



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

**FISCAL YEAR 2013**

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**Enclosure: Fiscal Year 2013 No FEAR Act Data Posted on the NRC Web Site**

## I. Executive Summary

The U.S. Nuclear Regulatory Commission (NRC or agency) provides its fiscal year (FY) 2013 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 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, to promote the common defense and security, and to protect the environment. A five-member Commission heads the NRC. The President designates one member as Chairman and official spokesperson. The Executive Director for Operations carries out the policies and decisions of the Commission. During FY 2013, the agency's workforce was 1.04 percent smaller, and at the end of FY 2013, the agency had 3,765 permanent employees. Because staff members are located at both headquarters and four regional offices, the agency must be especially attentive to providing all employees proper notification of their rights under the No FEAR Act. The agency has been successful in this task. The NRC's headquarters operation is located in Rockville, MD, and its regional offices are in King of Prussia, PA; Atlanta, GA; Lisle, IL; and Arlington, TX. The agency's technical training center is located in Chattanooga, TN.

The Partnership for Public Service ranked the NRC fourth in mid-sized agencies as one of the best places to work in the Federal Government based on the results of the 2013 Federal Employee Viewpoint Survey. The NRC was ranked third for its support for diversity. The NRC's commitment to diversity has been highlighted by national publications.

In FY 2013, there were decreases in both formal and informal complaints compared to FY 2012. Most of the complaints filed were brought under Title VII of the Civil Rights Act of 1964, as amended. Reprisal, age, and race discrimination were the most frequently filed bases. The most frequently claimed issues alleged were harassment (nonsexual) and performance evaluations or appraisals. There were five final agency decisions issued during FY 2013.

During FY 2013, the agency had no new equal employment opportunity (EEO) lawsuits in Federal District Court. There were no reimbursements to the Judgment Fund.

The agency's Office of the Chief Human Capital Officer (OCHCO) 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 (Anti-Harassment Policy). OCHCO's efforts have been instrumental in encouraging early intervention to resolve workplace disputes. During FY 2013, 29 claims of harassment were filed under the NRC's Anti-Harassment Policy, and there were 3 findings of harassment. In one finding, an employee resigned before the issuance of any proposed disciplinary action. In the second finding, the entire staff of the relevant location received a memorandum regarding anti-harassment policy. In the third finding, an employee involved received official counseling.

There were no cases filed in Federal District Court and no disciplinary actions issued in conjunction with the Whistleblower Protection Act (WPA).

Since the enactment of the No FEAR Act, the NRC continues to realize many positive changes in the workplace. Examples include the following:

- continuing support for the No FEAR Act by the Commission and senior agency executives through policy statements and discussion in key meetings

- continuing support and promotion of the NRC Comprehensive Diversity Management Plan, which includes goals and strategies to achieve a positive and discrimination-free work environment
- creating and implementing a Diversity Management and Inclusion Council consisting of agency executives, EEO advisory committee members, and others to assist the agency in developing a more comprehensive, integrated, and strategic focus on diversity and inclusion in the workplace
- briefing the Commission biannually on the accomplishments and plans of the agency's EEO program
- implementing a recently-updated online training course on the No FEAR Act
- implementing agency values known as ISOCER—integrity, service, openness, commitment, cooperation, excellence, and respect as a guide for fostering an open, collaborative work environment for all employees
- leading an effort to align employees' behavior with NRC values in the Behavior Matters Campaign, by sponsoring multiple "Behavior Matters Cafes" where employees learn skills needed to provide constructive feedback and intervene to correct behavior
- posting notices on whistleblower rights and protections in all facilities as required by the Office of Special Counsel for agency certification under 5 U.S.C. Section 2302(c)
- developing and implementing training programs and briefings for managers and employees on the No FEAR Act, EEO, diversity management, the NRC Anti-Harassment Policy, the WPA, prohibited personnel practices, reasonable accommodation, and alternative dispute resolution (ADR)
- conducting periodic internal EEO, affirmative employment, and diversity management assessments to determine compliance with the Equal Employment Opportunity Commission's (EEOC's) standards for a model EEO program
- processing EEO complaints promptly to ensure that no backlog of cases occurs
- publishing an agencywide announcement on the use of official time for processing EEO complaints
- creating an Ombudsman in the Office of the Inspector General under the Whistleblower Protection Enforcement Act
- conducting the first joint EEO Counselor and EEO Advisory Committee 2-day conference with over 100 participants

Additionally, the NRC is 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 each Federal agency to submit an annual report setting forth information describing its efforts to improve compliance with the employment discrimination and whistleblower protection laws and detailing the status of complaints brought against the agency under these laws. The report is submitted 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 of the United States, the EEOC, and the Office of Personnel Management (OPM). The NRC is submitting this report to satisfy the No FEAR Act reporting requirement.

## **III. Background**

On May 15, 2002, President George W. Bush signed into law the No FEAR Act, which took effect October 1, 2003. The Act requires each Federal agency to be accountable for making violations of antidiscrimination and whistleblower protection laws publicly known and to post on its Web site a summary of statistical data relating to Federal sector EEO complaints filed with its agency. Section 203 of the No FEAR Act requires that each Federal agency submit an annual report to Congress no later than 180 days after the end of each fiscal year. The agencies must report the number of Federal District Court cases arising from each area of law specified in the Act in which discrimination was alleged, the status or disposition of cases, the amount of money to be reimbursed to the Judgment Fund, the number of employees disciplined, any policies implemented that are 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 causes.

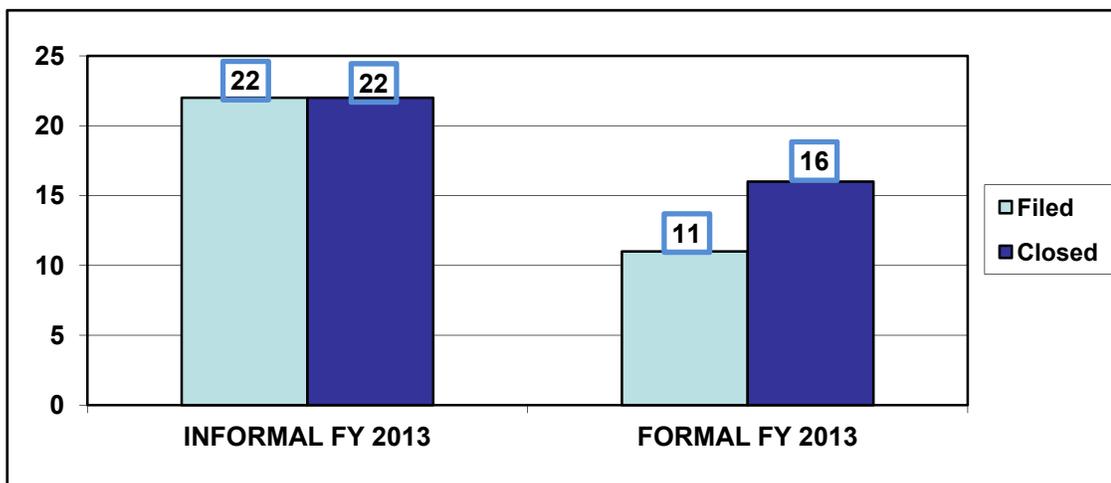
The NRC's Office of Small Business and Civil Rights (SBCR) is responsible for administering and ensuring agency compliance with Federal EEO laws, regulations, policies, and guidance that prohibit discrimination in the Federal workplace based on race, color, national origin, religion, gender, age, disability, genetic information, or reprisal. SBCR is also responsible for preparing the agency's annual No FEAR Act report. The Office of the Inspector General (OIG), OCHCO, and the Office of the General Counsel (OGC) also play a role in implementing the No FEAR Act for NRC employees.

#### IV. Data Posted for Fiscal Year 2013

As required by the No FEAR Act, the NRC promptly posts and displays a link to its No FEAR Act data on its public Web site ([www.nrc.gov](http://www.nrc.gov)). The agency updates this information no later than 30 calendar days after the end of each quarter. See Enclosure 1 for details.

The NRC's informal and formal complaint activity is relatively low—less than one percent of the agency's workforce filed informal EEO complaints and less than 0.5 percent filed formal complaints. This outcome can be attributed to the NRC's continual effort to maintain a positive work environment and to the resolution of workplace disputes before the informal complaint process is initiated. The following sections provide more information on the informal and formal complaints filed against the agency:

##### A. Fiscal Year 2013 Informal and Formal Complaint Activity



During FY 2013, a total of 22 new informal complaints were filed, and three informal complaints were carried over from the previous fiscal year. Of the total informal complaints, 22 were closed during FY 2013. A total of 11 new formal complaints were filed against the agency. Fourteen formal complaints were carried over from the previous fiscal year. Of the total formal complaints, 16 were closed during FY 2013.

During FY 2013, 10 cases were investigated; nine were completed pursuant to EEOC regulatory timeframes. As of the end of FY 2013, there were three cases pending investigation. The agency issued five final agency decisions during FY 2013 and no findings of discrimination. In FY 2013, the agency settled 12 formal and six informal cases using various ADR techniques, including mediation and facilitated discussion. The NRC attributes the relatively low complaint activity to the use of early intervention to resolve workplace disputes, the agency's ADR program, and the agency's providing of EEO and No FEAR Act training to all employees. The agency also emphasizes excellent customer service and responsiveness to issues.

##### B. Bases and Issues

The FY 2013 complaint data shows that complainants identified reprisal, age, and race as the most frequently filed bases for complaints. Additionally, the data shows that complainants identified harassment (nonsexual) and performance evaluations or appraisals as the most

common issues in complaints filed. Several complaints contained multiple bases and issues. See Enclosure 1 for details.

## **V. Civil Cases—Reimbursement to the Judgment Fund**

Section 203(1) of the No FEAR Act requires each agency to report in its annual report, the number of civil cases arising from the WPA and antidiscrimination laws, the status of such cases, and the amount of money reimbursed to the Judgment Fund.

During FY 2013, the agency defended one EEO lawsuit in Federal District Court that was brought in a prior FY. At the end of FY 2013, two cases were pending, both of which were brought in a prior FY. Of the two pending cases, one is awaiting determinations by the court on a motion and one is waiting for the appeal period to run.

Pursuant to the reporting requirements of Title 5 of the *Code of Federal Regulations* (5 CFR) Part 724, "Implementation of Title II of the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002," the NRC reports that, in FY 2013, it made no reimbursements to the Judgment Fund in connection with these lawsuits.

OPM published the final regulations on May 10, 2006, to carry out the agency reimbursement provisions of the No FEAR Act. These final regulations state that the Financial Management Service (FMS), U.S. Department of the Treasury, will provide written 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 it must contact FMS to make arrangements in writing for reimbursement.

## **VI. Disciplinary Actions**

Section 203(a)(6) of the No FEAR Act requires each agency to include in its annual report a detailed description of its policy that it implements relating to disciplinary actions imposed against a Federal employee found to have discriminated against any individual in violation of any law cited under Section 201(a)(1) or (2) or to have 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). Furthermore, the Act requires that the agency report the number of employees disciplined in accordance with such policy and the specific nature of the disciplinary action.

As indicated in the agency's previous No FEAR Act reports, the NRC's policy is to take appropriate disciplinary action against any employee found to have discriminated against an individual or engaged in other prohibited personnel actions, including retaliation for lawful whistleblowing activities or for exercising an appeal, complaint, or grievance right. During FY 2013, 29 claims of harassment were filed under the NRC's Anti-Harassment Policy, and there were three findings of harassment. In one finding, an employee resigned prior to issuance of any proposed disciplinary action. In the second finding, the entire staff of the relevant location received a memorandum concerning anti-harassment policy. In the third finding, an employee involved received official counseling.

There were no cases filed in Federal District Court and no disciplinary actions issued in conjunction with the WPA.

## **VII. Training Requirement for No FEAR Act**

Section 202(c) of the No FEAR Act requires each agency to provide training to its employees about their protections and responsibilities under the act. The agency updated, improved and re-issued its Web-based training on the No FEAR Act to comply with this provision. The training explains the rights, responsibilities, and remedies available to NRC employees under antidiscrimination and whistleblower protection laws. The NRC's training was rated as the agency's most effective online training and OPM deemed it "best in class." During FY 2013, 99 percent of all employees completed the training. New employees are required to complete the training within 90 calendar days of being hired.

## **VIII. Trends, Analysis, and Practical Knowledge**

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

An analysis of complaints filed during FY 2013, compared to FY 2012, shows that there was a decrease in the number of both informal and formal complaints filed, which could be the result of various reasons such as fewer opportunities to hire and promote, and additional training and outreach to NRC staff. Retaliation, race, and age were the most frequent bases of alleged discrimination. In addition, harassment (nonsexual) and performance evaluations or appraisals were the most frequent issues. The agency experienced an increase in the processing time for investigations primarily because of amendments. Of the 10 investigations, nine cases were processed within EEOC regulatory timeframes. The agency's average processing time for investigations in FY 2013 was 242 calendar days compared to 209 calendar days in FY 2012.

The NRC continues to make tremendous progress in developing standard operating procedures and internal controls to improve investigations. The agency has ongoing contractual arrangements to procure investigative services, including an interagency agreement with the U.S. Postal Service (USPS).

The NRC also employs EEO investigators on its staff. The agency's civil rights staff has considerable experience in processing EEO complaints. This knowledge base contributes significantly to the following:

- ongoing improvement in communication with complainants and managers
- high quality EEO training for employees to prevent discrimination
- reduced processing time in general for investigations
- effective training for collateral duty EEO counselors on the No FEAR Act, ADR, reasonable accommodation, and EEO case law
- effective dissemination of information on the ADR program

SBCR continues to maintain interactions with other Federal agencies and the Council of Federal EEO and Civil Rights Executives to gain and share knowledge and best practices in civil rights. The NRC uses its ADR program to help resolve workplace EEO disputes. The NRC is committed to promoting ADR to eliminate actions that may give rise to EEO complaints, and it offered ADR to all parties in both the informal and formal complaint processes in FY 2013.

To increase overall ADR participation rate, the agency continues to promote the program through the use of periodic ADR training and other interactive events. For FY 2013, these activities included an informational session on ADR during the agency's first Joint Conference for EEO Counselors and EEO Advisory Committee Members, updated ADR literature and promotional material, an interactive customer service exhibit on ADR during an SBCR open house, two sessions of hosting an ADR information table in a prominent area and ongoing training. The agency continues to support ADR through participation in the interagency Federal Sharing Neutrals Program. NRC employees conduct mediations for other Federal agencies, and Sharing Neutrals Program mediators facilitate mediation as a method to resolve complaints initiated at the NRC.