

No FEAR Act Report

FEDERAL MEDIATION AND CONCILIATION SERVICE

2021



ONE INDEPENDENCE SQUARE

250 E Street, SW

Washington, D.C. 20462

WWW.FMCS.GOV

Overview of FMCS

The Federal Mediation and Conciliation Service (FMCS), created in 1947, is an independent agency whose mission is to promote labor-management relationships, cooperation, and to assist parties in conflict. Headquartered in Washington, D.C., the public functions of FMCS are delivered through a network of regional and district offices in order to best service its customers. The FMCS network is divided into two (2) regions – Western and Eastern Region. The Western region consists of four (4) districts and the Eastern region consists of five (5) districts.

Agency Headquarter Offices

Office of the Director. The FMCS Director, appointed by the President with the advice and consent of the Senate, has the responsibility for establishing and directing policy and for the overall administration and strategic direction of the Service. The Director serves as agency liaison with the White House, members of the President’s Cabinet and the Congress, and also provides direction for and participation in mediating major disputes.

Division of Agency Initiatives. The Division of Agency Initiatives (DAI) coordinates the resources and efforts of the following service areas: Center for Conflict Resolution Education and Training (CCRE), Office of Conflict Management and Prevention (OCMP) and Office of Strategy and Development (OSD). The DAI ensures that these three service areas provide expert assistance to both our external clients as well as our mediators and regions. To achieve the highest service level, DAI helps all three (3) offices collaborate on many projects for optimal delivery and to utilize all agency initiatives staff as efficiently as possible. The DAI also works with Agency leadership to identify and explore opportunities to expand and grow the FMCS profile as the nation’s premier (public agency) provider of conflict resolution services, both in the industrial relations arena and beyond.

Center for Conflict Resolution Education and Training. The Center for Conflict Resolution Education and Training supports and drives a continuous learning environment for mediators, managers, and the national office staff consistent with the FMCS vision. The Director identifies and develops training materials and programs that support employees acquiring core competencies and high levels of job competency.

Office of Conflict Management and Prevention.

The Office of Conflict Management and Prevention’s (OCMP) mission is to grow and support FMCS capacity for full spectrum conflict management work that primarily falls under the Alternative Dispute Resolution (ADR) Act and the Negotiated Rule Making Act. OCMP supports FMCS commissioners, managers, leaders, and headquarters personnel, as well as building and maintaining external client relationships and inter-agency agreements with other federal agencies.



FEDERAL MEDIATION AND CONCILIATION SERVICE
HEADQUARTERS OFFICE
250 E Street, SW
Washington, D.C. 20427

OCMP Practice Areas:

- Conflict assessment, organizational assessment;
- Facilitation (small, medium large, multi-party and facilitated dialogues);
- Design and deliver training on the following topics (partial list): Negotiation, mediation resiliency, conflict coaching, leadership development, emotional intelligence, breakthrough conversations, and more;
- Coaching and appreciative inquiry skills;
- Dispute system design;
- Organizational change and development;
- Leadership alignment and development; and
- Strategic planning

Office of Strategy and Development. The Office of Strategy and Development bridges the gap between Headquarters office support services and the needs of mediators by using technology to improve service delivery and providing training, outreach, and special projects. The director is responsible for identifying and promoting information resources and communication tools that allow the Service to fulfill its mission as efficiently and effectively as possible.

Office of International Affairs. Internationally, the FMCS strives to build local capacity for effective industrial relations systems, including labor administration, inspection, collective bargaining, mediation, and dispute resolution at the request of the U.S. Department of State, U.S. Department of Labor and other entities. Additionally, the FMCS has also been asked to brief or train judges, mediators, and arbitrators on dispute resolution techniques, and has provided assistance in establishing mediation agencies. FMCS international program development, project management, and service delivery are provided by professional staff with significant international experience. In addition, the Agency draws on the expertise of a field staff of 165 full-time mediators to deliver the Agency's international services. For more than two decades, FMCS has delivered training services in more than 50 nations and addressed a wide variety of instructional and development needs.

Office of Arbitration, Shared Neutrals and Notice Processing Services. Federal labor policy promotes the use of voluntary arbitration and collective bargaining to resolve labor-management disputes between employers and represented employees. Two important features of constructive labor-management relations are voluntary arbitration and fact-finding in disputes and disagreements over establishment or modification of contract terms. As an ingredient of collective bargaining agreements, the arbitration system is an important tool in labor/management cooperation. Today, all collective bargaining agreements, in essence, contain grievance and arbitration provisions.

The Arbitration Office provides to requesting parties' panels of arbitrators experienced in dealing with labor matters. The FMCS Office of Arbitration Services' (OAS) major responsibilities include: maintaining a roster of arbitrators qualified to hear and decide labor questions in labor management disputes, providing the parties involved in collective bargaining agreements with a



FEDERAL MEDIATION AND CONCILIATION SERVICE
HEADQUARTERS OFFICE
250 E Street, SW
Washington, D.C. 20427

list of experienced panels of arbitrators, and appointing arbitrators following their selection by the involved parties. The labor policy of the United States promotes and encourages the use of voluntary arbitration to resolve disputes over the interpretation or application of collective bargaining agreements. Voluntary arbitration and fact-finding are important features of constructive labor-management relations and virtually all collective bargaining agreements contain arbitration provisions. FMCS administers a roster of qualified labor arbitrators. We promptly provide arbitrator panels from the roster when parties request and appoint arbitrators pursuant to parties' agreement. The director provides education, advocacy, and outreach to actual and prospective FMCS arbitration customers.

The Arbitration Office is also responsible for managing Shared Neutrals (SN). SN is an interagency mediation program in the National Capital Region including the Washington, DC area and Baltimore, since the 1990's. Upon request, SN assists participating federal agencies through a pool of trained, collateral-duty federal employees who provide mediation services to other than their own in exchange for like services to the program from the recipient agency.

The Notice Processing Unit has the responsibility for entry of all notices and certifications received from filing parties, the NLRB and the FLRA. We maintain original documents for a period of seven fiscal years. Filed documents can be retrieved from our Archives. Notice Processing also receives, processes and dispenses more than 25,000 notices of contract expirations required by law to the eight districts and eight Executive Managers.

A party to a collective bargaining agreement is required by statute to notify FMCS within 30 days (60 days if it involves employees of a healthcare institution) of serving notice to the other party of intent to terminate or modify the agreement. FMCS' dedicated Notice Processing staff is responsible for ensuring timely and accurate recording of these notices of collective bargaining contract termination or modifications (F-7 notice). Online submission of the notice is simple and creates a clear record to protect the submitting party. When the employer is a healthcare institution, a labor organization is separately required to notify FMCS at least ten days prior to any strike, picket, or other concerted refusal to work.

Office of Budget. The Office of Budget develops budget estimates and supporting material for the financial needs of the Service, coordinates and assists in presenting the budget to the Office of Management and Budget (OMB) and the Congress and ensures that enacted appropriations are properly executed. The director is responsible for advising employees about and ensuring compliance with appropriations integrity rules, law and procedures.

Office of Finance. The Office of Finance ensures that all funds, both appropriated and earned, are properly and completely accounted for and that internal controls minimize opportunities for fraud, waste, and abuse and thus provide accountability to OMB, Congress and the American public. The director is responsible for providing an integrated system of records and reports to meet management's data needs and ensure compliance with applicable laws, rules, and regulations.



FEDERAL MEDIATION AND CONCILIATION SERVICE
HEADQUARTERS OFFICE
250 E Street, SW
Washington, D.C. 20427

Office of Equal Employment Opportunity. The Office of Equal Employment Opportunity (EEO) is primarily responsible for enforcing laws and regulations that prohibit discrimination based on race, gender, religion, age, color, national origin, disability, sexual orientation, genetic information, and reprisal. The Director of EEO retains the authority and agency-wide responsibility for efficient and appropriate compliance with the FMCS EEO Program. This includes, but is not limited to, the authority to:

- Establish and maintain effective affirmative programs of EEO under Federal anti-discrimination laws.
- Ensure strategic partnership with Senior Agency leadership, General Counsel, and Chief Human Capital Officer to meet FMCS requirements relative to the FMCS Model Agency Plan and related Agency policies and programs.
- Ensure timely, fair, and impartial consideration, investigation, and disposition of complaints of discrimination.
- Exercise EEO or special emphasis advisory committees as needed and recruit representatives throughout the FMCS to assist in the recruitment, development, advancement, and retention of those belonging to groups who have been historically underserved and marginalized.
- Ensure that sufficient personnel and fiscal resources are provided to administer an effective EEO Program.
- Develop, implement, and monitor an EEO counseling, complaints, and investigations program in accordance with laws, rules, regulations, policies, and procedures that prohibit discrimination and ensure that complaints are processed in the prescribed timeframes.
- Implement an affirmative employment program to promote EEO for people with disabilities.
- Submit all required annual plans and accomplishment reports on behalf of the Agency as appropriate, including, but not limited to, the MD-715.
- Serve as the Agency contact for any and all contracts and agreements with external entities or federal agencies pertaining to processing FMCS's EEO complaints.

Office of the General Counsel. The Office of General Counsel provides legal support and advice necessary for the Service to carry out its mission. The General Counsel represents the agency in proceedings before the Merit System Protection Board (MSPB), Equal Employment Opportunity Commission (EEOC), Special Counsel, Federal Labor Relations Authority (FLRA), and other administrative bodies, and, in cooperation with the Department of Justice (DOJ), represents the Service in all matters arising in the Federal courts.

Office of Human Resources. The Office of Human Resources provides job applicants, employees, and agency managers with services and programs that support the Service's mission and ensures compliance with applicable laws and regulations. The director oversees hiring qualified employees, classifying position, implementing and monitoring performance appraisal systems, and coordinating employee relations programs.



FEDERAL MEDIATION AND CONCILIATION SERVICE
HEADQUARTERS OFFICE
250 E Street, SW
Washington, D.C. 20427

Office of Information Technology. The Office of Information Technology develops and implements the Service's technology plan; maintains computer application and system; and provides technology support to all aspects of the Agency's operations. The director provides strategic advice and direction with respect to technology issues and trends and ensures continuity of agency information services operations under a variety of likely scenarios.

Office of Procurement and Operational Support. The Office of Procurement and Operational Support procures and manages goods and services necessary for orderly and efficient agency operations. The director is responsible for the development of procurement strategic planning activities, including long-term enterprise-wide acquisitions. This office also manages agency-wide administrative and support services: facilities and space management, printing and graphics, audiovisual services, inventory, mail services; motor vehicle fleet, physical security, leasing, property and records management, Controlled Unclassified Information (CUI), and the agency's purchase card program. Other programs this office administers is the Labor-Management Cooperative Grants program.

Office of Congressional and Public Affairs. The Office of Congressional and Public Affairs, using a variety of communications platforms, provides internal and external information about the activities of the Service and acts as the public information voice for the agency in significant dispute cases, handling questions and information requests from the news media and issuing official statements from the Director. The director of public affairs also coordinates the agency's communication with business and union customers, with members of Congress, and provides public information and communication skills training for field mediators.

District Offices

District Offices. The FMCS network is divided into two (2) regions – Western and Eastern Region. The Western region consists of four (4) districts and the Eastern region consists of five (5) districts. In addition to the district offices, many FMCS mediators work from home offices which allows the agency greater flexibility in providing coverage for the entire country.

Western Region

South Central District

St. Louis, Missouri
1034 S. Brentwood Blvd. Suite 450
St. Louis, MO 63117
(314) 205-2008

North West District

Seattle, Washington
2001 Sixth Avenue, Suite 2500
Seattle, WA 98121
(206) 553-5800

South West District

Los Angeles, California
550 North Bend Blvd., Suite 1150
Glendale, CA 91203
(818) 507-9002

North Central District

Minneapolis, Minnesota
1300 Godward Street, Suite 3950
Minneapolis, MN 55413
(612) 331-6672

Eastern Region

National Office

Washington, District of Columbia
250 E Street, SW, 7th Floor
Washington, D.C. 20427
(202) 606-8100

North East District

Woodbridge, New Jersey
517 US Highway 1 South
Iselin, NJ 08830
(732) 726-3120

Mid Atlantic District

Philadelphia, Pennsylvania
1601 Market Street, Suite 910
Philadelphia, PA 19103
(215) 717-7500

Great Lakes District

Cleveland, Ohio
6161 Oak Tree Blvd., Suite 100
Independence, OH 44131
(216) 520-4800

South East District

Nashville, Tennessee
617 Potomac Place, Suite 405
Smyrna, TN 37167
(615) 220-2249

No FEAR Act Reporting

The No FEAR Act, Public Law 107-175, requires federal agencies to be publicly accountable for violations of Antidiscrimination and Whistleblower Protection laws. Federal agencies must post both quarterly and annual statistical data for federal sector EEO complaints on its public website, reimburse the Treasury Judgment Fund (Judgment Fund) for any payments made, and notify employees and applicants for employment about their rights under Antidiscrimination and Whistleblower Protection laws. The No FEAR Act and its implementing regulations also require federal agencies to report annually on the following:

- The number of Federal Court cases arising under the respective areas of law cited in the No FEAR Act where discrimination was alleged, the status or disposition of cases, and the amount required to be reimbursed to the Judgment Fund;
- The number of employees disciplined for discrimination, retaliation, harassment, or any other infraction of any provision of law referred to under the Act, and specific nature of the disciplinary action taken, separated by provisions of law;
- The final year-end data on discrimination complaints for the fiscal year;
- A detailed description of agency policy relating to appropriate disciplinary actions;
- An analysis of trends, causation, and practical knowledge gained through experience;
- Actions planned or taken to improve complaint or civil rights programs; and
- Any adjustments to the budget.

Pursuant to congressional and statutory requirements, this report is being provided to the following:

- Speaker of the U.S. House of Representatives
- Present Pro Tempore of the U.S. Senate
- Committee on Governmental Affairs of the U.S. Senate
- Committee on Government Reform of the U.S. House of Representatives
- Each Committee of Congress with jurisdiction relating to the agency
- Chair, Equal Employment Opportunity Commission
- Department of Justice Attorney General
- Director, U.S. Office of Personal Management

Executive Summary

The No FEAR Act aims to reduce the incidents of workplace discrimination within the federal government by holding agencies and departments accountable for their actions. Section 203 of the No FEAR Act and the Office of Personnel Management (OPM) regulations implementing Title II of the No FEAR Act require each federal agency to prepare and submit an annual report. This report covers data for FY2021.

This report is prepared in accordance with Section 203 (a)(1) of the No FEAR Act which requires federal agencies to include in their annual report to Congress the number of cases arising under each of the respective provisions of law covered by paragraphs (1) and (2) of Section 201 (a) in which discrimination on the part of such agency was alleged. Section 724.302 of OPM's implementing regulations clarifies Section 203(a)(1) of the No FEAR Act, stating that Federal agencies must report on the "number of cases in Federal court pending or resolved...arising under each of the respective provisions of the Federal Antidiscrimination Laws and Whistleblower Protection Laws applicable to them...in which an employee, former Federal employee, or applicant alleged a violation(s) of these laws, separating data by the provision(s) of law involved." The laws covered in the No FEAR Act include:

- Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e-16(race, color, religion, sex, and national origin) (Title VII);
- The Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 633a (age) (ADEA);
- The Equal Pay Act of 1963, 29 U.S.C. § 206(d) (gender-based wage differentials);
- Section 501 of the Rehabilitation Act of 1973, amended, 29 U.S.C. § 791 (disability) (Rehabilitation Act)
- The Genetic Information Nondiscrimination Act of 2008, 42 U.S.C. § 2000ff-1(genetic information) (GINA); and
- The Civil Service Reform Act of 1978, 5 U.S.C. § 2302(b) (race, color, religion, sex, national origin, age, disability, marital status, political affiliation, and whistleblowing).

Data

A. Civil Cases

During FY2021, FMCS was a party to one Federal district court case. This case alleged a violation of the Title VII, Rehabilitation and Age Discrimination in Employment Act. The case is pending at the end of the fiscal year.

B. Judgment Fund Reimbursement and Budget Adjustments

Section 724.103 of OPM's implementing regulations requires Federal agencies to reimburse the Judgment Fund for payments covered by the No FEAR Act.

During FY2021, no expenditures from the Judgment Fund were made on behalf of the FMCS. Therefore, the FMCS did not adjust its budget, as the FMCS did not have to reimburse the Judgment Fund.

C. Disciplinary Policy and Actions

Section 203(a)(6) of the No FEAR Act requires that an agency include in its annual report a detailed description of the policy implemented by that agency related to disciplinary actions imposed against a

Federal employee who discriminated against any individual in violation of any of the laws cited under Section 201(a) or (2).

The Director of FMCS issued a policy statement in November 2020, that reinforced the FMCS's commitment to maintaining a work environment free from discrimination, harassment and retaliation and encouraging an inclusive workforce. To support this commitment, the FMCS offered several trainings throughout the fiscal year including Civil Treatment training initiated in FY20 and completed in FY21. The FMCS reissued the following policies to reaffirm the agency's commitment to a workplace free from discrimination, harassment and retaliation.

Alternative Dispute Resolution Policy. This policy explains FMCS's commitment to the use of ADR, and other collaborative processes, as a management tool to prevent or minimize disputes, or to resolve disputes at the earliest stage possible in an expeditious, cost effective and mutually acceptable manner. The policy is currently under review for updates. **Appendix A.**

Elimination and Prevention of Harassment Directive. This directive explains FMCS's zero tolerance for harassment in the workplace, establishes an effective complaint reporting process and sets forth responsibilities and procedures for addressing allegations of harassment. **Appendix B.**

Equal Employment Opportunity Directive. This policy explains FMCS's commitment to provide equal employment opportunity for all employees and applicants for employment regardless of race, color, national origin, sex (including pregnancy, sexual harassment, sex stereotyping, sexual orientation, gender identity, and caregiving responsibilities), religion, age, disability, genetic information (including family medical history) or status as a parent. Moreover, it reiterates that FMCS prohibits discrimination on these bases in the workplace and the agency's employment practices. **Appendix C.**

Section 203(a)(4) of the No FEAR Act also requires that agencies include the number of employees disciplined for discrimination, retaliation, harassment, or any other infraction of any provision of law covered by the No FEAR Act.

In FY 2021, the FMCS did not discipline any employees for discrimination, retaliation, harassment, or any other infraction covered by the No FEAR Act.

D. No FEAR Act Training

Section 202(C) of the No FEAR Act requires agencies to provide training for their employees on the rights and remedies under Federal antidiscrimination, retaliation, and whistleblower protection laws.

In FY 2021, the FMCS web-based training was updated. FMCS employees also had additional No FEAR Act training during Agency-wide meetings. At the end of FY2021, 186 out of 208 FMCS employees completed the No FEAR Act web-based training Course. New employees completed No Fear Training. In order to ensure timely completion of biennial No FEAR Act Training, FMCS has established appropriate mechanisms for accurate tracking of No FEAR Act trainings by employees.

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

Section 203(a)(5) of the No FEAR Act requires Federal agencies to include its final year-end data posted under section 301(c)(1)(B) for such fiscal year. The FMCS includes the final year-end data required under aforementioned section in FY 2021 No FEAR Act Report in **Appendix D.**

Analysis of Complaints

Section 203(a)(7) of the No FEAR Act requires that agencies undertake “an examination of trends; causal analysis; practical knowledge gained through experience; and any actions planned or taken to improve complaint or civil rights programs of the agency.” The FMCS examined the information reported.

Data and Results. During FY 2021, one complaint was filed alleging unlawful discrimination. The allegations were based on race and sex and the issue was harassment (non-sexual). During FY2021, one formal complaint, involving allegations of discrimination based on disability, age, retaliation and harassment, was closed with no findings.

Trends and Causal Analysis. During FY 2021, the FMCS received one formal complaint involving allegations of discrimination based on race and sex which is lower than the two complaints filed in FY 2020. This represents a 50% decline in formal complaint filings. The decline in the number of cases filed in FY 2020 reflects the agency’s ongoing efforts to foster a workplace that is free from discrimination, harassment and retaliation. It is also noted that this reduction occurred during the COVID-19 pandemic, which caused differences in work environments, remote work and telework. This reduction in formal complaint filings is positive in ensuring allegations of discrimination are addressed and resolved at the lowest level.

For FY 2021, the most frequently cited basis in the formal complaints filed were: race and sex. This is consistent with the previous four years where the most frequently cited basis were: race, sex and age followed by religion and national origin. To respond to this outcome, the FMCS reviewed its hiring practices and policies and offered supervisory training to address appointment/hire and promotion/non-selection. In addition, the FMCS is undergoing a comprehensive review and updating of current hiring directives and developing a standardized hiring guide.

While there have been considerable changes with the FMCS the previous three years, leadership has been proactive about addressing issues within the agency and providing resources to supervisors so employees can effectively perform in a workplace that is inclusive and free from discrimination, retaliation and harassment. By continuing to address issues and provide necessary resources, there is an increased likelihood that the number of formal complaints will continue to decline. In addition, the FMCS will explore training opportunities, collaborate with HR and EEO to provide additional training on harassment, No FEAR Act, basics of EEO and inclusion awareness training.

Practical Knowledge Gained Through Experience and Action Plan

At FMCS, the EEO Director has partnered with senior management to settle workplace conflict while it is in its pre-complaint stage by engaging in facilitated dialogue. We encourage employees to communicate with each other and to attempt to resolve the dispute at the lowest level. The EEO Director, also, actively promotes the use of ADR to provide, both the complainant and the agency, the opportunity to resolve disputes in a fast and efficient manner. As a result, in FY 2021, potential formal EEO cases were avoided or were withdrawn in the informal complaints in the preceding years. This trend reflects that the FMCS is taking positive steps to eliminate discriminatory practices. The FMCS also established a full time EEO Director position which was previously a collateral duty position. In addition, the FMCS established an Ombudsman Office as an additional resource to facilitate dialog and settle workplace conflicts.

Conclusion

The FMCS continues to make strides in its efforts to foster and promote a workplace free from discrimination and harassment. There was 1 formal complaint filed alleging violations covered under the No FEAR Act and

there is one complaint pending in Federal district court. No FMCS employees were disciplined for findings of discrimination. Further, the FMCS has no cases that resulted in a judgement, award or compromised settlement. Therefore, no expenditures from the Judgement Fund were made on behalf of the FMCS.

These results can be attributed to the FMCS continued trainings and briefings for FMCS managers and employees on the No FEAR Act, EEO laws, harassment and civility treatment. Additionally, the FMCS continues to encourage FMCS employees to resolve disputes at the earliest stages through ADR or the Ombudsman Office. Lastly, the FMCS has committed to effectively communicating with employees regarding major changes within the agency and employment-related policies and practices. In conclusion, the FMCS will continue analyze its programs and develop strategic plans that promote and ensure a workplace free of harassment and discrimination.

APPENDIX A



FMCS

FEDERAL MEDIATION & CONCILIATION SERVICE

EEO Alternative Dispute Resolution Procedures May 2019

1. **INTRODUCTION.** This Statement of Policy addresses the use of Alternative Dispute Resolution (ADR) by the Federal Mediation and Conciliation Service (FMCS), as required by the Administrative Dispute Resolution Act (ADRA), 5 U.S.C § 571 et seq. The ADRA authorizes and encourages agencies to use mediation and other consensual methods of dispute resolution as alternatives to traditional dispute resolution processes. The ADRA requires agencies to designate a Dispute Resolution Specialist, establish a policy addressing the use of ADR, review contracts and grants for appropriate inclusion of ADR clauses and provide for regular training on ADR.
2. **POLICY.** FMCS is committed to the use of ADR, and other collaborative processes, as a management tool to prevent or minimize disputes, or to resolve disputes at the earliest stage possible in an expeditious, cost effective and mutually acceptable manner. In furtherance of this commitment to the use of ADR, and in compliance with the ADRA, FMCS's ADR Program seeks to encourage and coordinate the ADR efforts of FMCS, formulate agency-wide ADR policies, and disseminate information about internal ADR activities, including providing assistance, consultation and training within FMCS on ADR subject matter. Instate and federal court litigation, ADR procedures may be mandated by applicable statutes, court orders, rules and procedures. The FMCS supports the voluntary use of ADR, including collaborative discussion and other collaborative processes, e.g., mediation, conflict coaching, partnering, facilitated dialogues and the use of an ombudsman, where appropriate.
3. **KEY TERMS**
 - a. **Workplace Conflict:** Varying opinions, values or working styles that leads to a disagreement. It is also described as a state of discord caused by the actual or perceived opposition of needs, values and interests between people working together.
 - b. **Early Intervention:** Employees and managers are strongly encouraged to use the ADR process to resolve complaints at the earliest possible opportunity to eliminate the need for lengthy investigations and/or costly litigation. Resolution of workplace disputes should be attempted at the lowest possible level within each organization. Employees are encouraged to attempt to resolve their concerns directly with the individual or individuals involved before proceeding to the next level.

- c. Neutrality: The Agency ADR program will rely on a neutral third-party (one who functions specifically to aid the parties in resolving the dispute) to facilitate resolution of the dispute. ADR proceedings are most successful where a neutral or impartial third-party, with no stake in the outcome of a dispute, allows the parties themselves to attempt to resolve their dispute. Neutrality helps to maintain the integrity and effectiveness of the ADR program. The facilitator's duty to the parties is to be neutral, honest, and to act in good faith.
- d. Collaborative discussion: Two or more parties who may have conflicting ideas or paths sit down, flesh out areas of difference and collaborate on a consensual path forward for the good of the relationship. This process is assisted by a neutral facilitator.
- e. Mediation: refers to a non-adjudicative, third-party intervention wherein an impartial neutral, selected by the parties, facilitates negotiations between the parties to help them reach a mutually acceptable agreement. The parties are responsible for negotiating a settlement. The neutral's role is to assist the process in ways acceptable to the disputants.
- f. Confidentiality: Confidentiality is essential to the success of all ADR proceedings. All ADR processes will assure confidentiality consistent with the provisions in the Alternative Dispute Resolution Act. This will enable parties to ADR proceedings to be forthcoming and candid, without fear that their statements may later be used against them. Neutrals will not discuss confidential communications, comment on the merits of the case outside the ADR process or make recommendations about the case. Neutrals will not reveal to Agency staff or management confidential communications disclosed during the mediation process.
- g. Facilitated Dialogue: Facilitate dialogue is a structured conversation between two or more parties involved in a conflict ("Disputants"). Through Facilitated Dialogue, disputants can share their thoughts, feelings, and experiences with one another in a confidential space.
- h. Conflict Coaching: Conflict coaching is defined as a set of skills and strategies used to support peoples' ability to engage in, manage, or productively resolve conflict. In this process, the conflict coach works one-on-one with a coachee experiencing conflict with another person.

4. **PROCEDURES.** Employees are encouraged to discuss matters of concern informally with their supervisors. However, if a problem cannot be resolved, the ADR process is available. Usually, the entire ADR process should take no more than 90 days from initial contact to completion.

Step 1: Initial Intake

- a. An employee must contact the EEO Office to request ADR/conflict resolution services.
- b. The employee will be advised that in order to begin the process, he/she must complete and submit the Request for ADR Services Form (e-mails and faxes are acceptable).
- c. Upon receipt of the written request for ADR services, the EEO Director will contact the employee within five (5) calendar days.
- d. During the initial intake, a concerted effort should be focused on identifying the issues involved in a complaint, including dates of occurrence, person(s) responsible, alleged harm, and remedies requested.
- e. The EEO Director will assess the information provided, make appropriate contacts for additional information, and determine if the dispute/issue is appropriate for mediation.
 - There may be a determination that the matter is better served by using an ombudsman outside of the agency.
- f. If there are allegations of discrimination or issues that may have EEO implications, the EEO Director will refer the individual to an internal EEO counselor for case processing. The EEO Director or the EEO Counselor will notify the individual of his/her EEO rights and options under 29 C.F.R. Part 1614. The initial contact with the EEO office within 45 days of the occurrence or personnel action being complained of will satisfy the filing time for EEO Counselor contact. The EEO Director will advise the employee in writing of the specific issues that will be accepted for ADR mediation. A copy of this letter will be retained in the EEO office files.
- g. If the EEO Director determines there are no EEO implications, but the matter is or a workplace nature, they can refer it to the agency Ombuds.
- h. Either the EEO Director or the agency Ombuds can determine whether the matter is suitable for mediation.
- i. If the dispute/issue is appropriate for mediation, notification will be provided to the employee by either the EEO Director or Ombuds. The mediation session generally will be scheduled within 21 calendar days of the request. All parties will be notified in writing of those attending the ADR session. Mediations will be scheduled during normal work hours.

- j. Parties in mediation are entitled to have representation. The employee/management will be responsible for submitting a Designation of Representative Form (if either elects to have representation) to the Agency Ombuds within seven (7) calendar days before the scheduled mediation session.

If the dispute is inappropriate for ADR mediation, the employee will be notified in writing of the reason. A copy of the employee notification that the case was inappropriate for ADR will be maintained in the EEO Office. The EEO Office will then notify the individual of the right to file a formal complaint.

Step 2: Mediation

- a. The parties will meet with an impartial, neutral third-party who will facilitate the discussion and the resolution of the dispute.
- b. The agency Ombuds may serve as a mediator. Or, mediators can be selected first from the Office of Conflict Management and Prevention, followed by field mediators, or, if there is a perception FMCS mediators pose a conflict of interest, mediators may be chosen from the shared neutrals roster.
- c. The mediation begins a joint session attended by the mediator, employee, appropriate responding management official, and the designated representatives.
- d. During the joint session, the parties are advised of the mediation process, confidentiality of the process, and the role of the mediator. The mediator will answer any questions either party may have.
- e. All parties to mediation must sign an “FMCS Agreement to Mediate” outlining the terms under which the parties are agreeing to participate in the mediation.

The agreement includes the following:

- The parties agree to discuss the issues and attempt to reach an amicable resolution. The parties understand that settlement during mediation is voluntary.
- The parties understand that the mediator has no power to decide the terms of the resolution or who is right or wrong. Rather, the mediator will attempt to assist the participants in reaching their own resolution by facilitating the discussion.
- The parties understand that the mediator will not act as an advocate or attorney for either party and will not provide legal advice and/or counsel.
- The parties agree to negotiate in good faith.

- The parties agree not to subpoena the mediator or any observer to testify in any forum as to the issues discussed by the parties in the mediation.
- The mediator and all observers agree not to testify voluntarily on behalf of either party and will not report anything said during this mediation unless one of the participants makes a genuine threat of physical harm or reveals information related to criminal activity, fraud, waste, or abuse of government property, sexual harassment, or child or elder abuse.
- The parties understand that any document or notes prepared for or during mediation (such as case summaries presented to the mediator or notes taken by the mediator and the parties) are for settlement purposes only and will be given to the mediator at the conclusion of the mediation session for destruction.
- The parties understand that the mediation session will not be recorded by anyone (either video or audio) and no transcript of the session will be produced.
- The parties understand that no participant will be bound by anything said or done in mediation unless and until there is a signed written settlement agreement.
- The parties agree to discuss and define the matter to be mediated.
- Each of the parties will have an opportunity to explain his/her position on the dispute or matters of concern. The mediator encourages both parties to talk openly and candidly, voice all of their concerns, and to listen to the other party's concerns in order to reach the best possible resolution. Additionally, the mediator might meet with each party separately to discuss the problem in caucus to help each party find a solution.

Step 3: Mediation Outcomes

a. The employee may opt to **withdraw the ADR matter** if it is (1) resolved before mediation or (2) because after consideration he/she elects not to proceed further. Under these circumstances, the file will be closed.

- If **no settlement** agreement is reached, the EEO Director will provide written notification to the employee of his/her right to continue through the established complaint, grievance, and/or appeal systems, provided established time frames in the respective system, have otherwise been met.
- If a settlement **agreement is reached**, terms of the agreement will be given to the agency's Special Assistant to the Director and Office of General Counsel compliance and legal sufficiency review.

- Upon OGC’s certification of legal sufficiency, the Special Assistant to the Director will facilitate implementation of the settlement agreement with other functional areas within FMCS.
- The Special Assistant to the Director may confer with the EEO Director regarding settlement of cases involving EEO matters prior to the finalization of agreements to ensure that the appropriate language is included in the agreement.
- Written agreements reached will be signed during the mediation; however, settlement agreements under the ADR mediation may not violate any laws or be inconsistent or in conflict with the terms of any collective bargaining agreement.
- In the event of a **breach of the settlement agreement**, the parties may elect to (1) re-negotiate the matter, (2) apply sanctions (i.e., implementation of the original agreement by higher-level authority), or (3) a return to the status quo. For breaches of agreements involving EEO matters, the procedures set forth in the settlement agreement and in EEOC regulations will prevail.

Step 4: Evaluation

- a. An evaluation component is essential to any ADR program in order to determine whether the program has achieved its goals, how the program might be improved to be more efficient, and to achieve better results. At a minimum, evaluations should capture and analyze ADR usage, amount of time saved, cost avoidance, customer satisfaction, improved relationships, and other indicators in line with the Agency’s strategic goals and objectives.
- At the conclusion of each mediation session, all participants will be required to evaluate their experience with the mediation process and the mediator. This information will be used to assist the Agency in effectively evaluating the program. The Agency will monitor and maintain a record of ADR activity for annual reporting to the Equal Employment Opportunity Commission.

APPENDIX B



FMCS

FEDERAL MEDIATION & CONCILIATION SERVICE

Anti-Harassment Policy Statement December 19, 2019

I am pleased to announce that the Federal Mediation and Conciliation Service (FMCS) has a new anti-harassment Directive, the **Elimination and Prevention of Harassment Directive (Directive 5809)**. This is very important to me and to our Agency. I strongly encourage you to read the Directive, attend the upcoming training (to be announced), and join me in working to ensure that FMCS remains a model employer free from harassment.

FMCS is the U.S. government's premier mediation and conflict resolution agency. We are also ranked number one in the government's "best places to work" among small agencies. We are committed to maintaining a workplace free from all forms of harassment and discrimination. Toward that end, all FMCS employees and contractors must be committed to ensuring a professional and productive working environment by engaging in respectful behavior that reflects the highest standard of conduct at all times. This includes refraining from engaging in any form of discrimination or harassment. All employees must fully support this policy and refrain from engaging in harassing conduct.

Harassment in the workplace, like other forms of discrimination, has an adverse impact on employee morale and productivity. Harassment includes, among other things, demeaning remarks or insulting jokes, epithets or slurs, negative stereotyping, disparaging or derogatory remarks about a person's accent or attire, and ridicule or insults about a person's physical or mental disability. Sexual behavior at work can create an intimidating hostile work environment, if pervasive or condoned by management.

Examples of inappropriate sexual behavior are pressure for dates, threats and promises based on trading sexual favors, or any behavior with sexual overtones that is intimidating or offensive to the recipient or observer of the behavior.

Managers and supervisors should take prompt action to address all complaints of harassment and ensure that the individual who initiates a complaint of harassment or provides information related to the complaint is not subjected to retaliation. Employees, managers, or supervisors found to have engaged in harassing conduct will be subjected to appropriate disciplinary or adverse action, up to and including reprimand, suspension, demotion, or removal. Preventing harassment is everyone's responsibility and all reports of harassment will be taken seriously and handled appropriately.

In an effort to prevent harassment, we have developed the Elimination and Prevention of Harassment Directive that clarifies the avenues employees have to address harassment complaints and provides a new process within the Office of Human Resources. Under this Directive, any employee who witnesses harassment or who feels he or she is being harassed, even if such conduct is not severe or pervasive, should immediately report the behavior to any supervisor or manager, the Equal Employment Opportunity (EEO) Director, an EEO Counselor, or the Director of Human Resources. There is no such thing as an innocent bystander to harassment.

Please review the attached Directive 5809. If you have additional questions, please contact the FMCS EEO Director, Denise McKenney, at (202) 606-5448 (dmckenney@fmcs.gov) or the Human Resources office.

Sincerely,

A handwritten signature in blue ink that reads "Richard Giacalone". The signature is written in a cursive, flowing style.

Richard Giacalone
Federal Mediation & Conciliation Service



DIRECTIVE 5809: ELIMINATION AND PREVENTION OF HARASSMENT

1. Purpose:

- a. This Directive is intended to ensure that the Federal Mediation and Conciliation Service is taking all necessary steps to prevent and eliminate sexual harassment and other forms of harassment which are prohibited by applicable federal law. This Directive: (1) informs employees about what types of behavior are prohibited in the workplace; (2) establishes an effective complaint reporting procedure; and (3) sets forth responsibilities and procedures for addressing allegations of harassment. The procedures establish an alternative to the Equal Employment Opportunity (EEO) process to address harassment allegations in the workplace and provide appropriate officials with the opportunity to promptly correct harassing conduct. This anti-harassment Directive is part of FMCS' ongoing efforts to provide a model workplace for its employees. Discriminatory harassment against federal employees, contractors or applicants for employment will not be tolerated at FMCS.
- b. It is the intent of FMCS to prevent harassment of any kind and to stop it before it rises to the level of a violation of federal law. Therefore, any employee who engages in such improper conduct will be subject to appropriate disciplinary action. Supervisory or management officials who either condone or fail to act promptly to correct alleged harassing conduct that is brought to their attention will also be subject to appropriate disciplinary action.
- c. Confidentiality of allegations will be maintained to the fullest extent possible. Complete confidentiality cannot be guaranteed, since an effective investigation may require the disclosure of certain information to the alleged harasser, potential witnesses and agency officials. Information about the harassment complaint will be shared only with those individuals who need to know.

2. Authority: Federal laws prohibit harassment in the workplace due to race, color, religion, sex, national origin, age, physical/mental disability, or genetic information. These laws also prohibit retaliation against any employee or applicant who opposes an unlawful employment practice or who participates in any procedure alleging a discriminatory practice made unlawful by Title VII of the Civil Rights Act of 1964, as amended, the Equal Pay Act of 1963, the Age Discrimination in Employment Act of 1967, the Rehabilitation Act of 1973, as amended, the Civil Rights Act of 1991, the Americans with Disabilities Act of 1990, and the Genetic Information Nondiscrimination Act of 2008. See also the Whistleblower Protection Act of 1989. Executive Orders 13087 and 13152 prohibit discrimination and harassment against federal employees and applicants on the basis of sexual orientation and parental status.
3. Applicability: This Directive applies to all FMCS employees, contractors, interns and job applicants.



4. Definition of Harassment in the Workplace:

- a. Harassment in the workplace is any unwelcome verbal or physical conduct based on race, color, religion, sex, national origin, age, physical or mental disability, sexual orientation, transgender status, genetic information, reprisal for participating in protected EEO activity or any other protected group status. Harassment becomes unlawful when:
- b. Enduring the offensive conduct becomes a condition of continued employment; or
- c. The conduct is severe or pervasive enough to create a work environment that a reasonable person would consider intimidating, hostile, or abusive; or
- d. The harassing conduct causes significant change in the employee's terms, privileges, or conditions of employment.

5. Forms of Harassment:

- a. A hostile environment can result from the unwelcome conduct of FMCS employees, customers, contractors, or anyone else with whom the employee interacts on the job, when the unwelcome conduct renders the workplace atmosphere intimidating, hostile, or offensive.
- b. Prohibited behaviors in the Workplace include but are not limited to:
 - telling off-color jokes concerning race, sex, disability, or other protected bases;
 - epithets or slurs about a person's race, national origin, or religious beliefs;
 - disparaging or derogatory remarks about a person's accent or attire;
 - negative stereotyping;
 - ridicule or insults about a person's physical or mental disability;
 - profanity or vulgar language directed toward members of one protected group;
 - graffiti or materials in the workplace that disparage a group, such as sexually suggestive or racially insensitive pictures;
 - unnecessary touching;
 - commenting on physical appearance;
 - using indecent gestures or crude language;
 - sabotaging a person's work;
 - engaging in hostile physical conduct such as obstructing a person's path or grabbing a person;
 - general uncivil conduct (slamming files, throwing objects, etc.).



c. Unwelcome conduct is conduct that the employee did not invite or solicit and that the employee regards as undesirable or offensive. The standard for determining whether verbal or physical conduct is sufficiently severe or pervasive to create a hostile work environment is whether a reasonable person in the same or similar circumstance would find the conduct intimidating, hostile, or abusive. Whether an instance or a pattern of harassing conduct is severe or pervasive is determined on a case-by-case basis, with consideration paid to the following factors:

- the frequency of the unwelcome discriminatory conduct;
- the severity of the conduct;
- whether the conduct was physically threatening or humiliating, or a mere offensive utterance;
- whether the conduct unreasonably interfered with work performance;
- the effect on the employee's psychological well-being; and
- whether the harasser was a superior within the organization.

6. Rights and Responsibilities:

a. All FMCS employees shall be responsible for:

- 1) Acting professionally and refraining from harassing conduct;
- 2) Becoming familiar with the provision of this Directive, complying with all requirements of the Directive, and cooperating with any inquiry under this Directive; and
- 3) Promptly reporting harassing workplace conduct with the goal of eliminating such conduct quickly and effectively, even in cases in which the reported conduct may not be so severe and pervasive so as to constitute a violation of federal law.

b. All FMCS supervisors and managers shall be responsible for:

- 1) Acting promptly and appropriately to prevent harassment in the workplace and to prevent retaliation against those who complain of harassment;
- 2) Reporting, pursuant to procedures set forth in section 7 of this Directive, any incident of harassing conduct brought to their attention or personally witnessed;
- 3) Receiving and handling allegations of harassing conduct promptly and appropriately, utilizing the procedures set forth in section 7 of the Directive;
- 4) In consultation with the HR Director, providing interim relief to alleged victims



of harassment pending the outcome of the investigation to ensure that further misconduct does not occur; and

- 5) Using the procedures set forth below, in consultation with the HR Director, taking prompt and appropriate corrective and disciplinary action, up to and including removal, against personnel who have engaged in harassing conduct.

7. Procedure for Reporting Harassment:

- a. An employee who believes he or she or others are being subjected to conduct that may constitute harassment or a hostile or intimidating environment is strongly encouraged to report the behavior or situation immediately to the Director of Human Resources. Harassment could include third party situations in which harassing comments are overheard. If the employee feels uncomfortable discussing the issue with the Director of Human Resources, the employee should contact his or her supervisor or another management authority.
 - b. In consultation with the appropriate departments, the Office of Human Resources will conduct a prompt, impartial and thorough investigation of all the circumstances surrounding the alleged incident, and will keep the complaint and investigation confidential to the extent practicable.
 - c. If the employee makes an allegation of harassment against someone outside the Agency (such as a vendor, subcontractor, or consultant), the Office of Human Resources will contact appropriate representatives of the outside firm to report the allegation.
 - d. Any FMCS employee who attempts to retaliate against a person who files a harassment complaint or who assisted in the investigation of a discrimination complaint will be subject to swift appropriate disciplinary action in accordance with FMCS Collective Bargaining Agreement and Directive 5805 (Disciplinary and Adverse Actions).
8. This Directive and its reporting procedures are separate and distinct from the EEO process, which focuses on making employees whole after they have experienced an allegation of illegal discrimination (including harassment) by issuing remedial relief, such as compensatory damages. This Directive does not replace an employee's EEO or other rights, including rights to file negotiated or administrative grievances and other appeals. Filing a report under this Directive does not satisfy the requirements for filing an EEO complaint, negotiated grievance or other procedure and obtaining remedies pursuant to them. Nor does this directive delay the time limits for initiating those procedures. If an employee wishes to file an EEO claim of discrimination, report harassment, seek guidance, counseling or file a claim of discrimination through EEO procedures, he or she should contact the FMCS EEO Director or an EEO Counselor within 45 days of the latest incident.

APPENDIX C



DIRECTIVE 9101.

EQUAL EMPLOYMENT OPPORTUNITY

1. PURPOSE.

The directive sets forth the Federal Mediation and Conciliation Service (FMCS) policy related to equal employment opportunity (EEO) in the workplace as required under the Equal Employment Opportunity Commission (EEOC) Management Directive (MD) 715 and MD 110.

2. AUTHORITY.

- a. Notification and Federal Employee Antidiscrimination and Retaliation Act (NO Fear Act) of 2002, 5 U.S.C. § 2301.
- b. Equal Pay Act of 1963, as amended, 29 U.S.C. § 206(d).
- c. Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 621 et seq.
- d. Rehabilitation Act of 1973, as amended, 29 U.S.C. § 791 et seq.
- e. Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e-16 et seq.
- f. Civil Rights Act of 1991, 42 U.S.C. § 1981a.
- g. Genetic Information Nondiscrimination Act of 2008, 42 U.S.C. § 2000ff et seq.
- h. Exec. Order No. 11,478, as amended, 3 C.F.R. 803 (1966-1970).
- i. Exec. Order No. 12,106, as amended, 3 C.F.R. 263 (1978-1979).
- j. Exec. Order No. 13,087, 3 C.F.R. 191 (1998).
- k. Exec. Order No. 13,152, 3 C.F.R. 264 (2000)

3. APPLICABILITY.

This directive is applicable to FMCS Headquarters, Regions and Districts, including home offices. This directive also applies to applicants for employment and to contractors only to the extent specified or referenced in applicable contracts.



4. POLICY.

It is the FMCS's policy to provide equal employment opportunity (EEO) for all employees and applicants for employment regardless of race, color, national origin, sex (including pregnancy, sexual harassment, sex stereotyping, sexual orientation, gender identity, and caregiving responsibilities), religion, age, disability, genetic information (including family medical history) or status as a parent. Pursuant to this policy, FMCS prohibits discrimination on these bases in the workplace and the Agency's employment practices. FMCS strives to provide and maintain a work environment that is free of all forms of discrimination, including discriminatory harassment, as well as reprisal or retaliation for engaging in protected EEO activity. FMCS also seeks to address harassing conduct at the earliest possible stage, before it can become severe or pervasive.

5. RESPONSIBILITIES.

- a. **FMCS Director.** Ensures that the Agency complies with all laws, executive orders, and regulations that prohibit discrimination and provide EEO for all FMCS employees and applicants and to the maximum extent possible for all FMCS contractor employees.

Ensures Senior Agency leadership, including the FMCS Director, Deputy Director(s), Chief Operating Officer, Senior Advisor, National Representative and other officials-in charge of Headquarter Offices, Regional Directors and Executive Managers exercise personal leadership regarding the Agency's EEO and diversity program to ensure fair treatment in every aspect of FMCS policy and practice, including recruitment, selection, employee development, promotion, awards, and other terms and conditions or employment.

- b. **Director, Equal Employment Opportunity.** The Director of EEO shall advise and take required actions in accordance with, but not limited to, Discrimination Complaints under 29 C.F.R. Part 1614; Alternative Dispute Resolution under 29 C.F.R Part 1614; Anti-Harassment Procedures; Reasonable Accommodation Policy; Reasonable Accommodation Procedures, the FMCS Policy Statement of EEO; and the FMCS Policy Statement on Anti-Harassment.
- c. **Supervisors and Managers.** Supervisors and Managers shall implement the Agency's EEO, diversity, and affirmative employment program within their department; foster and maintain a workplace free from discriminatory practices; and participate in training programs designed to enhance their ability to perform these functions.
- d. **Director, Procurement and Operational Support.** The Director of Procurement and Operational Support shall ensure that EEO and diversity related contract clauses are included in applicable acquisition and procurement contracts.



- e. **All FMCS Employees.** Every FMCS employee is responsible for adhering to FMCS's non-discrimination and anti-discrimination policies. All employees, including FMCS Senior Agency leadership, managers and supervisors, are required to adhere to the Agency's standards of conduct with respect to EEO in the workplace.

6. REQUIREMENTS.

- a. The EEO Director must monitor progress, evaluate results, initiate corrective actions, and periodically report outcomes of such processes to external oversight agencies, such as the EEOC, Department of Justice, and Office of Personnel Management (OPM), as well as FMCS senior leadership; communicate relevant information regularly to stakeholders with the Agency.
- b. The EEO Director must submit EEO and diversity related reports:
 - 1) NO Fear Act Report. This report is required annually. It is provided to the EEOC, Department of Justice, and Congress.
 - 2) MD 715 Report. This report is required annually. It is provided to the EEOC.
 - 3) Annual Federal EEO Statistical Report of Discrimination Complaints (EEOC Form 462)
- c. The EEO Director comply with prescribed EEO complaint processing timeframes.
- d. All FMCS nonsupervisory employees must participate in a minimum of 3 hours of EEO/diversity training annually. All FMCS supervisory employees must participate in 4 hours of EEO/diversity training annually.
- e. All FMCS employees must participate in a minimum of 3 hours of training on prevention of sexual harassment on a biennial basis.
- f. Applicants for, and recipients of, FMCS contracts and/or grants must comply with all legal nondiscrimination obligations. In addition, applicants for, and recipients of, FMCS contracts and/or grants should strive to complete with FMCS policies issued by the FMCS Director regarding EEO and diversity.

7. DEFINITIONS. None.

8. ACRONYMS. None.



FMCS
FEDERAL MEDIATION &
CONCILIATION SERVICE

DIRECTIVE 9101

9. REFERENCES. None.
10. CONTACT. Questions regarding this directive should be referred to the Director of EEO at 202-606-8100 or eeo@fmcs.gov.
11. EFFECTIVE DATE. This Directive effective is immediately.

BY ORDER OF THE DIRECTOR:

APPENDIX D



FEDERAL MEDIATION & CONCILIATION SERVICE

No FEAR Act Report Through 09/30/2021

Complaint Activity	Comparative Data					2021	2021	2021	2021
	2016	2017	2018	2019	2020	Qtr. 1	Qtr. 2	Qtr. 3	Qtr. 4
1) Number of Complaints Filed	2	2	1	3	2	0	1	0	0
2) Number of Complainants	2	2	1	3	2	0	1	0	0
3) Number of Individuals Filing More Than Once	0	0	0	0	0	0	0	0	0
Complaint Basis	Comparative Data					2021	2021	2021	2021
	2016	2017	2018	2019	2020	Qtr. 1	Qtr. 2	Qtr. 3	Qtr. 4
4) Total Complaints	2	2	1	3	2	0	1	0	0
A) Race	0	2	1	3	1	0	1	0	0
i) Black	0	2	0	0	0	0	1	0	0
ii) White	0	0	1	3	0	0	0	0	0
iii) American Indian / Alaskan Native	0	0	0	0	0	0	0	0	0
iv) Asian / Pacific Islander	0	0	0	0	0	0	0	0	0
B) Color	0	0	0	0	0	0	0	0	0
C) Sex-Male (EPA claims included)	0	0	1	1	0	0	0	0	0
D) Sex-Female (EPA claims included)	0	0	0	1	0	0	1	0	0
E) Religion	0	0	0	1	0	0	0	0	0
F) National Origin	0	1	0	0	0	0	0	0	0
G) Age	2	2	1	3	2	0	0	0	0
H) Disability	0	0	0	0	2	0	0	0	0
i) Mental	0	0	0	0	2	0	0	0	0
ii) Physical	0	0	0	1	1	0	0	0	0
I) Reprisal/Retaliation for Previous EEO Activity	0	0	0	2	0	0	0	0	0
J) Non-EEO	0	0	0	0	0	0	0	0	0



FEDERAL MEDIATION & CONCILIATION SERVICE

No FEAR Act Report Through 09/30/2021

Complaint Issue	Comparative Data					2021	2021	2021	2021
	2016	2017	2018	2019	2020	Qtr. 1	Qtr. 2	Qtr. 3	Qtr. 4
5) Total EEO Complaints	2	2	1	3	2	0	1	0	0
A) Appointment/Hire	0	0	1	2	1	0	0	0	0
B) Assignment of Duties	0	0	0	0	0	0	0	0	0
C) Awards	0	0	0	0	0	0	0	0	0
D) Conversion to Full-Time	0	0	0	0	0	0	0	0	0
E) Disciplinary Action	0	0	0	0	0	0	0	0	0
i) Demotion	0	0	0	0	0	0	0	0	0
ii) Reprimand	0	0	0	0	0	0	0	0	0
iii) Suspension	0	0	0	0	0	0	0	0	0
iv) Removal	0	0	0	0	0	0	0	0	0
F) Duty Hours	0	0	0	0	0	0	0	0	0
G) Evaluation / Appraisal	0	0	0	0	1	0	0	0	0
H) Examination / Test	0	0	0	0	0	0	0	0	0
I) Harassment	0	0	0	0	0	0	1	0	0
i) Non-Sexual	0	0	0	0	0	0	1	0	0
ii) Sexual	0	0	0	0	0	0	0	0	0
J) Medical Examination	0	0	0	0	0	0	0	0	0
K) Pay (Including Overtime)	0	0	0	0	0	0	0	0	0
L) Promotion / Non-Selection	1	0	0	1	0	0	0	0	0
M) Reassignment	0	1	0	0	0	0	0	0	0
i) Denied	0	1	0	0	0	0	0	0	0
ii) Directed	0	0	0	0	0	0	0	0	0
N) Reasonable Accommodation	0	0	0	0	0	0	0	0	0
O) Reinstatement	0	0	0	0	0	0	0	0	0
P) Retirement	0	0	0	0	0	0	0	0	0
Q) Termination	0	1	0	0	0	0	0	0	0
R) Terms / Conditions of Employment	0	0	0	0	1	0	0	0	0
S) Time and Attendance	0	0	0	0	0	0	0	0	0
T) Training	0	0	0	0	0	0	0	0	0
U) Other	1	0	0	0	0	0	0	0	0



FEDERAL MEDIATION & CONCILIATION SERVICE

No FEAR Act Report Through 09/30/2021

Processing Time & Disposition	Comparative Data					2021	2021	2021	2021
	2016	2017	2018	2019	2020	Qtr. 1	Qtr. 2	Qtr. 3	Qtr. 4
6) Number of Complete Pending (for any length of time) During Fiscal Year	2	2	2	1	1	0	0	0	0
A) Average Number of Days to Fully Investigate a Formal Complaint	180	205	180	335	198	0	0	0	0
B) Average Number of Days to Issue a Final Decision When No EEOC Hearing Requested	0	0	0	0	0	0	0	0	0
7) Number of Final Actions Completed	0	1	0	0	0	0	0	0	0
A) Number of Final Actions Without A Hearing	0	1	0	0	0	0	0	0	0
B) Number of Final Actions After Hearing	0	0	0	0	0	0	0	0	0
8) Total Number of Complaints Dismissed	0	0	0	0	0	0	0	0	0
9) Average Length of Time to Dismiss	0	0	0	0	0	0	0	0	0



FEDERAL MEDIATION & CONCILIATION SERVICE

No FEAR Act Report Through 09/30/2021

Final Actions by Basis	Comparative Data					2021	2021	2021	2021
	2016	2017	2018	2019	2020	Qtr. 1	Qtr. 2	Qtr. 3	Qtr. 4
10) Total	0	0	0	0	0	0	0	0	0
A) Race	0	1	0	0	0	0	0	0	0
B) Color	0	0	0	0	0	0	0	0	0
C) Sex-Male	0	0	0	0	0	0	0	0	0
D) Sex-Female	0	0	0	0	0	0	0	0	0
E) Religion	0	0	0	0	0	0	0	0	0
F) National Origin	0	1	0	0	0	0	0	0	0
G) Age	0	1	0	0	0	0	0	0	0
H) Disability	0	0	0	0	0	0	0	0	0
I) Retaliation	0	0	0	0	0	0	0	0	0
Findings After Hearing									
J) Race	0	0	0	0	0	0	0	0	0
K) Color	0	0	0	0	0	0	0	0	0
L) Sex-Male	0	0	0	0	0	0	0	0	0
M) Sex-Female	0	0	0	0	0	0	0	0	0
N) Religion	0	0	0	0	0	0	0	0	0
O) National Origin	0	0	0	0	0	0	0	0	0
P) Age	0	0	0	0	0	0	0	0	0
Q) Disability	0	0	0	0	0	0	0	0	0
R) Retaliation	0	0	0	0	0	0	0	0	0
Findings Without Hearing									
S) Race	0	1	0	0	0	0	0	0	0
T) Color	0	0	0	0	0	0	0	0	0
U) Sex-Male	0	0	0	0	0	0	0	0	0
V) Sex-Female	0	0	0	0	0	0	0	0	0
W) Religion	0	0	0	0	0	0	0	0	0
X) National Origin	0	1	0	0	0	0	0	0	0
Y) Age	0	1	0	0	0	0	0	0	0
Z) Disability	0	0	0	0	0	0	0	0	0
AA) Retaliation	0	0	0	0	0	0	0	0	0



FEDERAL MEDIATION & CONCILIATION SERVICE

No FEAR Act Report Through 09/30/2021

Final Actions by Issue All Types	Comparative Data					2021	2021	2021	2021
	2016	2017	2018	2019	2020	Qtr. 1	Qtr. 2	Qtr. 3	Qtr. 4
11) Total	0	0	0	0	0	0	0	0	0
A) Appointment/Hire	0	0	0	0	0	0	0	0	0
B) Assignment of Duties	0	0	0	0	0	0	0	0	0
C) Awards	0	0	0	0	0	0	0	0	0
D) Conversion to Full-Time	0	0	0	0	0	0	0	0	0
E) Disciplinary Action	0	0	0	0	0	0	0	0	0
i) Demotion	0	0	0	0	0	0	0	0	0
ii) Reprimand	0	0	0	0	0	0	0	0	0
iii) Suspension	0	0	0	0	0	0	0	0	0
iv) Removal	0	0	0	0	0	0	0	0	0
F) Duty Hours	0	0	0	0	0	0	0	0	0
G) Evaluation / Appraisal	0	0	0	0	0	0	0	0	0
H) Examination / Test	0	0	0	0	0	0	0	0	0
I) Harassment	0	0	0	0	0	0	0	0	0
i) Non-Sexual	0	0	0	0	0	0	0	0	0
ii) Sexual	0	0	0	0	0	0	0	0	0
J) Medical Examination	0	0	0	0	0	0	0	0	0
K) Pay (Including Overtime)	0	0	0	0	0	0	0	0	0
L) Promotion / Non-Selection	0	0	0	0	0	0	0	0	0
M) Reassignment	0	1	0	0	0	0	0	0	0
i) Denied	0	1	0	0	0	0	0	0	0
ii) Directed	0	0	0	0	0	0	0	0	0
N) Reasonable Accommodation	0	0	0	0	0	0	0	0	0
O) Reinstatement	0	0	0	0	0	0	0	0	0
P) Retirement	0	0	0	0	0	0	0	0	0
Q) Termination	0	0	0	0	0	0	0	0	0
R) Terms / Conditions of Employment	0	0	0	0	0	0	0	0	0
S) Time and Attendance	0	0	0	0	0	0	0	0	0
T) Training	0	0	0	0	0	0	0	0	0
U) Other	0	0	0	0	0	0	0	0	0



FEDERAL MEDIATION & CONCILIATION SERVICE

No FEAR Act Report Through 09/30/2021

Final Actions by Issue (continued)	Comparative Data					2021	2021	2021	2021
Findings After Hearing	2016	2017	2018	2019	2020	Qtr. 1	Qtr. 2	Qtr. 3	Qtr. 4
V) Appointment/Hire	0	0	0	0	0	0	0	0	0
W) Assignment of Duties	0	0	0	0	0	0	0	0	0
X) Awards	0	0	0	0	0	0	0	0	0
Y) Conversion to Full-Time	0	0	0	0	0	0	0	0	0
Z) Disciplinary Action	0	0	0	0	0	0	0	0	0
i) Demotion	0	0	0	0	0	0	0	0	0
ii) Reprimand	0	0	0	0	0	0	0	0	0
iii) Suspension	0	0	0	0	0	0	0	0	0
iv) Removal	0	0	0	0	0	0	0	0	0
AA) Duty Hours	0	0	0	0	0	0	0	0	0
AB) Evaluation / Appraisal	0	0	0	0	0	0	0	0	0
AC) Examination / Test	0	0	0	0	0	0	0	0	0
AD) Harassment	0	0	0	0	0	0	0	0	0
i) Non-Sexual	0	0	0	0	0	0	0	0	0
ii) Sexual	0	0	0	0	0	0	0	0	0
AE) Medical Examination	0	0	0	0	0	0	0	0	0
AF) Pay (Including Overtime)	0	0	0	0	0	0	0	0	0
AG) Promotion / Non-Selection	0	0	0	0	0	0	0	0	0
AH) Reassignment	0	0	0	0	0	0	0	0	0
i) Denied	0	0	0	0	0	0	0	0	0
ii) Directed	0	0	0	0	0	0	0	0	0
AI) Reasonable Accommodation	0	0	0	0	0	0	0	0	0
AJ) Reinstatement	0	0	0	0	0	0	0	0	0
AK) Retirement	0	0	0	0	0	0	0	0	0
AL) Termination	0	0	0	0	0	0	0	0	0
AM) Terms / Conditions of Employment	0	0	0	0	0	0	0	0	0
AN) Time and Attendance	0	0	0	0	0	0	0	0	0
AO) Training	0	0	0	0	0	0	0	0	0
AP) Other	0	0	0	0	0	0	0	0	0



FEDERAL MEDIATION & CONCILIATION SERVICE

No FEAR Act Report Through 09/30/2021

Final Actions by Issue (continued)	Comparative Data					2021	2021	2021	2021
Findings Without Hearing	2016	2017	2018	2019	2020	Qtr. 1	Qtr. 2	Qtr. 3	Qtr. 4
AQ) Appointment/Hire	0	0	0	0	0	0	0	0	0
AR) Assignment of Duties	0	0	0	0	0	0	0	0	0
AS) Awards	0	0	0	0	0	0	0	0	0
AT) Conversion to Full-Time	0	0	0	0	0	0	0	0	0
AU) Disciplinary Action	0	0	0	0	0	0	0	0	0
i) Demotion	0	0	0	0	0	0	0	0	0
ii) Reprimand	0	0	0	0	0	0	0	0	0
iii) Suspension	0	0	0	0	0	0	0	0	0
iv) Removal	0	0	0	0	0	0	0	0	0
AV) Duty Hours	0	0	0	0	0	0	0	0	0
AW) Evaluation / Appraisal	0	0	0	0	0	0	0	0	0
AX) Examination / Test	0	0	0	0	0	0	0	0	0
AY) Harassment	0	0	0	0	0	0	0	0	0
i) Non-Sexual	0	0	0	0	0	0	0	0	0
ii) Sexual	0	0	0	0	0	0	0	0	0
AZ) Medical Examination	0	0	0	0	0	0	0	0	0
BA) Pay (Including Overtime)	0	0	0	0	0	0	0	0	0
BB) Promotion / Non-Selection	0	0	0	0	0	0	0	0	0
BC) Reassignment	0	1	0	0	0	0	0	0	0
i) Denied	0	1	0	0	0	0	0	0	0
ii) Directed	0	0	0	0	0	0	0	0	0
BD) Reasonable Accommodation	0	0	0	0	0	0	0	0	0
BE) Reinstatement	0	0	0	0	0	0	0	0	0
BF) Retirement	0	0	0	0	0	0	0	0	0
BG) Termination	0	0	0	0	0	0	0	0	0
BH) Terms / Conditions of Employment	0	0	0	0	0	0	0	0	0
BI) Time and Attendance	0	0	0	0	0	0	0	0	0
BJ) Training	0	0	0	0	0	0	0	0	0
BK) Other	0	0	0	0	0	0	0	0	0



FEDERAL MEDIATION & CONCILIATION SERVICE

No FEAR Act Report Through 09/30/2021

Pending Complaints Filed in Previous Fiscal Years and by Status	Comparative Data					2021	2021	2021	2021
	2016	2017	2018	2019	2020	Qtr. 1	Qtr. 2	Qtr. 3	Qtr. 4
12) Total Complaints	0	1	2	2	2	2	3	0	0
A) Individuals Filing	0	1	2	2	2	2	3	0	0
B) Number complaints pending	0	1	2	2	2	1	3	0	0
i) Notification / Counseling	0	0	0	0	1	0	1	0	0
ii) Investigation	0	0	0	1	1	1	1	0	0
iii) Hearing	0	1	2	1	0	1	1	0	0
iv) Final Action by Agency	0	0	0	0	0	0	0	0	0
v) Appeal with EEOC	0	0	0	0	0	0	0	0	0
C) Investigations Exceeding Required Time	0	0	0	0	1	0	0	0	0