



U.S. Customs and Border Protection Office of Diversity and Civil Rights

Fiscal Year 2012 Annual Report



U.S. Customs and
Border Protection



Office of Diversity and Civil Rights

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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) 2012 diversity, inclusion and civil rights/civil liberties program achievements. This report outlines the actions implemented in FY 2012 to achieve CBP's "Top 5 Diversity 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 2012, 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 further refined its procedures and controls to improve communication with the Department of Homeland Security's (DHS), Office of Civil Rights and Civil Liberties, and internal stakeholders, 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 third time in our history, DCR achieved full compliance with the regulatory timeframes stated in 29 C.F.R. Part 1614 for processing informal EEO counseling requests. CBP processed 100% of all informal EEO counseling requests within the regulatory timeframes. In addition, over 95% of all EEO investigations were completed within the 180 calendar day regulatory timeframe. CBP also established procedures and controls to facilitate the prompt reporting and investigation of acts of suspected discriminatory harassment and the implementation of remedial measures, when appropriate. DCR achieved these outstanding results by establishing organizational and individual performance goals, leveraging the use of technology, and providing leadership, technical guidance and support to staff members through individualized training, coaching, mentoring, and peer support.

II. Office of Diversity and Civil Rights Overview

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 of 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; and
- Accessibility to electronic and information technology systems.

III. Diversity and Inclusion Management

A. Diversity and Inclusion Management 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 and our workforce 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.

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 utilize the benefits 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 work environment based on diversity and inclusion, we can leverage the strengths afforded by the unique cultural perspective of each employee to achieve our homeland security mission.

B. Diversity and Inclusion Strategic Plan

During FY 2012, CBP developed a Diversity and Inclusion Strategic Plan for Fiscal Years 2013 - 2018, which complies with Executive Order 13583 on Establishing a Coordinated Government-Wide Initiative to Promote Diversity and Inclusion in the Federal Workforce. CBP’s plan will be released during the first quarter of FY 2013. The Executive Order directs executive departments and agencies to develop and implement a more comprehensive, integrated, and strategic focus on diversity and inclusion as a key component of their human resources strategies. Pursuant to this Executive Order, CBP undertook efforts to identify and adopt best practices to promote diversity and inclusion and to identify and remove any barriers to equal employment opportunity, consistent with merit system principles and applicable law.



CBP employees in El Paso celebrate Irish American Heritage Month.



CBP employees in San Juan celebrate Lesbian, Gay, Bisexual, and Transgender Pride Month.

To ensure that executives, managers, supervisors, and employees have the tools they need to meet CBP's mission well into the future, CBP's Diversity and Inclusion Strategic Plan translates equal opportunity into everyday practices and makes diversity and inclusion principles a fundamental part of CBP's organizational culture.

C. Diversity and Inclusion Management Council

The Diversity and Inclusion Management Council (DIMC) serves as an advisory body to CBP's Commissioner, and is comprised of all the Assistant Commissioners and independent office heads. The DIMC supports and fosters effective diversity and inclusion management practices, promotes diversity initiatives at all levels of CBP, and strives to integrate the principals of diversity and inclusion management into CBP's day-to-day operations. 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. Through the actions of the DIMC, 41 of the 59 recommended action items in the Plan have been achieved, and 7 are currently under development. The remaining 11 items will be included into CBP's Diversity and Inclusion Strategic Plan for Fiscal Years 2013 - 2018, which is scheduled to be released during the first quarter of FY 2013.



CBP employees in Miami celebrate National Women's History Month.

In FY 2012, the DIMC, led by Chief Operating Officer Thomas Winkowski, accomplished the following strategic goals:

- Developed and implemented an internship program that supports all CBP Offices.
- Continued to implement CBP's Diversity Communication Plan. Fourteen Assistant Commissioners were featured in the "It's All About Diversity" video series. The video clips were made available to the workforce via CBPnet and the Information Display System postings.
- Completed CBP's Plan to Increase the Employment of Individuals with Disabilities per Executive Order 13548.
- Established and implemented a unified CBP Targeted Outreach and Recruitment Plan for all occupations.
- Developed and implemented diversity and inclusion training for all CBP Offices.
- Utilized bona fide occupational qualifications as authorized by the Office of Personnel Management to hire female CBP Officers.
- Authorized the development of CBP's [Worker's Compensation Program Directive](#), CBP Directive Number 51810-005A, which was issued on February 2, 2012.

IV. 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 five years. Between FY 2008 and FY 2012, CBP's workforce increased by over 15.0%. 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.

	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012*	CLF
Male	77.8%	78.2%	78.3%	78.8%	79.0%	53.2%
Female	22.2%	21.8%	21.7%	21.2%	21.0%	46.8%
White	57.7%	58.2%	50.8%	51.5%	52.3%	72.7%
Black	6.1%	6.0%	7.4%	7.3%	6.8%	10.5%
Hispanic	31.8%	31.6%	35.6%	35.1%	34.4%	10.7%
Asian American	3.8%	3.7%	5.3%	5.2%	5.1%	3.8%
Native American	0.5%	0.6%	1.0%	1.0%	0.9%	0.6%

*FY 2012 data does not include two or more races.

Table 1 above shows CBP's workforce demographics from FY 2008 through FY 2011 compared to the civilian labor-force (CLF) statistics. At the end of FY 2012:

- Males represented 79.0%, compared to 53.2% of the CLF.
- Females represented 21.0%, compared to 46.8% of the CLF.
- Whites represented 52.3%, compared to 72.7% of the CLF.
- African Americans represented 6.8%, compared to 10.5% of the CLF.
- Hispanics represented 34.4%, compared to 10.7% of the CLF.
- Asian Americans represented 5.1%, compared to 3.8% of the CLF.
- Native Americans represented 0.9%, compared to 0.6% 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 Hispanic employees in the Federal law enforcement community. Females represent 11.3% of CBP law enforcement positions as compared to a rough average of 12.5% for Federal law enforcement as a whole¹. In FY 2012, within the bounds of Federal law, CBP will continue to focus on the recruitment of women and underrepresented minority groups to achieve, and ultimately exceed parity with the Federal sector on a whole.

Agency	Female	Native American	African American	Asian	Hispanic
CBP (Armed Officers)	11.3%	0.9%	4.7%	4.7%	39.9%
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%	22.0%
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%

This table does not include all Federal enforcement employees.

¹ Bureau of Justice Statistics - July 2006.

² This table does not include all Federal enforcement employees.

Table 3 below illustrates CBP’s law enforcement occupations as compared to the relevant civilian labor force³ (RCLF) demographics.

Agency	Female	Native American	African American	Asian	Hispanic
CBP Average**	11.3%	0.9%	4.7%	4.7%	39.9%
CBPOs	18.0%	1.0%	7.5%	8.2%	31.0%
RCLF CBPO	46.8%	0.6%	10.7%	3.9%	10.9%
BPAs	4.9%	0.8%	1.9%	1.4%	50.4%
RCLF BPA	21.1%	0.6%	10.7%	1.4%	9.2%
AMIAs	1.8%	1.7%	2.2%	0.8%	14.7%
RCLF OAM⁵	3.8%	0.7%	1.6%	1.1%	2.9%

Table 3 above indicates the following:

- Females represent 11.3% of CBP law enforcement positions:
 - 18.0% CBPOs, compared to 46.8% in the RCLF
 - 4.9% BPAs, compared to 21.1% in the RCLF
 - 1.8% AMIAs, compared to 3.8% in the RCLF

- Native Americans represent 0.9% of CBP law enforcement positions:
 - 1.0% CBPOs, compared to 0.6% in the RCLF
 - 0.8% BPAs, compared to 0.6% in the RCLF
 - 1.7% AMIAs, compared to 0.7% in the RCLF

- African Americans represent 4.7% of CBP law enforcement positions:
 - 7.5% CBPOs, compared to 10.7% in the RCLF
 - 1.9% BPAs, compared to 10.7% in the RCLF
 - 2.2% AMIAs, compared to 1.6% in the RCLF

- Asian Americans represent 4.7% of CBP law enforcement positions:
 - 8.2% CBPOs, compared to 3.9% in the RCLF
 - 1.4% BPAs, compared to 1.4% in the RCLF
 - 0.8% AMIAs, compared to 1.1% in the RCLF

- Hispanics represent 39.9% of CBP law enforcement positions:
 - 31.0% CBPOs, compared to 10.9% in the RCLF
 - 50.4% BPAs, compared to 9.2% in the RCLF
 - 14.7% AMIAs, compared to 2.9% in the RCLF



CBP conducts outreach at a Wounded Warrior Program in El Paso, Texas.

V. Implementing CBP’s Diversity and Inclusion Initiative

A. Support of Affinity Groups

DCR continued to promote CBP’s diversity and inclusion program objectives through affinity group outreach initiatives, sponsorships,

³ The Relevant Civilian Labor Force (RCLF) is the civilian labor force (CLF) data directly comparable to the occupation population being presented.

⁴ This table does not include all Federal law enforcement employees – Bureau of Justice Statistics – July 2006.

⁵ OAM data includes Pilots, Marine Interdiction Agents, Air Interdiction Agents, and Aviation Enforcement Officers.

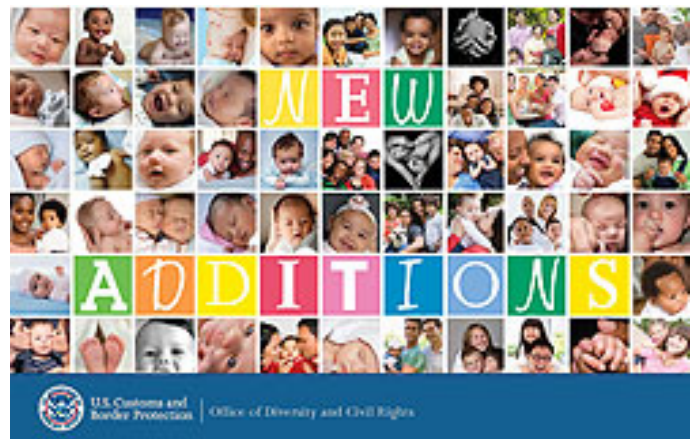
and partnerships. CBP's participation was intended to create interest in CBP as an employer of choice; promote name recognition to targeted audiences regionally and nationally; demonstrate CBP's commitment to diversity and inclusion; and invest in the community through CBP's educational, cultural and recruitment initiatives. The goal was to establish more meaningful interactions and to foster long-term positive relationships.

In FY 2012, CBP partnered with the following organizations to sponsor cultural understanding, enrichment and outreach activities:

- Blacks in Government (BIG)
- National Organization of Black Law Enforcement (NOBLE)
- Federal Employed Women (FEW)
- National Organization of Black Women in Law Enforcement (NOBWLE)
- Federal Asian Pacific American Council (FAPAC)
- Society of American Indian Government Employees (SAIGE)
- National Image, Inc., A National Hispanic Organization

B. New Additions

To drive employee engagement, DCR launched a new website, titled CBP New Additions. New Additions is a website where employees can announce new additions within their own families, whether it is a newborn, adopted, or foster child. The user friendly site was launched in August 2012 and is hosted under the CBP Today website. New Additions provides another avenue by which CBP employees can share a snapshot of their lives and can celebrate and appreciate the diversity of the families that make up the CBP workforce. This is the first interactive website where employees can submit pictures internally. Employees can view the New Additions photo gallery to see submissions uploaded by other employees. The gallery is fairly new, and is growing slowly, but surely. There have been more than 40 new additions uploaded onto the gallery.



C. Field Diversity and Inclusion Achievements

- **Minority Serving Institution Implementation Plan:** During FY 2012, CBP implemented a Minority-Serving Institutions (MSI) Implementation Plan to build partnerships with MSIs to create a diverse pool of candidates by ensuring students receive experience through internships and career experience programs. In support of the MSI Implementation Plan, during FY 2012, DCR conducted targeted outreach to: 16 Historically Black Colleges and Universities; 10 Tribal Colleges and Universities; seven Women's Colleges and Universities; three Asian/Asian Pacific Islander Colleges and Universities; and nine Colleges and Universities with students with disabilities.
- **Diversity and Inclusion Programs:** In addition to the outreach activities implemented to make CBP a more diverse and inclusive place to work, we also strive to ensure that all ethnic and nationality groups in our CBP family are acknowledged and celebrated. We believe that it is important to honor our heritage and celebrate those elements of ourselves that we value and respect as individuals. Table 4 on the following page provides an overview of the celebrations and acknowledgments for some of the numerous ethnic groups and nationalities represented in our workforce, which reflects that CBP increased the number of events and activities observed by 22.0% between FY 2011 and FY 2012.

Table 4: Acknowledgements and Celebrations			
Diversity and Inclusion Programs	FY 2011	FY 2012	%
American Indian Heritage Month	66	76	15.2%
Asian Pacific American Heritage Month	100	87	-13.0%
Black History Month	123	128	4.1%
Bring Your Child to Work Day	54	51	-5.6%
Caribbean American Heritage Month	30	74	146.7%
Disability Employment Awareness Month	67	63	-6.0%
Disability Mentoring Day	1	6	500.0%
Dr. Martin Luther King, Jr. Day of Service	16	59	268.8%
Dutch American Heritage Month	0	11	0.0%
Family Heritage Month	79	83	5.1%
German American Heritage Month	1	31	3,000.0%
Hispanic Heritage Month	81	97	19.8%
Irish American Heritage Month	68	64	-5.9%
Italian American Heritage Month	0	22	0.0%
Jewish American Heritage Month	30	27	-10.0%
Lesbian, Gay, Bisexual, and Transgender Pride Month	37	43	16.2%
Polish American Heritage Month	0	10	0.0%
Veterans' Day	4	35	775.0%
Women's History Month	114	104	-8.8%
Women's Equality Day	20	23	15.0%
Other	11	6	-45.5%
Total	902	1,100	22.0%

VI. Internal Communications Initiative

The Executive Director, DCR, serves as a member of the DHS Executive Steering Committee in support of the Secretary's Employee Engagement Initiative. Pursuant to a plan developed by the Steering Committee, he led CBP efforts to increase the number of employees who participated in the Federal Employee Viewpoint Survey. The DHS response rate was 46.5%, which was slightly higher than the government-wide rate of 46.1%. Around 40.0% of CBP's employees completed the survey. In support of the initiative, CBP leaders conducted 235 Town Hall meetings, in which 8,281 employees participated.

DCR also undertook the following communication initiatives during FY 2012:

- To encourage cultural appreciation within CBP, DCR posted several articles on the CBPnet. In addition, DCR published several articles in CBP's Manager's E-tips, to assist supervisors and managers in their efforts to comply with civil rights, civil liberties and EEO requirements.
- To ensure that local CBP managers had the information necessary to support CBP diversity and civil rights initiatives, DCR developed and implemented a Quarterly DCR Briefing Report to inform senior CBP leaders (e.g., Directors of Field Operations, Chief Patrol Agents, and Directors of Air and Marine) of significant upcoming activities and to provide a comparative analysis of complaint data and diversity and inclusion program activities. Based on this approach, workplace diversity programs have increased by 22.0%, from 902 in FY 2011 to 1,100 in FY 2012.
- Distributed quarterly, the E-Newsletter, "DCR News," which educates the CBP workforce and stakeholders on EEO issues, trends, challenges and diversity and inclusion initiatives. DCR News also includes summaries and analysis of the current state of EEO law, and more.

- Utilized CBP Central, CBP.gov, CBPnet, CBP Today and the Information Display System (IDS) to inform the CBP workforce of upcoming diversity and inclusion events and programs, provide diversity information, and to display diversity and inclusion PowerPoint presentations.
- Organized and provided guidance for the Office of Public Affairs to complete the “It’s All about Diversity” video, featuring CBP’s Acting Deputy Commissioner along with 14 Assistant Commissioners. The clips were made available to the workforce via posting to the CBPnet and were also featured on the IDS. As a result of these inspiring clips, CBP received the Videographer Award, which is an international award designed to recognize excellence in Video Productions, TV Commercials/New/Programs and Digital Media.



CBP employees in Atlanta celebrated National Disability Employment Awareness Month.

VII. 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 2012, ninety-two (92) individuals requested reasonable accommodation for a disability, which represents a 17.9% increase as compared to FY 2011 (78).

- To facilitate the efficient processing of requests for reasonable accommodation for persons with disabilities, DCR took the following actions:
 - Issued CBP Directive Number 51713-007A on [Reasonable Accommodation Procedures for Applicants and Employees with Disabilities](#) signed by Acting Commissioner David Aguilar on May 4, 2012. This Directive established CBP’s procedures to comply with the requirements of the Rehabilitation Act of 1973, as amended, and demonstrated CBP’s commitment to provide reasonable accommodations for qualified employees and applicants for employment with disabilities.
 - Continuously featured an article about the Computer/Electronics Accommodation Program (CAP) on the front page of DCR’s SharePoint website since June 2011.
 - Facilitated supervisory completion of DHS’ Employment of People with Disabilities: A Roadmap to Success Training, which provided departmental policy, procedures and best practices associated with reasonable accommodation of individuals with disabilities. During FY 2012, 4,683 supervisors completed this training.
 - Made CBP supervisors who attended Supervisory Leadership Training aware of CBP’s commitment to provide reasonable accommodation for employees and applicants with disabilities. During FY 2012, 739 new supervisors completed this training on various dates throughout the year, which taught supervisors about the reasonable accommodation process and resources available to provide accommodation through the CAP and the Job Accommodation Network (JAN).
 - To enhance knowledge and understanding about topics and issues associated with the reasonable accommodation process, the following articles were issued to the CBP workforce in the DCR News - an Office of Diversity and Civil Rights quarterly E-Newsletter:
 - [Providing Reasonable Accommodations for Individuals With Disabilities](#)

- [DCR and OIT's Section 508 Team Continue Commitment to Making CBP More Accessible by Renewing Their Partnership!](#)
- [The Plan to Increase U.S. Customs and Border Protection's Employment of Individuals with Disabilities](#)

B. Reasonable Accommodation - Religion: It is the policy of CBP to prohibit discrimination against employees and applicants for employment based on religious beliefs, practices, or affiliation. In addition, CBP shall provide reasonable accommodation for the 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. During FY 2012, DCR facilitated the processing of twelve (12) individual requests for reasonable accommodation based on religious beliefs and/or practices, which was the same number facilitated during FY 2011 (12).

- To facilitate the efficient processing of requests for reasonable accommodation based on religious beliefs and/or practices, DCR took the following actions:
 - Collaborated with the unions (National Border Patrol Council and the National Treasury Employees Union) to develop a Directive on Reasonable Accommodation for Religious Beliefs or Practices. This Directive establishes CBP's policy regarding reasonable accommodation of religious beliefs and/or practices of employees and applicants for employment. DCR will implement a communication plan in FY 2013 to promulgate the Directive and help managers, supervisors, and employees better understand the religious accommodation process.
 - Delivered a presentation entitled "Religious Accommodation in the Workplace" to participants at the National Organization of Black Law Enforcement Executives (NOBLE) 2012 National Training Conference.

VIII. Disability Program

A. CBP's Plan to Increase the Employment of Individuals with Disabilities

CBP is committed to complying with Executive Order 13548 by increasing the number of individuals with disabilities in its workforce. The Executive Order establishes a goal of hiring 100,000 people with disabilities into the Federal Government over a five (5) year period, including individuals with targeted disabilities⁶. To meet this commitment, on June 5, 2012, Acting Commissioner David Aguilar signed CBP's Plan to Increase the Number of Individuals with Disabilities, which outlines the strategies and actions that CBP will implement to increase the number of individuals with disabilities employed by CBP (2.7% of the workforce) to no less than 3.2% by the end of FY 2017.



To implement this plan, CBP will utilize existing hiring authorities, targeted outreach and recruitment, and targeted hiring/placement. The plan outlines the steps CBP will implement to ensure that individuals with disabilities and targeted disabilities are aware of employment opportunities, receive consideration for positions for which they are qualified, and are referred to hiring officials. The plan also outlines the procedures that CBP will implement to ensure that individuals with disabilities, who are hired by CBP, receive any necessary reasonable accommodation(s) to enable them to perform the essential functions of their position. DCR will work closely with employees and managers to facilitate the reasonable accommodation process in a timely and effective manner.

In summary, this plan will allow CBP to move closer to becoming a model employer of individuals with disabilities. Ultimately, our efforts will support all employees in their commitment to serving our country at the highest possible individual performance level.

⁶ Theoretically, based on the White House goal of 100,000 new hires over the next five (5) years, CBP's portion, based the size of the Federal government (approximately 1,916,000), the number of DHS employees (around 216,000) and the number of employees assigned to CBP (over 58,000) would be approximately 2,932 employees.

B. CBP/Office of Disability Employment Policy (ODEP) Alliance Agreement

On January 6, 2012, CBP became the first Federal agency to be a part of The Office of Disability Employment Policy's (ODEP) Alliance Initiative. The Alliance outlined in, *The Agreement Establishing an Alliance Between the Office of Disability Employment Policy, U.S. Department of Labor, and U.S. Customs and Border Protection*, is a complement to and supports the goals of CBP's affirmative action plan for individuals with disabilities.

The purpose of the Alliance is to help CBP fully comply with Executive Order 13548 and *CBP's Plan to Increase the Number of Individuals with Disabilities*. The Alliance agreement will afford CBP's Office of Human Resources Management (HRM) and DCR additional tools to provide CBP hiring officials with timely information, guidance, and access to resources that will help them to recruit, hire, and advance the careers of workers with disabilities. An implementation team, comprised of CBP staff from DCR, HRM, and the Office of Information Technology's (OIT) Section 508 Compliance Office, was assembled to work with ODEP to accomplish the goals of the Alliance.



Acting Commissioner David Aguilar and Assistant Secretary of Labor for Disability Employment Policy Kathleen Martinez sign the alliance agreement.

C. Disability Mentoring/Interviewing Day

On October 19, 2011, CBP's Headquarters hosted its first Disability Mentoring/Interviewing Day. All participating CBP offices identified positions in their offices that would be open after October 19, 2011. CBP found potential mentees who had the skills and experience to fill those open positions by conducting outreach to local universities and using databases, such as the Workforce Recruitment Program, OPM's Shared List of People with Disabilities, and the SharePoint Registry for Individuals with Disabilities. Hiring managers selected the potential mentees they were most interested in interviewing and those potential mentees were invited to participate in the event. All 16 headquarters offices and 28 mentees participated in CBP's Disability Mentoring Day; eight (8) mentees were offered a position as a result of the event.

D. DCR/OIT Section 508 Partnership

On August 20, 2012, DCR signed a Memorandum of Understanding (MOU) with OIT's Section 508 Compliance Office. This MOU strengthened the partnership between DCR and OIT and helped bring awareness to Section 508 compliance issues throughout CBP. During FY 2012, the partnership took the following actions in an effort to make electronic and information technology completely accessible to people with disabilities:

1. All DCR employees received training on Developing Accessible Microsoft Office Word Documents and Creating Accessible PDF Documents Using Adobe Acrobat.
2. Articles about Section 508 compliance were published in OIT and DCR newsletters.
3. A Standard Operating Procedure (SOP) on facilitating CBP employee requests for reasonable accommodation was promulgated for internal DCR use and includes instructions for coordinating with OIT's Section 508 Compliance Office on requests for assistive technology.
4. Weekly formal and informal meetings between DCR and the Section 508 Compliance Office were conducted to coordinate and track task completion.

IX. Addressing Allegations of Discriminatory and Sexual Harassment

A. Reporting, Addressing, and Investigating Allegations of Discriminatory Harassment

Allegations of discriminatory and sexual harassment reported to DCR staff members are reviewed in concert with CBP's Harassment Allegation Response Team (i.e., Office of Internal Affairs, Office of Chief Counsel, Office of Human Resources Management, and DCR), to determine the appropriate course of action based on the information available. All allegations are documented and assessed to determine the appropriate investigative jurisdiction and advice and guidance is provided to assist managers and supervisors in taking prompt, appropriate, and effective action to prevent recurrence when warranted. Allegations of discriminatory and sexual harassment are tracked and monitored until final management action is taken, when warranted by the facts of the case, to correct the effects on the employee and ensure that the harassment does not recur. During FY 2012, 211 allegations of discriminatory or sexual harassment were reported to DCR, which represents a 10.2% decrease as compared to FY 2011 (235).

- To facilitate the prompt reporting and investigation of acts of suspected discriminatory harassment and the implementation of remedial measures, when allegations were substantiated, DCR took the following actions:
 - Issued CBP's [Anti-Discrimination and Anti-Harassment Policy](#), signed by Acting Commissioner David Aguilar on May 17, 2012. This policy emphasized CBP's commitment to maintaining an environment free from harassment, defined and provided examples of discriminatory harassment, and conveyed supervisory expectations for taking immediate and appropriate action once made aware of any allegation of discriminatory harassment.
 - Issued an [Anti-Discriminatory Harassment Directive](#), CBP Directive Number 51713-011, signed by Acting Commissioner David Aguilar on June 26, 2012. This Directive established CBP's procedures for reporting allegations of discriminatory harassment against CBP employees.

X. Managing CBP's EEO Complaint Program

A. CBP's EEO Complaint Management Program

CBP has delegated authority from the 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 C.F.R. Part 1614 pertaining to the processing of workplace EEO complaints⁷ of discrimination. CBP is committed to resolving complaints of discrimination at the earliest possible point in the complaint process, at the lowest managerial level, and to processing all complaints in accordance with the applicable regulations and policies.⁸

B. FY 2012 Informal EEO Counseling Outcomes

- **Rate of Workforce Growth Relative to Complaints⁹:** CBP's workforce overview as depicted in Table 6 on the following page provides the context for the achievements outlined in the area of EEO complaints management. Table 6 provides an overview of CBP's workforce between FY 2008 and FY 2012, as compared to the entire Department of Homeland Security for FY 2012 and the Federal sector for FY 2011. The Federal workforce increased by 7.2%, while the total DHS workforce increased by 11.6% and CBP's workforce has increased at slightly over twice the rate of the Federal workforce, increasing by 15.5%.

⁷ In 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.

⁸ Additionally, Federal law prohibits discrimination on the basis of pregnancy, childbirth, or related medical conditions.

⁹ Note: Contact data for other agencies is not published. Comparative data for FY 2012 is not available at this time; other Federal agency FY 2011 comparative data was retrieved from the EEOC Annual Report on the Federal Workforce FY 2011 which is available at: <http://www.eeoc.gov/federal/reports/fsp2011/index.cfm>.

Table 6: Workforce Growth						
	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	% Increase between FY 2008 & FY 2012
CBP	52,543	58,496	58,674	59,464	60,668	15.5%
	% Increase	10.4%	11.3%	0.3%	1.3%	
DHS	179,643	189,337	191,150	199,452	200,559	11.6%
	% Increase	9.1%	5.4%	1.0%	4.3%	
Federal	2,763,183	2,811,277	2,850,584	2,961,820	N/A	7.2% ¹⁰
	% Increase	5.9%	1.7%	1.4%	3.9%	

- Per Capita¹¹ EEO Counseling Requests Received:** While as shown in Table 6 above, CBP's workforce increased by 15.5% between FY 2008 and FY 2012, Table 7 below shows that the number of requests for informal EEO counseling received by DCR staff decreased by 12.5% between FY 2008 and FY 2012, this figure reflects a reduction at nearly eight (8) times the rate of the total DHS counseling requests which decreased by 1.6% and over twice the rate of the Federal counseling requests which decreased by 5.8%. 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 rise to the level of an EEO claim. While the per capita rate for informal EEO counseling activity has fluctuated, it has declined from 1.0% in FY 2008 to its present rate of 0.8% for FY 2012. CBP's per capita EEO counseling rate of 0.8% is below both the DHS rate of 1.0% and the Federal rate of 1.2%.

Table 7: Per Capita Counseling Request Rate							
	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	% Increase between FY 2008 & FY 2012	
CBP Completed Counseling	530	529	506	574	464	-12.5%	
	% Increase	7.7%	-0.2%	-4.3%	13.4%		-19.2%
	Per Capita Rate	1.0%	0.9%	0.9%	1.0%		0.8%
DHS Completed Counseling	2,064	2,479	1,848	2,096	2,031	-1.6%	
	% Increase	-7.9%	20.1%	-25.5%	13.4%		-3.1%
	Per Capita Rate	1.1%	1.3%	1.0%	1.1%		1.0%
Federal Completed Counseling	38,898	39,038	40,563	36,642	N/A	-5.8% ¹²	
	% Increase	2.9%	0.4%	3.9%	-9.7%		N/A
	Per Capita Rate	1.4%	1.4%	1.4%	1.2%		N/A

- Timeliness of EEO Counseling Services:** As previously indicated, the number of counseling cases completed by DCR during this five (5) year period between FY 2008 through FY 2012, decreased by 12.5%. Table 8 on the following page shows DCR's rate of timeliness for processing informal counseling cases improved from 98.3% in FY 2008 to 100.0% by the end of FY 2010, and continued to remain at 100.0% in FY 2011 and FY 2012. DCR's timeliness rate for completed counseling exceeds the DHS average timeliness rate of 77.3% and the Federal sector average timeliness of 91.3%.

¹⁰ The Federal workforce percentage increase is from FY 2008 to FY 2011.

¹¹ Per capita is a Latin prepositional phrase which translates to "by heads" or in this specific instance for each individual or person in CBP's workforce.

¹² The Federal completed counseling request rate is from FY 2008 to FY 2011.

	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	Average Timeliness Rate
CBP % Timely	521	524	506	574	464	99.5%
	98.3%	99.1%	100.0%	100.0%	100.0%	
DHS % Timely	1,497	1,684	1,495	1,692	1,718	77.3%
	72.5%	67.9%	80.9%	80.7%	84.6%	
Federal % Timely	35,439	35,165	37,093	33,992	N/A	91.3% ¹³
	91.1%	90.1%	91.4%	92.8%	N/A	

- Mediation - Informal Counseling Stage:** Table 9 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. In FY 2012, there was a significant decrease in the amount of complaint activity from previous years; therefore percentages will be used to demonstrate the progress. Table 9 below shows that the number of individuals electing to participate in mediation to resolve potential EEO complaints during the informal counseling stage significantly increased from 362 out of 530 (68.3%) in FY 2008 to 335 out of 464 (72.2%) in FY 2012. However, the key to our success is based on the number of mediations which were actually conducted. The number of mediations conducted increased from 216 out of 362 (59.7%) in FY 2008 to 246 out of 335 (73.4%) in FY 2012.

	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012 ¹⁴
Mediation Offered	530	529	506	574	464
Mediation Accepted	362	393	381	404	335
	68.3%	74.3%	75.3%	70.4%	72.2%
Mediation Conducted	216	250	263	271	246
	59.7%	63.6%	69.0%	67.1%	73.4%

- Settlement and Withdrawal Rate Following 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. From FY 2008 to FY 2012, 45.9% of the cases where mediation was conducted were resolved at the informal counseling stage. Table 10 on the next page shows the following:
 - The number of cases settled through the use of mediation has decreased from 22 in FY 2008 to 19 in FY 2012.
 - The number of individuals who elected to withdraw their informal complaint after engaging in mediation increased from 34 in FY 2008 to 50 in FY 2012.
 - The number of individuals who elected not to file a formal EEO complaint after mediation and receiving a Notice of Right to File (NORTF) a formal complaint slightly increased from 42 in FY 2008 to 44 in FY 2012.
 - The total number of individuals who elected not to file a formal complaint after participating in mediation increased from 98 in FY 2008 to 113 in FY 2012.
 - The percentage of cases which achieved success (via a settlement agreement, withdrawal, or not filing formally following mediation conducted) remained relatively unchanged from 45.4% (98 of 216) in FY 2008 to 45.9% (113 of 246) in FY 2012.

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.

¹³ The Federal average timeliness rate is from FY 2008 to FY 2011.

¹⁴ FY 2012 data is as of November 5, 2012. Twenty-two complaints remain open in the informal EEO complaint process.

Table 10: Outcome of Informal Complaint Following Acceptance of Mediation

	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012 ¹⁵
Mediation Accepted by Complainant	362	393	381	404	335
	68.3%	74.3%	75.3%	70.4%	72.2%
Settlement - Mediation Conducted	22	26	26	30	19
Withdrawal - Mediation Conducted	34	61	45	51	50
Did Not File Formal - Mediation Conducted and NORTF Issued	42	46	51	40	44
Total	98	133	122	121	113

- **Filing Rate - Mediation Rejected:** Table 11 below shows that when a complainant rejects mediation, he or she is more likely to file a formal EEO complaint. Each year approximately 30.0% of the individuals seeking informal EEO counseling reject mediation. During the preceding four (4) years (FY 2008 to FY 2011), over 60.0% of the individuals who rejected mediation during informal counseling ultimately filed a formal EEO complaint. However, in FY 2012, this figure significantly decreased to 46.9%. Table 11 below shows the following:

- The number of complainants who rejected mediation has decreased from 145 (or 27.4%) in FY 2008 to 130 (or 28.0%) in FY 2012; this represents a 0.6% increase in the rejection of mediation.
- The number of cases settled following the rejection of mediation has virtually remained at zero (0) from FY 2008 to FY 2012 with the exception of FY 2008 resulting in one (1) settlement.
- The number of cases withdrawn following the rejection of mediation has fluctuated over this period. In FY 2012, 30 complaints were withdrawn.
- The number of complainants electing to file formal after rejecting mediation has consistently been over 60.0% from FY 2008 to FY 2011. However, in FY 2012 this figure significantly reduced to 61 (or 47.3%) formal complaints being filed.

Table 11: Outcome of Informal Complaint Following Rejection of Mediation

	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012 ¹⁶
Mediation Rejected by Complainant	145	148	149	167	130
	27.4%	28.0%	29.5%	29.1%	28.0%
Settlement - Mediation Rejected	1	0	0	0	0
Withdrawal - Mediation Rejected	16	0	18	31	30
Filed Formal - Mediation Rejected	96	92	113	104	61
	66.2%	62.2%	75.8%	62.3%	47.3%

- **Formal Filing Rate:** Table 12 on the following page indicates that the number of counseling cases completed by DCR had increased from 530 in FY 2008 to 574 in FY 2011, representing an increase of 8.3%. However, in FY 2012 this figure was reduced to 464, representing a substantial decrease of 19.2% from the prior FY. In addition, Table 12 shows the following:

- In FY 2012, CBP employees accounted for 22.8% (464 of 2,031) of the informal EEO complaints filed within DHS. In FY 2011, CBP accounted for 27.4% (574 of 2,096) of these complaints. These figures demonstrate a reduction of 4.6% of informal EEO complaints filed by CBP employees.
- In FY 2012, DHS employees accounted for 5.5% (2,031 of 36,642¹⁷) of the informal EEO complaints filed within the Federal sector. In FY 2011, DHS accounted for 5.7% (2,096 of 36,642) of these complaints. These figures demonstrate a reduction of 0.2% of informal EEO complaints filed by DHS employees.
- The number of formal EEO complaints filed by CBP employees decreased from 290 in FY 2008 to 260 in FY 2012. This represents a decrease of 10.3% of formal EEO complaints filed.

¹⁵ FY 2012 data is as of November 5, 2012. Twenty-two complaints remain open in the informal EEO complaint process.

¹⁶ FY 2012 data is as of November 5, 2012. Twenty-two complaints remain open in the informal EEO complaint process.

¹⁷ The Federal sector informal EEO claim figure is not available at this time, therefore, data from FY 2011 was used as a comparator.

- The formal to informal complaint filing ratio decreased from 57.1% in FY 2011 to 56.0% in FY 2012, compared to 59.0% for DHS and 46.3% for the Federal sector.

	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	DHS FY 2012	Federal FY 2011
Informal Counseling	530	529	506	574	464	2,031	36,642
Formal Complaints Filed	290	275	309	328	260	1,198	16,974
Formal Complaint Ratio	54.7%	52.0%	61.1%	57.1%	56.0%	59.0%	46.3%

C. FY 2012 Formal EEO Complaint Processing Outcomes

- **Formal Investigations Completed:** Table 13 below shows that between FY 2008 and FY 2012, DCR achieved the following outstanding results in the area of formal complaint investigations:
 - DCR increased the number of investigations completed from 212 in FY 2008 to 252 in FY 2012. This represents an 18.9% increase.
 - DCR increased the number of investigations completed within the regulatory timeframes from 93.4% in FY 2008 to 95.6% in FY 2012, as compared to 59.8% for other DHS components¹⁸, and 74.7% for the Federal sector.
 - During FY 2012, DCR completed formal EEO complaint investigations, on average, within 176 calendar days, compared to 230 days for all DHS components and 183 days on average for the Federal sector.

	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	DHS FY 2012	Federal FY 2011
EEO Investigations Completed	212	215	247	268	252	1,086	10,854
# Timely Investigation	198	210	242	265	241	596	8,103
% of Timely Investigations	93.4%	97.7%	98.0%	98.9%	95.6%	57.0%	74.7%
Average Processing Days	145.34	142.17	139.13	144.07	175.54	229.94	183

- **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 14 on the following page shows that in FY 2012, DCR offered mediation in 85.9% of all formal complaints. However, only 17.3% (40 individuals) of the complainants agreed to participate in mediation after filing a formal EEO complaint. Specifically, Table 14 shows the following:
 - The number of complainants offered mediation during the formal investigative process decreased from 237 in FY 2008 to 231 in FY 2012. However, the percentage of ADR offers increased from 81.7% in FY 2008 to 85.9% in FY 2012.
 - The number of complainants who accepted mediation at the investigative stage increased from 18 (7.6%) in FY 2008 to 40 (17.3%) in FY 2012, which represents an increase of approximately 10.0%.
 - In FY 2012, DCR mediated 40 cases.
 - In FY 2012, as a result of mediation, nine (9) cases were settled or withdrawn, which represents a 100.0% increase from the previous FY.

¹⁸ 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 days.

	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Formal Complaints Filed	290	275	309	328	269
Mediation Offered	237	236	241	263	231
	81.7%	85.8%	78.0%	80.2%	85.9%
Accepted by Complainant	18	6	31	16	40
	7.6%	2.5%	12.9%	6.1%	17.3%
Mediated	18	6	9	16	18
Settled	2	0	1	0	7
Withdrawal W/O Settlement	1	0	2	0	2
No Resolution Claim Continued	15	6	6	N/A	9

- **Dismissals and Settlements - Formal Complaints:** Table 15 below shows the following:
 - The number of formal complaints dismissed by CBP on jurisdictional grounds decreased from 60 (20.7%) in FY 2008 to 31 (10.5%) in FY 2012.
 - On average, DHS components dismissed 15.1% of all formal complaints received in FY 2012, while in FY 2011, other Federal agencies dismissed 27.3%.
 - The number of formal claims settled remains relatively unchanged from 57 in FY 2008 to 58 in FY 2012.

	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	DHS FY 2012	Federal FY 2011
Dismissal - No AJ	60	40	42	48	31	164	4768
	20.7%	14.5%	13.6%	14.6%	10.5%	15.1%	27.3%
Average Processing Days - Dismissal	127.28	104.33	144.81	72.5	75.10	128.50	73
Settlements - Formal Complaints	57	50	56	64	58	244	3,785
	19.7%	18.2%	18.1%	19.5%	19.7%	22.5%	21.7%

- **Investigative Cost:** Table 16 on the following page shows that CBP spent \$1,461,844.00 on investigations in FY 2011 and \$2,499,109.03 in FY 2012. Specifically, Table 16 shows the following:
 - The total number of investigations completed by DCR decreased from 268 at an average of 144.07 days in FY 2011, to 252 cases at an average of 175.54 days in FY 2012.
 - The number of investigations completed by DCR Staff Investigators increased from 130 cases at an average of 140.40 days in FY 2011, to 250 cases at an average of 175.15 days in FY 2012.
 - In FY 2011, CBP spent \$717,888.00 on investigations conducted by DCR Staff Investigators, and \$2,488,524.03¹⁹ in FY 2012.
 - The number of investigations conducted by contractors decreased from 138 cases at an average of 147.52 days in FY 2011, to two (2) cases at an average of 225.00 days in FY 2012.
 - In FY 2011, CBP spent \$743,956.00 on investigations conducted by contractors, and \$10,585.00 in FY 2012.

¹⁹ In FY 2012, the agency investigation costs were determined using the annual salary dollars for all current Complaints Management and Investigations Group and former staff that have either retired or left the agency. In FY 2013, the agency investigation costs should be significantly lower without the annual salary for former staff.

Table 16: Investigation Cost	FY 2011		FY 2012	
	Total	Average Days	Total	Average Days
Investigations Completed	268	144.07	252	175.54
Investigations Completed by CBP Personnel	130	140.40	250	175.15
Agency Investigation Costs	\$717,888.00		\$2,488,524.03	NA
Investigations Completed by Contractors	138	147.52	2	225.00
Contractor Investigation Costs	\$743,956.00		\$10,585	NA
Total Cost	\$1,461,844.00		\$2,499,109.03	

- **Findings of Discrimination:** Table 17 below shows that the number of findings of discrimination by EEOC Administrative Judges declined from six (6) in FY 2008 to five (5) in FY 2012.

Table 17: Finding of Discrimination					
	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Findings of Discrimination	6	5	3	2	5

- **Bases of Formal Complaints:** Table 18 below 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 “Age.”

Table 18: Bases of Formal Complaints					
	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Reprisal	158	129	190	281	117
Age	124	93	131	132	89
Sex (Male and Female)	125	94	132	143	88
National Origin	97	54	92	262	60
Disability (Mental and Physical)	91	76	113	134	60
Race	84	60	129	139	58
Color	10	5	44	28	19
Religion	31	17	22	33	15
PDA (Pregnancy Discrimination Act)	N/A	--	--	3	3
GINA (Genetic Information)	N/A	N/A	0	1	0

- **Formal Complaint Allegations:** Table 19 on the following page highlights the “Top 10” issues most frequently alleged by complainants.

XI. Alternative Dispute Resolution (ADR) Program Accomplishments and DHS Work Group Participation to Develop a Department- Wide Program

- **ADR Program Accomplishments:** During FY 2012, DCR’s accomplishments consisted of the following:
 - Realized a cost savings of approximately \$169,500.00 by utilizing internal mediation resources, including shared neutrals, which was calculated based on the average cost of a contract mediation services as determined by the Federal Mediation and Conciliation Service.
 - Increased the number of collateral duty mediators by 15.0% as compared to the prior FY.
 - Offered mediation to 100.0% of the individuals who requested EEO counseling and 100.0% of individuals whose claims were accepted for investigation.

- Increased the informal complaint mediation acceptance rate by 1.8%, as compared to the prior FY, resulting in a 72.2% participation rate.
- Conducted mediation for 100.0% of informal complaints and 88.0% of formal complaints within 90 calendar days of receipt of the claim.
- Facilitated the cross-training and professional development of 42 CBP employees who serve as collateral duty mediators.

- **DHS Work Group Participation:** CBP participated in a DHS work group to develop a department-wide ADR program. CBP’s ADR Program Manager served as a subject matter expert and as one (1) of three (3) facilitators of a sub-committee. CBP’s ADR program was utilized as a benchmark because we have implemented a successful component-wide program that ensures all employees utilizing the EEO complaint process have access to ADR as an alternative avenue to resolve work place disputes. CBP provided recommendations regarding effective management policies, processes, program funding, and best practices. Through this initiative, a business case was made for an effective department-wide ADR program that provides DHS components with policy recommendations, procedures and leveraged funding alternatives designed to maximize the benefits of ADR.



CBP employees in San Diego celebrate National Italian-American Heritage Month.

XII. Civil Rights and Civil Liberties Matters

A. Language Access for Persons with Limited English Proficiency

During FY 2012, DCR updated CBP’s Language Access Services - Limited English Proficiency (LEP) Plan to implement Executive Order 13166, *Improving Access to Services for Persons with Limited English Proficiency*, which requires, among other things, that each Federal agency “examine the services it provides and develop and implement a system by which LEP persons can meaningfully access those services consistent with, and without unduly burdening, the fundamental mission of the agency.” DHS’ LEP Plan required that each office and component LEP Plan contain, at a minimum, 14 elements. CBP’s LEP Plan contains all 14 of these elements, while including an additional element on strategically leveraging technology assets to meet CBP’s LEP objectives. CBP’s Plan enumerates these elements and describes CBP’s current language access activities and steps that will be implemented to improve and increase language services for LEP individuals in operations, services, activities, and programs across CBP.

B. Managing Civil Rights and Civil Liberties Claims

- **Civil Rights and 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."

- **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.
- **DCR Civil Rights and Civil Liberties Responsibilities**
 - Establishing policies, implementing guidelines, standards, and programs necessary to ensure compliance with policy and guidance issued by DHS/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.
- **FY 2012 Civil Rights and Civil Liberties Activities:** The following is a list of some of the civil liberties issues addressed during FY 2012:
 - 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
 - Non-Citizens with a Record of Mental Disorders

- **Civil Rights and Civil Liberties Referrals**

During FY 2012, CBP received 58 complaints. A total of 13 were closed with appropriate action and the remaining 45 complaints open are still under review by DHS/CRCL or still under CBP's investigation.

XIII. 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, enhance our ability to manage our responsibilities, and develop and implement measures to achieve a higher level of employee engagement, while focusing on customer service.

- 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 workforce.
 - During FY 2012, 68 staff members received subject matter related, civil rights and diversity and inclusion training totaling 3,858 hours.
 - During the annual training conference themed "The Path Forward," DCR staff members were provided the tools to improve interactions with customers and the ability to facilitate resolution of matters under their jurisdiction. This initiative engaged staff in training which integrated advanced theory, experiential learning, case studies, and robust dialogue.
 - DCR staff members were also cross-trained and performed core functions, which included counseling, investigations and program management. The implementation of this approach resulted in a 98.5% decrease in the use of contract EEO investigators and reduced CBP's investigative cost by \$866,544.40 in FY 2012.

XIV. Self-Inspection Program Results

DCR utilized CBP's Self-Inspection Program (SIP) to perform an annual assessment of CBP diversity and civil rights programs to emphasize accountability, promote operational integrity, and provide a mechanism to strengthen management oversight. DCR's worksheets are developed to assist managers maintain compliance with Federal civil rights and civil liberties laws, regulations, Executive Orders and policy and to assess national and local support for CBP diversity initiatives and EEO programs.

An analysis of the DCR SIP Cycle 2012 indicated an overall 75.2% compliance rate. Corrective action was implemented to address identified deficiencies in the following areas:

- Diversity and Civil Rights - 92.8%;
- No Fear Training - 83.3%;
- Equal Employment Practices in Hiring - 100.0%;
- Section 508 Compliance - 50.0%; and
- EEO Practices Regarding Personnel Matter - 50.0%.

XV. Closing Remarks



In closing, thank you for taking the time to read DCR's FY 2012 Annual Report, and please appreciate that our success is only possible through the dedication and commitment of all CBP employees. I appreciate all of your tireless efforts to ensure the safety of our great nation while striving to create an ideal working environment. In FY 2013, as we look forward to continuing our efforts to make CBP the best place to work in the world and 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/eeo for more information about CBP's diversity and civil rights/civil liberties programs.

A handwritten signature in black ink that reads "F. C. Jones". The signature is written in a cursive, flowing style.

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