

**MESSAGE FROM THE  
DEPUTY OFFICER FOR CIVIL RIGHTS AND CIVIL LIBERTIES,  
U.S. DEPARTMENT OF HOMELAND SECURITY**

I am pleased to present the U.S. Department of Homeland Security's (DHS) *Notification and Federal Employee Anti-discrimination and Retaliation Act of 2002* (No FEAR Act) Annual Report for Fiscal Year (FY) 2012.

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

- The number of cases pending or resolved in Federal District Court in each fiscal year arising under federal anti-discrimination and whistleblower protection laws;
- The total number of employees disciplined and the specific nature of the disciplinary action taken for violation of anti-discrimination and whistleblower protection laws;
- Final year-end statistical data of federal sector EEO activity;
- A detailed description of the agency's policy for taking disciplinary action for conduct that is found to violate federal anti-discrimination and whistleblower protection laws;
- An analysis of the trends and causes of complaints of discrimination as well as practical knowledge gained through experience and actions planned or taken to improve complaint or civil rights programs with the goal of eliminating discrimination;
- Amounts reimbursed for any payments made from the Judgment Fund and any budgetary adjustments required to comply with the reimbursement obligation; and
- A written plan to train employees about their rights.

This report summarizes DHS's most-significant accomplishments in the DHS EEO program, particularly focusing on the area of EEO complaint processing. It evidences the Department's strong commitment to abide by merit systems principles, provide protection from prohibited personnel practices, and promote accountability.

Pursuant to Congressional requirements, this report is being provided to the following Members of Congress:

**The Honorable Patrick J. Leahy**  
President pro tempore, U.S. Senate

**The Honorable Thomas R. Carper**  
Chairman, U.S. Senate Committee on Homeland Security and Governmental Affairs

**The Honorable Thomas Coburn**  
Ranking Member, U.S. Senate Committee on Homeland Security and Governmental Affairs

**The Honorable Patrick J. Leahy**  
Chairman, U.S. Senate Committee on the Judiciary

**The Honorable Charles Grassley**  
Ranking Member, U.S. Senate Committee on the Judiciary

**The Honorable John Boehner**  
Speaker of the House, U.S. House of Representatives

**The Honorable Michael McCaul**  
Chairman, U.S. House of Representatives Committee on Homeland Security

**The Honorable Bennie G. Thompson**  
Ranking Member, U.S. House of Representatives Committee on Homeland Security

**The Honorable Bob Goodlatte**  
Chairman, U.S. House of Representatives Committee on the Judiciary

**The Honorable John Conyers, Jr.**  
Ranking Member, U.S. House of Representatives Committee on the Judiciary

**The Honorable Darrell Issa**  
Chairman, U.S. House of Representatives Committee on Oversight and Government Reform

**The Honorable Elijah E. Cummings**  
Ranking Member, U.S. House of Representatives Committee on Oversight and Government Reform

The report is also being provided to the Commissioner of the U.S. Equal Employment Opportunity Commission (EEOC), the Attorney General of the U.S. Department of Justice (USDOD), and the Director of the U.S. Office of Personnel Management (OPM).

The DHS 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. DHS succeeds in part by ensuring that our workplace decisions are equitable and based upon merit.

The DHS EEO program reflects a strong and collaborative partnership between CRCL and DHS Components, shown in part through the various improvements in the Department's EEO program during FY 2012. FY 2012 accomplishments contained in this report include:

- Development of a five-year strategic plan for CRCL's EEO and Diversity Division.
- Launch of two Joint Opportunity Initiatives, exploring avenues for leveraging Department-wide resources among the DHS EEO and diversity communities.

- Completion of 596 timely investigations – a 12-percent increase over the 531 timely investigations completed in FY 2011.
- Completion of 85 percent of EEO counselings within the time frame specified by regulation.
- Issuance of 163 timely merit Final Agency Decisions (FADs) – a 37-percent increase over the 119 timely merit FADs issued in FY 2011.

The FY 2012 achievements have paved the way for continued measureable and valuable improvements in the DHS EEO program during FY 2013 and beyond. I look forward to continuing to provide information on the successes of this program in future reports.

A handwritten signature in blue ink, appearing to read "Veronica Venture". The signature is fluid and cursive, with a large initial "V" and a long, sweeping underline.

Veronica Venture  
Deputy Officer for Civil Rights and Civil Liberties  
Director, DHS EEO and Diversity Programs

## EXECUTIVE SUMMARY

The *Notification and Federal Employee Anti-discrimination and Retaliation Act of 2002* (No FEAR Act), Public Law 107-174, is intended to reduce the incidence of workplace discrimination within the Federal Government by making agencies and departments more accountable. Section 203 of the No FEAR Act specifically requires that, not later than 180 days after the end of each fiscal year, each federal agency submit to certain Congressional committees and members an annual report with the following information: federal anti-discrimination and whistleblower protection laws, complaint activity (including Federal District Court cases), and resulting disciplinary actions; Judgment Fund reimbursements; adjustments to agency budgets to meet reimbursement requirements; and an analysis of trends, causation, and practical knowledge gained through experience. This No FEAR Act Annual Report covers FY 2012 (October 1, 2011 to September 30, 2012).

At the U.S. Department of Homeland Security (DHS), senior DHS leaders demonstrate a strong commitment to abide by merit systems principles, provide protection from prohibited personnel practices, and promote accountability. DHS's Officer for Civil Rights and Civil Liberties (CRCL) provides policy and technical advice to senior DHS leadership on civil rights and civil liberties issues, and directs the Department's Equal Employment Opportunity (EEO) and diversity management programs.

During FY 2012, CRCL continued to partner with the DHS Undersecretary for Management, the DHS Office of the Chief Human Capital Officer (OCHCO), DHS Component EEO Offices, and other internal and external stakeholders to promote equality, fairness, workforce diversity, and efficiency. The CRCL Deputy Officer is a member of the Secretary's Employee Engagement Council, which is co-chaired by the Undersecretary for Management and the Chief Human Capital Officer (CHCO), and its mission is to identify strategies that will lead to improvements in employee morale throughout the Department. In FY 2012, CRCL, in partnership with OCHCO, led the Department's efforts to develop the DHS Diversity and Inclusion (D&I) Plan. Throughout FY 2012, CRCL also maintained close working relationships with all Components. The CRCL Deputy Officer chairs the EEO Council in which all Component EEO and Civil Rights Directors participate. Effective communication and collaboration have continued to strengthen partnerships with the Components throughout FY 2012.

For example, CRCL created the Joint Opportunities Initiative, an effort to explore opportunities to leverage resources among the DHS EEO and diversity community with the expected result of improving efficiencies and the quality of work. Two distinct committees were formed: 1) the Diversity and Equal Employment Opportunity Professional Development Committee (DEOPDC), which determines the competencies necessary to perform at the highest levels, assesses the current competency levels of DHS diversity and EEO professionals, and facilitates the attainment of additional skills, capabilities, and competencies; and 2) the DHS Alternative Dispute Resolution Committee (DHS ADR), developing policies for a centralized, enterprise-wide ADR program, which would use DHS employees to serve as collateral duty mediators, rather than outsourcing to contract mediators. Both committees are headed by a Senior Executive within the DHS EEO and diversity community and composed of employees across

this community. Efforts such as these are yielding new collaborative opportunities moving into FY 2013.

DHS's uniform complaints management approach allowed for opportunities to share best practices and led to improvements in complaints processing. In the area of EEO pre-complaint processing, the percentage of timely counseling increased from FY 2011 to FY 2012. During FY 2012, 1,718 of the 2,031 (85 percent) requests for EEO counseling were timely completed, compared to 1,692 of 2,096 (81 percent) in FY 2011. In FY 2012, two Components, U.S. Customs and Border Protection (CBP) and the Federal Law Enforcement Training Center (FLETC), achieved timely counseling for 100 percent of their cases.

In the area of EEO formal complaint processing, the percentage of timely investigations slightly decreased to 57 percent in FY 2012, as compared to 60 percent in FY 2011. It is noted, however, that in FY 2012, DHS increased the total number of investigations completed and the number of timely investigations completed. Specifically, in FY 2012, there was an 18-percent increase (1,046) in the total number of investigations DHS completed, compared to FY 2011 (888) and a 12-percent increase in the number of timely investigations completed between FY 2011 (531) and FY 2012 (596). Furthermore, DHS decreased the average number of processing days of investigations in FY 2012 in comparison to FY 2011. There was a 13-day decrease in the average number of processing days for investigations between FY 2011 (243) and FY 2012 (230).

With regard to complaints adjudication, DHS issued 337 merit FADs during FY 2012. The elimination of the merit FAD backlog in FY 2011 allowed CRCL to focus efforts in FY 2012 on increasing the percentage of cases processed within 60 days of the FAD request, as required by Equal Employment Opportunity Commission (EEOC) regulations. As a result, in FY 2012, DHS issued 163 (48 percent) timely merit FADs, which is a 37-percent increase from the 119 (26 percent) timely merit FADs issued in FY 2011. In addition, there was also a dramatic reduction in the average number of processing days for merit FADs, decreasing from 237 average processing days in FY 2011 to 143 days in FY 2012 – a 40-percent decrease. There are strategic efforts underway in FY 2013 to continue to align priorities and processes with the goal of increasing regulatory timeliness.

In FY 2012, DHS processed 13 findings of discrimination, mirroring the number of findings in FY 2011. The FY 2012 findings reflected only small shifts in the bases of discrimination and issues alleged (*i.e.*, reprisal continued to be the most-frequently asserted basis, followed by race/color, and age; the most-frequently asserted issues were non-selection/non-promotion, non-sexual harassment and assignment of duties).

During FY 2012, DHS had 185 civil actions pending in Federal District Court involving the various laws covered in the No FEAR Act. During FY 2012, Federal Court judges disposed of 85 cases, of which 68 cases were decided in favor of the agency and 12 cases were settled by the parties.

In FY 2012, as reported by the Components, DHS's reimbursement to the Judgment Fund totaled \$1,528,139, while the amount reimbursed for attorney's fees in the same time period totaled \$72,000. During FY 2012, zero employees were disciplined for discrimination, retaliation, harassment, or other infractions of provisions of law covered by the No FEAR Act.

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Appendix 1: DHS No FEAR Act Federal District Court Data for FY 2012

Appendix 2: DHS No FEAR Final Year End EEO Data for FY 2007-2012

## I. LEGISLATIVE REQUIREMENT

This document responds to the reporting requirements set forth in Section 203 of the No FEAR Act (Pub. L. No. 107-174), which states:

(a) Annual Report. — Subject to subsection (b), 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 the U.S. Office of Personnel Management (OPM) for the implementation of a best practices study and the issuance of advisory guidelines.

## **II. BACKGROUND**

DHS'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. In order to maximize its effectiveness, DHS seeks to have an exemplary EEO program. DHS 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 June 5, 2003, the Secretary of Homeland Security delegated authority to the Officer to lead the Department's EEO Programs and Diversity Initiative, and on August 1, 2006, the Officer re-delegated this responsibility to the Deputy Officer for EEO and Diversity Programs, in CRCL.

CRCL resides within the Office of the Secretary, and 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, rather than diminish, the personal liberties of all persons protected by our laws. In accordance with 6 U.S.C. § 345 and 42 U.S.C. § 2000ee-1, CRCL's mission is to support DHS as the Department 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, 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.

CRCL provides departmental guidance and standards for establishing and maintaining effective programs for diversity management and EEO, as required under both Title VII of the *Civil Rights Act of 1964* (Title VII), as amended, 42 U.S.C. § 2000(e) *et seq.*, and Section 501 of the *Rehabilitation Act of 1973* (Rehabilitation Act), as amended, 29 U.S.C. § 791 *et seq.* CRCL also works to advance the protections set forth under the *Age Discrimination in Employment Act of 1967* (ADEA), as amended, 29 U.S.C. § 621 *et seq.*, the *Equal Pay Act of 1963* (EPA), 29 U.S.C. § 206 (d)(1) *et seq.*, and the *Genetic Information Nondiscrimination Act of 2008* (GINA), (Pub. L. No. 110-233). To meet these objectives, the Deputy Officer for CRCL and her 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 (DOJ), EEOC, and OPM.

### **III. RESULTS AND DATA**

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

During FY 2012, DHS had 185 civil actions in Federal District Court, pending or resolved under the laws covered in the No FEAR Act. The majority of those Federal District Court filings arose under Title VII (111), followed by filings under the ADEA (39), the Rehabilitation Act (31), and the *Whistleblower Protection Act of 1989* (4).

During FY 2012, Federal District Court judges disposed of 85 cases: 68 were decided in favor of the Department, 12 were resolved by settlement, and 5 were sent to mediation or arbitration. For further information regarding FY 2012 employment discrimination and whistleblower cases filed in Federal District Court against DHS, see Appendix 1.

#### **B. Reimbursements to Judgment Fund**

During FY 2012, as reported by DHS Components, the Department reimbursed the Judgment Fund in the total amount of \$1,528,139. The bulk of the reimbursement to the Judgment Fund derived from cases filed under Title VII, in the amount of \$1,420,139. Cases arising under the Rehabilitation Act comprised a total of \$93,000 of the amount reimbursed, and cases arising under ADEA comprised the remaining \$15,000 of the amount reimbursed to the Judgment Fund. With respect to attorney's fees, Title VII cases totaled \$72,000; there were no attorney's fees reported for Rehabilitation Act or ADEA cases.

#### **C. Disciplinary Actions**

At DHS, the decision about whether to impose disciplinary action on an employee is determined on a case-by-case basis by the relevant Component, depending on the specific facts or circumstances at issue. During FY 2012, zero employees were disciplined for discrimination, retaliation, harassment, or an infraction of any provision of law covered by the No FEAR Act and filed in Federal District Court.

#### D. EEO Complaint Data

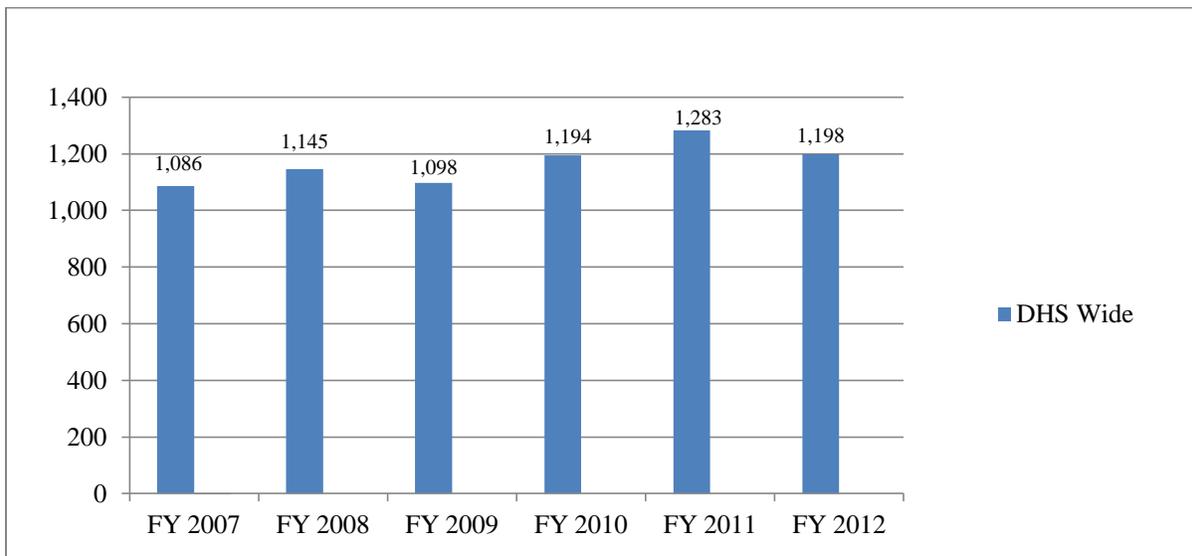
See Appendix 2 for DHS No FEAR Act data for FY 2012, which is also posted online (<http://www.dhs.gov/homeland-security-no-fear-act-reporting>).

### IV. ANALYSIS OF TRENDS AND CAUSALITY

#### A. EEO Complaint Activity

Between FY 2007 and FY 2012, DHS experienced a 10-percent increase in filings of new statutory and non-statutory EEO complaints. In FY 2012, the filing of 1,198 new statutory and non-statutory EEO complaints equated to a seven-percent decrease (85 fewer complaints) from FY 2011, a year when complaint activity spiked by a similar amount. Thus, the complaint filings in FY 2012 returned to levels nearly identical to FY 2010.

**Figure 1: Complaints Filed, FY 2007 – FY 2012**



#### B. Bases of Discrimination in EEO Complaints

During FY 2012, DHS's most-frequently alleged bases of discrimination in formal EEO complaints were, in order of frequency: reprisal, sex, and age. The number of these claims increased over the last fiscal year, but these increases were minimal. See Figure 2. In comparison, the most-frequently alleged bases in FY 2011 were: reprisal, sex, and race/color. Although the basis of age overtook the bases of race/color during this fiscal year, the basis of age had ranked fourth in FY 2011 (372 age claims compared to 379 race/color claims).

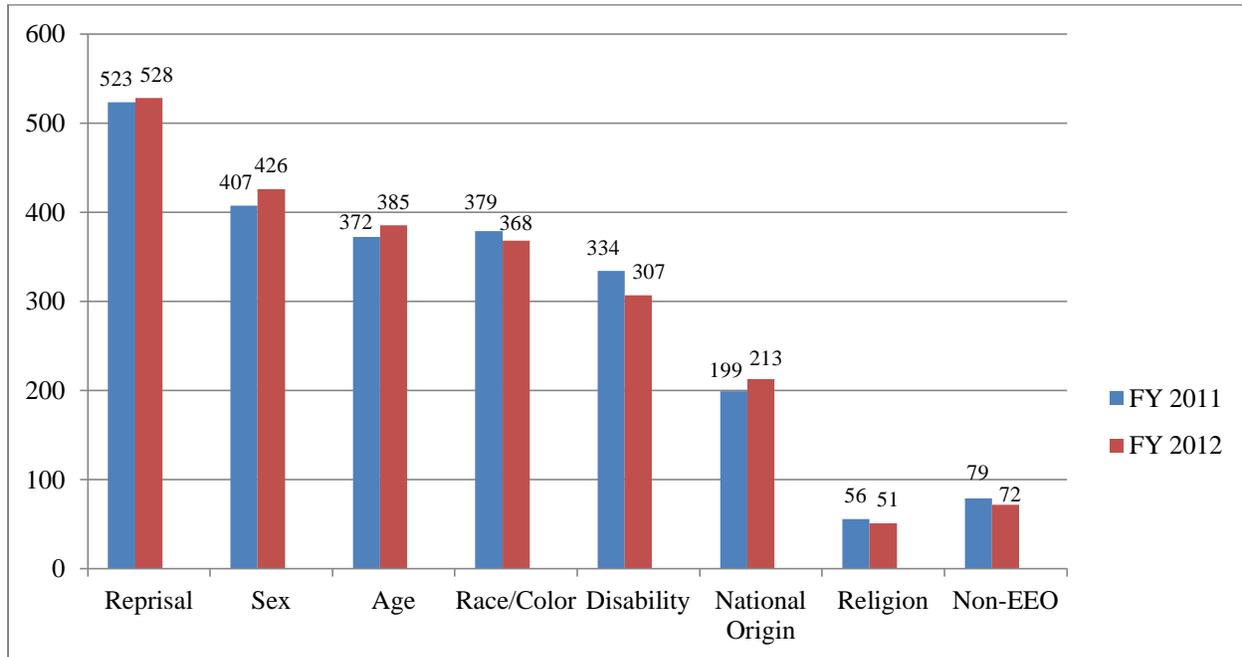
- *Reprisal*: DHS's FY 2012 reprisal claims (528) were higher than reprisal claims in prior years (523 in FY 2011; 493 in FY 2010; 418 in FY 2009; 432 in FY 2008; and 389 in FY

2007). The frequency of reprisal claims as the leading basis at DHS is consistent with government-wide data for reprisal claims, which show that reprisal is the most-frequently alleged basis of discrimination across the Federal Government from FY 2007 to FY 2011. At DHS, as elsewhere in the Federal Government, reprisal claims are nearly always joined with an underlying EEO complaint on the basis of race, national origin, sex, etc. See EEOC's *Annual Report on the Federal Workforce FY 2011* (<http://www.eeoc.gov/federal/reports/fsp2011/index.cfm>).

- *Sex*: During FY 2012, DHS received 426 complaints alleging discrimination on the basis of sex – a five-percent increase over FY 2011 (407). Since FY 2007, sex discrimination claims have numbered among the three most-frequently filed bases of discrimination. DHS has monitored this basis particularly since FY 2010 in order to ascertain whether a trend exists. However, with only a *de minimis* increase (2 complaints) from FY 2010 to FY 2011 and a slight increase (19 complaints) from FY 2011 to FY 2012, it is still not possible to draw a conclusion about the existence of a trend. DHS will continue to monitor this basis for any potential trend.
- *Age*: During FY 2012, age discrimination constituted the third most-frequently raised basis of discrimination, with 385 complaints, which is an increase of 13 cases from FY 2011 (372). For information on these and other bases asserted, see Figure 2, which sets out data from FY 2011 and FY 2012.

Notably, the largest shift between fiscal years related to claims of disability discrimination. The number of disability claims filed in FY 2012 (307 claims) decreased by 8 percent compared to FY 2011 (334 claims). However, the number of disability claims in FY 2011 had increased by 13 percent over FY 2010 (295 claims). The number of disability claims in FY 2012 was even lower than FY 2010 levels. Upon review, there were no discernible reasons for the decrease in disability claims from last fiscal year.

**Figure 2: Bases of Discrimination, FY 2011 and FY 2012**



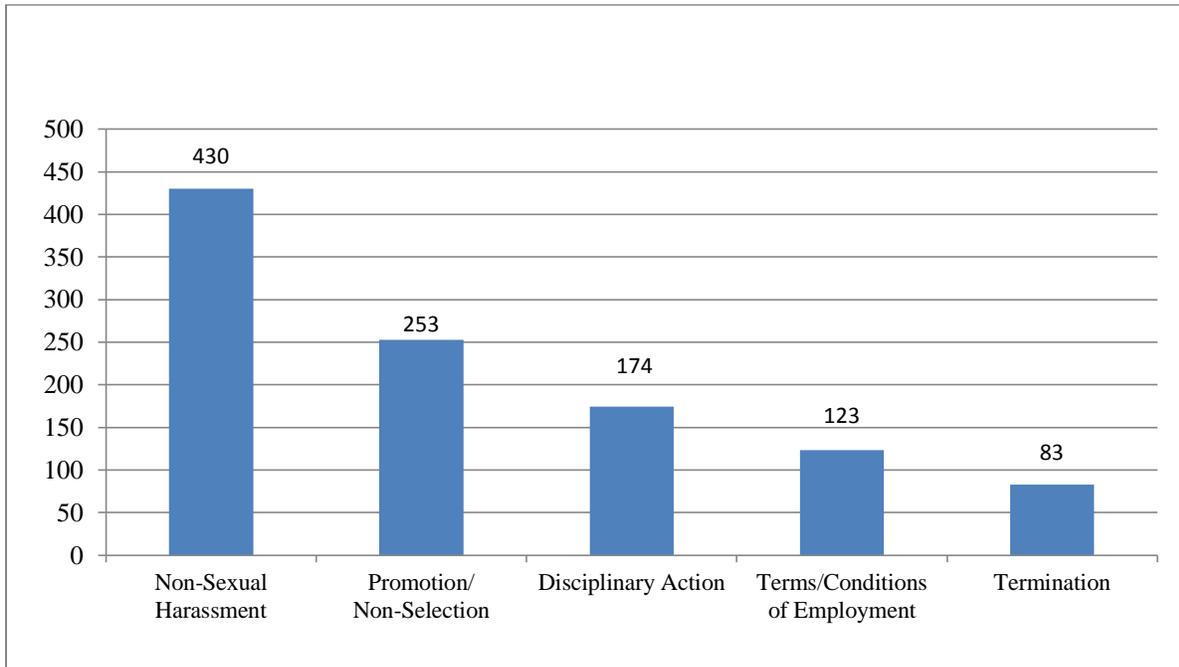
\* Nearly all color complaints also reference race.  
 \*\* Non-EEO includes parental status and sexual orientation.

### C. Issues in EEO Complaints

The two most-frequently raised issues in discrimination complaints during FY 2012 involved non-sexual harassment<sup>1</sup> (raised in 430 complaints) and promotion/non-selection (raised in 253 complaints). These two issues ranked among the three most-frequent issues in discrimination claims at DHS in each of the past three fiscal years. The prevalence of these issues is consistent with government-wide trends (*i.e.*, these two issues ranked among the three most-frequently raised issues in discrimination complaints across the Federal Government from FY 2007 to FY 2011, as reported in the EEOC’s *Annual Report on the Federal Workplace FY 2011*). And as shown in Figure 3, disciplinary action was raised as an issue in 174 complaints, ranking third among the issues most-frequently raised at DHS during FY 2012.

<sup>1</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 unwelcome conduct not of a sexual nature, *e.g.*, race, sex, national origin, color, religion, age, disability, or reprisal).

**Figure 3: Issues in Complaints, FY 2012**



## V. COMPLAINTS PROCESSING AND ADJUDICATION DATA

### A. EEO Counseling

During FY 2012, DHS continued the progress made in FY 2010 and FY 2011 in the percentage of timely-completed requests for counseling.<sup>2</sup> In FY 2012, counseling was completed for 2,031 cases, and 85 percent (1,718) of these cases were timely completed. This represents an increase in timely counseled cases, compared with 81 percent timely cases counseled in FY 2011. See Table 1.

**Table 1: EEO Counseling at DHS, FY 2007 – FY 2012**

	<i>2007</i>	<i>2008</i>	<i>2009</i>	<i>2010</i>	<i>2011</i>	<i>2012</i>
<b>Total Number</b>	2,240	2,064	2,479	1,848	2,096	2,031
<b>Timely Number</b>	1,709	1,497	1,684	1,495	1,692	1,718
<b>Percentage Timely</b>	76	73	68	81	81	85

<sup>2</sup> In accordance with 29 C.F.R. § 1614.105(d), counseling must be completed within 30 calendar days, unless the aggrieved person agrees to extend the counseling period up to an additional 60 calendar days.

During FY 2012, five DHS Components provided timely counseling in 98 percent or more cases. In particular, for the third year in a row, CBP completed 100 percent (464) of its cases within the regulatory time period. Similarly, FLETC timely completed 100 percent (18) of its cases for the first time in three years. Other Components that had a high percentage of timely cases counseled during FY 2012 include:

- U.S. Citizenship and Immigration Services (USCIS), timely completing 185 of 186 (99 percent);
- U.S. Coast Guard (USCG), timely completing 94 of 96 (98 percent); and
- U.S. Secret Service (USSS), timely completing 47 of 48 (98 percent).

The Transportation Security Administration (TSA) significantly increased the number of cases timely counseled from the previous fiscal year. Specifically, in FY 2012, TSA timely completed counseling in 558 of 658 cases (85 percent), compared with FY 2011, when TSA timely completed counseling in 443 of 675 cases (66 percent).

In FY 2012, U.S. Immigration and Customs Enforcement (ICE) experienced a sharp decrease in the percentage of timely counseled cases because of severe staffing shortages in their Complaints and Resolution Division. Specifically, ICE timely counseled 116 of 242 (48 percent) of cases, which is noticeably less than the 218 of 263 (83 percent) timely counseled in FY 2011.

## **B. EEO Investigations**

In FY 2012, there was an 18-percent increase in the total number of investigations (1,046) DHS completed compared with the number completed in FY 2011 (888). Despite the increase of 65 cases in FY 2012, DHS increased the number of timely-completed investigations – 531 in FY 2011 compared to 596 in FY 2012. DHS also experienced a decrease of 13 days (5 percent) in the number of average processing days during FY 2012. See Table 2.

**Table 2: EEO Investigations at DHS, FY 2007 – FY 2012**

	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>
<b>Total Number</b>	742	787	861	939	888	1046
<b>Timely Number</b>	375	448	561	566	531	596
<b>Percentage Timely</b>	51	57	65	60	60	57
<b>Average Days</b>	248	215	217	213	243	230

During FY 2012, two DHS Components stood out for their timely completion of EEO investigations: USCG and USCIS. USCG timely completed 100 percent of its 39 investigations, and USCIS timely completed 99 percent of its 74 investigations. For the second year in a row, USCIS maintained the lowest average processing rate for EEO investigations (142 days) of all DHS Components.

The Headquarters EEO Office (HQ EEO) showed significant progress in timely completion of investigations from FY 2011 to FY 2012. In FY 2011, HQ EEO timely completed 38 percent (13 of 34) of its investigations. In contrast, in FY 2012, HQ EEO timely completed 88 percent (21 of 24) of its investigations.

TSA also showed marked improvement in the timely completion of investigations from FY 2011 to FY 2012. In FY 2011, TSA timely completed 21 percent (53 of 250) of its investigations, in comparison to FY 2012, when it completed 44 percent (190 of 429) of its investigations timely.

During FY 2012, ICE experienced a decrease in the completion of timely investigations, similar to the decrease they experienced in the percentage of timely counselings. Again, this decrease was a result of severe staffing shortages that resulted in limited staff available to perform counselings and investigations. These shortages were addressed and vacancies were filled by the conclusion of the fourth quarter of FY 2012 and ICE expects to significantly increase both its complaint processing timeliness and the quality of this work in FY 2013. Specifically, ICE timely completed 6 of 81 (7 percent) investigations in FY 2012, compared to 66 of 98 (67 percent) in FY 2011.

In FY 2012, USSS also had a decrease in the timely completion of investigations, although they successfully eliminated the backlog of its oldest cases pending investigation (2011 and older). Specifically, USSS timely completed 5 of 28 (18 percent) investigations in FY 2012, compared to timely completing 8 of 19 (42 percent) investigations in FY 2011. However, during FY 2012, USSS also decreased the average processing days for investigations by 36 days – from 390 to 354.

### C. Procedural Dismissals

An agency may dismiss an EEO complaint for several reasons, including: failure to state a claim; untimely initial contact with an EEO counselor; filing the identical claim in Federal District Court; and failure to provide necessary information to the agency, among other reasons. See 29 C.F.R. § 1614.107(a). DHS Components submit requests to CRCL for full dismissal of complaints that meet appropriate regulatory criteria. During FY 2012, CRCL issued 164 dismissals, which is nearly identical to the number of dismissals issued in FY 2011 (163). The 129 average processing days in FY 2012 represents a 16-percent decrease from the number of processing days in FY 2011 (153) and was also the lowest number of days between FY 2007 and FY 2011. See Table 3.

**Table 3: Procedural Dismissals, FY 2007 – FY 2012**

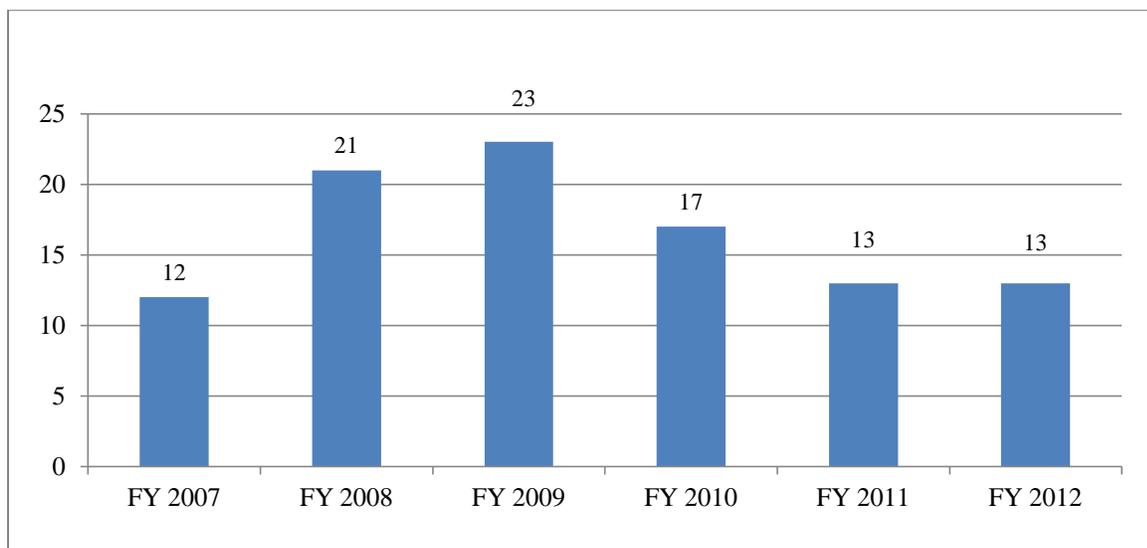
	2007	2008	2009	2010	2011	2012
<b>Total Number</b>	187	247	204	550	163	164
<b>Average Processing Days</b>	257	220	241	385	153	129

## D. Findings of Discrimination

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. The following tally of DHS's findings of discrimination from FY 2007 to FY 2012 illustrates DHS's EEO complaint trends and causes based on the overall number of findings at the Department, the protected bases upon which the findings were made, and the types of claims or issues involved in the findings during this period.

Overall, from FY 2007 to FY 2012, DHS has processed 99 findings of discrimination through the issuance of merit FADs or Final Orders following an EEOC Administrative Judge's (AJ) decision. FY 2012 does not show any systemic EEO issues or trends compared to prior years. In FY 2012, DHS processed 13 cases in which findings of discrimination were made. These cases included 1 merit FAD (without an EEOC AJ's decision); 9 decisions from an EEOC AJ finding discrimination that DHS fully implemented; and 3 EEOC AJ decisions finding discrimination that DHS did not fully implement, but instead appealed to EEOC's Office of Federal Operations (OFO). The 13 findings of discrimination in FY 2012 are consistent with the number of findings in FY 2011. See Figure 4.

**Figure 4: Complaints with Findings, FY 2007 – FY 2012**



### 1. Protected Bases

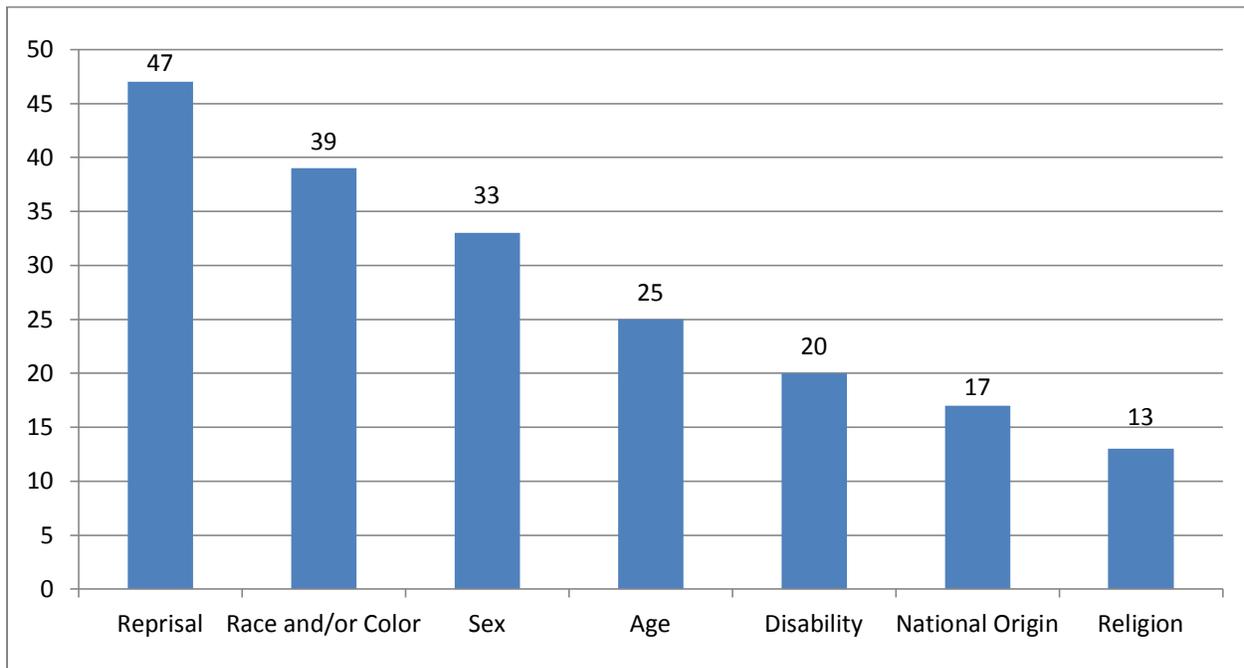
In FY 2012, the majority of findings were based on the protected bases of reprisal (13), race/color (7), and age (7). Of the 13 complaints finding discrimination, there were 13 findings of reprisal – a marked increase from the number of findings of reprisal in FY 2011 (4). In addition, these FY 2012 complaints also contained findings based on sex (6), disability (3), and national origin (3). There was an increase in the number of findings based on sex – one in FY 2011 compared to six in FY 2012. In addition, there was an increase in the number of findings (7) based on age in FY 2012 compared to the findings (4) based on age in FY 2011.

The increase in findings based on sex and age do not appear to signify any particular trend because the total number of findings did not increase and the number of findings on other bases decreased. For instance, in FY 2012, there were no findings based on religion, which is the first time since before 2006.

There was also an increase in findings based on national origin in FY 2012 (3), in comparison to previous fiscal years – one in FY 2011 and zero in FY 2010. This increase likely does not indicate a particular trend and it is noted that the number of national origin findings in FY 2012 is still significantly lower than the all-time high of eight in FY 2008.

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. The total number of findings by bases from FY 2007 to FY 2012 is shown in Figure 5.

**Figure 5: Findings by Bases, FY 2007 – FY 2012**



## 2. Issues

FY 2012 findings of discrimination involved issues consistent with previous fiscal years, and do not suggest any particular pattern or trend. In FY 2012, DHS findings predominantly involved non-selection/non-promotion (5), non-sexual harassment (3), and assignment of duties (3). Other issues in FY 2012 findings included: evaluation/appraisal (2), pay/overtime (1), duty hours (1), reasonable accommodation (1), reprimand (1), suspension (1), termination (1), and training (1). In contrast to the five previous fiscal years when there were no findings, there were findings for the first time in the areas of assignment of duties, evaluation/appraisal, pay/overtime, and training in FY 2012. It is noted, however, that the number of findings dropped relating to terms

and conditions of employment and appointment/hire. These increases and decreases in numbers are too small to indicate a particular trend. Additionally in FY 2012, there was an increase from the number of findings relating to non-selection/non-promotion — five in FY 2012 compared to zero in FY 2011. The five findings relating to non-selection/non-promotion in FY 2012 number are consistent with FY 2010 (6) and FY 2009 (5). As with protected bases, the total number of issues within findings of discrimination may exceed the total number of findings issued because one decision may find discrimination on multiple issues. See Table 4.

**Table 4: Findings by Issue, FY 2007 – FY 2012**

	<i>2007</i>	<i>2008</i>	<i>2009</i>	<i>2010</i>	<i>2011</i>	<i>2012</i>	<i>Total</i>
<b>Appointment/hire</b>	1	2	0	1	1	0	5
<b>Assignment of Duties</b>	0	0	0	0	0	3	3
<b>Disciplinary action</b>	2	2	4	4	1	3	16
<b>Duty hours</b>	0	0	0	0	2	1	3
<b>Evaluation/Appraisal</b>	0	0	0	0	0	2	2
<b>Harassment (non-sexual)</b>	2	5	10	3	3	3	26
<b>Non-selection/non-promotion</b>	2	11	5	6	0	5	29
<b>Pay/Overtime</b>	0	0	0	0	0	1	1
<b>Reasonable accommodation</b>	0	0	1	2	5	1	9
<b>Termination</b>	2	2	4	2	1	2	13
<b>Terms/conditions of employment</b>	2	2	2	1	2	0	9
<b>Training</b>	0	0	0	0	0	1	1

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

### **A. Improvements in DHS CRCL EEO Program**

During FY 2012, DHS achieved significant program improvements and enhancements, resulting in a substantial increase in DHS's issuance of timely merit FADs, improved quality of complaint tracking and reporting, and enhanced services to stakeholders. After CRCL's FY 2011 elimination of the backlog of cases pending adjudication, CRCL and the DHS EEO Directors committed to reconciling the departmental EEO data and working collaboratively towards maturing the departmental EEO program.

#### **1. Focusing on Timely Issuance of Merit FADs**

During FY 2012, CRCL focused on timely adjudicating merit FADs and issuing them within regulatory deadlines. EEOC Regulations at 29 C.F.R. Part 1614 require merit FADs to be issued

within 60 days. In FY 2009 and FY 2010, CRCL timely issued only 16 and 17 merit FADs, respectively. However, in FY 2011, DHS timely issued 119 merit FADs – 26 percent of the total number of merit FADs issued during the year and a 600-percent increase in the number of timely merit FADs over the prior fiscal year. And in FY 2012, CRCL’s continued emphasis on timely issuance led to even greater successes. Of the 337 FADs issued this fiscal year, 163 (48 percent) were issued timely – an 85-percent increase over the prior year – and marking the highest number and highest percentage of timely merit FADs in the Department’s history. This emphasis on timely issuing merit FADs also allowed the number of average processing days to drop from 237 to 143 – a 40-percent decrease.

During FY 2012, CRCL made improvements to both the formatting of EEO final actions and the processing of these work products. Late in FY 2011, CRCL launched a pilot for a revised final action format – utilizing a judicial decision format and integrating a procedural history and a certificate of service. These enhancements to the format allowed for more-accurate analysis, expedient processing, and tracking the issuance of final actions. In FY 2012, this pilot converted into a permanent revision for all final actions. In FY 2013, CRCL will continue to focus on timely processing of merit FADs and CRCL plans to coordinate closely with Component offices to facilitate conveyance of complaints ripe for adjudication within regulatory timeframes. See Table 5.

**Table 5: Timeliness for Merit FADs FY 2007 – FY 2012**

	<i>2007</i>	<i>2008</i>	<i>2009</i>	<i>2010</i>	<i>2011</i>	<i>2012</i>
<b>Backlog at Year End</b>	419	568	420	247	0	0
<b>Total FADs Issued</b>	249	86	303	527	457	337
<b>Number Timely Issued</b>	4	21	16	17	119	163
<b>Percentage Timely</b>	2	24	5	3	26	48
<b>Average Processing Days</b>	355	545	567	807	237	143

## **2. Harnessing the Advantages of Technology**

During FY 2012, CRCL partnered with DHS Components to continue maximizing digital processing efficiencies, including updating information and uploading documents to the departmental enterprise complaint data and document management system, to allow for access to uniform data and documents. DHS Components effectively requested procedural dismissals and merit FADs via email, and CRCL was able to digitally review, sign, and issue all final actions in an accessible format. These digital processes have allowed CRCL to maximize telework opportunities – an initiative encouraged across the Executive Branch. Further, CRCL made expanded use of Adobe® Connect™, a web-conferencing platform for holding meetings in a more-effective manner. These digital initiatives have enhanced the speed and accuracy of case processing and adjudication in FY 2012 and will continue on into FY 2013.

CRCL also engaged in several proactive initiatives that recognize the opportunities that arise when technology intersects with EEO and diversity. In January 2012, CRCL developed and launched a Facebook® page – the first such presence of a DHS Headquarters office – a useful

tool for sharing information about key EEO developments. In March 2012, CRCL briefed the DHS EEO Council on social media's impact on the EEO landscape, and provided a follow-up briefing to ICE's Office of Diversity and Civil Rights in June 2012. Also in March 2012, CRCL launched a presence on the U.S. Office of Management and Budget's MAX Federal Community, where useful EEO case law was posted for Component access and use. And lastly, throughout FY 2012, CRCL coordinated with EEOC's Office of Federal Operations (OFO) in the ongoing deployment of the EEOC File Exchange (EFX), a web-based EEO case processing and document conveyance portal. CRCL joined the pilot program and involved several Components early on and new Component EFX user enrollments have increased steadily throughout FY 2012. CRCL has been able to provide valuable input into shaping the design features and updates of EFX so Component usage can be more effective. CRCL remains active in an EFX Focus Group created to continue to dialogue between EEOC and the user community.

### **3. Launching the Joint Opportunities Initiative**

During FY 2012, CRCL created the Joint Opportunities Initiative as an effort to explore opportunities to leverage resources among the DHS EEO and diversity community, with the expected result of improving efficiencies and the quality of work. Two distinct committees were formed: the Diversity and Equal Employment Opportunity Professional Development Committee (DEOPDC) and the DHS Alternative Dispute Resolution Committee (DHS ADR). Both committees are headed by a Senior Executive within the DHS EEO and diversity community and composed of employees across this community.

The DEOPDC working group is an appointed body engaged in assisting CRCL and DHS Components in determining the competencies necessary to perform at the highest levels, assessing the current competency levels of DHS diversity and EEO professionals, and facilitating the attainment of additional skill, capabilities, and competencies. During FY 2012, the DEOPDC completed an inventory of competencies and tasks associated with those competencies for the EEO and diversity occupational series. In addition, the DEOPDC was invited to participate in an OPM-sponsored skills assessment inventory, whereby DHS EEO and diversity employees will be surveyed on their skills in an effort to identify areas of excellence and skill gaps. OPM is currently in the process of working with the DEOPDC to develop and deploy the competency assessment, which is expected to be completed by the second quarter of FY 2013. In addition to developing the survey, OPM will conduct an analysis of the results and offer advice and guidance on addressing any skill gaps that have surfaced.

The DHS ADR committee is composed of ADR managers from the largest DHS Components. The committee is responsible for developing policies for a centralized, enterprise-wide ADR program, which would use DHS employees to serve as collateral duty mediators, rather than outsourcing to contract mediators. In FY 2012, the committee created and deployed a survey to DHS Components on all aspects of their respective ADR programs. In addition, the committee interviewed ADR practitioners from both inside and outside DHS to assemble best practices. Through this process, the committee identified six major components of a successful enterprise-wide program: policy and leadership support; funding; procedures; mediators (selection criteria); training; and marketing. The committee formed sub-committees that reviewed these discrete operational areas and developed a number of recommendations addressing each of these

components. The committee is currently drafting a policy paper to be presented to the DHS Secretary for approval. The committee anticipates piloting an ADR program by the end of FY 2013.

#### **4. Collaborating and Leading DHS Components**

During FY 2012, CRCL engaged in proactive opportunities to create collaboration and information-sharing across the Department. CRCL conducted a number of training sessions to the DHS EEO and diversity community. For example, in the first quarter of FY 2012, CRCL provided a comprehensive training session on the acceptance/dismissal process, with a specific focus on 29 C.F.R. § 1614.107 (bases for procedural dismissals), to CBP's Complaint Processing Unit. The training presented the legal framework for procedural dismissals and used specific cases to illuminate the pertinent points. Much of the training focused on dismissals of hostile work environment complaints. This training was supplemented in the second quarter with another training session on understanding adjudication of hostile work environment complaints, especially those involving claims of retaliation. These engagements provided opportunities for both CRCL and CBP to engage in discussion, improve case analysis and processing, provide process transparency, and build a stronger working bond between the two offices. Also during the first quarter, CRCL staff assisted HQ EEO by conducting EEO briefings at new employee orientations at DHS Headquarters. These efforts have not only allowed HQ EEO to maintain effective operations, but have also allowed CRCL staff to better understand this customer-Component's products and services.

In the third quarter of FY 2012, the DHS Office of Inspector General (OIG) invited CRCL to provide EEO and diversity training at OIG's All-Employee meetings in Denver and Orlando. These training sessions included a detailed discussion of the EEO process, EEO laws and theories, and diversity concepts such as unconscious bias. Also in the third quarter, CRCL held three *Train the Trainer* sessions – one at FLETC in Glynco, Georgia, and two at HQ EEO in Washington, D.C. – for Component administrators of the DHS data base system. These intensive trainings were designed to be a force multiplier, providing the participants with an enhanced understanding of complaints for immediate application across their own organizations, as well as allowing participants to contribute in a more-substantial way to the Department's enterprise system and knowledge base. Since this training, the number of Component requests for CRCL assistance has gradually diminished. CRCL anticipates developing similar collaborative efforts during FY 2013.

In the fourth quarter of FY 2012, CRCL provided ICE's Office of Diversity and Civil Rights with on-site EEO training for their new investigators. Also in the fourth quarter, following the retirement of the HQ EEO Director, CRCL staff assisted HQ EEO by serving in an Acting role through the end of the fiscal year. During the summer, CRCL led DHS EEO Forums at the annual EEOC Examining Conflicts in Employment Law (EXCEL) Conference and at the annual LRP Publication Federal Dispute Resolution (FDR) Conference. These Forums allowed opportunities for CRCL to share updates on developments with Department-wide impact, including the CRCL EEO and Diversity Division Strategic Plan. Introductions made during these Forums have paved the way for closer working relationships throughout the year. And lastly, CRCL partnered with the DHS OCHCO to present an anti-harassment training to the

Program Accountability and Risk Management (PARM) office. This training discussed the roll-out of the new Anti-Harassment Unit (AHU) and explained the EEO and AHU processes. The training also focused on the DHS anti-harassment policy and responsibilities of managers and non-managers relating to harassment complaints.

## **5. Developing Strategic Plans**

During FY 2012, CRCL's EEO and Diversity Division (EEOD) developed a comprehensive five-year Strategic Plan for fiscal years 2013-2017. The Plan provides a roadmap for future success, by emphasizing broader collaboration with the Components and DHS OCHCO and a renewed focus on leadership. The Plan also includes new innovative initiatives that will improve efficiencies and communication.

In FY 2012, CRCL partnered with OCHCO to lead the Department's efforts in developing a DHS-wide D&I Strategic Plan for fiscal years 2012-2015. In the fourth quarter of FY 2012, the D&I Plan was signed by the Secretary. The D&I Plan established the framework for recruiting a diverse workforce, creating an inclusive workplace, and ensuring management accountability. It also serves as a dynamic road map to guide DHS's efforts in making DHS a leader in creating and sustaining a high-performing workforce. The D&I Plan identified three specific goals:

- 1) secure a high-performing workforce drawn from all segments of American society;
- 2) cultivate a culture that encourages collaboration, flexibility, and fairness to enable individuals to contribute to their full potential and feel valued and supported; and
- 3) institutionalize diversity and inclusion management as a key strategic priority, through continued leadership commitment, accountability, and total workforce engagement.

### **B. DHS Component EEO and Civil Rights Offices**

DHS Components continued to move forward with process efficiency initiatives. Beginning with a Department-wide commitment to maximize utility of the iComplaints enterprise database system, all Components have emphasized the importance of data integrity, reconciliation, and the timely updating of information and documents. These efforts have matured during FY 2012, allowing for faster and more-reliable conveyance of cases from the Components to CRCL for adjudication and final action. These initiatives have also allowed for easier access to documents and generation of related reports. These digital process efficiencies continue to be the foundation upon which CRCL and Components have built a speedy and collaborative EEO program.

#### **1. Federal Emergency Management Agency**

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

The Federal Emergency Management Agency (FEMA), Office of Equal Rights (OER) provides equal employment opportunity and civil rights services to a workforce of 16,903 employees. The office is organized into three sections: Informal Complaints/ADR, Formal Complaints, and Civil Rights. The staff consists of 24 full-time employees who are further supported by approximately 50 temporary employees (reservists) during disaster operations.

### ***Complaint Processing***

In FY 2012, FEMA has shown improvements in timely investigations over the results of FY 2011. The average timeframe for conducting investigations decreased from 433 days in FY 2011 to 361 days in FY 2012. There was a 23-percent increase in formal complaint filings during FY 2012 (137) over the prior Fiscal Year (111). Although there was an increase in the number of complaints filed, FEMA anticipates that the percentage of complaints timely-investigated will continue to increase due to focused efforts on streamlining internal processes and maintaining staffing levels.

### ***Diversity Management***

In FY 2012, FEMA produced Equal Employment Opportunity and Civil Rights Pocket Guides for distribution to the agency workforce. These guides provide easy-to-use reference material compiling the most critical information on both EEO and Civil Rights, in a concise and interactive format. In addition, the guide contains *I Speak* translations for use during disaster deployments. The key strength of this product lies in the ability to adapt and distill complicated information into an easy-to-understand format that everyone can use. This product was also produced in Braille and enhanced print. In the future FEMA's intent is to transform the product into an eGuide that is stored in a mobile application and kept on a smart phone. This feature will be extremely beneficial in critical environments, such as disasters or emergency situations.

The Administrator, Deputy Administrator, and Director of the OER issued an EEO and Diversity Policy statement communicating their commitment to equal opportunity, diversity and inclusion. The United States Fire Administrator (USFA) developed a Diversity Business Plan for use at the National Emergency Training Center (NETC) in Emmitsburg, Maryland. USFA's Business Plan stressed and emphasized their commitment to ensure all employment practices and opportunities are conducted in a non-discriminatory manner. This includes increasing employment and advancement opportunities for those groups that are underrepresented in FEMA's workforce by actively seeking creative methods to improve outreach efforts. USFA will continue to explore various hiring flexibilities available, including the new Pathways Program, which replaced the Student Career Experience Program; the Student Temporary Employment Program; the Internship Program; the Recent Graduates Program; and the Presidential Management Fellows program.

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

Through the Workforce Enhancement Initiative, a working group was established to identify and support the development and implementation of enhancements to improve, diversify and accelerate FEMA recruitment, and hiring of individuals with disabilities. Among these priorities, the working group developed a plan to maximize diversity; make the best use of special Veteran hiring authorities; and other hiring flexibilities. In FY 2012, FEMA organized Job Fairs for individuals with disabilities, where on-the-spot interviews were conducted and job offers were extended.

In FY 2012, FEMA applied the "Whole Community" approach to emergency management by expanding relationships with traditionally under-served groups, including those throughout tribal territories.

In FY 2012, FEMA led the first National Preparedness Symposium which brought together State, local, tribal and territorial elected officials, faith-based, nonprofit, community and private sector leaders.

FEMA's OER updated all independent study courses for all employees that included civil rights, EEO, supervisory responsibility for EEO, diversity, and disability awareness training with a focus on reasonable accommodations.

## **2. Federal Law Enforcement Training Center**

### ***Infrastructure***

The FLETC Equal Employment Opportunity Division provides services to 1,113 employees of the FLETC, as well as on-site FLETC Partner Organizations on an as-needed basis, and is composed of a Division Chief, Complaints Manager, four EEO Specialists, one Staff Assistant, and one Visual Information Specialist. The EEO Division is presently in the process of filling vacancies for the Complaints Manager position and an EEO Specialist position. Each EEO Specialist serves as a Special Emphasis Program Manager for at least one program, and two EEO Specialists coordinate and serve as Disability Program Managers.

### ***Complaint Processing***

During FY 2012, the FLETC processed 8 out of 9 EEO investigations within the regulatory timeframe of 180 days or 270 days with an approved extension. The FLETC EEO Division continues to manage the entire EEO investigative process, and remains committed to its goal of ensuring all EEO investigations are completed in a timely manner. In an effort to maintain this goal, the FLETC EEO Division will continue to work closely with EEO contract investigators, Responding Management Officials, the Human Capital Operations Division (HCOD) and the Office of Chief of Counsel (OCC).

### ***Diversity Management***

During FY 2012, the FLETC's EEO Division, HCOD, and the FLETC Recruitment Council (FRC) continued to collaborate to develop, review, and make recommendations regarding the DHS/FLETC Workforce Strategy Operational Plan. The plan focused on the following goals: 1) building an effective mission focused on a diverse and inspiring cadre of leaders, and 2) recruiting a highly qualified and diverse workforce, which aligns with both the FLETC's strategic plan and recruitment plan. This collaboration ensures that specific components of all the plans take into account the FLETC's long-term strategic planning goals and ensures that diversity and disability hiring initiatives are being addressed. Also during FY 2012, the FLETC EEO Division, in collaboration with the HCOD, drafted and obtained the Director's approval for the first FLETC D&I Strategic Plan, for fiscal years 2012-2015. The plan provides the framework for recruiting a diverse workforce, creating an inclusive workplace, and ensuring management accountability. It also serves as a dynamic road map to guide efforts in making the FLETC a leader in creating and sustaining a high-performing workforce and the premier employer for anyone committed to serving and protecting our nation.

Additionally, during FY 2012, the FLETC's Operation Warfighter Program had a total of

25 participants; 4 were hired into permanent positions with the FLETC, and 2 were referred and hired by other DHS Components. A Memorandum of Understanding between the FLETC and Fort Stewart continues to be a viable partnership which has produced a strong pipeline for veterans and created opportunities for wounded veterans to work and develop new skills.

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

The FLETC No FEAR Act Training is provided on-line through the organization's Learning Management System (LMS). The FLETC requires all employees to complete No FEAR Act training on biennial bases and that all new employees complete the No FEAR Act training within 30 calendar days of entering service. During FY 2012, the FLETC EEO Division processed 76 reasonable accommodation requests made by or through employees, managers, and students; these requests included sign language interpreters, job restructuring, modified work schedules and assistive electronic devices. Mandatory training on *Employment of People with Disabilities: A Roadmap to Success* was also provided through the LMS to 142 managers and supervisors. The EEO Division Chief provided training to 21 new FLETC supervisors and managers who completed mandatory EEO and reasonable accommodation training through the FLETC's New Supervisors Training Program (FNSTP). The FLETC EEO Division is currently reviewing and developing new training materials that will enhance EEO services and goals.

## **3. Headquarters EEO Office**

### ***Infrastructure***

HQ EEO's goals are to ensure Agency compliance with the laws, regulations, policies, and guidance that prohibit discrimination in the federal workplace and to prevent and address employment discrimination, and to ensure that the Department's Headquarters employees have a working environment that will support them in the fulfillment of the mission to protect the homeland.

HQ EEO achieved noteworthy success during FY 2012 and strongly enhanced the efficiency and quality of services to customers. During FY 2012, HQ EEO continued to provide training and career development opportunities to EEO staff members, which resulted in enhanced customer service.

Most notably, HQ EEO consistently provided high-quality services to its customers, despite undergoing several major transitions. Specifically, the HQ EEO Director — who stood up the HQ EEO Office in 2004 — retired during FY 2012. A CRCL Supervisory EEO Specialist served as Acting HQ EEO Director for the fourth quarter of FY 2012. A permanent HQ EEO Director was hired and came on board during the first quarter of FY 2013. In addition, HQ EEO and CRCL continued its collaborative efforts by having CRCL personnel serve temporarily in the positions of EEO Counselor and Acting Formal Complaints Manager. Finally, another transition in FY 2012 was the hiring of an additional EEO Specialist to specifically work on matters involving the Federal Protective Service (FPS), which transferred from ICE to National Protection and Programs Directorate (NPPD) within DHS Headquarters.

### ***Complaint Processing***

In FY 2012, HQ EEO had a slight decrease in the number of EEO cases counseled and formal complaints filed. HQ EEO conducted EEO counseling for 77 cases. HQ EEO continued its focus on timely complaint processing in the pre-complaint and formal process. Weekly meetings were held with HQ EEO staff members to monitor workloads and ensure efficient case movement, i.complaints was timely updated to ensure accurate report data, and HQ EEO and CMAS staff were cross-trained as counselors to reduce the number of cases counseled by contractors.

### ***Diversity Management***

HQ EEO is specifically responsible for developing EEO and diversity policies and procedures specific to DHS Headquarters offices; providing EEO and diversity guidance to all headquarters executives, managers, supervisors, and line employees; managing the HQ EEO complaints process, including EEO counseling, Alternative Dispute Resolution (ADR), and EEO investigations; promoting diversity management initiatives, including Special Emphasis Programs management to help Headquarters components recruit, hire, develop, and retain a diverse workforce; managing the Headquarters reasonable accommodation process; and providing training on EEO and diversity. Specifically, HQ EEO continued its efforts to increase the retention and professional development of working for the Department through its Women's Leadership Program and its Disability Program. The programs included women and veterans participants from various areas within DHS HQ learning about mentoring and the value of coaching future generations of DHS employees.

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

HQ EEO processed 44 requests for reasonable accommodation for individuals with disabilities, including services for the Office of the Secretary, applicants for employment, and employees seeking advice and guidance on the reasonable accommodation process and types of available accommodations. Additionally, HQ EEO processed 104 requests for sign language interpreting services, which required coordination with program offices and contractors. HQ EEO continued its commitment to support DHS's efforts to recruit and develop a diverse workforce, including veterans and individuals with disabilities. HQ EEO staff participated in 3 mock interview sessions with disabled veterans on October 19, 2011; May 23, 2012; and June 20, 2012. In addition, on September 19, 2012, HQ EEO staff participated on a panel sponsored by OPM and U.S. Department of Labor to assist federal disability program managers and selective placement coordinators in how to conduct productive interviews with disabled veterans.

During FY 2012, HQ EEO continued its efforts to increase the retention and professional development of women within the federal workforce. Specifically, on September 24, 2012, the Federal Women's Program sponsored the "5th Annual Women's Leadership Program." The Senior Counselor to Secretary Napolitano attended the event and provided opening remarks. The program included women in leadership positions from various areas within DHS HQ, focusing on the topics of mentoring and coaching future generations of leaders at DHS.

HQ EEO staff conducted a *Lunch and Learn*, entitled *Ergonomics in the Workplace*. The staff also created marketing materials to include a tri-fold brochure on the EEO complaint process, an HQ EEO Know Your Rights poster, an Exceptional Customer Service Pledge, and an HQ EEO

Today newsletter. In FY 2012, HQ EEO staff conducted 2 workshops on laws governing reasonable accommodations for persons with disabilities and best practices throughout the Federal Government.

HQ EEO continued to provide training and technical assistance to HQ employees. Trainings included annual EEO training to the Office of Health Affairs to more than 15 managers and 70 employees, and New Employee Orientation (NEO), providing pertinent information to new DHS employees regarding their rights to equal employment opportunity. HQ EEO established a rotation schedule utilizing HQ EEO and CRCL to conduct NEO training, which provided much needed depth for the bi-weekly sessions.

HQ EEO's presence was expanded from 30 minutes to 1½ hours in the *HR Essentials for Managers* course, which provided training to managers and supervisors, and is sponsored by OCHCO.

#### **4. Transportation Security Administration**

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

In FY 2012, TSA focused on maintaining an effective records management program in the Civil Rights Division (CRD). TSA purged more than 1,464 closed case file records that were destroyed internally in accordance with the National Archive Records Administration's General Record Schedule. Additionally, 2,202 case file records were sent to the Federal Records Center for storage/disposition. Furthermore, the CRD continued to modify and update icomplaints to ensure the accuracy, timeliness, and completeness of case tracking data for production of the quarterly No FEAR Act reports and the annual EEOC 462 report. Close monitoring of the icomplaints database and relevant business processes will continue through FY 2013 and beyond to ensure accurate tracking of informal and formal complaints, conflict cases, as well as hearings and appeals, and investigative matters. During the second quarter of FY 2012, the CRD implemented e-File for current employees and members of the Federal Air Marshal Service (FAMS) as an additional avenue to initiate the complaint process. TSA continues to tailor, refine, and enhance the e-File electronic complaint filing module.

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

CRD's Informal/Alternative Resolutions to Conflict (ARC) Section advanced model workplace/human capital goals by helping managers, supervisors, and employees resolve EEO workplace conflict and disputes through its ARC program. CRD processed 649 informal complaints in FY 2012. Even as informal complaint filings have increased, the mediation participation rate was 56 percent – an increase of one percent from FY 2011, which is also an increase from FY 2010. When parties participated in mediation, the cases were resolved 61 percent of the time.

In an effort to improve the efficiency of the informal complaint process, CRD developed a specially-trained team of representatives to handle all initial contacts to the CRD by the end of FY 2012. Employees who call the Informal/ARC Section to initiate a complaint no longer have to leave a voicemail with CRD and wait for a return call from an EEO Counselor. Instead, all calls are answered by specially-trained representatives who take the pertinent information, open a record in icomplaints, send the complainant an ARC package, and refer the case to CRD for

counseling and further processing. An assessment of the effectiveness of this system will be available in the first quarter of FY 2013.

In CRD's Formal Complaint Section, formal complaint filings decreased by 48 complaints (11 percent) from 439 complaints filed in FY 2011 to 391 complaints filed in FY 2012. The average number of days for completing an investigation was 225 days for FY 2012. This is a 26-percent decrease from the FY 2011 average number of days for completing an investigation. After a 40-percent decrease in EEO Specialist staffing in FY 2011, staffing levels were restored in FY 2012. As a result of full staffing, streamlining, and efficiency initiatives, the timely completion rate for FY 2012 increased to 44 percent, compared to the timely investigation completion rate of 21 percent in the FY 2011. In addition, in FY 2012, CRD staffed the Investigations Section with in-house investigators, and provided on-site training to investigative vendors to optimize timeliness and quality of investigative efforts.

### ***Diversity Management***

In the fall of 2011, the Office of Civil Rights & Liberties/Ombudsman and Traveler Engagement established the Diversity and Inclusion Division to elevate the visibility of TSA's diversity and inclusion program and fulfill a recommendation of TSA's Diversity Advisory Council. This division drafted TSA's Diversity and Inclusion Strategic Plan for 2012-2015. TSA's plan aligns with the President's August 2011 Executive Order on *Establishing a Coordinated Government-Wide Initiative to Promote Diversity and Inclusion in the Federal Workforce*, the U.S. Office of Personnel Management's *Guidance for Agency-Specific Diversity and Inclusion Strategic Plans* and the Department of Homeland Security *Diversity and Inclusion Strategic Plan* that was issued in February 2012. In addition, this division drafted a companion Diversity and Inclusion Operational Plan to assist TSA's major offices in achieving the agency's diversity and inclusion goals. The division continued to track and monitor the FAMS D&I Action Plans.

The Diversity and Inclusion Division also led TSA's efforts in celebrating its fifth annual Diversity Day at both headquarters and in field locations. These celebrations, which are now held throughout a month-long period of time rather than just on one particulate date, recognize the richness of diversity within the agency and raise awareness and understanding of different cultures represented in TSA's diverse workforce. The division recommended the issuance of an agency contract for the revamping of agency-wide training on cultural and religious awareness. The D&I Division scheduled, arranged, and staffed TSA's Diversity Advisory Council FY 2012 quarterly meetings held at TSA Headquarters in December 2011, and March, June, and September 2012. Members of the Division assisted several professional organizations that represent underrepresented populations in the Federal Government. The Division organized TSA workshops and panel discussions presented at conventions or training conferences of the organizations on various topics relating to TSA and diversity and inclusion issues.

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

In FY 2012, CRD staff provided in-person EEO training to approximately 3,300 managers, supervisors, and employees. The training was provided at 22 airports, 6 headquarters offices, and 1 Regional Conference. These site visits delivered legally mandated EEO and civil rights training to TSA managers and employees and allowed TSA to comply with Federal mandates

and EEOC Administrative Judge orders. During the on-site activity, CRD also provided EEO counseling services and intervention support for FSDs and management teams on existing EEO-related disputes or conflicts. This in-person training is a supplement to the DHS No FEAR Act training provided on-line and required every other year for all TSA employees. TSA also requires all new employees to complete the No FEAR Act training within 90 calendar days of entering service.

CRD continues to assist in the development of CRD-FAMS Liaison positions, as well as leading the development and execution of the training for the new CRD-FAMS Liaisons. CRD provided diversity training for the FAMS Detroit and Orlando Field offices.

In FY 2012, CRD began work on a *Know Your Rights and Responsibilities* section onto TSA's intranet website. The goal of *Know Your Rights and Responsibilities* is to give employees easy access to a full range of available avenues for resolving disputes and grievances. The site provides direct links to CRD, the TSA Ombudsman, DHS OIG, TSA Office of Inspection, Office of Professional Responsibility (OPR), OPR Appellate Board, TSA Workplace Violence Prevention Program, U.S. Office of Special Counsel, Prevention and Elimination of Sexual Harassment in the Workplace Program, and the National Resolution Center. *Know Your Rights and Responsibilities* will be launched in the second quarter of FY 2013.

In addition, CRD continued its training curricula designed to advance diversity and inclusion in TSA. TSA CRD also continued the full range of affirmative employment programs designed to increase awareness and assist with the development and advancement of key employee demographics. Related efforts included various programs in partnership with DHS and other federal agencies and submission of reports mandated by Executive Orders, Congress, and the EEOC.

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

### ***Infrastructure***

There were no significant changes in USCIS's infrastructure in FY 2012.

### ***Complaint Processing***

USCIS's Office of Equal Opportunity and Inclusion (OEOI) took many actions during FY 2012 to maintain or improve its complaint programs in furtherance of eliminating discrimination and retaliation in the workplace. In FY 2011, USCIS experienced a historically-low number of formal complaint filings (82); however, the number of formal complaints filed in FY 2012 (114) increased to levels in prior years. Notwithstanding, USCIS processed 99 percent of both its formal EEO investigations and informal EEO cases within applicable EEOC regulatory timeframes. Moreover, USCIS internalized much of the EEO counseling function, which in prior years had been performed by contract firms. Not only did this change allow for a better control of the process, the rate of timely counselings remained high – 98 percent timely-completed counselings in FY 2011 and 99 percent timely-completed counselings in FY 2012.

In FY 2012, USCIS's EEO ADR program was substantially improved because of additional information about the process was provided to aggrieved parties and designated management officials. In addition, USCIS incorporated improved feedback forms to solicit comments on the parties' ADR experience. Based on these comments, the program made appropriate adjustments; USCIS will continue to solicit this type of information in the future. The end result for FY 2012 was an ADR participation rate of 50 percent, which is an increase from a 44-percent participation rate in FY 2011. In FY 2013, USCIS will continue to focus on increasing this rate and is in the process of completing a video advertising the advantages of the ADR process, but will also work to increase the resolution rate for those matters that have gone through the ADR process.

### ***Diversity Management***

OEOI engaged in several activities reinforcing USCIS's commitment to diversity and inclusion. USCIS worked with DHS's Office of Accessible Systems and Technology (OAST) to tailor its Accessibility Compliance Management System (ACMS) for use in tracking agency disability accommodation requests. Moreover, USCIS provided guidance and support to managers and employees concerning 482 accommodation requests. Further, USCIS held its first-ever Unity Through Diversity Day – an event focused on cultural awareness and diversity within the USCIS workforce. Lastly, OEOI sponsored other USCIS Headquarters programs in observance of Native American Heritage, Women's History, and African American History months, as well as assisted other offices in holding job shadowing days for individuals with disabilities.

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

USCIS sponsored or provided several trainings for personnel during FY 2012. USCIS provided anti-harassment training at three agency locations; hosted five EEOC supervisory disability accommodation trainings; co-presented a webinar with Field Operations on customer disability accommodation; and conducted live ADR trainings at five locations for managers involved in the process as designated management officials. As a result of these trainings, more than 89 percent of USCIS's current managers and supervisors have received in-person disability accommodation training from EEOC staff. These trainings will continue in FY 2013 to capture newly-promoted supervisors who may be involved in processing disability accommodation requests or be tasked with being a designated management official in the ADR process. We will also continue to provide anti-harassment training, as requested by offices, either in response to events occurring in those offices or as a measure designed to reinforce appropriate behaviors and maintain proper work environments.

## **6. U.S. Coast Guard**

### ***Infrastructure***

During FY 2012, the USCG Civil Rights Directorate (CRD) approved and deployed its Strategic Plan of Action 2016. The centerpiece of the strategic plan is a 33-measure strategic dashboard, which provides EEO program leaders a set of program-centric, measurable performance elements that drive management decisions. The Plan of Action 2016 was distributed to CRD's stakeholders, staff members, and major USCG commands.

In addition, during FY 2012, CRD employed and dedicated two ADR employees to improve upon and expand the ADR program. CRD now consists of 83 civilian and military members who provide civil rights services to a workforce of 58,000 military and civilian personnel.

### ***Complaint Processing***

During FY 2012, USCG improved its complaint processing performance in many areas over FY 2011. Namely, a 5-percent increase in its settlement rate of pre-complaint and formal complaints (28 percent), an 8-percent increase in its resolution rate (52 percent), a 5-percent increase in timely investigation (100 percent); and a 1-percent increase in timely pre-complaint processing (98 percent).

For many years, Title 10 of the U.S. Code, Section 654, commonly-known-as “Don’t Ask, Don’t Tell,” banned openly gay and lesbian service members from military service. Furthermore, military members were not permitted to seek redress for complaints of discrimination based on sexual orientation. After the law was repealed on September 20, 2011, the CRD conceptualized and proposed a solution for responding to complaints of discrimination by gay and lesbian service members. CRD proposed that affected members be permitted to contact their servicing civil rights service providers (CRSPs). Consistent with other prevailing nondiscrimination policy, CRSPs would serve as the intake point, in concert with the military chain of command, and subsequently would offer counseling and attempt to resolve such complaints. This procedure was ultimately vetted and adopted agency-wide. Implementation of the complaint resolution policy for sexual orientation discrimination claims by military members requires continuous coordination and participation with other military agencies as a member of joint service working groups. In collaboration, the CRD identifies, proposes, and implements workable solutions for sexual orientation complaint tracking and response. It is USCG policy to provide its military members equal opportunity during their military service, and access to processes and procedures that enforce their rights to an environment free of discrimination.

### ***Diversity Management***

The USCG formed a cross-disciplinary, intra-agency team to identify triggers and barriers to equal opportunity. The team, composed of EEO, diversity, and human capital professionals, received intensive and effective training. The CRD is in the process of reviewing and refining its permanent charter for this team and articulating the roles and responsibilities of individual team members. Due to the realities of frequent movement and re-assignment associated with the USCG’s military members, and to ensure continuity, the charter will identify members by position, instead of by name. Charter approval is anticipated following an evaluation of processes used to complete the FY 2012 EEOC Management Directive (MD) 715 Report.

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

The USCG provides in-person Civil Rights Awareness training to all military and civilian personnel using its network of full-time, professional CRSPs. Training is required upon accession and at least triennially thereafter. In-person training is particularly valuable at military accession points, including Training Center Cape May and the U.S. Coast Guard Academy. The CRD attributes the USCG’s low rate of complaints to its personal, proactive engagement policies for training the entire workforce.

The USCG showed significant progress in its Reasonable Accommodation Program. The average time needed to process a reasonable accommodation request decreased from 47 days in FY 2011 to less than 12 days in FY 2012. The USCG attributed this process improvement to training targeted to Reasonable Accommodation Liaisons and service providers. Also, the USCG provided 426.5 hours of interpreter services to employees.

During FY 2012, USCG utilized the Defense Equal Opportunity Management Institute (DEOMI) Organizational Climate Survey (DEOCS). This annual survey is a tool to aid management in measuring a unit's civil rights climate and organizational effectiveness. Data shows that all USCG measures of organizational climate are more positive than other military agencies and also show an upward trend in positive perceptions by the workforce in nearly all measures over the past three fiscal years.

The USCG directed all military and civilian unit commanders to complete a civil rights compliance checklist. This ensures that all USCG management officials are aware of their EEO responsibilities and develop plans to correct any areas in which they may be deficient.

Lastly, the CRD produced 12 editions of *Civil Rights on Deck*, the Component newsletter that illuminates outstanding civil rights performance, best practices, policies, activities, and solutions. The newsletter was distributed monthly to the entire USCG workforce and key stakeholders. Also, 148 USCG units formally participated in the Partnership in Education (PIE) program during FY 2012, representing an increase from 55 units in FY 2010 and 125 units in FY 2011. Consistent with 29 C.F.R. § 1614.102(a)(13), the CRD's administration of the PIE program enhances educational opportunities and career awareness for the nation's youth through direct participation in education-related programs. All members of the USCG family, including active duty, reserve, auxiliary, civilian, and retirees, are encouraged to participate in local school and community activities approved by their local command. The USCG's support promotes excellence in education through collaboration with local school systems, community groups, and businesses, especially in communities with large, underserved populations, and creates student awareness of the USCG's missions and people.

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

### ***Infrastructure***

Within the Office of the Commissioner, the Office of Diversity and Civil Rights (DCR) is responsible for developing and administering all policies and directives related to EEO to ensure that all CBP programs are in full compliance with the applicable federal laws, Executive Orders, and relevant federal policies governing employee and individual civil rights and civil liberties. DCR promotes and ensures this compliance by providing a policy framework for diversity and inclusion. Additionally, DCR works to facilitate employee engagement initiatives, civil liberties compliance, and complaints management for CBP.

CBP's various missions require that agency managers exercise continual oversight of operations and major programs to ensure that CBP personnel adhere to the requirements of law, regulation, and policy that govern its operations. CBP managers are responsible for developing and maintaining systems of internal control. Effective internal controls – the policies, procedures,

systems, and practices that help managers implement agency programs, processes, and functions as intended – are recognized as a key factor in accomplishing agency missions and ensuring that desired program results are achieved effectively and efficiently.

The DCR provides civil rights services to over 60,000 CBP employees and is composed of an Executive Director and three divisions: Headquarters, the Complaints Management and Investigations Group, and the D&I Management Group. It also has a Mediation Program. Below is a brief description of each category and its role:

- The Executive Director provides executive leadership and oversight for the effective establishment and management of internal policies and programs.
- The Director of the Field D&I Management Group is responsible for all field activities, which includes the provision of informal EEO counseling pursuant to 29 C.F.R. Part 1614, as well as the collective bargaining agreement with the National Employees Treasury Union (NTEU). Informal counseling is accomplished by implementing a series of standard operating procedures and interactions between staff and supervisors.
- The Assistant Field Directors manage the local DCR Officers and Specialists who are responsible for providing programmatic leadership and support for in their assigned areas. DCR provides field staff services to all CBP Offices.
- The Complaints Management and Investigations Group is managed by a Field Director responsible for all aspects of the formal EEO complaint investigations and processing; Compliance; the mediation program; and Civil Rights and Civil Liberties matters.
- DCR Headquarters, located in Washington, D.C., includes the Policy, Diversity and Compliance Programs and the Mission Support Group, which both provide services to customers in the field. The D&I Management Group, under the leadership and direction of a Field Director responsible for developing the policies required to implement the applicable federal laws and DHS/CBP policies pertaining to civil rights and diversity. In addition, the group is responsible for assessing and evaluating CBP's efforts to fully comply with all applicable regulatory requirements. The Mission Support Group, under the direction of DCR's Chief of Staff, is responsible for a variety of administrative and policy driven actions necessary to insure the successful operation of the office. The Mission Support Group also responds to executive correspondence, maintains the office budget, provides technical support to the field directors and regional offices on reporting requirements, and maintains the DCR webpage.

Notably, during FY 2012, the CBP Self-Inspection Program (SIP), served as one of a number of mechanisms through which DCR monitored compliance with federal laws and regulations, agency policies and procedures, and other management controls. The SIP enables CBP managers to identify operational non-compliance or control deficiencies and implementing appropriate corrective actions; SIP is critical to establishing management accountability and maintaining a strong internal control environment. In annually completing and certifying the results of their self-assessments, CBP managers' report on the implementation of agency policies and procedures applicable to the operational, financial, and administrative functions reviewed through SIP.

During Self-Inspection Cycle 2012, DCR included a total of 5 self-inspection worksheets, which were administered 818 times and included a total of 21 questions. The worksheets covered the following topics: Diversity and Civil Rights; No FEAR Training; Equal Employment Practices on Hiring; Equal Employment Practices regarding Personnel Matters; and 508 Compliance. The worksheets were implemented in 26 Headquarters and field office locations, which conducted self-assessment activities performing, certifying, and/or approving the results of office self-inspections.

The reviews, conducted by CBP's Office of Internal Affairs Management Inspection Division, determined that CBP achieved less than 100-percent compliance in its No FEAR Act mandatory training requirement. To address the findings of less than 100-percent compliance for CBP employees completing No FEAR Act training in FY 2012, DCR identified a series of steps to ensure CBP's full compliance, and will work with the Office of Training and Development (OTD) to implement these steps. During FY 2013, OTD will use the Self Inspection Program to track the roster of mandatory trainings, with required trainings placed in employee learning queues located in the Virtual Learning Center.

### ***Complaint Processing***

During FY 2012, CBP counseled 464 complaints representing a 19-percent decrease as compared to 574 counseled in the previous fiscal year. Of the 464 cases counseled in FY 2012, 100 percent were timely. In FY 2012, 260 formal complaints were filed representing a 21-percent decrease from the previous fiscal year, when 328 complaints were filed.

The number of investigations completed decreased by 6 percent in FY 2012, when 252 investigations were completed, compared to 268 investigations in FY 2011. In FY 2012, the Complaints Management and Investigations Group experienced staff reductions of 66 percent as a result of retirements or departures, as well as the loss of contract Investigator support. The FY 2012 staff consists of 18 full-time Investigators (6 are new employees) compared to 53 Investigators (20 full-time Investigators, 24 contract investigators and 9 collateral duty Investigators) in FY 2011. In spite of the reductions, CBP completed 96 percent of its investigations within the regulatory timeframe in FY 2012, compared to a 99-percent timely rate achieved during FY 2011.

In FY 2012, there were 91 merit FADs issued. Further, 45 formal complaints were withdrawn, an increase of 50 percent from FY 2011 when 30 complaints were withdrawn. In FY 2012, CBP had five findings of discrimination, compared to two in FY 2011.

### ***Diversity Management***

It is CBP's policy to treat all employees, members of the trade and traveling public, and individuals detained for law enforcement purposes with dignity and respect. As such, implementing diversity and inclusion management principles is priority at CBP. CBP's mission, protecting the nation, is global in nature. Therefore, it is imperative that CBP continue to build and maintain a talented, diverse, and highly-engaged workforce to effectively protect and safeguard our nation.

CBP's diversity and inclusion management principles value not only having a workforce that includes individuals of varied races, religions, ages, national origins, genders, parental status, sexual orientations, and gender identities and expressions, but also having a workforce that embraces differences in approaches, insights, ability, and experience.

Fundamentally, CBP strives to value, understand and incorporate the differences each employee brings to the workplace, to better fulfill our homeland security mission, in a society that is growing in cultural complexity. To ensure that executives, managers, supervisors, and employees have the tools they need to meet CBP's mission well into the future, CBP is continuously striving to translate equal employment opportunity into everyday practice and make diversity and inclusion principles a fundamental part of CBP's organizational culture. By fostering an inclusive work environment based on diversity and inclusion management principles, CBP leverages the strengths afforded by the unique perspective of each person, which enhance employee engagement to achieve our homeland security mission.

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

During FY 2012, CBP implemented a Minority-Serving Institutions (MSI) Implementation Plan to build partnerships with MSIs to create a diverse pool of candidates by ensuring students receive experience through internships and career experience programs. In support of the MSI Implementation Plan, DCR conducted targeted outreach to 16 historically Black colleges and universities; 10 Tribal colleges and universities; 9 colleges and universities with students with disabilities; 7 Women's colleges and universities; and 3 Asian/Asian Pacific Islander colleges and universities.

To advance CBP's Diversity and Inclusion Management Plan, CBP must rely on collateral duty staff members to provide leadership, coordination, and direction as members of Diversity and Inclusion Program Committees (DIPCs) in order to establish and maintain a diverse, inclusive and highly engaged workforce at all CBP locations. All CBP field locations have DIPCs to assist local management in their efforts to achieve CBP's diversity and inclusion goals. DIPC's roles and responsibilities include developing and sponsoring local diversity and inclusion events and activities and planning an engaging in outreach to local colleges, universities and community organizations.

Through CBP monthly observance activities, DIPC volunteers and employees around the nation continue to cultivate a culture where similarities and differences of individuals are respected and valued. CBP is using DIPC volunteers and designees across the country to help build diversity through increased cultural awareness, education, and appreciation of differences. During FY 2012, 761 DIPC volunteers sponsored 1,100 workplace diversity activities, with 61,760 in total attendance for the year. DIPC volunteers also collaborated with local community organizations at nearly 208 community outreach events to educate the public about CBP's mission and career opportunities that included high schools, colleges, churches, and community organizations throughout the Nation.

CBP is committed to investing in the leadership development of all its managers and supervisors. All new supervisors are required to complete EEO Awareness Training during mandatory Supervisory Leadership Training held at the CBP Leadership Academy. During FY 2012,

741 new supervisors completed this training on various dates throughout the year. Also a total of 2,310 CBP employees completed diversity and inclusion, affirmative employment, and reasonable accommodation related training in the CBP Virtual Learning Center.

CBP continues to participate in the U.S. Department of Defense's (DOD) Operation Warfighter initiative. During FY 2012, CBP provided 19 temporary assignments in this program which is a 171-percent increase over FY 2011, when CBP provided 7 temporary assignments in this program.

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

### ***Infrastructure***

During FY 2012, the ICE Office of Diversity and Civil Rights (DCR) increased the staffing levels significantly to improve productivity and deliverables. Most notably, DCR hired the following personnel: an Attorney Advisor to provide legal services to the Assistant Director; a Senior Executive Service (SES) appointee; a GS-14 Model Workplace Program Manager with supervisory responsibility, to ensure the agency's compliance with the standards of EEOC's MD-715 Report to achieve a model workplace; a GS-13 Disability Program Manager as the agency's foremost subject matter expert on employees, veterans, and applicants with disabilities; a GS-13 Special Emphasis and Outreach Program Manager to manage the agency's Special Emphasis Programs; and three GS-9/11 EEO Specialists to process EEO complaints.

In FY 2012, DCR continued to redesign the complaint and ADR programs from a compartmentalized framework to a "cradle-to-grave" approach. This redesigned process focuses on improved customer service by providing the same EEO specialist to individuals throughout the process.

### ***Complaint Processing***

ICE received 154 formal EEO complaints filed in FY 2012. This represents a 12-percent decrease in formal complaints filed in FY 2011. ICE also experienced a decrease in the completion of timely counselings and investigations. Specifically, in FY 2012, ICE timely counseled 116 of 242 (48 percent) of cases and timely completed 6 of 81 (7 percent) investigations. These decreases were attributed to severe staffing shortages, to include unfilled positions and the loss of two full-time EEO Specialists and one contract EEO Specialist. This staff deficit left a staff of three EEO Specialists to process the agency's complaints from intake to the adjudication stages. As a result, the Division saw a decline in the number of cases processed. These shortages were addressed and vacancies were filled by the conclusion of the fourth quarter of FY 2012 and ICE expects to significantly increase both its complaint processing timeliness and the quality of this work in FY 2013.

During FY 2012, DCR launched an in-house investigator training program which utilized current GS-1811 series investigators in a detail capacity to investigate EEO complaints. The detailed investigators attended a week-long training, where senior leaders presented in-depth EEO training and provided human resource skills building. The group received practical exercises designed to equip them with on-the-job knowledge and skills to adequately investigate EEO complaints of discrimination. This initiative was deemed a success and ICE has committed to

transition 75 percent of its EEO investigations to be conducted by in-house investigators by the conclusion of FY 2014.

During FY 2012, ICE successfully reconciled complaint data housed in icomplaints, to ensure 100 percent reporting accountability. Since transitioning to icomplaints, ICE has conducted several training sessions for the EEO staff to facilitate understanding and system knowledge.

During FY 2012, ICE continued its participation in the EEOC's EFX program. ICE has maximized usage of the EFX portal, allowing for more-efficient transmittal of documents.

### ***Diversity Management***

ICE Diversity Management's (DM) area of responsibility includes Diversity Outreach, Strategic Recruitment, Model Workplace Program, Diversity Consultants, and the Disability Program. During FY 2012, the DM developed the Agency's first national recruitment strategy which will result in streamlining the agency's recruiting process and produce cost-savings. ICE also successfully developed the agency's Diversity and Inclusion Strategic Plan. The Plan will be deployed to ICE management and employees. Also, the DM finalized the Model Workplace Program Office Checklist, which will ensure compliance with the annual MD-715 Report. This document, aligned to the Agency Model Workplace Checklist, provides individual leaders within ICE with 32 practical steps that line managers or supervisors may take in support of the Agency's broader efforts to become a model workplace.

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

During FY 2012, ICE participated in 72 events nationwide, which consisted of job fairs, outreach, military recruiting events, and college events. A contributing factor to ICE's progress is the increased number of EEO training courses, as well as inclusion of equity topics in other leadership forums provided to employees, supervisors and senior managers. This approach meets the requirements of the No FEAR Act and results in a more informed workforce in all matters related to EEO. This fiscal year, employees, supervisors and senior managers also were provided guidance to ensure compliance with GINA. ICE completed mandatory supervisor update training to over 89 percent of its supervisors in FY 2012 and ICE has developed plans to increase that rate to 99 percent in FY 2013.

ICE's Reasonable Accommodation Program successfully transitioned a GS-13 detailee to serve as the agency's Reasonable Accommodation Program Coordinator reporting to the Disability Program Manager. During this reporting period, ICE processed 107 reasonable accommodation requests.

During FY 2012, ICE continued its *Disability 101* training, a new 90-minute interactive training that educates employees and managers on such topics as disability awareness, sensitivity, and facility accessibility. The training also identified roles and responsibilities in the agency's interactive reasonable accommodation process.

ICE continued integration of EEO into other strategic planning initiatives and included a robust focus on the DOD Operation Warfighter Program, which supports wounded warriors re-entering

the civilian workforce. ICE hired eight Wounded Warriors in support of the Operation Warfighter Program during this reporting period.

## **9. U.S. Secret Service**

### ***Infrastructure***

During FY 2012, the Office of Equal Opportunity hired a full-time sign language interpreter. This addition resulted from the participation in the Balanced Workforce Strategy process. The review process assessed the professional services of several EEO contracts in order to identify whether some functions currently being performed by contractors should be converted to federal positions.

### ***Complaint Processing***

During FY 2012, USSS timely completed 47 of 48 (98 percent) counselings, compared to 21 of 46 (46 percent) in FY 2011.

During the final quarter of FY 2012, the Office of Equal Opportunity continued with its practice of conducting follow-up internal EEO Assessment of the office's internal program operations. The follow up assessment revealed that the implementation of EEO program benchmarks, performance metrics, and certain management controls have continued to have a significant impact towards improving the overall performance of the EEO program. Additionally, USSS completely eliminated the backlog of EEO investigations that were older than FY 2012. While further improvements are required in concluding the EEO investigation within 180 days, the agency has made significant improvements in reducing the total number of days it takes to conduct the investigation and issue the Report of Investigation.

### ***Diversity Management***

Each year, Diversity Management Programs (DMP) hosts its "Conference on Cultural Diversity and Inclusion" for employees within the Special Agent, Uniformed Division, and the Administrative, Professional, and Technical ranks. During FY 2012, USSS's D&I Program hosted a total of four D&I training sessions. Two of these courses were specific to USSS's supervisory and managerial personnel. During the conference, employees were provided an opportunity, allowing them to heighten their diversity awareness and communication skills. The conference also focused on the key principle of inclusion and enabled participants to identify behaviors and actions that support the agency's inclusion and engagement goals. At the end of these sessions, attendees completed an Action Commitment Plan identifying measurable actions they committed to executing in their jobs to support the USSS's mission in a more-effective manner.

In July 2012, USSS held its Second Annual Unity Day Program. The USSS designated Unity Day to recognize and celebrate the unique diversities that make up the agency workforce. Through this initiative, the agency combined the federally recognized ethnic observances and other cultural events under one umbrella. As part of the Unity Day program, information, education, and awareness were provided through static displays, workshops, guest speakers, seminars, presentations, demonstrations, ethnic food samplings, and various other cultural

activities. This event allowed the entire USSS team to fully participate in a wide variety of planned events.

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

During FY 2012, the Office of Equal Opportunity continued to conduct numerous EEO briefings. The office has implemented a new approach to training by partnering and team-teaching with the Office of Chief Counsel. This approach has enhanced the quality of training as evidenced by audience interaction and engagement. In particular, training in areas of reasonable accommodation and disability awareness was provided to managers, supervisors and recruiters. As in previous years, training modules included information on MD-715 Report, reasonable accommodation for religion and individuals with disabilities, valuing and managing diversity, affirmative employment program initiatives, understanding EEO, prevention of sexual harassment, hostile work environment, ADR, and the No FEAR Act. The Office of Equal Opportunity also continued its role in providing training during the Cultural Diversity and Inclusion seminars that are sponsored four to six times during the calendar year by the DMP.

The USSS's Disability Recruitment Working Group designed training for hiring managers in response to Executive Order 13548, which requires federal agencies to provide mandatory training on the subject of hiring individuals with disabilities. This four-hour training workshop is titled, "*Disability Hiring Awareness and You: Your Roadmap to Effectively Hiring Individuals with Disabilities.*" This training covers the topics: Executive Order 13548, benefits of hiring individuals with disabilities, creating internships within the USSS for this target group, special hiring authorities, interview etiquette, reasonable accommodations, and agency points of contact.