



United States Department of Agriculture

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Food Safety and
Inspection Service

Office of the
Administrator
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TO: USDA Center for Civil Rights Operations
Compliance Division
Office of the Assistant Secretary for Civil Rights

FROM: Angela E. Kelly
Director

SUBJECT: Data Submission of the 2020 Notification and Federal Employee
Anti-Discrimination and Retaliation (No FEAR Act) Annual
Report

In accordance with the reporting requirements of Title III of the No FEAR Act of 2002 and No FEAR Act Report Guidelines, attached is the Food Safety and Inspection Service (FSIS) Fiscal Year (FY) 2020 Annual Report.

The report reflects from FY 2019 to FY 2020 the Agency's formal complaint inventory marginally decreased by three complaints. The Agency attributes this decrease to actions taken to address hiring and retention issues, as well as continued annual training efforts to educate employees on Equal Employment Opportunity (EEO) and Civil Rights (CR) matters.

If you have any questions on the contents of the report, please contact me at angela.kelly@usda.gov or at (301) 504-7755.

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Attachment

**Food Safety and Inspection Service
FY 2020 Annual Report of the Notification and Federal Employee
Anti-Discrimination and Retaliation Act Report**

1. The status and disposition of pending or resolved Federal court cases against the agency arising under employment discrimination and whistleblower protection laws:

The USDA Office of the General Counsel submits the response on behalf of the agency.

2. The amount of money the agency was required to reimburse the Judgment Fund:

The USDA Office of the General Counsel submits the response on behalf of the agency.

3. The number of individuals disciplined and the type of discipline in connection with employment discrimination or whistleblower cases:

None.

4. A description of the agency's policy for taking disciplinary action:

Reference FSIS Directive 4735.3 Employee Responsibilities and Conduct found at <https://www.fsis.usda.gov/wps/wcm/connect/98f86e3d-4c63-403a-ba33-650d9c79f1f2/4735.3.pdf?MOD=AJPERES>

5. Actions planned or taken to improve complaint processing or other civil rights programs in the agency:

- “Ask CRD” electronic mailbox – The Agency continues to promote this confidential mailbox to address employee questions and concerns about EEO/CR.
- EEO/CR information on the agency Internet and Intranet - The Agency revised its web pages with updates and expanded information and links to related department and agency policy statements, definitions, complaint processing information, Alternative Dispute Resolution (ADR), a special emphasis program directory, and a video library. Initiatives are underway to use electronic technology to automate and enhance the delivery of annual training modules and distribution of information relevant to the essential elements of a Model Agency EEO program.
- Alternative Dispute Resolution (ADR) – The FSIS Administrator continues to require management participation in ADR where an employee elects to participate. Each aggrieved party is offered the opportunity to elect ADR in lieu of traditional counseling. In FY 2020, 62% of aggrieved parties elected to participate in ADR. Offers of ADR in the formal stage of complaint processing

are also done, but this is on a case-by-case basis after an agency case assessment of the report of investigation and where a USDA decision on the record is the adjudicatory forum.

- **Balanced Scorecard for all Program Areas and District Offices** – This measures performance compliance against the six essential elements for a Model Agency EEO program. Included are periodic briefings from the CR Director to each Assistant Administrator and District Manager on trends in informal and formal complaint activity.
- **Updated policy on Reasonable Accommodations (RA) and Personnel Assistance Services (PAS)** - The updated FSIS policy directive 4306.2 aligns with USDA Departmental Regulation 4300-8 issued on October 30, 2020 to ensure employees are aware of and comply with new and revised policy and procedures for RA and PAS.
- **Civil Rights Enterprise System (CRES)** - FSIS continues to effectively use this system to process, track, monitor, report, and assess trends in EEO complaint activity from initiation to closure.
- **Training Initiatives** – EEO/CR training continues to be an integrated part of mandatory Agency training programs such as New Employee Orientation; Basic Supervisory Training for In-Plant Supervisors; Frontline Supervisory Training; and the New Supervisory Training Program. Customized civil rights and EEO training will continue to be developed and delivered upon request to numerous customers using both on-site and remote methods (in-person visits, use of telephone/videoconferencing).

Comparative Analysis of the Agency’s FY 2019 and FY 2020 No FEAR Act data

1. Number of Formal Complaints Filed

Trend Examination:

There was a five percent net decrease in the number of formal complaints filed in Fiscal Year (FY) 2020 (55) compared to the number filed in FY 2019 (58).

Causal Analysis:

The decrease in the formal complaint inventory can be attributed to any of the following actions or activities undertaken by the Agency during FY 2020:

- **EEO/CR Training** - The Agency issued mandatory No FEAR Act training to all employees to ensure they were knowledgeable about EEO/CR laws and regulations. Ninety-two (92) percent of employees completed the training. Additionally, all FSIS managers and supervisors were required to complete Anti-Reprisal training, of which 87 percent completed the training and satisfied the

competency requirement. This percentage exceeded the target competency rate of 82 percent established in the Agency's FY 2017-2021 Strategic Plan. Other efforts to train and educate the workforce included: articles on EEO/CR topics in various Agency newsletters and activities (Beacon, Wednesday Newslines, Equal Employment Opportunity Advisory Committees, Special Emphasis Programs, and webinars). When employees are educated about discrimination, harassment, reprisal, the EEO process, and conduct that contributes to violations of law and agency policy, they are more likely to refrain from engaging in behaviors that contribute to the filing of EEO complaints.

- **Continued marketing of ADR for complaint resolution at the lowest level possible** – To increase the ADR acceptance rate, the Agency established a goal of 48% ADR acceptance in the FY 2020 Strategic Plan. To meet this goal and garner participation in the ADR program, the Agency marketed the ADR program through training; during interactions with aggrieved parties; and through the dissemination of ADR brochures and promotional items. As a result, 62% of ADR offers during the informal complaint process were accepted. Further, the Agency continued to require all supervisors and managers participate in ADR. The Agency also designated one primary resolving official to participate in ADR for complaints originating from its field inspection program which had most of the complaints referred to mediation. Designating one primary resolving official helped the agency identify and address systemic issues and ensured consistency. In addition, the experience and knowledge of the Agency's EEO Counselors and Mediators assisted all the parties to reach resolution during the informal stage of the EEO process. As a result, the Agency's pre-complaint resolution rate during FY 2020 was 60%. This exceeded the government-wide resolution rate of 56% and USDA's resolution rate of 45%.
- **Fewer complaints related to the implementation of the New Poultry Inspection System (NPIS)** – Comparatively fewer numbers of GS-7 Food Inspectors were impacted in FY 2020 by the poultry industry's continued conversion to the NPIS inspection system than were impacted in FY 2019. Accordingly, fewer impacted employees raised EEO complaints regarding their dissatisfaction with the outcome of work reduction procedures and other terms and conditions of employment that led to EEO filings on claims of promotion/non-selection, reassignment out of the local commuting area, testing/grading outcomes of required inspection courses as a condition of employment to encumber Consumer Safety Inspector positions, and temporary travel and shift reassignments/hardships.
- **Continual and informative communication by top Agency leadership in providing instruction and guidance to the workforce during the COVID-19 pandemic** – Agency leadership provided weekly all-employee telephonic town hall meetings three times per day for approximately four months, and biweekly meetings thereafter, on the pandemic and its impact on Agency operations. These sessions kept the workforce informed on the latest policy guidance and public health recommendations from the CDC, OPM, and Agency for personal protective

gear, social distancing, and other protective measures in the in-plant environment. The sessions also provided employees with timely guidance on the use of available leave categories and the use of the reasonable accommodations process. This continual contact from top Agency leadership and day to day instructions from front-line supervisors provided updated information and guidance that helped to boost morale for inspection personnel who were required to report to work daily during a nationwide pandemic. Clear and on-going communication of policy and expectations created an environment of transparency and trust where employees less frequently felt the need to invoke the EEO process to have their concerns or complaints heard or where they believed they were treated disparately.

- **Conducting Title VII compliance reviews** – The Agency continued to monitor its policies and practices through Title VII compliance reviews of internal programs. These reviews proactively assisted the Agency to identify potential violations or weaknesses in its EEO programs as well as workplace climate concerns, thereby preventing potential EEO complaints. The Agency conducted Title VII compliance reviews of five program areas. During each of the reviews, the Agency analyzed the program’s workforce demographic data; assessed internal procedures and practices and EEO complaint activity for a 3-year period; administered a climate assessment survey and analyzed the results; and conducted facility assessments to determine if facilities were accessible to Persons with Disabilities (PWD) and displayed appropriate EEO posters and materials. Findings and recommendations were issued and action plans were developed to improve each program’s EEO programs.
- **Holding supervisors and managers accountable for engaging in discriminatory practices to deter such conduct in the future.** A standardized stand-alone mandatory EEO/CR critical element is incorporated into all supervisory performance standards that establish performance expectations to ensure supervisory compliance with EEO requirements. In addition, FSIS references USDA’s table of penalties covering discriminatory misconduct and applies applicable discipline when appropriate. The Agency’s Labor and Employee Relations Division (LERD) conducts accountability assessments on all findings of discrimination and settlement agreements. Where appropriate, Responsible Management Officials are held accountable for their conduct through corrective and/or disciplinary action. The Agency also reviews findings of discrimination against existing policies and procedures to identify knowledge gaps or inconsistencies in application to proactively prevent future adverse decisions.

Knowledge Gained:

Supervisors and managers who completed the No FEAR Act and Anti-Reprisal trainings were better informed about the laws governing discrimination complaints. This will enable them to ensure their work environments are free from actions and behaviors that lead to complaints.

The Agency gained significant insight into the climate of the workforce through the Title VII compliance reviews. Five compliance reviews are conducted annually to assess internal EEO programs and the workplace climate. Following the assessment, management is provided with findings and recommendations to assist them in ensuring they are taking proactive steps to address employees' concerns and adequately managing their EEO programs. The Agency continues to streamline the process by working across the Agency with a data integration analyst and survey/data collection experts to ensure the efficient and accurate collection of employee perceptions and proper analysis of relevant EEO data.

Three years into the implementation of the NPIS inspection system saw a net reduction of nearly 50% of EEO complaints filed in FY 2020 on claims of promotion/non-selection and terms/conditions of employment. This may be the result of fewer slaughter line employees being impacted by work reductions from plants converting to NPIS in FY 2020, and/or these employees having increased knowledge of Agency work reduction processes resulting from Agency educational efforts.

Continual, transparent, and effective management communication to employees during the COVID-19 pandemic may have positively improved employee morale and confidence in the Agency's mandate to provide on-going inspection coverage to industry. When employees understand the rationale behind top management's policies and actions, there may be fewer instances where employees believe discriminatory intent drives the actions. This may be a reason why fewer complaints were filed in FY 2020.

Action Taken or Planned:

In FY 2020, the Agency issued mandatory No FEAR Act training to the entire workforce and Anti-Reprisal training to managers and supervisors. The goal was to increase and refresh employees' knowledge of EEO/CR laws and regulations to reduce the occurrence of infractions that lead to complaint filings.

The Agency implemented two initiatives to address staffing shortages that may have been contributing factors to employee dissatisfaction and EEO complaint filings. The Agency utilized OPM-approved direct hire authority to decrease the time needed to staff critical frontline GS-1863 Food Inspector and GS-1862 Consumer Safety Inspector positions. The Agency also implemented a group monetary retention incentive program for in-plant Supervisory Veterinary Medical Officers/Public Health Veterinarians with five or more years of service. The objective of the monetary incentive program is to retain qualified personnel in a mission critical occupation that has experienced high turnover and vacancies.

In FY 2021, employees will be required to complete two EEO/CR-related trainings. One course will focus on religious accommodation, veterans' preference, age discrimination, national origin discrimination, employee use of official time for EEO activity, and reprisal. The second training will focus on reasonable accommodations.

2. Number of Individual Filers and Number of Repeat Filers

Trend Examination:

In FY 2020, there were 53 individual complainants, two of whom were repeat filers. In comparison, in FY 2019 there were 56 individual complainants, two of whom were also repeat filers. There was no comparative change in the number of individual and repeat filers between fiscal years.

Causal Analysis:

The causal analysis described under Section 1 of this report is also applicable for the decrease in the number of complaint filers noted during FY 2020. The decrease in complaint filers can also be associated with the same contributing factors resulting in a decreased volume of total complaints filed. Each of the two repeat filers' subsequent complaints alleged reprisal from the same responding officials, however each filer raised new claims that were distinct from the claims raised in their previous complaints.

Knowledge Gained:

Regarding the number of individual filers, the knowledge-gained analyses is the same as that described under Section 1 for total number of complaints. It was also noted some individuals use the EEO process to raise allegations, including reprisal, to air grievances, to seek information, or to raise objections to their perceptions of being wronged, harmed, ignored, or treated differently in the workplace.

Action Taken or Planned:

The decrease in the number of complaint filers is associated with the same contributing factors resulting in a decreased volume of total complaints filed. The actions taken or planned actions were described in Section 1 of this report.

3. Number of Bases Alleged in Complaints

Trend Examination:

The top four bases remained consistent between FY 2020 and FY 2019. Although reprisal remained the top basis, there was a 37 percent decrease in FY 2020. Race, sex, age, and disability were the other top bases noted in FY 2020.

FY 2020

1. Reprisal (26)
2. Race (21)
3. Sex (20)
4. Age and Disability (17)

FY 2019

1. Reprisal (41)
2. Sex (24)
3. Race and Disability (23)
4. Age (18)

Race was alleged in 21 complaints in FY 2020 and 23 complaints in FY 2019, a net decrease of 8.7 percent. Complaints citing sex decreased by 16.7 percent, from 24 in FY 2019 to 20 in FY 2020. Complaints citing disability had a net decrease of 26.1 percent from FY 2019 (23 complaints) to FY 2020 (17 complaints). Age was the fourth most frequently cited basis in both fiscal years with a net decrease of 5.6 percent from 18 complaints in FY 2019 to 17 complaints in FY 2020.

Causal Analysis:

The Agency experienced a decrease in all protected bases during FY 2020 compared to FY 2019, with the most significant decreases seen in the bases of reprisal and disability. This could be attributed to several factors including the Agency's efforts to resolve complaints at the earliest stage possible, specifically during the informal stage. Through traditional counseling and ADR, the Agency placed a great deal of emphasis on working with parties to reach resolution during the informal complaint process. The Agency continued to ensure employees, supervisors, and managers receive mandatory EEO/CR training and reasonable accommodation training to keep them apprised of current regulations and policies. Supervisors and managers also completed mandatory Anti-Reprisal training in FY 2020 to re-emphasize their understanding of what constitutes reprisal and what behaviors contribute to it. Further, the Agency ensured all senior managers designated as Resolving Officials received training regarding their responsibilities. The Agency also designated a single Resolving Official for its largest program with the most complaint activity. This helped the Agency identify and address systemic issues and achieve complaint closure.

Knowledge Gained:

The description of knowledge gained under Section 1 is similarly relevant here.

Action Taken or Planned:

During FY 2020, the Agency implemented all planned actions reported in the FY 2019 No FEAR Report. Specifically, the entire workforce completed mandatory No FEAR training and all managers and supervisors completed mandatory Anti-Reprisal training. Additional training was also provided to employees, managers, and supervisors. Three Special Emphasis Programs were conducted in field locations. These actions collectively assisted Agency's efforts towards achieving and maintaining a discrimination-free workplace.

During FY 2021 the workforce will be required to complete Agency issued mandatory EEO/CR training on religious accommodation, veterans' preference, age discrimination, national origin discrimination, employee use of official time for EEO activity, and reprisal. Employees will also be required to complete RA training issued by the Office of the Assistant Secretary for Civil Rights.

4. Number of Issues Alleged in Complaints

Trend Examination:

In FY 2020, the ranking of the top four claims remained unchanged from the ranking observed in FY 2019. The top claims were harassment (non-sexual), disciplinary/adverse actions, time and attendance issues, and terms/conditions of employment. Except for time and attendance issues, this ranking mirrors the same claims cited in complaints filed across all Federal agencies.

<u>FY 2020</u>	<u>FY 2019</u>
1. Non-sexual Harassment (35)	1. Non-sexual Harassment (38)
2. Disciplinary Actions (19)	2. Disciplinary Actions (18)
3. Time and Attendance (9)	3. Time and Attendance (17)
	Terms/Conditions of Employment (17)
4. Terms/Conditions of Employment (8)	4. Promotion/Non-Selection (13)

There was an 8 percent net decrease in the number of complaints citing non-sexual harassment, from 38 in FY 2019 to 35 in FY 2020. The number of complaints citing disciplinary/adverse actions increased by 5.5 percent from 18 in FY 2019 to 19 in FY 2020. Time and attendance claims were cited in 9 complaints in FY 2020; this represented a net decrease of 47 percent from FY 2019 (17 complaints). Claims classified as terms/conditions of employment had a net decrease of 52 percent from FY 2019 (13 complaints) to FY 2020 (8 complaints).

Causal Analysis:

From FY 2019 to FY 2020, there was no change in the ranking of the top issues. Non-sexual harassment remained the top cited claim, which is consistent with trends reported at both Departmental and Federal levels. Complainants frequently raised a series of sequentially occurring work-related incidents they categorized as harassment. Several Complainants also retroactively raised untimely discrete acts of alleged discrimination (such as non-selections for promotion and disciplinary actions) for use as background information in support of hostile work environment allegations.

The net increase in claims pertaining to discipline/adverse action is likely influenced by the Agency's adherence to Executive Order (E.O.) 13839, Section 5- Ensuring Integrity of Personnel Files. The Agency is prohibited from entering into settlement agreements that alter or rescind personnel actions in an employee's Official Personnel Folder (OPF) that were not the result of an Agency error. The E.O. impacted the Agency's ability to settle informal complaints involving disciplinary/adverse actions, neutral references, performance appraisals, and other personnel related actions. Two years after the E.O. was issued, aggrieved parties continue to pursue formal EEO complaints after they were made aware the resolutions they sought in the pre-complaint process were unavailable pursuant to the E.O.

Decreases in the number of claims citing time and attendance and terms and conditions of employment may have been influenced by the Agency's FY 2020 direct hire authority and monetary retention efforts that addressed in-plant staffing shortages. In prior FYs, staffing

shortages and limited relief coverage culminated in employee stress and dissatisfaction with the work environment often resulting in time and attendance issues and complaints about the terms or conditions of employment.

Fewer complaints pertaining to promotion/non-selection actions may be the result of fewer inspection personnel raising claims arising out of the intense competition for positions caused by the voluntary conversion of poultry plants to the NPIS.

Knowledge Gained:

The description of knowledge gained under Section 1 is similarly relevant here.

Action Taken or Planned:

The description of actions taken and/or planned under Section 1 is similarly relevant here.

6. Findings of Discrimination

Trend Examination:

For the past two years, there were no findings of discrimination issued to the Agency by the EEOC or USDA's Office of the Assistant Secretary for Civil Rights (OASCR).

Causal Analysis:

None.

Knowledge Gained:

None.

Action Taken or Planned:

None.

7. Average Length of Time to Complete Each Stage of the Complaint Process

Investigation: USDA averaged 11 more calendar days to complete investigations of FSIS cases which represented a 5.5 percent increase in processing time.

FY 2020 – 210 days FY 2019 – 199 days

Final Agency Action with Hearing: USDA averaged five fewer days to issue Final Orders of FSIS cases after receiving Administrative Judges decisions and orders entering judgment. This represented a 16.7 percent decrease in processing time.

FY 2020 – 25 days FY 2019 – 30 days

Final Agency Action without Hearing: USDA averaged 17 fewer days to issue merit Final Agency Decisions on FSIS cases which represented a 31.5 percent decrease in processing time.

FY 2020 – 37 days FY 2019 – 54 days

Dismissals: There was a 60 percent increase in the average number of days cases were pending prior to a procedural dismissal.

FY 2020 – 24 days FY 2019 – 15 days

There was a 180 percent increase in the total number of complaints dismissed in FY 2020 (14 cases) compared to FY 2019 (5 cases).

8. Pending Complaints Filed in Previous Fiscal Years

Investigation: No change. FY 2020 – 1 FY 2019 – 1

Hearing: 12.5 percent decrease (5 fewer cases pending). FY 2020 – 35 FY 2019 – 40

Final Agency Action: 33.3 percent decrease (2 fewer cases pending).

FY 2020 – 4 FY 2019 – 6

Appeal: 17.4 percent increase (12 more cases pending). FY 2020 – 81 FY 2019 – 69

9. Total Number of Pending Complaints Where Investigations Exceed Required Timeframes

There was no change in the number of pending cases exceeding the 180-day timeframe. There were no cases in either FY 2019 or FY 2020.

Additional Reporting Requirements for Agency Annual No FEAR Report

10. Posting No FEAR Statistical Data

A hyperlink to USDA's No FEAR page reflecting the Agency's quarterly complaint data is available on the FSIS public website home page at

<https://www.fsis.usda.gov/wps/portal/fsis/home>, as well as the FSIS Civil Rights page at <https://www.fsis.usda.gov/wps/portal/informational/aboutfsis/civil-rights>.

11. No FEAR Training of Agency Employees

The Agency provides mandatory No FEAR training as part of the initial onboarding process for new hires. The Agency provides bi-annual mandatory refresher No FEAR training through AgLearn and by distributing paper copies to employees without AgLearn accounts. The Agency's Civil Rights Staff reviews FSIS No FEAR data in AgLearn and provides notification to employees who have not taken the No FEAR training each year. In addition, the Agency routinely notifies the workforce about the requirement for No FEAR training through the FSIS weekly newsletter (*Wednesday Newsline*).

12. No FEAR Notice

A hyperlink to USDA's No FEAR page and the No FEAR Act Notice is available at <https://www.fsis.usda.gov/wps/portal/fsis/home>; on the FSIS Civil Rights page at <https://www.fsis.usda.gov/wps/portal/informational/aboutfsis/civil-rights>; and through the FSIS weekly newsletter (*Wednesday Newsline*).