



**Department of Navy
Notification and Federal Employee Anti-Discrimination
& Retaliation Act of 2002 (NO FEAR ACT)
FY 2014 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 Naval Office of EEO Complaints Management and Adjudication (NAVOECMA). NAVOECMA is a division within the DON Office of EEO Management and is delegated with the responsibility and authority to manage the Department of the Navy's Discrimination Complaints Program and issue Final Agency Decisions (FADs) and Final Orders on behalf of the Secretary of the Navy.

NAVOECMA 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. NAVOECMA 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
Filed	47	50	25	32	36
Closed	31	52	32	40	25
Pending	16	55	562	29	40

(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/\$)
Findings	0/0	0/0	0/0	0/0	0/0
Settlements	1/\$37,500	7/\$134,750	4/\$238,000	10/\$620,823	6/\$454,500

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 FY14 reportable under the No FEAR Act.

- a. A nine (9) calendar day suspension "Offensive Conduct". The employee violated the Commanding Officer's Statements on Sexual Assault and Equal Opportunity Employment and Sexual Harassment. The employee received SAPR training prior to the offense.
- b. A 45-day suspension for Violating Whistle Blower Act - Prohibited Personnel Practice 5 USC 2302 (b) (8) (B); 5 USC 2301 (b) (9).

(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 NAVOECMA 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
Total Workforce	243,017	245,372	245,574	243,926	239,790
Total # Complaints Filed	710	1053	749	610	792
Total # Individual Filers	697	1040	720	597	775
Total # Repeat Filers	9	13	25	12	15

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

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

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

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
Complaints pending during FY					
Ave days in investigation	154.69	272.48	307.60	301.38	231.88
Ave days in final action	111.98	151.34	62.85	64.88	148.20
Complaint pending during FY where hearing requested					
Ave days in investigation	14.21	278.74	289.80	292.55	239.09
Ave days in final action	37.04	39.64	35.48	40.71	94.08
Complaint pending during FY with no hearing request					
Ave days in investigation	246.19	267.25	333.45	314.68	219.89
Ave days in final action	159.21	221.92	83.70	80.99	235.45

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
Complaints Dismissed by Agency					
Total Complaints	167	162	200	5	112
Average Days	81	76	75	441	64
Complaints Withdrawn by Complainant					
Total Complaints	55	76	75	68	62

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

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

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

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

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

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

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

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

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

Table 12: Complaints Investigations

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

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

In FY 2014, there were four (4) 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)

FY 2012	FY 2013	FY 2014
Bases	Bases	Bases
• Reprisal	• Reprisal	• Reprisal
• Age	• Age	• Age
• Race - African American	• Race -African American	• Race - African American
• Sex - Female	• Sex - Female	• Sex - Female
• Disability - Physical	• Disability - Physical	• Disability - Physical
Issues	Issues	Issues
• Nonsexual Harassment	• Nonsexual Harassment	• Nonsexual Harassment
• Disciplinary Action	• Promotion/Nonselection	• Promotion/ Nonselection
• Promotion/Nonselection	• Disciplinary Action	• Appointment/Hire
• Terms/Conditions of Employment	• Assignment of Duties	• Terms/Conditions of Employment
• Termination	• Terms/Conditions of Employment	• Disciplinary Action - Reprimand

Status of Complaints Processing

One of the areas the DON focused on improving in FY 2014 was timely investigations. The Department of Defense (DoD) requires all DoD components to use DoD's Investigations and Resolution Division (IRD) for investigation purposes. From FY 2011 through FY 2013, IRD experienced a considerable backlog in investigating cases. Consequently, the majority of the DON investigations were untimely. To raise the DON's compliance and mitigate damages and sanctions, the Deputy Assistant Secretary of the Navy (Civilian Human Resources) or DASN (CHR) authorized flexibilities in the form of Commands being approved to use contract investigators and reemployed annuitants to conduct investigations effective FY 2013. Current data shows that the use of contract investigators was one of the contributing factors in raising the commands' compliance to investigation requirements. In September 2014 the DON leadership again demonstrated its commitment to a more timely and effective process by the DASN (CHR) authorizing the continuation of the above flexibilities to remain in place until otherwise rescinded. Furthermore, the DASN (CHR) personally contacted the top leadership of each command to remind them that one vital responsibility in

managing an EEO Program is ensuring the complaints are processed in a timely manner. The DASN (CHR) made it clear that delay outside the DON's control does not absolve the commands from its responsibility to ensure these complaints are processed timely and required them to do everything possible to ensure complaints are carefully monitored and completed timely, and, where feasible to explore the possibility of a settlement agreement. The accompanying chart 1 shows that for the first time in five years, the DON has gone beyond the 50% mark of timely investigations completed. At the end of FY 2014, 68% of DON investigations were processed timely.

Chart 1: Percent of Investigations Completed Timely

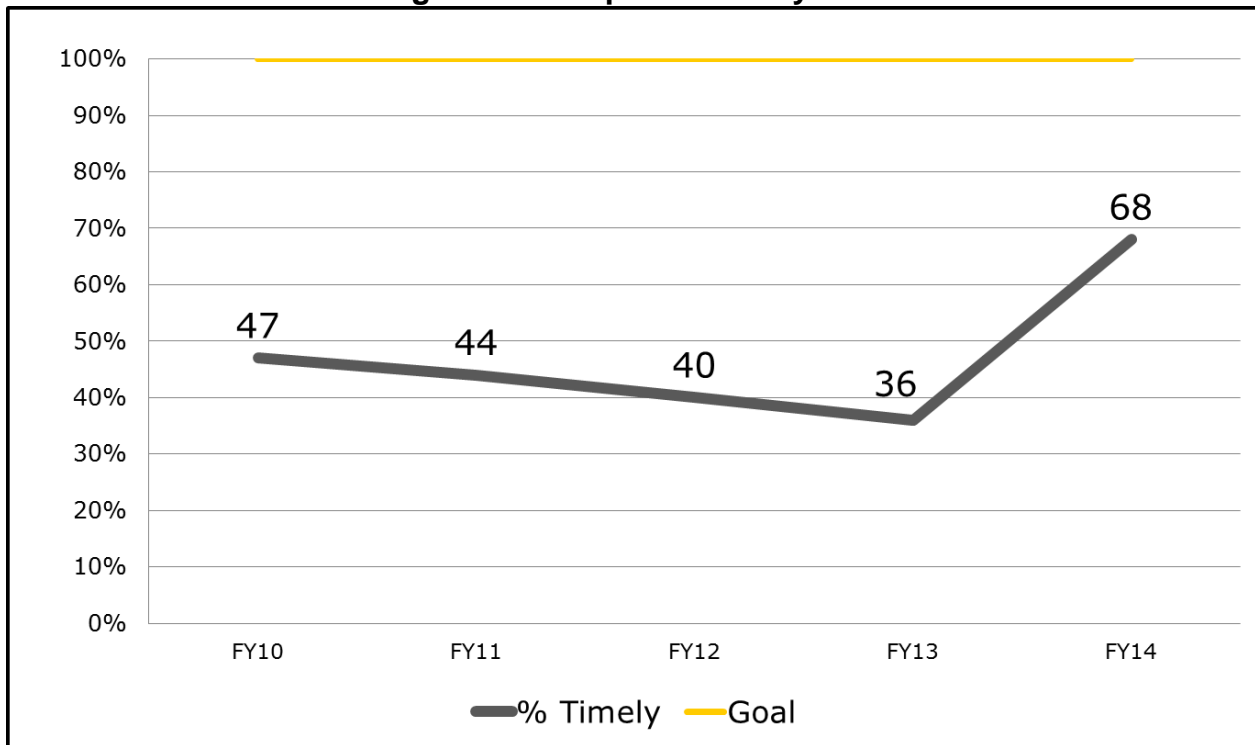


Chart 2 below shows that in FY 2014, the DON completed the 2nd highest number of investigations in the last five years. However, even with the volume processed in FY 2014, the average number of processing days is at its lowest compared to the last four reporting period, a good indication the DON is on track towards raising compliance.

Chart 2: Timeliness of Investigations

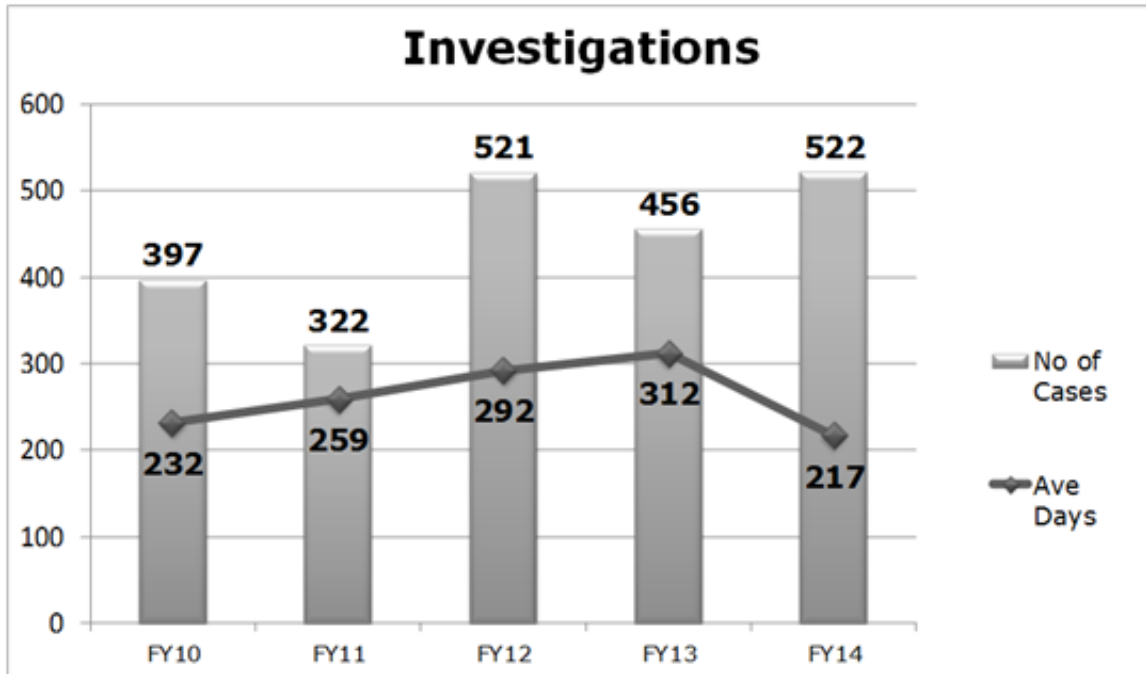
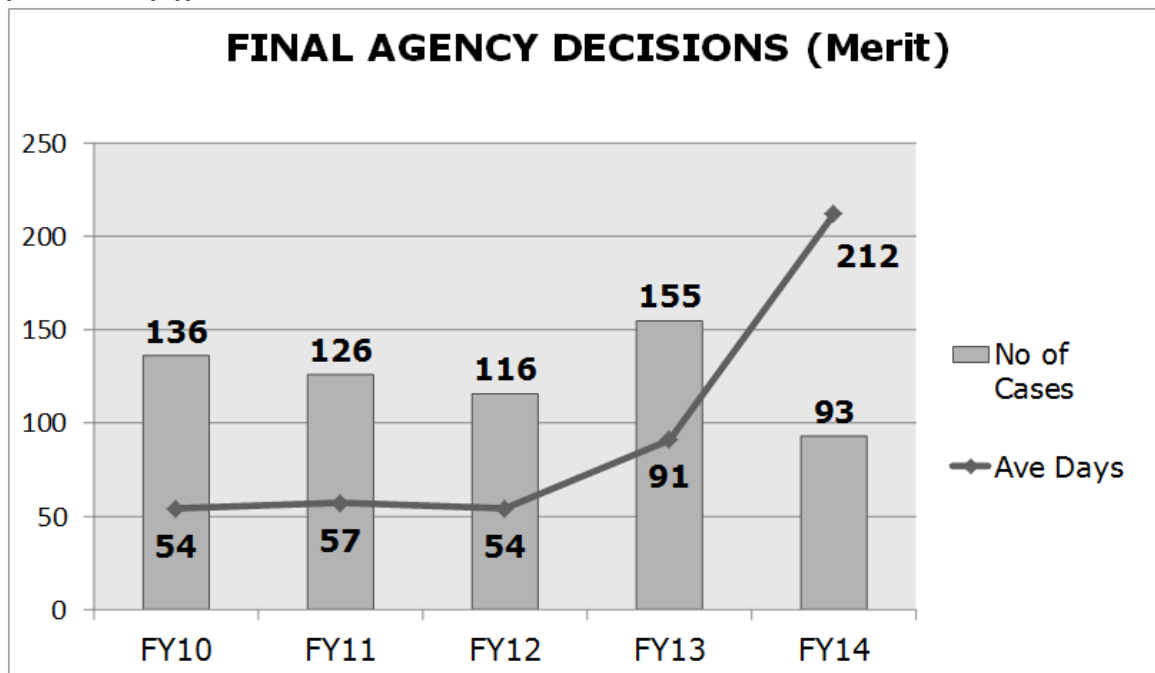


Chart 3: Final Agency Decisions / Final Orders (EEOC Administrative Judge) (1614.704(h))



Another area of concern in FY 2013 and FY 2014 was the issuance of Final Agency Decisions (FAD). The DON lost two experienced FAD Analysts due to retirement. At the same time, a hard freeze during sequestration prevented the DON from backfilling these two positions. This resulted in only two experienced FAD Analysts onboard in FY 2013 compared to four in previous fiscal years.

Chart 3 above illustrates the challenge the DON experienced in FY 2013 and FY 2014. 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

	FY 10	FY 11	FY 12	FY13	FY 14
% ADR Offered in Pre-Complaint Matters	100	76**	100	100	100
% Participation in ADR in pre-complaint phase	50	54	51	51	45
% Timely Held Counselings (within 30 days or 90 days w/extension or ADR)	86	88	91	90	88

In FY 2014, there was a decline in timely held counselings. 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 2014. On average, 50% of complainants declined ADR.

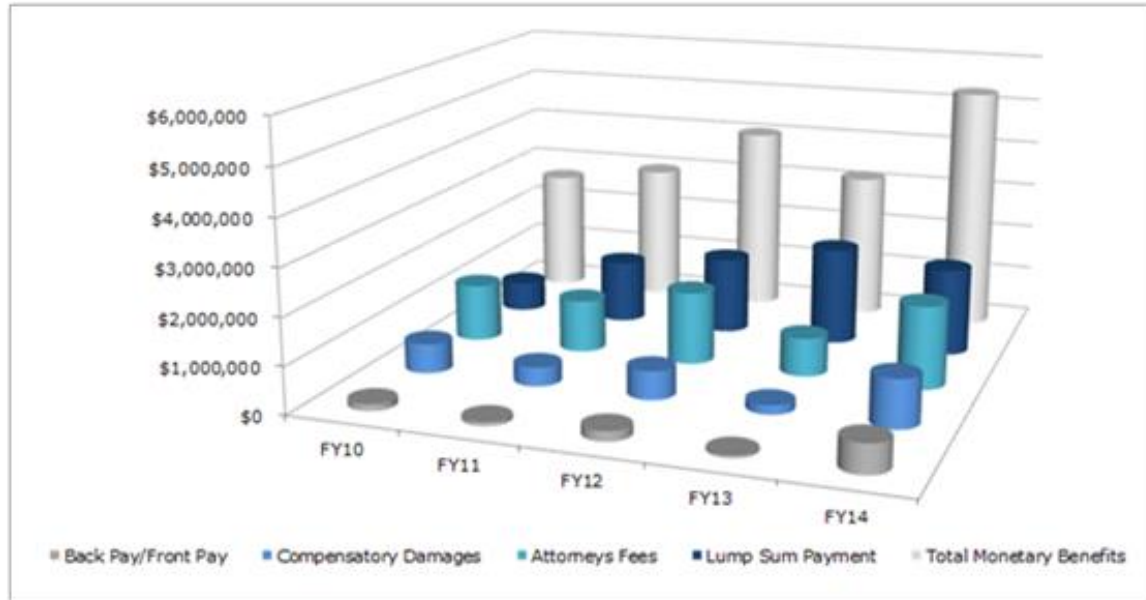
The DON remains committed to 100% timeliness from precomplaints to formal complaints processing. The DON will continue to engage and collaborate with all responsible components to effect positive change.

(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 process are reflected under Chart 4:

Chart 4: Monetary Corrective Actions



	Compensatory Damages	Attorneys Fees	Lump Sum Payment	Back Pay/Front Pay	Total Monetary Benefits
FY10	\$637,310	\$1,239,099	\$646,591	\$143,053	\$2,666,053
FY11	\$411,203	\$1,137,415	\$1,359,141	\$82,468	\$2,990,227
FY12	\$616,871	\$1,564,205	\$1,664,309	\$212,448	\$4,057,833
FY13	\$197,060	\$826,719	\$2,108,244	\$56,470	\$3,188,493
FY14	\$1,036,924	\$1,777,501	\$1,883,160	\$617,594	\$5,315,180

(9) Training Plan

The NO FEAR Act Training Plan was issued as part of the DON Civilian Human Resources Manual (CHRM). Commands are required to provide a written report certifying completion of this training requirement. The bi-annual training requirement for the period of 1 January 2014 through 31 December 2014 shows that 90% of the DON Workforce completed this requirement. Major Commands are required to ensure training is provided to all new hires and make effort to ensure 100% of the workforce receives refresher training biennially. Next training period is 1 January 2016 - 31 December 2016. Requirement will be issued in December 2015. Report of compliance is due by January 2017.

Reviewed and Approved:

Signature: _____

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