



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

FISCAL YEAR 2015

Enclosure

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Attachment:

Fiscal Year 2015 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) 2015 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 2015, the agency had approximately 3,700 permanent employees. The NRC's headquarters 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. 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 Partnership for Public Service ranked the NRC seventh in mid-sized agencies as one of the best places to work in the Federal Government based on the results of the 2015 Federal Employee Viewpoint Survey. The NRC was ranked fifth for its support for diversity. National publications have highlighted the NRC's commitment to diversity.

In FY 2015, there were increases in both formal and informal complaint activity, as compared to FY 2014. Most of the complaints filed were brought under Title VII of the Civil Rights Act of 1964, as amended. Age, sex, and race discrimination were the most frequently filed bases. The most frequently claimed issues alleged were harassment (nonsexual), nonselection or nonpromotion, and performance evaluations or appraisals. There was one final agency decision issued during FY 2015.

During FY 2015, the agency, after a bench trial in the U.S. District Court for the Southern District of Maryland, was found to have discriminated against an individual on the basis of age when this individual was not selected for a higher-graded position. The agency took appropriate action with respect to the manager found to have discriminated against the employee. The agency also reimbursed the Judgment Fund in the amount of \$422,418.40.

The NRC's Office of the Chief Human Capital Officer (OCHCO) provides an ancillary process for allegations of harassment to be presented under the NRC's Policy for Preventing and Eliminating Harassing Conduct in the Workplace (the policy). OCHCO's efforts have been instrumental in encouraging early intervention to resolve workplace disputes. During FY 2015, 33 claims of harassment were filed under the policy. Of these, there were four findings of harassment. In two of the cases, the employees received a written counseling. In the other two cases, the agency has proposed actions, and is considering the employees' replies before issuing a decision. Three cases were also closed in FY 2015 that were filed in FY 2014. Of these, there was one finding of harassment, and the employee received an oral counseling.

There was one case filed in Federal District Court in conjunction with the Whistleblower Protection Act (WPA), and the agency is awaiting a ruling from the court on filings by both parties.

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's 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, Equal Employment Opportunity (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 agency values known as ISOCCER—integrity, service, openness, commitment, cooperation, excellence, and respect—as a guide for fostering an open, collaborative work environment for all employees.
- Publishing an agencywide announcement on whistleblower protection and prohibited personnel practices.
- 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 annual internal EEO, affirmative employment, and diversity management assessments to determine compliance with the EEO 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 policy prohibiting discrimination based on sexual orientation and procedures for filing a sexual orientation discrimination complaint.
- Training collateral duty EEO counselors, Civil Rights Office staff, managers, supervisors, and employees that sexual orientation claims are now to be processed under Title 29 of

the *Code of Federal Regulations* (29 CFR) Part 1614, “Federal Sector Equal Employment Opportunity,” as decided by the Commission.

- Designating an ombudsman in the Office of the Inspector General (OIG) under the Whistleblower Protection Enforcement Act

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 U.S. House of Representatives, the President pro tempore of the U.S. 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.

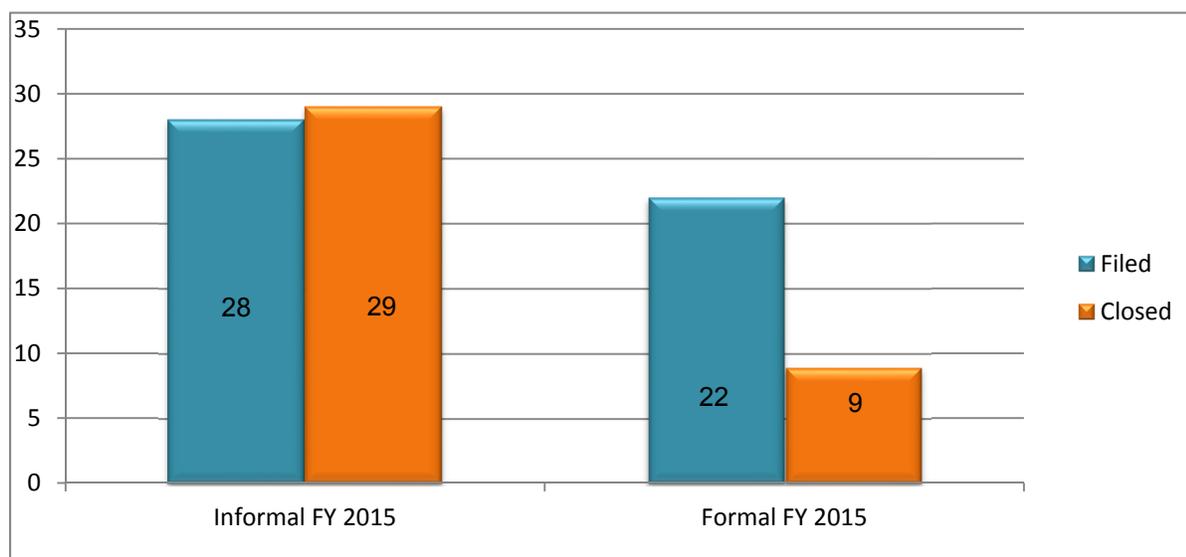
The NRC’s Office of Small Business and Civil Rights (SBCR) is responsible for administering and ensuring agency compliance with Federal EEO laws, regulations, policies, and guidance that prohibit discrimination in the Federal workplace based on race, color, national origin, religion, sex (including pregnancy,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

IV. Data Posted for Fiscal Year 2015

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). The agency updates this information no later than 30 calendar days after the end of each quarter. See the attachment for details.

The NRC’s informal and formal complaint activity is relatively low—less than 1 percent of the agency’s workforce filed informal EEO complaints, and approximately 0.6 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 2015 Informal and Formal Complaint Activity



During FY 2015, a total of 28 new informal complaints were filed, and two informal complaints were carried over from the previous fiscal year. Of the total informal complaints, 29 were closed during FY 2015. A total of 22 new formal complaints were filed against the agency. Twenty-one formal complaints were carried over from the previous fiscal year. Of the total formal complaints, nine were closed during FY 2015.

During FY 2015, nine cases were investigated; and all nine were completed in accordance with EEOC regulatory timeframes. As of the end of FY 2015, there were eight cases pending investigation. The agency issued one final agency decision during FY 2015 and had no findings of discrimination. In FY 2015, the agency settled eight formal and two 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 providing No FEAR Act training to all employees. The NRC also uses internal expertise to train managers and supervisors on EEO and diversity. All new managers and supervisors receive 2 days of training, and all present managers and supervisors receive a full day of training on this subject every 3 years. The agency also emphasizes excellent customer service and responsiveness to issues.

B. Bases and Issues

The FY 2015 complaint data show that complainants identified age, sex, and reprisal as the most frequently filed bases for complaints. Additionally, the data show that complainants identified harassment (nonsexual), non-selection or non-promotion, and performance

evaluations or appraisals as the most common issues in complaints filed. Several complaints contained multiple bases and issues. See the attachment 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 2015, the agency—after a bench trial in the U.S. District Court for the Southern District of Maryland—was found to have discriminated against an individual on the basis of age when he was not selected for a higher-graded position. The agency took appropriate action with respect to the manager found to have discriminated against the employee.

Under the reporting requirements of Title 5 of the *Code of Federal Regulations* Part 724, “Implementation of Title II of the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002,” the NRC reports that, in FY 2015, it reimbursed the Judgment Fund \$422,418.40.

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 the 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 2015, 33 claims of harassment were filed under the policy. Of these, there were four findings of harassment. In two of the cases, the employee received a written counseling. In the other two cases, the agency has proposed suspensions, among other things, and is considering the employees’ replies before issuing the decision. Three cases were also closed in FY 2015 that were filed in FY 2014. Of these, there was one finding of harassment and the employee received an oral counseling.

There was one case filed in Federal District Court in conjunction with the WPA, and the agency is awaiting a ruling from the court on filings by both parties.

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. During FY 2015, 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." As of February 29, 2016, 99 percent of all employees completed the training. New employees are required to complete the training within 90 calendar days of entering into employment.

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 2015, compared to FY 2014, shows that there was a small increase in the number of both informal and formal complaints filed, which could be the result of such factors as fewer opportunities to hire and promote. Age, sex, and reprisal were the most frequent bases of alleged discrimination. In addition, harassment (nonsexual), nonselection or nonpromotion, and performance evaluations or appraisals were the most frequent issues. Of the eight investigations, all eight cases were processed within the EEOC regulatory timeframes. The agency's average processing time for investigations increased from 223 calendar days in FY 2014 to 262 calendar days in FY 2015.

The NRC continues to make 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.

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,
- ongoing revisions to EEO complaint processing to be compliant with the EEOC's revised Management Directive 110, issued in August of 2015,
- effective training for collateral duty EEO counselors on the No FEAR Act, ADR, reasonable accommodation, and EEO case law,
- inter-agency agreements to assist other Federal agencies with EEO complaint processing, including EEO counseling and EEO investigations, and
- effective dissemination of information on the ADR program.

SBCR continues to maintain interactions with other Federal agencies, the Council of Federal EEO and Civil Rights Executives, and the Small Agency Council EEO, Diversity and Inclusion Committee, 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. It offered ADR to all parties in both the informal and formal complaint processes in FY 2015.

To increase the overall ADR participation rate, the agency continues to promote the program through the use of periodic ADR training sessions and other interactive events. For FY 2015, these activities included updated ADR literature and promotional material, one session of hosting an ADR information table during an agency knowledge-sharing event, and ongoing training on the ADR program for NRC managers and supervisors. 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.