

March 30, 2011

The Honorable John Boehner
Speaker of the United States
House of Representatives
Washington, D.C. 20515

Dear Mr. Speaker:

I am pleased to provide a copy of the U.S. Nuclear Regulatory Commission's (NRC's) Fiscal Year 2010 Annual Report on the Notification and Federal Employee Antidiscrimination and Retaliation (No FEAR) Act of 2002. The report is submitted in accordance with the requirements of Section 203 of the No FEAR Act. My Commission colleagues and I continue our commitment and efforts to maintain a model Equal Employment Opportunity program at the NRC.

Sincerely,

/RA/

Gregory B. Jaczko

Enclosure:
As stated

Identical letters sent to:

The Honorable John Boehner
Speaker of the United States
House of Representatives
Washington, D.C. 20515

The Honorable Joseph I. Lieberman
Chairman, Committee on Homeland
Security and Governmental Affairs
United States Senate
Washington, D.C. 20510
cc: Senator Susan Collins

The Honorable Fred Upton
Chairman, Committee on Energy
and Commerce
United States House of Representatives
Washington, D.C. 20515
cc: Representative Henry Waxman

The Honorable John Berry
Director, United States Office
of Personnel Management
Theodore Roosevelt Building
1900 E Street NW, Room 5A09
Washington, D.C. 20415

The Honorable Daniel Inouye
Chairman, Committee on Appropriations
United States Senate
Washington, D.C. 20510
cc: Senator Thad Cochran

The Honorable Darrell Issa
Chairman, Committee on Oversight
and Government Reform
United States House of Representatives
Washington, D.C. 20515
cc: Representative Elijah Cummings

The Honorable Barbara L. Boxer
Chairman, Committee on Environment
and Public Works
United States Senate
Washington, D.C. 20510
cc: Senator James M. Inhofe

The Honorable Jacqueline Berrien
Chairman, United States Equal Employment
Opportunity Commission
131 M Street, NE
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The Honorable Eric H. Holder, Jr.
Attorney General
United States Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530



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

FISCAL YEAR 2010

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I. Executive Summary

The U.S. Nuclear Regulatory Commission (NRC) provides its fiscal year 2010 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, promote the common defense and security, and 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 fiscal year 2010, the agency's workforce increased by approximately 61 employees, and at the end of this period, the agency had 4,028 permanent employees. To accommodate the growth in staff, over the past several years, the agency has obtained additional space for its Headquarters employees in several buildings in Montgomery County, MD. This expansion requires the agency to be more attentive to providing employees proper notification of their rights pursuant to the No FEAR Act; the agency has been successful in this task. The NRC's Headquarters operations are in Rockville, MD, and its regional offices are located in King of Prussia, PA; Atlanta, GA; Lisle, IL; and Arlington, TX. The NRC's Technical Training Center is located in Chattanooga, TN.

The Partnership for Public Service ranked the NRC the Best Place to Work in the Federal Government for the third consecutive time, based on the results of the 2009 Federal Employee Viewpoint Survey. The NRC has also received many accolades for its commitment to diversity from several national publications.

The agency's informal and formal complaint activity increased slightly. Most of the complaints filed were under Title VII of the Civil Rights Act of 1964, as amended, and the Age Discrimination in Employment Act of 1975, as amended. Reprisal, race, age and national origin discrimination were the most frequently filed bases; evaluations and appraisals, promotions, and assignment of duties were the most common issues. During this period, the agency issued two final agency decisions. There were no findings of discrimination.

During fiscal year 2010, one equal employment opportunity (EEO) lawsuit was filed against the agency in Federal district court. The case is pending a decision by the court on the agency's motion to dismiss. A second lawsuit against the agency, which was filed in fiscal year 2009 and pending in Federal district court, was decided in the agency's favor in fiscal year 2010, when the district court granted the agency's motion for summary judgment. There were no other cases filed in Federal district court or pending decision in fiscal year 2010 and 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. HR's efforts have been instrumental in encouraging early intervention to resolve workplace disputes. During fiscal year 2010, 21 claims of harassment were filed with HR under the policy. As a result, three disciplinary actions (two suspensions and one official reprimand) were issued. No disciplinary actions were issued in conjunction with the Whistleblower Protection Act (WPA).

Since the enactment of the No FEAR Act, the NRC has realized many positive changes in the workplace climate. Examples include the following:

- fostering continued support for the No FEAR Act by the Commission and senior agency executives through policy statements and in key meetings
- continuing support and promotion of the Comprehensive Diversity Management Plan, 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
- holding biannual EEO briefings
- implementing a state-of-the-art, Web-based training course on the No FEAR Act
- including a flowchart on the HR Web page depicting the process for reporting harassing conduct in the workplace
- posting in all facilities Notices on Whistleblower Rights and Protections as required for Office of Special Counsel 2302(c) compliance and certification
- conducting training programs and briefings for managers and employees on the No FEAR Act, EEO, diversity management, the Policy for Preventing and Eliminating Harassing Conduct in the Workplace, the WPA, prohibited personnel practices, reasonable accommodation, and Alternative Dispute Resolution (ADR)
- conducting EEO, affirmative employment, and diversity management program assessments to determine whether the agency is meeting the Equal Employment Opportunity Commission's (EEOC's) 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. 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 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 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.

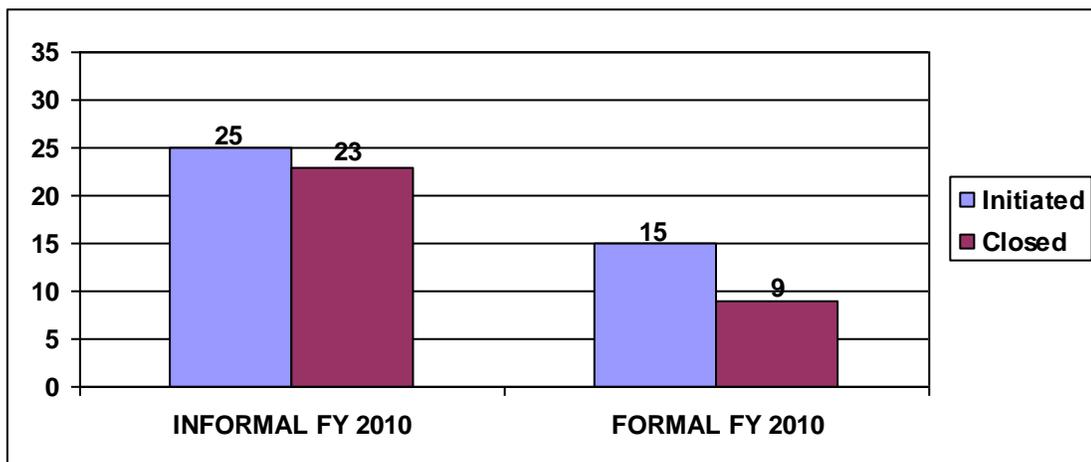
The NRC's Office of Small Business and Civil Rights (SBCR) is responsible for administering and ensuring agency compliance with Federal EEO laws, regulations, policies, and guidance that prohibit discrimination in the Federal workplace based on race, color, national origin, religion, gender, age, disability,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

IV. Data Posted for Fiscal Year 2010

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

Overall, the NRC's informal and formal complaint activity is relatively low. This outcome is attributable to a continual effort to maintain a positive work environment and the fact that some workplace disputes are resolved before aggrieved persons initiate the informal complaint process. The following sections provide more information on the informal and formal complaints filed against the agency:

A. Fiscal Year 2010 Informal and Formal Complaint Activity



During fiscal year 2010, a total of 25 new informal complaints were initiated; only one informal complaint was carried over from the previous fiscal year. Of the total 25 informal complaints, 23 were closed during fiscal year 2010. A total of 15 formal complaints were filed against the agency, and 9 complaints were closed. Formal complaint activity for fiscal year 2010 increased slightly from 2009 to more closely resemble complaint levels in years before 2009.

During fiscal year 2010, all EEO investigations were completed in a timely manner. As of the end of fiscal year 2010, there were no cases pending investigation. During fiscal year 2010, the agency issued two final agency decisions; there were no findings of discrimination. In fiscal year 2010, the agency settled nine cases; three cases were settled using ADR techniques including mediations and facilitated discussions. 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 the provision of EEO and No FEAR Act training to NRC managers, supervisors, and employees. The agency also emphasizes excellent customer service and responsiveness to issues.

B. Bases and Issues

The fiscal year 2010 complaint data show that complainants identified reprisal, race, age and national origin as the most frequently filed bases for complaints. Additionally, the data show that complainants identified evaluation/appraisal, promotion/nonselection, and assignment of duties as the most common issues in the complaints filed. Several complaints had 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 WPA and antidiscrimination laws, the status of such cases, and the amount of money reimbursed to the Judgment Fund. The Office of Personnel Management published final regulations on May 10, 2006, to carry out the agency reimbursement provisions of the No FEAR Act. These final regulations state that the Federal Management Service (FMS), U.S. Department of 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 must contact FMS to make arrangements in writing for reimbursement.

During fiscal year 2010, one EEO lawsuit was filed against the agency in Federal district court. The case is pending decision by the court on the agency's motion to dismiss. A second lawsuit against the agency, which was filed in fiscal year 2009 and pending in Federal district court, was decided in the agency's favor in fiscal year 2010, when the district court granted the agency's motion for summary judgment. There were no other cases filed or pending decision in fiscal year 2010 and no reimbursements to the Judgment Fund.

VI. Disciplinary Actions

Section 203(a)(6) of the No FEAR Act requires that each agency include in its 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 prior No FEAR Act reports, 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. During fiscal year 2010, 21 claims of harassment were filed with HR under the antiharassment policy. As a result, the agency issued three disciplinary actions (two suspensions and one official reprimand). No disciplinary actions were issued in conjunction with the WPA.

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 Web-based training course on the No FEAR Act. The training explained the rights and remedies available to NRC employees under antidiscrimination and whistleblower protection laws. The NRC's training was updated during early fiscal year 2010. This new state-of-the-art training includes an introductory message from the Executive Director for Operations, interactive vignettes, and knowledge checks to reinforce learning. Approximately 98 percent of employees had completed this refresher training course by February 28, 2010. 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.

An analysis of complaints filed during fiscal year 2010 compared to fiscal year 2009 shows an increase in the number of informal and formal complaints filed against the agency. Complaint activity alleging reprisal, age, and national origin discrimination increased during fiscal year 2010.

The agency continues to improve processing time for investigations and ensures that all investigations are completed within the 180-day timeframe mandated by EEOC regulations. In fiscal year 2010, the agency's average processing time for all complaints, including two amended complaints, was 175 calendar days.

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 interagency 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 experience in processing EEO complaints 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, reasonable accommodation, 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 uses its ADR program 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 all parties in both the informal and formal complaint processes. 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, discuss, and engage in creative methods of dispute resolution.

The agency's participation rate for ADR for the formal complaint phase was 11 percent in fiscal year 2010. For the informal complaint phase, the agency participation rate was 30 percent. In an effort to increase the agency's ADR participation rate to meet the EEOC's goal of 50 percent, the agency is continuing to promote the program through the use of periodic ADR training and other interactive events with agency offices. For fiscal year 2011, these activities will include (1) presenting informational exhibits about ADR, (2) distributing updated ADR brochures to employees, (3) conducting assessments of ADR sessions, and (4) providing ADR awareness training. The agency continues to support Federal progress in ADR through participation in the Federal Sharing Neutrals Program. NRC staff members conduct mediations for other Federal agencies, and Sharing Neutrals Program mediators facilitate NRC mediation for EEO matters.



Equal Employment Opportunity Data Posted Pursuant to the *No Fear Act*

Pursuant to Section 301 of the [Notification and Federal Employee Anti-discrimination and Retaliation Act of 2002](#) (the No Fear Act), the NRC has posted [summary statistical data](#) pertaining to complaints of employment discrimination filed by employees, former employees and applicants for employment under [29 CFR Part 1614](#). The specific data posted is described in section 301(b) of the Act and 29 CFR 1614.704.

<u>29 CFR § 1614.704(e)</u>	29 CFR § 1614.705 Comparative Data Previous Fiscal Year Data					
Complaint by Issue	2010	2009	2008	2007	2006	2005
Appointment/Hire	0	0	1	2	1	2
Assignment of Duties	5	4	5	2	7	6
Awards	1	1	2	2	6	2
Conversion to Full-time	0	0	0	0	0	0
Disciplinary Action						
Demotion	0	0	0	0	0	0
Reprimand	0	1	1	0	0	0
Suspension	1	0	1	0	0	0
Removal	1	0	1	1	0	1
Other	1	1	2	0	0	0
Duty Hours	0	0	0	0	1	0
Evaluation Appraisal	7	6	4	2	9	4
Examination/Test	0	0	0	0	0	0
Harassment						
Non-Sexual	2	6	6	4	9	7
Sexual	0	0	0	0	0	0
Medical Examination	0	0	0	0	0	0
Pay (Including Overtime)	0	1	0	0	0	0
Promotion/Non-Selection	5	1	10	6	6	2
Reassignment						
Denied	0	0	0	0	0	0
Directed	1	0	0	0	0	0
Reasonable Accommodation	1	0	0	1	0	2
Reinstatement	0	0	0	0	0	0
Retirement	0	0	0	0	0	0
Termination	0	0	1	1	0	0
Terms/Conditions of Employment	3	1	0	0	0	0
Time and Attendance	1	0	1	2	2	1
Training	2	0	2	2	4	4
Other	5	0	0	0	0	0

29 CFR § 1614.704 (f)			
Processing Time "...post the average length of time it takes to complete each step of the process for every complaint that is pending during any time of the then fiscal year..."		FY 2010 4 th qtr	
		Number	Average Days
All complaints pending in Investigative State	1614.704(f)(1)	5	55
All complaints pending in Final Agency Decision/Action Stage		2	257
All complaints pending in which Hearing was not requested	1614.704(f)(2)	0	0
Time in Investigation Stage		0	0
Time to issue Final Agency Action		0	0
All complaints pending in which a Hearing was requested	1614.704(f)(3)	0	0
Time in Investigation Stage		0	0
Time to issue Final Agency Action		0	0

29 CFR § 1614.704(g)	29 CFR § 1614.705 Comparative Data Previous Fiscal Year Data					
Complaint Dismissed by Agency	2010	2009	2008	2007	2006	2005
Total Complaints Dismissed by Agency	2	5	0	3	1	0
Average days pending prior to dismissal	31	282	0	110	86	0

29 CFR § 1614.704(h)	29 CFR § 1614.705 Comparative Data Previous Fiscal Year Data					
Complaint Withdrawn by Complainants Pursuant to 1614.107(a)	2010	2009	2008	2007	2006	2005
Total Complaints Withdrawn	0	0	0	1	4	2

29 CFR § 1614.704(i)	29 CFR § 1614.705 Comparative Data											
Total Final Agency Actions Finding Discrimination	2010		2009		2008		2007		2006		2005	
	#	%	#	%	#	%	#	%	#	%	#	%
Total Number Findings 1614.704(i)(1)	0		0		0		0		0		0	
Without Hearing 1614.704(i)(2)	0		0		0		0		0		0	
With Hearing 1614.704(i)(3)	0		0		0		0		0		0	

29 CFR § 1614.704(j)	29 CFR § 1614.705 Comparative Data Previous Fiscal Year Data											
	2010		2009		2008		2007		2006		2005	
	#	%	#	%	#	%	#	%	#	%	#	%
Findings of Discrimination Rendered by Basis												
Total Number Findings 1614.704(j)(1)	0		0		0		0		0		0	
Number of Finds Rendered Without Hearing 1614.704(j)(2)	0		0		0		0		0		0	
Number of Finds Rendered After Hearing 1614.704(j)(3)	0		0		0		0		0		0	
Race	0		0		0		0		0		0	
Color	0		0		0		0		0		0	
Religion	0		0		0		0		0		0	
National Origin	0		0		0		0		0		0	
Sex (include Equal Pay Act)	0		0		0		0		0		0	
Disability	0		0		0		0		0		0	
Age	0		0		0		0		0		0	
Reprisal	0		0		0		0		0		0	

29 CFR § 1614.704(k)	29 CFR § 1614.705 Comparative Data Previous Fiscal Year Data											
	2010		2009		2008		2007		2006		2005	
	#	%	#	%	#	%	#	%	#	%	#	%
Findings of Discrimination Rendered by Issue												
Total Number Findings 1614.704(k)(1)	0		0		0		0		0		0	
Findings Without Hearing 1614.704(k)(2)	0		0		0		0		0		0	
Findings After Hearing 1614.704(k)(3)	0		0		0		0		0		0	
Appointment/Hire	0		0		0		0		0		0	
Assignment of Duties	0		0		0		0		0		0	
Awards	0		0		0		0		0		0	
Conversion to Full-time	0		0		0		0		0		0	
Disciplinary Action	0		0		0		0		0		0	
Demotion	0		0		0		0		0		0	
Reprimand	0		0		0		0		0		0	
Suspension	0		0		0		0		0		0	
Removal	0		0		0		0		0		0	
Other	0		0		0		0		0		0	
Duty Hours	0		0		0		0		0		0	
Evaluation Appraisal	0		0		0		0		0		0	
Examination/Test	0		0		0		0		0		0	
Harassment	0		0		0		0		0		0	
Non-Sexual	0		0		0		0		0		0	
Sexual	0		0		0		0		0		0	
Medical Examination	0		0		0		0		0		0	
Pay (Including Overtime)	0		0		0		0		0		0	
Promotion/Non-Selection	0		0		0		0		0		0	
Reassignment	0		0		0		0		0		0	
Denied	0		0		0		0		0		0	
Directed	0		0		0		0		0		0	
Reasonable Accommodation	0		0		0		0		0		0	
Reinstatement	0		0		0		0		0		0	
Retirement	0		0		0		0		0		0	
Termination	0		0		0		0		0		0	
Terms/Conditions of Employment	0		0		0		0		0		0	
Time and Attendance	0		0		0		0		0		0	
Training	0		0		0		0		0		0	
Other	0		0		0		0		0		0	

29 CFR § 1614.704(l)	29 CFR § 1614.705 Comparative Data Previous Fiscal Year Data					
Complaints Pending From Previous Fiscal Years by Status	2010	2009	2008	2007	2006	2005
Total complaints from previous Fiscal Years 1614.704(l)(1)	0	0	2	2	2	3
Total Complainants 1614.704(l)(2)	0	0	2	2	2	3
Number of all pending complaints from previous Fiscal Years 1614.704(l)(3)						
Investigation	0	0	0	0	1	2
ROI issued, pending Complainant's action	0	0	0	0	0	0
Hearing	0	0	0	1	0	1
Final Agency Action	0	0	2	1	1	0
Number of closed complaints pending 1614.704(k)(3)						
Appeal with EEOC Office of Federal Operations	5	5	4	2	1	1

29 CFR § 1614.704(l)	29 CFR § 1614.705 Comparative Data Previous Fiscal Year Data					
Complaint Investigations	2010	2009	2008	2007	2006	2005
Number Pending Completion of Investigation	0	0	6	2	5	8
Pending Investigations Over Required Time Frames	0	0	0	0	2	2