

**Functional Series [100](#)
Agency Organization and Legal Affairs**

INTERIM UPDATE 05-07

SUBJECT: Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (Public Law 107-174)

NEW MATERIAL: The Notification and Federal Employee Antidiscrimination and Retaliation (No FEAR) Act was signed into law by President George W. Bush on May 15, 2002. It became effective on October 1, 2003. The purpose of this Act is to require Federal agencies to be more accountable for violations of antidiscrimination and whistleblower protection laws.

EFFECTIVE DATE: 10/01/2003

POLICY

USAID/General Notice
EOP/OD
10/03/2005

Subject: NOTIFICATION AND FEDERAL EMPLOYEE ANTIDISCRIMINATION AND RETALIATION ACT OF 2002 (Public Law 107-174)

The Notification and Federal Employee Antidiscrimination and Retaliation (No FEAR) Act was signed into law by President George W. Bush on May 15, 2002. It became effective on October 1, 2003. The purpose of this Act is to require Federal agencies to be more accountable for violations of antidiscrimination and whistleblower protection laws.

The Act has a provision for all employees to be trained on their rights and protections available under Federal antidiscrimination, whistleblower protection and retaliation laws. OPM encourages all agencies to implement training programs as soon as possible and requires all agencies to complete initial training by the end of the fiscal year. Thereafter, the training must be completed on a training cycle of no longer than every two years. A summary of your rights and protections under Federal antidiscrimination, whistleblower protection and retaliation laws is provided below. Facilitated training is planned for all employees throughout fiscal year 2006 and beyond to meet the full requirements of the training provision of the Act.

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. 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. See, e.g., 29 CFR - 1614. 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 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, 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 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 website -- 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 protections 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 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

For further information regarding the No FEAR Act regulations, refer to 5 CFR 724, as well as the Office of Equal Opportunity Programs. USAID's specific antidiscrimination policies relating to equal employment opportunity and prohibited personnel practices have been physically and electronically posted on EOP's website. Additional information regarding Federal antidiscrimination, whistleblower protection and retaliation laws can be found at the EEOC website--www.eeoc.gov and the OSC website--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). For more information on the No FEAR Act, you may contact the Office of Equal Opportunity Programs at (202) 712-1110, or click on the following link:

No FEAR Act (http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=107_cong_public_laws&docid=f:publ174.107).

Notice 1010

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