DEPARTMENT OF DEFENSE
WASHINGTON HEADQUARTERS SERVICES
1155 DEFENSE PENTAGON
WASHINGTON, DC 20301-1155

MAR - 8 2011

MEMORANDUM FOR DEPUTY UNDER SECRETARY OF DEFENSE (PLANS), OFFICE OF DIVERSITY MANAGEMENT AND EQUAL OPPORTUNITY

SUBJECT: Fiscal Year 2010 Annual Report Required by the Notification and Federal Employee Antidiscrimination and Retaliation Act of 202 (No FEAR Act) for Washington Headquarters Services (WHS)

Pursuant to Section 203 of the No FEAR Act, attached are ten copies of the required data and analysis for the following organizations that receive support from WHS:

Office of the Secretary of Defense
Joint Staff
Defense Legal Services Agency
Defense Security Cooperation Agency
Pentagon Force Protection Agency
Defense Business Transformation Agency
Defense Prisoner of War/Missing Personnel Office
Defense Technology Security Administration
DoD Test Resources Management Center
Office of Economic Adjustment
U.S. Court of Appeals for the Armed Forces
Washington Headquarters Services

As requested, an electronic copy of the attached report has been provided to Ms. Marilee Perkal at marilee.perkal@osd.mil. If you have any questions concerning this report, please contact Ms. Beatrice Pacheco, Director, WHS Equal Employment Opportunity Programs Office, at (703) 699-1805 or Beatrice.pacheco@whs.mil.

W. E. Brazis

William E. Brazis
Director

Attachments:
As stated

DEPARTMENT OF DEFENSE
WASHINGTON HEADQUARTERS SERVICES
EQUAL EMPLOYMENT OPPORTUNITY PROGRAMS

FISCAL YEAR 2010
ANNUAL REPORT TO CONGRESS

NOTIFICATION AND FEDERAL EMPLOYEE ANTIDISCRIMINATION AND RETALIATION ACT OF 2002 (NO FEAR ACT), P.L. 107-174

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INTRODUCTION

The Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (commonly known as the "No FEAR Act"), Public Law 107-174, was enacted on May 15, 2002. It was Congress' intent to increase accountability regarding violations of antidiscrimination and whistleblower protection laws. The No FEAR Act directed Federal agencies to post quarterly equal employment opportunity (EEO) complaint data on their public websites, reimburse the Judgment Fund, and submit annual reports to Congress.

In accordance with Section 203 of the No FEAR Act, this Annual Report to Congress includes data and analysis in the following categories:

- Number of employees disciplined for discrimination, retaliation and harassment, and agency policy regarding disciplinary actions for such violations;
- Amount of money reimbursed to the judgment fund, and adjustments needed to comply with reimbursement requirements;
- Final year-end statistical data posted; and
- Examination of trends, causal analysis, experiential knowledge, and actions (taken or planned) to improve complaint or civil rights programs.

NOTE: This report is prepared by Washington Headquarters Services/Equal Employment Opportunity Programs (EEOP) Office. The report does not contain data for components WHS previously served; and that data is reported by the respective components. Should questions or concerns arise, please contact EEOP at 703-699-1805.

EXECUTIVE SUMMARY

Washington Headquarters Services (WHS) was established as a Department of Defense (DoD) Field Activity on October 1, 1977, as part of a DoD headquarters streamlining initiative. WHS personnel contribute to the mission of our Defense customers by managing DoD-wide programs and operations for the Pentagon Reservation and DoD-leased facilities in the National Capital Region. WHS is organizationally aligned under the Director of Administration and Management for the Office of the Secretary of Defense (OSD).

The WHS/Equal Employment Opportunity Programs (EEOP) Director is authorized to employ a team of seventeen (including the Director) personnel to carry out its mission: one (1) Deputy Director/Complaints Manger; one (1) Affirmative Employment Program (AEP) Manager; (5) EEO Specialists; one (1) Military Equal Opportunity Staff Advisor; one (1) Administrative Officer; and seven (7) contractors.

In fiscal year (FY) 2010, WHS supported a total workforce of 5,839 civilian personnel within OSD, Joint Staff, Defense Agencies, and DoD Field Activities serviced by WHS[1]. The specific organizations that are included in the scope of this report may be found in the serviced component chart at Appendix A.

The following data highlights No FEAR Act averages per year for the timeframe FY05 to FY10:

- 69 total formal complaints on hand, and 31 new formal complaints
- 17 complaints pending investigation for 168 days
- 19 complaints pending a hearing for 577 days
- 6 complaints pending a final agency decision for 368 days

The following cites notable metrics from FY09 to FY10, respectively:

- 33 percent increase in number of complaints filed – 30 to 40
- 125 percent increase in basis of disability – 4 to 9
- 45 percent increase in basis of reprisal – 11 to 16
- 100 percent increase in basis of age – 7 to 14
- 37 percent increase in complaints pending investigation – 19 to 26
- 26 percent decrease in processing time for complaints pending investigation- 220 to 162
- 31 percent increase in processing time for complaints pending hearings – 588 to 769
- 6 percent decrease in processing time for complaints pending final actions – 310 to 292

[1] Components included in this report include: Office of the Secretary of Defense (OSD); Joint Staff; DoD Test Resources Management Center (DTRMC); Defense Legal Services Agency (DLSA); Defense Security Cooperation Agency (DSCA); Office of Economic Adjustment (OEA); Pentagon Force Protection Agency (PFPA); U.S. Court of Appeals for the Armed Forces (USCAAF); Defense Prisoner of War/Missing Personnel Office (DPMO); Defense Technology Security Administration (DTSA); DoD Counterintelligence Field Activity, Defense Business Transformation Agency (BTA); TRICARE Management Activity (TMA); Deputy Chief Management Officer (DCMO); and Washington Headquarters Services (WHS).

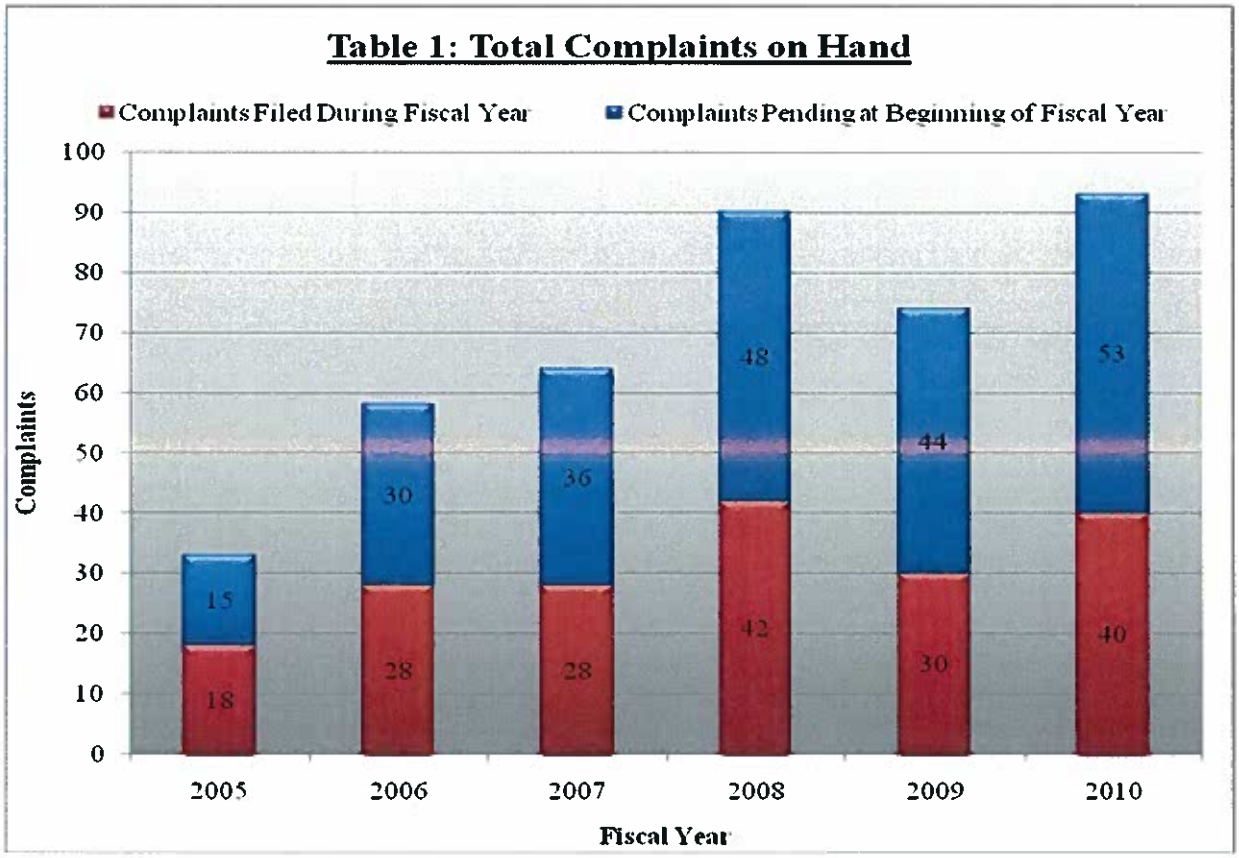
FORMAL EEO COMPLAINT DATA

Washington Headquarters Services timely posted, and prominently displayed, a link to the No FEAR Act data on its main website (www.whs.mil) not later than thirty (30) days after the end of each quarter (from FY05 to FY10). Final year-end data for FY10 is found at Appendix B.

Complaint Processing

In FY10, 39 individuals filed 40 formal complaints. The number of complaints filed from FY09 to FY10 increased by 33 percent. The total number of cases on hand at the beginning of the fiscal year (carried over from the previous year) increased by 20 percent compared to FY09.

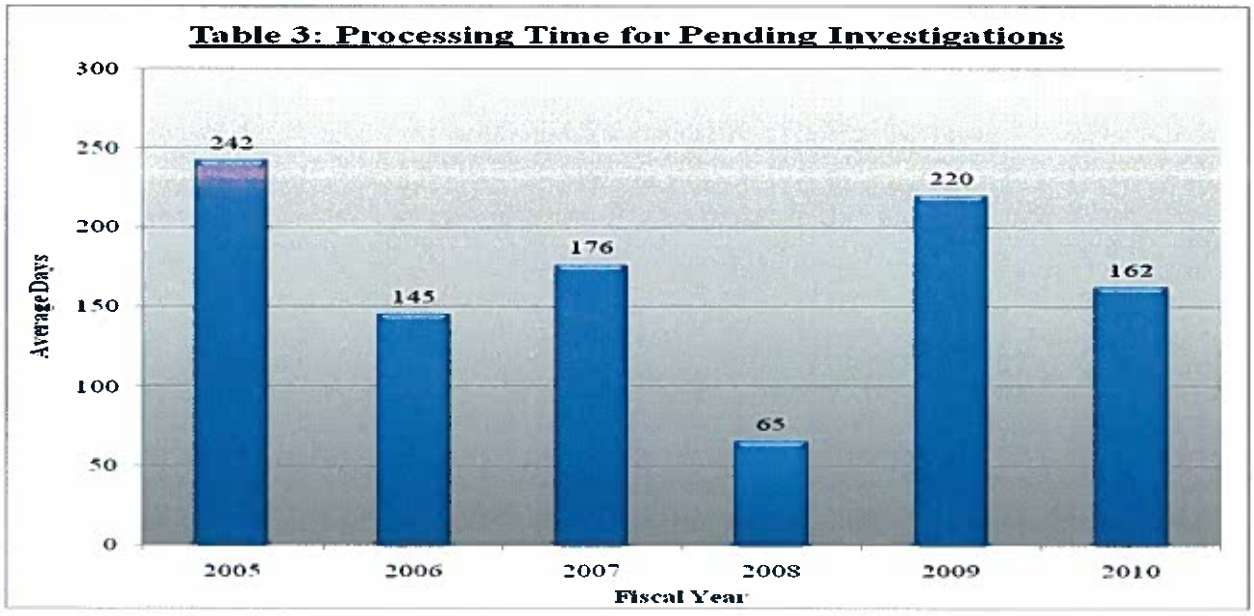
From FY05 to FY10, the average number of formal complaints on hand was 69 ranging from 33 in FY05 to 93 in FY10 (see Table 1 below). Complaints pending at the beginning of the fiscal year averaged 38, ranging from 15 in FY05 to 53 in FY10. The number of new complaints filed averaged 31 cases, ranging from 18 in FY05 to 40 in FY 10.



Investigations

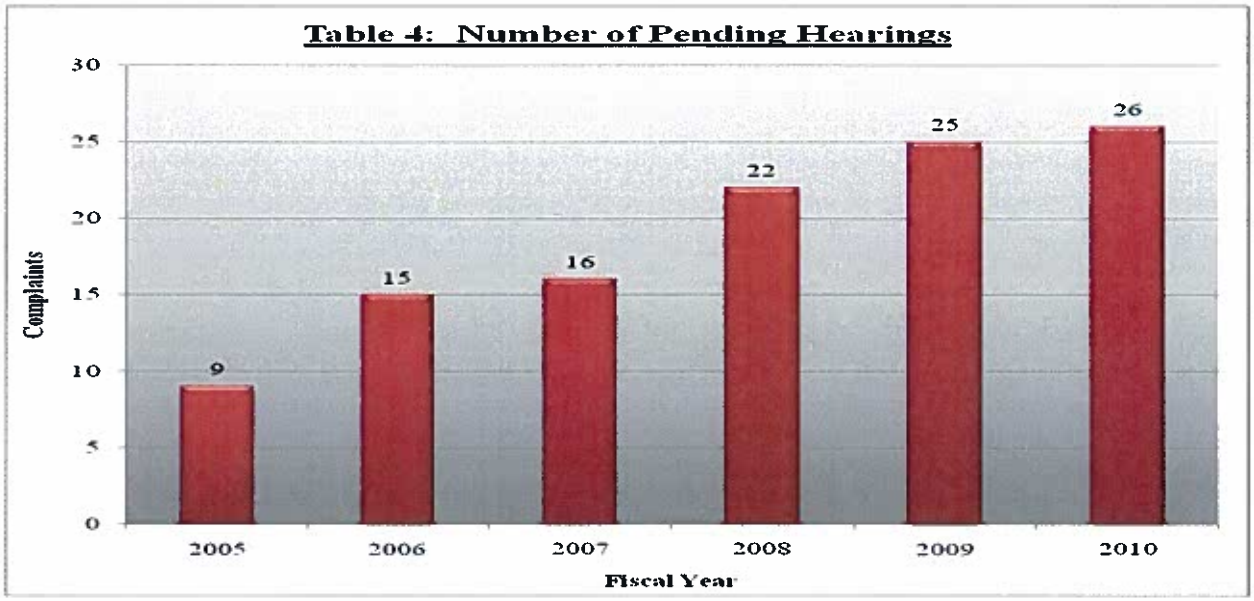
From FY05 to FY10, there was an average of 17 formal complaints pending an investigation for an average of 168 days. The number of investigations ranged from 14 cases in FY05 and FY06 to 26 cases in FY10 (see Table 2 below). From FY09 to FY10, there was a 37 percent increase in the number of cases pending investigation.

Investigation processing timeframe ranged from 65 days in FY08 to 242 days in FY05 (see Table 3 below). From FY09 to FY10, there was a 26 percent decrease in processing time.

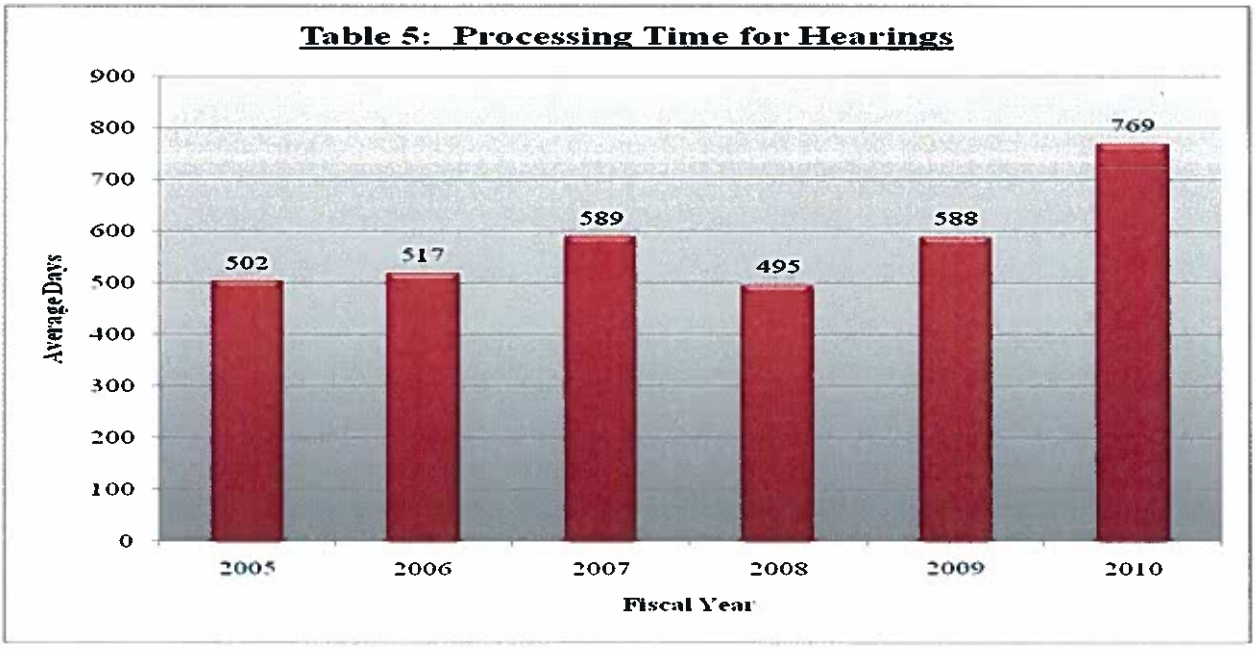


Hearings

From FY05 to FY10, there was an average of 19 formal complaints pending a hearing at the Equal Employment Opportunity Commission (EEOC) for an average of 577 days (see Table 4 below). The number of pending hearings ranged from 9 cases in FY05 to 26 cases in FY10. There was a 4 percent increase in cases pending a hearing from FY09 to FY10 (25 to 26, respectively).

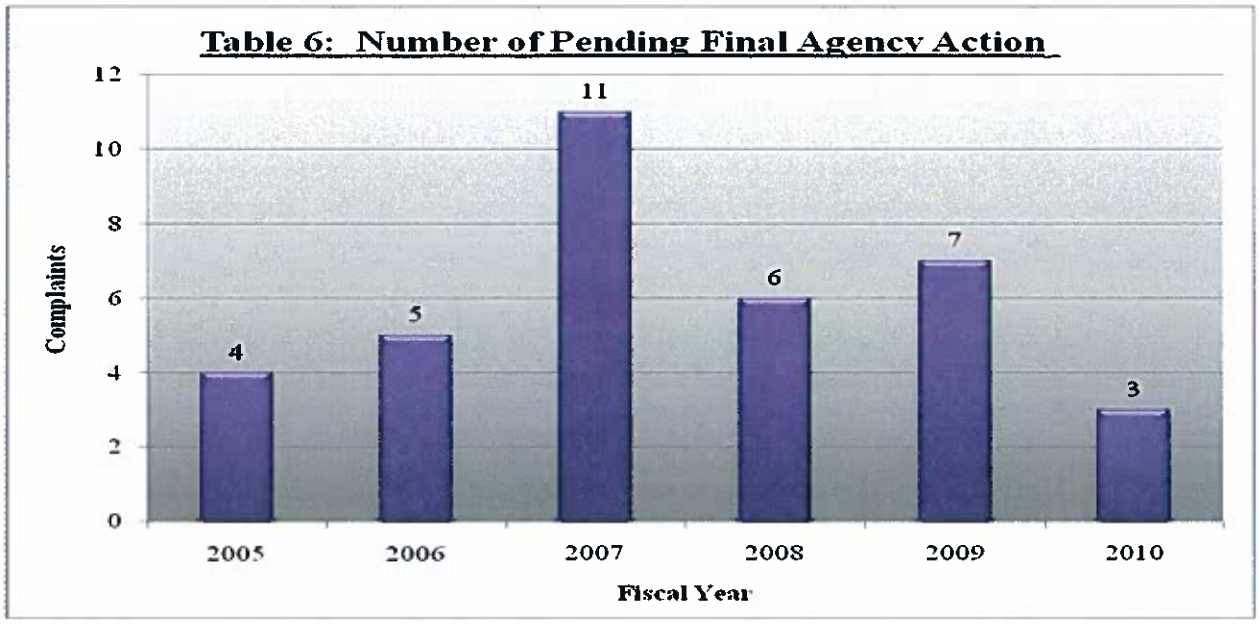


The average processing timeframe for cases pending hearings ranged from 495 in FY08 days to 769 days in FY10. The processing time for cases pending a hearing increased 31 percent from FY09 (588) to FY10 (769).

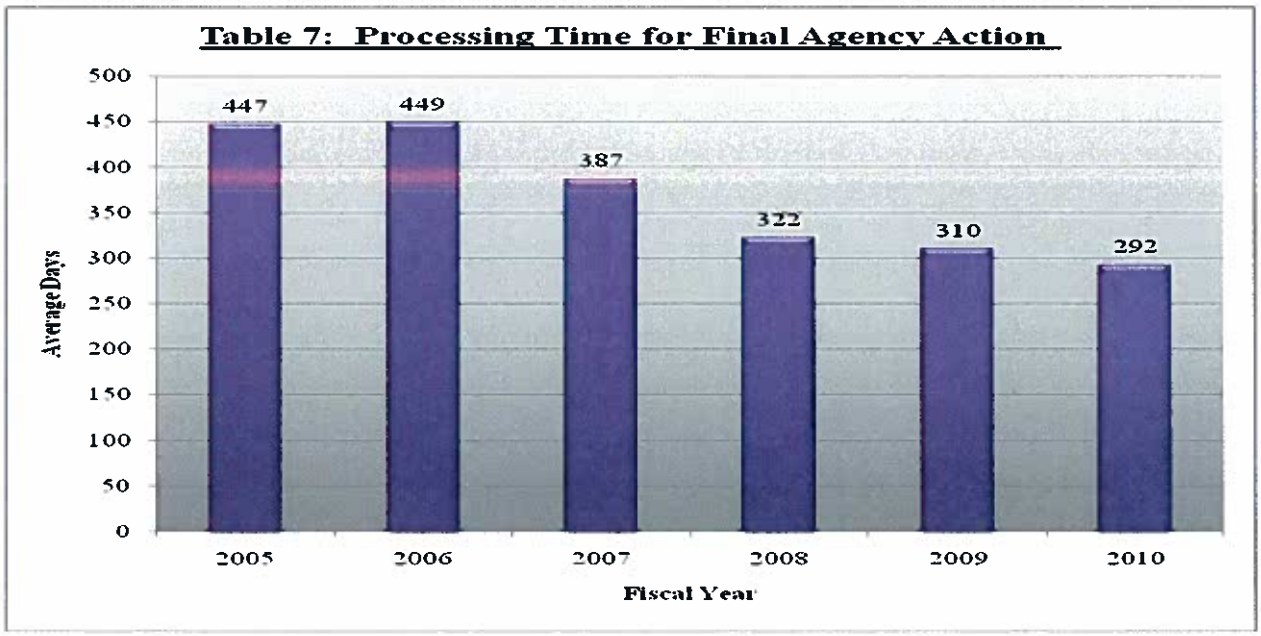


Final Agency Actions

From FY05 to FY10, there was an average of 6 formal complaints pending final agency action. The number of pending final actions ranged from 3 in FY10 to 11 cases in FY07 (see Table 6 below).

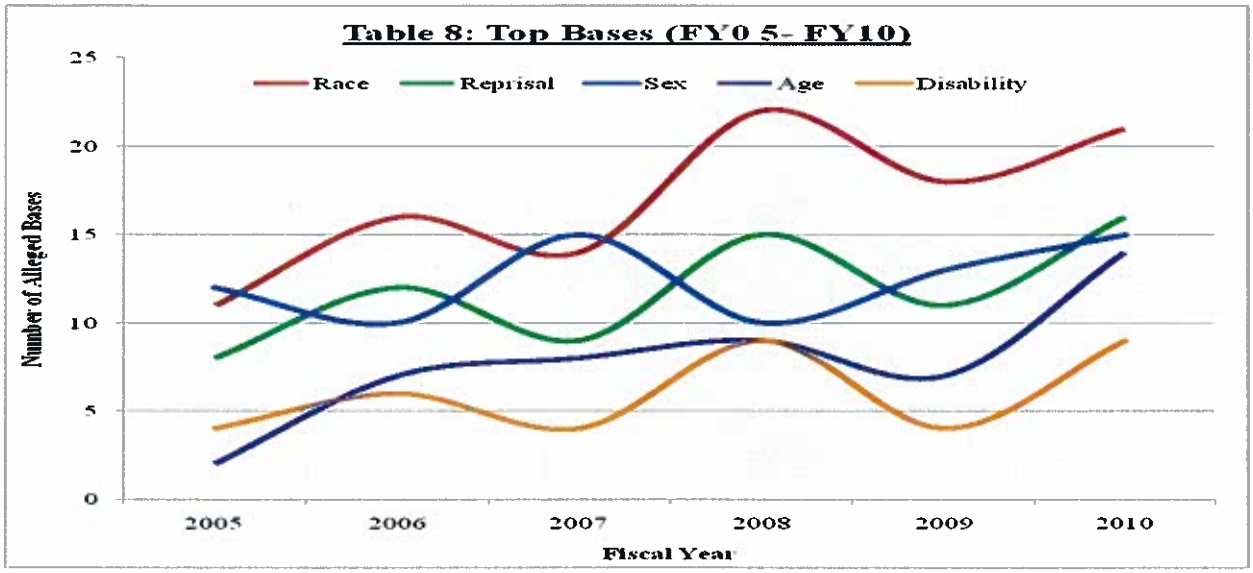


The processing time for cases pending a final agency action decreased 6 percent from FY09 (310) to FY10 (292).



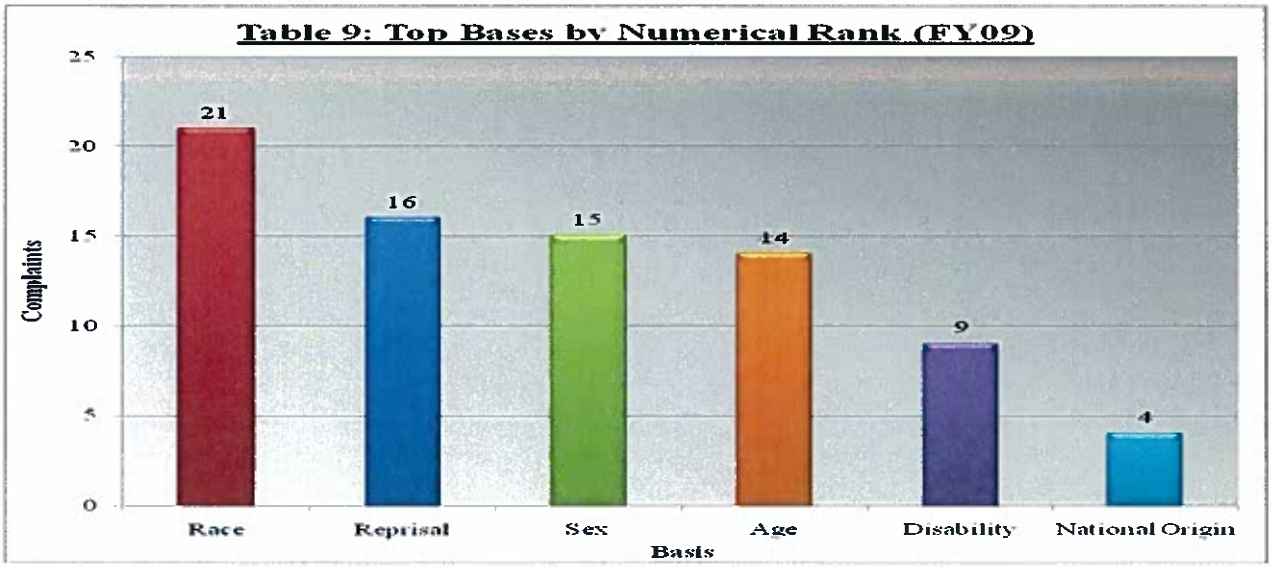
Bases

FY05 to FY10, complainants identified an average of 75 total bases each year for top five bases. The total number of alleged bases ranged between 37 in FY05 to 75 in FY10. Historically, the most common bases were: 1) "race" identified on average 17 complaints per year; 2) "sex" alleged on average 13 times each year; and 3) "reprisal" raised approximately 12 times per year. See Tables 8 and 9 below.



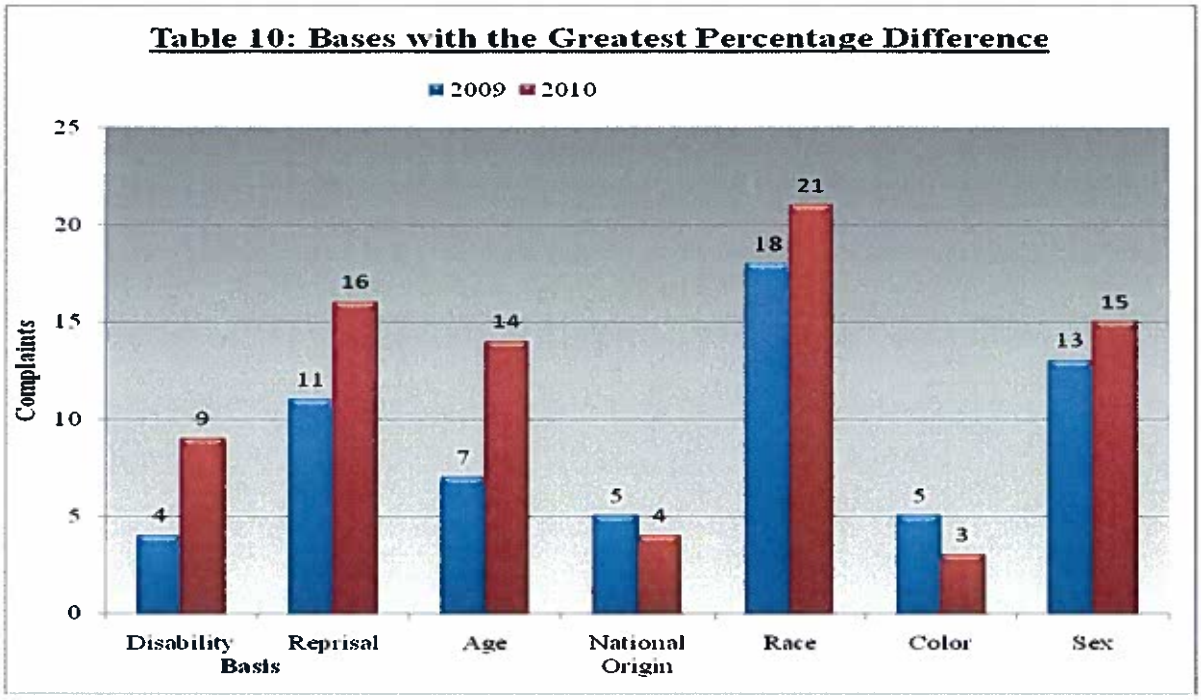
The following lists the top three alleged bases in FY10 according to *numerical rank* compared to FY09:

- 125 percent increase in basis of disability – 4 to 9
- 45 percent increase in basis of reprisal – 11 to 16
- 100 percent increase in basis of age – 7 to 14



The following lists the top three alleged bases in FY10 experiencing the highest *percentage change* compared to FY09:

1. Disability – from 4 to 9 (125 percent increase)
2. Age – from 7 to 14 (100 percent increase)
3. Reprisal – from 11 to 16 (45 percent decrease)



Final Agency Decision (FAD) Closures

On average, WHS processed 13 FADs without an EEOC Administrative Judge (AJ) decision between FY05 and FY10, ranging from 3 in FY09 to 12 in FY10. There were 17 FAD closures in FY10; 12 without hearings and 5 with hearings before an AJ. WHS had a yearly average of 6 FAD closures with an AJ decision.

Findings of Discrimination

There were no findings of discrimination from FY05 through FY10. From FY05 to FY10, there were 115 FAD closures issued within WHS' serviced components; 77 were made without an AJ decision, and 38 were made with an AJ decision.

DISCIPLINE

This section pertains to the number of employees disciplined for discrimination, retaliation, harassment, or any other infraction of law cited in Title II, Section 203(a)(4) of the No FEAR Act. There were no disciplinary actions taken in FY10 because there were no findings of discrimination.

Washington Headquarters Services, Administrative Instruction No. 8, Disciplinary and Adverse Actions, outlines the agency's policy on this subject (see Appendix C). This policy was revised in May 2008, to include violations to No FEAR Act-related statutes in the Table of Offenses and Penalties. WHS' policy requires consideration of the:

- Employee's obligation to be aware of pertinent rules or regulations;
- Significance or frequency of violations; and
- Degree of adverse effect on production, morale, maintenance of discipline, external relationships, or reputation of the agency.

In addition,

- There may be no discrimination against an employee for political beliefs (except as required by law under Federal Personnel Manual 733), marital status, physical disability, sex, race, religion, color, national origin, or age.

JUDGMENT FUND

The Department of the Treasury, Financial Management Service (FMS), manages the Judgment Fund, which is available for court judgments and Justice Department compromise settlements of actual or imminent lawsuits against the Government. The No FEAR Act requires federal agencies to reimburse the Judgment Fund for personnel discrimination payments made in accordance with 28 United States Code §2414, 2517, 2672, or 2677.

An agency is considered non-compliant if it fails to reimburse or make timely arrangements for reimbursement. As required by 5 Code of Federal Regulations §724.105, the FMS posts an annual non-compliance report on its website (www.fms.treas.gov/judgefund/).

For FY10, there were no court judgments against WHS or instances where contingent liability was documented for pending EEO litigation in which the Department of Justice determined that the outcome for loss was probable and estimable. WHS had no cases that required monetary reimbursement to the Judgment Fund during the reporting period.

TRAINING

Training requirements were first anticipated after a February 2005 Office of Personnel Management (OPM) Proposed Rule. At that time, WHS EEOP developed training materials that were compliant with the Act's requirements. Specifically, the course addressed antidiscrimination and whistleblower protection laws, agency policies, and definitions of prohibited conduct (particularly, discrimination, reprisal and whistleblower protections). It also covered proactive measures to achieve a diverse workforce, improve communication, and manage conflict. Lastly, the course provided rights, responsibilities, and contact information for both informal and formal avenues of redress available to all personnel.

The official WHS No FEAR Act Training was launched July 11, 2007; it was highly successful. The final training module tested knowledge and application of course material by randomly pulling from a question bank. Personnel were required to answer eight (8) of ten (10) questions correctly to pass and receive credit for the course. This electronic delivery system secured agency accountability for meeting educational goals and tracking.

The WHS No FEAR Act Training is mandatory for civilian personnel (including Senior Executives) and military personnel (supervising civilians) assigned to WHS and serviced components. WHS currently services 5,839 civilian employees. Our detailed tracking reports annotate the number of personnel trained within each serviced component, and we provide the training to new employees during our bi-weekly new civilian employee orientation program. This program ensures new employees will complete the 'No FEAR Act' training within the required 90-day timeframe.

To ensure quality control, WHS developed a voluntary online survey tool, the WHS Interactive Customer Evaluation (ICE). This tool has been available to all personnel since deployment of the system in FY07.

During FY09, WHS updated the No FEAR Act Training program; the updates were implemented in FY10. This updated training is available on the WHS Learning Management System (https://lms.whs.mil) a web-based system that tracks organizational and personal learning needs and requests. Completion of the training will be recorded in an employee's learning history and may be verified by reports generated from the system.

ACRONYMS AND ABBREVIATIONS

AJ	Administrative Judge
DoD	Department of Defense
EEO	Equal Employment Opportunity
EEOP	Equal Employment Opportunity Programs
FAD	Final Agency Decision
FY	Fiscal Year
No FEAR Act	Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002
OPM	Office of Personnel Management
OSD	Office of the Secretary of Defense
WHS	Washington Headquarters Services