



**RECOVERY ACCOUNTABILITY AND
TRANSPARENCY BOARD**

**Initial and FY 2010 Annual Report
to Congress on the
Notification and Federal Employee
Antidiscrimination and Retaliation
Act of 2002**

Office of General Counsel

I. Introduction

The Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (No FEAR Act) and implementing regulations require 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 Recovery Accountability and Transparency Board (Board), the Attorney General, the Chair of the Equal Employment Opportunity Commission (EEOC), and the Director of the Office of Personnel Management (OPM). This Board submission is in accordance with these reporting requirements.¹

II. Background

The No FEAR Act was signed into law on May 15, 2002, and became effective on October 1, 2003. The No FEAR Act requires Federal agencies to be accountable for violations of antidiscrimination and whistleblower protection laws and to post certain statistical data on their websites relating to Federal-sector EEO complaints with the agencies.

Section 203 of the No FEAR Act requires that each Federal agency submit its annual report to Congress no later than 180 days after the end of each Fiscal Year (FY). Federal agencies must report, among other things, the number of Federal court cases arising under each of the respective areas of law specified in the No FEAR Act in which discrimination was alleged; the status or disposition of cases; the amount of money required to be reimbursed; the number of employees disciplined; any policies implemented related to appropriate disciplinary actions against a Federal employee who discriminated against any individual or committed a prohibited personnel practice; an analysis of the data collected with respect to trends; and a causal analysis.

The President delegated responsibility to OPM for the issuance of regulations governing implementation of Title II of the No FEAR Act. OPM has published regulations concerning the No FEAR Act's reimbursement provisions, notification and training requirements, and reporting and best practices provisions. The EEOC has issued its regulations to implement the posting requirements of Title III of the No FEAR Act. The Board has prepared this report based on the provisions of the No FEAR Act and OPM and EEOC's final regulations.

III. Data

a. Civil Cases

Section 203(a)(1) of the No FEAR Act requires that Federal agencies include in their annual report to Congress "the number of cases arising under each of the respective provisions of law

¹The Board was established in mid-FY 2009, by the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, to address an economic emergency occurring throughout the United States. Because the Board was created in mid-FY 2009, the Board did not provide an annual report for FY 2009. This report will serve as the Board's first submission in accordance with the No FEAR Act reporting requirements.

covered by paragraphs (1) and (2) of section 201(a) in which discrimination on the part of such agency was alleged.” 5 C.F.R. § 724.302(a)(1) expands on this reporting requirement, stating that Federal agencies must report on the “number of cases in Federal court [district or appellate] pending or resolved . . . arising under each of the respective provisions of the Federal Antidiscrimination laws and Whistleblower Protection Laws applicable to them . . . in which an employee, former Federal employee, or applicant alleged a violation(s) of these laws, separating data by the provision(s) of law involved.”

The Board reports that during FY 2010, there were no Federal court cases pending. A review of the previous year indicates that there also were no Federal court cases pending in FY 2009.

b. Reimbursement to the Judgment Fund

Section 203(a)(3) of the No FEAR Act requires that Federal agencies include in the annual report to Congress the amount of money required to be reimbursed by such agencies under section 201 of the No FEAR Act in connection with each such case. 5 C.F.R. § 724.104 further explains that the Treasury Department’s Financial Management Service (FMS) will provide 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. Pursuant to 5 C.F.R. § 724.302(a)(2)(ii)-(iii), all such reimbursements must be reflected in the annual report.

In FY 2010, the Board was not required to make any reimbursements to the Judgment Fund as no payments were made from the Judgment Fund on behalf of the Board. A review of the previous year indicates that there also were no payments required to be reimbursed in FY 2009.

c. Types of Disciplinary Actions

Section 203(a)(4) of the No FEAR Act requires that Federal agencies include in the annual report to Congress the number of disciplinary actions taken for conduct that is inconsistent with Federal antidiscrimination and whistleblower protections.

The Board did not take any applicable disciplinary actions in FY 2010. A review of the previous year indicates that there also were no applicable disciplinary actions taken in FY 2009.

d. Final Year-End Data Posted Under Section 301(c)(1)(B)

The final year-end data posted on the Board’s website pursuant to Section 301(c)(1)(B) of the No FEAR Act is included in Appendix A. The final year-end data indicates that during FY 2010, there were no complaints of discrimination and no complaints resulting in findings of discrimination.

e. Description of Policy on Disciplinary Actions

Section 203(a)(6) of the No FEAR Act requires that Federal agencies include in their annual report to Congress a detailed description of the agency’s policy relating to disciplinary actions

imposed against Federal employees who discriminate against any individual in violation of any of the laws cited under section 201(a)(1) or (2), or commit other prohibited personnel practices.

The Board's statements of policy, set forth below, reinforce the Board's commitment to establish a workplace free from discrimination, harassment, and retaliation:

Equal Employment Opportunity Policy Statement. The Board is committed to the principles of equal employment opportunity and diversity in the workplace for Board employees and job applicants. The Board must continue to attract, develop, and retain a highly skilled, diverse workforce to meet the demands of our critical mission of preventing and detecting fraud, waste, and abuse.

All Board employees must be fully committed to protecting and maintaining a workplace that ensures equality of opportunity for everyone, regardless of her or his race, color, religion, sex, national origin, age, disability, status as a parent, sexual orientation, protected genetic information, prior Equal Employment Opportunity (EEO) activity, and marital status.

Every employee must be committed to treating one another with dignity, respect, and professionalism, and Board managers and supervisors are expected to lead by example in this regard.

Prevention of Harassment Policy Statement. The Board will not tolerate harassment on the basis of race, color, national origin, religion, sex, age (40 and over), disability, sexual orientation, or protected activity. Harassment in this context is defined as conduct that is so offensive as to create a work environment that a reasonable person would consider intimidating, hostile, or offensive.

Employees who believe that they have been victims of harassment may, without fear of reprisal, seek the immediate assistance of a management official or the Office of General Counsel. Any manager or supervisor who becomes aware of harassment must take immediate and appropriate corrective action to ensure that the harassment stops and does not recur. Violations of the law prohibiting harassment or violations of this policy will result in appropriate disciplinary actions against the offenders, up to and including dismissal. This also includes cases where a manager or supervisor should have known about the harassment and failed to take prompt and appropriate action.

Whistleblowing Policy Statement. The Board is committed to protecting current and former Federal employees and job applicants from interference and retaliation when making protected disclosures. Congress enacted the Whistleblower Protection Act of 1989 to strengthen protections for Federal employees who believe they are the target of unjustified personnel actions in reprisal for making disclosures. These disclosures include a violation of law, rule, or regulation; gross mismanagement; gross waste of funds; and abuse of authority; or a substantial and specific danger to public health or safety.

The Board will not tolerate whistleblower reprisal. Legitimate disclosure of information by employees is an invaluable resource for the oversight of government operations. It is the Board's

expectation that employees be able to report these matters confidentially to the Board's Office of General Counsel or appropriate management officials at the Board. Anyone who interferes with or retaliates against any current or former employee or job applicant making a protected disclosure will be subject to appropriate disciplinary action.

Employment and Advancement of Persons with Disabilities Policy Statement. The Board is committed to enhancing access to employment of people with disabilities to ensure equal employment opportunity. Section 501 of the Rehabilitation Act of 1973 (Act), as amended, prohibits Federal agencies from discriminating against qualified individuals with disabilities. The Act also requires agencies to provide hiring, placement, and advancement opportunities for individuals with disabilities. Violations of this law will result in appropriate disciplinary actions against the offenders up to and including dismissal.

The Board is committed to identifying and removing any barriers to hiring, retaining and promoting individuals with disabilities. The Board will strive to provide a work environment that welcomes qualified individuals with disabilities and effectively uses their skills, knowledge, and abilities. Each employee can play a role in identifying, reporting, and eliminating barriers to the employment of people with disabilities.

f. No FEAR Training

Section 202(c) of the No FEAR Act requires Federal agencies to provide training to their employees on the rights and remedies under Federal antidiscrimination, retaliation, and whistleblower protection laws.

Because the Board was not established until mid-FY 2009, and was created to address an economic emergency occurring throughout the United States, the Board did not in FY 2010 finalize a formal training plan. However, the Board has since procured a training solution, through OPM, to ensure that in FY 2011 and going forward, Board employees receive the requisite training.

The Board is composed of two types of employees: detailees from other Federal agencies, and appointees. Detailees' home agencies are ultimately responsible for ensuring that their detailees receive any requisite training, and the Board is responsible for training all of its own appointees. Even so, the Board will offer *all employees* access to the requisite training. If a detailee elects to utilize the Board's training solution, the Board's Office of General Counsel will coordinate with that detailee's home agency to ensure that his or her training is properly reported.

All Board employees will have access to a customized registration site where employees can register and take the No FEAR Act training module. The Board's registration site will enable employees to bookmark their location, document their completion, obtain a certificate, and review the completed training. It also permits Board management to produce real-time reports of user progress and completion. New employees will be required take this training within 90 days of their appointments.

IV. Analysis of Trends, Causal Analysis, and Practical Knowledge Gained Through Experience

Section 203(a)(7) of the No FEAR Act requires that Federal agencies undertake “an examination of trends, causal analysis, and practical knowledge gained through experience and any actions planned or taken to improve complaint or civil rights programs of the agency.” To date, the Board does not have any information to be examined.

V. Adjustment to Budget

Section 203(a)(8) of the No FEAR Act requires that Federal agencies include in their annual report to Congress information regarding “any adjustment (to the extent the adjustment can be ascertained in the budget of the agency) to comply with the requirements under section 201.” To date, the Board has made no such adjustment to its budget to comply with OPM’s regulation issued pursuant to section 201.

VI. The Board’s Actions Planned or Taken to Improve Complaint or Civil Rights Programs Pursuant to Section 203(a)(7)(D)

Actions Planned for FY 2011

As discussed above, there have been no reportable cases, Judgment Fund reimbursements, disciplinary actions, or discrimination complaints. In an effort to maintain a workplace free of discrimination and retaliation, the Board will strive to have 100 percent of its employees trained regarding their rights and protections under EEO, retaliation and whistleblower protection laws, and strive to have 100 percent of new employees trained within 90 calendar days of their appointments.



APPENDIX A
Equal Employment Opportunity Data Posted Pursuant
to Title III of the Notification and Federal Employee
Antidiscrimination and Retaliation Act of 2002 (No
FEAR Act), Pub. L. 107-174

Complaint Activity	FY 2009 ²	FY 2010
Number of Complaints Filed	0	0
Number of Complainants	0	0
Repeat Filers	0	0

Complaints by Basis		
<i>Note: Complaints can be filed alleging multiple bases. The sum of the bases may not equal total complaints filed.</i>	FY 2009	FY 2010
Race	0	0
Color	0	0
Religion	0	0
Reprisal	0	0
Sex	0	0
National Origin	0	0
Equal Pay Act	0	0
Age	0	0
Disability	0	0
Non-EEO	0	0

Numbers of Complaints Alleging Each Type of Claim		
<i>Note: Complaints can be filed alleging multiple issues. The sum of the issues may not be equal total complaints filed.</i>	FY 2009	FY 2010
Appointment/Hire	0	0
Assignment of Duties	0	0
Awards	0	0
Conversion to Full Time	0	0
Disciplinary Action	0	0
Demotion	0	0
Reprimand	0	0
Removal	0	0

² The Board was established on February 17, 2009.

Suspension	0	0
Other	0	0
Duty Hours	0	0
Evaluation Appraisal	0	0
Examination Test	0	0
Harassment	0	0
Non-Sexual	0	0
Sexual	0	0
Medical Examination	0	0
Pay (Including Overtime)	0	0
Promotion Non-Selection	0	0
Reassignment	0	0
Denied	0	0
Directed	0	0
Reasonable Accommodation	0	0
Reinstatement	0	0
Retirement	0	0
Termination	0	0
Terms/Conditions of Employment	0	0
Time and Attendance	0	0
Training	0	0
Other	0	0

Processing Time		
	FY 2009	FY 2010
Complaints pending during fiscal year		
Average number of days in investigation stage	0	0
Average number of days in final action stage	0	0
Complaints pending during fiscal year where hearing was requested		
Average number of days in investigation stage	0	0
Average number of days in final action stage	0	0
Complaints pending during fiscal year where hearing was not requested		
Average number of days in investigation stage	0	0
Average number of days in final action stage	0	0

Complaints Dismissed by Agency		
	FY 2009	FY 2010
Total Complaints Dismissed by Agency	0	0
Average Days pending prior to dismissal	0	0

Complaints Withdrawn by Complainants		
	FY 2009	FY 2010
Total Withdrawn by Complainants	0	0

Total Final Actions Finding Discrimination		
	FY 2009	FY 2010
Total Number of Findings	0	0
Without Hearing	0	0
With Hearing	0	0

Findings of Discrimination Rendered by Basis		
<i>Note: Complaints can be filed alleging multiple Bases. The sum of the bases may not equal total complaints filed.</i>	FY 2009	FY 2010
Total Number of Findings	0	0
Race	0	0
Color	0	0
Religion	0	0
Reprisal	0	0
Sex	0	0
National Origin	0	0
Equal Pay Act	0	0
Age	0	0
Disability	0	0
Other	0	0
Findings After Hearing		
Findings After Hearing	0	0
Race	0	0
Color	0	0
Religion	0	0
Reprisal	0	0
Sex	0	0

National Origin	0	0
Equal Pay Act	0	0
Age	0	0
Disability	0	0
Findings Without Hearing	0	0
Race	0	0
Color	0	0
Religion	0	0
Reprisal	0	0
Sex	0	0
National Origin	0	0
Equal Pay Act	0	0
Age	0	0
Disability	0	0
Other	0	0

Findings of Discrimination Rendered by Issue		
	FY 2009	FY 2010
Total Number of Findings	0	0
Appointments/Hire	0	0
Assignment of Duties	0	0
Awards	0	0
Conversion to Full Time	0	0
Disciplinary Action		
Demotion	0	0
Reprimand	0	0
Removal	0	0
Suspension	0	0
Other	0	0
Duty Hours	0	0
Evaluation Appraisal	0	0
Examination Test	0	0
Harassment		
Non-Sexual	0	0
Sexual	0	0
Medical Examination	0	0
Pay Including Overtime	0	0
Promotion Non-Selection	0	0
Reassignment		
Denied	0	0
Directed	0	0
Reasonable Accommodation	0	0
Reinstatement	0	0

Retirement	0	0
Termination	0	0
Terms/Conditions of Employment	0	0
Time and Attendance	0	0
Training	0	0
Other	0	0
Findings After Hearing	0	0
Appointment/Hire	0	0
Assignment of Duties	0	0
Awards	0	0
Conversion to Full time	0	0
Disciplinary Action		
Demotion	0	0
Reprimand	0	0
Removal	0	0
Suspension	0	0
Other	0	0
Duty Hours	0	0
Evaluation Appraisal	0	0
Examination Test	0	0
Harassment		
Non-Sexual	0	0
Sexual	0	0
Medical Examination	0	0
Pay Including Overtime	0	0
Promotion Non-Selection	0	0
Reassignment		
Denied	0	0
Directed	0	0
Reasonable Accommodation	0	0
Reinstatement	0	0
Retirement	0	0
Termination	0	0
Terms/Conditions of Employment	0	0
Time and Attendance	0	0
Training	0	0
Other	0	0
Findings Without Hearing	0	0
Appointment/Hire	0	0
Assignment of Duties	0	0
Awards	0	0

Conversion to Full Time	0	0
Disciplinary Action		
Demotion	0	0
Reprimand	0	0
Removal	0	0
Suspension	0	0
Other	0	0
Duty Hours	0	0
Evaluation Appraisal	0	0
Examination Test	0	0
Harassment		
Non-Sexual	0	0
Sexual	0	0
Medical Examination	0	0
Pay Including Overtime	0	0
Promotion Non-Selection	0	0
Reassignment		
Denied	0	0
Directed	0	0
Reasonable Accommodation	0	0
Reinstatement	0	0
Retirement	0	0
Termination	0	0
Terms/Conditions of Employment	0	0
Time and Attendance	0	0
Training	0	0
Other	0	0

Pending Complaints Filed in Previous Years by Status		
	FY 2009	FY 2010
Total Complaints from previous Fiscal Years	0	0
Total Complainants	0	0
Number of Complaints Pending		
Investigation	0	0
Hearing	0	0
Final Action	0	0
Appeal with EEOC Office of Federal Operations	0	0

Complaint Investigations		
	FY 2009	FY 2010
Pending Complaints Where Investigations Exceed Required Time Frames	0	0