



**Department of Navy
Notification and Federal Employee Anti-Discrimination
& Retaliation Act of 2002 (NO FEAR ACT)
FY 2013 Report**

This Department of Navy (DON) report covers all activities of the U.S. Navy and U.S. Marine Corps (USMC). The primary office in DON responsible for the policy and reporting requirements of the No Fear Act is the DON Office of EEO and Diversity Management. This report is provided in accordance with 5 C.F.R. § 724.302.

The DON Office of EEO and Diversity Management does not currently have a central database which accurately captures all current cases pending in Federal court arising under each of the respective provisions of the Federal Antidiscrimination Laws and the Whistleblower Protection Laws. Information on Federal District cases are provided by the DON Office of General Counsel.

The DON Office of EEO and Diversity Management works closely with the DON Office of General Counsel and the DON Employee and Labor Relations Division to ensure we capture and report the cases that fall under the Antidiscrimination Laws in compliance with the NO FEAR ACT reporting requirements.

The DON continues to improve our corporate database, iComplaints, and deployed extensive training to our EEO practitioners to ensure information in iComplaints are accurate. iComplaints is the DON's source of complaints information and status on complaints administrative processing.

(1) DON Federal District Court cases:

	FY 2009	FY 2010	FY 2011	FY2012	FY2013
Filed	51	47	50	25	32
Closed	40	31	52	32	40
Pending	11	16	55	562	29

(2) Status/Disposition of cases pending in District Court and Judgment Fund Reimbursement:

	FY 2009 (Number/Dollar)	FY 2010 (Number/Dollar)	FY 2011 (Number/Dollar)	FY 2012 (Number/Dollar)	FY 2013 (Number/Dollar)
Findings	0/0	0/0	0/0	0/0	0/0
Settlements	2/\$124,997	1/\$37,500	7/\$134,750	4/\$238,000	Data unable

All of the cases, where the judgment fund was reimbursed, were settlements at District Court. There were no findings of discrimination at the District Court level found against DON since the implementation of the reimbursement requirement. Reimbursements listed above did not identify specific Attorney's fees as all were lump sum payments. The DON was unable to obtain FY 2013 data on settlements at the District Court level.

Notification of judgment fund repayment is provided to the DON Office of Financial Management and Budget (FMB) directly from the Department of Justice. The FMB Office contacts DON Office of EE and Diversity Management for specific case information to ensure the bill is forwarded to the correct Command.

(3) Disciplinary Actions Issued:

The OPM requirement related to discipline is to report on formal disciplinary actions (letters of reprimand and above) taken for conduct that is inconsistent with antidiscrimination and/or whistleblower protections.

During FY 2012, DON deployed the new DoD Case Management and Tracking System (CMTS). CMTS is an enterprise-wide, web-based application that provides a single point of access to all LER cases for case handling, search, and reporting in an effective and efficient way. The data collecting elements in CMTS are: Administration Grievance Procedure, Arbitration, CPMS Review Request, Information Request, MSPB Appeal, Management / Employee Relations, Negotiability Appeal, Negotiated Grievance, Performance Based Actions, Representation, Suitability Adjudication, Unfair Labor Practice.

At the time of reporting the DON Employee and Labor Relations Division was not able to obtain the appropriate data in the CMTS due to system outages. The DON will submit a supplemental report on this area as soon as the information is available via the CMTS.

(4) EEO Discrimination Complaint Data (29 C.F.R Subpart G):

In 2003, DON implemented the iComplaints database tool. This tool is used by all EEO practitioners in DON to track all civilian discrimination complaints filed. This tool enables the DON Office of EEO and Diversity Management to view specific cases as well as produce corporate level reports which include the Title III No Fear Act Data Report to EEOC and the Annual EEOC 462 Statistical Report of Discrimination Complaints.

Data is analyzed quarterly by the DON Complaints Manager. This analysis is used to determine program deficiencies, trends and potential areas of liability. Information developed assists in focusing training and briefings presented to senior leadership, managers and supervisors, agency representatives, human resources and EEO professionals.

Summary of Complaints Data (1614.704(a)-(c))

	2009	2010	2011	2012	2013
Total Workforce	230,687	243,017	245,372	245,574	243,926
Total # Complaints Filed	675	710	1053	749	610
Total # Individual Filers	645	697	1040	720	597
Total # Repeat Filers	20	9	13	25	12

Part of a settlement agreement of a class complaint before the Federal District Court was for the class members to participate in the informal EEO counseling process as well as file an individual complaint of discrimination. Approximately 1,035 individuals responded to the court notice. Of those who responded, 477 received EEO Counseling and 328 filed formal complaints in FY 2011. These activities resulted to the significant increase in the overall DON case numbers in FY 2011.

Basis of Formal Complaints (1614.704(d) & 1614.705)

Basis	2009	2010	2011	2012	2013
<i>Note: Complaints can be filed alleging multiple bases. The sum of the bases may not equal total complaints filed.</i>					
Race	249	269	603	317	252
Color	71	90	146	121	94
Religion	21	27	37	33	18
Reprisal	263	267	288	348	261
Sex	208	243	257	268	217
National Origin	80	94	111	97	66
PDA	0	0	0	5	5
Equal Pay Act	1	2	6	11	2
Age	196	205	249	231	186
Disability	155	171	209	201	155
Genetics	0	0	0	6	1
Non-EEO	9	13	15	22	16

Issues of Formal Complaints (1614.704(e) & 1614.705)

Issues	2009	2010	2011	2012	2013
<i>Note: Complaints can be filed alleging multiple bases. The sum of the bases may not equal total complaints filed.</i>					
Appointment/Hire	40	37	51	47	45
Assignment of Duties	51	57	64	77	65
Awards	11	13	13	15	13
Conversion to Full Time	0	2	1	1	0

Disciplinary Action	Demotion	1	5	6	8	0
	Reprimand	49	54	57	76	40
	Suspension	33	25	33	35	33
	Removal	13	10	11	11	5
	Other	0	0	0	0	0
Duty Hours		6	9	12	14	10
Evaluation/Appraisal		23	25	25	43	30
Examination/Test		0	0	0	0	0
Harassment	Non-Sexual	271	303	249	288	248
	Sexual	31	29	21	34	25
Medical Examination		5	6	3	2	0
Pay Including Overtime		19	19	10	28	19
Promotion/Non-Selection		138	143	461*	130	87
Reassignment	Denied	10	8	7	7	3
	Directed	19	12	17	12	29
Reasonable Accommodation		31	42	45	35	31
Reinstatement		1	1	1	0	0
Retirement		2	4	5	5	1
Termination		67	64	80	82	51
Terms/Conditions of Employment		45	67	53	86	56
Time and Attendance		18	21	24	22	15
Training		18	27	15	24	11

Processing Time during Fiscal Year (1614.704(f))

Processing Time	2009	2010	2011	2012	2013
Complaints pending during FY					
Ave days in investigation	191.62	154.69	272.48	307.60	301.38
Ave days in final action	123.59	111.98	151.34	62.85	64.88
Complaint pending during FY where hearing requested					
Ave days in investigation	100.13	14.21	278.74	289.80	292.55
Ave days in final action	35.03	37.04	39.64	35.48	40.71
Complaint pending during FY with no hearing request					
Ave days in investigation	260.42	246.19	267.25	333.45	314.68
Ave days in final action	157.61	159.21	221.92	83.70	80.99

Table above includes cases where the individual first requested a hearing and then either withdrew or the EEOC dismissed the Hearing.

Disposition of Discrimination Complaints

	2009	2010	2011	2012	2013
Complaints Dismissed by Agency					
Total Complaints	128	167	162	200	5
Average Days	73	81	76	75	441
Complaints Withdrawn by Complainant					
Total Complaints	82	55	76	75	68

Final Decisions / Final Orders (1614.704(h))

	2009	2010	2011	2012	2013
Total Findings	10	4	5	8	2
Without Hearing					
Discrimination #	7	0	2	0	0
Discrimination %	70%	0	40%	0	0
With Hearing					
Discrimination #	3	4	3	8	2
Discrimination %	30%	100%	60%	100%	100%

Findings of Discrimination by Basis (1614.704(i) & (j))

Basis	2009	2010	2011	2012	2013
Total Number of Findings	10	4	5	8	2
Race	0	0	1	2	1
Color	0	0	0	2	1
Religion	0	0	0	0	1
Reprisal	4	3	3	6	1
Sex	0	2	0	3	0
National Origin	0	1	0	0	0
PDA	0	0	0	0	0
Equal Pay Act	0	1	0	0	0
Age	0	1	1	3	1
Disability	7	0	2	1	1
Genetics	0	0	0	0	0
Findings After Hearing					
Total	3	4	3	8	1

Race	0	0	1	2	1
Color	0	0	0	2	1
Religion	0	0	0	0	1
Reprisal	2	3	2	6	0
Sex	0	2	0	3	0
National Origin	0	1	0	0	0
PDA	0	0	0	0	0
Equal Pay Act	0	1	0	0	0
Age	0	1	1	3	1
Disability	1	0	1	1	1
Genetics	0	0	0	0	0
Findings Without Hearing					
Total	3	0	2	0	0
Race	0	0	0	0	0
Color	0	0	0	0	0
Religion	0	0	0	0	0
Reprisal	0	0	1	0	0
Sex	0	0	0	0	0
National Origin	0	0	0	0	0
PDA	0	0	0	0	0
Equal Pay Act	0	0	0	0	0
Age	0	0	0	0	0
Disability	3	0	1	0	0
Genetics	0	0	0	0	0

As reported above, as part of a settlement agreement of a class complaint before District Court, on or about 10 September 2010, a Notice of Approval of Settlement was sent to each individual (approximately 13,000), excluding the 120 prevailing party members. The remaining individuals received notification from the court of their right to participate in the informal EEO counseling process, as well as file an individual complaint of discrimination. Approximately 1,035 responded to the court notice. A provision of the settlement and dismissal of the class action bars individual complainants from filing a new class action complaint covering the same timeframe in the original class action against the USMC's two subordinate activities. However, individuals retained their federal EEO right to file an individual lawsuit. Approximately 477 individuals received EEO Counseling and 328 filed formal complaints during FY 2011. The basis of these complaints was Race-African American and the claim was Non-Selection.

Findings of Discrimination by Issue (1614.704(i) & (j))

Issues	2009	2010	2011	2012	2013
Total Number of Findings	10	4	5	8	2
Appointment/Hire	3	2	0	0	0

Assignment of Duties		0	0	1	1	0
Awards		0	0	1	0	0
Conversion to Full Time		0	0	0	0	0
Disciplinary Action		1	0	0	1	0
Duty Hours		0	0	0	0	0
Evaluation/Appraisal		0	0	0	0	0
Examination/Test		0	0	0	0	0
Harassment	Non-Sexual	3	1	1	3	2
	Sexual	0	0	0	1	0
Medical Examination		2	0	0	0	0
Pay Including Overtime		0	0	0	0	0
Promotion/Non-Selection		0	0	0	2	0
Reassignment	Denied	0	0	0	0	0
	Directed	1	0	0	2	0
Reasonable Accommodation		0	0	2	0	0
Reinstatement		0	0	0	0	0
Retirement		0	0	0	0	0
Termination		1	1	0	0	0
Terms/Conditions of Employment		0	0	1	1	0
Time and Attendance		0	0	1	0	0
Training		0	0	0	2	0

Pending Complaints Filed in Previous Fiscal Years by Status

	2009	2010	2011	2012	2013
Total complaints previous FY	697	708	0	0	0
Total Complainants	601	623	794	1126	1610
Investigation	13	21	83	39	451
ROI issued, pending Complainant's action	3	4	7	21	2
Hearing	202	236	263	367	437
Final Agency Action	29	44	28	30	72
Appeal with EEOC OFO	229	232	230	3	135

Complaints Investigations

	2009	2010	2011	2012	2013
Pending complaints where investigation exceed required time frames	93	87	662	827	867

(5) Disciplinary Actions Taken (Not in District Court):

In FY 2013 there were two (2) findings of discrimination rendered all of which resulted after a Hearing before an EEOC Administrative Judge. Although compliance with the corrective actions ordered by the Administrative Judge has not been completed, to date no specific individual disciplinary actions were reported in response to these decisions. Corrective action in these cases required EEO training be provided to the responsible management officials, a posting at the local activity and monetary corrective action.

(6) Description of DON Discipline Policy:

In addition to the information provided in section 3 above, it is DON policy for the EEO Director (Assistant Secretary of the Navy (Manpower & Reserve Affairs) to issue a personal letter to the Commander of the major command when there is a finding of discrimination. This letter instructs the Command to review the facts of the case and determine the level of discipline warranted.

In addition, this letter instructs the local Activity, where the discrimination occurred, to ensure compliance with the ordered corrective actions/relief and report on completed actions to DON Office of EEO and Diversity Management. The DON requires all actions completed in 180 days or less of the final agency decision.

The DON policy for disciplinary actions can be found at:

http://www.public.navy.mil/donhr/Documents/Civilian%20Human%20Resources%20Manual/752_SUBCHNEW.pdf.

(7) DON Complaints Analysis:

In FY 2012 and FY 2013, the basis most commonly alleged was reprisal and the issue filed the most was non-sexual harassment. For the last three fiscal years, the top five bases and issues have basically remained the same and relatively consistent.

The DON has special procedures for immediate action when harassment claims are brought forward. While a complainant may go to the EEO office, a management inquiry is also conducted to identify and verify whether harassment has occurred and recommend actions to management to stop/prevent further harassment. Both procedures may occur concurrently.

Basis and Issues of Formal Complaints (1614.704(d) and (e) & 1614.705)

FY 2011	FY 2012	FY 2013
Bases: <ul style="list-style-type: none"> • Race – Black • Reprisal • Age • Sex – Female • Disability – Physical 	Bases: <ul style="list-style-type: none"> • Reprisal • Age • Race – Black • Sex - Female • Disability – Physical 	Bases: <ul style="list-style-type: none"> • Reprisal • Age • Race – Black • Sex - Female • Disability – Physical
Issues: <ul style="list-style-type: none"> • Promotion/Non-Selection • Non-sexual Harassment • Disciplinary Action • Terms/Conditions of Employment • Assignment of Duties 	Issues <ul style="list-style-type: none"> • Non-sexual Harassment • Disciplinary Action • Promotion/Non-Selection • Terms/Conditions of Employment • Termination 	Issues <ul style="list-style-type: none"> • Non-sexual Harassment • Promotion/Non selection • Disciplinary Action • Assignment of Duties • Terms/Conditions of Employment

As reported previously, during FY 2011, as part of a settlement agreement of a class complaint before District Court, on or about 10 September 2010 a Notice of Approval of Settlement was sent to each individual (approximately 13,000), excluding the 120 prevailing party members. The remaining individuals received notification from the court of their right to participate in the informal EEO counseling process, as well as file an individual complaint of discrimination. Approximately 1,035 responded to the court notice. A provision of the settlement and dismissal of the class action bars individual complainants from filing a new class action complaint covering the same timeframe in the original class action against the USMC's two subordinate commands. Individuals retained their federal EEO right to file an individual lawsuit, however. Approximately 477 individuals received EEO Counseling and 328 filed formal complaints during FY 2011, hence the significant increase in the overall DON case numbers and specifically the US Marine Corps. The basis of these complaints was Race-African American and the claim was Non-Selection.

Processing Time (Average Days)

Fiscal Year (FY) 2013 was a very challenging period for the Department of the Navy (DON) Complaints Program. Efficiencies and quality of servicing were greatly impacted when the DON transitioned to a new EEO Service Delivery model in May 2013. The transition resulted in the loss of experienced EEO Specialists who had the corporate knowledge of the servicing and status of cases. With the new service delivery design, 90% of DON EEO offices not only reshuffled resources but also physically moved case files from one Command to another to comply with the transition requirement. As DON EEO offices are widely dispersed across the United States and overseas, it was inevitable that some EEO Offices experienced delay in receipt of case files, which also affected timely processing. A positive outcome of the new design was the additional resources allocated for the EEO Program across the DON. The downside was most of the new specialists assigned to the EEO Program had little or no EEO experience.

Consequently, the DON developed basic and advanced training modules to develop the new and transitioning specialists, providing them with the skills critical for EEO program execution. The deployment of this training was interrupted by the administrative furlough between June and August 2013, pushing delivery to September 2013. During the furlough period, the DON utilized abridged versions of this training via Defense Connect Online (DCO) sessions, but was not able to ensure complete participation due to the furlough. However, the DON did see improvements confirmed in terms of understanding of roles and responsibilities and expectations of EEO specialists based on the questions and feedback received during meetings and DCOs. We expect to see a continuation of this growth curve in FY 2014.

Notwithstanding these challenges, the DON continues to hold major commands and servicing offices accountable for timely, quality management and processing of complaints. In FY 2013, the areas listed on the tables below were tracked and measured via a complaints scorecard for each major command. Criteria below form the basis of the DON Scorecard.

Criteria for Percent of Cases Timely Processed

Cases Timely Processed				
METRICS	Goal	Green	Yellow	Red
Pre Complaint Process	100%	= > 80%	= > 70% but <80%	< 70%
Formal Process	100%	= > 80%	= > 70% but <80%	< 70%

Criteria for Processing Days

Processing Days			
METRICS	Goal	Green	Red
Counseling	30 or 90 with ADR or extension	= < 30/90	> 30/90
Counselor Report	7 from formal complaint received	= < 7	> 7
Accept/Dismiss Notice	30 from formal complaint received	= < 30	> 30
Investigation end	180 from formal complaint received or 270 with extension	= < 180/270	> 180/270

The DON's ultimate goal is for all cases to be processed timely. However, the DON acknowledges that establishing milestones and recognizing small successes will help the servicing offices in their efforts to improve. Consequently, the green, yellow, and red zones were instituted to assist commands in reaching 100% compliance. In order to be effective, these zones will be adjusted at least on a yearly basis, ultimately recognizing only the green zone, which will equate to 100% timely processing.

Investigation was one of the most challenging areas for the DON in FY 2013. As mandated by the Department of the Defense (DoD), all DoD components are required

to use DoD's Investigations and Resolution Division (IRD) for investigation purposes. As soon as cases are accepted for further processing, the DON relies on IRD to complete this process in a timely manner. Starting in 2011, IRD experienced backlogs that severely affected timely investigation of all DoD complaints. At the same time, the DON processed those previously reported class complaints from USMC that resulted in a substantial number of individual complaints submitted to IRD for investigation in FY12 and FY13. In response to these factors, the following actions were implemented in FY 2013:

- The Deputy Assistant Secretary of the Navy (Civilian Human Resources) issued an authorization in August 2012 and extended in September 2013, to use contract investigators.
- The DON continued to hold commands accountable for effective, efficient management and processing of complaints via scorecards (see Table 3 above) and provided ongoing training (more information under Initiatives in FY 2013 below).
- The DON actively engaged IRD to find ways to improve timeliness of their process. The DON was part of IRD's Lean Six Sigma study in 2012 and another DoD-directed study in 2013 with the goal of improving investigations. The DON was instrumental in identifying areas causing delays within the IRD process and ways to improve. Because of this engagement, IRD established timelines and implemented positive changes that will ultimately improve the investigative process.

The DON remains committed to 100% timeliness in investigations and the overall complaints processing. The DON will continue to engage and collaborate with all responsible components to effect positive change.

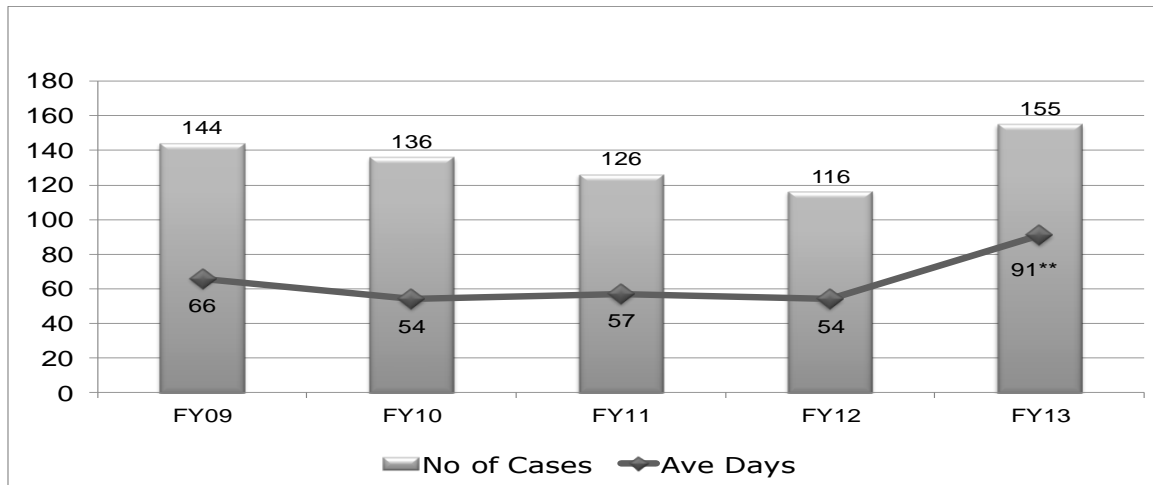
Final Agency Decisions / Final Orders (EEOC Administrative Judge) (1614.704(h))

For the last five fiscal years, DON has been in the top five federal agencies to timely process FADS. The DON's compliance in this area went down in FY 2013 for the following reasons:

- The DON lost two experienced FAD Analysts due to retirement in November 2012 and January 2013. The hard freeze and sequestration prevented the DON from backfilling these two positions. This resulted in only two experienced FAD Analysts onboard in FY 2013 compared to four in previous fiscal years
- In FY 2013, the DON received on average seven FAD requests a week compared to four requests in previous years. In addition, there were already pending cases in the DON's inventory after the retirement of the two Analysts. Most of the cases received were complex, involving two or more claims with a Report of Investigation comprised of over 3000 pages.
- The DON proactively tried different avenues in an effort to improve timely FAD issuance. The remaining FAD Analysts bundled cases by claims. For example, one Analyst reviewed all non-selection cases while the other one reviewed all mixed

cases. Another temporary remedy was to reassign the Special Emphasis Program Manager (SEP PM) to review cases and draft FAD. However, the reassignment interrupted the work of the other Analyst since the SEP PM required close guidance due to limited experience writing FADs.

- Consequently, with only two experienced FAD Analysts onboard and considering the volume of requests received on a weekly basis as well as pending inventory, the DON was not able to meet the 60-day/45-day (mixed) issuance requirement.



FY 2014 Initiatives

Critical to progress in the overall DON complaints program is bridging the competency gaps within the 0260 community. For this reason, it is the DON's priority to continue to deploy training and information meetings on a regular basis. Moving into FY 2014, we understand that there will be additional fiscal challenges resulting from the partial sequestration still in effect so the DON will utilize the DCO to continue deployment of weekly/monthly training on complaints processing, status of processing and areas of concern specific to the DON.

To raise the DON's compliance in formal processing, especially in investigation, the following are part of FY 2014 planned activities:

- In addition to the current areas being measured, the following will be included in the command's Scorecard:
 - Request for Investigation
 - Submission of Documents requested by IRD
 - Sufficiency Review of ROI
 - Issuance of 108(F) Notice
 - Submission of Case files to EEOC for hearing

- Submission of Case files to NAVOECMA for FAD

FY 2014 Complaints Scorecard Metrics

Processing Days			
METRICS	Goal	Green	Red
Counseling	30 or 90 with ADR or extension	= < 30/90	> 30/90
Counselor Report	7 from formal complaint received	= < 7	> 7
Accept/Dismiss Notice	30 from formal complaint received	= < 30	> 30
Request for Investigation	30 from formal complaint received	= < 30	> 30
Submission of docs per IRD request	7 from receipt of request from IRD	= < 7	> 7
Sufficiency Review	14 from download from FileX	= < 14	> 14
Investigation end	180 from formal complaint received or 270 with extension	= < 180/270	> 180/270
108 (F) Notice	14 from sufficiency review completed	= < 14	> 14
Submission of Case file for Hearing	15 from receipt of hearing request	= < 15	> 15
Submission of Case file for FAD/FO	7 from expiration of 30 days on 108(F) notice or from receipt of AJ decision	= < 7	> 7

- Continued close engagement and collaboration with IRD and other DoD components to resolve areas of delay within the IRD process
- Attend regularly scheduled customer meeting with IRD to discuss current processing and plans to further improve timeliness
- Continue to engage IRD staff during the DON's weekly complaints DCO to discuss areas of concern and ways to improve
- Continue monthly IRD report and ensure commands and IRD resolve deficiencies within a week of discovery

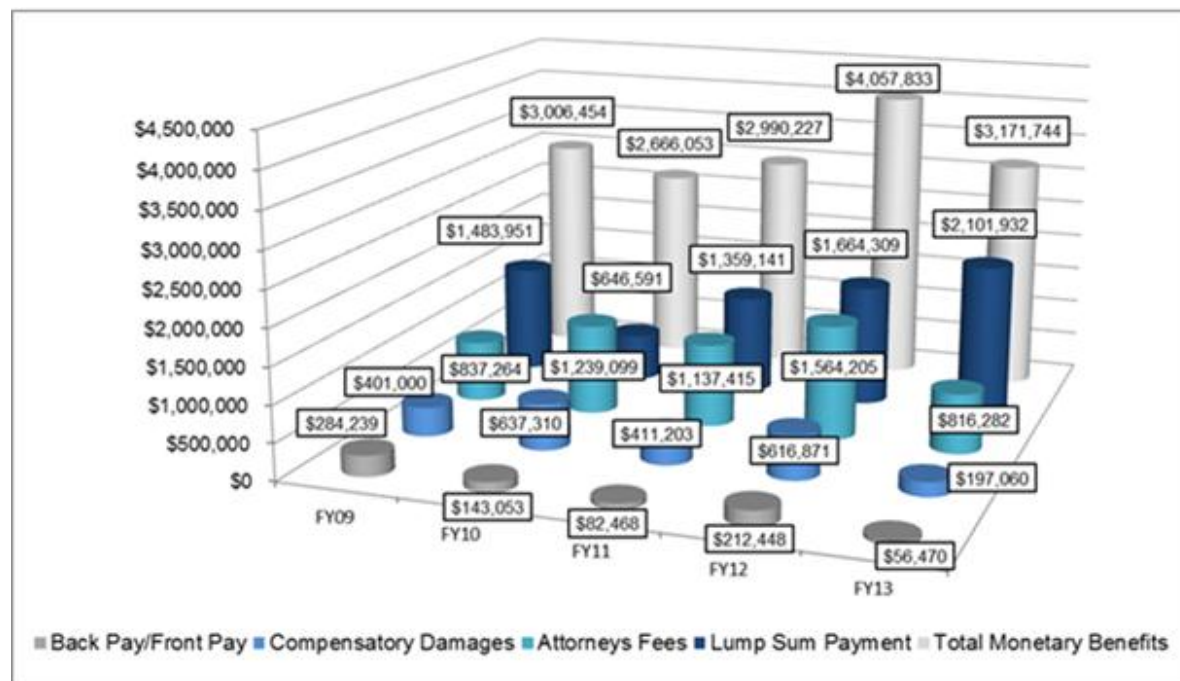
The DON will continue its effort to request exemptions from any budgetary cuts or hiring freezes to resolve backlogs in the FAD area. The request will include:

- Hiring of two full time FAD Analyst; or,
- Hiring of one full time and two reemployed annuitants as FAD Analysts

(8) Budget Adjustments due to Judgment Fund Reimbursement

The Department has not had to make adjustments to the budget to ensure reimbursement of the Judgment Fund. In fact, DON does not rely on payment of settlement actions through the fund. If settlement is accomplished, the individual activity will normally pay directly from their operating budget.

For other monetary corrective action issued as a result of findings of discrimination or settlements arrived at during the Discrimination Complaints Administrative process, DON remitted funds as follows:



(9) Training Plan

The No Fear Act Training Plan was issued as part of the DON Civilian Human Resources Manual (CHRM). A copy of this CHRM can be accessed at http://www.public.navy.mil/donhr/Documents/Civilian%20Human%20Resources%20Manual/CHRM_1613.pdf.

Commands are required to provide a written report certifying completion of this training requirement. The bi-annual training requirement for the period of 1 January 2012 – 31 December 2012 shows that 90% of the DON Workforce completed this requirement. Major Commands are required to ensure training is provided to all new hires and make effort to ensure 100% of the workforce receives refresher training biennially. Next training period is 1 January 2014 - 31 December 2014. Requirement has been sent out in October 2013. Report of compliance is due by January 2015.

Reviewed and Approved:

Signature: _____
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