



## ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

### MEMORANDUM FOR ALL ACUS EMPLOYEES

October 20, 2021

FROM: Matthew L. Wiener, Vice Chairman and Executive Director

SUBJECT: Annual Policy Statement on Equal Employment Opportunity; No FEAR Act/Whistleblower Protection Notice

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The Administrative Conference of the United States (ACUS or Conference) is committed to enforcing a zero-tolerance policy for any form of discrimination or harassment in the workplace, including physical, psychological or sexual harassment. Related to this commitment is a determination to seek diversity and to ensure the rights of employees under the federal whistleblower protection laws and policies that prohibit reprisals. The following information will serve as the official annual Policy Statement on Equal Employment Opportunity, as well as the annual notice required by the No FEAR Act of 2002, Pub. L. 107-174.

#### **I. Equal Employment Opportunity Policy Statement**

The Conference supports the principles of equal employment opportunity (EEO) for all employees and applicants for employment. ACUS's EEO policy covers all agency employment programs, management practices, and decisions, including recruitment, hiring, merit promotion, transfers, reassignments, training and career development, benefits, discipline, and separation. Moreover, the policy is consistent with all applicable law and presidential directives, including the latest requirements under Executive Order 14035, *Diversity, Equity, Inclusion, and Accessibility in the Federal Workforce* (June 25, 2021).

This statement notifies all employees and applicants that ACUS prohibits and will not tolerate discrimination on the basis of race, color, religion, sex (pregnancy, gender identity, and sexual orientation), national origin, age, genetic information, disability, and in retaliation for prior involvement in EEO protected activity. ACUS is committed to maintaining a work environment that is free of retaliation and harassment and will not tolerate workplace harassment or reprisal against anyone who engages in protected activity. This commitment includes taking swift and appropriate disciplinary action against individuals who engage in retaliatory and harassing behavior. Furthermore, ACUS supports the rights of individuals to exercise their rights under applicable EEO and civil rights statutes.

All ACUS employees are responsible for implementing the agency's EEO policy. In order to ensure that all employees are afforded a fair and competitive employment process, it is the responsibility of ACUS management to follow EEO principles in recruitment and personnel management decisions, and to be fair and equitable in the rights of employees. As leaders, managers and supervisors are expected to take an active role in promoting and implementing the agency's EEO goals and objectives. Achievement of the agency's equal opportunity objectives

will enhance the agency's ability to accomplish its mission. All employees are expected to abide by the letter, intent, and spirit of the equal opportunity laws and policies.

The Conference is committed to preventing unlawful discrimination in its employment policies, procedures, practices, and operations. This statement reaffirms the principles of equal employment opportunity and assures that EEO program requirements will be enforced.

A copy of this statement is to be posted in common areas of ACUS's offices and made available to all employees via shared computer drives. For questions concerning EEO, contact Shawne McGibbon, EEO Director at 202-480-2088 or via electronic mail at smcgibbon@acus.gov.

This policy statement supersedes all prior versions.

## **II. No FEAR Act Notice**

On May 15, 2002, Congress enacted the "Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002" (No FEAR Act), 116 Stat. 566, Pub. L. 107-174 (5 U.S.C. § 2301 note). The Act is intended to hold Federal agencies accountable for violations of antidiscrimination and whistleblower protection laws. In support of this purpose, Congress found that "agencies cannot be run effectively if those agencies practice or tolerate discrimination." Sec. 101(1), Pub. L. 107-174. The Conference provides this No FEAR Act notice to inform its current employees, former employees, and applicants for employment of the rights and protections available under Federal antidiscrimination, whistleblower protection, and retaliation laws, as required by the Office of Personnel Management, 5 CFR § 724.202.

### **a. 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 calendar days of the alleged discriminatory action.

Because the Conference is a very small agency, it has entered into an agreement with the General Services Administration (GSA) for EEO services, including, but not limited to, counseling and Alternative Dispute Resolution (ADR) services. EEO counselors are available by contacting GSA's EEO Office at their centralized intake hotline and mailbox.

Email: [eeo@gsa.gov](mailto:eeo@gsa.gov). Telephone: 202-501-0767. You may also file a written complaint of discrimination with that office.

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.

#### **b. 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 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 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](http://www.osc.gov).

#### **c. 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 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.

#### **d. Disciplinary Actions**

Under the existing laws, each agency 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), 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.

#### **e. Additional Information**

For information regarding the No FEAR Act regulations, refer to 5 CFR 724, or contact the General Counsel's Office at the Conference, 1120 20<sup>th</sup> Street, NW, Suite 706 South, Washington, DC 20036, (202) 480-2080. Additional information regarding Federal antidiscrimination, whistleblower protection, and retaliation laws can be found at [www.eeoc.gov](http://www.eeoc.gov) and [www.osc.gov](http://www.osc.gov).

**f. 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).