



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

FISCAL YEAR 2020

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I. Executive Summary

The U.S. Nuclear Regulatory Commission (NRC) provides its Fiscal Year (FY) 2020 Annual Report on the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (No FEAR Act), as required by Section 203 of the No FEAR Act, Public Law 107-174. The report summarizes the agency's activities to ensure accountability for antidiscrimination and whistleblower laws related to employment.

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 and confirmed by the Senate for 5 year terms. 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 2020, the agency had approximately 2,800 permanent employees. The NRC's Headquarters is in Rockville, MD, and it has regional offices in King of Prussia, PA; Atlanta, GA; Lisle, IL; and Arlington, TX. In addition, the agency also has a Technical Training Center in Chattanooga, TN. Because 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 agency continues to be successful in this task.

The Partnership for Public Service ranked the NRC in ninth place for midsized agencies and one of the best places to work in the Federal Government based on the results of the 2020 Federal Employee Viewpoint Survey. The NRC was ranked seventh for its "effective leadership" and ranked ninth for its "support for diversity." National publications have highlighted the NRC's commitment to diversity.

Since the enactment of the No FEAR Act, the NRC continues to realize many positive changes in the workplace, such as the following:

- Continuing Commission and senior agency executive support for implementation of the No FEAR Act through policy statements and discussions in key meetings;
- Continuing support for 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;
- Implementing the Initiative on Civility, Awareness, Respect and Engagement, known as "iCARE," to assist with agency efforts to facilitate deeper understanding and appreciation of issues related to culture, diversity, and inclusion among employees and to promote individual personal and professional growth and effectiveness through the processes of listening, introspection, and building acceptance for differing perspectives;
- Briefing the Commission biannually on the accomplishments and plans of 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. § 2302(c);
- Developing and implementing training programs and briefings for managers and employees on the No FEAR Act, EEO, diversity management, the NRC’s antiharassment 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 program 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, to include the provision of personal assistant services;
- Implementing changes to the Senior Executive Service Candidate Development Program (SES CDP) selection process, which resulted in a more diverse group of selectees for the most recent SES CDP class;
- 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 employees; and
- Continuing to raise awareness of and promote 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 a five-member Commission. Each Commissioner must be appointed by the President and confirmed by the Senate. Commissioner terms, by law, are up to 5 years and the terms are set sequentially so that each year a term ends. The agency has operated at less than five Commissioners depending on the timing of the appointment and confirmation of the new member. 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. The agency 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 uses these functions to regulate such industrial applications as gauges, irradiators, and other devices that contain radioactive material.

The NRC regulates 94 commercial nuclear power reactors operating in 28 States at 56 sites; 31 research and test reactors; about 4,600 people licensed to operate reactors; 20 nuclear reactors in various stages of decommissioning; 78 independent spent fuel storage installations; 13 licensed fuel cycle facilities; 11 uranium recovery sites; and approximately 2,600 research, medical, industrial, government, and academic materials licensees. The NRC also has issued 5 reactor early site permits, 5 reactor design certifications, and 12 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 17,000 materials licenses. The NRC works closely with these Agreement States to ensure that they maintain adequate and compatible regulatory programs.

The Director of the NRC's Office of Small Business and Civil Rights (SBCR) has been delegated the overall responsibility for programs and activities related to small business, civil rights, diversity and inclusion, and minority-serving institutions. SBCR provides agency guidance and standards for establishing and maintaining effective programs and activities. 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 report as required under the No FEAR Act, SBCR 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.

This report covers FY 2020 (October 1, 2019, through September 30, 2020). During FY 2020, the NRC employed 2,779 permanent employees; 33 precomplaint (informal) activities were initiated and 25 formal complaints were filed. Reprisal, race, age, and sex (gender) were the most common bases cited in FY 2020. The issues most frequently cited during this reporting period were harassment (nonsexual), nonselection/promotion, assignment of duties, term/conditions of employment, and disciplinary actions.

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 ensures 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 that, not later than 180 days after the end of each FY, each Federal agency must 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 implementing the No FEAR Act (Title 5 of the *Code of Federal Regulations* (5 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 that office.

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. No FEAR Act Legal Coverage

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 Chief Human Capital Officer and the Office of the General Counsel assist in implementing the No FEAR Act.

The laws covered in the No FEAR Act include the following:

- Title VII of the Civil Rights Act of 1964, as amended, as it applies to Federal agencies, 42 U.S.C. § 2000e-16 (race, color, religion, sex, national origin, and reprisal).
- The Age Discrimination in Employment Act of 1967, as amended, as it applies to Federal Government employment, 29 U.S.C. § 633a (age (40 and over) and reprisal).
- The Equal Pay Act of 1963, as amended, 29 U.S.C. § 206(d) (sex-based wage differentials and reprisal).
- Section 501 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 791 (physical and mental disabilities and reprisal).
- The Genetic Information Nondiscrimination Act of 2008, 42 U.S.C. § 2000ff et seq. (genetic information about an individual or individual's family members and reprisal).
- The Civil Service Reform Act of 1978, 5 U.S.C. § 2302 (prohibited personnel practices in connection with whistleblowing).
- The Whistleblower Protection Act of 1989, 5 U.S.C. 2302b, Pub.L. 101-12 as amended, protects federal whistleblowers who work for the government and report the possible existence of an activity constituting a violation of law, rules, or regulations, or mismanagement, gross waste of funds, abuse of authority or a substantial and specific danger to public health and safety.

V. Data Analysis and Results

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 ([No FEAR Act](#)). The agency updates this information no later than 30 calendar days after the end of each quarter, as discussed in more detail in Appendix 8.

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. EEO Complaint Activity and Disposition

Figure 1 shows EEO complaint activity initiated in FY 2020. During FY 2020, 33 precomplaint (informal) complaints were initiated and 8 precomplaints remained from the previous FY, for a

total of 41 precomplaints. Of the 41 precomplaints in total, 39 were completed/counseling ended during FY 2020. Individuals filed 25 new formal complaints against the agency and 27 remained from the previous FY, for a total of 52 formal complaints. Of the 52 formal complaints in total, the NRC closed 22 during FY 2020.

Monitoring and Oversight of EEO Complaint Activity

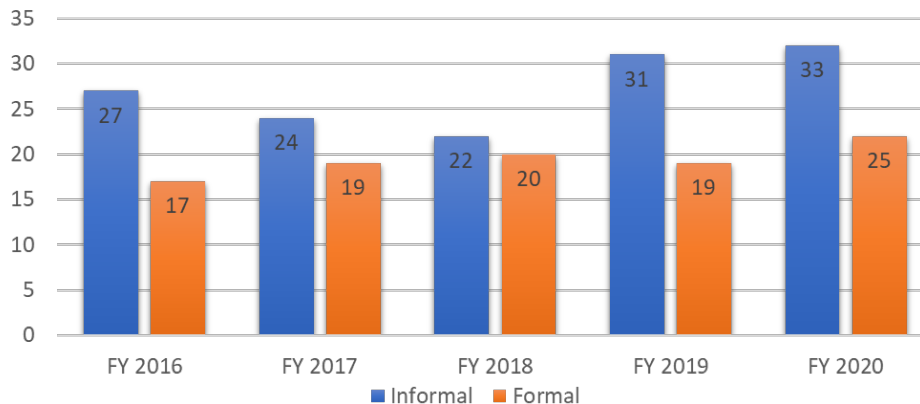


Figure 1: Precomplaint (Informal) and Formal Complaint Activity

During FY 2020, the agency completed 11 investigations in accordance with EEOC regulatory timeframes. At the end of FY 2020, another 11 complaints were pending investigation. The agency issued one final agency decision during FY 2020 and had no findings of discrimination. In FY 2020, the agency settled one precomplaint and three formal complaints using alternative dispute resolution (ADR) techniques, including mediation and facilitated discussion.

In comparison to other Federal agencies of similar size, the NRC’s complaint activity is relatively low, which is attributed to the use of early intervention to resolve workplace disputes, the agency’s ADR program, and the agency’s continuing efforts 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 1 day of EEO and diversity training, and all continuing managers and supervisors receive a full day of refresher training on this subject every 3 years.

B. Bases and Issues

The FY 2020 complaint data show that complainants most frequently identified reprisal, race, age, and sex (gender) as the bases for their complaints. Additionally, the data show that complainants identified harassment (nonsexual), nonselection/promotion, assignment of duties, and term/conditions of employment as the most common issues in complaints filed. The NRC notes that several of the complaints may allege multiple bases and issues, and the sum of the bases may not equal to the total complaints filed. The attachment provides details.

VI. Civil Cases—Reimbursement to the Judgment Fund

Section 203(a)(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 anti-discrimination laws, the status of such cases, and the amount of money reimbursed to the Judgment Fund. During FY 2020, the Agency had four EEO lawsuits pending in U.S. Federal District Court. In addition,

the NRC currently has two whistleblowing protection cases pending in the U.S. Court of Appeals for the Fourth Circuit.

Pursuant to the reporting requirements of Title 5 of the *Code of Federal Regulations* (5 CFR) Part 724, "Implementation of Title II of the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002," the NRC reports that, in FY 2020, it made no reimbursements to the Judgment Fund in connection with any lawsuits.

VII. 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 2020, 26 claims of violations of the anti-harassment policy were filed. Of the completed allegations, one was found to be a violation of the anti-harassment policy. The allegations were investigated, and the employee found to have engaged in harassing conduct under the Agency's policy was suspended. The most commonly alleged basis for harassment was race, followed closely by sex (gender).

VIII. 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, 2020–2021). In addition, the NRC uses its internal and external Web sites to issue to all employees its annual No FEAR Act notice 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 2020 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 2021, the NRC will administer the No FEAR Act training to all employees, including managers and supervisors. The NRC 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. All 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.

IX. Trends, Analysis, and Practical Knowledge

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

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

During the FY 2020 reporting period, the NRC provided quarterly EEO and diversity training opportunities for managers and employees. All 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/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, monitor complaint activity, and promote the benefits of ADR as a viable and cost-saving alternative to traditional EEO discrimination complaint processing.

An analysis of complaints filed during FY 2020 shows the agency experienced an increase in precomplaint (informal) activity but formal complaint activity remained relatively the same compared with FY 2019. Most of the complaints filed were brought under Title VII of the Civil Rights Act of 1964, as amended; the Age Discrimination in Employment Act of 1967, as amended; the Rehabilitation Act of 1973, as amended; or a combination of these. In FY 2020, reprisal, race, age, and sex (gender) were the most common bases for alleged discrimination. In addition, harassment (nonsexual), terms/conditions of employment, assignment of duties, nonselection/promotion, and performance evaluations/appraisals were the most common issues.

Of the 11 investigations completed in FY 2020, 3 were timely processed within the EEOC regulatory timeframes. In addition, the agency's average processing time for investigations decreased from 285 calendar days in FY 2019 to 262 calendar days in FY 2020. At the end of FY 2020, 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, "Equal Employment Opportunity," dated October 1, 2003, routinely conducts barrier analyses to evaluate 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 control measures to ultimately meet the regulatory timeframes for completing investigations in accordance with the EEOC's directions. The agency uses investigative services, including an interagency agreement with the contractor 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:

- SBCR Director issuance of the annual No FEAR Act notice to all agency employees.
- Posting on the agency's Web site of the summary updates of statistical No FEAR Act data related to EEO complaints filed.
- Ongoing improvement in communication with complainants and managers.
- High-quality EEO training for managers and supervisors to prevent discrimination.
- Conducting a virtual EEO Summit, entitled "Embracing Diversity and Inclusion in the Workplace," that was thought provoking, inspiring, and impressively practical for all members of the agency's workforce with the objective of providing education and awareness, inspiration, and connections related to a selection of topics and mixture of internal and external speakers to help transform the agency's culture and workplace.
- Effective dissemination of information and clarification of changes to the ADR program.

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.

X. Conclusion

The NRC's meaningful and measurable accomplishments highlighted in this report are due in part to the provisions of the No FEAR Act and related training, and strong and clear policy statements on EEO, ADR, diversity and inclusion, antiharassment, whistleblower rights, and reasonable accommodation procedures. The NRC continues to hold management officials accountable for compliance with EEO principles and policies by placing EEO critical elements in all SES performance appraisals and standards. Additionally, the NRC offers annual EEO and diversity training for managers and supervisors and periodic antiharassment training to its entire workforce. Opportunities for improvement continue to exist, and the NRC will capture data and report on its commitment to merit systems principles and to protect all employees from prohibited personnel practices under the law.