



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

2016

The Department of Commerce is pleased to submit this annual report in accordance with Section 5, Part 724 of the Code of Federal Regulations (5 C.F.R. § 724), Implementation of Title II of the Notification and Federal Employee Antidiscrimination and Retaliation (No FEAR) Act. The report is divided into seven sections that track the reporting areas required by the regulations: pending and resolved federal court cases; administrative equal employment opportunity complaints; disciplinary actions resulting from violations of nondiscrimination and whistleblower protection statutes; agency disciplinary policies; trend analyses of court cases and administrative complaints; a budgetary impact analysis; and the agency training plan.

This report does not include data or responses from the U.S. Patent and Trademark Office (USPTO). The USPTO is submitting its own report under separate cover.

### **Part 1. The Number of Federal Court Cases Pending and Resolved**

Section 5, Parts 724.302(a)(1) through (3) of the Code of Federal Regulations require agencies to report:

- (1) The number of cases in Federal court pending or resolved in each fiscal year and arising under each of the respective provisions of the Federal Antidiscrimination Laws and Whistleblower Protection Laws applicable to them as defined in Sec. 724.102 of subpart A of this part in which an employee, former Federal employee, or applicant alleged a violation(s) of these laws, separating data by the provision(s) of law involved;
- (2) In the aggregate, for the cases identified in paragraph (a)(1) of this section and separated by provision(s) of law involved:
  - (i) The status or disposition (including settlement);
  - (ii) The amount of money required to be reimbursed to the Judgment Fund by the agency for payments as defined in Sec. 724.102 of subpart A of this part;
  - (iii) The amount of reimbursement to the Fund for attorney's fees where such fees have been separately designated;
- (3) In connection with cases identified in paragraph (a)(1) of this section, the total number of employees in each fiscal year disciplined as defined in Sec. 724.102 of subpart A of this part and the specific nature, e.g., reprimand, etc., of the disciplinary actions taken, separated by the provision(s) of law involved.

Response: The statutes applicable to this report are:

Section 2302(b)(1) of the Civil Service Reform Act, which prohibits discrimination in personnel actions based on: race, color, religion, sex, or national origin (as prohibited by Title VII of the Civil Rights Act of 1964); age (as prohibited by sections 12 and 15 of the Age Discrimination in Employment Act of 1967); sex (as prohibited by section 6(d) of the Fair Labor Standards Act of 1938); handicapping condition (as prohibited by section 501 of the Rehabilitation Act of 1973); and marital status or political affiliation.

Section 2302(b)(9) of the Civil Service Reform Act, which prohibits taking a personnel action based on an employee's exercise of any appeal, complaint, or grievance right; testimony or other lawful assistance in the exercise of any appeal, complaint, or grievance right; cooperation with or

disclosure to the agency ' s Inspector General or the Office of Special Counsel; or refusal to obey an illegal order.

Section 6(d)(1) of the Fair Labor Standards Act of 1938, also known as the Equal Pay Act, which prohibits discrimination “between employees on the basis of sex by paying wages to employees ... at a rate less than the rate [paid] to employees of the opposite sex ... for equal work on jobs the performance of which requires equal skill, effort and responsibility, and which are performed under similar working conditions...” 29 U.S.C. 206(d)(1)

The Age Discrimination in Employment Act (ADEA) of 1967, as amended, which states that, "All personnel actions affecting employees or applicants for employment who are at least 40 years of age ... in executive agencies ... shall be made free from any discrimination based on age." 29 U.S.C. ' 633a(a).

Section 501 of the Rehabilitation Act of 1973, 29 U.S.C. § 791 et seq., which prohibits discrimination on the basis of disability and requires agencies of the Federal government to make reasonable accommodation to the known physical or mental limitations of qualified employees with disabilities, unless the agency can demonstrate that accommodation would prove to be an "undue hardship."

Section 717 of the Civil Rights Act of 1964 (Title VII), which prohibits discrimination based on race, color, religion, sex, or national origin against federal employees in executive agencies. 42 U.S.C. ' 2000e-16(a). Under Title VII, it is also unlawful "for an employer to discriminate against any of its employees because [the employee] has opposed any practice made an unlawful employment practice by Title VII, or because [the employee] has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under Title VII.

Tables showing the number and disposition of civil actions filed in a United States District Court under any of these statutes appear below:

**Table 1.A: Federal Court Litigation, FY 2016**

Statute	Number of Cases		Final Judgments Against Agency	Settled	Employees Disciplined
	Pending	Resolved			
Civil Service Reform Act 5 U.S.C. 2302(b)(1) Prohibited Personnel Practices	Pending	0	0	0	0
	Resolved	0			
Civil Service Reform Act 5 U.S.C. 2302(b)(9) Whistleblowing	Pending	0	0	0	0
	Resolved	0			
Fair Labor Standards Act 29 U.S.C. 206(d) and Title VII	Pending	0	0	0	0
	Resolved	0			
Age Discrimination in Employment Act of 1967 29 U.S.C. 631 and 633a	Pending	0	0	0	0
	Resolved	0			
Rehabilitation Act of 1973 29 U.S.C. 791	Pending	1	0	0	0
	Resolved	1			
Civil Rights Act of 1964 (Title VII) 42 U.S.C. 2000e-16	Pending	6	0	6	0
	Resolved	8			
Title VII and ADEA	Pending	2	0	0	0
	Resolved	2			
Title VII and ADEA and Rehabilitation Act	Pending	0	0	0	0
	Resolved	0			
Title VII and Rehabilitation Act	Pending	3	0	0	0
	Resolved	0			
ADEA and Rehabilitation Act	Pending	2	0	0	0
	Resolved	0			
Title VII and CSRA (Whistleblowing)	Pending	0	0	0	0
	Resolved	0			
Total	Pending	14	0	6	0
	Resolved	11			

**Table 1.B: Judgment Fund Expenditures, 2016**

<b>Judgment Fund Expenditures 2015</b>			
<b>Judgment Fund Total</b>	<b>Judgments</b>	<b>Settlements</b>	<b>Attorney's Fees</b>
	\$0.00	\$15,092,500.00	\$0.00

## Part 2. Administrative Equal Employment Opportunity Complaint Data

Section 5, Part 724.302(a)(4) of the Code of Federal Regulations requires agencies to report:

The final year-end data about discrimination complaints for each fiscal year that was posted in accordance with Equal Employment Opportunity Regulations at subpart G of title 29 of the Code of Federal Regulations (implementing section 301(c)(1)(B) of the No FEAR Act).

Response: See the following tables.

Complaint Activity	Comparative Data					
	Previous Fiscal Year Data					
	2011	2012	2013	2014	2015	2016
Number of Complaints Filed	278	178	168	139	165	188
Number of Complainants	265	174	153	133	155	178
Repeat Filers	13	4	13	6	9	10

Complaints by Basis	Comparative Data					
	Previous Fiscal Year Data					
	2011	2012	2013	2014	2015	2016
<i>Note: Complaints can be filed alleging multiple bases. The sum of the bases may not equal total complaints filed.</i>						
Race	115	72	60	46	53	80
Color	27	15	20	7	18	24
Religion	18	14	16	4	12	13
Reprisal	129	108	104	68	101	106
Sex	74	58	45	41	53	80
PDA	0	1	1	1	1	1
National Origin	35	29	28	16	21	33
Equal Pay Act	0	0	0	1	1	1
Age	97	59	51	48	62	74
Disability	81	73	46	54	62	64
GINA	0	0	1	1	1	1
Non-EEO	14	14	11	3	0	6

Complaints by Issue	Comparative Data					
	Previous Fiscal Year Data					2016
<i>Note: Complaints can be filed alleging multiple issues. The sum of the issues may not equal total complaints filed.</i>	2011	2012	2013	2014	2015	
Appointment/Hire	45	8	4	7	17	10
Assignment of Duties	35	34	24	35	47	39
Awards	6	7	2	1	4	2
Conversion to Full-time	0	0	0	0	0	0
<b>Disciplinary Action</b>						
Demotion	2	1	1	0	1	1
Reprimand	14	13	12	14	9	15
Removal	0	13	0	1	11	3
Suspension	17	0	8	6	1	5
Other	3	3	0	3	0	3
Duty Hours	0	0	0	2	1	1
Evaluation Appraisal	39	45	30	32	40	42
Examination/Test	9	0	0	0	0	0
<b>Harassment</b>						
Non-Sexual	113	92	63	64	92	101
Sexual	14	4	3	5	8	2
Medical Examination	0	1	0	0	0	0
Pay (Including Overtime)	9	7	3	5	7	8
Promotion/Non-Selection	27	22	16	21	23	21
<b>Reassignment</b>						
Denied	1	2	2	2	2	3
Directed	9	10	3	5	3	5
Reasonable Accommodation	18	10	12	18	28	27
Reinstatement	0	0	0	0	0	0
Religious Accommodation	0	0	0	0	0	0
Retirement	0	0	0	0	0	1
Sex Stereotyping	0	0	0	0	0	0
Telework	0	0	0	0	0	20
Termination	74	41	26	19	23	39
Terms/Conditions of Employment	12	15	11	28	37	27
Time and Attendance	27	25	20	25	22	22
Training	13	6	7	9	11	16
Other	21	2	5	3	0	2

Processing Time	Comparative Data					2016
	Previous Fiscal Year Data					
	2011	2012	2013	2014	2015	
Complaints pending during fiscal year						
Average number of days in investigation stage	85	113	139	190	179	183
Average number of days in final action stage	115	367 <sup>1</sup>	257	38	54	26
Complaint pending during fiscal year where hearing was requested						
Average number of days in investigation stage	89	136	160	158	196	195
Average number of days in final action stage	2	10	8	7	16	12
Complaint pending during fiscal year where hearing was not requested						
Average number of days in investigation stage	96	82	104	118	189	173
Average number of days in final action stage	150	181	280	238	53	36

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<sup>1</sup> The increase was due to the remaining Decennial inventory, all of which was closed out by August 15, 2013. There are currently no pending Decennial Final Agency Decisions or Final Orders.

Complaints Dismissed by Agency <sup>2</sup>	Comparative Data					2016
	Previous Fiscal Year Data					
	2011	2012	2013	2014	2015	
Total Complaints Dismissed by Agency	206	39	0	1	1	56
Average days pending prior to dismissal	112	52	0	15	1	70
<b>Complaints Withdrawn by Complainants</b>						
Total Complaints Withdrawn by Complainants	28	15	0	9	7	7

Total Final Actions Finding Discrimination	Comparative Data										2016	
	Previous Fiscal Year Data											
	2011		2012		2013		2014		2015		#	%
	#	%	#	%	#	%	#	%	#	%		
Total Number Findings	3	100	4	100	1	100	0	100	4	100	0	0
Without Hearing	3	100	1	25	0	0	0	0	3	75	0	0
With Hearing	0	0	3	75	1	100	0	0	1	25	0	0

<sup>2</sup> Dismissals for FY2011 increased due to the Decennial Census. Many Decennial complaints fail to allege a basis within the purview of the EEO process. Average days also went up because many Decennial complainants could not be located during the investigation. In FY16, 47 complainants that had been held in abeyance pending resolution of a federal class action from the 2010 Decennial Census were dismissed when the civil action settled. These complaints were dismissed later in the process.



Findings of Discrimination Rendered by Basis	Comparative Data												
	Previous Fiscal Year Data											2016	
	2011		2012		2013		2014		2015		#		%
#	%	#	%	#	%	#	%	#	%	#		%	
<i>Note: Complaints can be filed alleging multiple bases. The sum of the bases may not equal total complaints and findings.</i>													
<b>Total Number Findings</b>	3	100	4	100	2	100	0	0	4	100	0	0	
Race	0	0	0	0	0	0	0	0	0	0	0	0	
Color	0	0	0	0	0	0	0	0	0	0	0	0	
Religion	0	0	0	0	0	0	0	0	0	0	0	0	
Reprisal	3	100	3	75	1	50	0	0	3	75	0	0	
Sex	0	0	0	0	0	0	0	0	0	0	0	0	
National Origin	0	0	0	0	0	0	0	0	1	25	0	0	
Equal Pay Act	0	0	0	0	0	0	0	0	0	0	0	0	
Age	0	0	1	25	0	0	0	0	0	0	0	0	
Disability	0	0	0	0	1	50	0	0	0	0	0	0	
Non-EEO	0	0	0	0	0	0	0	0	0	0	0	0	
<b>Findings After Hearing</b>	0	0	0	0	3	75	1	100	0	0	0	0	
Race	0	0	0	0	0	0	0	0	0	0	0	0	
Color	0	0	0	0	0	0	0	0	0	0	0	0	
Religion	0	0	0	0	0	0	0	0	0	0	0	0	
Reprisal	2	33	0	0	3	75	1	100	0	0	0	0	
Sex	2	33	0	0	0	0	0	0	0	0	0	0	
National Origin	0	0	0	0	0	0	0	0	1	25	0	0	
Equal Pay Act	0	0	0	0	0	0	0	0	0	0	0	0	
Age	1	17	0	0	0	0	0	0	0	0	0	0	
Disability	1	17	0	0	0	0	0	0	0	0	0	0	
Non-EEO	0	0	0	0	0	0	0	0	0	0	0	0	
<b>Findings Without Hearing</b>	1	33	0	0	0	0	0	0	0	0	0	0	
Race	0	0	0	0	0	0	0	0	0	0	0	0	
Color	0	0	0	0	0	0	0	0	0	0	0	0	
Religion	0	0	0	0	0	0	0	0	0	0	0	0	
Reprisal	0	0	0	0	0	0	0	0	3	75	0	0	
Sex	0	0	0	0	0	0	0	0	0	0	0	0	

National Origin	0	0	0	0	0	0	0	0	0	0	0	0
Equal Pay Act	0	0	0	0	0	0	0	0	0	0	0	0
Age	0	0	0	0	0	0	0	0	0	0	0	0
Disability	1	100	0	0	1	25	1	100	0	0	0	0
Non-EEO	0	0	0	0	0	0	0	0	0	0	0	0

Findings of Discrimination Rendered by Issue	Comparative Data										2016	
	Previous Fiscal Year Data											
	2011		2012		2013		2014		2015		#	%
	#	%	#	%	#	%	#	%	#	%		
<b>Total Number Findings</b>	3	100	4	100	2	100	0	100	4	100	0	100
Appointment/Hire	0	0	1	25	0	0	0	0	0	0	0	0
Assignment of Duties	0	0	0	0	0	0	0	0	0	0	0	0
Awards	0	0	0	0	0	0	0	0	0	0	0	0
Conversion to Full-time	0	0	0	0	0	0	0	0	0	0	0	0
Disciplinary Action	0	0	0	0	0	0	0	0	0	0	0	0
Demotion	0	0	0	0	0	0	0	0	0	0	0	0
Reprimand	0	0	0	0	0	0	0	0	0	0	0	0
Suspension	0	0	0	0	0	0	0	0	0	0	0	0
Removal	0	0	0	0	0	0	0	0	0	0	0	0
Other	0	0	0	0	0	0	0	0	0	0	0	0
Duty Hours	0	0	0	0	0	0	0	0	0	0	0	0
Evaluation Appraisal	0	0	1	25	0	0	0	0	0	0	0	0
Examination/Test	0	0	0	0	0	0	0	0	0	0	0	0
Harassment	0	0	0	0	0	0	0	0	0	0	0	0
Non-Sexual	3	100	0	0	0	0	0	0	3	75	0	0
Sexual	0	0	0	0	0	0	0	0	0	0	0	0
Medical Examination	0	0	0	0	0	0	0	0	0	0	0	0
Pay (Including Overtime)	0	0	0	0	0	0	0	0	0	0	0	0
Promotion/Non-Selection	0	0	0	0	0	0	0	0	0	0	0	0
Reassignment	0	0	0	0	0	0	0	0	0	0	0	0
Denied	0	0	0	0	0	0	0	0	0	0	0	0
Directed	0	0	0	0	0	0	0	0	0	0	0	0
Reasonable Accommodation	0	0	1	25	1	50	0	0	0	0	0	0
Reinstatement	0	0	0	0	0	0	0	0	0	0	0	0

Retirement	0	0	0	0	0	0	0	0	0	0	0	0
Termination	0	0	1	25	0	0	0	0	0	0	0	0
Terms/Conditions of Employment	0	0	0	0	0	0	0	0	0	0	0	0
Time and Attendance	0	0	0	0	0	0	0	0	0	0	0	0
Training	0	0	0	0	0	0	0	0	0	0	0	0
Other	0	0	0	0	1	50	0	0	0	0	0	0
<b>Findings After Hearing</b>												
Appointment/Hire	0	0	1	25	0	0	0	0	0	0	0	0
Assignment of Duties	0	0	0	0	0	0	0	0	0	0	0	0
Awards	0	0	0	0	0	0	0	0	0	0	0	0
Conversion to Full-time	0	0	0	0	0	0	0	0	0	0	0	0
Disciplinary Action	0	0	0	0	0	0	0	0	0	0	0	0
Demotion	0	0	0	0	0	0	0	0	0	0	0	0
Reprimand	0	0	0	0	0	0	0	0	0	0	0	0
Suspension	0	0	0	0	0	0	0	0	0	0	0	0
Removal	0	0	0	0	0	0	0	0	0	0	0	0
Other	0	0	0	0	0	0	0	0	0	0	0	0
Evaluation Appraisal	0	0	1	25	0	0	0	0	0	0	0	0
Examination/Test	0	0	0	0	0	0	0	0	0	0	0	0
Harassment	0	0	0	0	0	0	0	0	0	0	0	0
Non-Sexual	0	0	0	0	0	0	0	0	1	25	0	0
Sexual	0	0	0	0	0	0	0	0	0	0	0	0
Medical Examination	0	0	0	0	0	0	0	0	0	0	0	0
Pay (Including Overtime)	0	0	0	0	0	0	0	0	0	0	0	0
Promotion/Non-Selection	0	0	0	0	0	0	0	0	0	0	0	0
Reassignment	0	0	0	0	0	0	0	0	0	0	0	0
Denied	0	0	0	0	0	0	0	0	0	0	0	0
Directed	0	0	0	0	0	0	0	0	0	0	0	0
Reasonable Accommodation	0	0	0	0	0	0	0	0	0	0	0	0
Reinstatement	0	0	0	0	0	0	0	0	0	0	0	0
Retirement	0	0	0	0	0	0	0	0	0	0	0	0
Termination	0	0	1	25	0	0	0	0	0	0	0	0
Terms/Conditions of Employment	0	0	0	0	0	0	0	0	0	0	0	0
Time and Attendance	0	0	0	0	0	0	0	0	0	0	0	0
Training	0	0	0	0	0	0	0	0	0	0	0	0

Other	0	0	0	0	1	100	0	0	0	0	0	0
<b>Findings Without Hearing</b>												
Appointment/Hire	0	0	1	25	0	0	0	0	0	0	0	0
Assignment of Duties	0	0	0	0	0	0	0	0	0	0	0	0
Awards	0	0	0	0	0	0	0	0	0	0	0	0
Conversion to Full-time	0	0	0	0	0	0	0	0	0	0	0	0
Disciplinary Action	0	0	0	0	0	0	0	0	0	0	0	0
Demotion	0	0	0	0	0	0	0	0	0	0	0	0
Reprimand	0	0	0	0	0	0	0	0	0	0	0	0
Suspension	0	0	0	0	0	0	0	0	0	0	0	0
Removal	0	0	0	0	0	0	0	0	0	0	0	0
Other	0	0	0	0	0	0	0	0	0	0	0	0
Duty Hours	0	0	0	0	0	0	0	0	0	0	0	0
Evaluation Appraisal	0	0	0	0	0	0	0	0	0	0	0	0
Examination/Test	0	0	0	0	0	0	0	0	0	0	0	0
Harassment	0	0	0	0	0	0	0	0	0	0	0	0
Non-Sexual	0	0	0	0	0	0	0	0	0	0	0	0
Sexual	0	0	0	0	0	0	0	0	3	75	0	0
Medical Examination	0	0	0	0	0	0	0	0	0	0	0	0
Pay (Including Overtime)	0	0	0	0	0	0	0	0	0	0	0	0
Promotion/Non-Selection	0	0	0	0	0	0	0	0	0	0	0	0
Reassignment	0	0	0	0	0	0	0	0	0	0	0	0
Denied	0	0	0	0	0	0	0	0	0	0	0	0
Directed	0	0	0	0	0	0	0	0	0	0	0	0
Reasonable Accommodation	0	0	0	0	0	0	0	0	0	0	0	0
Reinstatement	0	0	1	25	1	100	0	0	0	0	0	0
Retirement	0	0	0	0	0	0	0	0	0	0	0	0
Termination	0	0	0	0	0	0	0	0	0	0	0	0
Terms/Conditions of Employment	0	0	0	0	0	0	0	0	0	0	0	0

Time and Attendance	0	0	0	0	0	0	0	0	0	0	0	0
Training	0	0	0	0	0	0			0	0		
Other	0	0	0	0	0	0	0	0	0	0	0	0
	0	0	0	0	0	0	0	0	0	0	0	0

Pending Complaints Filed in Previous Fiscal Years by Status	Comparative Data					2016
	Previous Fiscal Year Data					
	2011	2012	2013	2014	2015	
Total complaints from previous Fiscal Years	335	177	177	130	125	119
Total Complainants	313	167	167	115	116	111
<b>Number complaints pending</b>						
Investigation	4	2	1	0	0	0
Hearing	259	163	138	93	112	104
Final Action	233	147	5	2	10	10
Appeal with EEOC Office of Federal Operations	64	23	33	35	2	13

Complaint Investigations	Comparative Data					2016
	Previous Fiscal Year Data					
	2011	2012	2013	2014	2015	
Pending Complaints Where Investigation Exceeds Required Time Frames	249	16	3	0	0	0

### Part 3. Disciplinary Actions

Section 5, Part 724.302(a)(5) of the Code of Federal Regulations requires agencies to report:

Whether or not in connection with cases in Federal court, the number of employees in each fiscal year disciplined as defined in Sec. 724.102 of subpart A of this part in accordance with any agency policy described in paragraph (a)(6) of this section. The specific nature, e.g., reprimand, etc., of the disciplinary actions taken must be identified.

Response: Consistent with the fact that there were no final judgments of discrimination against the Department in Fiscal Year 2016, no employees were disciplined in connection with cases in Federal court.

## **Part 4. Disciplinary Policies**

Section 5, Part 724.302(a)(6) of the Code of Federal Regulations requires agencies to report:

A detailed description of the agency's policy for taking disciplinary action against Federal employees for conduct that is inconsistent with Federal Antidiscrimination Laws and Whistleblower Protection Laws or for conduct that constitutes another prohibited personnel practice revealed in connection with agency investigations of alleged violations of these laws.

Response: The Department's policy for taking disciplinary action against Federal Employees for conduct that is inconsistent with Federal Antidiscrimination Laws and Whistleblower Protection Laws or for conduct that constitutes another prohibited personnel practice revealed in connection with agency investigations of alleged violations of these laws is set forth in Department Administrative Order 202-751 (DAO 202-751), a copy of which is available at [http://www.osec.doc.gov/opog/dmp/daos/dao202\\_751.html](http://www.osec.doc.gov/opog/dmp/daos/dao202_751.html)

The relevant offenses appear at Numbers 36, 42, 45, and 46 on the Table of Offenses and Penalties:

- Harassing, threatening or taking reprisal action against an employee as a result of or in anticipation of a grievance, appeal, complaint, or other exercise of rights (5 days suspension to removal);
- Misrepresentation, falsification, or omission of material fact in connection with application, employment or any record, report, investigation or other proceeding (written reprimand to removal);
- Discrimination. As used in the Table of Offenses and Penalties, discrimination refers to specific acts taken by an employee in the performance of his/her official duties which discriminate against one or more individuals on the basis of race, sex, religion, color, age, national origin, disability, marital status, or political affiliation. (5 day suspension to removal); and
- Refusal to answer appropriate interrogation in a properly authorized inquiry (written reprimand to removal).

Departmental Administrative Order 202-955, a copy of which is available at [http://www.osec.doc.gov/opog/dmp/daos/dao202\\_955.html](http://www.osec.doc.gov/opog/dmp/daos/dao202_955.html), also provides an expedited process for reviewing allegations of harassment, terminating actual incidents of harassment, and taking disciplinary actions as appropriate, which includes stopping any ongoing harassment and initiating disciplinary or adverse action when an inquiry results in a finding that misconduct has occurred.

## **Part 5. Trend Analyses**

Section 5, Part 724.302(a)(7) of the Code of Federal Regulations requires agencies to report:

An analysis of the information provided in paragraphs (a)(1) through (6) of this section in conjunction with data provided to the Equal Employment Opportunity Commission in compliance with 29 CFR part 1614 subpart F of the Code of Federal Regulations. Such analysis must include:

- (i) An examination of trends;
- (ii) Causal analysis;
- (iii) Practical knowledge gained through experience; and
- (iv) Any actions planned or taken to improve complaint or civil rights programs of the agency with the goal of eliminating discrimination and retaliation in the workplace;

### **Part 5.a: Civil Actions Filed in Federal Court**

For Fiscal Year 2016, the Department of Commerce litigated 25 cases in Federal district and appellate courts. Eleven of those cases have been resolved, leaving 14 cases pending at the time of this report.

Of the eleven cases resolved, the Department settled six of them, and there were no final judgments of discrimination against the Department. Consequently, there was no case requiring the discipline of any Department employee.

#### Analysis of Trends:

During the reporting period, there were no lawsuits brought against the Department based on a violation of 5 U.S.C. 2302(b)(1) (Civil Service Reform Act) or 29 U.S.C. 206(d) (pay discrimination). The majority of lawsuits against the Department are based on an alleged violation of Title VII of the Civil Rights Act of 1964. There were no lawsuits brought against the Department based on a violation of whistleblower statutes.

As shown in the table below, there is an uneven, but fairly steady, trend in the number of new antidiscrimination and whistleblower protection lawsuits brought against the Department over the last ten years.

As shown in the table below, there was not a marked increase in the number of new antidiscrimination complaints over the past year..

Fiscal Year	# of New Suits
2006	11
2007	8
2008	10
2009	14
2010	11
2011	13
2012	25
2013	23
2014	6
2015	11
2016	5

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

Number of filings:

The large spike in complaint activity in FY 2011 is attributable to the 2010 Decennial Census. The highly compressed operational calendar for the Decennial Census had a significant effect on processing time as reflected in the relevant tables. By FY 2012, new filings had returned to pre-Decennial levels and remained level in FY 13, but repeat filings returned to FY 2011 levels. FY 2014 brought a slight decrease in filings. FY 2015 and FY 2016 were consistent with average non-Decennial complaint activity but filings increased in FY 2016 and the trend continues upward.

Forty-seven Decennial administrative cases were subsumed in a class action in U. S. District Court concerning the background check process used for the 2010 Decennial Census. These complaints were dismissed from the administrative EEO process in FY 2016, when the class action settled. Test Census activity in advance of the 2020 Decennial Census resulted in six complaints.

Bases of Complaints:

The top bases of complaints overall during FY 2016 were reprisal (56%), race and sex (tied at 43%), age (39%), and disability (34%). Reprisal claims showed a 5% decrease in 2016, but race



and sex showed marked increases (up 10% and 13.4% respectively). Disability and age complaints are consistent with FY 2015 levels.

#### Issues in Complaints:

In FY 2016, the top five issues in order of number of complaints filed were non-sexual harassment (54%), evaluations (22%), assignment of duties and terminations (tied at 21%) and reasonable accommodations (disability) and terms and conditions of employment (tied at 14%). In FY 2015 the top issues were non-sexual harassment (55.7%), assignment of duties (28.4%), evaluations (24.2%), terms and conditions of employment (22.4), and reasonable accommodation (16.9%). The majority of the terminations (24 of 39) are attributable to the Census Bureau, which hires temporary employees for its regular survey work and preparatory operations for the upcoming Decennial Census. Realignment among the non-Decennial field staff and test operations for the 2020 Decennial contributed to the rise in termination complaints. In addition, overall filings were up for 2016.

#### Findings of Discrimination

The Department had no findings of discrimination in Fiscal Year 2016.

### **Part 6. Budgetary Adjustments**

Section 5, Part 724.302(a)(8) requires agencies to report:

For each fiscal year, any adjustment needed or made to the budget of the agency to comply with its Judgment Fund reimbursement obligation(s) incurred under 5 C.F.R. § 724.103.

Response: The Department of Commerce has not made or needed to make adjustments to its budget to comply with its Judgment Fund reimbursement obligation(s) incurred under 5 C.F.R. § 724.103.

### **Part 7. Training Plan**

Section 5, Part 724.302(a)(9) requires agencies to report:

The agency's written plan developed under 5 C.F.R. § 724.203(a) to train its employees.

Response:

Following is the U.S. Department of Commerce training plan for the No FEAR Act training for FY 16.

- Introduced updated training slides.

- Trained 1,693 employees through the Commerce Learning Center platform and bureau-specific e-learning systems. Employees who do not have access to the CLC (mostly temporary, seasonal, and or field employees at Census) have access to the No FEAR briefing via other platforms. FY 2016 was an “off” training year in the two-year training cycle. For the full training cycle of FY15-16 a total of 43,845 employees were trained.
- Posted information on the No FEAR Act training in the webpage belonging to the Department’s Office of Civil Rights – including a reminder to new employees of the requirement to take the training within 90 days of their entering on duty.
- Implemented a separate training module on whistleblower protection rights for worldwide employees of the U.S. & Foreign Commercial Service who are under the Foreign Service Act of 1980 (P.L. 96-465).

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