



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

Annual Report
Social Security
Administration
Fiscal Year 2020



**Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002
Fiscal Year 2020**

**Prepared by the:
Office of 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 (FY) 2020 Report

I. INTRODUCTION

The Office of Civil Rights and Equal Opportunity (OCREO) 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](#).¹ 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 the each fiscal year.² 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 equal employment opportunity (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) 2019 Annual Report, the Social Security Administration (SSA) has continued its effort to maintain a work environment free from discrimination and harassment. For FY 2020, 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 2020 complaints, including trends and causal analysis, and the practical knowledge gained.

II. BACKGROUND

Social Security programs touch the lives of almost every American. For 85 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.

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

² No FEAR Act, 5 U.S.C. Section 2301.

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 certain 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 2020:³

- Total pending cases at close of FY 2020: 55 cases
- Total pending cases alleged violations of the following laws:
 - Title VII of the Civil Rights Act: 46 cases
 - Age Discrimination in Employment Act: 14 cases
 - Rehabilitation Act (Disability): 14 cases
- Of the total pending cases at the close of FY 2020, 19 were new cases (received in FY 2020).
- The 19 new cases alleged violations of the following laws:
 - Title VII of the Civil Rights Act: 18 cases
 - Age Discrimination in Employment Act: 4 cases
 - Rehabilitation Act (Disability): 5 cases

³ 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.

The status or disposition of these cases is below:

- The Federal courts disposed of 13 cases in FY 2020: (One case includes both a partial judgment and a settlement);
 - Dismissed/Judgment for SSA: 11 cases
 - Judgment against SSA: 0 cases
 - Settled: 3 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 2020.

- \$12,000 Paid to Complainants; and
- \$2,500 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 2020, SSA had four disciplinary actions in this section, as illustrated below:

- Removal from management
- Removal from federal service (2 Cases)
- Demotion and short-term suspension

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 2020, 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, the agency promoted numerous training initiatives designed to reduce discrimination, retaliation and harassment as well as to promote diversity and inclusion in the workplace. An overview of these training initiatives is below:

- Agency-wide EEO and reasonable accommodation training to managers and supervisors.
- Barrier Analysis training to cover all phases of the process.
- Acceptance/Dismissal Letters drafting.
- EEO training/diversity and inclusion training for new and existing counselors, which met the required refresher training for EEO counselors and included guidance on addressing harassment allegations.
- Federal Civil Rights Laws and MD 110 Guidance training.
- Mandatory training on whistleblower protections and prohibited personnel practices to managers.
- EEO training to new managers and supervisors with 32 hours of mandatory EEO training.
- EEO training resources via the Compliance and Learning Center.
- Quarterly basic and refresher training on the use of the agency's tracking system for EEO complaints.
- Refresher EEO training to managers and supervisors.
- Regional EEO training.
- Special Emphasis Program Manager 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; this is satisfied through SSA's onboarding process.

In FY 2020, 98.2 percent of SSA employees completed the No FEAR Act web-based training.

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

Figure 1 illustrates in FY 2020, SSA received 457 formal complaints involving allegations of discrimination based on race, sex, national origin, disability, reprisal, color, age, which is 57 fewer than the 514 formal complaints filed in FY 2019. This represents an 11 percent decrease in formal complaints filed. This also represents the lowest number of formal complaints filed in any of the preceding five years.

FIGURE 1: Total EEO Formal Complaints Filed – FY 2015 – FY 2020

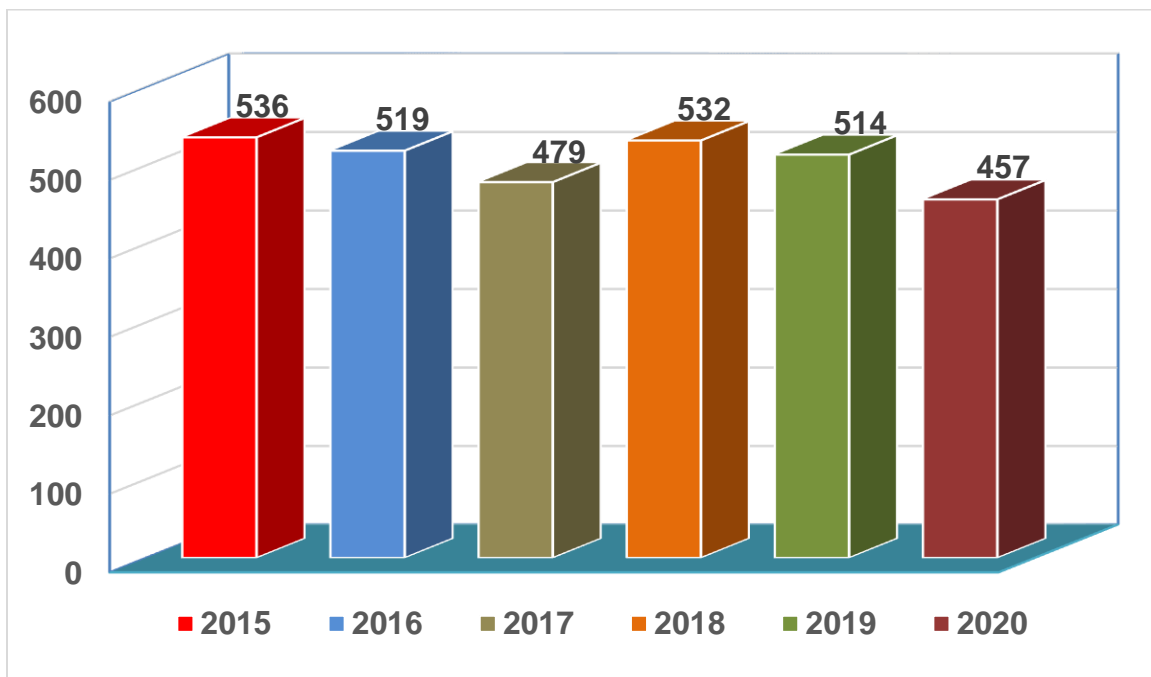


Figure 2 illustrates the agency’s FY 2020 top bases (individuals’ alleged protected status). With the exception of Sex, the agency’s top bases have remained consistent for the past six fiscal years

as illustrated in Figure 3. Additionally, the agency’s top issues (challenged agency action affecting individual’s employment term or condition) show that with the exception of Time and Attendance, the agency’s top issues have also remained consistent over the past six fiscal years as illustrated in Figure 3. Note that a person may allege more than one bases or issue in a single complaint.

FIGURE 2: SSA Top Bases and Issues – FY 2020

Top Bases FY 2020	Top Issues FY 2020
Reprisal (259)	Harassment (Non-Sexual) (271)
Disability (214)	Reasonable Accommodation (104)
Race (170)	Evaluation/Appraisal (75)
Sex (163)	Time and Attendance (63)

Figure 3 illustrates SSA’s bases and issues over a six-year period. The agency’s top bases for the last six years are Reprisal, Disability, Race, and Age. The top bases are consistent with those in FY 2020 with the exception of Age. The top issues for the last six years are Harassment (Non-Sexual), Promotion/Non-Selection, Reasonable Accommodation, and Evaluation. These top issues are consistent with those in FY 2020 with the exception of Promotion.

FIGURE 3: SSA Top Bases and Issues – FY 2015 – FY 2020

Top Bases (FY 2015 - FY 2020)	Top Issues (FY 2015 - FY 2020)
Reprisal	Harassment (Non-Sexual)
Disability	Promotion/Non-Selection
Race	Reasonable Accommodation
Age	Evaluation/Appraisal

Figure 4 illustrates that in FY 2020, SSA completed 408 EEO investigations with a timeliness rate of 83.1 percent, a decrease from FY 2019, but still exceeding the Federal government’s latest published timeliness rate of 79.08 percent. SSA attributes the decrease in timeliness to the global pandemic that hindered the agency’s ability to access mail during the first few months of the pandemic, and hindered the ability to disseminate hard copies of Reports of Investigations (ROIs). The agency revised its policy in late FY 2020 to move to an electronic process for processing EEO complaints, inclusive of disseminating electronic ROIs, per Equal Employment Opportunity Commission (EEOC) guidelines. Further, in FY 2020, the agency devised a process to release hard copies of ROIs upon request. Additionally, in FY 2020, the average number of days to complete an EEO investigation was within regulatory timelines (171 days).

FIGURE 4: SSA Investigations – FY 2015 – FY 2020

Investigations	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020
Total of Investigations Completed	350	550	436	419	467	408
Total of Timely Investigations Completed	103	238	326	410	440	339
Percent of Timely Investigations Completed	29.4%	43.3%	74.8%	97.9%	94.2%	83.1%
Total Average Days to Complete Investigations	287	255	208	181	160	171

Figure 5 illustrates that in FY 2020, SSA conducted counseling for 116 fewer pre-complaint cases (887) compared to FY 2019 (1,003). The decrease in counseling is consistent with the decrease in EEO complaints filed. The agency strives to maintain the timeliness of counseling at or about the 90 percent benchmark established by the EEOC. For six consecutive years, SSA exceeded the EEOC’s 90 percent or higher benchmark for timely processing of pre-complaint counseling. The agency attempts to resolve allegations of EEO violations prior to formal filings of complaints. The overall pre-complaint counseling resolution rate increased to 52.4 percent in FY 2020 compared to 51.9 percent in FY 2019. A pre-complaint counseling resolution includes a settlement, a withdrawal, or no formal complaint filed.

FIGURE 5: SSA Counseling – FY 2015 – FY 2020

Counseling Conducted	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020
Total	1,051	998	938	1,014	1,003	887
Number Timely	978	944	869	1,001	997	846
Percentage Timely	93.1%	94.6%	93.0%	98.7%	99.4%	95.4%
Percentage Resolved (Settled/ Withdrawn/No Formal Filed)	48.5%	49.9%	58.0%	47.8%	51.9%	52.4%

Figure 6 illustrates that in FY 2020, SSA closed 45 EEO complaints with monetary corrective actions totaling \$738,249, an average of about \$16,000 per corrective action, which is slightly lower than 36 EEO complaints with monetary corrective totaling \$611,978 in FY 2019. Figures in this table indicate that the number of cases and monetary amounts fluctuate each fiscal year.

FIGURE 6: SSA Monetary Corrective Actions by Fiscal Year – FY 2015 – FY 2020

Fiscal Year	Number of Cases Closed with Monetary Corrective Actions	Total Amount Paid	Average Amount per Corrective Action
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
FY 2016	53	\$809,946	\$15,282
FY 2015	55	\$1,525,575	\$27,738

B. Actions Planned/Taken & Practical Knowledge Gained

SSA is committed to the principles of EEO and the successful implementation of its EEO program. The agency practices this commitment at all levels of the agency. 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 2020, SSA's EEO program faced many challenges resulting from the global pandemic. In spite of the challenges, SSA has taken and continues to take steps towards obtaining model EEO status. Steps taken have included:

EEO Processing during COVID-19

- Use of an electronic process based on guidance from EEOC.
- Use of the eFile application for employees to submit EEO cases electronically.
- Released more than 900 emails to complaints and attorneys regarding updated processing of complaints in light of the President's Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak.
- Updated standard language for notices to implement EEOC's COVID-19 procedures.
- Developed new COVID-19 internal agency guidance for processing EEO cases.
- Developed an agency EEO Inquiries mailbox and established a hotline to receive telephone messages that would normally be addressed through written communication.
- Developed a process for tracking of COVID-19 cases in the current EEO system.
- Developed a process for analysts to mail hard copies of reports of investigations from home when complainants request hard copies.

Additional Improvements

- In process of updating its web-based No FEAR Act training module, which the agency will implement in 2022.⁴
- Piloted a new team workload concept for processing formal complaints resulting in faster processing, cross-training of staff, increased collaboration, and greater synergy.
- Updated quality review measures for complaints processing inclusive of metrics for analysts performing complaints processing.
- Implementing a new Blanket Purchase Agreement with agency contractors, which includes timeliness and quality performance metrics.

⁴ No FEAR Act training is required every two years. Thus, because SSA provided agency-wide training in FY 2020, it is not required to offer such training again until FY 2022.

V. CONCLUSION

The information in this report highlights SSA's EEO program successes and various challenges during FY 2020. The agency realized many notable accomplishments this year despite challenges 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 2021 in the next No FEAR Act Annual Report.

Attachment A
Equal Employment Opportunity (EEO)
Complaint Data (FY 2015 – FY 2020)

**Equal Employment Opportunity Data Posted Pursuant to the No Fear Act:
SSA Internal Complaint Activity**

Data as of September 30, 2020 (4th Qtr. 2020)

Complaint Activity Sec.1614.704 (a),(b),and (c)	Comparative Data (Sec.1614.705) Previous Fiscal Year Data					2020 thru 09/30
	2015	2016	2017	2018	2019	
Number of Complaints Filed	536	519	479	532	514	457
Number of Complainants	489	469	429	480	469	406
Repeat Filers	40	40	44	45	45	47

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>	Comparative Data (Sec.1614.705) Previous Fiscal Year Data					2020 thru 09/30
	2015	2016	2017	2018	2019	
Race	209	207	156	197	181	170
Color	38	37	28	31	36	27
Religion	20	24	29	21	21	21
Reprisal	235	251	245	279	258	259
Sex	177	179	131	183	178	163
National Origin	61	82	55	64	63	54
Equal Pay Act	1	1	0	1	0	1
Age	226	195	143	190	161	148
Disability	208	202	207	233	234	214
Genetics	1	0	1	2	1	2
Pregnancy Discrimination Act	2	2	3	3	3	2
Non-EEO Basis	67	62	46	45	58	53

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					2020 thru 09/30
	2015	2016	2017	2018	2019	
Appointment/Hire	15	15	5	10	6	8
Assignment of Duties	29	21	39	55	63	43
Awards	12	8	17	14	30	11
Conversion to full-time	2	1	0	0	0	0
Disciplinary Action						
Demotion	3	0	5	10	6	3
Reprimand	18	20	25	31	36	36
Removal	9	2	12	12	18	11
Suspension	11	11	21	29	38	33
Other	13	4	0	1	0	0
Duty Hours	4	1	2	6	8	2
Evaluation Appraisal	77	78	98	104	86	75
Examination/Test	0	0	2	2	1	0

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					2020 Thru 09/30
	2015	2016	2017	2018	2019	
Harassment						
Non-Sexual	231	241	255	275	295	271
Sexual	15	17	16	20	10	19
Medical Examination	0	0	0	2	1	0
Pay (Including Overtime)	7	9	18	10	17	6
Promotion/Non-Selection	165	158	87	112	87	61
Reassignment						
Denied	13	17	11	16	16	11
Directed	10	11	9	3	9	7
Reasonable Accommodation	83	71	104	108	137	104
Reinstatement	6	0	1	1	1	0
Religious Accommodation	0	1	5	5	2	1
Retirement	3	5	10	9	15	18
Telework	0	1	11	19	8	19
Termination	49	42	47	24	41	43
Terms/Conditions of Employment	12	15	29	32	15	43
Time and Attendance	41	32	50	63	76	63
Training	15	12	13	12	15	15
Other	7	43	1	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					2020 thru 09/30
	2015	2016	2017	2018	2019	
Complaints pending (for any length of time) during fiscal year						
Average number of days in investigation stage	286	284	258	203	159	175
Average number of days in final action stage	134	69	50	52	39	50
Complaints pending (for any length of time) during fiscal year where hearing was requested						
Average number of days in investigation stage	258	281	232	182	163	176
Average number of days in final action stage	114	44	52	42	23	33
Complaints pending (for any length of time) during fiscal year where hearing was not requested						
Average number of days in investigation stage	321	293	308	218	158	175
Average number of days in final action stage	152	77	46	60	56	81

Complaints Dismissed by Agency Sec.1614.704(g)	Comparative Data (Sec.1614.705) Previous Fiscal Year Data					2020 thru 09/30
	2015	2016	2017	2018	2019	
Total Complaints Dismissed by Agency	87	62	56	35	57	41
Average days pending prior to dismissal	88	85	102	57	88	72
Complaints Withdrawn by Complainants						
Total complaints Withdrawn by Complainants	46	45	61	54	57	39

Total Final Actions Finding Discrimination (Sec.1614.704 (i))	Comparative Data (Sec.1614.705) Previous Fiscal Year Data										2020 thru 09/30	
	2015		2016		2017		2018		2019			
	#	%	#	%	#	%	#	%	#	%	#	%
Total Number Findings	12		7		10		4		1		5	
Without Hearing	4	33	5	71	0	0	1	25	1	100	2	40
With Hearing	8	67	2	29	10	100	3	75	0	0	3	60

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										2020 thru 09/30	
	2015		2016		2017		2018		2019			
	#	%	#	%	#	%	#	%	#	%	#	%
Total Number Findings	12		7		10		4		1		5	
Race	1	8	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	0	0	0	0	1	100	0	0
Reprisal	8	67	1	14	1	10	2	50	0	0	4	80
Sex	4	33	0	0	0	0	0	0	0	0	0	0
National Origin	1	8	0	0	0	0	0	0	0	0	0	0
Age	2	17	0	0	10	100	2	50	0	0	0	0
Disability	4	33	7	100	0	0	1	25	0	0	3	60
Non-EEO	1	8	0	0	0	0	0	0	0	0	0	0
Findings After Hearing	8		2		10		3		0		3	
Race	1	8	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	0	0	0	0	0	0	0	0
Reprisal	7	88	1	50	1	10	2	67	0	0	3	100
Sex	3	38	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	2	25	25	0	10	100	2	67	0	0	0	0
Disability	1	13	2	100	0	0	0	0	0	0	1	33
Non-EEO	0	0	0	0	0	0	0	0	0	0	0	0
Findings Without Hearing	4		5		0		1		1		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	0	0	0	0	1	100	0	0
Reprisal	1	25	0	0	0	0	0	0	0	0	1	50
Sex	1	25	0	0	0	0	0	0	0	0	0	0
National Origin	1	25	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	3	75	5	100	0	0	1	100	0	0	2	100
Non-EEO	1	25	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										2020 thru 09/30	
	2015		2016		2017		2018		2019		#	%
	#	%	#	%	#	%	#	%	#	%		
Total Number Findings	12		7		10		4		1		5	
Appointment/Hire	1	8	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
Disciplinary Action												
Demotion	0	0	0	0	0	0	0	0	0	0	0	0
Reprimand	2	17	0	0	0	0	0	0	0	0	1	20
Suspension	1	8	0	0	0	0	0	0	0	0	0	0
Removal	0	0	0	0	0	0	0	0	0	0	0	0
Other	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
Evaluation Appraisal	2	17	0	0	0	0	1	25	0	0	0	0
Examination/Test	0	0	0	0	0	0	0	0	0	0	0	0
Harassment												
Non-Sexual	3	25	0	0	0	0	0	0	0	0	2	40
Sexual	4	33	0	0	0	0	0	0	0	0	0	0
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	0	0	0	0	10	100	1	25	0	0	2	40
Reassignment												
Denied	1	8	0	0	0	0	0	0	0	0	0	0
Directed	0	0	0	0	0	0	0	0	0	0	0	0
Reasonable Accommodation	3	25	6	86	0	0	1	25	1	100	2	40
Reinstatement	0	0	0	0	0	0	0	0	0	0	0	0
Retirement	0	0	0	0	0	0	0	0	0	0	1	20
Telework	0	0	2	29	0	0	0	0	0	0	1	20
Terms/Conditions of Employment	1	8	0	0	0	0	0	0	0	0	2	40
Time and Attendance	2	17	1	14	0	0	0	0	0	0	0	0
Training	0	0	0	0	0	0	0	0	0	0	0	0
Termination	2	17	0	0	0	0	0	0	0	0	0	0
Findings After Hearing	8		2		10		3		0		3	
Appointment/Hire	1	13	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
Disciplinary Action												
Reprimand	2	25	0	0	0	0	0	0	0	0	1	33
Suspension	1	13	0	0	0	0	0	0	0	0	0	0
Removal	0	0	0	0	0	0	0	0	0	0	0	0
Other	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
Evaluation Appraisal	2	25	0	0	0	0	1	33	0	0	0	0
Examination/Test	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										2020 thru 09/30	
	2015		2016		2017		2018		2019		#	%
	#	%	#	%	#	%	#	%	#	%		
Harassment												
Non-Sexual	3	38	0	0	0	0	2	67	0	0	2	67
Sexual	2	25	0	0	0	0	0	0	0	0	0	0
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	0	0	0	0	10	100	1	33	0	0	2	67
Reassignment												
Denied	1	13	0	0	0	0	0	0	0	0	0	0
Directed	0	0	0	0	0	0	0	0	0	0	0	0
Reasonable Accommodation	0	0	1	50	0	0	0	0	0	0	1	33
Reinstatement	0	0	0	0	0	0	0	0	0	0	0	0
Retirement	0	0	0	0	0	0	0	0	0	0	1	33
Telework	0	0	0	0	0	0	0	0	0	0	1	33
Terms/Conditions of Employment	1	13	0	0	0	0	0	0	0	0	0	0
Time and Attendance	2	25	1	50	0	0	0	0	0	0	0	0
Training	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
Findings Without Hearing	4		5		0		1		1		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
Disciplinary Action												
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	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
Evaluation Appraisal	0	0	0	0	0	0	0	0	0	0	0	0
Examination/Test	0	0	0	0	0	0	0	0	0	0	0	0
Harassment												
Non-Sexual	0	0	1	20	0	0	0	0	0	0	0	0
Sexual	2	50	0	0	0	0	0	0	0	0	0	0
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	0	0	0	0	0	0	0	0	0	0	0	0
Reassignment												
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
Reasonable Accommodation	3	75	5	100	0	0	1	100	1	100	1	50
Reinstatement	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
Termination	2	50	0	0	0	0	0	0	0	0	0	0
Terms/Conditions of Employment	0	0	0	0	0	0	0	0	0	0	2	100
Time and Attendance	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										2020 thru 09/30		
	2015		2016		2017		2018		2019		#	%	
	#	%	#	%	#	%	#	%	#	%			
Training	0	0	0	0	0	0	0	0	0	0	0	0	0
Other	0	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 Previous Fiscal Year Data					2020 thru 09/30
	2015	2016	2017	2018	2019	
Total Complaints From Previous Fiscal Years	457	536	514	524	406	431
Total Complainants	396	454	422	427	341	377
Number Complaints Pending						
Investigation	95	83	77	52	11	22
ROI Issues, Pending Complainant's Action	2	5	0	1	0	0
Hearing	355	455	483	502	352	355
Final Agency Action	74	72	46	41	50	72
Appeals with EEOC Office of Federal Operations	236	212	300	240	273	270

Complaint Investigations (Sec.1614.704(m))	Comparative Data (Sec.1614.705) Previous Fiscal Year Data					2020 thru 09/30
	2015	2016	2017	2018	2019	
Pending Completion Where Investigation Exceeds Required Time Frames	140	65	69	66	4	41

Attachment B

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

(Posted July 13, 2013)

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, retaliation or harassment against employees who exercise their equal employment opportunity (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 evaluate claims fully or other indications of unlawful discrimination or retaliation. We retain the authority to determine whether there is warrant for disciplinary or other corrective action under federal law or agency policy.

3. SCOPE

Management will work with OCREO, OGC, and OLMER to administer procedures effectively and 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 Disability Adjudication and Review).
- 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 we issue an administrative or judicial decision, but after we reach 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.
- e. "Deputy Commissioner" means component Deputy Commissioner.
- 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 and
- d. Informal resolutions based on SSA management’s decision that 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 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 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, 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 Associate Commissioner for OCREO, OLMER or the responsible Regional LR/ER Office, and the responsible Deputy Commissioner 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 issues a FAD or receives a Covered Action before the agency counsel/representative receives it, OCREO will send a copy of the Covered Action along with a copy of the pertinent case file(s) to OLMER or the responsible Regional LR/ER Office, OGC, and the responsible Deputy Commissioner or equivalent executive. OCREO will provide these documents as expeditiously as possible, but no later than two business days after receiving or issuing 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 conjunction 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 conjunction 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 officials and the responsible Deputy Commissioner or equivalent executive. 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 time frame 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 time frames prescribed below, the Deputy Commissioner, 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 Regional Civil Rights and Equal Opportunity (CREO) staff within the time frame prescribed in final orders of the EEOC, MSPB, FLRA, or arbitrator.

The Deputy Commissioner, 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 Regional CREO staff within ten business days of receiving the report from OLMER or the responsible Regional LR/ER Office. Additionally, the Deputy Commissioner, 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 Deputy Commissioner, 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 Regional CREO staff no later than ten business days after the subsequent event.

- (2) A delegated management official declining to take disciplinary or corrective action must seek Deputy Commissioner, equivalent executive, or designee concurrence as soon as possible, so the executive may provide timely written justification to OCREO and, if applicable, to the responsible Regional (CREO) staff. The Deputy Commissioner, 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 Deputy Commissioner, 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 Office of Personnel Management (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 Part 724](#) and our No FEAR Act Notice, located at <http://www.ssa.gov/eo/nofear/>. In addition, OPM's specific antidiscrimination policies relating to equal employment opportunity and prohibited personnel practices are located on OPM's website at 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 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--<https://osc.gov/> or with OSC at 1730 M Street NW, Suite 218, Washington, D.C. 20036-4505, or online through the OSC website.

Attachment C

SSA's Notification of Federal Employee Antidiscrimination and Retaliation (No FEAR) Act Notice on the Agency's Internet Webpage <http://www.ssa.gov/eo/nofear/>

EEO Data Posted Pursuant to the No FEAR Act 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 Equal Employment Opportunity (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 Equal Employment Opportunity Commission (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 his or her 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 Civil Rights and Equal Opportunity office (Regions), or the Civil Rights and Equal Opportunity Manager (Office of Disability Adjudication and Review). Additional information regarding Federal antidiscrimination, whistleblower protection and retaliation laws are found at the EEOC Web site—<http://www.eoc.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).