



# Notification and Federal Employee Antidiscrimination and Retaliation (No FEAR) Act

**Annual Report**  
Social Security  
Administration  
*Fiscal Year 2022*



**Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002**

**Fiscal Year 2022**

**Prepared by the:**

**Deputy Commissioner for Civil Rights and Equal Opportunity**

**Submitted to the:**

Speaker of the House of Representatives

President *pro tempore* of the Senate

Senate Committee on Homeland Security and Governmental Affairs

Senate Committee on Finance

Senate Committee on Appropriations

House of Representatives Committee on Oversight and Reform

House of Representatives Committee on Appropriations

House of Representatives Subcommittee on Social Security

Senate Subcommittee on Labor, Health and Human Services, Education, and Related Agencies

House of Representatives Subcommittee on Labor, Health and Human Services, Education, and  
Related Agencies

Equal Employment Opportunity Commission

U.S. Attorney General

Office of Personnel Management

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**Social Security Administration**  
**Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002**  
**Fiscal Year 2022 Report**

## **I. INTRODUCTION**

The Deputy Commissioner for Civil Rights and Equal Opportunity (DCCREO) submits this report pursuant to Section 203 of the Notification and Federal Employee Antidiscrimination and Retaliation (No FEAR) Act of 2002, [Public Law 107-174](#).<sup>1</sup> Section 203 of the No FEAR Act requires each Federal agency to submit the No FEAR Act Annual Report no later than 180 days after the end of each fiscal year.<sup>2</sup> The No FEAR Act directs agencies to report annually on the following:

- (1) Number of Federal court cases arising under the No FEAR Act laws and the status or disposition of the cases;
- (2) Amount of Judgment Fund reimbursements and adjustments to the agency's budget to meet the reimbursement requirements;
- (3) Number of disciplinary actions related to discrimination, retaliation, or harassment, and the agency's policy related to appropriate disciplinary action;
- (4) Agency's plan to train employees on their rights under the No FEAR Act;
- (5) Year-end summary of data related to Federal-sector EEO complaint activity; and
- (6) Analysis of trends, causation, and practical knowledge gained through experience and actions planned or taken to improve complaint or civil rights programs.

Since submission of its fiscal year (FY) 2021 Annual Report, the Social Security Administration (SSA) has continued its effort to maintain a work environment free from discrimination and harassment. For FY 2022, the agency reports on the number of cases filed in Federal District court regarding alleged violations of Federal antidiscrimination or whistleblower protection laws; disposition of those cases; reimbursements to the Judgment Fund; number of employees disciplined for discrimination, retaliation, harassment, or other infractions of law cited in Section 201(c) of the No FEAR Act; and SSA's No FEAR training efforts. This report also provides an analysis of the FY 2022 complaints, including trends and causal analysis, and the practical knowledge gained.

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<sup>1</sup> Notification of Federal Employee Antidiscrimination and Retaliation Act of 2002, 5 U.S.C. § 2301 note (2015) (No FEAR Act).

<sup>2</sup> No FEAR Act, 5 U.S.C. Section 2301.

## II. BACKGROUND

Social Security programs touch the lives of almost every American. For 87 years, the agency has delivered critical services to the public at significant times, such as birth, marriage, retirement, disability, and death. The agency's most valued asset in delivering these quality services to the public are its employees. All employees should have equal opportunities to participate in the workforce fully without fear of discrimination, retaliation, or harassment.

The No FEAR Act is designed to reduce workplace discrimination within the Federal government by holding agencies accountable for violations of antidiscrimination and whistleblower protection laws and requiring agencies to post statistical data related to Federal-sector EEO complaints filed within the agency.

## III. DATA

### A. Civil Cases

Section 203(a)(1) of the No FEAR Act requires agencies to report the number of cases arising under each of the respective provisions of law covered by paragraphs (1) and (2) of Section 201(a)(1) in which discrimination on the part of the agency was alleged. Section 724.302 of the Office of Personnel Management's (OPM) implementing regulations clarifies Section 203(a) of the No FEAR Act, indicating that Federal agencies must report on the number of cases in Federal court in which there is an alleged violation of law. The laws covered in the No FEAR Act include:

- Title VII of the Civil Rights Act of 1964, as amended (race, color, religion, sex, and national origin);
- Age Discrimination in Employment Act of 1967, as amended (age over 40);
- Equal Pay Act of 1963 (gender-based wage differentials);
- Section 501 of the Rehabilitation Act of 1973, as amended (disability);
- Genetic Information Nondiscrimination Act of 2008; and
- Civil Service Reform Act of 1978 (race, color, sex, national origin, age, disability, marital status, political affiliation, and whistleblowing).

Below is a summary of Federal district court cases during FY 2022:<sup>3</sup>

- Total pending cases at the close of FY 2022: 24 cases
- Total pending cases alleged violations of the following laws:
  - Title VII of the Civil Rights Act: 22 cases
  - Age Discrimination in Employment Act: 6 cases
  - Rehabilitation Act (Disability): 14 cases

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<sup>3</sup> Note that employees may file a single case under multiple statutes. Therefore, the number of cases pending by statute in this section may not equal the total pending cases for the fiscal year.

- Of the total pending cases at the close of FY 2022, 9 were new cases (received in FY 2022).
- The 9 new cases alleging violations of the following laws:
  - Title VII of the Civil Rights Act: 8 cases
  - Age Discrimination in Employment Act: 1 case
  - Rehabilitation Act (Disability): 4 cases

The status or disposition of these cases are below:

- The Federal courts disposed of 17 discrimination cases alleging 17 violations in FY 2022:
  - Dismissed/Judgment for SSA: 12 cases
  - Judgment against SSA: 0 cases
  - Settled: 5 cases

### **B. Judgment Fund Reimbursements and Budget Adjustments**

Section 724.103 of OPM’s implementing regulations and Section 203(a) (3) require Federal agencies to reimburse the Judgment Fund for payments covered by the No FEAR Act.

Below are the expenditures from the Judgment Fund made on behalf of SSA during FY 2022.

- \$123,000 Paid to Complainants
- \$0 Paid in Attorney fees

### **C. Disciplinary Policy and Actions**

Section 203(a)(4) of the No FEAR Act requires agencies to include the number of employees disciplined for discrimination, retaliation, harassment, or any other infraction of any provision of law covered by the No FEAR Act. Discipline in this context means any one or a combination of the following actions: reprimand, suspension without pay, reduction in grade or pay, or removal. OPM’s final regulation provides that irrespective of discrimination cases in Federal court, Federal agencies are to report the total number of employees disciplined and the nature of the disciplinary actions taken in accordance with agency policy.

In FY 2022, SSA had six disciplinary actions in this section, as illustrated below:

- Demotion - 1 action
- Reprimand - 1 action
- Removal - 1 action
- Long-term suspension of 15 days – 1 action
- Short-term suspension of 14 days or less – 2 actions

Section 203(a)(6) of the No FEAR Act requires agencies to include in its annual report a detailed description of the policy implemented by the agency related 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 Section 201(a)(1) or (2).

A copy of SSA's No FEAR Act Disciplinary Policy appears at [Attachment B](#).

In regard to other actions, in FY 2022, SSA's Commissioner issued the EEO policy statement reinforcing the agency's commitment to creating and maintaining a positive and productive work environment that is free from discrimination on all protected EEO bases.

Additionally, during FY 2022, the agency promoted numerous training initiatives designed to reduce discrimination, retaliation, and harassment as well as to promote diversity, equity, inclusion, and accessibility in the workplace. An overview of these training initiatives is below:

- Anti-Discrimination Policies Training
- Basic Equal Employment Opportunity Commission (EEOC): Nuts & Bolts Training
- Commentative Month Agency-Wide Informative Websites
- Contractor Complaints: Intentional Discrimination and Reprisal Cases Training
- Diversity Day Informative Training Programs
- Diversity, Equity, Inclusion, and Accessibility Ally Training
- Drafting Final Agency Decisions Training
- Drafting Letters of Acceptance and Dismissal Decisions Training
- EEO Compliance Training
- EEO Counselor and EEO Counselor Refresher Training
- EEO Process Training
- Examining Conflicts in Employment Law - EXCEL Conference
- Federal Workplace 2022: Accountability, Challenges & Trends Training
- Findings of Discrimination Training
- Gender Identity Training
- Harassment Prevention Training
- No FEAR Act Training
- Reasonable Accommodations, Schedule A, and Disability Awareness Training
- Religious Accommodations Training
- Sensitivity Training
- Telework as a Reasonable Accommodation Training
- The Importance of the Interactive Process
- Unconscious Bias Training
- Understanding Trauma and Post-Traumatic Stress Disorder
- Uniformed Services Employment and Reemployment Rights Act Training
- Veterans Employment Initiative Training

#### **D. No FEAR Act Training**

Section 202(c) of the No FEAR Act requires agencies to provide training for their employees on the rights and remedies under Federal antidiscrimination, retaliation, and whistleblower protection laws. Under Section 724.203 of OPM's implementing regulations, Federal agencies were required to develop a written training plan and to have trained their employees by December 17, 2006, and every two years thereafter. New employees must receive No FEAR Act training within 60 days of appointment; the agency satisfies this training requirement through its onboarding process.

The agency provided agency wide No FEAR Act training from October 3, 2022, through December 30, 2022. As of December 30, 2022, the agency had a 92 percent completion rate.

#### **E. Year-End Data**

Section 203(a)(5) of the No FEAR Act requires Federal agencies to include its final year-end data posted under Section 301(c)(1)(B) for such fiscal year. Moreover, Section 301(c)(2) of the No FEAR Act requires Federal agencies to include data for each of the five immediately preceding fiscal years. The agency's final year-end data and the preceding five-year data appear at [Attachment A](#). Also, SSA updates the data quarterly and posts the information online at <http://www.ssa.gov/eo/nofear>.

### **IV. ANALYSIS OF DISCRIMINATION COMPLAINTS**

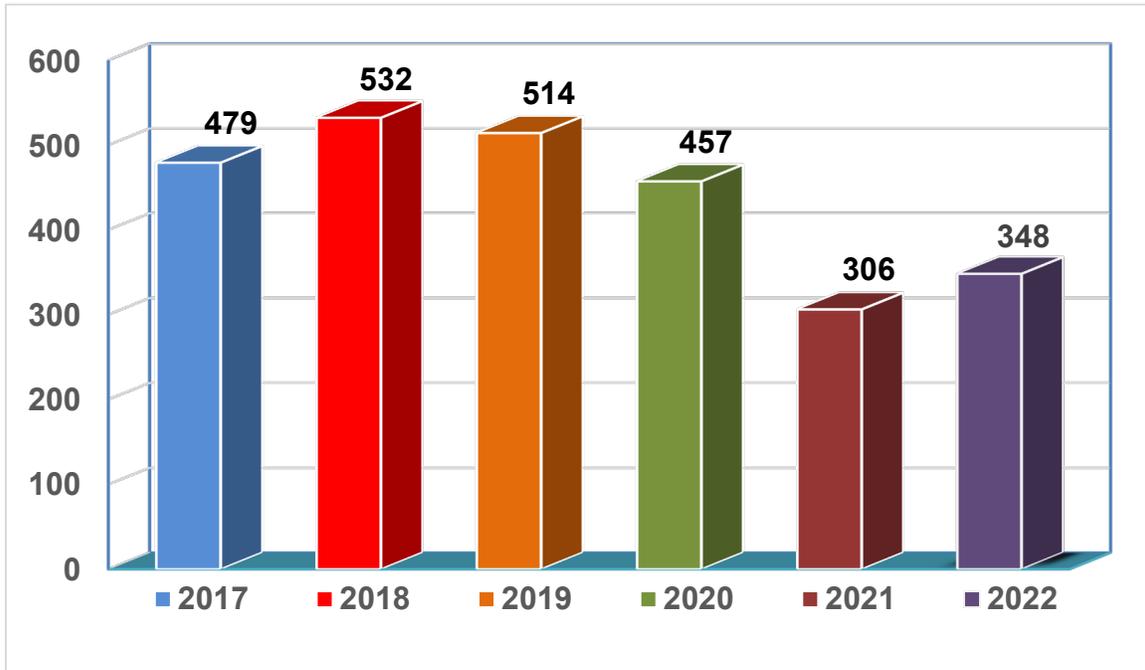
Section 203(a)(7) requires that agencies take an examination of trends, causal analysis, and practical knowledge gained through experience, and any actions planned or taken to improve the agency's complaint or civil rights programs.

#### **A. Trends and Causal Analysis**

##### **EEO Complaints Filed:**

**Figure 1** illustrates the number of formal discrimination complaints filed in each of the past six fiscal years alleging discrimination based on age, disability (mental/physical), Equal Pay Act, Genetic Information Nondiscrimination Act (GINA), national origin, Pregnancy Discrimination Act (PDA), race, color, religion, reprisal, and sex (male/female/LGBTQ+). When compared to FY 2021, in FY 2022 SSA received 42 (13.7 percent) more discrimination complaints. This increase, while slightly higher than FY 2021, is noticeably lower than the number of formal complaints filed in FY 2017 thru FY 2020. The lower number of complaints filed in FY 2021 and FY 2022 may be attributed to the agency's maximum telework policy in the aforementioned fiscal years. As the agency implements reentry plans that may reduce the number of telework days for employees, the number of complaints filed may begin to increase.

**FIGURE 1: SSA Formal Discrimination Complaints Filed In FY 2017 – FY 2022**



**Alleged Issues and Bases:**

**Figure 2** illustrates the top alleged bases and issues for discrimination complaints filed in FY 2022. Except for complaints based on sex, the agency’s top bases have remained consistent for the past six fiscal years as Disability, Reprisal, and Race. Beginning in FY 2019, complaints based on sex exceeded those based on age. See [Attachment A](#). The top alleged issues among complaints include:

- Harassment (non-sexual) and reasonable accommodation disability have been among the top in each of the past six fiscal years
- Promotion/non-selection for five of the six years
- Other terms/conditions of employment\* beginning in FY 2022

\* “Other terms/conditions of employment” include issues that were previously reported as assignment of duties, conversion to full-time, duty hours, reinstatement, retirement, and terms/conditions of employment. In FY 2022, EEOC made changes to issues of discrimination and EEOC combined the aforementioned issues into one category.

**FIGURE 2: SSA Top Alleged Bases and Issues – FY 2022**

<b>FY 2022 Top Bases</b> <b>Individuals Protected Status</b>	<b>FY 2022 Top Issues</b> <b>Actions Resulting in the Alleged Discrimination</b>
Disability (187)	Harassment (Non-Sexual) (207)
Reprisal (185)	Other Terms and Conditions of Employment (92)
Race (131)	Reasonable Accommodation Disability (91)
Sex (126)	Promotion/Non-Selection (63)

**Figure 3** illustrates the total of the top alleged bases and issues for discrimination complaints filed in each of the past six fiscal years. The top bases in Figure 3 are consistent with those in Figure 2. Except for complaints alleging issues of performance evaluation/appraisal, the top issues in Figure 3 are consistent with those in Figure 2. Beginning in FY 2022, complaints alleging issues of other terms and conditions of employment exceeded those alleging issues of performance evaluation/appraisal. [Attachment A](#)

**FIGURE 3: SSA Top Alleged Bases and Issues – FY 2017 – FY 2022**

Top Bases FY 2017 - FY 2022	Top Issues FY 2017 - FY 2022
Reprisal	Harassment (Non-Sexual)
Disability	Reasonable Accommodation Disability
Race	Performance Evaluation/Appraisal
Sex	Promotion/Non-Selection

### EEO Investigations

**Figure 4** illustrates investigations completed in each of the past six fiscal years. In FY 2022, SSA completed 272 investigations, 114 (29.5 percent) fewer investigations compared to 386 in FY 2021. SSA’s timeliness rate of 94.1 percent for investigations exceeded the EEOC’s 90 percent benchmark; timeliness improved by 24.9 percentage points in FY 2022 from 69.7 percent in FY 2021. Average processing days to complete investigations of 157 in FY 2022 decreased by 52 days (24.9 percent) compared to 209 in FY 2021. During FY 2022, SSA continued strategies that SSA implemented during FY 2020 and FY 2021 to address challenges caused by the global pandemic. Strategies were successful in improving the agency’s timeliness of investigation completions.

**FIGURE 4: SSA Investigations – FY 2017 – FY 2022**

Investigations	2017	2018	2019	2020	2021	2022
Total Investigations Completed	436	419	467	408	386	272
Total Timely Investigations Completed	326	410	440	339	269	256
Percent Timely Investigations Completed	74.8%	97.9%	94.2%	83.1%	69.7%	94.1%
Average Days to Complete Investigations	208	181	160	171	209	157

### Counselings Conducted

**Figure 5** illustrates pre-complaint counselings conducted in each of the past six fiscal years. In FY 2022, SSA conducted 635 pre-complaint counselings, an increase of 62 (10.8 percent) counselings compared to 573 in FY 2021. Counseling timeliness exceeded the EEOC’s 90 percent benchmark, increasing from 96.3 percent in FY 2021 to 98.4 percent in FY 2022. Pre-complaint counseling resolved (a settlement, a withdrawal, or no formal complaint filed) decreased from 49.3 percent in FY 2021 to 46.9 percent in FY 2022; the agency is researching solutions to increasing aggrieved individuals’ participation in mediation at the pre-complaints stage.

**FIGURE 5: SSA Pre-Complaint Counseling Conducted in FY 2017 – FY 2022**

<b>Counseling Conducted</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>	<b>2020</b>	<b>2021</b>	<b>2022</b>
Total of Counseling Conducted	938	1,014	1,003	887	573	635
Total of Timely Counseling Conducted	869	1,001	997	846	552	625
Percent of Timely Counseling Conducted	93.0%	98.7%	99.4%	95.4%	96.3%	98.4%
Percent Resolved (Settled/With drawn/No Formal Filed)	58.0%	47.8%	51.9%	52.4%	49.3%	46.9%

**Monetary Corrective Actions**

**Figure 6** illustrates monetary corrective actions paid in each of the past six fiscal years. In FY 2022, SSA closed 49 EEO complaints with monetary corrective actions totaling \$809,989, an average of about \$16,530 per corrective action. When compared to FY 2021, in FY 2022 SSA closed three (6.5 percent) more cases with monetary corrective actions with \$328,577 (28.9 percent) less in monetary corrective actions paid. Figures in this table indicate the number of cases and monetary amount fluctuate each fiscal year and remain below 50 cases with an average amount paid per corrective action of \$22,149 over the past six fiscal years.

**FIGURE 6: SSA Monetary Corrective Actions by Fiscal Year – FY 2017 – FY 2022**

<b>Fiscal Year</b>	<b>Number of Cases Closed with Monetary Corrective Actions</b>	<b>Total Amount Paid</b>	<b>Average Amount per Corrective Action</b>
FY 2022	49	\$809,989	\$16,530
FY 2021	46	\$1,138,546	\$24,751
FY 2020	45	\$738,249	\$16,406
FY 2019	36	\$611,978	\$16,999
FY 2018	49	\$884,334	\$18,048
FY 2017	39	\$1,566,300	\$40,162

## **B. Actions Planned/Taken & Practical Knowledge Gained**

SSA is committed to the principles of EEO and the successful implementation of its EEO program. Effective October 1, 2021, the DCCREO's reporting structure was aligned directly under the agency head in compliance with the Elijah E. Cummings Federal Employee Antidiscrimination Act of 2020. SSA maintains a commitment to foster a diverse and inclusive work environment, where EEO applies to all, and employment decisions are merit-based.

During FY 2022, SSA's EEO program continued to face many challenges resulting from the global pandemic. In spite of the challenges, SSA continued to take steps towards obtaining model EEO status. Steps taken have included:

### **EEO Processing Improvements**

- Acknowledgments – Achieved 90.5% timeliness, which exceeds DCCREO's internal 90% benchmark.
- Acceptance/Dismissals – Achieved 95.9% timeliness, which exceeds DCCREO's internal 90% benchmark.
- Investigative Plan Timeliness - Achieved 97.4% timeliness, which exceeds DCCREO's internal benchmark.
- Investigations - Achieved 94.1% timeliness, which exceeds EEOC's 90% benchmark.
- FADs - Achieved 94.6% timeliness, which exceeds EEOC's 90% benchmark.
- Final Orders – Achieved 93.7% timeliness, which exceeds EEOC's 90% benchmark.
- Compliance (Administrative Judges, Final Agency Decision, Office of Federal Operation Findings and Orders) – Achieved 96.9% timeliness, which exceeds DCCREO's internal benchmark.
- Compliance (Settlements) – Achieved 96.8% timeliness, which exceeds DCCREO's internal benchmark.

### **Additional Improvements**

- Implemented the EEO Academy Training Program Series for EEO Specialists and new hires.
- Released the mandatory Unconscious Bias Training curriculum.
- Implemented a process to increase awareness of job opportunities by sharing job announcements with all National Advisory Councils.
- Developed SSA's Policy and Practices on Prohibiting Discrimination, Including Harassment, Based on Sexual Orientation, Gender Identity, or Gender Expression and the associated Operational Procedures for Supporting Gender Transition Affirmation in the Workplace.

## **V. CONCLUSION**

The information in this report highlights SSA's EEO program successes and various challenges

during FY 2022. The agency realized many notable accomplishments this year despite challenges in processing EEO complaints during a global pandemic.

Because of the commitment, resilience, determined effort, and continued bonds of collaboration, the agency's EEO program continues to make significant steps towards achieving model EEO agency status according to criteria established by the EEOC. The agency will report on its progress in the EEO program during FY 2023 in the next No FEAR Act Annual Report.

**ATTACHMENTS**

# **Attachment A**

## **A. Equal Employment Opportunity (EEO) Complaint Data (FY 2017 – FY 2022)**

**Equal Employment Opportunity Data Posted Pursuant to the No Fear Act:  
SSA Internal Complaint Activity  
Data as of September 30, 2022**

<b>Complaint Activity Sec.1614.704 (a),(b),and (c)</b>	<b>Comparative Data (Sec.1614.705) Previous Fiscal Year Data</b>					
	<b>2017</b>	<b>2018</b>	<b>2019</b>	<b>2020</b>	<b>2021</b>	<b>2022</b>
Number of Complaints Filed	479	532	514	457	306	348
Number of Complainants	429	480	469	406	279	319
Repeat Filers	44	45	45	47	27	29

<b>Complaints by Basis Sec.1614.704(d) <i>Note: Complaints can be filed alleging multiple bases. The sum of the bases may not equal total complaints filed.</i></b>	<b>Comparative Data (Sec.1614.705) Previous Fiscal Year Data</b>					
	<b>2017</b>	<b>2018</b>	<b>2019</b>	<b>2020</b>	<b>2021</b>	<b>2022</b>
Race	156	197	181	170	110	131
Color	28	31	36	27	24	41
Religion	29	21	21	21	16	31
Reprisal	245	279	258	259	193	185
Sex	131	183	178	163	115	126
PDA	3	3	3	2	2	7
National Origin	55	64	63	54	43	50
Equal Pay Act	0	1	0	1	7	8
Age	143	190	161	148	89	107
Disability	207	233	234	214	148	187
Genetics	1	2	1	2	0	4
Non-EEO Basis	46	45	58	53	39	52

<b>Complaints by Issue Sec.1614.704 (e) <i>Note: Complaints can be filed alleging multiple issues. The sum of the issues may not equal total complaints filed.</i></b>	<b>Comparative Data (Sec.1614.705) Previous Fiscal Year Data</b>					
	<b>2017</b>	<b>2018</b>	<b>2019</b>	<b>2020</b>	<b>2021</b>	<b>2022</b>
Appointment/Hire	5	10	6	8	5	3
Assignment of Duties	39	55	63	43	47	0
Awards	17	14	30	11	5	10
Conversion to full-time	0	0	0	0	0	0
<b>Disciplinary Action</b>						
Demotion	5	10	6	3	6	4
Reprimand	25	31	36	36	28	0
Suspension	21	29	38	33	27	23
Removal	12	12	18	11	5	5
Disciplinary Warning	0	1	0	0	9	0
Other Disciplinary Actions	0	0	0	0	0	26
Duty Hours	2	6	8	2	6	0
Performance Evaluation/Appraisal	98	104	86	75	61	50

Complaints by Issue Sec.1614.704 (e) <i>Note: Complaints can be filed alleging multiple issues. The sum of the issues may not equal total complaints filed.</i>	Comparative Data (Sec.1614.705) Previous Fiscal Year Data					
	2017	2018	2019	2020	2021	2022
Examination/Test	2	2	1	0	1	0
<b>Harassment</b>						
Non-Sexual	255	275	295	271	164	207
Sexual	16	20	10	19	12	6
Medical Examination	0	2	1	0	1	0
Pay (Including Overtime)	18	10	17	6	11	9
Promotion/Non-Selection	87	112	87	61	53	63
<b>Reassignment</b>						
Denied	11	16	16	11	5	6
Directed	9	3	9	7	2	2
Reasonable Accommodation Disability	104	108	137	104	73	91
Reinstatement	1	1	1	0	0	0
Religious Accommodation	5	5	2	1	1	6
Retirement	10	9	15	18	10	0
Sex-Stereotyping	0	0	0	0	1	1
Telework	11	19	8	19	4	9
Termination	47	24	41	43	29	26
Terms/Conditions of Employment	29	32	15	43	20	0
Time and Attendance	50	63	76	63	37	44
Training	13	12	15	15	10	7
Other Terms and Conditions	0	0	0	0	0	92
Other	1	0	0	0	0	0

Processing Time Sec.1614.704(f) the average length of time it has taken an agency to complete, respectively, investigation in final action for:	Comparative Data (Sec.1614.705) Previous Fiscal Year Data					
	2017	2018	2019	2020	2021	2022
<b>Complaints pending (during fiscal year</b>						
Average number of days in investigation stage	258	203	159	175	211	157
Average number of days in final action stage	50	52	39	50	50	33
<b>Complaints pending during fiscal year where hearing was requested</b>						
Average number of days in investigation stage	232	182	163	176	206	165
Average number of days in final action stage	52	42	23	33	26	24
<b>Complaints pending during fiscal year where hearing was not requested</b>						
Average number of days in investigation stage	308	218	158	175	216	154
Average number of days in final action stage	46	60	56	81	67	45

Complaints Dismissed by Agency Sec.1614.704(g)	Comparative Data (Sec.1614.705) Previous Fiscal Year Data					
	2017	2018	2019	2020	2021	2022
Total Complaints Dismissed by Agency	56	35	57	41	39	22
Average days pending prior to dismissal	102	57	88	72	112	87
Complaints Withdrawn by Complainants						
Total complaints Withdrawn by Complainants	61	54	57	39	44	33

Total Final Actions Finding Discrimination (Sec.1614.704 (i))	Comparative Data (Sec.1614.705) Previous Fiscal Year Data											
	2017		2018		2019		2020		2021		2022	
	#	%	#	%	#	%	#	%	#	%	#	%
<b>Total Number Findings</b>	10		4		1		5		6		3	
Without Hearing	0	0	1	25	1	100	2	40	4	67	2	67
With Hearing	10	100	3	75	0	0	3	60	2	33	1	33

Findings of Discrimination Rendered by Basis Sec.1614.704(i) <i>Note: Complaints can be filed alleging multiple bases. The sum of the bases may not equal total complaints and findings.</i>	Comparative Data (Sec. 1614.705) Previous Fiscal Year Data											
	2017		2018		2019		2020		2021		2022	
	#	%	#	%	#	%	#	%	#	%	#	%
<b>Total Number Findings</b>	10		4		1		5		6		3	
Race	0	0	0	0	0	0	0	0	1	17	0	0
Color	0	0	0	0	0	0	0	0	0	0	0	0
Religion	0	0	0	0	1	100	0	0	0	0	0	0
Reprisal	1	10	2	50	0	0	4	80	1	17	1	33
Sex	0	0	0	0	0	0	0	0	0	0	0	0
PDA	0	0	0	0	0	0	0	0	0	0	0	0
National Origin	0	0	0	0	0	0	0	0	0	0	0	0
Equal Pay Act	0	0	0	0	0	0	0	0	0	0	0	0
Age	10	100	2	50	0	0	0	0	1	17	0	0
Disability	0	0	1	25	0	0	3	60	5	83	3	100
Genetics	0	0	0	0	0	0	0	0	0	0	0	0
Non-EEO	0	0	0	0	0	0	0	0	0	0	0	0
<b>Findings After Hearing</b>	10		3		0		3		2		1	
Race	0	0	0	0	0	0	0	0	1	50	0	0
Color	0	0	0	0	0	0	0	0	0	0	0	0
Religion	0	0	0	0	0	0	0	0	0	0	0	0
Reprisal	1	10	2	67	0	0	3	100	0	0	0	0
Sex	0	0	0	0	0	0	0	0	0	0	0	0

Findings of Discrimination Rendered by Basis Sec.1614.704(i) <i>Note: Complaints can be filed alleging multiple bases. The sum of the bases may not equal total complaints and findings.</i>	Comparative Data (Sec. 1614.705) Previous Fiscal Year Data											
	2017		2018		2019		2020		2021		2022	
	#	%	#	%	#	%	#	%	#	%	#	%
PDA	0	0	0	0	0	0	0	0	0	0	0	0
National Origin	0	0	0	0	0	0	0	0	0	0	0	0
Equal Pay Act	0	0	0	0	0	0	0	0	0	0	0	0
Age	10	100	2	67	0	0	0	0	1	50	0	0
Disability	0	0	0	0	0	0	1	33	2	100	1	100
Genetics	0	0	0	0	0	0	0	0	0	0	0	0
Non-EEO	0	0	0	0	0	0	0	0	0	0	0	0
<b>Findings Without Hearing</b>	0		1		1		2		4		2	
Race	0	0	0	0	0	0	0	0	0	0	0	0
Color	0	0	0	0	0	0	0	0	0	0	0	0
Religion	0	0	0	0	1	100	0	0	0	0	0	0
Reprisal	0	0	0	0	0	0	1	50	1	25	1	50
Sex	0	0	0	0	0	0	0	0	0	0	0	0
PDA	0	0	0	0	0	0	0	0	0	0	0	0
National Origin	0	0	0	0	0	0	0	0	0	0	0	0
Equal Pay Act	0	0	0	0	0	0	0	0	0	0	0	0
Age	0	0	0	0	0	0	0	0	0	0	0	0
Disability	0	0	1	100	0	0	2	100	3	75	2	100
Genetics	0	0	0	0	0	0	0	0	0	0	0	0
Non-EEO	0	0	0	0	0	0	0	0	0	0	0	0

The “#” and “%” are

Findings of Discrimination Rendered by Issue Sec.1614.704(j)	Comparative Data (Sec.1614.705) Previous Fiscal Year Data											
	2017		2018		2019		2020		2021		2022	
	#	%	#	%	#	%	#	%	#	%		
<b>Total Number Findings</b>	10		4		1		5		6		3	
Appointment/Hire	0	0	0	0	0	0	0	0	0	0	0	0
Assignment of Duties	0	0	0	0	0	0	0	0	0	0	0	0
Awards	0	0	0	0	0	0	0	0	0	0	0	0
Conversion to Full-Time	0	0	0	0	0	0	0	0	0	0	0	0
<b>Disciplinary Action</b>												
Demotion	0	0	0	0	0	0	0	0	0	0	0	0
Reprimand	0	0	0	0	0	0	1	20	0	0	0	0
Suspension	0	0	0	0	0	0	0	0	0	0	0	0
Removal	0	0	0	0	0	0	0	0	0	0	0	0

Findings of Discrimination Rendered by Issue Sec.1614.704(j)	Comparative Data (Sec.1614.705) Previous Fiscal Year Data											
	2017		2018		2019		2020		2021		2022	
	#	%	#	%	#	%	#	%	#	%		
Other Disciplinary Actions	0	0	0	0	0	0	0	0	0	0	0	0
Duty Hours	0	0	0	0	0	0	0	0	0	0	0	0
Performance Evaluation Appraisal	0	0	1	25	0	0	0	0	1	17	0	0
Examination/Test	0	0	0	0	0	0	0	0	0	0	0	0
<b>Harassment</b>												
Non-Sexual	0	0	2	50	0	0	2	40	1	17	1	33
Sexual	0	0	0	0	0	0	0	0	0	0	0	0
Medical Examination	0	0	0	0	0	0	0	0	0	0	1	33
Pay (Including Overtime)	0	0	0	0	0	0	0	0	0	0	0	0
Promotion/Non-Selection	10	100	1	25	0	0	2	40	0	0	0	0
<b>Reassignment</b>												
Denied	0	0	0	0	0	0	0	0	0	0	0	0
Directed	0	0	0	0	0	0	0	0	1	17	0	0
Reasonable Accommodation Disability	0	0	1	25	1	100	2	40	3	50	2	67
Reinstatement	0	0	0	0	0	0	0	0	0	0	0	0
Religious Accommodation	0	0	0	0	1	100	0	0	0	0	0	0
Retirement	0	0	0	0	0	0	1	20	0	0	0	0
Sex-Stereotyping	0	0	0	0	0	0	0	0	0	0	0	0
Telework	0	0	0	0	0	0	1	20	1	17	0	0
Termination	0	0	0	0	0	0	0	0	0	0	0	0
Terms/Conditions of Employment	0	0	0	0	0	0	2	40	0	0	0	0
Time and Attendance	0	0	0	0	0	0	0	0	0	0	0	0
Training	0	0	0	0	0	0	0	0	0	0	0	0
<b>Findings After Hearing</b>	10		3		0		3		2		1	
Appointment/Hire	0	0	0	0	0	0	0	0	0	0	0	0
Assignment of Duties	0	0	0	0	0	0	0	0	0	0	0	0
Awards	0	0	0	0	0	0	0	0	0	0	0	0
Conversion to Full-time	0	0	0	0	0	0	0	0	0	0	0	0
<b>Disciplinary Action</b>												
Demotion	0	0	0	0	0	0	0	0	0	0	0	0
Reprimand	0	0	0	0	0	0	1	33	0	0	0	0
Suspension	0	0	0	0	0	0	0	0	0	0	0	0
Removal	0	0	0	0	0	0	0	0	0	0	0	0
Other Disciplinary Actions	0	0	0	0	0	0	0	0	0	0	0	0
Duty Hours	0	0	0	0	0	0	0	0	0	0	0	0
Performance Evaluation Appraisal	0	0	1	33	0	0	0	0	0	0	0	0
Examination/Test	0	0	0	0	0	0	0	0	0	0	0	0
<b>Harassment</b>												
Non-Sexual	0	0	2	67	0	0	2	67	1	50	0	0
Sexual	0	0	0	0	0	0	0	0	0	0	0	0

Findings of Discrimination Rendered by Issue Sec.1614.704(j)	Comparative Data (Sec.1614.705) Previous Fiscal Year Data											
	2017		2018		2019		2020		2021		2022	
	#	%	#	%	#	%	#	%	#	%	#	%
Medical Examination	0	0	0	0	0	0	0	0	0	0	0	0
Pay (Including Overtime)	0	0	0	0	0	0	0	0	0	0	0	0
Promotion/Non-Selection	10	100	1	33	0	0	2	67	0	0	0	0
<b>Reassignment</b>												
Denied	0	0	0	0	0	0	0	0	0	0	0	0
Directed	0	0	0	0	0	0	0	0	1	50	0	0
Reasonable Accommodation Disability	0	0	0	0	0	0	1	33	0	0	1	100
Reinstatement	0	0	0	0	0	0	0	0	0	0	0	0
Religious Accommodation	0	0	0	0	0	0	0	0	0	0	0	0
Retirement	0	0	0	0	0	0	1	33	0	0	0	0
Sex-Stereotyping	0	0	0	0	0	0	0	0	0	0	0	0
Telework	0	0	0	0	0	0	1	33	1	50	0	0
Termination	0	0	0	0	0	0	0	0	0	0	0	0
Terms/Conditions of Employment	0	0	0	0	0	0	0	0	0	0	0	0
Time and Attendance	0	0	0	0	0	0	0	0	0	0	0	0
Training	0	0	0	0	0	0	0	0	0	0	0	0
<b>Findings Without Hearing</b>	0		1		1		2		4		2	
Appointment/Hire	0	0	0	0	0	0	0	0	0	0	0	0
Assignment of Duties	0	0	0	0	0	0	0	0	0	0	0	0
Awards	0	0	0	0	0	0	0	0	0	0	0	0
Conversion to Full-time	0	0	0	0	0	0	0	0	0	0	0	0
<b>Disciplinary Action</b>												
Demotion	0	0	0	0	0	0	0	0	0	0	0	0
Reprimand	0	0	0	0	0	0	0	0	0	0	0	0
Suspension	0	0	0	0	0	0	0	0	0	0	0	0
Removal	0	0	0	0	0	0	0	0	0	0	0	0
Other Disciplinary Actions	0	0	0	0	0	0	0	0	0	0	0	0
Duty Hours	0	0	0	0	0	0	0	0	0	0	0	0
Performance Evaluation Appraisal	0	0	0	0	0	0	0	0	1	25	0	0
Examination/Test	0	0	0	0	0	0	0	0	0	0	0	0
<b>Harassment</b>												
Non-Sexual	0	0	0	0	0	0	0	0	0	0	1	50
Sexual	0	0	0	0	0	0	0	0	0	0	0	0
Medical Examination	0	0	0	0	0	0	0	0	0	0	1	50
Pay (Including Overtime)	0	0	0	0	0	0	0	0	0	0	0	0
Promotion/Non-Selection	0	0	0	0	0	0	0	0	0	0	0	0
<b>Reassignment</b>												
Denied	0	0	0	0	0	0	0	0	0	0	0	0
Directed	0	0	0	0	0	0	0	0	0	0	0	0

Findings of Discrimination Rendered by Issue Sec.1614.704(j)	Comparative Data (Sec.1614.705) Previous Fiscal Year Data											
	2017		2018		2019		2020		2021		2022	
	#	%	#	%	#	%	#	%	#	%	#	%
Reasonable Accommodation Disability	0	0	1	100	1	100	1	50	3	75	1	50
Reinstatement	0	0	0	0	0	0	0	0	0	0	0	0
Religious Accommodation	0	0	0	0	0	0	0	0	0	0	0	0
Retirement	0	0	0	0	0	0	0	0	0	0	0	0
Sex-Stereotyping	0	0	0	0	0	0	0	0	0	0	0	0
Telework	0	0	0	0	0	0	0	0	0	0	0	0
Termination	0	0	0	0	0	0	0	0	0	0	0	0
Terms/Conditions of Employment	0	0	0	0	0	0	2	100	0	0	0	0
Time and Attendance	0	0	0	0	0	0	0	0	0	0	0	0
Training	0	0	0	0	0	0	0	0	0	0	0	0

Pending Complaints Filed in Previous Fiscal Years by Status (Sec.1614.704(l))	Comparative Data (Sec.1614.705) Previous Fiscal Year Data					
	2017	2018	2019	2020	2021	2022
Total Complaints From Previous Fiscal Years	514	524	406	431	279	175
Total Complainants	422	427	341	377	240	150
<b>Number Complaints Pending</b>						
Investigation	77	52	11	22	3	0
ROI Issues, Pending Complainant's Action	0	1	0	0	0	0
Hearing	483	502	352	355	250	158
Final Agency Action	46	41	50	72	26	17
Appeals with EEOC Office of Federal Operations	300	240	273	270	213	89

Complaint Investigations (Sec.1614.704(m))	Comparative Data (Sec.1614.705) Previous Fiscal Year Data					
	2017	2018	2019	2020	2021	2022
Pending Completion Where Investigation Exceeds Required Time Frames	69	66	4	41	5	0

## **Attachment B**

### **B. SSA's Notification of Federal Employee Antidiscrimination and Retaliation (No FEAR) Act Disciplinary Policy**

# **NOTIFICATION OF FEDERAL EMPLOYEE ANTIDISCRIMINATION AND RETALIATION (NO FEAR) ACT DISCIPLINARY POLICY**

## **BACKGROUND**

The No FEAR Act holds Federal agencies accountable for violations of antidiscrimination and whistleblower protection laws. It also requires Federal agencies to notify employees of their rights and remedies under the employment discrimination and whistleblower protection laws.

### **1. PURPOSE**

This document establishes our disciplinary policy and procedures for ensuring that we take appropriate disciplinary or corrective action if discrimination or whistleblower violations occur. In accordance with Federal law, this policy strengthens our existing anti-discrimination and retaliation policies and encourages resolution of complaints at the earliest possible opportunity.

### **2. POLICY**

Consistent with Federal law, it is our policy to treat employees and applicants for employment fairly and equitably, with dignity and respect, regardless of race, color, national origin, sex (including sexual harassment, pregnancy, and gender identity), religion, age, disability, political affiliation, sexual orientation, marital status, parental status, genetic information (including family history), or military service. Discrimination and harassment on any of these bases, and retaliation against employees who oppose discrimination, violate Federal laws and this policy. We will not tolerate any form of discrimination, harassment, or retaliation against employees who exercise their EEO rights or report misconduct, gross mismanagement, waste, fraud, or abuse under the Whistleblower Protection Act (WPA), and we will continue to take necessary measures to protect their confidentiality.

Managers and supervisors are responsible for observing and enforcing applicable laws. We hold our managers, supervisors, and all other employees accountable for discrimination and whistleblower violations. While our No FEAR Act Disciplinary Policy applies solely to executives, managers, and supervisors, we will apply other appropriate policies to other employees who discriminate or commit whistleblower violations. Management will work with the Office of Civil Rights and Equal Opportunity (OCREO), the Office of the General Counsel (OGC), and the Office of Labor-Management and Employee Relations (OLMER) to fully evaluate claims or other indications of unlawful discrimination or retaliation. We retain the authority to determine whether disciplinary or other corrective action is warranted under Federal law or agency policy.

### **3. SCOPE**

Management will work with OCREO, OGC, and OLMER to effectively administer these procedures in accordance with Federal law and policy.

#### 4. SPECIAL INSTRUCTIONS

Management will use these procedures in conjunction with our Annual Personnel Reminders, the Office of Government Ethics' Standards of Ethical Conduct for Employees of the Executive Branch, and any other applicable agency or Government-wide policy or regulation.

#### 5. DEFINITIONS

For purposes of this policy:

a. "Agency Counsel/Representative" means the agency's legal representative in the matter in question. Typically, this will be an employee of OGC, OLMER, or the Regional Labor Relations/Employee Relations (LR/ER) staff (including the Division of Quality Service in the Office of Hearings Operations (OHO)).

b. "Corrective Action" means measures taken that are not disciplinary or adverse actions (e.g., training, policy changes).

(1) "Initiating Corrective Action" means taking firm steps toward scheduling the corrective action.

(2) "Effectuating Corrective Action" means completing or realizing the corrective action.

c. "Decision" means a determination reached after considering the facts and any applicable law. It refers to a final arbitration award, following decision on appeal or exceptions, if any, or a final determination of a Federal court or administrative body (e.g., EEOC, Merit Systems Protection Board (MSPB), or Federal Labor Relations Authority (FLRA), following appeal, if applicable). This policy also applies to situations where we informally resolve disputes before an administrative or judicial decision is issued, but after reaching a management determination that discrimination occurred.

d. "Delegated Management Official" means the management official to whom the Commissioner has delegated authority to propose or decide an official action. ([see](#) PPM Chapter S751\_1). As referenced in this policy, the Delegated Management Official is the lowest level official who can decide whether to propose administrative, disciplinary, or corrective action.

e. "Deputy Commissioner" means component Deputy Commissioner (DC). As referenced in this policy, the responsible DC or equivalent executives are:

- For covered actions originating in Headquarters, the component DC or equivalent executive (e.g., the General Counsel, Chief Actuary);
- For covered actions originating in the field, the Regional Commissioner; and

- For covered actions originating in OHO, the Regional Management Official, or the Regional Chief Administrative Law Judge if the matter involves an Administrative Law Judge.

f. “Disciplinary Action” means measures taken to correct the conduct of an employee and may include a letter of reprimand, suspension, reduction in grade or pay, or removal from Federal service.

- (1) “Initiating Disciplinary Action” means issuing a proposal to discipline.
- (2) “Issuing Disciplinary Action” means issuing a letter of reprimand or a decision to discipline.
- (3) “Effectuating Disciplinary Action” means carrying out the discipline.

g. “Douglas Factors” are the pertinent mitigating and aggravating factors we consider in determining an appropriate penalty for misconduct. They are:

- (1) nature and seriousness of the offense;
- (2) employee’s job level and type of employment;
- (3) employee’s disciplinary record;
- (4) employee’s work record;
- (5) effect on supervisory confidence in the employee’s ability to perform assigned duties;
- (6) consistency of penalty with that for similar offenses;
- (7) consistency of penalty with any applicable table of penalties;
- (8) notoriety of offense;
- (9) employee’s notice of rules;
- (10) employee’s potential for rehabilitation;
- (11) mitigating circumstances; and
- (12) adequacy of alternative sanctions to deter future misconduct.

h. “Final Agency Decision (FAD)” means our conclusive determination, disposing of all issues involved in a formal EEO complaint.

## **6. COVERED ACTIONS**

In accordance with Section 8 (below), we will initiate a review to determine whether disciplinary or corrective action is warranted under the following circumstances:

- a. A FAD that includes a finding of discrimination;
- b. Final EEOC, MSPB, FLRA, or arbitration decisions that include findings of discrimination or violations of the WPA;
- c. Federal court decisions that include findings of discrimination or violations of the WPA;

d. Formal resolutions (e.g., settlements) and informal resolutions in which, based on SSA management's decision, the underlying facts clearly demonstrate that a manager has violated the antidiscrimination or whistleblower protection laws.

Situations other than FADs, administrative findings, judicial findings, or formal or informal resolutions may constitute covered actions under this policy. For example, a case may be withdrawn or dismissed for procedural reasons (e.g., timeliness), but management nevertheless determines that a management official has violated the antidiscrimination or whistleblower protection laws. In view of Federal mandates to initiate appropriate disciplinary or corrective action for violations of the antidiscrimination or whistleblower protection laws, we must consider potential covered actions on a case-by-case basis.

## **7. RESPONSIBILITIES AND PROCEDURES**

a. All employees are responsible for fostering a work environment free of discrimination or retaliation.

b. OCREO, regional civil rights staff within OCREO's Center for Regional Equal Opportunity Management (CREOM), OGC, OLMER, and appropriate component management will share copies of Covered Actions and pertinent case files as described below:

(1) The agency counsel/representative must send any Covered Action not issued by OCREO and a copy of the pertinent case file(s) to the Deputy Commissioner (DC) for OCREO, the Associate Commissioner (AC) for OLMER or the responsible Regional LR/ER Office (through the Human Resources Director (HRD) for Operations or the Regional Attorney for Office of Hearing Operations), and the responsible DC or equivalent executive. The agency counsel/representative must provide these documents as expeditiously as possible, but no later than two business days after receiving the Covered Action.

(2) If OCREO's CREOM receives a Covered Action before the agency counsel/representative receives it, the CREOM will send a copy of the Covered Action to the Associate Commissioner (AC) for OLMER or the responsible Regional LR/ER Office, OGC, and the DC or equivalent executive. OCREO, or the responsible CREOM office, must provide these documents as expeditiously as possible, but no later than two business days after receiving the Covered Action.

(3) If OCREO issues a FAD, OCREO will send a copy of the Covered Action to the AC for OLMER or the responsible LR/ER Office. For findings that pertain to Headquarters components (including offices within the Office of Central Operations and OHO), OCREO will forward the pertinent case file(s) to OLMER. If the findings pertain to Regional Offices, the responsible CREOM office will forward a copy of the pertinent case file(s) to the responsible Regional LR/ER Office. OCREO's CREOM will provide these documents as expeditiously as possible, but no later than two business days after receiving or issuing the Covered Action.

(4) For any formal or informal resolutions that, based on the Delegated Management Official's decision that the underlying facts clearly demonstrate that a manager violated the antidiscrimination or whistleblower protection laws, the Delegated Management Official will notify, and provide a copy of the pertinent case file(s) to the DC for OCREO, the AC for OLMER or the responsible Regional LR/ER Office, and the responsible DC or equivalent executive. The Delegated Management Official must provide such notification and documents as expeditiously as possible, but no later than two business days after receiving the Covered Action.

c. Within ten business days of receiving a copy of the Covered Action, OLMER or the responsible Regional LR/ER Office, in coordination with the servicing OGC office, will gather any additional case files and review the underlying circumstances leading to the Covered Action. OLMER or the responsible Regional LR/ER Office, in coordination with the servicing OGC office, will document in a report the results of its review, including a recommendation on what disciplinary or corrective action (if any) is appropriate.

OLMER or the responsible Regional LR/ER Office will forward the report to OCREO and to the appropriate component management, including the Delegated Management Official and the responsible DC or equivalent executive.

For example, if the covered action involves a District Manager in an Atlanta Region IV field office, then the report is disseminated to OCREO, the Area Director (i.e., as the Delegated Management Official), and the Atlanta Regional Commissioner.

OLMER or the responsible Regional LR/ER Office will issue the report within 30 calendar days of receiving the Covered Action, or within any shorter timeframe required to ensure that we satisfy an order of the EEOC, MSPB, FLRA, or arbitrator.

d. Management will fully consider the report issued by OLMER or the Regional LR/ER Office in determining whether to take disciplinary or corrective action. In all instances, management must consult with OLMER or the appropriate Regional LR/ER Office and the servicing OGC office in determining whether to take disciplinary or corrective action, and if so, the appropriate action to take. In so doing, management will evaluate the facts and apply the Douglas Factors to determine the appropriate penalty. Within the timeframes prescribed below, the DC, equivalent executive, or designee must provide a written justification to OCREO in all instances where there is a decision not to take disciplinary or corrective action.

(1) A Delegated Management Official deciding to take disciplinary or corrective action must initiate the action and notify OCREO and, if applicable, the responsible CREOM staff within the time frame prescribed in final orders of the EEOC, MSPB, FLRA, or arbitrator.

(2) The DC, equivalent executive, or designee must report on initiating disciplinary action, issuing disciplinary action, effectuating disciplinary action, initiating corrective action, or effectuating corrective action to OCREO and, if applicable, to the responsible

CREOM staff within ten business days of receiving the report from OLMER or the responsible Regional LR/ER Office. Additionally, the DC, equivalent executive, or designee must report these events within any shorter time frame required to ensure that any applicable EEOC, MSPB, FLRA, or arbitrator order is satisfied. The DC, equivalent executive, or designee also will report to OCREO any subsequent event canceling or rescinding disciplinary or corrective action. These reports are due to OCREO and, if applicable, to the responsible CREOM staff no later than ten business days after the subsequent event.

(3) A Delegated Management Official declining to take disciplinary or corrective action must seek the concurrence of the DC, equivalent executive, or designee as soon as possible, so the executive may provide timely written justification to OCREO and, if applicable, to the responsible CREOM staff. The DC, equivalent executive, or designee must provide the written justification no later than ten business days after receiving the report from OLMER or the responsible Regional LR/ER Office. Additionally, the DC, equivalent executive, or designee must provide the written justification within any shorter time frame required to ensure that we satisfy any applicable EEOC, MSPB, FLRA, or arbitrator order.

e. At the end of each fiscal year, in accordance with the No FEAR Act, OCREO will prepare an annual report setting forth the number of disciplinary or corrective actions taken under this policy. The report will set forth the specific nature of the disciplinary or corrective action and will identify the Covered Action giving rise to the review that led to the disciplinary or corrective action. OCREO will submit the annual report to Congress, the EEOC, Department of Justice, and OPM no later than 180 days after the end of the fiscal year.

## **8. PREVENTIVE MEASURES**

OCREO will continue the practice, started in 2006, of training all managers and employees concerning their rights and remedies under the Federal antidiscrimination and whistleblower protection laws. OCREO will repeat this training every two years and will ensure that it is user-friendly and that managers and employees have sufficient notice of this training. OCREO views this requirement as a continuing opportunity to ensure compliance with the No FEAR Act, thereby preventing discrimination and the need for disciplinary or corrective action.

## **9. RESOURCES**

For further information regarding the No FEAR Act, please refer to 5 CFR 724 and our No FEAR Act Notice, located at <http://www.ssa.gov/eo/nofear/>. In addition, OPM's specific antidiscrimination policies relating to EEO and prohibited personnel practices are located on OPM's website at [http://www.opm.gov/about\\_opm/nofear](http://www.opm.gov/about_opm/nofear). Additional information on Federal antidiscrimination, whistleblower protection, and retaliation laws are located on the EEOC website at [www.eeoc.gov](http://www.eeoc.gov) and on the Office of Special Counsel's (OSC) website at <https://osc.gov/>.

If employees believe they have been the victim of whistleblower retaliation, they may file a written complaint (Form OSC-11) with OSC at 1730 M Street NW, Suite 218, Washington, D.C. 20036-4505, or online through the OSC website.

## **Attachment C**

### **C. SSA's Notification of Federal Employee Antidiscrimination and Retaliation (No FEAR) Act Notice on the Agency's Internet Webpage**

## No FEAR Act Notice

On May 15, 2002, Congress enacted the “Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002,” which is now known as the No FEAR Act. One purpose of the Act is to “require that Federal agencies be accountable for violations of antidiscrimination and whistleblower protection laws.” Public Law 107-174, Summary. In support of this purpose, Congress found that “agencies cannot be run effectively if those agencies practice or tolerate discrimination.” Public Law 107-174, Title I, General Provisions, section 101(1).

The Act also requires this agency to provide this notice to Federal employees, former Federal employees and applicants for Federal employment to inform you of the rights and protections available to you under Federal antidiscrimination and whistleblower protection laws.

### Antidiscrimination Laws

A Federal agency cannot discriminate against an employee or applicant with respect to the terms, conditions or privileges of employment on the basis of race, color, religion, sex, national origin, age, disability, marital status or political affiliation. Discrimination on these bases is prohibited by one or more of the following statutes: 5 U.S.C. 2302(b)(1), 29 U.S.C. 206(d), 29 U.S.C. 631, 29 U.S.C. 633a, 29 U.S.C. 791 and 42 U.S.C. 2000e-16.

This agency also prohibits discrimination based on parental status and sexual orientation. Executive Order 13152 states explicitly that discrimination based upon an individual’s status as a parent is prohibited within the Executive Branch of the Federal Government. The right to address sexual orientation discrimination derives from Agency policy.

If you believe that you have been the victim of unlawful discrimination on the basis of race, color, religion, sex, national origin, disability, parental status or sexual orientation you must contact an EEO counselor within 45 calendar days of the alleged discriminatory action, or, in the case of a personnel action, within 45 calendar days of the effective date of the action, before you can file a formal complaint of discrimination with the Agency. See, e.g., 29 CFR 1614. If you believe that you have been the victim of unlawful discrimination based on age, you must either contact an EEO counselor as noted above or give notice of intent to sue to the EEOC within 180 calendar days of the alleged discriminatory action. If you are alleging discrimination based on marital status or political affiliation, you may file a written complaint with the U.S. Office of Special Counsel (OSC) (see contact information below). In the alternative (or in some cases, in addition), you may pursue a discrimination complaint by filing a grievance through the Agency's administrative or negotiated grievance procedures, if such procedures apply and are available.

### Whistleblower Protection Laws

A Federal employee with authority to take, direct others to take, recommend or approve any personnel action must not use that authority to take or fail to take, or threaten to take or fail to take, a personnel action against an employee or applicant because of disclosure of information by that individual that is reasonably believed to evidence violations of law, rule or regulation; gross mismanagement; gross waste of funds; an abuse of authority; or a substantial and specific danger

to public health or safety, unless disclosure of such information is specifically prohibited by law and such information is specifically required by Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs.

Retaliation against an employee or applicant for making a protected disclosure is prohibited by 5 U.S.C. 2302(b)(8). If you believe that you have been the victim of whistleblower retaliation, you may file a written complaint (Form OSC-11) with the U.S. Office of Special Counsel at 1730 M Street NW., Suite 218, Washington, DC 20036-4505 or online through the OSC Web site—<http://www.osc.gov>.

### Retaliation for Engaging in Protected Activity

A Federal agency cannot retaliate against an employee or applicant because that individual exercises their rights under any of the Federal antidiscrimination or whistleblower protection laws listed above. If you believe that you are the victim of retaliation for engaging in protected activity, you must follow, as appropriate, the procedures described in the Antidiscrimination Laws and Whistleblower Protection Laws sections or, if applicable, the administrative or negotiated grievance procedures in order to pursue any legal remedy.

### Disciplinary Actions

Under the existing laws, each agency retains the right, where appropriate, to discipline a Federal employee for conduct that is inconsistent with Federal Antidiscrimination and Whistleblower Protection Laws up to and including removal. If OSC has initiated an investigation under 5 U.S.C. 1214, however, according to 5 U.S.C. 1214(f), agencies must seek approval from the Special Counsel to discipline employees for, among other activities, engaging in prohibited retaliation. Nothing in the No FEAR Act alters existing laws or permits an agency to take unfounded disciplinary action against a Federal employee or to violate the procedural rights of a Federal employee who has been accused of discrimination.

### Additional Information

For further information regarding the No FEAR Act regulations, refer to 5 CFR part 724. You may also contact the Office of Civil Rights and Equal Opportunity (Headquarters), the appropriate office in the Civil Rights and Equal Opportunity Management, which includes the manager in OHO. Additional information regarding Federal antidiscrimination, whistleblower protection and retaliation laws are found at the EEOC Web site—<http://www.eeoc.gov> and the OSC Web site—<http://www.osc.gov>.

### Existing Rights Unchanged

Pursuant to section 205 of the No FEAR Act, neither the Act nor this notice creates, expands or reduces any rights otherwise available to any employee, former employee or applicant under the laws of the United States, including the provisions of law specified in 5 U.S.C. 2302(d).