

National Science Foundation
The Notification and Federal Employee Antidiscrimination
And
Retaliation Act of 2002 ("No FEAR Act")
Section 203(a) (7) Analysis

Introduction

The National Science Foundation (NSF) is pleased to present its report on the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (“No FEAR Act”) covering Fiscal Year (FY) 2010, which summarizes many of NSF’s significant achievements in its equal employment opportunity (EEO) programs. NSF is committed to achieving equality for all employees through its management decisions, personnel actions, and programs that are designed to address such issues.

In accordance with the Equal Employment Opportunity Commission (EEOC) Management Directive (MD) 715, NSF conducts an annual analysis of its workforce to ensure agency personnel policies, principles, and practices provide employment opportunities for all employees, particularly minorities, women and individuals with disabilities. NSF’s EEO complaint program, which includes alternative dispute resolution and early intervention, provides for a prompt, fair, and impartial review of allegations of discrimination and other employment-related concerns.

Although the number of complaints fluctuates from year to year, historically, NSF has not experienced a large number of complaints, and fiscal year FY 2010 is no exception. During FY 2010, a total of 11 informal complaints were initiated, and six formal complaints were carried over from FY 2009 for a total of 17 active complaints (informal and formal).¹ Of the 11 informal complaints filed in FY 2010, two were withdrawn, and one did not file formal. The remaining eight complaints progressed through the administrative complaint process in which four were closed, one was resolved in mediation, and the remaining three complaints remained in inventory, along with the six complaints carried over from FY 2009, for a total of nine complaints at the end of FY 2010.

There were no cases filed in Federal court against NSF under the Federal antidiscrimination laws or whistleblower protection laws. NSF follows overall agency adverse and disciplinary action practices, procedures, and case law on determining appropriate action to be taken based on the nature of the offense when there is a violation. Additionally, NSF continues to regularly assess its practices and policies to ensure compliance with EEO laws and to avoid systemic barriers to EEO.

NSF has developed an online training module for existing employees on the provisions of the No FEAR Act, in which recertification training is required every two years. In FY 2010, 221

¹. Note that not all informal complaints progress to the formal stage.

employees (20%) completed training via the online module,² and 260 employees received the training via new employee orientation. The 2010 Analysis, which provides an overview of the data required by the No FEAR Act, is attached as Enclosure 2. Additionally, this Analysis addresses on-going initiatives that demonstrate NSF's commitment to ensuring a diverse and dynamic workforce that is poised to carry out NSF's mission into the 21st century

². The recertification training requirement is a bi-annual process. When the on-line training began, the majority of the existing workforce took it that year, so every other year will show a large recertification of the training. For example, in FY 2009, 1393 employees (79.33%), were recertified. Off-years consist primarily of new employees who began working at NSF after the initial on-line process started.

**Report to Congress
Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002
(No FEAR Act)**

National Science Foundation
For Period Covering October 1, 2009, to September 30, 2010

TAB 1

T-1: No FEAR Act Awareness Training (Academy Learn online training)³

³ Copies of NSF's on-line training module and its in-class presentation appear at Enclosures 1 and 3, respectively. Please contact NSF's Office of Diversity and Inclusion for more information regarding this training.

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TAB 2

T-2: 2013 ANALYSIS – Section 203(a)(7)

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2010 ANALYSIS – Section 203(a)(7)

A. Trend Analysis

During Fiscal Year (FY) 2010, a total of 11 informal complaints were initiated. Of the informal complaints filed, two were voluntarily withdrawn, and one did not file a formal complaint. The remaining complaints progressed through the administrative complaint process.

In addition to the complaints that progressed to the formal stage, there were six formal complaints on-hand at the beginning of FY 2010 for a total of 13 formal complaints. Of the 13 formal complaints, four were closed and nine remained in inventory at the end of FY 2010.

There was one complaint filed under Title VI of the Civil Rights Act of 1964, as amended, and one complaint filed under Title IX of the Education Amendments of 1972, as amended. There were no complaints filed under Section 504 of the Rehabilitation Act of 1973.

B. Causal Analysis

During fiscal years 2009 and 2010, the number of informal complaints decreased from 12 to 11, respectively. While NSF has not historically experienced a large number of complaints, the Office of Diversity and Inclusion (ODI), conducted an analysis of the informal complaints initiated in FY 2010 for potential trends and/or barriers. A review of the complaints showed that three were filed from employees in the same unit, but in different divisions under different direct supervisors.

C. Practical Knowledge Gained through Experience

NSF is committed to equal employment opportunity (EEO) principles and practices in all of its management decisions and personnel activities. It is the goal of NSF to develop and retain a high-quality, diverse workforce that is representative of our nation's diversity. NSF believes that a culturally diverse environment promotes better communication, ideas, and trust between individuals. Therefore, NSF will continue its emphasis on attracting the best candidates from a variety of sources, selecting and advancing the best qualified employees based upon merit, training its managers and employees on their EEO rights and responsibilities, providing equal opportunities to all individuals, and providing a prompt, fair and impartial review and adjudication of any allegations of discrimination.

D. Actions Planned/Taken to Improve Agency Complaint or Civil Rights Program

During FY 2010, NSF's noteworthy accomplishments include the following:

- ODI continued its quarterly update of the Notification of Federal Employee Anti-discrimination and Retaliation Act (No FEAR Act) data on its website in accordance with the No FEAR Act of 2002.
- NSF distributed the MD 715 posters identifying the criteria to obtain model EEO status and the EEO Complaint Process posters throughout common areas of Stafford I and Stafford II and posted them in areas accessible to employees.
- ODI continued to be cognizant of the regulatory requirements of timely processing of complaints and continued to make great strides in adhering to this requirement. ODI has always had in place an efficient and expeditious process of employing contractor services for ODI investigations and alternative dispute resolution (ADR), and in FY 2010 re-instituted its Early Intervention Program resulting in the resolution of seven complaints that could have resulted in EEO filings.
- NSF continued its agency-wide distribution of EEO and Harassment Policy Statements signed by the Director and Deputy Director (policies are distributed annually in January). All EEO and related brochures were updated and provided at all training sessions, which include: EEO complaint brochure, the Early Intervention Program (EIP) brochure, Reasonable Accommodations brochure, Prevention of Sexual Harassment and Diversity booklets, and *Guide to Etiquette and Behavior for Communicating and Working with Individuals with Disabilities* brochure. The relevant documents were also provided to employees during the complaint initial intake process.
- NSF continued to regularly assess its practices and policies to ensure compliance with EEO laws and to avoid systemic barriers to EEO. NSF continued its very successful reasonable accommodations program that provides employees, applicants, visitors and panelists with disabilities with reasonable accommodations. In FY 2010, the Department of Defense Computer/Electronic Accommodation Program (CAP) provided 175 NSF reasonable accommodations which is an increase of 86% from FY 2009. Additionally, the total expenses incurred for reasonable accommodations from NSF's "centralized fund" showed an 8.7% increase from FY 2009.⁴
- ODI, in addition to the on-line training module, continued to conduct the No FEAR Act training as part of the New Employees Orientation. Employees were provided information on their rights under the antidiscrimination and whistleblower laws.⁵

⁴ CAP provides information based on the number of accommodations, not the number of employees assisted.

⁵ Moreover, in FY 2010, NSF obtained 2302 certification from the Office of the Special Counsel, which involves a five-step process in which agency employees are made aware of the rights and remedies available to them under Prohibited Personnel Practices (PPP), especially retaliation for whistleblowing.

Approximately 260 new employees received this training during FY 2010. Also, upon request, ODI will continue to conduct in-class No FEAR training to provide employees with a variety of methods that will allow them the choice of completing the training in a way that is most convenient to them.⁶

- ODI revised its EEO training materials for New Employee Orientation (NEO), EEO briefings for various offices at their request in which more than 340 employees received the training, provided EEO and diversity training to more than 90% of its supervisors and managers, and provided EEO training at every NSF Program Managers Seminar.
- ODI continued its focus on assisting the agency best achieve model EEO status by focusing on the following principles: demonstrated commitment to EEO from agency leadership; integration of EEO into the agency's strategic mission; management and program accountability; proactive prevention of unlawful discrimination; efficiency; and responsiveness and legal compliance, in which significant strides were made in addressing the remaining actions necessary to successfully complete the Model EEO Agency checklist.
- ODI reestablished its participation on The Department of Justice Interagency Working Group charged with Title IX compliance issues.
- ODI drafted its first Title IX Compliance Review Plan, which lays the framework for NSF's compliance review program.
- NSF continued to emphasize its Strategic Plan, 2006--2011, which focused on the agency's commitment to diversity and to its workforce in its goal of "Learning - cultivate a world-class, broadly inclusive science and engineering workforce, and expand the scientific literacy of all citizens" as well as in its internally focused goal of "Stewardship – support excellence in science and engineering research and education through a capable and responsive organization."
- NSF incorporated its model EEO strategy into the agency's new strategic plan as a performance goal beginning in FY 2011.
- ODI drafted its first Diversity and Inclusion Strategic Plan to lay the framework for diversity initiatives.
- The Equal Opportunity Liaisons (EOL) remained actively involved in the ODI's strategic planning initiatives.
- NSF changed the name of its EEO office to better reflect the agency's diversity.
- ODI increased its involvement in NSF's Broadening Participation initiatives, which included presenting on civil right issues impacting recipients of federal funds at NSF Regional Conferences in Jackson, MS and Cleveland, OH through partnerships with

⁶ A copy of the in-class presentation appears at Enclosure 3.

NSF's Policy Office; presenting on civil right issues impacting recipients of federal funds at the Minority Serving Institution conferences in Dallas, TX and Baltimore, MD; serving on EEOC Task Force regarding potential barriers to African Americans and Women in the Federal Workplace; presenting at the 3rd Affinity Network Colloquium sponsored by the Office of Intelligence Community Equal Employment Opportunity and Diversity; and re-establishing NSF's partnership with Title IX Working Group (DOJ/NASA/DOE) that deals primarily with compliance issues.

- NSF's various directorates and offices actively participated in 17 Special Emphasis Programs and four Diversity Dialogue Series that were held throughout the year in which they co-sponsored events, recommended guest speakers, moderated the programs, or introduced the guest speakers.
- ODI increased its active partnership with Human Resources and the Office of General Counsel through monthly meetings. The purpose of these meetings is to allow better communication between offices and the resolution of issues of common purpose.
- ODI's website was completely revised during FY 2010 to make it more accessible to internal and external customers as well as improved its communication with its customers to better serve them through enhanced communication and face-to-face involvement.

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TAB 3

T-3: No FEAR Act Awareness Training FY 2013 (Live training)⁷

⁷ Please contact NSF's Office of Diversity and Inclusion for more information regarding this training.