

# Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR PART 724

RIN 3206-AJ93

#### Implementation of Title II of the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002

**AGENCY:** Office of Personnel Management.

**ACTION:** Interim final rule with request for comments.

**SUMMARY:** The Office of Personnel Management (OPM) is issuing interim regulations to carry out the agency reimbursement provisions of Title II of the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (No FEAR Act). The No FEAR Act requires that the President or his designee promulgate rules to regulate agency reimbursement of the Judgment Fund for payments made to employees, former employees, or applicants for Federal employment because of actual or alleged violations of Federal discrimination laws, Federal whistleblower protection laws, and/or retaliation claims arising from the assertion of rights under these laws. This rule will implement the reimbursement provisions of Title II of the No FEAR Act.

**DATES:** *Effective Date:* The interim final rule is effective on October 1, 2003.

*Comment Date:* Comments must be received on or before March 22, 2004.

**ADDRESSES:** Send or deliver written comments to Jeffrey E. Sumberg, Deputy Associate Director for Workforce Relations and Accountability Policy, Office of Personnel Management, Room 7H28, 1900 E Street, NW., Washington, DC, 20415; by FAX at (202) 606-0967; or by e-mail at [NoFEAR@opm.gov](mailto:NoFEAR@opm.gov).

**FOR FURTHER INFORMATION CONTACT:** Gary D. Wahlert by telephone at (202) 606-

2920; by FAX at (202) 606-0967; or by e-mail at [NoFEAR@opm.gov](mailto:NoFEAR@opm.gov).

**SUPPLEMENTARY INFORMATION:** The United States and its citizens are best served when the Federal workplace is free of discrimination and retaliation. In order to maintain a productive workplace that is fully engaged with the many important missions before the Government, it is essential that the rights of employees, former employees and applicants for Federal employment under discrimination, whistleblower, and retaliation laws be steadfastly protected and that agencies that violate these rights be held accountable. Congress has found that agencies cannot be run effectively if those agencies practice or tolerate discrimination. Furthermore, Congress has found that notification of present and former Federal employees and applicants for Federal employment of their rights under discrimination and whistleblower laws, combined with training of employees, should increase Federal agency compliance with the laws. Therefore, under authority delegated by the President, OPM is issuing interim regulations to implement the reimbursement provisions of Title II of the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (No FEAR Act), Public Law 107-174. OPM will issue proposed regulations concerning the other parts of the No FEAR Act separately.

#### Judgment Fund

One of the key provisions of the No FEAR Act requires that agencies reimburse the Judgment Fund for payments concerning violations or alleged violations of Federal discrimination laws, Federal whistleblower protection laws, and/or retaliation claims arising from the assertion of rights under these laws. Prior to the enactment of the No FEAR Act, agencies were not required to reimburse the Judgment Fund. Congress has created a financial incentive to foster a Federal workplace that is free of discrimination and retaliation.

The No FEAR Act does not change the criteria or process for obtaining payments from the Judgment Fund; it only creates a reimbursement requirement for agencies. In other words, the No FEAR Act does not authorize agencies to make payments directly to employees, former

employees, or applicants for Federal employment that, prior to the No FEAR Act, would have been made from the Judgment Fund. Judgments, awards, or settlements that were eligible for payment from the Judgment Fund before the No Fear Act becomes effective will continue to be paid by the Judgment Fund.

As noted, however, the No FEAR Act requires agencies to reimburse the Judgment Fund for payments made in connection with 28 U.S.C. 2414, 2517, 2672, 2677 or with 31 U.S.C. 1304. OPM interprets the No FEAR Act to apply to any payment from the Judgment Fund on or after October 1, 2003, for violations or alleged violations of Federal discrimination laws, Federal whistleblower protection laws, and/or retaliation claims arising from the assertion of rights under these laws.

In addition to requiring reimbursement of the Judgment Fund, Congress expected such reimbursements to be made within a reasonable amount of time. Accordingly, these regulations specify timeframes within which agencies must either repay the Judgment Fund or contact the administrator of the Judgment Fund to make arrangements for a payment schedule. The administrator of the Judgment Fund is the Financial Management Service (FMS), the Department of the Treasury. The timeframe begins upon written notice by FMS to the agency's Chief Financial Officer (CFO) that a payment from the Judgment Fund has been disbursed. OPM notes in the regulations that agencies that fail to reimburse or make timely arrangements for reimbursement of the Judgment Fund will be identified and posted on the FMS Web site.

#### Notification and Training Obligations

Section 202 of the No FEAR Act requires agencies to notify covered individuals of the rights and protections concerning Federal discrimination laws, whistleblower protection laws, and/or retaliation claims arising from the assertion of rights under these laws. Agencies must also conduct training of employees about these rights and protections. OPM intends to publish proposed regulations on these subjects separately.

#### Annual Report

Section 203 of the No FEAR Act requires that each Federal agency

submit an annual report to Congress, the Equal Employment Opportunity Commission, and the Attorney General. Among other things, these reports are to provide information about payments from the Judgment Fund and the discipline of employees who engaged in discrimination, retaliation, harassment, or other violations of Federal discrimination and/or whistleblower laws. Each report also must provide the agency's analysis of certain information required in the report. OPM intends to publish proposed regulations on these subjects separately.

#### Best Practices

Section 204 of the No FEAR Act requires OPM, as the President's designee, to conduct a comprehensive study to determine the best practices relating to appropriate disciplinary actions against employees who violate Federal discrimination laws, whistleblower protection laws, and/or protections against retaliation arising from the assertion of rights under these laws. Based on the results of this study, OPM will issue advisory guidelines that incorporate the best practices that agencies may follow to take such disciplinary actions. In addition, the No FEAR Act requires agencies to report to the Congress, the Equal Employment Opportunity Commission, and the Attorney General on the extent to which they have adopted or will follow the guidelines issued by OPM. OPM intends to publish proposed regulations on these subjects separately.

#### Publication of Interim Regulations

Immediate implementation of this rule as an interim final rule with provision for post-promulgation public comment is based upon the exceptions found at 5 U.S.C. 553(b)(3)(A), (b)(3)(B) and (d). The agency obligations under the No FEAR Act to reimburse the Judgment Fund begin on October 1, 2003. It is essential that all agencies understand their responsibilities regarding this requirement. OPM has determined under 5 U.S.C. 553(b)(3)(A) that the reimbursement provision only effects the rules of agency organization, procedure, or practice and has no effect on the substantive rights of those entitled to payment from the Judgment Fund. OPM has determined under 5 U.S.C. 553(b)(3)(B) that it would be contrary to the public interest to delay promulgation of the rules governing the reimbursement provisions of the No FEAR Act. For the same reasons, OPM has determined under 5 U.S.C. 553(d)(3) that there is good cause for the interim final rule to be effective October 1, 2003, with provision for post-promulgation

public comment. OPM is seeking public comment on the regulation and will consider all comments when promulgating the final rule.

#### Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulations pertain only to Federal employees and agencies.

#### E.O. 12866, Regulatory Review

This interim final rule has been reviewed by the Office of Management and Budget under Executive Order 12866.

#### E.O. 13132

This regulation will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

#### E.O. 12988, Civil Justice Reform

This regulation meets the applicable standard set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

#### Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

#### Congressional Review Act

This action pertains to agency management, personnel and organization and does not substantially affect the rights of obligations of non-agency parties and, accordingly, is not a "rule" as that term is used by the Congressional Review Act (Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)). Therefore, the reporting requirement of 5 U.S.C. 801 does not apply.

#### List of Subjects in 5 CFR Part 724

Administrative practice and procedure, discrimination, prohibited personnel practices, claims, discipline.

U.S. Office of Personnel Management.

**Kay Coles James,**  
*Director.*

■ Accordingly, OPM is adding part 724 to title 5, Code of Federal Regulations, as follows:

### PART 724—IMPLEMENTATION OF TITLE II OF THE NOTIFICATION AND FEDERAL EMPLOYEE ANTIDISCRIMINATION AND RETALIATION ACT OF 2002

#### Subpart A—Reimbursement of Judgment Fund

Sec.

- 724.101 Purpose and Scope.
- 724.102 Definitions.
- 724.103 Agency Obligations.
- 724.104 Procedures.
- 724.105 Compliance.
- 724.106 Effective Date.

**Authority:** Sec. 204 of Pub. L. 107-174, 116 Stat. 566; Presidential Memorandum dated July 8, 2003, "Delegation of Authority Under Section 204(a) of the Notification and Federal Employee Antidiscrimination Act of 2002."

#### § 724.101 Purpose and scope.

This subpart implements Title II of the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 concerning the obligation of Federal agencies to reimburse the Judgment Fund for payments. The regulations describe agency obligations and the procedures for reimbursement and compliance.

#### § 724.102 Definitions.

In this part: *Agency* means an Executive agency as defined in 5 U.S.C. 105, the United States Postal Service, or the Postal Rate Commission;

*Applicant for Federal employment* means an individual applying for employment in or under a Federal agency;

*Employee* means an individual employed in or under a Federal agency;

*Former employee* means an individual formerly employed in or under a Federal agency;

*Judgment Fund* means the Judgment Fund established by 31 U.S.C. 1304;

*No FEAR Act* means the "Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002;"

*Payment* means a disbursement from the Judgment Fund on or after October 1, 2003, to an employee, former employee, or applicant for Federal employment, in accordance with 28 U.S.C. 2414, 2517, 2672, 2677 or with 31 U.S.C. 1304, that involves alleged discriminatory conduct described in 5 U.S.C. 2302(b)(1) and (b)(8) or (b)(9) as applied to discriminatory conduct

described in 5 U.S.C. 2302(b)(1) and/or (b)(8).

#### § 724.103 Agency Obligations.

A Federal agency must reimburse the Judgment Fund for payments covered by the No FEAR Act. Such reimbursement must be made within a reasonable time as described in § 724.104.

#### § 724.104 Procedures.

(a) The procedures that agencies must use to reimburse the Judgment Fund are those prescribed by the Financial Management Service (FMS), the Department of the Treasury, in Chapter 3100 of the Treasury Financial Manual. All reimbursements to the Judgment Fund covered by the No FEAR Act are expected to be fully collectible from the agency. FMS will provide notice to the agency's Chief Financial Officer within 15 business days after payment from the Judgment Fund. For any payments from the Fund between October 1, 2003, and January 22, 2004, FMS will provide such notice within 15 business days after January 22, 2004, if it has not already provided such notice.

(b) Within 45 business days of notice by FMS, agencies must reimburse the Judgment Fund or contact FMS to make arrangements in writing for reimbursement.

#### § 724.105 Compliance.

An agency's failure to reimburse the Judgment Fund or to contact FMS within 45 business days of an FMS notice for reimbursement under § 724.104 will be recorded on an annual basis and posted on the FMS Web site.

#### § 724.106 Effective Date.

This subpart is effective on October 1, 2003.

#### Subpart B—Notification of Rights and Protections and Training

[RESERVED]

#### Subpart C—Annual Report

[RESERVED]

#### Subpart D—Best Practices

[RESERVED]

[FR Doc. 04-1338 Filed 1-21-04; 8:45 am]

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## DEPARTMENT OF AGRICULTURE

### Rural Housing Service

### Rural Business-Cooperative Service

### Rural Utilities Service

### Farm Service Agency

#### 7 CFR Part 1951

RIN 0570-AA52

#### Debt Collection Improvement Act— Treasury Offset and Cross Servicing

**AGENCY:** Rural Housing Service, Rural Business-Cooperative Service, Rural Utilities Service, Farm Service Agency, USDA.

**ACTION:** Final rule.

**SUMMARY:** This action amends the regulations governing the servicing of Rural Business-Cooperative Service (RBS) loan and grant programs by adding a section to clarify that any amounts paid by RBS on account of the liabilities of a guaranteed loan borrower will constitute a Federal debt owing to RBS by the guaranteed loan borrower. RBS may use all remedies available to it, including offset under the Debt Collection Improvement Act (DCIA), to collect the debt from the borrower.

**EFFECTIVE DATE:** This rule is effective on January 22, 2004.

**FOR FURTHER INFORMATION CONTACT:** Bill Hagy, Deputy Administrator, Rural Business-Cooperative Service, USDA, Stop 3220, Room 5050, 1400 Independence Ave. SW., Washington, DC 20250-3250, Telephone (202) 720-7287, or internet e-mail [bill.hagy@usda.gov](mailto:bill.hagy@usda.gov).

#### SUPPLEMENTARY INFORMATION:

##### Classification

This rule has been reviewed under Executive Order 12866 and has been determined to be a nonsignificant regulatory action by the Office of Management and Budget (OMB).

This rule is not published for notice and comment because it implements statutory and regulatory provisions that are binding on the RBS. Since RBS does not have discretion in this matter, public comment would not be able to affect the provisions of the rule. Therefore, the rule is published as final and effective upon publication.

##### Programs Affected

The Catalog of Federal Domestic Assistance Program number assigned to this program is: 10.768, Business and Industrial Loans.

## Paperwork Reduction Act

There are no reporting or record keeping requirements associated with this rule.

## Environmental Impact Statement

It is the determination of the Secretary that this action is not a major Federal action significantly affecting the environment. Therefore, in accordance with the National Environmental Policy Act of 1969, an Environmental Impact Statement is not required.

## Executive Order 12988

This rule has been reviewed in accordance with E.O. 12988, Civil Justice Reform. In accordance with this rule: (1) All State and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings in accordance with 7 CFR part 11 must be exhausted before bringing suit in court challenging action taken under this rule unless those regulations specifically allow bringing suit at an earlier time.

## The Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal Governments and the private sector. Under section 202 of the UMRA, USDA must prepare a written statement, including a cost benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local or tribal Governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. When such a statement is needed for a rule, section 205 of UMRA generally requires USDA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost effective, or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and tribal Governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

## Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601-612), the undersigned has determined and certified by signature of this document that this rule will not have a significant