



U.S. Securities and Exchange Commission

**Office of Equal Employment  
Opportunity**

# **NOTIFICATION AND FEDERAL EMPLOYEE ANTIDISCRIMINATION AND RETALIATION ACT OF 2002**

ANNUAL REPORT  
FISCAL YEAR 2022



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The No FEAR Act requires Federal agencies to maintain a productive and mission-focused workplace by affording employees, former employees, and applicants for employment notice of their rights under anti-discrimination and whistleblower protection laws; and by holding agencies and violators of these laws accountable.

# INTRODUCTION

On May 15, 2002, Congress enacted the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (Pub. L. No 107-174) (No FEAR Act). The No FEAR Act requires Federal agencies to maintain an effective and mission-focused workplace by affording employees, former employees and applicants for employment notice of their rights under anti-discrimination and whistleblower protection laws; and by holding agencies and violators of these laws accountable. The Elijah E. Cummings Federal Employee Antidiscrimination Act of 2020 (Pub. L. No. 116-283) (Cummings Act) amended the No FEAR Act to require Federal agencies to increase accountability under these laws.

The reporting provisions of the No FEAR Act, as amended, set forth under Title 5 C.F.R. section 724.302(a)-(c), the items to be included in the Annual No FEAR Act Report concerning cases filed under Federal anti-discrimination laws and whistleblower protection laws.

Agencies must include the following information, *inter alia*:

- The number of Federal court cases, pending or resolved, arising under the covered laws and the status and disposition of the cases;
- Judgment Fund reimbursements and adjustments to the agency's budget to meet reimbursement requirements;
- The number and type of disciplinary actions related to discrimination, retaliation, or harassment, and the agency's policy relating to appropriate disciplinary action;
- Year-end summary data related to the agency's Equal Employment Opportunity (EEO) complaint activity for the fiscal year;<sup>1</sup>
- An analysis of trends, causation, and practical knowledge gained through experience;
- Actions planned or taken to improve the agency's discrimination complaint programs; and
- The agency's No FEAR Act training plan.

<sup>1</sup> The No FEAR Act data for the SEC can be accessed from the agency's homepage ([SEC.gov](https://www.sec.gov)), or directly at [SEC.gov/eooinfo/nofeardata.htm](https://www.sec.gov/eooinfo/nofeardata.htm).

Reports must be submitted to:

- Speaker of the U.S. House of Representatives;
- President Pro Tempore of the U.S. Senate;
- U.S. Senate Committee on Homeland Security and Governmental Affairs;
- U.S. House of Representatives Committee on Oversight and Reform;
- Each committee of Congress with jurisdiction relating to the agency;
- Chair, U.S. Equal Employment Opportunity Commission;
- U.S. Attorney General; and
- Director, U.S. Office of Personnel Management (OPM).

This is the U.S. Securities and Exchange Commission's (SEC) Annual No FEAR Act Report for Fiscal Year (FY) 2022 in accordance with reporting obligations at 5 C.F.R. section 724.302 (a)-(c).

**Section 724.302(a)(1):** The number of cases in Federal court pending or resolved in each fiscal year and arising under each of the respective provisions of the Federal Antidiscrimination Laws applicable to them as defined in section 724.102 of subpart A of this part 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.

**Section 724.302(a)(2)(i):** In the aggregate, for the cases identified pursuant to section 724.302(a)(1), the status or disposition (including settlement).

Cases Pending or Resolved in U.S. Federal Courts <sup>2</sup> by Statute and Their Disposition						
STATUTES	FISCAL YEARS					
	2017	2018	2019	2020	2021	2022
<b><i>Title VII of the Civil Rights Act of 1964</i></b>						
Pending Cases	4	5	3	2	3	2
Decision Issued	0	1	3	1	1	2
Cases Settled	1	0	0	0	0	0
<b><i>Age Discrimination in Employment Act of 1967</i></b>						
Pending Cases	5	6	3	2	3	2
Decision Issued	0	1	4	1	1	1
Cases Settled	0	0	0	0	0	0
<b><i>Rehabilitation Act of 1973</i></b>						
Pending Cases	2	1	0	0	0	0
Decision Issued	0	1	1	0	0	0
Cases Settled	0	0	0	0	0	0
<b><i>Civil Service Reform Act of 1978, Whistleblower Protection Act and Related Laws</i></b>						
Pending Cases	1	0	0	0	0	0
Decision Issued	0	1	0	0	0	0
Cases Settled	0	0	0	0	0	0
<b><i>Equal Pay Act</i></b>						
Pending Cases	0	0	0	0	1	2
Decisions Issued	0	0	1	0	0	0
Cases Settled	0	0	0	0	0	0
<b><i>Genetic Information Nondiscrimination Act (GINA) of 2008</i></b>						
Pending Cases	0	0	0	0	0	0
Decisions Issued	0	0	0	0	0	0
Cases Settled	0	0	0	0	0	0

2 Includes both U. S. District Courts and Courts of Appeals. A case is listed as “Pending” if it was open on the last day of the fiscal year. “Decision Issued” does not include cases that have been appealed to a Court of Appeals.

Section 724.302(a)(2)(ii): The amount of money required to be reimbursed to the Judgment Fund by the agency for payments as defined in section 724.102 of subpart A of this part.

*No reimbursements to the Judgment Fund were required in FY 2022.*

Section 724.302(a)(2)(iii): The amount of reimbursement to the Judgment Fund for attorney's fees where such fees have been separately designated.

*No reimbursements to the Judgment Fund for attorney's fees were required during FY 2022.*

Section 724.302(a)(3): In connection with cases identified in paragraph (a)(1) of this section, the total number of employees in each fiscal year disciplined as defined in section 724.102 of subpart A of this part and the specific nature, e.g., reprimand, etc., of the disciplinary actions taken, separated by the provision(s) of law involved.

*No employees were disciplined during FY 2022 in connection with cases identified in paragraph (a)(1) of this section.*

Section 724.302(a)(4): The final year-end data about discrimination complaints for each fiscal year that was posted in accordance with Equal Employment Opportunity Regulations at subpart G of title 29 of the Code of Federal Regulations (implementing section 301(c)(1)(B) of the No FEAR Act).

*The final year-end EEO complaint case data for FY 2022 are found in Attachment A.*

Section 724.302(a)(5): Whether or not in connection with cases in Federal court, the number of employees in each fiscal year disciplined as defined in section 724.102 of subpart A of this part in accordance with any agency policy described in paragraph (a)(6) of this section. The specific nature, e.g., reprimand, etc., of the disciplinary actions taken must be identified.

*One employee was disciplined (letter of reprimand) during FY 2022, in accordance with the agency policy described in paragraph (a)(6) of this section. (See immediately below.)*



Section 724.302(a)(6): A detailed description of the agency's policy for taking disciplinary action against Federal employees for conduct that is inconsistent with Federal Anti-discrimination Laws and Whistleblower Protection Laws or for conduct that constitutes another prohibited personnel practice revealed in connection with agency investigations of alleged violations of these laws.

*The SEC's EEO Policy Statement sets forth the agency's commitment to maintaining a work environment that is free of discrimination and retaliation. Further, in FY 2020, the SEC implemented revised SEC Administrative Regulation 6-20, Disciplinary and Adverse Actions. The regulation sets forth policies and procedures for taking disciplinary and adverse actions against bargaining unit and non-bargaining unit employees. The process and procedures covering SEC disciplinary actions are incorporated by reference in the 2018 Collective Bargaining Agreement (CBA) between the SEC and its Union. The CBA explains that disciplinary and adverse actions are taken "for such cause as will promote the efficiency of the service." See Attachment B - SECR 6-20; CBA, Art. 34, Disciplinary Actions; CBA, Art. 35, Adverse Actions. See also 5 U.S.C. section 7503(a) & 7513(a) (codifying that an agency may take disciplinary or adverse actions against an employee "for such cause as will promote the efficiency of the service").*

*The SEC Office of Inspector General (OIG) has its own Disciplinary and Adverse Action policy that sets forth the policies and procedures relating to employee misconduct for SEC OIG employees. The SEC OIG's Disciplinary and Adverse Action Policy is based on 5 U.S.C. Chapter 75 (Adverse Actions), 5 C.F.R. Part 752 (Adverse Actions), 5 C.F.R. Part 315 (relating to probationary periods), and other applicable SEC OIG policies. Pursuant to the SEC OIG's policy, disciplinary and adverse actions will only be taken for such cause as will promote the efficiency of the Federal service.*

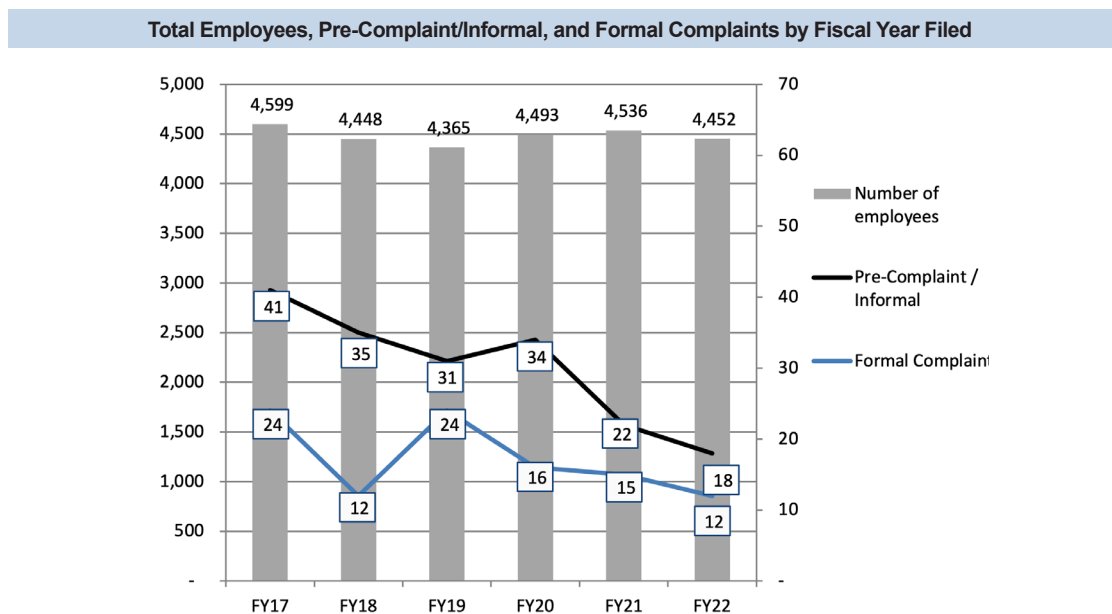
Section 724.302(a)(7): An analysis of the information provided in paragraphs (a)(1) through (6) of this section in conjunction with data provided to the Equal Employment Opportunity Commission in compliance with 29 C.F.R. part 1614 subpart F of the Code of Federal Regulations. Such analysis must include: (i) An examination of trends; (ii) Causal analysis; (iii) Practical knowledge gained through experience; and (iv) Any actions planned or taken to improve complaint or civil rights programs of the agency with the goal of eliminating discrimination and retaliation in the workplace.

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# EXAMINATION OF TRENDS AND CAUSAL ANALYSIS

The SEC’s Office of Equal Employment Opportunity (OEEO) identifies and keeps abreast of significant external EEO complaint processing trends and best practices and compares SEC complaints data with 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 peers and other colleagues helps OEEO learn about and share EEO best practices, and implement leading practices at the SEC.

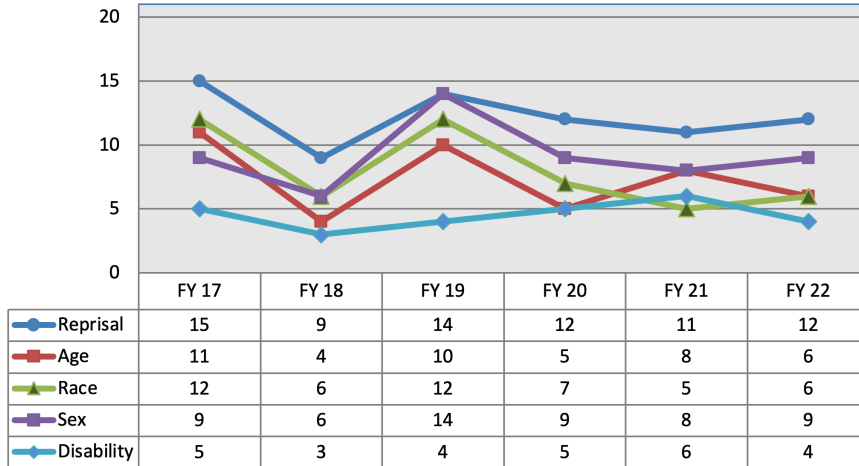
The average number of SEC employees during the period covered in this report (FY 2017–2022) was approximately 4,500. Between FY 2017–2022, the average number of formal administrative EEO complaints filed annually was 16. In FY 2022, there were 12 complaints filed by 12 individuals.



With an annual average of less than 20 complaints filed for approximately 4,500 employees during this 6-year period, there is insufficient data to draw meaningful conclusions 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 six-year period, there were no findings of employment discrimination from which possible causation factors could be gleaned.

For the reporting period FY 2017–2022, there were 103 formal cases. The 5 discrimination bases alleged most frequently at the SEC were: reprisal (73), sex (55), race (48), age (44), and disability (27). The table and graphic below show the number of complaints filed under each of the most common bases during this reporting period.

**Most Common Bases Alleged at the SEC FY 2017 – FY 2022**

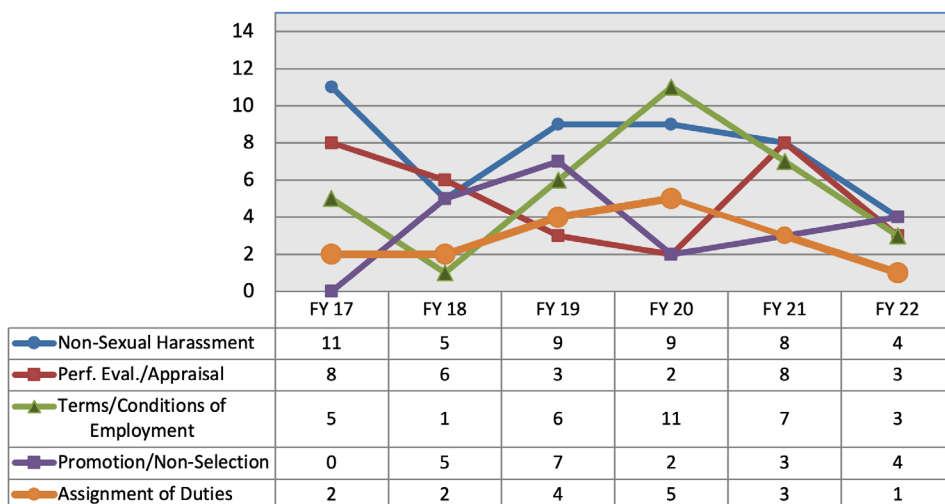


In FY 2022, of the 12 complaints filed, the discrimination bases alleged most frequently at the SEC were reprisal (12), sex (9), age (6), race (6), and disability (4). For comparison purposes, according to the Equal Employment Opportunity Commission’s (EEOC) *Annual Report on the Federal Workforce for FY 2019 Complaint Tables*, the top five bases in complaint allegations were reprisal/retaliation, age, disability, race, and sex.<sup>3</sup>

The employment issues raised most frequently in the 103 formal cases raised from FY 2017–2022 were: non-sexual harassment (46), terms and conditions of employment (33), performance evaluation/appraisal (30), promotion/non-selection (21), and assignment of duties (17). The table and graphic below show the number of complaints filed under each of the most common issues during this reporting period.

<sup>3</sup> U.S. Equal Employment Opportunity Commission, Office of Federal Operations, *Annual Report on the Federal Workforce Fiscal Year 2019*, Table B-8 FY 2019 Complaints Filed Basis and Issues—Grand Total. This is the most recent data available.

Issues Raised Most Frequently at SEC FY 2017 – FY 2022



The issues most frequently raised in the 12 FY 2022 cases were: non-sexual harassment (4), promotion/non-selection (4), performance evaluation/appraisal (3), terms/conditions of employment (3), reprimand (2), removal (2), and reassignment (directed) (2). According to the EEOC’s *Annual Report on the Federal Workforce for FY 2019 Complaint Tables*, the top five issues in complaint allegations were harassment– non-sexual, disciplinary action, terms and conditions of employment, promotion/non-selection, and reasonable accommodation.<sup>4</sup>

The EEOC regulations governing data posted pursuant to Title III of the No FEAR Act limit the case disposition data to the following types: dismissals by the agency, withdrawals by complainants, and findings of discrimination. See [SEC.gov/eeoinfo/nofeardata.htm](https://www.eeoc.gov/eeoinfo/nofeardata.htm). As noted above, there were no findings of discrimination during this period. In FY 2022, the average number of days to complete an investigation was 219.91, as compared to 243.09 days in FY 2021. At the close of FY 2022, three complaints filed in previous years were pending hearings before administrative judges at the EEOC. There were three other complaints filed in previous years that were on appeal to the EEOC’s Office of Federal Operations.

<sup>4</sup> U.S. Equal Employment Opportunity Commission, Office of Federal Operations, *Annual Report on the Federal Workforce Fiscal Year 2019*, Table B-8 FY 2019 Complaints Filed Basis and Issues—Grand Total.

The complainant rate is the number of complainants (complainants may file multiple complaints) as a percentage of the total workforce. The SEC’s complainant rate of .25% in FY 2022 was below the most recently reported rate across the Federal government (.48%) and for medium-sized agencies (.50%) like the SEC.<sup>5</sup> The table below shows, for each year in the reporting period, the number and percent of complaints filed and the number and percent of individuals filing at least 1 complaint (i.e., complainants).

The SEC assessed whether the observed decrease in the complainant rates was larger than would be expected due to chance. The observed decrease in FY 2022 was not statistically significant compared to FY 2021, but was statistically significant (one-tailed, directional) compared to FY 2017. This indicates a statistically significant long-term decline over the last five years.<sup>6</sup> Complaint activity has fluctuated over the last six fiscal years, from a high of 24 complaints in 2017 to a low of 12 complaints in both 2018 and 2022. The decline in complaints since 2019 correlates with increases in OEEO’s outreach and education efforts and may be influenced by the shift to mandatory telework in response to the COVID-19 pandemic.

**Complainant Rates for Fiscal Years 2017 – 2022**

Fiscal Year	Number of Complaints Filed	Number of Complainants*	Total Workforce	Complaints Filed as a % of Total Workforce	Number of Complainants as a % of Total Workforce
2017	24	23	4,599	0.52%	0.50%
2018	12	12	4,448	0.27%	0.27%
2019	23	21	4,365	0.53%	0.48%
2020	16	16	4,493	0.36%	0.36%
2021	15	14	4,536	0.33%	0.31%
2022	12	12	4,452	0.27%	0.27%

\* Complainants may file multiple complaints.

5 To gain some insight into the frequency of complaint filings, the EEOC calculates the percentage of Federal employees who file formal complaints—or who become “complainants”—at each agency; this is the complainant rate. Government-wide, the rate of complainants was .48% and for medium-size agencies (1,000 to 14,999 employees), the rate was .50%. See U.S. Equal Employment Opportunity Commission, Office of Federal Operations, Form 462 Complaints Tables, Table B1 FY 2019 Total Work Force, Counselings and Complaints, *available at* [EEOC.gov/federal/reports/tables.cfm](https://www.eeoc.gov/federal/reports/tables.cfm).

6 Two-by-two contingency tables with a Fisher’s exact test were analyzed comparing complainant rates during FY 2022 with the complainant rate in each of the prior years.

# PRACTICAL KNOWLEDGE GAINED THROUGH EXPERIENCE AND ACTIONS PLANNED TO IMPROVE COMPLAINT AND CIVIL RIGHTS PROGRAMS

The SEC evaluates its EEO Program on an annual basis, as required by the EEOC's Management Directive 715. The SEC reviewed and updated the formal EEO complaint case data maintained in its case-tracking software system, ETK-EEO. This data is posted online quarterly and included in Attachment A. In FY 2022, the SEC's OEEO completed 19 counselings under Part 1614. All counselings completed in FY 2022 qualified as timely under 29 C.F.R. section 1614.105. Five counselings were timely completed within 30 days, and 8 traditional counselings were completed timely with written extensions of no longer than 60 days. Six counselings were processed through the SEC's Alternative Dispute Resolution (ADR) program and were timely completed within 90 days. Of the 19 counselings completed, 6 were resolved at the informal stage. In each of these counselings, the agency provided the regulatory-required notification to individuals of their various rights and responsibilities in the EEO process. This information was provided during the initial counseling session verbally and later in writing.

In FY 2022, 12 new formal EEO complaints were filed under Part 1614, compared with 15 in FY 2020. OEEO generally issued all Acceptance letters/Dismissal decisions within a reasonable time (FY 2022 average of 43 days) after receipt of the written EEO counselor's report. OEEO conducted investigations of formal EEO complaints in a timely fashion. OEEO provides complainants with the regulatory-required "180-day letter" if an investigation is expected to exceed 180 days. This letter notifies complainants of the date by which OEEO expects to complete the investigation and informs complainants of their right to request a hearing before an EEOC administrative judge or to file a lawsuit. In FY 2022, seven Final Agency Decisions (no discrimination found) were issued.

The SEC 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 SEC. It champions SEC 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 as far as their talents will take them. In preparing the agency's FY 2022 No FEAR Act Report, OEEO examined data to identify potential problems, spot trends, and develop action plans. OEEO staff members have gained insights that have helped improve the SEC's overall EEO Program, including the following observations:

- A commitment from top-level leadership to EEO—including a commitment to affirmative employment (e.g., barrier analysis) efforts—shapes the workplace experience, inspires employee confidence, and aids legal compliance. This commitment is best manifested through tangible actions by the Chair, Commissioners, and senior leaders to support EEO and visibly and actively incorporate the EEO Program as a valued partner.
- Maintaining OEEO's independence is indispensable to safeguarding statutory enforcement mechanisms. Not only is this independence required under Federal law and EEOC requirements, but it is also vital to fostering trust that the EEO Program is (and appears) impartial and separate from other offices with potentially conflicting interests.
- Many substantive EEO concepts are complex, and new supervisors may sometimes struggle to apply complicated rules (e.g., those involving disability and anti-retaliation laws). Consistent proactive prevention of discrimination, harassment, retaliation (including whistleblower retaliation), and other prohibited personnel practices—through training and targeted technical assistance—remains vital to fostering workplace civil rights and upholding Merit System Principles.
- The Federal sector EEO process itself can seem confusing to new employees, and often even to career civil servants. There are numerous, sometimes overlapping sources of legal protection (e.g., via statutes, regulations, and Executive Orders) and various related enforcement processes (e.g., the Part 1614 process, intra-agency harassment procedures, Union grievances, and Office of Special Counsel/Merit Systems Protection Board complaints). Accordingly, regular messaging reinforced through outreach can aid understanding and minimize confusion. In particular, explaining the differences between filing an EEO complaint alleging violations of Federal law and reporting harassment under the SEC's harassment prevention policy is important.
- Creating collective responsibility for stopping words and conduct that could be perceived as offensive in the workplace can help improve culture and reduce EEO complaints alleging harassment.
- Operationalizing EEO, Diversity, Equity, Inclusion, and Accessibility into SEC's everyday business requires close coordination and consistent communication across various SEC offices and stakeholders. Sharing information on these concepts spurs discussion and action.



- All organizational leaders must consider EEO and civil service protections before and while implementing new or changed policies, practices, procedures, and organizational decisions that could affect the workforce. Outreach to the OEEEO Director early and often to obtain crucial input and feedback on personnel, budget, technology, and other workforce issues can help prevent potential EEO missteps and ensure EEO best practices are adopted.
- Resolving issues early and expeditiously helps maintain a work environment that fosters open communication, trust, and engagement. Used properly in appropriate circumstances, ADR can provide faster, less expensive and contentious, and more productive results in resolving workplace disputes, including claims of discrimination, harassment, and retaliation or workstyle or personality conflicts that may arise. The SEC must be open to and make reasonable efforts to settle complaints of discrimination as early as possible in, and throughout, the administrative processing of complaints.

OEEEO applied the above experience when defining its strategic priorities. OEEEO will also focus on implementing Goal 3 of *SEC Strategic Plan for Fiscal Years 2022–2026* (Support a skilled workforce that is diverse, equitable, and inclusive and is fully equipped to advance agency objectives) and Initiative 3.1 (Focus on the workforce to increase capabilities, leverage shared commitment to investors, and promote diversity, equity, inclusion, accessibility, and equality of opportunity). OEEEO's daily operations included the following accomplishments:

- Processed all informal and formal complaints and requests for ADR it handled in compliance with 29 C.F.R. Part 1614 and EEOC MD-110;
- Contributed expertise to a variety of agency efforts focused on disability, including the participation in a cross-agency working group focused on advancement opportunities for employees with disabilities, and advised on the enhancements to SEC's religious accommodation policy;
- Conducted ongoing barrier analyses, including monitoring action plans;
- Collaborated with the Federal sector EEO community to share and learn best practices and innovative approaches to enhance equality of employment opportunity;
- Continued to incorporate the EEOC's Six Essential Elements of a Model EEO Program to achieve greater program effectiveness;
- Briefed senior leadership on the State of the Agency EEO Program, reaffirmed their support for the program and increased awareness of issues and trends;
- Improved accuracy of EEO complaint data through increased oversight;

- Leveraged internal communication channels to distribute EEO-related information and promoted early conflict resolution;
- Trained supervisors and managers to provide proactive approaches to resolving workforce issues;
- Increased employee awareness of EEO statutes, executive orders, and leading practices;
- Continued to collaborate with stakeholders across the agency to analyze workforce demographic data; and
- Reviewed information from employee surveys, exit interviews, focus groups, and training to identify opportunities to improve equality of opportunity at the SEC.

Section 724.302(a)(8): For each fiscal year, any adjustments needed or made to the budget of the agency to comply with its Judgment Fund reimbursement obligation(s) incurred under section 724.103 of this part.

*As noted above, no reimbursements were made by the SEC to the Judgment Fund during FY 2022; therefore, no adjustments were made to the SEC's budget to comply with this section.*

Section 724.302(a)(9): The agency's written plan developed under section 724.203(a) of subpart B of this part to train all of its employees (including supervisors and managers) about the rights and remedies available under the Anti-discrimination Laws and Whistleblower Protection Laws applicable to them.

# SEC'S NO FEAR ACT TRAINING PLAN

The No FEAR Act requires each agency to develop a plan to train all employees (including managers and supervisors) about the rights and remedies available under the Anti-discrimination Laws and Whistleblower Protection Laws applicable to them. Office of Personnel Management (OPM) regulations require agencies to include No FEAR Act training plans in the annual No FEAR Act Report. *See* 5 C.F.R. §724.302(a)(9).

## TRAINING FOR NEW SEC EMPLOYEES

As part of the SEC's ongoing effort to train all SEC employees on their rights, remedies, and responsibilities under the No FEAR Act, new SEC employees receive information about their rights and responsibilities under the anti-discrimination and whistleblower protection laws during new employee orientation, including the SEC's EEO and harassment prevention policies. All new employees are also required, as instructed during new employee orientation, to take an online No FEAR Act training course within 30 days after joining the SEC. The training is formally assigned and tracked through the SEC's e-learning system, LEAP. The SEC's Office of the General Counsel also provides training to new employees on Federal employee whistleblower protections and rights.

## TRAINING FOR ALL SEC EMPLOYEES EVERY TWO YEARS

In compliance with the requirement to provide No FEAR Act training every **two** years, the SEC mandated that all SEC employees complete the training. The SEC assigned mandatory No FEAR Act training to all SEC employees in 2022.

## ADDITIONAL OUTREACH REGARDING RIGHTS AND REMEDIES

In partnership with other SEC offices, OEEO works to ensure all employees are aware of and know how to access EEO policies and related information. The SEC maintains an EEO Policy Statement, which advises employees of the SEC's commitment to EEO laws and provides information on how to participate in the EEO complaint process. In addition, the SEC's Policy Statement on Preventing Harassment (PPH) expresses the SEC's commitment to a harassment-free work environment. The PPH Program was designed to identify and stop behavior that violates the agency's policy. These policy statements were emailed to employees by the SEC Chair, are physically posted in prominent locations throughout the SEC's headquarters and regional offices, and are available on SEC's intranet.

The OEEO intranet page contains contact and location information, important information and resources about EEO laws and policies, and complaint-processing procedures. This helps ensure that employees can easily seek assistance, including EEO counseling. The SEC also provides contact information and other relevant information to members of the public, including applicants for employment, on [SEC.gov](https://www.sec.gov).

# WHISTLEBLOWER PROTECTION LAWS

The Whistleblower Protection Act of 1989 and the Whistleblower Protection Enhancement Act of 2012 provide the right for covered Federal employees to make protected disclosures and to be protected from retaliation for making such disclosures. The Dr. Chris Kirkpatrick Whistleblower Protection Act of 2017 further reinforces and enhances these protections.

A whistleblower makes a protected disclosure by reporting what they reasonably believe to be a violation of law, rule, or regulation; gross mismanagement; a gross waste of funds; an abuse of authority; a substantial and specific danger to public health or safety; or censorship related to research, analysis, or technical information. These protected disclosures may be made to anyone, but are typically made to management, to the SEC Office of Inspector General (OIG), or to the U.S. Office of Special Counsel (OSC), which is an independent Federal investigative and prosecutorial agency.

The Whistleblower Protection Enhancement Act of 2012 requires that the statement below is incorporated into the SEC's and the SEC OIG's nondisclosure policies, forms, or agreements, including those in effect before the Act's effective date of December 27, 2012:

These provisions are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by existing statute or Executive order relating to (1) classified information, (2) communications to Congress, (3) the reporting to an Inspector General of a violation of any law, rule, or regulation, or mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, or (4) any other whistleblower protection. The definitions, requirements, obligations, rights, sanctions, and liabilities created by controlling executive orders and statutory provisions are incorporated into this agreement and are controlling.

In December 2019, the SEC OIG received its recertification under the OSC's 5 U.S.C. section 2302(c) certification program. This OSC certification program requires agencies to periodically inform employees about their rights and remedies under the whistleblower protection laws. The SEC OIG's certification was valid for all of the FY 2022 reporting period.

In December 2021, the SEC OIG trained its supervisory employees on how to respond to allegations of whistleblower retaliation, as required by the Dr. Chris Kirkpatrick Whistleblower Protection Act of 2017.

The SEC OIG's public website contains information about whistleblower rights and remedies, and options for filing complaints of whistleblower retaliation via the SEC OIG's hotline. *See* [SEC.gov/oig](https://www.sec.gov/oig).

# ATTACHMENT A: EQUAL OPPORTUNITY DATA POSTED PURSUANT TO THE NO FEAR ACT

## EQUAL EMPLOYMENT OPPORTUNITY DATA POSTED PURSUANT TO THE NO FEAR ACT U.S. SECURITIES AND EXCHANGE COMMISSION

For 4th Quarter 2022 for period ending September 30, 2022

Complaint Activity	Comparative Data					
	Previous Fiscal Year Data					2022 Thru 09-30
	2017	2018	2019	2020	2021	
Number of Complaints Filed	24	12	24	16	15	12
Number of Complainants	23	12	21	16	14	12
Repeat Filers	1	0	3	0	1	0

Complaints by Basis <i>Note: Complaints can be filed alleging multiple bases. The sum of the bases may not equal total complaints filed.</i>	Comparative Data					
	Previous Fiscal Year Data					2022 Thru 09-30
	2017	2018	2019	2020	2021	
Race	12	6	12	7	5	6
Color	4	2	3	3	1	1
Religion	2	1	4	0	3	2
Reprisal	15	9	14	12	11	12
Sex	9	6	14	9	8	9
PDA	0	0	1	0	0	0
National Origin	2	1	1	1	1	0
Equal Pay Act	1	2	4	0	1	0
Age	11	4	10	5	8	6
Disability	5	3	4	5	6	4
Genetics	0	0	0	0	0	0
Non-EEO	2	0	4	2	1	0

Complaints by Issue <i>Note: Complaints can be filed alleging multiple bases.</i>  <i>The sum of the bases may not equal total complaints filed.</i>	Comparative Data					
	Previous Fiscal Year Data					2022 Thru 09-30
	2017	2018	2019	2020	2021	
Appointment/Hire	4	1	0	2	1	0
Assignment of Duties	2	2	4	5	3	1
Awards	2	3	2	2	2	0
Conversion to Full Time/Perm Status	0	0	0	0	0	1
<b>Disciplinary Action</b>						
Demotion	1	0	0	0	1	1
Reprimand	1	0	1	1	0	2
Suspension	1	0	0	1	0	0
Removal	1	2	2	1	0	2
Duty Hours	0	0	0	0	0	0
Perf. Evaluation/Appraisal	8	6	3	2	8	3
Examination/Test	0	0	0	0	0	0
<b>Harassment</b>						
Non-Sexual	11	5	9	9	8	4
Sexual	1	0	2	0	0	0
Medical Examination	0	0	0	0	0	0
Pay Including Overtime	2	1	3	1	1	0
Promotion/Non-Selection	0	5	7	2	3	4
<b>Reassignment</b>						
Denied	0	0	0	1	0	1
Directed	2	1	1	0	0	2
Reasonable Accommodation Disability	2	1	3	2	2	0
Reinstatement	0	0	0	0	0	0
Religious Accommodation	0	0	0	0	0	0
Retirement	0	1	0	0	0	0
Sex – Stereotyping	0	0	0	0	0	0
Telework	0	0	0	0	0	0
Termination	2	0	1	1	1	1
Terms/Conditions of Employment	5	1	6	11	7	3
Time and Attendance	1	1	1	0	0	0
Training	1	0	0	0	0	0
<b>Other</b>						
Other 1 – Non EEO Harassment	0	0	0	0	0	0
None Provided	1	0	0	0	0	0
User Defined – Other 3	0	0	0	0	0	0
User Defined – Other 4	0	0	0	0	0	0

Processing Time	Comparative Data						2022 Thru 09-30
	Previous Fiscal Year Data					2022 Thru 09-30	
	2017	2018	2019	2020	2021		
<b>Complaints Pending During Fiscal Year</b>							
Average Number of Days in Investigation	198.95	189.76	175.78	218.88	243.09	219.91	
Average Number of Days in Final Action	43.86	38.10	57.38	52.00	39.91	58.00	
<b>Complaint Pending During Fiscal Year Where Hearing Was Requested</b>							
Average Number of Days in Investigation	203.50	207.50	174.71	226.57	219.80	217.34	
Average Number of Days in Final Action	29.67	23.00	50.50	48.00	41.00	40.00	
<b>Complaint Pending During Fiscal Year Where Hearing Was Not Requested</b>							
Average Number of Days in Investigation	191.14	161.83	179.50	183.00	278.80	202.17	
Average Number of Days in Final Action	54.50	52.80	78.00	60.00	58.00	60.00	

Complaints Dismissed by Agency	Comparative Data						2022 Thru 09-30
	Previous Fiscal Year Data					2022 Thru 09-30	
	2017	2018	2019	2020	2021		
Total Complaints Dismissed by Agency	1	0	5	0	0	0	
Average Days Pending Prior to Dismissal	41	0	141	0	0	0	
<b>Complaints Withdrawn by Complainants</b>							
Total Complaints Withdrawn by Complainants	0	3	0	0	2	2	

Total Final Agency Actions Finding Discrimination	Comparative Data											
	Previous Fiscal Year Data										2022 Thru 09-30	
	2017		2018		2019		2020		2021		#	%
	#	%	#	%	#	%	#	%	#	%	#	%
Total Number Findings	0		0		0		0		0		0	
Without Hearing	0	0	0	0	0	0	0	0	0	0	0	0
With Hearing	0	0	0	0	0	0	0	0	0	0	0	0

<b>Findings of Discrimination Rendered by Basis</b>  <i>Note: Complaints can be filed alleging multiple bases.</i>  <i>The sum of the bases may not equal total complaints and findings.</i>	Comparative Data											
	Previous Fiscal Year Data										2022 Thru 09-30	
	2017		2018		2019		2020		2021			
	#	%	#	%	#	%	#	%	#	%	#	%
<b>Total Number Findings</b>	0		0		0		0		0		0	
Race	0	0	0	0	0	0	0	0	0	0	0	0
Color	0	0	0	0	0	0	0	0	0	0	0	0
Religion	0	0	0	0	0	0	0	0	0	0	0	0
Reprisal	0	0	0	0	0	0	0	0	0	0	0	0
Sex	0	0	0	0	0	0	0	0	0	0	0	0
PDA	0	0	0	0	0	0	0	0	0	0	0	0
National Origin	0	0	0	0	0	0	0	0	0	0	0	0
Equal Pay Act	0	0	0	0	0	0	0	0	0	0	0	0
Age	0	0	0	0	0	0	0	0	0	0	0	0
Disability	0	0	0	0	0	0	0	0	0	0	0	0
Genetics	0	0	0	0	0	0	0	0	0	0	0	0
Non-EEO	0	0	0	0	0	0	0	0	0	0	0	0
<b>Findings After Hearing</b>	0		0		0		0		0		0	
Race	0	0	0	0	0	0	0	0	0	0	0	0
Color	0	0	0	0	0	0	0	0	0	0	0	0
Religion	0	0	0	0	0	0	0	0	0	0	0	0
Reprisal	0	0	0	0	0	0	0	0	0	0	0	0
Sex	0	0	0	0	0	0	0	0	0	0	0	0
PDA	0	0	0	0	0	0	0	0	0	0	0	0
National Origin	0	0	0	0	0	0	0	0	0	0	0	0
Equal Pay Act	0	0	0	0	0	0	0	0	0	0	0	0
Age	0	0	0	0	0	0	0	0	0	0	0	0
Disability	0	0	0	0	0	0	0	0	0	0	0	0
Genetics	0	0	0	0	0	0	0	0	0	0	0	0
Non-EEO	0	0	0	0	0	0	0	0	0	0	0	0
<b>Findings Without Hearing</b>	0		0		0		0		0		0	
Race	0	0	0	0	0	0	0	0	0	0	0	0
Color	0	0	0	0	0	0	0	0	0	0	0	0
Religion	0	0	0	0	0	0	0	0	0	0	0	0
Reprisal	0	0	0	0	0	0	0	0	0	0	0	0
Sex	0	0	0	0	0	0	0	0	0	0	0	0
PDA	0	0	0	0	0	0	0	0	0	0	0	0
National Origin	0	0	0	0	0	0	0	0	0	0	0	0
Equal Pay Act	0	0	0	0	0	0	0	0	0	0	0	0
Age	0	0	0	0	0	0	0	0	0	0	0	0
Disability	0	0	0	0	0	0	0	0	0	0	0	0
Genetics	0	0	0	0	0	0	0	0	0	0	0	0
Non-EEO	0	0	0	0	0	0	0	0	0	0	0	0



Findings of Discrimination Rendered by Issue	Comparative Data											
	Previous Fiscal Year Data										2022 Thru 09-30	
	2017		2018		2019		2020		2021			
	#	%	#	%	#	%	#	%	#	%	#	%
<b>Total Number Findings</b>	0		0		0		0		0		0	
Appointment/Hire	0	0	0	0	0	0	0	0	0	0	0	0
Assignment of Duties	0	0	0	0	0	0	0	0	0	0	0	0
Awards	0	0	0	0	0	0	0	0	0	0	0	0
Conversion to Full Time/Perm Status	0	0	0	0	0	0	0	0	0	0	0	0
<b>Disciplinary Action</b>												
Demotion	0	0	0	0	0	0	0	0	0	0	0	0
Reprimand	0	0	0	0	0	0	0	0	0	0	0	0
Suspension	0	0	0	0	0	0	0	0	0	0	0	0
Removal	0	0	0	0	0	0	0	0	0	0	0	0
Duty Hours	0	0	0	0	0	0	0	0	0	0	0	0
Perf. Evaluation/Appraisal	0	0	0	0	0	0	0	0	0	0	0	0
Examination/Test	0	0	0	0	0	0	0	0	0	0	0	0
<b>Harassment</b>												
Non-Sexual	0	0	0	0	0	0	0	0	0	0	0	0
Sexual	0	0	0	0	0	0	0	0	0	0	0	0
Medical Examination	0	0	0	0	0	0	0	0	0	0	0	0
Pay Including Overtime	0	0	0	0	0	0	0	0	0	0	0	0
Promotion/Non-Selection	0	0	0	0	0	0	0	0	0	0	0	0
<b>Reassignment</b>												
Denied	0	0	0	0	0	0	0	0	0	0	0	0
Directed	0	0	0	0	0	0	0	0	0	0	0	0
Reasonable Accommodation Disability	0	0	0	0	0	0	0	0	0	0	0	0
Reinstatement	0	0	0	0	0	0	0	0	0	0	0	0
Religious Accommodation	0	0	0	0	0	0	0	0	0	0	0	0
Retirement	0	0	0	0	0	0	0	0	0	0	0	0
Sex – Stereotyping	0	0	0	0	0	0	0	0	0	0	0	0
Telework	0	0	0	0	0	0	0	0	0	0	0	0
Termination	0	0	0	0	0	0	0	0	0	0	0	0
Terms/Conditions of Employment	0	0	0	0	0	0	0	0	0	0	0	0
Time and Attendance	0	0	0	0	0	0	0	0	0	0	0	0
Training	0	0	0	0	0	0	0	0	0	0	0	0
<b>Other – User Define</b>												
Other 1 – Non EEO Harassment	0	0	0	0	0	0	0	0	0	0	0	0
None Provided	0	0	0	0	0	0	0	0	0	0	0	0
User Defined – Other 3	0	0	0	0	0	0	0	0	0	0	0	0
User Defined – Other 4	0	0	0	0	0	0	0	0	0	0	0	0

Findings of Discrimination Rendered by Issue	Comparative Data											
	Previous Fiscal Year Data										2022 Thru 09-30	
	2017		2018		2019		2020		2021			
	#	%	#	%	#	%	#	%	#	%	#	%
<b>Findings After Hearing</b>	0		0		0		0		0		0	
Appointment/Hire	0	0	0	0	0	0	0	0	0	0	0	0
Assignment of Duties	0	0	0	0	0	0	0	0	0	0	0	0
Awards	0	0	0	0	0	0	0	0	0	0	0	0
Conversion to Full Time/Perm Status	0	0	0	0	0	0	0	0	0	0	0	0
<b>Disciplinary Action</b>												
Demotion	0	0	0	0	0	0	0	0	0	0	0	0
Reprimand	0	0	0	0	0	0	0	0	0	0	0	0
Suspension	0	0	0	0	0	0	0	0	0	0	0	0
Removal	0	0	0	0	0	0	0	0	0	0	0	0
Duty Hours	0	0	0	0	0	0	0	0	0	0	0	0
Perf. Evaluation/Appraisal	0	0	0	0	0	0	0	0	0	0	0	0
Examination/Test	0	0	0	0	0	0	0	0	0	0	0	0
<b>Harassment</b>												
Non-Sexual	0	0	0	0	0	0	0	0	0	0	0	0
Sexual	0	0	0	0	0	0	0	0	0	0	0	0
Medical Examination	0	0	0	0	0	0	0	0	0	0	0	0
Pay Including Overtime	0	0	0	0	0	0	0	0	0	0	0	0
Promotion/Non-Selection	0	0	0	0	0	0	0	0	0	0	0	0
<b>Reassignment</b>												
Denied	0	0	0	0	0	0	0	0	0	0	0	0
Directed	0	0	0	0	0	0	0	0	0	0	0	0
Reasonable Accommodation Disability	0	0	0	0	0	0	0	0	0	0	0	0
Reinstatement	0	0	0	0	0	0	0	0	0	0	0	0
Religious Accommodation	0	0	0	0	0	0	0	0	0	0	0	0
Retirement	0	0	0	0	0	0	0	0	0	0	0	0
Sex – Stereotyping	0	0	0	0	0	0	0	0	0	0	0	0
Telework	0	0	0	0	0	0	0	0	0	0	0	0
Termination	0	0	0	0	0	0	0	0	0	0	0	0
Terms/Conditions of Employment	0	0	0	0	0	0	0	0	0	0	0	0
Time and Attendance	0	0	0	0	0	0	0	0	0	0	0	0
Training	0	0	0	0	0	0	0	0	0	0	0	0
<b>Other – User Define</b>												
Other 1 – Non EEO Harassment	0	0	0	0	0	0	0	0	0	0	0	0
None Provided	0	0	0	0	0	0	0	0	0	0	0	0
User Defined – Other 3	0	0	0	0	0	0	0	0	0	0	0	0
User Defined – Other 4	0	0	0	0	0	0	0	0	0	0	0	0

Findings of Discrimination Rendered by Issue	Comparative Data											
	Previous Fiscal Year Data										2022 Thru 09-30	
	2017		2018		2019		2020		2021			
	#	%	#	%	#	%	#	%	#	%	#	%
<b>Findings Without Hearing</b>	0		0		0		0		0		0	
Appointment/Hire	0	0	0	0	0	0	0	0	0	0	0	0
Assignment of Duties	0	0	0	0	0	0	0	0	0	0	0	0
Awards	0	0	0	0	0	0	0	0	0	0	0	0
Conversion to Full Time/Perm Status	0	0	0	0	0	0	0	0	0	0	0	0
<b>Disciplinary Action</b>												
Demotion	0	0	0	0	0	0	0	0	0	0	0	0
Reprimand	0	0	0	0	0	0	0	0	0	0	0	0
Suspension	0	0	0	0	0	0	0	0	0	0	0	0
Removal	0	0	0	0	0	0	0	0	0	0	0	0
Duty Hours	0	0	0	0	0	0	0	0	0	0	0	0
Perf. Evaluation/Appraisal	0	0	0	0	0	0	0	0	0	0	0	0
Examination/Test	0	0	0	0	0	0	0	0	0	0	0	0
<b>Harassment</b>												
Non-Sexual	0	0	0	0	0	0	0	0	0	0	0	0
Sexual	0	0	0	0	0	0	0	0	0	0	0	0
Medical Examination	0	0	0	0	0	0	0	0	0	0	0	0
Pay Including Overtime	0	0	0	0	0	0	0	0	0	0	0	0
Promotion/Non-Selection	0	0	0	0	0	0	0	0	0	0	0	0
<b>Reassignment</b>												
Denied	0	0	0	0	0	0	0	0	0	0	0	0
Directed	0	0	0	0	0	0	0	0	0	0	0	0
Reasonable Accommodation Disability	0	0	0	0	0	0	0	0	0	0	0	0
Reinstatement	0	0	0	0	0	0	0	0	0	0	0	0
Religious Accommodation	0	0	0	0	0	0	0	0	0	0	0	0
Retirement	0	0	0	0	0	0	0	0	0	0	0	0
Sex – Stereotyping	0	0	0	0	0	0	0	0	0	0	0	0
Telework	0	0	0	0	0	0	0	0	0	0	0	0
Termination	0	0	0	0	0	0	0	0	0	0	0	0
Terms/Conditions of Employment	0	0	0	0	0	0	0	0	0	0	0	0
Time and Attendance	0	0	0	0	0	0	0	0	0	0	0	0
Training	0	0	0	0	0	0	0	0	0	0	0	0
<b>Other – User Define</b>												
Other 1 – Non EEO Harassment	0	0	0	0	0	0	0	0	0	0	0	0
None Provided	0	0	0	0	0	0	0	0	0	0	0	0
User Defined – Other 3	0	0	0	0	0	0	0	0	0	0	0	0
User Defined – Other 4	0	0	0	0	0	0	0	0	0	0	0	0

Pending Complaints Filed in Previous Fiscal Years by Status	Comparative Data					
	Previous Fiscal Year Data					2022 Thru 09-30
	2017	2018	2019	2020	2021	
Total Complaints from Previous Fiscal Years	19	19	15	17	12	6
Total Complainants	19	17	13	13	12	6
<b>Number Complaints Pending</b>						
Investigation	0	0	0	0	0	0
ROI Issued, Pending Complainant's Action	0	0	0	0	0	0
Hearing	17	18	15	15	10	3
Final Agency Action	2	1	0	2	2	3
Appeal with EEOC Office of Federal Operations	5	6	1	4	2	3

Complaint Investigations	Comparative Data					
	Previous Fiscal Year Data					2022 Thru 09-30
	2017	2018	2019	2020	2021	
Pending Complaints Where Investigations Exceed Required Time Frames*						
* These cases were conflict matters handled by other agencies.	0	0	0	1	17	0

7 While conducting a review of FY 2021, the calculations for one case in investigation were incorrect. The FY 2021 No FEAR data has been corrected to reflect the one case that exceeded required time frames.

# ATTACHMENT B: SEC'S DISCIPLINARY ACTION POLICIES

## SEC ADMINISTRATIVE REGULATION

U.S. Securities and Exchange Commission  
Office of Human Resources  
Washington, D.C. 20549

SECR 6-20  
February 10, 2020

## DISCIPLINARY AND ADVERSE ACTIONS

This administrative regulation describes the policy and principles of the U.S. Securities and Exchange Commission (SEC) for maintaining discipline and for taking disciplinary and adverse actions.

Except as otherwise noted, this policy applies to all SEC employees without regard to bargaining unit status. This policy applies to the SEC's Office of the Inspector General to the extent it does not interfere with or impede the authorities or independence of the Inspector General pursuant to the Inspector General Act of 1978.

This administrative regulation shall be reviewed at least every three years to ensure the contents remain relevant and reflect current federal laws, rules, regulations, and SEC regulations.

### **Summary of Changes.**

This revision supersedes SECR 6-20, "Disciplinary and Adverse Actions," dated January 15, 2016. This revision reflects a change in the policy approving officials; updates to the policy, authority, and responsibilities sections; and other administrative updates.

//Signature on File//

James P. McNamara  
Chief Human Capital Officer  
Office of Human Resources

**SEC ADMINISTRATIVE REGULATION  
DISCIPLINARY AND ADVERSE ACTIONS**

**1. Purpose and Scope**

This administrative regulation describes the policy and principles of the U.S. Securities and Exchange Commission (SEC) for maintaining discipline and for taking disciplinary and adverse actions.

**2. Policy**

It is the policy of the SEC that disciplinary and adverse actions will be taken for such cause as will promote the efficiency of the federal service.

**3. General Procedures**

3.1. Except as otherwise noted, refer to Article 34, “Disciplinary Actions,” and Article 35, “Adverse Actions,” of the Collective Bargaining Agreement (CBA) and the [askHR portal](#) for related procedures.

3.2. Except as otherwise noted, refer to Article 36, “Unacceptable Performance,” of the CBA and the [askHR portal](#) for information regarding actions based on unacceptable performance.

**4. Authority**

- Chapters 43 and 75 of Title 5, United States Code
- Parts 432 and 752 of Title 5, Code of Federal Regulations, current edition
- Public Law 95-452, “Inspector General Act of 1978,” October 12, 1978, as amended
- Collective Bargaining Agreement between the United States Securities and Exchange Commission and the National Treasury Employees Union, current edition

**5. Applicability**

5.1. Except as noted in subsection 5.2. below, this administrative regulation applies to all SEC employees without regard to bargaining unit status.

5.2. This policy applies to the SEC’s Office of the Inspector General to the extent it does not interfere with or impede the authorities or independence of the Inspector General pursuant to the Inspector General Act of 1978.

5.3. Until further notice, except as noted in subsection 5.4. below, the authorities cited above and Article 34, “Disciplinary Actions,” Article 35, “Adverse Actions,” and Article 36, “Unacceptable Performance,” of the CBA shall apply to all SEC employees.

5.4. The following provisions of the CBA shall not apply to non-bargaining unit employees:

5.4.1. Article 34, the last sentence of Section 5.G.;

5.4.2. Article 34, Section 7;

5.4.3. Article 35, the last sentence of Section 3.7.;

5.4.4. Article 35, Section 5; and

5.4.5. Article 36, Section 5.

## **6. Definitions**

Except as otherwise noted, refer to Article 34, “Disciplinary Actions,” Article 35, “Adverse Actions,” and Article 36, “Unacceptable Performance,” of the CBA for related definitions.

## **7. Responsibilities**

7.1. Chief Human Capital Officer, Office of Human Resources, or designee(s), shall establish policies and procedures for disciplinary and adverse actions, in consultation with the Office of the General Counsel (OGC).

7.2. General Counsel, OGC, or designee(s), shall provide legal and technical expertise, advice, and guidance (including the proper processes and procedures to be followed) to supervisory and management officials on disciplinary and adverse actions.

7.3. Supervisors shall comply with the provisions of this administrative regulation and the CBA, as applicable.

Except as otherwise noted, refer to Article 34, “Disciplinary Actions,” Article 35, “Adverse Actions,” and Article 36, “Unacceptable Performance,” of the CBA for additional related responsibilities.

# 2018 COLLECTIVE BARGAINING AGREEMENT BETWEEN U.S. SECURITIES AND EXCHANGE COMMISSION AND THE NATIONAL TREASURY EMPLOYEES UNION

## **Article 34 DISCIPLINARY ACTIONS**

### **Section 1**

For purposes of this Article, disciplinary actions are written reprimands and suspensions for fourteen (14) calendar days or fewer.

### **Section 2**

In effecting disciplinary actions, the Employer endorses the use of like penalties for like offenses and progressive discipline. The Employer will consider the existence of any mitigating and/or aggravating circumstances, the nature of the position occupied by the employee at issue, and any other factors bearing upon the incident(s) or act(s) underlying the action. The degree of discipline administered will be proportionate to the offense and will be determined on a case-by-case basis.

### **Section 3**

When the Employer determines that discipline of an employee is appropriate, the Employer may consider informal actions before taking disciplinary action. However, the Employer need not take informal action before taking disciplinary action.

The Employer will take a disciplinary action for such cause as will promote the efficiency of the service.

### **Section 4**

No advance notice is required for the issuance of a written reprimand. However, a written reprimand will state the specific reasons for the action and include a statement in the written reprimand advising the employee of his/her rights to challenge the written reprimand.

Written reprimands will be placed in the employee's Official Personnel Folder for no more than two (2) years from the date of issuance.

### **Section 5**

The Employer will follow these procedures when proposing and deciding to suspend an employee under this Article:

- A. Give the employee advance written notice stating the specific reasons for the proposed suspension. In cases where a disciplinary action is proposed for



reasons of off-duty misconduct, the Employer's written notification also will contain a statement of the nexus between the off-duty misconduct and the efficiency of the service.

- B. Provide the employee with a copy of the information relied upon to support the proposed disciplinary action.
- C. Grant the employee a reasonable amount of duty time, up to four hours, to prepare his/her response to the proposed suspension. The Employer may consider a written request from the employee for additional duty time to prepare his/her response.
- D. Give the employee the opportunity to reply to the notice orally and/or in writing within seven calendar days from the date the employee receives notice of the proposed suspension. The Employer may consider a written request from the employee to extend the reply period.
- E. If the employee elects to make an oral reply, the Deciding Official, or his/her designee, will prepare a summary of the oral reply for the record. The Employer will provide a copy of this summary to the employee and the employee's representative and allow at least one day for comment and/or correction.
- F. Consider the employee's reply.
- G. Give the employee a written decision letter concerning the proposed suspension. Normally, the decision will be made by a management official of a higher level than the official who issued the notice of the proposed suspension. The decision letter will be issued prior to the effective date of the suspension, and will contain the Employer's findings with respect to each specification and charge made against the employee in the notice of proposed action and the dates of the suspension. The Employer also will include a statement in the decision letter advising the employee of the Union's right to challenge the suspension.

#### **Section 6**

Upon request an employee is entitled to representation at any examination by a representative of the Employer in connection with an investigation if the employee reasonably believes that the examination may result in disciplinary action against the employee.

**Section 7**

An employee against whom a disciplinary action has been taken may grieve that action under Article 32 of this Agreement (Grievance Procedure). For actions effected after a second level management decision (suspensions), the grievance procedure may be bypassed and the Union may elect to proceed directly to arbitration in accordance with Article 33.

**Section 8**

If a disciplinary action is canceled, all documentation relative to that action (or proposed action) in the employee's Official Personnel File will be destroyed, with confirmation of destruction sent to the employee. The Employer will not destroy any documentation required to be preserved under laws, rules, or regulations.

**Article 35**  
**ADVERSE ACTIONS**

**Section 1**

For purposes of this Article, adverse actions are suspensions for more than fourteen (14) calendar days, removals (except for actions taken under Article 36 (Unacceptable Performance)), reductions in grade or pay (except for actions taken under Article 36 (Unacceptable Performance)), or furloughs of thirty (30) calendar days or fewer. The provisions of this Article do not apply to the removal of probationary or term employees. The Employer will take an adverse action for such cause as will promote the efficiency of the service.

**Section 2**

The Employer and the Union agree to the concept of progressive discipline. Every situation warranting discipline is different and in some instances, progressive discipline may not be appropriate. In deciding what action may be appropriate, the Employer will give due consideration to the relevance of any mitigating and/or aggravating circumstances, including those listed below. All of these factors may not be relevant in a particular case, and each case must be considered individually. Selection of the appropriate penalty requires a responsible balancing of the factors relevant to the particular case.

1. The nature and seriousness of the offense, and its relation to the employee's duties, position, and responsibilities, including whether the offense was intentional or technical and inadvertent, or was committed maliciously or for gain, or was frequently repeated;
2. The employee's job level and type of employment including fiduciary role, contacts with the public, and prominence of the position;
3. The employee's past disciplinary record;
4. The employee's past work record, including length of service, performance on the job, ability to get along with fellow workers, and dependability;
5. The effect of the offense upon the employee's ability to perform at a satisfactory level and its effect upon the Employer's confidence in the employee's ability to perform assigned duties;
6. Consistency of the penalty with those imposed upon other employees for the same or similar offenses;
7. The notoriety of the offense or its impact upon the reputation of the Employer;
8. The clarity with which the employee was on notice of any rules that were violated in committing the offense, or had been warned about the conduct in question;
9. Potential for the employee's rehabilitation;

10. Mitigating circumstances surrounding the offense such as unusual job tensions, personality problems, mental impairment, harassment or bad faith, malice or provocation on the part of the others involved in the matter; and
11. The adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employee or others.

### **Section 3**

The Employer will follow these procedures when proposing and deciding to take adverse actions against an employee under this Article:

1. Give the employee at least thirty (30) calendar day advance written notice stating the specific reasons for the proposed adverse action. In cases where an adverse action is proposed for reasons of off-duty misconduct, the Employer's written notification also will contain a statement of the nexus between the off-duty misconduct and the efficiency of the service.
2. Provide the employee with a copy of any information relied upon to support the proposed adverse action.
3. Grant the employee a reasonable amount of duty time, normally no more than eight (8) hours, to prepare his/her response to the proposed adverse action. The Employer may consider a written request from the employee for additional duty time to prepare his/her response.
4. Give the employee the opportunity to reply to the notice orally and/or in writing within ten calendar days from the date the employee receives notice of the proposed adverse action. The Employer may consider a written request from the employee to extend the reply period unless the proposed action is being taken under the 'crime provision' (5 CFR §752.404), in which case a request for an extension of the reply period will not be considered.
5. If the employee elects to make an oral reply, the Deciding Official or his/her designee, will prepare a summary of the oral reply for the record. The Employer will provide a copy of this summary to the employee and the employee's representative and allow at least one day for comment and/or correction.
6. Consider the employee's reply.
7. Give the employee a written decision letter concerning the proposed adverse action. Normally, the decision will be made by a management official of a higher level than the official who issued the notice of the proposed adverse action. The decision letter will be issued prior to the effective date of the adverse action, and will contain the Employer's findings with respect to each specification made against the employee in the notice of proposed action. The Employer also will include a statement in the decision letter advising the employee of his/her or the Union's rights to challenge the adverse action.

**Section 4**

Upon request, an employee is entitled to representation at any examination by a representative of the Employer in connection with an investigation if the employee reasonably believes that the examination may result in disciplinary action against the employee.

**Section 5**

An employee against whom an adverse action has been taken may challenge that action in accordance with Article 32 (Grievance Procedure) of this Agreement. The grievance procedure may be bypassed and the Union may elect to proceed directly to arbitration in accordance with Article 33. This would not preclude the employee's option to appeal the adverse action directly to the Merit Systems Protection Board if arbitration is not invoked.

**Section 6**

If an adverse action is canceled, all documentation relative to that action (or proposed action) in the employee's Official Personnel File will be destroyed, with confirmation of destruction sent to the employee. The Employer will not destroy any documentation required to be preserved under laws, rules, or regulations.

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