



# No FEAR Act

Fiscal Year 2008 Annual Report to Congress

March 29, 2009



Homeland  
Security

*Office for Civil Rights and Civil Liberties*

# Foreword/Message from the Acting Officer for Civil Rights and Civil Liberties, and the Deputy Officer, Equal Employment Opportunity Programs, Office for Civil Rights and Civil Liberties

The Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (No FEAR Act) is intended to reduce the incidence of workplace discrimination within the Federal government by making agencies and departments more accountable. The U.S. Department of Homeland Security's (DHS) overriding and urgent mission is to lead the unified national effort to secure the country and preserve our freedoms. In order to maximize its effectiveness, DHS seeks to achieve an exemplary Equal Employment Opportunity (EEO) program and become a model agency.

Section 203 of the No FEAR Act specifically requires, not later than 180 days after the end of each fiscal year, each Federal agency to submit an annual report to the Speaker of the House of Representatives, the President Pro Tempore of the Senate, the Committee on Governmental Affairs of the Senate, the Committee on Government Reform of the House of Representatives, each committee of Congress with jurisdiction relating to the agency, the Equal Employment Opportunity Commission, and the Attorney General. The No FEAR Act Annual Report shall have specific information relating to each agency's EEO complaints activity (including Federal district court cases) and resulting disciplinary actions, Judgment Fund reimbursements, adjustments to agency budgets to meet reimbursement requirements, as well as an analysis of trends, causation, and practical knowledge gained through experience. 5 C.F.R. Part 724 provides further guidance on each agency's reporting obligations, and also requires the submission of the annual report to the Director of U.S. Office of Personnel Management (OPM) for the implementation of a best practices study and the issuance of advisory guidelines.

Pursuant to statutory requirements, this report is being provided to the following members of the 111<sup>th</sup> United States Congress:

The Honorable Joseph R. Biden  
President of the Senate

The Honorable Robert Byrd  
President pro tempore, U.S. Senate

The Honorable Nancy Pelosi  
Speaker of the House of Representatives

The Honorable Joseph I. Lieberman  
Chairman, Senate Committee on Homeland Security and Governmental Affairs

The Honorable Bennie G. Thompson  
Chairman, House Committee on Homeland Security

The Honorable Edolphus Towns  
Chairman, House Committee on Oversight and Government Reform

The Honorable Susan M. Collins  
Ranking Member, Senate Committee on Homeland Security and Governmental Affairs

The Honorable Darrell Issa  
Ranking Member, House Committee on Oversight and Government Reform

The Honorable Peter T. King  
Ranking Member, House Committee on Homeland Security

Pursuant to statutory requirements, this report is being provided to the following members of the Executive Branch:

The Honorable Stuart J. Ishimaru  
Acting Chairman, U.S. Equal Employment Opportunity Commission

The Honorable Eric H. Holder  
Attorney General, U.S. Department of Justice

The Honorable Kathy Whipple  
Acting Director, U.S. Office of Personnel Management

This No FEAR Act Report was prepared by the DHS Office for Civil Rights and Civil Liberties (CRCL) and no one else, pursuant to Congressional requirements.



---

Timothy J. Keefer  
Acting Officer for Civil Rights and Civil Liberties  
Office for Civil Rights and Civil Liberties



---

Stephen T. Shih, Esq.  
Deputy Officer for EEO Programs  
Office for Civil Rights and Civil Liberties

**Message from the  
Acting Officer for Civil Rights and Civil Liberties  
U.S. Department of Homeland Security**

I am pleased to present the U.S. Department of Homeland Security's (DHS) Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 ("No FEAR Act") Annual Report for Fiscal Year (FY) 2008. This report summarizes the Department's most significant FY 2008 No FEAR Act programs and workforce accomplishments, and helps demonstrate our strong commitment to abide by merit system principles, provide protection from prohibited personnel practices, and promote accountability.

In order to maximize the effectiveness of DHS, we will operate in a unified manner and identify as one Department, where many different people contribute in diverse ways to one paramount goal: securing our Nation, while ensuring the strength of our economy and preserving our cherished American freedoms and liberties. We will faithfully execute the duties and responsibilities entrusted to us, and maintain the highest ethical and professional standards. We will highly value the relationships we build with our customers, partners, stakeholders, and each other. We will honor America's liberty, democracy, and diversity. We will always respect and preserve the individual rights enshrined in our Constitution and accorded through our Nation's laws, and we will continue developing sound Equal Employment Opportunity (EEO) and Human Capital management systems to encourage workforce innovation, recognition, mutual respect, and teamwork.

DHS has demonstrated measurable progress in championing merit system principles, providing protection from prohibited personnel practices, and promoting accountability. With the arrival of a new Deputy Officer for EEO Programs in the Office for Civil Rights and Civil Liberties in August 2008, and with specific actions planned to continue bolstering EEO and Diversity Programs at DHS, I eagerly look forward to reporting exceptional, measurable results in FY 2009. At DHS, we are committed to merit system principles and accountability in order to accomplish our overriding and urgent mission – to lead the unified national effort to secure the country and preserve our freedoms.



Timothy J. Keefer  
Acting Officer for Civil Rights and Civil Liberties  
U.S. Department of Homeland Security



# Executive Summary

The No FEAR Act is intended to reduce the incidence of workplace discrimination within the Federal government by making agencies and departments more accountable. Section 203 of the No FEAR Act specifically requires, not later than 180 days after the end of each fiscal year, each Federal agency to submit, to certain Congressional committees and members, an annual report with specific information relating to each agency's EEO complaints activity (including Federal district court cases) and resulting disciplinary actions, Judgment Fund reimbursements, adjustments to agency budgets to meet reimbursement requirements, as well as an analysis of trends, causation, and practical knowledge gained through experience.

This No FEAR Act Annual Report covers Fiscal Year (FY) 2008, from October 1, 2007 to September 30, 2008, and is to be issued no later than March 29, 2009. During FY 2008, the Department began a significant new effort to enhance its EEO and Diversity Programs, with a delegation of authority to the Officer for Civil Rights and Civil Liberties to functionally integrate the Department's civil rights, civil liberties, and EEO programs, and to lead the Department's Diversity Initiative. Furthermore, the Office for Civil Rights and Civil Liberties (CRCL) continued to partner with the Department's Undersecretary for Management, the Department's Office of the Chief Human Capital Officer (OCHCO), and other internal and external stakeholders in FY 2008 to support merit system principles and diversity management, driving diversity initiatives and achieving results, including the following: an all-DHS issuance of a Secretary's Diversity Statement; the inclusion of a DHS Diversity Strategy as part of the Department's Human Capital Recruitment Strategy; the convening of a DHS Diversity Council; the inclusion of a diversity advocate element in all executive performance plans; an on-line all-DHS No FEAR Act training; a new DHS recruitment video targeting academic institutions of higher learning; a video on the recruitment, hiring, and reasonable accommodation of individuals with disabilities; improvements in the CRCL's EEO Programs' Complaint Adjudication Unit involving a new strategic plan, performance metrics, standard operating procedures, technical training, internal controls, and technology; and the creation of a Diversity Management Unit with clear lines of business, new metrics, and an updated staffing plan aligned to a new strategic plan.

During FY 2008, the Department had 213 cases in Federal court, pending or resolved under the various laws covered in the No FEAR Act. Of those 213 cases pending, 68 were filed in FY 2008. Of the 70 decisions that were issued in FY 2008 by Federal court judges, 2 were in favor of the complainant, either in its entirety or partially, 45 were in favor of the agency, and 21 were settled.

The amount of reimbursement to the Judgment Fund in FY 2008 totaled \$726,186 while the amount of reimbursement for Attorney's Fees in that same time period was \$135,099. The total number of employees disciplined for discrimination, retaliation, harassment, or any other infraction of any provision of law covered by the No FEAR Act in connection with Federal cases was three (3). The total number of employees disciplined for discrimination, retaliation, harassment, or any other infraction of any provision of law covered by the No FEAR Act,

whether or not in connection with Federal cases (i.e., including EEO administrative cases), was four (4).

During FY 2008, DHS received a total of 1,145 formal EEO complaints – an increase of 59 complaints from FY 2007 – which is not considered significant given the size of the DHS workforce (approximately 200,000 employees). Additionally, the EEO complaint activity at DHS remained relatively consistent with respect to the bases of discrimination alleged; the data reflects certain shifts and trends but mostly does not show any significant increase in complaints filed on certain bases, when considering the aggregate size of the workforce. Similarly, the Department’s EEO complaints activity remained relatively consistent with respect to the issues raised. With respect to the two most frequently raised issues (non-sexual harassment and promotion/non-selection), the data reveals an increasing trend in the number of non-sexual harassment claims and a decreasing trend in promotion/non-selection claims.

During FY 2008, the Department made significant progress in improving the timeliness of EEO investigations, completing investigations for complaints pending during FY 2008 with an average processing time of 249.9 days. This marked the continuation of the Department’s significant improvement in conducting investigations after FY 2005, from an average of 406 days in FY 2006 and an average of 311.5 days in FY 2007. DHS also continued to decrease its inventory of complaints filed in previous FYs, to a net amount of 1,382 cases, significant reduced from a high of 2,595 in FY 2005.

CRCL has encountered difficulties managing the DHS EEO complaint adjudication inventory during the past three years with the transition of this function from the use of contract decision-writers to full-time Federal decision-writers. Consequently, the Department experienced increases in the net inventory and average processing times for issuing Final Agency Decisions on the merits, and Final Agency Orders following the receipt of an Equal Employment Opportunity Commission (EEOC) Administrative Judge’s decision.

The Department also experienced an increase in the number of discrimination findings in FY 2008 (21 findings in FY 2008, compared to 12 findings in FY 2007 and 29 findings in FY 2006). The Department’s FY 2008 findings mainly raised the following bases: race (7); religion (5); retaliation (5); sex (7); national origin (8); and age (4). Of these FY 2008 findings, five involved harassment and 11 involved promotion/non-selection.

# Table of Contents

I.	Legislative Requirement	1
II.	Background	2
III.	Results/Data Report	3
IV.	Analysis of Trends	5
V.	Conclusion/DHS Action Plan	7
VI.	Appendices	11
Appendix 1:	DHS Delegation No. 3095: Delegation from Secretary to Officer for Civil Rights and Civil Liberties	
Appendix 2:	DHS Delegation No. 19000: Sub-Delegation to Deputy Officer for EEO Programs	
Appendix 3:	DHS Delegation No. 19002: Delegation to Officer for Civil Rights and Civil Liberties to Integrate and Manage Civil Rights, Civil Liberties and EEO Programs	
Appendix 4:	DHS No FEAR Act Federal District Court Data for FY 2008	
Appendix 5:	DHS No FEAR Act Final Year End EEO Data for FY 2004-2008	
Appendix 6:	DHS Secretary's Diversity Policy Statement to Component Heads	
Appendix 7:	DHS Secretary's Diversity Policy Statement to All Employees	
Appendix 8:	DHS Memorandum on 2008 No FEAR Act Training	
Appendix 9:	DHS No FEAR Act Notification	
Appendix 10:	DHS Secretary's No FEAR Act and Whistleblower Protection Act Notification	
Appendix 11:	DHS No FEAR Act Training Plan	

# I. Legislative Requirement

This document responds to the reporting requirements set forth in Section 203 of the No FEAR Act (P.L. 107-74), which states:

(a) Annual Report.--Subject to subsection (b), not later than 180 days after the end of each fiscal year, each Federal agency shall submit to the Speaker of the House of Representatives, the President pro tempore of the Senate, the Committee on Governmental Affairs of the Senate, the Committee on Government Reform of the House of Representatives, each committee of Congress with jurisdiction relating to the agency, the Equal Employment Opportunity Commission, and the Attorney General an annual report which shall include, with respect to the fiscal year--

- (1) the number of cases arising under each of the respective provisions of law covered by paragraphs (1) and (2) of section 201(a) in which discrimination on the part of such agency was alleged;
- (2) the status or disposition of cases described in paragraph (1);
- (3) the amount of money required to be reimbursed by such agency under section 201 in connection with each of such cases, separately identifying the aggregate amount of such reimbursements attributable to the payment of attorneys' fees, if any;
- (4) the number of employees disciplined for discrimination, retaliation, harassment, or any other infraction of any provision of law referred to in paragraph (1);
- (5) the final year-end data posted under section 301(c)(1)(B) for such fiscal year (without regard to section 301(c)(2));
- (6) a detailed description of--
  - (A) the policy implemented by that agency relating to appropriate disciplinary actions against a Federal employee who--
    - (i) discriminated against any individual in violation of any of the laws cited under section 201(a) (1) or (2); or
    - (ii) committed another prohibited personnel practice that was revealed in the investigation of a complaint alleging a violation of any of the laws cited under section 201(a) (1) or (2); and
  - (B) with respect to each of such laws, the number of employees who are disciplined in accordance with such policy and the specific nature of the disciplinary action taken;
- (7) an analysis of the information described under paragraphs (1) through (6) (in conjunction with data provided to the Equal Employment Opportunity



Commission in compliance with Part 1614 of Title 29 of the Code of Federal Regulations) including--

- (A) an examination of trends;
- (B) causal analysis;
- (C) practical knowledge gained through experience
- (D) any actions planned or taken to improve complaint or civil rights programs of the agency; and

(8) any adjustment (to the extent the adjustment can be ascertained in the budget of the agency) to comply with the requirements under section 201.

5 C.F.R. Part 724.302 provides further guidance on each agency's reporting obligations, and also requires the submission of the annual report to the Director of OPM for the implementation of a best practices study and the issuance of advisory guidelines.

## II. Background

DHS's overriding and urgent mission is to lead the unified national effort to secure the country and preserve our freedoms. In order to maximize its effectiveness, DHS seeks to achieve an exemplary EEO program and become a model agency. DHS was established through the Homeland Security Act of 2002, P.L. 107-296, (*see* [http://www.dhs.gov/xlibrary/assets/hr\\_5005\\_enr.pdf](http://www.dhs.gov/xlibrary/assets/hr_5005_enr.pdf)), of which Section 103(d)(5) required the appointment of an Officer for Civil Rights and Civil Liberties ("Officer"). On June 5, 2003, the Secretary of DHS delegated authority to the Officer to lead the Department's EEO Programs and Diversity Initiative (*see* Appendix 1). On August 1, 2006, the Officer sub-delegated this responsibility to the Deputy Officer for EEO Programs, in CRCL (*see* Appendix 2).

CRCL falls within the Office of the Secretary and provides legal and policy advice to Department leadership on civil rights and civil liberties issues. The Officer, by statute, reports directly to the Secretary. At this level, the Officer is able to assist senior leadership in shaping policy in ways that protect, rather than diminish, the personal liberties of all persons protected by our laws. In accordance with 6 U.S.C. § 345 and 42 U.S.C. § 2000ee-1, the mission of the CRCL is to assist the dedicated men and women of this Department to secure the nation while preserving our freedoms and our way of life. CRCL assists our colleagues in four ways:

1. We help the Department to shape policy in ways that are mindful of civil rights and civil liberties by providing proactive advice, evaluation and review of a wide range of technical, legal and policy issues;
2. We investigate and resolve complaints filed by the public regarding Departmental policies or actions taken by Departmental personnel;
3. We provide leadership to the Department's equal employment opportunity programs, seeking to make this Department the model Federal agency; and
4. We are engaged with the public regarding these issues.

CRCL provides Departmental guidance and standards for establishing and maintaining effective programs for diversity management and EEO, as required under both Title VII of the Civil

Rights Act of 1964, as amended, 42 U.S.C. § 2000(e) *et seq.*, and Section 501 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 791 *et seq.* To meet this objective, the Deputy Officer for EEO Programs and staff develop program plans, monitor implementation, and submit annual progress reports to OPM, EEOC, the White House Initiatives Offices, and other appropriate agencies such as the No FEAR Act Annual Report. The No FEAR Act is intended to reduce the incidence of workplace discrimination within the Federal government by making Federal agencies and departments more accountable.

### III. Results/Data Report

#### A. *Current Status of EEO Programs and Overview of Initiatives*

During FY 2008, the Department began a significant new effort to enhance its EEO and Diversity Programs, with a delegation of authority to the Officer for Civil Rights and Civil Liberties to functionally integrate the Department's civil rights, civil liberties, and EEO programs, and to lead the Department's Diversity Initiative (*see* Appendix 3). In support of DHS Delegation 19002, a Management Directive (DHS Directive 256-03) on Civil Rights, Civil Liberties and Equal Employment Opportunity Integration and Management and an Instruction Guide (DHS Instruction 256-03-001) on Civil Rights, Civil Liberties and Equal Employment Opportunity Integration and Management have been drafted, and are pending review with the Office of General Counsel at the close of FY 2008. FY 2008 further constituted a transition year for CRCL, as three senior career officials in the Office retired – including the career executive primarily responsible for EEO and Diversity (i.e., the Deputy Officer for EEO Programs).

Nevertheless, CRCL continued to partner with the Department's Undersecretary for Management, the Department's Chief Human Capital Officer (CHCO), and other internal and external stakeholders in FY 2008 to support merit system principles and diversity management, driving diversity initiatives and achieving results, including the following: an all-DHS issuance of a Secretary's Diversity Statement; the inclusion of a DHS Diversity Strategy as part of the Department's Human Capital Recruitment Strategy; the convening of a DHS Diversity Council; the inclusion of a diversity advocate element in all executive performance plans; an on-line all-DHS No FEAR Act training; a new DHS recruitment video targeting academic institutions of higher learning; a video on the recruitment, hiring, and reasonable accommodation of individuals with disabilities; a review to identify appropriate policies for revision (e.g., No FEAR Act Notice, anti-harassment, reasonable accommodation, etc.); improvements in CRCL's EEO Programs' Complaint Adjudication Unit involving a new strategic plan, performance metrics, standard operating procedures, technical training, internal controls, and technology; and the creation of a Diversity Management Unit with clear lines of business, new metrics, and an updated staffing plan aligned to a new strategic plan.

Furthermore, DHS continued to maintain strong programs in FY 2008 for the employment, advancement and retention of a diverse Federal workforce, including achieving notable results through the following programs: Federal Equal Opportunity Recruitment Program; Disabled Veterans Affirmative Action Program; the White House Initiative on Historically Black Colleges and Universities; White House Initiative on Tribal Colleges and Universities; and EEO Management Directive 715. These programs included initiatives to: achieve a model EEO

program; strengthen partnerships with academic institutions and special emphasis community groups; and conduct outreach and recruitment events to provide potential civil service recruits with information on locating and applying for DHS jobs. DHS Components also regularly conducted Special Observance programs designed to provide information and foster appreciation for individuals of different cultures and experiences.

*B. Number of Cases Filed in Federal Court, Pending or Resolved during FY 2008, Arising under the Various Anti-Discrimination and Whistleblower Protection Statutes Listed in the No FEAR Act*

During FY 2008, the Department had 213 cases in Federal court, pending or resolved under the various laws covered in the No FEAR Act. The majority of those Federal district court filings arose under Title VII (169 cases), followed by filings under the Age Discrimination in Employment Act (ADEA) (48), the Rehabilitation Act (26), the Equal Pay Act (15) and under Whistleblower Protection statutes (5). Of those 213 cases pending, 68 were filed in FY 2008.

With regard to the status or disposition of the 213 cases in Federal court, 107 were pending hearing and 12 were heard and pending decision. Of the 70 decisions were issued in FY 2008 by Federal court judges: two found in favor of the complainant either entirely or partially; 45 found in favor of the agency; none went to arbitration or mediation; 21 were settled; two were appealed to a Federal circuit court, and none were remanded. For further information regarding FY 2008 employment discrimination and whistleblower cases filed in Federal court against DHS, *see* Appendix 4.

*C. Reimbursement to Judgment Fund*

The amount of reimbursement to the Judgment Fund in FY 2008 totaled \$726,186 while the amount of reimbursement for Attorney's Fees in that same time period was \$135,099. The bulk of the reimbursement to the Judgment Fund derived from cases filed under Title VII, specifically, \$638,186. Only \$50,000 of reimbursement to the Judgment Fund stemmed from cases filed under the Rehabilitation Act, and \$38,000 from cases filed under the ADEA. With regard to the \$135,099 reimbursed for Attorney's Fees, the entire amount was awarded in case filed under Title VII.

*D. Disciplinary Actions*

At DHS, disciplinary action is determined on a case-by-case basis, depending on the specific facts or circumstances. During FY 2008, DHS disciplined a total number of eleven employees for discrimination, retaliation, harassment, or any other infraction of any provision of law covered by the No FEAR Act. Of these eleven employees, four were reprimanded, three were suspended without pay, two had a reduction in grade or pay, and two were removed.

*E. EEO Complaint Data*

*See* Appendix 5.

## IV. Analysis of Trends

During FY 2008, the EEO complaints activity at DHS remained consistent with complaint activity in past fiscal years. The Department received a total of 1,145 formal EEO complaints – less than the total number of 1,199 complaints received in FY 2005 but greater than the total number of 1,083 and 1,086 complaints filed respectively in FY 2006 and FY 2007. While DHS experienced a total FY 2008 inventory which was 59 complaints greater than the inventory in FY 2007 and 62 complaints greater than in FY 2006, the total FY 2008 inventory was still 54 complaints less than the FY 2005 total inventory of 1,199 complaints. The increase in FY 2008 activity – as compared to the complaint activity in FYs 2006 and 2007 – also is not significant because the total size of the DHS workforce increased from a total of 168,865 employees in FY 2006 to approximately 200,000 employees by the end of FY 2008.

Additionally, the EEO complaint activity at DHS remained relatively consistent with respect to the bases alleged; the data reflects certain shifts and trends but mostly does not show any significant increase in complaints filed on certain bases of discrimination, when considering the aggregate size of the workforce. DHS did experience a reduction of 70 formal complaints filed on the basis of race in FY 2008 (FY 2008 total of 298 compared to FY 2007 total of 368, and also lower than the aggregate race complaint totals in FY 2005 and FY 2006) while experiencing a slight increase of 12 formal complaints filed on the basis of color in FY 2008 (a total of 92 color complaints in FY 2008 compared to 80 in FY 2007) with a slight overall increasing trend (75 in FY 2005 and 83 in FY 2006). DHS received 10 more religious complaints in FY 2008; however, the total 48 religious complaints in FY 2008 remained lower than the number of religious complaints filed in FY 2005 (50) and FY 2006 (57). With respect to national origin complaints, DHS received 175 in FY 2008 – an increase from the 158 FY 2007 national origin complaints but down from the 197 FY 2005 complaints and 193 FY 2006 complaints. During FY 2008, DHS received only three Equal Pay Act complaints (down from seven in FY 2007, and up from one FY 2006 complaint). Notably, the Department's 238 disability complaints in FY 2008 were lower than the totals in each of the preceding three fiscal years (260 in FY 2007, 258 in FY 2006, and 264 in FY 2005). DHS did experience an increase in its FY 2008 complaints based on sex (385 in FY 2008, 334 in FY 2007, 349 in FY 2006, and 408 in FY 2005) and alleging retaliation (432 in FY 2008, 389 in FY 2007, 391 in FY 2006, and 406 in FY 2005).

Similarly, the Department's FY 2008 EEO complaints activity remained relatively consistent with respect to the issues raised; again, the data reflects certain shifts and trends but mostly does not show any significant increase in complaints filed on certain issues, when considering the aggregate size of the workforce. With respect to the two most frequently raised issues (non-sexual harassment and promotion/non-selection), the data reveals an increasing trend in the number of non-sexual harassment claims (189 in FY 2005, 282 in FY 2006, 289 in FY 2007, and 314 in FY 2008) and a decreasing trend after FY 2005 in promotion/non-selection claims (287 in FY 2006, 277 in FY 2007, and 248 in FY 2008).

During FY 2008, the Department made significant progress in improving the timeliness of EEO investigations, completing investigations for complaints pending during FY 2008 with an average processing time of 249.9 days. This marked the continuation of the Department's significant improvement in conducting investigations after FY 2005, from an average of 406 days in FY 2006 and an average of 311.5 days in FY 2007. DHS also continued to decrease its inventory of complaints filed in previous FYs – with a net total of 1,382 cases at the end of FY 2008, down from: 2,595 at the end of FY 2005; 2,096 at the end of FY 2006; and 1,411 at the end of FY 2007.

CRCL encountered difficulties managing its complaint adjudication inventory in the past three years during the transition from performing this function through contract decision-writers to full-time Federal decision-writers. Consequently, DHS experienced increases to its inventory of complaints and average processing times for issuing Final Agency Decisions on the merits, and Final Agency Orders following the receipt of an EEOC Administrative Judge's decision. However, CRCL did demonstrate improvement in the number of procedural dismissals issued in FY 2008 (247 FY 2008 dismissals compared to 187 FY 2007 dismissals) and average processing time of dismissals (220 days in FY 2008 compared to 257 days in FY 2007). As described below in Section V., CRCL has taken a number of steps to enhance performance and leverage efficiencies in order to improve its EEO complaint adjudication, and CRCL expects to report significant measurable results in FY 2009.

Additionally, DHS experienced an increase in the number of findings of discrimination in FY 2008 (21 findings in FY 2008 compared to 12 findings in FY 2007); however, this total was lower than the total number of findings in FY 2006 (29) while higher than the number of findings in FY 2005 (12). These FY 2008 findings mainly raised the following bases: race (7); religion (5); retaliation (5); sex (7); national origin (8); and age (4). Of these FY 2008 findings, five involved harassment (up from two in FY 2007 but down from 9 in FY 2006), and 11 involved promotion/non-selection (up from two findings in FY 2007 but consistent with the 10 findings in FY 2006).

Through experience gained over the first five years of the Department's existence, and with the arrival of a new Deputy Officer for EEO Programs with substantial experience in EEO and human capital management, CRCL will continue to apply a wealth of practical knowledge towards ensuring merit systems compliance, prompt and impartial complaint-processing, and accountability. CRCL is committed to promoting EEO and other merit systems principles and practices throughout the Department's management decisions and personnel activities, and it is the goal of the CRCL's EEO and Diversity Programs to help DHS recruit, develop and retain a high-quality, diverse workforce, notable for its constructive communication, professionalism, respect, perspectives, ideas, experiences, and trust between individuals. CRCL will continue partnering with OCHCO to emphasize recruitment of the best candidates from a variety of sources, selection and advancement of the best qualified employees based upon merit, delivery of training for DHS managers and employees on their No FEAR Act rights and responsibilities, promotion of equal employment opportunities to all individuals, and providing a prompt, fair, and impartial review of discrimination allegations while maintaining accountability.

DHS did not make any adjustments (budgetary or otherwise) to comply with Section 201 of the No FEAR Act, which governs Federal agency reimbursement of the Judgment Fund.

## V. Conclusion/DHS Action Plan

During FY 2008, DHS took the following actions to improve the Department's EEO and Diversity Programs:

### A. *Functional Integration Delegation*

The Secretary delegated authority to the Officer to functionally integrate the Department's civil rights, civil liberties, and EEO programs, and to lead the Department's Diversity Initiative (*see* Appendix 3). This delegation assigned CRCL the responsibility for leading the Department's EEO and Diversity Programs. The delegation is important because it unifies the EEO and Diversity operations of the Department's various support and operating Components – standardizing policies and practices, eliminating redundancies, institutionalizing best practices, and leveraging economies of scale.

### B. *Issuance of Secretary's Diversity Statement*

On October 16, 2007, the Secretary issued a Workforce Diversity Statement to all Component Heads (*see* Appendix 6). Subsequently, on October 31, 2008, the Secretary issued an all-DHS Statement affirming his commitment to diversity at the Department (*see* Appendix 7). In this statement, the Secretary reinforced the importance of diversity and the Department's commitment to developing a Diversity Strategy.

### C. *Creation of DHS Diversity Strategy*

OCHCO developed a DHS Diversity Strategy and included it in the Department's Human Capital Recruitment Strategy.

### D. *Integration of EEO and Diversity into Strategic Operations*

Senior leaders in CRCL (including the Officer and Deputy Officer for EEO Programs) attended and participated in the Department's daily senior leadership meetings. The Deputy Officer for EEO Programs also regularly attended the Department's Management Council (comprised of the senior management officials in each DHS Component and chaired by the Undersecretary for Management) meetings as well as the Human Capital Leadership Council (comprised of the human capital officers of each Component and chaired by the CHCO).

### E. *Diversity Council and Diversity Planning and Policy Sub-Council*

The Department's Management Council served as the *de facto* Diversity Council after executing a charter. This body also created a Diversity Planning and Policy Sub-Council (comprised of diversity officials at each DHS Component, and co-chaired by the Executive Director, Human



Capital Operations and Services, OCHCO, and by the CRCL Deputy Officer for EEO Programs) to devise and implement Department-wide diversity initiatives.

*F. Diversity Advocate Element in Senior Executive Service Performance Plans*

OCHCO developed a “Diversity Advocate” performance element and added this element to all executive performance plans. This element measures executives’ success in: promoting workforce diversity; providing fair and equitable recognition and equal opportunity; and promptly and appropriately addressing allegations of harassment or discrimination.

*G. All-DHS No FEAR Act Training*

Toward the end of FY 2008, CRCL began developing a web-based No FEAR Act training to deliver on-line through the various Departmental Learning Management Systems, which provide efficient, easy access for the entire Department’s Federal workforce. This training was finalized and deployed in December 2008 (*see* Appendix 8).

*H. No FEAR Act Notification*

On January 13, 2009, DHS published a No FEAR Act Notice to the Federal Register (*see* Appendix 9, or <http://edocket.access.gpo.gov/2009/E9-376.htm>). Through this posting, DHS provided notice to all of its employees, former employees, and applicants for employment about the rights and remedies that are available to them under Federal antidiscrimination laws and whistleblower protection laws. This notice satisfied the Department's notification requirements under section 202 of the No FEAR Act and OPM regulations at 5 CFR Part 724. Note the Secretary had previously issued an all-DHS No FEAR Act Notification on September 26, 2005 (*see* Appendix 10.)

*I. CRCL Participation in SES Appointment, Management and Recognition*

The CRCL Deputy Officer for EEO Programs participated in the Department’s Executive Resources Council – chaired by the DHS Deputy Secretary – to review and approve all DHS Senior Executive Service (SES) appointments. The Deputy Officer for EEO Programs also participated in the Department’s Executive Resources Board, responsible for reviewing and approving all SES Candidate Development Program executive development plans and completion certification.

*J. New DHS Recruitment Video*

CRCL produced a new recruitment video highlighting DHS as America’s newest and most dynamic Federal government organization – showing professionals of all ages and levels of experience, and emphasizing the wide range of benefits available to Federal employees.

*K. Disability Video*

CRCL produced a video on the recruitment, hiring, and reasonable accommodation of individuals with disabilities, providing DHS leaders with important information to understand hiring flexibilities, rights, and responsibilities relating to the employment of individuals with disabilities.

*L. Diversity, Special Emphasis, and Special Observance Programs*

DHS continued to maintain strong programs in FY 2008 for the employment, advancement and retention of a diverse Federal workforce, including achieving notable results through the following programs:

- Federal Equal Opportunity Recruitment Program
- Disabled Veteran Affirmative Action Program
- White House Initiative on Historically Black Colleges and Universities
- White House Initiative on Tribal Colleges and Universities
- EEOC's EEO Management Directive 715.

These programs included initiatives to: achieve a model EEO program; strengthen partnerships with academic institutions and special emphasis community groups; conduct outreach and recruitment events to provide potential civil service recruits with information on locating and applying for DHS jobs; and educate and encourage the use of various recruitment flexibilities to tap into deep and diverse talent pools. DHS Components also regularly conducted Special Observance programs designed to provide information and foster appreciation for individuals of different cultures and experiences.

*M. Hiring of New CRCL Deputy Officer for EEO Programs*

On August 18, 2008, a new Deputy Officer for EEO Programs – Stephen T. Shih – reported to DHS after a significant personnel turnover in CRCL's EEO Programs, which included the retirement of three senior career officials. Serving as the career executive primarily responsible for leading DHS EEO and Diversity, the new Deputy Officer for EEO Programs brings a wealth of knowledge and experience to DHS, having achieved notable results in previous Federal agencies, including successfully managing the EEO and Diversity Program at OPM to lead the entire Federal government in several complaint-processing categories during FY 2006, and previously serving as a Supervisory Administrative Judge at the EEOC's Washington Field Office, where he achieved significant EEO complaint processing improvements and results. With Mr. Shih's experience and record of achievement, DHS expects to demonstrate significant, objective EEO and Diversity improvements in FY 2009.

*N. Improvements in EEO Complaint Adjudication Program*

Upon his arrival in August 2008, the new Deputy Officer for EEO Programs conducted an efficiency and program review of the CRCL's EEO Programs' Complainant Adjudication Unit. Consequently, the Deputy Officer for EEO Programs implemented a new strategy, performance

metrics, procedures, technical training, controls, and technology for the Complaint Adjudication Unit. These measures have already enabled the Complaints Adjudication Unit to achieve impressive results through improved processing times and enhanced quality of EEO complaint adjudications, as well as increased efficiency and improved quality of complaint intake, tracking, and out-processing. CRCL expects to demonstrate exceptional improvement in FY 2009, which will be reflected in the Department's FY 2009 No FEAR Act data.

*O. Creation of New Office for CRCL's Diversity Management Unit*

During FY 2008, CRCL reorganized to create a new Diversity Management Unit with clear lines of business aligned to a new strategic and staffing plan. Recruitment will take place during FY 2009 to increase staffing in this Unit, further strengthening the CRCL's Diversity Programs and its leadership of the Department's diversity initiatives.

*P. Review of EEO Policies*

At the end of FY 2008, the new CRCL Deputy Officer for EEO Programs commenced a comprehensive review of all EEO policies at DHS to identify policies requiring updating or revision. Consequently, the Deputy Officer for EEO Programs targeted the following policies to update or revise in FY 2009:

- No FEAR Act Notice – published in the Federal Register on January 13, 2009 (available at Appendix 9, or on-line at <http://edocket.access.gpo.gov/2009/E9-376.htm>)
- EEO Policy Statement
- Prohibited Personnel Practices Policy Statement
- Anti-Harassment Policy
- Procedures for Providing Reasonable Accommodations under the Rehabilitation Act of 1973

*Q. Training Plan*

See Appendix 11.

## VI. Appendices

## **Appendix 1**

### **DHS Delegation No. 3095**

#### **Delegation from Secretary to Officer for Civil Rights and Civil Liberties**

Department of Homeland Security  
Delegation Number: 3095  
Issue Date: 06/05/2003

**DELEGATION TO THE  
OFFICER FOR CIVIL RIGHTS  
AND CIVIL LIBERTIES FOR  
MATTERS INVOLVING CIVIL  
RIGHTS, CIVIL LIBERTIES,  
AND EQUAL EMPLOYMENT  
OPPORTUNITY**

---

**I. Purpose**

This is a delegation of authority to the Officer for Civil Rights and Civil Liberties in the Office of the Secretary to fulfill responsibilities set forth in Title VII of the Homeland Security Act of 2002 (the Act), P.L. 107-296.

**II. Delegation**

By virtue of the authority vested in the Secretary of Homeland Security by law, including the Homeland Security Act of 2002, the Officer for Civil Rights and Civil Liberties is hereby delegated the authority to:

- A. Direct the Department's processing of equal employment opportunity (EEO) complaints to ensure that EEO complaints are handled in a timely and cost-effective manner. The process includes:
1. accepting or dismissing [formal]complaints of discrimination;
  2. conducting complete and fair investigations;
  3. rendering all final decisions and final orders on individual and class complaints of discrimination pursuant to the administrative process described in 29 CFR 1614;
  4. rendering decisions on allegations of breach of settlement agreements; and
  5. requiring any authorized form of appropriate remedial action, whenever necessary.



B. Direct the Department's equal employment opportunity programs on coordination with the Chief Human Capitol Officer, including, but not limited to:

1. the Hispanic Employment Program (including the Educational Excellence for Hispanic Americans Program);
2. the Federal Women's Program;
3. the Historically Black Colleges and Universities Program;
4. the Federal Equal Opportunity Recruitment Program;
5. the Program to Increase Employment Opportunity for Individuals with Disabilities;
6. the Affirmative Employment Program for Minorities and Women; and
7. the Disabled Veterans Affirmative Action Program.

C. Direct the Department's diversity initiative;

D. Evaluate the effectiveness of EEO programs, including diversity training activities, and recommend to the head of an organizational element and the Secretary appropriate improvements in the programs;

E. Assure that all federally-assisted and federally-conducted programs or activities of the Department comply with the provisions of Title VI of the Civil Rights Act of 1964, as amended; Title IX of the Education Amendments of 1972, as amended; the Rehabilitation Act of 1973, as amended; the Age Discrimination Act of 1975, as amended; and related Executive Orders, including but not limited to, Executive Orders 12898, 13160, 13163, and 13166.

F. Promulgate policies, rules and regulations to carry out the responsibilities in this Delegation Order;

G. Approve procedures for the use of alternative dispute resolution methods in EEO complaints;

H. Develop and administer an effective dispute prevention program;

I. Administer such projects as the Secretary shall establish;

J. Review and assess information alleging abuses of civil rights and civil liberties, including allegations of racial and ethnic profiling by employees and officials of the Department;

K. Publish information on the responsibilities and functions of the Officer of Civil Rights and Civil Liberties in accordance with this Delegation Order and other applicable Management Directives;

L. Carry out the functions and exercise the authority in 29 CFR 1614.110 to take final action in Departmental EEO complaints; and

M. Perform such other duties as the Secretary may direct.

### **III. Re-delegation**

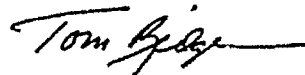
The powers, authorities, responsibilities, and functions of the Officer for Civil Rights and Civil Liberties may be re-delegated in writing to any other appropriate subordinate official.

### **IV. Authorities**

The Homeland Security Act of 2002, P.L. 107-296; 5 U.S.C. 301.

### **V. Office of Primary Interest**

The Office of Civil Rights and Civil Liberties is the office with primary interest in this delegation.



Secretary of Homeland Security

## **Appendix 2**

### **DHS Delegation No. 19000 Sub-Delegation to Deputy Officer for EEO Programs**

Department of Homeland Security

Delegation Number: 19000

Issue Date: 08/01/2006

## **DELEGATION TO THE DEPUTY OFFICER FOR EQUAL EMPLOYMENT OPPORTUNITY PROGRAMS**

---

### **I. Purpose**

The authorities contained in this delegation are held by the Officer for Civil Rights and Civil Liberties and are subject to the Officer for Civil Rights and Civil Liberties' direction. This delegation vests authority in the Deputy Officer for Equal Employment Opportunity (EEO) Programs to perform the functions of the Officer for Civil Rights and Civil Liberties as specified below.

### **II. Delegation**

Pursuant to the authority vested in me by the Secretary of Homeland Security to fulfill the responsibilities under Title VII of the Homeland Security Act of 2002, I hereby delegate to the Deputy Officer for EEO Programs the responsibility for:

- A. Directing the administrative processing of complaints of discrimination to ensure handling in a timely and cost-effective manner including;
  - 1. Providing counseling for informal complaints of discrimination when requested;
  - 2. Accepting or dismissing formal complaints of discrimination;
  - 3. Conducting complete and fair investigations of accepted complaints of discrimination;
  - 4. Coordinating an effective Alternative Dispute Resolution Program for resolution of complaints of discrimination under 29 C.F.R. Part 1614; and
  - 5. Organizing and coordinating DHS personnel and budgetary resources to accomplish this purpose to extent required by existing DHS management directives.

- B. Directing the EEO program including;
  - 1. Establishing and maintaining EEO programs and initiatives with the goal of ensuring that all employment decisions are free from discrimination and the removal of barriers to free and open workplace competition;
  - 2. Fulfilling reporting requirements on behalf of DHS with the White House, Congress, and independent executive agencies when required by law, regulation or Executive Order;
  - 3. Evaluate the effectiveness of EEO programs throughout DHS and recommending appropriate improvements to the head of a component and to the Officer for Civil Rights and Civil Liberties.
- C. Directing the diversity initiative including:
  - 1. Compliance with applicable statutes, regulations, orders and other directives relating to establishing and maintaining diversity in the workforce;
  - 2. Identification and elimination of policies, practices and procedures that hinder hiring, retention and promotion solely on the basis of qualifications, including diversity training;
  - 3. Evaluation of the effectiveness of DHS' efforts to establish and maintain a diverse workforce.
- D. Taking final action on behalf of DHS:
  - 1. In all individual and class complaints of discrimination where a Final Agency Decision is elected;
  - 2. In all individual and class complaints of discrimination where a hearing before the EEOC is elected;
  - 3. In authorizing all remedial actions (including hiring or reinstatement, back pay, compensatory damages, attorney's fees and disciplinary actions for discriminatory conduct) and coordinating compliance with such actions properly ordered by the EEOC; and
  - 4. On allegations of breach of settlement agreements entered into by DHS to resolve complaints of discrimination;
- E. Performing such other duties as the Officer for Civil Rights and Civil Liberties may direct.

### **III. Re-delegation**

The authorities in this delegation may be re-delegated to the appropriate Component EEO Officers where such re-delegation fulfills the responsibilities of the Officer for Civil Rights and Civil Liberties and is not inconsistent with law (including rules and regulations.)

### **IV. Authorities**

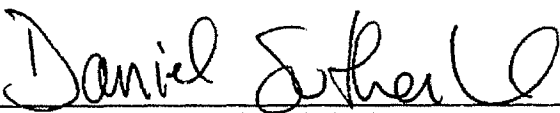
- A. P. L. 107-296, The Homeland Security Act of 2002
- B. DHS Delegation 3095, "Delegation to the Officer for Civil Rights and Civil Liberties for Matters Involving Civil Rights, Civil Liberties and Equal Employment Opportunity"

### **V. Office of Primary Interest**

The offices of primary interest in this delegation are the offices and subordinate offices of: (1) the Director, Equal Employment Opportunity; (2) the Deputy Officer for EEO Programs; and (3) the Component EEO Officers.

### **VI. Cancellation**

This delegation supersedes Delegation 3096, "Delegation Signature Authority for the EEO Complaint Process."



---

Daniel W. Sutherland  
Officer for Civil Rights and Civil Liberties

8-1-06

---

Date



## **Appendix 3**

### **DHS Delegation No. 19002 Delegation to Officer for Civil Rights and Civil Liberties to Integrate and Manage Civil Rights, Civil Liberties and EEO Programs**

Department of Homeland Security  
Delegation Number: 19002  
Issue Date: 02/04/2008

**DELEGATION TO THE  
OFFICER FOR CIVIL RIGHTS  
AND CIVIL LIBERTIES TO  
INTEGRATE AND MANAGE  
CIVIL RIGHTS, CIVIL  
LIBERTIES AND EQUAL  
EMPLOYMENT  
OPPORTUNITY PROGRAMS**

---

**I. Purpose**

This is a delegation of authority to the Officer for Civil Rights and Civil Liberties to integrate and manage Civil Rights, Civil Liberties, and Equal Employment Opportunity (EEO) programs throughout the Department of Homeland Security (DHS).

**II. Delegation**

The Officer for Civil Rights and Civil Liberties is hereby delegated the authority to:

A. Direct and oversee the implementation of the integration of Civil Rights and Civil Liberties (CRCL) across the Department. The Office for Civil Rights and Civil Liberties will serve as the foundational DHS organization through which all Department-wide CRCL activities will be overseen, defined, and measured. DHS will standardize Civil Rights and Civil Liberties policies across DHS to ensure functional excellence, to include:

1. Developing and coordinating with Component heads, and approving, the policy direction and management of the Civil Rights, Civil Liberties and EEO programs.
2. In conjunction with Component heads and the Chief Financial Officer, reviewing and approving Civil Rights, Civil Liberties, EEO and Disability Coordinator budget formation and execution, and establishing reimbursable agreements.
3. Participating in and approving the recruitment and selection of key Civil Rights, Civil Liberties, EEO and Disability Coordinator officials.

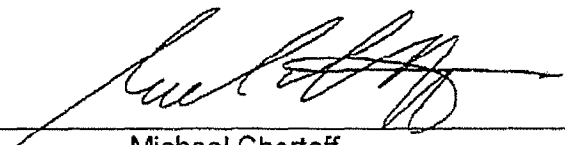
4. Coordinating with Component heads to establish training and development for Civil Rights, Civil Liberties and EEO professionals, and approving such training and development.
5. Participating in and approving the establishment of appropriate staffing plans.
6. In conjunction with Component heads and the Under Secretary for Management, coordinating, implementing and approving a strategy for the delivery and maintenance of enterprise EEO solutions and services.
7. Coordinating with Component heads on and approving any reorganization and/or restructuring plans affecting the Component's Civil Rights, Civil Liberties, EEO and Disability Coordinator functions prior and subsequent to implementation.


### **III. Re-delegation**

The authority of the Officer for Civil Rights and Civil Liberties may be further re-delegated to the Deputy Officer for Programs and Compliance or the Deputy Officer for Equal Employment Opportunity Programs within the Office for Civil Rights and Civil Liberties

### **IV. Office of Primary Interest**

The Office for Civil Rights and Civil Liberties has the primary interest in this delegation.

  
\_\_\_\_\_  
Michael Chertoff  
Secretary

  
\_\_\_\_\_  
Date

## **Appendix 4**

### **DHS No FEAR Act Federal District Court Data for FY 2008**

U.S. Department of Homeland Security FY08 No FEAR Act Data on Federal Cases (Section 203)

NUMBER OF CASES FILED IN FEDERAL COURT, PENDING OR RESOLVED UNDER §724.302(a)(1)							Comparative Data Under §724.302(b)
Provision of Law	Title VII	ADEA	EPA	Rehab. Act	Whistleblower	Total	
	169	48	15	26	5	213	N/A
CBP	38	16	0	5	0	44	
CIS	11	3	0	4	0	18	
FEMA	2	2	0	1	0	3	
FLETC	12	3	1	3	0	12	
HQ	1	0	0	1	0	2	
ICE	30	16	2	10	4	48	
TSA	67	8	12	2	1	78	
USCG	3	0	0	0	0	3	
USSS	5	0	0	0	0	5	

STATUS OF CASES AND REIMBURSEMENT UNDER §724.302(a)(1-2)							Comparative Data Under §724.302(b)
Provision of Law	Title VII	ADEA	EPA	Rehab. Act	Whistleblower	Total	
Complaints Filed (FY08)	55	13	1	16	2	68	N/A
CBP	8	3	0	2	0	10	
CIS	3	1	0	3	0	7	
FEMA	1	0	0	0	0	1	
FLETC	0	0	0	0	0	0	
HQ	0	0	0	0	0	0	
ICE	9	4	1	3	1	12	
TSA	33	5	0	8	1	37	
USCG	1	0	0	0	0	1	
USSS	0	0	0	0	0	0	

U.S. Department of Homeland Security FY08 No FEAR Act Data on Federal Cases (Section 203)

<b>FY08</b>	<i>(i) Status or Disposition as of end of FY08</i>						
	Pending Hearing	84	25	3	21	1	107
	Heard, Pending Decision	11	1	0	3	0	12
	<i>Decisions</i>						
	<i>In favor of Complainant, either in its entirety or partial</i>	2	0	0	0	0	2
	<i>In favor of Agency</i>	39	7	0	4	0	45
	Arbitration/Mediation	0	0	0	0	0	0
	Settlement	15	4	0	3	0	21
	Appeal	2	0	0	0	0	2
	Remand	0	0	0	0	0	0
	<i>(ii) Amount of Reimbursement in FY08</i>	\$638,186	\$38,000	\$ -	\$ 50,000	\$ -	\$726,186
	<b>CBP</b>	\$ 67,000	\$35,000	\$ -	\$ -	\$ -	\$ 102,000
	<b>CIS</b>	\$ 40,000	\$ 3,000	\$ -	\$ -	\$ -	\$ 43,000
	<b>FEMA</b>	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
	<b>FLETC</b>	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
	<b>HQ</b>	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
	<b>ICE</b>	\$35,000					\$35,000
	<b>TSA</b>	\$441,186	\$ -	\$ -	\$50,000	\$ -	\$491,186
	<b>USCG</b>	\$55,000	\$ -	\$ -	\$ -	\$ -	\$55,000
	<b>USSS</b>	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
	<i>(iii) Amount of Reimbursement for Attorney Fees in FY08</i>	\$135,099	\$ -	\$ -	\$ -	\$ -	\$135,099
	<b>CBP</b>	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
	<b>CIS</b>	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
	<b>FEMA</b>	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
	<b>FLETC</b>	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -

U.S. Department of Homeland Security FY08 No FEAR Act Data on Federal Cases (Section 203)

HQ	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
ICE	\$35,000	\$ -	\$ -	\$ -	\$ -	\$ -	\$35,000
TSA	\$100,099	\$ -	\$ -	\$ -	\$ -	\$ -	\$100,099
USCG	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
USSS	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -

TOTAL NUMBER OF EMPLOYEES DISCIPLINED IN CASES UNDER §724.302(a)(3)							Comparative Data Under §724.302(b)
Provision of Law	Title VII	ADEA	Equal Pa	Rehab. Act	Whistleblower	Total	
<i>Total Number of Employees and Specific Nature of Discipline in FY08</i>	3	1	0	0	0	3	N/A
CBP	0	0	0	0	0	0	
CIS	0	0	0	0	0	0	
FEMA	0	0	0	0	0	0	
FLETC	2	0	0	0	0	2	
HQ	0	0	0	0	0	0	
ICE	1	1	0	0	0	1	
TSA	0	0	0	0	0	0	
USCG	0	0	0	0	0	0	
USSS	0	0	0	0	0	0	
<i>Reprimand</i>	0	0	0	0	0	0	
CBP	0	0	0	0	0	0	
CIS	0	0	0	0	0	0	
FEMA	0	0	0	0	0	0	
FLETC	0	0	0	0	0	0	
HQ	0	0	0	0	0	0	
ICE	0	0	0	0	0	0	
TSA	0	0	0	0	0	0	

U.S. Department of Homeland Security FY08 No FEAR Act Data on Federal Cases (Section 203)

FY08	USCG	0	0	0	0	0	0
	USSS	0	0	0	0	0	0
	<i>Suspension without Pay</i>	1	0	0	0	0	1
	CBP	0	0	0	0	0	0
	CIS	0	0	0	0	0	0
	FEMA	0	0	0	0	0	0
	FLETC	1	0	0	0	0	1
	HQ	0	0	0	0	0	0
	ICE	0	0	0	0	0	0
	TSA	0	0	0	0	0	0
	USCG	0	0	0	0	0	0
	USSS	0	0	0	0	0	0
	<i>Reduction of Grade or Pay</i>	1	0	0	0	0	1
	CBP	0	0	0	0	0	0
	CIS	0	0	0	0	0	0
	FEMA	0	0	0	0	0	0
	FLETC	1	0	0	0	0	1
	HQ	0	0	0	0	0	0
	ICE	0	0	0	0	0	0
	TSA	0	0	0	0	0	0
	USCG	0	0	0	0	0	0
	USSS	0	0	0	0	0	0
	<i>Removal</i>	1	1	0	0	0	1
	CBP	0	0	0	0	0	0
	CIS	0	0	0	0	0	0
	FEMA	0	0	0	0	0	0
	FLETC	0	0	0	0	0	0
	HQ	0	0	0	0	0	0
	ICE	1	1	0	0	0	1
	TSA	0	0	0	0	0	0
	USCG	0	0	0	0	0	0
	USSS	0	0	0	0	0	0



U.S. Department of Homeland Security FY08 No FEAR Act Data on Federal Cases (Section 203)

TOTAL NUMBER OF EMPLOYEES DISCIPLINED, WHETHER OR NOT IN CONNECTION WITH FEDERAL CASES UNDER §724.302(a)(5) (I.E. INCLUDING EEO ADMINISTRATIVE CASES)							Comparative Data Under §724.302(b)	
Provision of Law		Title VII	ADEA	Equal Pa	Rehab. Act		Total	
FY08	Total Number of Employees and Specific Nature of Discipline in FY08	4	2	0	0	0	4	N/A
	CBP	0	0	0	0	0	0	
	CIS	0	0	0	0	0	0	
	FEMA	0	0	0	0	0	0	
	FLETC	2	0	0	0	0	2	
	HQ	0	0	0	0	0	0	
	ICE	2	2	0	0	0	2	
	TSA	0	0	0	0	0	0	
	USCG	0	0	0	0	0	0	
	USSS	0	0	0	0	0	0	
	Reprimand	0	0	0	0	0	0	
	CBP	0	0	0	0	0	0	
	CIS	0	0	0	0	0	0	
	FEMA	0	0	0	0	0	0	
	FLETC	0	0	0	0	0	0	
	HQ	0	0	0	0	0	0	
	ICE	0	0	0	0	0	0	
	TSA	0	0	0	0	0	0	
	USCG	0	0	0	0	0	0	
	USSS	0	0	0	0	0	0	
Suspension without Pay	1	0	0	0	0	1		

U.S. Department of Homeland Security FY08 No FEAR Act Data on Federal Cases (Section 203)

CBP	0	0	0	0	0	0
CIS	0	0	0	0	0	0
FEMA	0	0	0	0	0	0
FLETC	1	0	0	0	0	1
HQ	0	0	0	0	0	0
ICE	0	0	0	0	0	0
TSA	0	0	0	0	0	0
USCG	0	0	0	0	0	0
USSS	0	0	0	0	0	0
<i>Reduction of Grade or Pay</i>	2	1	0	0	0	2
CBP	0	0	0	0	0	0
CIS	0	0	0	0	0	0
FEMA	0	0	0	0	0	0
FLETC	1	0	0	0	0	1
HQ	0	0	0	0	0	0
ICE	1	1	0	0	0	1
TSA	0	0	0	0	0	0
USCG	0	0	0	0	0	0
USSS	0	0	0	0	0	0
<i>Removal</i>	1	1	0	0	0	1
CBP	0	0	0	0	0	0
CIS	0	0	0	0	0	0
FEMA	0	0	0	0	0	0
FLETC	0	0	0	0	0	0
HQ	0	0	0	0	0	0
ICE	1	1	0	0	0	1
TSA	0	0	0	0	0	0
USCG	0	0	0	0	0	0
USSS	0	0	0	0	0	0

## **Appendix 5**

### **DHS No FEAR Act Final Year End EEO Data for FY 2004-2008**

DHS EQUAL EMPLOYMENT OPPORTUNITY DATA POSTED PURSUANT TO THE NO FEAR ACT:  
Data as of September 30, 2008 - 4th Quarter 2008

Complaint Activity	Comparative Data					2008 Thru 9-30
	Previous Fiscal Year Data					
	2003	2004	2005	2006	2007	
Number of Complaints Filed			1199	1083	1086	1145
Number of Complainants			1075	1010	1045	1099
Repeat Filers			80	54	42	52

Complaints by Basis	Comparative Data					2008 Thru 9-30
	Previous Fiscal Year Data					
	2003	2004	2005	2006	2007	
<i>Note: Complaints can be filed alleging multiple bases. The sum of the bases may not equal total complaints filed.</i>						
Race			339	326	368	298
Color			75	83	80	92
Religion			50	57	38	48
Reprisal			406	391	389	432
Sex			408	349	334	385
National Origin			197	193	158	175
Equal Pay Act			n/a	1	7	3
Age			287	336	283	321
Disability			264	258	260	238
Non-EEO			16	44	24	16

Complaints by Issue	Comparative Data					2008 Thru 9-30
	Previous Fiscal Year Data					
	2003	2004	2005	2006	2007	
<i>Note: Complaints can be filed alleging multiple issues. The sum of the issues may not equal total complaints filed.</i>						
Appointment/Hire			16	45	57	57
Assignment of Duties			68	59	61	68
Awards			60	25	15	22
Conversion to Full-time			2	1	3	1
<b>Disciplinary Action</b>						
Demotion			17	6	18	11
Reprimand			48	19	50	46
Removal			36	23	22	34
Suspension			41	40	45	30
Other			n/a	28	1	14
Duty Hours			14	14	22	15
Evaluation Appraisal			41	36	38	40
Examination/Test			5	8	8	5
<b>Harassment</b>						
Non-Sexual			189	282	289	314
Sexual			43	51	37	33
Medical Examination			2	14	8	10
Pay (Including Overtime)			26	28	25	27
Promotion/Non-Selection			239	287	277	248
<b>Reassignment</b>						
Denied			21	28	34	34
Directed			43	30	29	28
Reasonable Accommodation			27	34	43	47
Reinstatement			0	4	4	2
Retirement			2	4	5	2
Termination			162	136	135	112
Terms/Conditions of Employment			87	116	142	108
Time and Attendance			34	42	36	54
Training			39	29	26	23
Other			96	28	35	44

Processing Time	Comparative Data					2008 Thru 9-30
	Previous Fiscal Year Data					
	2003	2004	2005	2006	2007	
Complaints pending during fiscal year						

DHS EQUAL EMPLOYMENT OPPORTUNITY DATA POSTED PURSUANT TO THE NO FEAR ACT:  
Data as of September 30, 2008 - 4th Quarter 2008

Average number of days in investigation stage			322	406	311.5	249.9
Average number of days in final action stage			n/a	326	428.1	296
Complaint pending during fiscal year where hearing was requested						
Average number of days in investigation stage			331	338	242.5	259.4
Average number of days in final action stage			n/a	48	72.5	64
Complaint pending during fiscal year where hearing was not requested						
Average number of days in investigation stage			301	413	347.3	312.8
Average number of days in final action stage			842	443	587.6	660.5

Complaints Dismissed by Agency	Comparative Data					2008 Thru 9-30
	Previous Fiscal Year Data					
	2003	2004	2005	2006	2007	
Total Complaints Dismissed by Agency			231	281	187	247
Average days pending prior to dismissal			306	254	257	220
Complaints Withdrawn by Complainants	Comparative Data					2008 Thru 9-30
Previous Fiscal Year Data	2003	2004	2005	2006	2007	
Total Complaints Withdrawn by Complainants			n/a	81	96	109

Total Final Actions Finding Discrimination	Comparative Data										2008 Thru 9-30	
	Previous Fiscal Year Data											
	2003		2004		2005		2006		2007			
	#	%	#	%	#	%	#	%	#	%	#	%
Total Number Findings					12		29		12		21	
Without Hearing					2	17%	4	14%	2	17%	0	0%
With Hearing					10	83%	25	86%	10	83%	21	100%

Findings of Discrimination Rendered by Basis	Comparative Data										2008 Thru 9-30	
	Previous Fiscal Year Data											
	2003		2004		2005		2006		2007			
	#	%	#	%	#	%	#	%	#	%	#	%
<b>Total Number Findings</b>					12		29		12		21	
Race					1	8%	21	72%	3	25%	7	33%
Color					0	0%	2	7%	0	0%	3	14%
Religion					1	8%	1	3%	1	8%	5	24%
Reprisal					3	25%	10	34%	6	50%	5	24%
Sex					5	42%	10	34%	7	58%	7	33%
National Origin					1	8%	1	3%	1	8%	8	38%
Equal Pay Act					0	0%	0	0%	0	0%	0	0%
Age					3	25%	5	17%	2	17%	4	10%
Disability					5	42%	3	10%	0	0%	2	10%
Non-EEO					0	0%	0	0%	0	0%	0	0%
<b>Findings After Hearing</b>					10	83%	25	86%	10	83%	21	100%
Race					1	100%	18	86%	2	50%	7	100%
Color					0	0%	1	50%	0	0%	3	100%
Religion					1	100%	1	100%	1	100%	5	100%
Reprisal					3	100%	10	100%	4	67%	5	100%
Sex					5	100%	10	100%	5	71%	7	100%
National Origin					1	100%	1	100%	1	100%	8	100%
Equal Pay Act					0	0%	0	0%	0	0%	0	0%
Age					3	100%	5	100%	2	100%	4	100%
Disability					4	80%	3	100%	0	0%	2	100%
Non-EEO					0	0%	0	0%	0	0%	0	0%

DHS EQUAL EMPLOYMENT OPPORTUNITY DATA POSTED PURSUANT TO THE NO FEAR ACT:  
Data as of September 30, 2008 - 4th Quarter 2008

<b>Findings Without Hearing</b>					2	17	4	14	2	17%	0	0%
Race					0	0	3	14	2	50%	0	0%
Color					0	0	1	50	0	0%	0	0%
Religion					0	0	0	0	0	0%	0	0%
Reprisal					0	0	0	0	2	23%	0	0%
Sex					0	0	0	0	2	29%	0	0%
National Origin					0	0	0	0	0	0%	0	0%
Equal Pay Act					0	0	0	0	0	0%	0	0%
Age					0	0	0	0	0	0%	0	0%
Disability					1	20	0	0	0	0%	0	0%
Non-EEO					0	0	0	0	0	0%	0	0%

Findings of Discrimination Rendered by Issue	Comparative Data										2008 Thru 9-30	
	Previous Fiscal Year Data											
	2003		2004		2005		2006		2007		#	%
#	%	#	%	#	%	#	%	#	%			
<b>Total Number Findings</b>					12		29		12		21	
Appointment/Hire					2	17	4	14	1	8%	2	10%
Assignment of Duties					2	17	1	3	1	8%	1	5%
Awards					0	0	1	3	0	0%	0	0%
Conversion to Full-time					0	0	0	0	0	0%	0	0%
Disciplinary Action					0	0	2	7	0	0%	0	0%
Demotion					0	0	0	0	0	0%	0	0%
Reprimand					0	0	2	7	0	0%	0	0%
Suspension					0	0	0	0	1	8%	0	0%
Removal					0	0	0	0	0	0%	2	10%
Other					0	0	0	0	1	8%	0	0%
Duty Hours					0	0	0	0	0	0%	0	0%
Evaluation Appraisal					0	0	2	0	0	0%	0	0%
Examination/Test					0	0	0	0	0	0%	0	0%
Harassment					1	8	11	40	2	17%	5	24%
Non-Sexual					1	8	9	31	2	17%	5	24%
Sexual					0	0	2	7	0	0%	0	0%
Medical Examination					0	0	1	3	0	0%	0	0%
Pay (Including Overtime)					0	0	1	3	1	8%	0	0%
Promotion/Non-Selection					4	33	10	34	2	17%	11	52%
Reassignment					0	0	0	0	2	17%	0	0%
Denied					0	0	0	0	0	0%	0	0%
Directed					0	0	0	0	2	17%	0	0%
Reasonable Accommodation					0	0	1	3	0	0%	0	0%
Reinstatement					0	0	0	0	0	0%	0	0%
Retirement					2	17	0	0	0	0%	0	0%
Termination					0	0	5	17	2	17%	2	10%
Terms/Conditions of					0	0	3	10	2	17%	2	10%
Time and Attendance					0	0	1	3	2	17%	0	0%
Training					0	0	0	0	0	0%	0	0%
Other					0	0	0	0	1	8%	0	0%

<b>Findings After Hearing</b>					10	83	25	86	10	83%	21	100%
Appointment/Hire					2	100	4	100	1	100%	2	100%
Assignment of Duties					2	100	1	100	1	100%	1	100%
Awards					0	0	1	100	0	0%	0	0%
Conversion to Full-time					0	0	0	0	0	0%	0	0%
Disciplinary Action					0	0	0	0	0	0%	0	0%
Demotion					0	0	0	0	0	0%	0	0%
Reprimand					0	0	2	100	0	0%	0	0%
Suspension					0	0	0	0	1	100%	0	0%
Removal					0	0	0	0	0	0%	2	100%
Other					0	0	0	0	1	100%	0	0%
Evaluation Appraisal					0	0	1	50	0	0%	0	0%
Examination/Test					0	0	0	0	0	0%	0	0%
Harassment					1	100	7	78	2	100%	5	100%
Non-Sexual					1	100	5	71	2	100%	5	100%
Sexual					0	0	2	100	0	0%	0	0%
Medical Examination					0	0	1	100	0	0%	0	0%
Pay (Including Overtime)					0	0	1	100	1	100%	0	0%
Promotion/Non-Selection					4	100	10	100	2	100%	11	100%
Reassignment					0	0	0	0	0	0%	0	0%
Denied					0	0	0	0	0	0%	0	0%
Directed					0	0	0	0	0	0%	0	0%
Reasonable Accommodation					0	0	1	100	0	0%	0	0%
Reinstatement					0	0	0	0	0	0%	0	0%
Retirement					0	0	0	0	0	0%	0	0%
Termination					1	50	5	100	0	0%	2	100%
Terms/Conditions of					0	0	3	100	2	100%	2	100%
Employment												
Time and Attendance					0	0	0	0	2	100%	0	0%
Training					0	0	0	0	0	0%	0	0%



DHS EQUAL EMPLOYMENT OPPORTUNITY DATA POSTED PURSUANT TO THE NO FEAR ACT:  
Data as of September 30, 2008 - 4th Quarter 2008

Other					0	0	0	0	1	100%	0	0%
<b>Findings Without Hearing</b>					2	17	4	14	2	17%	0	0%
Appointment/Hire					0	0	0	0	0	0%	0	0%
Assignment of Duties					0	0	0	0	0	0%	0	0%
Awards					0	0	0	0	0	0%	0	0%
Conversion to Full-time					0	0	0	0	0	0%	0	0%
Disciplinary Action					0	0	0	0	0	0%	0	0%
Demotion					0	0	0	0	0	0%	0	0%
Reprimand					0	0	0	0	0	0%	0	0%
Suspension					0	0	0	0	0	0%	0	0%
Removal					0	0	0	0	0	0%	0	0%
Other					0	0	0	0	0	0%	0	0%
Duty Hours					0	0	0	0	0	0%	0	0%
Evaluation Appraisal					0	0	1	50	0	0%	0	0%
Examination/Test					0	0	0	0	0	0%	0	0%
Harassment					0	0	4	36	0	0%	0	0%
Non-Sexual					0	0	4	44	0	0%	0	0%
Sexual					0	0	0	0	0	0%	0	0%
Medical Examination					0	0	0	0	0	0%	0	0%
Pay (Including Overtime)					0	0	0	0	0	0%	0	0%
Promotion/Non-Selection					0	0	0	0	0	0%	0	0%
Reassignment					0	0	0	0	2	100%	0	0%
Denied					0	0	0	0	0	0%	0	0%
Directed					0	0	0	0	2	100%	0	0%
Reasonable Accommodation					0	0	0	0	0	0%	0	0%
Reinstatement					0	0	0	0	0	0%	0	0%
Retirement					0	0	0	0	0	0%	0	0%
Termination					1	50	0	0	0	0%	0	0%
Terms/Conditions of Employment					0	0	0	0	0	0%	0	0%
Time and Attendance					0	0	1	100	0	0%	0	0%
Training					0	0	0	0	0	0%	0	0%
Other					0	0	0	0	0	0%	0	0%

Pending Complaints Filed in Previous Fiscal Years by Status	Comparative Data					2008 Thru 9-30
	Previous Fiscal Year Data					
	2003	2004	2005	2006	2007	
Total complaints from previous Fiscal Years			2595	2096	1411	<b>1382</b>
Total Complainants			2262	1758	1315	<b>1280</b>
<b>Number complaints pending</b>						
Investigation			997	480	147	<b>164</b>
Hearing			652	574	438	<b>468</b>
Final Action			651	683	679	<b>649</b>
Appeal with EEOC Office of Federal Operations			254	188	147	<b>164</b>

Complaint Investigations	Comparative Data					2008 Thru 9-30
	Previous Fiscal Year Data					
	2003	2004	2005	2006	2007	
Pending Complaints Where Investigations Exceeds Required Time Frames			634	154	367	<b>375</b>

## **Appendix 6**

### **DHS Secretary's Diversity Policy Statement to Component Heads**






# Homeland Security

October 16, 2007

MEMORANDUM FOR: Component Heads

FROM: Michael Chertoff 

SUBJECT: Workforce Diversity at Department of Homeland Security (DHS)

The demands of our mission are carried out by people with broadly diverse talents and backgrounds, who require a multitude of technical, managerial, administrative, and leadership skills. Moreover, a diverse workforce helps us better understand the diversity of our customers – the American people – and improves our effectiveness as we work to anticipate, protect against, and recover from threats and hazards to our Nation.

The DHS leadership team recognized the importance of diversity when we developed the eight DHS Leadership Competencies. Leaders and aspiring leaders in the Department are expected to be diversity advocates; promoting workforce diversity; providing fair and equitable recognition and equal opportunity; and addressing allegations of harassment or discrimination appropriately and promptly.

I encourage you to leverage the recruiting efforts led by the Office of the Chief Human Capital Officer (OCHCO). For senior positions in your organization, it may be appropriate to engage an executive search firm that has a proven ability to reach diverse candidates, especially at the GS-14, GS-15, and SES levels. OCHCO can help you identify appropriate search firms.

On August 31, 2007, you were sent a request from the Deputy Officer for Equal Employment Opportunity Programs and Chief Human Capital Officer to complete the annual Federal Equal Opportunity Recruitment Program (FEORP) Plan Certification and Accomplishment Report. **The Office of Personnel Management requires Federal agencies to complete this report** on results and efforts to recruit, hire, and train a diverse workforce. I encourage you to respond openly and accurately to the FEORP request. It provides an excellent opportunity to showcase diversity initiatives already underway in your organization and serves as a springboard for your upcoming diversity initiatives.

To further our efforts, I have directed the development of a DHS diversity strategy and will provide more information as the strategy develops. Thank you for your continued support of our efforts to develop a DHS that reflects and serves the breadth of our Nation.

Attachments

## **Appendix 7**

### **DHS Secretary's Diversity Policy Statement to All Employees**

**Arora, Junish**

**From:** DHS Employee Communications  
**Sent:** Friday, October 31, 2008 3:31 PM  
**To:** ^DHS-HQ-ALL-QB  
**Subject:** MEMORANDUM FROM SECRETARY CHERTOFF: WORKFORCE DIVERSITY AT THE DEPARTMENT OF HOMELAND SECURITY

MEMORANDUM FOR: All Department of Homeland Security Employees  
 FROM: Michael Chertoff /s/  
 SUBJECT: Workforce Diversity at the Department of Homeland Security

To protect and safeguard the homeland effectively, it is important that we reflect the Nation that we serve and capitalize on one of its greatest strengths – the exceptional diversity of our citizens. A diverse DHS workforce helps us better understand the diversity of our customers in a multicultural society. It also provides us a dynamic workforce with the requisite talents, multidisciplinary knowledge, and up-to-date skills to optimize our effectiveness as we work to secure the country and preserve our freedoms.

To achieve the highest level of organizational performance, DHS will maintain a positive work environment where the similarities and differences of individuals are valued, so that all can reach their potential and maximize their contributions to the Department's strategic goals and objectives. This requires moving beyond compliance with equal employment opportunity (EEO) laws to a much broader view of diversity that consciously acknowledges and embraces all individual differences as a way to enhance our organizational capacity. To meet the needs of our customers in this complex and interdependent society, DHS values a diverse workforce to ensure a rich source of business solutions, ideas, and decisions to accomplish our mission. Our efforts must include engagement, recruitment, retention, employee development, and succession planning.

Our commitment to enhancing diversity begins with me and our senior leadership team. Last year, we took a major step in this direction by charging our executive leaders to become "diversity advocates" and incorporating this competency into their performance plans. This year, the Office of the Chief Human Capital Officer issued additional guidance on rating executive performance regarding diversity.

I have initiated the following actions to further enhance and leverage the diversity of our workforce now and in the future:

- Established a DHS *Diversity Council* composed of the senior management from each Component and chaired by the Under Secretary for Management. The Chief Human Capital Officer and the Office for Civil Rights and Civil Liberties serve as *ex officio* advisers.
- Issued a DHS *Corporate Diversity Strategy* under the aegis of the Council.
- Developed a DHS *Diversity Master Action Plan* with an eye toward developing similar, complimentary Component diversity action plans next year that are aligned with the final Diversity Strategy. Significant actions in the Plan for FY 2009 include:
  - Implementing diversity management training to all executives, managers, and supervisors;
  - Establishing a DHS Diversity Advisory Forum of external stakeholders and partners;
  - Enhancing our efforts in the areas of rotational assignments, mentoring, and coaching; and

- Increasing our diversity outreach efforts in recruiting executives and senior managers.

We must integrate diversity permanently into the fabric of our business culture rather than view it as a separate, stand-alone program. Diversity is an organizational priority and not merely a Human Resources or EEO program. We all have responsibility for enhancing diversity, and I welcome your ideas to help us achieve and maintain a qualified, diverse workforce at all levels of the Department.

## **Appendix 8**

### **DHS Memorandum on 2008 No FEAR Act Training**



# Homeland Security

MEMORANDUM FOR: ALL DHS FEDERAL EMPLOYEES

FROM:

George L. Tanner, Ph.D.  
Chief Learning Officer

Handwritten signature of George L. Tanner in black ink.

Stephen I. Shih, Esq.  
Deputy Officer for EEO Programs

Handwritten signature of Stephen I. Shih in black ink.

Office for Civil Rights and Civil Liberties

SUBJECT:

Training for All Federal Employees Pursuant to the Notification and  
Federal Employee Antidiscrimination and Retaliation Act of 2002

On May 15, 2002, Congress enacted the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (No FEAR Act), Public Law 107-174. Section 202(c) of the No FEAR Act requires each Federal agency to provide training to all employees regarding their rights and remedies under the Federal antidiscrimination, whistleblower, and retaliation laws listed in the No FEAR Act. Additionally, 5 C.F.R. § 724.202 requires Federal agencies to provide training on a cycle of no longer than every two years.

The DHS Office for Civil Rights and Civil Liberties, in collaboration with the Chief Learning Officer, announces the release of an online training course entitled "DHS No FEAR Act Training" in accordance with the No FEAR Act and 5 C.F.R. § 724.202. All DHS Federal employees should access and complete the training through their respective Learning Management System (LMS) by February 20, 2009. The "DHS No FEAR Act Training" will take approximately 45 minutes to complete and is intended only for DHS Federal personnel.

For employees that serve in positions or situations with no computer access, Component Heads should assign responsibility to an appropriate office (e.g., EEO or Civil Rights Office, Human Capital Office, etc.) to deliver, track, and report completion to the DHS Office for Civil Rights and Civil Liberties for training completed in an alternative format (e.g., CD, hardcopy, etc.).

Employees may direct any questions concerning the content of this training to their servicing EEO or Civil Rights Office, or alternatively to Mary McGoldrick, Manager for EEO Services, Office for Civil Rights and Civil Liberties (e-mail: [mary.mcgoldrick@dhs.gov](mailto:mary.mcgoldrick@dhs.gov), telephone: (202) 254-8224). Employees should direct any LMS technical questions to their servicing IT or LMS Help Desk.

## **Appendix 9**

### **DHS No FEAR Act Notification**

**U.S. DEPARTMENT OF HOMELAND SECURITY**

**No FEAR Act**

**AGENCY: Office of the Secretary; DHS.**

**ACTION: Notice.**

**SUMMARY:** The Department of Homeland Security (DHS) is providing notice to all of its employees, former employees, and applicants for employment about the rights and remedies that are available to them under Federal antidiscrimination laws and whistleblower protection laws.

This notice satisfies the Department's notification requirements under section 202 of the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 and Office of Personnel Management regulations.

**FOR FURTHER INFORMATION CONTACT:** Stephen Shih, Deputy Officer for Equal Employment Opportunity (EEO) Programs, U.S. Department of Homeland Security, 245 Murray Lane, SW, Building 410, Washington DC, 20528, by telephone at 1-888-644-8360 or by e-mail at [civil.liberties@dhs.gov](mailto:civil.liberties@dhs.gov).

**SUPPLEMENTAL INFORMATION:**

The Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002, ("No FEAR Act"), Public Law 107-174 (May 15, 2002) was enacted, in part, to ensure that federal agencies are accountable for violations of antidiscrimination and whistleblower protection laws. Congress expressly found that "agencies cannot be run effectively if those agencies practice or tolerate discrimination." *Id.*, Title I, General Provisions, section 101(1).



In furtherance of this purpose, section 202 of the No FEAR Act requires all Federal agencies to provide written notification to Federal employees, former Federal employees and applicants for Federal employment to inform them of the rights and protections available under applicable Federal antidiscrimination and whistleblower protection laws. The Act also requires federal agencies to post the notice on each agency's website.

Pursuant to section 202 of the No FEAR Act, DHS is notifying all of its employees, former employees, and applicants for employment about the rights and remedies that are available to them under applicable Federal antidiscrimination laws and whistleblower protection laws. This notice will also be posted on DHS's website <https://www.dhs.gov>.

#### *Antidiscrimination Laws*

A Federal agency, including DHS, may not discriminate against an employee or applicant for Federal employment 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 a DHS 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 part 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 calendar days of

the alleged discriminatory action. If you are alleging discrimination based on sexual orientation, marital status, protected genetic information or political affiliation, you may (a) file a written complaint with the U.S. Office of Special Counsel (OSC) (see contact information below) or (b) pursue a discrimination complaint by contacting a DHS Equal Employment Opportunity (EEO) counselor within 45 calendar days of the alleged discriminatory action or (c) file a grievance through the DHS administrative or negotiated grievance procedures, if such procedures apply and are available.

#### *Whistleblower Protection Laws*

A Federal employee – including a DHS 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 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 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 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 Web site – <http://www.osc.gov>.

### *Retaliation for Engaging in Protected Activity*

A Federal employee, including a DHS employee, may not retaliate against an employee or applicant for employment because that individual exercises his or her rights under any of the Federal antidiscrimination or whistleblower protection 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*

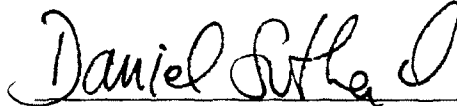
Under the existing laws, DHS retains the right, where appropriate, to discipline a Federal employee for conduct that is inconsistent with Federal Antidiscrimination and Whistleblower Protection Laws, up to and including removal. If OSC has initiated an investigation under 5 U.S.C. 1214, however, according to 5 U.S.C. 1214(f), DHS 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 DHS 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 Part 724, as well as the DHS Office for Civil Rights and Civil Liberties. Additional information regarding Federal antidiscrimination, whistleblower protection and retaliation laws can be found at the EEOC Web site – <http://www.eeoc.gov> and the OSC Web site – <http://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).

  
Daniel W. Sutherland  
Officer for Civil Rights and Civil Liberties

## **Appendix 10**


### **DHS Secretary's No FEAR Act and Whistleblower Protection Act Notification**



# Homeland Security

September 26, 2005

MEMORANDUM FOR: All DHS Employees

FROM: Michael Chertoff 

SUBJECT: The Notification and Federal Employee Antidiscrimination and Retaliation (No Fear) Act of 2002 and the Whistleblower Protection Act

As Secretary of the Department of Homeland Security (DHS), I am committed to ensuring that you are notified of your rights as Federal employees and understand prohibited personnel practices and whistleblower protections. The Notification and Federal Employee Antidiscrimination and Retaliation (No Fear) Act of 2002 and the Whistleblower Protection Act were enacted to support the President's Management Agenda and to ensure a work environment free of unlawful discrimination and retaliation.

The Whistleblower Protection Act was enacted to strengthen protections for Federal employees who believe they have been subjected to unjustified personnel actions in reprisal for their whistleblowing activities. Whistleblowing is defined as the disclosure of information by an employee or applicant that the employee or applicant reasonably believes evidences a violation of any law, rule or regulation or gross mismanagement, a gross waste of funds, an abuse of authority or a substantial and specific danger to public health or safety. The Notification and Federal Employee Antidiscrimination and Retaliation Act (No Fear Act) of 2002 requires that Federal agencies be accountable for violations of antidiscrimination and whistleblower protection laws and contends that agencies cannot be run effectively if they practice or tolerate discrimination.

Discrimination and reprisal have no place at DHS. It is a prohibited personnel practice to discriminate against any employee or applicant for employment because of his or her race, color, religion, sex, national origin, age or disability. In keeping with the No Fear Act, managers and supervisors found responsible for violating civil rights or whistleblower protection laws will be disciplined accordingly.

## **Appendix 11**

### **DHS No FEAR Act Training Plan**



# Homeland Security

## **No FEAR Act Training Plan**

This document sets forth the U.S. Department of Homeland Security's (DHS) training plan, pursuant to the Notification and Federal Antidiscrimination and Retaliation Act of 2002 ("No FEAR Act"), Public Law 107-174, and 5 CFR Part 724.203.

### **Requirements of the No Fear Act**

Specifically, Section 202(c) of Title II of the No FEAR Act sets forth the requirement: "Each Federal agency shall provide to the employees of such agency training regarding the rights and remedies applicable to such employees under the [Federal antidiscrimination and retaliation statutes and other legal authority]."

### **Requirements of 5 CFR Part 724**

5 CFR § 724.203(a) requires the following: "Each agency must develop a written plan to train all of its employees (including supervisors and managers) about the rights and remedies available under the Antidiscrimination Laws and Whistleblower Protection Laws applicable to them."

5 CFR § 724.203(b) further specifies: "Each agency training plan shall describe: (1) the instructional materials and method of training; (2) the training schedule; and (3) the means of documenting completion of training."

5 CFR § 724.203(d) requires each agency "to complete the initial training under this subpart for all employees (including supervisors and managers) by December 17, 2006. Thereafter, each agency must train all employees on a training cycle of no longer than every two years."

Finally, 29 CFR § 724.203(e) sets forth the following requirement: "After the initial training is completed, each agency must train new employees as part of its agency orientation program or other training program. Any agency that does not use a new employee orientation program for this purpose must train new employees within 90 calendar days of the new employees' appointments."

### **DHS No FEAR Act Training**

#### **I. Initial Training Required by 5 CFR § 724.203(d)**

DHS has distributed a PowerPoint presentation to all DHS employees (including executives, managers and supervisors) providing an overview of the rights and responsibilities applicable to DHS employees under the Federal antidiscrimination and retaliation statutes and other legal authority. The presentation remains posted to the DHS internal website, accessible to all DHS employees, satisfying the internal training requirement of 5 CFR § 724.203(d).

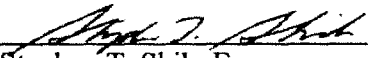


**II. No FEAR Act Training during New Employees' Orientation, Required by 5 CFR § 725.203(e)**

DHS component EEO and Civil Rights Offices participate in all new employee orientation sessions conducted by the component Human Capital Offices, by providing basic information on Equal Employment Opportunity (EEO) and specifically on the No FEAR Act, directing new employees to the No FEAR Act Power Point presentation posted on the component LMS or the Headquarters DHScovery website. New employees should complete this training within 90 calendar days of the new employees' appointments.

**III. Recurring No FEAR Act On-Line Training and Documentation**

The DHS Office for Civil Rights and Civil Liberties has completed an on-line No FEAR Act training course, and various components are preparing it for delivery. This training will be a biennial, mandatory requirement for all DHS employees. The training will take approximately 45 minutes and will enable DHS to electronically track completion through the DHScovery Learning Management System, in compliance with the recurring training and documentation requirements of 5 CFR §§ 724.203(b) and (d).

  
\_\_\_\_\_  
Stephen T. Shih, Esq.  
Deputy Officer for EEO Programs  
Office for Civil Rights and Civil Liberties

Dec. 17, 2008  
Date