

March 30, 2012

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 Fiscal Year 2011 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 remain committed to maintaining a model Equal Employment Opportunity program.

Sincerely,

/RA/

Gregory B. Jaczko

Enclosure:
[As stated](#)

Identical letter 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
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of Personnel Management
Theodore Roosevelt Building
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The Honorable Daniel K. Inouye
Chairman, Committee on Appropriations
United States Senate
Washington, D.C. 20510
cc: Senator Thad Cochran

The Honorable Harold Rogers
Chairman, Committee on Appropriations
United States House of Representatives
Washington, D.C. 20515
cc: Representative Norman Dicks

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 A. Berrien
Chair, United States Equal Employment
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131 M Street, NE
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The Honorable Eric H. Holder, Jr.
Attorney General
United States Department of Justice
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The Honorable Joseph R. Biden, Jr.
President of the Senate
Washington, D.C. 20510



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

FISCAL YEAR 2011

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Attachment [Fiscal Year 2011 No FEAR Act Data Posted on NRC Web Site](#)

I. Executive Summary

The U.S. Nuclear Regulatory Commission (NRC) provides its fiscal year (FY) 2011 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 FY 2011, the agency's workforce decreased by approximately 78 employees, and at the end of this period, the agency had 3,950 permanent employees. The agency's headquarters employees are located in several buildings in Montgomery County, MD. 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 dispersal of staff 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 Partnership for Public Service ranked the NRC second in the rankings for the Best Place to Work in the Federal Government, based on the results of the 2010 Federal Employee Viewpoint Survey. The NRC has also received accolades for its commitment to diversity from several national publications.

The agency's informal and formal complaint activity increased in FY 2011 but remain relatively low given the NRC's size. 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 1967, as amended. Age, reprisal, and race discrimination were the most frequently filed bases; evaluations/appraisals, promotions/nonselections, harassment (non-sexual), and assignment of duties were the most common issues. During this period, the agency issued five final agency decisions. There were no findings of discrimination.

During FY 2011, the agency had two equal employment opportunity (EEO) lawsuits in Federal District Court. 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 (NRC Anti-Harassment Policy). HR's efforts have been instrumental in encouraging early intervention to resolve workplace disputes. During FY 2011, 20 claims of harassment were filed under the NRC's Anti-Harassment Policy. No disciplinary actions were issued as a result. 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 has realized many positive changes in the workplace climate. Examples include the following:

- continuing support for the No FEAR Act by the Commission and agency senior executives through policy statements and discussion 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
- biannual EEO briefings
- implementation of a highly praised Web-based training course on the No FEAR Act
- publication of a flowchart on the HR Web page depicting the process for reporting harassing conduct in the workplace
- posting of Notices on Whistleblower Rights and Protections in all facilities as required for Office of Special Counsel 5 U.S.C. Section 2302(c) compliance and certification
- implementation of 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)
- periodic 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
- continuing efforts to timely process EEO complaints and ensure that no backlog of cases occurs

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 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). 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 each Federal agency 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.

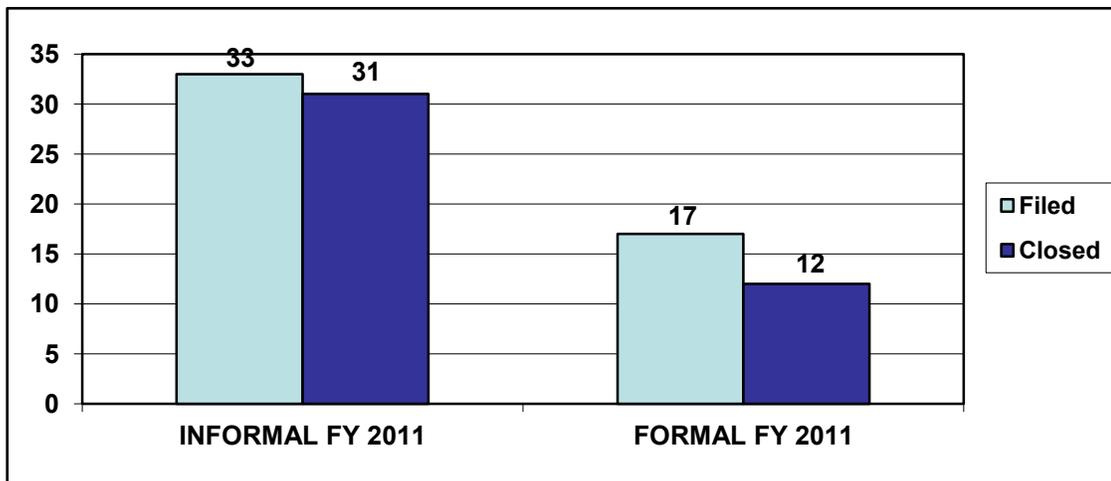
The NRC's Office of Small Business and Civil Rights (SBCR) is responsible for administering and ensuring agency compliance with Federal EEO laws, regulations, policies, and guidance that prohibit discrimination in the Federal workplace based on race, color, national origin, religion, gender, age, disability, 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 (OIG), and the 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 Fiscal Year 2011

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 2011 Informal and Formal Complaint Activity



During FY 2011, a total of 33 new informal complaints were filed; three informal complaints were carried over from the previous fiscal year. Of the total informal complaints, 31 were closed during FY 2011. A total of 17 formal complaints were filed against the agency, and 12 complaints were closed. FY 2011 Informal and formal complaint activity increased from FY 2010, but remain relatively low given the agency's size.

During FY 2011, there were two EEO investigations greater than 180 days. As of the end of FY 2011, there were six cases pending investigation. During FY 2011, the agency issued five final agency decisions; there were no findings of discrimination. In

FY 2011, the agency settled seven formal and ten informal cases; 13 cases were settled using ADR techniques including mediation and facilitated discussion. 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 FY 2011 complaint data show that complainants identified age, reprisal, and race as the most frequently filed bases for complaints. Additionally, the data show that complainants identified evaluations/ appraisals, promotions/nonselections, harassment (non-sexual), and assignment of duties as the most common issues in the complaints filed. Several complaints identified multiple bases and issues. 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 the 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 FY 2011, the agency had two equal employment opportunity (EEO) lawsuits in Federal District Court. At the end of FY 2011, one case before District Court was pending the agency's motion to dismiss (which was granted in early FY 2012) and the plaintiff then appealed to the Court of Appeals for the 4th Circuit. In the other case, the agency's motion to dismiss was granted by the District Court, and is now pending the plaintiff's amended complaint. There were no reimbursements to the Judgment Fund required in connection with these lawsuits.

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 law 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, including retaliation for lawful whistleblowing activities or for exercising an appeal, complaint, or grievance right. During FY 2011, 20 claims of harassment

were filed under the NRC Anti-Harassment Policy. No disciplinary actions were issued as a result. There were no cases filed in Federal District Court and no disciplinary actions issued in conjunction with the WPA.

VII. Training Requirement for the No FEAR Act

Section 202(c) of the No FEAR Act requires that agencies provide training about the Act to employees. To comply with this provision, on September 30, 2005, the agency implemented a Web-based training course on the No FEAR Act. The training explains the rights and remedies available to NRC employees under antidiscrimination and whistleblower protection laws. The NRC's training was updated during FY 2010 and was rated by NRC employees as the agency's most effective online training. The training was also deemed "best in class" training by OPM. This new includes an introductory message from the NRC's Executive Director for Operations, interactive vignettes, and knowledge checks to reinforce learning. Approximately 99 percent of employees had completed this refresher training course by February 29, 2012. 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 FY 2011 compared to FY 2010 shows an increase in the number of informal and formal complaints filed against the agency. Complaint activity alleging age, disability, reprisal, and national origin discrimination increased over the past several years.

The agency experienced a slight increase in processing time for investigations and had two cases that exceeded the 180-day timeframe mandated by EEOC regulations. In FY 2011, the agency's average processing time for all complaints, including one amended complaint, was 199 calendar days.

The agency has made significant 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 staff EEO investigators. The agency's civil rights staff has considerable experience in processing EEO complaints. This knowledge base contributes significantly to ongoing improvement in communication with complainants and managers; high quality EEO training for employees to prevent discrimination; generally reduced processing time for investigations; effective training for collateral duty EEO counselors on the No FEAR Act, ADR, reasonable accommodation, and EEO case law; and 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 knowledge and learn about 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 offered ADR to all parties in both the informal and formal complaint processes in FY 2011. The ADR coordinator meets with the agency official and employee separately to discuss the ADR process and the issues in dispute. The parties are encouraged to collectively discuss creative methods of dispute resolution.

The agency's ADR participation rate for the informal phase was 52 percent in FY 2011, a significant increase from 30 percent in FY 2010. For the formal phase, the participation rate was 17 percent in FY 2011 compared to 11 percent in FY 2010. In an effort to increase the agency's overall ADR participation rate to meet or exceed 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 FY 2011, these activities included three informational exhibits/awareness training on ADR as well as the distribution of ADR descriptive brochures. The agency continues to support Federal progress in ADR through participation in the Federal Sharing Neutrals Program. NRC employees 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	2011	2010	2009	2008	2007	2006
Appointment/Hire	2	0	0	1	2	1
Assignment of Duties	5	5	4	5	2	7
Awards	4	1	1	2	2	6
Conversion to Full-time	0	0	0	0	0	0
Disciplinary Action						
Demotion	0	0	0	0	0	0
Reprimand	1	0	1	1	0	0
Suspension	0	1	0	1	0	0
Removal	1	1	0	1	1	0
Other	2	1	1	2	0	0
Duty Hours	0	0	0	0	0	1
Evaluation Appraisal	9	7	6	4	2	9
Examination/Test	0	0	0	0	0	0
Harassment						
Non-Sexual	7	2	6	6	4	9
Sexual	0	0	0	0	0	0
Medical Examination	0	0	0	0	0	0
Pay (Including Overtime)	2	0	1	0	0	0
Promotion/Non-Selection	5	5	1	10	6	6
Reassignment						
Denied	0	0	0	0	0	0
Directed	0	1	0	0	0	0
Reasonable Accommodation	1	1	0	0	1	0
Reinstatement	0	0	0	0	0	0
Retirement	0	0	0	0	0	0
Termination	1	0	0	1	1	0
Terms/Conditions of Employment	2	3	1	0	0	0
Time and Attendance	0	1	0	1	2	2
Training	1	2	0	2	2	4
Other	5	5	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 2011					
	Number		Average Days			
All complaints pending in Investigative State	1614.704(f)(1)		6		98	
All complaints pending in Final Agency Decision/Action Stage			0		0	
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)		6		405	
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	2011	2010	2009	2008	2007	2006
Total Complaints Dismissed by Agency	1	2	5	0	3	1
Average days pending prior to dismissal	0	31	282	0	110	86

29 CFR § 1614.704(h)						
29 CFR § 1614.705 Comparative Data Previous Fiscal Year Data						
Complaint Withdrawn by Complainants Pursuant to 1614.107(a)	2011	2010	2009	2008	2007	2006
Total Complaints Withdrawn	0	0	0	0	1	4

29 CFR § 1614.704(i)												
29 CFR § 1614.705 Comparative Data												
Total Final Agency Actions Finding Discrimination	2011		2010		2009		2008		2007		2006	
	#	%										
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 § 1614.705 Comparative Data											
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29 CFR § 1614.704(l)	29 CFR § 1614.705 Comparative Data Previous Fiscal Year Data					
Complaints Pending From Previous Fiscal Years by Status	2011	2010	2009	2008	2007	2006
Total complaints from previous Fiscal Years 1614.704(l)(1)	2	0	0	2	2	2
Total Complainants 1614.704(l)(2)	2	0	0	2	2	2
Number of all pending complaints from previous Fiscal Years 1614.704(l)(3)						
Investigation	0	0	0	0	0	1
ROI issued, pending Complainant's action	0	0	0	0	0	0
Hearing	6	0	0	0	1	0
Final Agency Action	0	0	0	2	1	1
Number of closed complaints pending 1614.704(k)(3)						
Appeal with EEOC Office of Federal Operations	3	5	5	4	2	1

29 CFR § 1614.704(l)	29 CFR § 1614.705 Comparative Data Previous Fiscal Year Data					
Complaint Investigations	2011	2010	2009	2008	2007	2006
Number Pending Completion of Investigation	6	0	0	6	2	5
Pending Investigations Over Required Time Frames	2	0	0	0	0	2