was reimbursed to the Judgment Fund for attorney's fees by CBP, Headquarters EEO Office (HQ EEO), and United States Secret Service (USSS), which stemmed from Title VII and ADEA cases.

### C. Disciplinary Actions

At the Department, each Component retains independent authority to issue personnel actions against its own employees. This includes the imposition of disciplinary action against individuals who have been found to have engaged in discriminatory, retaliatory, or harassing conduct, as set forth in findings of discrimination. As part of any relief ordered, Components are required to consider disciplinary action against any individual found to have been responsible for a discriminatory act. In deciding whether disciplinary action is appropriate in a given case, Components consider the specific facts and circumstances at issue in the case. If disciplinary action is imposed, that information is reported to CRCL for inclusion in the Department's No FEAR Act Report. If disciplinary action is considered, but not imposed, that information is also reported to CRCL, along with other matters of compliance with the ordered relief. During FY 2018, a total of 11 employees (6 from TSA, 2 from U.S. Citizenship and Immigration Services (USCIS), 2 from USSS, and 1 from ICE) were disciplined as a consequence of findings of discriminatory, retaliatory, or harassing conduct. Eleven employees were also disciplined in FY 2017.

### D. EEO Complaint Data

See Appendix 2 for the Department's No FEAR Act data for FY 2018, which is also posted online (<http://www.dhs.gov/homeland-security-no-fear-act-reporting>).

## IV. ANALYSIS OF TRENDS AND CAUSALITY

### A. EEO Complaint Activity

Section 203(a)(7) of the No FEAR Act requires federal agencies to examine trends and causes behind the data in their reports over the past five years. Figure 1 shows the number of complaints filed Department-wide each year for the past five years and the variance from the prior year's filing.

The Department's workforce population has increased in recent years, and FY 2018 marked the largest workforce over the past five years with 206,449 employees. A gradual increase in staffing at the Department occurred between FY 2015, when there were 190,431 employees, and FY 2017, when the number had increased to 197,593 employees. In FY 2018, the workforce

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

grew to 206,449 employees, which is an increase of 8,856 employees from FY 2017. The upsurge reflects workforce increases at all Components, with the exception of the Federal Law Enforcement Training Centers (FLETC), which experienced a slight decrease in its workforce in FY 2018.

After modest, steady increases in the number of formal EEO complaints filed each year from FY 2014 through FY 2016, the number of formal EEO complaints filed declined in FY 2017. However, in FY 2018, there was an 18 percent increase in the number of complaints filed (1,472) compared to FY 2017 (1,245). In addition, the number of formal complaints filed in FY 2018 represents the largest number filed in the preceding five years. CBP, the U.S. Coast Guard (USCG), and USCIS experienced moderate increases in the total number of complaints filed, while FLETC, ICE, and TSA experienced slight decreases in complaint filings. Notably, FEMA, USSS, and HQ EEO showed the most significant increases in the number of formal filings from FY 2017 to FY 2018. Specifically, FEMA showed a 103 percent increase (79 in FY 2017 to 160 in FY 2018), USSS showed a 96 percent increase (23 in FY 2017 to 45 in FY 2018), and HQ EEO showed a 75 percent increase (36 in FY 2017 to 63 in FY 2018). Most Components have attributed increases in complaint filings to increased awareness of the EEO complaint program as result of increased anti-harassment and anti-discrimination training provided to employees during FY 2018, which is described further in this report. Additionally, the Department’s employee population increased by 8,856 employees between FY 2017 and FY 2018, a significant increase over the prior five years, which likely also affected the overall number of complaints filed. See Figure 1.

**Figure 1: Complaints Filed, FY 2013 – FY 2018**

	<i>2013</i>	<i>2014</i>	<i>2015</i>	<i>2016</i>	<i>2017</i>	<i>2018</i>
<b>Department -wide Filings</b>	1,192	1,213	1,262	1,315	1,245	1,472
<b>Variance from prior year complaints</b>	-6	+21	+49	+53	-70	+227
<b>Department -wide Population</b>	196,439	191,975	190,431	192,866	197,593	206,449
<b>Variance in employee population from prior year</b>	-4,120	-4,464	-1,544	+2,435	+4,727	+8,856

## B. Bases of Discrimination in EEO Complaints

During FY 2018, the most frequently alleged bases of discrimination in formal EEO complaints were, in order of frequency: reprisal, sex, and race. Although the numbers have fluctuated from year to year, reprisal and sex have been the most frequently alleged bases since FY 2012. Race had been the third most frequently alleged basis in FY 2015 and FY 2016; however, in FY 2017, disability was the third most frequently alleged basis. See Figure 2.

- *Reprisal:* In FY 2018, there was a 23 percent increase in the number of reprisal claims (735) compared to in FY 2017 (596). However, this is only a 10 percent increase from the number of reprisal claims in FY 2016 (667). Reprisal remains the most commonly alleged basis of discrimination at DHS, and government-wide, as reported by the EEOC.<sup>4</sup> At the Department, and across the federal sector, reprisal claims are almost always joined with an underlying EEO complaint on the basis of race, national origin, sex, etc.
- *Sex:* During FY 2018, DHS received 509 complaints alleging discrimination on the basis of sex, which includes claims of lesbian, gay, bisexual, and transgender (LGBT) discrimination. Specifically, females alleging discrimination based on sex accounted for the most frequently raised basis, with 352 complaints. Males alleging discrimination based on sex in 144 complaints. Sexual orientation was raised in 13 complaints. The 509 complaints raising sex discrimination in FY 2018 represent a 7 percent increase from the 476 complaints alleging sex discrimination in FY 2017.
- *Race:* During FY 2018, race discrimination was alleged in 488 complaints, which is a 25 percent increase over the prior year when race was raised in 391 complaints. In particular, there were increases in three race categories: Asian, Black or African American, and White. As explained below, the increases in race claims at DHS can mostly be attributed to increases in complaints of race discrimination filed at TSA, USCIS, and CBP.

At DHS, there was a 61 percent increase in the number of complaints alleging discrimination based on race (Asian) from FY 2017 (28) to FY 2018 (45). TSA experienced a 450 percent increase in these claims, from two in FY 2017 to 11 in FY 2018. At USCIS, discrimination claims based on race (Asian) increased 67 percent, from three in FY 2017 to five in FY 2018. Finally, at CBP these claims increased 60 percent from five in FY 2017 to eight in FY 2018.

There was also a 33 percent increase in the number of complaints alleging discrimination based on race (White), from 87 in FY 2017 to 116 in FY 2018. This increase can be attributed to a 300 percent increase at USCIS (four in FY 2017, compared to 16 in FY 2018) and a 167 percent increase at CBP (12 in FY 2017, compared to 32 in FY 2018).

Finally, there was a 23 percent increase in the number of complaints alleging discrimination based on race (Black or African American), from 261 in FY 2017,

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<sup>4</sup> <https://www.eeoc.gov/federal/reports/fsp2015/index.cfm>. (The 2015 report is the most recent issued by the EEOC).

compared to 322 in FY 2018. USCIS experienced a 46 percent increase in these claims, from 28 in FY 2017, compared to 41 in FY 2018. At CBP, there was a 26 percent increase in Black or African American race-based discrimination claims, from 42 in FY 2017, compared to 53 in FY 2018.

The root cause of the increases in race-based discrimination within the Components appears to be largely unknown. CRCL asked CBP, TSA, and USCIS about the reasons for the increases. USCIS was unable to explain the increases, except to note that their formal complaints increased overall by 35 percent; however, they plan further examine this issue in FY 2019. Similarly, CBP indicated that, the increases are connected to the significant increase in formal complaints filed in FY 2018.

**Figure 2: Bases of Discrimination, FY 2013 - FY 2018**

	<b>2013</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>
<b>Reprisal</b>	558	532	576	667	596	735
<b>Sex</b>	442	394	430	453	476	509
<b>Race</b>	451	322	402	403	391	488
<b>Disability</b>	301	320	355	379	424	477
<b>Age</b>	413	336	392	396	386	398
<b>National Origin</b>	184	182	186	218	207	263
<b>Color</b>	155	122	165	159	181	187
<b>Non-Statutory</b> <sup>5</sup>	79	78	82	74	100	90
<b>Religion</b>	56	63	58	66	57	62
<b>GINA</b>	8	4	5	7	4	6

\* Non-statutory bases include parental status and sexual orientation.

### C. Issues in EEO Complaints

The most frequently raised issue in EEO complaints at DHS during FY 2018 was harassment (non-sexual).<sup>6</sup> Non-sexual harassment has been the most frequently raised issue in EEO

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

<sup>6</sup> The No FEAR Act requires reporting of complaints involving sexual harassment (i.e., sex-based claims involving actionable unwelcome conduct of a sexual nature) and non-sexual harassment (i.e., claims involving actionable

complaints at the Department over the past seven years, as has been the case across the federal sector.<sup>7</sup> The basis of sex was the basis most frequently raised in non-sexual harassment complaints (233 complaints), and 74 percent (172) of those complaints were based on sex (female). Notably, there was a 25 percent increase in the number of non-sexual harassment complaints between FY 2017 (502) and FY 2018 (628). This increase can be attributed to increased complaints based on non-sexual harassment at three Components: USCIS, CBP, and TSA. Specifically, in FY 2018, USCIS had 61 non-sexual harassment complaints, compared to 37 non-sexual harassment complaints in FY 2017, which is a 65 percent increase. TSA saw a 17 percent increase in non-sexual harassment complaints, with 179 in FY 2017, compared to 210 in FY 2018. Finally, CBP experienced a 37 percent increase in non-sexual harassment complaints between FY 2017 (122) and FY 2018 (167).

Although sexual harassment complaints are not among the most commonly raised issues at DHS, the Department experienced a 36 percent increase in the number of sexual harassment complaints from FY 2017 (42) to FY 2018 (64).<sup>8</sup> In addition, there was an 89 percent increase in the number of specific allegations of sexual harassment contained within those complaints — 47 allegations in FY 2017, compared to 89 allegations in FY 2018. These increases were across all bases: men, women, LGBT, and reprisal.<sup>9</sup> Seven of nine DHS Components experienced increases in sexual harassment complaints, the exceptions being CBP, which had 13 sexual harassment complaints in both FY 2017 and FY 2018, and ICE, whose sexual harassment complaints decreased from 13 in FY 2017 to 8 in FY 2018. The Components that experienced the largest increases were FEMA and TSA. In FY 2017, FEMA had one complaint that contained one allegation of sexual harassment. In FY 2018, FEMA had 15 complaints that included 16 allegations of sexual harassment. In FY 2017, FEMA had ten complaints with 13 allegations of sexual harassment. In FY 2018, TSA had 18 complaints with 29 allegations of sexual harassment.

As noted above with regard to bases, the specific reasons for these increases are largely unknown. Some of the increases, however, might be attributed to the focus placed on the issues of harassment, sexual harassment, and sexual assault that resulted from multiple high-profile cases of sexual harassment and assault that came to light in late 2017 and in 2018. Social movements, including on social media, further uncovered and broadcast to the public the egregious nature of many of these incidents, which occurred in numerous industries, including entertainment, media, politics, and government. A consequence of these events was increased attention on anti-harassment prevention efforts, with respect to both sexual and non-sexual harassment, at the Components and Department-wide at DHS. These efforts are discussed further in Section VI of this report. Again, while sexual harassment is not among the most frequently raised issues in complaints at the Department, in light of the increased focus in this area and the major increases in sexual harassment complaints experienced in FY 2018, this is an area that will continue to be monitored.

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unwelcome conduct not of a sexual nature, e.g., based instead on race, sex, national origin, color, religion, age, disability, or reprisal).

<sup>7</sup><https://www.eeoc.gov/federal/reports/fsp2015/index.cfm>.

<sup>8</sup> It is important to note that the total number of issues may exceed the total number of complaints because one complaint may include more than one issue.

<sup>9</sup> In addition to sex (male and female), sexual harassment complaints can be based on someone's LGBT status or in reprisal for engaging in prior EEO activity.

The second-most commonly raised issue at DHS, disciplinary action, was raised in 282 complaints. This represented an eight percent decrease from FY 2017, when it was raised in 304 complaints. As Figure 3, below, shows, disciplinary action has consistently been the second- or third-most frequently raised issue at the Department.

The third-most frequently raised issue at DHS was promotion/non-selection, which was raised in 235 complaints. This represents a 16 percent decrease over FY 2017, when promotion/non-selection was raised in 280 complaints.

**Figure 3: Issues in Complaints, FY 2013 - FY 2018**

	<i>2013</i>	<i>2014</i>	<i>2015</i>	<i>2016</i>	<i>2017</i>	<i>2018</i>
<b>Non-Sexual Harassment</b>	498	482	479	584	502	628
<b>Disciplinary Action</b>	198	196	247	259	304	282
<b>Promotion/Non-Selection</b>	272	159	224	296	280	235
<b>Assignment of Duties</b>	98	104	141	150	126	222
<b>Terms/Conditions of Employment</b>	105	99	105	147	158	221

## V. COMPLAINT PROCESSING AND ADJUDICATION DATA

### A. EEO Counseling

Department-wide, despite a seven percent increase in the total number of completed counselings between FY 2017 (2,517) and FY 2018 (2,685), the rate of timely processing improved to 96 percent in FY 2018, the highest timeliness percentage ever at the Department.<sup>10</sup> See Figure 4. This increase in timeliness is mainly attributed to a 109 percent increase in timely completed counselings at USSS (from 33 in FY 2017 to 69 in FY 2018), a 67 percent increase in timely completed counselings at FEMA (from 186 in FY 2017 to 310 in FY 2018), and a 25 percent increase at USCIS (from 175 in FY 2017 to 218 in FY 2018).

<sup>10</sup> In accordance with 29 C.F.R. § 1614.105(d), counseling of an informal EEO complaint (also referred to as a pre-complaint) must be completed within 30 calendar days, unless the aggrieved person agrees to extend the counseling period up to an additional 60 calendar days.

**Figure 4: EEO Counseling at the Department, FY 2013 – FY 2018**

	<i>2013</i>	<i>2014</i>	<i>2015</i>	<i>2016</i>	<i>2017</i>	<i>2018</i>
<b>Total Number</b>	2,134	2,067	2,391	2,510	2,517	2685
<b>Timely Number</b>	1,737	1,761	2,081	2,253	2,387	2587
<b>Percentage Timely</b>	81	85	87	90	95	96

Individual Components’ program accomplishments and enhancements, as highlighted below, contributed to the Department’s increase in timely counselings in FY 2018:

- Three Components provided timely EEO counseling in 100 percent of their cases in FY2018: FLETC, USCIS, and USSS.
- Five additional Components provided timely counseling in a high percentage of their cases: CBP, 99 percent timely (735 of 736 cases), USCG, 98 percent timely (107 of 109 cases), TSA, 96 percent timely (827 of 862 cases), FEMA, 95 percent timely (294 of 310 cases), and ICE, 91 percent timely (274 of 302).

**B. EEO Investigations**

In accordance with 29 C.F.R. § 1614.108(e), an investigation must be completed within 180 calendar days, unless the complainant agrees to extend the deadline, or the complaint is amended. Here, we compare the number of formal complaints filed Department-wide to the number of EEO investigations completed, and to those that were completed timely.<sup>11</sup>

In FY 2018, 1,179 investigations were completed Department-wide, a slight increase from the 1,135 investigations completed in FY 2017. The number of timely completed investigations moderately increased as well in FY 2018, to 840 from 812 in FY 2017. While the percentage of timely completed investigations remained consistent between FY 2018 (71 percent) and FY 2017 (72 percent), the average number of days to complete an investigation increased to 271 days in FY 2018 from 238 days in FY 2017. This was due to a senior staffing shortage at ICE, as well as FEMA making significant improvements to address a backlog of pending cases.

USSS showed the most significant improvements in timely completed investigations over the last fiscal year. In FY 2017, USSS timely completed 47 percent (16 of 34) of their investigations; in FY 2018, the rate of timely completed investigations improved to 100 percent (33 of 33). This is a notable improvement and is a direct result of USSS implementing process improvements, including case reconciliation,<sup>12</sup> over the past fiscal year. HQ EEO also showed significant improvement in timely completed investigations. In FY 2017, HQ EEO timely completed 8 of

<sup>11</sup> We note, however, that complaints filed in one fiscal year may not always be investigated during the same fiscal year.

<sup>12</sup> Case reconciliation is the process of pulling complaint records and verifying that data is accurately reflected into the enterprise complaints management system.

22 investigations (36 percent), and in FY 2018, HQ EEO timely completed 29 of 40 investigations (73 percent). This improvement is a result of HQ EEO’s focus on addressing their staffing challenges and backfilling vacant positions. See Figure 5.

**Figure 5: EEO Investigations at the Department, FY 2013 – FY 2018**

	<i>2013</i>	<i>2014</i>	<i>2015</i>	<i>2016</i>	<i>2017</i>	<i>2018</i>
<b>Total Formal Complaints Filed<sup>13</sup></b>	1,192	1,213	1,262	1,315	1,245	1,472
<b>Total Investigations</b>	871	940	865	1,122	1,135	1,179
<b>Timely Investigations</b>	651	658	535	522	812	840
<b>Percentage Timely</b>	75	70	62	46	72	71
<b>Average Days</b>	227	246	253	296	238	271

Other notable information regarding Components’ investigation data includes:

- USCIS has timely completed 100 percent of their EEO investigations, an increase from 94 percent in FY 2017.
- Three additional Components provided timely completed investigations in a high percentage of their cases: USCG, 96 percent timely (47 of 49 investigations); TSA, 91 percent timely (366 of 403 investigations); and CBP, 90 percent timely (226 of 251 investigations).
- Three Components had decreases in the percentage of timely completed investigations because of resource/staffing challenges. FEMA’s timely investigations decreased from seven percent (2 timely completed of 27 total investigations completed) in FY 2017, to six percent (9 timely completed of 151 total investigations completed) in FY 2018. The decrease was due to significant staffing challenges FEMA faced throughout FY 2017, and which FEMA has since been working to address. Notably, however, FEMA significantly increased the total number of investigations completed from FY 2017 (27) to FY 2018 (151) as a result of dedicated efforts to address its backlog of cases pending investigation. FLETC’s timely investigations declined, from 100 percent (7 timely completed of 7 total investigations completed) in FY 2017, to 60 percent (3 timely completed of 5 total investigations completed) in FY 2018.<sup>14</sup> Similarly, ICE staffing shortages were apparent in their decrease in the percentage of timely completed investigations from 36 percent in FY 2017 (51 timely completed of 143 total

<sup>13</sup> Investigations are not completed for all formal complaints; some complaints are dismissed, settled, or withdrawn before an investigation is completed.

<sup>14</sup> FLETC’s decrease in timely completed investigations was partially out of its direct control; one case was processed by another Component because of a conflict of interest, and another case was a requested procedural dismissal that CRCL returned to FLETC to investigate, with too little time remaining to meet the regulatory timeframe.

investigations completed) to 25 percent in FY 2018 (39 timely completed of 159 total investigations completed).

- Although DHS had an overall increase in the average number of processing days for EEO investigations, the majority of Components experienced a decrease in the average number of processing days for completion of EEO investigations. The Department’s increase was largely driven by FEMA, given the high number of complaints investigated in FY 2018 (151) compared to FY 2017, when FEMA only completed 27 investigations. Investigations completed in FY 2018 involved some of FEMA’s oldest pending cases, thus driving up the overall number of processing days.

C. Procedural Dismissals

Not all formal complaints result in an EEO investigation. Instead, an agency may procedurally dismiss an EEO complaint for one of several reasons, including, but not limited to: failure to state a claim, untimely initial contact with an EEO counselor, filing the identical claim in Federal District Court, or failure to provide necessary information to the agency. See 29 C.F.R. § 1614.107(a). At DHS, Components send CRCL requests for procedural dismissal of complaints that, based on Components’ review, meet appropriate regulatory criteria; CRCL makes the final determinations after a careful and diligent review process. In FY 2018, CRCL dismissed 186 formal complaints — a 68 percent increase over the number of dismissals issued in FY 2017 (111), and the highest number of dismissals issued over the past five years. At the same time, CRCL increased its efficiency in this area, with a 29 percent decrease in average processing days in FY 2018 (163), compared to 211 average processing days in FY 2017. This decrease is a direct result of CRCL’s focus on streamlining the review and approval process during FY 2018. See Figure 6.

**Figure 6: Procedural Dismissals, FY 2013 – FY 2018**

	<i>2013</i>	<i>2014</i>	<i>2015</i>	<i>2016</i>	<i>2017</i>	<i>2018</i>
<b>Total Number</b>	131	125	92	61	111	186
<b>Average Number of Processing Days</b>	104	136	163	206	211	163

D. Findings of Discrimination

Findings of discrimination in the federal administrative EEO process result from either the issuance of a merit FAD<sup>15</sup> or a decision from an EEOC AJ. The regulations at 29 C.F.R. § 1614.110(a) require that when an AJ issues a decision, agencies shall take final action on the complaint by issuing a final order within 40 days of receipt of the hearing file and AJ’s decision. The final order must notify the complainant whether or not the agency is fully implementing the

<sup>15</sup> Further discussion of merit FADs can be found in Section VI of this report.

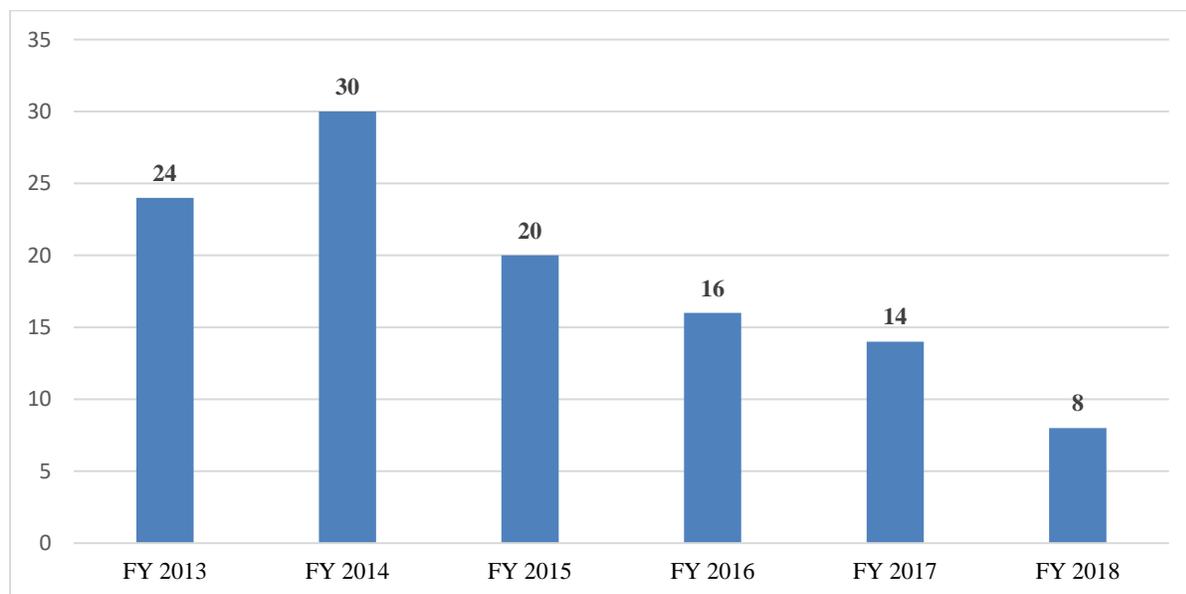
AJ's decision. If the agency's final order indicates that it will not fully implement an AJ's decision, then the agency simultaneously files an appeal with EEOC's Office of Federal Operations (OFO).

The following tally of the Department's findings of discrimination from FY 2013 to FY 2018, illustrates the protected bases upon which the findings were made, and the specific issues involved in the findings during this period.

As shown in Figure 7, from FY 2013 to FY 2018, the Department processed 112 findings of discrimination through the issuance of merit FADs or Final Orders following an EEOC AJ decision. In FY 2018, the Department processed eight cases in which findings of discrimination were made. These cases included one merit FAD (without an EEOC AJ's decision), four EEOC AJ decisions finding discrimination that the Department fully implemented, and three EEOC AJ decision finding discrimination that the Department appealed to the EEOC's OFO. It should be noted that the number of findings reflects only a small portion of the Department's complaints overall. The eight findings represent one percent of the 640 merit FADs and Final Orders the Department issued in FY 2018. This is below the government-wide percentage of findings of discrimination in FY 2015, which was three percent (168 findings).<sup>16</sup>

In the examination of findings issued during FY 2018, no significant patterns or trends have been identified. Likewise, the fluctuation in findings from FY 2013 to FY 2018, shown below, does not appear to be attributable to any particular reason, nor does it indicate a pattern Department-wide, or within a particular Component. Furthermore, the number of findings is too small to make any across-the-board comparisons. See Figure 7.

**Figure 7: Complaints with Findings, FY 2013 – FY 2018**



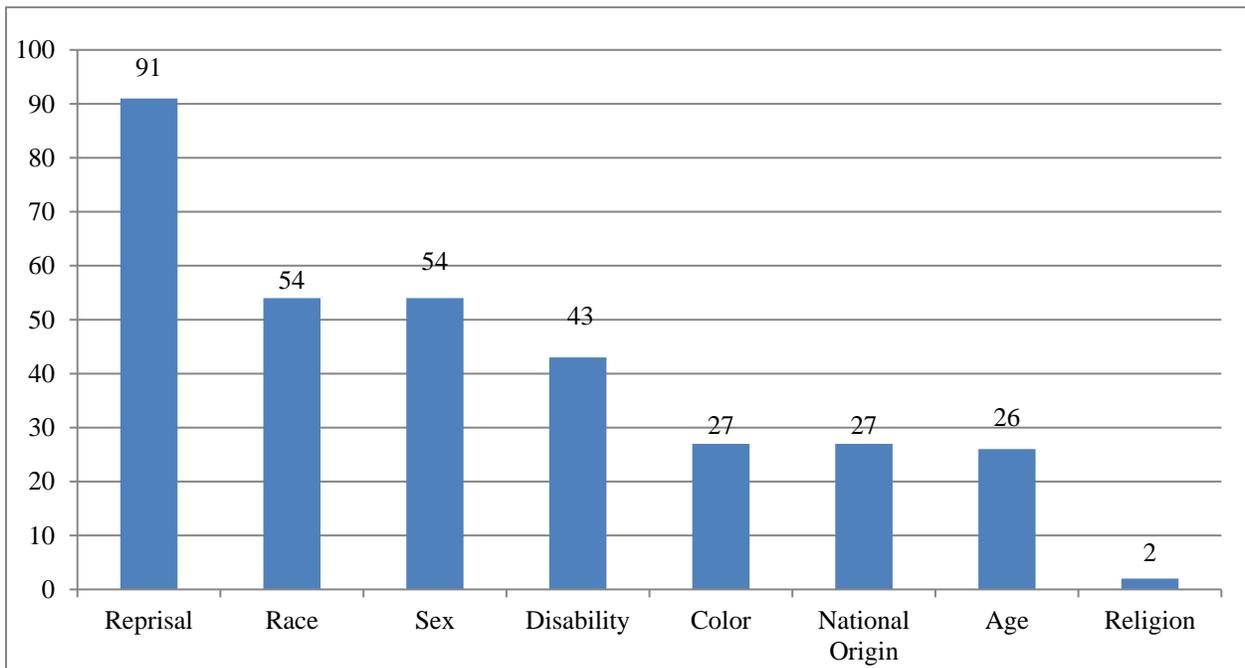
<sup>16</sup> This is the most recent EEOC Annual Report on the Federal Workforce (<https://www.eeoc.gov/federal/reports/fsp2015/index.cfm>).

## 1. Protected Bases

In FY 2018, most findings of discrimination issued included the bases of reprisal (8), race (4), and color (2). The number of findings based on reprisal in FY 2018 (8) is slightly lower than the nine reprisal findings in FY 2017. The four findings based on race is higher than the two findings made on race in both FY 2016 and FY 2017. In addition, with respect to these four findings on race, the race identified in all cases was “Black or African American.” The overall number of findings issued in FY 2018, was lower than previous years, so it logically follows that the number of bases upon which those findings were made would be lower than previous years. It is important to note that the total number of bases within findings of discrimination may exceed the total number of findings issued because one decision may find discrimination on more than one basis. In FY 2018, the Department also issued two findings based on sex and two findings based on disability. The small change in the number of findings on many of the bases does not appear to signify any particular trend.

The total number of findings by basis for the period from FY 2013 to FY 2018 is shown in Figure 8.

**Figure 8: Findings by Basis, FY 2013 – FY 2018**



## 2. Issues

Consistent with previous years, the FY 2018 findings of discrimination involved complaints raising 18 issues in different areas, with no discernible pattern or trend. The FY 2018 findings

predominantly involved harassment (non-sexual) (6). There was a decrease in the number of findings relating to harassment (non-sexual) in FY 2018 (6), as compared to FY 2017 (11). Additionally, the Department saw findings relating to terms/conditions of employment (such as overly scrutinizing work, complaints about office space, damage to reputation) (3), medical examination (3), disciplinary action (2), performance evaluation/appraisal (2), non-selection/non-promotion (1), and assignment of duties (1). In FY 2017, there was a more dramatic increase in the number of findings in the area of assignment of duties: nine, compared to three in FY 2016. However, in FY 2018, there was just one finding related to assignment of duties, suggesting that the increase in 2017 was an anomaly. In FY 2017, for the first time in at least five years, there were two findings based on medical examinations, and that trend continued in FY 2018, with a slight increase of three findings. As with protected bases, the total number of issues within the findings of discrimination may exceed the total number of findings issued, given that one decision may find discrimination with regard to multiple issues. In FY 2018, there were modest fluctuations in issues from prior years; however, these do not appear to signify any particular trend. See Figure 9.

**Figure 9: Findings by Issue, FY 2013 – FY 2018**

	<i>2013</i>	<i>2014</i>	<i>2015</i>	<i>2016</i>	<i>2017</i>	<i>2018</i>	<i>Total</i>
<b>Appointment/hire</b>	2	1	0	0	0	0	3
<b>Assignment of duties</b>	3	2	2	3	9	1	20
<b>Awards</b>	0	0	0	1	0	0	1
<b>Disciplinary action</b>	5	1	1	1	0	2	10
<b>Duty hours</b>	0	0	1	0	0	0	1
<b>Evaluation/appraisal</b>	1	2	2	0	0	2	7
<b>Examination/test</b>	0	0	0	0	2	0	2
<b>Harassment (non-sexual)</b>	18	18	8	10	11	6	71
<b>Medical Examination</b>	0	0	0	0	2	3	5
<b>Non-selection/non-promotion</b>	1	4	5	4	2	1	17
<b>Pay/overtime</b>	0	0	0	0	1	0	1
<b>Reasonable accommodation</b>	2	2	1	2	2	0	9
<b>Termination</b>	2	4	3	0	0	0	9
<b>Terms/conditions of employment</b>	7	2	3	0	4	3	19
<b>Time and Attendance</b>	1	1	2	0	2	0	6
<b>Training</b>	0	0	2	0	0	0	2

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

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

During FY 2018, the Department continued to capitalize on program enhancements started in previous fiscal years and implemented new initiatives. CRCL broadened its collaborative work with the Department's EEO Directors and Component EEO offices in a number of areas.

#### 1. Issuance of Merit FADs

Merit FADs are issued by CRCL after the following events have occurred: a complainant seeks EEO counseling; files a formal complaint alleging discrimination; the Component accepts the complaint and conducts an investigation; and then a request is made for the agency to issue a decision as to whether or not discrimination occurred. Generally, this request may be made by the complainant, may result from the filing of a mixed case,<sup>17</sup> or may be requested by the Component as a result of the complainant's failure to make an election before the expiration of the post-investigation election period. Specifically, the EEOC regulations, at 29 C.F.R. Part 1614, require most merit FADs to be issued within 60 days of election, or failure to timely elect a FAD or hearing (the exception being mixed cases).

In FY 2018, CRCL issued 417 merit FADs, a three percent increase over the 405 FADs issued in FY 2017. Although CRCL did not meet its goal to issue 40 percent of merit FADs within regulatory timelines, instead achieving a 36 percent (152 of 417) timeliness rate, the total number of timely FADs issued was substantially higher in FY 2018 (152) than in FY 2017 (105). In addition, the number of average processing days to issue a FAD decreased by 16 percent — from 207 days in FY 2017 to 173 days in FY 2018. Figure 10 shows CRCL's six-year trend in merit FAD issuances.

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<sup>17</sup> A mixed case is a complaint of employment discrimination that stems from an action that can be appealed to the Merit Systems Protection Board. In accordance with 29 C.F.R. § 1614.302(d)(2), the agency must issue a FAD within 45 days of completion of the investigation.

**Figure 10: Merit FADs FY 2013 – FY 2018**

	<i>2013</i>	<i>2014</i>	<i>2015</i>	<i>2016</i>	<i>2017</i>	<i>2018</i>
<b>Backlog at Year End</b>	0	0	0	22	149	172
<b>Total FADs Issued</b>	455	301	297	278	405	417
<b>Number Timely Issued</b>	185	161	120	94	105	152
<b>Percentage Timely</b>	41	53	40	34	26	37
<b>Average Processing Days</b>	164	117	115	166	207	173

CRCL’s adjudication program experienced some understaffing during the first part of FY 2018, due to an employee’s extended leave. Though short term, this understaffing coupled with the ripple effect of prior years’ staffing shortages, negatively impacted CRCL’s timely merit FAD issuances in 2018. Further, and notably, CRCL experienced a 31 percent increase in the number of incoming FAD requests during FY 2018 (570), over those received in FY 2017 (434). As a result, the inventory of unassigned FAD requests increased from 149 at the end of FY 2017, to 172 at the end of FY 2018.

With the growing inventory of unassigned cases due to extremely high incoming caseloads, CRCL continued to face competing adjudication priorities: issuing merit FADs within the regulatory 45- or 60-day time period and issuing merit FADs that had already surpassed that regulatory time period. Thus, CRCL was compelled to adopt a strategic FAD assignment approach, striking a balance between issuing regulatory timely FADs, while also addressing older cases in order to avoid disadvantaging complainants whose FAD requests had been pending for a longer period of time.

Also contributing to the merit FAD timeliness issue, CRCL does not always receive FAD requests in time to prepare and issue decisions within the 60-day regulatory time period (as explained later in this section). It is important to understand that the Department’s Component EEO offices play a key role in CRCL’s ability to timely issue merit FADs, since Components are responsible for forwarding FAD requests to CRCL. The regulatory time limit for merit FAD issuances commences on the date a complainant requests a FAD, or if the complainant does not request a FAD, the time limit commences 30 days from the date the complainant received notice of the right to request a FAD. Therefore, CRCL’s timely adjudication process relies both upon the Components’ processing efficiency and notification to CRCL, as well as having the CRCL resources to address the incoming work.<sup>18</sup> During FY 2018, one way that CRCL addressed this delay from when the FAD is elected to when that information is conveyed to CRCL was by partnering with some of the Component EEO offices to amend the post-investigation notice to complainants to require that complainants directly notify CRCL of FAD requests.<sup>19</sup> The notice, which also transmits the Investigative File, informs complainants of their right to request an

<sup>18</sup> The DHS EEO complaint procedures require Components to submit FAD requests within five calendar days of receipt of a FAD request from a complainant, or ten calendar days of the expiration of the complainant’s election period to request a FAD or EEOC hearing.

<sup>19</sup> The notice is required by 29 C.F.R. § 1614.108(f)

EEOC hearing or a FAD. The amended notice instructs complainants to send their FAD requests directly to CRCL, as well as to the Components' EEO offices. This new approach has increased CRCL's ability to move cases forward to assignment more quickly, and issue an increased number of timely merit FADs in FY 2018. This new approach also demonstrates another of CRCL's unity of effort initiatives with our Component partners, all of which continue to strengthen the EEO program and business lines across the Department, while simultaneously having a positive impact on customer service. CRCL expects that this effort will expand to additional Components in FY 2019.

In an effort to address the growing inventory of pending FAD requests, CRCL dedicated funding to establish an external contract with a firm to draft merit FADs, thus supplementing CRCL's internal adjudication resources. The contract was awarded at the end of FY 2017, and the first cases were sent to the contractor in December 2017. The additional FAD writing support provided by the contractor significantly helped with FAD production and in addressing the backlog of 104 unassigned FAD requests that were pending at the end of FY 2017. As a result, the majority of that group of backlog cases were issued by April 2018, with the one remaining case being issued in July 2018. Additionally, CRCL started to assign the contractor new unassigned FAD requests from newly acquired inventory from FY 2018; however, an approximately three-month lapse in funding on the contract hampered efforts to address unassigned FAD requests. During FY 2018, 121 cases were assigned to the contract firm, and of the 121, 95 FADs or remands for supplemental investigation were issued. CRCL has pledged to continue funding the contract as an additional resource into FY 2019.

## 2. Advancing Joint Opportunity Initiatives and Implementation of a Department-wide Strategic Plan

In FY 2018, the DHS EEO Directors' Council continued executing its five-year Strategic Plan (FY 2016 – FY 2020) (the Plan), aimed at achieving a unity of effort across the Department's EEO and Diversity programs. Council-led working groups, each focused on one of the Plan's goals and staffed with EEO and Diversity practitioners from across the Department, undertook measurable actions in furtherance of their respective goals. A summary of the Plan's goals and corresponding working groups' FY 2018 accomplishments are noted below.

The Plan's first goal is securing and sustaining commitment by leadership within the Department and its Components. Goal 1's working group, with the direction of the EEO Council, established an annual operational plan for FY 2018 and tracked the progress of other working groups in completing their respective action items.

Integrating EEO and Diversity into Departmental and Component strategic plans is the second goal of the Plan. In FY 2018, Goal 2's Awards working group administered the Department-wide EEO and Diversity awards program, recognizing employees for their excellent contributions to the Department's EEO and Diversity programs. Award recipients, chosen by the EEO Council, were recognized at the Department's 2018 EEO and Diversity Training Conference in June 2018. The group also developed a proposal to recast the Secretary's Diversity Award, part of the Secretary's Awards Program, as the EEO and Diversity Award, so

that employees who make significant contributions toward EEO, as well as those who make valuable contributions toward Diversity, can receive this prestigious recognition.

The third goal of the Plan focuses on promoting voluntary resolution of workplace disputes. In FY 2018, Components used mediators from the DHS Shared Neutrals Roster in 133 cases, which is a 77 percent increase from FY 2017, when these mediators were used in 75 cases. In addition, Components that utilized mediators from the roster, instead of contract mediators, realized a collective savings of over \$60,000 in FY 2018, when compared to funds that Components would have expended on contract mediation services. A breakdown of the cost savings by Component is shown below at Figure 11.

**Figure 11: FY 2018 Cost Savings from Shared Neutrals Mediators by Component**

	<b>Number of times used shared neutrals</b>	<b>Settlements</b>	<b>Cost Savings<sup>20</sup></b>
<b>USCIS</b>	31	8	\$24,400
<b>CBP</b>	45	4	\$36,000
<b>FEMA</b>	2	0	\$1,600
<b>USCG<sup>21</sup></b>	-	-	-
<b>ICE</b>	27	6	\$22,843.62
<b>TSA</b>	9	1	\$12,426
<b>FLETC</b>	4	3	\$2,465
<b>HQ EEO</b>	15	3	\$11,000 <sup>22</sup>
<b>USSS</b>	-	-	-
<b>TOTAL</b>	133	25	\$110,734.62

The Plan’s fourth goal concerns the harnessing of data to prevent unlawful discrimination. In FY 2018, this group again analyzed data from the Department’s EEOC Form 462 and MD-715 Reports to identify possible workplace barriers to EEO that are common across multiple Components. The working group presented its findings to the EEO Directors’ Council.

The fifth goal of the Plan is to ensure coordination, effectiveness, and efficiency of Departmental and Component EEO and diversity programs. In FY 2018, this working group developed a second advanced barrier analysis course to allow barrier analysis practitioners to more effectively conduct and message their programs. Members of the EEO Council served as

<sup>20</sup> Cost savings is calculated using the number of mediations conducted by the Shared Neutrals Program multiplied by the dollar amount a Component would have paid a contract mediator.

<sup>21</sup> USCG and USSS do not utilize the Shared Neutrals roster as part of their ADR program.

<sup>22</sup> HQ EEO no longer uses contract mediators, so this is an estimate based on what it spent per case on contract mediators in 2015, the last year contract mediators were utilized. .

instructors for the one-day course, providing instruction to nearly 30 practitioners from across the Department.

The Plan's sixth and final goal is to ensure responsive and legal compliance by Departmental and Component EEO and diversity programs. As previously noted, in FY 2018, there was substantial emphasis on sexual harassment and assault that resulted from multiple high-profile cases of sexual harassment and assault, both within and outside of the Department. As a result of these events, and particular interest of Secretary Nielsen, increased attention was given to anti-harassment prevention efforts at the Components and Department-wide. For instance, in February 2018, the Secretary mandated that all DHS employees—approximately 240,000—complete anti-harassment training, and a 95 percent completion rate was achieved. In addition, in FY 2018, Goal 6's working group conducted a study of anti-harassment programs across government and in the private sector, with the aim of making improvements to DHS's anti-harassment programs. The working group's recommendations were accepted by the CRCL Officer and are in various phases of implementation. Lastly, the Department began the realignment of the Headquarters Anti-Harassment Unit from OCHCO to CRCL in an effort to consolidate investigative functions with respect to allegations of harassment within one Directorate. This will result in improved coordination and oversight under CRCL's mission of leading the Department's EEO programs.

### 3. Collaborating and Leading the Department's Components

During FY 2018, CRCL led quarterly meetings of the DHS EEO Complaint Managers. Topics of discussion at these meetings included the review of EEO complaint management processes; standardized and ad hoc reports, updates, and refresher training on the DHS enterprise EEO database; and briefings from the EEOC on their data management system.

CRCL's EEO compliance program monitors Components' implementation of remedial relief that is ordered in findings of discrimination issued by CRCL and the EEOC. Through effective communication and collaboration with DHS Components, the EEO compliance program timely and accurately reports compliance progress to the EEOC on EEOC-issued decisions where discrimination was found. Toward the end of FY 2018, EEOC's OFO issued new guidance and procedures relative to the implementation and reporting of ordered relief in EEOC-issued decisions. The CRCL EEO compliance manager timely facilitated the new reporting requirements to all DHS Components to ensure continued compliance. These efforts included revising internal compliance processes and reporting procedures and conducting training for all DHS Components' EEO compliance managers to ensure all ordered relief is satisfied in accordance with EEOC OFO's guidance.

CRCL's Complaints Management and Adjudication Section (CMAS) personnel were invited by two DHS Components' EEO Directors, to conduct briefings for the Components' EEO managers and staff to ensure that these stakeholders understood CRCL's and Components' roles within the EEO complaint program, and how those roles intersect and impact each other. CMAS personnel also conducted several workshops, open to all DHS Components, regarding preparation of the annual statistical report of complaint activity (referred to as the "462 Report"), which is

produced for the EEOC by each Component and aggregated by CRCL for the Department's annual report.

CRCL staff participated in working groups formed to implement annual goals of the EEO Council's Strategic Plan. These working groups consisted of DHS EEO professionals from all Components, and demonstrated a commitment to unity of effort by the DHS EEO Program. Additionally, staff members delivered EEO training to Headquarters supervisors, members of the Senior Executive Service, and new employees.

Notably, in June 2018, CRCL hosted the 2018 DHS EEO and Diversity Training Conference in Washington, D.C. Building on the Department's inaugural EEO and Diversity Training Conference in 2016, the 2018 conference brought together over 300 EEO and diversity professionals from across the Department. The training conference further honed the skill of the Department's EEO and diversity practitioners and fostered the sharing of best practices from across the Department. In keeping with DHS Leadership Year—the DHS effort to promote a culture of leadership across the Department—the training conference theme, “Partners in Leadership and Excellence,” highlighted the critical roles that EEO and Diversity practitioners play in fostering effective leadership at all levels and promoting excellence throughout the Department. CRCL Officer Cameron Quinn and Deputy Officer Veronica Venture provided opening remarks, welcoming attendees from across the Department and encouraging participants to embrace the conference theme by thinking of ways to be the most effective leader possible in the various EEO and Diversity initiatives taking place at DHS. Each day of the training conference opened with a keynote speaker during the morning plenary session. The Conference also featured over 20 high-powered breakout workshops on EEO and diversity-related topics, provided advanced a first-of-its-kind barrier analysis session for EEO leaders/practitioners, and offered refresher training for EEO counselors and investigators from across DHS. It ended with an awards ceremony recognizing employees for their contributions to the Department's EEO and Diversity programs.

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

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

### 1. Federal Emergency Management Agency

#### ***Infrastructure***

FEMA's Office of Equal Rights (OER) provides EEO and civil rights services to approximately 20,000 employees. OER is comprised of five units in the following functional areas: Business Management, Informal Complaints, Formal Complaints, Civil Rights, and Reasonable Accommodations. During much of FY 2018, OER was led by an Acting Director; however, a new Director came on board at the end of FY 2018.

### ***Complaint Processing***

FY 2018 marked a turning point for FEMA's OER. There were significant challenges and opportunities presented during the year, and OER improved its service to FEMA stakeholders on many fronts. In FY 2018, OER experienced a significant 80 percent increase in the number of completed counselings from 173 in FY 2017 to 310 in FY 2018. More importantly, FEMA timely counseled 95 percent of the completed counselings (294 of 310), improving from 89 percent in FY 2017, where 166 of 186 counselings were timely completed.

OER also experienced a major increase in formal complaint filings, from 79 in FY 2017 to 160 in FY 2018, the largest number of formal complaints filed since 2009. Despite the increase in the number of formal complaints filed, OER improved processing times. Specifically, the average processing days for completing investigations decreased from 644 days in FY 2017 to 627 days in FY 2018. In addition, the average processing days for procedural dismissals decreased from 407 days in FY 2017 to 182 days in FY 2018.

In FY 2018, OER achieved major improvements in completing investigations, and thus starting to address a backlog of cases pending investigation from previous years due to a data breach with a former contract firm, which resulted in a complete work stoppage. In FY 2018, OER completed 151 investigations, a huge leap from the 27 completed investigations in FY 2017. While there was a significant increase in the number of completed investigations, only six percent of the completed investigations in FY 2018 were timely processed. As a result, OER hired additional staff to monitor the investigative process and expects an improved timeliness rate for completed investigations in FY 2019.

Despite showing improvements in several areas, OER still faced challenges in the timely processing of formal complaints during FY 2018. It is anticipated that significant improvements will be made during FY 2019, to include adding additional staff, training current staff, and improved accountability for all parties involved in the process.

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

Throughout FY 2018, FEMA conducted "Civil Treatment" training for managers and employees. The Civil Treatment training program focuses on preventing, detecting, and correcting inappropriate behaviors and building an inclusive culture. FEMA continued to provide annual mandatory training for managers and employees, which covered the EEO complaint process, roles and responsibilities, the duty to act, and diversity and inclusion. The training also presents an opportunity to prevent complaints and proactively educate the workforce on the regulations, laws, and the consequences related to complaints of discrimination.

FEMA also secured the services of the EEOC to provide anti-harassment training. The training is on-going and the goal is to have all FEMA employees participate in these mandatory, in-person sessions. Supervisors and managers attend training on developing and using appropriate responses to allegations of harassment (Leading for Respect). During FY 2018, FEMA training 80 senior-level managers. The training for non-supervisory employees are focusing on successful intervention when an individual sees inappropriate behavior in the workplace (Respectful Workplace).

## 2. The Federal Law Enforcement Training Centers

### ***Infrastructure***

The FLETC EEO Office provides services to 1,282 FLETC employees. The office consists of the EEO Officer, Complaints Manager, Disability Program Manager, four EEO Specialists, and one Staff Assistant. Each EEO Specialist serves as a special emphasis program manager (SEPM) for at least one program.

### ***Complaint Processing***

During FY 2018, FLETC timely completed three of five investigations, achieving a 60 percent timeliness rate; however, from FY 2013 to FY 2017, FLETC achieved a 100 percent timeliness rate for investigations. FLETC's inability to match the 100 percent timeliness rate they achieved in FY 2017 was (1) the result of one case having been processed by another Component because of a conflict of interest, and (2) a requested procedural dismissal that was returned by CRCL to FLETC to investigate with too little time to meet the regulatory timeframe. Notably, the FLETC EEO Office timely processed and investigated two conflict of interest cases for other DHS components. FLETC remains committed to its goal of ensuring all EEO investigations are completed in a timely manner. In an effort to fulfill this goal, the FLETC EEO Office continues to work closely with fellow components responsible for processing FLETC's conflict of interest cases, CRCL, the EEO contract investigators, responding management officials, the Human Capital Office, and the Office of Chief of Counsel.

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

FLETC requires all new employees to complete No FEAR Act training within 30 calendar days of entering on duty. All current employees are required to complete No FEAR Act training on a biennial basis. The No FEAR Act training is provided online through the Performance and Learning Management System (PALMS), FLETC's electronic learning management system. In FY 2018, 1,122 employees completed the training.

During FY 2018, the FLETC EEO Office processed 82 reasonable accommodation requests made by, or through, employees, managers, and students. These requests included sign language interpreters, job restructuring, modified work schedules, service animals, mobility devices, ergonomic furniture, and assistive electronic devices. Additionally, the EEO Office provided reasonable accommodation training to 22 FLETC supervisors and managers through the FLETC New Supervisors Training Program. Moreover, during FY 2018, 192 employees received the disability training entitled, "Employment of People with Disabilities: A Road Map to Success."

To reinforce FLETC's anti-harassment policy, 215 employees completed training entitled "Workplace Harassment Prevention for Employees," and 22 supervisors completed "Workplace Harassment Prevention for Managers" training through PALMS.

The Office of Organizational Health (OOH) measures the perception and levels of satisfaction of FLETC employees and students, identifies organizational strengths and weaknesses, and monitors and evaluates progress toward maximizing employee engagement and operational

effectiveness. During FY 2018, OOH began the process of analyzing data from the Federal Employee Viewpoint survey, as well as data obtained from other FLETC components. Analysis of this data enables OOH to work collaboratively with its stakeholders to evaluate and recommend systemic solutions that address, and acknowledge, the essential connection between operational effectiveness and a healthy, diverse, and engaged workforce. OOH comprises the Critical Incident Stress Management (CISM) Program, Employee Wellness Program, and the Ombudsman Program.

### 3. DHS Headquarters EEO Office

#### ***Infrastructure***

HQ EEO provides EEO services to 8,231 DHS Headquarters employees. During FY 2018, HQ EEO experienced several significant staffing shortages and consequent challenges. In early FY 2018, the Formal Complaints Program Manager position was vacant, with an acting in place. In March 2018, the HQ EEO Director retired and detailees served in an acting capacity. In June, an EEO Specialist left HQ EEO. Subsequently, HQ EEO hired an EEO Specialist to work on reports and diversity initiatives, as well as a permanent Formal Complaints Program Manager. In addition, HQ EEO backfilled the Director position (selected in late FY 2018, and entered on duty in FY 2019), and advertised for an EEO Specialist position, and a vacant EEO Investigator position. It is anticipated that the EEO Specialist and the EEO Investigator positions will be filled in FY 2019.

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

In FY 2018, HQ EEO timely completed 79 percent (55 of 70) of its pre-complaint counselings, which is a notable increase over the 64 percent (40 of 63) in FY 2017. There was also a significant increase – 75 percent - in the number of formal complaint filings over the last fiscal year (63 vs. 36). In addition, HQ EEO substantially increased its rate of timely completed investigations over the past fiscal year. In FY 2018, HQ EEO timely completed 73 percent (29 of 40) of its investigations, whereas 36 percent (8 of 22) of its investigations were completed in a timely fashion in FY 2017. The lengthy processing times and challenges in reaching optimal timeliness rates were attributable to the staffing shortages.

During FY 2018, the most commonly alleged bases for HQ EEO complaints were reprisal, race (African-American), age, physical disability, and sex (female). The most commonly alleged issues were non-sexual harassment, performance/evaluation, disciplinary actions, promotion/non-selection, and reasonable accommodation/disability.

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

In FY 2018, HQ EEO staff members continued to engage the workforce through different training initiatives. HQ EEO staff presented in person EEO training as part of HQ's New Employee Orientation training. Staff members incorporated an EEO segment into the Human Resources (HR) Essentials training course for new HQ supervisors. HQ EEO also conducted monthly internal EEO Counselor meetings to discuss the status of cases and provide a forum for regular, technical refresher training. HQ EEO continued to produce and disseminate a biannual newsletter to keep HQ employees informed of relevant and recent EEO developments.

HQ EEO also continued to make strides in growing its reasonable accommodation program. In FY 2018, in addition to handling daily contacts from employees and managers seeking advice and guidance on the reasonable accommodation process and disability rights and responsibilities, HQ EEO processed 369 reasonable accommodation requests made by 186 employees, applicants for employment, and contractors. HQ EEO produced a draft reasonable accommodation procedures document that will, once finalized, provide HQ employees with clarity into how a reasonable accommodation works. HQ EEO also coordinated with the Department's Office of Chief Human Capital and the Office of General Counsel to work on a new standard operating procedure for the HQ Medical Review Officer. Additionally, HQ EEO staff conducted outreach and provided reasonable accommodation and Schedule A trainings to several HQ program offices. Staff will work towards finalizing the reasonable accommodation procedures document and coordinating with the HR Office to improve the tracking of Schedule A eligible conversions.

#### 4. Transportation Security Administration

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

TSA's Civil Rights Division (CRD) provides EEO services to a workforce of more than 63,000 employees. CRD is organized into two main branches: the EEO Management Branch and the Affirmative Employment Branch. At the end of fiscal year FY 2018, the staffing level of CRD consisted of 39 full-time federal employees, including 16 EEO Generalists, and two EEO Assistants. In FY 2018, CRD hired a new EEO Management Branch Manager and one new EEO Generalist. CRD has several positions that are currently held by detailees, including the positions of Director, Deputy Director, two Section Chiefs, and the Compliance Manager. In addition to its federal EEO staff members, CRD was also supported by two contract investigative firms in FY 2018.

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

In FY 2018, TSA CRD completed 862 pre-complaint counselings. Of the 862 pre-complaints, 96 percent (827) were processed within the required regulatory timeframes, as compared to 93 percent (943 of 1,010) in FY 2017. In FY 2018, the number of formal complaint filings decreased by 14 percent from 475 in FY 2017 to 405 in FY 2018. In addition, TSA showed a significant improvement in the number of timely investigations completed. In FY 2018, CRD provided quarterly feedback sessions with the contract firms that conduct their investigations, in order to increase timeliness and improve the quality of ROIs. As a result, in FY 2018 CRD timely completed 91 percent (366 of 403) of its investigations, compared to 73 percent (412 of 561) in FY 2017.

Additionally, in FY 2018, CRD began using "Acuity," which is a scheduling application to facilitate the scheduling of meetings by the EEO case managers with other parties involved in complaint processing. Acuity allows the parties to identify a mutually agreeable time to schedule any complaint-related meetings. This reduced the amount of time required to find an acceptable meeting date that worked for both the complainant and the EEO case manager. CRD also provided case managers with access to CyberFEDs, an on-line reference resource that provides information on various EEO topics.

In FY 2018, TSA's CRD ADR program (CRD-ADR) accepted 416 informal pre-complaints and formal complaints into the ADR program. Of the 416 cases, ADR sessions were held in 198 of the cases, which included 162 mediations and 36 facilitations. There was a 67 percent resolution rate when mediations were held. There was an 89 percent resolution rate when facilitation sessions were conducted. In FY 2018, the administrative processing costs saved due to the internal facilitations exceeded \$120,000. Resolutions obtained through TSA's internal facilitation pilot resulted in an estimated \$1.3 million savings in potential investigation and litigation costs. Furthermore, CRD-ADR fully participated in the DHS Shared Neutrals Program as mediators and as recipients of mediation services. CRD-ADR's use of the DHS Shared Neutrals Program resulted in an additional \$12,426 cost savings from using contract mediators.

In FY 2018 TSA's ADR working group continued the work it began in FY 2017, by jointly participating in conflict resolution panel discussions across the country with other TSA ADR service offering programs. Over 700 employees and managers joined the conflict resolution discussions. TSA anticipates continuing the discussion panels and formalizing its ADR working group, via a charter, in FY 2019. In addition, CRD-ADR led the development of the document "Where Do I Go?" which provides a cross-divisional ADR services matrix, to assist employees in identifying the appropriate office to address their specific workplace concerns.

In FY 2018, CRD-ADR trained 49 field EEO point of contacts (POCs), standardizing the ADR assistance provided by field POCs. These efforts led to a reduction in scheduling time and a 30 percent reduction in cancellation cost from the previous FY. CRD-ADR also trained its EEO case managers on the use of interest-based discussions during traditional counseling to assist EEO case managers in resolving complaints during counseling. CRD expects to realize the results of its interest-based "Circle of Influence" training in FY 2019.

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

In FY 2018, CRD's goal was to provide training and outreach to 2,000 TSA employees. CRD exceeded this goal, with CRD staff providing proactive and regulatory required training to 2,018 management employees across 25 sites. Training was provided at Federal Air Marshal Service (FAMS) field offices, airports nationwide, and TSA HQ. CRD's in-person training was supplemented by TSA's Online Learning Center's No FEAR Act training, which all employees are required to complete every other year. TSA also requires all new employees to complete No FEAR Act training within the first 90 calendar days of entering service. CRD continued to provide EEO training for TSA's new employee orientation for management, administrative, and professional staff and during new employee orientation for FAMS.

In FY 2018, CRD continued to host training and informational sessions to foster awareness and increase understanding of EEO issues and topics that have a direct impact on the quality of employees' workplace experiences. CRD hosted the "Ask the Experts" series in covering topics such as, "Religion and the Work Place," "Emotional and Social Intelligence," and "Social Media and the Workplace," with leading experts in those fields. CRD also hosted several "Conflict Resolution Resource Panels" to highlight the various conflict resolution options available for employees at TSA. The Panels held at headquarters, reaching 143 employees, as well as across the nation at four major airports, reaching 401 employees.

In FY 2018, CRD continued to offer courses under Civil Rights Diversity & Inclusion University (CRDI-U). CRDI-U offers a number of training classes presented by subject matter experts on civil rights, EEO laws, and diversity and inclusion. The course offerings cover a broad range of topics, including effective communication, conflict management skills, and techniques to foster diversity and inclusion. Throughout FY 2018, CRDI-U's Crucial Conversation course was an in-demand course and there were increasing requests from the field. The course was piloted in FY 2018 extensively for all staff at a FAMS Field Office. CRD staff conducted 21 sessions for Crucial Conversations, and Micro-Inequities. The training was provided to a total of 331 employees and facilitated an opportunity for additional proactive training throughout the agency.

## 5. U.S. Citizenship and Immigration Services

### ***Infrastructure***

USCIS's Office of Equal Opportunity and Inclusion (OEOI) provides EEO services over 17,000 employees at over 220 offices worldwide. The Chief of OEOI reports directly to the USCIS Office of the Director, underscoring the Director's commitment to the importance of EEO as an integral part of the USCIS mission to ensure a workplace free from discrimination. OEOI has three divisions: the Complaints Resolution Division (CRD); the Diversity Management Operations (DMO) Division; and the Policy, Planning and Resources (PPR) Division. OEOI staff currently consists of 31 full-time employees. Additionally, USCIS employs approximately 102 collateral duty SEPMs and reasonable accommodation coordinators at various USCIS offices nation-wide to assist it in achieving its EEO, outreach, and education objectives.

### ***Complaint Processing***

In the area of pre-complaint counselings, the number of informal pre-complaints initiated increased slightly in FY 2018 (199), as compared to FY 2017 (196). Overall, 218 pre-complaints were completed and timely processed (100 percent) in FY 2018. Formal complaint filings also increased by 33 percent in FY 2018 (119), as compared to FY 2017 (89). In FY 2018, CRD completed 100 percent of its 88 EEO investigations within the regulatory timeframes, as compared to timely completing 94 percent (66 of 70) in FY 2017.

USCIS's ADR program was established as a stand-alone program, but it has continued to have a positive impact on the efficiency of the overall EEO program. Notably, the ADR participation rate increased to 75 percent in FY 2018 from 59 percent in FY 2017. Furthermore, the informal ADR resolution rate remained high at 54 percent in FY 2018. USCIS continued to be an active participant in the implementation of the DHS Shared Neutrals Program, utilizing the shared neutrals cadre in 31 ADR sessions in FY 2018. In addition, the ADR Program Manager, along with other staff, provided training to 205 Designated Management Officials (DMOs) across USCIS on the topics of mediation or about becoming a shared neutral. The purpose of the training was to explain the role of a DMO, discuss the goals and benefits of mediation, and to familiarize managers with the mediation process. Through its efforts in these areas, USCIS hopes to increase its ADR participation and resolution rates in FY 2019.

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

During FY 2018, OEOI, in collaboration with the EEOC, provided mandatory, in-person reasonable accommodation training to 691 supervisors and managers. More than 6,000

managers and supervisors have received training since this initiative was introduced in FY 2011. OEOI continued to broaden outreach efforts and enhance community partnerships through the Minority Serving Institutions (MSI) Program and facilitated more than \$2,435,169 in equipment donations to MSIs in FY 2018. Additionally, OEOI conducted many training sessions for approximately 361 employees across the USCIS, in-person and by video-teleconference, on EEO related topics, such as harassment, micro-inequities and the New Inclusion Quotient. OEOI continued to use its Anti-Harassment hotline to provide employees and managers a mechanism to report harassment and in FY 2018. OEOI had 136 calls to the hotline, as compared to 72 calls in FY 2017. This represents an increase of 89 percent, which is attributed, in part, to the increased training sessions provided on harassment.

## 6. U.S. Coast Guard

### **Infrastructure**

The USCG Civil Rights Directorate (CRD) provides services to over 10,000 civilian employees and over 48,000 service members. The Civil Rights Director reports to the Commandant of the USCG. The EEO complaint processing program comprises HQ staff who have four geographical regions of responsibility. Each region is divided into 14 geographical zones. The regions and their respective zones conduct the informal complaint processing, with 43 full-time EEO Counselors. The formal complaint process is managed at USCG Headquarters by the Solutions and Complaints Division. The Division consists of two ADR Specialists, two Complaints Managers, two Technical Advisors, an IT Specialist, and an EEO Assistant. In addition, the CRD uses a contract firm to assist in conducting EEO investigations.

### **Complaint Processing**

During FY 2018, USCG's complaint processing unit surpassed its planned objectives.

**Pre-complaints:** In FY 2018, USCG completed 109 EEO counselings, a 23 percent increase over the 89 EEO counselings completed in FY 2017. Of those 109 EEO counselings completed, 98 percent (107) were timely completed. Of the 109 pre-complaints, 45 were resolved, which represents a resolution rate of 41 percent. This represents a six-point decrease from a resolution rate of 51 percent in FY 2017.

**Formal Complaints:** There were 58 formal complaints filed in FY 2018, a 38 percent increase over the 42 complaints filed in FY 2017. USCG completed 96 percent (47 of 49) of its investigations within the regulatory timeframe, which is an increase from the 90 percent (36 of 40) timely completed investigations in FY 2017. In FY 2018, the Solutions and Complaints Division began using the United States Army Aviation and Missile Research Development and Engineering Center's Safe Access File Exchange (AMRDEC SAFE) electronic file transfer system to help gather and manage documentation for the construction of ROIs. The AMRDEC SAFE system expedited and improved communications between the Solutions and Complaints Division staff, complainants, complainants' representatives, investigators, and contractors. As a result of the improved system, USCG completed investigations in an average of 143 days in FY 2018, which is a 29 percent decrease from the 200 average processing days FY 2017.

Bases and Issues: In FY 2018, reprisal, disability, and sex, respectively, were the most prevalent bases of discrimination. With respect to issues, harassment (non-sexual), disciplinary actions, and terms/conditions of employment were the most frequently raised in complaints.

ADR: In an effort to resolve issues at the earliest opportunity, USCG offered ADR to 100 percent of individuals initiating pre-complaints in FY 2018. This resulted in a 54 percent participation rate in FY 2018, which is a slight decrease from 61 percent participation rate in FY 2017. Of the 55 cases in which ADR was conducted, settlement was achieved in 27 percent (15) of the cases.

### **Services and Proactive Engagement**

Reasonable Accommodations: USCG granted 92 percent (195) of the 212 requests for reasonable accommodations. This includes, but is not limited to, electronic equipment, ergonomic chairs, telework, alternative work schedules, motorized scooters, wheelchairs, and sign language interpreters. USCG continued its relationship with the Department of Transportation (DOT) Disability Resource Center (DRC). DRC provides USCG with a centrally funded resource to provide reasonable accommodation services, personal assistance services, technical assistance, training, and outreach to all managers, supervisors, employees and job applicants.

Mobility Program: USCG Headquarters mobility program provides devices, such as motorized scooters and wheelchairs, to USCG employees, applicants, and visitors. In FY 2018, the program received 48 requests, which provided temporary accommodations for 45 individuals with mobility needs. Drawing on the successes of the Headquarters program, USCG expanded the program to its CRD offices nationwide and to select large units in FY 2017. The expansion of the mobility program resulted in a 66 percent increase in requests in FY 2018, compared to the 29 requests in FY 2017.

USCG performs annual assessments to determine if any perceptions of bias or triggers exist that affect the EEO climate. USCG achieves this through EEO climate assessments and surveys. For FY 2018, USCG conducted 20 on-site climate assessment reviews, which is a slight decrease from the 22 reviews conducted in FY 2017. USCG also uses the Federal Employee Viewpoint Survey, as well as the survey and reporting services of the Defense Equal Opportunity Management Institute (DEOMI). The DEOMI Organizational Climate Survey (DEOCS) assesses workforce perceptions of discrimination, harassment, equal opportunity, and other organizational effectiveness measures. The survey reports provide unit leadership with the ability to better analyze the work climate. USCG unit commanding officers and supervisors are required to allow their employees an opportunity to participate in an annual climate assessment survey. In addition, they must share the survey results with their supervisors and create an action plan to foster positive behaviors and address any concerns. These action plans can be created using DEOMI's "Assessments to Solutions" website.

USCG continued its requirement for triennial in person EEO awareness training for all military and civilian members of the workforce. During FY 2018, Civil Rights Service Providers presented and facilitated discussions during in-person training sessions for 20,379 individuals,

which included 745 supervisors; however, this was a slight decrease from the 22,525 individuals trained in FY 2017.

CRD continued to publish a monthly newsletter, *Civil Rights On Deck*, which is targeted to internal and external readers. The newsletter provides an important avenue through which the agency educates the workforce and key stakeholders on EEO cases, general EEO/EO complaint process information, best practices, EEO/EO awards, and special observances.

## 7. U.S. Customs and Border Protection

### ***Infrastructure***

Within CBP's Office of the Commissioner, the Privacy and Diversity Office (PDO) is responsible for developing and administering all policies and directives related to ensuring full compliance with the Privacy Act, Freedom of Information Act (FOIA), federal diversity and inclusion policies, EEO laws, and civil rights and civil liberties laws. PDO's Diversity and EEO Division provides EEO and diversity and inclusion services to over 60,000 CBP employees. The Diversity and EEO Division is led by a Director, who is supported by a Deputy Director and Assistant Directors.

### ***Complaint Processing***

During FY 2018, CBP experienced a significant increase in overall complaint activity. During FY 2018, CBP completed 736 counselings of informal complaints, which is a 15 percent increase over the 637 completed counselings during FY 2017. CBP timely counseled 99.8 percent (735 of 736) of its informal complaints in FY 2018. Notably, the total number of timely counseled cases in FY 2018 (735) represents a 15 percent increase over the total number of timely completed counselings in FY 2017 (637). In FY 2018, 419 formal complaints were filed, which represents a significant 55 percent increase from the 266 formal complaints filed in FY 2017. A total of 251 investigations were completed in FY 2018, a nine percent increase over the 231 investigations completed in FY 2017. Of the 251 completed investigations in FY 2018, 90 percent (226 of 251) were timely completed. Additionally, in FY 2018, the overall average processing time decreased to 225 days, from 229 average processing days in FY 2017. In addition to the significant increase in formal complaint activity, PDO also experienced a loss of several full-time EEO investigators due to attrition. Lengthy hiring and background investigation processes caused delays in replacing staff. As a result, CBP has entered into a contractual agreement with the U.S. Postal Service to provide supplemental investigative services in FY 2019.

CBP is unclear as to what caused the significant increase in complaint activity; however, PDO believes two factors may have contributed to the increase because they represented changes that occurred in FY 2018 not seen in previous fiscal years. First, PDO saw an increase in cases involving allegations regarding polygraph tests. In FY 2018, CBP's Hiring Center allowed vacancy announcements for Border Patrol Agent and CBP Officer positions to remain open continuously, and both positions require passing a polygraph test. In prior years, the vacancy announcements for these two positions were only open twice a year, and only for a limited time. The change in the vacancy announcement in FY 2018 resulted in more than double the

number of individuals who received tentative offers of employment withdrawn due to failure of the polygraph exam. PDO believes a second factor that may have contributed to the increase in complaint activity was an increase in on-site training. Last fiscal year, one of PDO's goals was to conduct on-site training in all the major offices of CBP. Due to increased training, PDO believes employees became more knowledgeable and aware of the process.

PDO continued to show its commitment to continual learning in FY 2018. CBP created internal "How to Guides," which helped streamline the process for finalizing and issuing ROIs and on the steps that need to be taken when a case is appealed. The guides enabled staff to prepare cases for appeals and to transmit ROIs in a consistent manner. This helped create uniformity across the two processes and helped with time management. PDO plans to create additional guides to assist in other processing areas.

In FY 2018, PDO continued its efforts to promote and stimulate learning through examining best practices and process improvements. PDO continued to sponsor roundtable forums that were developed in FY 2017, and focus on the topics of pre-complaints, investigations, and diversity and inclusion. The forums provided enhanced learning opportunities by enabling staff members to share and learn about interesting cases, research accomplishments, and discuss various diversity topics. The forums also proved to be a powerful learning tool the exposure of junior staff to different ways of accomplishing their duties, and improving their performance, while learning from their peers.

During FY 2018, CBP and PDO continued to promote ADR as a preferred method used to resolve EEO complaints at the lowest possible level. During FY 2018, CBP's collateral-duty mediators conducted 286 mediation sessions. Moreover, CBP continued to participate and provide support in the Department-wide Shared Neutrals Program, with 23 active collateral duty mediators. Finally, PDO's ADR Program Coordinator served on the Department's ADR Advisory Council, providing guidance and input, and assisting in Component-wide training. The coordination also provided the opportunity for CBP to be more closely aligned with the Department's management of the ADR program.

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

CBP continuously strives to incorporate EEO into everyday practice and makes diversity and inclusion principles fundamental parts of CBP's organizational culture. During FY 2018, CBP continued implementation of its Diversity and Inclusion Strategic Plan FY 2016 – FY 2020. The Plan incorporates a comprehensive and integrated approach to diversity and inclusion within CBP's human resource strategies, while aligning CBP's strategic goals with EEO principles to advance the goal of building and maintaining a model workplace.

During FY 2018, CBP's implementation of the Plan spanned across four major areas that have particular relevance with regard to EEO complaints: efforts regarding anti-harassment, diversity and inclusion, training, and identifying trends through data analysis.

1. Anti-Harassment – CBP engaged in multiple activities to strengthen its anti-harassment program, identify trends, and review existing policies and practices.

- DHS Anti-Harassment Working Group: CBP participated in the DHS Anti-Harassment Working Group, which is conducting a systematic review of harassment across DHS. Some areas the working group focused on included: reviewing documents and guidelines related to harassment and harassment complaint reporting mechanisms; reviewing harassment complaints data from across the Department; outreach to other federal agencies to identify existing guidance, practices, and recommendations; and outreach to private sector organizations to identify the current state of anti-harassment policies and promising practices.
  - The Department's Office of Inspector General's (OIG) Audit: On February 6, 2018, OIG initiated an audit into how employees' allegations of sexual harassment and workplace sexual misconduct were handled by CBP, ICE, TSA, and USSS. CBP offices involved in providing information for the audit include PDO, Office of Professional Responsibility, and the Office of Human Resources Management. The ongoing audit has involved a review of policies and materials related to employee conduct and discipline, compiling data on EEO and harassment complaints, and providing information on current tracking systems for allegations and investigations of sexual harassment.
  - Anti-Discrimination and Anti-Harassment Policy Statement: On January 2, 2018, CBP's Commissioner issued an updated Anti-Discrimination and Anti-Harassment Policy Statement. CBP reissues a policy statement on an annual basis and distributes the policy through multiple channels – including CBP Central, which is an email sent weekly to employees with links to stories and announcements on CBP's intranet site – along with a reminder of standards of conduct.
2. Diversity and Inclusion – The Diversity and Inclusion Team continued its work within the Diversity and EEO Division of PDO, which was established during FY 2017. The Diversity and Inclusion Team has helped establish greater efficiency in executing programmatic goals, by aiding CBP in realizing the benefits of greater organizational diversity and inclusion, and securing senior management support. CBP sponsored 1,831 diversity and inclusion observance programs in FY 2018, which represents a 15 percent increase over the 1,599 observance programs CBP sponsored in FY 2017. During FY 2018, 155,563 attendees attended diversity and inclusion observance programs, which represents a 14 percent increase over the 136,557 attendees during FY 2017. Furthermore, PDO provides annual training to members of CBP's volunteer-led Diversity and Inclusion Program committees, which plans and implements the observance programs. These committees are located across the nation and help to promote diversity and inclusion at a grassroots level.
3. Training – CBP engaged in multiple training activities across various platforms (on-site, webinar, and computer-based) to further strengthen its EEO program. Training included:
- DHS No FEAR Act and Anti-Harassment Training: CBP employees and supervisors were provided with DHS-specific No FEAR Act and Anti-Harassment Training, which identifies Agency responsibilities and employee

responsibilities/protections under federal law and DHS policy. During FY 2018, 42,252 CBP employees completed this training.

- Supervisory Leadership Training: To ensure supervisors are aware of their obligations to help ensure a work environment free of discrimination and retaliation, all new supervisors are required to complete “Supervisory Leadership Training,” which includes modules on diversity and EEO awareness. During FY 2018, 708 new supervisors completed Supervisory Leadership Training.
  - EEO Awareness and Reasonable Accommodation Training: CBP’s PDO has a goal of conducting at least one EEO awareness training session at each of CBP’s 40 major locations. During FY 2018, PDO met this goal and conducted 294 “EEO Awareness” and “Reasonable Accommodation” training sessions to duty stations across the nation. These training sessions were delivered to 1,942 supervisors and 2,378 employees, providing an overview of CBP’s anti-discrimination policy and commitment to diversity, a review of EEO laws and Executive Orders, discussions of what constitute discriminatory behavior and harassment, and an overview of the reasonable accommodation process. In addition to providing reasonable accommodation training, PDO also developed and posted a statement on CBO’s public website that described how employees can make requests for personal assistance services, under Section 501 of the Rehabilitation Act of 1973, through the reasonable accommodation process.
4. Identifying Trends – PDO assessed the EEO ADR program from FY 2013, through FY 2017, which included a review of informal EEO complaints, outcomes of informal EEO complaints based on the election and participation in ADR, and areas for improvement as identified by the collateral duty mediators within CBP’s cadre of mediators. The assessment found that for informal complaints where the aggrieved elected ADR, there was a higher settlement rate (5 percent) and withdrawal rate (23 percent) than those who elected EEO counseling (0 percent and 21 percent, respectively). In addition, an average of 164 informal complaints were resolved each year, from FY 2013 through FY 2017, through the use of ADR.

## 8. U.S. Immigration and Customs Enforcement

### ***Infrastructure***

ICE’s Office of Diversity and Civil Rights (ODCR) provides EEO, diversity and inclusion, civil rights, and civil liberties services to more than 19,800 employees, as well as to its external stakeholders, including detainees, witnesses, victims of crime, and the public. The ODCR Assistant Director (AD) provides leadership and oversight for the ICE EEO program, diversity and inclusion programs, affirmative employment, and civil liberties programs. The AD oversees the Complaint Resolution Division (CRD), which is responsible for all aspects of EEO complaint management, including complaint intake, processing, counseling, investigation, as well as the ICE ADR program.

ODCR workflow changed during FY 2018. To better align complaint processing, the EEO complaint accept and dismiss function was transitioned from the formal complaint team to the

informal complaint team. This realignment allowed the formal team to focus on effective case management, while also improving the efficiency and timeliness of the reviewing cases for acceptance and/or dismissal. As a result, the average processing days for drafting and issuing letters of acceptance decreased by 50 percent from 80 days to 40 days.

CRD experienced a senior staffing shortage with a vacancy in the Deputy Chief position, which posed significant challenges in managing some of the investigations-related inventory. CRD added an Intake Specialist to the informal team to assist with intake and counseling of informal complaints. In addition, CRD initiated a summer internship program for law students. For three months in FY 2018, CRD had six legal interns assisting the division in processing requests for final agency decisions and procedural dismissals, as well as supporting case intake-related data entry. CRD also recruited an additional part-time, temporary resource for the informal team through the Wounded Warrior Program to assist CRD with data entry and standard operating procedures development.

To expand the availability of EEO counselors, CRD completed the budgeting and award of an electronic EEO complaint filing system, eFile. This new system will allow for complainants to initiate EEO complaints electronically, 24 hours a day, 7 days a week. The system is anticipated facilitate CRD EEO specialists having more information to be better equipped to address EEO complaints in a timelier manner. The eFile system is set to launch in late FY 2019.

### ***Complaint Processing***

During FY 2018, ICE experienced the highest jump in EEO contacts<sup>23</sup> over the past five years, with a 9 percent increase from 477 contacts in FY 2017 to 522 contacts in FY 2018. The number of completed pre-complaint counselings show a slight decrease from 309 completed counselings in FY 2017 to 302 completed counselings in FY 2018.

The noteworthy increase in EEO contacts, the realignment of the acceptance and/or dismissal function, and the sustained effort to complete counselings, slightly reduced the timeliness rate of completed pre-complaint counselings from 95 percent (292) in FY 2017 to 91 percent (274) in FY 2018.

Regarding EEO investigations, ICE successfully completed 11 percent more investigations in FY 2018 (159), as compared to FY 2017 (143). However, the timeliness rate decreased from 36 percent in FY 2017 to 25 percent in FY 2018. The timeliness rate was adversely affected by the requirement to reinvestigate and supplement reports of investigation on cases that were investigated by a prior contract vendor in late FY 2017 and deemed insufficient. During FY 2018, CRD staff and the new contract vendor dedicated significant time and resources to ensure that these legacy cases were appropriately investigated. Additionally, ICE experienced a 27 percent increase in the number of individuals filing amendments to their formal complaints, from 30 in FY 2017 to 38 individuals in FY 2018.

ODCR continues to utilize the ADR program to resolve EEO complaints at the informal and formal stage. ODCR increased its participation in the DHS Shared Neutrals Program by

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<sup>23</sup> EEO Contacts are calls received from individuals seeking information about the EEO complaint processes. Not all EEO contacts result in a pre-complaint.

contributing 23 mediators to the program and continues to successfully draw on the program to procure mediators in support of ICE's workforce. In FY 2018, ODCR resolved 38 percent (56 of 147) of informal complaints and 64 percent (9 of 14) of formal complaints that were accepted into the ADR program.

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

In FY 2018, ICE engaged in significant training of employees, managers, and supervisors. Specifically, through Quarters 3 and 4 of FY 2018, ODCR conducted nine site visits to select ICE field offices across the country. During these visits, ODCR provided senior field leaders with EEO and civil liberties briefings and conducted the FY 2018 Managers and Supervisors Training. ODCR conducted classroom-based anti-harassment training to more than 1,714 employees at 12 locations (including 9 site visit locations). As part of the site visits, ODCR met with local union officials and field special emphasis program managers and held open office hours to discuss any issues of concern. In addition to field site visits, ODCR also conducted more than 10 classroom-based trainings at the ICE headquarters for more than 200 managers and supervisors on EEO and civil liberties updates as well as annual anti-harassment training.

## 9. U.S. Secret Service

### **Infrastructure**

The Equity, Diversity, and Inclusion (EDI) Program at USSS works to proactively address discrimination, conflict resolution, and processing of complaints of discrimination for employees and contract employees. EDI provides services to more than 7,000 employees and is composed of the EEO Director, Deputy EEO Director, Formal Complaints Manager, Pre-Complaints Manager, Disability Program Manager/Sign Language Interpreter, Affirmative Employment Program Manager, an EEO Assistant, an EEO Specialist (Generalist), and two Program Analysts. The program also includes 22 collateral duty EEO Counselors as well as six collateral duty SEPMs.

### **Complaint Processing**

In FY 2018, EDI completed 69 pre-complaint counselings with 100 percent timely counseled. There was a moderate increase in the number of completed counselings over the last fiscal year from 33 in FY 2017 to 69 in FY 2018. However, the number of formal complaints filed (45) at USSS, in FY 2018, nearly doubled from the number of formal filings in FY 2017 (23). The top three bases representing complaint activity were race, reprisal, and sex, and the top three issues were harassment (non-sexual), non-selection, and performance evaluation.

Most notably, USSS showed significant improvement in the area of investigations. In FY 2017, USSS timely completed 16 of 34 investigations (47 percent), and in FY 2018, timely completed 33 of 33 (100 percent) of their investigations. This is a direct result of process improvements and case reconciliation with USSS over the past fiscal year. Additionally, the average number of days to complete the investigation decreased from 214 days in FY 2017 to 143 days in FY 2018.

## **Services and Proactive Engagement**

During FY 2018, USSS continued to encourage participation in the Early Dispute Resolution Program for individuals involved in EEO and non-EEO related conflicts. EDI also encourages participation in mediation during the EEO complaint process. Informational materials (brochures) regarding mediation are distributed to the general workforce and to employees during the pre-complaint intake process. This information is also available to all employees during the New Employee Orientation training, First Line Supervisor training, as well as Special Agent/Uniformed Division Trainee instructional training courses. As a proactive measure, EDI continued its partnership with the Office of Chief Counsel in providing education and training to ensure that the workforce has knowledge of the EEO complaint process, reasonable accommodation process, and the Anti-Harassment Program.

During FY 2018, the EDI staff conducted numerous EEO-related training modules, which included the EEO Process, Anti-Harassment, Reasonable Accommodation, and Religious Accommodation. Training was presented to the following audiences:

- 130 supervisors received training by participating in the First Line Supervisor's Training Course, which is a two-day training that is mandatory for all new supervisors within their first year of supervision;
- 208 employees received training during the New Employees Orientation program;
- 1,294 Special Agent (773)/Uniformed Division (521) trainees received training as part of their specialized training program; and
- 304 Uniformed Division Officers received Anti-Harassment/Sexual Harassment training during three different Roll Calls. An additional question and answer session was held with leaders after each session.

In addition to the above training, all USSS employees are required to complete EEO-related online training through PALMS. During FY 2018, employees also completed the following online training:

- DHS No FEAR Act Training;
- EEO and Prevention of Discrimination in the Federal Workplace;
- Workplace Harassment Prevention for Employees; and
- Supervisors completed Workplace Harassment Prevention Training for Front Line Supervisors.

## **CONCLUSION**

The information in this report highlights the Department's numerous successes in its EEO complaints program in FY 2018. In particular, an impressive level of collaboration across the Department's EEO and Diversity Program continued, through initiatives such as the 2018 EEO

and Diversity Training Conference, the EEO Directors' Council Strategic Plan working groups, the ADR Shared Neutrals Program, and continued use of the ROI Feedback Tool. These efforts and achievements demonstrated a strong unity of effort throughout the program and have paved the way for continued cooperation and successes in future years.

EEO complaint processing has been examined in terms of the number of pre-complaints and formal complaints filed, the types of claims raised, the number and timeliness of investigations completed, the number and timeliness of merit FADs issued, and the number and types of findings of discrimination issued. The Department's program is impacted statistically by fluctuations in the number of complaints filed, resolved, and investigated within individual Components' programs. This report dove deeper to also examine each Component's complaint program and understand the reasons behind the more significant numerical shifts, whether they resulted from positive changes from the prior year(s) or involved matters that negatively affected Components' and/or the Department's processing timelines. Although DHS faced staffing and resource shortages and an increase in the number of formal complaints filed, the Department still excelled relative to several areas in the EEO complaint program.

As previously stated in this report: (1) the Department's number of completed EEO counselings and investigations are at a five-year high; (2) the total number of merit FADs issued and the number of FADs issued with the regulatory timeframe increased in FY 2018, as compared to FY 2017; and (3) the Shared Neutrals program continued to provide a cost savings to Components that utilize this service.

This report also provided an overview of each individual Component's EEO and Civil Rights program. While the Department puts forth numerous collaborative and collective efforts, each Component must also provide dedicated attention to its individual leadership initiatives, employee population, and its own unique needs and goals. The Department's overall EEO program had an active and engaged workforce and continued to achieve meaningful goals throughout FY 2018. Through strong leadership support and encouragement, this program will continue to capitalize on progress made during FY 2018 and foster collaborative efforts and effectiveness into future years.

FY18 Annual No FEAR Act Report – Federal Court Cases

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Department of Homeland Security

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

	TITLE VII	ADEA	EPA	REHABILITATION ACT	GINA	WHISTLEBLOWER
Number of cases filed, pending, or resolved	119	27	2	45	0	4

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

	TITLE VII	ADEA	EPA	REHABILITATION ACT	GINA	WHISTLEBLOWER
Cases pending hearing	53	11	0	20	0	1
Cases heard/pending decision	1	0	0	0	0	0
Decision issued in favor of the Complainant (either in its entirety or partial)	0	0	0	0	0	0
Decision issued in favor of the Agency	29	5	0	14	0	0
Arbitration/Mediation	1	0	0	0	0	0
Settlement	14	5	1	2	0	0
Appeal	5	2	0	3	0	0
Remand	0	0	0	0	0	0
Amount of Reimbursement	\$2,543,000	\$0	\$15,000	\$0	\$0	\$0
Amount of Reimbursement for Attorney Fees	\$210,000	\$11,000	\$0	\$0	\$0	\$0

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

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

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

	TITLE VII	ADEA	EPA	REHABILITATION ACT	GINA	WHISTLEBLOWER
Reprimand	4	0	0	0	0	0
Suspension without pay	4	0	0	0	0	0
Reduction of grade or pay	1	0	0	1	0	0
Removal	0	0	0	0	0	0

# Equal Employment Opportunity Data Posted Pursuant to the No Fear Act: Department of Homeland Security

For 4th Quarter 2018 for period ending September 30, 2018

Complaint Activity	Comparative Data					
	Previous Fiscal Year Data					2018Thru09-30
	2013	2014	2015	2016	2017	
Number of Complaints Filed	1244	1239	1289	1349	1275	1472
Number of Complainants	1189	1207	1244	1301	1227	1423
Repeat Filers	51	27	40	42	38	62
Complaints by Basis	Comparative Data					
	Previous Fiscal Year Data					2018Thru09-30
	2013	2014	2015	2016	2017	
<i>Note: Complaints can be filed alleging multiple bases. The sum of the bases may not equal total complaints filed.</i>						
Race	460	387	448	450	464	545
Color	158	139	178	167	194	201
Religion	58	66	65	66	61	68
Reprisal	602	583	607	685	645	768
Sex	466	443	467	481	465	526
PDA	9	7	23	23	13	19
National Origin	197	196	195	222	207	264

Equal Pay Act	3	12	8	4	11	6
Age	423	373	411	407	390	409
Disability	281	304	330	348	337	416
Genetics	6	6	5	8	4	6
Non-EEO	85	85	89	80	103	90
<b>Complaints by Issue</b>	<b>Comparative Data</b>					
	<b>Previous Fiscal Year Data</b>					<b>2018Thru09-30</b>
<i>Note: Complaints can be filed alleging multiple bases. The sum of the bases may not equal total complaints filed.</i>	<b>2013</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>	
Appointment/Hire	68	58	85	86	87	98
Assignment of Duties	103	117	143	132	139	224
Awards	22	16	20	20	24	20
Conversion to Full Time/Perm Status	1	2	0	3	1	0
<b>Disciplinary Action</b>						
Demotion	10	9	9	11	12	16
Reprimand	76	56	65	42	79	81
Suspension	65	62	74	79	88	87
Removal	28	44	56	56	36	40
Duty Hours	21	21	29	41	23	28
Perf. Eval./ Appraisal	93	86	145	115	150	150
Examination/Test	10	10	6	15	7	27
<b>Harassment</b>						
Non-Sexual	520	515	513	594	527	645
Sexual	49	40	35	38	46	70
Medical Examination	8	13	22	27	16	33

Pay including overtime	35	48	53	43	62	44
Promotion/Non-Selection	276	170	230	302	288	240
<b>Reassignment</b>						
Denied	30	24	30	34	34	32
Directed	36	50	35	44	53	56
Reasonable Accommodation Disability	59	67	84	89	100	114
Reinstatement	3	3	6	5	3	7
Religious Accommodation	0	0	0	11	10	12
Retirement	3	3	6	4	5	3
Sex-Stereotyping	0	0	0	2	1	1
Telework	0	0	0	20	20	21
Termination	105	92	88	85	113	155
Terms/Conditions of Employment	108	107	105	117	173	235
Time and Attendance	48	48	72	80	98	105
Training	32	25	28	44	55	40
<b>Other</b>						
<b>Processing Time</b>	<b>Comparative Data</b>					
	<b>Previous Fiscal Year Data</b>					<b>2018Thru09-30</b>
	<b>2013</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>	
Complaints pending during fiscal year						
Average number of days in investigation	238.80	258.66	257.44	293.53	248.21	274.04
Average number of days in final action	104.89	70.52	77.07	104.47	137.42	108.31
Complaint pending during fiscal year where hearing was requested						
Average number of days in investigation	233.35	252.06	258.71	284.51	237.05	247.87

Average number of days in final action	54.59	39.91	46.53	57.32	70.40	68.06						
Complaint pending during fiscal year where hearing was not requested												
Average number of days in investigation	247.71	270.50	255.26	297.65	264.53	308.53						
Average number of days in final action	164.31	109.65	112.82	159.83	188.34	167.36						
<b>Complaints Dismissed by Agency</b>	<b>Comparative Data</b>											
	<b>Previous Fiscal Year Data</b>										<b>2018Thru09-30</b>	
	<b>2013</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>							
Total Complaints Dismissed by Agency	131	126	96	63	111	186						
Average days pending prior to dismissal	103	140	153	206	213	163						
<b>Complaints Withdrawn by Complainants</b>												
Total Complaints Withdrawn by Complainants	102	103	120	121	111	120						
<b>Total Final Agency Actions Finding Discrimination</b>	<b>Comparative Data</b>											
	<b>Previous Fiscal Year Data</b>										<b>2018Thru09-30</b>	
	<b>2013</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>							
	<b>#</b>	<b>%</b>	<b>#</b>	<b>%</b>	<b>#</b>	<b>%</b>	<b>#</b>	<b>%</b>	<b>#</b>	<b>%</b>	<b>#</b>	<b>%</b>
Total Number Findings	19		12		14		18		14		8	
Without Hearing	0	0	0	0	0	0	11	61	12	86	1	12
With Hearing	19	100	12	100	14	100	7	39	2	14	7	88



Reprisal	4	80	3	50	5	45	6	86	1	50	6	86
Sex	2	40	1	17	4	36	6	86	0	0	2	29
PDA	0	0	0	0	0	0	0	0	0	0	0	0
National Origin	1	20	1	17	0	0	3	43	0	0	0	0
Equal Pay Act	0	0	0	0	0	0	0	0	0	0	0	0
Age	1	20	1	17	5	45	2	29	0	0	0	0
Disability	1	20	3	50	2	18	2	29	0	0	2	29
Genetics	0	0	0	0	0	0	0	0	0	0	0	0
Non-EEO	0	0	0	0	1	9	1	14	0	0	0	0
<b>Findings Without Hearing</b>	14		17		3		9		10		1	
Race	3	21	4	24	1	33	1	11	1	10	0	0
Color	1	7	1	6	1	33	1	11	0	0	0	0
Religion	0	0	0	0	0	0	1	11	0	0	0	0
Reprisal	6	43	8	47	0	0	2	22	6	60	1	100
Sex	5	36	10	59	0	0	6	67	4	40	0	0
PDA	0	0	0	0	0	0	0	0	0	0	0	0
National Origin	1	7	3	18	1	33	1	11	1	10	0	0
Equal Pay Act	0	0	0	0	0	0	0	0	0	0	0	0
Age	0	0	4	24	3	100	0	0	3	30	0	0
Disability	5	36	4	24	1	33	2	22	4	40	0	0
Genetics	0	0	0	0	0	0	0	0	0	0	0	0
Non-EEO	0	0	1	6	0	0	1	11	0	0	0	0

<b>Findings of Discrimination Rendered by Issue</b>	<b>Comparative Data</b>											
	<b>Previous Fiscal Year Data</b>										<b>2018Thru09-30</b>	
	<b>2013</b>		<b>2014</b>		<b>2015</b>		<b>2016</b>		<b>2017</b>		<b>#</b>	<b>%</b>
	<b>#</b>	<b>%</b>	<b>#</b>	<b>%</b>	<b>#</b>	<b>%</b>	<b>#</b>	<b>%</b>	<b>#</b>	<b>%</b>		
<b>Total Number Findings</b>	19		24		14		16		12		8	
Appointment/Hire	1	5	2	8	0	0	1	6	0	0	0	0
Assignment of Duties	1	5	2	8	2	14	2	13	3	25	1	12
Awards	0	0	0	0	0	0	1	6	0	0	0	0
Conversion to Full Time/Perm Status	0	0	0	0	0	0	0	0	0	0	0	0
<b>Disciplinary Action</b>												
Demotion	0	0	0	0	0	0	0	0	0	0	0	0
Reprimand	2	11	0	0	1	7	1	6	0	0	0	0
Suspension	1	5	2	8	1	7	0	0	0	0	0	0
Removal	0	0	0	0	0	0	0	0	0	0	1	12
Duty Hours	0	0	0	0	0	0	1	6	0	0	0	0
Perf. Eval./ Appraisal	1	5	1	4	1	7	0	0	0	0	1	12
Examination/Test	0	0	0	0	0	0	0	0	1	8	0	0
<b>Harassment</b>												
Non-Sexual	9	47	11	46	7	50	8	50	4	33	3	38
Sexual	1	5	3	13	1	7	4	25	0	0	0	0
Medical Examination	0	0	0	0	0	0	0	0	0	0	1	12
Pay including overtime	0	0	0	0	0	0	0	0	0	0	0	0
Promotion/Non-Selection	1	5	5	21	4	29	4	25	2	17	1	12
<b>Reassignment</b>												

Denied	0	0	0	0	0	0	0	0	0	0	0	0
Directed	2	11	3	13	1	7	1	6	0	0	0	0
Reasonable Accommodation Disability	2	11	1	4	1	7	2	13	1	8	0	0
Reinstatement	0	0	0	0	0	0	0	0	0	0	0	0
Religious Accommodation	0	0	0	0	0	0	0	0	0	0	0	0
Retirement	0	0	0	0	0	0	0	0	0	0	0	0
Sex-Stereotyping	0	0	0	0	0	0	0	0	0	0	0	0
Telework	0	0	0	0	0	0	0	0	0	0	0	0
Termination	1	5	3	13	2	14	0	0	1	8	0	0
Terms/Conditions of Employment	3	16	2	8	3	21	1	6	3	25	2	25
Time and Attendance	1	5	1	4	1	7	1	6	0	0	0	0
Training	0	0	0	0	2	14	0	0	0	0	0	0
Other - User Define												
<b>Findings After Hearing</b>	5		7		11		7		2		7	
Appointment/Hire	0	0	1	14	0	0	0	0	0	0	0	0
Assignment of Duties	0	0	1	14	2	18	1	14	0	0	1	14
Awards	0	0	0	0	0	0	1	14	0	0	0	0
Conversion to Full Time/Perm Status	0	0	0	0	0	0	0	0	0	0	0	0
Disciplinary Action												
Demotion	0	0	0	0	0	0	0	0	0	0	0	0
Reprimand	1	20	0	0	1	9	1	14	0	0	0	0
Suspension	1	20	1	14	1	9	0	0	0	0	0	0



Other - User Define												
<b>Findings Without Hearing</b>	14		17		3		9		10		1	
Appointment/Hire	1	7	1	6	0	0	1	11	0	0	0	0
Assignment of Duties	1	7	1	6	0	0	1	11	3	30	0	0
Awards	0	0	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	0	0
Disciplinary Action												
Demotion	0	0	0	0	0	0	0	0	0	0	0	0
Reprimand	1	7	0	0	0	0	0	0	0	0	0	0
Suspension	0	0	1	6	0	0	0	0	0	0	0	0
Removal	0	0	0	0	0	0	0	0	0	0	0	0
Duty Hours	0	0	0	0	0	0	0	0	0	0	0	0
Perf. Eval./ Appraisal	1	7	1	6	0	0	0	0	0	0	0	0
Examination/Test	0	0	0	0	0	0	0	0	1	10	0	0
Harassment												
Non-Sexual	8	57	8	47	1	33	4	44	4	40	0	0
Sexual	0	0	2	12	0	0	2	22	0	0	0	0
Medical Examination	0	0	0	0	0	0	0	0	0	0	0	0
Pay including overtime	0	0	0	0	0	0	0	0	0	0	0	0
Promotion/Non-Selection	1	7	4	24	2	67	1	11	0	0	1	100
Reassignment												
Denied	0	0	0	0	0	0	0	0	0	0	0	0
Directed	0	0	3	18	0	0	1	11	0	0	0	0

Reasonable Accommodation Disability	1	7	1	6	0	0	1	11	1	10	0	0
Reinstatement	0	0	0	0	0	0	0	0	0	0	0	0
Religious Accommodation	0	0	0	0	0	0	0	0	0	0	0	0
Retirement	0	0	0	0	0	0	0	0	0	0	0	0
Sex-Stereotyping	0	0	0	0	0	0	0	0	0	0	0	0
Telework	0	0	0	0	0	0	0	0	0	0	0	0
Termination	1	7	2	12	0	0	0	0	1	10	0	0
Terms/Conditions of Employment	2	14	2	12	0	0	0	0	3	30	0	0
Time and Attendance	1	7	0	0	1	33	0	0	0	0	0	0
Training	0	0	0	0	2	67	0	0	0	0	0	0

Other - User Define

Pending Complaints Filed in Previous Fiscal Years by Status	Comparative Data						2018Thru09-30
	Previous Fiscal Year Data						
	2013	2014	2015	2016	2017		
Total complaints from previous Fiscal Years	970	1146	1419	1760	2083	2092	
Total Complainants	914	1078	1328	1635	1914	1892	
<b>Number complaints pending</b>							
Investigation	118	105	199	210	214	90	
ROI issued, pending Complainant's action	12	9	9	11	28	24	
Hearing	718	914	1061	1237	1590	1597	
Final Agency Action	114	112	147	252	215	308	
Appeal with EEOC Office of Federal Operations	729	923	369	751	818	978	

<b>Complaint Investigations</b>	<b>Comparative Data</b>					
	<b>Previous Fiscal Year Data</b>					<b>2018Thru09-30</b>
	<b>2013</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>	
Pending Complaints Where Investigations Exceed Required Time Frames	214	164	287	236	228	169

# **GLOSSARY OF TERMS**

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