



United States Department of Agriculture

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Food Safety and
Inspection Service

Office of the
Administrator
Civil Rights Staff
4700 River Road
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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 2021 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) 2021 Annual Report.

The report reflects from FY 2020 to FY 2021 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.

cc: Bridget.Peters@usda.gov
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Attachment

**Food Safety and Inspection Service
FY 2021 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 submits the response on behalf of the Food Safety and Inspection Service (FSIS).

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

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:

- **Alternative Dispute Resolution (ADR) offer to Complainants and Aggrieved Parties** – ADR is offered to 100 percent of all Aggrieved Parties at the informal stage of the complaint process. Complainants are offered ADR at the formal stage of the complaint process, on a case-by-case basis, usually when a Complainant requests a Final Agency Decision on the merits of the case from USDA as opposed to the Equal Employment Opportunity Commission (EEOC).
- **Equal Employment Opportunity and Civil Rights (EEO/CR) Training Initiatives** – EEO/CR training is an integral part of the Agency's training programs, including FSIS' New Supervisor and Experienced Supervisor training Programs. The Agency also develops and issues annual EEO/CR training that all employees, supervisors, and managers are required to complete. Customized EEO/CR training is also developed and delivered upon request.
- **EEO/CR information on the Agency's internet and intranet** - The Agency's web pages were updated and expanded with relevant information pertaining to

EEO/CR policies, processing EEO complaints, ADR, and a Special Emphasis Program (SEP) directory.

- **Annual Meetings with Senior Leaders** – On an annual basis, the Civil Rights Director meets with the Agency’s senior leaders to brief them on, among other things, trends in informal and formal complaint activity.
- **Civil Rights Enterprise System (CRES)** - FSIS uses this system to process, track, monitor, report, and assess trends in EEO complaint activity from initiation to closure.
- **Virtual FSIS Diversity and Inclusion Conference** – During FY 2021, FSIS hosted the first of its kind Virtual Diversity and Inclusion Conference (VDIC). The VDIC was an event that provided training to over 700 Agency employees throughout the country. Employees received training on various topics such as diversity and inclusion, employee engagement, conflict management, and health and wellness. The VDIC was also an excellent way for Agency employees to engage virtually while being provided with valuable training and presentations that aided in dealing with day-to-day issues that arise in the workplace. It was also in keeping with the President’s Executive Order (EO) 14035, *Diversity, Equity, Inclusion and Accessibility (DEIA) in the Federal Workforce* as well as promoted USDA’s and FSIS’ DEIA initiatives. The Agency plans to host a similar conference during FY 2022.
- **MD-715 Work Group** – During FY 2021, FSIS established a FSIS-wide workgroup to assist in identifying barriers in employment practices that lead to underrepresentation within the various protected groups. Once barriers are identified, the workgroup will develop an action plan that will assist in addressing areas of underrepresentation. The actions developed by the workgroup will also be included as part of the Agency’s FY 2021 MD-715 report.

Comparative Analysis of the Agency’s FY 2020 and FY 2021 No FEAR Act Data

1. Number of Formal Complaints Filed

Trend Examination:

There was a five percent decrease in the number of formal complaints filed in Fiscal Year (FY) 2021 (55) compared to those filed in FY 2020 (58).

Causal Analysis:

The decrease in the formal complaint inventory could be attributed to the following actions or activities undertaken by the Agency during FY 2021:

- **Resolution of Informal Complaints** - The Agency’s efforts in the timely processing of complaints resulted in resolution of 61% of informal EEO

complaints, a resolution rate higher than the Department and Federal government. The high level of cases resolved during the informal process prevented 69 complaints progressing to the formal stage of the EEO process.

- **EEO/CR Training** - The Agency issued mandatory training to all employees; ninety-one percent of the employees who completed the training met the EEO competency requirements by demonstrating an overall understanding of the training module. Additionally, the FSIS workforce was required to complete the USDA Reasonable Accommodation (RA) and Personal Assistance Service (PAS) training. Ninety-nine percent of the workforce satisfied this requirement. Other efforts to train and educate the workforce included publishing articles on EEO/CR topics in the Agency's newsletter, hosting Agency-wide Special Emphasis Program (SEP) observances, and delivering EEO/CR webinars to various work units upon request.
- **EEO Advisory Committees** - The Agency currently has 21 established Equal Employment Advisory Committees (EEOAC) in each of the program areas and districts. EEOAC members are routinely provided with EEO and civil rights training, workforce demographic data, updated policies, and other information that they share with their respective constituents. The committees also develop and disseminate newsletters and other civil rights and EEO-related information to their employees on a monthly or quarterly basis. In addition, a Model EEOAC Award was created to recognize the EEOAC that demonstrated excellence in informing and/or educating their employees and/or the FSIS workforce on a whole, with respect to EEO, CR, and diversity and inclusion.
- **Special Emphasis Program** - With the assistance of the Agency's seven Special Emphasis Program Managers (SEPM), FSIS hosted four SEP observances during FY 2021. For each of these programs, FSIS collaborated with USDA's Office of Communications to record, close caption, and archive the events so that they would be available to employees who were not able to attend in real time. Efforts to deliver these programs to employees supported the diversity and inclusion goals of the Administration and EO 14035.
- **Issuance of EEO/CR policies to the workforce** – During FY 2021, the Agency issued EEO/CR policies to the workforce. The policies both demonstrated the Administrator's commitment to a discrimination-free and harassment-free work environment and also demonstrated the consequences for engaging in discriminatory or harassing behavior.
- **Marketing of ADR to address workplace disputes at the lowest level possible** – The Agency has a robust ADR program that assists managers, supervisors, and employees in addressing and resolving workplace disputes. FSIS' ADR program offers a variety of services, including training, facilitations, team conflict resolutions, and mediations. These services are publicized through the dissemination of ADR information, such as brochures, to the workforce; however, the majority of customers are familiar with the Agency's ADR program through

word-of-mouth. ADR training is provided to all new supervisors to assist them with addressing conflict in the workplace. Similarly, ad-hoc ADR training is provided to managers, supervisors, and employees upon request. During FY 2021, ADR resulted in the resolution of 28 non-EEO disputes and 61 percent of EEO disputes. During FY 2022, the Agency will continue to market the availability of the ADR program as a means of resolving disputes.

- **Monthly Town Hall Meetings hosted by Agency Leadership** – Agency leadership hosted interactive monthly all-employee town hall meetings at three separate times of the day in an effort to communicate important information to the workforce, including updates on the Covid pandemic and its impact on Agency operations. Update portions of the calls are recorded and posted for employees who can't join. These sessions kept the workforce informed on the latest policy guidance and public health recommendations from the CDC, OSHA, and the Department and Agency for personal protective gear, social distancing, and other protective measures in the workplace. The sessions also provided employees with timely guidance on the use of available leave categories and the use of the RA process. This continual contact from top Agency leadership and day-to-day instructions from frontline supervisors provided updated information and guidance that helped boost morale for inspection personnel who were required to report to work daily during a nationwide pandemic. Clear and ongoing 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 conducts Title VII compliance reviews of its work units in order to monitor its EEO policies and practices. These reviews assist in identifying potential violations and/or deficiencies in EEO programs as well as workplace climate concerns, thereby preventing potential EEO complaints. During the reviews, the Agency analyzed the work unit's workforce demographic data; assessed internal procedures and practices and EEO complaint activity for a three-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 and displayed appropriate EEO posters and materials. Findings and recommendations were issued, and action plans were developed to improve each work unit's EEO program. During FY 2022, the Agency will monitor the work units that were reviewed during FY 2021 and follow up regarding corrective actions. The Agency will also conduct four Title VII compliance reviews during FY 2022.
- **Holding supervisors and managers accountable for engaging in discriminatory practices to deter such conduct in the future** – The Agency conducts accountability assessments whenever there is a finding of discrimination or where an EEO complaint is resolved through a settlement agreement. Where appropriate, management officials who are found to have engaged in discriminatory practices are held accountable through training as well as 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. During FY 2022, the Agency will continue to conduct accountability assessments on cases that result in findings of discrimination or settlement agreements and take action as appropriate.

Knowledge Gained:

Supervisors and managers who participated in 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 five Title VII compliance reviews that were conducted during FY 2021. Information that was derived from the reviews was provided to the appropriate management officials, along with recommendations to address areas of concerns. The information that was provided will enable them to be aware of and address issues that lead to EEO complaints within their work units and better manage their EEO programs.

Transparent, effective, and consistent communication to the workforce may have aided in improving employee morale and confidence in the Agency's mandate to provide ongoing 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 have contributed to fewer complaints being filed in FY 2021.

Action Taken or Planned:

The Agency will issue EEO/CR policies from the Administrator during FY 2022. The policies will reinforce the Administrator's commitment to a discrimination-free and harassment-free work environment.

In FY 2021, the Agency ensured that the workforce completed RA and PAS training that was issued by USDA. This USDA training focused on RA and PAS-related laws and policies; timeframes associated with procedures for requesting an RA and/or PAS; and RA/PAS Webpage and Toolkit usage. In FY 2022, the Agency will again issue RA training to the workforce; the training will focus on processes and procedures at the Agency level. In addition, the Agency will ensure that EEO/CR training that is issued by USDA's Office of the Assistant Secretary for Civil Rights is completed by FSIS employees.

Additionally, the Agency plans to develop and deliver Diversity and Inclusion Training to the workforce. The training will equip managers and supervisors with tips to ensure that they consider diversity at the onset when they are attempting to fill vacant positions. It will provide information regarding recruiting from a diverse pool of sources, tips on interviewing candidates to avoid biases, as well as other information regarding the

recruitment and hiring process. All FSIS supervisors and managers will be required to complete the training by September 30, 2022.

The Agency will host a Virtual Diversity and Inclusion Conference that will focus on topics such as conflict management and employee engagement. The virtual platform will allow employees from throughout the Agency and the country to participate.

To address staffing shortages that may have been a contributing factor to employee dissatisfaction and EEO complaint filings, in FY 2021, the Agency used 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. FSIS Office of Field Operations, in-plant Veterinary Medical Officers, Food Inspectors and Consumer Safety Inspectors are offered incentives, recruitment and retention flexibilities. In some locations FSIS offers a recruitment bonus and may pay some of the moving expenses to their first duty station. In some locations, transit subsidies are offered for those who use public transportation to and from work. 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 as an in-plant veterinarian. The objective of the monetary incentive program is to retain qualified personnel in mission-critical occupations that have experienced high turnover and vacancies. FSIS is a qualifying employer of the Public Service Loan Forgiveness Program; the Agency also actively supports and promotes family- friendly workplace alternatives such as less than full time work schedules in some locations, and the Employee Assistance Program to assist employees with family and work issues. To the extent possible, the Agency will continue using these hiring and retention initiatives during FY 2022.

2. Number of Individual Filers and Number of Repeat Filers

Trend Examination:

In FY 2021, there were 50 individual complainants, two of whom were repeat filers. In comparison, in FY 2020 there were 53 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 2021. 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 harassment (non-sexual), one from the same responding official; 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 that some individuals used the EEO process to raise allegations, air grievances, seek information, or raise objections to their perceptions of being wronged, harmed, ignored, or treated differently in the workplace.

Action Taken or Planned:

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 2021 and FY 2020. Although disability was tied with age for the fourth top basis in FY 2020, there was a 29.4 percent increase in FY 2021, making it the top basis. Reprisal, race, sex, and age were the other top bases noted in FY 2021.

FY 2021

1. Disability (22)
2. Reprisal (20)
3. Race (19)
4. Sex and Age (14)

FY 2020

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

Reprisal was alleged in 20 complaints in FY 2021 and 26 complaints in FY 2020, a net decrease of 23 percent. Complaints citing race decreased by 9.5 percent, from 21 in FY 2020 to 19 in FY 2021. Complaints citing sex had a net decrease of 30 percent from FY 2020 (20 complaints) to FY 2021 (14 complaints). Age was the fourth most frequently cited basis in both fiscal years with a net decrease of 17.6 percent from 17 complaints in FY 2020 to 14 complaints in FY 2021.

Causal Analysis:

Except for disability, the Agency experienced a decrease in complaints on all protected bases during FY 2021 compared to FY 2020, with the most significant decreases being in the bases of sex and reprisal. 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 that employees, supervisors, and managers received mandatory annual EEO/CR training to keep them apprised of current EEO/CR regulations and policies.

Knowledge Gained:

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

Action Taken or Planned:

During FY 2021, the Agency implemented all planned actions reported in the FY 2020 No FEAR Report. Specifically, the workforce was issued EEO/CR and RA/PAS training and the majority of employees completed the training. Additional EEO/CR training was provided to employees, managers, and supervisors. These actions collectively assisted the Agency’s efforts towards achieving and maintaining a discrimination-free workplace.

In FY 2022, the Agency will again issue RA training to the workforce; the training will focus on processes and procedures at the Agency level. In addition, the Agency will ensure that EEO/CR training that is issued by USDA’s Office of the Assistant Secretary for Civil Rights is completed by employees.

4. Number of Issues Alleged in Complaints

Trend Examination:

In FY 2021, the ranking of the top two claims remained unchanged from FY 2020. The top claims were harassment (non-sexual), disciplinary/adverse actions, reasonable accommodations, and promotion/non-selection.

<u>FY 2021</u>	<u>FY 2020</u>
1. Non-sexual Harassment (24)	1. Non-sexual Harassment (35)
2. Disciplinary Actions (14)	2. Disciplinary Actions (19)
3. Reasonable Accommodation (10)	3. Time and Attendance (9)
4. Promotion/Non-Selection (8)	4. Terms/Conditions of Employment (8)

There was a 31 percent net decrease in the number of complaints citing non-sexual harassment, from 35 in FY 2020 to 24 in FY 2021. The number of complaints citing disciplinary/adverse actions decreased by 26 percent, from 19 in FY 2020 to 14 in FY 2021. RA claims were cited in 10 complaints in FY 2021; this was a net increase of 100 percent from FY 2020 (5 complaints). Claims classified as promotion/non-selection had a net increase of 14 percent, from FY 2020 (7 complaints) to FY 2021 (8 complaints).

Causal Analysis:

From FY 2020 to FY 2021, there was no change in the ranking of the top two 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 decrease in claims pertaining to discipline/adverse action could have been influenced by the fact that the Agency had more flexibility in FY 2021 to settle informal complaints associated with disciplinary actions. Prior to FY 2021, the Agency was prohibited from entering into settlement agreements that altered or rescinded personnel actions in employees' Official Personnel Folder (OPF), except in cases where an error occurred. This prohibition impacted the Agency's ability to settle informal complaints involving disciplinary/adverse actions, neutral references, performance appraisals, and other personnel related actions. However, in FY 2021, the Agency was able to resolve some complaints by negotiating the timeframe that disciplinary actions remain in employees' OPF, preventing informal EEO cases from progressing into a formal complaint.

Knowledge Gained:

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

Action Taken or Planned:

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

6. Findings of Discrimination

Trend Examination:

During FY 2021, the Agency was found liable of discriminatory practices in two instances; both findings were the result of a Final Agency Decision (FAD).

FY 2021

- 1) Failure to accommodate physical disability (disability)
- 2) Sex-based disparate treatment (female)

In FY 2020, there were no findings of discrimination issued by the EEOC, nor any by USDA's Office of the Assistant Secretary for Civil Rights.

The number of findings of discrimination increased from zero in FY 2020 to two in FY 2021.

Causal Analysis:

Because there were only two findings, the Agency was limited in terms of its analysis and its ability to identify underlying trends. However, since there was an overall increase in findings from FY 2020 to FY 2021, the Agency concludes that there may be a lack of understanding among some supervisors and managers of the laws, regulations, and policies pertaining to EEO/CR and reasonable accommodations.

Knowledge Gained:

None.

Action Taken or Planned:

In FY 2021, the workforce was issued EEO/CR and RA/PAS training; the majority of the employees completed this training. As previously indicated, the Agency will issue mandatory EEO/CR training again in FY 2022. This will include training on diversity and inclusion as well as supplemental RA training that will provide RA guidance at the Agency level. In addition, the Agency will continue to focus on its Disability Employment Program by further distributing the RA policy and procedures and by providing additional RA training to managers and supervisors. The Agency will also promote RA training offered by external sources, such as the Office of General Counsel.

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

Investigation: There was 33.3 percent decrease in the average number of days (70 fewer days) USDA took to complete EEO investigations.

FY 2021 – 140 days FY 2020 – 210 days

Final Agency Action with Hearing: There was a 64 percent decrease (16 fewer days) in the average number of days it took USDA to issue final orders.

FY 2021 – 9 days FY 2020 – 25 days

Final Agency Action without Hearing: There was a 13.5 percent increase (5 more days) in the average number of days that USDA took to issue merit Final Agency Decisions.

FY 2021 – 42 days FY 2020 – 37 days

Dismissals: There was a 29 percent increase (seven more days) in the average number of days cases were pending prior to a procedural dismissal.

FY 2021 – 31 days FY 2020 – 24 days

There was an 86 percent decrease in the total number of complaints dismissed in FY 2021 (2 cases) compared to FY 2020 (14 cases).

8. Pending Complaints Filed in Previous Fiscal Years

Investigation: 100 percent decrease (1 fewer case pending); FY 2021 – 0 FY 2020 – 1

Hearing: 25.7 percent decrease (9 fewer cases pending); FY 2021 – 26 FY 2020 – 35

Final Agency Action: 50 percent decrease (2 fewer cases pending)

FY 2021 – 2 FY 2020 – 4

Appeal: 91.4 percent decrease (74 fewer cases pending). FY 2021 – 7 FY 2020 – 81

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 such cases in either FY 2021 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/>, as well as the FSIS Civil Rights page at <https://www.fsis.usda.gov/employees/civil-rights>.

11. No FEAR Training of Agency Employees

The Agency ensures that all new employees receive No FEAR training as part of the initial onboarding process for new hires and biannual refresher No FEAR training through AgLearn thereafter. Employees who are required to complete the training are notified about the requirement through the Agency’s newsletter, through their supervisors, and through reminder messages from the Agency’s AgLearn training system.

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/> and on the FSIS Civil Rights page at <https://www.fsis.usda.gov/employees/civil-rights>.