

February 2018

MEMORANDUM TO: All CFPB Employees, Former Employees, and Applicants for Employment at CFPB

**FROM: Mick Mulvaney
Acting Director**

SUBJECT: FY 2018 Annual Notice on the No FEAR Act and Whistleblower Protection Laws/Prohibited Personnel Practices

The "[Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002](#)," otherwise known as the "No FEAR Act," requires Federal agencies like the CFPB to "be accountable for violations of antidiscrimination and whistleblower protection laws." Pub. L. 107-174, Summary. Congress found in passing the No FEAR Act that "agencies cannot be run effectively if those agencies practice or tolerate discrimination." Pub. L. 107-74, Title I, General Provisions, § 101(1).

The No FEAR Act also requires Federal agencies, including the Bureau, to provide this notice to Federal employees, former Federal employees, and applicants for Federal employment. This notice is intended to inform you of the rights and protections available to you under Federal antidiscrimination, civil service, whistleblower protection, and antiretaliation laws.

Antidiscrimination Laws

A federal agency cannot discriminate or tolerate harassment against any employee or applicant for employment on the basis of race, color, religion, sex (including pregnancy, sexual orientation, transgender status, gender identity or expression, gender non-conformity, or sex stereotyping of any kind), national origin, age (40 and above), disability, genetic information, marital status, parental status, political affiliation, military service, union activities, protected equal employment opportunity (EEO) activity, whistleblower activity, or any other non-merit factor. Discrimination and harassment on these bases is prohibited by Federal statutes and Executive Orders. See 5 U.S.C. §§ 2302(b); 5 U.S.C. §§ 7101-7135; 29 U.S.C. § 206(d); 29 U.S.C. § 633a; 29 U.S.C. § 791; 38 U.S.C. §§ 4301-35; 42 U.S.C. § 2000e-16; 42 U.S.C. § 2000ff *et seq.*; E.O. 11478; E.O. 13087; E.O. 13145; E.O. 13152; E.O. 13672.

To pursue your rights under these statutes and executive orders, you may need to follow specific rules and meet certain deadlines. For instance:

- If you believe that you have been the victim of unlawful discrimination and wish to pursue a discrimination claim on the basis of race, color, religion, sex (including pregnancy, sexual orientation, transgender status, gender identity or expression, gender non-conformity, or sex stereotyping of any kind), national origin, disability, genetic information, or parental status you may file a formal complaint of discrimination with the CFPB's Office of Civil Rights (OCR). To file a complaint of discrimination with OCR, you first must contact an Equal Employment Opportunity (EEO) counselor in OCR. (See contact information for OCR at the bottom of this notice.)

You must contact OCR to request EEO counseling *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.* Failure to meet these timeframes could result in the forfeiture of your legal right to redress the discrimination. See [29 C.F.R. Part 1614](#).

- In the alternative, if you are a bargaining unit employee and you believe that you have been the victim of unlawful discrimination on the basis of race, color, religion, sex (including pregnancy, sexual orientation, transgender status, gender identity or expression, gender non-conformity, or sex stereotyping of any kind), national origin, age (40+), disability, or genetic information you may file a grievance through CFPB's [negotiated grievance procedures](#). ***You may not file both a timely written grievance under the negotiated grievance procedures and a formal complaint of discrimination with OCR on the same matter. If you file a timely written grievance over an issue but fail to include a related discrimination allegation, you still could be precluded from filing a formal complaint of discrimination with OCR over the same matter.***

For more information, read the [Equal Employment Opportunity Article](#) in the CFPB-NTEU collective bargaining agreement. You may also contact OCR or the [Employee and Labor Relations team](#) in the [Office of Human Capital](#) (OHC).

- If you believe that you have been the victim of unlawful discrimination on the basis of age (40+) in violation of the Age Discrimination in Employment Act of 1967, you may proceed through the administrative EEO process by contacting OCR to request EEO counseling within 45 calendar days. (This is the same as for an allegation of discrimination based on race, color, religion, sex, national origin, disability, genetic information, or parental status, as noted above.) *Alternatively*, you can choose to file an age-discrimination lawsuit in an appropriate United State district court. If you choose this direct-

suit option, you must first give the [Equal Employment Opportunity Commission](#) (EEOC) notice that you intend to sue. You must give the EEOC this notice at least 30 days before you file your lawsuit in court. This notice-of-intent-to-sue may be filed in writing with the EEOC, at P.O. Box 77960, Washington, D.C. 20013. You may also file the notice by facsimile (if the fax is 10 pages or less), at (202) 663-7022. Finally, you may file this notice by personal delivery to the EEOC's Office of Federal Operations/Federal Sector Programs Branch at 131 M Street, NE, Washington, D.C. 20507.

You must file this notice of intent to sue within 180 calendar days of the alleged discriminatory action. See 29 C.F.R. § 1614.201(a).

- If you believe that you have been the victim of sex-based pay discrimination in violation of the Equal Pay Act of 1963, you may proceed through the administrative EEO process by contacting OCR to request EEO counseling within 45 calendar days. (This is the same as for an allegation of other bases of discrimination, as noted above.) *Alternatively*, you may file a civil action in a court of competent jurisdiction *within two years (or, if the violation is willful, three years) of the date of the alleged Equal Pay Act violation*. Contacting an EEO Counselor in the Bureau's OCR does *not* suspend or toll the two- or three-year deadline for filing a civil action. *See 29 C.F.R. § 1614.408.*

Sex-based pay disparities also may violate Title VII of the Civil Rights Act of 1964, and individuals may challenge sex-based pay discrimination simultaneously under both the Equal Pay Act and Title VII. However, if you wish to allege that a pay disparity violates Title VII, you *must* raise the Title VII allegation in the administrative EEO process by contacting OCR to request EEO counseling within 45 calendar days – even if you also file an Equal Pay Act civil action over the same alleged pay disparity.

- If you are alleging discrimination based on marital status, political affiliation, or any other non-merit factor, you may file a written complaint with the U.S. [Office of Special Counsel](#) (OSC). (See also “Whistleblower Protection Laws/Prohibited Personnel Practices” below.)
- If you are alleging discrimination based on military service, you may request assistance from the [Veterans' Employment and Training Service](#) (VETS) at the Department of Labor (DOL), the [Merit Systems Protection Board](#) (MSPB), or OSC, depending on the circumstances.
- If you are alleging discrimination based on membership or non-membership in a union, or for union activities, you may request assistance from your union (if applicable) or the [Federal Labor Relations Authority](#) (FLRA).

Whistleblower Protection Laws/Prohibited Personnel Practices

Federal employees have the right to be free from [prohibited personnel practices](#), including retaliation for whistleblowing and exercising certain grievance, complaint, and appeal rights (and other protected activities). The Bureau is committed to making sure that all employees are aware of their rights, as well as the safeguards that are in place to protect them.

The Whistleblower Protection Act of 1989, the Whistleblower Protection Enhancement Act of 2012, and the Dr. Chris Kirkpatrick Whistleblower Protection Act of 2017 collectively provide rights for all covered federal employees to make whistleblower disclosures and ensure that employees are protected from whistleblower retaliation. 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 that individual has engaged in whistleblowing.

For these purposes, [whistleblowing](#) is defined as the disclosure of information that an employee or applicant reasonably believes evidences (1) a violation of any law, rule, or regulation; (2) gross mismanagement; (3) a gross waste of funds; (4) an abuse of authority; (5) a substantial and specific danger to public health or safety; or (6) censorship related to scientific research or analysis, if such disclosure is not specifically prohibited by law and if such information is not 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). Employees may make lawful disclosures to anyone, including, for example, management officials, the Inspector General of an agency, and/or the [U.S. Office of Special Counsel](#) (OSC). This notice includes links below to information about OSC, which is an independent agency that protects federal employees from prohibited personnel practices, including whistleblower retaliation and unlawful hiring practices. OSC also provides an independent, secure channel for disclosing and resolving wrongdoing in federal agencies. This [fact sheet](#) from OSC provides information on the prohibition on retaliation for whistleblowing.

Under 5 U.S.C. § 2302(b)(9), agency officials also are prohibited from retaliating against any covered employee because the employee (1) filed a lawful complaint, grievance or appeal; (2) testified for or helped someone else with one of these activities; (3) cooperated with or disclosed information to the Special Counsel or an Inspector General; or (4) refused to obey an order that would require the employee to violate a law, rule, or regulation. This [fact sheet](#) from OSC provides information on this type of retaliation.

Please also review the fact sheet, "[Your Rights as a Federal Employee](#)," which provides detailed information on the fourteen prohibited personnel practices and employees' rights to file complaints with OSC. You can also learn more about federal

civil service merit systems principles and prohibited personnel practices in this [brief guide](#) from the Merit Systems Protection Board, and this [fact sheet](#) from OSC.

Additionally, you are encouraged to review these other materials: “[Know Your Rights When Reporting Wrongs](#)” and “[The Role of the U.S. Office of Special Counsel](#),” which describe different avenues for making whistleblower disclosures and OSC’s role in accepting complaints from federal employees.

If you believe that you have been the victim of whistleblower or other retaliation under 5 U.S.C. §§ 2302(b)(8) or (b)(9), you 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.

Retaliation for Engaging in Protected EEO-Related 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 protections laws listed and as discussed above). If you believe that you are the victim of retaliation for engaging in protected activity and wish to pursue a legal remedy, you must follow, as appropriate, the procedures and timeframes described in the sections of this notice above entitled “Antidiscrimination Laws” and “Whistleblower Protection Laws/Prohibited Personnel Practices” – or, if applicable, relevant negotiated grievance procedures.

Read this [brief guide](#) from the EEOC on some of the causes of, and manager tips for avoiding, [EEO-related retaliation](#).

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 from federal service. 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.

However, under the Dr. Chris Kirkpatrick Whistleblower Protection Act of 2017, an agency *must* propose certain disciplinary actions against supervisors who have engaged in certain specified acts of whistleblower retaliation or other forms of retaliation and prohibited personnel practices under civil service laws. For more information on these mandatory discipline requirements, contact OCR or the Bureau’s Legal Division.

Additional Information

For further information regarding the No FEAR Act rules, see [5 C.F.R. Part 724](#) or contact the Bureau's [Office of Civil Rights](#). (See complete contact information for OCR at the bottom of this notice.) You can find additional information about the No FEAR Act on the CFPB's intranet at http://team.cfpb.local/wiki/index.php/No_FEAR_Act_Notice. The CFPB's No FEAR Act statistics can be found on the Bureau's external website at <http://www.consumerfinance.gov/no-fear-act/>.

You can find additional information regarding Federal antidiscrimination, whistleblower protection, and retaliation laws on the CFPB's intranet at <http://team.cfpb.local/wiki/index.php/EEO>, on the EEOC website at <http://www.eeoc.gov>, on the OSC website at <http://www.osc.gov>, on the MSPB website at <http://www.mspb.gov>, on the VETS website at <https://www.dol.gov/vets/>, or on the FLRA website at <http://www.flra.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).

Contact Information for the CFPB Office of Civil Rights

U.S. Postal Service Mail:

Office of Civil Rights
Consumer Financial Protection Bureau
1700 G Street, NW
Washington, D.C. 20552

Hand-Delivery:

Office of Civil Rights
Consumer Financial Protection Bureau
1700 G Street, NW
Sixth Floor
Washington, D.C. 20552

Phone:

202-435-9EEO
1-855-233-0362

202-435-9742 (TTY)

E-mail:

CFPB_EEO@cfpb.gov

Fax:

202-435-9598