

Federal Election Commission



2022
Notification and Federal Employee
Anti-discrimination and Retaliation Act
(No FEAR Report) to Congress

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I. Executive Summary

The Federal Election Commission (FEC or Commission) was established by Congress in 1975 as an independent regulatory agency responsible for administering and enforcing the Federal Election Campaign Act (FECA). Under the authority of this statute, which governs the financing of federal elections, the FEC is responsible for ensuring: “The disclosure of campaign finance information, enforcement of provisions of the FECA such as limits and prohibitions on campaign contributions and monitoring public funding of Presidential elections.”

The Commission is made up of six members, who are appointed by the President and confirmed by the Senate. Each member serves a six-year term, and two seats are subject to appointment every two years. By law, no more than three Commissioners can be members of the same political party, and at least four votes are required for any official Commission action. This structure was created to encourage nonpartisan decisions. The Chair of the Commission is a rotating position, filled through election by the Commission members each year.

During fiscal year (FY) 2022, the FEC had no cases that resulted in a judgment, award or compromised settlement. There were zero equal employment opportunity (EEO) administrative complaint filed against the FEC during FY 2022. There were no civil actions against the FEC for bases or issues covered under the anti-discrimination statutes or the Whistleblower Protection laws. There was no reimbursement to the Judgment Fund and zero (0) disciplinary actions against any FEC employee for violations of the Anti-discrimination and/or Whistleblower Protection laws.

II. Introduction

The FEC is providing this Annual Report to Congress as required by The Elijah E. Cummings Federal Employee Antidiscrimination Act of 2020 (Cummings Act) which became law on January 1, 2021. The law amends the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (“No FEAR Act”), [Public Law 107-174](#).

The No FEAR Act requires 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 agency, the Attorney General, the U.S. Office of Personnel Management, and the Equal Employment Opportunity Commission. This report is submitted by the FEC to satisfy this reporting requirement.

III. Background

The No FEAR Act was signed into law by President George W. Bush on May 15, 2002, and became effective on October 1, 2003. The Act requires Federal agencies to be accountable for violations of anti-discrimination and whistleblower protection laws and to post certain statistical data relating to Federal sector EEO complaints filed with the 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. Agencies must report on:

- the number of Federal district court cases arising under each of the respective areas of law specified in the 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 an individual, or committed a prohibited personnel practice; and
- an analysis of the data collected with respect to trends and causal analysis.

The President delegated responsibility to the U.S. Office of Personnel Management (OPM) for the issuance of regulations governing implementation of Title II of the No FEAR Act. OPM published final regulations on May 10, 2006, concerning the reimbursement provisions of the Act and on July 29, 2006, published final regulations to carry out the notification and training requirements of the Act. OPM also issued proposed regulations to implement the reporting and best practices provisions of the No FEAR Act on January 25, 2006. The FEC has prepared this Report based on § 203 of the No FEAR Act along with the proposed and final regulations issued by OPM.

IV. Data

During (FY) 2022, the FEC had no cases that resulted in a judgment, award or compromised settlement and there were zero (0) administrative complaints filed against the agency. Among administrative cases filed to date, none have resulted in a finding of discrimination. Zero (0) employees were disciplined for discrimination, retaliation, harassment or other infractions or provisions of law cited in Section 201(c) of the No FEAR Act.

Civil Cases

Section 203(a)(1) of the No FEAR Act requires that agencies include in their Annual Report to Congress “the number of cases arising under each of the respective provisions of law covered by paragraphs (1) and (2) of section 201(a) in which discrimination on the part of such agency was alleged.” Section 724.302 of the Code of Federal Regulations (effective February 26, 2007) clarifies section 203(a)(1) of the No FEAR Act, stating that the agencies report on the “number of cases in Federal Court pending or resolved ... arising under each of the respective provisions of the Federal anti-discrimination laws and whistleblower protection laws.” The FEC reports that during FY 2022, there were zero (0) Federal district court discrimination cases resulting in a payment from the Judgment Fund. Subsequently, there were no district court cases for which the Judgment Fund paid monies on behalf of the FEC for retaliation under the Whistleblower Protection Act.

Reimbursement to the Judgment Fund

OPM published interim final regulations in the Federal Register on January 22, 2004, and final regulations on May 10, 2006, to clarify the agency’s reimbursement provision of Title II of the

No FEAR Act. These regulations, among other things, state that the Financial Management Service (FMS), U.S. Department of the Treasury, 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 the FMS or must contact the FMS to make arrangements in writing for reimbursement.

As indicated, the FEC had no civil action resulting from a reportable statute that resulted in payment which is required to be reimbursed to the Treasury Judgment Fund for monies owed to the Judgment Fund for judgments, awards and/or compromised settlements for FY 2022.

Disciplinary Actions

Section 203(a)(4) of the No FEAR Act requires that agencies include in the Annual Report to Congress "the number of employees disciplined for discrimination, retaliation, harassment, or any other infraction of any provision of law referred to in paragraph (1)." Section 203(a)(1) requires that agencies report "the number of cases arising under each of the respective provisions of law 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 (effective February 26, 2007) provides that these cases refer to the number of discrimination cases for which the Judgment Fund paid on behalf of the agency. The proposed regulations also define disciplinary actions to include any one or a combination of the following actions: reprimands, suspensions without pay, reduction in grade or pay, or removal. (See 5 C.F.R. § 724.102)

The FEC had zero (0) disciplinary actions arising from a federal district court discrimination case during FY 2022.

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

Appendix 2 contains the FY 2022 final year-end data posted pursuant to Section 301(c)(1)(B) of the No FEAR Act.¹ The final year-end data indicates that during FY 2022, there were (0) complaints of discrimination.

Policy Description on Disciplinary Actions

Sections 203 (a)(6) of the No FEAR Act requires that agencies include in their Annual Reports to Congress a detailed description of the policy implemented by the agency relating to disciplinary actions imposed against a Federal employee who discriminated against any individual in violation of any of the laws 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 the section 201 (a)(1) or (2). Further, the Act requires that with respect to each such law, the Federal agency report on the number of employees who were disciplined in accordance with such policy and the specific nature of the disciplinary action taken.

¹ This includes data for each of the five (5) immediately preceding fiscal years.

The FEC does not have a table of penalties for disciplinary actions. When disciplinary action is taken against an employee, the proposed penalty is based on an assessment of the reasonableness of that penalty in view of other actions that have previously been taken with respect to similarly situated employees. The agency does not have a separate disciplinary policy that specifically addresses employees found to have committed discrimination. The agency's general policy for taking disciplinary actions with respect to any non-bargaining unit employee is set forth in Personnel Instruction 752.1. (progressive discipline). During 2022, the FEC Chairman issued the agency's EEO Policy Statement (**See Appendix 3**), which occurs annually, to communicate the agency's commitment for equal employment opportunity and a workplace free of discriminatory harassment for all employees and applicants for employment.

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

Section 203(a)(7) of the No FEAR Act requires that agencies undertake an examination of trends, causal analysis and practical knowledge gained through experience, as well as any actions planned or taken to improve complaint or civil rights programs for the agency. The FEC has examined its complaint statistics contained in the information reported to EEOC. The FEC had zero (0) Federal district court cases resulting in judgments, awards or compromised settlements paid by the Judgment Fund.

A. Trend Analysis

During FY 2022, the number of employees filing EEO complaints was zero (0) which matches the previous fiscal year (FY 2021) in which there were zero (0) complaints. The FEC had zero (0) findings of violations of the anti-discrimination or whistleblower protection laws. No employees were disciplined for discrimination, retaliation, harassment, or any provision of law referred to in the No FEAR Act.

B. Causal Analysis

The Office of Equal Employment Opportunity is continuing to conduct a causal analysis of the deficiency of diversity within certain Race/National Origin (RNO) categories (more specifically the lack of diversity represented within the GS-15 and Senior level staff positions). One major factor for this deficiency is due to the lack of employee turnover at these position levels. The EEO Office will continue to monitor the data to ensure that career growth opportunities exist for under-represented staff so they can effectively compete for these senior-level positions as they become available. During the previous fiscal year (**FY 2021**) the FEC made improvements concerning the number of minority staff who occupy the agency's major occupational codes in its three largest divisions: Office of General Counsel, Reports Analysis Division, and the Chief Information Office. Analysis of the RNO categories of the largest FEC divisions that are more likely to hire new staff (and therefore offer positions with a more robust career ladder), can give a better picture of overall employee lifecycles and help to promote more upwardly mobile pathways for under-represented employees. These divisions are the major entry points into the

agency where new staff come aboard and therefore have a greater chance to develop into management/supervisor and senior level staff positions.

In FY21, there were 60 attorneys in the Office of General Counsel (OGC). Of those employees, 31 (51.66%) were male and 29 (48.33%) were female.

Regarding race/ethnicity, there were 46 White attorneys (76.67%), of whom 27 were male (58.69%) and 19 were female (41.30%). There was one (1) Hispanic female attorney (2.1%). There were 10 Black/African American attorneys (16.6%), of whom three (3) were male (30%) and seven (7) were female (70%). There were three (3) Asian attorneys (5%), of whom one (1) was male (33.3%) and two (2) were female (66.7%). There were zero (0) employees who identified as Two or More Races (0%), Native Hawaiian/Other Pacific Islander (0%), or American Indian/Alaska Native employees (0%). **(Appendix 4)**

There were 44 Campaign Finance Analyst in the Reports Analysis Division. Of those employees, 23 were male (52.27%) and 21 were female (47.72%).

Regarding race/ethnicity, there were 40 White employees (90.90%), of whom 20 were male (50%) and 20 were female (50%). There were three (3) Black/African American employees (6.82%), of whom two (2) were male (66.67%) and one (1) was female (33.33%). There was one (1) Asian male (2.27%). There were zero (0) employees who identified as Hispanic (0%), Two or More Races (0%), Native Hawaiian/Other Pacific Islander (0%), or American Indian/Alaska Native employees (0%). **(Appendix 5)**

There were 41 employees in the Chief Information Office (OCIO). Of those employees, 23 were male (56.10%) and 18 were female (43.90%).

Regarding race/ethnicity, there were 10 White employees (24.39%), of whom seven (7) were male (70%) and three (3) were female (30%). There were no Hispanic employees (0%) in OCIO. There were 13 Black/African American employees in OCIO (31.70%), of whom six (6) were male (46.15%) and seven (7) were female (53.85%). There were 15 Asian employees (36.59%), of whom eight (8) were male (53.33%) and seven (7) were female (46.67%). There were three (3) employees who identified as Two or More races (7.32%), of whom two (2) were male (66.67%) and one (1) was female (33.33%). **(Appendix 6)**

The FEC EEO Office is currently conducting an in-depth barrier analysis for the FY'22 FEC Annual EEO Management Directive 715 (MD-715) report. The MD-715 report is mandated by all federal agencies to ensure that all employees and applicants for employment enjoy equality of opportunity in the federal workplace regardless of race, sex, national origin, color, religion, age, genetic information, disability, or reprisal for engaging in prior protected activity. Some high-level observations that the EEO Office has noted in the past was the lack of diversity of under-represented groups employed in the Reports Analysis Division. More specifically, the lack of employees who identify as Hispanic, American Indian/Alaskan Native and Individuals with Disabilities is noticeable for each division noted above, a situation that needs to show meaningful improvement so that the FEC is better aligned with the Civilian Labor Force (CLF) data. Overall, the agency is doing a good job of ensuring that employee RNO demographics keep pace with the CLF or in some instances surpasses the CLF data for certain positions. Data

for FY22 was not available at the time of this report and the EEO Office plans to review the FY22 data to conduct a comprehensive analysis which will be included in the agency FY22 MD-715 Report to the EEOC.

The EEO Office plans to continue to monitor agency provided data annually, make appropriate recommendations to FEC management, and collaborate on solutions so that these (and any other triggers which are found to exist) can be addressed before they become barriers to employment opportunities.

C. Practical Knowledge Gained Through Experience

See Part VII for the specific actions the FEC has planned or already taken to improve the EEO complaints process. The FEC is committed to ensuring compliance with our nation's EEO and Civil Rights laws and maintaining a work environment where discrimination, retaliation, and harassment are not tolerated.

VI. Adjustment to Budget

Section 203(a)(8) of the No FEAR Act requires that agencies include in their Annual Report to Congress information about "any adjustment (to the extent the adjustment can be ascertained in the budget of the agency) to comply with the requirements under Section 201." The FEC did not make such an adjustment.

VII. FEC Actions Planned or Taken to Improve Complaint and Civil Rights Programs

The FEC plans to take (or has taken) the following actions:

1. Continue to provide Diversity, Equity, Inclusion and Accessibility training workshops for FEC management and staff so that the agency can continue to increase the recruitment, hiring, and promotion of under-represented group members.
2. The EEO Office will continue to utilize and/or promote the Computer Accommodation Program (CAP), the Job Accommodation Network (JAN), Employer Assistance and Resource Network on Disability Inclusion (EARN), [Federal Exchange on Employment and Disability \(FEED\)](#) and other appropriate resources to ensure that employees with disabling conditions can enjoy all benefits of employment.
3. Continue to work in collaboration with the FEC's Diversity, Equity, Inclusion and Accessibility Council (DEIA) and Senior management to implement President Biden's Executive Orders regarding diversity, equity, inclusion and accessibility in the federal government, as applicable.
4. Collaborate with the Office of Human Resources to expand agency outreach and recruitment efforts to reach qualified applicants from the agency's underrepresented groups--most urgently, Hispanics/Latinos, American Indians/Native Alaskans and Individuals with Disabilities and Targeted Disabilities.

5. The EEO Office will continue to present findings from our barrier analysis to Senior management that will identify root causes that need to be addressed by the agency to improve the recruitment, retention, and career advancement of minorities employed at the FEC.
6. The EEO Office will increase collaborative efforts with agency Senior managers to identify triggers/barriers that may be impeding the realization of equal employment opportunities and help develop and implement appropriate action plans to eliminate barriers.

(Appendix 1)

Notification and Federal Employee Anti-discrimination and Retaliation (No FEAR) Act

Accomplishments Update

This Appendix highlights the FEC's accomplishments in implementing the No FEAR Act (also referred to as "the Act") during Fiscal Year (FY) 2022. The FEC has pursued the requirements of this important legislation as indicated in the actions highlighted below:

1. EEO Office staff continued to educate employees about the agency's Accommodation Program and facilitated numerous accommodations for staff who made requests and engaged in the interactive process. A further understanding of the Accommodation Program's benefits to staff has prompted management to expand flexibilities in medical telework-- an adjacent non-EEO agency program.
2. The FEC provided interpretive services (sign language) to employees with targeted disabilities.
3. Highlighted Special Emphasis Months with articles and current events for staff to participate in during African American Heritage Month (February), Women's History Month (March), Asian American Heritage Month (May), Hispanic Heritage Month (September/October), National Disability Employee Awareness Month (October) and American Indian Heritage Month (November).
4. The EEO Office hosted an agency wide conversation/training on "**Unconscious Bias**" which was designed to help staff better recognize and understand their unconscious bias. This training was facilitated by Franklin Covey.
5. The DEIA Council hosted the first ever "FEC Diversity Week" in September 2022. Diversity Week consisted of panel discussions and daily events that highlighted the importance of diversity, equity, inclusion and accessibility within the FEC.

(Appendix 2)

Equal Employment Opportunity Data Pursuant to the No FEAR Act

FEC No FEAR 2022 FY Totals

Number of	2022 FY Totals
Complaints	0
Filers	0
Repeat Filers	0

Bases	2022 FY Totals
Sex	0
Age	0
Race	0
Color	0
Disability	0
National Origin	0
Religion	0
Reprisal	0

Issues (Claims)	2022 FY Totals
Appointment/Hire	0
Assignment of Duties	0
Awards	0
Conversion to Full Time	0
Disciplinary Action	0
1. Demotion	0
2. Reprimand	0
3. Suspension	0
4. Removal	0
Duty Hours	0
Evaluation/Appraisal	0
Examination/Test	0
Harassment/Sexual Harassment	0
Harassment/Non- Sexual	0

Issues (Claims)	2022 FY Totals
Medical Exam	0
Pay (including overtime)	0
Promotion/Non-Selection	0
Reassignment	0
1. Denied	0
2. Directed	0
Reasonable Accommodation	0
Reinstatement	0
Retirement	0
Termination	0
Terms/Conditions of Employment	0
Time and Attendance	0
Training	0
Other	0

Processing Time (Days)	2022 FY Totals
Investigations	0
Final Agency Decision	0
All	0
With Hearing	0
Without Hearing	0

Dismissals	2022 FY Totals
Number of Dismissals	0
Days pending prior to Dismissal	0

Findings of Discrimination	2022 FY Totals
All	0
With Hearing	0
Without Hearing	0

Bases- Findings of Discrimination	2022 FY Totals
Sex	0
Age	0
Race	0
Color	0
Disability	0
National Origin	0
Religion	0
Reprisal	0

Bases-Findings of Discrimination- Without Hearing	2022 FY Totals
Sex	0
Age	0
Race	0
Color	0
Disability	0
National Origin	0
Religion	0
Reprisal	0

Issues Findings of Discrimination	2022 FY Totals
Appointment/Hire	0
Assignment of Duties	0
Awards	0
Conversion to Fulltime	0
Disciplinary Action	0
1. Demotion	0
2. Reprimand	0
3. Suspension	0
4. Removal	0

Issues Findings of Discrimination	2022 FY Totals
Duty Hours	0
Harassment/ Sexual	0
Harassment/Non-Sexual	0
Evaluation/Appraisal	0
Examination/Test	0
Medical Exam	0
Pay, Including Overtime	0
Promotion/Non-Selection	0
Reassignment	0
1. Denied	0
2. Directed	0
Reasonable Accommodation	0
Reinstatement	0
Retirement	0
Termination	0
Terms/Conditions of Employment	0
Time and Attendance	0
Training	0
Other	0

Findings of Discrimination-Without Hearing	2022 FY Totals
Appointment/Hire	0
Assignment of Duties	0
Awards	0
Conversion to Fulltime	0
Disciplinary Action	0
1. Demotion	0
2. Reprimand	0
3. Suspension	0
4. Removal	0
Evaluation/Appraisal	0
Examination/Appraisal	0
Harassment/Sexual	0

Findings of Discrimination-Without Hearing	2022 FY Totals
Harassment/Non-Sexual	0
Medical Exam	0
Pay including overtime	0
Promotion/Non-Selection	0
Reassignment	0
1. Denied	0
2. Directed	0
Reasonable Accommodation	0
Reinstatement	0
Retirement	0
Terms/Conditions of Employment	0
Time and Attendance	0
Training	0
Other	0

Issue-Findings of Discrimination – With Hearing	2022 FY Totals
Appointment/Hire	0
Assignment of Duties	0
Awards	0
Conversion to Fulltime	0
Disciplinary Action	0
1. Demotion	0
2. Reprimand	0
3. Suspension	0
4. Removal	0
Duty Hours	0
Evaluation/Appraisal	0
Examination/Test	0
Harassment/Sexual	0
Harassment/Non-Sexual	0
Non-Sexual	0

Issue-Findings of Discrimination – With Hearing	2022 FY Totals
Medical Examination	0
Pay, Including Overtime	0
Promotion/Non-Selection	0
Reassignment	0
1. Denied	0
2. Directed	0
Reasonable Accommodation	0
Reinstatement	0
Retirement	0
Termination	0
Terms/Conditions of Employment	0
Time and Attendance	0
Training	0
Other	0