



**UNITED STATES
DEPARTMENT OF TRANSPORTATION**

**Fiscal Year 2016 Annual Report to Congress on the Notification
and Federal Employee Antidiscrimination and Retaliation Act of 2002**



**The United States Department of Transportation
Office of the Secretary
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1. Purpose of Report

The Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (No FEAR Act), Public Law 107-174, 5 U.S.C. § 2301, *et seq.*, requires each federal agency to submit an annual report to Congress no later than 180 days after the end of each fiscal year. Based on this requirement, the Fiscal Year (FY) 2016 report is due no later than March 29, 2017. Representatives from the Departmental Office of Civil Rights, the Departmental Office of Human Resource Management, the Office of the Assistant Secretary for Budget and Programs, and the Office of the Assistant Secretary for Administration assisted in the preparation of this report, in collaboration with the U.S. Department of Transportation (DOT) Operating Administrations (OAs): the Federal Aviation Administration (FAA); the Federal Highway Administration (FHWA); the Federal Motor Carrier Safety Administration (FMCSA); the Federal Railroad Administration (FRA); the Federal Transit Administration (FTA); the Maritime Administration (MARAD); the National Highway Traffic Safety Administration (NHTSA); the Pipeline and Hazardous Materials Safety Administration (PHMSA); and the St. Lawrence Seaway Development Corporation (SLSDC).

In 2002, Congress passed the No FEAR Act to hold federal agencies financially accountable for violations of Federal antidiscrimination and whistleblower protection laws. Prior to the No FEAR Act, monetary judgments against federal agencies were paid from the U.S. Department of Justice's Judgment Fund. Section 201 of the No FEAR Act mandates that Federal agencies reimburse the Judgment Fund for all judgments, awards, and settlements paid to a complainant as the result of a violation of antidiscrimination or whistleblower protection laws.

Additionally, the No FEAR Act requires public notice of relevant statistics on agency websites, including the number of complaints filed, pending, and resolved and other items of information. These accountability measures help create an environment that promotes less discrimination and fewer complaints.

The annual report must include:

- The number of Federal court cases, pending or resolved, arising under the antidiscrimination laws and authorities included in the No FEAR Act, and the status and disposition of the cases;
- Judgment Fund reimbursements, adjustments to agency budgets to meet reimbursement requirements, and the amount of reimbursement required for attorneys' fees where such fees have been separately designated;
- 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 federal sector equal employment opportunity (EEO) complaint activity;
- A detailed description of the agency's policy for taking disciplinary actions against employees for conduct inconsistent with the antidiscrimination laws referenced by the No FEAR Act;

- An analysis of the information provided in this report, including an examination of trends, causal analysis, practical knowledge gained, and actions planned or taken to improve compliance; and
- The agency's plan to train employees on their rights under the No FEAR Act.

Pursuant to statutory requirements, DOT provides the No FEAR Act annual report to the following members of the 115th Congress:

The Honorable Michael R. Pence
President of the Senate

The Honorable Paul D. Ryan
Speaker of the House of Representatives

The Honorable Orrin G. Hatch
President Pro Tempore of the Senate

The Honorable Rodney P. Frelinghuysen
Chairman, House Committee on
Appropriations

The Honorable Thad Cochran
Chairman, Senate Committee on
Appropriations

The Honorable Nita M. Lowey
Ranking Member, House Committee on
Appropriations

The Honorable Patrick J. Leahy
Vice Chairman, Senate Committee on
Appropriations

The Honorable Greg P. Walden
Chairman, House Committee on Energy and
Commerce

The Honorable Mike D. Crapo
Chairman, Senate Committee on Banking,
Housing, and Urban Affairs

The Honorable Frank J. Pallone, Jr.
Ranking Member, House Committee on
Energy and Commerce

The Honorable Sherrod C. Brown
Ranking Member, Senate Committee on
Banking, Housing, and Urban Affairs

The Honorable Jason E. Chaffetz
Chairman, House Committee on Oversight and
Government Reform

The Honorable John R. Thune
Chairman, Senate Committee on Commerce,
Science, and Transportation

The Honorable Elijah E. Cummings
Ranking Member, House Committee on
Oversight and Government Reform

The Honorable Bill Nelson
Ranking Member, Senate Committee on
Commerce, Science, and Transportation

The Honorable Lamar Smith
Chairman, House Committee on Science,
Space, and Technology

The Honorable John A. Barrasso
Chairman, Senate Committee on Environment
and Public Works

The Honorable Eddie Bernice Johnson
Ranking Member, House Committee on
Science, Space, and Technology

The Honorable Tom R. Carper
Ranking Member, Senate Committee on

The Honorable Bill Shuster
Chairman, House Committee on

Environment and Public Works

The Honorable Ronald H. Johnson
Chairman, Senate Committee on Homeland
Security and Governmental Affairs

The Honorable Claire C. McCaskill
Ranking Member, Senate Committee on
Homeland Security and Governmental Affairs

Transportation and Infrastructure

The Honorable Peter A. DeFazio
Ranking Member, House Committee on
Transportation and Infrastructure

Pursuant to regulatory requirements, DOT also provides this report to the following members of the Executive Branch:

- The Honorable Victoria A. Lipnic, Acting Chair, U.S. Equal Employment Opportunity Commission
- The Honorable Jefferson B. Sessions, Attorney General, U.S. Department of Justice
- The Honorable Kathleen McGettigan, Acting Director, U.S. Office of Personnel Management

2. Background

The DOT mission is to serve the United States by ensuring a fast, safe, efficient, accessible, and convenient transportation system that meets our country's vital national interests and enhances the quality of life for the American people, today and into the future. To this end, DOT seeks to achieve exemplary EEO programs, and to lead as a model agency by eliminating the practice or tolerance of any form of discrimination or retaliation within the workplace.

3. Results and Data

3.1 EEO Complaint Activity in Federal Court and Disposition

For FY 2016, DOT was a party to 25 Federal court cases filed under the various laws covered by the No FEAR Act. Of these cases, five were resolved or settled at the time of reporting. One case was dismissed, one case was resolved by summary judgment in favor of the agency, and three cases were settled. At the time of reporting, twenty cases are still pending.

The number of pending cases decreased from 22 in FY 2015 to 20 in FY 2016. For both fiscal years, the most frequently stated allegation was retaliation under Title VII of the Civil Rights Act of 1964 (Title VII).

The breakdown of allegations in the 20 cases pending in Federal court is:¹

- 16 cases concerned Title VII (42 U.S.C. § 2000e-16);
- 5 cases concerned the Age Discrimination in Employment Act (ADEA) of 1967 (29 U.S.C. §§ 631, 633 (a));
- 3 cases concerned the Rehabilitation Act of 1973 (Rehabilitation Act) (29 U.S.C. § 791);
- 1 case concerned the Whistleblower Protection Act of 1989 (5 U.S.C. § 1201); and
- 13 cases involved allegations of retaliation.

The breakdown of the nature of cases resolved in Federal court:

- 5 cases concerned Title VII (42 U.S.C. § 2000e-16); and
- 3 cases involved allegations of retaliation.

3.2 Judgment Fund Reimbursements and Budget Adjustments

DOT reimbursed a total of \$307,000 to the Judgement Fund for three Federal court cases during FY 2016. This amount represents a 36.4 percent increase from FY 2015 reimbursements (\$225,000) for three Federal court cases. Reimbursements for each of the Federal court cases in FY 2016 were: \$7,000, \$100,000, and \$200,000, respectively.

3.3 Number of Employees Disciplined and Discipline Policy

During FY 2016, no employee was subject to disciplinary action in connection with a Federal court case. DOT did, however, take disciplinary action against five employees for violating DOT policies concerning discrimination, retaliation, harassment, or other infractions of Federal antidiscrimination and whistleblower protection laws. Overall, DOT issued two letters of reprimand, suspended two employees, and removed one employee during the probationary period.

Section 203 of the No FEAR Act requires the Annual Report to Congress to include a detailed description of the agencies' disciplinary policies related to laws covered by the No FEAR Act. Agencies must specify disciplinary policies for Federal employees who discriminate against any individual in violation of any of the laws covered by the No FEAR Act, or who commit any other prohibited personnel practice that was revealed in the investigation of a complaint claiming a violation of the Federal antidiscrimination and whistleblowing laws.

Five Secretarial Policy Statements reinforce DOT's commitment to establishing a workplace free from discrimination, harassment, and/or retaliation. The Policy Statements are issued annually and were most recently issued in March 2017. These policies advise employees regarding their rights and responsibilities and inform them that they will be subject to

¹ More than one type of allegation can be made in a single case.

disciplinary action for engaging in discriminatory conduct. In effect, all DOT employees are accountable for their actions according to the Policy Statements, which include:

- The *Equal Employment Opportunity Policy Statement* emphasizing DOT's determination to subject employees to appropriate disciplinary action for engaging in unlawful discriminatory practices or allowing discriminatory practices to exist;
- The *Policy Statement on the Prevention of Harassment* communicating DOT's zero tolerance for harassment against employees on the basis of race, color, sex (gender, pregnancy, sexual harassment, sexual orientation, gender identity, or transgender status), national origin, religion, age (40 and over), disability (mental or physical), equal pay/compensation, genetic information, retaliation, or other forms of protected activity;
- The *Policy Statement on the Implementation of the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (No FEAR Act)*, Pub. L. No. 107-174 communicating DOT's commitment to implementation of the No FEAR Act;
- The *Policy Statement on Whistleblowing* communicating DOT's commitment to protecting employees and job applicants from interference or retaliation when making protected disclosures; and
- The *Policy Statement on Employment and Advancement of Persons with Disabilities* communicating DOT's strong commitment to be a model employer for persons with disabilities, especially persons with targeted disabilities, by encouraging the advancement of employment opportunities and improving the work environment by identifying and removing barriers to hiring, retaining, and promoting those qualified, and by prohibiting discrimination.

3.4 Summary Data

Table 1: Summary of Federal Court Cases	
(The U.S. DOT FY 2016 No FEAR Act Annual Report required by Section 203 of the No FEAR Act and 5 C.F.R. Part 724).	
Total number of pending or resolved Federal court cases, arising under each of the respective provisions of law covered by 724.302 (a) (1)	25
A. Cases Pending	20
B. Cases Resolved	5
The status or disposition of resolved cases	
Dismissed	1
Settled	3
Summary Judgment for Agency	1
Summary Judgment for Complainant	0
Withdrawn	0
Closed	0
Total resolved cases	5
Funds required to be reimbursed by DOT under Section 201 in connection with each case	
Title VII	\$207,000
Title VII, Retaliation	\$100,000
Other	\$0
Total Reimbursement to the Judgment Fund	\$307,000
Number of employees disciplined for discrimination, retaliation, harassment, or any other provision of the law referred: There were no disciplinary actions taken against any employee in connection with a Federal court case during FY 2016.	0
The number of employees disciplined because of violating Departmental policy was five: Two employees received a letter of reprimand; one employee received a 14-day suspension; one employee received a two-day suspension; and one employee was terminated during the probationary period.	5

3.5 Analysis of Complaints

There was a 15.52 percent decrease in complaints and a 12.07 percent decrease in complainants from FY 2015 to FY 2016. Specifically, 284 complainants filed a total of 294 formal EEO administrative complaints with DOT. This represented a decrease of 39 complainants and 54 complaints from FY 2015. The ratio of complaints (294) to the total DOT workforce (55,414) is 0.53 percent; the government-wide average is 1.1 percent (per the [Equal Employment Opportunity Commission \(EEOC\) Fiscal Year 2014 Annual Report on the Federal Workforce Part I](#)).

3.5.1. Trends and Analysis

From FY 2011 to FY 2016, the number of complaints filed and the number of complainants continues to decline from year to year, with the total number of complaints filed decreasing by nearly five percent and the number of complainants declining by three percent over this period.

Retaliation has consistently represented the most common basis for complaints in the five-year period, with an average of 188 such complaints filed on an annual basis between FY 2011 and FY 2016. Race-based (141) and sex-based (134) complaints were the next highest reported bases for complaints, on average, during this same period. There has been, however, a notable decrease in the number of complaints filed for each of these bases in FY 2016, compared to FY 2011 figures. Race-based complaints in FY 2016 declined by nearly 30 percent compared to FY 2011, while retaliation and sex-based complaints decreased by 19 percent and 10 percent, respectively.

The most frequently raised type of adverse action is harassment (non-sexual), with an average of 137 complaints filed each year between FY 2011 and FY 2016. DOT has also observed the number of complaints of this type increase by nearly 16 percent in FY 2016 when compared to FY 2011 figures.

Between FY 2011 and FY 2016, the annual average time for DOT's processing of formal complaints in the investigation stage is 142.5 days. DOT's average complaint investigation time has fallen within the 180-day requirement every year since FY 2009.

The total number of Federal court cases decreased between FY 2011 and FY 2013, and has since remained steady between FY 2014 and FY 2016. There were a total of 60 cases in FY 2011, 51 in FY 2012, 44 in FY 2013, 33 in FY 2014, 33 in FY 2015, and 25 in FY 2016.

3.6 Findings of Discrimination

There were four findings of discrimination rendered in FY 2016, all following a hearing before the EEOC. The bases of discrimination for the four findings were race, reprisal, sex, and disability. The findings of discrimination were issued pertaining to allegations of

disciplinary action (other), non-sexual harassment, reasonable accommodation, and promotion.

There were three findings of discrimination rendered in FY 2015, all following a hearing before the EEOC. The bases for the three findings were race, color, reprisal, age, and disability. The findings of discrimination were issued pertaining to allegations of reprimand, non-sexual harassment, promotion/non-selection, reasonable accommodation, and termination.

A comparison of the recent two years of data shows a 33 percent increase in total findings of discrimination between FY 2015 and FY 2016.

4. Accomplishments

4.1 Actions

As shown below, DOT, guided by its senior leadership and through the Departmental Office of Civil Rights (DOCR), the Departmental Office of Human Resource Management (DOHRM), and other civil rights programs, works to reduce or eliminate discrimination, harassment, and retaliation in the workplace.

DOT included performance objectives related to disability hiring and employee engagement of diverse groups in its strategic plan for Fiscal Years 2014-18.

DOCR continued to partner closely with various Human Resources (HR) subject matter experts and participate in HR working groups to share and acquire knowledge that may identify and remove barriers to equity and inclusion concerns.

DOT has continued work on a policy to establish a framework for addressing allegations of harassment, and provide authority to the OAs to establish their own procedures. Throughout FY 2016, DOCR, DOHRM, and other stakeholders worked to finalize a draft. DOHRM and DOCR expect to finalize the policy in FY 2017.

In FY 2016, the FAA Office of Civil Rights-National Complaints Services team also continued, in FY 2016, to maintain International Organization Standardization Quality Management System (QMS) standards for National Intake and EEO Counseling Services. The QMS ensures continuous EEO Complaint Process improvements by evaluating procedures and analyzing customer feedback.

In FY 2016, FAA's Office of Civil Rights-National Complaints Services, in support of the Agency's No FEAR efforts and zero tolerance policy for discrimination, conducted its first EEO Complaint Information Exchange Forum. EEO executives and practitioners from Federal agencies (FAA, DOT, Department of Energy, Department of Justice, Department of Homeland Security, Equal Employment Opportunity Commission, General Services Administration, Transportation Security Administration, and Department of Agriculture) across the District of Columbia, Maryland, Virginia, New Jersey, and Pennsylvania,

participated in a one-day round-table discussion in which they shared their EEO programs' "best practices to continue efforts to building a Model EEO Program" under Title VII and the Rehabilitation Act.

In the previous fiscal year, FAA established Reasonable Accommodation Teams (REACT), trained in the Reasonable Accommodation process. These teams are comprised of civil rights, management, legal, medical, and labor relations professionals. The training helped REACT make effective decisions regarding reasonable accommodation requests throughout FAA. In FY 2016, for example, the FAA Eastern Service Area processed 22 REACT requests on behalf of employees requesting reasonable accommodations.

FAA conducted two Organization Climate Surveys for over 500 FAA employees, and it received and reviewed input and feedback on EEO and Organizational Effectiveness factors. Based on that information, recommendations were provided for promoting the efficiency and effectiveness of the FAA's EEO programs.

As part of the FY 2016 Business Plan, FAA's Office of Civil Rights completed a number of audits across service areas. Pursuant to EEOC's MD-715, which seeks to identify both potential barriers to equal opportunity and self-audit solutions to them, the Eastern Service Area conducted three such audits during FY 2016.

In the Western Service area, the Transport Air Directorate participated in an equal opportunity audit, with all six of its sub-organizations (417 employees) participating in the Defense Equal Opportunity Management Institute –Federal Organizational Climate Survey. Participation was at a record high and provided a confidence factor of 96 percent (277 employees), demonstrating employees' beliefs that the survey's results reflect the sentiments of that organization. This high confidence factor was achieved by the strong relationship-building and transparency promoted by FAA's Office of Civil Rights with two unions: Professional Aviation Safety Specialists and National Air Traffic Controllers Association-Multi Unit. Together, they developed the Locally Developed Questions Survey and presented it to employees in a unified manner during two all-hands meetings.

FAA's Office of Civil Rights also continued its efforts in the utilization of Conflict Coaching. The Conflict Coaching Program is a one-on-one program designed to help participants improve their Conflict Management skills. The goal of the program is to provide participants with an avenue to redress an issue in the workplace without having to participate in a formal complaint process. Program utilization increased by 93 percent in FY 2016 and 82.4 percent of users said they would utilize Conflict Coaching again. When asked whether their issue was resolved and whether the Conflict Coaching Process provided them with an effective and efficient alternative, 58.8 percent of the participants indicated that the program provided them with a means to successfully and efficiently resolve the conflict. This resulted in a direct savings to the FAA of \$183,490, due to measurable reductions in the utilization of the formal complaint process in favor of Conflict Coaching. Additionally, the Conflict Coaching Program invested in building its library of resources by procuring a unique six-stage interactive lesson plan offered over six weeks. The sessions are two hours per week

and are provided using the “Go to Training” platform. All sessions are recorded, allowing on-demand access to coaches.

During FY 2016, MARAD faced challenges relating to allegations of workplace discrimination and harassment based on race, sex, and disability. Management took proactive steps to improve the work environment by promoting civility and respect in the workplace and by identifying management improvements or changes that could promote a fair and discrimination-free workplace. The MARAD Administrator also clearly defined and communicated the importance of civil rights programs as a whole, including education, training, and the importance of confidentiality in the EEO program.

MARAD identified that management inquiries into allegations of harassment and discrimination can have positive benefits for the organization, and can offer opportunities to correct cultural issues that create an environment perceived by employees to be lacking in fairness. MARAD conducted two management inquiries under its Anti-Harassment Management Order in response to complaints of workplace harassment and discrimination.

During FY 2016, FMCSA managers continued to participate in mediation whenever it was requested by aggrieved individuals. Although not a requirement, each executive understands that the Administrator expects them to participate in mediation whenever aggrieved individuals make the request because there is a greater chance to resolve the complaint when the parties engage in mediation early in the process. This is a practice that will be continued into the next fiscal year.

During FY 2016, the St. Lawrence Seaway Development Corporation (SLSDC) worked to ensure that all employees were able to work in a harassment and discrimination-free workplace. To accomplish this, SLSDC updated its anti-discrimination workplace policies and posted them in high-traffic areas at all facilities. These actions raised awareness of non-discriminatory expectations in the workplace and grievance systems for addressing conduct that does not align with federal policy.

4.2 Awareness

The FAA Office of Civil Rights Western Service Area hosted its 5th Annual Employee Association and Coalition Fair. This event, coordinated by FAA and employee resource groups, was designed to raise awareness among FAA employees regarding the various groups and their missions so that they will consider supporting these organizations. The 5th annual fair was extremely successful, with over 180 FAA employees participating and almost all Associations and Coalitions present at both locations.

The Office of Research and Technology (OST-R) sponsors an annual EEO Awareness Day event. The event is designed to give employees information on their rights and responsibilities, promote diversity, and provide information on resolution of workplace conflict. The Assistant Secretary for Research and Technology also signed a proclamation dedicating the first week of every August as “OST-R’s EEO Awareness Day.” This action supports strong agency leadership in the area of EEO programming with the goal of achieving equal opportunity in the workplace.

4.3 Training

DOT continues to produce and deliver trainings that ensure all managers and employees understand the expectations of a discrimination-free work environment. In FY 2016, over 600 managers and employees were trained in-person and virtually. DOT provides training on both EEO matters and leadership development.

Throughout FY 2016, DOCR conducted civil rights training for employees on topics including, but not limited to, Diversity and Inclusion; Prevention of Workplace Harassment; Prevention of Sexist Behavior in the Workplace; Reasonable Accommodations; the informal EEO Complaint Process; and Bullying and Civility. About one-third of the sessions were provided in response to specific training requests submitted by OAs. Two sessions were provided in response to a settlement, and the remaining sessions were regularly scheduled quarterly open-attendance drop-in sessions. The training sessions were led by in-house DOT-certified Civil Rights instructors at various locations across the country.

DOCR, DOHRM, and OAs offer continuous training on appropriate workplace behavior. The DOCR-sponsored Civil Rights Learning Council serves as a Department-wide resource for training materials related to appropriate workplace behavior, as well as many other civil rights topics. DOT informs its workforce through new employee orientation, FAA Accountability Board Training, and the posting of the FAA Table of Penalties on the FAA website.

As part of its ongoing workforce EEO education and training efforts, DOT held its third annual DOT Civil Rights Virtual Symposium in FY 2016, which addressed civil rights issues across the transportation community. The symposium, entitled “Speaking with One Voice: Accelerating Access to Opportunity,” was a three-day virtual event connecting more than a thousand DOT employees, recipients of Federal funding and other stakeholders across the country. Among the target audience were Federal and state employees including EEO, Diversity & Inclusion, and Civil Rights professionals; recipients of Federal funding, and members of the public with an interest in transportation and civil rights topics. The symposium covered a number of EEO-related topics including: inclusionary practices; Schedule A hiring practices; and ensuring 508-compliant accessible technology and information. The symposium provided a civil rights learning and training platform that featured two tracks: Accelerating Application of Diversity and Inclusion Principles and Accelerating Application of External Civil Rights Principles.

FAA Eastern Service Area staff members, including the Director, presented various training modules to 337 managers and 551 employees throughout the Eastern Service Area. The training was conducted at the request of management, as part of settlement agreements and as a result of complaint activities identified in MD-715 Assessments at various facilities. The Eastern Service Area also provided in-person training to 337 managers and 551 employees.

FAA conducted briefings and trainings regarding various EEO topics throughout the fiscal year. These included 20 briefings ranging from Conflict Management to Workplace Cyber Bullying conducted for FAA Lines of Business/Staff Offices. In collaboration with FAA

Human Resources and the Department of Labor Rehabilitation/Vocational Center, the FAA Office of Civil Rights provided education and employment opportunity briefings for Schedule A hiring.

In FY 2016, the FAA Office of Civil Rights Central Service Area staff had several workgroups for newly hired personnel and employees with civil rights experience. The workgroups focused on developing and understanding EEO laws and regulations and application of those regulations as it relates to Supreme Court decisions in proactive prevention of discrimination.

In late FY 2016, FMCSA provided EEO training to its managers and supervisors located in its DC headquarters office. The purpose of the training was to educate managers and supervisors about their EEO responsibilities and to fulfill a requirement under an EEOC Administrative Judge's order. The training focused on the current state of the law on employment discrimination, in particular *per se* violations of Title VII, and the goals behind requiring equal employment opportunity. Attorneys from the EEOC conducted the training.

MARAD provided EEO training to its managers and supervisors at headquarters, and at two other field facilities to help them execute their EEO responsibilities and promote a workplace free of discrimination. MARAD provided training to its employees at USMMA on the prevention of sexual harassment and other forms of sex discrimination, with the goal of increasing awareness of how attitudes and unconscious biases may lead to sexist behaviors and workplace discrimination. This training is part of USMMA's ongoing sexual assault and sexual harassment prevention program.

During FY 2016, SLSDC conducted a Workplace Bullying Training for all employees. In addition, all employees completed online No FEAR Training.

OST-R cultivates a culture that encourages collaboration, flexibility, and fairness to enable individuals to contribute to their full potential. The OST-R conducted several training sessions and events, which support this endeavor: Volpe Day; OST-R's Employee Engagement; Conflict Resolution; Unconscious Bias; Rethinking Diversity; Civility and the Prevention of Workplace Harassment; Communicating with Tact, Diplomacy, and Professionalism; Overcoming Communication and Polarity in the Workplace; Reasonable Accommodation; and the EEO Complaint Process.

5. No FEAR Act Training

Section 202 of the No FEAR Act requires Federal agencies to provide training for their employees on the rights and remedies under Federal antidiscrimination, retaliation, and whistleblower protection laws. Title 5 of C.F.R. § 724.203 requires Federal agencies to develop a written training plan and to have trained their employees by December 17, 2006, and every two years thereafter. Under these regulations, new employees are to receive No FEAR training within 90 days of appointment through the agency's orientation program or some other form of No FEAR Act training.

DOT requires the inclusion of electronic No FEAR Act training in each employee's e-Learning development plan. The process helps to ensure that employees take their No FEAR Act training within the two-year cycle required by the No FEAR Act, and that new employees complete the training within 90 days of hire. DOT used the Training Management System (TMS) and FAA's electronic Learning Management System (eLMS) to include the required training in every employee's learning plan, a practice that began in FY 2011. In FY 2016, 88 percent of the 4,409 new DOT employees completed No FEAR Act training, with 84 percent completing the training within 90 days of appointment. For comparison, the 90-day completion rate for FY 2015 was 71.6 percent.

The National Highway Traffic Safety Administration (NHTSA) Office of Civil Rights conducts a mid-year annual review to determine whether all employees are meeting the two-year training cycle requirement and to ensure 100 percent participation, which NHTSA achieved this cycle. Completion rates and updates are provided to the NHTSA Administrator and management team during meetings throughout the year to emphasize the importance of the training and to ensure all employees meet the training requirement.

6. Actions Planned, Taken, and Practical Knowledge Gained to Improve the Program

6.1 Pursuant to Section 203(a)(7)(D), DOT Plans to Implement These Actions:

- Finalize and implement new anti-harassment prevention policy and procedures in FY 2017.
- Conduct regular reviews of the Department's civil rights activities, procedures, and practices. DOCR will continue to follow the review schedule for all policies and determine what updates, if any, are necessary.
- Continue to perform analyses on recruitment, on board, and/or outreach efforts, and triggers to understand the causes of low participation of diverse groups in certain areas of the workforce.
- Strive to achieve a biannual goal of educating all employees of their rights and protections under antidiscrimination, retaliation, and whistleblower protection laws.
- Ensure that new employees receive No FEAR Act training within 90 days of their appointment through electronic e-Learning plan. Further, through the new employee orientation program, ensure that new employees receive the information regarding his/her rights and protections under anti-discrimination, retaliation, and whistleblower protection laws.
- Provide necessary updates to the No FEAR Act training module to continue to ensure accessibility for all employees.
- Continue to provide annual training to all supervisors and managers on recruiting and maintaining a diverse workforce.
- Ensure that complainants and respondents are apprised of the opportunity for mediation and Alternative Dispute Resolution throughout the informal and formal complaint process. This promotes early resolution of complaints, and saves resources and staff time.

- Collaborate with veterans' programs to increase hiring of veterans, including those with targeted disabilities.

6.2 Practical Knowledge Gained

- The Office of the Secretary and the OAs play a vital role in meeting the reporting requirements of the No FEAR Act. As a result, DOT will continue to work on the development of information systems that facilitate and automate the process of gathering and analyzing data so that it is accessible to everyone.
- The trend analyses inherent in No FEAR Act reporting is shared with all DOT offices to spur relevant action planning, not only to accomplish training, but also to address a range of issues, including potential barriers to employment of individuals from diverse backgrounds.

Appendix A – Legislative and Regulatory Requirements

An annual No FEAR Act report to Congress is required by Section 203 of the “Notification and Federal Employee Antidiscrimination Act of 2002” (No FEAR Act or Act), Pub. L. No. 107–174, 116 Stat. 566, 5 U.S.C. § 2301, *et seq.*, and its implementing regulations at 5 C.F.R. § 724.302. Each Federal agency must submit the report no later than 180 days after the end of the fiscal year.

The report is sent to designated Members of Congress, the U.S. Attorney General, the Chair of the U.S. Equal Employment Opportunity Commission, and the Director of the U.S. Office of Personnel Management.



THE SECRETARY OF TRANSPORTATION
WASHINGTON, DC 20590

March 2, 2017

**Policy Statement on the Implementation of the
Notification and Federal Employee
Antidiscrimination and Retaliation
Act of 2002 (No FEAR Act), Pub. L. No. 107-174**

The Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (No FEAR Act) requires Federal agencies to keep their employees, former employees, and applicants for employment informed of their antidiscrimination and whistleblower protections; post quarterly statistics on their Web sites; and train all employees regarding the rights and remedies to which they are entitled under the law. Federal agencies are required to submit annual reports to Congress demonstrating their compliance with the law, as measured by a number of specific criteria, not later than 180 days after the end of each fiscal year.

I fully support the principles of the No FEAR Act, and I am committed to providing a workplace environment that is free from discrimination as one of my major equal opportunity goals. It is the U.S. Department of Transportation's policy to prohibit employment discrimination and interference or retaliation when protected disclosures are made, as stated in the whistleblower protection laws.

I have assigned the Departmental Office of Civil Rights and the Office of the Assistant Secretary for Administration joint responsibility for ensuring the proper implementation of the No FEAR Act's mandatory requirements. I expect all departmental organizations to offer their full support to ensure compliance with the requirements of the No FEAR Act. You may obtain further information regarding the No FEAR Act by contacting the Departmental Office of Civil Rights for assistance or visiting the Office's Web site at <https://www.transportation.gov/civil-rights>.


Elaine L. Chao



THE SECRETARY OF TRANSPORTATION
WASHINGTON, DC 20590

March 2, 2017

**Policy Statement on Employment and Advancement of
Persons with Disabilities**

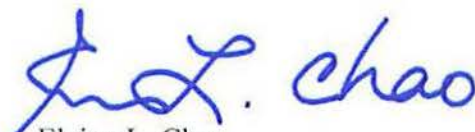
The U.S. Department of Transportation (DOT) is committed to enhancing access to employment of people with disabilities by ensuring equal employment opportunity. I encourage effective outreach, recruitment, selection, and advancement of qualified people with disabilities. I am committed to making DOT a model employer of persons with disabilities, especially those with severe disabilities referred to as "targeted disabilities."

The DOT will comply with Section 501 of the Rehabilitation Act of 1973, as amended, which prohibits Federal agencies from discriminating against qualified individuals with disabilities. The DOT will provide hiring, placement, and advancement opportunities for persons with disabilities. Violations of this law will result in appropriate disciplinary actions against the offenders, up to and including dismissal.

The DOT will continue to identify and remove any barriers to hiring, retaining, and promoting persons with disabilities. In accordance with Executive Order 13548 "Increasing Federal Employment of Individuals with Disabilities," and the respective DOT Plan to Increase Employment of People with Disabilities, all departmental organizations will work with their Offices of Human Resources in outreach efforts to provide internship, employment, and advancement opportunities to persons with disabilities, especially those with targeted disabilities.

The DOT will provide a work environment that welcomes qualified individuals with disabilities and effectively uses their skills, knowledge, and abilities. Each of us has a role in identifying, reporting and eliminating barriers to the employment of people with disabilities. Guidance on how to handle requests for reasonable accommodation by employees and employment applicants is contained in DOT Order 1011.1A, "Procedures for Processing Reasonable Accommodation Requests from DOT Job Applicants and Employees with Disabilities" (available on the Department's Web site at <https://www.transportation.gov/civil-rights>).

Please join me in ensuring equal employment opportunities for people with disabilities. Together, we can make DOT a model employer and a better workplace for all.


Elaine L. Chao



THE SECRETARY OF TRANSPORTATION
WASHINGTON, DC 20590

March 2, 2017

Policy Statement on the Prevention of Harassment

The U.S. Department of Transportation is committed to zero tolerance for harassment on the basis of race, color, sex (gender, pregnancy, sexual harassment, sexual orientation, gender identity, or transgender status), national origin, religion, age (40 and over), disability (mental or physical), equal pay/compensation, genetic information, or retaliation. Harassment, in this context, is defined as conduct that is so offensive as to create a work environment that a reasonable person would consider intimidating, hostile, or offensive. As Secretary of Transportation, I am committed to our longstanding policy that harassment will not be tolerated and must not occur.

Employees, contractors, and applicants for employment who believe that they have been victims of harassment may, without fear of retaliation, seek the immediate assistance of a management official or their Office of Human Resources. Employees can also contact an Equal Employment Opportunity Counselor or their Office of Civil Rights. All information provided regarding concerns about harassment will be maintained on a confidential basis to the greatest extent possible. I expect a manager or supervisor who becomes aware of harassment to take immediate and appropriate corrective action to ensure that the harassment stops and does not recur. Violations of the law prohibiting harassment or violations of this policy will result in appropriate disciplinary actions against the offenders, up to and including dismissal. This also includes cases where a manager or supervisor should have known about the harassment and failed to take prompt and appropriate corrective action. All employees are prohibited from retaliating against and/or harassing those who report such conduct or behavior.

I am committed to providing a workplace free from harassment where every employee, contractor, and applicant is treated with respect and dignity. I expect each employee to join me in ensuring a harassment-free workplace by engaging in conduct that is consistent with this policy of zero tolerance for harassment.

A handwritten signature in blue ink, reading 'Elaine L. Chao', is positioned above the printed name.

Elaine L. Chao



THE SECRETARY OF TRANSPORTATION
WASHINGTON, DC 20590

March 2, 2017

Policy Statement on Whistleblowing

The U.S. Department of Transportation (DOT) is committed to protecting current and former Federal employees and applicants for employment from interference and retaliation when making protected disclosures, or "whistleblowing," which includes disclosing information related to a violation of law, rule, or regulation; gross mismanagement; gross waste of funds; abuse of authority; or a substantial and specific danger to public health or safety. The Whistleblower Protection Act of 1989, and the expanded protections provided by the Whistleblower Protection Enhancement Act of 2012 (WPEA), protect individuals who report Federal agency misconduct from retaliation.

These provisions strengthen protections for Federal employees who disclose evidence of waste, fraud, or abuse, and modify rules on the use of nondisclosure policies or agreements by government agencies. They also clarify that these agreements do not override employee rights and obligations created by existing statute or Executive Order relating to classified information; communications with Congress; reporting violations and/or misconduct to an Inspector General; or any other whistleblower protection. In addition, Presidential Policy Directive 19 extends whistleblower protections to Federal employees eligible for access to classified data.

The DOT will initiate appropriate actions against responsible persons who take, threaten to take, or fail to take a personnel action with respect to any employee, former employee, or applicant for employment because of any protected disclosure of information. In 2002, the Notification and Federal Employee Antidiscrimination and Retaliation Act was enacted to make all Federal agencies accountable for violations of antidiscrimination and whistleblower protection laws.

The DOT will not tolerate whistleblower retaliation. Legitimate disclosure of information by employees is an invaluable resource for the oversight of government operations. I expect that employees are able to report these matters confidentially to the Department's Office of Inspector General (OIG), the U.S. Office of Special Counsel, or appropriate management officials. Those who interfere with or retaliate against any current or former employee or applicant for employment, who makes a protected disclosure, will be subject to appropriate disciplinary action. In accordance with the WPEA, a Whistleblower Protection Ombudsman has been designated in OIG to educate agency personnel about whistleblower rights.

I am committed to maintaining DOT's role as a Federal agency that respects the rights of current and former Federal employees and applicants for employment to raise legitimate concerns without fear of retaliation. I ask you to join me in implementing and communicating this important policy.


Elaine L. Chao



THE SECRETARY OF TRANSPORTATION
WASHINGTON, DC 20590

March 2, 2017

Equal Employment Opportunity Policy Statement

The U.S. Department of Transportation will maintain a model Federal work environment that is free of discrimination. We will ensure equal employment opportunity for employees, contractors, and applicants for employment, regardless of race, color, sex (gender, pregnancy, sexual harassment, sexual orientation, gender identity, or transgender status), national origin, religion, age (40 and over), disability (mental or physical), equal pay/compensation, genetic information, or retaliation.

I am committed to fostering, through effective outreach, recruitment, hiring, and employee development, an inclusive workforce that reflects America's diversity. We will continue to identify and eliminate barriers to equal employment opportunities for individuals with disabilities and groups with a low participation rate of employment in the workforce. Equal opportunity, exclusive of unlawful bias or prejudice, to work and advance based upon merit, is the law and is not an option. I also expect all managers and supervisors to ensure that our employees are given equal opportunity for training and career development programs, promotions, awards and recognitions, and other applicable benefits and privileges of employment.

The Department will enforce zero tolerance of discrimination in the workplace. Violations of the law prohibiting unlawful discrimination practices will result in appropriate disciplinary actions against offenders, up to and including dismissal. Employees who believe they have been subjected to unlawful discrimination, subjected to retaliation for opposing discrimination in the agency, or hindered from participating in the employment discrimination complaint process are encouraged to contact their Office of Civil Rights or the Departmental Office of Civil Rights.

Let us maintain our commitment to fostering an excellent work environment free of unlawful discrimination. All employees must comply with equal employment opportunity principles as we perform the Department's mission.

A handwritten signature in blue ink, reading "Elaine L. Chao", is positioned above the printed name.

Elaine L. Chao



THE SECRETARY OF TRANSPORTATION
WASHINGTON, DC 20590


March 2, 2017

**Access to Programs, Services, Information, and Technology
Policy Statement**

The U.S. Department of Transportation (DOT) will take appropriate steps to ensure equal access in compliance with Section 504 of the Rehabilitation Act of 1973, as amended, which prohibits disability discrimination in any program or activity that receives Federal funds or is conducted by an executive agency. The DOT will ensure that persons with disabilities have access to all of its programs, services, activities, and information that is comparable to the access provided to persons without disabilities.

Similarly, Section 508 of the Act requires that all electronic and information technology (EIT) purchased, developed, maintained, or used by DOT must meet the Section 508 accessibility standards for the public and employees. The DOT will comply with all statutory requirements so employees with disabilities have access to and use of EIT to perform their assigned duties. The accessibility and usability of EIT will be comparable for all employees, regardless of disability, unless an undue burden would be imposed on the Department.

To achieve our organizational excellence goal, DOT must maintain an accessible work environment. This is crucial to ensuring that all individuals with the appropriate skills and talents have equal employment opportunities. Supervisors and managers should provide effective leadership to accomplish disability assessment goals. The Chief Information Officer, the Assistant Secretary for Administration, and the Director of the Departmental Office of Civil Rights are available to provide employees with policy guidance and technical assistance.


Elaine L. Chao

Appendix C – Summary Data

Table 1: Total Complaints Filed and Complainants Filing, FY 2011- FY 2016								
	2011	2012	2013	2014	2015	2016	Average	Change FY 2011- FY 2016
Number of Complaints Filed	350	315	374	322	348	294	334	-4.6%
Number of Complainants	320	297	346	293	323	284	311	-3.0%

Table 2: Complaints by Basis, FY 2011 to FY 2016								
Basis	2011	2012	2013	2014	2015	2016	Annual Average	Change FY 2011-FY 2016
Race	145	132	164	142	158	102	141	-29.7%
Reprisal	199	189	195	184	199	161	188	-19.1%
Sex	133	128	141	149	130	120	134	-9.8%
Age	107	125	95	136	128	109	117	1.9%
Disability	96	100	104	93	111	109	102	13.5%

Table 3: Top Complaints Filed by Issue, FY 2011 to FY 2016								
Issue	2011	2012	2013	2014	2015	2016	Annual Average	Change FY 2011-FY 2016
Harassment (Non-Sexual)	126	139	119	130	160	146	137	15.9%
Promotion/Non-Selection	100	79	88	87	87	71	85	-29.0%
Disciplinary Action	34	37	33	23	32	20	30	-41.2%
Reasonable Accommodation	19	23	19	28	23	31	24	63.2%
Training	32	26	41	24	27	15	28	-53.1%
Reassignment	31	19	14	18	13	12	18	-61.3%
Other	25	30	49	17	3	4	21	-84.0%
Termination	33	22	47	10	27	26	28	-21.2%
Appointment/Hire	6	4	9	18	34	13	14	116.7%

Table 4: Findings of Discrimination by Basis, FY 2011 to FY 2016						
Basis	2011	2012	2013	2014	2015	2016
Age	1	2	2	2	1	0
Color	1	2	0	0	1	0
Disability	0	1	0	1	1	3
Equal Pay	0	1	0	0	0	0
National Origin	0	1	0	1	0	0
Race	2	2	3	1	1	1
Religion	0	1	0	0	0	0
Reprisal	2	3	3	1	2	3
Sex	1	3	7	0	0	3

Table 5: Findings of Discrimination by Issue, FY 2011 to FY 2016						
Issue	2011	2012	2013	2014	2015	2016
Appointment/Hire	0	0	0	0	0	0
Assignment of Duties	0	0	1	1	0	0
Harassment	0	2	2	1	1	2
Medical Examination	0	0	0	0	1	1
Promotion/Non-Selection	2	0	3	0	0	0
Reasonable Accommodation	0	0	0	0	0	1
Termination	0	1	0	0	0	0
Terms/Conditions of Employment	0	0	0	1	1	0
Training	0	0	1	0	0	2

Table 6: Federal Court Cases with Alleged Violation of Law, FY 2011 to FY 2016						
	2011	2012	2013	2014	2015	2016
Total Court Cases	60	51	44	33	33	25
Alleged Title VII Violation	52	35	25	29	29	19
Alleged Age Discrimination in Employment Act Violation	35	19	18	9	7	5
Alleged Rehabilitation Act Violation	30	8	7	5	3	2
Alleged Whistleblower Protection Act Violation	40	0	0	0	2	1
Alleged Equal Pay Act Violation	0	1	0	0	0	0
Alleged Retaliation	0	1	0	9	6	14

Table 7: Formal Complaint Processing Time in Days, FY 2011 to FY 2016								
	2011	2012	2013	2014	2015	2016	Annual Average	Change FY2011-FY2016
Investigation Stage	146	136	155	139	138	141	142.5	-3.4%
Final Action Stage	51	43	214	42	42	62	81	+25.3%

Table 8: Annual Total Reimbursements to the Judgment Fund by Amount, FY 2011 to FY 2016						
	2011	2012	2013	2014	2015	2016
Total Reimbursements	\$2,542,342	\$570,881	\$1,116,156	\$1,009,500	\$225,000	\$307,000

Table 9: Pre-Complaint Processing Timelines, FY 2011 to FY 2016						
	2011	2012	2013	2014	2015	2016
Rate of Individuals Counseled within Mandatory Timeframe	94.8%	93.1%	94.9%	90.0%	96.1%	98.1%

Table 10: Reimbursements to Judgment Fund by Number of Cases, FY 2011 to FY 2016						
	2011	2012	2013	2014	2015	2016
Cases resulting in Reimbursements	5	6	5	7	3	3