



# Notification and Federal Employee Anti-Discrimination and Retaliation Act of 2002 Annual Report for Fiscal Year 2019

*May 28, 2020*



**Homeland  
Security**

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

# MESSAGE FROM THE OFFICER FOR CIVIL RIGHTS AND CIVIL LIBERTIES

May 28, 2020

I am pleased to present the U.S. Department of Homeland Security's (DHS or the Department) "*Notification and Federal Employee Anti-discrimination and Retaliation Act of 2002*" (No FEAR Act) Annual Report for Fiscal Year (FY) 2019.

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



This report, summarizes the most significant accomplishments within the Department's EEO program to implement the No FEAR Act, focusing principally on EEO complaint processing. The report is a testament to the exceptional EEO professionals at the Department, whose commitment endures through all challenges. It evidences the Department's strong commitment to abide by merit system principles, provide protection from prohibited personnel practices, and promote accountability on the part of its leadership.

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

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

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

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

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

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

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

**The Honorable Bennie G. Thompson**

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

**The Honorable Mike Rogers**

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

**The Honorable Jerrold Nadler**

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

**The Honorable Doug Collins**

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

**The Honorable Carolyn B. Maloney**

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

**The Honorable Jim Jordan**

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

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

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

The Department's EEO program continued to demonstrate a strong and collaborative partnership between CRCL and the Department's Components throughout FY 2019. The year brought several program challenges described in greater detail in this report, including the impact of the 35-day appropriation lapse and continuing resource challenges that affected all Component EEO programs. Nevertheless, the program achieved a great deal, a testament to the drive, tenacity, and professionalism of the dedicated EEO staff throughout DHS. A few of the FY 2019 EEO program highlights in this report include:

- The DHS Anti-Harassment Working Group, led by the DHS EEO Council, developed anti-harassment training curriculum and launched revised anti-harassment training as follow up to the revised Anti-Harassment Policy changes in FY 2018. In recognition of these accomplishments, the Anti-Harassment Working Group received a 2019 Secretary's Award for Unity of Effort for, "outstanding collaboration in developing implementation

procedures for the new DHS Anti-Harassment Policy and standardized training curriculum, improving working conditions for all DHS employees.”

- Hiring actions were completed in several key leadership positions within Components’ EEO programs. This brought a new level of stability and strategy to those Components and to the Department’s program overall. The report highlights resulting Component process improvements and steps toward resolution of long-standing EEO complaint processing delays.
- The CRCL Complaints Management and Adjudication Section (CMAS) surpassed its goal to issue 45 percent of merit-based final agency actions within regulatory timeframes, issuing 51 percent (421 of 832) timely final actions.

Moving forward into the new fiscal year, CRCL and Component partnerships will continue to develop and strengthen the Department’s EEO program. The EEO Directors’ Council recently produced a new five-year EEO and Diversity Strategic Plan that will be refined and finalized in FY 2020. I look forward to providing information on program successes in future reports. Please contact the Department’s Office of Legislative Affairs for additional information at (202) 447-5890.

Sincerely,

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



# Fiscal Year 2019 No FEAR Act Annual Report

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Appendix 1: The Department’s No FEAR Act Federal District Court Data for FY 2019

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

# EXECUTIVE SUMMARY

The purpose of the “Notification and Federal Employee Anti-discrimination and Retaliation Act of 2002” (No FEAR Act), Public Law 107-174, is to reduce the incidence of workplace discrimination within the Federal Government by making agencies and departments more accountable for violations of anti-discrimination and whistleblower protection laws. Section 203 of the No FEAR Act specifically requires that each federal agency submit to certain Congressional committees and members, not later than 180 days after the end of each fiscal year, an annual report containing the following information on cases brought under federal anti-discrimination and whistleblower protection laws; complaint activity (including Federal District Court cases), resulting disciplinary actions; associated Judgment Fund reimbursements and adjustments to agency budgets to meet reimbursement requirements; and an analysis of trends, causation, and practical knowledge gained through experience. This report covers Fiscal Year (FY) 2019 (October 1, 2018, to September 30, 2019).

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

## *Continued Partnerships*

During FY 2019, CRCL continued its partnerships with various entities to promote equality, fairness, diversity, and efficiency within the Department’s workforce. Specifically, CRCL partnered with the Department’s Office of the Chief Human Capital Officer (OCHCO), the Department’s Component EEO offices, and other internal and external stakeholders. The CRCL Deputy Officer (Deputy Officer), who serves as the Department’s Director for EEO and Diversity, chairs the EEO Directors’ Council (the EEO Council) of which all Component EEO and Civil Rights Directors are members. The Deputy Officer is also a member of the Secretary’s Employee Engagement Executive Steering Committee, the mission of which is to identify strategies leading to improvements in employee morale throughout the Department. Throughout FY 2019, CRCL and its partners strengthened relationships through their collective efforts to continue to improve the Department’s workforce environment.

FY 2019 was the final year of the EEO Council’s five-year strategic plan, which focused on the unity of effort across the Department’s EEO and Diversity communities. Working groups, each of which focused on one of the strategic plan’s goals, continued to take measurable actions in furtherance of their respective goals. The working groups’ accomplishments included: (1) coordinating and obtaining the approval for a new Anti-Harassment Directive; (2) providing recommendations on standardized curriculum for anti-harassment training; and (3) developing and implementing comprehensive anti-harassment training for employees. The Anti-Harassment working group received the Secretary’s Award for Unity of Effort for “outstanding collaboration in developing implementation procedures for the new DHS Anti-Harassment Policy and

standardized training curriculum, improving working conditions for all DHS employees.” These and other actions are discussed in greater depth in Section V of this report.

### ***Impact of the Lapse in Appropriations***

The December 2018 - January 2019 lapse in funding impacted the Department’s EEO program staff and processing timelines. Following the return to operational status, CRCL led efforts to obtain and share guidance with Components issued by the Equal Employment Opportunity Commission (EEOC) regarding complaint processing timelines. Unfortunately, the EEOC extended some, but not all, processing timelines to reflect the 35-day shutdown; this decision impacted Components’ and the Department’s timeliness measures, as further explained in this report. Additionally, the shutdown had a detrimental effect on EEO program staff morale. The transition back to work required staff to face the daunting tasks of reacquainting themselves with their workload, reassessing priorities, and facing impending and significantly shortened deadlines or the realization that deadlines were missed due to the shutdown and EEOC’s resulting decision to not extend all processing timelines. Finally, staff managed an influx of incoming work that accumulated during the 35-day period responding to customers’ increased frustration level at delays in complaint processing. The negative effects of the shutdown in FY 2019 are expected to reverberate throughout future fiscal years.

### ***EEO Complaint Program***

*Report of Investigation (ROI) Feedback Tool.* Throughout FY 2019, CRCL provided Components an objective assessment of the quality of their EEO Reports of Investigation (ROI) through the ROI Feedback Tool (Feedback Tool). Launched in FY 2016, the Feedback Tool enables CRCL to provide Components quarterly feedback on the quality (e.g. legal sufficiency, organization, documentation) of their ROIs. Additionally, in FY 2019, CRCL began to disseminate to all Components aggregate information on the quality of all contractor-produced ROIs within the DHS EEO program. This aggregate information provides Components a snapshot of CRCL’s ROI assessments for all contract firms, allowing Components to make strategic decisions regarding future contract needs.

*Complaint Activity and Timeliness.* DHS experienced decreases in complaint activity and processing timeliness in FY 2019. One area was in the EEO pre-complaint process, during which EEO counseling is to be completed within 30 days of an employee’s initial contact unless the employee agrees to an extension. In FY 2019, 2,339 cases were counseled, down from 2,685 cases in FY 2018. Additionally, in FY 2019, 2,141 (92 percent) of counselings were timely completed, compared with 2,587 (96 percent) timely counselings the prior year. Formal complaints also decreased in FY 2019 (1,266) when compared with those filed the prior year (1,472); however, the FY 2019 filing rate was similar to the number of formal complaints filed in FY 2014 through FY 2017. Additional information on complaint activity is provided in Section IV of this report.

*EEO Investigations.* The Department completed roughly the same number of investigations in FY 2019 (1,177) as in FY 2018 (1,179), but the rate of timeliness decreased slightly – 65 percent

(768) in FY 2019 down from 71 percent (840) in FY 2018. In addition, the Department's average number of processing days for investigations increased slightly from the prior year.

*Adjudication.* CRCL's incoming workload increased significantly during FY 2019, with a resulting increase in its backlog of cases pending final agency decision (FAD). CRCL issued 399 FADs in FY 2019, a slight decrease from the 417 FADs issued during the prior year. CRCL experienced an 18 percent increase in incoming requests for FAD during FY 2019 (672) over the prior year (568); moreover, the number of FY 2018 requests were 26 percent higher than in FY 2017 (451). The primary source of the FAD requests during FY 2018 and FY 2019 were cases dismissed from the hearing process by EEOC Administrative Judges (AJs) and remanded to the Department to issue FADs.

Additionally, CRCL experienced a significant increase in incoming EEOC AJ decisions, after which CRCL issued merit-based final actions called Final Orders. During FY 2019 incoming decisions from EEOC AJs rose by 67 percent (433 cases) over FY 2018 (259 cases). Notably, the 259 AJ decisions received in FY 2018, was already a 42 percent increase over the 182 AJ decisions received in FY 2017. The foregoing workload, coupled with CRCL's continued staffing challenges in the adjudications program, and the impact of the 35-day lapse in appropriations, led to an increase in the backlog of FADs from 172 at the end of FY 2018, to 311 cases as of the end of FY 2019.<sup>1</sup>

In FY 2019, DHS issued or took final action on 16 findings of discrimination,<sup>2</sup> an increase from the 8 findings processed in FY 2018. The FY 2019 findings were comparable to the prior year's findings regarding the bases of discrimination and issues on which complainants prevailed. In FY 2019, race was the most frequently alleged basis on which complainants prevailed, closely followed by reprisal and sex discrimination. The most frequently raised issues on which complainants prevailed were harassment (non-sexual), performance evaluation/appraisal, and terms and conditions of employment.

During FY 2019, 221 civil actions filed against the Department, involving various laws covered in the No FEAR Act, were pending or resolved in Federal District Court. Federal judges disposed of 54 cases, 36 of which were decided in favor of the agency and 18 of which were settled by the parties.

Components reported that the Department's reimbursement to the Judgment Fund during FY 2019, was in the amount of \$963,000.00. Additionally, \$1,055,000.00 was reimbursed to the Judgment Fund for attorney's fees. During FY 2019, this report reflects that 28 employees were disciplined for discrimination, retaliation, harassment, or other infractions of provisions of law

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<sup>1</sup> In FY 2019, CRCL changed the way the backlog is calculated by defining the backlog as any pending FAD request that had been at CRCL for more than 60 days. In previous fiscal years, the backlog was defined as a pending FAD request that had not yet been assigned to an adjudication analyst. If that same methodology were used, the end of FY 2019 backlog number would be 257 cases. For future reports, the new method of calculation will be used.

<sup>2</sup> The Department issued 11 merit FADs, and four Final Orders fully implementing Equal Employment Opportunity Commission (EEOC) Administrative Judges' (AJ) decisions finding discrimination; the Department also issued one Final Order not implementing an AJ's decision finding discrimination and appealing the matter to the EEOC's Office of Federal Operations. A more detailed explanation can be found in Section V of this report.

covered by the No FEAR Act, many from U.S. Citizenship and Immigration Services (USCIS). While this appears to be a sharp increase in employees being disciplined when compared with the 11 disciplinary actions reported in FY 2018, USCIS explained that its increase in reported actions resulted from improved data reconciliation over the method used in past fiscal years. This information is described in Section III of this report.

## LEGISLATIVE REQUIREMENT

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

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

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

(ii) committed another prohibited personnel practice that was revealed in the investigation of a complaint alleging a violation of any of the laws cited under section 201(a)(1) or (2); and  
(B) with respect to each of such laws, the number of employees who are disciplined in accordance with such policy and the specific nature of the disciplinary action taken;

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

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

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

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

## I. BACKGROUND

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

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

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

the law. CRCL performs four key functions to integrate civil rights and civil liberties into all the Department's missions and activities:

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

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

## II. RESULTS AND DATA

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

During FY 2019, the Department had 221 pending or resolved civil actions in Federal District Court under the laws covered in the No FEAR Act. The majority (127) of those Federal District Court filings arose under Title VII, followed by filings under the Rehabilitation Act (53), then filings under the ADEA (32), and finally filings under the *Whistleblower Protection Act of 1989*, 5 U.S.C. §1201 (9). There were no filings under the Equal Pay Act or GINA during FY 2019.

During FY 2019, 54 cases were disposed of in Federal District Court: 36 were decided in favor of the Department, and 18 were resolved by settlement. For further information regarding FY 2019 employment discrimination and whistleblower cases filed against the Department in Federal District Court, see Appendix 1.

## B. Reimbursements to Judgment Fund

During FY 2019, as reported by the Department’s Components, the Department reimbursed a total of \$963,000.00 to the Judgment Fund. The amount reimbursed resulted from cases filed under Title VII, ADEA, and the Rehabilitation Act. Reimbursements came from the following Components in order of the largest to the smallest amount: Transportation Security Administration (TSA),<sup>3</sup> Federal Emergency Management Agency (FEMA), Headquarters EEO Office (HQEEO), U.S. Customs and Border Protection (CBP), and U.S. Secret Service (USSS). In addition, \$1,055,000.00 was reimbursed to the Judgment Fund for attorney’s fees by TSA and U.S. Immigration and Customs Enforcement (ICE), which stemmed from Title VII and ADEA cases.

## C. Disciplinary Actions

Components retain independent authority to discipline employees, including individuals found to have engaged in discriminatory, retaliatory, or harassing conduct, as set forth in findings of discrimination. As part of any relief ordered, Components are required to consider disciplinary action against any individual found responsible for a discriminatory act. During FY 2019, a total of 28 employees (twenty from USCIS, four from USSS, three from FEMA, and one from ICE) were disciplined because of findings of discriminatory, retaliatory, or harassing conduct. The disciplinary actions resulted from violations of the Title VII. The breakdown is included in Figure 1 below.

**Figure 1: Number of Employees Disciplined, Whether in Connection with Federal Cases Under Section 724.302(a)(5) (i.e. Including EEO Administrative Cases)**

	Title VII
Reprimand	10
Suspension without Pay	14
Reduction in grade or pay	1
Removal	3

## D. EEO Complaint Data

See Appendix 2 for the Department’s No FEAR Act data for FY 2019, which is also posted online (<http://www.dhs.gov/homeland-security-no-fear-act-reporting>).

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

### III. ANALYSIS OF TRENDS AND CAUSALITY

#### A. EEO Complaint Activity

Section 203(a)(7) of the No FEAR Act requires federal agencies to examine trends and causes behind the data in their reports over the past five years. Figure 2 shows the number of complaints filed Department-wide each year for the past five years and the variance from the prior year's filing.

The Department's workforce population has increased over the years, and FY 2019 marked the largest workforce over the past five years with 211,442 employees. A gradual increase in staffing at the Department occurred between FY 2015 and FY 2017, when the number of employees grew from 190,431 to 197,593 employees. In FY 2018, the workforce again increased by 8,856 employees to 206,449 employees. In FY 2019, the workforce grew to 211,421, which is an increase of 4,972 employees from FY 2018. The upsurge reflects workforce increases at all Components, except for two: The Federal Law Enforcement Training Centers (FLETC) and DHS Headquarters, both of which experienced a slight workforce decrease in FY 2019.

After modest, steady increases in the number of formal EEO complaints filed each year from FY 2014, through FY 2016, the number of formal EEO complaints filed decreased in FY 2017, but then spiked in FY 2018. In FY 2019, there was a 14 percent decrease in the number of complaints filed (1,266) compared to FY 2018 (1,472). USCIS, TSA, CBP, the U.S. Coast Guard (USCG), and USSS experienced slight to moderate decreases in the total number of complaints filed, while FLETC and Headquarters experienced slight increases in complaint filings. Notably, FEMA and ICE showed the most significant decreases in the number of formal complaints filed from FY 2018 to FY 2019. FEMA showed a 34 percent decrease (160 in FY 2018 to 106 in FY 2019), and ICE showed a 29 percent decrease (201 in FY 2018 to 143 in FY 2019). The one-year spike in complaint filings in FY 2018 is largely attributed to a new, Secretary-driven improvement in anti-harassment policy, which increased awareness of the EEO complaint program as a result of increased anti-harassment and anti-discrimination training provided to employees that year. See Figure 2.

**Figure 2: Complaints Filed, FY 2014 – FY 2019**

	<i>2014</i>	<i>2015</i>	<i>2016</i>	<i>2017</i>	<i>2018</i>	<i>2019</i>
<b>Department-wide Filings</b>	1,213	1,262	1,315	1,245	1,472	1,266
<b>Variance from prior year complaints</b>	+21	+49	+53	-70	+227	-206
<b>Department-wide Population</b>	191,975	190,431	192,866	197,593	206,449	211,421
<b>Variance in employee population from prior year</b>	-4,464	-1,544	+2,435	+4,727	+8,856	+4,972

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

During FY 2019, the most frequently alleged bases of discrimination in formal EEO complaints were, in order of frequency: reprisal, disability, and sex. See Figure 3.

- *Reprisal:* In FY 2019, there was a 14 percent decrease in the number of reprisal claims (633) compared to in FY 2018 (735). Reprisal remains the most commonly alleged basis of discrimination at DHS, and government-wide, as reported by the EEOC.<sup>4</sup> At the Department, and across the federal sector, reprisal claims are almost always joined with an underlying EEO complaint based on race, national origin, sex, etc.
- *Disability:* During FY 2019, for the first time, disability discrimination was the second-most commonly alleged basis. Disability discrimination was alleged in 480 complaints, which is a six percent increase over the prior year when disability discrimination was raised in 477 complaints.
- *Sex:* During FY 2019, DHS received 460 complaints alleging discrimination on the basis of sex, including claims of lesbian, gay, bisexual, and transgender (LGBT) discrimination. Specifically, females alleging discrimination based on sex accounted for the most frequently raised basis, with 304 complaints. Males alleged discrimination based on sex in 150 complaints. LGBT claims were raised in six complaints. The 460

<sup>4</sup> <https://www.eeoc.gov/federal/reports/fsp2016/index.cfm>. (The 2016 report is the most recent report issued by the EEOC).

complaints raising sex discrimination in FY 2019 represent a 10 percent decrease from the 509 complaints alleging sex discrimination in FY 2018.

**Figure 3: Bases of Discrimination, FY 2014 - FY 2019**

	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>
<b>Reprisal</b>	532	576	667	596	735	633
<b>Disability</b>	320	355	379	424	477	480
<b>Sex</b>	394	430	453	476	509	460
<b>Race</b>	322	402	403	391	488	407
<b>Age</b>	336	392	396	386	398	366
<b>National Origin</b>	182	186	218	207	263	173
<b>Color</b>	122	165	159	181	187	146
<b>Non-Statutory*<sup>5</sup></b>	78	82	74	100	90	69
<b>Religion</b>	63	58	66	57	62	53
<b>GINA</b>	4	5	7	4	6	3

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

### C. Issues in EEO Complaints

The most frequently raised issue in EEO complaints at DHS during FY 2019 was harassment (non-sexual).<sup>6</sup> Non-sexual harassment has been the most frequently raised issue in EEO complaints at the Department over the past eight years, as has been the case across the federal sector as reflected in the most recent EEOC report.<sup>7</sup> The basis of sex was the basis most frequently raised in non-sexual harassment complaints (246 complaints), and 68 percent (168) of those complaints were based on sex (female). There was a six percent decrease in the number of non-sexual harassment complaints between FY 2018 (628) and FY 2019 (588).

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

<sup>6</sup> The No FEAR Act requires reporting of complaints involving sexual harassment (i.e., sex-based claims involving actionable unwelcome conduct of a sexual nature) and non-sexual harassment (i.e., claims involving actionable unwelcome conduct not of a sexual nature, e.g., based instead on race, sex, national origin, color, religion, age, disability, or reprisal).

<sup>7</sup><https://www.eeoc.gov/federal/reports/fsp2016/index.cfm>.

The second-most commonly raised issue at DHS, disciplinary action, was raised in 228 complaints. This represented a 19 percent decrease from FY 2018, when it was raised in 282 complaints. As Figure 4, below, shows, disciplinary action has consistently been the second- or third-most frequently raised issue at the Department.

The third-most frequently raised issue at DHS was promotion/non-selection, which was raised in 215 complaints. This represents a nine percent decrease over FY 2018, when promotion/non-selection was raised in 235 complaints.

**Figure 4: Issues in Complaints, FY 2014 - FY 2019**

	<i>2014</i>	<i>2015</i>	<i>2016</i>	<i>2017</i>	<i>2018</i>	<i>2019</i>
<b>Non-Sexual Harassment</b>	482	479	584	502	628	588
<b>Disciplinary Action</b>	196	247	259	304	282	228
<b>Promotion/Non-Selection</b>	159	224	296	280	235	215
<b>Terms/Conditions of Employment</b>	99	105	147	158	221	161
<b>Assignment of Duties</b>	104	141	150	126	222	131

## IV. COMPLAINT PROCESSING AND ADJUDICATION DATA

### A. EEO Counseling

Department-wide, both the furlough and staffing challenges impacted completed counselings. While the agency experienced a 13 percent decrease in the total number of completed counselings, from 2,685 in FY 2018 to 2,339 in FY 2019, there were bright spots. FLETC remained steady, completing four counselings in FY 2019 and FY 2018, and HQ EEO experienced a 36 percent increase in the number of completed counselings (95 in FY 2019, up from 70 in FY 2018). Additionally, the rate of timely EEO counseling decreased from 96 percent in FY 2018 to 92 percent in FY 2019.<sup>8</sup> See Figure 5. Most Components experienced a decrease in both completed and timely-completed counselings. The Department's overall decrease in timeliness is primarily attributed to a 50 percent decrease in timely completed counselings at FEMA (from 294 in FY 2018 to 148 in FY 2019), a 44 percent decrease in timely

<sup>8</sup> In accordance with 29 C.F.R. § 1614.105(d), counseling of an informal EEO complaint (also referred to as a pre-complaint) must be completed within 30 calendar days, unless the aggrieved person agrees to extend the counseling period up to an additional 60 calendar days.

completed counselings at ICE (from 274 in FY 2018 to 153 in FY 2019), and a 16 percent decrease at TSA (from 827 in FY 2018 to 697 in FY 2019). FEMA, ICE, and TSA attribute the decreases in timely counselings to staffing and resource challenges.

**Figure 5: EEO Counseling at the Department, FY 2014 – FY 2019**

	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>
<b>Total Number</b>	2,067	2,391	2,510	2,517	2,685	2,339
<b>Timely Number</b>	1,761	2,081	2,253	2,387	2,587	2,141
<b>Percentage Timely</b>	85	87	90	95	96	92

Individual Components’ program accomplishments regarding timely counselings in FY 2019 are highlighted below:

- Two Components provided timely EEO counseling in 100 percent of their cases in FY 2019: USCG (100) and FLETC (4).
- Five additional Components provided timely counseling in a high percentage of their cases: USCIS, 99 percent timely (196 of 197 cases); CBP, 99 percent timely (704 of 710 cases); USSS, 98 percent timely (47 of 48 cases); HQ EEO, 98 percent timely (93 of 95 cases); and TSA, 90 percent timely (697 of 771).

#### B. EEO Investigations

In accordance with 29 C.F.R. § 1614.108(e), an investigation must be completed within 180 calendar days, unless the complainant agrees to extend the deadline, or the complaint is amended. The following compares the number of formal complaints filed Department-wide to the number of EEO investigations completed, and to those that were timely completed.<sup>9</sup>

In FY 2019, 1,177 investigations were completed Department-wide, which was like the number of investigations completed in FY 2018 (1,179). The number of timely completed investigations moderately decreased in FY 2019, to 768 (65 percent) from 840 (71 percent) in FY 2018. Additionally, the average number of days to complete an investigation increased from 271 days in FY 2018, to 291 days in FY 2019. The 35-day lapse in appropriation funding for the Department had a significant impact on the timely completion of EEO investigations. Components’ staff and contract EEO investigators were unable to work on any investigations for 35-days; therefore, all EEO investigations were affected. Further, the EEOC extended deadlines only for cases whose deadlines fell within the government shutdown period.<sup>10</sup>

<sup>9</sup> Complaints filed in one fiscal year may not always be investigated during the same fiscal year.

<sup>10</sup> [https://www.eeoc.gov/eeoc/newsroom/wysk/impact\\_of\\_lapse.cfm](https://www.eeoc.gov/eeoc/newsroom/wysk/impact_of_lapse.cfm)

Despite challenges presented by the government shutdown, FEMA and HQ EEO improved their rate of timely completed investigations. In FY 2019, FEMA completed 204 investigations, 53 more than in FY 2018, and FEMA’s timeliness rate for completed investigations improved from 6 percent (9 of 151) in FY 2018 to 13 percent (27 of 204) in FY 2019. Additionally, FEMA’s average processing days to complete their investigations decreased from 627 days in FY 2018 to 507 days in FY 2019, a direct result of FEMA addressing their backlog of pending investigations during FY 2019. HQ EEO also showed improvements in timely completed investigations; in FY 2018, HQ EEO timely completed 29 of 40 investigations (73 percent), and in FY 2019, HQ EEO timely completed 43 of 49 investigations (88 percent). This improvement is a result of HQ EEO refining their existing business processes and improving their case tracking system, which helped increase efficiencies and reduced risks. See Figure 6.

**Figure 6: EEO Investigations at the Department, FY 2014 – FY 2019**

	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>
<b>Total Formal Complaints Filed<sup>11</sup></b>	1,213	1,262	1,315	1,245	1,472	1,266
<b>Total Investigations</b>	940	865	1,122	1,135	1,179	1,177
<b>Timely Investigations</b>	658	535	522	812	840	768
<b>Percentage Timely</b>	70	62	47	72	71	65
<b>Average Days</b>	246	253	296	238	271	291

Other notable information regarding Components’ FY 2019 investigation data includes:

- USCG, USCIS, and FLETC timely completed 100 percent of their EEO investigations.
- CBP timely completed 92 percent of their EEO investigations (233 of 253).
- Three Components experienced decreases in the percentage of timely completed investigations directly related to resource and staffing challenges and the impact of the lapse in appropriations. ICE’s rate of timely investigations decreased from 25 percent (39 of 159) in FY 2018, to 13 percent (22 of 175) in FY 2019. TSA’s rate of timely investigations decreased, from 91 percent (366 of 403) in FY 2018, to 86 percent (280 of 325) in FY 2019. Similarly, USSS’s staffing shortages were apparent in their decrease in the percentage of timely completed investigations from 100 percent in FY 2018 (33 investigations) to 76 percent in FY 2019 (26 timely completed of 34 total investigations completed).

<sup>11</sup> Investigations are not completed for all formal complaints; some complaints are procedurally dismissed without an investigation (See Section IV.C, below) and other cases may be settled or withdrawn before an investigation is completed.

### C. Procedural Dismissals

An agency may procedurally dismiss an EEO complaint for one of several reasons, including, but not limited to: failure to state a claim, untimely initial contact with an EEO counselor, filing the identical claim in Federal District Court, or failure to provide necessary information to the agency. See 29 C.F.R. § 1614.107(a). At DHS, Components send CRCL requests for procedural dismissal of complaints that, based on Components' review, meet appropriate regulatory criteria; CRCL reviews the record and makes a final determination to dismiss or return the case to the Component for investigation.

CRCL benefited from a 48 percent decrease in the overall number of formal complaints in FY 2019 (97) from FY 2018 (186), primarily due to a decrease in the overall number of procedural dismissal requests submitted to CRCL in FY 2019 (107) as compared to FY 2018 (146). CRCL's average processing days in FY 2019 was 199 days, which is a 36-day increase (163) over the average processing days of dismissals in FY 2018. The increase in average processing days is attributable to the 35-day lapse in funding, adjudication program staffing challenges, and increases in the workload for other final actions. See Figure 7.

**Figure 7: Procedural Dismissals, FY 2014 – FY 2019**

	<i>2014</i>	<i>2015</i>	<i>2016</i>	<i>2017</i>	<i>2018</i>	<i>2019</i>
<b>Total Number</b>	125	92	61	111	186	97
<b>Average Number of Processing Days</b>	136	163	206	211	163	199

### D. Findings of Discrimination

Findings of discrimination in the federal administrative EEO process result from either a merit FAD issued by CRCL<sup>12</sup> or a decision by an EEOC AJ. CRCL is required to take final action within 40 days on behalf of DHS when an AJ issues a decision on the merit of a complaint; this type of final action is called a Final Order. The Final Order must notify the complainant whether the agency intends to fully implement the AJ's decision or file an appeal with EEOC's Office of Federal Operations (OFO).

The following tally of the Department's findings of discrimination from FY 2014 to FY 2019, illustrates the protected bases upon which the findings were made, and the specific issues involved in the findings during this period.

As shown in Figure 8, below, from FY 2014 to FY 2019, the Department processed 104 findings of discrimination through the issuance of merit FADs or Final Orders. In FY 2019, the Department processed a total of 16 cases in which findings of discrimination were made. The discriminatory conduct in these cases date back as early as 2011. These cases included 11 merit

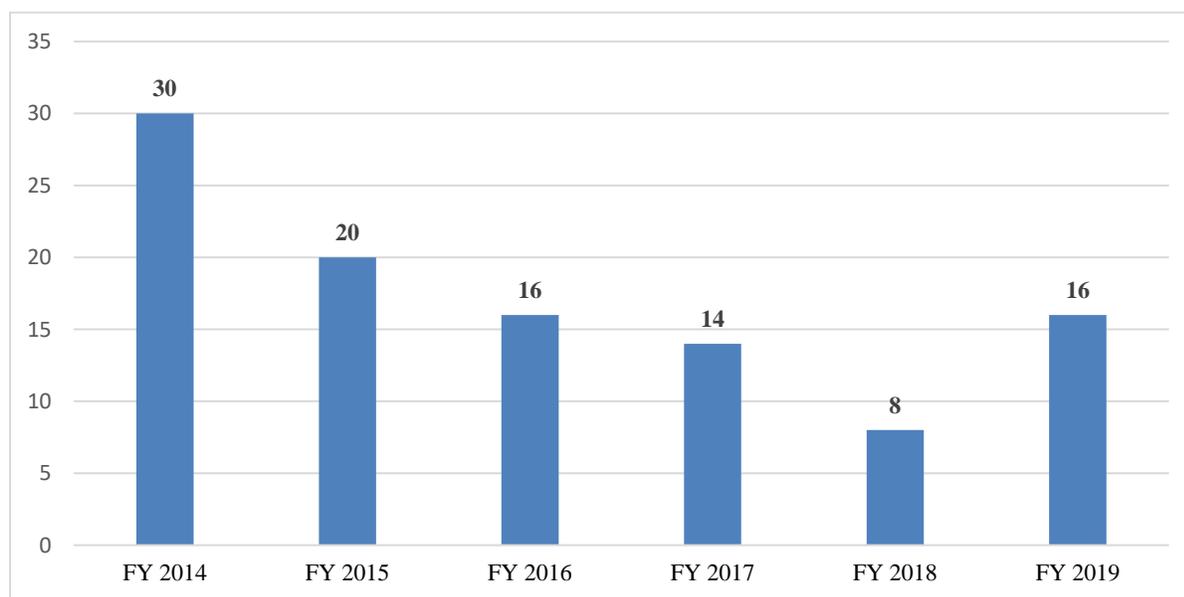
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<sup>12</sup> Further discussion of merit FADs can be found in Section VI of this report.

FADs issued by CRCL, four EEOC AJ decisions that the Department fully implemented, and one EEOC AJ decision that was appealed.

These findings of discrimination represent only two percent of the 832 merit FADs and Final Orders the Department issued in FY 2019, which is slightly below the government-wide percentage of findings of discrimination in FY 2016, which was three percent (159 findings).<sup>13</sup> While these reflect a small percentage of the Department’s overall complaint inventory, they get significant attention by CRCL and Component leadership.

**Figure 8: Complaints with Findings, FY 2014 – FY 2019**



In the examination of findings issued during FY 2019, no significant patterns or trends have been identified. Likewise, the fluctuation in findings from FY 2014 to FY 2019, shown above, does not indicate a discernable pattern or trend.

### 1. Protected Bases

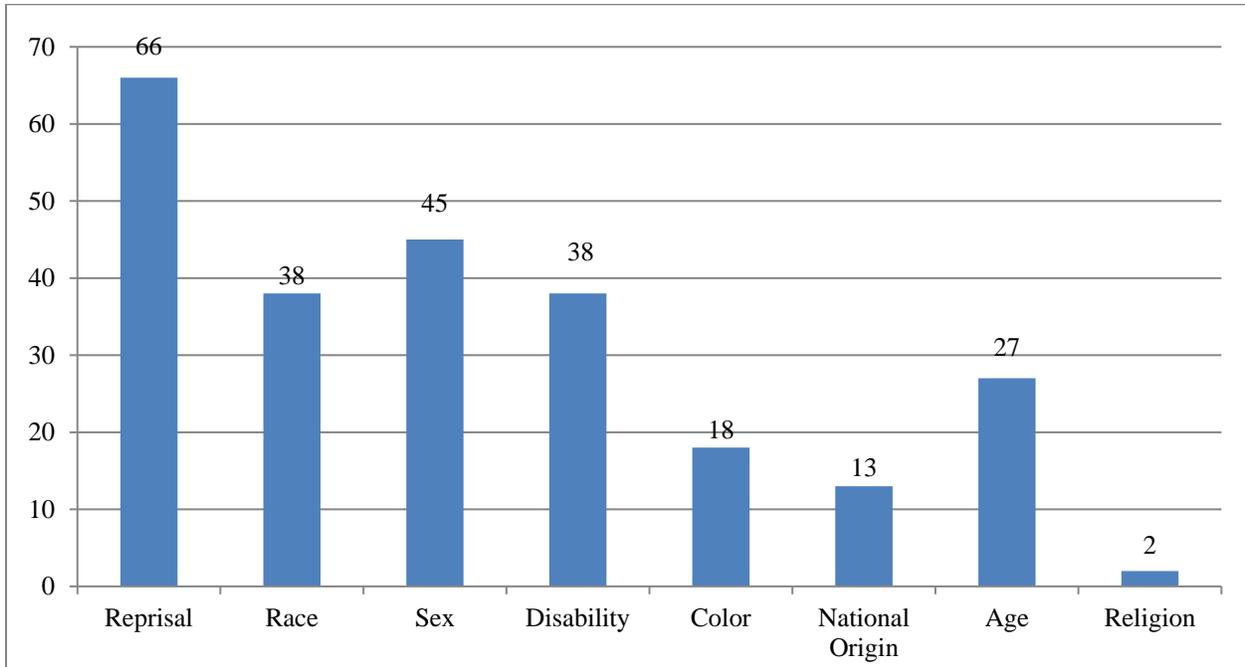
In FY 2019, findings of discrimination were issued on the bases of race (6), reprisal (5), sex (4), age (4), disability (4), and color (1). FY 2019 is the first year in which the number of findings based on race exceeded the number of findings based on reprisal. The six findings based on race is higher than the four findings based on race in FY 2018. In addition, the number of findings based on reprisal in FY 2019 (5) is lower than the eight reprisal findings in FY 2018. The 16 findings issued in FY 2019 is higher than the 8 findings in FY 2018, so it follows that the number of bases upon which those findings were made in FY 2019 would be higher than previous years. It is important to note that the total number of bases within findings of

<sup>13</sup> This is the most recent EEOC Annual Report on the Federal Workforce (<https://www.eeoc.gov/federal/reports/fsp2016/index.cfm>).

discrimination may exceed the total number of findings issued because one decision may find discrimination on more than one basis. The small change in the number of findings on many of the bases does not appear to signify a trend.

A comprehensive look at the number of findings by basis for the period from FY 2014 to FY 2019 is shown in Figure 9.

**Figure 9: Findings by Basis, FY 2014 – FY 2019**



## 2. Issues

Consistent with previous years, the FY 2019 findings of discrimination involved complaints raising 18 issues in different areas, with no discernible pattern or trend. As with protected bases, the total number of issues within the findings of discrimination may exceed the total number of findings issued, given that one decision may find discrimination regarding multiple issues. In FY 2019, there were modest fluctuations in issues from prior years; however, these do not appear to signify a trend. See Figure 10.

**Figure 10: Findings by Issue, FY 2014 – FY 2019**

	<i>2014</i>	<i>2015</i>	<i>2016</i>	<i>2017</i>	<i>2018</i>	<i>2019</i>	<i>Total</i>
<b>Appointment/hire</b>	1	0	0	0	0	1	2
<b>Assignment of duties</b>	2	2	3	9	1	1	18
<b>Awards</b>	0	0	1	0	0	0	1
<b>Disciplinary action</b>	1	1	1	0	2	4	9
<b>Duty hours</b>	0	1	0	0	0	0	1
<b>Evaluation/appraisal</b>	2	2	0	0	2	8	14
<b>Examination/test</b>	0	0	0	2	0	0	2
<b>Harassment (non-sexual)</b>	18	8	10	11	6	11	64
<b>Medical Examination</b>	0	0	0	2	3	0	5
<b>Non-selection/non-promotion</b>	4	5	4	2	1	3	19
<b>Pay/overtime</b>	0	0	0	1	0	0	1
<b>Reasonable accommodation</b>	2	1	2	2	0	1	8
<b>Reassignment</b>	4	3	1	0	0	3	11
<b>Termination</b>	4	3	0	0	0	1	8
<b>Terms/conditions of employment</b>	2	3	0	4	3	7	19
<b>Time and Attendance</b>	1	2	0	2	0	1	6
<b>Training</b>	0	2	0	0	0	1	3

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

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

During FY 2019, the Department continued to capitalize on program enhancements started in previous fiscal years and implemented new initiatives. CRCL broadened its collaborative work with the Department’s EEO Directors and Component EEO offices in several areas.

1. Advancing Joint Opportunity Initiatives Through Implementation of the EEO and Diversity Program’s Strategic Plan

In FY 2019, the EEO Council executed the final year of its five-year Strategic Plan aimed at achieving a unity of effort across the Department's EEO and Diversity programs. Working groups staffed by EEO and Diversity practitioners from across the Department focused on the Plan's goals and undertook measurable actions in furtherance of those goals.

The program continued to focus on anti-harassment efforts, building momentum on the work started in FY 2018, when there was substantial emphasis on addressing and eradicating sexual harassing and assault conduct stemming from multiple high-profile cases from within and outside of the Department. In FY 2019, the Department continued implementing improvements to DHS's anti-harassment programs approved by the CRCL Officer in FY 2018, following a Council working group's study of anti-harassment programs across government and in the private sector. As a result, the working group developed separate guidelines for anti-harassment training curriculum for employees, managers and supervisors, and senior leaders, for use by Components in the development of any future anti-harassment training.

In addition, with the assistance of a contract firm, anti-harassment training was revised and launched on each Component's Learning Management System. Due to their efforts, the Anti-Harassment working group received an FY 2019 Secretary's Award for Unity of Effort for "outstanding collaboration in developing implementation procedures for the new DHS Anti-Harassment Policy and standardized training curriculum, improving working conditions for all DHS employees."

Also, in anti-harassment efforts, the Headquarters Anti-Harassment Unit (AHU), a program within CRCL, continued to mature during FY 2019. CRCL completed the realignment of the AHU from OCHCO, a process which began in FY 2018, thereby consolidating investigative functions in response to harassment allegations within the DHS Headquarters Directorate. The AHU hired an individual who was detailed to the AHU from OCHCO. Additionally, in May 2019, DHS issued a new Anti-Harassment Directive, providing further clarity on the Department's anti-harassment obligations and details on the anti-harassment program. The AHU also engaged the procurement process to obtain a contract firm for fact-finding services. A Technical Evaluation Team convened to evaluate the proposals and a recommendation for selection was forwarded. The contract was awarded in early FY 2020.

During FY 2019, the Council continued efforts to promote voluntary resolution of workplace disputes through alternative dispute resolution (ADR) initiatives. In FY 2019, Components used mediators from the DHS Shared Neutrals<sup>14</sup> roster in 159 cases, a 20 percent increase from FY 2018, when these mediators were used in 133 cases. In addition, Components that utilized mediators from the roster, instead of contract mediators, realized a collective savings of over \$132,415 in FY 2019, when compared to funds that Components would have expended on contract mediation services. A breakdown of the cost savings by Component is shown below at Figure 11.

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<sup>14</sup> The DHS Shared Neutrals program was established in 2016 and is a collection of trained, collateral duty mediators who support DHS Components' ADR programs.

**Figure 11: FY 2019 Cost Savings from Shared Neutrals Mediators by Component**

	<b>Number of Times Used Shared Neutrals</b>	<b>Settlements</b>	<b>Cost Savings</b>
<b>USCIS</b>	34	3	\$27,200
<b>CBP</b>	53	15	\$42,400
<b>FEMA</b>	5	1	\$4,000
<b>USCG</b>	1	0	\$3,000
<b>ICE</b>	20	2	\$17,000
<b>TSA</b>	3	1	\$5,350
<b>FLETC</b>	4	3	\$2,465
<b>HQ EEO</b>	39	7	\$31,000
<b>USSS<sup>15</sup></b>	-	-	-
<b>TOTAL</b>	159	32	\$132,415

2. Collaborating and Leading the Department’s Components

Throughout FY 2019, CRCL led quarterly meetings of the Component EEO Complaint Managers, providing opportunities for Components’ input on agenda topics and encouraging and facilitating discussions. CRCL arranged for briefings from the EEOC on their data management system, and the Federal Sector EEO Portal (FedSEP). Other topics discussed during meetings included review of EEO complaint management processes, standardized and ad hoc reports, and updates and refresher training on the DHS enterprise EEO data system. This regular collaboration between CRCL and Components proved key in strengthening relationships and enabling managers within this community to share challenges and provide input on solutions and best practices. CRCL also launched efforts to coordinate with four Components and update their organizational hierarchy designations in the system, a project that will conclude in FY 2020.<sup>16</sup>

CRCL’s EEO compliance program monitors Components’ implementation of remedial relief that was ordered in findings of discrimination, and reports compliance progress to the EEOC for EEOC-issued decisions in which discrimination was found. During FY 2019, CRCL collaborated with the EEOC’s incoming compliance officer to establish an effective working relationship and, in turn, updated Components on new procedures.

CRCL’s CMAS staff participated in working groups formed to implement the goals of the EEO Council’s strategic plan. CMAS staff members also delivered EEO training to supervisors and new employees within Headquarters and to members of the Senior Executive Service.

During FY 2019, CMAS provided quarterly feedback to DHS Components on the quality of their ROIs through use of an ROI Feedback Tool. The Tool was developed and launched in FY 2016,

<sup>15</sup> USSS does not utilize the Shared Neutrals roster as part of their ADR program.

<sup>16</sup> The hierarchy designations are the names of the offices within a specific Component. As reorganizations occur and office names change, there is a need to update the hierarchy in the database.

in a collaborative effort between CMAS and DHS Component EEO Offices. Following completion of a merit FAD, the CMAS Adjudication Analyst uses the Feedback Tool to objectively rate each individual ROI in 14 competency categories including sufficiency of documentation, selection of relevant witnesses interviewed, relevance of evidence, as well as several report accuracy measurements.

Component EEO Offices use this feedback as an additional method to assess the quality of their ROIs and this has proven to be an effective way for CMAS to partner with Components to improve the quality of ROIs across DHS. Component Complaint Managers praised the Feedback Tool for its detailed comments and suggestions for improvement. They also indicated that they used the feedback as an objective improvement mechanism, and that they shared it with their staff and contractors.

#### B. Challenges in the Issuance of Merit FADs

Merit FADs are issued by CRCL after the following events have occurred: a complainant files a formal complaint alleging discrimination (after undergoing EEO counseling), the Component accepts the complaint, investigates, and a request is made for the CRCL to issue a decision as to whether discrimination occurred. This request may be made by the complainant, may result from the filing of a mixed case,<sup>17</sup> may be requested by the Component because of the complainant's failure to make an election before the expiration of the post-investigation election period, or may be ordered by an EEOC AJ after dismissal of the complaint from the hearing process. Specifically, the EEOC regulations, at 29 C.F.R. Part 1614, require most merit FADs to be issued within 60 days of election, or other event triggering the FAD request (the exception being mixed case FADs which are required to be issued in 45 days).

CRCL consequentially surpassed its goal to issue 45 percent of merit-based final actions within regulatory timeframes, issuing 51 percent (421 of 832) timely final actions, despite the 35-day furlough. Other measures were negatively impacted by the furlough. In FY 2019, CRCL issued 399 merit FADs, which is a slight decrease from the 417 FADs issued in FY 2018. CRCL's rate of timely FAD issuance also decreased, from 36 percent (152 of 417) in FY 2018 to 21 percent (83 of 399) in FY 2019. And, the average processing days increased by 65 days (238), when compared to the 173 average processing days in FY 2018. Some additional reasons for these changes are discussed further below. Figure 12 shows CRCL's six-year trend in merit FAD issuances.

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

**Figure 12: Merit FADs FY 2014 – FY 2019**

	<i>2014</i>	<i>2015</i>	<i>2016</i>	<i>2017</i>	<i>2018</i>	<i>2019</i>
<b>Backlog at Year End</b>	0	0	22	149	172	311 <sup>18</sup>
<b>Total FADs Issued</b>	301	297	278	405	417	399
<b>Number Timely Issued</b>	161	120	94	105	152	83
<b>Percentage Timely</b>	53	40	34	26	37	21
<b>Average Processing Days</b>	117	115	166	207	173	238

In FY 2019, multiple factors negatively impacted CRCL’s adjudication program and contributed to a decrease in CRCL’s timely merit FAD issuances and a rise in the FAD backlog in FY 2019: (1) a 20 percent drop in adjudication staffing during the fourth quarter of FY 2019, due to an employee’s departure and another employee’s need for extended leave; (2) loss of a critical resource when one of the attorney-advisors supporting the EEO program departed the agency; (3) the 35-day lapse in appropriation funding; and (4) a significant increase in incoming requests for merit FAD and other final actions.

Regarding number 4, above, CRCL experienced an 18 percent increase in the number of incoming requests for merit FADs (672) over those received in FY 2018 (568). Notably, the 18 percent increase in FY 2019 followed an already unprecedented 26 percent increase in the number of FAD requests in FY 2018, as compared to FY 2017 (451). The CRCL FAD backlog increased from 172 at the end of FY 2018, to 311 at the end of FY 2019, due to the aforementioned staffing and workflow challenges. Notably, the primary source of the increase in FAD requests during FY 2018 and FY 2019 were cases where the complainant initially elected an EEOC hearing. Quite a number of these cases were, in turn, dismissed from the hearing process by EEOC AJs (thus removing them from EEOC’s inventory) and remanded to the Department to issue a FAD, thereby having the effect of exponentially increasing the Department’s inventory.

CRCL also experienced a sharp increase in another category of cases received from EEOC AJs. As part of the regulatory process, following an EEOC AJ’s merit-based decision in a complaint, CRCL must review the record and issue a Final Order indicating whether the Agency will fully implement the AJ’s decision or will not fully implement the decision (with a simultaneous appeal to EEOC). There was a 67 percent increase in the number of AJ decisions received in FY 2019 (433), when compared to FY 2018 (259). Moreover, the 259 AJ decisions received in FY 2018 were already a 42 percent increase over the 182 AJ decisions received in FY 2017.

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<sup>18</sup> In FY 2019, CRCL changed the way the backlog is calculated by defining the backlog as any pending FAD request that had been at CRCL for more than 60 days. In previous fiscal years, the backlog was defined as a pending FAD request that had not been assigned to Analyst. The backlog would have been 257 if the former calculation method was used.

With the growing inventory of pending FADs due to the extremely high incoming workload and internal resource challenges, CRCL continued to face competing adjudication priorities, i.e., issuing merit FADs within the regulatory 45- or 60-day time frame and ensuring that merit FADs which had already surpassed the regulatory time frame (whether prior to or after CRCL's receipt of the FAD request) did not linger. In response, CRCL was compelled to adopt a strategic FAD assignment approach, striking a balance between issuing regulatory timely FADs, while also addressing older cases to avoid disadvantaging complainants whose FAD requests were pending for a longer period. Additionally, CRCL dedicated additional funding to a contract to aid in the drafting of merit FADs. This additional support significantly improved FAD production by addressing FADs pending in the prior fiscal year, as well as several cases received in FY 2019. As a result, CRCL closed 184 FADs with contractor support.<sup>19</sup> CRCL leadership has pledged to continue funding the contract as an additional resource into FY 2020.

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

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

#### 1. Federal Emergency Management Agency

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

FEMA's Office of Equal Rights (OER) provides EEO services to approximately 20,000 employees. OER comprises six functional areas: Business Management Unit; EEO Division; Civil Rights Division; Disability Division; and the Affirmative Employment Division.

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

In FY 2019, OER worked diligently to address the significant challenges and opportunities presented during the year to improve service to FEMA stakeholders. One significant effort to improve EEO processing was transitioning the Informal and Formal Complaint Unit from EEO Specialists to EEO Generalists.<sup>20</sup> The EEO Generalists are now responsible for processing EEO complaints in their entirety. The effort was led by two Supervisory EEO Specialists who provided training to the EEO Generalists. The training covered all phases of the EEO complaint process including drafting counselor's reports, understanding mixed cases, drafting letters of acceptance and dismissal, and ROI legal sufficiency reviews. In addition, five EEO Generalists attended 32 hours of New Counselor training offered by the EEOC.

FEMA experienced a decrease in the number of informal complaints (also called pre-complaints) initiated in FY 2019 (176), when compared to FY 2018 (310). There was also a decrease in the percentage of timely completed counselings in FY 2019 (84 percent) compared to FY 2018 (95 percent). OER attributes the decrease in timely completed counselings to

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<sup>19</sup> A 2- month lapse in contract funding, coupled with the 35-day lapse in appropriations, reduced the number of FADs CRCL could otherwise have closed in FY 2019.

<sup>20</sup> EEO Generalists handles cases from the beginning to the end of the complaint process.

staffing changes, the transition of their EEO Specialists to EEO Generalists, and the impact from the lapse in appropriation funding.

OER's formal complaint processing improved significantly during FY 2019. Most notably, OER addressed a complaint backlog existing since 2014; thus, cases that were pending for years at various stages in the formal complaint process were properly addressed. OER's focus on the backlog in FY 2019 resulted in much higher average processing times because the cases were older; however, it also resulted in clearing those complaints from OER's inventory so that newer cases can be timely processed in FY 2020.

In FY 2019, 106 formal complaints were filed, compared to 160 formal complaints filed in FY 2018. OER completed 204 EEO investigations in FY 2019, representing a 35 percent increase compared to the 151 investigations completed in FY 2018. The number of timely completed investigations also increased from six percent in FY 2018 (9) to 13 percent in FY 2019 (27). Finally, the average processing days to complete investigations decreased from 627 days in FY 2018 to 507 days in FY 2019. Notably, the number of pending EEO investigations of aged complaints was dramatically reduced during FY 2019.

Only eight aged investigations were pending with OER at the end of FY 2019, which is major reduction from the almost 200 cases at the end of FY 2018. FEMA attributes the significant reduction to OER's management who diligently managed the EEO Division staff to ensure the complaints pending investigation were properly addressed, including improved monitoring of the performance of contract investigators. OER implemented expedited processing mechanisms, to include streamlined document request collections and responses. Finally, OER also acquired an additional contract to assist with conducting EEO investigations. It is expected that improvements will continue to be implemented in FY 2020, to include adding additional staff, training the current staff, and improved accountability for all parties involved in the process.

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

During FY 2019, OER staff conducted seven training and outreach events, including webinars on reasonable accommodation and participating in FEMA's Supervisory Essentials training course. OER issued two frequently asked questions sheets on reasonable accommodation, one tailored for employees and one geared toward managers and supervisors. In addition, the Affirmative Employment Division provided annual mandatory training for managers and employees, which covered the EEO complaint process, roles and responsibilities, the responsibility for managers to act to end harassment, and diversity and inclusion. These training opportunities provide an opportunity to proactively prevent complaints and to educate the workforce on the regulations, laws, and the consequences related to complaints of discrimination.

Throughout FY 2019, OER employed a variety of strategies and initiatives to proactively engage and educate its workforce, promote diversity and inclusion, and create a cultural shift with a focus on living up to FEMA's core values of compassion, fairness, integrity, and respect.

Additionally, in FY 2019, OER:

- Launched a Lunch & Learn series, providing eight educational trainings including webinars that addressed reasonable accommodation, anti-harassment, and successfully giving and receiving feedback.
- Conducted two townhall sessions with employees in two regions. OER also conducted Crucial Conversations training in one region to managers and supervisors.
- Continued to utilize the services of EEOC to provide anti-harassment training to 462 employees, managers, and supervisors. Additionally, OER secured a contract to provide anti-harassment training to field and regional offices, and to certify up to 40 of OER's personnel to deliver anti-harassment and "Civil Treatment" training. The "Civil Treatment" training program focuses on preventing, detecting, and correcting inappropriate behaviors and building an inclusive culture. In the future, all FEMA employees will be required to participate in these mandatory, in-person sessions.
- Revised the New Employee Orientation presentations on the roles and responsibilities in the EEO process to expand the training from a 45-minute briefing to a four-hour orientation, which covers the EEO complaint process, anti-harassment, the reasonable accommodation process, and roles and responsibilities therein. Additionally, in FY 2019, all EEO based trainings were facilitated by subject matters experts, either by OER employees or employees trained by OER, which differed from previous trainings that were conducted by non-subject matter experts.
- Enhanced the inward (intranet) and outward (internet) facing civil rights websites to provide information on EEO, civil rights, and reasonable accommodation processes.

## 2. The Federal Law Enforcement Training Centers

### ***Infrastructure***

FLETC's EEO Office provides services to 1,260 FLETC employees. It comprises the EEO Officer, the Complaints Manager, five EEO Specialists, and one Staff Assistant. One EEO Specialist serves as the Disability Program Manager. Each EEO Specialist serves as a special emphasis program manager (SEPM) and presents EEO information for New Employee Orientation, counsels aggrieved parties at the informal stage, processes requests for reasonable accommodation due to disabilities and religion, and processes accommodations for pregnancy-related issues. The Complaints Manager and Disability Program Manager also develop and present management training on EEO topics, including ADR, harassment prevention, and reasonable accommodation.

### ***Complaint Processing***

In FY 2019, FLETC timely completed 100 percent of its pre-complaint counselings; however, the total number of completed counselings decreased to four, which is an aberration from previous years. Specifically, FLETC completed 9 counselings in FY 2018,

15 counselings in FY 2017, and 13 counselings in FY 2016. The EEO office has not ascertained whether this is a trend, but it will continue to monitor in FY 2020.

Regarding investigations, FLETC completed 100 percent (2) of formal EEO complaint investigations within the regulatory timeframe in FY 2019, which is an improvement over the 60 percent (3 of 5) timely investigated in FY 2018. The FLETC EEO Office also timely processed two conflict of interest cases for other DHS Components. The FLETC EEO Office remains committed to completing all EEO investigations in a timely manner. To continue to fulfill this goal, the FLETC EEO Office continues to work closely with the EEO contract investigators, responding management officials, the Human Capital Office, and the Office of Chief Counsel.

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

During FY 2019, the EEO Office revised its reasonable accommodation procedures and started to revise FLETC's Anti-Harassment Procedures. FLETC also continued to support the DHS Shared Neutrals Program through the Complaint Manager's role in co-leading the DHS Basic Mediation Training sessions.

### 3. DHS Headquarters EEO Office

#### ***Infrastructure***

HQ EEO, with a staff of six, provided EEO services to nearly 8,000 DHS Headquarters employees and program offices by enforcing compliance with EEO laws, regulations, and mandates; providing guidance to Headquarters management officials and employees on EEO and diversity; preventing and addressing unlawful employment discrimination; and ensuring that all Headquarters employees have a working environment that is free from unlawful discrimination, harassment, or reprisal and that will support them in the fulfillment of their mission to protect the homeland.

In FY 2019, HQ EEO actively worked to fill key vacancies. At the start of FY 2019, HQ EEO hired a new EEO Director. In addition, HQ EEO hired an EEO Specialist to conduct intake and counseling of EEO complaints, evaluate the acceptance or dismissal of discrimination claims, provide support during the investigation of EEO complaints, and coordinate with EEOC on matters at hearing or on appeal. HQ EEO also hired an EEO Investigator to conduct in-house investigations, including those involving complex or unique fact patterns. In FY 2020, HQ EEO aims to hire an EEO Specialist to work on reports and to lead diversity initiatives.

In November 2018, the President signed into law the Cybersecurity and Infrastructure Security Agency (CISA) Act of 2018. This law elevated the National Protection and Programs Directorate, which had been part of the Department's Headquarters, to be a stand-alone Component of the Department. As a result, there will be a transition from HQ EEO providing EEO services to these employees, to a newly created EEO Office for CISA. Until that transition is completed, HQ EEO continues to process CISA's complaints

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

In FY 2019, HQ EEO completed 95 counselings on informal complaints and completed 49 EEO investigations—record levels of incoming complaint activity at Headquarters when compared to the prior six fiscal years. Notwithstanding the increase in the number of complaints processed, HQ EEO increased the timely completion rates for both EEO counselings and investigations compared to the prior fiscal year: 98 percent (93 of 95) of counselings were timely completed in FY 2019 as compared to 79 percent (55 of 70) timely completed in FY 2018. Likewise, for EEO investigations, 88 percent (43 of 49) of investigations were timely completed in FY 2019 as compared to 73 percent (29 of 40) timely completed investigations in FY 2018. During FY 2019, the most commonly alleged bases were reprisal, race, disability, and sex. The most commonly alleged issues were non-sexual harassment, assignment of duties, disciplinary action, performance/evaluation, and promotion/non-selection.

HQ EEO's accomplishments in complaints processing were achieved through enhancements in accountability and transparency by way of an improved case tracking system. In addition, efforts to refine existing businesses processes helped increase efficiencies and reduced risks.

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

In FY 2019, HQ EEO kept Headquarters employees engaged and informed about EEO and diversity by maintaining a regular training cadence. HQ EEO updated the EEO training module provided at New Employee Orientations for all incoming Headquarters employees, including new incoming senior executives. HQ EEO staff also updated the EEO materials used during the Human Resources Essentials training course aimed at developing new Headquarters supervisors. Additionally, HQ EEO conducted monthly internal EEO Counselor meetings to discuss the status of cases and provide a forum for regular, technical refresher training.

HQ EEO also continued to make strides in FY 2019 by growing its reasonable accommodation program. In addition to handling daily contacts from employees and managers seeking advice and guidance on the reasonable accommodation process and disability rights and responsibilities, HQ EEO processed 258 reasonable accommodation requests made by 128 employees, applicants for employment, and contractors. HQ EEO also produced a Reasonable Accommodation Fact Sheet that provides Headquarters employees with a brief description of the reasonable accommodation process. Further, HQ EEO conducted outreach and provided reasonable accommodation training to several Headquarters program offices supervisors and managers. Staff continues to coordinate with Headquarters offices to conduct reasonable accommodation trainings in addition to Schedule A and Disability Etiquette trainings.

## 4. Transportation Security Administration

### ***Infrastructure***

Within TSA's Civil Rights & Liberties, Ombudsman and Traveler Engagement (CRL/OTE) office, the Civil Rights, Diversity and Inclusion (CRDI) Division provides EEO services to a total workforce of 64,593 employees. CRDI is organized into three main branches: the EEO Management Branch, the Affirmative Employment Branch, and the Diversity and Inclusion Branch. At the end of FY 2019, the staffing level of CRDI consisted of 35 full-time federal employees. CRDI was also supported by contract investigative firms. In FY 2019, CRDI's EEO Management Branch continued to work to improve complaint processing.

### ***Complaint Processing***

All complaint processing timeframes in FY 2019 were negatively affected by the lapse in appropriation funding for DHS. In FY 2019, TSA completed 771 pre-complaint counselings. Of the 771 pre-complaint counselings, 90 percent (697) were processed within the required regulatory timeframes, as compared to 96 percent (827 of 862) in FY 2018. In FY 2019, ADR was offered in 584 pre-complaints; of those, 335 (57 percent) were accepted into the ADR program. TSA saw a decrease in the number of formal complaint filings by 4 percent in FY 2019, from 405 in FY 2018 to 390 in FY 2019, even though TSA's workforce increased by 2.5 percent (1,583) employees. In FY 2019, despite the effects of the lapse in funding and the resulting loss of case processing time, CRDI was able to timely complete 86 percent (280 of 325) of its investigations. While this is a decrease in timely completed investigations from the 91 percent (366 of 403) achieved in FY 2018, it remains well above the 73 percent (412 of 561) of investigations timely completed in FY 2017. CRDI is compliant with EEOC orders by conducting 100 percent of EEO training within prescribed timelines.

Additionally, CRDI continued its robust ADR program aimed at resolving conflicts before they become formal EEO complaints. During FY 2019, the following actions were taken:

- The CRDI ADR program developed a "Now What?" flyer designed to assist managers in preparing for mediated discussions. The ADR program co-sponsored the development of an informal TSA ADR council, fostering collaboration and the sharing of best practices across TSA's varied dispute resolution programs. During a Federal Air Marshal Service (FAMS) headquarters open house, the ADR program actively engaged over 50 managers and employees, while educating and promoting the benefits of ADR in the EEO complaint process. It also supported the Department's Shared Neutrals initiative by sending seven CRDI employees to new mediator training. The program further developed and launched a new ADR pilot program aimed at expanding potential resolution options.
- In support of the TSA Administrator's Intent, which identifies specific priorities the Administrator planned to accomplish as part of TSA's strategic priorities, CRL/OTE in collaboration with Human Capital, commissioned an ADR study during FY 2019, to provide an evidence-based assessment of TSA's ADR services and recommend an organizational structure and ADR model that promotes the efficiency and effectiveness of ADR service delivery across the agency. Study results are expected in the first quarter of FY 2020.
- In FY 2019, CRDI staff provided EEO training to approximately 1,600 TSA managers and supervisors. The training was provided at FAMS field offices, airports nationwide, and TSA Headquarters. CRDI's in-person training was supplemented by TSA Online Learning Center No FEAR Act training, which all employees are required to complete every other year. TSA also requires all new employees to complete No FEAR Act training within the first 90 calendar days of entering service. CRDI also provided EEO training for TSA Headquarters' New Employee Orientation for management, administrative, and professional personnel.

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

During FY 2019, CRDI continued these initiatives and activities that helped strengthen the Department's EEO program:

- Continued the successful CRDI University (CRDI-U) as a model for employees to receive training on civil rights, EEO laws, and diversity and inclusion; learn and develop essential skills for success, including communication and conflict management skills; and equip them with techniques for creating a diverse and inclusive organizational culture. Courses included a "Crucial Conversations" course, as well as the launch of the "Civil Treatment" training course pilot at TSA Headquarters. CRL/OTE staff conducted 18 training sessions for the "Crucial Conversations," "Micro-Inequities," and "Civil Treatment" courses. Training was provided to a total of 320 employees. As a result, there was a seven percent increase in the ADR participation rate.
- CRDI continued to assist in the successful coordination of TSA Conflict Resolution Panels in collaboration with the National Resolution Center, Human Capital's Organizational Effectiveness program, the Anti-Harassment Office, and CRL/OTE to conduct 23 panel sessions, at three airport locations (Detroit Metro Wayne County, Miami International, and Dallas Fort Worth), providing outreach to 374 field employees to increase knowledge, understanding, awareness, and accessibility to the agency's various conflict resolution resources.
- CRL/OTE continued to nurture an environment where employees felt comfortable raising whistleblower complaints by heightening employee awareness of how to raise issues and file whistleblower complaints with the U.S. Office of Special Counsel (OSC). CRL/OTE also promoted OSC's contact information through the "Know Your Rights and Responsibilities" brochure that is readily available as an employee resource on TSA's intranet. CRL/OTE further led the TSA effort to ensure that all employees completed the Department's anti-harassment training, which resulted in over 95 percent of the TSA workforce having completed the training by the due date.

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

### ***Infrastructure***

USCIS's Office of Equal Opportunity and Inclusion (OEOI) provides EEO services to a workforce of 19,111 employees at over 200 offices worldwide. The Chief of OEOI reports directly to the USCIS Office of the Director, underscoring the Director's commitment to the importance of EEO as an integral part of the USCIS mission to ensure a workplace free from discrimination. OEOI is organized into three divisions: Complaints Resolution Division (CRD); Diversity Management Operations Division; and the Policy, Planning and Resources Division. OEOI currently consists of 32 full-time employees. Additionally, USCIS employs the assistance of approximately 105 collateral-duty SEPMs and reasonable accommodation coordinators at various USCIS offices nation-wide to assist it in achieving its EEO, outreach, and education objectives.

### ***Complaint Processing***

In pre-complaint processing, the number of completed counselings decreased by 10 percent in FY 2019 (197), compared to the 218 completed counselings in FY 2018. Formal complaint filings decreased slightly, by four percent in FY 2019 (114), as compared to FY 2018 (119). In FY 2019, CRD completed 99 percent (196 of 197) of EEO counselings and 100 percent (104) of investigations within regulatory timeframes. The establishment of USCIS's ADR program has continued to have a positive impact on the efficiency of the overall EEO program. Notably, the ADR participation rate was 66 percent in FY 2019, and the informal ADR resolution rate remained high, at 50 percent.

USCIS continued to be an active participant in the implementation of the CRCL's DHS Shared Neutrals program, utilizing the shared neutrals cadre for 28 mediations in FY 2019. In addition, the ADR Program Manager and other CRD staff provided training to 86 Designated Management Officials (DMO) across USCIS on the topic of mediation. The purpose of the training was to explain the role of a DMO, discuss the goals and benefits of mediation, and familiarize participants with the mediation process. In March of 2019, the CRD Administrative Team received the USCIS Director's Unsung Heroes Award for their work and dedication to EEO complaint processing.

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

During FY 2019, OEOI provided mandatory in-person disability reasonable accommodation training to over 850 supervisors and managers. In addition, OEOI staff provided in-person training entitled, "Fostering an Inclusive and Respectful Workplace" to over 630 employees and managers at USCIS. OEOI also conducted many other training sessions across the agency in-person and by video teleconference on EEO-related topics, such as harassment and reprisal, for over 850 employees. OEOI CRD continues to provide the USCIS Anti-Harassment Hotline to allow employees and managers a mechanism to report harassment. In FY 2019, hotline calls were up 59 percent, with 217 contacts compared to 136 calls in FY 2018. Furthermore, 131 Management Inquiry Officers were trained on anti-harassment inquiry procedures in FY 2019. USCIS was also 96 percent compliant with the Department's anti-harassment and No FEAR Act training requirements.

## 6. U.S. Coast Guard

### ***Infrastructure***

The USCG Civil Rights Directorate (CRD) provides services to 10,005 civilian employees and 48,069 service members. The Director of Civil Rights reports to the Commandant of the USCG. The EEO complaint processing program comprises Headquarters staff who have four geographical regions of responsibility. Each region is divided into 14 geographical zones. The regions and their respective zones conduct the informal complaint processing, with 46 full-time EEO Counselors. The formal complaint process is managed at USCG Headquarters by the Solutions and Complaints Division, which is led by an EEO Manager. The Division consists of two ADR Specialists, two Complaints Managers, two Technical Advisors, an IT Specialist, and an EEO Assistant. In addition, the CRD uses a contract firm to assist in conducting EEO investigations.

### ***Complaint Processing***

During FY 2019, the USCG's complaint processing unit surpassed its planned objectives. USCG timely completed 100% of its 100 EEO counselings, an eight percent decrease from the 109 EEO counselings completed in FY 2018, and an increase over the 98 percent (107) of counselings timely completed in FY 2018. Of the 100 pre-complaints, 51 were resolved, representing a resolution rate of 51 percent, a six percent increase from the 45 pre-complaints resolved in FY 2018.

There were 49 formal complaints filed in FY 2019, a 16 percent decrease over the 58 complaints filed in FY 2018. USCG completed a total of 31 investigations in FY 2019, which represents a 37 percent decrease compared to the 49 investigations completed in FY 2018. The Solutions and Complaints Division continued using the electronic file transfer system, Department of Defense Secure Access File Exchange (DoD SAFE),<sup>21</sup> to gather, manage, and provide EEO documents to complainants, their representatives, and investigators. This expedited delivery method resulted in 100 percent of USCG's investigations being completed within the regulatory timeframe in FY 2019. USCG completed investigations in an average of 136 days, which is a five percent decrease from the 143 average processing days in FY 2018. Further, because of the improved file transfer system, which was implemented in FY 2018, USCG achieved a 32 percent decrease in investigation processing time, compared to the 200 average processing days in FY 2017.

In FY 2019, reprisal, disability, and race, respectively, were the most prevalent bases of discrimination for USCG. With respect to issues, harassment (non-sexual), promotion/non-selection, and disciplinary actions were the most frequently raised in complaints.

To resolve issues at the earliest opportunity, USCG offered ADR to 96 percent of individuals initiating pre-complaints in FY 2019. This resulted in a 49 percent participation rate in FY 2019, which is a slight decrease from the 50 percent participation rate in FY 2018. Of the 47 cases in which ADR was conducted during the pre-complaint process, settlement was achieved in 36 percent (17) of the cases. In FY 2019, USCG offered ADR to 98 percent of individuals who filed formal complaints. This resulted in a 40 percent participation rate, which is higher than the 34 percent participation rate in FY 2018. Of the 19 cases in which ADR was conducted during the formal complaint process, settlement was achieved in 37 percent (7) of the cases.

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

USCG granted 298 requests for reasonable accommodation in FY 2019. This includes, but is not limited to, electronic equipment, ergonomic chairs, telework, alternative work schedules, motorized scooters, wheelchairs, and sign language interpreters. USCG continued its relationship with the Department of Transportation (DOT) Disability Resource Center (DRC). DRC provides USCG with a centrally funded resource to provide reasonable accommodation services, personal assistance services, technical assistance, training, and outreach to all managers, supervisors, employees, and job applicants.

USCG Headquarters' mobility program provides devices, such as motorized scooters and wheelchairs, to USCG employees, applicants, and visitors in locations throughout the nation. In

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<sup>21</sup> This system was previously named the United States Army Aviation and Missile Research Development and Engineering Center's Safe Access File Exchange (AMRDEC SAFE).

FY 2019, the program received 26 requests, which provided temporary accommodations for individuals with mobility needs.

In another program area, USCG performs annual assessments of its units to determine if any perceptions of bias or triggers exist that affect the EEO climate. USCG achieves this through EEO climate assessments and surveys. For FY 2019, USCG conducted 25 on-site climate assessment reviews, which is an increase from the 20 reviews conducted in FY 2018. USCG also uses the Federal Employee Viewpoint Survey (FEVS), as well as the survey and reporting services of the Defense Equal Opportunity Management Institute (DEOMI). The DEOMI Organizational Climate Survey (DEOCS) assesses workforce perceptions of discrimination, harassment, equal opportunity, and other organizational effectiveness measures. The survey reports provide unit leadership with the ability to better analyze the work climate. USCG unit commanding officers and supervisors are required to allow their employees an opportunity to participate in an annual climate assessment survey. In addition, they must share the survey results with their supervisors and create an action plan to foster positive behaviors and address any concerns. DEOMI provides comprehensive tools to create effective action plans through its “Assessments to Solutions” website.

USCG continued its requirement for triennial, in-person EEO awareness training for all military and civilian members of the workforce. The triennial training modules include information on the EEO complaint process, ADR, reasonable accommodations, personal assistance services, anti-harassment and hate incident procedures, along with special emphasis programs, climate surveys, and social climate incident reporting. During FY 2019, Civil Rights Service Providers presented and facilitated discussions during in-person training sessions for 20,027 individuals. In FY 2019, instructors provided training to 1,013 supervisors, which represents a 36 percent increase from the 745 supervisors trained in FY 2018.

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

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

### ***Infrastructure***

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

In FY 2019, PDO strategically assigned staff to better align to the agency’s operational program needs. PDO recognized that approximately 80 percent of the CBP workforce are assigned to three major operating offices: Office of Field Operations, U.S. Border Patrol, and Air and

Marine Operations. As a result, PDO assigned an EEO Specialist to service each of the 40 major operating locations, to include ten EEO Specialists that were co-located to a major operation office. This realignment allowed for better coordination to provide training opportunities and organizing diversity and inclusion programs.

### ***Complaint Processing***

During FY 2019, CBP completed 710 counselings of informal complaints, which is a four percent decrease over the 736 completed counselings during FY 2018. Of the 710 counselings in FY 2019, 99 percent (704) were timely counseled. In FY 2019, 356 formal complaints were filed, representing an 18 percent decrease from the 419 complaints were filed in FY 2018. Although this was a decrease in formal complaints filed during FY 2019 compared to FY 2018, CBP has continued to experience an increase in formal complaints filed, when compared to previous years. For example, the 356 formal complaints filed in FY 2019, represents a 34 percent increase over the 266 formal complaints filed in FY 2017; a 15 percent increase from the 309 complaints filed in FY 2016; and a 51 percent increase from the complaints filed in FY 2015. A total of 253 investigations were completed in FY 2019, a two percent increase over the 251 investigations completed in FY 2018. Of the 256 completed investigations, 91 percent (233) were timely completed. Additionally, in FY 2019, the overall average processing time decreased to 221 days, from 225 average processing days in FY 2018.

PDO experienced a loss of investigators due to attrition in FY 2018 and FY 2019. As an interim solution until new investigators can be on-boarded, CBP entered into a contractual agreement with the United States Postal Service to provide supplemental investigative services during FY 2019. Having this contract in place allowed CBP to maintain its complaint processing performance, reduce overall processing time, and timely complete investigations with a smaller staff of investigators.

During FY 2019, CBP had six findings of discrimination. The cases involved a negative performance appraisal; harassment on social media; non-selections; transfer from a duty assignment; removal of telework; and cases that involved reasonable accommodation, including a failure to accommodate and a delay in providing the reasonable accommodation. As a result, CBP increased reasonable accommodation training for managers and supervisors and updated its Reasonable Accommodation Directive, which included better synchronization with other related agency processes such as the Fitness For Duty procedures, which assesses Law Enforcement Officers (LEOs) for compliance with medical standards that they are required to maintain in the performance of their essential duties.

In August 2019, the PDO, Diversity and EEO Division, sponsored a week-long conference in New Orleans, Louisiana. On the first day of the training conference, FEMA's Director for the Office of Equal Rights provided training on "Crucial Conversations," which teaches skills to create alignment and consensus by fostering open dialogue around high-stakes, emotional, or risky topics—at all organization levels. The Director emphasized that learning how to speak and be heard – and encouraging others to do the same – allows employees to focus on the best ideas, make the highest-quality decisions, and act on the decisions with unity of effort and commitment. This training provided CBP's EEO staff with guidance on effective communication, which will enhance their customer service skills. The Diversity and EEO Division leadership also engaged the staff in an interactive listening exercise to demonstrate the

importance of active listening. An Administrative Judge from EEOC's New Orleans Field Office shared her perspective on EEO counseling and investigations and the importance of identifying conflicts of interest. The Diversity and EEO Division leadership and participants also conducted a Strengths, Weaknesses, Opportunities, and Threats (SWOT) analysis on its principal program areas, to identify opportunities to improve processes and services. Lastly, participants engaged in an operational mission orientation with Air and Marine Operations and Office of Field Operations Seaport Operations, which among other things, included a tour of the facility, watching a canine demonstration, and observing some operations.

In FY 2019, CBP continued its efforts to promote and stimulate learning through examining best practices and process improvement. PDO continued to sponsor roundtable forums that focused on the topics of pre-complaints, investigations, and diversity and inclusion. The forums provided enhanced learning opportunities by enabling staff members to share and learn about interesting cases, research accomplishments, and discuss various diversity topics. These forums also proved to be a powerful learning tool that exposed junior staff to different ways of accomplishing their duties, and improving their performance, while learning from their peers.

In FY 2019, CBP continued to promote ADR as a preferred method used to resolve EEO complaints at the lowest possible level. During FY 2019, CBP's collateral duty mediators conducted 197 mediation sessions. Moreover, CBP continued to participate and provide support in the Department-wide Shared Neutrals Program, with three active collateral duty mediators, and five new mediators who received mediation training. Finally, PDO's ADR Program Coordinator served on the Department's ADR Advisory Council, providing guidance and input, and assisting in Component-wide training. The continued coordination provides the opportunity for CBP to be more closely aligned with the Department's management of the ADR program.

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

CBP continuously strives to incorporate EEO into everyday practice and makes diversity and inclusion principles fundamental parts of CBP's organizational culture. During FY 2019, CBP continued implementation of its Diversity and Inclusion Strategic Plan FY 2016 – FY 2020. The Plan incorporates a comprehensive and integrated approach to diversity and inclusion within CBP's human resource strategies, while aligning CBP's strategic goals with EEO principles to advance the goal of building and maintaining a model workplace.

During FY 2019, CBP's implementation of the Plan spanned across three major areas that have relevance regarding EEO complaints: training, diversity and inclusion, and efforts regarding anti-harassment.

1. Training – CBP engaged in multiple training activities across various platforms (on-site, webinar, and computer-based) to further strengthen its EEO program. Training included:
  - Supervisory Leadership Training: To ensure supervisors are aware of their obligations to help ensure a work environment free from discrimination and harassment, all new supervisors are required to complete “Supervisory Leadership Training,” which includes modules on diversity and EEO awareness. All new supervisors must complete this three-week-long training

program within their first year of promotion into a supervisory position. During FY 2019, 752 new supervisors completed Supervisory Leadership Training.

- EEO Awareness and Reasonable Accommodation Training: CBP's PDO conducted 181 sessions of "EEO Awareness" and "Reasonable Accommodation" training to duty stations across the nation. These training sessions were delivered to 2,917 employees (1,269 employees and 1,648 supervisors), providing an overview of CBP's anti-discrimination policy and commitment to diversity, a review of EEO laws and Executive Orders, discussions of what constitute discriminatory behavior and harassment, and an overview of the reasonable accommodation process.
- Centers for Excellence and Expertise (CEE): CBP established the centers to increase uniformity of practices across ports of entry, facilitate the timely resolution of trade compliance issues nationwide, and further strengthen critical agency knowledge of key industry practices. In FY 2019, PDO began an initiative with the CEEs to provide supervisory training on CBP's reasonable accommodation process. A total of 190 supervisors were trained during six training sessions.
- Laredo Sector Training: During FY 2019, PDO coordinated 16 hours of compliance training, in response to a finding of discrimination within the Laredo Sector of the U.S. Border Patrol. The training required coordination with management officials at Laredo Sector, the Office of Chief Counsel, the Office of Human Resource Management, the Office of Information Technology, and the Privacy Division of PDO. A total of 1,590 uniformed U.S. Border Patrol (supervisors and non-supervisors) employees were provided training, consisting of eight hours of online training material developed by the participating CBP offices. This was followed by eight hours of on-site classroom training, utilizing material also developed by the participating CBP offices, during a three-week period. The on-site training was conducted by a minimum of two representatives from each of these CBP offices.
- Office of Facilities and Asset Management: During FY 2019, PDO coordinated harassment awareness training for employees and supervisors within the Office of Facilities and Asset Management. The training covered the definition of discriminatory harassment, provided examples of harassing conduct, and identified strategies to successfully address allegations of harassment. A total of 108 supervisors and 464 non-supervisory employees were trained during 17 training sessions.
- Office of Operations Support and Office of Enterprise Services: During FY 2019, PDO coordinated training on the reasonable accommodation process, with the Office of Operations Support and the Office of Enterprise Services. The training covered all aspects of the reasonable accommodation process, including

the initial request, the interactive process, and the final decision. A total of 86 supervisors were trained during two training sessions.

- **DHS No FEAR Act Training:** CBP employees and supervisors were also provided with DHS-specific No FEAR Act and Anti-Harassment Training, which identifies Agency responsibilities and employee responsibilities and protections under federal law and DHS policy. During FY 2019, 9,817 CBP employees completed this training.
  - **DHS Preventing and Addressing Workplace Harassment Training:** During FY 2019, all CBP employees were required to complete a training module entitled, “Preventing and Addressing Workplace Harassment.” The training employed the use of scenarios and case studies to present critical concepts from the Department’s Anti-Harassment Directive 256-01. The course provided examples of harassing behavior, informed participants how to report allegations, and demonstrated how to use this knowledge to assess behaviors in practical scenarios.
  - **Personal Use of Social Media Training:** During FY 2019, all CBP employees were required to complete a training module entitled, “Personal Use of Social Media.” The training educated employees on the use of social media, as it relates to their employment with CBP. The course covered acceptable and unacceptable behavior – including harassment – on social media and the potential consequences for violating rules regarding the use of social media.
2. **Anti-Harassment –** CBP engaged in multiple activities to strengthen its anti-harassment program, identify trends, and review existing policies and practices.
- **Anti-Discrimination and Anti-Harassment Policy Statement:** On June 5, 2019, CBP’s Chief Operating Officer and Senior Official Performing the Functions and Duties of the Commissioner issued an updated Anti-Discrimination and Anti-Harassment Policy Statement. This policy specified that CBP will not tolerate harassment, or bullying in the workplace, whether it occurs on duty, off duty, face-to-face, or remotely through electronic means (i.e., email, social media, telephone). CBP reissues a policy statement on an annual basis and distributes the policy through multiple channels – including CBP Central, which is an email sent weekly to employees with links to stories and announcements on CBP’s intranet site – along with a reminder of standards of conduct.
  - **Harassment Complaints:** During FY 2019, CBP’s Office of Professional Responsibility received a total of 892 complaints from employees and members of the traveling public. Of these complaints, 230 alleged harassment based on an EEO-protected basis. CBP completed inquiries into 364 of the 892 complaints, which resulted in nine written reprimands, 11 written counselings, 18 verbal counselings, two suspensions, and 16 memorandums of instruction.

- DHS Anti-Harassment working Group: CBP continued to participate in the DHS Anti-Harassment working Group, which is conducting a systematic review of harassment across DHS. Some areas the working group focused on included: evaluating policies, standards of conduct, and tables of penalties to ensure harassment and discrimination are addressed and reviewing potential electronic tracking systems for use within the Department to monitor harassment complaints, from receipt to closure.
- Office of Inspector General (OIG) Information Request: CBP provided documentation in support of the OIG's information request on CBP's leadership and knowledge of and actions to address offensive content posted on Facebook by CBP employees. The information request is in its initial stage and has included providing information on complaints related to offensive social media posts; documentation of tracking matters involving the alleged misuse of social media by CBP employees; and policies, procedures, guidance, and directives to prevent and address discrimination and harassment.

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

### *Infrastructure*

ICE's Office of Diversity and Civil Rights (ODCR), mission is to ensure that the rights of employees and applicants are protected and that the agency promotes a proactive equal employment opportunity program, to ensure that the goal of a diverse workplace is achieved. ODCR is led by an Assistant Director who reports directly to the agency head. ODCR carries out its mission through its Diversity Management Division, Civil Liberties Division, and the Complaints and Resolutions Division (CRD), which provides EEO counseling, investigation, and ADR services to 20,034 employees. CRD comprises the Complaints Branch, which is responsible for providing EEO counseling and complaint processing, and the Resolutions Branch, managing ICE's ADR program. Since October 2018, CRD has experienced leadership vacancies; however, in March 2019, a new Division Chief was hired, The Deputy Chief position is expected to be filled in early FY 2020.

The Complaints Branch is currently comprised of two Lead EEO Specialists, four EEO Specialists, and an Intake Specialist. Complaints Branch operations were severely strained during FY 2019, due to leadership vacancies and staffing shortages. The two Lead EEO Specialist positions were vacant from March to August 2019. The Intake Specialist left the agency during the second quarter of FY 2019, and the vacancy is not expected to be filled until FY 2020.

The Complaints Branch was approved to hire a Complaints Manager and two additional EEO Specialists; however, funding for these positions was not allocated as of the end of FY 2019. During FY 2019, the Complaints Branch lacked key resources that contributed to complaints processing successes in FY 2018, including six legal interns and one Wounded Warrior Program participant. Due to the resource gaps during FY 2019, over 80 percent of ODCR's pre-complaint counseling and 100 percent of complaint investigations were conducted by the United States

Postal Service's National EEO Investigative Services Office, under the terms of an inter-agency agreement.

Complaint program operations were also affected in FY 2019 by a restructuring within the Complaints Branch, which occurred in March 2019. As part of this restructuring, EEO Specialists assumed greater responsibility for timely processing of complaints as the Division moved to a model where each Specialist is responsible for oversight of their assigned cases throughout the entire EEO complaint process - from initial intake to issuance of the ROI. This process change caused delays as staff members learned new portions of the complaint process; however, the new structure is expected to eventually produce a more agile, capable staff with greater breadth of knowledge and experience in the complaint process.

The Resolutions Division is comprised of the ADR Program Manager and a contractor who provides administrative support services. ADR services are most often provided using the techniques of mediation and facilitated discussions. The Resolutions Division provides these services under an inter-agency agreement with the Federal Mediation and Conciliation Service, and through collateral duty mediators from the DHS Shared Neutrals Program.

### ***Complaint Processing***

In FY 2019, ICE completed counseling for 238 informal complaints, which represents a 21 percent decrease from the 302 informal complaints counseled in FY 2018. The number of timely completed counselings fell to a 64 percent timeliness rate (153) in FY 2019, compared to a 91 percent timeliness rate (274) in FY 2018. The timeliness rate was negatively impacted by two factors: the 35-day lapse in appropriation funding and attempts to informally resolve complaints beyond the regulatory timeframe for the informal process. ICE had 29 informal complaints that would have been timely processed, but for the lapse in appropriation funding. An additional seven informal complaints were resolved through settlement or withdrawal in the ADR process, were untimely because settlement discussions were underway and continued beyond the 90-day time limit. This decline is also attributed to the decrease in staff the Complaints Branch experienced between FY 2018 and FY 2019.

ICE continues to use ADR to attempt to resolve conflicts at the earliest possible stage of the process. In FY 2019, 128 informal complaints were accepted into the ADR program. While the informal complaint resolution rate declined in FY 2019 to 11 percent from 16 percent in FY 2018, a higher percentage of ADR participants declined to file formal complaints after their participation in the ADR process. Specifically, in FY 2019, 38 percent (48 of 128) of aggrieved individuals in the informal process did not pursue formal complaints; this is an increase over the 22 percent (32 of 148) of individuals, who declined to file a formal complaint in FY 2018. ODCR attributes the increase to aggrieved individuals gaining a greater understanding of the issue at the center of their complaint during the ADR process.

Formal complaint filings fell 29 percent from FY 2018 to FY 2019. In FY 2019, ICE received 143 formal complaints, compared to 201 in FY 2018. Despite having a smaller staff in FY 2019, ICE completed 175 investigations, which is a ten percent increase over the 159 investigations completed in FY 2018. Although more investigations were completed, the number of timely investigations decreased to 13 percent (22), when compared to a 25 percent timeliness rate (39)

in FY 2018. Formal complaint processing was also severely impacted by the lapse in appropriation funding.

In early March 2019, ODCR provided New EEO Counselor training to all Complaints Branch EEO Specialists, in conjunction with the restructuring of the EEO Specialists' role in the complaint process. By the end of FY 2020, the EEO Specialists will perform more in-house counseling, as opposed to the current state, where most counselings are completed by contract counselors. In FY 2020, ODCR will work with facilitators from the Federal Mediation and Conciliation Service and Lean Six Sigma experts to identify and correct process inefficiencies and improve overall timeliness.

ODCR adopted a two-pronged approach to improving timeliness in the formal complaint investigation stage. First, during FY 2019, ODCR leadership provided in-person EEO training to more than 1,000 managers and supervisors. During each training session, the managers and supervisors were educated about the timeliness requirements contained in 29 C.F.R. § 1614, Leadership was also briefed on the importance of adhering to deadlines to respond to interrogatories and document requests and were cautioned on the consequences of not cooperating during the EEO investigation process. Second, ODCR seeks to improve formal investigation timeliness with a goal of completing 20 percent of complaint investigations with internal investigators. Accordingly, during FY 2019, ODCR initiated a program in which ICE Law Enforcement Officers (LEOs) receive New EEO Investigator training and are assigned complaints to investigate on a collateral-duty basis. This program began with a Supervisory Special Agent (SSA) from Homeland Security Investigations, who was detailed full-time to ODCR to serve as the Internal Investigations Manager. In that role, the SSA attended and evaluated several New EEO Investigator training programs and was assigned several complaints to investigate. During FY 2020, this program will expand to a projected 20 participants.

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

During FY 2019, ODCR staff provided training at every bi-weekly New Employee Orientation session for ICE employees of the National Capital Region. During the training sessions, new employees were briefed on ICE's EEO complaints program and the reasonable accommodation program, as well as the timelines to initiate both processes.

ODCR's Assistant Director, Deputy Assistant Director, and Division Chiefs presented in-person EEO training to more than 1,000 managers and supervisors at 54 ICE program field offices. ODCR staff also provided several in-person training sessions for managers and supervisors working in the National Capital Region. The training heavily emphasized the responsibilities of managers, supervisors, and the Agency during the EEO complaint process, as well as a discussion and examination of case studies on reasonable accommodation. Managers and supervisors who did not attend this training in person were required to complete the training on the Performance and Learning Management System (PALMS).

Anytime ODCR staff visits a field office, they extend invitations to local union officials to meet and discuss any EEO-related concerns. The Complaints and Resolutions Division Chief also met with the National President of American Federation of Government Employees Local 511, which represents hundreds of attorneys, accountants, statisticians, nurse practitioners, and other ICE

professionals. ODCR held office hours events for field office employees during the site visits, and several employees took advantage of the opportunity to discuss problems they were encountering in the field, or to learn more about the work done by ODCR.

ODCR leadership also provided in-person training about the EEO process and their responsibilities to ICE's new supervisors at the Supervisory Leadership Training program. This program is held 10 times per year at the ICE Academy in Dallas, Texas and is mandatory for new supervisors to complete within their first year of employment as a supervisor. ODCR leadership also provided in-person training about the EEO process and supervisors' responsibilities to management fact-finders at the Management Inquiry Training program held at FLETC, and to mission support personnel attending the Fundamentals of Mission Support Training at ICE Academy in Dallas.

## 9. U.S. Secret Service

### *Infrastructure*

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

### *Complaint Processing*

In FY 2019, EDI completed 48 pre-complaint counselings, and 98 percent (47) were timely counseled. The one untimely counseling resulted from the lapse in appropriation funding for DHS from December 22, 2018 to January 28, 2019. Notably, in FY 2019, pre-complaint activity decreased 30 percent from FY 2018, when 69 pre-complaint counselings were completed. USSS has several on-going initiatives that are contributing to the reduction in complaint activity. In training, EDI has improved instructor-led anti-harassment training, as well as developed and implemented a new training course called Inclusive, Diversity, Engagement in Action – Inclusion Quotient (IDEA-IQ), which is discussed below in more depth. EDI has also partnered with the Ombudsman program to address employee concerns and resolve issues before they enter the EEO process.

In FY 2019, 37 formal complaints were filed, which is an 18 percent decrease from the 45 complaints filed in FY 2018. The top three bases representing complaint activity were race, reprisal, and disability, and the top three issues were harassment (nonsexual), non-selection, and disciplinary actions. Regarding investigations, USSS experienced a decrease in the percentage of cases timely investigated. In FY 2018, USSS timely investigated 100 percent (33) of their cases; however, in FY 2019, USSS timely investigated 76 percent (26 of 34) of their cases. In addition, the average number of processing days for investigations increased, from 143 days in FY 2018, to 186 days in FY 2019. The USSS's timely processing was affected by personnel

changes, the lapse in appropriation funding, and the inexperience of some of the contract staff used to conduct investigations.

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

During FY 2019, USSS continued to encourage participation in the Early Dispute Resolution Program (EDRP) for individuals involved in EEO and non-EEO-related conflicts. EDI also encourages participation in mediation during the EEO complaint process. Informational materials (brochures) regarding mediation are distributed to the general workforce and to employees during the pre-complaint intake process. This information is also available to all employees during the New Employee Orientation training, First Line Supervisor training, as well as Special Agent/Uniformed Division Trainee instructional training courses. As a proactive measure, EDI continued its partnership with the Office of Chief Counsel in providing education and training to ensure that the workforce has knowledge of the EEO complaint process, reasonable accommodation process, and the Anti-Harassment Program.

During FY 2019, the EDI staff conducted the following EEO-related training modules, which included the EEO Process, Anti-Harassment, Reasonable Accommodation, and Religious Accommodation. Training was presented to the following audiences:

- 96 supervisors received training by participating in the First Line Supervisor's Training Course, which is a two-day training that is mandatory for all new supervisors within their first year of supervision;
- 946 employees received training during the New Employee Orientation Program;
- 554 Special Agent (296)/Uniformed Division (258) trainees received training as part of their specialized training program;
- 93 new supervisors and managers received training by participating in the New Supervisor/Manager Orientation, which is a one-day training that is mandatory for all new supervisors and managers within the first 90 days of their hire or promotion date; and,
- 6,659 employees completed mandatory training entitled "Preventing and Addressing Workplace Harassment."

In addition, all USSS employees are required to complete EEO-related online training through the agency's PALMS. During FY 2019, employees also completed the following online training:

- DHS No FEAR Act Training; and
- EEO and Prevention of Discrimination in the Federal Workplace Training.

Although not directly related to the EEO complaint process, during FY 2019, USSS achieved an important accomplishment in diversity and inclusion. EES developed and launched a new IDEA-IQ training course. IDEA-IQ is an interactive training course designed to challenge the

views, assumptions, biases, and beliefs of participants. Through practical, interactive exercises and audience-specific subject matter, IDEA-IQ instructors (EES staff) reinforce how diversity can increase an organization's performance by capitalizing on differences to solve complex problems. Due to their efforts in developing IDEA-IQ, the EES staff received a 2019 Secretary's Award.

# CONCLUSION

The information in this report highlights the Department's EEO program's successes and various challenges during FY 2019. An impressive level of collaboration across the Department's EEO program continued through initiatives such as the EEO Directors' Council Strategic Plan working groups, the ADR Shared Neutrals Program, continued use of the ROI Feedback Tool, and regular engagement through the quarterly Complaint Manager meetings.

Many notable accomplishments were realized this year despite challenges such as, staffing shortages, and significant increases in incoming requests for FAD and the 35-day lapse in appropriation funding. CRCL and Components deployed new initiatives like:

- Components' EEO program leadership positions were filled and new complaint management methods were implemented;
- Contract resources provided needed support to supplement internal staffing;
- CRCL issued 51 percent of merit-based final actions within regulatory timelines, surpassing its goal of 45 percent;
- The Anti-Harassment working group earned a Secretary's Award for its work in strengthening anti-harassment efforts for the Department; and
- Components realized a significant cost savings in their ADR programs through the use of DHS Shared Neutrals.

Because of the commitment, resilience, determined effort, and continued bonds of collaboration, the Department's EEO program continues to press forward and strengthen. The EEO Directors' Council recently produced a new five-year EEO and Diversity Strategic Plan that will be refined and finalized in FY 2020, laying the foundation for achievements in future program accomplishments and upcoming No FEAR Act annual reports.