



**Department of Navy  
Notification and Federal Employee Anti-Discrimination  
& Retaliation Act of 2002 (NO FEAR ACT)  
FY 2015 Report**

This Department of Navy (DON) report covers all activities of the U.S. Navy and U.S. Marine Corps (USMC) and is provided in accordance with 5 C.F.R. § 724.302. The primary office responsible for the policy and reporting requirements of the NO FEAR Act is the DON Office of Complaints and Adjudication (OCA). DON OCA is a division within the DON Office of EEO who is delegated with the responsibility and authority to manage the Department of the Navy's Discrimination Complaints Program, as well as issue Final Agency Decisions (FADs) and Final Orders on behalf of the Secretary of the Navy.

The DON OCA does not currently have a central database which accurately captures all current cases pending in Federal court arising under each of the respective provisions of the Federal Antidiscrimination Laws and the Whistleblower Protection Laws. DON OCA works closely with the DON Office of General Counsel and the DON Employee and Labor Relations Division to ensure we capture and report the cases that fall under the Antidiscrimination Laws in compliance with the NO FEAR Act reporting requirements.

The DON continues to improve our corporate database, iComplaints, and deployed extensive training to our EEO practitioners to ensure information in iComplaints is accurate. iComplaints is the DON's source of complaints information and status on complaints administrative processing.

**(1) Table 1: DON Federal District Court cases**

	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015
<b>Filed</b>	47	50	25	32	36	22
<b>Closed</b>	31	52	32	40	25	21
<b>Pending</b>	16	55	562	29	40	26

**(2) Table 2: Status/Disposition of cases pending in District Court and Judgment Fund Reimbursement**

	FY 2010 (Number/\$)	FY 2011 (Number/\$)	FY 2012 (Number/\$)	FY 2013 (Number/\$)	FY 2014 (Number/\$)	FY 2015 (Number/\$)
<b>Findings</b>	0/0	0/0	0/0	0/0	0/0	0/0
<b>Settlements</b>	1/\$37,500	7/\$134,750	4/\$238,000	10/\$620,823	6/\$454,500	8/\$965,000

All of the cases, where the judgment fund was reimbursed, were settlements at District Court. There were no findings of discrimination at the District Court level found against DON since the implementation of the reimbursement requirement. Reimbursements listed above did not identify specific Attorney’s fees, as all were lump sum payments.

Notification of judgment fund repayment is provided to the DON Office of Financial Management and Budget (FMB) directly from the Department of Justice. The FMB Office contacts NAVOECMA for specific case information to ensure the bill is forwarded to the correct Command.

**(3) Disciplinary Actions Issued:**

The OPM requirement related to discipline is to report on formal disciplinary actions (letters of reprimand and above) taken for conduct that is inconsistent with antidiscrimination and/or whistleblower protections.

The DON had two disciplinary actions in FY15 reportable under the No FEAR Act.

- a. A Letter of Reprimand for engaging in prohibited discrimination.
- b. A Removal for causing an unnecessary disturbance and failure to follow EEO policy and procedure (engaging in prohibited discrimination).

**(4) EEO Discrimination Complaint Data (29 C.F.R Subpart G):**

The DON continues to use iComplaints to enter, update and track all civilian discrimination complaints filed. This tool enables the DON OCA to view specific cases as well as produce corporate level reports which include the Title III NO FEAR Act Data Report to EEOC and the Annual EEOC 462 Statistical Report of Discrimination Complaints.

The DON requires commands to analyze their data on, at least, a quarterly basis to determine program deficiencies, trends and potential areas of liability. Information developed assists in focusing training and briefings presented to senior leadership, managers and supervisors, agency representatives, human resources and EEO professionals.

**Table 3: Summary of Complaints Data (1614.704(a)-(c))**

	2010	2011	2012	2013	2014	2015
<b>Total Workforce</b>	243,017	245,372	245,574	243,926	239,790	246,497
<b>Total # Complaints Filed</b>	710	1053	749	610	792	801
<b>Total # Individual Filers</b>	697	1040	720	597	775	775
<b>Total # Repeat Filers</b>	9	13	25	12	15	24

*Note: Table 3 - Complainant may file one or multiple complaints. The sum of the number of individual filers and repeat filers may not equal to total complaints filed.*

**Table 4: Basis of Formal Complaints (1614.704(d) & 1614.705)**

Basis	2010	2011	2012	2013	2014	2015
Race	269	603	317	252	349	326
Color	90	146	121	94	169	148
Religion	27	37	33	18	50	31
Reprisal	267	288	348	261	352	360
Sex	243	257	268	217	338	293
National Origin	94	111	97	66	119	111
PDA	0	0	5	5	2	7
Equal Pay Act	2	6	11	2	2	6
Age	205	249	231	186	241	253
Disability	171	209	201	155	219	240
Genetics	0	0	6	1	4	4
Non-EEO	13	15	22	16	14	22

Note: Table 4 - Complaints can be filed alleging multiple bases. The sum of the bases may not equal to total complaints filed.

**Table 5: Issues of Formal Complaints (1614.704(e) & 1614.705)**

Issues	2010	2011	2012	2013	2014	2015	
Appointment/Hire	37	51	47	45	80	94	
Assignment of Duties	57	64	77	65	65	62	
Awards	13	13	15	13	65	19	
Conversion to Full Time	2	1	1	0	1	0	
Disciplinary Action	Demotion	5	6	8	0	2	3
	Reprimand	54	57	76	40	66	74
	Suspension	25	33	35	33	40	32
	Removal	10	11	11	5	15	18
	Other	0	0	0	0	0	0
Duty Hours	9	12	14	10	17	9	
Evaluation/Appraisal	25	25	43	30	29	44	
Examination/Test	0	0	0	0	0	0	
Harassment	Non-Sexual	303	249	288	248	324	384
	Sexual	29	21	34	25	48	38
Medical Examination	6	3	2	0	2	4	
Pay Including Overtime	19	10	28	19	30	25	
Promotion/Non-Selection	143	461*	130	87	140	134	
Reassignment	Denied	8	7	7	3	10	9
	Directed	12	17	12	29	24	27

Reasonable Accommodation	42	45	35	31	44	57
Reinstatement	1	1	0	0	1	1
Retirement	4	5	5	1	2	4
Termination	64	80	82	51	59	51
Terms/Conditions of Employment	67	53	86	56	71	82
Time and Attendance	21	24	22	15	26	20
Training	27	15	24	11	24	22

Note: Table 5 - Complaints can be filed alleging multiple issues. The sum of the issues/claims may not equal to total complaints filed.

**Table 6: Processing Time during Fiscal Year (1614.704(f))**

Processing Time	2010	2011	2012	2013	2014	2015
<b>Complaints pending during FY</b>						
Ave days in investigation	154.69	272.48	307.60	301.38	231.88	201.88
Ave days in final action	111.98	151.34	62.85	64.88	148.20	188.17
<b>Complaint pending during FY where hearing requested</b>						
Ave days in investigation	14.21	278.74	289.80	292.55	239.09	208.75
Ave days in final action	37.04	39.64	35.48	40.71	94.08	68.01
<b>Complaint pending during FY with no hearing request</b>						
Ave days in investigation	246.19	267.25	333.45	314.68	219.89	192.29
Ave days in final action	159.21	221.92	83.70	80.99	235.45	253.60

Note: Table 6 includes cases where the individual first requested a hearing and then either withdrew or the EEOC dismissed the Hearing.

**Table 7: Disposition of Discrimination Complaints**

	2010	2011	2012	2013	2014	2015
Complaints Dismissed by Agency						
Total Complaints	167	162	200	5	112	169
Average Days	81	76	75	441	64	64
Complaints Withdrawn by Complainant						
Total Complaints	55	76	75	68	62	91

**Table 8: Final Decisions / Final Orders (1614.704(h))**

	2010	2011	2012	2013	2014	2015
<b>Total Findings</b>	4	5	8	2	8	3
<b>Without Hearing</b>						
<b>Discrimination #</b>	0	2	0	0	0	0
<b>Discrimination %</b>	0	40%	0	0	0	0
<b>With Hearing</b>						
<b>Discrimination #</b>	4	3	8	2	8	3
<b>Discrimination %</b>	100%	60%	100%	100%	100%	100%

**Table 9: Findings of Discrimination by Basis (1614.704(i) & (j))**

<b>Basis</b>	2010	2011	2012	2013	2014	2015
<b>Total Number of Findings</b>	4	5	8	2	4	3
<b>Race</b>	0	1	2	1	2	0
<b>Color</b>	0	0	2	1	0	0
<b>Religion</b>	0	0	0	1	1	0
<b>Reprisal</b>	3	3	6	1	1	3
<b>Sex</b>	2	0	3	0	3	1
<b>National Origin</b>	1	0	0	0	0	0
<b>PDA</b>	0	0	0	0	0	0
<b>Equal Pay Act</b>	1	0	0	0	0	0
<b>Age</b>	1	1	3	1	0	0
<b>Disability</b>	0	2	1	1	0	2
<b>Genetics</b>	0	0	0	0	0	0
<b>Findings After Hearing</b>						
<b>Total</b>	4	3	8	1	4	3
<b>Race</b>	0	1	2	1	2	0
<b>Color</b>	0	0	2	1	0	0
<b>Religion</b>	0	0	0	1	1	0
<b>Reprisal</b>	3	2	6	0	1	3
<b>Sex</b>	2	0	3	0	3	1
<b>National Origin</b>	1	0	0	0	0	0
<b>PDA</b>	0	0	0	0	0	0
<b>Equal Pay Act</b>	1	0	0	0	0	0
<b>Age</b>	1	1	3	1	0	0
<b>Disability</b>	0	1	1	1	0	2
<b>Genetics</b>	0	0	0	0	0	0
<b>Findings Without Hearing</b>						
<b>Total</b>	0	2	0	0	0	0

Race	0	0	0	0	0	0
Color	0	0	0	0	0	0
Religion	0	0	0	0	0	0
Reprisal	0	1	0	0	0	0
Sex	0	0	0	0	0	0
National Origin	0	0	0	0	0	0
PDA	0	0	0	0	0	0
Equal Pay Act	0	0	0	0	0	0
Age	0	0	0	0	0	0
Disability	0	1	0	0	0	0
Genetics	0	0	0	0	0	0

**Table 10: Findings of Discrimination by Issue (1614.704(i) & (j))**

Issues		2010	2011	2012	2013	2014	2015
Total Number of Findings		4	5	8	2	4	3
Appointment/Hire		2	0	0	0	0	0
Assignment of Duties		0	1	1	0	0	0
Awards		0	1	0	0	0	0
Conversion to Full Time		0	0	0	0	0	0
Disciplinary Action		0	0	1	0	0	0
Duty Hours		0	0	0	0	0	0
Evaluation/Appraisal		0	0	0	0	0	1
Examination/Test		0	0	0	0	0	0
Harassment	Non-Sexual	1	1	3	2	1	3
	Sexual	0	0	1	0	3	0
Medical Examination		0	0	0	0	0	0
Pay Including Overtime		0	0	0	0	0	1
Promotion/Non-Selection		0	0	2	0	0	0
Reassignment	Denied	0	0	0	0	0	0
	Directed	0	0	2	0	0	0
Reasonable Accommodation		0	2	0	0	0	2
Reinstatement		0	0	0	0	0	0
Retirement		0	0	0	0	0	0
Termination		1	0	0	0	1	0
Terms/Conditions of Employment		0	1	1	0	0	0
Time and Attendance		0	1	0	0	0	1
Training		0	0	2	0	0	1

**Table 11: Pending Complaints Filed in Previous Fiscal Years by Status**

	2010	2011	2012	2013	2014	2015
Total complaints previous FY	708	0	0	0	637	635
Total Complainants	623	794	1126	1610	587	563
Investigation	21	83	39	451	28	21
ROI issued, pending Complainant's action	4	7	21	2	3	2
Hearing	236	263	367	437	463	537
Final Agency Action	44	28	30	72	157	86
Appeal with EEOC OFO	232	230	3	135	155	188

**Table 12: Complaints Investigations**

	2010	2011	2012	2013	2014	2015
Pending complaints where investigation exceed required time frames	87	662	827	867	37	41

**(5) Disciplinary Actions Taken (Not in District Court):**

In FY 2015, there were three (3) findings of discrimination rendered, all of which resulted after a Hearing before an EEOC Administrative Judge. Although compliance with the corrective actions ordered by the Administrative Judge has not been completed, to date no specific individual disciplinary actions were reported in response to these decisions. Corrective action in these cases required EEO training be provided to the responsible management officials, a posting at the local activity and monetary corrective action.

**(6) Description of DON Discipline Policy:**

In addition to the information provided in section (3) above, it is DON policy for the EEO Director (Assistant Secretary of the Navy (Manpower & Reserve Affairs) to issue a personal letter to the Commander of the major command when there is a finding of discrimination. This letter instructs the Command to review the facts of the case and determine the level of discipline warranted.

Furthermore, this letter instructs the local Activity, where the discrimination occurred, to ensure compliance with the ordered corrective actions/relief and report on completed actions to DON Office of EEO and Diversity Management. The DON requires all actions completed in 180 days or less of the final agency decision.

**(7) DON Complaints Analysis:**

Table 13 below shows that non-sexual harassment continues to be the most prevalent claim within the DON for the last three fiscal years. Although the current DON policy pertains to allegations of sexual harassment, the DON also requires major commands and subordinate activities to conduct a management inquiry when an employee alleges non-sexual harassment. The scope of the inquiry will depend upon the complexity of

the issue/s and people involved in the allegation. The inquiry must be conducted by a competent management official who is not working in EEO. If an employee raises this allegation through the EEO process, the employee is advised of the command/activity's responsibility to a conduct management inquiry, which is a separate process that runs simultaneous to the processing of the EEO complaint. A draft Anti-Harassment policy is currently under review. The goal is to officially establish a separate program and process for claims of non-sexual harassment or all harassment allegations. This is a clear demonstration of the DON's commitment to a working environment free from harassment and ensures the DON provides a place where all groups have the ability to realize their full potential and participate fully in all employment processes.

**Table 13: Basis and Issues of Formal Complaints (1614.704(d) and (e) & 1614.705)**

<b>FY 2013</b>	<b>FY 2014</b>	<b>FY 2015</b>
<b>Bases</b>	<b>Bases</b>	<b>Bases</b>
<ul style="list-style-type: none"> <li>• Reprisal</li> <li>• Age</li> <li>• Race –African American</li> <li>• Sex - Female</li> <li>• Disability - Physical</li> </ul>	<ul style="list-style-type: none"> <li>• Reprisal</li> <li>• Age</li> <li>• Race – African American</li> <li>• Sex - Female</li> <li>• Disability - Physical</li> </ul>	<ul style="list-style-type: none"> <li>• Reprisal</li> <li>• Age</li> <li>• Race – African American</li> <li>• Disability - Physical</li> <li>• Sex – Female</li> </ul>
<b>Issues</b>	<b>Issues</b>	<b>Issues</b>
<ul style="list-style-type: none"> <li>• Nonsexual Harassment</li> <li>• Promotion/Nonselection</li> <li>• Disciplinary Action</li> <li>• Assignment of Duties</li> <li>• Terms/Conditions of Employment</li> </ul>	<ul style="list-style-type: none"> <li>• Nonsexual Harassment</li> <li>• Promotion/Nonselection</li> <li>• Appointment / Hire</li> <li>• Terms/Conditions of Employment</li> <li>• Disciplinary Action</li> </ul>	<ul style="list-style-type: none"> <li>• Nonsexual Harassment</li> <li>• Promotion/Nonselection</li> <li>• Appointment / Hire</li> <li>• Terms/Conditions of Employment</li> <li>• Disciplinary Action</li> </ul>

**Status of Complaints Processing**

In FY 2015, the DON heavily focused on formal complaints processing due to the sanctions it received for untimely investigations. As previously reported, the Department of Defense (DoD) requires all DoD components to use DoD's Investigations and Resolution Division (IRD) for investigations. From FY 2011 through FY 2013, IRD experienced a considerable backlog in investigating cases, which resulted in the majority of the DON investigations being untimely. To raise the DON's compliance and to mitigate damages and sanctions, the Deputy Assistant Secretary of the Navy (Civilian Human Resources) (DASN(CHR)) authorized flexibilities to allow major commands to use contract investigators and reemployed annuitants to conduct investigations. In addition, the DON continued to utilize its established Complaints Working Group to track complaints processing in FY 2015. The Working Group reviewed the status of complaints processing, issues experienced at the command/activity levels and shared best practices on a monthly basis. Each major command is required to conduct analysis into areas of deficiency, create an action plan to address the issue(s), and report on their progress. The DON collaborated with IRD to establish procedures to fast-track / expedite investigations. The DON also provided commands with scorecards related to the status of their FY 2014 programs during FY 2015, which included a discussion on



formal complaint processing. Recommendations for improvement and best practices were shared with all commands for immediate application.

End of year data shows that 568 investigations were completed in FY 2015, of which 480 (85%) were completed in a timely manner. The DON attributes the increase of timeliness of completed investigations to all of these aforementioned efforts. As shown in Chart 1 below, the percentage of timely investigation completed is now at its highest when compared to previous years; i.e., FY 2011- 44%, FY 2012 - 40%, FY 2013 - 36%, and FY 2014 - 68%. The DON will continue these efforts in FY 2016 with the ultimate goal of achieving 100% timely completed investigations.

**Chart 1: Percent of Investigations Completed Timely**

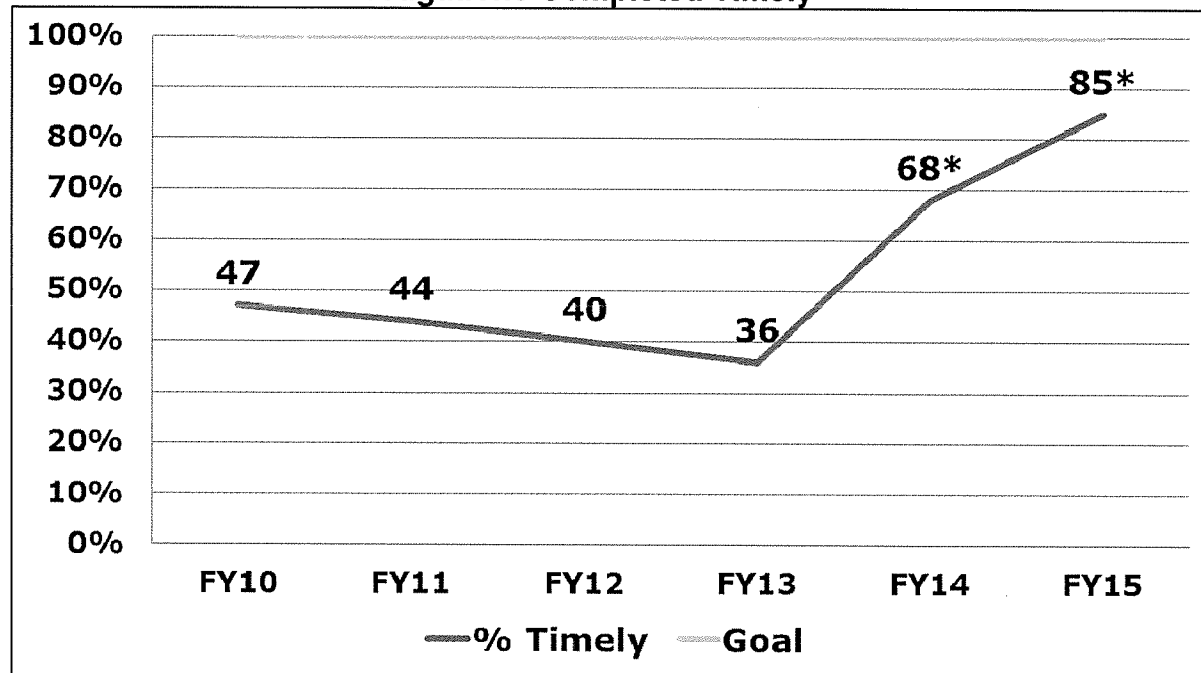
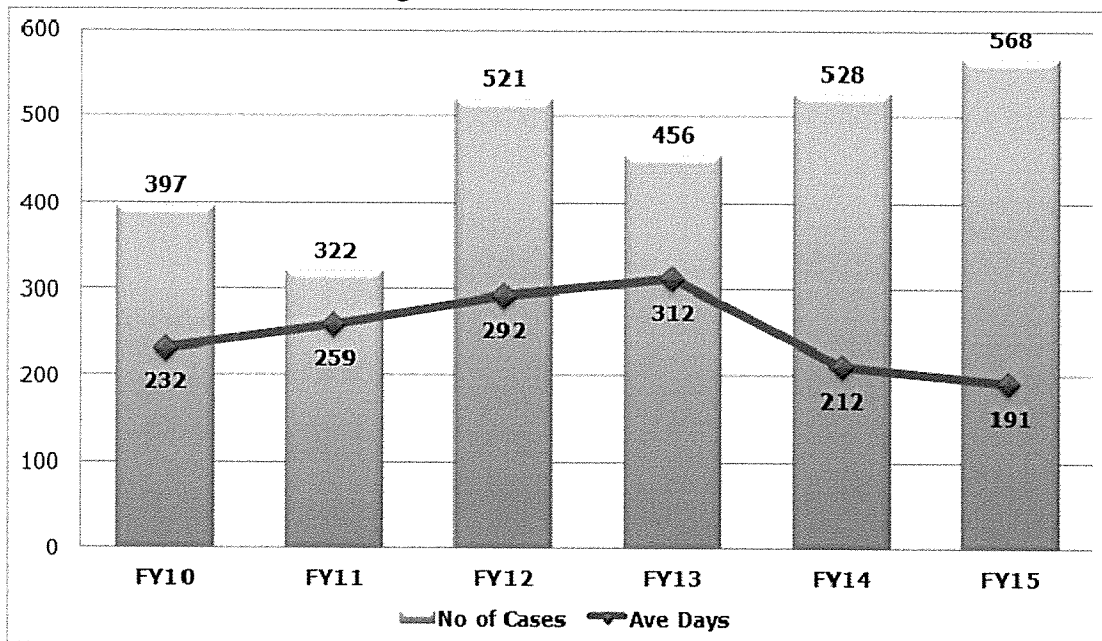
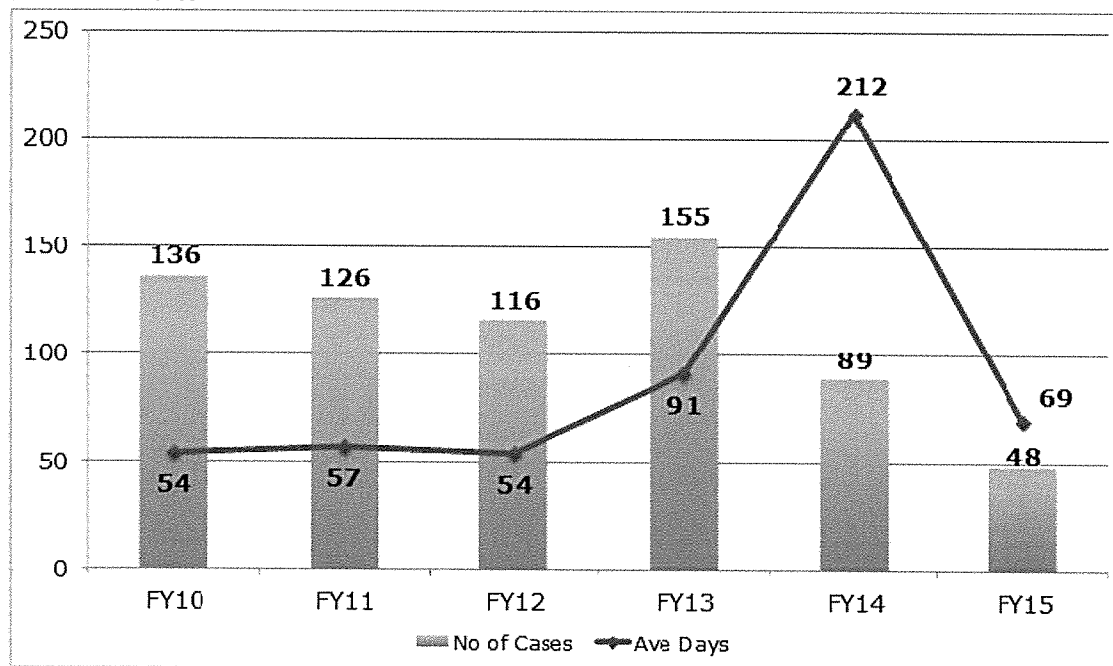


Chart 2 below shows that in FY 2015, the DON completed the highest number of investigations within the last six years. However, even with the volume processed in FY 2015, the average processing days was at its lowest. This is a good indication that the DON is on track towards raising compliance.

**Chart 2: Timeliness of Investigations**



**Chart 3: Final Agency Decisions / Final Orders (EEOC Administrative Judge) (1614.704(h))**



Another area of concern in FY 2015 was the issuance of Final Agency Decisions (FAD). As previously stated, the DON Office of Complaints and Adjudication (which prepares DON FADs) was understaffed in FY 2013 and FY 2014. The staffing shortage was due to the retirement of three full-time seasoned analysts, and the inability to fill these billets due to the hiring freeze and staff reductions. Further complicating this situation was an increase in requests for FADs, due in part to complaints filed resulting from the hiring freeze and furloughs in FY 2013, and a de-certified class complaint. In 2014, the DON entered into an agreement with the U.S. Postal Service (USPS) to process the resulting

backlog, sending 117 cases to USPS in October 2014. All backlogged cases were completed expeditiously by April 2015. The DON continues to grapple with FAD writer staffing issues, with only two re-employed annuitant FAD writers and a team lead on staff. The DON extended the contract with USPS in order to respond to an unusual volume of FAD/FO requests resulting from group complaints and/or de-certified class complaints and to assist with conflict of interest cases. The DON received 275 FAD and FO requests in FY 2015, 83 (30%) of which were processed in a timely manner. While this is an increase from the 4% of timely FADs issued in FY 2014, the DON recognizes that major improvement is still needed and will continue to focus efforts on increasing timeliness in this area in FY 2016.

Chart 3 above illustrates the challenge the DON has experienced since FY 2013. However, it also demonstrates that with appropriate resources, the DON is compliant with the regulatory requirements. From FY 2010 through FY 2012, the DON's average processing days was well below the 60-day regulatory requirement and the DON was able to timely process all FAD requests received.

**Table 14: PreComplaint Processing**

	<b>FY 10</b>	<b>FY 11</b>	<b>FY 12</b>	<b>FY 13</b>	<b>FY 14</b>	<b>FY 15</b>
<b>% ADR Offered in Pre-Complaint Matters</b>	100	76	100	100	100	100
<b>% Participation in ADR in pre-complaint phase</b>	50	54	51	51	53	52
<b>% Timely Held Counselings (within 30 days or 90 days w/extension or ADR)</b>	86	88	91	90	88	91

The DON conducted 1639 total counselings in FY 2015, of which 1496 (91%) were completed in a timely manner. As shown in Table 14 above, this is an increase from FY 2014, as well as the highest percentage of timeliness in counseling within the last three fiscal years. The DON will continue to include precomplaint processing in our plan to bring the DON into compliance in this area. The DON will also hold commands accountable for effective, efficient management and processing of complaints via scorecards and ongoing training.

The DON requires commands to justify or provide a reason if a management official declines ADR. Consequently, management officials participate when complainants chose to avail themselves of the ADR process, unless there are unique extenuating circumstances that would justify a declination on the part of the management official, which would be a rare occurrence. In addition, the DON has been conducting training to supervisors and managers on the benefits of ADR. Table above shows 100% offers to complainants to utilize ADR at the precomplaint stage. However, there is a noticeable decrease in complainants' participation in FY 2015. On average, 50% of complainants declined ADR.

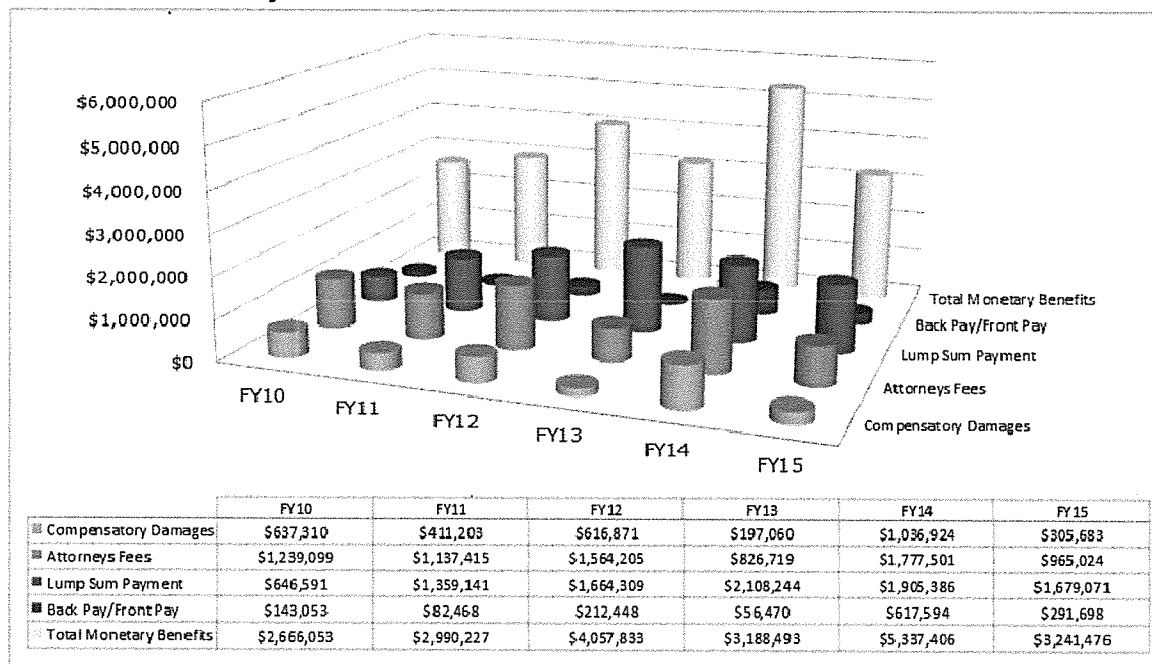
The DON remains committed to 100% timeliness from precomplaints to formal complaints processing. The DON will continue to engage and collaborate with all responsible components to effect positive change.

**(8) Budget Adjustments due to Judgment Fund Reimbursement**

The Department has not had to make adjustments to the budget to ensure reimbursement of the Judgment Fund, as the DON does not rely on payment of settlement actions through the fund. If settlement is accomplished, the individual activity will normally pay directly from their operating budget.

Other monetary corrective action issued as a result of findings of discrimination or settlements arrived at during the Discrimination Complaints Administrative processes are reflected under Chart 4.

**Chart 4: Monetary Corrective Actions**



**(9) Training Plan**

The NO FEAR Act Training Plan was issued as part of the DON Civilian Human Resources Manual (CHRM). Major Commands are required to ensure training is provided to all employees biennially and provide a written report certifying completion of this training requirement. The next training period is 1 January 2016 through 31 December 2016. The requirement was issued in December 2015. Report of compliance is due by January 2017.

**Reviewed and Approved:**

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