

No FEAR Act Report

FEDERAL MEDIATION AND CONCILIATION SERVICE

FY2023



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Overview of FMCS

The Federal Mediation and Conciliation Service (FMCS), created in 1947, is an independent agency whose mission is to preserve and promote labor-management peace and cooperation. Headquartered in Washington, DC, with six Regions comprising more than 60 Field and Home Offices, the agency provides mediation and conflict resolution services to industry, government agencies and communities.

Agency Structure

Under the Director's leadership, FMCS is structured into three primary divisions: Headquarters, Office of Field Operations, and the newly established Office of Policy and Strategy. The subsequent sections will provide detailed insights into the Director's Office and illuminate the offices comprising these three divisions.

Director's 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 FMCS. The Director serves as agency liaison with the White House, members of the President's Cabinet and the Congress, and provides direction for and participation in mediating major disputes.

Office of Equal Employment Opportunity. The Office of Equal Employment Opportunity (OEEEO) is primarily responsible for ensuring compliance with applicable laws, regulations, and policies that prohibit discrimination based on race, gender, religion, age, color, national origin, disability, sexual orientation, genetic information, and reprisal. Reporting directly to FMCS's Director, the Director of OEEEO retains the authority and agency-wide responsibility for efficient and appropriate compliance with the FMCS OEEEO 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.
- 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 all contracts and agreements with external entities or federal agencies pertaining to processing FMCS's EEO complaints.

Office of the Chief Operating Officer

FMCS's headquarter offices report directly to the Office of the Chief Operating Officer. These offices consist of Office of Procurement and Operational Support, Office of Human Resources, Office of Budget, Office of Information Technology, Office of Finance, and Office of the General Counsel.

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

Office of Budget. The Office of Budget develops budget estimates and supporting material for the financial needs of FMCS, 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 Information Technology. The Office of Information Technology develops and implements the FMCS'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 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.

Office of the General Counsel. The Office of General Counsel provides legal support and advice necessary for FMCS 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 FMCS in all matters arising in the Federal courts.

Office of Field Operations

Office of Field Operations is comprised of the following three subdivisions: Office of Field Operations (Regional), Office of Field Operations (National), and Office of Field Administration.

Office of Field Operations (Regional)

The Office of Field Operations Regional is home to Client Services/Arbitration and through 140 mediators in many Field Offices including home offices – geographically distributed throughout the country.

Office of Client Services/Arbitration's vision is to improve client experience in 2023 and beyond. The office aims to enhance services provided to customers comprehensively, spanning from website design changes, client outreach, marketing, and education, to F7 Notices, service requests (including labor contract related issues or processes, LM Partnerships/Forums, and other requests), service delivery (such as mediation, training, facilitation), tracking, and customer interaction and feedback.

Additionally, the Office of Client Services oversees Arbitration, Shared Neutrals, Notices to FMCS, and Federal Inter-Agency Agreements.

Offices of Field Operations Regions 1-6 delivers workplace conflict management and resolution services to customers through 140 mediators in 64 Field Offices — about half of which are home offices — geographically distributed throughout the country.

Office of Field Operations (National)

The Office of Field Operations (National) oversees the implementation of projects, initiatives, cases, and programs with a cross-cutting national focus. The Office is responsible for overseeing all service delivery associated with education and training, in addition to the statutory requirements outlined in the Administrative Dispute Resolution Acts of 1990 and 1996, the Negotiated Rulemaking Act of 1990, and all other current and future authorities. The Office includes the National Projects Team, the Office of Conflict Management & Prevention International and the Center for Conflict Resolution Education.

National Projects Team designs and delivers professional conflict management and dispute resolution programs and services throughout all industries and employment sectors. This includes

the coordination of national-impact projects, including the agency's public policy negotiated rulemaking (PPNR) services under the Negotiated Rule-Making Act and the Administrative Dispute Resolution Act.

National Projects Team members effectively engage with internal and external stakeholders to develop, implement, and improve national-impact projects and programming; partner with other mediators in all lines of service delivery; organize and facilitate mediator-working groups in industries and sectors of high demand and need for increased knowledge; and lead the agency in discovering new technologies to help FMCS employees perform more efficient and effective service delivery.

National Projects Service Areas:

- Needs Assessment and Convening Services;
- Systems Design for National Impact Programs and Projects;
- Program and Project Management;
- Academic and Institutional Partnerships;
- Technology Innovations;
- Facilitation of Public Policy Dialogues and
- Facilitation of Negotiated Rulemaking.

Office of Conflict Management and Prevention/ International (OCMP/I's) 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/I 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.

OCMP/I Practice Areas:

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

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 aided 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.

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 Field Administration

The Office of Field Administration provides direct administrative support to Field Managers, Mediators, and agency staff. From greeting, referring, and assisting customers to preparing documents and reports, compiling records, scheduling meetings, organizing, and maintaining information, coordinating calendars, analyzing data including budgetary expenditures, and providing general office support, they are the heartbeat of the agency. The office is streamlining its concepts, practices, and procedures in day-to-day taskings, aiming to execute each field program with quality, effectiveness, and efficiency.

Office of Policy and Strategy

The Office of Policy and Strategy is currently comprised of the Office of Congressional and Public Affairs.

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 FMCS 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.

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 FY2023.

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 FY2023, the FMCS was not a party to a federal district court case arising under the provisions of the No Fear Act.

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 FY2023, 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 on February 13, 2023, that reinforced the FMCS's commitment to maintaining a work environment free from discrimination, harassment and retaliation and encouraging an inclusive workforce. These principles are also embedded in the FMCS Strategic Plan. To support this commitment, the FMCS OEEA offered several trainings throughout the fiscal year and incorporated new course content for the New Mediator Training Class including EEO, Diversity, Equity, Inclusion and Accessibility (DEIA), Civil Treatment for Employees and overview of the FMCS Equity and DEIA Strategic Plans related to the FMCS Strategic Plan. All employees are required to complete the course entitled "EEO is for Everyone" and all supervisors are required to take EEO Supervisor Refresher Training. Directive 5805 Disciplinary and Adverse Action and Directive 5809 cover these behaviors and consequences and FMCS requires all new employees to review and certify understanding of Directives, including Directive 5809 Anti-Harassment. All-Hands reminders of the rights and responsibilities under the Directive are placed in the FMCS Monthly Requirements.

The FMCS OEEA Director also facilitated dialogue and engagement sessions during 5 in person/offsite Regional Meetings to reinforce the Agency's commitment. In addition, FMCS Acting Director prioritized EEO and DEIA internally and externally by providing appropriate resources and evaluation of resources and consistently promoting employees use of the protections under the No Fear and Whistleblower laws during agency-wide townhalls. The FMCS reissued the following policies to reaffirm the agency's commitment to a workplace free from discrimination, harassment, and retaliation.

Alternative Dispute Resolution (ADR) 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. During FY2023, FMCS drafted a new Equal Employment Opportunity Alternative Dispute Policy to be implemented in FY2024. **Appendix A.**

Elimination and Prevent of Harassment Directive. This directive explains FMCS's zero tolerance for harassment in the workplace, establishes an effective complain 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 and retaliation. 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 2023, 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.

During FY2023, the FMCS web-based training continued to be updated. At the end of FY2023, 197 out of 202 employees completed the No Fear Training, which is an increase from FY2022 (186 out of 208). To ensure timely completion of biennial No FEAR Act Training for employees and 90 days for new employees, the Director of OEEO will continue to work with the Center for Resolution Education to streamline the process for tracking required No Fear training 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 section in FY2023 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 FY2023, 4 complaints were filed alleging unlawful discrimination. Of the FY2023 formal complaints of discrimination filed, 3 complaints were from new filers in the first quarter and the 1 complaint in quarter 3 was a repeat filer. The allegations for the formal

complaints filed in FY2023, quarter 1 were based on race, color, sex, religion, age, and reprisal. Like quarter 1 complaints, quarter 3 complaints included the same basis with an addition of disability.

Trends and Causal Analysis. The FMCS’ OEEO identifies and keeps abreast of EEO complaint processing trends and best practices and compares FMCS complaints data for similar size and mission-focused agencies using existing and available government-wide Federal sector reports. This concerted and sustained engagement with EEO and Diversity, Equity, Inclusion and Accessibility (DEIA) peers and other colleagues helps OEEO learn more about and share EEO best practices and implement leading practices at FMCS.

During FY2023, FMCS had a total of 201 permanent full-time and part-time employees and 1 temporary employee. Between FY2019 to FY2023, the average number of formal administrative complaints filed annually was 2.4. In FY2023, there were 4 formal administrative complaints filed by 3 individuals.

| Complaint Activity | Comparative Data | | | | |
|--|------------------|------|------|------|------|
| | 2019 | 2020 | 2021 | 2022 | 2023 |
| 1) Number of Complaints Filed | 3 | 2 | 1 | 2 | 4 |
| 2) Number of Complainants | 3 | 2 | 1 | 2 | 3 |
| 3) Number of Individuals Filing More Than Once | 0 | 0 | 0 | 0 | 1 |

For the reporting period FY2019-2023, the 3 discrimination bases alleged most frequently at FMCS were: race, sex (female) and age. The top 3 most frequently alleged issues were: promotion/non-selection, disciplinary action, and harassment (non-sexual). For comparison purposes, according to the Equal Employment Opportunity Commission’s (EEOC) *Annual Report on the Federal Work Force for FY2023*, the top five bases in complaint allegations were retaliation, sex, disability, race, and age.¹ The top five most frequently cited issues in complaint filings were discharge, reasonable accommodation, hiring (including referral, recall, assignment, and job classification), constructive discharge, and harassment. This illustrates that FMCS’ most frequently cited bases and issues are consistent with EEOC’s receipt and processing of EEO complaints during FY2023.

With an annual average of less than 3 formal administrative complaints filed for 202 employees during this 5-year period, there is insufficient data to draw meaningful conclusion as to the cause and effect of the bases and issues raised in these complaints of employment discrimination. Further, in the cases closed during this 5-year period, there were no findings of employment discrimination from which possible causation factors could be gleaned.

Additional insight can be gleaned however, from significant events occurring within the agency during the time frames. In 2022, FMCS initiated restructuring of its regional offices and finalized the restructuring in FY2023. This time period is causally connected to the formal administrative complaint filings in quarter 1 of FY2023, which shows the highest spike in formal administrative

¹ U.S. Equal Employment Opportunity Commission, Office of Federal Operations, *Annual Report on the Federal Work Force Fiscal Year 2023*.

complaints filed within this 5-year period. Additionally, the data shows that the most frequently cited bases and issues filed in formal administrative complaints also spiked during quarter 1 of FY2023. This significant agency initiative can be considered casually connected to the rise in number of complaints, complaint issues and complaint allegations related to the agency restructuring.

The average investigation time has varied over the years, with an increase to 335 days in 2019 and 198 days in 2020. It is significant to note that due to assessment and evaluation of vendors and more streamlined procedures implemented, the FY2023 average investigation time decreased to 103 days, despite the increase in number of complaints filings during the fiscal year.

Practical Knowledge Gained Through Experience and Action Plan

The FMCS OEEO regularly monitors trends in its EEO Program to determine whether its obligations under the workplace anti-discrimination laws have been met. OEEO safeguards employment-related civil rights at the FMCS. Guided by its Agency Strategic Plan, FMCS champions efforts to foster a fair and equitable workplace, one where employment decisions are based on individual merit, and where everyone has an equal chance to succeed. FMCS encourages employees to communicate with each other and to attempt to resolve any disputes at the lowest level and 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.

In preparing the FY2023 No Fear Act Report, OEEO examined data to identify trends and develop action plans. To address identified trends, FMCS, through its OEEO launched several initiatives including:

Training and Engagement Opportunities:

- OEEO provided training and engagement opportunities for employees through DEIA dialogues related to religious expression in the workplace, microaggressions, psychological safety in the workplace and allyship.
- Agencywide DEIA Training included LGBTQ+, Working Across Cultures and Working Across Generations.
- Formalized EEO ADR Program Directive was created to be implemented in FY2024. Training for managers and employees is in development for launch in FY2024 through FY2025.

Senior Leadership Commitment:

- FMCS Acting Director prioritized EEO and DEIA internally and externally by providing additional resources to support the OEEO and consistently promoted employees use of the protections under the No Fear and Whistleblower laws during agency-wide townhalls.
- FMCS Acting Director provided avenues for engagement and suggestions through several channels throughout the fiscal year.

Career Development/Retention:

FMCS generally adopts an inclusive approach to training and developmental opportunities, striving to provide equitable opportunities for all employees regardless of their grade or title. In FY2023, there were 42 applicants for career developmental opportunities with 100% acceptance to participate and complete the opportunities. Some of these initiatives included:

- Development of a pilot program for the evaluation of the process for offering and providing opportunities for professional development (Non-Regional Work Assignments) to ensure the process is transparent and equitable to all employees.
- Maintaining a coaching and mentorship program to ensure the ongoing development of mediators and supervisory mediators.
- Continued enhancement of the FMCS learning management system (LMS) to record and monitor employee training activities.

Outreach and Recruitment:

To facilitate greater awareness of careers within FMCS and to promote FMCS' services, FMCS conducted outreach and recruitment efforts at the National Blacks in Government Conference as a booth exhibitor. The collaborative effort included the FMCS OEEO, Office of Human Resources, Office of Procurement and Operational Support and Office of Field Administration.

The below outlines FMCS' action plan for FY2024 to address the identified trends:

- Evaluate mechanisms for enhancing the quality of both internal and external applicant flow data by ensuring that job postings remain within the fiscal year (FY). This will enable FMCS to conduct trend analysis effectively and allow FMCS to identify any potential barriers that could result in complaint filings.
- Revise and modernize the learning management system (LMS) to monitor and confirm that all employees have completed mandatory EEO-related trainings.
- Conduct culture climate assessment and agency-wide DEIA training.
- Continue quarterly DEIA engagement series Agency-wide and within departments and regions.
- Continue development of gender transition and pronoun use policy and guidance.
- Development and implementation of a formalized Special Emphasis Program to include Special Emphasis Program Managers dispersed throughout the agency.
- Update annual EEO required training for managers and employees.
- Implement EEO ADR Policy and provide agency wide training.
- Assess FMCS compliance with Section 508 of the Rehabilitation Act.
- Provide Anti-Harassment Training for Managers, Respectful Workplaces for Employees and Civil Treatment Training.

Conclusion

A review of the complaint allegations for the 5-year period from FY2019 through FY2023 consistently shows the following:

- a. **Stable number of complaints.** The number of complaints remain relatively low, with an average of 2 formal administrative complaints filed annually.
- b. **Diverse array of complaints.** The type of complaints has varied each year with the top three bases of race, sex (female) and age and most alleged issues of promotion/non-selection, disciplinary action, and harassment (non-sexual).
- c. **Complaints and investigation times.** The average investigation time has varied over the years, with an increase to 198 days in 2020, however, in FY 2023 the average investigation time decreased to 103 days, despite the increase in number of complaints filings.

The FMCS continues to make strides in its efforts to foster and promote a workplace free from discrimination and harassment. There were four formal complaints filed alleging violations covered under the No FEAR Act. No FMCS employees were disciplined for findings of discrimination. Further, the FMCS has no cases that resulted in a judgment, award, or compromised settlement, therefore, no expenditures from the Judgment Fund were made on behalf of the FMCS.

While the number of formal complaint filings increased from 2 in FY2022 to 4 in FY2023, the FMCS' continued targeted trainings and briefings to FMCS managers and employees on the No FEAR Act, EEO laws, harassment, and civil treatment in the workplace. Additionally, the FMCS will continue to encourage FMCS employees and managers to resolve disputes at the earliest stages through ADR. Lastly, FMCS has committed to effectively communicating with employees regarding major changes within the agency and to employment-related policies and practices. In conclusion, FMCS will continue to 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



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

DIRECTIVE 5809: ANTI-HARASSMENT

1. Purpose: This Directive sets forth the updated FMCS policy on anti-harassment and provides guidance and implementing procedures for maintaining a workplace free from unlawful harassment, in accordance with Federal laws. The purpose of this directive is to:
 - a. Prevent harassment in FMCS employment, facilities and services;
 - b. Correct harassing conduct that does occur before it becomes severe or pervasive;
 - c. Ensure all FMCS employees, contractors, volunteers, interns, visitors, and customers are aware that FMCS does not tolerate discrimination or harassment;
 - d. Identify what to do in the event of an incident of harassment at FMCS; and
 - e. Ensure that 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.

2. Authority:
 - a. Title VII of the Civil Rights Act of 1964 (Title VII), as amended;
 - b. Equal Pay Act of 1963, as amended;
 - c. The Age Discrimination in Employment Act of 1967 (ADEA);
 - d. The Rehabilitation Act of 1973, Sections 501 and 505, as amended;
 - e. Americans with Disabilities Act (ADA) of 1990, as amended;
 - f. Federal Sector Equal Employment Opportunity Regulations, 29 CFR Part 1614;
 - g. Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002;
 - h. Genetic Information Nondiscrimination Act of 2008;
 - i. Executive Order 13087, which amended Executive Order 11478, prohibiting discrimination in federal employment based on sexual orientation;
 - j. Executive Order 13152, which amended Executive Order 11478, prohibiting discrimination in federal employment based on status as a parent;
 - k. Equal Employment Opportunity Commission (EEOC) Model EEO Programs Must

Have an Effective Anti-Harassment Program (2005);

- l. EEOC's Enforcement Guidance: Vicarious Employer Liability for Unlawful Harassment by Supervisors (1999);
 - m. Equal Employment Opportunity Commission Management Directive 715 (2003); and
 - n. Directive 9101, FMCS Equal Employment Opportunity Complaints Program;
 - o. Executive Order 14035 and Government-wide Strategic Plan to advance DEIA in the Federal Government (2021).
3. Scope: This directive covers conduct that falls within the EEO's definition of unlawful harassment, as well as other broader conduct. The EEO definition of unlawful harassment is unwelcome verbal or physical conduct based on a protected class (race, color, religion, sex (including sexual orientation, gender identity, and pregnancy), national origin, age (40 or older), disability or genetic information) that has the purpose or effect of unreasonably interfering with an employee's work performance and/or creating an intimidating, hostile, or offensive work environment. To rise to the level of unlawful harassment, conduct must be severe or pervasive. This policy also covers any type of harassment that interferes with, or alters, the condition of an employee's employment.

Employees should be aware that the anti-harassment process within this directive is **NOT** the same as the EEO complaints process and does not impact, pause or extend any statutory timelines associated with that process.

4. Applicability: This directive covers all federal employees, non-federal workers, and contractors, as defined below, regardless of position. As such, each federal employee, non-federal worker, and contractor is required to comply with this policy. The principles in this policy also apply to all individuals on owned or leased property, including extended visitors and customers. This policy also applies to conduct in virtual settings and conduct while using agency-owned devices or accounts or agency-sponsored third-party sites for communication (ex. Microsoft Teams, Zoom).
- a. Federal employee: An individual of the FMCS who is employed pursuant to an appointing authority that grants them federal status by law. This includes: Title 5 employees (GS), all Executives (SES and SL), and Political Appointees.
 - i. NOTE: FMCS Management is responsible for taking appropriate action against any federal employee who violates this policy. Appropriate action for federal employees may include, but is not limited to, reprimand, suspension, demotion, or removal from one's position and/or separation from the Federal Service. Such actions may also be considered when making administrative decisions related to funding, staffing, and other resources.
 - b. Non-federal worker: Those individuals who perform work for FMCS but have not been employed under an appointing authority that grants them federal status by law and benefits. This includes: all Trainees, Interns, or Volunteers.
 - i. NOTE: FMCS Management is responsible for taking appropriate action against

any non-federal worker who violates this policy.

- c. Contractors: Employees of a firm that has a mutually binding legal relationship, in the form of a contract, with FMCS to provide supplies and services. The contract firm is responsible for ensuring that their employees comply with this policy.
 - i. NOTE: Contractors' failure to comply with this policy may have action taken against them by the contracting officer ranging from a negative contractor performance review (CPARS) to a breach of contract, depending upon the impact of the failure to comply.
- d. Extended visitors and customers: Visitors to any FMCS owned or leased space (including agency-controlled virtual settings) are responsible for abiding by federal law, regulations, and applicable policy for FMCS controlled spaces. Any visitors or customers that commit acts of discrimination or harassment within FMCS facilities should be reported to FMCS management or physical security and may be removed and/or barred from the space.

5. Policy:

- a. FMCS does not, and will not, tolerate discrimination or harassment within FMCS facilities, agency-controlled virtual settings, or services. FMCS does not condone acts of harassment committed by employees, volunteers, interns, contractors, visitors, or customers using FMCS facilities or services, and it does not condone harassment of employees, volunteers, interns, contractors, visitors, or customers using FMCS facilities or services. FMCS is committed to maintaining a work environment that is courteous, respectful, and free from harassment for its employees, contractors, volunteers, interns, visitors, and customers.
- b. Even if harassing conduct does not rise to the level actionable under Title VII of the Civil Rights Act of 1964, as amended, it is still misconduct. FMCS' anti-harassment policy therefore is to take swift and appropriate corrective action, including the use of disciplinary action, to eliminate harassing conduct even if the conduct does not violate the law. Harassing actions may also result in corrective actions such as revoking privileges to use FMCS facilities or services.
- c. Retaliation towards any federal employee, non-federal worker, or contractor for reporting allegations of inappropriate conduct or harassment, participating as a witness in an administrative inquiry or investigation, or for participating in the EEO complaint process, is prohibited.
- d. If you are subjected to harassment of the type covered by this policy while using FMCS facilities or services, you may use the procedures in this policy to report the incident, and your report will be handled swiftly and with consideration.
- e. Employees, volunteers, contractors, and interns will be informed of this policy through their on-boarding process.
- f. All managers, supervisors, and employees are required to take mandatory anti-harassment training at least biennially through FMCS' Learning Management System

(LMS) or other approved format. Anti-harassment training requirements may also be met by taking NO FEAR Act training conducted by the EEO Office.

- g. Filing a complaint under these procedures is not equivalent to filing an EEO complaint of discrimination, under 29 CFR 1614, or a grievance, under an administrative or negotiated procedure.

6. Definition of Harassment in the Workplace:

- a. Harassment is unwelcome conduct that is based on race, color, religion, sex (including pregnancy, gender identity, and sexual orientation), national origin, age (40 or older), disability, or genetic information (including family medical history). Harassment is a form of employment discrimination prohibited by Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967, (ADEA), the Rehabilitation Act of 1973 (as amended), and ADA Amendments Act of 2008 ADAAA, 42 U.S.C. ch. 126 § 12101 et seq. Harassment becomes unlawful when: enduring the offensive conduct becomes a condition of continued employment, or the conduct is severe or pervasive enough to create a work environment that a reasonable person would consider intimidating, hostile, or abusive. Anti-discrimination laws also prohibit harassment against individuals in retaliation for filing a discrimination charge, testifying, or participating in any way in an investigation, proceeding, or lawsuit under these laws; or opposing employment practices that they reasonably believe discriminate against individuals, in violation of these laws.
- b. Unwelcome conduct is conduct that a person did not invite or solicit and that they regard as undesirable or offensive (outside of work assignments or instructions) and the complainant is not an active participant in the behavior. 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:
 - i. The frequency of the unwelcome discriminatory conduct;
 - ii. The severity of the conduct;
 - iii. Whether the conduct was physically threatening or humiliating, or a mere offensive utterance;
 - iv. Whether the conduct unreasonably interfered with work performance;
 - v. The effect on the employee's psychological well-being; and
 - vi. Whether the harasser was a superior within the organization.
- c. Liability for harassment attaches to the Agency if management (i) knew or should have known of harassment and (ii) failed to take immediate and appropriate action to investigate the behavior. This includes harassing behavior from outside clients or entities engaged in FMCS services. Knowledge is assumed if:
 - i. The victim complains about harassment to an appropriate official;
 - ii. The conduct occurred in the presence of a manager or supervisor, and they were aware of it;
 - iii. The conduct is widespread; or
 - iv. The complainant put the alleged violator on notice.

7. Forms of Harassment: The following are examples of inappropriate conduct that may meet the definition of harassment if an incident is severe or pervasive. A hostile environment can result from the unwelcome conduct and interactions on the job, when the unwelcome conduct renders the workplace atmosphere intimidating, hostile, or offensive.
- a. Sexual Harassment/Harassment based on sex (including pregnancy, gender identity, and sexual orientation). Examples include, but are not limited to:
 - i. Unwelcome sexual advances;
 - ii. Requests for sexual favors;
 - iii. Making repeated attempts to establish an unwanted relationship;
 - iv. Making offensive comments or asking questions about someone's sexual history, orientation, or gender identity;
 - v. Intentionally misusing a person's name or pronouns;
 - vi. Sharing sexually inappropriate images or videos, such as pornography, with others in the workplace;
 - vii. Sending suggestive letters, notes, texts, or emails or displaying inappropriate sexual images in the workplace;
 - viii. Telling lewd jokes or sharing sexual anecdotes;
 - ix. Making inappropriate sexual gestures;
 - x. Staring in a sexually suggestive or offensive manner or inappropriate whistling;
 - xi. Making sexual comments about appearance, clothing, or body parts; or
 - xii. Inappropriate touching, including pinching, patting, rubbing, or purposefully brushing up against another person.
 - b. Harassment based on race, ethnicity, color, and/or national origin. Examples include, but are not limited to:
 - i. Making derogatory epithets, slurs, remarks, stereotypes, labels, jokes, or innuendos related to a person's race, ethnicity, culture, or national origin;
 - ii. Making comments, jokes, teasing someone about a person's dress, personal appearance, hairstyle, speech, or other practices that are related to their race, ethnicity, culture, and/or national origin;
 - iii. Displaying racist or discriminatory symbols or imagery; or
 - iv. Engaging in a pattern of unwelcome or inappropriate verbal, behavioral, or environmental indignities, whether intentional or unintentional, that communicate hostile, derogatory, or otherwise negative prejudicial slights and

insults toward an individual or group, including but not limited to individuals from historically excluded groups. These may also be referred to as microaggressions, such as touching someone's hair or skin, commenting on ability to speak English, stating and/or perpetuating stereotypes, etc.

- c. Harassment based on physical, cognitive, mental disability or "regarded as" having a disability. Examples include, but are not limited to:
 - i. Making derogatory remarks, stereotypes, labels, jokes, or innuendos related to people with disabilities;
 - ii. Sending inappropriate letters, notes, texts, or emails and/or displaying inappropriate images in the workplace of people with disabilities;
 - iii. Telling inappropriate jokes or sharing inappropriate disability related anecdotes;
 - iv. Making inappropriate or mocking disability related gestures;
 - v. Staring in an inappropriate or offensive manner;
 - vi. Making inappropriate comments about appearance, assistive equipment, or body parts;
 - vii. Inappropriate touching, including pinching, patting, rubbing, or purposefully providing unwanted assistance including with service animals; or
 - viii. Making offensive comments or asking questions about someone's medical condition, history of a medical condition, and/or whether they are a person with a disability.
- d. Harassment based on religion or creed. Examples include, but are not limited to:
 - i. Sharing inappropriate images or videos with others in the workplace of a person's religion, creed, or a person's choice to abstain from religiosity;
 - ii. Sending inappropriate letters, notes, texts, or emails or displaying inappropriate images in the workplace of a person's religion, creed, or a person's choice to abstain from religiosity;
 - iii. Telling inappropriate jokes or sharing inappropriate religion related anecdotes;
 - iv. Making inappropriate or mocking religion related gestures; or
 - v. Making offensive comments or asking questions about someone's religion, creed, or a person's choice to abstain from religiosity.
- e. Harassment based on age (40 or older). Examples include, but are not limited to:
 - i. Sending inappropriate letters, notes, texts, or e-mails or displaying inappropriate age-related images in the workplace;

- ii. Telling inappropriate jokes or sharing inappropriate age-related anecdotes;
 - iii. Making inappropriate or mocking age-related gestures;
 - iv. Determining and assigning tasks or duties based on a person's age;
 - v. Staring in an inappropriate or offensive manner;
 - vi. Inappropriate touching, including pinching, patting, rubbing, or purposefully providing unwanted assistance; or
 - vii. Making offensive age-related comments or inappropriately asking questions about someone's age.
- f. Harassment based on genetic information. Examples include, but are not limited to:
- i. Unlawfully obtaining or sharing genetic information, as well as any information related to it with others in the workplace;
 - ii. Sending inappropriate letters, notes, texts, or e-mails related to genetic information or displaying inappropriate images in the workplace related to genetic information; or
 - iii. Making offensive comments or asking questions about someone's genetic information or related medical condition, history of a medical condition, and/or whether they are a person with a disability.
- g. Inappropriate conduct: Inappropriate conduct is also covered and is a separate, broader category of misconduct that may not meet the definition of harassment listed above. This type of conduct, though inappropriate and covered under this policy, may not constitute harassment under the law. Inappropriate conduct includes any comments or conduct that disparages or demonstrates hostility or aversion towards any person that could reasonably be perceived as disruptive, disrespectful, offensive, or inappropriate in the workplace. These may also be referred to as microaggressions. Examples include, but are not limited to:
- i. Actions or behaviors that adversely impact Agency operations, productivity, and/or work environment;
 - ii. Rude comments, ridicule, disrespectful jokes, or insults;
 - iii. Inappropriate yelling or emotional outbursts, using expletives, throwing objects, or banging/slamming doors;
 - iv. Inappropriate touching or any form of physical intimidation or aggression (e.g., holding, restraining, impeding, or blocking movement, following, inappropriate contact or advances, bullying, or any other forms of inappropriate touching);
 - v. Engaging in a personal relationship with someone in an inherently unequal position where there is a real or perceived authority or influence over the other's conditions of employment and/or has the ability to directly impact the other's

career progression and not disclosing the relationship and taking steps to mitigate the risk to all parties. This may include formal and informal supervisory relationships;

- vi. Inappropriate or rude gestures, expressions, pictures, or graffiti;
- vii. Threats against others or engaging in other threatening behavior;
- viii. Psychological bullying or intimidation, such as making statements that are false, malicious, disparaging, or derogatory with the intent to hurt another's reputation; or
- ix. Engaging in behaviors that may have a dampening effect on reporting workplace concerns, such as those that can be perceived as intimidating or retaliatory against individuals who report concerns or participate in an administrative inquiry or other protected activity.

8. Rights and Responsibilities:

a. Director, FMCS

- 1. Exercises personal leadership in establishing, maintaining, and carrying out a continuing program designed to deter harassment;
- 2. Ensures resources are allocated to promote a safe and civil organizational culture and to create an environment where all individuals are treated with respect and dignity; and
- 3. Holds FMCS leadership, managers, and supervisors accountable under this policy.

b. Office of Human Resources (OHR)

- 1. Assists management officials in conducting prompt and impartial inquiries into non-EEO allegations of harassment, obtains third party investigation services;
- 2. Assists management officials in reviewing reports of inquiry to determine what, if any, administrative action is required and advising on appropriate disciplinary action;
- 3. If it appears that the allegations might rise to the level of fraud, waste, abuse, or mismanagement, makes referrals to an OIG¹ or OSC; and
- 4. Works with managers and supervisors to process any disciplinary action managers decide to implement.

¹ The Agency may form an agreement with an external agency to provide services commonly performed by an Office of Inspector General.

c. Office of Equal Employment Opportunity (EEO)

1. Provides agency-wide leadership and guidance on issues of equal employment opportunity, diversity, and inclusion;
2. Oversight of all discrimination complaints filed under 29 CFR Part 1614;
3. Providing training and guidance to the FMCS community on their rights and responsibilities regarding EEO laws and policies;
4. Providing guidance to managers as appropriate, and when requested, on how to address allegations of unlawful harassment because of a legally protected basis;
5. Processes EEO complaints regarding harassment;
6. Provides technical assistance to FMCS staff and training regarding harassment; and
7. Refers harassment allegations to the OHR if not brought as part of an EEO complaint.

d. Office of General Counsel (OGC)

Provides legal advice, represents FMCS in matters relating to harassment, reviews documents for legal sufficiency.

e. Office of Inspector General (OIG)/Office of Special Counsel (OSC)

May investigate allegations of harassment in connection with fraud, waste, abuse, or mismanagement.

f. 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 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 this Directive; Managers and Supervisors should encourage reporting on FMCS Form 5809-1 or should ensure collection of the information contained within that form through other acceptable format (email or signed statement);
4. In consultation with OHR, providing appropriate interim relief to alleged victims of harassment pending the outcome of the investigation to ensure that further misconduct does not occur; and
5. In consultation with OHR, taking prompt and appropriate corrective and disciplinary action, up to and including removal, against personnel who have

engaged in harassing conduct.

g. 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;
3. Timely reporting incidents of workplace harassment, including those incidents as a bystander, to any appropriate FMCS manager or supervisor or the resources identified in this directive. Complaints may be filed directly with the OHR at antiharassment@fmcs.gov;
4. Cooperating fully with investigation of the complaint;
5. Reporting any acts of retaliation related to making a good faith report of harassment, or for assisting with an investigation;
6. Being aware that management cannot guarantee confidentiality when investigating a workplace harassment complaint; and
7. Taking advantage of the Employee Assistance Program (EAP) counseling services, or other personal counseling services, when necessary, to address personal problems relating to the workplace harassment.

9. Procedure for Reporting Harassment:

- a. Any federal employee, non-federal worker, or contractor who believes they have experienced harassment or inappropriate conduct may report such behavior to:
 - 1) antiharassment@fmcs.gov using the intake form FMCS 5809-1; or
 - 2) To any manager or supervisor within FMCS. Managers and Supervisors then have an obligation to timely report, within seven (7) calendar days, any allegations to the Office of Human Resources for prompt investigation using the intake form and forwarding to antiharassment@fmcs.gov; or
 - 3) To the Office of Equal Employment Opportunity at eeo@fmcs.gov, if they believe the harassment is prohibited under Directive 9101. Claims of harassment not falling within the EEO process will be forwarded to antiharassment@fmcs.gov; or
 - 4) If a contractor, report such behavior to their employing organization and/or the Contracting Officer's Representative (COR) and are encouraged to follow any reporting requirements set forth by their organization; or
 - 5) To the Director, OHR who will utilize the intake form and forward a copy to antiharassment@fmcs.gov within seven (7) calendar days; or

- 6) Employees may also contact OSC, or an external OIG made available to FMCS employees, directly, or may also choose one of FMCS' formal complaints or grievance processes, if applicable. Employees will need to follow the rules and timelines for those processes, which differ from the ones in this policy.
- b. Once an allegation is raised, the OHR will work with the appropriate managers or supervisors to timely investigate the alleged harassment; documenting the investigative findings; taking appropriate action, including disciplinary action, to remedy the situation; and, making a good faith effort to prevent future incidents from occurring. When appropriate, OHR will obtain a third party to conduct a prompt, impartial and thorough investigation of all the circumstances surrounding the alleged incident.
 - 1) During this process, a reporting party may initially remain anonymous, but the information will be shared with those entities with a need to know. Reports can be made anonymously, which means you do not have to identify yourself. However, fact finders (either internal or third party) must follow up on all allegations of harassment and cannot guarantee that your identity will not be disclosed during the process. Please note that if you desire to remain anonymous, key details about the allegation or concern would need to be omitted. This would limit FMCS' ability to conduct an inquiry and take corrective action as warranted.
 - 2) Confidentiality indicates that you desire what you say to be private or secret and no further action will be taken. **This process is not a confidential resource.** OHR and management officials cannot guarantee confidentiality when it comes to allegations of harassment. If you report an allegation that meets the definition of harassment, including sexual harassment, your supervisor or manager **must** contact OHR. There are other offices that operate under principles of confidentiality. You can reach out to them to discuss any concerns and they are not required to take action, including the Employee Assistance Program (EAP) or the FMCS Ombuds, both of which operate under principles of confidentiality. Bargaining Unit employees may also reach out to their Union Representative.
- c. If an employee makes an allegation of harassment against someone outside the Agency (such as a customer, vendor, contractor, or consultant), the OHR will complete any necessary internal investigation and provide appropriate interim relief, as well as refer the allegations to the FMCS Office of General Counsel to handle interactions with or consequences to the third party. The Agency may be liable for harassment by third parties that it knows about or should have known about (see Section 6c).
- 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 appropriate disciplinary action in accordance with agency disciplinary regulations, the Collective Bargaining Agreement, and Directive 5805 (Disciplinary and Adverse Actions).

10. Resolution

- a. Corrective Administrative Action

- i. When it is determined that this policy has been violated, the OHR Employee and Labor Relations Specialist will coordinate with appropriate management officials to develop corrective administrative actions. The corrective administrative actions can include a variety of interventions as well as appropriate disciplinary actions such as reprimand, proposed suspension, or proposed removal and shall always include a reminder that retaliatory treatment towards any federal employee, non-federal worker, or contractor for reporting allegations of inappropriate conduct or harassment, or for participating as a witness in an administrative inquiry or EEO complaint process, is prohibited. Other interventions may include training, coaching, facilitated discussions for the team, and/or collaborative work with the Employee Assistance Program or the FMCS Ombuds. If the respondent is a Government contractor, corrective and/or disciplinary action will be the responsibility of the contracting company and negative performance may be recorded in the Contractor Performance Assessment Reporting System (CPARS), if warranted.
 - ii. Should any employee or manager not cooperate throughout this process, or not implement the corrective administrative action in whole or in part, OHR will report this information to the FMCS Director and external entities, as appropriate.
 - b. Communicating Outcomes to Reporting Parties
 - i. OHR will notify the reporting party of the status of the administrative inquiry and when it has been referred to the appropriate management officials. However, because of privacy rights and procedures, no further information will be provided.
 - c. EEO Process Not Affected by Anti-Harassment Process
 - i. This Directive is not intended to replace an employee's EEO rights. An employee may pursue claims of harassing conduct through this Directive or the EEO process simultaneously. If an employee wishes to file a formal claim, report harassment, seek guidance or counseling, or file a claim of discrimination through EEO procedures, they must contact the FMCS EEO Office within 45 days of the incident or becoming aware of the harassment. Pursuing the anti-harassment process through this Directive will not extend or toll any timeframes for the EEO process; therefore, employees should be cognizant of timeframes.

11. CONTACT: Office of Human Resources, antiharassment@fmcs.gov

12. EFFECTIVE DATE: This Directive is effective immediately and shall continue until superseded or replaced.

Gregory Goldstein, Acting Director

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.



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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 Fourth Quarter Fiscal Year 2023

| Complaint Activity | Comparative Data | | | | | 2023 | 2023 | 2023 | 2024 |
|---|------------------|------|------|------|------|--------|--------|--------|--------|
| | 2018 | 2019 | 2020 | 2021 | 2022 | Qtr. 1 | Qtr. 2 | Qtr. 3 | Qtr. 4 |
| 1) Number of Complaints Filed | 1 | 3 | 2 | 1 | 2 | 3 | 0 | 1 | 0 |
| 2) Number of Complainants | 1 | 3 | 2 | 1 | 2 | 3 | 0 | 1 | 0 |
| 3) Number of Individuals Filing More Than Once | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 0 |
| | | | | | | | | | |
| Complaint Basis | Comparative Data | | | | | 2023 | 2023 | 2023 | 2023 |
| | 2018 | 2019 | 2020 | 2021 | 2022 | Qtr. 1 | Qtr. 2 | Qtr. 3 | Qtr. 4 |
| 4) Total Complaints | 1 | 3 | 2 | 1 | 2 | 3 | 0 | 1 | 0 |
| A) Race | 1 | 3 | 1 | 1 | 2 | 2 | 0 | 1 | 0 |
| i) Black | 0 | 0 | 0 | 1 | 2 | 1 | 0 | 0 | 0 |
| ii) White | 1 | 3 | 0 | 0 | 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 |
| v) Hispanic | 0 | 0 | 0 | 0 | 0 | 1 | 0 | 0 | 0 |
| B) Color | 0 | 0 | 0 | 0 | 1 | 1 | 0 | 1 | 0 |
| C) Sex-Male (EPA claims included) | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| D) Sex-Female (EPA claims included) | 0 | 1 | 0 | 1 | 0 | 1 | 0 | 1 | 0 |
| E) Religion | 0 | 1 | 0 | 0 | 0 | 1 | 0 | 1 | 0 |
| F) National Origin | 0 | 0 | 0 | 0 | 1 | 0 | 0 | 0 | 0 |
| G) Age | 1 | 3 | 2 | 0 | 1 | 2 | 0 | 1 | 0 |
| H) Disability | 0 | 0 | 2 | 0 | 0 | 0 | 0 | 1 | 0 |
| i) Mental | 0 | 0 | 2 | 0 | 0 | 0 | 0 | 1 | 0 |
| ii) Physical | 0 | 1 | 1 | 0 | 0 | 0 | 0 | 1 | 0 |
| I) Reprisal/Retaliation for Previous EEO Activity | 0 | 2 | 0 | 0 | 1 | 1 | 0 | 1 | 0 |
| J) Non-EEO | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| | | | | | | | | | |



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| Complaint Issue | Comparative Data | | | | | 2023 | 2023 | 2023 | 2023 |
|-------------------------------------|------------------|------|------|------|------|--------|--------|--------|--------|
| | 2018 | 2019 | 2020 | 2021 | 2022 | Qtr. 1 | Qtr. 2 | Qtr. 3 | Qtr. 4 |
| 5) Total EEO Complaints | 1 | 3 | 2 | 1 | 2 | 3 | 0 | 1 | 0 |
| A) Appointment/Hire | 1 | 2 | 1 | 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 | 3 | 0 | 1 | 0 |
| i) Demotion | 0 | 0 | 0 | 0 | 0 | 2 | 0 | 0 | 0 |
| ii) Reprimand | 0 | 0 | 0 | 0 | 0 | 1 | 0 | 0 | 0 |
| iii) Suspension | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| iv) Removal | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 0 |
| F) Duty Hours | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| G) Evaluation / Appraisal | 0 | 0 | 1 | 0 | 1 | 0 | 0 | 0 | 0 |
| H) Examination / Test | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| I) Harassment | 0 | 0 | 0 | 2 | 2 | 0 | 0 | 0 | 0 |
| i) Non-Sexual | 0 | 0 | 0 | 2 | 2 | 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 | 1 | 0 | 0 | 1 | 3 | 0 | 0 | 0 |
| M) 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 |
| 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 | 1 | 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 | 1 | 0 |



FEDERAL MEDIATION & CONCILIATION SERVICE

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| Processing Time & Disposition | Comparative Data | | | | | 2023 | 2023 | 2023 | 2023 |
|--|------------------|------|------|------|------|--------|--------|--------|--------|
| | 2018 | 2019 | 2020 | 2021 | 2022 | Qtr. 1 | Qtr. 2 | Qtr. 3 | Qtr. 4 |
| 6) Number of Complaints Pending (for any length of time) | 2 | 1 | 1 | 0 | 2 | 3 | 4 | 4 | 3 |
| A) Average Number of Days to Fully Investigate a Formal Complaint | 180 | 335 | 198 | 0 | 0 | 133 | 131 | 149 | 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 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| A) Number of Final Actions Without A Hearing | 0 | 0 | 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 Fourth Quarter Fiscal Year 2023

| Final Actions by Basis | Comparative Data | | | | | 2023 | 2023 | 2023 | 2023 |
|---------------------------------|------------------|------|------|------|------|--------|--------|--------|--------|
| | 2018 | 2019 | 2020 | 2021 | 2022 | Qtr. 1 | Qtr. 2 | Qtr. 3 | Qtr. 4 |
| 10) Total | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| A) Race | 0 | 0 | 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 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| G) Age | 0 | 0 | 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 | 0 | 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 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Y) Age | 0 | 0 | 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 |



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| Final Actions by Issue All Types | Comparative Data | | | | | 2023 | 2023 | 2023 | 2023 |
|-------------------------------------|------------------|------|------|------|------|--------|--------|--------|--------|
| | 2018 | 2019 | 2020 | 2021 | 2022 | 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 | 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 |
| 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 Fourth Quarter Fiscal Year 2023

| Final Actions by Issue (continued) Findings After Hearing | Comparative Data | | | | | 2023 | 2023 | 2023 | 2023 |
|--|------------------|------|------|------|------|--------|--------|--------|--------|
| | 2018 | 2019 | 2020 | 2021 | 2022 | 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 Fourth Quarter Fiscal Year 2023

| Final Actions by Issue (continued) Findings Without Hearing | Comparative Data | | | | | 2023 | 2023 | 2023 | 2023 |
|--|------------------|------|------|------|------|--------|--------|--------|--------|
| | 2018 | 2019 | 2020 | 2021 | 2022 | 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 | 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 |
| 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

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| Pending Complaints | Comparative Data | | | | | 2023 | 2023 | 2023 | 2023 |
|---|------------------|------|------|------|------|--------|--------|--------|--------|
| | 2018 | 2019 | 2020 | 2021 | 2022 | Qtr. 1 | Qtr. 2 | Qtr. 3 | Qtr. 4 |
| 12) Total | 2 | 2 | 2 | 5 | 2 | 4 | 4 | 4 | 0 |
| A) Individuals Filing | 2 | 2 | 2 | 5 | 2 | 4 | 4 | 3 | 0 |
| B) Number complaints pending | 2 | 2 | 2 | 4 | 1 | 4 | 4 | 4 | 3 |
| i) Notification / Counseling | 0 | 0 | 1 | 1 | 0 | 0 | 0 | 0 | 0 |
| ii) Investigation | 0 | 1 | 1 | 2 | 1 | 3 | 3 | 1 | 1 |
| iii) Hearing | 2 | 1 | 0 | 2 | 0 | 1 | 1 | 3 | 0 |
| iv) Final Action | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| v) Appeal with EEOC | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 3 | 2 |
| C) Investigations Exceeding Required Time | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 |
| | | | | | | | | | |
| | | | | | | | | | |
| | | | | | | | | | |