



**Notification and Federal Employee
Antidiscrimination and Retaliation Act
Report**

Fiscal Year 2007

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I. Executive Summary

The U.S. Nuclear Regulatory Commission (NRC) provides its FY 2007 Annual Report to Congress as required by Section 203 of the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (No FEAR Act), Public Law 107-174. The agency's first report was submitted to Congress on March 22, 2007, and was a consolidation for the 5-year period FY 2002–2006.

The NRC's mission is to license and regulate the Nation's civilian use of byproduct, source, and special nuclear materials to ensure adequate protection of public health and safety, promote the common defense and security, and protect the environment. The NRC is headed by a five-member Commission. The President designates one member as Chairman and official spokesperson. The Executive Director for Operations (EDO) carries out the policies and decisions of the Commission. During FY 2007, the agency's workforce increased by approximately 200 employees, and at the end of this period, the agency had more than 3,500 permanent employees. NRC's headquarters is located in Rockville, Maryland, and its regional offices are located in King of Prussia, Pennsylvania; Atlanta, Georgia; Lisle, Illinois; and Arlington, Texas. The NRC's Technical Training Center is located in Chattanooga, Tennessee.

During FY 2007, the agency was recognized among large Federal agencies as the 2007 Best Place to Work in the Federal Government. In addition to receiving the highest overall score, the NRC captured the top ranking in 8 of 10 best-in-class scores, including (1) Employee Skills/Mission Match, (2) Strategic Management, (3) Teamwork, (4) Effective Leadership, (5) Performance-Based Rewards and Advancement, (6) Training and Development, (7) Support for Diversity, and (8) Work/Life Balance.

Although NRC's population grew by approximately 6 percent in FY 2007, the agency's informal and formal complaint activity decreased. The decrease in complaint activity is attributed, in part, to the agency's continued efforts to resolve high numbers of workplace issues prior to those issues being raised in the informal and formal complaint processes. The greatest number of complaints filed was under Title VII of the Civil Rights Act of 1964, as amended (Title VII). Reprisal, sex, and race discrimination were the most frequently filed bases, and non-selection for promotion and harassment (nonsexual) were the most common issues. During this period, the agency issued eight final agency decisions. There were no findings of discrimination.

During FY 2007, there were no new cases filed in Federal district court against the agency, and one pending case that was filed during FY 2006 was dismissed; there were no reimbursements to the Judgment Fund.

The agency's Office of Human Resources (HR) provides an ancillary process for issues of harassment to be presented under the NRC's Policy for Preventing and Eliminating Harassing Conduct in the Workplace. The Office of Human Resources' efforts have been instrumental in encouraging early intervention to resolve workplace disputes. During FY 2007, no disciplinary actions were issued in conjunction with the Whistleblower Protection Act (WPA) or the agency's Policy for Preventing and Eliminating Harassing Conduct in the Workplace.

Since the enactment of the No FEAR Act, the NRC has had many accomplishments that have positively impacted the workplace climate. Examples include the following:

- Support of the Commission and senior executives of the No FEAR Act through policy statements and in key meetings.

- Continual promotion of the agency's Comprehensive Diversity Management Plan (CDMP), which includes goals and strategies to achieve a positive and discrimination-free work environment where all employees are valued and use their diverse talents to support the agency's mission.
- Semi-annual equal employment opportunity (EEO) briefings.
- Mandatory training programs for managers and employees on the No FEAR Act, EEO, diversity management, the Whistleblowers Protection Act, prohibited personnel practices, and alternative dispute resolution (ADR).
- Assessments of EEO, Affirmative Employment, and Diversity Management programs to determine whether the agency is meeting the Equal Employment Opportunity Commission's (EEOC) standards for a model EEO program.
- Timely processing of all EEO complaints and ensuring that no backlog of cases occurs.

Additionally, the NRC has been committed to raising awareness and promoting the agency's ADR Program to resolve complaints at the earliest stage.

II. Introduction

The No FEAR Act requires Federal agencies to submit annual reports to the Speaker of the House of Representatives, the President *pro tempore* of the Senate, the Committee on Governmental Affairs of the Senate, the Committee on Government Reform of the House of Representatives, each committee of Congress with jurisdiction relating to the agency, the Attorney General, the EEOC, and the Office of Personnel Management (OPM). This report is submitted by the NRC to satisfy this reporting requirement.

III. Background

The No FEAR Act was signed into law by President George W. Bush on May 15, 2002, and became effective on October 1, 2003. The Act requires Federal agencies to be accountable for violations of antidiscrimination and whistleblower protection laws and post on its Web site certain statistical data relating to Federal sector EEO complaints filed with the agency. Section 203 of the No FEAR Act requires that each Federal agency submit an annual report to Congress not later than 180 days after the end of each fiscal year. Agencies must report on the number of Federal district court cases arising under each of the respective areas of law specified in the act in which discrimination was alleged; the status or disposition of cases; the amount of money required to be reimbursed to the Judgment Fund; the number of employees disciplined; any policies implemented related to appropriate disciplinary actions against a Federal employee who discriminated against any individual or committed a prohibited personnel practice; and an analysis of the data collected with respect to trends and causal analysis.

The NRC's Office of Small Business and Civil Rights (SBCR) is responsible for administering and ensuring agency compliance with the Federal EEO laws, regulations, policies, and guidance that prohibit discrimination in the Federal workplace based on race, color, national origin, religion, gender, age, disability, or reprisal. SBCR is also responsible for preparing the agency's *Annual No FEAR Act Report*. The Office Human Resources, Office of the Inspector

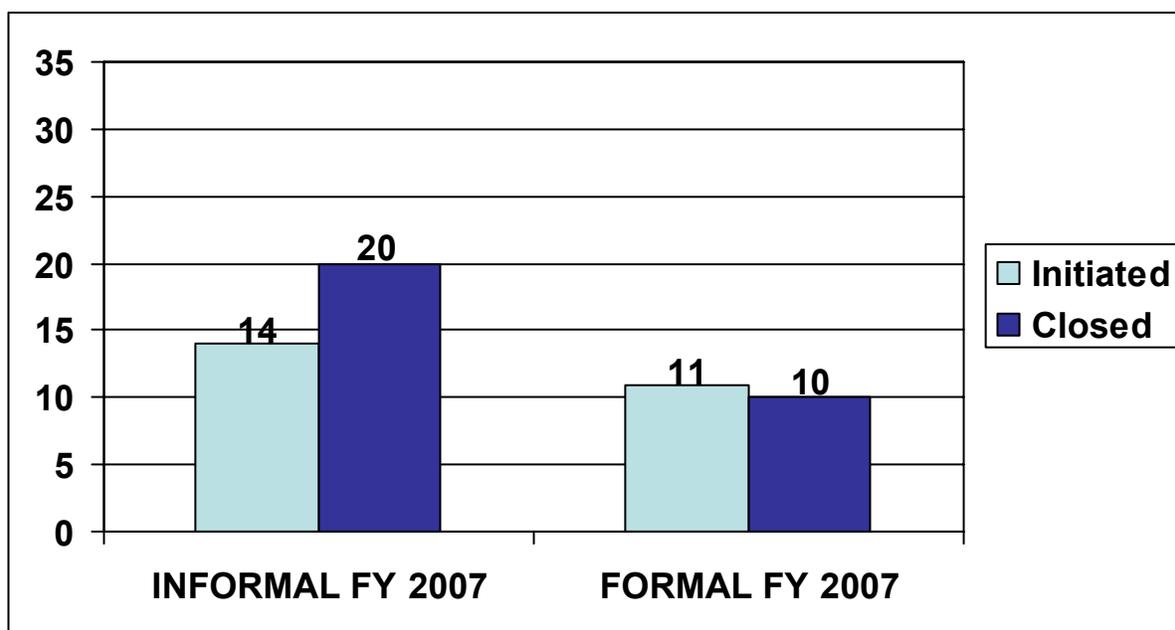
General (OIG), and Office of the General Counsel (OGC) also play a role in the implementation of the No FEAR Act for NRC employees.

IV. Data Posted for FY 2007

As required by the No FEAR Act, the NRC posts and prominently displays a link to the No FEAR Act data on its public Web site (www.nrc.gov). This information is updated quarterly, not later than 30 calendar days after the end of each quarter. See Attachment 1 for details.

Overall, NRC's informal and formal complaint activity is relatively low, which is attributable to a continual effort to maintain a positive work environment and the fact that a number of workplace disputes are resolved prior to complainants initiating the informal process. The following sections provide more information on the informal and formal complaints filed against the agency:

A. FY 2007 Informal and Formal Complaint Activity



During FY 2007, a total of 14 new informal complaints were initiated. This resulted in the agency having a total of 20 informal complaints on hand. All 20 informal complaints were closed during FY 2007. The 14 new informal complaints represent an approximate 50-percent decrease in the number of informal complaints initiated in comparison to FY 2006. Formal complaint activity for FY 2007 was consistent in comparison to FY 2006.

The agency has made considerable strides to ensure that all EEO investigations are completed in a timely manner. During FY 2007, only one investigation was untimely due to the need for a supplemental investigation to ensure that the record was sufficiently complete so a merit determination could be made. As of the end of FY 2007, there were two cases pending investigation; however, the processing time for both cases was timely. During FY 2007, the agency issued eight final agency decisions; there were no findings of discrimination.

The NRC attributes the relatively low complaint activity to the use of proactive early intervention to resolve workplace disputes; the agency's ADR program; and provision of EEO and No FEAR Act training to NRC managers, supervisors, and employees.

B. Bases and Issues

The FY 2007 complaint data shows that complainants identified reprisal, sex, and race as the most frequently filed bases that gave rise to complaints. Additionally, the data shows that complainants identified promotion/non-selection, and harassment (non-sexual) as the most common issues for filing complaints. Several complaints included multiple bases. See Attachment 1 for details.

V. Civil Cases - Reimbursement to the Judgment Fund

Section 203(1) of the No FEAR Act requires that agencies include in their annual report the number of civil cases arising under the Whistleblower Protection Act and antidiscrimination laws, the status of such cases, and the amount of money reimbursed to the Judgment Fund. OPM published interim final regulations on January 22, 2004, to clarify the agency reimbursement provisions of the No FEAR Act. These interim regulations stated that the Federal Management Service (FMS), U.S. Department of Treasury, will provide notice to an agency's Chief Financial Officer within 15 business days after payment from the Judgment Fund. The agency is required to reimburse the Judgment Fund within 45 business days after receiving the notice from FMS or must contact FMS to make arrangements in writing for reimbursement.

During FY 2007, no Federal district court cases were filed against the agency; a Federal district case that was filed during FY 2006 was dismissed during FY 2007. There were no reimbursements to the Judgment Fund.

VI. Disciplinary Actions

Section 203(a)(6) of the No FEAR Act requires that agencies include in their annual report a detailed description of the policy implemented by the agency relating to disciplinary actions imposed against a Federal employee who discriminated against any individual in violation of any laws cited under section 201(a)(1) or (2), or committed another prohibited personnel practice that was revealed in the investigation of a complaint alleging a violation of any of the laws cited under section 201(a)(1) or (2). Further, the Act requires that, with respect to each such law, the agency report on the number of employees who were disciplined in accordance with such policy and the specific nature of the disciplinary action taken.

As indicated in the agency's FY 2002-2006 report, the NRC's policy is to take appropriate disciplinary action against any employee who discriminates against an individual or engages in other prohibited personnel actions against an individual, including retaliation for lawful whistleblowing activities or for exercising an appeal, complaint, or grievance right. The NRC has issued three policy statements that reinforce its commitment to establishing a workplace free from discrimination, harassment, and retaliation. These include (1) Agency Policy on Appropriate Disciplinary Action for Engaging in Prohibited Personnel Practices (September 24, 2004), (2) Equal Employment Opportunity and Diversity Policy Statement (September 29, 2006), and (3) NRC Policy for Preventing and Eliminating Harassing Conduct in the Workplace (January 24, 2007). During FY 2007, 16 claims of harassment were filed with

the Office of Human Resources; however, the inquiries did not result in findings of violations related to these policies or prohibited personnel practices. Therefore, no disciplinary actions were issued.

In addition to the abovementioned policies, on January 26, 2007, the agency issued a notice to all employees regarding their rights with respect to whistleblower protections and prohibited personnel practices. The notice also reminded new employees about the requirement to take the No FEAR Act training.

VII. Training Requirement for No FEAR Act

Section 202(c) of the No FEAR Act requires that agencies train employees about the Act. To comply with the provision, on September 30, 2005, the agency implemented a No FEAR Act Web-based training course concerning the rights and remedies applicable to NRC employees under antidiscrimination and whistleblower protection laws. The training was updated during FY 2007. As of February 29, 2008, 95 percent of employees had completed the refresher training course, which is required every 2 years. New employees are required to complete the training within 90 calendar days of being hired by the agency.

VIII. Trends, Analysis, and Practical Knowledge

Section 203(7) of the No FEAR Act requires that agencies examine trends, causal analyses, practical knowledge gained through experience, and any actions planned or taken to improve the complaint or civil rights program of the agency.

As the agency anticipated, the issuance of the new Policy for Preventing and Eliminating Harassing Conduct in the Workplace likely resulted in an overall decrease of complaint activity. An analysis of complaints filed during FY 2007 shows there has been a significant decrease in the number of informal complaints filed (26 during FY 2006 and 14 during FY 2007). There was a slight decrease in formal complaints filed (13 during FY 2006 and 11 during FY 2007). Complaint activity during FY 2006 compared to FY 2007 alleging race, national origin, and age has decreased slightly; however, allegations of sex, disability, and reprisal remained constant.

During the past year, the agency has worked diligently to improve the processing time for investigations and ensure that all investigations are completed in a timely manner. The average processing time for investigations has improved by 32 days. For example, the average number of processing days has declined from 314 (10 cases investigated) in FY 2006 to 282 (8 cases investigated) in FY 2007. During FY 2007, only one case was investigated in an untimely manner because of the need for an extensive supplemental investigation. It is anticipated that all cases filed during FY 2008 will be investigated in a timely fashion.

The agency has made tremendous progress in developing standard operating procedures and internal controls to improve investigations. The agency has contractual arrangements to procure investigative services, including an inter-agency agreement with the U.S. Postal Service. The NRC also has an internal staff of EEO investigators. SBCR's recruitment of a staff with considerable EEO complaint processing experience has resulted in the Civil Rights program improving communication with complainants and managers; providing EEO training to employees to prevent discrimination; reducing the processing time for investigations; training collateral duty EEO Counselors on the No FEAR Act, ADR, and EEO case law; and publicizing the ADR Program. SBCR continues to maintain contact with other Federal agencies and the

Council of Federal EEO and Civil Rights Executives to gain knowledge and learn about best practices in the civil rights area.

The NRC's ADR program is used to help resolve workplace EEO disputes. The NRC has been committed to promoting ADR to eliminate actions that may give rise to EEO complaints and offered ADR to 100 percent of all complainants in both the informal and formal complaint process. The ADR program manager meets with the agency official and employee separately to discuss the ADR process and the issues in dispute. The parties are encouraged to discover and discuss creative methods of dispute resolution.

During FY 2007, the agency's participation rate for using ADR was 29 percent compared to the overall FY 2006 Federal Government participation rate of 43 percent. During FY 2007, the NRC examined several ways to increase the agency's use of ADR. As a result, the Chairman, on February 2, 2007, issued a statement supporting the ADR program. The statement reminded all employees of the agency's commitment to promoting and maintaining a discrimination-free work environment and eliminating actions that may give rise to valid EEO complaints in the workplace. The statement advised employees of the use of the ADR program to help resolve workplace disputes in the EEO complaint process.

Other methods of increasing the agency's use of ADR included (1) the SBCR staff holding two informational exhibits about ADR, (2) the distribution of new ADR brochures to employees, (3) conducting assessments of ADR sessions, and (4) conducting ADR awareness training.

In an effort to increase the ADR participation rate and to meet the EEOC's FY 2009 goal of 50 percent participation in ADR, more evaluation is necessary and will be conducted to document both the successes and opportunities for continued improvement.