



ANNUAL NO FEAR ACT NOTICE

TO: FHFA Employees
FROM: Mark Calabria, Director
SUBJECT: **Annual Notification of Employee Rights**
DATE: March 26, 2021

NO FEAR ACT NOTICE

On May 15, 2002, Congress enacted the [Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002](#) (Pub. L. No 107-174) (No FEAR Act or Act). The Act requires federal agency accountability for violations of antidiscrimination and whistleblower protection laws and states that agencies cannot run effectively if they practice or tolerate discrimination. Congress recently enacted the [Elijah E. Cummings Federal Employee Antidiscrimination Act of 2020](#)¹ which amends the No FEAR Act. The Cummings Act increases federal agencies' accountability by requiring the following:

- Establishment of an EEO Complaint Tracking system;
- Notation of any adverse action and the reason for the action in the employee's personnel record, if an agency takes an adverse action under 5 U.S.C. § 7512 against an employee for a discriminatory act;
- Fair and impartial processing and resolution of EEO complaints;
- Establishment of a Model EEO Program that is not under the control of Human Resources or the Office of General Counsel;
- Ensure that each Head of EEO program reports directly to Agency Head; and
- The EEOC may refer discrimination findings to the Office of Special Counsel, if it determines that the agency did not take appropriate action with respect to the finding.

This document provides notice to Federal Housing Finance Agency (FHFA) employees, former employees, and applicants for employment of the right to a workplace that is free from discrimination, harassment, retaliation, and prohibited personnel practices, including reprisal for whistleblowing activities.

Please read this notice in its entirety and follow the links provided below for additional information. If you have any questions about this notice, you may contact the Office of Equal Opportunity and Fairness (OEOF) at 202-649-3500 or via email at OEOFInfo@fhfa.gov.

¹ Contained in Title XI, Subtitle B Sec. 1131-1138 of the William M. (Mac) Thornberry National Defense Authorization Act of 2021. Attached to the end of the Annual No Fear Act Notice.



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Antidiscrimination Laws

A federal agency may not discriminate against an employee, former employee, or applicant with respect to the terms, conditions, or privileges of employment on the basis of race, color, religion, sex (including pregnancy, gender identity, and sexual orientation), national origin, age, disability, genetic information, marital status, or political affiliation. Discrimination on these bases is prohibited by one or more of these 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](#), [42 U.S.C. § 2000e-16](#), and [42 U.S.C. § 2000ff](#).

If you believe that you have been subjected to unlawful discrimination you must contact an EEO counselor **within 45 calendar days of the alleged discriminatory action or within 45 calendar days of becoming aware of the alleged discriminatory event or action in order to preserve your EEO complaint rights**. In the case of an alleged discriminatory personnel action, you must contact an EEO counselor **within 45 calendar days of the effective date of the action**.² For claims of constructive discharge, the 45-day limitations period begins on the employee's official date of departure from an agency.

If you believe that you have been subjected to unlawful discrimination on the basis of age (40 years of age and older) in violation of the Age Discrimination in Employment Act of 1967, you must either contact an FHFA EEO counselor **within 45 calendar days of the alleged discriminatory action or personnel action, or give notice of intent to file a lawsuit in Federal Court to the Equal Employment Opportunity Commission (EEOC) within 180 days after the alleged discriminatory action**.

If you believe you were subjected to discrimination based on marital status or political affiliation, you may file a complaint with the United States Office of Special Counsel (OSC). You may also seek assistance from OSC if you believe you have been subjected to a prohibited personnel practice based on sexual orientation or gender identity.³

For more information on EEO Counseling, please visit FHFA's intranet page at [FHFA EEO Services](#) or [EEO internet page](#).⁴ **Individuals may file an EEO complaint of harassment with the EEO Counselor and simultaneously may report claims of harassment through FHFA's Harassment Prevention Program in OEOF.**

² The procedures regarding the EEO complaint process appear at 29 C.F.R. § 1614. You can find more information at [www.eeoc.gov](#).

³ Information is available online through the OSC website at [www.osc.gov](#). The Whistleblower Disclosure Hotline is (800) 872-9855 or (202) 804-7000.

⁴ EEO counseling may be requested by contacting EEO Services, EEOServices@fhfa.gov or (202) 649-3816 or by directly contacting Susan Grimes Associates, Inc. at (202) 338-1468 or office@susangrimes.com



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EEO Services will process the EEO matter apart from the internal FHFA Anti-Harassment process as allegations may be addressed in both forums simultaneously. If employees contact the Anti-Harassment program first, they must also make timely contact with EEO Services if they wish to pursue an EEO complaint as well.

To report harassment, contact the Harassment Prevention Hotline at (202) 649-3964 or by email at HarassmentPrevention@fhfa.gov.

Whistleblower Protection Laws

A federal employee with authority to take, direct others to take, recommend, or approve any personnel action must not take or fail to take, or threaten to take or fail to take, a personnel action against an employee or applicant because of a disclosure of information that the employee or applicant reasonably believes is a violation 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 or regulation 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.⁵

Disclosure by an employee or applicant for employment of information that the employee or applicant reasonably believes is evidence of censorship related to research, analysis, or technical information is also within the protection of the Whistleblower Protection Enhancement Act of 2012. As with all protected disclosures, the employee or applicant must reasonably believe that such censorship is of an actual or potential violation of law, rule, or regulation; a gross mismanagement; gross waste of funds; an abuse of authority; or a substantial and specific danger to public health or safety.

Retaliation for Engaging in Protected Activity

Federal agencies may not retaliate against an employee, former employee, or applicant because that individual exercises his or her rights under any of the federal antidiscrimination or whistleblower protection laws. Each of the EEO laws prohibits retaliation, so if you believe that you are being subjected to retaliation for exercising your rights under any of the federal

⁵ For information regarding such disclosures, please refer to the OSC website section on “Disclosure Involves Counterintelligence or Foreign Intelligence Information” located at <https://osc.gov/Services/Pages/DU-IntelligenceInfo.aspx>.



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antidiscrimination laws and wish to pursue a legal remedy, you must follow, as appropriate, the procedures, below, as described in the antidiscrimination laws.

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 subject of whistleblower retaliation, you may file a complaint with OSC. You may also report allegations of whistleblower retaliation to the FHFA Office of Inspector General (OIG) at <http://www.fhfaig.gov/ReportFraud> or through the OIG Hotline at 1-800-793-7724.

In certain instances, an employee who has experienced retaliation because of protected communication may also file an appeal directly with the [Merit Systems Protection Board \(MSPB\)](#).

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. However, if OSC has initiated an investigation under [5 U.S.C. § 1214](#), agencies must seek approval from the Special Counsel to discipline employees for, among other activities, engaging in prohibited retaliation. [5 U.S.C. § 1214\(f\)](#). 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 OSC provide information on their websites regarding the No FEAR Act, antidiscrimination laws, whistleblower protection, and other topics.⁶ You can also learn more from the FHFA Office of Equal Opportunity and Fairness and the FHFA Office of General Counsel. Please follow the links referenced in this notice 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 [5 U.S.C. § 2302\(d\)](#).

⁶Additional information regarding federal antidiscrimination, whistleblower protection, MSPB, and retaliation laws can be found at the EEOC website (www.eeoc.gov), the OSC website (www.osc.gov) and MSPB (www.mspb.gov) Regulations concerning the No FEAR Act appear at 5 C.F.R. § 724 and 29 C.F.R. § 1614.701.

**Subtitle B--Elijah E. Cummings Federal Employee Antidiscrimination Act
of 2020**

SEC. 1131. SHORT TITLE.

This subtitle may be cited as the ``Elijah E. Cummings Federal Employee Antidiscrimination Act of 2020''.

SEC. 1132. SENSE OF CONGRESS.

Section 102 of the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (5 U.S.C. 2301 note) is amended--

(1) by striking paragraph (4) and inserting the following:

``(4) accountability in the enforcement of the rights of Federal employees is furthered when Federal agencies agree to take appropriate disciplinary action against Federal employees who are found to have intentionally committed discriminatory (including retaliatory) acts;''; and

(2) in paragraph (5) (A)--

(A) by striking ``nor is accountability'' and inserting ``accountability is not''; and

(B) by inserting ``for what, by law, the agency is responsible'' after ``under this Act''.

SEC. 1133. NOTIFICATION OF VIOLATION.

Section 202 of the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (5 U.S.C. 2301 note) is amended by adding at the end the following:

``(d) Notification of Final Agency Action.--

``(1) In general.--Not later than 90 days after the date on which an event described in paragraph (2) occurs with respect to a finding of discrimination (including retaliation), the head of the Federal agency subject to the finding shall provide notice--

``(A) on the public internet website of the agency, in a clear and prominent location linked directly from the home page of that website;

``(B) stating that a finding of discrimination (including retaliation) has been made; and

``(C) which shall remain posted for not less than 1 year.

``(2) Events described.--An event described in this paragraph is any of the following:

``(A) All appeals of a final action by a Federal agency involving a finding of discrimination (including retaliation) prohibited by a provision of law covered by paragraph (1) or (2) of section 201(a) have been exhausted.

``(B) All appeals of a final decision by the Equal Employment Opportunity Commission involving a finding of discrimination (including if the finding included a finding of retaliation) prohibited by a provision of law covered by paragraph (1) or (2) of section 201(a) have been exhausted.

``(C) A court of jurisdiction issues a final judgment involving a finding of discrimination (including retaliation) prohibited by a provision of law covered by paragraph (1) or (2) of section 201(a).

``(3) Contents.--A notification provided under paragraph (1) with respect to a finding of discrimination (including retaliation) shall--

``(A) identify the date on which the finding was made, the date on which each discriminatory act occurred, and the law violated by each such discriminatory act; and

``(B) advise Federal employees of the rights and protections available under the provisions of law covered by paragraphs (1) and (2) of section 201(a).''.

SEC. 1134. REPORTING REQUIREMENTS.

(a) Electronic Format Requirement.--

(1) In general.--Section 203(a) of the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (5 U.S.C. 2301 note) is amended in the matter preceding paragraph (1)--

(A) by inserting ``Homeland Security and'' before ``Governmental Affairs'';

(B) by striking ``on Government Reform'' and inserting ``on Oversight and Reform''; and

(C) by inserting ``(in an electronic format prescribed by the Director of the Office of Personnel Management),'' after ``an annual report''.

(2) Effective date.--The amendment made by paragraph (1) (C) shall take effect on the date that is 1 year after the date of enactment of this Act.

(3) Transition period.--Notwithstanding the requirements of section 203(a) of the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (5 U.S.C. 2301 note), the report required under such section 203(a) may be submitted in an electronic format, as prescribed by the Director of the Office of Personnel Management, during the period beginning on the date of enactment of this Act and ending on the effective date in paragraph (2).

(b) Reporting Requirement for Disciplinary Action.--Section 203 of the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (5 U.S.C. 2301 note) is amended by adding at the end the following:

``(c) Disciplinary Action Report.--Not later than 120 days after the date on which a Federal agency takes final action, or a Federal agency receives a final decision issued by the Equal Employment Opportunity Commission, involving a finding of discrimination (including retaliation) in violation of a provision of law covered by paragraph (1) or (2) of section 201(a), as applicable, the applicable Federal agency shall submit to the Commission a report stating--

``(1) whether disciplinary action has been proposed against a Federal employee as a result of the violation; and

``(2) the reasons for any disciplinary action proposed under paragraph (1).''.

SEC. 1135. DATA TO BE POSTED BY EMPLOYING FEDERAL AGENCIES.

Section 301(b) of the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (5 U.S.C. 2301 note) is amended--

(1) in paragraph (9)--

(A) in subparagraph (A), by striking ``and'' at the end;

(B) in subparagraph (B) (ii), by striking the period at the end and inserting `` , and''; and

(C) by adding at the end the following:

``(C) with respect to each finding described in subparagraph (A)--

``(i) the date of the finding,

``(ii) the affected Federal agency,

``(iii) the law violated, and

``(iv) whether a decision has been made regarding disciplinary action as a result of the finding.''; and

(2) by adding at the end the following:

``(11) Data regarding each class action complaint filed against the agency alleging discrimination (including retaliation), including--

``(A) information regarding the date on which each complaint was filed,

``(B) a general summary of the allegations alleged in the complaint,

``(C) an estimate of the total number of plaintiffs joined in the complaint, if known,

``(D) the current status of the complaint, including whether the class has been certified, and

``(E) the case numbers for the civil actions in which discrimination (including retaliation) has been found.''.

SEC. 1136. DATA TO BE POSTED BY THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION.

Section 302(b) of the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (5 U.S.C. 2301 note) is amended by striking ``(10)'' and inserting ``(11)''.

SEC. 1137. NOTIFICATION AND FEDERAL EMPLOYEE ANTIDISCRIMINATION AND RETALIATION ACT OF 2002 AMENDMENTS.

(a) Notification Requirements.--Title II of the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (5 U.S.C. 2301 note) is amended by adding at the end the following:

``SEC. 207. COMPLAINT TRACKING.

``Not later than 1 year after the date of enactment of the Elijah E. Cummings Federal Employee Antidiscrimination Act of 2020, each Federal agency shall establish a system to track each complaint of discrimination arising under section 2302(b)(1) of title 5, United States Code, and adjudicated through the Equal Employment Opportunity process from the filing of a complaint with the Federal agency to resolution of the complaint, including whether a decision has been made regarding disciplinary action as the result of a finding of discrimination.

``SEC. 208. NOTATION IN PERSONNEL RECORD.

``If a Federal agency takes an adverse action covered under section 7512 of title 5, United States Code, against a Federal employee for an act of discrimination (including retaliation) prohibited by a provision of law covered by paragraph (1) or (2) of section 201(a), the agency shall, after all appeals relating to that action have been exhausted, include a notation of the adverse action and the reason for the action in the personnel record of the employee.''.

(b) Processing and Referral.--The Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (5 U.S.C. 2301 note) is amended by adding at the end the following:

``TITLE IV--PROCESSING AND REFERRAL

``SEC. 401. PROCESSING AND RESOLUTION OF COMPLAINTS.

``Each Federal agency shall--

``(1) be responsible for the fair and impartial processing and resolution of complaints of employment discrimination (including retaliation) prohibited by a provision of law covered by paragraph (1) or (2) of section 201(a); and

``(2) establish a model Equal Employment Opportunity Program that--

``(A) is not under the control, either structurally or

practically, of the agency's Office of Human Capital or Office of the General Counsel (or the equivalent);

``(B) is devoid of internal conflicts of interest and ensures fairness and inclusiveness within the agency; and

``(C) ensures the efficient and fair resolution of complaints alleging discrimination (including retaliation).

``SEC. 402. NO LIMITATION ON ADVICE OR COUNSEL.

``Nothing in this title shall prevent a Federal agency or a subcomponent of a Federal agency, or the Department of Justice, from providing advice or counsel to employees of that agency (or subcomponent, as applicable) in the resolution of a complaint.

``SEC. 403. HEAD OF PROGRAM SUPERVISED BY HEAD OF AGENCY.

``The head of each Federal agency's Equal Employment Opportunity Program shall report directly to the head of the agency.

``SEC. 404. REFERRALS OF FINDINGS OF DISCRIMINATION.

``(a) EEOC Findings of Discrimination.--

``(1) In general.--Not later than 30 days after the date on which the Equal Employment Opportunity Commission (referred to in this section as the 'Commission') receives, or should have received, a Federal agency report required under section 203(c), the Commission may refer the matter to which the report relates to the Office of Special Counsel if the Commission determines that the Federal agency did not take appropriate action with respect to the finding that is the subject of the report.

``(2) Notifications.--The Commission shall--

``(A) notify the applicable Federal agency if the Commission refers a matter to the Office of Special Counsel under paragraph (1); and

``(B) with respect to a fiscal year, include in the Annual Report of the Federal Workforce of the Commission covering that fiscal year--

``(i) the number of referrals made under paragraph (1) during that fiscal year; and

``(ii) a brief summary of each referral described in clause (i).

``(b) Referrals to Special Counsel.--The Office of Special Counsel shall accept and review a referral from the Commission under subsection (a) (1) for purposes of pursuing disciplinary action under the authority of the Office against a Federal employee who commits an act of discrimination (including retaliation).

``(c) Notification.--The Office of Special Counsel shall notify the Commission and the applicable Federal agency in a case in which--

``(1) the Office of Special Counsel pursues disciplinary action under subsection (b); and

``(2) the Federal agency imposes some form of disciplinary action against a Federal employee who commits an act of discrimination (including retaliation).

``(d) Special Counsel Approval.--A Federal agency may not take disciplinary action against a Federal employee for an alleged act of discrimination (including retaliation) referred by the Commission under this section, except in accordance with the requirements of section 1214(f) of title 5, United States Code.''.

(c) Conforming Amendments.--The table of contents in section 1(b) of the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (5 U.S.C. 2301 note) is amended--

(1) by inserting after the item relating to section 206 the following:

``Sec. 207. Complaint tracking.
``Sec. 208. Notation in personnel record.''; and

(2) by adding at the end the following:

``TITLE IV--PROCESSING AND REFERRAL

``Sec. 401. Processing and resolution of complaints.
``Sec. 402. No limitation on advice or counsel.
``Sec. 403. Head of Program supervised by head of agency.
``Sec. 404. Referrals of findings of discrimination.''.
SEC. 1138. NONDISCLOSURE AGREEMENT LIMITATION.

Section 2302(b)(13) of title 5, United States Code, is amended--

(1) by striking ``agreement does not'' and inserting the following: ``agreement--

``(A) does not'';

(2) in subparagraph (A), as so designated, by inserting ``or the Office of Special Counsel'' after ``Inspector General''; and

(3) by adding at the end the following:

``(B) prohibits or restricts an employee or applicant for employment from disclosing to Congress, the Special Counsel, the Inspector General of an agency, or any other agency component responsible for internal investigation or review any information that relates to any violation of any law, rule, or regulation, or mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, or any other whistleblower protection; or'