

**Office of Diversity and Civil Rights
Fiscal Year 2011 Annual Report**



**Office of the Commissioner
Office of Diversity and Civil Rights
FY 2011 Annual Report**

Office of Diversity and Civil Rights Fiscal Year 2011 Annual Report

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I. Introduction

On behalf of the dedicated staff members of the Office of the Commissioner, Office of Diversity and Civil Rights (DCR), we would like to take this opportunity to share some of U.S. Customs and Border Protection's (CBP) fiscal year (FY) 2011 diversity, inclusion and civil rights/civil liberties program achievements. This report outlines the actions implemented in FY 2011 to achieve CBP's "Top 5 Strategic Priorities."

1. Implementing CBP's Diversity and Inclusion Management Initiative
2. Managing Reasonable Accommodation Requests
3. Managing Civil Liberties Claims
4. Managing CBP's EEO Complaint Program
5. Managing DCR's Staff Development Initiative

During FY 2011, DCR implemented several initiatives and actions which achieved outstanding results in the five strategic areas listed above. For example, under the leadership of the Diversity and Inclusion Management Committee (DIMC), CBP implemented several diversity initiatives which advanced employee inclusion and engagement to support CBP's mission of protecting the American people while facilitating lawful travel and trade. With regard to the facilitation of reasonable accommodation requests, based on religion and/or disability, CBP continues to strive to provide the highest possible level and quality of service to our employees and members of the trade and traveling public. CBP established procedures and controls to improve communications with the Department of Homeland Security's (DHS), Office of Civil Rights and Civil Liberties, which allowed CBP to comply with DHS's policies regarding the treatment of travelers, members of the trade community and individuals detained for law enforcement purposes.

In the area of equal employment opportunity (EEO) complaint management, for the second time in our history, DCR achieved full compliance with the regulatory timeframes stated in 29 C.F.R § 1614 for processing informal EEO counseling requests. CBP processed 100% of all informal EEO counseling requests within the regulatory timeframes. In addition, over 98% of all EEO investigations were completed within the 180 calendar day regulatory timeframe. DCR achieved these outstanding results by establishing performance goals, providing leadership, technical guidance and support to staff members through individualized training, coaching, mentoring, and peer support.

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II. Office of Diversity and Civil Rights Overview

The Office of Diversity and Civil Rights (DCR) is responsible for developing and administering all policies and directives necessary to ensure that all CBP programs are in full compliance with the applicable Federal laws, executive orders, and relevant Federal policies governing employee and individual civil rights and civil liberties. In addition, DCR is responsible for reviewing and approving all CBP policies, regulations, procedures, external correspondence, training curricula and materials, and external communications and publications related to civil rights and civil liberties issues/matters prior to internal or external dissemination and use or release within or outside CBP. More specifically, DCR is responsible for the following:

- Complaints/issues regarding alleged discriminatory treatment of former or current employees, applicants for employment, and members of the traveling public or trade community.
- Workforce diversity and public outreach.
- Allegations of racial profiling.
- Treatment of adult detainees and unaccompanied minors.
- Requests to provide reasonable accommodations to employees, applicants, and members of the public with disabilities.
- Federally funded programs or activities sponsored or conducted by CBP.
- Accessibility to electronic and information technology systems.

A. Anti-discrimination Policy



Alan Bersin, Commissioner

As Commissioner of U.S. Customs and Border Protection (CBP), I want to affirm my commitment to the principles of equal opportunity and fair treatment for all CBP employees, applicants for employment, members of the trade and traveling public, and individuals detained for law enforcement purposes. CBP is committed to maintaining its status as a model employer and world-class law enforcement organization. As such, it is the policy of CBP to treat all individuals in a nondiscriminatory manner, without regard to race, color, religion, sex, national origin, age, disability, genetic information, sexual orientation, parental status, or prior equal employment opportunity (EEO) activity.

CBP executives, managers, and supervisors shall take appropriate action to create a diverse and inclusive workplace environment that recognizes and rewards excellence, teamwork, fairness, and integrity. The principles of equal employment opportunity apply to all CBP personnel employment programs, management practices and decisions including, and are not limited to, recruitment, hiring, merit promotion, transfer, reassignment, training and career development, benefits, and separation.

Personally, I would like to remind all CBP employees of the need to maintain our commitment to treating our fellow coworkers, applicants for employment, members of the trade and traveling public, and individuals detained for law enforcement purposes with dignity and respect. Only through our commitment to the highest level of individual integrity and professionalism will we be able to meet our homeland security mission.

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In addition, all CBP employees must work to ensure that all barriers to EEO are identified and removed. Therefore, employees who believe they have been subjected to discrimination must contact CBP's Office of Diversity and Civil Rights (DCR) within 45 calendar days of the alleged discriminatory event to initiate an informal EEO complaint. You may initiate an informal EEO complaint by calling 1-877-MY-EEO-HELP (1-877-693-3643), sending an electronic mail message to cbpeeocomplaintfiling@dhs.gov, or by contacting the local DCR Officer. To identify the DCR Officer responsible for your duty station, or to obtain current information regarding the EEO complaint process, please visit the DCR Internet Web site at the following address: www.cbp.gov/eo.

B. Diversity and Inclusion Policy Statement

It is the policy of U.S. Customs and Border Protection (CBP) to treat all employees, members of the trade and traveling public, and individuals detained for law enforcement purposes with dignity and respect. At CBP, we value diversity as a tool for achieving readiness and accomplishing our core mission. CBP's mission – protecting the Nation – is global in nature. CBP's workforce – from Air and Marine Interdiction Agents, Border Patrol Agents, Customs and Border Protection Officers, and mission support staff – must interact with a diverse population each and every day. Therefore, it is imperative that CBP build and maintain a talented and diverse workforce to protect and safeguard our nation. By reflecting America's diversity, CBP's workforce can provide a wider range of ideas and solutions aimed at protecting and securing our Nation.



CBP Organizes Local Muslim Youth Outreach in Buffalo, New York

This responsibility is not limited to managerial actions regarding recruiting and employment; it is the responsibility of all CBP employees to work to dispel stereotypes and to build a work environment that is based on mutual respect. All CBP employees must be committed to providing both fair and equal access to the privileges and benefits of employment based solely on individual merit while requiring personal accountability and integrity in all aspects of our law enforcement mission. To meet this commitment, we all must work to create a work environment that recognizes diversity and fosters inclusion and equal opportunity regardless of an individual's race, color, national origin, religion, sex, age, disability, status as a parent, sexual orientation, or genetic information.

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To maintain our status as a high-performing Federal law enforcement organization, we must continue to rely on our diverse and dynamic workforce while striving to ensure that all of our employees receive the tools necessary to develop the requisite skill, multidisciplinary knowledge, and up-to-date training and development necessary to accomplish our present and future mission objectives. Therefore, we must fully embrace the concept of diversity and inclusion management to create and maintain a positive work environment where the similarities and differences of individuals are respected and valued, so that everyone can reach their full potential and maximize their contributions to achieve our strategic goals and objectives. By fostering a positive work environment based on diversity and inclusion, we can leverage the strengths afforded by the cultural perspective of each employee to achieve our homeland security mission.

III. CBP's Workforce Demographics

A. Five Year Demographic Trend

At CBP, diversity and inclusion remains one of our top priorities and an important theme that permeates CBP's management philosophy. CBP's leadership team is focused on eliminating barriers that restrict equal employment opportunity for all individuals and dedicated to promoting an environment of inclusion, cultural appreciation and awareness which supports the development and advancement of all employees. To meet our homeland security mission, CBP's workforce has steadily increased over the past six years. Between FY 2006 and FY 2011, CBP's workforce increased by over 37%. Through a well-managed diversity and inclusion strategy, CBP conducted outreach to underrepresented communities to ensure the full participation of women and minorities in this workforce expansion.

Table 1	FY06	FY07	FY08	FY09	FY10	FY11	CLF
Male	76.70%	76.90%	77.80%	78.23%	78.33%	78.76%	54.40%
Female	24.30%	23.10%	22.20%	21.77%	21.67%	21.24%	45.60%
White	56.30%	56.40%	57.70%	58.16%	50.75%	51.50%	70.78%
Black	7.10%	6.50%	6.10%	6.01%	7.40%	7.27%	10.00%
Hispanic	31.50%	32.40%	31.80%	31.55%	35.58%	35.06%	13.20%
Asian Pacific American	4.50%	4.20%	3.80%	3.74%	5.28%	5.21%	4.30%
Native American	0.60%	0.50%	0.50%	0.55%	0.99%	0.95%	0.70%

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Table 1 above shows CBP’s workforce demographics from FY 2006 through FY 2011 compared to the civilian labor-force¹ (CLF) statistics. At the end of FY 2011:

- Males represented 78.76%, compared to 54.40% of the CLF.
- Women represented 21.24%, compared to 45.60% of the CLF.
- Whites represented 51.50%, compared to 70.78% of the CLF.
- Blacks represented 7.27%, compared to 10% of the CLF.
- Hispanics represented 35.06%, compared to 13.20% of the CLF.
- Asian Pacific Americans represented 5.21%, compared to 4.30% of the CLF.
- Native Americans represented 0.95%, compared to 0.70% of the CLF.

B. CBP Law Enforcement Workforce Demographics

For limited comparison only, Table 2 below depicts CBP’s law enforcement demographics as compared to a snapshot of Federal sector law enforcement jobs. CBP’s workforce demographics are consistent with the overall Federal law enforcement community in some respects and exceed it in others. CBP has the largest representation of Hispanics employees in the Federal law enforcement community. Women represent 11.2% of CBP law enforcement positions as compared to a rough average of 12.5% for Federal law enforcement on a whole². In FY 2012, within the bounds of Federal law, CBP will continue to focus on the recruitment of women and underrepresented minorities groups to achieve, and ultimately exceed parity with the Federal sector on a whole.

Agency	Women	Native American	African American	Asian	Hispanic
CBP (Armed Officers)	11.2%	1.0%	4.8%	4.7%	40.8%
Bureau of Prisons	13.3%	1.3%	24.2%	1.5%	12.7%
FBI	18.5%	0.4%	5.8%	3.6%	7.4%
ICE	13.7%	0.6%	8.6%	2.7%	22%
Secret Service	10.5%	0.6%	11.2%	2.6%	5.2%
DEA	8.9%	0.4%	7.6%	2.5%	8.9%
Marshals Service	10.2%	0.7%	7.3%	2.3%	9.6%
ATF	13.3%	1.1%	9.3%	2.1%	7.5%
Average Rate	12.5%	0.8%	9.9%	2.8%	14.3%

¹A term used by the U.S. Bureau of Labor Statistics (BLS) to describe the subset of Americans who have jobs or are seeking a job, are at least 16 years old, are not serving in the military and are not institutionalized.

²Bureau of Justice Statistics - July 2006.

³This table does not include all Federal law enforcement employees.

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Table 2a below illustrates CBP's law enforcement occupations as compared to the relevant civilian labor force⁴ (RCLF) demographics.

Table 2a⁵: Gender, Race, Ethnicity of Federal Officers - Arrest and Firearm Authority					
Agency	Women	Native American	African American	Asian	Hispanic
CBP Average**	11.2%	1.0%	4.8%	4.7%	40.8%
CBPOs	18.2%	1.0%	7.7%	8.3%	32.0%
RCLF CBPO	46.80%	0.60%	10.50%	3.80%	10.70%
BPAs	5.0%	0.9%	2.0%	1.4%	50.7%
RCLF BPA	21.10%	0.60%	10.60%	1.40%	9.10%
AMIAs	1.7%	1.7%	2%	0.7%	15.6%
RCLF OAM⁶	3.8%	3.23%	3.23%	0.0%	3.23%

Table 2a above indicates the following:

- Women represent 11.2% of CBP law enforcement positions:
 - 18.2% CBPOs, compared to 46.8% in the RCLF.
 - 5% BPAs, compared to 21.1% in the RCLF.
 - 1.7% AMIAs, compared to 3.8% in the RCLF.

- American Indians represent 1.0% of CBP law enforcement positions:
 - 1.0% CBPOs, compared to 0.6% of the RCLF.
 - 0.9% BPAs, compared to 0.6% of the RCLF.
 - 1.7% AMIAs, compared to 3.2% RCLF.

- African Americans represent 4.8% of CBP's law enforcement positions:
 - 7.7% CBPOs, compared to 10.5% of the RCLF.
 - 2.0% BPAs, compared to 10.6% of the RCLF.
 - 2.0% AMIAs, compared to 3.2% of the RCLF.

- Asian Americans represent 4.7% of CBP law enforcement positions:
 - 8.3% CBPO's, compared to 3.8% of the RCLF.
 - 1.4% BPAs, compared to 1.4% of the RCLF.
 - 0.7% AMIAs, compared to 0.0% of the RCLF.

⁴ The Relevant Civilian Labor Force (RCLF) is the civilian labor force (CLF) data directly comparable to the occupation population being presented.

⁵ This table does not include all Federal law enforcement employees - Bureau of Justice Statistics - July 2006.

⁶ OAM data includes Pilots, Marine Interdiction Agents, Air Interdiction Agents, and Aviation Enforcement Officers

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IV. Implementing CBP's Diversity and Inclusion Initiative

CBP established a Diversity and Inclusion Management Council (DIMC) to advance workforce and workplace diversity by developing and implementing strategies to recruit a diverse workforce and sustain an inclusive environment where individuals are valued for their talents and empowered to reach their fullest potential and maximize their contributions to achieve CBP's strategic goals.

A. DIMC's Purpose

The DIMC serves as an advisory body to CBP's Commissioner. The DIMC strives to demonstrate the highest level of organizational commitment to diversity and inclusion management by identifying strategic goals, assigning initiatives to specific CBP offices, identifying anticipated outcomes and appropriate metrics to support CBP's Diversity and Inclusion Management Plan. In addition, the DIMC supports and fosters effective diversity and inclusion management practices, promotes diversity initiatives at all levels of the CBP, and strives to integrate the principals of diversity and inclusion management into CBP's day-to-day operations.



David Aguilar
Deputy Commissioner

B. DIMC Officers

- **DIMC Chairperson:** The Commissioner is the chair of the DIMC. The Chairperson presides over meetings of the Council and may appoint working groups for specific tasks. These working groups may consist of Council members and subject matter experts inside and outside the Council and CBP.
- **Vice-Chairperson:** The Deputy Commissioner serves as the Vice-Chairperson and operations director and as Chairperson in the absence of the Commissioner.
- **Principle Advisor:** The Executive Director, Office of Diversity and Civil Rights, serves as the principle advisor to the Chairperson.
- **Legal Advisor:** The Chief Counsel serves as the legal advisor to the Council.
- **Standing Council Members:** All CBP Assistant Commissioners and independent office directors.

C. Diversity and Inclusion Management Council Accomplishments

In FY 2011, the DIMC, led by Deputy Commissioner David Aguilar, accomplished the following strategic goals:

- Implemented a Communication Plan.
- Developed a draft plan to hire individuals with a disability per Executive Order 13548.
- Authorized the establishment of an internship program that supports all CBP Offices.
- Authorized the creation of a unified CBP Targeted Outreach and Recruitment Plan for all occupations.
- Authorized the establishment of a CBP-wide mentoring program.

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- Authorized the development and implementation of diversity and inclusion training for all CBP Offices.
- Received authorization from the Office of Personnel Management to utilize the bona fide occupational qualifications to hire female Customs and Border Protection Officers.
- Authorized the establishment of a working group to focus on increasing the number of female and minority Border Patrol Agents.
- Developed a tool to measure the effectiveness of diversity and inclusion training on employee's behavior.
- Authorized the development of a CBP "Light Duty Policy."

D. **The Integrated Recruitment Committee** focused on the goal of ensuring coordinated recruitment initiatives between the program offices and the Office of Human Resources Management to prevent duplication of efforts by individual offices. The committee consists of representatives of all the program offices, which ensured communication in the largest law enforcement organization in the federal sector. DCR facilitated the process of ensuring that targeted recruitment of underrepresented groups remained a priority in order to meet the goal of a diverse workforce that is reflective of the civilian workforce.

E. **Office of Diversity and Civil Rights Diversity and Inclusion Accomplishments:** Table 3 below highlights the activities sponsored by CBP to celebrate the diversity of CBP's workforce. CBP increased the number of events and activities to celebrate diversity by 27.03% between FY 2010 and FY 2011.⁷

Table 3: Acknowledgements and Celebrations	FY 10	FY 11	%
American Indian Heritage Month	59	66	12%
Asian Pacific American Heritage Month	75	99	32%
Black History Month	140	123	-12%
Bring Your Child to Work Day	30	54	80%
Caribbean American Heritage Month	0	28	100%
Disability Employment Awareness Month	56	67	20%
Disability Mentoring Day	2	1	-50%
Dr. Martin Luther King, Jr. Day of Service	14	16	14%
Family Heritage and Diversity Month	2	73	3550%
Hispanic Heritage Month	102	44	-57%
Irish American Heritage Month	1	68	6700%
Jewish American Heritage Month	2	29	1350%
Lesbian, Gay, Bisexual, and Transgender Pride Month	29	36	24%
Veterans' Day	2	4	100%
Women's History Month	147	114	-22%
Women's Equality Day	1	18	1700%

⁷In FY 2010, CBP sponsored 662 acknowledgements and celebrations compared to 841 in FY 2011.

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F. **Support for Affinity Groups:** In FY 2011, CBP partnered with the following organizations to sponsor cultural understanding, enrichment and outreach activities.

- Society of American Indian Government Employees (SAIGE).
- Women in Federal Law Enforcement (WIFLE).
- Federally Employed Women (FEW).
- National Organization of Black Law Enforcement (NOBLE).
- National Organization of Black Women Law Enforcement (NOBWLE).
- Blacks in Government (BIG).
- National Asian Peace Officers Association (NAPOA).

G. CBP Field Diversity and Inclusion Achievements

- **African American Outreach**

Accomplishments: During FY 2011, DCR personnel facilitated 59 speaking engagements and other student and faculty events at Historically Black Colleges and Universities. Notably, during FY 2011, DCR personnel made 1,300 contacts with Historically Black Colleges and Universities informing them of career opportunities with CBP.



ROTC students at Jackson State University, Jackson, MS

- **Hispanic Outreach Accomplishments:** During FY 2011, DCR personnel facilitated over 23 events in various Hispanic communities and educational institutions in compliance with the White House Initiative on Educational Excellence for Hispanic Americans. Notably, during FY 2011, DCR personnel made 1,687 contacts with Hispanic Serving Institutions informing them of career opportunities with CBP.



CBP Celebrates Bring Your Child to Work

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- **American Indian Outreach Accomplishments:** During FY 2011, DCR personnel facilitated five events in various Tribal colleges and universities. Notably, during FY 2011, DCR personnel made 1,974 contacts with Tribal Colleges and Universities informing them of career opportunities with CBP.



CBCBP Celebrates National American Indian Heritage Month

- **Disability Program Outreach Accomplishments:** During the month of October, CBP held 19 National Disability Employment Awareness Month events in program offices throughout the nation. On Wednesday, October 19, 2011, CBP headquarters personnel participated in its first formal National Disability Mentoring Day. Seventeen program offices participated, mentoring 25 participants. The day served not only as a day of mentoring but also as a day for informal interviewing. Most of the participating program offices had vacant positions to be filled and had the option of considering the mentees to fill those vacancies.

I. Achievements to Support Continuous Learning for Employers, Managers and Supervisors

- **Hiring Guide for Supervisors** - Disseminated the *Hiring Manager and HR Specialist Checklist to Increase the Number of Individuals with Disabilities in the U.S. Customs and Border Protection* to DCR. This checklist will certify that all hiring managers and HR specialists have considered using alternative hiring authorities prior to posting a position on USA Jobs.
- **Diversity and Inclusion/EEO Training:** DCR conducted 256 training sessions in FY 2011. A total of 3,156 employees and 1,471 supervisors were trained.
- **Virtual Learning** – DCR partnered with the Office of Training and Development to complete CBP’s first Diversity and Inclusion Awareness Virtual Learning Center Training to be taken by all managers and supervisors, and will be available to all CBP employees.
- **Accountability Tool** – DCR Collaborated with the Office of Internal Affairs to develop EEO guidelines for the Self-Inspection program and create a system of accountability for diversity and equal employment opportunities.



CBP Celebrates Asian Pacific American Heritage Month

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V. Managing Reasonable Accommodation Requests

A. **Reasonable Accommodation – Disability:** CBP is committed to providing reasonable accommodation for its employees and applicants for employment in order to ensure that qualified individuals with disabilities enjoy full access to equal employment opportunity, unless a particular accommodation would impose an undue hardship on the operation of CBP's programs. During FY 2011, seventy-eight (78) individuals requested reasonable accommodation for a disability, which represents a 6% decrease as compared to FY 2010 (83).



Color Guard at the Port Noonan, North Dakota

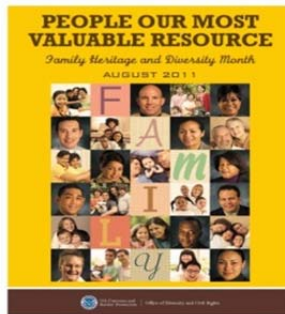
- To facilitate the efficient processing of requests for reasonable accommodation for persons with disabilities, DCR took the following actions:
 - Collaborated with the unions (National Border Patrol Council and the National Treasury Employees Union) to develop a Guide to Processing Reasonable Accommodation Reassignments.
 - Established a partnership with the Office of Information Technology's (OIT) 508 Compliance Team regarding 508 issues. The main function of the partnership is to bring awareness to CBP employees about 508 compliance. The partnership also publicized the Computer/Electronics Accommodations Program (CAP) in the following manner:
 - Published CAP article in April – June edition of “DCR News”
 - Published CAP article in July edition of OIT's newsletter, “The OIT Connector”
 - Published CAP article in July edition of Manager's E-Tip

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B. Reasonable Accommodation based on Religion: It is the policy of CBP to prohibit discrimination against employees and applicants for employment based on religious beliefs, practices, or affiliation. CBP shall provide reasonable accommodation for the sincerely held religious beliefs and/or practices of employees and applicants for employment unless providing an accommodation would result in undue hardship. CBP will strive to ensure that accommodations provided will be the least restrictive alternative and will be narrowly tailored to remove the particular burden for which the accommodation is sought.

- **FY 2011 Requests for Reasonable Accommodation:** During FY 2011, DCR facilitated twelve (12) individual requests for reasonable accommodation based on religious reasons, which represents a 50% increase as compared to FY 2010 (8).
- **FY 2012 Upcoming Events:** During FY 2012, DCR will sponsor a series of learning opportunities help managers and supervisors better under CBP's religious accommodation process.



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VI. Managing Civil Liberties Claims

A. Civil Liberties: Civil liberties are the rights enumerated in the U.S. Constitution, Federal statutes, and regulations, including freedom from discrimination on the grounds of race, sex, religion, national origin, age, disability, or genetic information, freedom of speech, free exercise of religion, due process of law, appropriate conditions of confinement, and protection from excessive force, unreasonable searches and seizures, and unlawful intrusions into personal privacy. The Department of Homeland Security's policy, which prohibits the consideration of race or ethnicity in the application of CBP law enforcement duties, states that:

“Racial profiling” is the invidious use of race or ethnicity as a criterion in conducting stops, searches, and other law enforcement or screening activities. It is premised on the erroneous assumption that any particular individual of one race or ethnicity is more likely to engage in misconduct than any particular individual of another race or ethnicity. DHS has explicitly adopted the Department of Justice’s “Guidance Regarding the Use of Race by Federal Law Enforcement Agencies,” issued in June 2003. It is the policy of the Department of Homeland Security to prohibit the consideration of race or ethnicity in our daily law enforcement and screening activities in all but the most exceptional instances, as defined in the DOJ Guidance. DHS personnel may use race or ethnicity only when a compelling governmental interest is present, and only in a way narrowly tailored to meet that compelling interest. Moreover, it is DHS policy, although not required by the Constitution, that in law enforcement and security settings (but not in immigration or customs situations in which nationality is statutorily relevant or referenced as a discretionary screening factor in an individualized border inspection), rules or policies that consider, as an investigative or screening criterion, an individual’s simple connection to a particular country, by birth or citizenship, should be reserved for situations in which such consideration is based on an assessment of intelligence and risk, and in which alternatives do not meet security needs, and such consideration should remain in place only as long as necessary. Of course, race- or ethnicity-based information that is specific to particular suspects or incidents, or ongoing criminal activities, schemes or enterprises, may be considered, as stated in the DOJ Guidance.”

B. CBP Civil Rights and Civil Liberties Policy

CBP employees shall treat all individuals in a non-discriminatory manner, with respect to all forms of protected status under Federal law, regulation, Executive Order, or policy, with full respect for individual rights including equality under the law, due process, freedom of expression and religion, and freedom from excessive force, unreasonable searches and seizures, and unlawful intrusions into personal privacy. To exemplify these commitments, CBP will maintain an efficient and effective external civil rights and civil liberties complaint-processing program focused on gathering all the relevant facts and evidence necessary to resolve complaints. CBP shall adhere to the core premise that civil rights and civil liberties protection is not only an ethical and legal imperative but also a practical necessity to maintaining and enhancing the public's level of trust in Federal law enforcement.

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C. DCR Civil Liberties Responsibilities

- Establishing policies, implementing guidelines, standards, and programs necessary to ensure compliance with policy and guidance issued by the Department of Homeland Security, Office of Civil Rights and Civil Liberties(CRCL).
- Advising the Commissioner and other senior CBP leaders, as appropriate, on issues that may adversely impact operations or require funding to implement.
- Ensuring that CRCL receives requested information related to the implementation of guidelines, standards, and programs within the established timeframes.
- Leading CBP's efforts to gather all information necessary, ensuring a free flow of information between CBP and CRCL to facilitate the timely and thorough completion of CRCL investigations. In particular, DCR will ensure that reports of investigation are returned to CRCL within 180 days.
- Arranging classified briefings, when necessary, to respond to CRCL's requests for information.
- Ensuring the implementation, when appropriate, of recommendations made in memoranda issued by CRCL to senior CBP leadership.
- Providing notification to CRCL of actions taken or reason(s) for non-implementation of CRCL recommendations.

D. FY 2011 Civil Rights and Civil Liberties Activities

- DCR developed and promulgated CBP Directive No. 2130-021: Roles and Responsibilities of U.S. Customs and Border Protection Component Offices and Employees Regarding Civil Rights and Civil Liberties Matters.
- DCR developed and issued the following message for placement on the Informational Display System (IDS): *Racial and ethnic profiling is Illegal. At CBP we treat everyone with dignity and respect.* The message began running during the month of September 2011 and will run each month for an infinite period of time.
- The following is a list of some of the civil liberties issues addressed during FY 2011:
 - Civilian Deaths Notification
 - Detainees with HIV/AIDS and/or Blood Borne Pathogens
 - Unaccompanied Minors
 - Electronic Device Searches
 - Extended Term B-2 Visas
 - Nationality-Based Screenings
 - Northern Border Incidents

E. Civil Liberties Referrals

During FY 2011, CBP received 94 referrals. A total of 51 were closed with appropriate action and the remaining referrals are still under review by DHS/CRCL.

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VII. Managing CBP's EEO Complaint Program

A. CBP's EEO Complaints Management Program

CBP has delegated authority from the Department of Homeland Security (DHS) Office for Civil Rights and Civil Liberties (CRCL) to implement the U.S. Equal Employment Opportunity Commission's (EEOC) regulations set forth in 29 CFR Part 1614 pertaining to the processing of workplace equal employment opportunity (EEO) complaints⁸ of discrimination. CBP is committed to resolving workplace complaints of discrimination at the earliest possible point in the complaint process, lowest managerial level, and to processing all claims in accordance with the applicable regulations and policies.⁹

B. FY 2011 Informal EEO Counseling Outcomes

- Rate of Workforce Growth Relative to Complaints:**¹⁰ CBP's workforce overview as depicted in Table 4 below provides the context for the achievements outlined in the area of EEO complaints management. Table 4 provides an overview of CBP's workforce between FY 2007 and FY 2011, as compared to the entire Department of Homeland Security¹¹ and the Federal sector for FY 2010. CBP's workforce increased by 29.90% between FY 2006 and FY 2011, while the total DHS workforce increased by only 16.12% and the Federal workforce remained relatively the same during this period.

Table 4	FY 07	FY 08	FY 09	FY 10	FY 11	DHSFY 10	FederalFY10
CBP	47,606	52,543	58,496	58,674	59,464	191,150	1.9 million
% Increase	9.32%	10.37%	10.17%	0.30%	1.34%	N/A	N/A

- Per Capita**¹² **EEO Counseling Requests Received:** While, as shown in Table 4 above, CBP's workforce increased by 29.90% between FY 2006 and FY 2011, Table 5 shows that the number of requests for informal EEO counseling received by DCR staff increased by only 16.66% between FY 2007 and FY 2011. In our opinion, this result can be attributed to the outstanding efforts of DCR staff members to educate and inform the workforce in order to prevent and address potential EEO issues before the behavior or actions rises to the level of an EEO claim. While the per capita rate for informal EEO counseling activity has fluctuated, it declined from 1.03% in FY 2007 to 0.96% at by the end of FY 2011. Presently, CBP's per capita EEO counseling rate is 0.96%, which is equal to the DHS rate and below the Federal average of 1%.

⁸In civil rights matters, discrimination refers to unfavorable or unequal treatment of a person or class of people because of the following factors (called protected classes): race, color, sex, sexual orientation, age, religion, national origin, physical or mental disability, genetic information, status as a parent, or reprisal for participation in the EEO complaint process or for opposing discriminatory practices. It also includes harassment because of a protected class and failure to reasonably accommodate one's religion or disability.

⁹Additionally, federal law prohibits discrimination on the basis of pregnancy, childbirth, or related medical conditions.

¹⁰Note: Contact data for other agencies is not published. Comparative data for FY 2011 is not available at this time; other Federal Agency FY 2010 comparative data was retrieved from the EEOC Annual Report on the Federal Workforce FY 2010 which is available at: <http://www.eeoc.gov/federal/reports/fsp2010/index.cfm>.

¹¹The DHS total workforce increased by 16.12% from 164,613 in FY 2007 to 191,150 in FY 2010.

¹²Per capita is a Latin prepositional phrase which translates to "by heads" or in this specific instance for each individual or per person in CBP's workforce.

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Table 5	FY 07	FY 08	FY 09	FY 10	FY 11	DHS FY10	Federal FY 10
Counseling Completed	492	530	529	506	574	1,848	40,563
% Increase	27.13%	7.72%	-0.01%	-4.34%	13.43%	N/A	N/A
Per Capita Rate	1.03%	1.00%	0.94%	0.86%	0.96%	0.96%	1.00%

- Timeliness of EEO Counseling Services:** As previously indicated, the number of counseling cases completed by DCR during this five year period, between FY 2007 through FY 2011, increased by 16.66%. Table 6 below shows DCR's rate of timeliness for processing informal counseling cases improved from 90.24% in FY 2007 to 100% by the end of FY 2010, and again in FY 2011. DCR's timeliness rate for completed counseling exceeds the DHS average timeliness rate of 81% and the Federal sector average timeliness of 91.50% for FY 2010.

Table 6	FY 07	FY 08	FY 09	FY 10	FY11	DHS FY 10	Federal FY 10
# Timely Counseling Cases	492	530	529	506	574	1,848	37,093
	90.24%	98.30%	99.05%	100%	100%	81%	91.50%

- Mediation – Informal Counseling Stage:** Table 7 below demonstrates that DCR's initiative to increase the use of mediation at the lowest managerial level, and earliest possible point in the EEO complaint process was highly successful. Table 7 below shows that the number of individuals electing to participate in mediation to resolve potential EEO claims during the informal counseling stage significantly increased from 288 (58.65%) in FY 2007 to 405 (70.55%) in FY 2011. However, the key to our success is based on the number of mediations actually conducted. The number of mediations conducted increased from 162 (58.33%) in FY 2007 to 271 (66.91%) in FY 2011.

Table 7	FY 07	FY 08	FY 09	FY 10	FY 11
Mediation Offered	491	530	529	506	574
Mediation Accepted	288	362	393	381	405
	58.65%	61.50%	74.29%	75.29%	70.55%
Mediation Conducted	162	216	250	263	271
	58.33%	59.66%	63.61%	69.02%	66.91%

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• **Settlement and Withdrawal after Mediation (Informal Counseling):** The best evidence of the success achieved through DCR’s mediation initiative is demonstrated through the number of individuals who elected not to file a formal EEO claim after participating in mediation during the informal counseling stage. Table 8 below shows the following:

- The number of cases settled through the use of mediation steadily increased from 8 in FY 2007 to 29 in FY 2011.
- The number of individuals who elected to withdraw their requests for informal counseling after engaging in mediation increased from 28 in FY 2007 to 49 in FY 2011.
- The number of individuals electing not to file a formal EEO complaint after mediation and receiving a notice of right to file a formal complaint increased from 23 in FY 2007 to 44 in FY 2011.
- The total number of individual electing to not to file a formal complaint after participating in mediation increased from 59 in FY 2007 to 122 in FY 2011.

We believe that the increase in the use of mediation can be attributed to the professionalism of the DCR staff and the willingness of CBP employees and managers to openly discuss their issues in a neutral and impartial environment.

Table 8	FY 07	FY 08	FY 09	FY 10	FY 11
Settlement - Mediation Conducted	8	22	26	26	29
Withdrawal - Mediation Conducted	28	34	61	45	49
Did Not File Formal - Mediation Conducted	23	36	43	51	44
Total	59	126	130	122	122

• **Filing Rate – Mediation Rejected:** Table 9 below shows that when a complainant rejects mediation, he or she is more likely to file a formal EEO complaint. Each year approximately 30% of the individuals seeking informal EEO counseling reject mediation. During the past five years, over 60% of the individuals who reject mediation during informal counseling ultimately filed a formal EEO complaint. Table 9 below shows that:

- The number of complainants who rejected mediation increased slightly, from 151 in FY 2007 to 167 in FY 2011.
- The number of cases settled after mediation was rejected, has fluctuated over this period, but no cases were settled in FY 2011.
- The number of cases withdrawn after mediation was rejected has fluctuated over this period, and 31 claims were withdrawn in FY 2011.
- The number of complainants electing to file formal after rejecting mediation was consistently over 60% during this period.

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Table 9	FY 07	FY 08	FY 09	FY 10	FY 11
Mediation Rejected by Complainant	151	145	148	149	167
	30.75%	27.35%	27.97%	29.44%	29.09%
Settlement - Mediation Rejected	0	16	19	18	0
Withdrawal - Mediation Rejected	26	1	2	0	31
Filed Formal - Rejection of Mediation	104	96	92	113	102
	68.90%	66.21%	62.16%	75.84%	61.08%

• **Formal Filing Rate:** Table 10 below indicates that the number of counseling cases completed by DCR increased from 492 in FY 2007 to 574 in FY 2011. In addition, Table 10 below shows that:

- CBP accounts for 31.10% of the 1,848 informal EEO claims filed by DHS employees.
- Based on FY 2010 data, DHS EEO claims represent 4.5% of all Federal sector complaints.
- The number of formal EEO complaints filed increased from 259 in FY 2007 to 328 in FY 2011.
- The formal complaint to informal complaint filing ratio increased from 52.49% in FY 2011 to 57.14% in FY 2011, compared to 64.12 for DHS and 43.40% for the Federal sector.

Table 10	FY 07	FY 08	FY 09	FY 10	FY 11	DHS FY 10	Federal FY 10
Informal Counseling	492	530	529	506	574	1,848	40,563
Formal Complaints Filed	259	290	275	309	328	1,185	17,583
Formal Complaint Ratio	52.64%	54.71%	51.98%	61.06%	57.14%	64.12%	43.40%

C. FY 2011 Formal EEO Complaint Processing Outcomes

• **Formal Investigations Completed:** Table 11 below shows that between FY 2007 and FY 2011, DCR achieved the following outstanding results in the area of formal complaint investigations:

- DCR increased the number of investigated completed from 198 in FY 2007 to 268 in FY 2011. This represents a 35.35% increase.
- DCR increased the number of investigations completed within the regulatory timeframes from 80.81% in FY 2007 to 98.88% in FY 2011, as compared to only 60.30% for other DHS components,¹³ and 75.80% for the Federal average.

¹³ Pursuant to 29 C.F.R. part 1614 formal EEO complaints must be investigated with 180 calendar days from the date of filing or, in cases of amended complaints within 360 calendar day.

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- During FY 2011, DCR completed formal EEO complaint investigation, on average, within 144 calendars days, compared to 213 days for DHS components and 181 days on average for the Federal sector.

Table 11	FY 07	FY 08	FY 09	FY 10	FY 11	FY 10 DHS	Federal Sector FY 10
EEO Investigations Completed	198	212	215	247	268	939	11,055
# Timely Investigation	160	198	210	242	265	566	8,380
% of Investigation Timely	80.81%	93.40%	97.67%	97.98%	98.88%	60.30%	75.80%
Average Processing Days – Investigations	171.24	145.44	142.17	139.13	144.07	213.11	181

● **Mediation – Formal Complaints:** It is DCR’s goal to offer mediation to all individuals who file formal EEO complaints. However, some claims are not eligible for mediation because they are dismissed on jurisdictional grounds. Table 12 below shows that in FY 2011, DCR offered mediation in 80.18% of all formal complaints. However, only 6.08% (16 individuals) of the complainants agreed to participate in mediation after filing a formal EEO complaint and none of these claims resulted in settlement or withdrawal. Specifically, Table 12 shows the following:

- The number of complainants offered mediation during the formal complaints investigation process increased from 206 (79.23%) in FY 2007 to 263 (80.18%) in FY 2011.
- The number of complainants who accepted mediation at the investigative stage increased from 12 (5.82%) to 16 (6.08%) in FY 2011.
- In FY 2011, DCR mediated 16 cases.
- In FY 2011, as a result of mediation, zero cases were settled or withdrawn.

Table 12	FY 07	FY 08	FY 09	FY 10	FY 11
Formal Complaints Filed	259	290	275	309	328
Mediation Offered	206	237	236	241	263
	79.53%	81.72%	85.81%	77.99%	80.18%
Accepted by Complainant	12	18	6	31	16
	5.82%	7.59%	2.54%	12.86%	6.08%
Mediated	12	18	6	9	16
Settled	1	2	0	1	0
Withdrawal W/O Settlement	2	1	0	2	0
No Resolution Claim Continued	9	15	6	6	N/A

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- **Dismissals and Settlements – Formal Complaints:** Table 13 below shows that the following:
 - The number of formal complaints dismissed by CBP on jurisdictional grounds increased from 35 (13.51%) in FY 2007 to 48 (14.63%) in FY 2011.
 - On average, the DHS components dismissed 46.58% of all formal complaints received in FY 2010, and other Federal agencies dismissed 28.20%.
 - The number of formal claims settled increased from 38 in FY 2007 to 64 in FY 2011.

Table 13	FY 07	FY 08	FY 09	FY 10	FY 11	FY 10 DHS	Federal Sector FY 10
Dismissal - No AJ	35	60	40	42	48	552	4960
	13.51%	20.68%	14.54%	13.59%	14.63%	46.58%	28.20%
Average Processing Days – Dismissal	124.86	127.28	104.33	144.81	72.5	331.9	88
Settlements - Formal Complaints	38	57	50	56	64	272	3,623
	14.67%	19.65%	18.18%	18.12%	19.51%	16.00%	21.20%

- **Investigative Cost:** Table 14 below shows that CBP spent \$1,414,590 on investigations in FY 2007 and \$1,461,844 in FY 2011. In FY 2012, CBP will consider more cost effective measures to complete EEO investigations. Specifically, Table 14 shows the following:
 - The total number of investigations completed by DCR increased from 247 in an average of 139.13 days in FY 2010, to 268 cases in an average of 144.07 days in FY 2011.
 - The number of investigations completed by DCR staff investigators increased from 122 cases in an average of 135.30 days in FY 2010, to 130 cases in an average of 140.40 days in FY 2011.
 - In FY 2010, CBP spent \$659,340 on investigations conducted by DCR Investigators, and \$717,888 in FY 2011.
 - The number of investigations conducted by contractors increased from 125 cases in an average of 142.87 days in FY 2010, to 138 cases in an average of 138 days in FY 2011.
 - In, FY 2010, CBP spent \$755,250 on investigations conducted by contractors, and 743,956 in FY 2011.

Table 14 Investigation Cost	FY 10		FY 11	
	Total	Average Days	Total	Average Days
Investigations Completed	247	139.13	268	144.07
Investigations Completed by CBP Personnel	122	135.30	130	140.40
Agency Investigation Costs	\$659,340		\$717,888	
Investigations Completed by Contractors	125	142.87	138	147.52
Contractor Investigation Costs	\$755,250	N/A	\$743,956	N/A
Total Cost	1,414,590	N/A	1,461,844	N/A

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- **Findings of Discrimination:** Table 15 below shows that the number of findings of discrimination by EEOC Administrative Judges declined from 7 in FY 2007 to 2 in FY 2011.

Table 15	FY 07	FY 08	FY 09	FY 10	FY 11
Findings of Discrimination	7	6	5	3	2

- **Bases of Formal Complaints:** Table 16 provides a list of the bases upon which individuals filed complaints of discrimination. The most frequently alleged basis of discrimination was reprisal. The second most frequently alleged basis was “national origin.”

Table 16 - Formal Complaints Bases	FY 07	FY 08	FY 09	FY 10	FY 11
Reprisal	135	158	129	190	281
National Origin	75	97	54	92	262
Sex (Male and Female)	128	125	94	132	143
Race	106	84	60	129	139
Disability (Mental and Physical)	80	91	76	113	134
Age	108	124	93	131	132
Religion	27	31	17	22	33
Color	3	10	5	44	28
GINA (Genetic Information)	N/A	N/A	N/A	0	1

- **Formal Complaint Allegations:** Table 17 highlights the “Top 10” issues most frequently alleged by complainants.

Table 17 Top 10- Alleged Issues	FY 07	FY 08	FY 09	FY 10	FY 11
Non-sexual Harassment	127	115	79	166	113
Termination	41	71	70	130	98
Promotion/Non-selection	154	153	96	105	55
Time and Attendance	40	51	25	48	52
Assignment of Duties	50	50	56	40	39
Training	17	18	16	24	34
Reasonable Accommodation	18	28	16	18	28
Suspension	19	16	17	28	23
Reprimand	17	29	21	43	22
Appoint/Hire	0	5	1	15	21

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VIII. Managing DCR's Staff Development Initiative

DCR is committed to the success of all CBP employees, so we are constantly striving to identify tools to increase individual performance and enhance our ability to manage our responsibilities, develop and implement measures to achieve a higher level of employee engagement while focusing on customer service.



CBP's Operations War Fighter Program

- DCR strives to provide learning and knowledge management opportunities for our staff members in order to develop and sustain the skills required to facilitate a more diverse and inclusive CBP.
 - During FY 2011, 75 staff members received subject matter related, civil rights, diversity and inclusion training totaling 5,406.5 hours.
 - DCR held an annual training conference in Harpers Ferry, WV during the period August 16-18, 2011. The theme of the conference was *The Path Forward* and provided myriad opportunities for DCR staff to receive cost effective refresher equal employment opportunity training as well as to focus on new concepts like getting the most out of interpersonal interactions and what it means to be customer-focused and forward-thinking.



VIGILANCE ★ **SERVICE** ★ **INTEGRITY**



The Office of Diversity and Civil Rights Annual Training Conference
August 16 to August 18, 2011
U. S. Customs and Border Protection
Advanced Training Center
Harpers Ferry, WV



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- DCR's hiring practices reflect the diversity and inclusion principles it is fostering for the CBP workforce.
 - During FY 2011, DCR hired two disabled veterans and one disabled person under Schedule A – special hiring authority which allows Agencies to hire disabled applicants and veterans non-competitively.
 - During FY2011, DCR utilized the Workforce Recruitment Program, the Office of Personnel Management Share List of People with Disabilities, CBP's SharePoint Registry for individuals with Disabilities, and outreach to local universities, all resources to identify qualified candidates with disabilities to fill all of its vacancies.



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Closing Remarks

In closing, thank you for taking the time to read DCR's FY 2011 Annual Report, and please appreciate that our success is only possible through the dedication and commitment of CBP employees, who are tireless in their efforts to ensure the safety of our great nation while striving to create an ideal working environment. In FY 2012, as we look forward to continuing our efforts to make CBP a model workplace, a sought after employer of choice in the law enforcement community, we will continue to build upon our strengths in the spirit of "*One CBP*" by growing our diversity and inclusion programs to sustain a workplace culture in which all Americans are welcomed and given an opportunity to excel. We will continue to celebrate the differences and uniqueness that each person brings to the CBP family— because our true strength is embroidered on a fabric which reflects many faces, many colors, individual beliefs and cultures, woven together by a common thread of vigilance, integrity, and commitment to public service while adhering to our values as Americans.

Moving forward, as we continue our long standing partnership with you, all CBP employees, DCR welcomes your comments and recommendations on how we can further our commitment to diversity and inclusion and our commitment to building the best possible organization to protect the American people. Please visit us at www.cbp.gov/eo for more information about CBP's diversity and civil rights/civil liberties programs.

Yours truly,
Franklin C. Jones
Executive Director
Office of Diversity and Civil Rights