

March 28, 2013

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) Fiscal Year 2012 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/

Allison M. Macfarlane

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 R. Biden, Jr.
President of the Senate
Washington, D.C. 20510

The Honorable Thomas R. Carper
Chairman, Committee on Homeland
Security and Governmental Affairs
United States Senate
Washington, D.C. 20510
cc: Senator Tom Coburn

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 Patrick Leahy
President, Pro Tempore
United States Senate
Washington, D.C. 20510

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 David Vitter

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 Jacqueline A. Berrien
Chair, United States Equal Employment
Opportunity Commission
131 M Street, NE
Washington, D.C. 20507

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 2012

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I. Executive Summary

The U.S. Nuclear Regulatory Commission (NRC) provides its fiscal year (FY) 2012 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 2012, the agency's workforce decreased by 175 employees, and at the end of this period the agency had 3,775 permanent employees. The agency's headquarters employees are located in Montgomery County, MD. Because staff members are located at both headquarters and regional offices, the agency must be especially attentive to providing 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 third in mid-sized agencies as one of the best places to work in the Federal Government based on the results of the 2012 Federal Employee Viewpoint Survey. The NRC also has received praise for its commitment to diversity from several national publications.

There was no significant change in the agency's informal and formal complaint activity for FY 2012 compared to FY 2011. Most of the complaints filed were under Title VII of the Civil Rights Act of 1964, as amended. Reprisal, sex, and race discrimination were the most frequently filed bases; harassment (nonsexual), as well as evaluations and appraisals, and promotions or nonselections were the most common issues. There were no final agency decisions issued during FY 2012.

During FY 2012, 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 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 (NRC Anti-Harassment Policy). OCHCO's efforts have been instrumental in encouraging early intervention to resolve workplace disputes. During FY 2012, 37 claims of harassment were filed under the NRC's Anti-Harassment Policy, and there were 2 findings of harassment. In one finding, an employee resigned in lieu of being issued a Notice of Proposed Removal, and another employee in the same case received official counseling. In the second finding, the harassment was in the form of an anonymous, offensive note. Because the harasser was never identified, management in the relevant office issued a written reminder to the entire staff concerning harassment.

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
- creating a Diversity Management and Inclusion Council to assist the agency in developing a more comprehensive, integrated, and strategic focus on diversity and inclusion in the workplace
- holding biannual EEO briefings to the agency's Commission
- implementing a highly praised Web-based training course on the No FEAR Act
- continuing support of 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
- posting of Notices on Whistleblower Rights and Protections in all facilities as required by the Office of Special Counsel 5 U.S.C. Section 2302(c) compliance and certification
- 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 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 process EEO complaints promptly and to 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 an annual report that sets forth information about their efforts to improve compliance with the employment discrimination and whistleblower protection laws and details the status of complaints brought against their agencies 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 publically known and to post on its Web site a summary of statistical data relating to Federal sector EEO complaints filed with each 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. The agencies must report on 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.

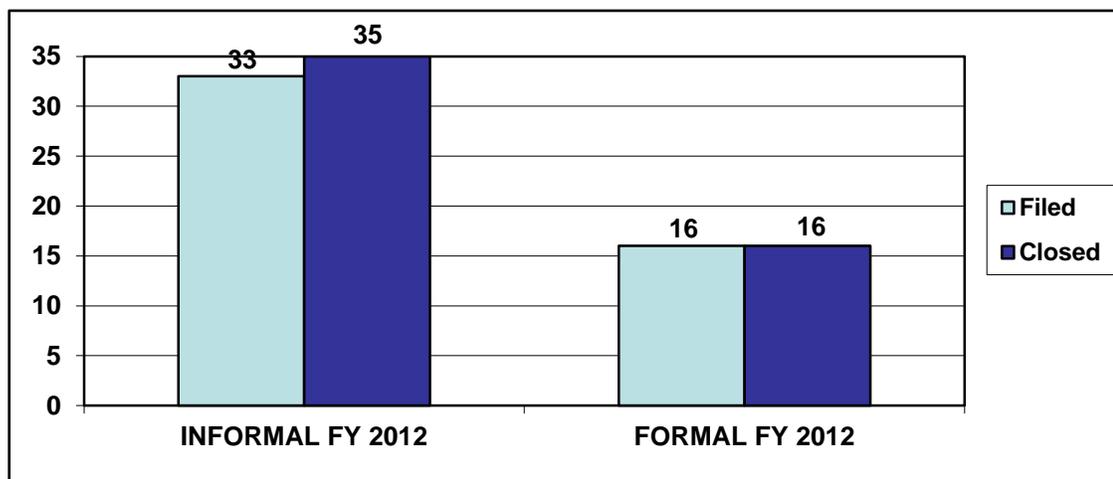
The NRC's Office of Small Business and Civil Rights (SBCR) is responsible for administering and ensuring agency compliance with Federal EEO laws, regulations, policies, and guidance that prohibit discrimination in the Federal workplace based on race, color, national origin, religion, gender, age, disability, genetic information, or reprisal. SBCR also is 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 2012

As required by the No FEAR Act, the NRC promptly 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 no later than 30 calendar days after the end of each quarter. See Attachment 1 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 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 fact that some workplace disputes are resolved 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 2012 Informal and Formal Complaint Activity



During FY 2012, a total of 33 new informal complaints were filed, and 5 informal complaints were carried over from the previous fiscal year. Of the total informal complaints, 35 were closed during FY 2012. A total of 16 new formal complaints were filed against the agency and 2 previously dismissed complaints were remanded from the EEOC. Twelve formal complaints were carried over from the previous fiscal year. Of the total formal complaints, 16 were closed during FY 2012.

During FY 2012, there were three EEO investigations that lasted longer than 180 days; two of these investigations were processed untimely. As of the end of FY 2012, there were six cases pending investigation. The agency issued no final agency decisions during FY 2012 or findings of discrimination. In FY 2012, the agency settled 11 formal and 9 informal cases, and 6 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 all employees. The agency also emphasizes excellent customer service and responsiveness to issues.

B. Bases and Issues

The FY 2012 complaint data show that complainants identified reprisal, sex, and race as the most frequently filed bases for complaints. Additionally, the data show that complainants identified harassment (nonsexual), evaluations or appraisals, and promotions or nonselection as the most common issues in complaints filed. Several complaints contained 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 from the WPA and antidiscrimination laws, the status of such cases, and the amount of money reimbursed to the Judgment Fund. 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.

During FY 2012, the agency had two EEO lawsuits in Federal District Court. At the end of FY 2012, both cases were pending, awaiting determinations by the court on motions. There were no reimbursements to the Judgment Fund 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 that it implements 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). Furthermore, 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.

As indicated in the agency's previous 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 2012, 37 claims of harassment were filed under the NRC Anti-Harassment Policy. Disciplinary action was proposed in one finding; however, the employee resigned in lieu of being issued a Notice of Proposed Removal and another employee involved in the same case received official counseling. In the second finding, the harassment was in the form of an anonymous, offensive note. Because the harasser was never identified, management in the relevant office issued a written reminder to the entire staff concerning harassment.

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 all agencies provide training to employees about the act. To comply with this provision during September 2005, the agency implemented a Web-based training course on the No FEAR Act. The training explains the rights, responsibilities, and remedies available to NRC employees under antidiscrimination and whistleblower protection laws. The NRC's training was updated during FY 2010, which NRC employees rated as the agency's most effective online training, and OPM deemed it "best in class." During FY 2012, 99 percent of all employees completed the training. New employees are required to complete the training within 90 calendar days of being hired.

To further inform the staff about the agency's commitment to preventing and eliminating discrimination in the workplace and to provide direct insight into the origin, objectives, and requirements of the No FEAR Act, the agency hosted a training session facilitated by Dr. Marsha Coleman-Adebayo, the foremost authority on the No FEAR Act. The training was well attended by employees from all levels of the agency.

VIII. Trends, Analysis, and Practical Knowledge

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

An analysis of complaints filed during FY 2012, compared to FY 2011, shows a significant decrease in the number of complaints filed when national origin was identified as a basis. There was no change in the number of informal complaints filed and a decrease of one formal complaint.

The agency experienced a slight increase in processing time for investigations and had three cases that exceeded the 180-day timeframe that EEOC regulations mandate. In FY 2012, the agency's average processing time for all complaints, including two amended complaints, was 209 calendar days—compared to 199 calendar days in FY 2011.

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

The NRC also has EEO investigators on 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 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 it offered ADR to all parties in both the informal and formal complaint processes in FY 2012.

To increase its overall ADR participation rate, the agency continues to promote the program through the use of periodic ADR training and other interactive events. For FY 2012, these activities included the agency wide lunch-and-learn event that Dr. Coleman-Adebayo facilitated, updated ADR literature and promotional material, an interactive customer service exhibit on ADR during an SBCR open house, and ongoing training. The agency continues to support ADR through participation in the 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.



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.

Attachment

NRC Discrimination Complaint Activity FY 2007 - FY 2012



29 CFR ' 1614.704(a) - (c)	<u>29 CFR ' 1614.705</u> Comparative Data Previous Fiscal Year Data					
Complaint Activity	2012 4th Qtr	2011	2010	2009	2008	2007
Number of Complaints Filed in FY 1614.704(a)	16	17	15	8	13	11
Number of Complainants 1614.704(b)	16	16	14	8	12	11
Repeat Filers 1614.704(c)	0	1	1	0	1	2

<u>29 CFR ' 1614.704(d)</u>	29 CFR ' 1614.705 Comparative Data Previous Fiscal Year Data					
Complaint by Basis	2012 4th Qtr	2011	2010	2009	2008	2007
Race	6	6	5	5	6	5
Color	2	0	1	1	2	0
Religion	1	1	1	1	0	0
National Origin	0	5	5	1	2	1
Sex (including complaint filed under Equal Pay Act)	8	4	2	0	3	4
Disability	5	5	2	1	0	3
Age	5	10	7	4	8	2
Reprisal	9	9	7	5	5	4
Other	2	0	0	0	0	0

29 CFR ' 1614.704(e)	29 CFR ' 1614.705 Comparative Data Previous Fiscal Year Data					
Complaint by Issue	2012 4 th Qtr	2011	2010	2009	2008	2007
Appointment/Hire	0	2	0	0	1	2
Assignment of Duties	4	5	5	4	5	2
Awards	3	4	1	1	2	2
Conversion to Full-time	0	0	0	0	0	0
Disciplinary Action						
Demotion	1	0	0	0	0	0
Reprimand	0	1	0	1	1	0
Suspension	1	0	1	0	1	0
Removal	0	1	1	0	1	1
Other	0	2	1	1	2	0
Duty Hours	0	0	0	0	0	0
Evaluation Appraisal	8	9	7	6	4	2
Examination/Test	0	0	0	0	0	0
Harassment						
Non-Sexual	8	7	2	6	6	4
Sexual	0	0	0	0	0	0
Medical Examination	0	0	0	0	0	0
Pay (including Overtime)	0	2	0	1	0	0
Promotion/Non-Selection	7	5	5	1	10	6
Reassignment						
Denied	1	0	0	0	0	0
Directed	0	0	1	0	0	0
Reasonable Accommodation	1	1	1	0	0	1
Reinstatement	0	0	0	0	0	0
Retirement	0	0	0	0	0	0
Termination	0	1	0	0	1	1
Terms/Conditions of Employment	2	2	3	1	0	0
Time and Attendance	4	0	1	0	1	2
Training	1	1	2	0	2	2

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	2012 4 th Qtr	2011	2010	2009	2008	2007
Total complaints from previous Fiscal Years 1614.704(l)(1)	5	2	0	0	2	2
Total Complainants 1614.704(l)(2)	3	2	0	0	2	2
Number of all pending complaints from previous Fiscal Years 1614.704(l)(3)						
Investigation	0	0	0	0	0	0
ROI issued, pending Complainant=s action	0	0	0	0	0	0
Hearing	4	6	0	0	0	1
Final Agency Action	0	0	0	0	2	1
Number of closed complaints pending 1614.704(k)(3)						
Appeal with EEOC Office of Federal Operations	2	3	5	5	4	2

29 CFR ' 1614.704(l)	29 CFR ' 1614.705 Comparative Data Previous Fiscal Year Data					
Complaint Investigations	2012 4 th Qtr	2011	2010	2009	2008	2007
Number Pending Completion of Investigation	0	6	0	0	6	2
Pending Investigations Over Required Time Frames	2	2	0	0	0	0