

**Food Safety and Inspection Service  
FY 2023 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 U.S. Department of Agriculture (USDA), Office of the General Counsel (OGC) submits the response on behalf of the Agency.

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

The USDA, OGC 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:**

One management official was issued a Letter of Reprimand resulting from a finding of discrimination in a USDA Final Agency Decision.

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

FSIS Directive 4735.3 on Employee Responsibilities and Conduct is found at <https://www.fsis.usda.gov/wps/wcm/connect/98f86e3d-4c63-403a-ba33-650d9c79f1f2/4735.3.pdf?MOD=AJPERES>. Also applicable is Departmental Regulation 4300-010 on Civil Rights Accountability Policy and Procedures.

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

- **Alternative Dispute Resolution (ADR) offers:** During FY 2023, the Agency offered ADR to each Aggrieved Party (AP) at the informal stage of the Equal Employment Opportunity (EEO) complaint process in an attempt at early resolution. At the formal stage, ADR was typically offered to the Complainant after completion of the EEO investigation when more information about the case was available to all parties and where the strengths or weaknesses of the case may become evident. ADR was not offered in cases where a Complainant elected a hearing before the Equal Employment Opportunity Commission (EEOC) so as not to conflict with preliminary case processing and offers of ADR in the hearing stage. The Agency will continue to offer ADR in the same manner at the informal and formal stages of the EEO process during FY 2024.
- **Anti-Harassment Program** - The Agency developed a process to ensure that all complaints where allegations of harassment are raised were reviewed by an office separate and apart from the Civil Rights Office to determine if misconduct occurred.

Once an AP alleges that they were subjected to harassment, the Civil Rights Staff forwards the complaint to the Agency's newly established Anti-Harassment Staff. Upon referral, the Anti-Harassment Staff reviews the complaint and determines the appropriate action (i.e., inquiry, investigation, etc.) to take and ensure that action is taken. The Agency will continue this process during FY 2024.

- **EEO and Civil Rights (CR) training courses** – EEO/CR training is an integral part of the Agency's mandatory annual training program for all employees. Customized EEO/CR training is also developed and delivered where a need is identified, e.g., training was ordered as a result of findings of discrimination; training was requested by a work unit.
- **EEO/CR information on the Agency's public internet** - The Agency's civil rights web page is frequently updated and expanded with relevant information pertaining to current EEO/CR policies, information on the EEO complaint process, ADR, required postings, and other relevant information.
- **Annual Meetings with Senior Leaders** – The Civil Rights Director meets with all senior management officials at least annually to brief them on trends in EEO complaint activity and affirmative employment related to their programs, as well as on other EEO/CR topics.
- **Entellitrak (ETK) EEO complaints database** - FSIS uses this database to process, track, report, and assess trends in EEO complaint activity from initial contact to final closure.

### **Comparative Analysis of Agency FY 2022 and FY 2023 No FEAR Act data**

#### **1. Number of Formal Complaints Filed**

##### **Trend Examination:**

The number of formal complaints filed in FY 2023 (41) was the same the number of complaints filed in FY 2022 (41).

##### **Causal Analysis:**

The stability in the formal complaint inventory may be attributed to any or all of the following activities taken by the Agency in FY 2023:

- **EEO/CR Training** – The following EEO/CR trainings were offered to employees, supervisors, and managers during FY 2023: Understanding and Interpreting Unconscious Bias; USDA Section 508 – What it is and Why it's Important; No FEAR Act; USDA Whistle Blowers Rights and Remedies; Preventing Retaliation; Workplace Violence; Conflict Management; Conflict in the Establishment; Whistleblower Retaliation and other Prohibited Personnel Practices; Workplace Violence Closure Process; Resolving Official Refresher; Intersection of Social Media and Civil Rights

(Hiring and Inappropriate posting); A Manager's Guide to the EEO Process, and Harassment, Workplace Violence, and Hostile Work Environment Claims. Other ongoing training and educational efforts included a series of Agency-wide special emphasis programs and EEO/CR articles in Agency newsletters.

The Agency hosted its third *Virtual Diversity and Inclusion Training Conference*; the event was available to all employees. Topics included: EEO training, EEO case law updates, emotional intelligence, and cultural competence. An average of 500 Agency employees from across the country participated during the 3-day event.

- **Issuance of EEO/CR policies** – The FSIS Administrator issued three separate EEO/CR policies during FY 2023: Equal Employment Opportunity, Civil Rights and Anti-Harassment. These policies emphasized the Agency's commitment to a diverse, equitable, and discrimination/harassment-free work environment. The policies also placed employees on notice of potential disciplinary consequences for engaging in discriminatory, harassing, or retaliatory conduct.
- **Marketing use of ADR services to address workplace disputes:** The Agency has a vigorous ADR program that assists managers, supervisors, and employees in addressing and resolving workplace disputes. The program offers a variety of services for both EEO and non-EEO matters, including training, facilitations, individual conflict coaching, early intervention services for individuals and teams, and mediations. These services are communicated to the workforce by brochures, the Agency website, training, and word-of-mouth. During FY 2023, the Agency published an article on the benefits of the ADR program; the article was distributed in the Agency's newsletter, Food for Thought. ADR is routinely included in training course curricula given to new and experienced supervisors to help proactively address workplace conflict. ADR training is also provided to managers, supervisors, and employees upon request. During FY 2023, ADR efforts resulted in the resolution of 68% of EEO disputes.

**Title VII employment compliance reviews:** The Agency routinely conducts Title VII compliance reviews of its work units to monitor the implementation and execution of EEO policies and practices necessary to maintain model EEO programs. These reviews proactively assist managers and supervisors in identifying potential violations and/or deficiencies in EEO programs, as well as identifying workplace climate concerns that may prevent potential EEO complaints. Among other things, the reviews involve examining EEO complaint activity and assessing the work unit's EEO program. At the conclusion of the review, findings and recommendations are issued. The Agency also monitors the implementation recommendations. The Agency conducted four Title VII compliance reviews during FY 2023.

- **Accountability assessments on actions of responsible officials engaging in or contributing to discriminatory practices:** In accordance with a USDA regulation on civil rights accountability, the Agency routinely conducts assessments into the actions of officials identified in EEO complaints where findings of discrimination were issued or where settlement agreements were reached to avoid potential findings of liability.

Employees found to have engaged in discriminatory actions are held accountable by a range of corrective or adverse actions.

- **Monthly Town Hall Meetings Hosted by Agency Leadership** – Throughout FY 2023, Agency leadership hosted monthly all-employee town hall meetings. During these virtual meetings, information was shared relating to various topics including recruitment and retention, leave, flexible work arrangements, and professional development. Hosting these monthly meetings gave employees the opportunity to receive information directly from leadership and be heard by leadership. This may have contributed to a workplace where employees felt heard and valued and prevented an increase in the Agency's formal EEO complaint inventory.
- **Remote work:** In FY 2023, a large number of non-frontline employees were able to telework or work remotely, which either eliminated or greatly reduced employee presence in an office setting. Remote work arrangements may have assisted in preventing complaints from being filed.

### **Knowledge Gained:**

Supervisors and managers who participated in training gained increased knowledge about discrimination laws and potential Agency missteps that can generate complaints. On-going training helps supervisors ensure work environments remain free from disparate actions and harassing behaviors that result in complaints.

The Agency gained insight into its workforce climate through four Title VII compliance reviews conducted in FY 2023. Review findings were provided to appropriate management officials, along with recommendations to address areas of concern. The information facilitated management awareness of issues potentially contributing to EEO complaints and enabled them to proactively address matters to improve their EEO programs.

Transparent and ongoing communication between Agency leadership and the workforce may have assisted in improving employee morale, work-life balance, and reduced the number of interpersonal interactions that can result in conflict. When employees recognize that their feedback is solicited, heard, and, when possible, acted upon by management, there may be fewer instances where they believe discriminatory or retaliatory intent is a root cause of their grievement.

### **Actions Taken or Planned:**

The FSIS Administrator issued three EEO/CR policies during FY 2023. These policies reinforced the Agency's commitment to a diverse, equitable, discrimination and harassment-free work environment.

In FY 2023, the Agency ensured that the workforce completed mandatory training on Understanding and Interpreting Unconscious Bias; USDA Section 508 – What it is and Why it's Important; and No FEAR Act. A variety of other EEO/CR trainings were also delivered to multiple supervisors, managers, and work units within the Agency. For FY 2024, the

Agency plans to issue mandatory training on FSIS-Diversity, Equity, and Inclusion: R.E.S.P.E.C.T. in the Workplace.

As noted previously, the Agency hosted a third Virtual Diversity and Inclusion Training Conference; the event was available to all employees. Topics included: EEO training, EEO case law updates, emotional intelligence, and cultural competence. An average of 500 Agency employees from across the country participated over the course of the 3-day event. A similar conference is planned for FY 2024.

## **2. Number of Bases Alleged in Complaints**

### **Trend Examination:**

The top three bases and their rank order remained consistent between fiscal years.

#### **FY 2023**

1. Reprisal (19)
2. Disability (17)
3. Race (16)

#### **FY 2022**

1. Reprisal (24)
2. Disability (18)
3. Race (15)

Reprisal was alleged in 19 complaints in FY 2023 compared to 24 complaints in FY 2022, a net decrease of 20.8%. Complaints citing the basis of disability decreased by one complaint, representing a 5.5% net decrease. The basis of race saw a slight increase of one complaint filed between fiscal years, representing a net increase of 6.7 %.

### **Causal Analysis:**

The 21% net decrease in cases citing reprisal as a basis may be the result of more in-person training for supervisors and employees where prevention of retaliation was discussed. Additionally, EEO Counselors' explanation to APs regarding what constituted EEO retaliation may have led to less complaints including retaliation as a basis. The Agency has also taken several steps to address conflict, which may be eliminating some retaliatory behaviors among employees. These efforts include engaging employees in conflict resolution, team building, and early intervention sessions. Through traditional counseling and ADR occurring during the informal EEO process, the Agency also emphasizes identifying root causes of conflict, improving communication between the parties, and working to reach resolution. Lastly, annual EEO/CR training and issuance of policy statements that address reprisal also keep employees apprised of current Agency policies and consequences for violating the policies. The decrease in cases citing disability may be attributed to the wealth of reasonable accommodation training delivered to employees in recent years by both USDA and FSIS.

### **Knowledge Gained:**

The description of knowledge gained under Section 1 is similarly relevant under this section. With regard to the decrease in allegations of reprisal, past agency EEO/CR training efforts and efforts of

EEO Counselors have increased employee knowledge of what constitutes reprisal in an EEO context.

**Actions Taken or Planned:**

During FY 2023, the Agency implemented the “planned training actions” reported in the FY 2022 No FEAR Report, wherein employees completed Understanding and Interpreting Unconscious Bias training-

In FY 2024, all FSIS employees are required to complete FSIS-Diversity, Equity, and Inclusion: R.E.S.P.E.C.T. in the Workplace training by August 2024. In addition, the Agency will ensure all USDA-issued EEO/CR training is completed by employees.

**3. Number of Issues Alleged in Complaints**

**Trend Examination:**

The claims of disciplinary actions and non-sexual harassment remained the two most frequently cited issues across FYs 2022 and 2023. Disciplinary/adverse action was the number one cited claim, with a net increase of 190%; this was a result of the Agency adding termination actions to this category. The remaining two most frequently cited claims in FY 2023 were time and attendance and terms/conditions of employment.

**FY 2023**

**FY 2022**

- |                                       |  |
|---------------------------------------|--|
| 1. Disciplinary/Adverse Actions (29)  | 1. Non-sexual Harassment (13)          |
| 2. Non-sexual Harassment (22)         | 2. Disciplinary Actions (12)           |
| 3. Time and Attendance (10)           | 3. Terms/Conditions of Employment (10) |
| 4. Terms/Conditions of Employment (8) | 4. Reasonable Accommodation (5)        |

**Causal Analysis:**

Corrective, disciplinary, and adverse actions are frequently raised as issues in discrimination claims; as such, it is not surprising these actions rose to the number one ranking in FY 2023. Complainants seek ways to mitigate or undo these types of actions or recover harm they perceive as discriminatory, unfair, or unjustified, and the EEO complaint process is a mechanism to raise and pursue those objections.

Harassment covers a wide range of offensive behaviors, making it consistently one of the top-cited issues year after year. Complainants frequently cite supervisory decisions they disagree with or supervisory attempts to caution or correct performance and conduct deficiencies as unwelcome harassment because the results are annoying, embarrassing, or upsetting. Conflict with coworkers is also often identified as harassment.

The ranking of non-sexual harassment among the top cited claims is consistent with trends reported at both the Department and Federal levels. However, in FSIS, the nature of the work may contribute to more instances of allegations of non-sexual harassment. The Agency’s

mission-critical work is performed in private establishments, where both industry and federal employees are present. This presents an additional opportunity to experience or witness inappropriate conduct, which some Agency employees may find offensive and lead to initiating of an EEO complaint. In addition, disagreements between employees and their supervisors for various reasons (e.g., being disciplined, denied leave, etc.) may also lead to EEO complaints.

The increase in time and attendance claims may be attributed to a trend in supervisory requests for medical documentation when employee leave abuse is suspected. Supervisors document employee's absences as Absent Without Leave (AWOL) until acceptable documentation is provided.

**Knowledge Gained:**

Training and the issuance of EEO/CR policies may have reinforced workforce knowledge of those EEO/CR topics. As a result, there was not an increase in the number of complaints that were filed from the previous fiscal year. The interactive nature of the recurring all-employee town hall meetings may also have improved employee morale by providing employees access to Agency leadership and the opportunity to provide feedback on Agency actions and initiatives.

**Actions Taken or Planned:**

In FY 2023, the Agency issued EEO/CR policies to the workforce; EEO/CR policies will also be issued by the Agency during FY 2024. During FY 2023, the Agency also conducted four employment compliance reviews to identify workplace issues or trends requiring correction; employment reviews will also be conducted during FY 2024. Agency leadership actively engaged employees during interactive all-employee town hall meetings during FY 2023; these meetings will continue during FY 2024.

**4. Number of Individual Filers and Repeat Filers**

**Trend Examination:**

Between FY 2022 and FY 2023 there was a 2.5% decrease in the number of individual filers (from 40 individuals to 39). There was a 100% increase in the number of repeat filers (from one individual in FY 2022 to two in FY 2023).

**Causal Analysis:**

The net change in individual and repeat complaint filers between fiscal years is associated with the same causal factors described in the preceding section pertaining to total complaints filed.

**Knowledge Gained:**

The knowledge gained as described under the previous section for total number of complaints is similarly applicable here.

### **Actions Taken or Planned:**

The actions described in the previous section of this report are similarly applicable here.

## **5. Findings of Discrimination**

### **Trend Examination:**

There were five findings of discrimination in FY 2023. Two of the findings were related to non-selection, two were related to failure to accommodate a disability, and one was related to sexual harassment.

### **Causal Analysis:**

The two findings pertaining to non-selection demonstrated inconsistency in the Agency's selection process, specifically relating to vetting candidates. The findings for failure to accommodate highlighted the Agency's need to ensure that supervisors and managers were engaging in the interactive process in a timely manner. The finding relating to sexual harassment highlighted the Agency's delay in taking prompt and effective corrective action in response to an allegation of sexual harassment.

### **Knowledge Gained:**

The knowledge gained with respect to the findings relating to non-selection was that the hiring managers in the respective work unit where the discrimination occurred needed to be educated regarding the Agency's selection process so that the issue would not recur. With respect to the cases relating to failure to accommodate, the knowledge gained was that supervisors and managers within the respective work unit should receive reasonable accommodations training. With respect to the case relating to sexual harassment, the knowledge gained was that the individuals involved should receive sexual harassment training. In addition to training, it was necessary to conduct an accountability assessment in each case to determine if disciplinary or adverse action was appropriate.

### **Actions Taken or Planned:**

Appropriate training on topics applicable to the respective findings of discrimination was provided to all responding management officials directly involved in the cases, as well as to all selecting officials and/or supervisory officials, as applicable, in the respective work units. In addition, all five cases were assessed by the Agency and by USDA's Office of Human Resource Management for accountability in accordance with the Departmental Regulation on civil rights accountability; the assessment resulted in one management official being issued a letter of reprimand. In FY 2023, the Agency re-issued its EEO/CR policy statements to re-emphasize those policies and disseminated USDA's Departmental Regulation on anti-harassment policy and procedures.



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

**Investigation:** There was an increase of 4 days (a 2.7% increase) in the amount of time it took USDA to complete EEO investigations.

FY 2023 – 152 days    FY 2022 – 148 days

**Final Agency Action with Hearing:** There was a decrease of 2 days (a 13.3% decrease) in the amount of time it took USDA to issue final orders from an EEOC Administrative Judge’s decision.

FY 2023 – 13 days    FY 2022 – 15 days

**Final Agency Action without Hearing:** There was an increase of 87 days (a 140.3% increase) in the amount of time it took USDA to issue merit Final Agency Decisions.

FY 2023 – 149 days                  FY 2022 – 62 days

**Dismissals:** There was no change in the number of complaints dismissed in FY 2023 (3 cases); however, there was an increase of 41 days (a 100% increase) in the amount of time it took USDA to issue procedural dismissals.

FY 2023 – 82 days    FY 2022 – 41 days

## 7. Pending Complaints Filed in Previous Fiscal Years

**Investigations:** There was 1 more case pending in FY 2023 than was pending in the previous year, representing a 6% increase: FY 2023 – 18    FY 2022 – 17

**Hearings:** There were 2 fewer cases pending in FY 2023 than were pending the previous year, representing an 18% decrease: FY 2023 – 9    FY 2022 – 11

**Final Agency Actions:** There were no cases pending at the end of FY 2023 representing a 100% decrease from the previous year: FY 2023 – 0    FY 2022 – 3

**Appeals:** There was a decrease of 7 pending appeals among fiscal years, representing a 36.8% decrease: FY 2023 – 12    FY 2022 – 19

## 8. Total Number of Pending Complaints Where Investigations Exceed Required Timeframes

No cases exceeded the 180-day regulatory timeframe for completion of the investigation. This represents a 100% decrease from FY 2022, where one case was untimely completed.

## **Additional Reporting Requirements for Agency Annual No FEAR Report**

### **9. Posting No FEAR Statistical Data**

The Agency's quarterly complaint data is publicly available in two locations on the FSIS internet site: (1) on the FSIS home page at <https://www.fsis.usda.gov/wps/portal/fsis/home> as a footer hyperlink to USDA's No FEAR page; and (2) on the FSIS Civil Rights page at <https://www.fsis.usda.gov/wps/portal/informational/aboutfsis/civil-rights>.

### **10. No FEAR Training of Agency Employees**

The Agency ensures all new employees receive No FEAR training as part of the initial onboarding process and then a bi-annual refresher through AgLearn thereafter. Employees are notified of the requirement to complete training through the Agency's newsletter, through their supervisors, and through emails issued from AgLearn.

### **11. 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> and on the FSIS Civil Rights page at <https://www.fsis.usda.gov/wps/portal/informational/aboutfsis/civil-rights>.