



# FY 2023 NO FEAR ACT

ANNUAL REPORT TO CONGRESS



Office of Equal Opportunity and Fairness

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## Introduction

The Federal Housing Finance Agency (FHFA or Agency) was established by the Housing and Economic Recovery Act of 2008 (HERA)<sup>1</sup> and is responsible for the effective supervision, regulation, and housing mission oversight of the Federal National Mortgage Association (Fannie Mae), the Federal Home Loan Mortgage Corporation (Freddie Mac), and the Federal Home Loan Bank System, which includes 11 Federal Home Loan Banks (FHLBanks) and the Office of Finance. The Agency's mission is to ensure that Fannie Mae and Freddie Mac (the Enterprises) and the FHLBanks operate in a safe and sound manner so that they serve as a reliable source of liquidity and funding for housing finance and community investment through the economic cycle. Since 2008, FHFA has also served as conservator for the Enterprises.

The Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (No FEAR Act)<sup>2</sup> requires federal agency accountability for violations of antidiscrimination and whistleblower protection laws. Federal agencies must notify employees and applicants for employment about their rights under the federal antidiscrimination and whistleblower laws.

The No FEAR Act requires each federal agency to report quarterly on its public website summary statistical data related to equal employment opportunity (EEO) complaints filed against it and to report annually on the agency's efforts to improve compliance with employment discrimination and whistleblower protection laws and detail the status of complaints brought against the agency under these laws. This Report covers Fiscal Year (FY) 2023 and the five-year reporting period between FY 2019 and FY 2023.

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<sup>1</sup> Public Law 110-289, 110<sup>th</sup> Congress, 122 Stat. 2654.

<sup>2</sup> On January 1, 2021, Congress enacted the *Elijah E. Cummings Act*, to amend the *No Fear Act*.

FHFA Director Sandra L. Thompson confirmed the Agency’s commitment to the principles of equity and fairness in all aspects of the employment lifecycle through the issuance of the annual Equal Employment Opportunity Policy statement on October 17, 2023. An excerpt from the Director’s message to staff stated the following:

*The EEO Policy Statement serves as confirmation that all FHFA employees and applicants are protected from unlawful discrimination on the basis of race, color, religion, sex, family /parental status, national origin, age (age 40 and over) disability, genetic information, prior protected EEO activity, political affiliation, military service, and non-merit-based factors.*

The updated policy statement and message to employees confirmed that discrimination, retaliation, and harassment will not be tolerated at FHFA and that FHFA is committed to fostering a work environment where employees are aware of their rights and protections.

## Claims in Federal Court Arising Under Federal Antidiscrimination or Whistleblower Laws

### I. Types of Claims in Federal Court and Status

In FY 2023, one new case was brought against the Agency in D.C. District Court alleging Equal Pay Violations.

### II. The Judgment Fund

FHFA is a non-appropriated Agency and, therefore, does not use the Judgment Fund.<sup>3</sup> Accordingly, FHFA made no reimbursements to the Judgment Fund during the reporting period. During this reporting period, FHFA did not have any payments resulting from discrimination findings.

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<sup>3</sup> The Judgment Fund is a permanent, indefinite appropriation used to pay court judgments and U.S. Department of Justice settlements of actual or imminent lawsuits against the U.S. government. It is a permanent appropriation and is administered by the Judgment Fund Branch, which is part of the U.S. Department of Treasury, Financial Management Service. The No FEAR Act requires federal agencies to reimburse the Judgment Fund for personnel discrimination payments made in accordance with 28 U.S.C. §§ 2414, 2517, 2672, or 2677.

### III. Disciplinary Action

In FY 2023, FHFA conducted six disciplinary actions for claims related to discrimination, retaliation, harassment, or other infractions under the Act.

In those instances where disciplinary action is warranted, FHFA's Conduct and Discipline Policy is available as a management tool. This policy applies to all employees, and it is located on the Agency's internal website. The Policy notes that FHFA employees are expected to:

*Demonstrate high standards of integrity, both on and off the job, and to abide by the Standards of Ethical Conduct for Executive Branch Employees and other applicable laws, rules, and regulations, as well as all Federal anti-discrimination and anti-retaliation laws and policies.*

FHFA's disciplinary procedures are designed to enable management to address misconduct appropriately, with the goal of ensuring the behavior is not repeated or emulated, while also providing the individual charged with the misconduct due process as required by 5 U.S.C. Chapter 75 and 5 CFR Part 752. The Conduct and Discipline Policy states, "to correct misconduct or inappropriate behavior, FHFA will apply discipline in a fair and equitable manner that promotes the efficiency of the service."



## Final Year-End No FEAR Act Data for FY 2019 through FY 2023

### I. FY 2023 Discrimination Complaint Data

The following section provides a detailed overview at the formal complaints filed against the Agency during the reporting period, including the number of complaints, complainants, and the bases and issues alleged.

**Table 1** provides information about the number of formal EEO complaints filed during the five-year reporting period. During FY 2023, six individuals filed a total of six formal discrimination complaints.

**Table 1: FHFA Complaint Activity for the Period FY 2019 through FY 2023**

	2019	2020	2021	2022	2023
Number of FHFA Employees <sup>4</sup>	595	635	692	703	723
Number of formal complaints filed	5	15	4	6	6
Number of complainants	5	15	3	6	6
Repeat filers	0	0	1	0	0
Complaints Filed as a Percentage of Total FHFA Workforce	.84	2.36	.58	.85	.83

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<sup>4</sup> This number of FHFA Employees does not include employees of the FHFA Office of Inspector General (OIG), which posts its No FEAR Act data separately from FHFA and administers No FEAR Act compliance for OIG employees.

**Table 2** reflects the bases and type(s) of discrimination alleged in the complaints filed from FY 2019 through FY 2023.

**Table 2: FHFA Complaint Activity for the Period FY 2019 through FY 2023 by Bases of Discrimination<sup>5</sup>**

	2019	2020	2021	2022	2023
Race	3	9	4	2	5
Color	2	4	0	0	4
Religion	0	0	0	0	0
Reprisal	4	9	3	1	4
Sex	3	9	4	3	3
National Origin	1	0	0	0	1
Equal Pay Act	1	2	0	2	2
Age	2	7	0	2	4
Disability	3	2	0	1	0
Genetic Information	0	0	0	1	0
Non-EEO	0	0	0	0	0

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<sup>5</sup> Since employees can allege multiple issues in a single complaint, the aggregate number of issues is more than the total number of complaints filed.

Table 3 reflects formal EEO complaints by issue filed from FY 2019 through FY 2023.

Table 3: FHFA Complaint Activity for FY 2019 through FY 2023 by Issue

	2019	2020	2021	2022	2023
Appointment/Hire	0	3	0	0	1
Assignment of Duties	0	3	0	1	0
Awards	0	0	0	0	0
Conversion to Full-Time	0	0	0	0	0
Disciplinary Action					
<i>Demotion</i>	0	0	0	0	0
<i>Reprimand</i>	1	2	0	0	0
<i>Removal</i>	0	0	0	0	0
<i>Suspension</i>	0	0	0	0	0
<i>Other</i>	0	1	0	0	1
Duty Hours	1	0	0	0	0
Evaluation/Appraisal	2	5	1	1	2
Examination/Test	0	0	0	0	0
Harassment					
<i>Non-sexual</i>	2	8	1	0	3
<i>Sexual</i>	0	0	0	0	0
Medical Examination	0	0	0	0	0
Pay (including Overtime)	1	6	1	1	1
Promotion/Non-Selection	0	5	2	0	3
Reassignment					
<i>Denied</i>	0	0	0	0	0
<i>Directed</i>	1	0	0	0	0
Reasonable Accommodation	2	0	0	1	0
Reinstatement	0	0	0	0	0
Religious Accommodation	0	0	0	0	0
Retirement	0	0	0	0	0
Sex Stereotyping	0	0	0	0	1
Telework	0	0	0	0	0
Termination	0	0	0	1	0
Terms/Conditions of Employment	4	6	2	2	0
Time and Attendance	0	1	0	0	0
Training	1	0	0	0	1
Other	0	0	0	0	0



## II. Examination of Trends and Causal Analysis

During the five-year reporting period, 35 individuals filed 36 complaints. Of the 36 complaints filed, 21 involved allegations of reprisal, 23 included allegations of race discrimination, 22 contained allegations of sex discrimination, 15 raised allegations of age discrimination, 6 represented allegations of disability discrimination, and 10 made allegations of discrimination based on color<sup>6</sup> (see **Table 2**). Women filed 17 of the 22 sex-based complaints, and African Americans filed 18 of the 24 race allegations. According to the most recent Equal Employment Opportunity Commission (EEOC) data, the most frequently alleged bases of discrimination in small agencies in the federal government were reprisal, sex, and race. More generally, the most alleged bases of discrimination across the entire federal government were reprisal, sex, and disability.<sup>7</sup>

As shown in **Table 3** above, the most common issues raised by FHFA employees over the five-year period were non-sexual harassment (14), terms/conditions of employment<sup>8</sup> (14), and evaluation/appraisal (11). According to the most recently available EEOC data, the most frequently raised issues in the federal government were disciplinary actions, non-sexual harassment, and terms/conditions of employment. The EEOC data shows that employees in small agencies in the federal government frequently raised issues in the category of non-sexual harassment, terms/conditions of employment, and performance evaluations/appraisals.<sup>9</sup> Below are observations about the complaints filed against FHFA in FY 2023

**Number of Complaints:** FY 2023 formal complaint numbers remained the same as in FY 2022. The number of formal complaints filed this fiscal year appears to align with the historical average number of complaints prior to the FY 2020 spike. The most frequently alleged bases at FHFA in FY 2023 were race, reprisal, and age.

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<sup>6</sup> Since employees can allege multiple issues in a single complaint, the aggregate number of issues is more than the total number of complaints filed.

<sup>7</sup> EEOC Form 462 data tables for FY 2018 for small agencies and grand total, <https://www.eeoc.gov/federal/reports/tables.cfm> [This is the most recent data available.](#)

<sup>8</sup> Terms/conditions of employment is a broad issue category that encompasses items such as leave, breaks, and office assignments.

<sup>9</sup> EEOC Form 462 data tables for FY 2018 for small agencies and grand total, <https://www.eeoc.gov/federal/reports/tables.cfm> [This is the most recent data available.](#)

- As FHFA has made its transition from full-time telework to a hybrid work environment, the Agency has taken additional proactive steps to maintain a culture where employees know about their available protections. These steps include Values Based Culture Initiative (VBCI) presentations, postings of the EEO and Anti-Harassment policies on common area bulletin boards and the FHFA intranet, and in-person New Employee Orientation (NEO) training.
- The Office of Equal Opportunity and Fairness (OEOF) has continued to educate the workforce on retaliation and EEO protections through educational articles posted regularly in the Agency's internal newsletter.
- In FY 2023, OEOF hired one federal employee to further complete the division. OEOF also hired a contractor to assist with MD-715 related projects.
- OEOF began working on an Action Plan as a result of employee responses through the Federal Employee Viewpoint Survey (FEVS) to address employees' concerns surrounding retaliation and its effects on psychological safety and organizational trust, and to improve the OEOF team's engagement.
- In FY 2023, FHFA contracted with the McCammon Group to provide mediation and alternative dispute resolution (ADR) services in both EEO and non-EEO matters.
- The McCammon Group was also introduced to the FHFA workforce as the new Ombuds office (Workforce Ombuds). FHFA consistently leveraged ADR in several employment conflicts that arose in FY 2023.
- To ensure that EEO complaint data is accurate, OEOF has an ongoing project to scan historical paper files to a digital record system.
- **Harassment Prevention:** In FY 2023, 19 harassment allegations were filed and of those, 12 inquiries were completed during the fiscal year by the Harassment Prevention Program (HPP) staff. Each inquiry was reviewed and processed in accordance with the FHFA Anti-Harassment Policy, Procedures, and Responsibilities as amended.
- In FY 2023, HPP drafted a new Anti-Harassment policy, which is currently under review. The Agency amended the existing policy on August 1, 2023, to revise and review the harassment decision-making process as well as rescind the definition of harassment or harassing conduct as defined and replaced with the legal standard that exists under the Faragher-Ellerth<sup>10</sup> case law precedent.
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<sup>10</sup> [Enforcement Guidance: Vicarious Liability for Unlawful Harassment by Supervisors | U.S. Equal Employment Opportunity Commission \(eoc.gov\)](#)

- Final Action: EEOC identifies three types of final actions taken by agencies: 1) a Final Notice by an agency following a decision by an Administrative Judge, or 2) a Final Agency Decision (FAD) in all other circumstances, and 3) full dismissals as it relates to Acceptance Letters.<sup>11</sup> FHFA continues to meet its required Final Action timeframes. In FY 2023, the Agency issued 2 FADs. These FADs were issued within an average of 49.5 days, which is within the recommended 60-day EEOC timeframe.

**Table 4:** reflects the Agency took timely final actions in FY 2023 in matters involving Final Agency Decisions (FADs) and the number of complaints currently pending.

**Table 4: FHFA Complaint Processing Time for the Period FY 2019 through FY 2023**

	2019	2020	2021	2022	2023
<b>Complaints Pending During Fiscal Year</b>					
Average number of days in investigation stage	155	140	157	128.8	147
Average number of days in final action stage	32	53	56	25	20.25
<b>Number of Complaints Pending</b>					
Investigation	5	7	0	0	4
180-Day Investigation Notice	0	0	0	0	1 <sup>12</sup>
Hearing	1	3	5	3	1
Final Action	1	0	0	0	0
Appeal with EEOC Office of Federal Operation	0	0	2	0	1

<sup>11</sup> EEOC Management Directive 110, Chapter 5, Agency Processing of Formal Complaints, Part VI Final Actions, [http://www.eeoc.gov/federal/directives/md-110\\_chapter\\_5.cfm#\\_Toc425745246](http://www.eeoc.gov/federal/directives/md-110_chapter_5.cfm#_Toc425745246).

<sup>12</sup> Please note that, pursuant to 29 CFR § 1614.108(g), an Agency is still required to issue a 180-day notice to the complainant where 180 days have passed since the original EEO complaint filing, even in the case where there has been an amended complaint.

## Practical Knowledge

FHFA recognizes the importance of having Agency executives and managers model the behavior expected from the workforce and proactively engage employees to prevent discrimination and resolve conflicts. Further, the Agency values a workplace in which employees know their rights and understand the various protections available to them. In FY 2023, FHFA continued to strengthen these areas in the following ways:

- In FY 2023, all new OEOF employees became Employment Learning Innovations (ELI) Certified Instructors.
- Throughout FY 2023, OEOF delivered No FEAR Act training to all new employees during NEO. This training includes a discussion on civility and respect and specifically highlights FHFA's FAIR Values (Fairness, Accountability, Integrity, Respect), which are grounded on a foundation of competence, diversity, equity, and inclusion. OEOF amended the orientation discussion to include the Elijah Cummings Act provisions.
- In FY 2023, OEOF conducted EEOC mandatory No Fear Act training for current employees and thoroughly checked for full completion and compliance by all staff.
- OEOF developed a variety of toolkits and articles that were shared with the FHFA workforce highlighting employees' rights and responsibilities with respect to equal employment opportunity and retaliation. OEOF will continue to create guidance for the workforce on these important topics.
- The Director of OEOF, facilitates programs associated with the Values Based Culture Initiative (VBCI) as its aim is to ensure the FAIR values are integrated into the FHFA culture. This initiative includes developing programs based on IDEASCALE suggestions from employees and bringing in facilitators for Outward Mindset and Crucial Conversations trainings.
- OEOF staff signed Confidentiality and Neutrality agreements to increase trust among the workforce of the neutral and unbiased approach provided in EEO and HPP processes. An article was included in the Agency's internal newsletter to notify staff of this action.
- In FY 2023, OEOF made updates to the FHFA resource guide and compliance training modules.

## Actions to Improve Equal Employment Opportunity Program

Pursuant to the requirements of EEOC Management Directive (MD) 715, the Agency evaluates its EEO program on an annual basis. In response to its MD 715 Action Plans and EEOC recommendations, FHFA is planning comprehensive and engaging anti-harassment training and delivered comprehensive ADR training throughout the Agency. FHFA also publicly posted its Affirmative Action Plan for the Recruitment, Hiring, Advancement, and Retention of Persons with Disabilities. To ensure management is held accountable for the model work environment that FHFA seeks to maintain, management's EEO performance measure was elevated from a competency element to a critical element in the performance management system for managers and supervisors. In FY 2023, FHFA provided training to employees to assist them in evaluating performance under this critical element.

In FY 2023, the National Treasury Employees Union (Union) was formally certified as the exclusive representative for FHFA bargaining unit employees. The Agency plans to collaborate with the Union to ensure employees are aware of their rights in the EEO process.

The Agency's FY 2023 FEVS results had an unadjusted response rate of 82.6 percent, which exceeds the average government-wide response rate of 38.9 percent. As a response to the scores, FHFA continues to promote the Values Based Culture Initiative (VBCI) to ensure the Agency's FAIR values are integrated into all FHFA activities. VBCI helps improve employee confidence in reporting issues to leadership and mitigates the fear of reprisal/retaliation.

OEOF will continue to develop additional methods, such as the toolkits mentioned above, articles, and presentations to educate FHFA employees on identifying and preventing retaliation in the workplace.

OEOF has taken steps to improve both the EEO program and HPP. OEOF has continued to schedule one-on-one monthly case updates with parties, named officials, and witnesses. It is imperative for OEOF to conduct a fair and impartial EEO process and to ensure all parties involved are well-informed about the process and what to expect. OEOF has received positive feedback, particularly from named officials, regarding these process improvements.

## Training Efforts

In FY 2023, FHFA launched a new Talent Management System (Talent365) to assist with online interactive professional development. As it relates to OEOF, this system provides more ways to train employees in conflict resolution and employee rights through eLearning and/or live sessions in addition to tracking attendance.

## No FEAR Act Training Plan

In FY 2023, FHFA completed the Agency-wide mandatory No FEAR Act training, which consisted of two modules in July 2023. One module was dedicated to the No FEAR Act requirements, and the second portion covered the Elijah Cummings Amendments to the No FEAR Act, which created additional agency accountability for acts of discrimination and retaliation.

All new employees in FY 2023 completed No FEAR Act training within the first 90 days of onboarding in accordance with FHFA requirements.

FHFA's NEO process includes a session on EEO and whistleblower protections<sup>13</sup> and the No FEAR Act. In addition to a live session, the training module has a subsequent knowledge check for new employees. This training approach allows new employees to interact directly with the trainer, ask questions, and build on the information they obtain during the online training. FHFA maintains records of employee participation in these trainings to ensure compliance with No FEAR Act requirements.

On January 25, 2024, the Agency was recertified under OSC's 5 U.S.C. § 2302(c) certification program, signifying its compliance with obligations to inform the Agency's employees of their rights and remedies under the whistleblower protection laws.

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<sup>13</sup> Whistleblower Protection Guidance <https://www.fhfa.gov/AboutUs/Policies/Pages/Whistleblower-Protections.aspx>

As part of the whistleblower training requirements, OSC approved the Agency's online mandatory supervisory training on how to respond to complaints involving whistleblower protection. Every FHFA supervisor completed the training by the end of December 2023.

### **Appendix**

#### **I. FHFA EEO Policy Statement – October 2023**

#### **II. No FEAR Act Data – FY 2023**