



U.S. DEPARTMENT OF TRANSPORTATION

Fiscal Year 2007

Annual Report to Congress
on the
Notification and Federal Employee
Antidiscrimination and Retaliation
Act of 2002

Office of the Secretary
Departmental Office of Civil Rights

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I. EXECUTIVE SUMMARY

The U.S. Department of Transportation (DOT) provides its Annual Report to Congress as required by Section 203 of the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (“No FEAR Act”), Public Law 107-174. Also, DOT reports on the number of cases that were filed in Federal court which resulted in judgments, awards or compromise settlements; the disposition of those cases; money required to be reimbursed; and the number of employees disciplined for discrimination, retaliation, harassment, or other infractions of a provision of law cited in Section 201(c) of the No FEAR Act.

There were 43 Federal court cases pending during Fiscal Year (FY) 2007. Among this number, 37 Federal court cases (86 percent) included alleged violations of the Civil Rights Act of 1964 (42 U.S.C. § 2000e *et seq*) (“Title

VII”). There were 5 cases (12 percent) that included allegations of the Age Discrimination in Employment Act (“ADEA”) (29 U.S.C. §§ 631, 633a); and 7 cases (16 percent) included alleged violations of the Rehabilitation

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Act of 1973 (“Rehab. Act”) (29 U.S.C. §791). Also, there were 9 Federal court cases that were resolved during the fiscal year. Among this number, 4 cases resulted in payments from the Judgment Fund, and all included alleged violations of Title VII. There were no judgments, awards, or compromised settlements paid from the Judgment Fund on behalf of DOT for retaliation under the Whistleblower Protection Act.

It is important to note, in FY 2007 DOT experienced a decline in the number of Federal court cases that resulted in judgments, awards and compromise settlements in comparison to the previous fiscal year. DOT reimbursed the Judgment Fund a total of \$488,533.95 during FY 2007, for Federal court judgments, awards and compromise settlements. This amount included \$300,000, which was separately designated as attorneys’ fees. No DOT employees were disciplined for discrimination, retaliation, harassment or other infractions of a provision of law cited in the No FEAR Act stemming from the Federal court cases. However, DOT took 56 disciplinary actions against employees for violating antidiscrimination, harassment or retaliation policies issued by the Operating Administrations.

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There were 475 administrative complaints filed against DOT during FY 2007. Among those 475 complaints,

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the greatest number of cases filed included claimed violations of Title VII. During FY 2006, there were 484 administrative complaints filed against DOT. By comparison, the number of administrative complaints filed during FY 2007 declined by 2 percent from FY 2006. Among those administrative cases filed, there were 8

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cases which resulted in findings of discrimination – 5 with hearings before an administrative judge and 3 with final agency decisions issued without an administrative judge. All but one case included violations of Title VII. No DOT employees were disciplined for discrimination, retaliation, harassment or other infractions of a provision

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of law cited in Section 201(c) of the No FEAR Act.

The DOT believes there may be several reasons for the decline in the number of Federal court judgments, awards and compromise settlements in FY 2007 in comparison to FY 2006. The No FEAR Act requires that Operating Administrations reimburse the Judgment Fund resulting from any judgments, awards, and compromise settlements for Federal court cases involving antidiscrimination, retaliation, and whistleblower protection laws. Therefore, the requirement to reimburse the Judgment Fund has increased Federal agencies’ focus and accountability concerning these types of cases. In FY 2007, DOT reimbursed a total of \$488,533.95 to the Judgment Fund in comparison to a reimbursement of \$1,023,295.23 in FY 2006, a 52 percent reduction.

The DOT believes that another reason for the decline in the number of Federal court judgments, awards and compromise settlements, and administrative complaints filed between FY 2006 and FY 2007, is that DOT’s senior management continues to place emphasis on maintaining a model EEO work environment pursuant to the EEOC’s Management Directive (MD) 715. The Director for the Departmental Office of Civil Rights

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(DOCR) holds trimester meetings with senior officials from the Operating Administrations (OA) to

discuss affirmative employment goals and civil rights initiatives to attain a model work environment. Representatives from the Offices of the General Counsel and Human Resource Management are also in attendance. At these meetings, an internal self-assessment scorecard is used as a common work tool to assess achievements and identify areas that need emphasis for improvement.

Aside from the accountability factor, DOT has made many accomplishments since the enactment of the No FEAR Act (See Appendix A). In addition to the mandatory training on EEO laws and rights and remedies required by the No FEAR Act and OPM's implementing regulations, training also has been provided on diversity, Whistleblower Protection Act (WPA), prohibited personnel practices, conflict resolution and alternate

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dispute resolution (ADR). Further, DOT has increased its emphasis on encouraging employees to resolve workplace issues at the earliest stages. This increased attention to early resolution of workplace issues, briefings, and training on the No FEAR Act also may have had an impact in the declining number of Federal court cases resulting in judgments, awards and compromise settlements.

To facilitate the analytical review of past No FEAR Act fiscal year information and trends, a comprehensive ONEDOT database system is needed that will interface with civil rights, legal, human resources, and financial management programs within the Department. Additionally, more effective communication with DOT's employees about major changes regarding pending or ongoing reorganizations, policies, and practices is important to early resolution of potential employee workplace concerns. Finally, DOT recognizes that training in ADR and conflict management skills for supervisors and managers is critical to resolving workplace conflicts before they become formal complaints.

II. INTRODUCTION

The No FEAR Act requires Federal agencies to submit annual reports to the Speaker of the House of Representatives, the President *pro tempore* of the Senate, the Committee on Governmental Affairs of the Senate, the Committee on Government Reform of the House of Representatives, each committee of Congress with jurisdiction relating to the agency, the Attorney General, and EEOC. Additionally, the U.S. Office of Personnel Management's ("OPM") final regulation on the No FEAR Act on Reporting and Best Practices issued December 28, 2006, requires that OPM also receive a copy of the report. The DOT submission is in accordance with these reporting requirements.

III. BACKGROUND

The No FEAR Act was signed into law by President George W. Bush on May 15, 2002, and became effective on October 1, 2003. The Act requires Federal agencies to be accountable for violations of antidiscrimination and whistleblower protection laws and post certain statistical data relating to Federal sector EEO complaints filed with the agency.

Section 203 of the No FEAR Act requires that each Federal agency submit its annual report to Congress not later than 180 days after the end of each fiscal year. Operating Administrations must report on the number of Federal court cases arising under each of the respective areas of law specified in the Act in which discrimination was alleged; the status or disposition of cases; amount of money required to be reimbursed; number of employees disciplined; any policies implemented related to appropriate disciplinary actions against a Federal

employee who discriminated against any individual, or committed a prohibited personnel practice; and, an analysis of the data collected with respect to trends, causal analysis, etc.

The President delegated responsibility to OPM for the issuance of regulations governing implementation of Title II of the No FEAR Act. OPM published final regulations on May 10, 2006, concerning the reimbursement provisions of the Act; final regulations to carry out the notification and training requirements of the Act on July 20, 2006; and the final regulations to implement the reporting and best practices provisions of the No FEAR Act on December 28, 2006. The EEOC issued its final regulations to implement the posting requirements of Title III of the No FEAR Act on August 2, 2006. The DOT has prepared this report based on the provisions of the No FEAR Act and OPM and EEOC's final regulations.

IV. DATA

a. Civil Cases

Section 203(1) of the No FEAR Act requires that Operating Administrations include in their Annual Report to Congress "the number of cases arising under each of the respective provisions of law covered by paragraphs (1) and (2) of section 201(a) in which discrimination on the part of such agency was alleged." OPM's final regulations at § 724.302 on reporting and best practices issued on December 28, 2006, clarify section 203 (1) of the No FEAR Act stating that Operating Administrations report on the "number of cases in Federal court [district or appellate] pending or resolved...arising under each of the respective provisions of the Federal Antidiscrimination laws and Whistleblower Protection Laws applicable to them...in which an employee, former Federal employee, or applicant alleged a violation(s) of these laws, separating data by the provision(s) of law involved."

DOT reports that during FY 2007, there were a total of 43 Federal court cases pending. (See Appendix F, Figure 1). Among this number of cases pending, 37 cases (86 percent) included claimed violations of Title VII; 5 cases (12 percent) included claimed violations of the ADEA; and, 7 cases (16 percent) included claimed violations of

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the Rehab. Act. Also, for FY 2007 that there were a total of 9 Federal court cases resolved. Among this number 4 cases resulted in payments from the Judgment Fund, and all included claimed violations of Title VII. (See Appendix F, Figure 3). There were no judgments, awards or compromised settlements paid from the Judgment Fund on behalf of DOT for retaliation under the Whistleblower Protection Act.

Over the past five fiscal years, data indicate that there has been an overall decline of 74 percent in the number of Federal court cases resulting in judgments, awards or compromise settlements involving violations of antidiscrimination laws. (See Appendix F, Figure 2.) A review of previous FYs indicates that DOT's Annual Report to Congress in FY 2006 reflected 9 Federal court cases that resulted in payments from the Judgment Fund. Among these 9 cases, 7 (78 percent) included claimed violations of Title VII, and 2 cases (22 percent) included claimed violations of the ADEA. In FY 2005, there were a total of 10 Federal court cases resulting in payments from the Judgment Fund. All of the 10 cases were filed under Title VII. The DOT's Annual Report to Congress in FY 2004 reflected 12 Federal court cases that resulted in payments from the Judgment Fund, about half of the number of cases in FY 2003. Among these 12 cases, 7 (58 percent) included claims of Title VII, 3 cases (25 percent) included claims of the Rehab. Act, and 2 cases (17 percent) included claims of the ADEA. There were 23 Federal court cases that resulted in payments from the Judgment Fund for FY 2003. Among the 23 cases, 18 cases (78 percent) included claims of Title VII; 2 cases (9 percent) included claims of the Rehab. Act; and 3 cases (13 percent) included claims of the ADEA. In each of

these past FYs there were no Federal court cases for which the Judgment Fund paid monies on behalf of DOT for retaliation under the Whistleblower Protection Act.

b. Reimbursement to the Judgment Fund

The OPM published final regulations in the Federal Register on May 10, 2006, to clarify the agency reimbursement provisions of Title II of the No FEAR Act. These regulations state, among other things, that the Financial Management Service, U.S. Department of the Treasury (FMS) will provide notice to an agency's Chief Financial Officer within 15 business days after payment from the Judgment Fund. The agency is required to reimburse the Judgment Fund within 45 business days after receiving the notice from FMS or must contact FMS to make arrangements in writing for reimbursement.

The Treasury Judgment Fund paid \$488,533.95 on behalf of DOT for discrimination cases filed in Federal court resulting in judgments, awards, or compromise settlements during FY 2007. Included in this amount was the reimbursement of attorneys' fees, which were separately designated, in the amount of \$300,000. DOT has reimbursed the Treasury Judgment Fund for monies owed to the Judgment Fund for all judgments, awards, and compromise settlements for FY 2007.

DOT continues to work with FMS to improve and streamline the FMS notification process to DOT Operating Administrations. Improvements to the FMS notification process will enable DOT Operating Administrations to respond more promptly and efficiently.

c. Type of Disciplinary Actions

Section 203(a)(4) of the No FEAR Act requires that Operating Administrations include in the Annual Report to Congress "the number of employees disciplined for discrimination, retaliation, harassment, or any other infraction of any provision of law referred to in paragraph (1)." Section 203(a) (1) requires that Operating Administrations report "the number of cases arising under each of the respective provisions of law covered by paragraphs (1) and (2) of section 201(a) in which discrimination on the part of such agency was alleged." OPM's final regulation issued December 28, 2006, provides that these cases refer to the number of discrimination cases for which the Judgment Fund paid on behalf of the agency. The final regulations also define disciplinary actions to include any one or a combination of the following actions: reprimand, suspension without pay, reduction in grade or pay, or removal. DOT reports that there were no disciplinary actions arising from the four Federal court discrimination cases resulting in payments from the Judgment Fund.

OPM's final regulation also provides that whether or not in connection with cases in Federal court, Operating Administrations are to report the total number of employees disciplined and the specific nature of the disciplinary action taken in accordance with agency policy that prescribes disciplinary action for discrimination, retaliation, or harassment conduct and whistleblower protection law violations. DOT reports 56 disciplinary actions in FY 2007 as listed below:

- Ø 3 – Termination during probation
- Ø 1 – Demotion
- Ø 1 – 21-day Suspension
- Ø 1 – 14-day Suspension

- Ø 1 – 10-day Suspension
- Ø 1 – 9-day Suspension
- Ø 3 – 5-day Suspension
- Ø 1 – 4-day Suspension
- Ø 1 – 3-day Suspension
- Ø 1 – 2-day Suspension
- Ø 7 – 1-day Suspension
- Ø 35 – Letter of Reprimand

d. Final Year-End Data Posted Under Section 301(c)(1)(B)

The final year-end data posted pursuant to Section 301(c)(1)(B) of the No FEAR Act is included in Appendix B.

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The final year-end data indicate that during FY 2007, there were 475 complaints of discrimination. Among the 475 complaints filed, 161 complaints were dismissed and 8 complaints resulted in findings of discrimination.

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Among these 8 complaints, 3 were final agency decisions issued without an administrative judge decision and the other 5 complaints were final agency actions taken following an EEOC administrative judge decision.

Among these 8 cases resulting in findings of discrimination, all but one case included violations of Title VII.

e. Description of Policy on Disciplinary Actions

Section 203(a)(6) of the No FEAR Act requires that Operating Administrations include in their Annual Report to Congress a detailed description of the policy implemented by the agency relating to disciplinary actions imposed against a Federal employee who discriminated against any individual in violation of any of the laws cited under section 201(a) (1) or (2), or committed another prohibited personnel practice that was revealed in the investigation of a complaint alleging a violation of any of the laws cited under section 201(a) (1) or (2). Further, the Act requires that, with respect to each such law, the Federal agency report on the number of employees who were disciplined in accordance with such policy and the specific nature of the disciplinary action taken. OPM's final regulations on Reporting and Best Practices issued December 28, 2006, implementing this provision define discipline as "any one or a combination of the following actions: reprimand, suspension

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without pay, reduction in grade or pay or removal." OPM expects Federal agencies to report disciplinary

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action taken based on an employee's conduct whether there is a formal finding of discrimination.

Three policy statements issued by the Secretary reinforce DOT's commitment to establish a workplace free from discrimination, harassment, and retaliation. DOT's employees are accountable for their actions with respect to these policy statements. Specifically they are: "Equal Employment Opportunity Policy Statement" (See Appendix C), "Policy Statement on the Prevention of Harassment" (See Appendix D) and "Policy Statement on Whistleblowing" (See Appendix E). The first statement emphasizes DOT's determination to subject employees to appropriate disciplinary action for engaging in unlawful discriminatory practices or allowing discriminatory practices to exist. The second statement communicates DOT's zero tolerance of harassment against employees on the basis of race, color, national origin, religion, age (40 and over), sex, disability, sexual orientation, or engaging in protected activity. The third statement communicates DOT's commitment

to protecting employees and job applicants from interference or retaliation when making protected disclosures. These statements caution that engaging in prohibitive behavior will result in appropriate disciplinary actions.

In addition to the Secretary's Policy Statements, the Federal Transit Administration's (FTA) Table of Offenses and Penalties has specific penalties for discrimination and retaliation. An employee who discriminates because of race, color, religion, age (40 and over), sex, national origin, disability, or reprisal may receive from a written reprimand up to removal for the first offense; a 14-day suspension up to removal for a second offense; and removal for a third offense. Supervisors, who have knowledge of the incident but fail to take action to prevent discrimination by subordinates, will be disciplined. Additionally, intentional interference with an employee's right to file a complaint through established procedures is punishable by a 1-day suspension up to removal for the first offense; a 5-day suspension up to removal for the second offense; and, a 14-day suspension up to removal for a third offense. Reprisal against an employee for providing information for or testifying in an official proceeding is punishable in the same manner.

f. No FEAR Training

Section 202(c) of the No FEAR Act requires Operating Administrations to provide training to their employees on the rights and remedies under Federal antidiscrimination, retaliation, and whistleblower protection laws. Under 5 C.F.R. § 724.203, Operating Administrations were required to develop a written training plan and to have trained their employees by December 17, 2006. Additionally, new employees are to receive No FEAR training in an agency orientation program or other training program. If Operating Administrations do not use their orientation programs for such purposes, then new employees must be trained within 90 days of appointment.

The DOT delegated responsibility to its OAs for meeting their training obligations. To assist the OAs, DOT developed a No FEAR presentation, and placed it on its electronic Learning Management System (eLMS). The eLMS is available to all DOT employees, which provides the agency and the OAs with an efficient way to assign and document employee learning events.

Over 95 percent of DOT employees were trained on the No FEAR Act through eLMS using the No FEAR presentation. During FY 2007, several thousand employees were hired and nearly one-half received No FEAR training within 90 days using online training or eLMS.

V. ANALYSIS OF TRENDS, CAUSAL ANALYSIS, AND PRACTICAL KNOWLEDGE GAINED THROUGH EXPERIENCE

Section 203(7) of the No FEAR Act requires that Operating Administrations undertake "an examination of trends, causal analysis, and practical knowledge gained through experience and any actions planned or taken to improve complaint or civil rights programs of the agency." DOT has examined the information reported and finds that since the effective date of the No FEAR Act, there has been a decline in the number of Federal court cases resulting in judgments, awards and compromise settlements paid by the Judgment Fund. From FYs 2003 to 2007, the number of Federal court cases resulting in judgments, awards or compromise settlements has declined by 74 percent. (See Appendix F, Figure 2.)

The number of administrative cases filed with DOT has fluctuated between FY 2003 and FY 2007. There was a 2-percent decline between FY 2007 and FY 2006. (See Appendix G, Figure 1.) However, these cases increased by

19 percent between FY 2005 and FY 2006. In FY 2007, the three leading bases among these administrative complaints were age, gender, and reprisal/race. (See Appendix G, Figure 2.) In FY 2006, the leading bases were reprisal, age, and gender. Those individuals filing complaints raised the issues of promotion/non-selection, harassment (non-sexual) and reprimand most often. (See Appendix G, Figure 3). Although promotion/non-selection was one of the leading issues, this number was a significant decrease from the previous year. (See Appendix G, Figure 3.) In FY 2007, there has been a decline in the number of complaints involving sexual harassment in comparison to FY 2006. (See Appendix G, Figure 3.)

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The total number of findings of discrimination increased slightly in FY 2007 in comparison to FY 2006. These final actions include findings of discrimination both when a hearing was filed and when DOT issued a finding of discrimination. (See Appendix G, Figure 4). However, the greatest number of findings with hearings occurred in FY 2005. (See Appendix G, Figure 6). There has been a decline in the total number of findings of discrimination overall in FY 2007; the prominent bases of discrimination without a hearing were for race, age, and color. (See Appendix G, Figure 7).

In FY 2006, there were 484 cases filed in comparison to the 475 cases filed in FY 2007. (See Appendix G, Figure 1.) Although it is hard to predict specifically what caused this reduction, DOT attributes the reduction to education and training about employees' rights and protections under antidiscrimination, retaliation and whistleblower protection laws, better communication, early intervention and the use of ADR to resolve workplace disputes before they become complaints. Statistics for FY 2007 indicate that at the EEO pre-complaint stage, 661 individuals were offered ADR. Among the 661 individuals offered ADR at the pre-complaint stage of the process, only 149 (23 percent) actually participated in ADR. Among the 149 individuals who participated, 25 (17 percent) of those individuals' workplace conflicts were resolved and only 5 (3 percent) filed formal complaints. Individuals rejected ADR approximately 65 percent of the time, whereas the agency rejected the use of ADR approximately 35 percent of the time. DOT has not conducted any study which may reveal the reason why more than half of the number of individuals offered ADR in the pre-complaint process

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rejects the use of ADR as a means of resolving workplace conflicts. However, it appears that providing additional training to employees, including managers and supervisors may enhance their understanding of the use of ADR and its benefits.

To the contrary, statistics indicate that once an EEO complaint has been filed, the use of ADR has shown promising results. The DOT offered ADR in a number of discrimination cases through its ONEDOT Sharing Neutrals Program. According to the EEOC's Form 462 Annual Federal Equal Employment Report of

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Discrimination Complaints for FY 2007, DOT reported that it offered ADR to 26 individuals in the EEO formal complaint process. Among the 26 individuals offered ADR, 16 were able to participate in ADR, because the agency rejected the use of ADR in 8 complaints. Among the 16 complainants who accepted ADR to resolve their complaints, 5, or 31 percent, of these cases resulted in a resolution. Thus, DOT has demonstrated that by offering ADR to individuals involved in the EEO process, successful resolution can be achieved. Therefore, DOT believes that more education in conflict resolution, early intervention, and greater use of ADR at the pre-complaint phase of EEO complaints will enhance employees', including managers' and supervisors', understanding about ADR. The goal is to ultimately reduce the number of formal complaints.

There may be several reasons for the decline in the number of Federal court discrimination cases in which judgments, awards and compromise settlements were paid to the Judgment Fund during FY 2007 in comparison to previous FYs, and for the decline in the number of administrative discrimination complaints filed before the EEOC. With respect to the Federal court cases, DOT believes that the primary reason is that Federal agencies are now required by the No FEAR Act to reimburse the Judgment Fund for judgments, awards and compromise settlements resulting from cases pending in Federal court. This requirement serves as an incentive for managers to take greater caution in making decisions based on merit. DOT reimbursed a total of \$488,533.95 to the Judgment Fund in FY 2007, in comparison to \$1,023,295.23 in FY 2006, and the number of Federal court cases declined by 48 percent. From FYs 2003 to 2007, there has been an overall 74 percent reduction in the number of Federal court cases involving antidiscrimination and retaliation laws. (See Appendix F, Figure 2.) Although the reduction in the number of Federal court cases does not always yield a substantial reduction in the amount of money reimbursed to the Judgment Fund, it did in FY 2007 in comparison to FY 2006.

Another reason believed to be responsible for the decline in the number of Federal court judgments, awards and compromise settlements, and for administrative discrimination cases filed with DOT is that over 95 percent of DOT's employees, including supervisors and managers, received the mandatory No FEAR training on the EEO laws, rights, and remedies. DOT continues to stress training as a mechanism for reducing the number of Federal court judgments, awards and compromise settlements for discrimination cases.

In addition to the No FEAR Act's accountability factor, DOT's senior management places emphasis on maintaining a model EEO work environment pursuant to the EEOC Management Directive (MD) 715. The DOCR Director, along with representatives from the Offices of the General Counsel and Human Resource Management, meet with Heads of the Operating Administrations on a trimester basis to assess several key internal and external civil rights initiatives. Among the several internal civil rights initiatives assessed is training for managers, supervisors, and all employees on anti-discrimination and anti-harassment laws, the No FEAR Act, and managing workplace conflicts. The OAs utilize an internal self-assessment scorecard as a common work tool to assess their achievements and identify areas that need further emphasis. The DOCR Director uses the information obtained during these trimester meetings to provide the Secretary with a report on the progress of DOT in meeting the No FEAR Act and EEOC's statutory requirements.

The DOT has gained practical knowledge and experience since the first year of implementing the No FEAR Act, and continues to recognize the importance of a centralized database that would interface with the Departmental Offices of Civil Rights and Human Resource Management, Offices of the General Counsel and Chief Financial Officer, and the OAs' civil rights, human resources, and legal offices. Because these organizations play a vital role in meeting the reporting requirements of the Act, DOT will work to develop an information system to facilitate the process of gathering information and data from Secretarial offices and OAs. Additionally, during FY 2007, DOT identified no delays in processing reimbursements to the Judgment Fund. As a result, reimbursements were made within the required 45 day period.

VI. ADJUSTMENT TO BUDGET

Section 203(a)(8) of the No FEAR Act requires that Operating Administrations include in their Annual Report to Congress information regarding "any adjustment (to the extent the adjustment can be ascertained in the budget of the agency) to comply with the requirements under section 201." DOT did not provide such an adjustment based on OPM's Regulations.

VII. DOT's ACTIONS PLANNED OR TAKEN TO IMPROVE COMPLAINT OR CIVIL RIGHTS PROGRAMS

- (1) Identify a number of approaches in this report that may alleviate complaints of discrimination, retaliation, and violation of whistleblower laws and facilitate data collection for purposes of meeting the requirements under the Act. This includes continued training on EEO laws, whistleblower protections, prohibited personnel practices, diversity, conflict resolution, and improved communications.
- (2) Strive to keep 95 percent of employees trained regarding their rights and protections under EEO, retaliation and whistleblower laws, as well as training on conflict resolution skills, and managing a diverse workforce. DOT shows that when alternate dispute resolution methods are utilized, workplace conflicts are resolved more swiftly and at a high rate. Greater use of the training would likely facilitate a reduction in future EEO administrative cases and Federal district court cases.
- (3) Acknowledge that changes in the workplace tend to trigger more complaints. Therefore, better communication from senior management to all employees about changes to policies and practices, reorganizations, and competitive sourcing initiatives may ameliorate future complaints. When employees are potentially impacted by change, timely and candid communication is essential to avoiding work place conflict and/or complaints.
- (4) Revise and strengthen the current Alternative Dispute Resolution Order to eliminate outdated references to the U.S. Coast Guard, and encourage greater participation in mediation to resolve EEO and civil rights disputes.
- (5) Determine that a ONEDOT centralized tracking database system that interfaces with civil rights, legal, human resources, and financial management programs throughout DOT would assist the processing of information needed for the Annual Report to Congress pursuant to the Act.

APPENDIX A: DOT's Accomplishments Update

NOTIFICATION AND FEDERAL EMPLOYEE ANTIDISCRIMINATION AND RETALIATION (No FEAR) ACT

ACCOMPLISHMENTS UPDATE

This Appendix highlights the DOT accomplishments in implementing the No FEAR Act (also referred to as the Act) during Fiscal Year (FY) 2007. DOT has pursued the requirements of this important legislation as indicated in the actions highlighted below.

A. Legislative Implementation

Senior Management Emphasis. With full support and emphasis by the senior leadership aimed at maintaining a work environment free of discrimination and harassment, DOT continues to stress the proper implementation of the principles of the Act. DOT employees are informed that they are completely accountable for violations of antidiscrimination and whistleblower protection laws. During FY 2007, DOT focused on initiatives to ensure that managers and supervisors receive adequate training in the management of a diverse workforce; early and alternative conflict resolution; effective communication skills; and, proper ethical standards of behavior. DOT seeks to be a model Federal employer and believes that it is better to address potential adverse employee issues rather than wait for them to happen. In FY 2005, the DOCR Director initiated quarterly meetings with the Heads of Operating Administrations. These meetings proved to be effective and continued during FY 2007, but on a trimester basis. They evaluated each DOT organization in critical equal employment opportunity core areas which include diversity of workforce and Title VII complaints of discrimination. The antidiscrimination, retaliation objectives, and mandates of the Act are inherent in the DOCR organizational analyses. Each analysis results in a report card for use as a management tool to assess achievements and areas requiring increased emphasis and/or improvement. DOCR also uses the results of these trimester meetings to keep the Secretary abreast annually on how effectively the agency is responding to No FEAR and EEOC's statutory requirements.

B. Employee Awareness and Training

(1) Initial No FEAR Training. DOT's use of an enterprise learning management system (eLMS) was effective in ensuring that newly hired employees received No FEAR training within 90 days after entering on duty. Also, DOT provided alternative training opportunities for newly hired employees without computer access or individuals with disabilities that required reasonable accommodations.

(2) Management No FEAR Training Initiatives. During FY 2007, DOT organizations concentrated their training aimed at increasing their managers' and supervisors' awareness of EEO, the No FEAR objectives and requirements. DOT's primary goal is not only to prevent EEO discriminatory actions, but also to provide early and immediate resolution and/or corrective action if a discriminatory action occurs. DOT's organizations provided training to managers and supervisors in the following areas:

- a. EEO laws and rights/remedies required by the No FEAR Act and the Office of Personnel Management's implementing regulations;
- b. Processing an EEO Complaint of Discrimination;
- c. Reasonable Accommodations for Individuals with Disabilities;
- d. Alternative Dispute Resolution and other Mediation Methods;
- e. Constructive Conflict Management;
- f. Prevention of Harassment in the Workplace; and,
- g. Process, Procedures, and Management's Responsibility to Report All Claims of Harassment.

The DOT believes that the increased training emphasis for managers and supervisors was a contributing factor to the decline it experienced in the number of Federal court judgments, awards and compromise settlements, and the number of administrative complaints filed in FY 2007 compared to FY 2006.

C. Policy Implementation. The Secretary re-issued policy statements requiring all DOT employees to maintain a work environment that is free of discrimination and to be accountable for violations of antidiscrimination

and whistleblower protection laws. DOT's current policies and guidance fully implement the intent and the letter of the law in a number of ways. The broad range of these policies and guidance include:

- a. Employee standards of conduct;
- b. Holding executives, managers, and supervisors accountable for EEO, diversity and No FEAR Act standards;
- c. Establishing a methodology for addressing DOT's policy governing findings of discrimination;
- d. Taking disciplinary and adverse actions concerning EEO and No FEAR Act violations as a matter of DOT policy; and
- e. Specific disciplinary penalties for EEO and No FEAR Act Violations.

Currently, DOT has in place the necessary policy infrastructure that aided its primary focus during FY 2007 which was to ensure that all employees were aware of applicable policies, guidance and procedures, and that appropriate disciplinary action was taken whenever necessary.

D. Other Action.

No FEAR Act Object Classification Codes. During FY 2007, the Federal Aviation Administration (FAA) Office of Civil Rights developed specially designated budget Object Classification Codes (OCC) to facilitate the capturing of the Treasury Judgment Fund information required by OPM's final regulations. DOT adopted these OCCs to ensure uniformity by its organizations in the recording and reporting of EEO financial information related to:

- (1) EEO reimbursement made to the Treasury Judgment Fund in accordance with the No FEAR Act - This includes attorney and other fees, resulting from a court decision.
- (2) EEO financial settlements that do not require reimbursement to the Treasury Judgment Fund in accordance with the No FEAR Act - This includes payments associated with settlement agreements, at any stage of the EEO complaint process, and excludes court decisions.
- (3) EEO-related payments associated with Findings of Discrimination that do not require reimbursement to the Treasury Judgment Fund - This includes payments associated with findings issued by DOCR or EEOC.

Also, the use of the new OCCs by DOT's organizations expedited the capturing of financial information for the No FEAR FY 2007 annual report.

APPENDIX B: DOT No FEAR 2007 Fiscal Year Totals

The U.S. Department of Transportation (All Operating Administrations)

Equal Employment Opportunity Data Posted Pursuant to the No FEAR Act

Equal Employment Opportunity Data Posted Pursuant to Title III of the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (No FEAR Act), Pub. L. 107-174

Complaint Activity	Comparative Data Previous Fiscal Year Data					2008 thru 12/31
	2003	2004	2005	2006	2007	
Number of Complaints Filed	400	493	408	484	475	96
Number of Complainants	374	477	376	434	451	94
Repeat Filers	20	24	27	34	21	2

Complaints by Basis <i>Note: Complaints can be filed alleging multiple bases. The sum of the bases may not equal total complaints filed.</i>	Comparative Data Previous Fiscal Year Data					2008 thru 12/31
	2003	2004	2005	2006	2007	
Race	142	121	133	167		

					150	30
Color	44	49	66	67	53	12
Religion	10	15	12	14	19	7
Reprisal	180	147	155	208	150	44
Sex (including complaints filed under Equal Pay Act)	135	137				

			113			
				174		
					159	
						37
National Origin	29	106	47	50	51	13
Age	124	109	155	192	162	29
Disability	50	59				

			70			
				71		
					73	
						20
Non-EEO basis		*				
			*			
				*		
					51	
						8
						1

* Data not collected by Color. In previous years, "Color" included in basis "Race/Color."

Complaints by Issue <i>Note: Complaints can be filed alleging multiple issues. The sum of the issues may not equal total complaints filed.</i>	Comparative Data Previous Fiscal Year Data					2002 thru 12/31
	2003	2004	2005	2006	2007	
Appointment/Hire	9	19	36	10		

					23	0
Assignment of Duties	15	24	26	39	36	4
Awards	8	7	12	15	9	3
Conversion to Full-time	3	1	1	0		

					1	0
Disciplinary Action						
Demotion	2	1	1	2	3	2
Reprimand	7	9	9	11	17	3
Removal	0	1	2			

				5		8	1
Suspension	10	20	19	16	12		2
Other	5	3	8	11	17		0
Duty Hours	6	3	8				

				10		14		3
Evaluation Appraisal	14	11	20	22	15			0
Examination/Test	0	0	1	1	1			0
Harassment								
Non-Sexual	14							

		5		5		44		71		18
Sexual	107	29	45	5	8					2
Medical Examination	1	3	0	2	2					1
Pay (Including Overtime)	13									

		9		26		21		11		4
Promotion/Non-Selection	111	87	91	126	86					26
Reassignment										
Denied	15	6	19	10	6					0
Directed										

	1	13	16	10	11	5
Reasonable Accommodation	13	14	22	16	20	5
Reinstatement	1	2	6	3	1	0
Retirement						

	2	5	4	11	9	0
Termination	11	9	8	28	23	4
Terms/Conditions of Employment	35	32	18	29	31	3
Time and Attendance						

	5	11	26	33	26	7
Training	16	20	31	30	25	8
Other	12	29	27	10	51	8
Processing Time				Comparative Data		

	Previous Fiscal Year Data					2008 thru 12/31
	2003	2004	2005	2006	2007	
Complaints pending (for any length of time) during fiscal year						
Average number of days in investigation stage	*	*	*	203.62	192.97	235.87
Average number of days in final action stage	*	*	*	56.98	152.26	87.45

Complaints pending (<i>for any length of time</i>) during fiscal year where hearing was requested				161.79		
Average number of days in investigation stage	*	*	*	205.6	124.20	0
Average number of days in final action stage	*	*	*	43.76	25.58	8.11
Complaints pending (<i>for any length of time</i>) during fiscal year where hearing was not requested						

						131.72
Average number of days in investigation stage	*	*	*	205.6	195.34	235.87
Average number of days in final action stage	*	*	*	43.76	215.59	147.76
Complaints Dismissed by Agency	Comparative Data Previous Fiscal Year Data					2008 Thru 12/31
	2007	2006	2005	2004	2003	

Total Complaints Dismissed by Agency	111	200	224	179	206	28
Average days pending prior to dismissal	160	174	340	883	303	135
Complaints Withdrawn by Complainants						
Total complaints Withdrawn by Complainants	17	17	*			

*

*

Total Final Actions Finding Discrimination

**Comparative Data
Previous Fiscal Year Data**

**2008
thru
12/31**

2003

2004

2005

2006

2007

#

%

#

%

#

%

#

%

#

%

#

%

Total Number Findings

4

			8		10		2		0.7			
Without Hearing	0		2	25%	1	10%	0		3	43%	0	0

With Hearing

4	100%	6	75%	9	90%	2	100%	4	57%	1	100%
---	------	---	-----	---	-----	---	------	---	-----	---	------

Findings of Discrimination Rendered by Basis
Note: Complaints can be filed alleging multiple bases. The sum of the bases may not equal total complaints and findings.

**Comparative Data (Sec. 1614.705)
 Previous Fiscal Year Data**

		Comparative Data (Sec. 1614.705) Previous Fiscal Year Data					2008 Thru 12/31	
		2003	2004	2005	2006	2007		
#	%		#					

				%	#	%	#	%	#	%	#	%
Total Number Findings	6		22		25		2		7		1	0

Race

3

50%

6

27%

4

16%

0

2

29

0

0

Color

0

1

5%

4

16%

0

									1			
										14		
											0	
												0
Religion		0										
				0								
					2							
						8%						
							0					
								0				
										0		
											0	
												0
Reprisal		0										
				1								
					5%							

National Origin	0		0		1	4%	0		0	0	0	0
Age	2	33%	4	18%	0		1					

								50%				
									2			
										29		
											0	
												0
Disability		0										
				3								
					14%							
						0						
							1					
								50%				
									1			
										14		
											0	
												0
Non-EEO												
		*										
				*								

					*		*		0	0	0	0
Findings After Hearing	6		19		20		2		4	0	0	

Race	3	50%	5	26%	3	15%	0	0	0	0	0	0
Color	0		1	5%	2	10%	0					

				5%	6	30%	0	4	100	1	100%
Sex (including complaints filed under Equal Pay Act)	1	17%	6	31%	4	20%	0	0	0	0	

National Origin	0	0	0	1	5%	0	0	0	0	0	0
Age	2	33%	3	16%	2	10%	1				

								50%	0	0	0	0
Disability	0		3	16%	1	5%	1	50%	1	25	0	0
Non-EEO	*											

*

*

*

0

0

0

0

Findings Without Hearing

0

3

1

0

3

0

												0
Race	0		1	33%	1	100%	0		2	67	0	0
Color	0		0		0		0					

			0									
					0							
							0					
									0			
										0		
											0	
												0
Sex (including complaints filed under Equal Pay Act)	0		1	33%	0		0		0	0	0	0
National Origin	0											
			0									
					0							
							0					
										0		

										0	0	0
Age	0		1	33%	0	0			2	67	0	0
Disability	0		0									

--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

Findings of Discrimination Rendered by Issue	Comparative Data Previous Fiscal Year Data										2008 thru 12/31	
	2003		2004		2005		2006		2007			
	#	%	#	%	#	%	#	%	#	%		

							#	%	#	%	#	%
Total Number of Findings	4		8		10		2		7		1	
Appointment/Hire	0											

			0		0		0		1	17	1	100%
Assignment of Duties	0		1	11%	1	10%	0		0	0	0	

												0
Awards	0		0		0		0		0		0	0
Conversion to Full-time	0		0		0	0	0		0	0	0	0
Disciplinary Action												
Demotion	0		0									

					1							
						10%		0		0		0
										0		0
												0
Reprimand												
	0											
			0									
					0							
							0					
									0			
										0		
											0	
												0

Suspension

0

0

0

0

0

0

0

0

Removal

0

0

0

0

Examination/Test

0

0

0

0

0

0

0

Harassment

Non-Sexual	0		1	11%	1	10%	0		0	0	0	0
Sexual	2	40%										

0

0

0

0

0

0

0

Medical Examination

0

0

0

0

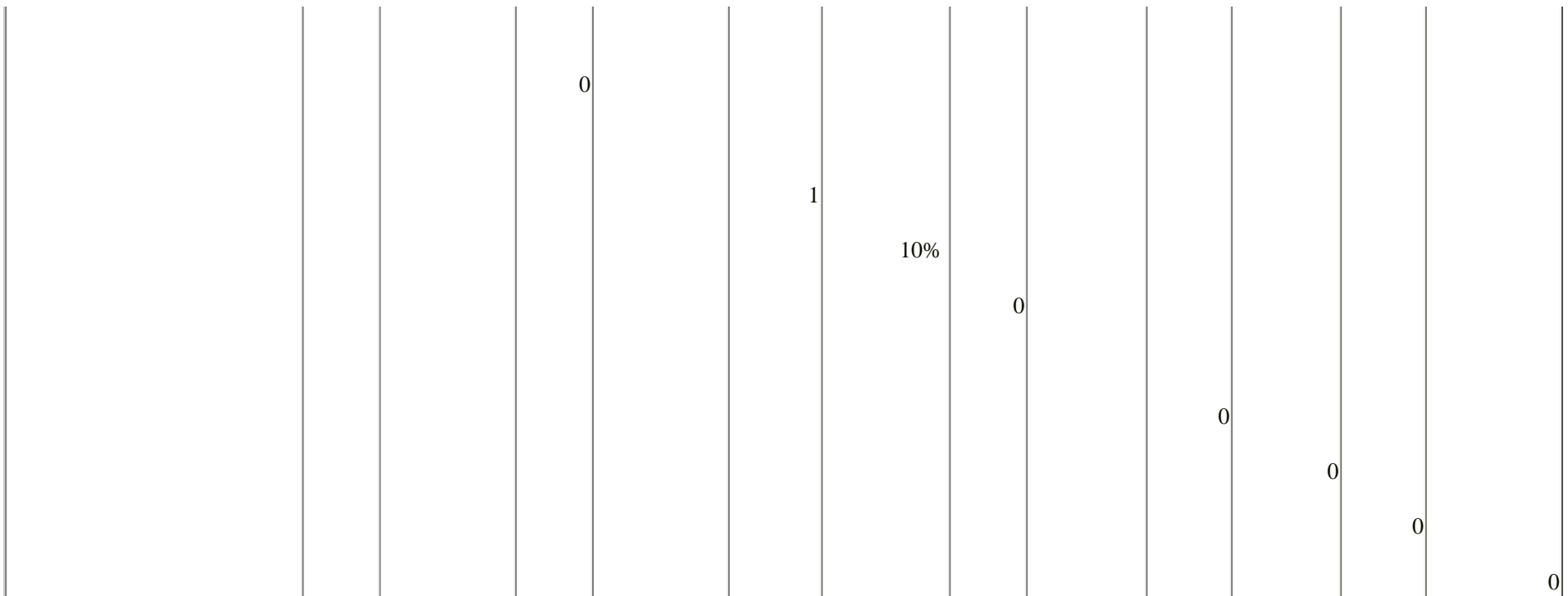
0

0

0

												0
Pay (Including Overtime)	0		0		0		0		1	17	0	0
Promotion/Non-Selection	2	40%	3	27%	1	10%	1					

								50%		1		17		0		0
Reassignment																
Denied		0														
				2												
					18%											
						0										
									0							
											1					
												17				
														0		
																0
Directed		0														



Reasonable Accommodation



											0	
												0
Reinstatement	0		0		0		0		0		0	
												0
Retirement	0		0		0							

							0						
									0			0	
										0			
											0		
												0	
													0
Termination													
	0												
		0											
			0										
				0									
					0								
						0							
							0						
								0					
									0				
										0			
											0		
												0	
													0
Terms/Conditions of Employment													
	0												

											0	
												0
Training	1	20%	0	1	10%	0	0	0	0	0	0	0
Other	0		0	0								

							0					
									1			
										17		
											0	
												0
Findings After Hearing												
	2											
			8									
				12								
							2					
									4			
											1	
Appointment/Hire												
	0											

			0		0		0		0		0		1		100%
Assignment of Duties	0		1	13%	1	8%	0		0		0		0		

											0	
												0
Awards	0		0		0		0		0		0	
												0
Conversion to Full-time	0		0		0							

	0		0		0		0		0		0		0		0		0		0
Suspension	0		0		0		0		0		0		0		0		0		0

							*		*	0	*	0
Duty Hours	0		0		0		0		0	0	0	0
Evaluation Appraisal												

	0		0		1	8%	0		0		0		0		0
Examination/Test	0		0		0		0		0		0		0		0

Pay (Including Overtime)

0

0

0

0

1

33

0

0

Promotion/Non-Selection

1

50%

2

25%

0

1

50%

Reinstatement	0		0		0		0		0	0	0	0
Retirement	0		0		0		0					

									0		0		0		0
Termination		0		0		0		0		0		0		0	0
Terms/Conditions of Employment		0													

			2	25%	3	25%	0	1	33	0	0
Time and Attendance	0		0		0		0	0	0	0	0

Training	1	50%	0	1	8%	0	0	0	0	0	0
Other	0		0	3	25%	0					

									1			
										33	0	0
Findings Without Hearing	1		1		0		0		3	0	0	0
Appointment/Hire	0											

0

0

0

1

33

0

0

Assignment of Duties

0

0

0

0

0

0

0

Awards	0		0		0		0		0		0	0
Conversion to Full-time	0		0		0		0					

0

0

0

0

0

0

0

Suspension

0

0

0

0

0

0

											0	
												0
Removal	0		0		0		0		0		0	
												0
Other	*		*		*							

							*			*		0		0			0
Duty Hours	0		0		0		0		0		0		0		0		0
Evaluation Appraisal	0																

0

0

0

0

0

0

0

Examination/Test

0

0

0

0

0

0

												0	0
--	--	--	--	--	--	--	--	--	--	--	--	---	---

Harassment

Non-Sexual	0		0		0		0		0		0		0	0
------------	---	--	---	--	---	--	---	--	---	--	---	--	---	---

Sexual	0		0											
--------	---	--	---	--	--	--	--	--	--	--	--	--	--	--

	0		0		0		0		0		0		0		0		0		0
Promotion/Non-Selection	1	100%	0		0		0		1										

										33		0		0
Reassignment														
Denied														
	0													
			0											
				0										
					0									
							0							
									1					
										330				
												0		
														0
Directed														
	0													
			0											

Reinstatement

0

0

0

0

0

0

0

0

Retirement

0

0

0

0

									0			
										0		
											0	
												0
Termination												
	0											
			1									
				100%								
					0							
								0				
									0			
										0		
											0	
												0
Terms/Conditions of Employment												
	0											
			0									

Training

0

0

0

0

0

0

0

0

Other

0

0

0

0

0
0
0
0

Pending Complaints Filed in Previous Fiscal Years by Status

Pending Complaints Filed in Previous Fiscal Years by Status	Comparative Data Previous Fiscal Year Data					2008 thru 12/31	Complaint Investigations	Comparative Data Previous Fiscal Year Data					2008 thru 12/31
	2003	2004	2005	2006	2007			2007	2006	2005	2004	2003	
							Pending Completion Where Investigation Exceeds Required Time Frames	79	50	*	*	*	75

*
Data
was
not
collected
prior
to

<p>Total complaints from previous Fiscal Years</p>	<p>*</p>	<p>*</p>	<p>*</p>	<p>688</p>	<p>609</p>	<p>730</p>
<p>Total Complainants</p>	<p>*</p>	<p>*</p>	<p>*</p>	<p>513</p>	<p>237</p>	<p>474</p>
<p>Number complaints pending</p>						

DOT's implementation of the standard posting format mandated by EEOC's final rule dated August 2, 2006.

This page was last modified on January 31, 2008.

Investigation

*

*

*

[276](#)

101

216

Hearing

*

Final Agency Action

	*	*	*	60	46	87

Appeal with EEOC Office of Federal Operations						
	*		*	*	1	
						2
						2

APPENDIX C: EEO Policy Statement

Equal Employment Opportunity Policy Statement 2007

Every employee at the U.S. Department of Transportation is responsible for maintaining a work environment that is free of discrimination. When any employee or job applicant is discriminated against, the work of this Department suffers, opportunities for achievement are lost, and the ability of our employees to reach their full potential is jeopardized.

We must eliminate all barriers to equal employment opportunity for employees and applicants for employment and further ensure that our recruitment and selection processes support the full consideration of talented individuals from groups that were not well represented in the past. All supervisors and managers must ensure that employees receive equal opportunity to obtain the training needed to maintain core competencies and develop to their full potential. We must counsel and mentor all of our employees, and acknowledge accomplishments through formal recognition and opportunities for advancement. Personnel actions must be based upon merit factors, without bias or prejudice.

There is zero tolerance of discrimination in the workplace. Any departmental employee determined to have engaged in unlawful discriminatory practices, and any employee in a position of authority who fosters an environment that allows discriminatory practices to exist, will be subject to appropriate disciplinary action.

Employees who believe they have been discriminated against on the basis of race, color, national origin, religion, age, sex, disability, or sexual orientation; or subjected to reprisal for opposing discrimination in the agency or hindered from participating in the employment discrimination complaint process are encouraged to contact their Office of Civil Rights or the Departmental Office of Civil Rights.

I am committed to ensuring the Department is a model workplace where every employee is valued and has an opportunity to contribute fully to the accomplishment of our mission. I ask you to join me in this commitment. I am counting on each of you to do your part.

Mary E. Peters

APPENDIX D: Prevention of Harassment Policy Statement

Policy Statement on the Prevention of Harassment

2007

The U.S. Department of Transportation has zero tolerance for harassment on the basis of race, color, national origin, religion, age, sex, disability, sexual orientation, or protected activity. Harassment in this context refers to unwelcome comments or conduct that is so objectively offensive as to alter the conditions of employment. It is an illegal and offensive form of discrimination that undermines professional, cooperative working relationships, and violates the law and Department policy. As Secretary of Transportation, I am fully committed to our longstanding policy that harassment is wholly unacceptable, will not be tolerated, and must not occur.

Any employee who believes that he or she has been the victim of harassment may, without fear of reprisal, use the Department's informal and formal programs to prevent and eliminate harassment, seek assistance of an Equal Employment Opportunity counselor, or contact the Department's Offices of Civil Rights. Any manager or supervisor who becomes aware of such unacceptable behavior must take immediate and appropriate corrective action, and has a responsibility to ensure that harassment stops and does not recur. Violations of the law prohibiting harassment or violations of this policy will result in appropriate disciplinary actions against the offenders, up to and including dismissal.

Everyone is entitled to a work environment that is free from harassment. Prevention is the best tool we have. I ask all employees to join me in implementing and communicating this policy.

Mary E. Peters

APPENDIX E: Whistleblowing Policy Statement

Policy Statement on the Implementation of the Notification and Federal Employee Antidiscrimination and Retaliation (No FEAR) Act of 2002, Public Law 107-174

On May 15, 2002, President Bush signed the No FEAR Act (“the Act”), which requires Federal agencies to be accountable for violations of antidiscrimination and whistle blower protection laws. The Act also requires Federal agencies to: (a) notify and train Federal employees, former Federal employees and applicants for Federal employment of their rights and protections available to them under the Federal antidiscrimination, whistleblower protection and retaliation laws; and (b) post statistical data relating to Federal sector Equal Employment Opportunity (EEO) complaints on its public website.

The Act mandates that Federal agencies will provide annual reports to Congress on:

(a) the number of cases that were filed in Federal district court resulting in judgments, or awards or compromised settlements; (b) the disposition of those cases; (c) the money required to be reimbursed; and (d) the number of employees disciplined for discrimination, retaliation, harassment, or other infractions of a provision of law cited in the Act.

I fully support the principles of the Act and it is the Department’s policy to strictly prohibit EEO discrimination, harassment, and interference/retaliation when making protected disclosures as specified in the whistleblower protections laws. For more detailed information concerning the rights and protections of Federal employees, former employees, and applicants for Federal employment under the Act, you may refer to the Department’s website at: [www.dotcr.ost.dot.gov/asp/No FEAR.asp#2](http://www.dotcr.ost.dot.gov/asp/No_FEAR.asp#2) or contact the Departmental Office of Civil Rights’ Compliance Operations Division at (202) 366-9370, TTY (202) 366-0663 or toll-free (866) 355-7147.

The Department’s goal is to be a model Federal employer, and I have charged the Assistant Secretary for Administration and the Director of the Departmental Office of Civil Rights with joint responsibility for effectively implementing the No FEAR Act’s requirements. I expect all departmental offices and Operating Administrations to provide their full support and necessary resources as required to ensure our complete compliance with the Act. This also includes the timely submission of all requested information for the annual report to Congress.

Mary E. Peters

APPENDIX F: Civil Cases

Figure 3.10
 2007 Number of Foreign Born Cases by Age Group

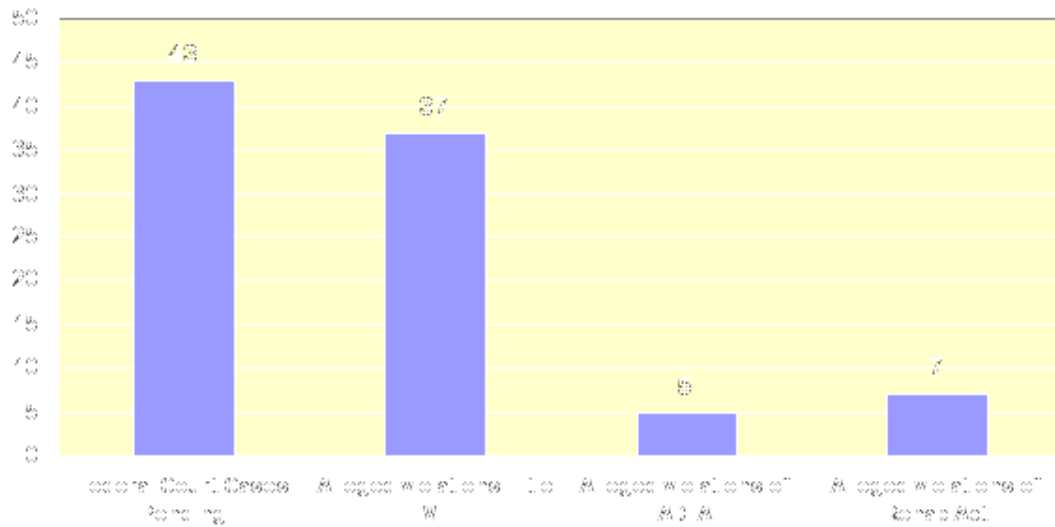


Figure 3.11
 Number of Cases Including Foreign Born Residents by Age Group

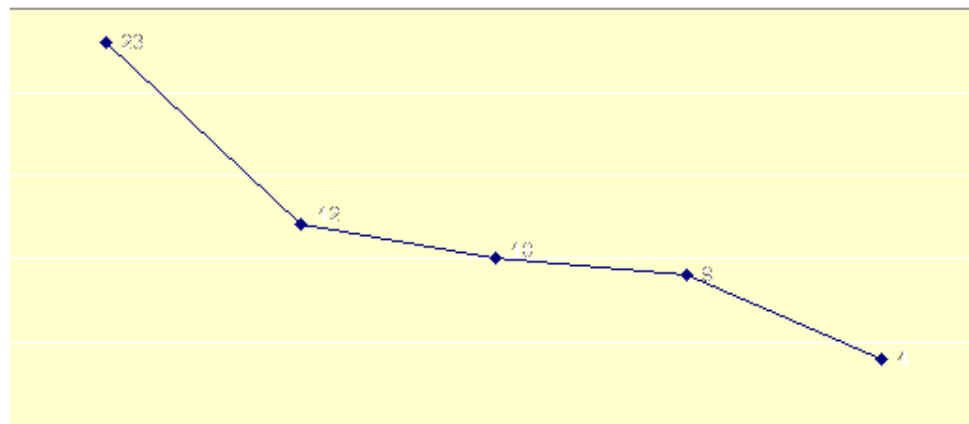
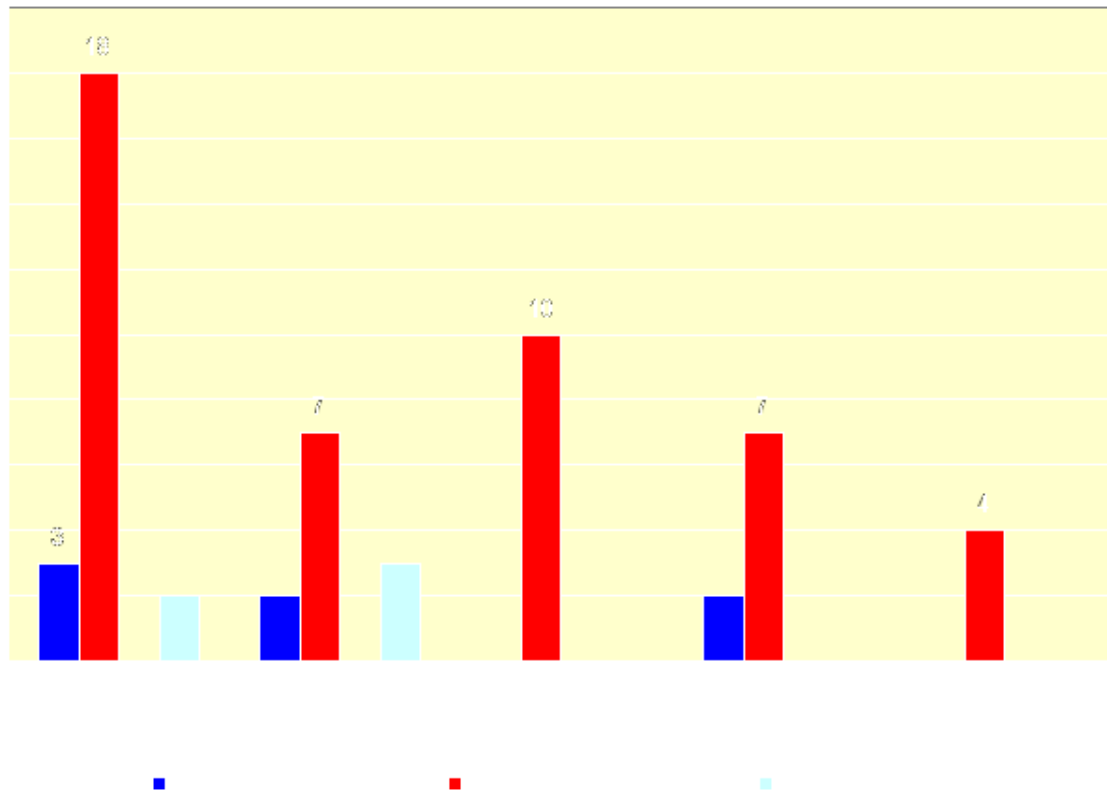
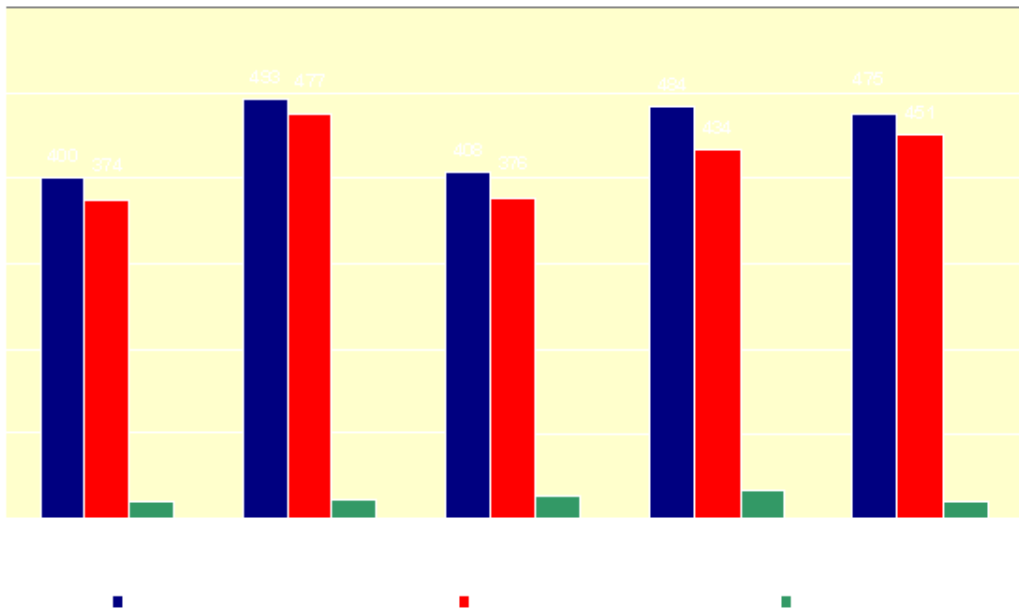


Fig. 10
Number of Cases in the Los Angeles Area by Agency

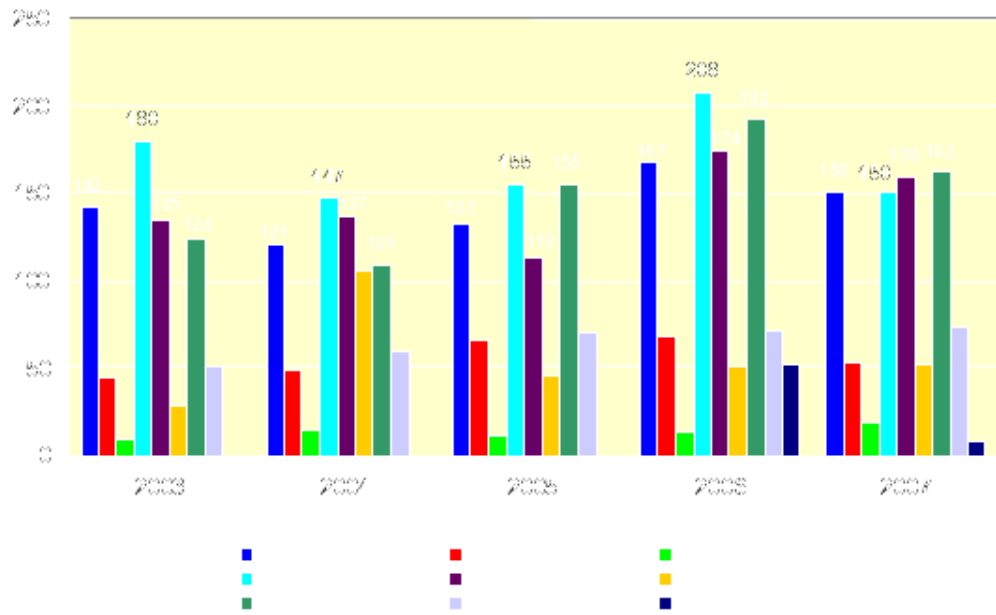


APPENDIX G: Administrative Cases

3.02 Comes by less



3.02 Comes by less



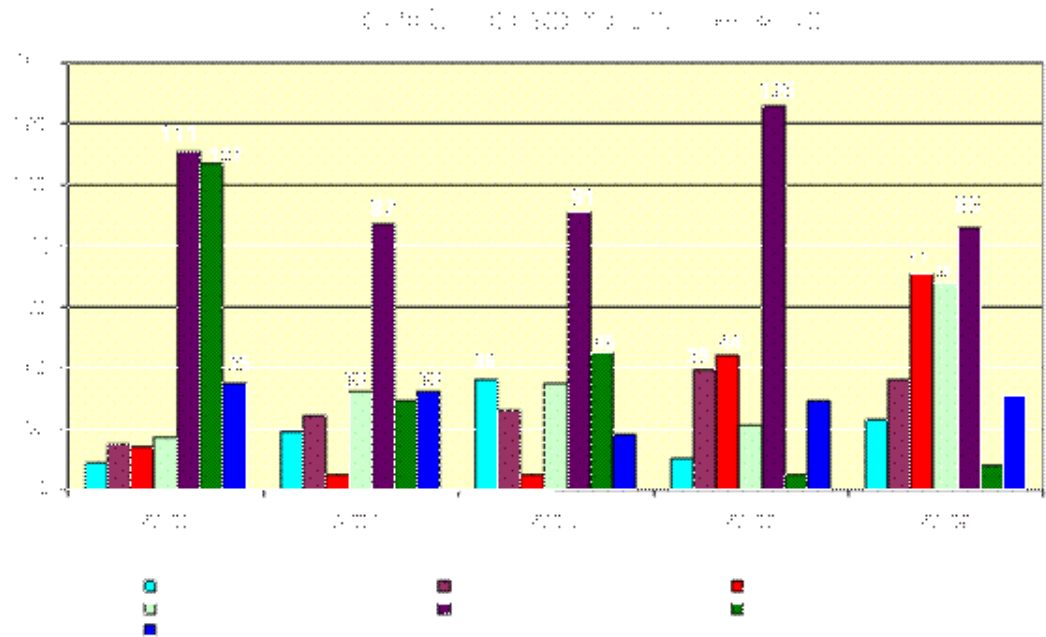


Figure 3: Number of cases by age group and gender

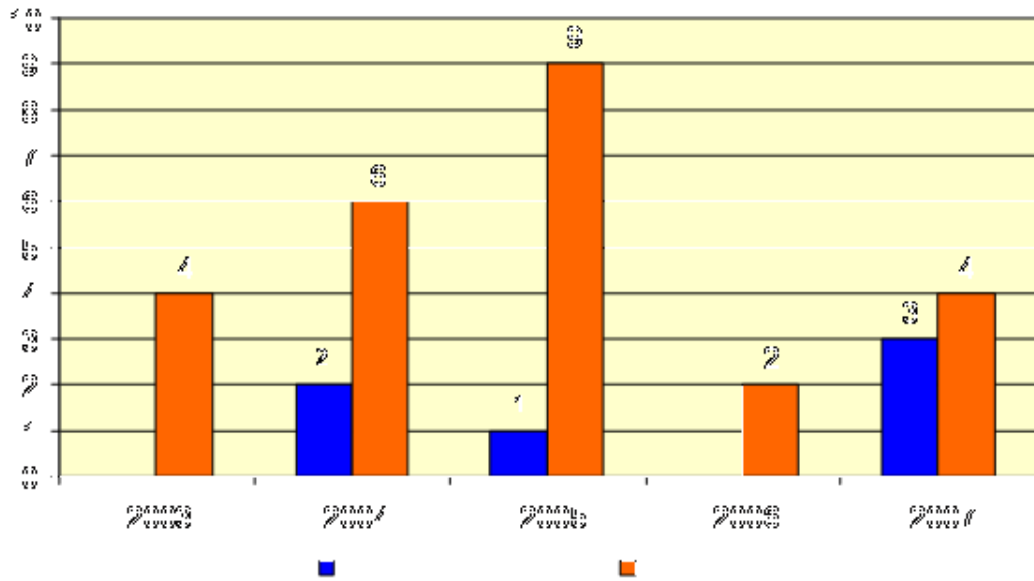


Figure 4: Number of cases by age group and gender

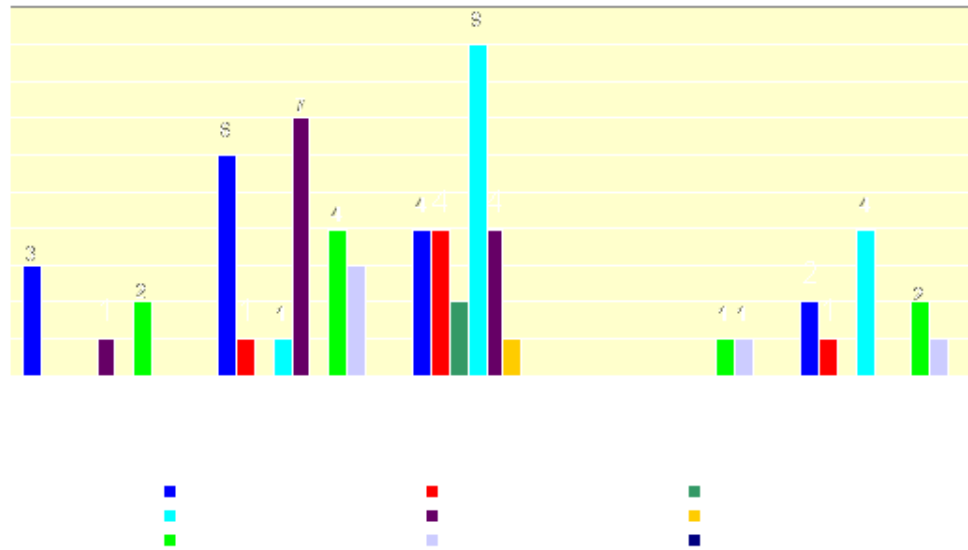


Figure 6
 "Accident" responses by sex
 After being

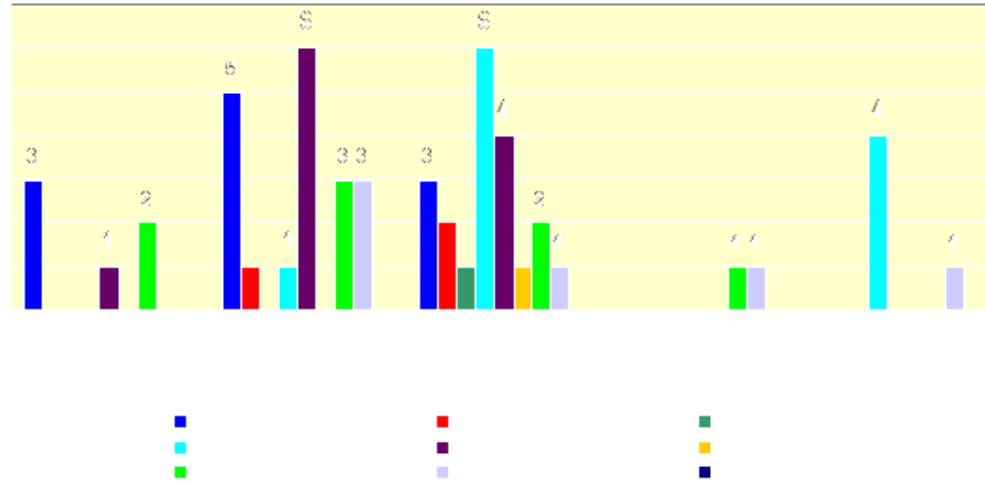


Figure 7
 "Accident" responses by sex
 Without being

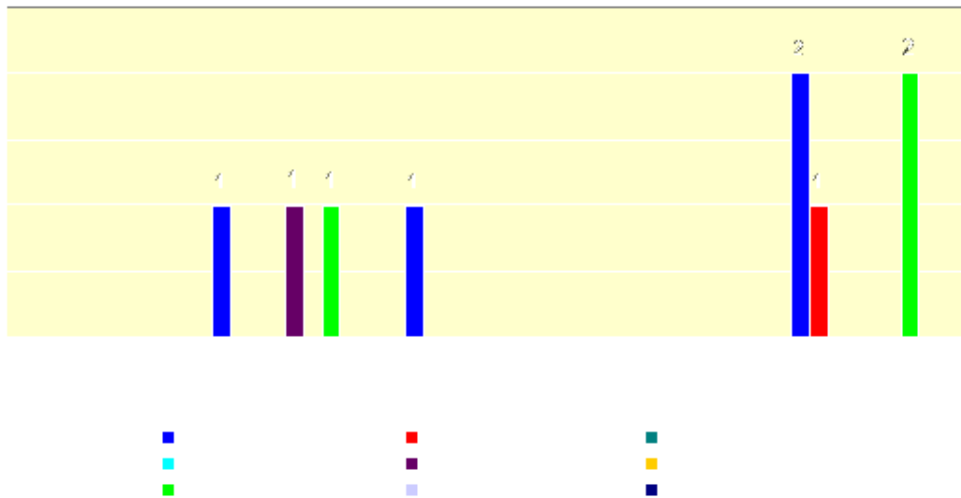
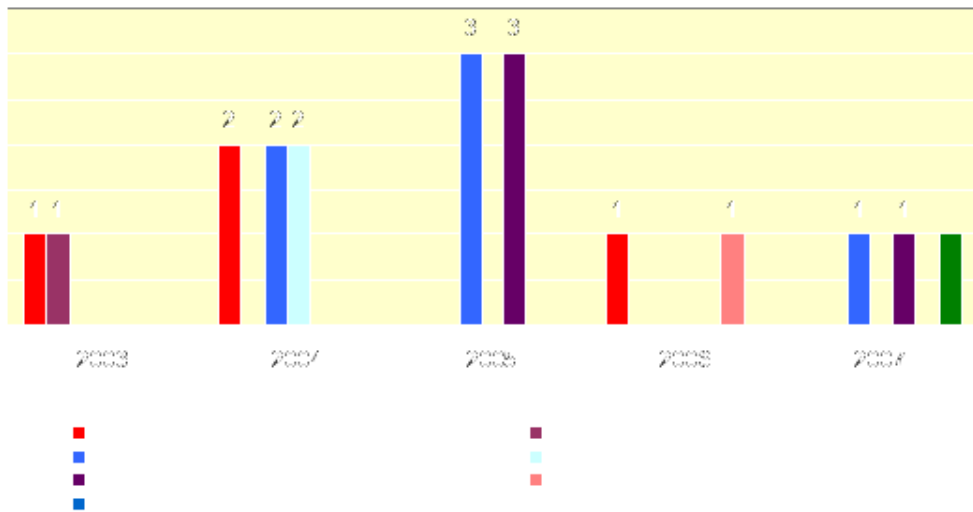


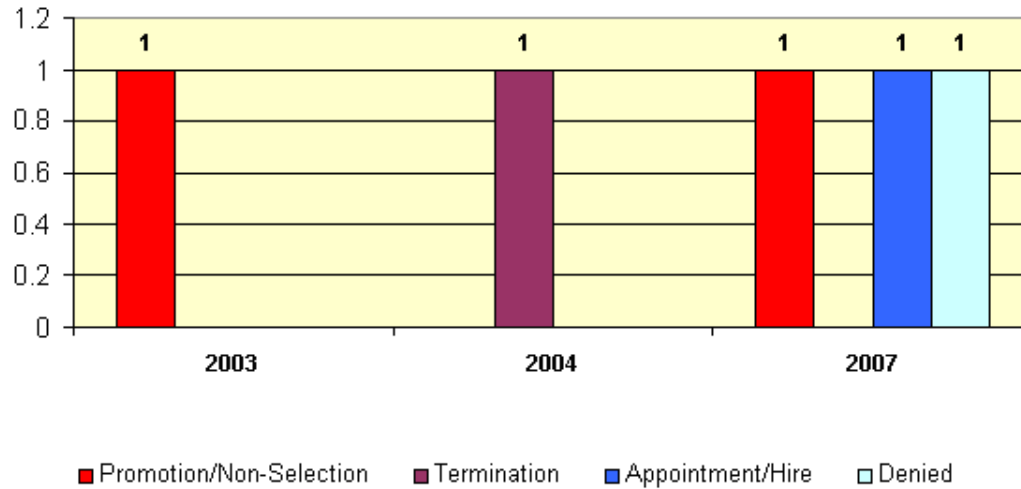
Figure 3
 Number of cases by year and sex



Figure 4
 Number of cases by year and sex, adjusted for age



**Figure 10: Number of Findings of Discrimination by Issue
Without Hearing**



[1]

Some of these Federal court cases involved more than one antidiscrimination law. For example, a case may have included violations of Title VII and the ADEA. Therefore, the total number of cases reported are the actual numbers of cases pending, but each case may involve more than one antidiscrimination law.

[2]

Although there were 475 complaints filed, there were 452 filed individually.

[3]

According to the EEOC Form 462 Annual Federal Equal Employment Report of Discrimination Complaints for FY 2007, 331 complaints involved claims of Title VII, 123 involved claims of the ADEA, 70 involved claims of the Rehab. Act; and 6 involved claims of the Equal Pay Act (“EPA”)(29 U.S.C. 216(b)).

[4]

The DOT had not implemented the final action in one administrative case at the end of the fiscal year. See Appendix B, page 32 and Appendix G, Figure 4.

[5]

Section 201(c) provides the law applicable under the No FEAR Act, i.e., 5 U.S.C. §2302(b)(1), §2302(b)(8), §2302(b)(9) and §2302(d).

[6]

The OAs include the Federal Aviation Administration, Federal Highway Administration, Federal Transit Administration, National Highway Traffic Safety Administration, Maritime Administration, Federal Railroad Administration, Federal Motor Carrier Safety Administration, Pipeline and Hazardous Materials Safety Administration, Research and Innovative Technology Administration, Saint Lawrence Seaway Development Corporation, and Surface Transportation Board.

[7]

This FY, 60% of DOT’s managers received basic ADR orientation training as reported in DOT’s EEOC Form 462 Annual Federal Equal Employment Opportunity Statistical Report of Discrimination Complaints.

[8]

Some of these Federal Court cases involved more than one antidiscrimination law. For example, a case may have included violations of Title VII and the ADEA. Therefore, the total number of cases reported are the actual numbers of cases pending, but each case may involve more than one antidiscrimination law.

[\[9\]](#)

These 475 complaints were filed by 452 individuals.

[\[10\]](#)

These cases include one or more of the protected discriminatory bases enforceable under the EEOC regulations, e.g., race, color, national origin, age, sex, disability, etc.

[\[11\]](#)

5 C.F.R. § 724.102

[\[12\]](#)

This would include cases where there is a settlement agreement and no admission of liability but where the law clearly would have been found to have been violated had there been a formal finding. OPM states in the Federal Register Notice, “it is the conduct of the employee that dictates whether a disciplinary action is to be reported under the regulations, not whether there is a formal finding.” 71 F. R. 78033 (December 28, 2006)

[\[13\]](#)

The term “final action” refers to the action that an agency takes either following an administrative judge’s decision to implement fully that decision or to not implement fully the decision and file an appeal to the EEOC’s Office of Federal Operations. Final action also can refer to the action that the agency takes when the agency either dismisses an entire complaint under 29 C.F.R. § 1614.107, receives a request for an immediate final decision, or does not receive a reply to the notice issued under 29 C.F.R. § 1614.108(f).

[\[14\]](#)

The EEOC Form 462 Annual Federal Equal Employment Opportunity Statistical Report of Discrimination Complaints for FY 2006.

[\[15\]](#)

The EEOC regulations at 29 C.F.R §1614.602 requires Federal agencies to provide data on the discrimination complaints processing, including alternative dispute resolution, on a fiscal year basis.