



DEPARTMENT OF DEFENSE
WASHINGTON HEADQUARTERS SERVICES
1155 DEFENSE PENTAGON
WASHINGTON, DC 20301-1155



JAN 23 2017

MEMORANDUM FOR DEPUTY UNDER SECRETARY OF DEFENSE (PLANS),
OFFICE OF DIVERSITY MANAGEMENT AND EQUAL
OPPORTUNITY

SUBJECT: Fiscal Year 2016 Annual Report Required by the Notification and Federal
Employee Antidiscrimination and Retaliation Act of 2002 (No FEAR Act)
for Washington Headquarters Services (WHS)

Pursuant to Section 203 of the No FEAR Act, enclosed is a copy of the required
data and analysis for the following organizations that receive support from WHS:

Office of the Secretary of Defense
Counterintelligence Field Activity
Dense Advanced Research Projects Agency
Defense Legal Services Agency
Pentagon Force Protection Agency
Defense Security Cooperation Agency
Defense POW/MIA Accounting Agency
Defense Technology Security Administration
Deputy Chief Management Officer
DoD Test Resources Management Center
Office of Economic Adjustment
U.S. Court of Appeals for the Armed Forces
Washington Headquarters Services

As requested, an electronic copy of the enclosed report has been provided to
Mr. Clarence Johnson at clarence.a.johnson20.civ@mail.mil. If you have any questions
concerning this report, please contact Ms. Pamela Sullivan, Director, WHS Office of
Equal Employment Opportunity Programs at (571) 372- 0838 or
pamela.r.sullivan2.civ@mail.mil.

Barbara A. Westgate
Director

Enclosures:
As stated



Washington Headquarters Services
Equal Employment Opportunity Programs

**Notification and Federal Employee
Antidiscrimination and Retaliation Act (NoFEAR)**

Fiscal Year (FY) 2016 Report

Table of Contents

I.	Introduction.....	1
II.	Reporting Requirements	2
III.	Analysis.....	4
	a. Examination of Trends.....	4
	b. Causal Analysis.....	11
	c. Practical Knowledge Gained Through Experience	11
	d. Actions Planned or Taken for Improvement Measures /Conclusion.....	11
	Appendix A.....	13
	Appendix B	15
	Appendix C.....	18

I. INTRODUCTION

Washington Headquarters Services (WHS) was established as a Department of Defense (DoD) Field Activity on October 1, 1977, as part of a DoD headquarters streamlining initiative. WHS personnel contribute to the mission of our Defense customers by managing DoD-wide programs and operations for the Pentagon Reservation and DoD-leased facilities in the National Capital Region. WHS is organizationally aligned under the Deputy Chief Management Office (DCMO) within the Office of the Secretary of Defense (OSD).

The WHS/Office of Equal Employment Opportunity Programs (EEOP) is authorized to employ a team of thirteen personnel (7 Government and 6 contractors) to carry out its mission: one (1) Director; one (1) Program/Complaints and Adjudication Manager; (1) Alternative Dispute Resolution (ADR) Manager; four (4) EEO Specialists; one (1) Program Manager (contractor); one (1) Administrative Assistant (contractor) and four (4) EEO Specialist contractors.

In fiscal year 2016 (FY16), WHS supported a total workforce of 6,519 civilian personnel within OSD, Defense Agencies, and DoD Field Activities serviced by WHS.¹

Washington Headquarters Services timely posted, and prominently displayed, a link to the No FEAR Act data on its main website (www.whs.mil) not later than thirty (30) days after the end of each quarter in FY16. Final year-end data for FY16 can be found at Appendix A.

NOTE: The Washington Headquarters Services (WHS)/Office of Equal Employment Opportunity Programs (EEOP) prepared this report. This report does not contain data for components WHS previously served as those respective components report their own EEO complaint data. Should questions arise, please contact EEOP at 571-372-0832.

¹ Components included in this report include: Office of the Secretary of Defense (OSD); DoD Test Resources Management Center (TRMC); Defense Legal Services Agency (DLSA); Defense Security Cooperation Agency (DSCA); Office of Economic Adjustment (OEA); Pentagon Force Protection Agency (PFPA); U.S. Court of Appeals for the Armed Forces (USCAAF); Defense POW/MIA Accounting Agency (DPAA); Defense Technology Security Administration (DTSA); Defense Advanced Research Projects Agency (DARPA); Deputy Chief Management Officer (DCMO); and Washington Headquarters Services (WHS).

The following data highlights No FEAR Act averages per year for the timeframe FY11 to FY16, and cases that are pending or resolved in FY16.

There were a total of 63 complaints on hand at the beginning of FY16, and a total of 30 new complaints filed during FY16.

- Total complaints filed from previous years pending at the close of FY16: 32
- Average of complaints from previous years pending investigation: 6
- Average of complaints from previous years pending a hearing before the EEOC: 32
- Average of complaints from previous years pending a final agency action: 5

The following cites notable metrics from FY15 to FY16, respectively:

- 3 percent increase in number of complaints filed – 29 to 30
- 7 percent increase on basis of race – 15 to 16
- 13 percent decrease on basis of sex – 15 to 13
- 45 percent increase on basis of reprisal – 11 to 16
- 25 percent increase on basis of age – 12 to 15
- 29 percent decrease on basis of color – 7 to 5
- 43 percent increase on basis of disability – 7 to 10

There was a 21 percent decrease in average investigation processing time – 225 to 174 days; a 21 percent decrease in investigation processing time when hearing requested – 226 to 178 days; and a 27 percent increase in the processing time for final agency actions – 52 to 66 days.

II. REPORTING REQUIREMENTS

a. *The number of cases in Federal court pending or resolved in each fiscal year and arising under each of the respective provisions of the Federal antidiscrimination laws and whistleblower protection laws applicable to them as defined in 5 C.F.R. § 724.102, in which an employee, former federal employee, or application alleged a violation of these laws, separating data by the provision of law involved (5 C.F.R. 724.302(a)(1)) and the status or disposition of such cases (5 C.F.R. 724.302(a)(2)(i)).*

Statute	Cases Opened in FY16	Cases Resolved in FY16		Cases Pending at Close of FY16
		Settled	Other	
Title VII, Civil Rights Act of 1964 42 U.S.C. 2000e-16	29	7	39	46
Age Discrimination in Employment Act 29 U.S.C. 631, 633a	15	2	13	19
Fair Labor Standards Act of 1938 29 U.S.C. 206(d)	0	0	0	0
Section 501 of Rehabilitation Act 29 U.S.C. 791	10	1	10	15

Equal Pay Act 29 U.S.C. 206(d)	0	1	1	0
Whistleblower Protection Act 5 U.S.C. 2302(b)(1)	0	0	0	0

b. *The amount of money required to be reimbursed to the Judgment Fund by the agency for payments as defined in 5 C.F.R. § 724.102 (5 C.F.R. 724.302(a)(2)(ii)), and the amount of reimbursement to the Fund for attorney’s fees where such fees have been separately designated (5 C.F.R. 724.302(a)(2)(iii)), and any adjustment needed or made to the budget of the agency to comply with its Judgment Fund reimbursement obligation(s) incurred (5 C.F.R. 724.302(a)(8)).*

\$ Reimbursed to Judgment Fund	\$ Attributed to Attorneys’ Fees	Adjustment Needed
\$0.00	\$75,892.50	\$0.00

c. *In connection with the cases identified above, the total number of employees in each fiscal year disciplined (reprimand, suspension without pay, reduction in grade or pay, or removal) and the specific nature of the disciplinary actions taken, separated by the provision(s) of law involved (5 C.F.R. 724.302(a)(3)) and the number of employees in each fiscal year disciplined in accordance with any agency policy, regardless of whether or not the matters are in connection to a federal court case (5 C.F.R. 724.302(a)(5)).*

Statute	# of Employees Disciplined	Nature of Disciplinary Action (e.g., reprimand, dismissal, etc.)
Title VII, Civil Rights Act of 1964 42 U.S.C. 2000e-16	0	N/A
Age Discrimination in Employment Act 29 U.S.C. 631, 633a	0	N/A
Fair Labor Standards Act of 1938 29 U.S.C. 206(d)	0	N/A
Section 501 of Rehabilitation Act 29 U.S.C. 791	0	N/A
Equal Pay Act 29 U.S.C. 206(d)	0	N/A
Whistleblower Protection Act 5 U.S.C. 2302(b)(1)	0	N/A
Matters that did <u>NOT</u> result in a federal court case	0	N/A

d. *The final year-end data about discrimination complaints for each fiscal year that was posted in accordance with Equal Employment Opportunity Regulations 29 C.F.R. §§ 1614.701, et seq. (5 C.F.R. 724.302(a)(4)).*

See Appendix A

e. *A detailed description of the agency’s policy for taking disciplinary action against Federal employees for conduct that is inconsistent with Federal Antidiscrimination Laws and Whistleblower Protection Laws or for conduct that constitutes another prohibited personnel practice revealed in connection with agency investigations of alleged violations of these laws (5 C.F.R. 724.302(a)(6)).*

See Appendix B.

f. *The agency’s written plan to train its employees (5 C.F.R. 724.302(a)(9)).*

See Appendix C

III. ANALYSIS

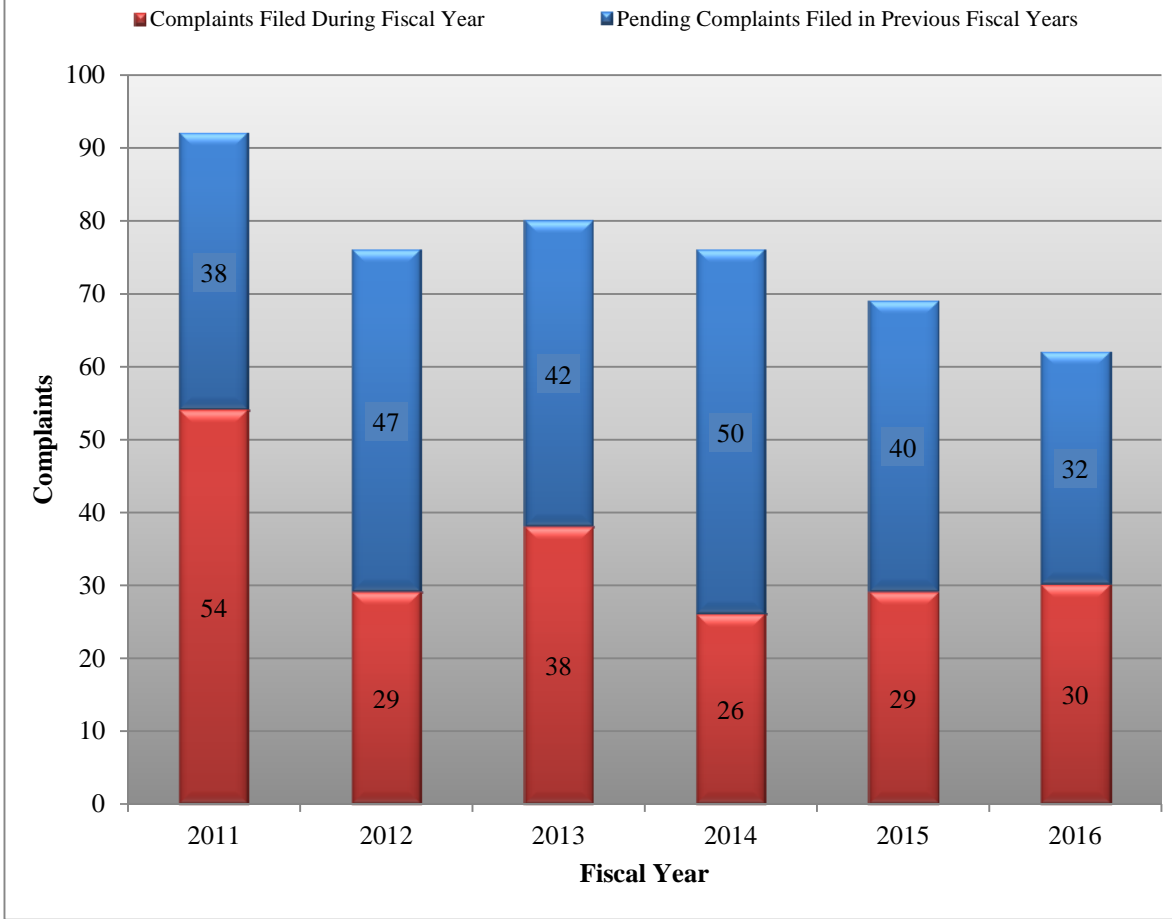
An analysis of the information provided in paragraphs (a)(1) through (6) of this section in conjunction with data provided to the Equal Employment Opportunity Commission in compliance with 29 CFR part 1614 subpart F of the Code of Federal Regulations. Such analysis must include:(i) An examination of trends;(ii) Causal analysis;(iii) Practical knowledge gained through experience; and (iv) Any actions planned or taken to improve complaint or civil rights programs of the agency with the goal of eliminating discrimination and retaliation in the workplace (5 C.F.R. 724.302(a)(7)).

a. Examination of Trends

Twenty-nine individuals filed thirty formal complaints of discrimination during FY16. The number of complaints filed from FY15 to FY16 increased by 3 percent. The total number of pending complaints (carried over from the previous years) decreased by 20 percent compared to FY15.

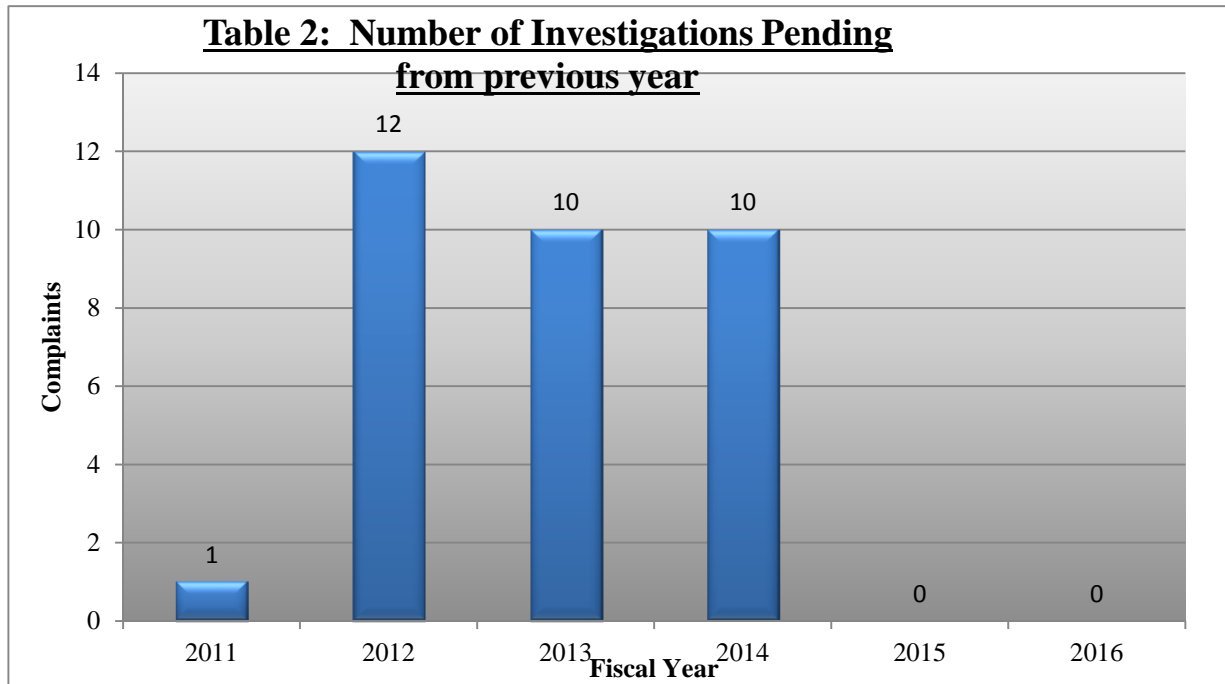
From FY11 to FY16, the average number of formal complaints handled was 76 ranging from 62 in FY16 to 92 in FY11 (see Table 1 below). Complaints that are pending carried over from previous years averaged 42, ranging from 32 in FY16 to 50 in FY14. The average number of new complaints filed is 34, ranging from 26 in FY14 to 54 in FY11.

Table 1: Total Complaints Handled

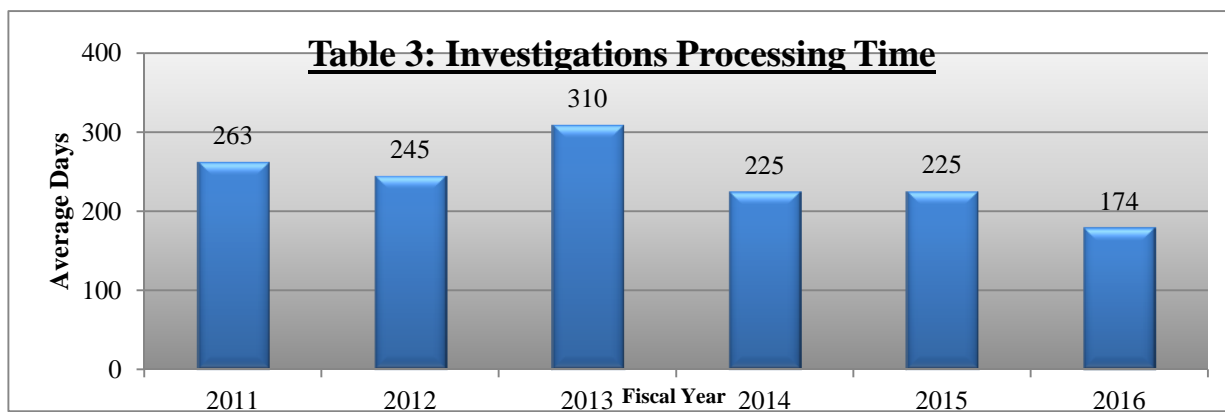


Investigations

From FY11 to FY16, on average, six formal complaints (from previous years) were pending an investigation at the end of the fiscal year.

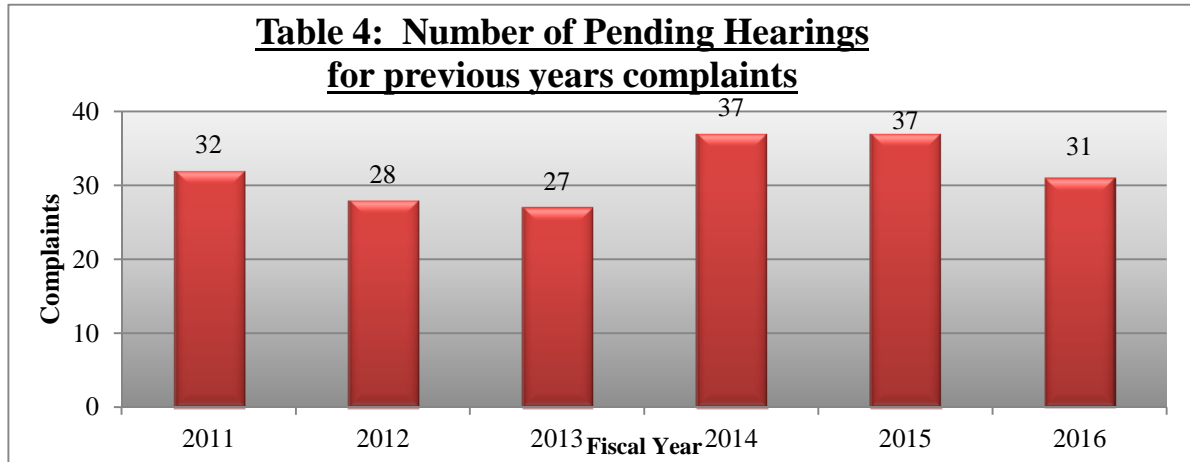


Investigation processing timeframe ranged from 174 days in FY16 to 310 in FY13 (see Table 3 below). In FY16, complaints processing time decreased by 23 percent as compared to FY15, from 225 days to 174 days.

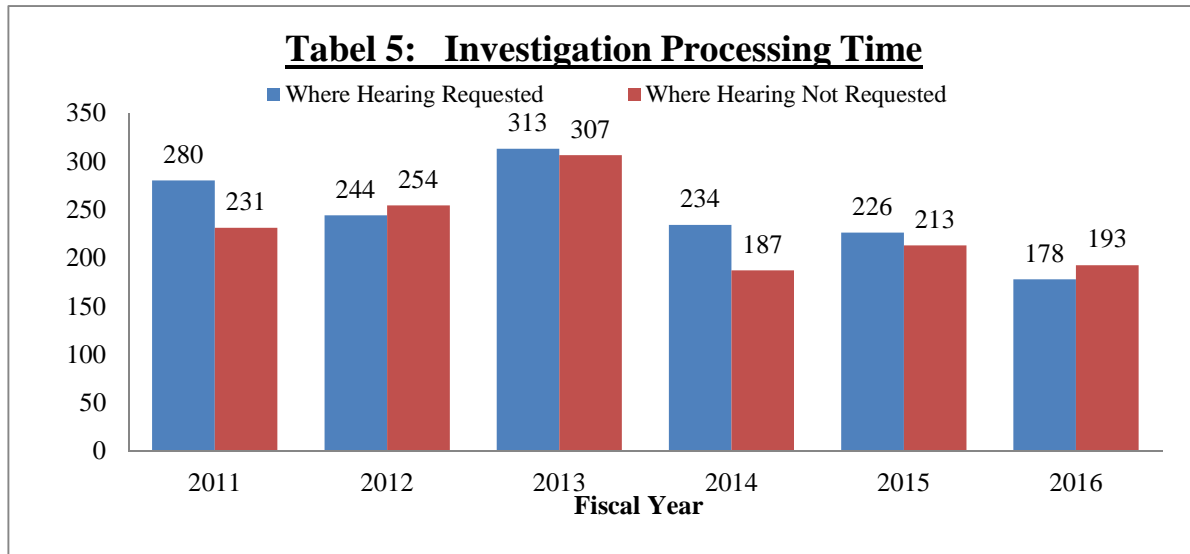


Hearings

From FY11 to FY16, there was an average of 32 formal complaints from previous years pending a hearing before the Equal Employment Opportunity Commission (EEOC). The number of complaints pending hearings ranged from 27 in FY13 to 37 in FY15 (See chart 4 below). There was a 16 percent decrease in complaints pending a hearing from FY15 to FY16 (37 to 31, respectively).



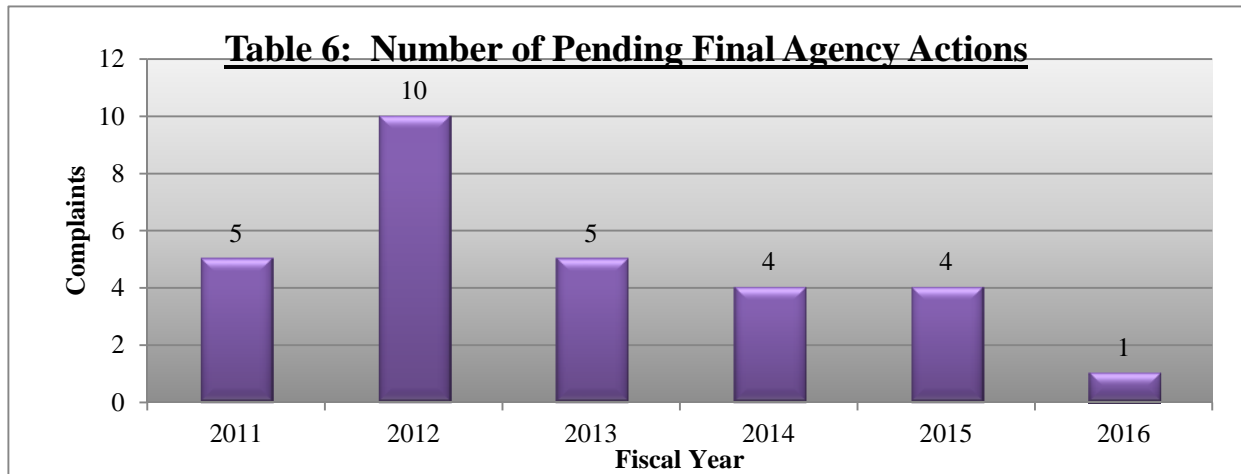
The average processing timeframe for cases when hearing was requested ranged from 178 days in FY16 to 313 days in FY13. The processing time for cases when a hearing was requested decreased by 21 percent from FY15 (226) to FY16 (178).



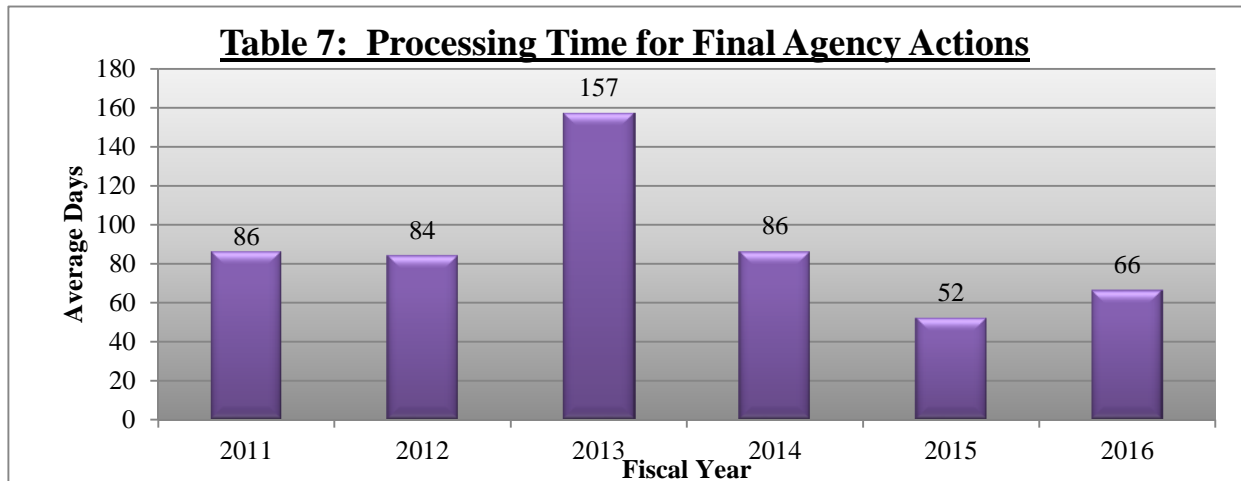
Final Agency Actions (FAA)

On average, WHS processed 16 FAAs without an EEOC Administrative Judge (AJ) decision between FY11 and FY16, ranging from 8 in FY14 to 19 in FY16. There were 27 FAA closures in FY16; 19 without hearings and 8 with hearings before an AJ. WHS had a yearly average of 6 FAA closures with an AJ decision.

From FY11 to FY16, there was an average of 5 complaints pending final agency action. The number of complaints pending final agency actions ranged from 1 in FY16 to 10 in FY12 (See Table 6 below).

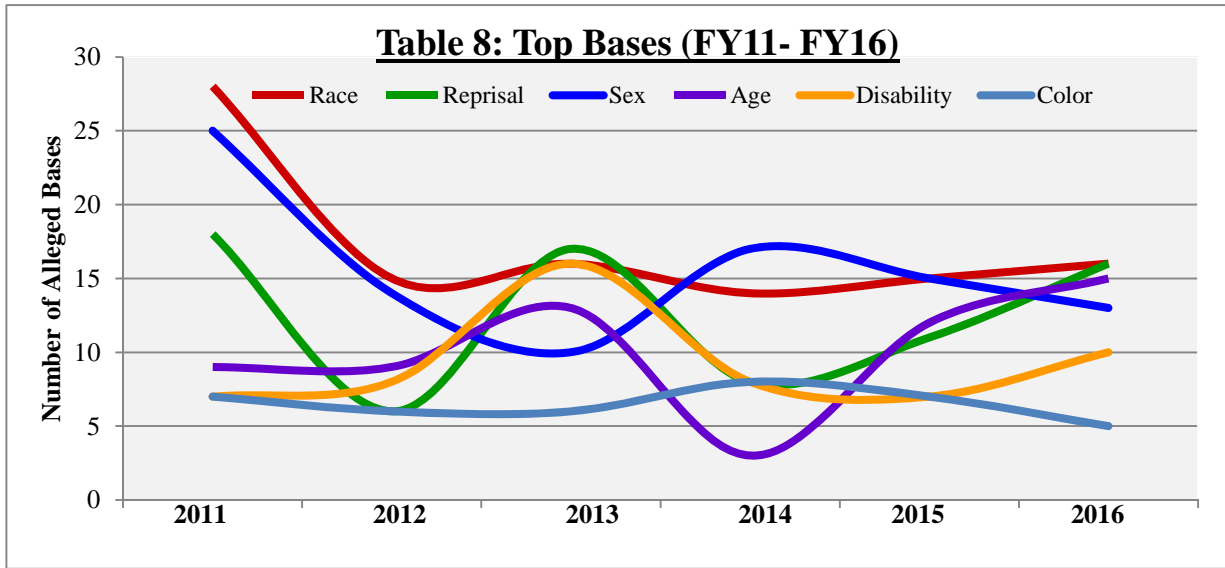


The average processing time from FY11 to FY16 for final agency actions is 89 days. The processing time increased by 27 percent from FY15 (52 days) to FY16 (66 days).

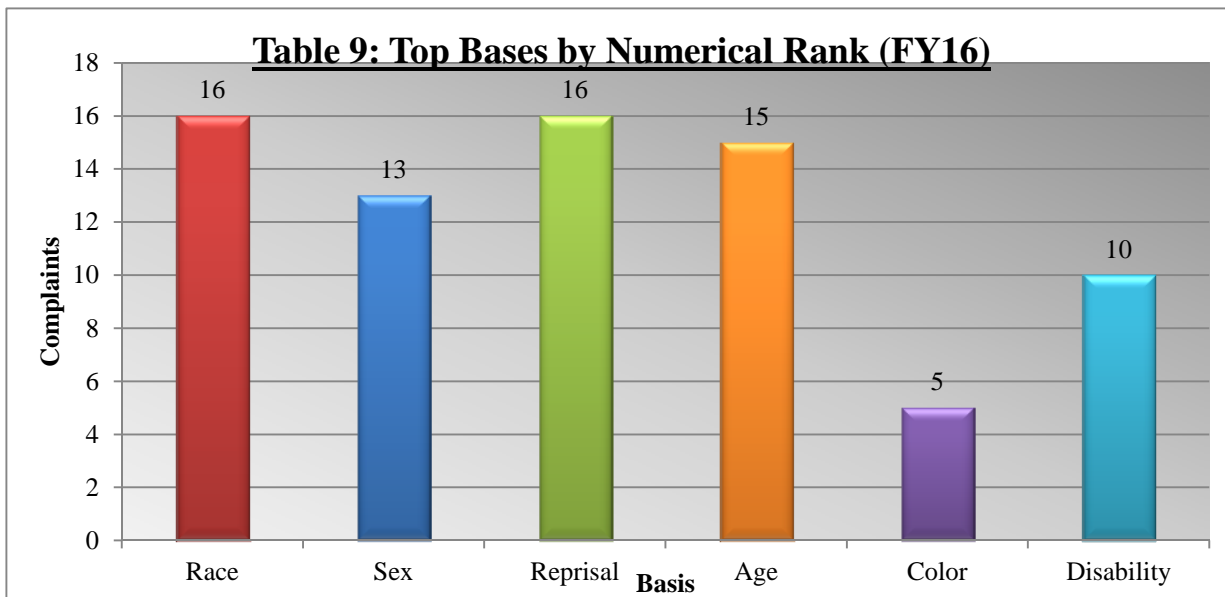


Bases

FY11 to FY16, complainants identified an average of 62 total bases each year for top six bases. The total number of alleged bases ranged between 50 in FY12 to 87 in FY11. Historically, the most common bases alleged were: 1) “race” 17 times per year; 2) “sex” 16 times per year; and 3) “reprisal” 13 times per year. See Tables 8 and 9 below. From FY15 to FY16, the basis of reprisal increased from 11 to 16, or 45 percent.



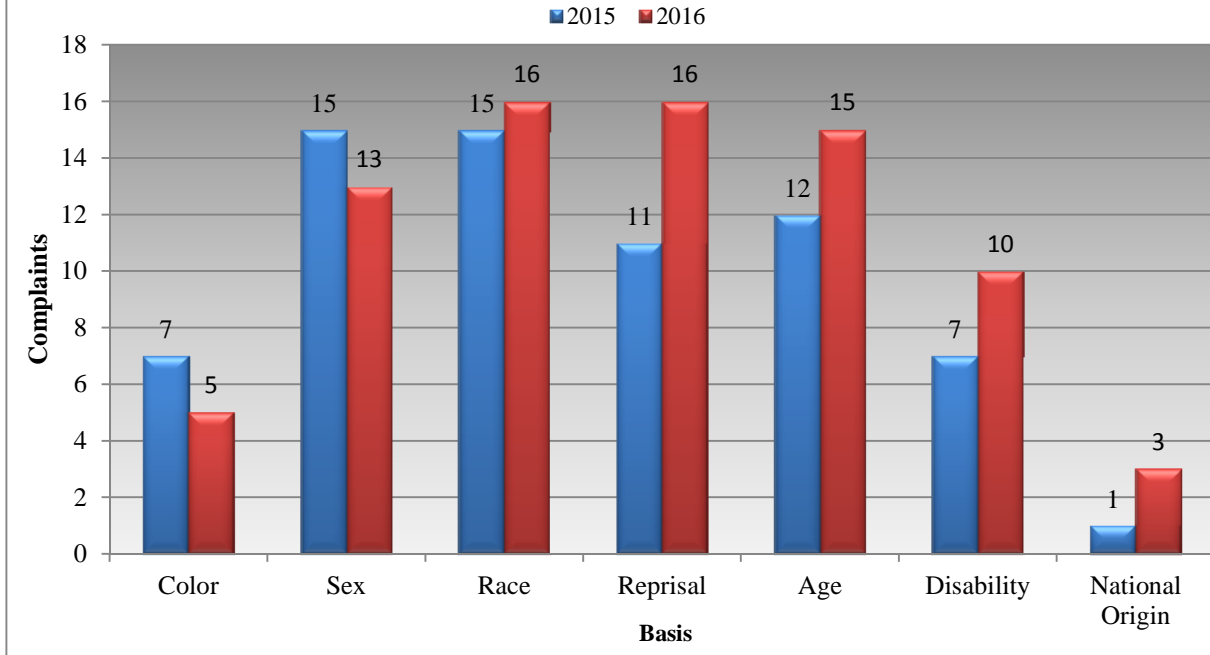
The following lists the top six alleged bases in FY16 according to *numerical ranking*:



The following lists the top three alleged bases in FY16 experiencing the highest *percentage change* compared to FY15:

1. Reprisal – from 11 to 16 (45 percent increase)
2. Age – from 12 to 15 (25 percent increase)
3. Disability – from 7 to 10 (42 percent increase)

Table 10: Bases with the Greatest Percentage Difference



Final Agency Decision (FAD) Closures

On average, WHS processed 7 FADs per year between FY 11 and FY16, ranging from 5 in FY12 to 12 in FY13. There were a total of 7 FAD closures in FY 16; 1 where Complainant requested an immediate FAD from the Agency and 6 where an EEOC Administrative Judge (AJ) returned the case to the Agency for a FAD, subsequent to Complainant electing a hearing. WHS average processing time to complete a FAD decreased 64 percent since FY13 in comparison to the previous fiscal years; 178 days in FY13, 123 days in FY14, 87 days in FY15 to 82 days in FY16.

Findings of Discrimination

There was 1 finding of discrimination from FY11 through FY16. From FY11 to FY16, there were 44 FAD closures issued.

b. Causal Analysis

In FY 2016, the Department of Defense began to implement a Department-wide “delaying” initiative in an effort to reduce personnel costs by 25 percent. The initiative is expected to run from FY16 through FY20; however, projections at WHS indicate an early completion in FY17. Therefore, we are only able to provide an analysis based on WHS and serviced components. The restructuring of WHS business practices and processes through attrition or reassignment of employees to other positions is expected to affect approximately 1,260 positions in defense agencies and field activities and 309 positions within the Office of the Secretary. Thus far, WHS, EEOP servicing population decreased by 2 percent, 6,519 in FY15 to 6,359 in FY16. Although the number of contacts to EEOP increased by 7 percent, 160 in FY15 to 171 in FY16, there was minimal change in the number of individuals who filed formal complaints of discrimination in comparison (3% increase). WHS anticipates an increase in the number of EEO contacts in FY17 due to the ongoing delaying initiative; however, it is too early to determine if systemic issues would lead to an increase in Complaint filings as a result of the process. EEOP does anticipate performance related issues deriving from this process, as a new appraisal system was introduced, but does not believe matters will be EEO related.

c. Practical Knowledge Gained Through Experience

WHS implemented a mandatory Alternative Dispute Resolution (ADR) policy in FY15 that requires the Agency to participate if deemed suitable for ADR by EEOP. This does not include the components serviced by WHS, where the use of ADR is voluntary.

During FY16, the ADR Program in WHS provided services to an increasing number of customers. ADR mediation utilization rates increased from 19 in FY15 to 26 in FY16, representing a 37% increase. The success or resolution rates of resolved disputes remained steady at 70%. The increase in ADR utilization rates is due to a large extent to the success of our training program, the new ADR participation policy effective in FY15, and the success of the annual ADR Symposium that provided visibility to the ADR program.

d. Actions Planned or Taken for Improvement Measures

Training requirements were first anticipated after a February 2005 Office of Personnel Management (OPM) Proposed Rule. At that time, WHS EEOP developed training materials that were compliant with the Act's requirements. Specifically, the course addressed antidiscrimination and whistleblower protection laws, agency policies, and definitions of prohibited conduct (particularly, discrimination, reprisal and whistleblower protections). It also covered proactive measures to achieve a diverse workforce, improve communication, and manage conflict. Lastly, the course provided the rights, responsibilities, and contact information for both informal and formal avenues of redress available to all personnel.

The official WHS No FEAR Act Training was launched July 11, 2007; it was highly successful. The final training module tested knowledge and application of course material by randomly pulling from a question bank. Personnel were required to answer eight (8) of ten (10) questions correctly to pass and receive credit for the course. This electronic delivery system continues to secure agency accountability for meeting educational goals and tracking.

The WHS No FEAR Act Training is mandatory for civilian personnel (including Senior Executives) and military personnel (supervising civilians) assigned to WHS and serviced components. WHS currently services 6,359 civilian employees. Our detailed tracking reports annotate the number of personnel trained within each serviced component, and we provide the training to new employees during our bi-weekly new civilian employee orientation program. This program ensures new employees will complete the ‘No FEAR Act’ training within the required 90-day timeframe.

To ensure quality control, WHS developed a voluntary online survey tool, the WHS Interactive Customer Evaluation (ICE). This tool has been available to all personnel since deployment of the system in FY07.

The No FEAR Act training program has been periodically updated. Most recent updates were implemented in FY14 with an updated online training available at (<https://whsportal.osd.mil/lms/default.aspx>) on the iCompass Learning Management System- a web based system that tracks organizational and personal learning needs and requests. For FY16, 1,450 employees completed the No FEAR Act training online and 376 employees waived the online training and attended the “EEO and Diversity in the Workplace” classes which serves as the classroom equivalent. Completion of the training is recorded in the employee’s learning history and may be verified by reports generated from the system.

WHS, EEOP will continue to: 1) monitor and identify underlying employee-management issues within WHS and all servicing components, and improve/modify the EEO and Diversity in the Workplace training accordingly; 2) utilize ADR and strongly promote the benefits of ADR as an option at all stages of the EEO process; 3) ensure that managers and supervisor receive bi-annual EEO refresher trainings required by the No Fear Act; and 4) review and modify operational procedures according to the new MD-110, to ensure the processing of EEO Complaints our within guidelines and meet required timelines.

ACRONYMS AND ABBREVIATIONS

AJ	Administrative Judge
DoD	Department of Defense
EEO	Equal Employment Opportunity
EEOP	Equal Employment Opportunity Programs
FAA	Final Agency Action
FAD	Final Agency Decision
FY	Fiscal Year
No FEAR Act	Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002
OPM	Office of Personnel Management
OSD	Office of the Secretary of Defense
WHS	Washington Headquarters Services

APPENDIX A

*The final year-end data about discrimination complaints for each fiscal year that was posted in accordance with Equal Employment Opportunity Regulations
29 C.F.R. §§1614.701, et seq. (5 C.F.R. 724.302(a)(4)).*

Equal Employment Opportunity Data Fiscal Year 2016: October 1, 2015 to September 30, 2016

Office of the Secretary of Defense/Washington Headquarters Services (WHS) and WHS-serviced components

Comparative Data from Previous Fiscal Years
29 CFR § 1614.705

Complaint Activity

29 CFR § 1614.704(a) - (c), (f)(1)-(3), (k)(1)-(2)

	2011		2012		2013		2014		2015		2016	
	#	Ave. Days	#	Ave. Days	#	Ave. Days	#	Ave. Days	#	Ave. Days	#	Ave. Days
Number of Complaints Pending in Previous Fiscal Years (FY*) by Status.	38		47		42		50		40		32	
Number of Complaints Filed during the FY*	54		29		38		26		29		30	
Individuals Who Filed 2 or more complaints during FY	0		1		1		0		1		1	
Pending Complaints Where Investigations Exceed Required Time Frames	3		8		1		0		1		0	
Investigations Pending	1	263	12	245	10	310	10	225	0	225	0	178
EEOC Hearings Pending	32	280	28	244	27	313	37	234	37	226	31	178
Final Agency Actions Pending	5	86	10	84	5	157	4	86	3	52	1	66

* Also denotes number of individuals filing complaints during specified time frame (including class agents)

Complaints by Basis

Complaints can be filed alleging multiple bases. The sum of the bases may not equal total complaints filed. 29 CFR § 1614.704(d)

	2011	2012	2013	2014	2015	2016
Race	28	15	16	17	15	16
Color*	7	6	6	6	7	5
Religion	0	2	2	0	1	0
Reprisal	18	6	17	8	11	16
Sex	25	14	10	18	15	13
National Origin	2	1	4	1	1	3
Equal Pay Act	1	1	1	0	1	0
Age	9	9	13	4	12	15
Disability	7	8	16	9	7	10

*Prior to FY02, Race and Color were combined as one basis category by the EEOC. Color was officially established as a separate basis in FY02. For the purposes of this report, all complaints filed with Color as a basis was separated for all Fiscal Years.

Complaints by Issue

Complaints can be filed alleging multiple issue. The sum of the bases may not equal total complaints filed. 29 CFR § 1614.704(e)

	2011	2012	2013	2014	2014	2016
Appointment/Hire	2	2	3	1	2	6
Assignment of Duties	5	2	1	1	6	1
Awards	1	1	0	2	0	0
Conversion to Full-time	0	0	0	0	0	0
Disciplinary Action						
<i>Demotion</i>	1	0	5	0	0	0
<i>Reprimand</i>	0	0	1	1	1	2
<i>Suspension</i>	3	4	2	3	0	0
<i>Removal</i>	1	1	0	0	1	0
Duty Hours	0	2	1	2	1	0
Evaluation Appraisal	5	1	3	5	6	2
Examination/Test	1	0	1	0	1	0
Harassment						
<i>Non-Sexual</i>	22	16	15	14	20	18
<i>Sexual</i>	3	3	0	0	1	2
Medical Examination	1	0	3	0	1	0
Pay (Including Overtime)	1	1	1	0	0	0
Promotion/Non-Selection	8	1	6	4	4	3
Reassignment						
<i>Denied</i>	3	1	0	0	0	1
<i>Directed</i>	1	1	0	3	2	3
Reasonable Accommodation	0	1	3	4	0	1
Reinstatement	0	0	0	0	0	0

Retirement	0	1	0	1	0	0
Telework	0	0	0	0	0	2
Termination	1	2	2	1	1	2
Terms/Conditions of Empl't	16	5	4	3	2	2
Time and Attendance	2	1	1	7	5	0
Training	3	0	1	2	4	1

Complaints Dismissed by Agency

	2011	2012	2013	2014	2015	2016
Total Complaints Dismissed by Agency	8	13	7	3	6	12
Average days pending prior to dismissal	65	245	49	84	276	121
Complaints Withdrawn by Complainants						
Total Complainants Withdrawn by Complainants	3	6	5	11	5	1

Findings of Discrimination Rendered by Basis

*Complaints can be filed alleging multiple bases. The sum of the bases may not equal total complaints and findings.
29 CFR § 1614.704(i)*

	2011		2012		2013		2014		2015		2016	
	#	%	#	%	#	%	#	%	#	%	#	%
Total Number Findings	0		0		0		0		1		0	
Race	0	0	0	0	0	0	0	0	1	100	0	0
Findings After Hearing	0		0		0		0		1		0	
Race	0	0	0	0	0	0	0	0	1	100	0	0

Findings of Discrimination Rendered by Issue

*Complaints can be filed alleging multiple issues. The sum of the issues may not equal total complaints and findings.
29 CFR § 1614.704(j)*

	2011		2012		2013		2014		2015		2016	
	#	%	#	%	#	%	#	%	#	%	#	%
Total Number Findings	0		0		0		0		1		0	
Promotion/Non-Selection	0	0	0	0	0	0	0	0	1	100	0	0
Findings After Hearing	0		0		0		0		1		0	
Promotion/Non-Selection	0	0	0	0	0	0	0	0	1	100	0	0

APPENDIX B

A detailed description of the agency's policy for taking disciplinary action against Federal employees for conduct that is inconsistent with Federal Antidiscrimination Laws and Whistleblower Protection Laws or for conduct that constitutes another prohibited personnel practice revealed in connection with agency investigations of alleged violations of these laws (5 C.F.R. 724.302(a)(6)).

Available at http://dtic.mil/whs/directives/corres/pdf/AI08_2016.pdf

APPENDIX C

The agency's written plan to train its employees (5 C.F.R. 724.302(a)(9)).

See Part III D.