OFFICE OF FEDERAL HOUSING ENTERPRISE OVERSIGHT
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September 15, 2006

MEMORANDUM FOR: OFHEO Employees

FROM: James B. Lockhart III
Director

SUBJECT: **Annual Notification of Employee Rights**

I want to ensure that all OFHEO employees are aware of and understand their rights not to be subjected to discrimination, retaliation or prohibited personnel practices, including reprisal for whistleblowing activities. I am providing this information to all OFHEO employees for your information and benefit. I encourage you to read this notice and follow the internet links to get additional information. If you have any questions about this information you may contact Janice Kullman, Senior Counsel, in the Office of General Counsel.

NO FEAR ACT NOTICE

On May 15, 2002, Congress enacted the "Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002," 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."[1] In support of this purpose, Congress found that "agencies cannot be run effectively if those agencies practice or tolerate discrimination."[2]

The Act also requires OFHEO to provide notice to Federal employees, former Federal employees and applicants for Federal employment to inform then of the rights and protections available to them under Federal antidiscrimination, whistleblower protection and retaliation laws.

Antidiscrimination Laws

A Federal agency may not discriminate against an employee or applicant with respect to the terms, conditions or privileges of employment on the basis of race, color, religion,

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[1] Pub. L. 107-174, Summary.
[2] Pub. L. 107-74, Title I, General Provisions, Section 101(1).

sex, national origin, age, disability, marital status or political affiliation. Discrimination on these bases is prohibited by one or more statutes.[3]

If you believe that you have been the victim of unlawful discrimination on the basis of race, color, religion, sex, national origin or disability, 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 your agency.[4] If you believe that you have been the victim of unlawful discrimination on the basis of 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 days of the alleged discriminatory action. If you believe you have been the victim of discrimination based on marital status or political affiliation, you may file a written complaint with the United States Office of Special Counsel (OSC).[5]

Whistleblower Protection Laws

A Federal employee with authority to take, direct others to take, or 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 he or she 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. See contact information at footnote 5.

Retaliation for Engaging in Protected Activity

A Federal agency may not retaliate against an employee or applicant because that individual exercises his or her rights under any of the Federal antidiscrimination or whistleblower protections laws. 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 grievance procedures in order to pursue any legal remedy.

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[3] 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.

[4] The procedures regarding the EEO process appear at 29 CFR 1614.

[5] The Office of the Special Counsel is located at 1730 M Street NW., Suite 218, Washington, DC 20036-4505 or online through the OSC Web site (www.osc.gov).

Disciplinary Actions

Under the existing laws, each agency retains the right, where appropriate, to discipline a Federal employee who has engaged in discriminatory or retaliatory conduct, 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

The EEOC and the OSC provide more information on their web sites regarding the No FEAR Act, antidiscrimination laws, whistleblower protection and other topics.[6] For further information regarding the No FEAR Act regulations, refer to 5 CFR 724. You can also learn more from the Chief Human Capital Officer and the Office of General Counsel. I encourage each of you to follow the links referenced in the footnotes below and familiarize yourself with these laws and regulations.

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).

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[6] Additional information regarding Federal antidiscrimination, whistleblower protection and retaliation laws can be found at the EEOC Web site (www.eeoc.gov) and the OSC Web site (www.osc.gov). You can access the fact sheet, "Your Rights as a Federal Employee," on the Office of Special Counsel web site at http://www.osc.gov/documents/pubs/rights.htm. The pamphlet, "The Role of the U.S. Office of Special Counsel," also contains information about the Whistleblower Protection Act of 1989 and telephone numbers for reporting purposes. You can access it at http://www.osc.gov/documents/pubs/oscrole.pdf. Regulations concerning the No FEAR Act appear at 5 CFR 724.