



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

Fiscal Year 2019

Enclosure

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I. Executive Summary

The U.S. Nuclear Regulatory Commission (NRC or agency) provides its annual Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (No FEAR Act) report to Congress for fiscal year (FY) 2019, in accordance with Title II, Section 203, of the No FEAR Act, Public Law 107-174. This annual report summarizes the NRC's activities to ensure accountability for antidiscrimination and whistleblower laws related to employment as required by Section 203 of the No FEAR Act, Public Law 107-174.

The NRC's mission is to license and regulate the Nation's civilian use of radioactive materials to provide reasonable assurance of 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 2019, the agency had approximately 3,000 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 in Chattanooga, TN. While NRC staff members are located throughout the country, the agency must be especially attentive to providing all employees proper notification of their rights under the No FEAR Act through online training and agency network announcements. The NRC continues to be successful in this task.

The Partnership for Public Service ranked the NRC in 9th place for midsized agencies and one of the best places to work in the Federal Government based on the results of the 2019 Federal Employee Viewpoint Survey. The NRC was ranked 6th for its support for diversity. National publications have highlighted the NRC's commitment to diversity.

This annual No FEAR Act report covers the period of October 1, 2018, to September 30, 2019. In FY 2019, the agency experienced an increase in informal complaint activity and formal complaint activity remained relatively comparable to FY 2018. Most of the complaints filed were brought under Title VII of the Civil Rights Act of 1964, as amended, or the Age Discrimination in Employment Act of 1967, as amended (or both), or the Rehabilitation Act of 1973, as amended. Reprisal, age, gender, and disability were the most common bases filed in FY 2019. The most prevalent issues during this reporting period were harassment (non-sexual), promotion, non-selection, performance appraisal, assignment of duties, and disciplinary actions. The NRC issued two final agency decisions during FY 2019.

During FY 2019, the NRC had no EEO lawsuits pending in U.S. Federal District Court. The NRC currently has no whistleblowing cases pending in Federal District Court. There were no reimbursements to the Judgment Fund.

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 implementation of the No FEAR Act by the Commission and senior agency executives through policy statements and discussions in key meetings;
- Continuing support and promotion of the NRC's Inclusive Diversity Strategic Plan, which includes the Comprehensive Diversity Management Plan goals and strategies to achieve a positive and discrimination-free environment;

- 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 of and plans for the agency's EEO affirmative employment and diversity management program;
- Upholding 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;
- Posting notices on whistleblower protection rights 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's anti-harassment policy, reasonable accommodation, and alternative dispute resolution (ADR);
- Continuing the implementation of DIALOGUE—Diversity Inclusion Awareness Leading Organizational Growth, Understanding, and Engagement—in which small groups of managers and employees participate in facilitated forums to discuss diversity topics in an open environment;
- Implementing the NRC Leadership Model, which emphasizes observable behaviors that are representative of leadership characteristics, including receptivity to new ideas and thinking and diversity in thought;
- Continuing to support a workplace where diverse views, alternative approaches, critical thinking, collaborative problem solving, unbiased evaluations, and honest feedback are encouraged, recognized, and valued;
- Implementing changes to the agency's reasonable accommodation policies and procedures in compliance with amendments to the regulations governing Section 501 of the Rehabilitation Act of 1973 to include the provision of personal assistant services;
- Implementing changes to the Senior Executive Service Candidate Development Program (SES CDP), including the selection process;
- Processing EEO complaints promptly to ensure that cases are dispositioned in a timely manner;
- Continuing to facilitate the "Speed of Trust" initiative, consisting of workshops to provide opportunities for strengthening mutual trust among agency leaders, supervisors, and staff; and
- Continuing to raise awareness of the agency's ADR program to resolve EEO complaints at the earliest stage.

II. Introduction

The NRC is an independent agency established by the Energy Reorganization Act of 1974 that began operations in 1975 as a successor to the licensing and regulatory activities of the Atomic Energy Commission. The NRC's mission is to license and regulate the Nation's civilian use of radioactive materials to provide reasonable assurance of adequate protection of public health and safety, to promote the common defense and security, and to protect the environment. The NRC is headed by five Commissioners appointed by the President of the United States, and confirmed by the U.S. Senate, to serve staggered 5-year terms. The President designates one of the Commissioners to serve as Chairman. The Executive Director for Operations carries out the policies and decisions of the Commission. The Commission formulates policies and regulations governing the safety and security of nuclear facilities and radioactive materials, issues orders to licensees, and adjudicates legal matters brought before it.

The NRC's overall responsibility is to protect public health and safety in the civilian uses of radioactive materials. It has the following main regulatory functions:

- Establish standards and regulations.
- Issue licenses, certificates, and permits.
- Ensure compliance with established standards and regulations.
- Conduct research, adjudication, and risk and performance assessments to support regulatory decisions.

The NRC carries out these regulatory functions to regulate nuclear power plants, fuel cycle facilities, and other civilian uses of radioactive materials, such as nuclear medicine programs at hospitals and academic activities at educational and research institutions. The NRC also regulates such industrial applications as gauges, irradiators, and other devices that contain radioactive material.

The NRC regulates 96 commercial nuclear power reactors operating in 29 States at 58 sites; 31 research and test reactors; 22 nuclear reactors in various stages of decommissioning; 80 independent spent fuel storage installations; 10 licensed fuel cycle facilities; 3 uranium recovery sites; and approximately 1,900 medical, industrial, government, and academic materials licensees. The NRC also has issued 5 reactor early site permits, 6 reactor design certifications, and 18 combined licenses for new reactors. In addition, the NRC has agreements with 39 States, also referred to as Agreement States, under which these States have assumed regulatory responsibility for the use of certain radioactive materials. These Agreement States oversee approximately 16,500 materials licenses. The NRC works closely with these Agreement States to ensure that they maintain adequate and compatible regulatory programs.

The overall responsibility for small business, civil rights, diversity and inclusion, and minority serving institution programs and activities is delegated to the Director of SBCR. SBCR provides agency guidance and standards for establishing and maintaining effective programs and activities, thus ensuring compliance and enforcement. To meet these objectives, SBCR assists the NRC's leadership in shaping policies to protect and ensure the principles of EEO for all employees by developing policies and procedures; generating workforce analysis and reporting requirements; conducting annual multiyear studies and research; delivering trainings and briefings; conducting oversight and monitoring; processing EEO complaints; integrating civil rights, diversity and

inclusion, and engagement into the NRC's initiatives and activities; and submitting annual reports to internal and external customers, constituents, and stakeholders. As part of its responsibility for preparing the agency's annual No FEAR Act report, SBCR also collaborates with the Office of the Inspector General, the Office of the Chief Human Capital Officer, and the Office of the General Counsel, which also have major roles in implementing the No FEAR Act for the NRC.

III. Purpose of This Report

On May 15, 2002, President George W. Bush signed the No FEAR Act, which increases Federal agency accountability for acts of discrimination or reprisal against employees. This act, which took effect on October 1, 2003, makes Federal agencies individually accountable for violations of antidiscrimination and whistleblower protection laws related to employment and to ensure that employees, applicants for employment, and former employees know their rights under antidiscrimination laws and the Whistleblower Protection Act. Section 203 of the No FEAR Act specifically requires, not later than 180 days after the end of each FY, each Federal agency to submit 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 Equal Employment Opportunity Commission (EEOC), and the Attorney General an annual report with specific information relating to each agency's EEO complaints activity. Regulations from the U.S. Office of Personnel Management (OPM) implementing the No FEAR Act (Title 5 of the *Code of Federal Regulations* (CFR), Part 724, "Implementation of Title II of the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002," Subpart C, "Annual Report") also require the submission of this annual report to the Director of OPM.

The annual No FEAR Act report must provide the following information:

- The number, status, and disposition of Federal court cases, pending or resolved, arising under the laws covered by the No FEAR Act.
- Judgment Fund reimbursements and adjustments to the NRC budget to meet reimbursement requirements.
- The number and type of disciplinary actions related to discrimination, retaliation, or harassment and the NRC's policy relating to appropriate disciplinary action.
- Final year-end summary data related to the NRC's EEO complaint activity for the FY.
- An analysis of trends, causation, and practical knowledge gained through experience.
- Actions planned or taken to improve the NRC's discrimination complaint program.
- The Agency's No FEAR Act training plan.

IV. Data Analysis and Results

SBCR is responsible for administering, managing, and ensuring agency compliance with Federal EEO laws, regulations, policies, and guidance that prohibit discrimination in the Federal workplace. SBCR is also responsible for preparing the NRC's annual No FEAR Act report. The NRC's Office of the Inspector General, the Office of the Chief Human Capital Officer, and the Office of the General Counsel assist with implementation of the No FEAR Act for NRC employees.

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. The agency updates this information no later than 30 calendar days after the end of each quarter. Appendix 6 provides a summary of data collected.

The NRC's informal and formal complaint activity is relatively low in comparison to other agencies of similar size—approximately 1.0 percent of the agency's total workforce filed informal EEO complaints, and approximately 0.7 percent filed formal complaints. These results can be attributed to the NRC's continuing efforts to reeducate the workforce and provide robust training and cultural awareness seminars on the importance of EEO, civil rights, diversity and inclusion, and engagement initiatives for all employees. The following sections provide more information on the informal and formal complaints filed against the agency.

A. Equal Employment Opportunity Complaint Activity and Disposition

Figure 1 shows formal and informal complaint activity for the reporting period. During FY 2019, 31 pre-complaint (informal) complaints were initiated, and three pre-complaints remained from the previous FY at the beginning of the reporting period. Of the 31 pre-complaints, 26 were completed or counseling ended during FY 2019. Individuals filed 19 new formal complaints against the agency, and 20 remained from the previous FY at the beginning of the reporting period. Of the 39 formal complaints, 8 were closed during FY 2019.

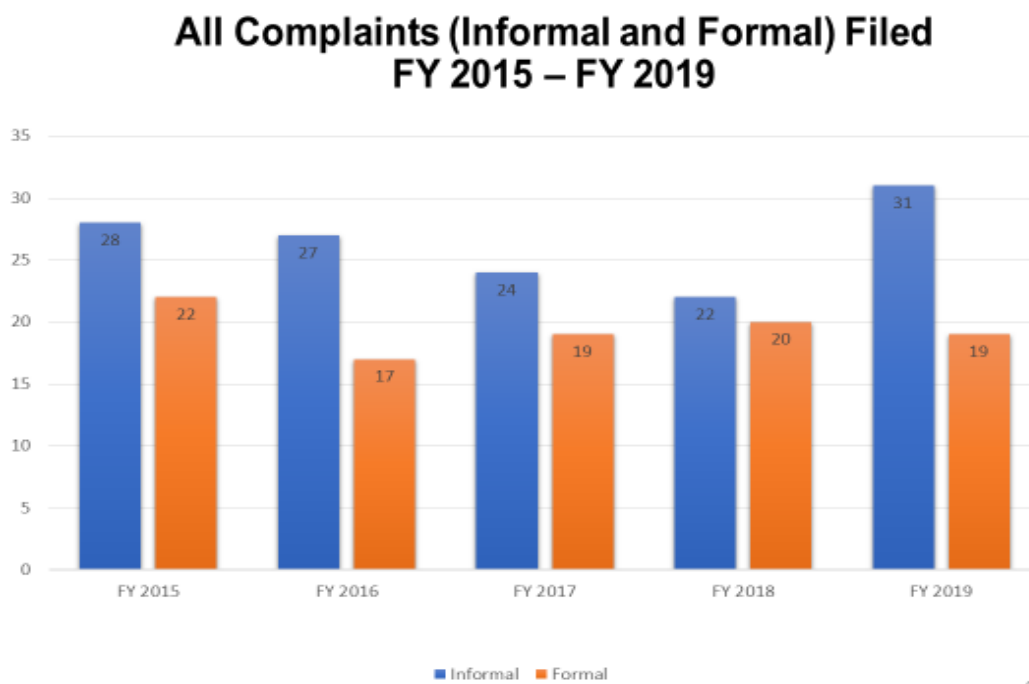


Figure 1: Pre-complaint (Informal) and Formal Complaint Activity

During FY 2019, the agency completed a total of 10 investigations, seven of which were timely completed in accordance with EEOC regulatory timeframes. At the end of FY 2019, 11 complaints were pending investigation. The NRC issued two final agency decisions during FY 2019 and had no findings of discrimination. In FY 2019, the agency settled four formal complaints using ADR

techniques, including mediation and facilitated discussion. The agency has continuing efforts in place to provide No FEAR Act training to all employees. The NRC uses internal expertise to train managers and supervisors on EEO and diversity. All new managers and supervisors receive one day of EEO and diversity training, and all continuing managers and supervisors receive a full day of refresher training on this subject every three years.

B. Bases and Issues

The FY 2019 complaint data show that complainants identified reprisal, age, sex, and race as the most frequently filed bases for complaints. Additionally, the data show that the complaints filed identified harassment (non-sexual), promotion, non-selection, and performance evaluations, appraisals as the most common issues in complaints filed. Because several complaints may allege multiple bases and issues, the sum of the bases may not equal the total complaints filed. Appendix 6, "Fiscal Year 2019 No FEAR Act Data Posted on the NRC Web Site," provides additional details.

V. Civil Cases—Reimbursement to the Judgment Fund

Section 203(1) of the No FEAR Act requires each agency to state in its annual report the number of civil cases arising from the Whistleblower Protection Act and antidiscrimination laws, the status of such cases, and the amount of money reimbursed to the Judgment Fund. During FY 2019, the NRC had no EEO lawsuits pending in U.S. Federal District Court. In addition, the agency currently has no whistleblower protection cases pending in U.S. Federal District Court.

Pursuant to the reporting requirements of 5 CFR Part 724, the NRC reports that, in FY 2019, it made no reimbursements to the Judgment Fund in connection with any lawsuits.

VI. Disciplinary Actions

Section 203(a)(6) of the No FEAR Act requires the annual report of each agency to describe in detail 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.

The NRC's antidiscrimination policy provides for appropriate disciplinary action to be taken against any employee found to have discriminated against an individual or to have engaged in other prohibited personnel actions, including retaliation for lawful whistleblowing activities or for exercising an appeal, complaint, or grievance right. During FY 2019, 40 claims of violations of the anti-harassment policy were filed. Of these, two were found to be violations of the anti-harassment policy. Of the two violations, one involved a third-party, non-NRC employee who engaged in the harassing conduct of an NRC employee. The allegations were investigated, and the third-party employer initially suspended the individual, then terminated their employment. In the second matter, the complainant requested and received an immediate reassignment, and the matter is with management for appropriate corrective action with regard to the offender. The most commonly alleged basis for harassment was race, followed closely by gender.

VII. No FEAR Act Training Plan

The NRC adheres to the requirements of the No FEAR Act by providing biennial training for all its employees. The agency issues a global message to all employees announcing the training cycle (for this reporting period, it is 2019–2020). In addition, each year, the NRC issues to all employees its No FEAR Act notice through the agency's internal and external Web sites to inform them of the available rights and protections under Federal antidiscrimination and whistleblower protection laws.

The NRC revised its No FEAR Act training in 2019 to clarify recent changes to the EEOC case law and whistleblower regulations. SBCR examined trends and incorporated information in the revised biennial No FEAR Act training course on issues relating to sexual harassment, retaliation, and reasonable accommodation. In FY 2020, the NRC will administer the No FEAR Act training to all employees, including managers and supervisors. The agency will track and monitor the number of employees completing the training and issue notifications to those who have not completed it within the mandatory training cycle. New NRC employees are required to complete the No FEAR Act training within 90 days of onboarding. This requirement is conveyed to new employees during their orientation program.

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 that agency.

In reaffirming the NRC's unwavering commitment to the principles of EEO and eliminating unlawful discrimination in the workplace, SBCR briefed the Commission on the state of the EEO program, provided awareness of issues and trends, and solicited the Commissioners' perspectives and recommendations for strengthening the agency's EEO program.

In recognizing the critical role training plays in raising awareness of EEO laws, regulations, initiatives, and procedures, during the FY 2019 reporting period, the NRC provided quarterly EEO and diversity training opportunities for managers and employees. All new and existing managers and supervisors must attend EEO and diversity training every three years. The training focuses on affirmative employment, diversity and inclusion, merit system principles and prohibited personnel practices, unconscious or implicit bias, reasonable accommodation, harassment, the EEO complaint process, and ADR. The NRC will continue to review and modify procedures in accordance with EEOC regulations and monitor complaint activity.

An analysis of complaints filed during FY 2019 shows the agency experienced an increase in pre-complaint (informal) activity, but formal complaint activity remained relatively comparable to FY 2018. Most of the complaints filed were brought under Title VII of the Civil Rights Act of 1964, as amended, or the Age Discrimination in Employment Act of 1967, as amended (or both), or the Rehabilitation Act of 1973, as amended. In FY 2019, reprisal, age, and race were the most common bases of alleged discrimination. In addition, harassment (non-sexual), promotion/non-selection, and performance evaluations or appraisals were the most common issues.

Of the 10 investigations completed in FY 2019, seven were timely processed within the EEOC regulatory timeframes. However, the agency's average processing time for investigations increased from 273 calendar days in FY 2018 to 285 calendar days in FY 2019. At the end of FY 2019, 11 complaints were pending investigation.

In addition, the NRC continues to focus on collecting and analyzing various workforce data to comply with the EEOC's guidelines for a model EEO program, particularly by incorporating mechanisms for identifying triggers, analyzing barriers, and developing action plans to eliminate barriers. The NRC, in accordance with EEOC Management Directive 715, routinely conducts barrier analysis by evaluating groups that show low participation rates in the workforce, focusing on promotions, separations, awards, and developmental opportunities.

The NRC continues to make progress in developing standard operating procedures and improving internal controls to ultimately meet the regulatory timeframes for completing investigations in accordance with EEOC regulations. The agency uses investigative services, including an interagency agreement with the U.S. Postal Service National EEO Investigative Services.

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 managers and supervisors to prevent discrimination; and
- Effective dissemination of information and clarification of changes to the ADR program.

SBCR staff also conducted a joint EEO and advisory committee training conference entitled, "A Forethought, Not an Afterthought." The objective of this conference was to provide education and awareness, inspiration, and connections to those who serve as EEO counselors, executive sponsors, EEO advisory committee members, and EEO employee resource group members by assisting them in honing their skills to help transform the agency workplace.

SBCR continues to maintain interactions with other Federal agencies, the Federal EEO and Civil Rights Council, and the Small Agency Council to gain and share knowledge and best practices in civil rights.